Nebraska Law Review

Volume 62 | Issue 3 Article 3

1983

A Humanistic Perspective in Legal Education

James R. Elkins
West Virginia University College of Law, jelkins@labs.net

By James A. Elkins*

A Humanistic Perspective in Legal Education

I. INTRODUCTION

There are many ways to look at the complex institution of legal education. Teachers tend to view legal education differently than students. At the same time, "outsiders" possess a different perspective of legal education than do law students and teachers. The nature of legal education and its role in preparing future professionals are the subject of debate between students, teachers, and members of the legal profession.[1]

One perspective of legal education finds a polarity between practical and theoretical approaches. William Twining described the polarity as a conflict between Pericles and the plumber.[2] The practical-theoretical conflict that exists in law schools is also present in the life of a professional.[3]

Other views of legal education employ theories grounded in sociology, psychology, political science, economics, history, and philosophy. Unfortunately, the varied perspectives of legal education have done little to promote significant improvements in the way lawyers are educated.

In the past two decades, the critics of legal education have forged a new humanistic perspective. The humanistic perspective emerges from the work of critics who suggest that law school should be more than mere training. Those critics recognize that lawyers need to have certain skills in order to actually help clients. The problem arises because while practical skills are being taught,

* Professor of Law, West Virginia University. B.A., 1967, J.D., 1971, Kentucky; LL.M., 1975, Yale.

1. *See, e.g.*, 1983 Report by Derek C. Bok to Harvard's Board of Overseers (excerpted in STUDENT LAWYER, Sept. 1983, at 46).
2. Twining, *Pericles and the Plumber*, 83 LAW Q. REV. 396 (1967). When learning is split into the practical and the theoretical, learners are polarized into practicalists and idealists; scientists and humanists; doers (lawyers) and thinkers (philosophers). If learning involves merely learning how to do something, then learning law is a practical activity well suited for a prosaic mentality. The problem is that this conceptualization splits off learning from theory, theory from practice, and doing from being.
3. *See* Elkins, *The Paradox of a Life in Law*, 40 U. PITT. L. REV. 129 (1979).

the psychological, sociological, political, and moral dimensions of the lawyer's work are ignored. Humanistic legal education seeks to cultivate an ideal of professional practice while teaching basic legal skills and knowledge. A central purpose of the humanistic perspective is to provide a critical view of what lawyers do and how they themselves are affected by their work. Legal education patterned after the humanistic perspective would more closely examine the role of the lawyer in society.

The humanistic perspective also recognizes that law students often become dissatisfied and disillusioned soon after beginning law school. A sensible, personally fulfilling, and socially responsive educational training regimen for lawyers must respond to the interests and concerns of those who are being educated.[4] Traditional legal education ignores the simple fact that each student is a person with a rich inner life that plays a significant role in forming a professional identity. The teacher with a humanistic perspective recognizes what the traditional teacher ignores. The humanistic teacher takes the effort to discover who the student is and what unique gifts she[5] has that will help her pursue the life of a lawyer. By taking the effort to know her students, the humanistic teacher concentrates less on the curriculum, the skills, and the body of knowledge transmitted in legal education than does the traditional teacher. Instead, more time is spent teaching and learning the process of participation in an individual, personal, and subjective world of law and legal practice. In other words, the emphasis shifts from merely teaching the skills of a lawyer to teaching the law student to be a whole person.[6]

---

4. For an excellent account of teaching from the "bottom up," that is, from the student perspective, see I. SHOR, CRITICAL TEACHING AND EVERYDAY LIFE (1980). *See also* P. FREIRE, CULTURAL ACTION FOR FREEDOM (1970) [hereinafter cited as CULTURAL ACTION]; P. FREIRE, EDUCATION FOR CRITICAL CONSCIOUSNESS (1973); P. FREIRE, PEDAGOGY OF THE OPPRESSED (1970) [hereinafter cited as PEDAGOGY]; Monette, *Paulo Friere [sic] and Other Unheard Voices*, 74 RELIGIOUS EDUC. 543 (1979).
5. The female gender will generally be used throughout this article.
6. "One of the most cherished ideals of the humanistic tradition is the notion of the whole man." Buchen, *Humanism and Futurism: Enemies or Allies?*, in THE PERSON IN EDUCATION: A HUMANISTIC APPROACH 248, 248 (C. Schlosser ed. 1976).

> One basic reason why the humanities did not honor the past legacy of educating the whole man is that they turned, instead, to educating the individual; and the concept of individuality and that of the whole man are not synonymous. The individual man is stirred by independence, autonomy and self-reliance; the holistic man by interdependence, collectivism and reliance.

Id. at 250-51.

> Buchen argues that we should recognize that we are in truth many selves: Singular selfhood is the egotistical attempt of a part of the whole to

The humanistic perspective is built on the failure of traditional modes and conceptions of thought. Consequently, a humanistic perspective relies on critical awareness of existing social structure and processes, modes of thought, and ways of being. The humanistic orientation in legal education, like the humanistic orientation in psychology, sociology, anthropology, and other professions, can be traced to a recognition of the limits of traditional disciplines and modes of analysis.

II. A HISTORICAL PERSPECTIVE

A comprehensive account of the humanistic perspective would require an extensive review of the historical philosophical roots of present day legal education. A thorough study of the sociology of legal knowledge is beyond the scope of this Article. However, in order to understand the humanistic perspective, it is necessary to examine legal education in the broad context of knowledge and learning.

The humanistic perspective has its roots in the work of legal educators who have outlined two parallel concerns about traditional education: (1) the failure of legal education to focus on issues of social justice, and (2) the failure to deal with the "human relations skills" that are necessary for one to be an effective lawyer. While critics of legal education tend to write from either a social or psychological perspective, those perspectives may be viewed as two essential elements of a humanistic orientation.

A. The Social Critique

A range of reform-oriented and radical critical views observe legal education from a social perspective.[7] Duncan Kennedy and Paul Savoy, for example, argue that legal education has a distinctively ideological bent that supports the prevailing social hierar-

---

be self-sufficient and to subordinate other parts to its own desires and purposes. Culturally, it is reflected in the lie of the melting pot; internationally, in the self-sufficiency of isolationism; economically, in the unilateralism of being solely a consumer.

Id. at 253. It is not difficult to find support for Buchen's position. *See, e.g.*, Kaplan, *Some Limitations on Rationality*, in NOMOS VII: RATIONAL DECISION 55, 58 (C. Friedrich ed. 1964) ("[I]n truth the individual is a congress of selves, each pursuing values to which the other selves may be indifferent or hostile—if, indeed, they are even aware of the pursuit."). *See generally* D. MILLER, THE NEW POLYTHEISM (1981).

7. The relationship of the reform-oriented and the radical critic is quite complex. The relationship has an important, if not determinative role in the future of legal education. The relationship can be observed in other movements, for example, in the women's movement. *See, e.g.*, Z. EISENSTEIN, THE RADICAL FUTURE OF LIBERAL FEMINISM (1981).

chy.[8] That persuasion fails to help students confront the issues of social injustice which are inherent in the lawyer's work. William Simon[9] and Judith Shklar[10] have shown how legal ideology[11] promotes a belief that law and politics are separated.[12] That belief masks the role of lawyers in society.

Law schools fail to provide an adequate academic program for the critical analysis of the role of law in society.[13] More significantly, the legal worldview imparted in law schools has become "basically a set of rationalized economic strategems and devices for manipulating people and power."[14] In the ongoing struggle between power and justice, justice comes to be viewed as the out-

8. *See* Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 40 (D. Kairys ed. 1982); Savoy, *Toward a New Politics of Legal Education*, 79 YALE L.J. 444 (1970).

9. *See generally* Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487 (1980). For a critique of Simon's work, see Elkins, *"All My Friends Are Becoming Strangers": The Psychological Perspective in Legal Education*, 84 W. VA. L. REV. 161 (1981).

10. *See generally* J. SHKLAR, LEGALISM (1964). Shklar's account of the effort to view law in isolation from the social/political world remains unequalled. Shklar writes:

> The urge to draw a clear line between law and nonlaw has led to the constructing of ever more refined and rigid systems of formal definitions. This procedure has served to isolate law completely from the social context within which it exists. Law is endowed with its own "science," and its own values, which are all treated as a single "block" sealed off from general social history, from general social theory, from politics, and from morality.

Id. at 2-3.

11. William Simon has described legal ideology as an "ideology of advocacy." *See* Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 30.

12. On political lawyering, see Goldberg, *Political Lawyering in "Non-Political" Cases: Some Theoretical Considerations*, 4 AM. LEGAL STUD. A. F. 57 (1979).

13. A new radical social critique of law and legal education is being presented by feminist scholars. *See* Menkel-Meadow, *Women as Law Teachers: Toward the "Feminization" of Legal Education*, in 3 HUMANISTIC EDUCATION IN LAW: ESSAYS ON THE APPLICATION OF A HUMANISTIC PERSPECTIVE TO LAW TEACHING 16 (1981) (Project for the Study and Application of Humanistic Education in Law, Colum. U. School of Law); Rifkin, *Toward a Theory of Law and Patriarchy*, in MARXISM AND LAW 295 (P. Beirne & R. Quinney eds. 1982); Polan, *Toward a Theory of Law and Patriarchy*, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 294 (D. Kairys ed. 1982). Jerold Auerbach and Stuart Scheingold argue that it is our persistent faith in the piecemeal, case-by-case approach to the resolution of conflict that makes it so difficult for lawyers to acquire any kind of social perspective. *See* J. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA (1976); S. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE (1974).

14. d'Errico, Arons & Rifkin, *Humanistic Legal Studies at the University of Massachusetts at Amherst*, 28 J. LEGAL EDUC. 18, 19 (1976) [hereinafter cited as d'Errico].

come of a case determined by institutional rules. In law schools, students learn the rules and they are told why the system is necessary. However, they are not taught how rules affect their lives. Neither are they taught that the "system of rules" becomes a justification for the existence of the system itself.

Another socially-oriented critique of legal education is the "law and humanities" approach.[15] That approach places less emphasis on the political ideology of law and legal education than does the approach espoused by the previously discussed social critics.[16] In the law and humanities approach, law and lawyers are viewed from a broad cultural perspective. The study of history, philosophy, and literature—the traditional humanities[17]—brings to law a

15. *See, e.g.*, J. WHITE, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION (1973) (White's book is the only "law and humanities" text available for use in the classroom). *See also* Fetner, *Future of Undergraduate Education in Law and the Humanities*, 67 A.B.A. J. 187 (1981); Homans, *A "Humanist" Caught by the Law*, 3 AM. LEGAL STUD. A. F. 9 (1978); Samaha, *Law and the Liberal Arts at the University of Minnesota*, 28 J. LEGAL EDUC. 80 (1976); Swartz, *Law and Justice Studies: Built on a Firm Foundation*, CHANGE, Aug. 1978, at 42.

16. *See supra* text accompanying notes 7-14.

17. In the classical humanistic perspective there has traditionally been a strong emphasis on history, philosophy, literature, and the arts. *See* MacDonald, *Toward a Platform for Humanistic Education*, in HUMANISTIC EDUCATION: VISIONS AND REALITIES 345 (R. Weller ed. 1977). The term classical is used here to refer to what has traditionally been referred to as humanism. The classical humanistic approach "focus[es] on the balance and significance of the subject matter of the curriculum in terms of its ability to develop full human capacity." *Id.* at 346. "[A]ny complete picture of humanistic education must come squarely to grips with substantive humanism as it focuses upon our cultural heritage." *Id.* at 349.

The humanities refuse "to repudiate the past as irrelevant." Bullock, *The Future of Humanistic Studies*, 82 TCHRS. C. REC. 173, 179 (1980). Given this conception of traditional humanism, it should come as no surprise that history is commonly seen as a subject of the humanities and remains today a fundamental strand in the humanistic perspective. Paul Ricoeur notes that "[h]umanism in the narrow sense presents itself as a resistance to this tendency of modern man to disengage himself from his cultural past; in short, humanism is a resistance to forgetfulness." P. RICOEUR, POLITICAL AND SOCIAL ESSAYS 70 (D. Stewart & J. Bien eds. 1975). Ricoeur goes on to note that humanists are "experts of cultural memory." *Id.* at 71.

For an exploration of humanism in its traditional and classical versions, see A.J. AYER, THE HUMANIST OUTLOOK (1968); H. BLACKHAM, HUMANISM (1968); H. BLACKHAM, OBJECTIONS TO HUMANISM (1965); G. ELLIOTT, HUMANISM AND IMAGINATION (1938); J. FLYNN, HUMANISM AND IDEOLOGY: AN ARISTOTELIAN VIEW (1973); E. FROMM, THE REVOLUTION OF HOPE (1968); M. HADAS, HUMANISM: THE GREEK IDEAL AND ITS SURVIVAL (1960); J. HUXLEY, THE HUMANIST FRAME (1962); P. KURTZ, THE FULLNESS OF LIFE (1974); C. LAMONT, THE PHILOSOPHY OF HUMANISM (1965); A. LEVI, HUMANISM AND POLITICS: STUDIES IN THE RELATIONSHIP OF POWER AND VALUE IN THE WESTERN TRADITION (1968); J. MARITAIN, TRUE HUMANISM (1970); T. MAYNARD, HUMANIST AS HERO: THE LIFE OF SIR THOMAS MORE (1947); H. MULLER, SCIENCE AND CRITICISM (1943);

fresh cultural perspective. Such a perspective helps legal actors to see themselves from outside their own narrow and limited worldviews.[18] The humanities should be an integral part of professional education. One commentator wrote:

G. MUNSON, THE DILEMMA OF THE LIBERATED: AN INTERPRETATION OF TWENTIETH CENTURY HUMANISM (1967); A. NEY, SEEING INTO LIFE: ESSAYS ON ILLUSION, REALITY, AND MORALITY (1969); O. REISER, COSMIC HUMANISM AND WORLD UNITY (1975); J. RYCHLAK, THE PSYCHOLOGY OF RIGOROUS HUMANISM (1977); F. SCHILLER, STUDIES IN HUMANISM (2d ed. 1970); THE CRITIQUE OF HUMANISM, (C. Grattan ed. 1968); THE HUMANIST ALTERNATIVE: SOME DEFINITIONS OF HUMANISM (P. Kurtz ed. 1973); Kurtz, *What is Humanism?* in MORAL PROBLEMS IN CONTEMPORARY SOCIETY (P. Kurtz ed. 1969).

On defining modern humanism, see Primack & Aspy, *The Roots of Humanism*, 38 EDUC. LEADERSHIP 224 (1980). For a more contemporary view of humanistic approaches to the humanities, see W. KAUFMAN, THE FUTURE OF THE HUMANITIES (1977); A. LEVI, THE HUMANITIES TODAY (1970) (Levi argues that there are two conceptions of the humanities, "one holding that they are skills or techniques, or 'ways of doing' or *arts*; the other, that they are fields or areas of attention or 'contents' or *subject matters*." *Id.* at 14. Levi concludes, wrongly I submit, that the humanities and sciences present a "real dualism" based on "a split within the structure of the human mind." *Id.* at 55.); P. NOZICK, PHILOSOPHICAL EXPLANATIONS (1981); F. OLAFSON, THE DIALECTIC OF ACTION: A PHILOSOPHICAL INTERPRETATION OF HISTORY AND THE HUMANITIES (1979).

A recent commentator on the humanistic perspective in nursing has suggested that the humanities represent three distinct approaches to human experience: the historical, the aesthetic, and the philosophical. Gadow, *Nursing and the Humanities: An Approach to Humanistic Issues in Health Care*, in BIOETHICS AND HUMAN RIGHTS 305 (E. Bandman & B. Bandman eds. 1978). Gadow suggests that the historical approach focuses on the origin and evolution of professional values. The philosphical approach would look at the moral/ethical dimension and question "the nature of humanness and the fundamental forms of human relating," while the aesthetic approach focuses on "the unique nonquantifiable dimensions of human experience" and addresses "the subjective and expressly individual aspects of the experience of illness, as portrayed, for example, in literature." *Id.* at 306.

18. An excellent example of how the humanities can help expand our vision is seen in the view we take toward legal writing, the stepchild of the legal curriculum. One educator has noted that "writing, which is the clearest demonstration of the power of analytical and sequential thinking, seems increasingly to be an alien form to many of our young, even to those who may be regarded as extremely intelligent." N. POSTMAN, TEACHING AS A CONSERVING ACTIVITY 73 (1979). Lawyers practice their art through writing, and judges convey their opinions in written form. Lawyers write to clients and attempt to draft documents to help clients achieve certain ends. Simply put, lawyers and judges are writers. *See* J. WHITE, *supra* note 15, at 409.

From a humanistic perspective, legal writing is not simply a skill; it also produces a body of literature. James White has offered some intriguing possibilities for looking at judicial opinions as literature. He asks,

> whether the judicial opinion, like the poem, has a form with its own meaning—its own resources for expression and demands on the reader and writer—and if so, how that form can be defined. . . . What are the structural tensions, the permanent questions each writer must address, that give it life and interest? . . . [W]hat is

> Awareness of the meaning of a profession should not dawn upon a student in graduate school, law school, medical school, or advanced engineering school. Imaginative teaching that links the arts, sciences and professions can satisfy the inner hunger for moral commitment and self-expression, while answering the outer call for service by providing a vehicle for social regeneration. Liberal learning can recognize the validity and promise in the ferment of our time and suggest ways in which students may lose themselves in order to find themselves in the transformation of the world about them.[19]

While the "law and humanities" perspective has enriched legal education, it has not created the impetus for major reform. Rather than changing legal education, the humanities simply offer an alternative to traditional law courses. In addition, the humanities have become "disciplines" with their own narrow perspectives.[20] Finally, the humanities, while presenting a cultural perspective, may implicitly represent a conservative political tradition. For any or all of these reasons, the "law and humanities" viewpoint may falsely represent the humanistic perspective.

The "law and literature" strand of the "law and humanities" perspective, however, is of special interest.[21] J. Allen Smith, one of

---

> there, beyond the message or rule of judicial opinion, which makes it worth one person's while to write it and another's to read it?
>
> Does the form, when you find it, impose a restraint that makes meaning possible? . . . Possible tensions [may exist] in the structure of the opinion—between the particular and the representative, between the logical and the illogical, between the inherited language and the individual mind, between the relevant and the irrelevant, between complexity and simplicity, between honesty and clarity, between legal and nonlegal languages . . . .

Id. at 801.

19. Meyerson, *Civilizing Education: Uniting Liberal and Professional Learning*, 103 DAEDALUS 173, 175 (1974).
20. A former director of the National Endowment of the Humanities has written that "[i]n the academic world today the most common use of the term humanities is to designate a number of disciplines." Duffy, *The Social Meaning of the Humanities*, CHANGE, Feb.-Mar. 1980, at 39, 40. If by the term humanities we mean nothing more than particular fields of knowledge then the humanities cannot play a significant role in the movement of legal education to a more humanistic perspective.
21. *See* J. WHITE, *supra* note 15; Axelrod, *Law and the Humanities: Notes from Underground*, 29 RUTGERS L. REV. 228 (1976); Davenport, *A Course in Literature for Law Students*, 6 J. LEGAL EDUC. 569 (1954); Smith, *The Coming Renaissance in Law and Literature*, 7 MD. L.F. 84 (1977) [hereinafter cited as *Coming Renaissance*]; Smith, *Job and the Anguish of the Legal Profession: An Example of the Relationship of Literature, Law and Justice*, 32 RUTGERS L. REV. 661 (1979); Smith & Moore, *Law and Literature: A Symposium*, 2 AM. LEGAL STUD. A. F. 21 (1977); Suretsky, *Search for a Theory: An Annotated Bibliography of Writings on the Relation of Law to Literature and the Humanities*, 32 RUTGERS L. REV. 727 (1979); Weisberg and Barricelli, *Literature and Law*, in INTERRELATIONS OF LITERATURE 150 (J. Barricelli & J. Gibaldi eds. 1982); Weisberg & Kretschman, *Wigmore's "Legal Novels" Expanded: A Collaborative Effort*, 7 MD. L.F. (1977).

the early leaders of the contemporary movement, argues that literature is an expression of the humanistic tradition "from which the profession should draw nourishment and direction."[22]

The purpose of studying law and lawyers in literature is to awaken people to the rich imaginative possibilities that the novelist and fiction writer see in our professional work and lives. The novelist may see law and lawyers more clearly than we are able to see ourselves. Kafka, Faulkner, Dickens, and Shakesphere present the ethics and ethos of law and lawyering by way of imaginative moral stories which transcend any limited instrumental goals of legal education as professional training.

In an interesting variation on the law and literature theme, Thomas Shaffer has developed a body of stories and literary criticism for the purpose of teaching legal ethics.[23] Shaffer points out that the novelist describes how lawyers deal with the moral, social, political, and psychological calculus of lawyering. The novelist's accounts of lawyering help us see both the pathology of professionalism and the heroic endeavors of individual lawyers to lead good lives. "[T]he story is the novelist's way of describing how lawyers in law firms came to accept or to refuse the moral burdens they (and we) identify as heroic stuff. . . ."[24] Shaffer's work is humanistic in the truest sense.

B. The Subjective Personalistic Dimension of the Humanistic Perspective

In the previous section, the social, political, and cultural strands of the humanistic perspective were briefly described. This section will explore the personal, subjective, and psychological aspects of legal education which serve as the forerunners of more contemporary humanistic perspectives.

In 1955, Erwin Griswold, a Harvard law professor, suggested the need for human relations skills training.[25] Griswold was by no means a radical critical of legal education. His proposal for human relations skills training was not an alternative to the traditional case method. Yet, he found that the traditional approach, "good as

22. *Coming Renaissance*, *supra* note 21, at 85.

23. *See* T. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER (1980); Shaffer, *Christian Lawyer Stories and American Legal Ethics*, 33 MERCER L. REV. 877 (1982); Shaffer, *Henry Knox and the Moral Theology of Law Firms*, 38 WASH. & LEE L. REV. 347 (1981) [hereinafter cited as *Henry Knox*]; Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181 (1981); Shaffer, *Serving the Guilty*, 26 LOYOLA L. REV. 71 (1980).

24. *Henry Knox*, *supra* note 23, at 349.

25. *See* Griswold, *Law Schools and Human Relations*, 1955 WASH. U.L.Q. 217.

it is, is not beyond criticism."[26] Griswold's concern about the case method was that it overemphasized the need and desire to dissect cases. Griswold stated:

> [Such overemphasis] fosters a bar of technicians, who tend to look for detail rather than for larger issues. The case method, arising out of litigated controversies, may be more logical and precise than the law actually is. The case method, without some supplementation or corrective, may lead to too much legalism, to too much of what even the lawyer recognizes as technicality. . . . There is some tendency, with the case method, for the study of law to be something like the study of chess or the analysis of a bridge hand. When analyzing the law in intricate detail, it may be hard to keep in mind the vital fact that the problems really relate to people, either the people who are parties to the case, or the people who will be affected by the law established once the case is decided.[27]

Griswold argued that legal education should draw more from the social sciences, so that the human beings and human problems confronted by lawyers could be more adequately dealt with.

> [L]awyers constantly deal with people. They deal with people far more than they do with appellate courts. They deal with clients; they deal with witnesses; they deal with persons against whom demands are made; they carry on negotiations; they are constantly endeavoring to come to agreements of one sort or another with people . . . who are under stress or strain of one sort or another. . . . Do law students ever learn anything about this at all?[28]

While Griswold was unwilling to place the blame for the deficiencies in legal education on the case method, he did call the method into question: "Can it be that the case method of instruction is partly to blame because it lends itself so well to the impersonal, chess board attitude toward law, obscuring the humble human relationships which law is intended to serve and with which the lawyer must deal?"[29] Griswold argued that a body of knowledge about human relations could be brought into the law schools. He noted that business schools and medical schools already had courses in human relations and that information being developed in the fields of social psychology, cultural anthropology, and group dynamics was relevant to lawyers' work.

Four years after Griswold's lecture on the need for human relations skills training in law schools, Howard Sacks developed a program for human relations skills training in a seminal article published in the *Journal of Legal Education*.[30] Sacks' article described a course designed to teach human relations skills, which represented one of the early efforts to incorporate role playing, ex-

26. *Id.* at 219.
27. *Id.* at 220.
28. *Id.* at 223.
29. *Id.* at 224.
30. *See* Sacks, *Human-Relations Training for Law Students and Lawyers*, 11 J. LEGAL EDUC. 316 (1959).

periential "awareness," and communication skills exercises into the teaching of lawyering skills. Sacks made extensive use of the concept of process; "the procedural and psychological aspects of how a group goes about its business, in contrast to the 'content' element of group life, which relates to the problem the group has, the solution suggested, etc."[31] Sacks' process orientation was derived from his training in small group dynamics at the National Training Lab (NTL) at Bethel, Maine.[32] NTL pioneered the use of small, unstructured groups to study how people interact with each other. NTL T-groups[33] are consciously unstructured so that everything that happens in the group becomes a part of the process of learning about oneself and about how people interact. What makes the T-group unique is that the "trainer (instructor) does not prescribe what the trainees are to talk about or to do, or lead the discussion, or even lay down procedural rules for the group—*e.g.*, how one gets the floor. All these things are, instead, done by the group itself."[34] Individual work in the group consists of gaining more "awareness" as a person. The group work provides the opportunity to explore new behavior. Finally, there is the opportunity to learn how one's responsibility in such a group is exercised and evaded.

Sacks' early work with T-groups in law school is significant for a number of reasons.[35] Sacks implemented Griswold's ideas about human relations skills training. Much of the social science research, as in Griswold's article, provided intriguing ideas but little in the way of practical suggestions as to how those ideas might be applied. Sacks, applying NTL small group concepts, was able to operationalize Griswold's proposal for human relations training.

Sacks' work did not lead to wholesale adoption of the use of T-

31. *Id.* at 325-26.

32. The NTL Institute was founded as the National Training Laboratories in 1947 by a group of behavioral scientists. NTL has been largely responsible for the popularization of the study of human relations skills in the setting of small groups (called T or Training groups). The study of small group processes and insights into individual personality and interpersonal dynamics in small groups was pioneered by NTL. During the 1950's and the 1960's, NTL concepts were expanded to include a study of the role of individuals in organizations. Today NTL is well-known for development of what is called laboratory education which explores new dimensions of personal relations, new approaches to social change, and new methods of managing organizations and institutions.

For applications of the T-Group method in the classroom setting, see Miles, *The T-Group and the Classroom*, in T-GROUP THEORY AND LABORATORY METHOD 452 (1964).

33. *See supra* note 32.

34. Sacks, *supra* note 30, at 328.

35. On the significance of small group dynamics for lawyers, see Elkins, *supra* note 9, at 166 n.22.

groups in legal education. His work, however, has had a continuing influence. Thomas Shaffer,[36] Paul Savoy,[37] and other clinical teachers[38] have continued to draw on the growing body of theory of small group dynamics. While law schools have generally not embraced the use of small groups to teach the human relations skills necessary to practice law, the early work with the small group process has lead to an increased concern for teaching lawyers basic skills of interviewing, counseling, and negotiation. During the 1960's and the 1970's, the concepts underlying human relations skills training found their way into the curriculum via interviewing and counseling courses.[39]

While it is appropriate to look at human relations skills training and the more recent work in legal counseling as precursors of the contemporary humanistic perspective in legal education, some caution is needed. Human relations skills training and counseling, like the humanities, are clothed in humanistic rhetoric. On closer analysis, however, the ideological basis of interviewing and counseling is often philosophically grounded in the pragmatic, instrumental perspective of lawyering.[40]

---

36. *See generally* Grismer & Shaffer, *Experience-Based Teaching Methods in Legal Counseling*, 19 CLEV. ST. L. REV. 448 (1970).
37. *See generally* Savoy, *supra* note 8.
38. *See* Meltsner & Schrag, *Report from a CLEPR Colony*, 76 COLUM. L. REV. 581 (1976); Meltsner & Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978).
39. *See generally* D. BINDER & S. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977); H. FREEMAN & H. WEIHOFEN, CLINICAL LAW TRAINING: INTERVIEWING AND COUNSELING (1972); T. SHAFFER, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL (1976); T. SHAFFER & R. REDMOUNT, LEGAL INTERVIEWING AND COUNSELING (1980); A. WATSON, THE LAWYER IN THE INTERVIEWING AND COUNSELLING PROCESS (1976).

In addition to these teaching materials, Andrew Watson, Thomas Shaffer, Robert Redmount, Gary Goodpastor, and numerous other commentators wrote articles during the 1960's and the 1970's promoting the counseling perspective in legal education. *See* T. SHAFFER, THE PLANNING AND DRAFTING OF WILLS AND TRUSTS (1972); Goodpaster, *The Human Arts of Lawyering: Interviewing and Counseling*, 27 J. LEGAL EDUC. 5 (1975); Redmount, *Attorney Personalities and Some Psychological Aspects of Legal Consultation*, 109 U. PA. L. REV. 972 (1961); Redmount, *Humanistic Law Through Legal Counseling*, 2 CONN. L. REV. 98 (1969); Redmount, *Perception and Strategy in Divorce Counseling*, 34 CONN. B.J. 249 (1960); Shaffer, *The "Estate Planning" Counselor and Values Destroyed by Death*, 55 IOWA L. REV. 376 (1970); Shaffer, *Lawyers, Counselors, and Counselors at Law*, 61 A.B.A. J. 854 (1975); Shaffer, *Will Interviews, Young Family Clients and the Psychology of Testation*, 44 NOTRE DAME LAW. 345 (1969); Watson, *The Lawyer as Counselor*, 5 J. FAM. L. 7 (1965); Watson, *Professionalizing the Lawyer's Role as Counselor: Risk Taking for Rewards*, 1969 ARIZ. ST. L.J. 17. *See also* Elkins, *A Counseling Model for Lawyering in Divorce Cases*, 53 NOTRE DAME LAW. 229 (1977); Smith & Nester, *Lawyers, Clients, and Communication Skill*, 1977 B.Y.U. L. REV. 275.
40. *Cf.* Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1981) (arguing that the ideo-

C. The Psychological Formalities of the Humanistic Perspective

Psychology has a long history in legal education, a history that predates the counseling and human relations skills training era. As early as the 1920's, the President of the Association of American Law Schools argued that judges should attain "self-consciousness as to methods of thought and procedure."[41] In the 1930's, legal realists sought to include within jurisprudence a study of "pragmatic and socio-psychological decision elements."[42] Jerome Frank, a legal realist, attacked sociological conceptions of legalism in *Law and the Modern Mind* and began to focus on the personality of the judge.[43] Frank argued that judges should be trained "in the best available methods of psychology" in order to "become keenly aware of [their] own prejudices, biases, antipathies, and the like. . . ."[44] Frank and the legal realists' interest in the psychological dimension of law and lawyering found its way into the law school curriculum. Frank introduced legal scholars to Freud and psychoanalytic theory which became a focus of legal and jurisprudential scholarship during the post-war period, extending into the early 1970's.[45]

---

logical premises of traditional law classroom teaching are replicated in clinical settings). *See also* Elkins, *supra* note 9.

41. Oliphant, *A Return to Stare Decisis*, (pts. 1 & 2), 14 A.B.A. J. 71, 159, at 161 (1928). *See also* Hutcheson, *The Judgment Intuitive: The Function of the "Hunch" in Judicial Decision*, 14 CORNELL L.Q. 274 (1929).
42. Llewellyn, *A Realistic Jurisprudence-The Next Step*, 30 COLUM. L. REV. 431, 447 n.12 (1930).
43. J. FRANK, LAW AND THE MODERN MIND (1949). For discussions of Frank's work, see W. VOLKOMER, THE PASSIONATE LIBERAL: THE POLITICAL AND LEGAL IDEAS OF JEROME FRANK (1970); Ackerman, *Law and the Modern Mind*, 103 DAEDALUS 119 (1974); Douglas, *Jerome N. Frank*, 10 J. LEGAL EDUC. 1 (1957) (address to joint meeting of Assoc. of Bar of City of N.Y. and N.Y. County Lawyer's Assoc., May 23, 1957); Paul, *Psychological Materials in the Legal Philosophy of Jerome Frank*, 11 S.C.L.Q. 293 (1959).
44. J. FRANK, *supra* note 43, at 147 n.*. Jerome Frank and other members of the legal realist school who brought the psychological perspective into their work did not lose sight of social-political realities. Frank's work was highly psychological in orientation and yet was highly critical of the legal profession and the legal system.
45. *See* A. Ehrenzweig, PSYCHOANALYTIC JURISPRUDENCE (1971); Batt, *Notes from the Penal Colony: A Jurisprudence Beyond Good and Evil*, 50 IOWA L. REV. 999 (1965); Bienenfeld, *Prolegomena to a Psychoanalysis of Law and Justice* (pts. 1 & 2), 53 CALIF. L. REV. 957, 1254 (1965); Ehrenzweig, *Psychoanalytical Jurisprudence: A Common Language for Bablyon*, 65 COLUM. L. REV. 1331 (1965); Elkins, *The Legal Persona: An Essay on the Professional Mask*, 64 VA. L. REV. 735 (1978); Goldstein, *Psychoanalysis and Jurisprudence*, 77 YALE L.J. 1053 (1968); Redmount, *Psychological Views in Jurisprudential Theories*, 107 U. PA. L. REV. 472 (1959); Schoenfeld, *Implications for the Law in Psychoanalytic Discoveries Concerning Aggression*, 34 REV. JUR. U.P.R. 207 (1965); Schoenfeld, *Law and Unconscious Mental Mechanisms*, 35 OKLA. B.A.J. 975 (1964); Schoenfeld, *Law and Unconscious Motivation*, 8 HOW. L.J. 15 (1962);

For the last half century, legal educators have become increasingly attuned to psychology. It is not uncommon to find clinical psychologists, psychiatrists, and psychoanalysts on law school faculties.[46] A few law schools offer a combined law and psychology degree, and numerous schools offer courses in law and psychology, law and psychiatry, and law and mental health.[47] In a still larger number of schools, substantive courses make use of the psychological perspective. Interviewing and counseling is essentially a psychology course. Even clinical courses have been significantly influenced by the psychological perspective.[48] All of this has led at least one commentator to suggest that psychology has become the foundation for a new "psychological vision" in legal education with profound jurisprudential overtones.[49]

Legal educators have made use of various schools of psychological knowledge in the law school curriculum, within specific courses designed both to convey the knowledge[50] and to use the

---

Schoenfeld, *On the Relationship Between Law and Unconscious Symbolism*, 26 LA. L. REV. 56 (1965); Schoenfeld, *Psychoanalysis, Criminal Justice, Planning and Reform, and the Law*, 7 CRIM. L. BULL. 313 (1971); Schoenfeld, *Psychoanalysis and Natural Law: Some Preliminary Observations*, 10 HOW. L.J. 277 (1964); Schoenfeld, *The Superego's Influence on the Law*, 14 DE PAUL L. REV. 299 (1965); Stone, *Psychoanalysis and Jurisprudence: Revisited*, 10 AM. CRIM. L. REV. 357 (1972); Szasz, *Psychoanalysis and the Rule of Law*, 55 PSYCHOANALYTIC REV. 248 (1968); Wertham, *Psychoauthoritarianism and the Law*, 22 U. CHI. L. REV. 336 (1955); West, *A Psychological Theory of Law*, in INTERPRETATION OF MODERN LEGAL PHILOSOPHIES 767 (Sayre ed. 1947); Weyrauch, *Taboo and Magic in Law*, 25 STAN. L. REV. 782 (1973).

46. *See* Watson, *The Law and Behavioral Science Project at the University of Pennsylvania: A Psychiatrist on the Law Faculty*, 11 J. LEGAL EDUC. 74 (1958).

47. *See* Bent & Marquis, *The Development of a Seminar in Law and the Behavioral Sciences*, 24 J. LEGAL EDUC. 89 (1971); Clancy, Brodland & Fahr, *A Psychiatric Clerkship for Law Students*, 129 AM. J. PSYCHIATRY 98 (1972); MacDonald, *The Teaching of Psychiatry in Law Schools*, 49 J. CRIM. L. CRIMINOLOGY & POL. SCI. 310 (1958); Sadoff, Thrasher & Gottlieb, *Survey of Teaching Programs in Law and Psychiatry*, 2 BULL. AM. ACAD. PSYCHIATRY & LAW 67 (1974); Watson, *Teaching Mental Health Concepts in the Law School*, 33 AM. J. ORTHOPSYCHIATRY 115 (1963).

48. *See supra* note 38.

49. *See* Simon, *supra* note 9.

50. In the past twenty-five years, "law and psychiatry" has become a recognized speciality in both the legal and psychiatric professions. For an example of materials available for teaching law and psychiatry, see R. ALLEN, READINGS IN LAW AND PSYCHIATRY (rev. ed. 1975); A. BROOKS, LAW, PSYCHIATRY AND THE MENTAL HEALTH SYSTEM (1974); J. KATZ, J. GOLDSTEIN & A. DERSHORWITZ, PSYCHOANALYSIS, PSYCHIATRY AND LAW (1967); F. MILLER, THE MENTAL HEALTH PROCESS (2d ed. 1976).

As a result of the growing interest in psychiatry in legal education and in society generally, psychiatric knowledge has become more accessible to practicing lawyers. *See, e.g.*, H. DAVIDSON, FORENSIC PSYCHIATRY (1965); S. GLUECK, LAW AND PSYCHIATRY: COLD WAR OR ENTENTE CORDIALE (1962); R.

knowledge to make other courses more effective.[51] Elite law schools brought psychoanalysts and psychiatrists into the law school to teach, resulting in two extensive psychoanalytic critiques of the psychodynamics of legal education.[52]

The final examination of a psychologically based humanistic perspective in legal education in the 1970's was the work of Jack

---

GORDON, FORENSIC PSYCHOLOGY (1975); M. GUTTMACHER, THE ROLE OF PSYCHIATRY IN LAW (1968); M. GUTTMACHER & H. WEIHOFEN, PSYCHIATRY AND THE LAW (1952); J. MARSHALL, LAW AND PSYCHOLOGY IN CONFLICT (1979); W. OVERHOLSER, THE PSYCHIATRIST AND THE LAW (1953); J. POLIER, THE RULE OF LAW AND THE ROLE OF PSYCHIATRY (1968); J. ROBITSCHER, PURSUIT OF AGREEMENT: PSYCHIATRY AND THE LAW (1966); M. SELZER, PSYCHIATRY FOR LAWYERS HANDBOOK (1967); R. SOLVENKO, PSYCHIATRY AND LAW (1973); A. WATSON, PSYCHIATRY FOR LAWYERS (1968).

While law and psychiatry treatises continue to appear, *see, e.g.*, W. BROMBERG, THE USES OF PSYCHIATRY IN THE LAW: A CLINICAL VIEW OF FORENSIC PSYCHIATRY (1979), a more critical body of literature suggests that the potential uses of psychiatry to resolve legal issues has been oversold. *See* B. ENNIS, PRISONERS OF PSYCHIATRY: MENTAL PATIENTS, PSYCHIATRISTS, AND THE LAW (1972); J. ROBITSCHER, THE POWERS OF PSYCHIATRY (1980); Elkins, *Legal Representation of the Mentally Ill*, 82 W. VA. L. REV. 157 (1979); Ennis & Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom*, 62 CALIF. L. REV. 693 (1974); Morse, *Crazy Behavior, Morals, and Science: An Analysis of Mental Health Law*, 51 S. CAL. L. REV. 527 (1978); Morse, *A Preference for Liberty: The Case Against Involuntary Commitment of the Mentally Disordered*, 70 CALIF. L. REV. 54 (1982); Rosenhan, *On Being Sane in Insane Places*, 179 SCI. 250 (1973).

The trend toward a more critical stance toward psychiatry is clearly evidenced by the writings of Judge David Bazelon on the Court of Appeals for the District of Columbia. Bazelon was one of the early proponents of psychiatric input into the question of criminal responsibility. He developed a test for insanity that provided great leeway for the use of testimony by psychiatric experts in criminal trials. *See* Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954). Bazelon, along with his colleagues on the bench, found the *Durham* test unsatisfactory and in United States v. Brawner, 471 F.2d 969 (D.C. Cir. 1972) adopted a new standard for the District of Columbia which placed greater restrictions on the testimony of psychiatric experts. For a chronicle of Bazelon's work in the field of law and psychiatry, see Watson, *Chief Judge David L. Bazelon as Teacher: Observations By a Sometime Collaborator*, 123 U. PA. L. REV. 453 (1974).

51. *See, e.g.*, Davis, *Psychological Functions in the Teaching of Criminal Law*, 44 MISS. L.J. 647 (1973); Watson, *Canons As Guides to Action: Trustworthy or Treacherous*, 33 TENN. L. REV. 162 (1966); Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, 16 J. LEGAL EDUC. 1 (1963) [hereinafter cited as *Psychological Aspects*].

52. *See* Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392 (1971); Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 93 (1968). While these critiques provide rich new insights into the psychological dynamics of professional socialization, they are ultimately limited by the narrow theoretical constraints of their theory. For a more electric, free-wheeling psychological critique of legal education, see Savoy, *supra* note 8.

Himmelstein.[53] Himmelstein eschewed the psychoanalytic framework utilized by Watson and Stone and adopted a humanistic educational psychology perspective[54] because of its focus on the "whole person." Himmelstein's critique of legal education follows the pattern of critics generally: legal education is too narrow, it takes account of a limited range of our experience, and it produces an undimensional worldview which restricts the realization of our higher values. The emphasis on reasoning, logic, the precise formulation of legal doctrine, and objectivity lead to denigration of the subjective aspects of lawyering. Himmelstein argued that our focus on rational cognitive skills squeezes out an examination of other important human values, ideals, and beliefs.[55]

After the appearance of the psychoanalytic critiques in the 1960's and the early 1970's, the concern for psychology began to wane as legal educators followed new intellectual currents.[56] As

53. *See* Himmelstein, *Reassessing Law Schooling: An Inquiry Into the Application of Humanistic Educational Psychology to the Teaching of Law*, 53 N.Y.U. L. REV. 514 (1978) [hereinafter cited as *Reassessing Law Schooling*]; Himmelstein, *Reassessing Law Schooling: The Sterling Forest Group*, 53 N.Y.U. L. REV. 561 (1978). *See also* E. DVORKIN, J. HIMMELSTEIN & H. LESNICK, BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM (1981).

54. *See Reassessing Law Schooling*, *supra* note 53, at 543-47. Himmelstein suggested that humanistic psychology is the proper focus of the humanistic perspective in legal education because it reflects, he says,

> a shift from a medical model of sickness to one of personal growth and actualization; an emphasis on human awareness, responsibility, and choice as the foundation for personal growth; complementing cognitive learning with experiential learning; supplementing the intellectual with an awareness of the emotional; increasing awareness about the ability to communicate with others; developing capacities for the use of intuition, inspiration, and creativity in learning; a return to the expression of basic human values, aspirations, and ideals within and between human beings; and the development of a variety of methods for moving the insights of psychology from the laboratory and psychologist's office to a larger public, and applying them to living, working, and learning.

Id. at 546-47.

55. Himmelstein's work is important for a number of reasons. First, he has developed, in conjunction with colleagues, the techniques and strategies for educating (as well as training) lawyers in the art of human relations. His work is a realization of the project first outlined by Sacks and others in the late 1950's and early 1960's. Himmelstein carries on the humanistic tradition in legal education, while pushing the psychological perspective to its logical conclusion. Himmelstein's work points to needs beyond professional training and helps us envision a new process of education, an education in which a life in law would be radically different from professionalism as we know it today.

56. The reason for the waning interest in the counseling perspective in the 1980's has not been explored. It could be that scholars' interest in the humanistic perspective follows intellectual currents which are in vogue. Legal scholars may lose interest in a subject like counseling when it becomes apparent that

the fallout of student political activism filtered into legal education, psychology gave way to more socially oriented political concerns[57] and law schools began to place more emphasis on public law.

III. THE NARROW "BOUND" WORLD OF LEGAL EDUCATION

The most obvious problem with legal education is that it emphasizes "training" rather than "education."[58] Even when legal

---

the "movement" is not going to result in substantial change in legal education. With the realization, conscious or unconscious, that counseling was not going to be the catalystic agent for change, legal educators moved to take up other concerns.

The new intellectual interest of the humanistic counseling scholars of the past two decades is legal ethics and professionalism. *See* Elkins, *Moral Discourse and Legalism in Legal Education*, 32 J. LEGAL EDUC. 11 (1982); Hauerwas & Shaffer, *Hope in the Life of Thomas More*, 54 NOTRE DAME LAW. 569 (1979); Shaffer, *Advocacy as Moral Discourse*, 57 N.C.L. REV. 647 (1979); Shaffer, *Christian Theories of Professional Responsibility*, 48 S. CALIF. L. REV. 721 (1975); Shaffer, *Moral Moments in Law School*, in 4 SOCIAL RESPONSIBILITY: JOURNALISM, LAW, MEDICINE 32 (L. Hodges ed. 1978); Shaffer, *The Practice of Law as Moral Discourse*, 55 NOTRE DAME LAW. 231 (1979); Watson, *The Watergate Lawyer Syndrome: An Educational Deficiency Disease*, 26 J. LEGAL EDUC. 441 (1974).

57. *See* J. AUERBACH, *supra* note 13; LAW AGAINST THE PEOPLE: ESSAYS TO DEMYSTIFY LAW, ORDER AND THE COURTS (R. Lefcourt comp. 1971); S. SCHEINGOLD, *supra* note 13; VERDICTS ON LAWYERS (R. Nader & M. Green eds. 1976); WITH JUSTICE FOR SOME: AN INDICTMENT OF THE LAW BY YOUNG ADVOCATES (B. Wasserstein & M. Green eds. 1970).

58. Some educators contend that what we do in law schools is *train* professionals. Training is not education. A dog is trained so that it can live in the house; a dog is not educated when it is house-broken. Education implies something more than training. Training points to what is needed to survive as a professional, as the dog is trained to survive with its fellow inhabitants in the house. An education prepares people to do something more than survive. When future lawyers are taught as if they were being trained, they are treated like dogs.

Looking at legal education as education tells us something. What kind of view of legal education do we get by seeing it as a form of education? What can be made of legal education by a perusal of the current literature of education? Of what benefit would it be to law teachers to step into an educational library and spend a day reading? What could legal educators learn if they changed the reading diet from judicial opinions and the law review articles which digest, analyze, and synthesize legal opinions?

One way to look at legal education would be to focus on the forms of pedagogical practices in legal education—what teachers are doing and how they explain their actions. Or the texts of the law could be examined to see *what* kinds of literature constitute the corpus or body of knowledge called law and *how* this body of knowledge is conveyed to the law student in the curriculum.

The pursuit of legal training from the view of education might begin on a higher rung of the ladder of abstraction by looking at the education of the lawyer from a philosophical perspective. What kind of questions are raised by legal educators to which legal education becomes the answer? How do

education is viewed broadly, as education, there is a tendency to see knowledge of the law and skills of the lawyer as the essential core of that education. Legal education is, of course, a body of knowledge (in the most superficial sense, a body of rules) and problem-solving skills, but it is always more than that.

A humanistic perspective calls into question the narrow, undimensional view of legal education as professional training. An instrumental view of legal education—a view that education simply trains one to do the work of a lawyer—fails to take account of the person who chooses law as a career. In addition, the instrumental view fails to take into account the higher values of human endeavor—altruism, empathy, caring, helping, and social justice—which are often present in fantasies of lawyering.

Legal education promotes a distinctive worldview.[59] Legal training is an education in legalism.[60] The problem is that in learning to think, speak, and act like lawyers, students do not realize that they acquire a way of seeing and understanding the world which has social and political consequences. On a more pragmatic, everyday level, legalism finds its way into the relationships lawyers create with clients. The problem with the legalistic worldview, as Judith Shklar and Stuart Scheingold have so clearly demonstrated, is that it gives the social and political views embedded in legal education and law a facade of neutrality and objectivity in pursuit of social justice. That is not what is actually taking place.[61] Legalism provides a method of understanding the world, while masking the values upon which that understanding rests.[62]

---

legal educators view the tasks of teaching, and the role of legal education? What do law teachers say they are doing? When the focus is shifted to such questions, educators engage in philosophical inquiry.

59. *See* S. SCHEINGOLD, *supra* note 13; J. WHITE, *supra* note 15; Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29, 43-51 (1982).

60. There is a substantial body of literature on legalism. *See, e.g.*, L. FRIEDMAN, THE LEGAL SYSTEMS: A SOCIAL SCIENCE PERSPECTIVE (1975); J. NOONAN, PERSONS AND MASKS OF THE LAW: CARDOZO, HOLMES, JEFFERSON AND WYTHE AS MAKERS OF THE MASK (1976); J. SHKLAR, LEGALISM (1964); V. THOMPSON, THE REGULATORY PROCESS IN OPA RATIONING (1950); Chroust, *Law, Reason, Legalism, and the Judicial Process*, 74 ETHICS 1 (1963); Friedman, *On Legalistic Reasoning—A Footnote to Weber*, 1966 WIS. L. REV. 148; Kennedy, *Legal Formality*, 2 J. LEGAL STUD. 351 (1973); Shklar, *In Defense of Legalism*, 19 J. LEGAL EDUC. 51 (1966); Simon, *supra* note 11.

61. *See* Gabel, *A Critical Anatomy of the Legal Opinion*, 5 AM. LEGAL STUD. A. F. 5 (1980); Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265 (1978).

62. The problem with legal education is not that it entails a particular view of the world, but that teachers fail to take proper account of it. Every discipline, including law, presents a perspective or "frame of reference" through which we see the world. One of the ways that we make sense of what we do is to adopt and/or build a "frame of reference" for understanding law from the

The existence of a narrow legal worldview is more obvious to those who view education from without than to those who teach and learn law. Is it the task of legal educators as well as those outside legal education to recognize and explore the limits of our world view? Is it possible to look at the ideology of legal education and at the same time help students master a body of knowledge and acquire skills necessary to become good lawyers? Or is it detrimental for one to know the dysfunctional, "shadow side" of a world-view when being "educated" into it? Are we asking too much of students to become "strangers" to professionalism[63] as they become initiates ("members") of the community of professionals? For what purpose are we educating lawyers? Does legal education lead to a social consciousness as well as provide a means to *do* something in the world? Can legal education be relevant to social concerns?[64]

These questions present the dilemma at the heart of legal education. Working with the questions requires some sense of what it means to "become" a professional and what kind of "being" the professionally trained lawyer turns out to be. The curriculum in legal education shields students from the confrontation with these questions.

A recent article entitled *World Views and Curriculum*, published in an obscure Canadian education journal raises questions concerning the relationship of curriculum and social problems

---

resources made available within legal education and given shape by our individual psychological needs. The problem with legalism as a "frame of reference" is that it is easily forgotten that it is simply a "frame of reference" and does not explain all social phenomenon or provide an automatically appropriate moral and ethical perspective for being a good person.

63. *See* Elkins, *supra* note 56, at 43-46.

The critical stance of the humanist depends in part on whether she is within or without a particular system. This is most clearly seen in the teaching of legal ethics, where the effect of being within the system seems to require belief in the adversary system. The foremost question for the teacher of legal ethics is: What do we do about the adversary system? Do we take it as a given, accept it as reality which cannot be changed? Do we present viable alternatives? How do we stand on the political and social consequences of the ethics derived from an adversary system?

Scholars who teach law outside law schools also suggest the importance of the insider/outsider phenomena. *See* d'Errico, *supra* note 14.

64. The problem with a *relevant* legal education, one that results in both skills and "social concern," is that perceptions of social problems change over time. Given the "relativist" nature of the education/society relationship, educators react in diverse ways. They retreat to tradition or argue that education should confine itself to that knowledge which is perennial—that which does not change. One could view the current cry of "back to the basics" as a retreat from social relevance to an education that "stands still."

which provide insight into our problem in legal education.[65] The author, Kilbourne, suggests that our social problems are always linked to our world view, that is, our perceptions of reality and how we come to know reality. Kilbourne states:

> What part does the school curriculum play in the development of a world view which contributes to social concerns? What aspects of the curriculum contribute to the development of world views? Can it be shown that world views are implicitly (if not explicitly) taught in schools? If world views are implicitly taught, is there consistency throughout the curriculum or do students receive mixed and unsorted messages about appropriate ways of viewing reality? . . . What role could the curriculum play in addressing issues related to world view? In what ways could schools explicitly teach about world views? Could aspects of schooling address the personal and social implications of alternative views of reality? Should these kinds of issues be taught or is this a case where benign neglect is the morally defensible path?[66]

Could legal educators ask for a more relevant set of questions for coming to a better understanding of what is done in law schools? It has been argued for decades, and with increased vigor in the 1970's, that legal training is an initiation into a lawyering worldview as well as a process of learning a body of knowledge and a set of skills to be used in practice. Kilbourne's reflections on curriculum and worldviews places our curriculum in perspective.

Legal education shares with all education the problem of compartmentalization and instrumentalism. Education in modern universities fragments life and learning into rigid "disciplines."[67]

---

65. Kilbourne, *World Views and Curriculum*, 11 INTERCHANGE ON EDUC. POL'Y 1 (1980-81).

66. *Id.* at 2-3.

67. Educators live in a world known by its boundaries, which are physical, cultural, social, academic, and personal. Their allegience is to disciplines and fields of study known by their clearly defined boundaries. They become committed to definitions of words, concepts, and symbols transmitted to them as members of particular disciplines and professions. Disciplines and professions are themselves definitions of the world, and at the same time they justify dividing up the world in particular ways.

There is a persistent urge and deep-seated need to draw and maintain boundaries around fields of knowledge. Modern education fragments learning into "disciplines" maintained within rigid boundaries. Academics continue to concern themselves with the demarcation of the limits and boundaries of their disciplines by classifying, categorizing, and distinguishing the fine arts from the liberal arts, and the liberal arts from the natural sciences. Academics pay little attention to how areas of knowledge fit together—how knowledge can be viewed as a whole.

Contemporary education leads to an understanding of a field of knowledge, while it promotes ignorance of it's boundaries. There is talk, for example, about "fields of study," which conveys images of fences, borders, and boundaries. A field is a definable area; a physical and geographic construct with clear boundaries. The first task in reimagining the concept of legal education is to work with the problem of boundaries; it is here that the nature of "professional blindness" is understood.

Rooted in the analytical, empirical, positivistic paradigm of contemporary western philosophy, general education (often including the humanities) has become instrumentalist in orientation. It is not entirely clear what are the ends for which education is the means.[68]

The fragmented and specialized slice of knowledge presented in any discipline, including law, encourages myopic vision. When we set out to *know* the world by studying it from the standpoint of a discipline, such as sociology, psychology, anthropology, philosophy, or law, we acquire the discipline's particular mode of seeing the world. The greater the specialization and professionalism in a particular discipline, the less of the world that discipline encourages us to see.

The language we use and the activities it describes are restricted by the "world" of the discipline or profession that the particular actor inhabits. A "bound world" of disciplined discourse is the space in which the process of thinking about values and professional identity takes place. A discourse like law is an elaborate series of definitions of human experience. The purpose of a humanistic perspective in education is to learn how our definition of human experience works and to determine the limits of our worldview.

The way of "seeing," i.e., knowing, provided by a discipline like law forgets itself. What must be remembered is that "[n]o one way of talking, no academic discipline, can *possess* the central ground of which we know ourselves and understand our values."[69] Kenneth Burke reminds us that "a way of seeing is always a way of not seeing."[70]

IV. THE TRANSFORMATIVE NATURE OF PROFESSIONAL SOCIALIZATION

Karl Llewellyn began *The Bramble Bush*, the series of lectures which he presented to the University of Chicago law students, with the statement: "You have come to this school to embark upon the study of law."[71] Students embark on far more than a course of study. The hope is that the student can find a way to see that the decision to become a lawyer and the time devoted to the effort is

68. We are entering the last decades of the twentieth century increasingly aware of the failure of educational institutions to provide educational experiences which serve the deepest of human needs. Educational institutions no longer provide a means by which the education students receive will relate to the life they live and the communities they create.

69. F. INGLIS, IDEOLOGY AND THE IMAGINATION 112 (1975).

70. K. BURKE, PERMANENCE AND CHANGE 70 (1935).

71. K. LLEWELLYN, THE BRAMBLE BUSH 11 (1951).

something more than a course of study. There is certainly a preoccupation in the first weeks and months with mastering the technical skills which one needs to survive as a student. Reading and briefing cases is difficult at first. Each student will wonder whether she is doing it correctly and whether she is sufficiently comprehending the cases. There is also a period of adjustment in which one tries to make sense out of the law school version of the Socratic form of teaching. While the practical concern for skills is of immediate importance, that concern should not blind the student to the fact that learning the skills to be a lawyer is not the same thing as learning the law student game. Much of the learning that underlies the development of a legal person parallels, but is not dependent on, learning skills and a substantive body of law.

Most law school classes are highly structured, goal oriented, and teacher dominated. In the traditional law school class, one is given little opportunity to deal with issues which affect the work of the lawyer as a person. Consequently, there is a need for courses that do not attempt to teach one *how* to practice law. Courses are needed that would require the student to think and reflect upon the experience of being a law student, the path that brought her to legal study, and the path it is possible to pursue in becoming and being a lawyer. The primary focus of these concerns could be the experience of law school itself and the possibility of creating for the student an effective role in the complex world of lawyering.

A highly structured traditional law school class offers little opportunity to examine these kinds of issues. The substance of the law crowds out other concerns. The goal for a course can be to cover material and it can be more than that. In every course the material for study and the class interaction expose questions that tell us something about what it means to be a lawyer.

The emphasis on the experience of learning has been largely ignored in legal education.[72] The concentration on comprehensive

72. If legal education is viewed as an initiation rite, then the role of the participants is to learn an esoteric language and arcane skills of procedure. An initiation is something done to people, imposed on them. Understanding the process of initiation is unnecessary to its accomplishment. Teachers confirm this view, often stating that students do not know what they need to learn and if they did they would not be students. Students are initiates in a drama, playing a role which entails ignorance about much of what is being learned. It is also significant that the only individuals that become teachers in law schools have themselves undergone the initiation. Only upon admission to the inner circle of initiates does one have enough understanding (and forgetfulness) of the process to be a teacher. It is the initiation into the tradition of legal thinking which legitimizes the teacher.

Professional students tend to see learning as "automatic." Like riding a bicycle, students learn without conceptualizing about the process of learning. By remaining in the educational world for an extended period, students in

coverage of substantive materials effectively precludes law teachers from dealing with student expectations, values, images, work patterns, anxieties, and fears. For all practical purposes, legal education ignores the learner and also the dynamics of the learning process. Law schools typically offer no courses on legal education or the philosophy and psychology of professionalism. For the most part, students are not asked to reflect on their experience in the classroom or on classroom learning. The failure of law schools to provide such courses is a mistake:

> [L]egal education in a society provides a window on its legal system. Here one sees the expression of basic attitudes about the law: What law is, what lawyers do, how the system operates or how it should operate. Through legal education the legal culture is transferred from generation to generation. Legal education allows us to glimpse the future of the society. Those who will man the legal system and will fill those positions of leadership in government and the private sector that seem to fall more frequently to lawyers, at least in Western societies, come out of the law schools. What they are taught and how it is taught to them profoundly affect their objectives and attitudes and the ways in which they will fill these social roles.[73]

Learning law is both transactional and transformative in nature. Transactional learning involves the absorption of information or the acquisition of a new skill. In formal educational institutions, such learning revolves around student-knowledge and student-teacher relationships. At the surface level it entails presence in a class, the reading of certain books and materials, and testing to determine how well the transmission of knowledge (i.e., the transaction) took place.

Transformative learning involves the same surface level activity as transactional learning, but it affects the learner at a deeper level.[74] Transformative learning "touches" us as human beings, speaks to us poetically, and offers new possibilities for ways to live

---

professional schools are even more likely to be "professional students" in the sense that they have thoroughly mastered the technical skills associated with learning.

73. Merryman, *Legal Education There and Here: A Comparison*, 27 STAN. L. REV. 859, 859 (1975). *See also* G. BELLOW & B. MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978).

74. James Loder has described the following types of learning which are associated with the transformational process. *See* Loder, *Transformation in Christian Education*, 76 RELIGIOUS EDUC. 204 (1981).

The first type he calls "learning interpretation and responsible action." *Id.* at 217 (emphasis deleted). While this would seem to be the end point of professional education it is the "common point of intentional entrance into the practice of education. It seems that we tend to begin at the end . . . . In more sophisticated terms this task is associated with the best sense of the term "proessional," one who professes and practices in accordance with the knowledge he/she professes." *Id.*

A second type of learning Loder finds at the end of the cycle of transfor-

and work, thereby shaping our worldview. The knowledge one learns in order to pass a course and satisfy degree requirements is transactional rather than transformative learning. In transactional learning, the student is presented with knowledge as if knowledge is "given," requiring no affirmative act of the learner. Knowledge is regurgitated by the teacher and taken in by the student without reference to its larger significance and meaning. It may turn out that the noble banquet table at which all this learning takes place is the setting for overeating and indisgestion. The beauty of the spread provides no hint of the possibility of starvation.[75]

Transformative learning can be encouraged by focusing more

---

mation is the ability "to face and embrace appropriate conflict with perserverance." *Id.* at 218 (emphasis deleted).

Thirdly, we learn in the transformation "to celebrate. . . . Celebration in transformation is not isolated outburst; it is not a temporary self-indulgence in random selection of instinct gratification, but the repeated awakening to and profound appreciation of the fundamental but hidden order of all things undergoing transformation . . . ." *Id.* at 218-19.

A fourth type of learning Loder calls "contemplative wondering." *Id.* at 219 (emphasis deleted).

> Here the learner is encouraged and supported in a state of expectant searching; he/she is immersed in the exploration of connections and combinations of meanings for which both the basic problem and the redeeming conflict may still be obscure . . . . It is like following a inner voice or carrying on an internal dialogue with the unseen teacher . . . .

Id. at 219.

75. Some of us eat our way to oblivion. The presence of so much knowledge makes understanding a problem, and we suffer knowledge disorders just as we do eating disorders.

Erich Fromm suggests that the two kinds of learning described here are linked to two basic yet diverse orientations in life: having and being.

> Students in the having mode of existence will listen to a lecture, hearing the words and understanding their logical structure and their meaning and, as best they can, will write down every word in their looseleaf notebooks—so that, later on, they can memorize their notes and thus pass an examination. But the content does not become part of their own individual system of thought, enriching and widening it. . . .
>
> . . . .
>
> The process of learning has an entirely different quality for students in the being mode of relatedness *to* the world. . . . Instead of being passive receptacles of words and ideas, they listen, they *hear*, and most important, they *receive* and they *respond* in an active, productive way. What they listen to stimulates their own thinking processes. New questions, new ideas, new perspectives arise in their minds. Their listening is an alive process. They listen with interest, hear what the lecture says, and spontaneously come to life in response to what they hear. They do not simply acquire knowledge that they can take home and memorize. Each student has been affected and has changed: each is different after the lecture than he/she was before it.

E. FROMM, TO HAVE OR TO BE? 28-29 (1976).

explicitly on the process of learning. When we focus on *process*, we do not only look at legal rules and case holdings; we also try to gain an awareness of what the facts of a case tell us about society, the relationships of neighbors, buyers and sellers, and landlords and tenants. The process of a case opens the possibility of understanding the world in which we live.[76] Through process, evidence is offered about our own place in the world—our idealism, doubts, antagonism, fear, and anxiety. These all stem from the strong feeling that arise when one does the work of reading cases and learning how courts resolve social conflict. By focusing on process, education becomes an activity with intrinsic as well as instrumental value. The process of learning the law can be worthwhile over and beyond what it permits one to *do* or to *be*. In examining the process, we increase our understanding of self as well as our understanding of how to use that which we learn. Learning the process provides a power of understanding that can alter our way of being in the world. The concepts and interpretative schemata that we acquire illuminate not only our own life but the lives of others.

A process-oriented approach encourages reflection on what it means to be a student of law and an actor in the legal system. To get at this "meaning," one must do something more than learn to read cases and to think like a lawyer. It is in the reflection of the way that one sees and understands law and lawyering, as well as the way that law is established in judicial opinions, that one takes on character as a lawyer.

The ultimate goal is to develop concepts for sorting, relating, and interpreting the feelings and perceptions relevant both to learning the body of knowledge called law and to practicing law. This goal can be achieved only if the student accepts the proposition that the feelings about oneself and others (as well as about the law) influence the study and practice of law. The feelings which students experience as they study law can help clarify what it means to be a law student as well as a lawyer. By ignoring their experience in life, students will ultimately fail as lawyers. Justice Oliver W. Holmes warned a group of law students of this very pitfall nearly one hundred years ago when he stated:

> I cannot but believe that if the training of lawyers led them habitually to consider more definitely and explicitly the social advantages on which the rule they lay down must be justified, they sometimes would hesitate where now they are confident, and see that really they were taking sides

76. The process-orientation to learning alluded to here is patterned on the work of Paulo Freire, an educator, whose work in promoting literacy in the Third World has helped us see the ideological function of learning a language. *See supra* note 4.

upon debatable and often burning questions.[77]

To be an effective lawyer, one needs to become a lifetime student of the law and also of human experience. Truly good lawyers have the special capacity to learn from their continuing experience and to be aware of the obstacles to learning. Learning how to learn "requires a willingness to explore openly one's motivations and one's feelings; to utilize the reaction of others as feedback about the consequences of one's behavior; and to experiment with new ways of behaving."[78]

A. Focusing on the Person

The system of legal education should take seriously the everyday reality that structures and defines the student's world. How does this everyday reality define our view of learning? What does it mean to have mastered the technical skills which are a precondition of effective learning and to make learning an instrumental activity? What are the skills that are being taken for granted? Or are the skills of reading, comprehension, reasoning, and recall problematic even for law students? When do we actually master those skills? Is the pretense of mastery itself a source of personal anxiety and an issue for both teacher and student?

These questions call for a review of the phenomenology of learning. The phenomenologist turns away from theories of learning and professional socialization to look again at the experience of those who are learning. What brings this person to try to learn to be a professional? What are the images and expectations which envelope the learning process?[79] What kind of relationships are created in the context of learning and how are they experienced?

---

77. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 468 (1897) (address at new hall dedication at Boston University Law School, Jan. 8, 1897).

78. Bradford, *Membership and the Learning Process*, in T-GROUP THEORY AND LABORATORY METHOD 190, 192 (L. Bradford, J. Gibb & K. Benne eds. 1964).

One significant feature of learning about learning is the effort to undercover the meta-goals of legal education:

> Meta-goals are approaches to learning and personal development which the learner acquires in the *process* of being educated in a particular system. In other words, meta-goals represent what the learner learns, in addition to the *content* of instruction, about how to approach and solve subsequent problems outside the classroom.
>
> They represent the problem-solving processes, the learning styles, which the . . . student becomes committed to in the course of his educational experience. Meta-goals have to do with "learning how to learn."

Harrison & Hopkins, *The Design of Cross-Cultural Training: An Alternative to the University Model*, 3 J. APPLIED BEHAV. SCI. 431, 437 (1967).

79. Some would say that those images and expectations "invade" the learning process.

The act of learning can never be viewed as a process separate and apart from the person who learns.

> When a student comes to law school, he brings with him a fantasy of what the law is and what it does. These notions, drawn from superficial contacts with the legal process, embody highly idealistic notions about the function and nature of the law. They include moralistic and idealistic stereotypes about the lawyer's task of helping individuals and society to regulate their personal, business, and community relationships . . . . These ideas and images are partially determined by the forces of internal psychological life . . . .[80]

Students have certain images and expectations of and about the educational process. Students know the student's role and the teacher's role and have certain expectations about what will, can, and should take place in the classroom. Interspersed with these role expectations are images, expectations, and beliefs of the teacher.

Being open to student expectation makes it clear that it is impossible to satisfy everyone's expectations. Hence, we learn that there are diverse demands being made in any particular course and that these demands must be mediated in some fashion by the teacher. In terms of the actual time commitment to this process, a single class period may be sufficient to get these kinds of concerns out in the open for discussion.[81]

The student's image of lawyers is called into question by formal classroom work and by the general law school environment. It is during the first days and weeks of legal education that vaguely perceived notions of law and lawyering are subjected to the acid test of reality (or at least the reality presented by law teachers). For those who entered law school blindly, perceptions of lawyers crystalize soon after they begin. Confronted with the "legal version" of the Socratic method of teaching that pushes the student to master a new form of "thinking," the student begins to adjust her view of the world. Through the persuasive efforts of law professors and law students who have "been through it," the prospective lawyer

---

80. *Psychological Aspects*, *supra* note 51, at 7. *See also* d'Errico, *supra* note 14, at 21.

81. It is relatively easy to spend the first period of any course covering administrative details: the requirements of the course, providing a substantive outline of the material to be covered, and the basis for grading. This use of classroom time is a waste since virtually all the information can be provided more efficiently in a written handout. Is it possible that the scenario of the first classroom encounter is designed to alleviate the anxiety of both teacher and student? An alternative would be a meditation of some sort. Teachers should spend the evening before the first session meditating and reflecting on what it means to begin teaching the course. Students could benefit by going through a similar process.

realizes that she must learn to "think like a lawyer" to *become* a lawyer.

B. Focusing on the Situation

The real lessons in legal education lie more in the politics and psychodynamics of the classroom than in the substantive law which is being taught.[82] The teacher who employs the Socratic method poses a question to a selected student who attempts to articulate a response. The teacher continues to propound questions until she is satisfied that the case has been properly dissected and analyzed and that the rationale and the rule of the case is understood. Scott Turow, in his biographical account of his first year at Harvard, describes the process:

> Generally, Socratic discussion begins when a student—I'll call him Jones—is selected without warning by the professor and asked a question. Traditionally, Jones will be asked to "state the case," that is, to provide an oral rendition of the information normally contained in a case brief. Once Jones has responded, the professor—as Socrates did with his students—will question Jones about what he has said, pressing him to make his answers clearer. If Jones says that the judge found that the contract had been breached, the professor will ask what specific provision of the contract had been violated and in what manner. The discussion will proceed that way, with the issues narrowing. At some point, Jones may be unable to answer. The professor can either select another student at random, or—more commonly—call on those who've raised their hands. The substitutes may continue the discussion of the case with the professor, or simply answer what Jones could not, the professor then resuming his interrogation of Jones.[83]

The student on the Socratic "hot seat" is much like the client in Gestalt psychotherapy where a similar encounter takes place. Both in law school and the therapeutic encounter, the work with a particular individual is in a group. The acknowledged master of the Gestalt technique, Fritz Perls, suggests that this encounter is an opportunity for growth, facilitated by creating frustration for the patient. "We apply enough skillful frustration so that the patient is forced to find his own way, discover his own possibilities, his own potential, and discover that *what he expects from the therapist, he can do just as well for himself*."[84] The appropriate degree and nature of "frustration" conducive to a productive encounter is always in question. In the following description, again by Scott

82. Savoy, *supra* note 8.

83. S. TUROW, ONE L 40-41 (1977). For reviews of ONE L, see Elkins, Book Review, 3 AM. LEGAL STUD. A. F. 81 (1978); Book Note, 31 ARK. L. REV. 529 (1977); Book Note, 66 KY. L.J. 938 (1977-78). *See also* Wheeler, *Is There Madness in the Method?*, 15 CHRON. HIGHER EDUC. 17 (1977).

84. Perls, *Gestalt Therapy Verbatim: Introduction*, in THE HANDBOOK OF GESTALT THERAPY 23, 51 (C. Hatcher & P. Himmelstein eds. 1976) (emphasis in original.)

Turow, we have a clear example of undue and inappropriately teacher-induced frustration of a first-year Contracts student:

> "Mr. Karlin," Perini said, ambling toward my side of the room, "why don't you tell us about the case of *Hurley v. Eddingfield*?"
>
> Karlin already had his notebook open. His voice was quavering.
>
> "Plaintiff's intestate," he began. He got no further.
>
> "What does *that* mean?" Perini cried from across the room. He began marching fiercely up the aisle toward Karlin. "In-*tes*-tate," he said, "in-*tes*-tate. What is that? Something to do with the *stomach*? Is this an anatomy class, Mr. Karlin?" Perini's voice had become shrill with a note of open mockery and at the last word people burst out laughing, louder than at anything Perini had said before.
>
> He was only five or six feet from Karlin now. Karlin stared up at him and blinked and finally said, "No."
>
> "No, I didn't think so," Perini said. "What if the word was 'testate'? What would that be? Would we have moved from the stomach"—Perini waved a hand and there was more loud laughter when he leeringly asked his question—"*else*where?"
>
> "I think," Karlin said weakly, "that if the word was 'testate' it would mean he had a will."
>
> "And 'intestate' that he didn't have a will. I see." Perini wagged his head. "And who is this 'he' Mr. Karlin?"
>
> Karlin was silent. He shifted in his seat as Perini stared at him. Hands had shot up across the room. Perini called rapidly on two or three people who gave various names—Hurley, Eddingfield, the plaintiff. Finally someone said that the case didn't say.
>
> "The case doesn't *say*!" Perini cried, marching down the aisle. "The case does *not say*. Read the case. *Read* the case! *Care*fully!" He bent with each word, pointing a finger at the class. He stared fiercely into the crowd of students in the center of the room, then looked back at Karlin. "Do we really care who 'he' is, Mr. Karlin?"
>
> "Care?"
>
> "Does it make any *difference* to the outcome of the case?"
>
> "I don't think so."
>
> "Why not?"
>
> "Because he's dead."
>
> "He's *dead*!" Perini shouted. "Well, that's a load off our minds. But there's one problem then, Mr. Karlin. If he's dead how did he file a *law*suit?"
>
> Karlin's face was still tight with fear, but he seemed to be gathering himself.
>
> "I thought it was the administrator who brought the suit."
>
> "Ah!" said Perini, "The ad*min*istrator. And what's an administrator? One of those types over in the Faculty Building?"
>
> It went on that way for a few more minutes, Perini striding through the room, shouting and pointing as he battered Karlin with questions, Karlin doing his best to provide answers.[85]

It might be of interest to explore the nature of Professor Perini's behavior and the student reaction to it. Why does this man

85. TUROW, *supra* note 83, at 52-53.

behave this way in the classroom? Does it help anyone learn about the law? If so, how? Turow tells us that instead of Perini's style turning students off, it seemed to engage them; they actually seemed to enjoy Perini.

> What the hell went on here? I was thoroughly confused, the more so because despite my reservations the truth was that I had been gripped, even thrilled, by the class. Perini, for all the melodrama and intimidation, had been magnificent, electric, in full possession of himself and the students. The points he'd made had had a wonderful clarity and directness.[86]

Recognizing the dramatic flair of Perini's style, Turow questioned the impact of such teaching on first-year law students. The fear was that students "[would] come away with a tacit but ineradicable impression that it is somehow characteristically 'legal' to be heartless, to be brutal, and [would] carry that attitude with them into the execution of their professional tasks."[87]

A problem faced by many law students is maintaining self-esteem. A hypoethetical question might be posed: "How can I maintain my self-image and personal dignity in a class where I consistently face the threat of being asked to respond and perform in class?"[88]

It is necessary to take a closer look at the Socratic method and ask how it promotes and how it obstructs student learning. When the group feels that the Socratic teacher has abdicated her responsibility to direct the learning, anxiety may become a real obstacle to learning. Students who have been programmed to expect directive teachers are likely to feel lost in the turmoil characteristic of the law school version of Socratic dialogue. The difficulty with the Socratic method is that it does not follow a *planned* course. A true Socratic dialogue requires that the teacher ask questions in response to answers. Each of the teacher's questions depends upon the answer given by the student to a previous question. The Socratic method depends upon a one-on-one relationship.

The Socratic method can take account of individual student differences and allow the teacher to question a student and focus on

---

86. *Id.* at 54.

87. *Id.* at 296.

88. Scott Turow describes the problem of maintaining one's self-esteem this way:

> For me, the primary feeling at the start was one of incredible exposure. Whatever its faults or virtues, the Socratic method depends on a tacit license to violate a subtle rule of public behavior. When groups are too large for any semblance of intimacy, we usually think of them as being divided by role. The speaker speaks and, in the name of order, the audience listens—passive, anonymous, remote. In using the Socratic method, professors are informing students that what would normally be a safe personal space is likely at any moment to be invaded.

Id. at 42.

their personal understanding. This ability of the Socratic teacher—to alter the dialogue as required, to engage the student in a one-on-one relationship—is the most significant advantage of the Socratic method. In contrast, the teacher who lectures must ignore differences in students.

However, the law teacher who uses Socratic questions is manipulative. To what extent is such manipulation authoritarian? Can a teacher in a one-on-one relationship manipulate a discussion in a way that answers the needs of each individual participant? Or is she not forced to impose the authority of her own views and manipulate the discussion to the benefit of some to the detriment of others in the group?[89]

Socratic encounters in law school classrooms may be enlightening, electrifying, and effective in promoting the education of a particular student engaged in the dialogue. Can the same be said for the other students who are witnesses to the Socratic dialogue? Do they follow the dialogue "as if" they were the participant on the "hot seat?" The Socratic method works for those who are sufficiently aggressive to take part in the confrontational encounter. If one's knowledge is fragmentary or uncertain, or if one's self-esteem is in question, the confrontational Socratic teaching undermines rather than promotes learning.

C. Discovering Ourselves as Teachers

Humanistic legal education cannot prevail until teachers learn to be more attentive to teaching and to themselves as teachers. What does it mean to be a teacher? What can one say about such a life, and about its promises and possibilities? To what extent is teaching simply a way to earn a living, to provide a comfortable lifestyle? Does teaching provide a promising "professional" career, or is it a search for meaning in life? What do teachers learn about themselves by becoming teachers?

Teaching is common to settings widely removed from legal education. There is teaching on-the-job and in the family, as well as

89. One commentator, after a consideration of the problem of using the Socratic method in large classes suggests use of a Platonic method. The Platonic method follows the general outline of the Socratic method but substitutes a theory for the Socratic question.

> If a teacher takes the time and effort to 'lay something on the table' the way Plato does in later dialogues, then inquiry and education may proceed neither in the vacuum created by a totally unstructured situation, nor in the highly structured Procrustean bed of a lecture or guided series of questions and answers.

Oglivy, *Socratic Method, Platonic Method, and Authority*, 21 EDUC. THEORY 3, 13 (1971).

among friends. Teaching is a natural activity whenever people interact with others.

Carl Rogers, the humanistic psychologist, expressed the desire to no longer be a teacher but only to be a learner. Dichotomizing teaching and learning is misleading, however. There is "student" in the teacher and "teacher" in the student. The student within the teacher has a need to learn, to understand, and to order knowledge. The teacher dies (a metaphorical death) when the student no longer inhabits his work. The student becomes teacher when learning is an act of self-discovery. The true humanistic teacher never forgets that she is a student as well as a teacher.

The humanistic teacher must understand more than the law; she must understand life.[90] The humanistic teacher might ask herself the following questions: In what kind of world do I live? How do I see this world and inhabit the world? How am I in the world? Who am I? To what extent do I construct this world and to what extent is it given to me? To the extent the world is given, the world is a limitation. The world as given is the boundary of imagination and possibility.[91] By constructing the world, and not accepting it as given, the humanist exercises choice and demonstrates the reality of freedom. Teaching and learning should be a collaborative existential project in which the teacher's work becomes her being in the world.

V. CONCLUSION

Without denigrating the need for a substantive knowledge of law, a humanistic legal education extends legal studies beyond law and legal process to an examination of the subculture of lawyers. Instead of focusing simply on lawyer skills, a humanistic perspective would involve exploring the personal aspects of lawyering—

90. *See* S. KEEN, TO A DANCING GOD (1970).

Kenneth Keniston has noted that "[a]ll men need, then, some more or less coherent set of implicit assumptions, symbolic meanings, characteristic configurations, and explicit beliefs that help them or organize and guide their lives; and we can call this need a need for myth." K. KENISTON, THE UNCOMMITTED: ALIENATED YOUTH IN AMERICAN SOCIETY 314 (1965). It is the human need for myth that underlies the persistence of fairy tales and legends, and the stories that we live through the enactments of everyday life.

91. The first task of humanistic legal studies is an exploration of reality. What is the reality of law? (That question is another way of asking how law is experienced in modern society). Here we are concerned not only about law from a philosophical perspective (at the epistomological level: what is it?) but also how it appears in the world, and how it is experienced.

Law appears as a "given", an externality to which the legal world submits. Law is a part of the "giveness" of culture; it is the task of humanistic legal studies to unmask that "giveness."

how lawyers affect others and are themselves affected when they act as lawyers.

The material written about the legal profession is generally incomplete. A view of the profession is presented that reveals little about the human actors who acquire and utilize professional skills. This failure to focus on the person as a professional is disturbing. A humanistic orientation would help us look for that which is missing in a study of the lawyer as a professional—the real person who makes a life of this work we call lawyering.