Legal Education In Crisis: Healing and Humanizing Canadian Law Schools

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Abstract

Western law schools are suffering from an identity and moral crisis. Many of the legal profession's problems can be traced to the law school environment, where students are taught to reason and practice in ways that are often at odds with their own personalities and values and even with generally accepted psychologically healthy practices. The idealism, ethic of care, and personal moral compasses of many students become eroded and even lost in the present legal education system. Formalism, rationalism, elitism, and big business values have become paramount. In such a moment of historical crisis, there exists the opportunity to create a new legal education story.

This paper is a conceptual study of both my own Canadian legal education and the general legal education experience. It examines core problems and critiques of the existing Western legal education organizational and pedagogical paradigm to which Canadian law schools adhere. New approaches with the potential to enrich, humanize, and heal the Canadian law school experience are explored. Ultimately, the paper proposes a legal education system that is more interdisciplinary, theoretically and practically integrated, emotionally intelligent, technologically connected, morally accountable, spiritual, and humane. Specific pedagogical and curricular strategies are suggested, and recommendations for the future are offered.

The dehumanizing aspects of the law school experience in Canada have rarely been studied. It is hoped that this thesis will fill a gap in the research and provide some insight into an issue that is of both academic and public importance, since the well-being of law students and lawyers affects the interests of their clients, the general public, and the integrity and future of the entire legal system.
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CHAPTER ONE: THE PROBLEM

My profession, the law, is in crisis. The origins of this crisis lie, in large part, in the way that law schools are structured. I used to think that I was the only one who felt this way. In fact, I used to think the only one in crisis was me. Like a lot of young people entering the profession in the extreme, competitive 1980s, I began law school with great energy, hopes, and ideals. Unfortunately, law school was largely a meaningless boot camp blur. Legal practice, while having brief shining moments and gifting me with some very fine colleagues, was also disappointing. I progressed, achieved, and "succeeded" financially and professionally. But I often did not believe in what I was doing. In both law school and practice, I often felt like I was trapped in the folk tale *The Emperor's New Clothes*: I was part of a secret, powerful, intelligent club in which there appeared to be a conspiracy of silence about the truth of how lost, alienated, and unhappy many of us felt about what we were learning, thinking, saying, and doing. In school and practice, the work I did often bore no resemblance to learning about or perpetuating substantive justice. The rule-driven rationality and deception were mind and soul numbing. Law professors and lawyers are so effective at making the simplest of matters impossibly complicated and adversarial. How do they learn to think and behave this way? In law school.

**Personal Experience**

There are many reasons why people study the law. In my case, law school appealed to the scholarly and care-oriented side of my nature. I saw it as an opportunity to be among what I thought would be fine minds; to develop my thinking, reasoning, writing, speaking, and research and advocacy skills, all things I valued. I wanted to get
inside the mysterious world of the law, so closed to outsiders, and find out how it all worked, and then hopefully use my knowledge to be a voice for others.

The reality of law school was a disappointment to me. I attended an esteemed Ontario law school. I did experience inspiring teachers there, who later became well-known public figures and leaders in their respective fields. I also developed objective reasoning, research, and analytical skills. But I lost more than I gained.

Like so many of my peers, I entered law school with the required background of accomplishment. Unlike many others, I was unusual in never having met another law student or lawyer or been inside a courtroom or legal office of any kind. I was the beneficiary of extremely positive high school and undergraduate experiences, contributing and excelling academically and athletically and thriving socially. My law school expectations were high, and my attitude was extremely positive coming in. Things soon changed.

Within the first month or two, I began to steadily lose optimism and then confidence. Much of the time, I felt isolated and mentally and emotionally disoriented. There was a general feeling of my pre-law reality being under seige on all levels. It is difficult to describe what seemed to be the deliberate, systematic infantilization of first-year students. It was as though we needed to be reduced to nothing so that we could be rebuilt into something else. The information was presented in an unnecessarily convoluted way, with little connection to real-world skill development or practice examples. Direct interaction with professors was rare and brief.

Thinking then that I was the only one who felt this way, and never having experienced anything remotely like this before, I told no one and sought no help. I went
through the motions of attending classes, reading the texts, making copious notes, and
writing exams at the end of each course, the results of which I never saw, and which
made little sense to me. Except for the athletes with whom I played on several law
school teams, it was difficult to connect with others in first year; everyone was so zipped
up.

The Christmas of first year, I felt disconnected and isolated from the people and
holiday cheer around me. A dark fog moved in and stayed. At my lowest point, in the
dead of winter of first-year law, I remember considering the idea of death (or
alternatively, a tragic accident) as a welcome relief and escape from the charade I was
living. At the time, I did not see any other way out, as I could not imagine leaving the
program. This would mean admitting and accepting defeat, and I had never experienced
major failure of any kind before. My entire identity had become wrapped up in
succeeding. (Many law students are like this, and their disciplined desire to succeed is
exploited perfectly by law school.) Moreover, my family members viewed my attending
law school as a special and prestigious opportunity (and a financial sacrifice) not to be
squandered. It was difficult to meet the expectations of my environment when I could not
see clearly what they were.

Looking back, I obviously saw leaving law school as a fate worse than death.
Meanwhile, I thought everyone else was having a good time at law school. It was so hard
to tell. I wondered what was wrong with me. This made a dark time for me even darker. I
was able to articulate and understand the truth of the whole experience only years later.

I survived, finishing the program after the requisite 3 years somewhere in the
middle of the pack academically speaking (in itself, both a failure and a relief as well as a
mystery to me).

After graduating from law school in 1985, I chose the specialty area of litigation law. The practice of law was somewhat better, since I was fortunate to work with some wonderful colleagues and had more control over what I was doing and how I was doing it. Although it was not what I expected, I did experience positive, memorable moments as a litigation lawyer. However, because important qualities were missing, and amiss, in my legal educational and practice experiences, I did not see the law as an end in itself for me. I saw it as part of a journey whose end I did not yet know.

Other Stakeholder Voices

An exploration of insider experiences over the years has revealed to me that my law school experience was far from unique. Many voices have expressed concern over existing problems in the Canadian law school environment. They suggest that these institutions need to look for and travel down a different path and form a new, more humane story. Following are some of the compelling voices of past and present legal education participants, whose collective crie de coeur provides its listeners with a vision of what legal education is, what it is not, and what it could be.

Students

Students have become increasingly vocal in expressing their views about legal education in various venues such as law student papers, law school blogs, and student surveys. Many describe their law school experiences in less than positive terms. Some describe law school as "an incredibly isolating and agonizingly depressing place" whose dark atmosphere far too few law students, faculty, or administrations are willing to acknowledge or confront (Law School Discussion Forum, 2005, p. 8).
Several typical factors blamed for student dissatisfaction include the overall environment, being graded on a Bell curve, being aware of the limited number of summer jobs, being encouraged to be adversarial, feeling isolated, having a "suspicion that everyone's got some edge, some insight, some contact in the field that you don't have" (Hutchinson & Marshall, 1996, p. 59).

The conventional top-down, lecture-oriented, doctrinal-based law teaching style tends to emphasize competition over collaboration and morally neutral thinking and remains largely disconnected from professional legal experience. This type of teaching approach is the cause of distress among law students. Many students feel that their legal educations left them unprepared for the eventual work they would be doing. A number of students compared law school unfavourably to medical school, which they claim has many more actual real-life connections, reflected in a more multidimensional pedagogy and curriculum that offers small group lectures, labs, and problem solving/role playing/mentoring sessions. Even better, medical students "know what the professors expect of them." Generally, law students feel that law schools need to move towards the new medical school model "where practical experience is incorporated into the entire curriculum" (McMahon, 2005, p.28). In contrast, law students attend lectures which they come out of feeling more confused than when they went in; they feel "we aren't being taught, we are being asked to teach ourselves" (Law School Discussion Forum, 2005, p. 8).

A significant number of students are of the view that fundamental changes from the ground up are overdue in law schools. The following comment is typical of the generally held view of first year in particular:
Legal education is so badly in need of reform it’s ridiculous. Any other profession would have made massive changes by now. But somehow law just plods along. I mean, the first year design has been the same for how long? (Law School Discussion Forum, 2005, pp. 9-10)

The overall pedagogy is even more harshly condemned:

The pedagogy of law school is so completely screwed as to be next to unbelievable if you weren’t seeing it yourself. You spend an entire class mostly listening to classmates say nothing at all with a professor that usually gives no indication of what the hell is good info and what is bad. The result: you figure it out yourself. Law school, at least the 1L year of it, is essentially self-taught.... If you listen to most of your profs, you’ll see they are saying a whole lotta nothing about the nuts and bolts of most subjects.... In any other subject, including med school, the profs actually attempt to teach you the skills needed to do well....There is no reason to think that if the classes actually tried to give you the information you need, that less qualified lawyers would be the result. In fact, I’d argue the opposite would be the result. (Law School Discussion Forum, 2005, pp. 12-13)

Student mental health issues are also being increasingly addressed, to combat their traditional treatment as a taboo topic. Although counseling and other mental health services are made more readily available in most law schools today, the stigma surrounding mental illness and failure can prevent students from seeking help if they need it. It is apparent that law school administrators may need to take further steps to reduce the stigma attached to mental health in the highly competitive, success-oriented
law school environment, especially because it is the law school experience itself that takes such a toll on students' health, including their mental, emotional, and physical well-being. Some students are calling for their peers to "break down taboos" and bring this issue out into the open. One University of Toronto student survey indicated that, particularly in first year, when they seem to need it most, "far too few [students] know where [they] can turn to if [they] need help. This must change" (Pilliar, 2005, para. 17).

The high cost of legal education and the resulting debt that many students find themselves in to pay for it is another major cause for complaint. Students lament that there is "so much debt" that it narrows their options to seeking high-paying corporate jobs even if that area of law is not their first practice choice (McMahon, 2005, p. 29). The level of debt many are carrying is onerous. Law school tuition averages in the area of average $10,000 across Canada, with the University of Toronto being the highest; the school plans to top their tuition in the near future at $22,000. Tuition is lower than the average in the prairie provinces and smaller east coast schools. In addition to tuition costs, students typically also have annual living costs such as rent, food, books, travel, and other expenses. Students say that the level of debt load they carry by the end of 3 years of law school "affects every decision [they] make in [their] career" (McMahon, 2007, p. 36). More and more students are protesting that legal education in Canada is increasingly "reserved for the wealthy" (McMahon, 2005, p. 29).

Legal Academics', Administrators', and Scholars' Voices

Legal administrators and professors also acknowledge that the law school experience can be brutal. Former law dean Allan Hutchinson has written that some in the legal profession "depict law school as a harrowing experience, and warn that its
entrance ought to be described like the portals to Dante’s Hell: Abandon all hope you who enter here” (Hutchinson & Marshall, 1996, p. xii). Professors and teachers admit that law school can be a somewhat false experience that brings out the competitive drive in placid students and induces alienation in affable students and that "even the camaraderie can be contrived and superficial" (Hutchinson & Marshall, p. 55).

A number of researchers have conducted studies on depression and anxiety in law students and found law school to be "a breeding ground for depression, anxiety and other stress-related illnesses" (McKinney, 2003, p. 1). The small but growing body of literature on this topic reflects alarming facts concerning the negative emotional and physical reactions that many students experience as they pursue a law degree. Many longstanding philosophical and practical choices, policies, and practices of administrators and faculty are now being condemned as unhelpful and even harmful. The research expresses dismay at law schools for abdicating their pedagogical responsibilities in strong language, describing law school as "a hazing ritual to be endured" and "a bizarre rite of passage to be suffered" as the price for getting the coveted law degree (Litowitz, 2006, p. 29). Law schools are under attack for their dense language, their problematic "thinking like a lawyer" ideology, and their overly controlling atmosphere and teaching tactics. These same writers all agree that law schools could be so much more; and they call on law schools to stop wasting the time, money, and talent and health of so many of the students who pass through their doors.

Lawrence Krieger, a law professor and humanistic law advocate whose studies are central to the discussion of the dark side of the legal education experience in North America, has expressed generally in his work the idea that law school paradigms,
teaching methods, and other practices exert pressures that undermine the physical health, internal values, experience of security, self-worth, competence, and communication abilities of students. His own and other researchers' studies describe major deficiencies in law student well-being, life satisfaction, and enthusiasm; and flourishing depression, anxiety, and cynicism (Krieger, 1998-99, 2002).

Former Ontario law dean and corporate lawyer Philip Slayton also condemns many of the practices and attitudes of Canadian lawyers and points to the roots of many of the profession's problems as beginning in law school, where "students are not just taught to be pessimistic, aggressive, judgmental, intellectual, analytical, and emotionally detached. They also have part of their personal morality stripped away" (Slayton, 2007, p. 8). This unspoken emphasis on disengagement from self and others has come at the expense of developing more humanistic law students with healthier personalities and more service-oriented goals.

Marjorie A. Silver, a law professor at Touro Law Centre, New York, notes that "unlike training for other helping professions, training for lawyers rarely includes exposure to principles of psychology or an exploration of the emotional aspects of practice" (Silver, 2007, p. 5). Yet those who wish to practice law as a healing profession will need a strong understanding of the emotional and psychological motivations behind behaviour. To promote the realization of this goal, Silver proposes that law schools provide more sophisticated emotional training for law students. She and other critics challenge legal educators to reflect more deeply on the content, methods, and goals of legal education in order to ensure that students can expect an intellectually rigorous, emotionally humane experience. Such reflection is not practiced because it ultimately
calls into question the status quo.

Perhaps the most profound criticism of law schools being voiced by leading critics today is that they lack moral centres or foundations and they explicitly or implicitly deny that some of what they present can skew student moral thinking such that, as in wider society, the immoral becomes understood and accepted as the normal (Cohen, 2007). Law students today often receive the message that what they believe, or believed prior to law school is unimportant or even irrelevant and/or inappropriate in the context of legal discourse.

Hutchinson and Marshall have acknowledged that for many it is a contradiction to talk about lawyering and ethical standards of behaviour in one and the same breath, since the very definition of a contemporary lawyer is becoming increasingly universally understood as someone who "vacates the ordinary domain of ethical judgment and inhabits a perverse world of normative disingenuity" (Hutchinson & Marshall, 1996, p. 156). This process of stripping away the moral centre begins in law school.

With their morality unmoored and their debt levels rising, law students have been described by critics as less idealistic, less interested in public service work, less motivated by intrinsic, internal values, more motivated by external rewards, and less philosophical, introspective, or interested in abstract ideas. Moral decision making becomes "crystallized at a conventional, rule-following, norm-obeying stage"; those with an ethic of care "are likely to lose it" (Daicoff, 2004, pp. 73-75). It is fairly unanimous that the first year, especially, is demoralizing to law students' psychological well-being.

The voices of law school participants, including present and former students, educators, and lawyers, reflect an increasing disenchantment with the status quo.
Criticisms abound, ranging from disappointment with the less than healthy and humane environment, to outdated and limited teaching practices, to a sense of emptiness and moral unease. Ultimately, a study of professional schools like law schools reveals them to be often controlling and invasive institutions that can negatively influence beliefs, values, and personality characteristics of students. In fact, the research shows that law schools appear to be among the most invasive and least enlightening among all higher education.

**Statement of the Problem**

Graduate education has provided an opportunity for me to revisit my law school years and study my own and others' law school and practice experiences. Existing Western literature and debate on the topic, while initially sparse, particularly in Canada, has grown considerably in the last 10 years. Experts studying this area, including law, psychology, medical, and social science academics, former and present practicing lawyers, and even law students, are claiming that law schools and the profession are suffering from an identity and moral crisis. They use powerful, even shocking language to describe an education system and profession that has fallen victim to excessive formalism and rationalism, morally bankrupt big business, and the new mega corporate elite, a system that has traditionally been run like a private club by disinterested, obfuscating academics and practitioners motivated by profit, power, prestige, and survival.

Many of the profession's problems can be traced back to the law school environment, where students are taught to reason and practice in ways that are often at odds not only with psychologically healthy practices but also with their own personalities and values. Law school is the first place wherein students learn what it means to "think
like and be a lawyer"; they carry this unhealthy new persona into the rest of their professional and personal life. Along the way, service-oriented idealism, ethics of care, and personal moral compasses become eroded and even lost.

Central problems like elitism, excessive rationalization, too much division of theory and practice, formalistic and rigid teaching methods, excessive tuition costs, assessment that lacks credibility, and excessive emphasis on competition, grades, lack of student/professor connection, lack of discussion re meaning/values/justice, an overemphasis on a business paradigm teaching approach and values, and the general cultivation of an overall atmosphere of unnecessary fear, alienation, and competition—to name just a few—have been named as central themes at the heart of much law student/lawyer distress and emptiness.

These views have been percolating in the social consciousness for perhaps decades or even longer, but recent trends toward big business and increasing economic and social pressures have fanned the discussion into a flaming wall of criticism and concern that threaten to engulf a profession whose educational institutions in particular are gasping for and grasping at fresh ideas and direction.

Experts are also pointing out that, as law school tuition increases to new heights each year, and competition to get into law schools remains high, public opinion of lawyers is at an all-time low. Law schools currently continue to be viewed in many quarters as simply a necessary hurdle to conquer in order to gain upscale and influential careers and lifestyles, while at the same time, lawyers are increasingly seen as untrustworthy, inaccessible, expensive, arrogant, out of touch, robotic, morally neutral, hateful, and even evil. Many people feel society would actually be better off without
lawyers. Lawyers have become reduced to a national joke. These extreme views (i.e., the world of law as glamorous but evil/comical) are unfortunately pounced on and stretched to their limits by all media forms. Critics point to law schools as the incubators that have given birth to many of these destructive developments.

**Purpose of the Study**

This study serves as an exploration of the legal education experience and the root causes and dynamics behind the disappointment and discontent voiced by many participants, including me. Central challenges and critiques of the existing Western legal education organizational and pedagogical paradigms to which Canadian schools adhere are examined. The study explores some recent, innovative approaches to enriching, humanizing, and healing law schools. Finally, it suggests ways in which these approaches can be implemented in Canadian law schools and provides conclusions and recommendations in that regard.

**Questions to Be Answered**

The following questions will guide the exploration of the above issues:

What are the main criticisms and challenges facing legal education in Canada today?

How is legal education organized? How is it taught? How is it administered and led? Is it humane? Does it carry the weight of authentic authority? What are the intentions of those who organize and administer legal education? What are the moral issues with which they struggle? Does change need to occur to make legal education richer, more humane, and more responsive to the present needs and challenges of law students and lawyers? If yes, what ideas can be explored and implemented to humanize and heal the problems in the legal education story? How can these ideas be implemented? What implications will
flow from making humane changes? What does the future hold for Canadian legal education?

Rationale

Few comprehensive studies have been done in relation to humanistic problems and challenges in Western legal education. The main studies of note are being done in the U.S., where this field of research has been growing in the new millennium. While some studies have been done in Canada critiquing and/or analyzing legal pedagogy and curriculum, and surveys and papers by law students, journalists, and legal and other governing bodies touch on student experience and issues of law school admission, tuition, and diversity issues, there is little significant research to be found specifically in the area of humanistic and healing approaches to improving legal education in Canada. Therefore, it is hoped that this study will provide some insight into an issue that is of both academic and public importance, since the well-being of law students and lawyers affects the interests of their clients and the general public and the integrity and future of the entire legal system.

Importance of the Study

Many of those doing work in the field of legal education reform want to see legal education become more interdisciplinary, theoretically and practically integrated, emotionally intelligent, morally accountable, spiritual, and humane. Some have created or belong to organizations and institutions that value ideas used in holistic and humanistic lawyering. They are looking to such fields as psychology, medicine, higher and adult education, and other social science disciplines to advocate for legal education approaches
that reflect more therapeutic and healing ways in which to teach, learn about, and ultimately practice law. Some of these ideas and theories have begun to be applied in some Western law schools, but few of these ideas have widely influenced the Canadian legal education consciousness. This thesis attempts to fill a gap in linking some of these ideas to Canadian legal education.

Lawyer and professor Doug Litowitz states that criticizing the legal profession requires "the overturning of a vast network of unchallenged myths that buttress the existing regime...which sends the message that any attempt to change the existing order is irrational, radical, illogical or utopian" (Litowitz, 2006 p. 24). The thesis explores some emerging reform-minded theories and suggests strategies for their integration in Canadian law schools as a way of changing the existing order.

Scope and Limitations of the Study

The thesis discussion will focus on the law school experience generally but will devote more attention to the first-year law experience. Various current noteworthy practices and policies at American, UK, and Canadian law schools will be highlighted throughout the study.

Presupposition

Given that the Anglo American model of legal education is generally regarded as paradigmatic by Canadian legal educators, and the tendency of Canadian law schools and firms has been to imitate the strategies and structures of the Anglo American legal academy (Arthurs, 2000), this thesis presupposes that studies and theories from the British and/or American law school experience are applicable to and largely interchangeable with the Canadian law school experience.
Outline of the Remainder of the Document

In Chapter Two, the paper explores various critiques and shortcomings of law school principles, philosophies, and pedagogy permeating the existing institutional atmosphere as expressed in the existing literature. It examines how these shortcomings contribute to the dehumanization of law students and legal education. It asks: How do law schools presently see their role? Why is the legal educational culture the way it is? Why are existing methods/practices being used? What effect do present practices have on student well-being? What is preventing law schools from becoming richer, more humanistic, and transparent environments?

In Chapters Three, Four, Five, and Six, emerging approaches to humanizing and healing the law schools are analyzed. The paper focuses on the following four possibilities/directions for change originating from the fields of education, humanistic psychology, internet communications technology, and religion/spirituality.

1. Multiple and Emotional Intelligence theories (Gardner; Goleman);
2. The Comprehensive Law movement (Daicoff);
3. Internet communications technology using virtual worlds (Maharg); and
4. Spiritual law (T. Floyd; Gabel; Hall; Palmer; Silver; Zohar & Marshall).

Chapter Seven provides a summary of findings, conclusions, and a discussion of the implications involved for law schools considering these new humanizing directions. It concludes with recommendations for future study and a vision of the ideal holistic Canadian law school.
CHAPTER TWO: REVIEW AND EVALUATION OF EXISTING PARADIGM

Experts in and outside of the Western legal profession are claiming that the profession is suffering from a serious identity and moral crisis and that the roots of the crisis lie in part in the law schools. Doug Litowitz, a former Ohio Northern University law professor and practicing lawyer, sums up the prevailing view of disenchanted legal thinkers/researchers in his recent book, *The Destruction of Young Lawyers* (2006):

I have never met a person who liked law school....And the amazing thing about law school is that it teaches so little in exchange for subjecting law students to a grueling mixture of fear, anxiety and tedium. Law school does not empower or transform students in an intellectual sense, nor does it provide rudimentary lawyering skills. The main thing that it teaches is...to bluff and pose under pressure, and to be litigious...to be apolitical and socially conservative. (p. 21)

The existing literature on law schools in the Western world generally paints a bleak picture of law schools as unnecessarily dehumanizing places. Clinical law professor and humanist scholar Lawrence Krieger and other critics have written about this darker side of law schools. They describe legal education institutions as emotionally disconnected places that undermine personal health, happiness, and life balance while prompting the need to achieve external honours, recognition, and material gain. A central criticism of law schools is their moral neutrality. Krieger states that they "discourage the appreciation and expression of subjective equalities such as values, feelings and conscience" (1998-99, p. 10), thereby impacting student potential for personal and vocational development and satisfaction. He and others connect the unusually high rate of
depression and various addictions among law students and lawyers as reflecting "a loss of connection with [their] feelings and inner sense of self" (Krieger, p. 3).

A lack of engagement between law school participants has also undermined the value of legal education. Critics view current law schools as places where meaningful connection between professors and students, students and their peers, and even between law school and one's own past, is often neutralized by the reality of mainly White male professors having "absolute power and unquestioned status" over law students, who are "second class citizens instead of partner[s] in learning" (Litowitz, 2006, p. 30). Law schools are viewed as the protectors of Western society's Eurocentric, patriarchal values of progress, competition, and profit. The entrenched sanctioned rules and knowledge that form the basis of most Western education also form the basis of the standard law school curriculum.

Legal pedagogy has also been criticized as being slower than other professional institutions have been to change and adapt to more enlightened pedagogical practices. Law schools have been challenged for reflecting the ultimate banking system model of education, which essentially involves facts, theories, and rules being dispensed from the authorities and taken in passively by students (Freire, 2000). Detractors view professional schools in general to be highly invasive institutions whose mandate is to "exert intense control by purposely influencing beliefs, values, and personality characteristics of students; ...and law schools in particular, appear to be the most invasive among all graduate education" (Benjamin, Kaszniak, Sales, & Shanfield, 1986, pp. 251-252). There is little space within which to question, challenge, or analyze the status quo or to
understand why law school often does not reconcile with the lived experience and values of many students.

The poverty of the pedagogy is most disappointing when one considers that the subject of law is particularly rich with history, story, complex ethical dilemmas, and heroic characters/leaders and therefore, lends itself particularly to the use of narrative, story, literary, and other art forms. It could also benefit from more exposure to the instructive lived experiences of many of its esteemed members. Research shows that the curriculum approach has improved somewhat recently in law schools. There are more efforts to marry theory and practice and to introduce alternative and mixed theoretical perspectives as well as new forms of technology into some classes. But the general rational, patriarchal, commercial/business-oriented Western pedagogical paradigm remains largely the same. It could benefit from a more humanizing, holistic approach.

Core Criticisms of Law School Principles/Philosophies

Law schools have faced criticism on a number of levels. Their past and present moral philosophy and priorities have been questioned. They are seen as lacking in care and vision and needing a new philosophical narrative.

Law Schools Lack Moral Centres

Of central concern is the widespread condemnation of the moral neutrality of law schools. Jonathan Cohen states in his paper "The Culture of Legal Denial" that "legal culture masks the immoral as the normal" (Cohen, 2007, p. 279). He suggests that the legal profession has created a culture of denial about this reality. Others agree. Hutchinson and Marshall state that "it has become a contradiction to talk about lawyers and ethical behaviour in one and the same breath" (1996, p. 156). Some have even
suggested that "to be a lawyer is to vacate the ordinary domain of ethical judgment and to inhabit a perverse world of normative disingenuity" (Hutchinson & Marshall, p. 156). Where does this dismantling of the moral centre begin? In law school.

Law schools would benefit by reconsidering their moral centres. Charged with teaching the regulation and legal foundational ways of doing and being in our society, law schools must take care to make the exercise of moral reflection and leadership a fundamental teaching priority. Presently, the existing formalistic, overly rational pedagogical approach undermines student self-understanding and moral frames of reference. It separates moral thinking from legal thinking, with the result that law students can feel disassociated from their own pasts, personalities, and values:

In the process of training law students to become lawyers, for the most part legal educators [have] at best ignored and at worst dismissed attention to the core values that attracted many students to the study of law. These values include...the desire to "help people," to "make a difference," to seek justice, to have a positive impact on the world. The intellectual indoctrination of law students [has] distanced many from the ideals that provided a meaning for the work they wished to do, thus threatening to separate lawyers from their own moral core. (Silver, 2007, p. xxiii)

In the fall of 2007, Dean Patrick Monahan of Osgoode Hall Law School stated that "for the first time in 30 years...we have... revised or reformed our first year curriculum [to include] a mandatory course on ethical lawyering in the global community" (Hill, 2007, para. 10). Dean Monahan acknowledged that, until the creation of this course, "it was possible to go through three years of a legal education at Osgoode
and never actually be required to deal in a direct way with issues around ethics and professional roles" (Hill, para. 12). This traditional failure by Osgoode (still unaddressed at some schools) to place the consideration of moral issues at or even near the center of its curriculum is one of the fundamental ways in which Canadian law schools have arguably abdicated their responsibility to their students and, by extension, to the profession and public their students have gone on to serve. While the Osgoode first-year initiative is a step in the right pedagogical direction, it appears that ethics are not yet a broadly foundational aspect of the school’s educative intentions. A broader ethical foundational approach would instill in students in all courses over 3 years of law school the need to ask such questions as: What is the caring, humane, wise, and just thing to do; and how can this (case/problem/issue/conflict) be resolved in a way that is most helpful and least harmful to all involved?

*Ethic of Care Is Lost*

Accompanying a lack of moral vision is the failure by law schools to support an ethic of care in their students. Harvard psychologist Carol Gilligan and others have suggested that women have traditionally been taught a different kind of moral outlook or "care ethic" from men, one that emphasizes personal loyalty, community, and caring about one's special relationships (Gilligan, 1982). This "care view" of morality has traditionally been ignored in favour of the more traditional, male-oriented "justice" or "rights" view of morality, which focuses on doing the right thing even if it requires personal cost or sacrificing the interest of those to whom one is close.

It has been found that law school actually changes the personalities of those individuals who come to law school with an ethic of care, often within the first year
(Daicoff, 2004). A 1989 study of first-year students at Temple University Law School by Sandra Janoff found that the female students had moral reasoning that reflected an ethic of care, while the male students more often used a rights orientation. However, by the end of the students’ first year, there was a significant overall decrease in the amount of care orientation and a significant increase in the amount of rights orientation shown by all the law students. Generally speaking, it has been found that female students in particular experience more profound personality changes in first-year law school, in that they feel compelled by what they are being taught in the law school environment to bury their ethic of care orientation to fall into line with the rights assumptions and values of the law school. In effect, law school tends to "silence a voice of care" (Janoff, cited in Daicoff, pp. 74-75).

The traditional approach to thinking like a lawyer has meant focusing on individual or group rights in legal conflict and placing oneself in an emotionally neutral state to be an advocate (Daicoff, 2004, pp. 74-75). In this way, law school has failed to incorporate what Janoff describes as the relational side of human nature, which is a primary way that women (and other minority students including Aboriginal students) engage in the world. By discouraging collaborative peer relationships while fostering more competitive interactions, law school encourages introversion and pessimistic attitudes, rational, rights-oriented thinking, and a narrow way of looking at legal problems and conflicts. Submerging or subordinating an ethic of care or losing it altogether can be damaging to some law students and can be linked to some of the female and minority student distress exhibited, particularly in first year.
Law Schools Underutilize the Power of Their Own Myths and Narratives

William Bennett has found that legal education that is lacking a moral reference results in a pedagogical approach that discounts or dismisses the nature and power of narrative and its ability to reinforce moral paradigms. Law is full of rich story, but law schools use little personal or professional narrative or storytelling to give meaning to the law school experience. Bennett, in *The Lawyer's Myth: Reviving Ideals in the Legal Profession* (2001), points out that the instinct for their own narrative is often "discontinued for law students by educational fiat or training" (p. 24). Yet narrative has long been recognized as being primary to the human psyche, and it gives voice to many lessons and insights that would otherwise be excluded from traditional, scientific legal analysis. Individuals cannot dismiss and replace their own moral stories about who they are without serious consequences to their personhood, since emotions, desires, hopes, values, ideals, the hidden and the unconscious, all are expressed through narrative (Bennett).

A student's evolving understanding of who he/she is can often be dismantled or negated within the context of the rule-oriented law school environment. The end result is damage to the student's ultimate professional capacity for moral growth. In law school curricula, "the devaluation of professional mythology has been systematic and largely intentional because the indefinite character of mythology and the narrative method is conceived as an impediment to the scientific methodology of the law" (Bennett, 2001, p. 78).

Not only do law students soon lose their individual narratives in law school, but the profession as a whole has lost its original "tribal mythology" of law as a just and
noble endeavour and a statesmanlike, service-oriented profession with a purpose and meaning greater than its members. The lawyer as a champion of just causes has become a lost ideal (Bennett, 2001). In Lawyer's Myth, Bennett discusses Carl Jung and his ideas on the origin and meaning of myths. It was Jung who proposed that "myths are original revelations of the preconscious psyche" (cited in Bennett, p. 53). Lawyer myths reveal [to the professional tribe] the "great mysteries of the law and the transcendent power of the profession" (Bennett, p. 52). A tribe's mythology is its living religion, whose loss is always "a moral catastrophe" (Jung, cited in Bennett, p. 53).

Understanding these ancient and sacred links is a critical precondition to achieving success in revitalizing legal education and the profession. One goal of law schools could be to reauthenticate their mythological power by rebuilding, reactivating, and adapting their moral and narrative function, thereby restoring and enhancing both teaching and learning potential (Bennett, 2001). Law students would benefit from increased exposure to uplifting stories, experiences of ideal lawyer/leaders, and positive traditions of the profession. Such exposure would provide inspiration for students to resurrect old ideals and create their own new stories to reinvigorate the profession and work to restore its altruistic identity.

In the postmodern world, it is important to not only resurrect but also renew and adapt the traditional law narrative, since it remains locked to a disproportionate extent in the masculine archetype reflecting masculine ideals of rational judgment and adversarial thinking. Benet and others have argued that the linear reasoning and oppositional decision making so highly valued in the legal education paradigm tend to develop a lack of balance in lawyers as people. In law, traditionally, the more "feminine" voice, which
"roots itself in context and human experience and which makes true justice possible" (Bennett, 2001, p. 99), has been repressed and excluded from professional development. This lack of balance in lawyers has contributed significantly to the current general personal, pedagogical, and organizational crisis experienced and/or witnessed by so many in and outside the schools and profession.

**Structural Criticisms**

Law schools have faced a number of structural criticisms. Their inherent organizational structure and design have also been challenged as being obsolete at worst and conflicted at best. Law schools do not appear to have a clear pedagogical agenda. They have been described as being enigmatic organizations lacking in leadership, accountability, and transparency. Their admission and tuition policies and procedures have been described as being unjust and undemocratic. Who they choose to be a part of their student body and faculties and how they choose these individuals has come under increasing scrutiny. Well over 100 years old, it seems as though Canadian law schools do not clearly know what it is that they want to look like, or be.

*Law Schools Are Confused and Conflicted About Their Central Design and Mission*

How do law schools see their role? What is their central pedagogical structure and intention? The Latin root for education is "educare" meaning to "elicit" or "bring out" from within (Spirituality and Education, 2002). What is it that our law schools want to be, and what do they want to "bring out" from within the students who become our society's future legal educators, lawyers, and leaders?

It is difficult to provide answers to the above questions, because there has always been a fundamental and persistent tension in relation to the educative mission and
philosophical design of law schools in North America. History and research show that there is no clear, identifiably Canadian law school philosophical design or pedagogical mission (Arthurs, 2000, 2001; Esau, 1999). The Canadian system largely reflects the institutional and professional Anglo American structure. Like their UK and American counterparts, Canadian law schools have always been pulled in different directions. They are subject to the goals and priorities of the universities to which they are linked, and simultaneously to the legal profession and its governing bodies, rules, and expectations.

On the one hand, law schools have tried to emphasize the critical study of law as an academic discipline linked with the social sciences and humanities, with the goal of teaching law students, lawyers, and society generally what law is, how it is created, and how it functions and affects other interests (Esau, 1999). In this vein, a variety of methodological perspectives, theoretical approaches, contexts, and criticisms have developed and been implemented with varying degrees of success over time.

On the other hand, there has also existed the simultaneous purpose and study of the law as training for professional practice. In this respect, law schools have been understood and promoted, not always successfully, as the "formative stage for professional competence in terms of doctrine, skills, and values" (Esau, pp. 5-6). A primary goal has been to get students to learn to "think like lawyers." This term or phrase itself has inspired controversy and conflicting views, particularly of late.

The traditional twin goals of preparing students to practice law and cultivating an appreciation and commitment to broader, more critical learning have instigated much conflict through the years within the ranks of legal academia. Those with strong views in both camps differ as to which goal should be the priority when they come into conflict.
These mixed internal goals and tensions have mired law schools in perpetual conflict over resources, values, and interests. The result is that many important goals and intentions become diluted or marginalized:

The basic problem of legal education is that it espouses a broad range of goals and has opted for no specific structure to achieve any of them. As a result, professional formation...is neither as effectively professional nor as broad and humane as it aspires to be. (Arthurs, 1998, p. 17)

To add to the internal philosophical and pedagogical confusion, law schools are now being subjected to external political and economic forces that threaten to push it closer toward a politically conservative, market- and profit-oriented business paradigm and further away from humanistic and aesthetic ideals. (Such forces will be further discussed later in the chapter.) Traditionally, the majority of students attending law school have done so with a view to entering the legal profession and practicing law either privately or with some type of government body. However, with increasing diversity in the student body, new multidisciplinary degree offerings such as LLB/MBA degrees, and worldwide legally related work options/opportunities opening up, students are now beginning to choose law school at different stages of life, with more sophisticated backgrounds and expectations and for a wider variety of more deeply considered intentions. Canadian law school leaders can collectively take advantage of the philosophical fork in the road that the above dilemmas present and choose to use the opportunity to restructure and promote an educative agenda that brings out the best thinking, actions, and values in their institutions and students. Such an agenda would dovetail with the newly emerging priorities and identities of law students themselves.
Admission/Tuition Barriers

Law school and admission and tuition policies have been criticized as being noninclusive and undemocratic. The nature of law school admission tests (LSAT) and academic requirements, coupled with increasing tuition fees, continues to create barriers for many students seeking to pursue legal education in Canada (Smith, n.d.; Tong & Pue, 1999). Regarding academic and LSAT admission testing, some argue that the traditional Western content forming the basis of most university curricula and admission testing discriminates against minorities, because the course work and tests fail to take into account the values, multiple language abilities, cultural challenges, and ways of working/knowing/learning and being of minority cultures that are fast establishing significant membership in the Canadian family (Smith, 2006, n.d.). Initiatives on the part of some law schools have been made in recent years in an attempt to make their admissions policies more inclusive. The University of Windsor Law School has been a forerunner in this regard. However, law schools remain predominantly White and middle (or upper) class (Smith, n.d.). Perhaps existing standard admission requirements need to be further reviewed and rethought. Consideration of a wider variety of factors beyond marks and the LSAT should become the standard approach in determining admission. Such factors could include personal essays, interviews, and volunteer and work experience. The LSAT content and design itself needs to be reexamined, to ensure that it is reflective of the realities of the multidimensional population that it tests.

Recent studies also link new immigrants and minorities with low socioeconomic status, which in turn is linked with the failure to gain admittance to, or even pursue law
school education. Deregulation of law school tuition in the late '90s has intensified this problem. Tuition fees have more than doubled at top Ontario law schools and tripled at one (The University of Toronto). Students can expect to pay on average approximately $10,000 per year and upward, up to $22,000 in the near future, to attend Ontario law schools, potentially graduating with a debt load of up to $70,000 (Pardy, 2004; Smith, 2006). Aboriginal, Black, and South Asian students have been shown to have the least law school presence and the most debt (Smith, n.d.). According to a 2001 Law Society of Upper Canada (LSUC) report detailing the changing face of the legal profession, the profession across Canada is 94.2% White, and within Ontario it is 92.7% White (LSUC Report, 2001, cited in Smith, n.d.). Taken together, the above statistics raise serious concerns about just who is accessing legal education in Canada.

The recent dramatic tuition increases have created a situation where approximately two thirds of law students are presently coming from homes in the top 40% income tax bracket. Statistics Canada indicates that 38% of students 18-21 years come from wealthy families in Canada (Smith, 2006). Studies also show that law students are increasingly gravitating toward the high-paying, prestigious corporate jobs in the private corporate sector rather than to social justice or public service positions. Debt serves to push most students into the most conservative and high-paying positions that they can find. Many law students start out intending to do more meaningful public service or social justice oriented work, but in the end, they take these types of positions only when they have the luxury of being debt free or have no other option (Middlemiss, 2006). A 2004 study shows that Canadian students' interest in human rights/social justice studies has declined from 11.5% to 5.6% from first- to third-year students, with only
1.2% of recent graduates practicing in these areas (Smith, n.d.). One student recently stated in a Canadian Lawyer Magazine survey, "the level of debt I’m carrying affects every decision I make in my career" (McMahon, 2007, p. 36). Another stated in an earlier survey, "So much debt, you can only really practice where the money is—Corporate Bay Street or New York" (McMahon, 2005, p. 29).

The System Is Enigmatic

What goes on in Canadian law schools? A recent study on the topic by Canadian scholars Annie Rochette and W. Wesley Pue finds the country’s legal education institutions to be less than transparent. Few really know what goes on in Canadian law schools, since little to no scholarly research focuses on what actually happens in legal education (Rochette & Pue, 2001). Those who work in legal education administration agree that the legal profession has rarely been studied empirically: The "quality, quantity and diversity of legal scholarship" is lacking (Arthurs, 1998, p. 18). The lack of research extends to law students, those in graduate programs in legal education, law professors, lawyers, and law firms, notwithstanding the visibility of the legal profession in society (Chartrand et al., 2001). The lack of scrutiny and self-reflection has led legal education to remain entrenched in past practices for decades, with the occasional course or other program being added to the curriculum of a law school. Generally speaking, current legal education continues to reflect ideas, programs, and formats originally created hundreds of years ago.

One comprehensive assessment of legal education in Canada is a report widely known as the Arthurs Report, principally written by former law dean Harry Arthurs and commissioned by the Social Sciences and Humanities Research Council of Canada and
published in 1983. This document called for multidimensional improvement in the quality of thought and planning put into the formation of law students, with the goal of creating humane professionals. However, many of that report's recommendations (for example, the formation of a national law and research center) were only partially implemented or never materialized. Some helpful guidebooks on law school have been published over the years by legal academics, including Professor Allan Hutchinson and Pam Marshall and, more recently, lawyer Adam Letourneau. Somewhat illuminating law student and law school surveys have been conducted in recent years by publications such as Canadian Lawyer Magazine and MacLean's Magazine. A recent notable legal journal devoted to the status of Canadian legal education and reform was also published in 2001 by the University of Windsor Law School's Windsor Yearbook of Access to Justice. This publication followed on the heels of a groundbreaking conference on the future of Canadian legal education held at the University of Manitoba in 1999. The Carnegie Foundation for the Advancement of Teaching, based in California, has also studied teaching and learning in both American and Canadian law schools. There is also extensive information and analysis about the content and practices of legal education on official Canadian law school and legal government websites and on unofficial blogs and forums. But there appears to be little momentous empirical research exploring humanistic or holistic legal education reform in particular. This paper looks to the recent work done mainly by American and UK humanistic law scholars to explore some of the possibilities for enlightened reform in Canadian legal education.
Teaching Approaches

Law school teaching approaches have been criticized as lacking in care and imagination. The overall pedagogy has been viewed as generally unhelpful in terms of professional practice preparation. Studies show that many teaching ideas and methods, including the teaching of legal thinking and language unique to the profession, are detrimental to the personal and professional development of students. Legal educators are being challenged to create more experiential, multidimensional, and humanistic curriculum, to engage more fully with the material that they teach, and to connect more meaningfully with their students.

The Problem With Teaching Students to "Think Like a Lawyer"

The core instructional goal of teaching law students to "think like a lawyer" is being challenged and reconsidered by reformers. In law school, thinking like a lawyer is often presented to students as a "new and superior way of thinking, rather than a... strictly limited legal tool" (Krieger, 2002, p. 117). Traditionally, the term has come to be understood as showing students how to think rationally, dispassionately, and scientifically about the legal issues, conflicts, and problems that will come before them in school and practice. The goal is to get students to develop the ability to consider and argue either side of any legal issue from a morally neutral position, depending on a given case or set of facts. The problem is that nothing in life is morally neutral. There is also the problem of the truth and the subjective story at hand, which can be inconveniently (and sometimes tragically) forgotten in the interests of able but dispassionate and objective argument. The concern is that "being able to argue either side of a case or to concoct a legal argument by testing the facts against...legal doctrine replaces concerns with
substantive justice" (Granfield, cited in Mertz, 2007, p. 98). Many legal reformers are realizing that teaching students to “think like lawyers” is not necessarily a desirable goal. It is costing students too much in terms of encouraging the abandonment of personal principles and values in the interests of collective conformity to a rigid, doctrine-based method of argument. The question that lingers is: How valuable can value-free thinking be?

At present, the legal system’s complicated evidentiary rules force legal matters to be presented in restrictive ways, which can result in the abandonment of common sense and the chance to express to or show the court what actually happened: "As students are drawn into this new discursive practice, they are drawn away from the norms and conventions that many members of our society, including...clients, use to solve conflicts and moral dilemmas" (Mertz, 2007, p. 99). The participants and the story can get lost in complex legal language and argument, resulting in unintended and even substantively unjust outcomes. The present understanding of the term "thinking like a lawyer" needs itself to be reevaluated, if not abandoned altogether, in favour of a more humanistic, multidimensional, moral understanding of the term.

The Problem With Teaching Students to Use Legal Language

The legal language and writing that students are hearing, speaking, and reading daily in law school (and learning to write themselves) consists of very dense and inaccessible prose. Hutchinson and Marshall state:

[Legal language] is loaded with the worst forms of circumlocution, prolixity, and obfuscation. Indeed, legal writing seems to be a paradigm of bad writing; it is full of compound constructions, redundant repetition, dangling modifiers, and
multiple negatives. It is almost universally condemned as being an unholy combination of vices—convoluted, tortuous, pompous, and boring. The effect of this reputation is to mystify and alienate the public...to a non-lawyer, reading law...is an alien and baffling experience. (Hutchinson & Marshall, 1996, p. 86)

Teaching law involves getting students to develop a new relationship with a new and foreign language that is created solely for lawyers. Embedded in this new language is "a hidden epistemology" with significant moral dimensions that values thinking of the practice of law as essentially playing a big game with its own special language codes (Mertz, 2007). Individuals and events are slotted into categories and roles, and the language appears deliberately dispassionate and obtuse, in order to keep others from being able to understand the game.

Professor Elizabeth Mertz argues that, in learning to speak the language of law and lawyers, students "learn to become operators in a world in which important aspects of social context and identity have become invisible" (Mertz, 2007, p. 132). According to Mertz, when professors translate human conflict into legal language, they teach in a language that drains away much sociocultural specificity along with many emotional and moral dimensions. The problem is that, in doing so, they also subtly erase a great deal of the context and detail on which most lay people would rely in forming ethical judgments: "This erasing or marginalizing of many of the concrete social and contextual features of legal conflicts can direct attention away from grounded moral understandings which...are crucial to achieving justice" (p. 134).

Learning the legal language creates confusion and alienation for many law students. They are taught to value the importance of adapting to a process in which
"increasingly instrumental and technical appeals to legal authority blunt moral and context sensitive judgment" (Mertz, 2007, p. 134). It is a hidden, rather than overt process, in which the students' core selves are "de-centered" (Mertz) through and in the new legal discourse as they take on their new legal voices and language. In short order, they learn to separate their inner opinions and feelings from the legal person they come to embody. The result is the development of what almost feels like split personalities: the lawyer and his/her real, fully human self. In the former, lawyers take on a different voice and speak as if as players in a legal drama. The O. J. Simpson case is a good example of great theatre, but no real justice. Learning the legal language often requires an "unmooring of the self from its usual coordinates" (Mertz, p. 137) and a new positioning based on something not real. Notwithstanding all of the above concerns raised by Mertz and others about the artificiality of legal language, proficiency in the understanding and use of legal language is a fundamental requirement of Canadian law students, and an admired skill that has a coveted central role in Western legal epistemology.

Another more basic and technical problem with legal language is its overcomplication in documentation, procedures, and expressed rules and laws. Technology has intensified rather than minimized this obfuscation of language. For example, a typical legal file doesn't contain fewer documents today; it contains more. The language in these documents is so complicated that even lawyers get confused. Students soon learn that complex legal language has the potential to intimidate, confuse, and exclude people in order to maintain vested interests. For example, one need only think about how complicated insurance policies and contracts are and how they are worded heavily in favour of wealthy corporate insurers rather than potential individual
beneficiaries. The typical lay person will not be able to challenge what he or she does not understand.

Current language complexities are found not only in law school teaching and law school discourse and argument but also in course content, legal and evidentiary rules, case law decisions, and even test wording. All of these language intricacies have caused both students and citizens to feel separated or alienated from lawyers, legal institutions, their teachers, and the law. In teaching law students to master their new environment and communicate in this obtuse way, law schools undermine student helpfulness and credibility in a system whose mandate is, in part, to serve as a clear voice and vehicle of equity and justice for the disenfranchised and the disempowered. The "lawyer language" issue is even more problematic in a multicultural country like Canada, some of whose citizens do not speak English as a first language. Language can be used as a tool of power to uplift or oppress, to help or to harm. Never is that more true than in a legal dispute.

Lawyers and law schools would benefit by rethinking their historical use (and current abuse) of both language and its power if they want to build and establish their moral authority. Law students need to be taught to avoid or reject the use of the dense language of the legal "culture" to intimidate and obfuscate in favour of learning to use it in more personalized, transparent, and meaningful ways to protect and promote the interests of their fellow citizens, particularly those who have no voice.

The Failure of Formalism

Much of what is increasingly viewed as unhealthy about law school pedagogy is its rigid, overly scientific approach. A long-recognized term for this pedagogical approach is "legal formalism." In How Lawyers Lose Their Way: A Profession Fails Its
*Creative Minds* (2005), Professors Jean Stefancic and Richard Delgado describe legal formalism as follows:

Legal formalism emphasizes precedent...rather than social policy and the search for an answer that would be right for today.... Legal formalism emphasizes doctrines and cases and minimizes external factors such as justice, social policy and politics. It imagines law as an autonomous discipline existing apart from others; it is not at all interdisciplinary. The classroom is Socratic and doctrinal.... The professor asks what the rule of a case is and how it squares with that of a previous one.... The beginner may attempt to answer by resort to morality or justice.... The professor will dismiss such answers as dangerously naïve. The student soon learns to give the right-legalistic-response. (pp. 34-35)

Formalism has also been criticized as excluding intuition, imagination, and human values and failing to take into account the complexity and always changing nature of life.

Two of the more problematic qualities of formalism are its elitist/deceptive nature and its inability to facilitate socially just decisions. In focusing so much on precedent, or the past, it assumes that existing, traditional sets of rules are necessary and right, when in fact many of the rules and laws in our society were originally designed to serve (and still do serve) the rights of the ruling class (Stefancic & Delgado, 2005, p. 39). In other words, formalism hides White power by perpetuating existing pedagogy and law as "neutral" even though it isn’t. It is an exclusive, rather than inclusive pedagogy. In this way, formalism perpetuates deception in that it hides the way power actually works.

Finally, formalism does not encourage social justice. It does not really allow a court to get at the truth since it tends to discourage courts and other legal decision-
making bodies and individuals from considering such factors as equity, mercy, economics, class relations, personal story, and other extenuating circumstances when making decisions that can profoundly affect individual and organizational lives. Various attempts have been made to establish new pedagogical theories and ideas to combat formalism's obvious shortcomings in the contemporary law school, but formalism remains a centrally accepted and internalized paradigm in Western legal pedagogy.

The Problem With the Socratic Teaching Method

The Socratic method was originally created by the philosopher Socrates as a rhetorical device for conversations for teaching a subject matter in small group discussions. It involved a process of back-and-forth discussion, with Socrates asking probing questions and definitions of his friends on a given subject matter. The questions would continue until Socrates had exhausted the friends' definitions, and he would then present his own theory (Litowitz, 2006, pp. 34-35).

This method was first introduced into the Western legal pedagogy by Christopher Columbus Langdell at Harvard Law School in 1870. It soon became an integral part of the law school experience in North America. Western legal scholars have traditionally viewed it as a central approach to law school pedagogy.

While broadly accepted, the Socratic method has also been extensively criticized over the years by many inside the legal education world. The main argument against its use in law schools is that it is an inappropriate and inefficient way to teach law to first-year classes. The method was originally used as a means for learned individuals to deepen philosophical conversations; it was not meant to be used to teach a particular legal subject to large groups of students who are complete neophytes about the law:
The method is [not] appropriate for teaching practical subjects like law and the legal system, which are intrinsically complicated to such an extent that students need a professor who makes the subject less complicated, not more. Yet somehow law students get so disoriented that they lose their common sense and come to accept this strange, pedagogically unsound way of teaching. (Litowitz, 2006, pp. 34-35)

Other common educational criticisms of this method include the following: It is not functionally helpful, even for teaching doctrine; it is the cause of unnecessary and harmful humiliation and stress; it favours White male students' ways of thinking and being; it fails to impart moral values; it imparts the wrong moral values; it fosters incivility and overly competitive attitudes; it complicates information unnecessarily; it does not challenge students intellectually; and it leaves students unprepared for the realities of practice (Litowitz, 2006; Mertz, 2007). Finally, for those students who put time and care into their law studies, the approach is frustrating because it is difficult, if not impossible to prepare for a class taught via this method: "There is no way to prepare for a public performance that is so one sided in which the student is asked impossible questions designed to trip her up" (Litowitz, pp. 33-34).

Psychological studies have also shown that the Socratic method is limited in teaching students with diverse learning styles, personalities, and backgrounds and negatively affects students' interpersonal relations and self-esteem (Mertz, 2007). Critics condemn the "strong element of sadism in the Socratic interchange," arguing that "the …method is really a ritual of subjugation that purposely disables the law student...it uses fear and shame as a motivating force, which is easier than motivating people with ideas
and worthy goals" (Litowitz, 2006, p. 34). Particularly affected are the females and non-
traditional law students now entering Canadian law schools with increasing frequency,
including those with diverse learning styles, personalities, and backgrounds. Feminist
legal researcher Lani Guinier and others suggest that the Socratic method operates to
differentially exclude women and students of colour (Guinier, 1999). The emphasis on
impersonal reasoning encouraged by this method has also been linked with negative
ramifications beyond law school, such as lawyer dissatisfaction, reduced public trust in
the legal system, and declining professionalism (Mertz).

In spite of all of the criticism, the Socratic method remains in use in
contemporary law schools, although it is no longer the central or only method of
teaching. More diverse, enlightened faculty and a wider of variety of class sizes and
methods of teaching have been introduced into the more progressive law schools in
recent years. However, the Socratic approach may continue to remain in vogue for
economic reasons: "It is cheap because it can be used to teach large numbers of students"
(Litowitz, 2006, p. 34).

Detractors take the view that this method should be completely shelved, as it
serves no helpful purpose in teaching students, especially first-year students. Those in the
humanistic law movement are increasingly proving by example that there are ways to
teach students legal doctrine, skills of reasoning and deduction, and even rigorous case
and fact analysis that are more inclusive, effective, and humane.

Existing Teaching Approaches Fail to Engage Students

Law students are typically well prepared academically, highly motivated, and
make a substantial investment of time and finances to attend law school; thus, it follows
that potential law students and others assume that law students are highly engaged by their professors and the material they teach during law school. However, there is a significant body of research, including direct law student surveys and interviews as well as empirical studies, which refutes this assumption.

There are several main reasons that lie behind a lack of law student emotional, environmental, and intellectual engagement. Many faculty members in American and Canadian law schools continue to use traditional teaching methods either exclusively or primarily, rather than using richer "more research based, learner centered practices" (Law School Survey of Student Engagement [LSSSE], 2006, p. 6). For example, prompt feedback is rarely practiced in law schools, even though it is viewed by experts as an obvious hallmark of effective and meaningful learning. Prompt feedback allows students to know whether they are in fact learning what they are supposed to be learning; it gives them a better sense of control and direction over their learning. On a larger scale, it allows them to feel more meaningfully connected to, rather than distanced from the learning experience and school environment: "To assess progress, to evaluate study methods, to remain enthused and focused, students need feedback...many law classes offer concrete feedback only after the course has ended" (LSSSE, p. 6).

Constant competition (for the best marks, best argument in moot court, high class ranking, best corporate summer and articling jobs, etc.) is also highly encouraged and embedded in the law school environment. Conversely, research shows that a supportive and open climate encourages students to participate in class and communicate more meaningfully with peers and faculty, whereas a competitive climate will stifle such behaviour. Learners of all ages and backgrounds are found to benefit most if they engage
in educationally purposeful activities such as class participation, peer discussion and teamwork, and meaningful communication with mentors such as professors (LSSSE, 2006, p. 6). Lee Shulman, president of the Carnegie Foundation for the Advancement of Teaching, which sponsors the annual Law School Survey of Student Engagement (LSSSE) in American and Canadian law schools, states: "Learning begins with student engagement, which in turn, leads to knowledge and understanding" (LSSSE, p. 6).

Online law student engagement surveys conducted by the LSSSE over the last several years show that students who perceive their professors to be helpful and sympathetic and who receive prompt feedback from faculty report greater gains in their ability to synthesize and apply concepts and ideas, spend more time preparing for class, and generally feel more positive about their law school experience (LSSSE, 2006, p. 11). Teamwork has also been shown by educators to be a learning vehicle that fosters connectedness to the learning environment. Notwithstanding this fact, the vast majority of law students (88%) taking part in the 2006 LSSSE stated that they do not frequently work together with other students in the classroom on projects or otherwise (p. 13).

Students who are encouraged or required to take part in clinical internships or other field experience or who do pro bono work also report gaining more than other students in such desirable areas as: speaking and writing proficiency, clarifying career goals, learning independently, contributing to the welfare of the community, understanding people with backgrounds different than one's own, working effectively with others, and developing greater confidence in solving real-world problems (p. 16). In spite of the stated benefits of participating in clinical internships in law school, only a
minority of law students take part in such internships. Participation in clinical internships is mandatory in very few Canadian law school programs.

Teaching methods can also be unimaginative in law schools. Research has repeatedly shown that students have many different learning styles (i.e., visual, linguistic), yet research and development of alternative teaching techniques in law schools have rarely been pursued (Dalrymple, 1999). Few legal scholars have evaluated alternative humanistic methods for teaching the law. For the most part, faculty follow the status quo. In recent years law schools have seen the incorporation of more technology into legal education (for example, some law courses, including Bar exam courses, as well as exams, are now offered online and/or via podcast format). Some students also use laptops in class as well. But there could be more audio-visual, art-based aids and technological aids routinely used in the classroom. Generally, many curriculum teaching methods are not transformative and do not engage or empower/enlighten students on an intellectual or visceral level. The research taken together demonstrates that too many law school professors and administrators appear to be disinterested in their students and material and to be socially, emotionally, and/or morally absent from the law school process or dynamic.

Assessment Approaches Lack Meaning

Most Canadian law schools rely primarily on the form of evaluation involving a 3-hour, 100% examination at the end of the first-year courses as a major device for grading students, although it has been acknowledged by leading academics that "there are many pedagogic and educational reasons to move beyond [this approach]" (Hutchinson & Marshall, 1996, p. 136). The evaluation procedure has been described as
being "inescapably subjective" and traumatic in nature: "Once [students] have...recovered from the shock of examinations, [they] must begin to steal [sic] [themselves] for the ensuing results" (Hutchinson & Marshall, p. 145). Given this information, it would appear that the assessment of first-year students in particular is neither fair nor thoughtful.

Hutchinson and Marshall, in The Law School Book: Succeeding at Law School (1996), explain the law school grading system as follows:

Most law schools tend to impose some kind of grade profile; that is, professors are required to grade examinations so that there is a spread of grades that generally conforms to a bell curve in which there are a few high and low marks, but the great majority cluster around the middle.... Some law schools operate on a fixed spread of grades in which a certain number of students must be graded within each letter grade...students should not drive themselves to distraction by complaining or arguing against the profile...changing the grading profile or evaluation procedures is something for another day. (p. 136)

These evaluation procedures are no longer relevant. They are artificial and do not measure true individual learning. They call out to be replaced with something more meaningful and helpful.

Canadian legal education would benefit by embracing new assessment practices. Critics have shown that legal education in North America is renowned for its adherence to traditional case books, Socratic teaching methods, heavily weighted final exams, and an unwillingness to change (LSSSE, 2006, p. 4). These methods leave little to no room for feedback. The exams themselves contain questions that can bear little resemblance to
the actual reality of the practice of law, how one should "be" a lawyer, or even what basic information/skills a lawyer is expected to know in order to graduate with a feeling of competence. Students receive a letter grade (based on the aforementioned bell curve system), but the exam itself is traditionally not returned. How or why the professor arrived at calculating the grade often remains a mystery. The grade often bears little to no resemblance to the amount of time and effort put into the course. For all students know, the professor could have just pulled a number or letter out of the air. This can be disheartening for the student. It is difficult to learn from this type of experience. Faculty feedback is also sparing. If a student requests a meeting with a professor, it is possible that the professor may, upon meeting with the student, have no idea who the student actually is. While this may be acceptable in undergraduate courses at larger universities, such a disconnect between faculty and students should not exist in much smaller, customized, costly professional schools. Although law schools do not have large student bodies, there appears to be a deliberate attempt by many professors to keep students at arm's length.

Using more alternative forms of assessment such as interactive group or individual projects, role playing, simulations, presentations, short essay, and progressive testing along with major exams, or without them altogether, would improve the quality and value of assessment and would provide more opportunities for teacher/student discourse. Ultimately, lack of meaning and transparency in the assessment system would not matter so much if grades were not the central and often sole consideration by law firms/other employers in choosing which students to hire for summer and full-time positions.
Impact on Students

Law schools have been described as having harmful effects on the physical, mental, and emotional health of students. Various studies addressing the reasons for law student distress are analyzed below.

Law Schools Are Unhappy, Depressing Places for Many Students

Law students have reported unusually high levels of psychological distress in law school for over 30 years. Clinical depression levels, while normal before law school, have been shown in several studies to dramatically increase during law school. Some experts conservatively estimate that "law school... irretrievably damages 10 to 20% of its graduates" (Daicoff, 2004, p.124). Law students have also been shown to become more alienated, more aggressive, and more ambitious as law school progresses; and these characteristics do not abate after law school.

The image of the typical law student as confident and in control contradicts the true experience of many who experience unduly high levels of psychological distress. A number of studies have been done on the subject of law student distress, depression, well-being, and the legal education culture by American scholars and professionals who have made this topic central to their life's work. The studies are at times extreme in their findings.

In a 1985 study by S. Shanfield, and G. Andrew Benjamin, law students were found to have a higher rate of psychiatric distress than either medical students or people in general (Daicoff, 2004, pp. 15, 31). They scored significantly higher than the general population in psychiatric tests for anxiety, depression, hostility, obsessive-compulsivity, interpersonal discomfort, phobic anxiety, paranoid thoughts, overall distress, intensity,
and number of symptoms. Twelve percent of law students in this study were depressed enough to warrant psychiatric evaluation and intervention (Daicoff, 2004).

A second follow-up study in 1986 by Benjamin, Kaszniak, Sales, and Shanfield analyzed over 320 law students at the University of Arizona Law School before, during, and after law school using four self-report instruments to obtain data, including the well-respected Beck Depression Inventory self-report instrument, to measure depression. The purpose of the study was to explore whether the process of legal education impairs the maintenance of emotional well-being in students (Benjamin et al.). The study revealed that law students who, before entering law school, reported normal levels of psychiatric distress, experienced significantly increased distress to above average levels within the first year of law school. Their symptoms continued to worsen during the next 2 years of law school and never returned to prelaw levels even 2 years after graduation. These symptoms include obsessive-compulsive behavior, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism (social alienation and isolation). The study emphasized that it was the law school educational process itself that affected the students rather than certain types of individuals choosing law school who react negatively to the process because of their unique personal vulnerabilities or character traits (Benjamin et al.).

The study also compared medical and law student experiences and found that law students developed significantly more distress than medical students. Benjamin et al. ultimately concluded that the development and maintenance of the psychological well-being of law students was ignored and diminished by the process of legal education (Benjamin et al., 1986).
A 1997 study comparing Canadian law students to Canadian medical students found that the law students were less satisfied with their vocations, less healthy, less able to relax, more anxious and hostile, more driven to accomplish and succeed, and more stressed than the medical students. This finding is notwithstanding that the medical students were shown to have work schedules generally requiring them to work about 30% more hours per week than law students (Daicoff, 2004, p. 117). Both Canadian and American lawyers and law students are also much more likely than the general population to experience emotional distress, depression, anxiety, addictions, and other related mental, physical, and social problems (Krieger, 2002).

Law school has been called "the dark night of the soul" (Roach, 2004, para.1). It has been described as a harrowing and harsh place. Law school has been likened more than once to "a professional boot camp" so as to be able to "beat preconceptions and attitudes out of students" to teach them to "think like lawyers" (Daicoff, 2004, p. 69). Daicoff notes that, because it is aimed at profoundly reforming students' ways of thinking, law school also can cause dramatic but not well understood effects on many students' personalities as well.

In a 2002 study involving her own law students in Texas, law professor D. Floyd found that students did report gaining valuable analytical and reasoning skills at law school as well as an improved ability to articulate arguments and to see an issue from a variety of perspectives. But this is where her positive findings ended. Professor Floyd discovered that there are many negative factors which undermine the law school experience and the very personhood of students. Such factors include: (a) excessive competition for grades and prizes, leading to feelings of failure and inadequacy, (b) an
overemphasis on rational, analytical thought to the almost total exclusion of other qualities, (c) devaluation of emotional matters, including relationships, and the undermining or elimination of the ability to form relationships that students possess when they begin law school, (d) a complete lack of discussion of meaning and purpose in the practice of law, (e) deliberate fostering of isolation and discouraging of collaboration among students, (f) student loss of sense of purpose and passion to be lawyers, (g) intolerance of fears, anxieties, vulnerabilities, and mistakes, and (h) boring and repetitious curriculum (Floyd, 2002). Because the law school experience is so rooted in the male perspective, the experience can be even more devastating for women, who tend to view the world with a more humanistic, intuitive, qualitative vision.

Since student lawyers are encouraged to disengage from their curriculum content, peers, and superiors, many often do not realize that significant numbers of their peers feel the same as they do. One student in D. Floyd's study compares the experience of being a law student to being similar to the grief process: "Students experience loss, denial, anger, and then acceptance" of the isolation of the law school environment (2002, para. 18).

Further key findings in this area were published by law professor Ruth Ann McKinney in her study of law student distress in 2003, wherein law school was found to be "a breeding ground for depression, anxiety and other stress related illnesses" (p. 1). In her study, McKinney found that nearly everyone writing on the subject of legal education agrees that the current system places enormous amounts of emotional stress on students that negatively affects, perhaps irreparably, students' self-esteem, their ability to perform, their
short-term and long-term health, and their ultimate satisfaction with the
profession. (McKinney, pp. 2-3)

The study also found that up to 40% of law students may experience depression or
other symptoms as a result of the law school experience (2003).

In his 2006 critique of legal education, Litowitz suggested that the entire system
was extremely mentally damaging to students:

A person caught inside the whirlwind of law school is oblivious to his condition,
much like a psychotic who cannot see how crazy he is.... It does not take a degree
in psychiatry to spot the abnormal mental conditions created by law school,
because the symptoms are apparent in any first year classroom. (p. 29)

Given the unimaginative and often harsh structure of conventional law schools,
the above findings and observations are not entirely surprising. Depression looms as a
significant presence in law school, since students are encouraged to adopt a rigid legal
persona that prevents them from dealing with genuine feelings, expressing emotions, or
resolving any internal discomfort or conflict. This sense of alienation continues after law
school. Many students graduate from law school feeling and acting in emotionally
unhealthy ways. They receive and live out unhealthy messages about what it means to be
a successful professional. The profession which they join itself comes to mirror the law
school environment.

Law Schools Impair Self-Actualization

Empirical studies undertaken by humanistic psychologists such as Abraham
Maslow and Carl Rogers have shown that one's choice of goals and values predicts
quality of mental health. Many of the findings of these experts can be connected to the
present legal education crisis. The implications of their findings have in fact been studied in relation to law students and law schools. Maslow and Rogers found that the natural striving to be one's best and improve one's society is directly linked to the experience of satisfaction and well-being and that the source of most psychological distress was the blocking of this movement toward personal and social integration (Krieger, 2002).

Maslow found the following traits in people who are in the process of higher psychological development or self-actualization: "self-governance and individuality, universal holistic thinking, superior awareness of truth and undistorted perception of reality, seeking good for others and mankind/service orientation and lack of concern for differences in class, race or belief" (Maslow, cited in Krieger, 1998-99, p. 35). In particular, Maslow found self-actualizers to be highly ethical people (p. 35). Full function or self-actualization produces the highest ethical and prosocial behavior. Such behavior is ideally cultivated and practiced in lawyering and, indeed, in life.

In related research, Krieger found that typical goals cultivated in the Western world such as "money, power, and image" are also "embedded particularly deeply in the culture of most law schools and law firms," notwithstanding that they can negate and even actively undermine a happy, ethical life and the ability to self-actualize (Krieger, 2002, p. 121). Focusing on extrinsic goals disconnects individuals from their true selves and causes them to focus on more basic survival and security needs. This in turn results in a lack of ability to grow and move forward emotionally and socially: "Extrinsically oriented people tend to become stuck in a "vicious cycle" in which they continually experience psychological distress and conflicted interpersonal relationships, not knowing how to escape the cycle" (Sheldon & Kasser, cited in Krieger, p. 122). Ultimately, the
conclusion that one can draw from these studies is that legal institutions that encourage and cultivate in their students intrinsic goals such as "personal growth, intimacy and community integration" (Krieger, p. 121) will have happier, healthier student and lawyer populations.

Law Schools Neutralize Emotions and Encourage Addictive Behaviour

Perhaps one of the most damaging things that law schools have been accused of doing to students is neutralizing their emotions and encouraging addictive behaviour. Emotions are generally understood to have no place in law school or legal practice. This is unhealthy:

Many of the most vital and fulfilling human experiences...joy, satisfaction, love and appreciation...are experienced on the level of feeling.... [In losing touch with their feelings, students] lose the capacity to experience the richness of life, which can result in a...sense of emptiness and potentially lead to addiction and depression. (Krieger, 1998-99, p. 26)

The high stress levels created by the law school culture are connected to student efforts to control things that cannot really be controlled: the need to constantly win, to be perfect, to get among the highest marks, to avoid criticism, to always be seen as rational, intelligent, and successful.

Most definitions of addiction include "the suppression of feelings" (Krieger, 2002, p. 31). The psychological unhealthiness that is fostered in the law school environment can result in a higher than average incidence of addictions such as "perfectionism, workaholism, and alcohol and drug abuse among law students and lawyers... [as] addictions accompany low self esteem, fear, and disconnection from
feeling (Krieger, p. 30). Addiction theory points to marked similarities between addictive personalities and qualities associated with law students and lawyers. For example, psychologist Jerome Levin describes alcoholism as "an immature state of development characterized by grandiosity, arrogance, isolation, unrealistic goals, excessive need for control, low tolerance for feelings and emotions, massive anxiety, depression and inability to access internal resources, resulting in excessive dependence on external factors," which Levin calls "field dependence" (Levin, cited in Krieger, p. 31). Similarly, many of these factors such as dependence on extrinsic gains and successes are also trademarks of contemporary law school culture and many of the lawyers the schools produce.

Other theorists/therapists advise that addicts "lack the capacity for emotional intimacy...and consequently form their primary relationships with objects and events and not with other people" in order to control their feelings (Krieger, 2002, p. 31). The legal education culture is conducive to the formation of addictions in that it exerts pressure to achieve academic and other forms of unattainable perfection, it can cultivate a sense of fear, failure, and inadequacy, and encourages allegiance to material success while discouraging intimacy with others.

First Year Has Worst Impact

The negative emotional effects of first year law school in particular have been explored in books such as Scott Turow’s One L and movies such as The Paper Chase, both of which received so much attention in the 1970s because they cracked open the door to the secret and often harsh world of first-year law school. Has much changed in the 30 years since this book and movie were released? The evidence says not enough.
The aforementioned 1986 study by Benjamin et al. on student well-being also addressed the issue of the first-year experience, finding that it is first-year students in particular who feel overwhelmed, primarily due to importance placed on matters such as grades, winning academic prizes, and future job placements. First year is consuming to the point that students often abandon other aspects of life, including important nurturing relationships of their former lives. Benjamin et al. observed that better communication in terms of both quality and quantity between new students and faculty could make a significant difference for first-year student comfort levels but found that student/faculty relations in law school rated lower than for any other type of graduate level university education program.

J. Halpern also addressed the extreme "initiatory" experiences of first-year students:

It is not uncommon for the workload to be such that it is physically impossible to complete assignments on time. For any highly motivated first year students this can lead to a near constant state of anxiety. Physical and psychological exhaustion are...programmed into the first year. The student is stripped naked, so to speak, so that he may be remade into a lawyer. The underlying dynamic...parallels a highly structured, controlling, emotionally intense initiatory rite used by the church or the military in the indoctrination of their neophytes. (cited in Benjamin et al., 1986, p. 248)

A 2001 study by Krieger and Sheldon found that first-year law students experienced a decline on every measure of positive well-being, including self-actualization, life satisfaction, and positive mood. They experienced an increase on every
negative measure of well-being including physical symptoms, negative mood, and depression, as they progressed through law school (Krieger & Sheldon, cited in Daicoff, 2004, pp. 70-71). By the end of the first year of law, the students experienced loss and decline in "growth/self acceptance, intimacy/emotional connection and community/societal contribution and [were] less likely to act for interest or inherent satisfaction" and a corresponding increased orientation toward money, luxuries, popularity/fame, and personal appearance/attractiveness and a motivation to please others (pp. 70-71).

In a follow-up study several years later, Sheldon and Krieger demonstrated that law students also experience a significant decline in mental health, negative changes in values (shifting toward valuing image and appearance over helping values), and reduced intrinsic motivation, all during their first year (Sheldon & Krieger, 2007).

Litowitz describes first year as "a sham" and calls for clarity and empathy on the part of teachers in their dealings with students in first-year law:

The first year experience doesn’t prepare students for anything. It serves no pedagogic purpose...Most law students realize by the second week that the entire first year arrangement is something of a sham, that the students themselves could teach the class. Why can’t professors simply teach the subject matter in a clear way and show empathy for students? Would that really be so difficult? (Litowitz, 2006, p. 34)

I wondered the same thing in my own first year of law school in 1982. It is disheartening to see that apparently little has changed since then. I do remember thinking in first year, after the first few months: Does learning something like (insert any law
subject here) really need to be this difficult? Can someone look me in the eye and tell me that there isn't something fundamentally obtuse, if not destructive, going on here?

Ultimately there was a feeling of denial and disappointment about the program/experience.

*Student Distress Is Denied*

Notwithstanding numerous studies documenting the collective distress, depression, and other maladaptive behaviours of North American law students, there is a corresponding denial and failure by the majority of its participants to respond to this deepening crisis. Krieger states: "We appear to be practicing a sort of organizational denial... given this information, it is remarkable we are not openly addressing these problems among ourselves and with our students" (2002, p. 112). Denial compounds the crisis. The literature repeatedly uses words and phrases like "secret," "taboo," "denial," "silence," "dark side," and "breaking the silence" to connote hidden or unspoken truths about law school. Students themselves are increasingly calling for more responsiveness to their distress. For example, University of Toronto law student A. Pilliar wrote the following in a 2005 issue of the law school paper *Ultra Vires*:

Mental health is still a taboo topic.... Every student here probably knows someone who has been in significant distress while at law school. Stigma can prevent students from seeking help when they need it... we must reduce the stigma attached to mental health in the law school.... We need to reduce the toll that law school takes on our well being. (para. 2-20)

Pilliar (2005) states that first year can be the most brutal on student mental health: "Particularly in first year, far too few of us know where we can turn to if we need help."
This must change" (para. 17). Law reform critics suggest that the denial stems from conflict over the law school role and by the fact that "core attitudes and beliefs at the foundations of the legal educational culture would be threatened by an open look at what is going wrong" (Krieger, 2002, p. 17). Clearly, damaging attitudes and practices serve to severely affect first-year law students. Steps could be taken to acknowledge and change such attitudes and practices.

**Future Threats**

A final key concern relates to the perceived failure by those in positions of authority in legal education to show the necessary leadership required to respond carefully and thoughtfully to new economic and political forces that potentially threaten the integrity and future of the legal education and the profession.

*The Negative Effects of Globalization and Neo-Liberalism on Law School Pedagogy*

Recent progress toward more human educative practices in many law schools is now being threatened by two new forces which have arrived on the Canadian economic and political scene: globalization and neo-liberalism.

Globalization can be generally described as the integration into world markets of national economies. Neo-liberalism has been defined as a set of economic policies that favour minimal to no government intervention in economic matters and champion free trade, including no restrictions on manufacturing, no barriers to commerce, and no tariffs. Neo-liberalists believe that free trade, individual economic initiatives, and open-door policies are the best way for a nation's economy to develop (Martinez & Garcia, 2000). Recent years have witnessed the steady increase of the consolidation and internationalization of large Canadian law firms and other businesses. At the same time,
pressure has been mounting on governments to create a positive legal environment for business, especially international business. Under neo-liberalism, the stability and continuing legitimacy of the state legal system as the traditional protector and defender of social justice and individual and collective rights is being challenged (Arthurs, 2001). Neo-liberalism and globalization have exposed Canadian law firms to new fiscal and competitive pressures. Experts predict that the implications for legal education are and will continue to be equally profound.

One area that is being affected is the area of legal research. Governments have radically revised their investment in policy studies and law reform research. Legal education research is inadequately funded by our governments and public institutions. Instead, funds are directed into areas of legal research which governments consider to be more important, such as business, health, e-commerce, international trade, and productivity (Arthurs, 2001). In the law schools themselves, Canadian law professors currently have little experience in teaching subjects beyond the narrow scope of Canadian domestic law, even though, in this age, law students will likely be required to practice much wider areas such as minority rights law, international law, the law of corporate codes and prisons, and intellectual property law of the United States and other countries (Arthurs), to name a few.

Since globalization and neo-liberalism have come onto the Canadian societal, political, and economic scene, Canadian law has begun to adopt the new priority of ensuring safety for markets rather than protecting and improving society (Arthurs, 2001). It is predicted that the changes anticipated and advocated by reform-minded academics
Corporatization is another threat to the culture, practices, values, and conventions of contemporary Canadian law schools. Many institutions of higher education, including law schools, are, in essence, threatening (or being propelled by various forces) to think and operate like a corporation. A term has even been coined for this eventuality: Corporate U. (Reimer, 2004).

There has been a clear shift from upholding law schools and other forms of higher education as a public institution serving the interests of society to institutions more in keeping with a corporate agenda and the needs of global capitalism (Hornosty, 2004; Kovacs, 2006). This shift threatens not only academic autonomy but the principles of academic freedom which depend on it. Ironically, when they need it more than ever, law schools will be less able to provide an environment where faculty can examine, challenge, and criticize existing beliefs, values, theories, methodologies, and underlying legal education and pedagogical traditions and assumptions. It is difficult to think critically and bring new, independent views into the present law school environment, given the ruling corporate climate. Increasing private and corporate funding of universities brings with it corporate agendas and values, which in turn affect curriculum offerings and curriculum choices of students, research priorities, pedagogical approaches, and the overall university culture. (Hornosty).

The continuing commercialization of university life is presently reflected in the emphasis on business courses and practice in law schools. For example, the basic
required first-year courses at all Canadian law schools include business/commercial oriented personal property, real property, contracts, and tort law (Official Guide to Canadian Law Schools, n.d.). In addition, a wide variety of business-related subjects are offered on a permanent basis at all the law schools. Examples include corporate finance, commercial law, tax law, labour law, securities, corporate governance, competition law, business associations, wills and trusts, and international law, to name a few. All common law schools in Canada offer combined law and business (LLB/MBA) degrees, and some, such as The University of Western Ontario, offer other joint law and business degrees such as the LLB/HBA degree. These degrees are presently prized as having a high "exchange value" in the marketplace (Hornosty, 2004, p. 51). Other courses such as human rights, poverty law, environmental law, aboriginal law, social justice issues, and ethics are either offered as electives or injected peripherally into the core curricula. Costly programs such as clinical internships, mentoring programs, and other off-site educational experiences suffer from insufficient funding. Arguably, the core courses and electives should be reversed; this would reflect a much more socially just, inclusive, and people-centered legal system. In general, epistemologies with the potential to transform knowledge are now being rejected in favour of approaches that look to education for its "use" value (Hornosty). Since non-business-oriented knowledge is not presently highly valued in law school, it is also not valued in practice.

The effects of globalization, neo-liberalism, and corporatization are being reflected in student course selections. A recent study of Canadian law schools indicated that the average LLB or JD (Toronto) student takes approximately 60% of his/her second and third year course load from the "core" course category (Rochette & Pue, 2001).
notwithstanding that their law school usually offers a variety of elective courses as well. Although they potentially have a large selection of courses to choose from, many law students take few perspective or elective courses apart from their upper-year course studies (Rochette & Pue). For example, at UBC law school, the percentage of students who choose to take only one or no electives in upper years has increased over the years despite an increase in the number and range of elective offerings (Rochette & Pue). Instead, they are focusing on taking courses that will give them the most "useful" information in terms of securing a job (often sought) in the corporate law sector, which in turn will allow them to pay off their considerable law school debt and have access to a certain kind of practice/life currently held out as desirable.

Summary

Law schools are in crisis. Criticism is being rained down upon them for being morally neutral and for lacking a humane vision, a coherent mission, and a strong narrative story. Studies reveal them to be emotionally and psychologically unhealthy environments in certain respects. Their traditional pedagogical paradigms have been found to be limiting and even harmful. Significant philosophical and intellectual holes are being revealed at the heart of fundamental aspects of legal education, such as its unique language and legal thinking and its persistent elitism and lack of an ethic of care.

Research findings show that law schools are also currently caught up in global, economic, and political forces that are affecting their ability to progress toward a more humanistic epistemological vision. Law schools have been criticized for failing to show strong leadership in responding to these forces. Rather, they are seen to be responding to these forces in ways that are viewed as short-sighted and opportunistic: to "avoid
negative consequences, to gain institutional advantage, to form advantageous allegiances and alliances with or against other schools, the profession and the universities" (Arthurs, 1998, p. 23). Those in positions of authority in legal education are beginning to acknowledge the need for greater accountability and moral leadership in creating a more humane law school experience:

It is true that the high level of depression among law students exists for a variety of reasons...some of it the result of unnecessarily damaging pedagogical approaches...we should work hard to reduce or eliminate unnecessary stresses caused by our pedagogical choices and to [help students] to avoid the depression to which too many law students succumb.... We also know, if we are honest with ourselves, that many students suffer unnecessary emotional damage in law school and carry it into the profession.... We are powerful players for good or for ill... and that fact carries with it responsibilities we must not ignore. (Weddle, 2006, para. 4-10)

While it is clear that various pressures exist within law schools to be different things to different people, there remain long-cultivated administrative and faculty behaviours, practices, and policies and teaching and learning approaches that appear to be unnecessarily harmful and limiting to law students. These must end. The key is for the law schools to direct the ambition and passion of the young people under their influence toward something meaningful and enduring. Legal administrators, teachers, and lawyers are some of the most visible, privileged members of the White power culture. Currently, they are being asked to re-examine their own professional values and expectations and to
perhaps reflect more deeply on the hopes and expectations of the students and public they have chosen to serve.

**Where Do Law Schools Go From Here?**

Discontented participants in legal academia have begun to think about ways to create a healthier legal education and professional environment. They are looking to ideas being implemented in other fields like liberal arts education, psychology, medicine, philosophy, traditional religions, mythology, and the healing and performing arts, and in other cultures, such as the Aboriginal culture, to see what they can learn and apply to the world of Western legal education and law. The idea that multiple forms of intelligence (including emotional and even spiritual intelligence) can be used to inform multiple ways of learning in the real world context is also reemerging and gaining prominence in the fields of business and education. More recently, internet communications technology has been identified as a learning aid with the potential to enrich and deepen human communication in legal education.

Reformers have begun to adapt ideas such as restorative justice, therapeutic jurisprudence, creative problem solving, intelligence theory, and, most recently, virtual world and other internet communication technology to the study of law. The general aim has been to create a deeper, more holistic way of teaching and learning law. Many of these emerging ideas have become part of a movement known by various names, including the Humanizing Law Movement, Holistic Law, Comprehensive Law, and Renaissance Law.

The numbers of reformers who are now part of the initiative to humanize legal education is growing exponentially with each year. While still primarily within American
legal academia, some ideas from the movement have gained a foothold in the United Kingdom. In Canada, while not broadly endorsed in an explicit or formal way, some humanistic law movement ideas and goals can be seen peripherally in the work of such reform-minded legal scholars as Harry Arthurs, Constance Backhouse, W. Wesley Pue and Victoria Netten. Inside the law schools, there are pockets of change reflected in newer social justice programs, general perspective and interdisciplinary courses, clinical opportunities off-site, greater creative use of technology, mentoring programs, and mental health counseling centers, among other changes. Alternative processes such as alternative dispute resolution (ADR), mediation, and restorative justice are being taught and valued more widely. Hopefully, the humanizing movement will be able to overcome market and political forces and continue to embed itself into the Western legal education and practice consciousness, becoming more explicit, widespread, and mainstream in its future story. The following four chapters (Three through Six) explore the philosophical/historical origins of the new humanism and analyze some of the more prominent (and promising) ideas and practices linked to the movement.
CHAPTER THREE: REVISITING THE PAST:
MULTIPLE AND EMOTIONAL INTELLIGENCE

The theories of multiple and emotional intelligence have recently experienced a renaissance of sorts within the professional and educational world. A study of these theories and their existing educational uses suggests that they hold great possibilities for humanizing and healing legal education. Following is an explanation of these theories and a discussion of their potential for enriching the legal education experience.

Multiple Intelligence (MI)

Mainstream intelligence theorists have traditionally viewed intelligence as a singular and permanent trait varying in strength in each individual, developing in "a predictable way," and "best measured by standardized testing" (Dauphinais, 2005, p. 3). The classic "psychometric" definition of intelligence proposes that intelligence is an inborn attribute or faculty that does not change much with age, training, or experience and is measured quantitatively by "an individual’s ability to answer items on tests of intelligence" (Gardner, 2006, p. 6). This approach to understanding intelligence involves the use of statistical techniques and the comparing of test responses of subjects. Both standardized testing and the idea of a single standard intelligence remain the generally understood and accepted concepts behind Western thought and educational pedagogy and are certainly reflected in mainstream legal education.

In 1983, Harvard education professor Howard Gardner wrote and published *Frames of Mind: The Theory of Multiple Intelligences*, wherein he proposed and outlined his multiple intelligence theory (MI theory), a radical new way of understanding intelligence as something more multidimensional and complicated. Gardner's views on
intelligence are a clear departure from the traditional, rationally based, one-dimensional understanding of the term. With MI theory, Gardner suggests a pluralistic view of the mind, recognizes many different and discrete facets of cognition, and acknowledges that people have many different cognitive strengths and contrasting cognitive learning styles. He rejects the idea of one type of intelligence for all and looks at ways of learning as being ideally more individually centered.

MI theory does not measure intelligence by a standard test but views intelligence as a "computational capacity" rooted in biology and psychology (Gardner, 2006, p. 6). This capacity allows for the processing of various kinds of information, the solving of problems, and the creation of products or results that are of consequence and value in particular cultural settings and human communities (Gardner). It is an understanding of intelligence that is more fluid, flexible, and adaptable to customized circumstances. Using this kind of intelligence in learning, one is able to harness and communicate knowledge in a variety of different ways.

In developing MI theory, Gardner considered only those skills and intelligences that are universal, that is, found in all races and cultures. He originally identified seven types of intelligence, later adding an eighth: (a) linguistic intelligence, involving sensitivity to spoken and written language and the capacity to use language to accomplish certain goals (lawyers, writers, and poets); (b) logical mathematical intelligence, involving the capacity to logically analyze problems, carry out mathematical operations, and explore issues scientifically; (c) musical intelligence, involving skill in the performance, composition, and appreciation of musical patterns. It is parallel structurally to linguistic intelligence; (d) bodily-kinesthetic intelligence, involving using part or all of
the physical body to move in space, solve problems, or create products (craftspersons) or achieve specific physical goals (athletes); (e) spatial intelligence, entailing the potential to recognize and manipulate the patterns of wide space (pilots) or restricted space (surgeons, architects); (f) interpersonal intelligence, involving a person’s capacity to understand the intentions, motivations, and desires of other people (teachers, psychologists, political leaders); (g) intrapersonal intelligence, involving the capacity to understand oneself; (h) naturalist intelligence, involving those with extensive knowledge of (and ability to interact with) the living environment and having the capacity to recognize and distinguish among various species (Gardner, 1999). These intelligences are all thought by Gardner to be both innate and independent of one another.

Over time, Gardner has stressed the emotional origins of inter- and intrapersonal intelligence and has recently expressed his belief that emotional facets exist in all intelligences, not just the inter- and intrapersonal intelligences (Gardner, 1999). He also predicts the growing importance of intrapersonal intelligence and possible further, not yet defined, intelligences, including some type of spiritual, cosmic, or existential intelligence in the new millennium. In their totality, Gardner calls his intelligences "a new definition of human nature, cognitively speaking" (p. 44).

Since writing *Frames of Mind*, Gardner has continued to refine and reframe his theory and to address the considerable and ongoing scholarly and public discussion and literature that have developed around the idea of multiple intelligences. Notwithstanding the theory’s appeal and positive implications, it has received both scientific and nonscientific mixed criticism. A central criticism has been that it is not sufficiently empirically based. In recent years, scholars and practitioners, educators, business
executives, and other individuals and organizations have given the theory new
momentum by applying it in areas that even Gardner himself did not originally consider.
Those individuals working in business and in education reform seem to have especially
embraced and made attempts to apply the theory in their work.

**MI Theory and Education**

In originally proposing the existence of multiple intelligences, Gardner suggested
that people are not the same, they learn differently, their minds work differently, and that
those in formal education in the Western world should take these differences seriously:
"Education works most effectively if [these] differences are taken into account rather
than denied or ignored" (1999, p. 91).

There is evidence that schools influenced by multiple intelligences theory are
effective. Many of the classes and schools that use this theory claim that students are
more likely to come to school, to like school, to complete school, and to do well in
various assessments. Recent, more rigorous longitudinal studies of the use of MI theory
in the educational setting have bolstered Gardner’s own view that "important materials
can be taught in many ways, thereby activating a range of intelligences and consolidating
the learning," resulting in enhanced educational experiences (Gardner, 2006, p. 84). For
example, in the SUMIT (Schools Using Multiple Intelligences Theory) project, educator
and researcher Mindy Kornhaber and her research team studied a group of 42 schools in a
number of states that had been using MI theory for at least 3 years and found that the use
of the theory had resulted in significant improvement in educational experience in several
key areas such as standardized test scores, parent participation, student classroom
performance, and student discipline (Gardner, 1999, 2006). Using Gardner’s MI theory in
teaching and learning seems to be especially helpful in that it contributes to the
cultivation of depth and variety in human thought and behaviour, which Gardner views as
critically important in optimizing the learning experience and responding more
effectively to many individual and societal problems.

**MI Theory and Legal Education**

Most tasks and activities, including lawyering, require the use of multiple
intelligences. In the legal profession, individuals need many different combinations of
strengths and abilities in such areas as language, logic, and interpersonal communication.
MI theory is particularly relevant to legal education, wherein an ideal primary goal is to
motivate and support student development of as wide a variety of the spectrum of human
abilities as possible, which they could then bring to their work lives. If law students are
taught material in a way that allows them to develop and use multiple intelligences, they
will likely learn more deeply. They will feel more connected to the material and operate
more competently in the legal educational environment. In their later work, they will feel
more engaged with others and aware of their own innate strengths. Ultimately, they will
have more to offer personally and professionally to the legal and wider community.

Gardner’s research suggests that any rich, layered concept or topic (such as law)
can be approached in at least eight different ways that map onto the multiple
intelligences. He compares each topic or subject to be taught as like a room with eight
different doorways into it. The path of learning chosen by each student will be different
according their strengths. Once teachers become aware of the different entry points, they
can teach new concepts and information in the curriculum in ways that can be understood
and explored by students from the perspective of their individually preferred entry points.
This form of teaching allows for students to cultivate a variety of perspectives on the material. Gardner describes this approach as "the best antidote to stereotypical thinking" (2006, p. 139).

Some entry points suggested by Gardner for use in teaching (including, by extension, teaching law) include the narrational entry point (presenting a story or narrative about the concept in question); logical entry point (approaching a concept through structured argument); quantitative entry point (dealing with numerical quantities and relations); foundational/existential entry point (examining the philosophical and terminological facets of a concept); aesthetic approach (focusing on sensory or design/patterns and other surface features that appeal to artistic students); experiential approach (hands-on approach or skills-based approach, dealing directly with materials that embody or convey the subject or concept); or collaborative approach (group work, discussions, role playing, debates, and "jig-saw" activities, in which each student makes a specific contribution). In all of the above learning approaches, the teacher functions as a "student-curriculum broker," hopefully bringing in texts, films, music, software, human speakers, and so on in order to facilitate and enhance the learning modes of various students (Gardner, 2006). Ideally, the goal for educators is to use multiple rather than single entry points so as to allow students to encounter different representations of the key ideas, to reach as many students as possible, and to show students how to be able to think about an area of expertise in multiple ways. Essentially, the aim is to get away from teaching and learning in ways that are used simply because that is what has been done in the past and instead teach only in ways that have a compelling rationale for their use.
today. In this way, schools can move away from the "custodial" model and towards a more creatively "educational" model (Gardner, p. 136).

Gardner suggests that even in cases where it is desired that a basic core curriculum be mastered by all students (as in first year in Canadian law schools), it is possible to offer an educational design that draws on multiple intelligences. While a common understanding and knowledge of certain core areas of the law may be valued and pursued by law schools, the core material can be presented in many different ways so as to appeal to different intelligences. In this way, students can learn what the schools view as mandatory, but in a way that can "identify their [personal] strengths and [help them] to pursue areas in which they are comfortable and can [excel and] expect to achieve a great deal" (2006, p. 142). Ultimately, applying MI theory will allow for the realization of legal education that is geared to cultivating performances of sophisticated understanding, better recognizing and celebrating the existence of different individual strengths, and committed to identifying and cultivating these elements productively in each student's education. Such an education is more welcoming to the individual student and provides a more humanistic alternative to the existing paradigm.

Western educators are increasingly appreciating the importance of cultivating "imaginativeness, inventiveness and creativity" in all levels of education (Gardner, 2006, p. 176). In the law classroom, MI theory would also free up imagination and creativity, qualities that are presently infrequently exercised or encouraged. Gardner's work points to recent studies showing that creative individuals are more ambitious, bigger risk takers and operate cognitively in more efficient and flexible ways than others. Creative individuals are also more fully engaged in and passionate about their work, tend to seek
the new and untried, exhibit a strong sense of purpose, are extremely goal oriented, and reflect more deeply on their activities, use of time, and the quality of their products and work (Gardner). These findings support the argument that making space for creative-minded individuals and for the cultivation of more creativity generally is a highly desirable goal for Western legal education institutions.

If law schools in Canada were to dedicate themselves to a different model of education using MI theory, it would be possible to do so without significant costs. It would require a change in mindset and some new curriculum development. For example, currently, there is little photographic/visual imagery that is used to accompany the vast amounts of legal textual information. More educators could regularly use multimedia, literature, art, comedy, film, role playing, off-site education, journaling, or meditation/reflection or refer to the importance of story and spirituality in their teaching. More professors could bring their own professional or education experiences into the classroom and encourage students to talk to each other or write about their own experiences/understanding/hopes/goals regarding the law. There is a narrow and limiting emphasis on verbal and logical activities involving words and reasoning, given the many other ways to learn.

These suggestions may sound uncommon, but they are presently being used in numerous schools in North America, including a few law schools. For example, Professor Peggy Cooper Davis of the New York University (NYU) School of Law has devised the Workways Program, whereby she and other colleagues at NYU Law are working to incorporate into the law school curriculum ways of teaching and learning using the multiple intelligences (Cooper Davis, n.d.).
Why Is MI Theory Needed Especially Now In Law Schools?

Innovative learning approaches like MI theory are needed in law schools. The practice of law and general legal work and experiences are becoming increasingly complex, demanding, and multidimensional. More than ever is expected of the law student and the lawyer he/she becomes. Legal education needs to change in order to be more responsive to new workplace challenges and to better prepare students for the complex professional demands they will have to meet. At present, the types of intellectual capacities and activities valued and developed in most law schools are narrower than the range of capacities and abilities needed to do the work of lawyers. Students are presently not learning the full range of intellectual activities necessary to achieve professional excellence (Dauphinais, 2005). If law schools became more reflective and proactive about developing a broader pedagogical spectrum to enhance students' relevant cognitive processes, students would engage more fully in the development of their intellectual capacities, perform better cognitively, and develop a more solid sense of competence. Moreover, the use of MI theory could help professors to be able to more closely evaluate and cultivate not only their students' competencies but also their own ability to remain relevant and responsive to changing trends and needs.

Valuing and nurturing multiple intelligence curricula is also a way to combat the business paradigm trend pervading the law school environment and offer an alternative, multidimensional, humanizing direction. The use of multiple teaching strategies will also better engage the more diverse, contemporary law student population reflecting different sexes, ages (Canadian law schools have increasing numbers of adult or "mature" students), cultures, and learning backgrounds. In fact, some argue that the failure of
contemporary legal pedagogy to become more conscious of and open to multiple intelligences is "tantamount to discrimination" (Dauphinais, 2005, p. 15) and that "law school creates an artificial hierarchy of intelligences that unfairly rewards those traditional students who think with logical intelligence at the expense of those nontraditional students who think with other intelligences" (Kaufman, cited in Dauphinais, p. 15). Gardner himself has stated that "when [only] one or two intelligences reflect the standards of competence, it is virtually inevitable that most students will end up feeling incompetent" (cited in Dauphinais, p. 15).

**MI Theory and the Law School Admission Process**

Law schools have come under fire for their narrow admissions considerations. Dauphinais has suggested that MI theory could provide part of the framework for an alternate, more equitable law school admissions scheme (2005). She and others have proposed that increased weight could be given to factors reflecting the use of a variety of intelligences such as "community service, overcoming adversity, recommendation letters, personal interviews, commitment to social justice, and unusual life experiences" and that applicants could submit portfolios of completed works or projects in addition to writing the standard Law School Admission Test (LSAT) as part of the admission process (Delgado, cited in Dauphinais, p. 26). The consideration of wider admission criteria would result in more diversely intelligent law student bodies.

**MI Theory and Law School Assessment**

Gardner’s work is of interest when considering the implications of his MI theory for legal education assessment practices. Gardner and other proponents of MI theory take the view that Western cultural values dating back to Socrates need to be taken down from
the pedestal they have been put on, in terms of their central role in existing education paradigms, including assessment practices (Gardner, 2006). Logical thinking and rationality have long been valued in education because they focus on human abilities or learning approaches that are, in Gardner’s words, "readily testable" (p. 23). MI theory proponents take the view that educational and psychological assessment can be "much broader, much more humane than it is now" and that educators and psychologists using MI theory in testing would be able to "spend less time ranking people and more time trying to help them" (p. 23). The results of standard tests in the life of law students can become a powerful factor in decisions about their career and other life choices. Given its potential implications, testing should be as varied as possible in any thoughtful educational environment.

The existing assessment approach in most law schools involves "little more than the use of formal instruments [standardized tests] administered in a neutral, decontextualized setting" (Gardner, cited in Dauphinais, 2005, p. 30). Legal scholar John M. Burman states, "almost without exception, legal education = case method + final exam" (Burman cited in Dauphinais, p. 30). Traditional law school testing may be effective in a limited way in evaluating certain intelligences such as logical intelligence, but its usefulness ends there. From a humanistic perspective, the inherent limitations of existing assessment methods undermine their fairness and therefore their value.

**Application of MI Theory**

Western legal pedagogy has traditionally relied on linguistic (language-based) and logical-rational didactic approaches. MI theory proposes many ways in which material might be taught to facilitate effective learning. Global research on child development
suggests that everyone, including law students, has potential in each of the areas of intelligence cited by Gardner. Although each of these intelligences is independent, most sophisticated activities or tasks such as legal learning and lawyering require the use of multiple intelligences, especially in the current culture. In the case of lawyers, the use of language, logic, inter- and intrapersonal intelligence would usually be primary, although not exclusive.

Since individuals have the potential to learn and experience the world via all of these different intelligences, this raises significant implications for education: "To meet the needs of students with diverse intelligence profiles (as would exist in Canada’s multicultural, female- and male-attended law schools), teachers must provide opportunities for students to learn and work in a variety of ways" (Cooper Davis, n.d., para. 9). Presently, the broad range of intelligences and capacities possessed by law students are not being valued and consciously developed through legal education. Cooper Davis states:

The conscious development of a broader range of intelligence capacities would better prepare [law] students for the complexities of lawyering as well as engage them more effectively in the development of their capacities. Students who are alienated by the narrow range of capacities currently valued and developed in [law schools] will be drawn in by opportunities to learn and work in a variety of ways. (para. 24)

Legal educators would benefit by becoming aware of multiple intelligence theory and describing and discussing the theory and the various intelligences it proposes with their students early in law school (they could present the information visually.
linguistically, or in some other way). Students could then use this information to try to relate it to their own learning strengths and weaknesses and to think about using different ways of working in classroom settings. When both faculty and students become aware of multiple intelligences and their various uses, the entire discourse and dynamic in the law classroom will change.

**Integrated Family Law/MI Course Model Example**

Legal educators could begin to incorporate multiple intelligence theory concepts into the curriculum on a course by course basis and eventually through all dealings within the law school. For example, multiple intelligence theory approaches could be used in the teaching of a typical family law (FL) course. A design for such a course is depicted by this writer (See Figure 1): It could include the following:

**Teacher.** The teacher/professor could assign legal and extralegal readings about family law cases and rules (linguistic); create a chart or formula that expresses central family law rules, concepts, or legal procedures (linguistic, logical, spatial); design a map or graph that explains the family law court system, procedures, or rules; set out methods of problem solving in some type of visual format (spatial); have the students jointly observe, reflect on, and collaborate on creating possible resolutions of a family law issue or problem after viewing a movie with family law issues or themes (visual/spatial/linguistic/interpersonal); have the class participate in clinical practice or visit and interact with family lawyers in a real law firm environment (bodily-kinesthetic, interpersonal); invite the participation of nonlegal guest speakers who deal with families in legal crisis such as therapists, social workers, or police officers and have students reflect on the speakers' visits via journal reflections (inter- and intrapersonal, linguistic);
Figure 1. Integrated family law/MI course model.

- Peer and self-assessment
- Nonlegal expert guest speakers
- Recording/journal/reflection re: personal or wider world FL issues
- Shared experiences and recommendations from community members
- Develop skills in clinic/virtual/real firm environment
- Legal/other readings
- Text format
- Create charts/maps/formulas expressing rules/court system/procedures/concepts
- Set out problem-solving methods in visual format
- Develop skills in clinic/virtual/real firm environment
- Dramatize/role play concepts/disputes using film, poetry, literature and/or music
role play a family conflict, for example a child custody dispute between two parents, within a simulated dispute resolution setting such as a mediation hearing (bodily-kinesthetic, linguistic, interpersonal).

Students. Students themselves could take part in the teaching of a family law concept, court ruling, or law that may resonate with them personally, using literature, poetry, film, and/or music (most of the intelligences). They could also record on tape or in a journal assignment or reflection paper their feelings and reactions to experiences relating to any personal family legal issues in their own lives or any family law issues raised in the class setting or discussed elsewhere in the media or courts (intrapersonal). Students could then partially assess/evaluate their own work and that of their peers individually or in a paired or group format.

Community members. Individuals from the community who have personally experienced the family law system in both positive and negative ways could be invited to the classroom to share firsthand their thoughts, feelings, and recommendations for change (interpersonal). Speakers could potentially include faculty and students themselves.

As the above example shows, the possibilities for involving multiple intelligences in the teaching and learning experience are wide and deep. Not every legal subject can be taught using all of the intelligences, but professors can experiment with trying to teach using as many different ways as possible in order to reach as many of the student body as possible.

The Green Environmental Law and Policy Course: A Working Example

William C. Green, professor of government at Morehead State University in Kentucky, has integrated MI theory ideas and problem-based learning approaches into a
prelaw environmental law (EL) and policy course. Problem-based learning is used extensively in medical schools and has been described as a type of learning that focuses on process and working progressively toward the understanding or resolution of a problem or concept (Ontario Institute for Studies in Education, n.d.). This approach usually involves case-based, experiential, small group, self-directed learning with a mentor or facilitator (Ontario Institute for Studies in Education).

Green created an original curriculum for his course with the goal of having his students acquire the following:

knowledge and understanding of the common law, statutory, and constitutional legal dimensions of environmental policies by means of an integrated set of problem-based resources and activities that develop [students'] linguistic, logical, and interpersonal intelligences and uses their intrapersonal, spatial, and bodily-kinesthetic intelligences to enhance their learning. (Green, n.d., para. 9)

Green allowed MI theory to guide his choice of problem-based learning resources and activities and further used it as a framework for his evaluation of the students' learning experience and for the students' own evaluation of the course.

The course is designed around a set of resources and activities chosen and planned by Green. A visual presentation of Green's course designed by this writer provides clarification. (See Figure 2.)

*Resources*: Green chose three interrelated, problem-based learning resources: (a) a general law school text containing legal principles, case analysis, and hypothetical problems, (b) a course packet created by Green addressing the ways in which typical law school case books are MI deficient, and (c) a book of environmental litigation case
**Legend**
- Red - Linguistic Intelligence
- Yellow - Intra & Interpersonal intelligence
- Purple - Logical Intelligence
- Blue - Bodily-Kinesthetic Intelligence

1. General law school text
2. Course Packet on E.L. and policy created by Green
3. Case Studies

**Problem-Based Activities**
• Hypothetical problem exercises
• Surveys
• Case analysis via panel debate, small group discussion, reading and discussion of media news and video, sample brief and primer
• Debating in pairs
• Peer and course assessment
• Traditional case and other text analysis and writing of exams

**Green Environmental Law Course**

**Resources**

**Assessment**

**Learning Environment**

**Activities**

**1. Student learning:**
- Students rated themselves and peers via Green-designed assessment form for participation and problem-solving skills
- Student comments used by Green to design grading criteria
- Exams also used

2. **Course:**
- Standard university evaluation
- Course-specific questionnaire

**Figure 2. The Green environmental law course.**
studies to show students the interdisciplinary nature of environmental (and by extension, other) legal conflicts/problems.

Activities. Green designed a set of interrelated problem-based learning activities for three course modules (Green, n.d.). Each activity begins with a survey of current environmental legal issues, ways to analyze the issues, actual analysis of court cases, and concludes with a hypothetical problem exercise. At the end of the course, the goal is to make connections between the modules and a wider discussion of the hypothetical problem involving the entire class. Classes specifically include as much variety and change of pace as possible.

Physical environment. Green prefers a classroom with no physically fixed seats, no set student seating arrangement, and freedom of movement. This preference establishes a "malleable physical foundation for the use and development of the students' linguistic, logical, and interpersonal intelligences" (Green, n.d., para. 11). The variety, change of pace, and freedom of movement allow for the "weaving [of] bodily-kinesthetic intelligence into the design and dynamics of the course" (para. 11).

Other specific aspects of the versatile design include module surveys, case analysis via student panel debate, small group discussions, and the reading and discussion of media news stories and video. Green (n.d.) has found that the news story discussion sessions inspire extensive participation, because the news stories allow students to access their intrapersonal intelligence and explore their personal feelings and views about the issues. In addition, the strong class reaction to the material has provided Green with the opportunity to model and encourage the expression of emotion and to reinforce the value of communicating within the classroom space on something other than a strictly
intellectual level. Green views open expression as something to be encouraged when discussing matters of significant human interest such as environmental legal issues and their powerful links to societal, political, economic, and even personal arenas.

Green (n.d.) has also used more traditional case analysis in order to facilitate linguistic and logical intelligences in his students and also to enhance "the development of interpersonal intelligence during group discussions" (para. 13). The class explores each case by way of a sample brief and primer. The students then use the case primer and a briefing form to create their own practice brief for a different case. The students are also presented with a hypothetical environmental law problem (n.d.).

All of these activities draw collectively upon the students' linguistic, logical, and spatial intelligences. Throughout the course, Green (n.d.) generally avoids the traditional law school approach of questioning one student, relying instead on student panels, group discussions, and role playing exercises, and assigning students to groups of three to brief cases. By working together so much on both the case analysis and the hypothetical problem, students develop their interpersonal and teamwork skills, as actual law partners and colleagues often do, to address and deal with real-world issues and conflicts similar to those they would find in practice.

All group members are also given specific leadership roles and duties within the group at different times to encourage participation, ensure equal input, facilitate the development of leadership skills, develop social responsibility, and facilitate the creation of an open and friendly learning environment (Green, n.d.). Such roles and duties also cultivate the growth of inter- and intrapersonal intelligence.
Green (n.d.) also emphasizes to his students that there are often several ways to resolve a problem; he discourages them from thinking that there is only one correct rationally based answer. Students are paired off to debate the strengths and weaknesses of each other's different case reasoning approaches, use of precedents, and results. Finally, the group as a whole will reconvene to sum up what they have learned and how and why they learned it.

**How the Green Course Uses MI Theory to Evaluate/Assess Learning**

The Green course also provides a working example of how to effectively use MI theory to evaluate learning. Green looks to certain types of intelligences suggested by MI theory to guide him in assessing certain skills. For example, intrapersonal and interpersonal intelligence criteria help him to assess a student's ability to follow and contribute to discussion, preparedness in answering questions, willingness to volunteer answers, overall quality of participation, and interaction with peers in group activities (Green, n. d.). Green uses a self-designed group participation assessment form to have the students rate themselves and each group member by answering questions about their participation and problem-solving skills. He uses student comments on the forms to assist him in finalizing customized grading criteria. For example, an A student would generally show evidence of well-developed leadership skills; reflect the "heart" of the group; keep things going and people involved; work through all options to find the best answer; and know legal rules/tests/cases and how to apply them (para. 19).

To promote/enhance linguistic and logical intelligence, Green (n.d.) also uses midterm and final exams toward assessment. Exam questions focus on legal concepts, cases, analysis, and variations of a hypothetical problem previously discussed in class.
They also assess the extent to which each student has developed and used the various intelligences to engage with environmental law and policy issues.

*Using MI Theory to Assess the Course Itself*

Morehead State, Green's home university, uses a standard evaluation report that is MI sensitive (Green, n.d., para. 21). The report asks students how a course has helped them to understand principles, theories, and whether it improved their thinking and critical skills. Green's Environmental Law and Policy course gets "consistently high ratings" from students (para. 21).

In addition to the university-wide report, Green's students also complete a course-specific questionnaire that asks how helpful the resources, case analysis, and chosen hypothetical problem were and what changes in resources and activities they would recommend. Student feedback on this questionnaire reveals that the course does assist student development of various intelligences in that many students find themselves blossoming socially, becoming more open-minded to others' ideas, more adept as speakers and leaders, developing confidence with the material and their own knowledge and ability and desire to express it, honing speaking and reasoning skills, and cultivating interpersonal skills, such as the ability to work with peers and feel like real working colleagues and lawyers (Green, n. d.) Students responded especially positively to the smaller forums and to the extensive peer interaction, which helped them know and feel that they were "not alone in [the] struggle to understand the assignment" (para. 22).

Above all, Green found that the students confirmed "enjoyment and recognition of the benefits of an MI-designed course," with many saying they "wouldn't change a thing" about the course (para. 23).
This creative prelaw course designed by Green (n.d.) is a proven success at Morehead State. The Green curriculum and assessment approaches are layered and multidimensional; they reinforce various welcoming MI theory ideas and practices. The course is instructional in that it incorporates MI theory into a problem-based learning environment and also applies the theory to student assessment. Overall, it provides a workable example of an effective way to embed MI theory into a highly conceptual law course.

**Emotional Intelligence (EI)**

In 1995, Daniel Goleman originally wrote *Emotional Intelligence: Why It Can Matter More Than I.Q.* In his work, Goleman discusses and explores the term "emotional intelligence" (EI), a concept he attributes to psychologists and educators John Mayer and Peter Salovey, who originally proposed a four-point definition of the concept to include "the ability to perceive emotions, to access and generate emotions so as to assist thought, to understand emotions and emotional knowledge, and to reflectively regulate emotions so as to promote emotional and intellectual growth" (Mayer & Salovey, 1997, p. 5). The four factors encompass self-awareness, self-management, social awareness, and social skills and combine to form a person's emotional quotient (EQ), much like an intelligence quotient (IQ); (Mayer & Salovey; Nailon, 2005).

In the 2005 updated edition of *Emotional Intelligence*, Goleman describes a collection of capacities having to do with knowledge of emotions and sensitivity to one's own or others' emotional states. He suggests that emotions fall into several basic categories which fit under the umbrella emotions of anger, sadness, fear, love, surprise, disgust, and shame (Goleman, 2005, p. 290). He elaborates on the definition of emotional
intelligence offered by Mayer and Salovey to include (a) self-awareness, or knowing one’s own emotions; (b) managing one’s emotions, or handling feelings so they are appropriate; (c) mastering one’s emotions and motivating oneself, so as to use one’s emotions in the service of a goal; (d) empathy, or recognizing emotion in others; and (e) handling relationships well and managing emotions in others (2005, p. 43).

The idea of emotional intelligence is similar to what Gardner calls the two "personal intelligences" put forward in MI theory, those being intrapersonal intelligence (inward: understanding oneself) and interpersonal (outward: understanding others) intelligence (Gardner, 1999). While Gardner’s intelligences focus more on cognitive-based intelligences, Goleman adds the element of emotion to the discussion. He also links emotional intelligence with values and social policy in describing it as involving ideal behaviours such as empathy, considerateness, and making a contribution to the optimal functioning of the one’s community.

Like Gardner’s MI theory, Goleman’s idea of emotional intelligence has received significant general and academic attention. It has been stated that the EI concepts are now "almost universally accepted as strong indicators of high performance and leadership" (Nailon, 2005, para. 4). Studies have shown that an individual’s emotional quotient (EQ) is even more important than his or her cognitive abilities in terms of work and learning performance and that much successful professional leadership is attributable to EQ (Nailon). Numerous professionals in different fields, especially education and business, have written and spoken on the topic of emotional intelligence, its links to multiple intelligences, and its importance in raising work and life quality. Yet both MI theory and EI theory have largely escaped the legal education consciousness, particularly in Canada.
**Why Does Emotional Intelligence Matter in Legal Education?**

A progressive discussion of humanizing legal education is arguably not complete without considering Goleman’s theory of emotional intelligence (EI) and its potential application in the field of legal education, mainly because of the connection Goleman draws between emotional intelligence and ethical behaviour. In the introduction to his updated 2005 edition, Goleman addresses the growing research and evidence (that has developed since his original publication) reinforcing the idea that an individual’s ethical positions stem from underlying emotional capacities. His argument for the importance of emotional intelligence in life addresses the link between feeling, character, and moral instinct (2005). In essence, he argues that knowing something is right in one’s heart lends more certainty of conviction than thinking it is with the rational mind alone (2005). Goleman’s and others’ insights into the purpose and power of emotions suggest that the deepest human feelings are crucial touchstones, even archetypes, operating in the universal human journey.

Into each decision-making process, individuals bring rational thoughts, judgments, personal history, and emotions. In *Emotional Intelligence* (2005), Goleman points out that the root of the word "emotion" is *motere*, the Latin verb "to move," suggesting that it is our emotions that "move us" to right action (p. 6). Goleman refers to Antoine de Saint-Exupéry’s classic observation in *The Little Prince*: "It is with the heart that one sees rightly; what is essential is invisible to the eye" (de Saint-Exupéry, cited in Goleman, p. 3). He points to experts in nonliterary fields, such as sociobiologists, whose work has shown them that emotions guide human beings in facing predicaments and
tasks "too important to leave to the intellect alone" (p. 4), which suggests that when it comes to critical decision making and action taking, feelings count as much as, and often more than, thought.

Goleman’s theory considers both the rational and emotional mind to be working best when they operate together to guide human thoughts, actions, choices, and decisions. In the current law school environment, the emphasis is on rational thought to the virtual exclusion of considering and valuing the emotions in lawyering. Goleman observes that the importance of the intellect in education has been exaggerated to the point of distortion (2005), as reflected in the alienation of many students and the excessive analysis that goes on inside the classroom. The problem with this approach for law students is that all students/lawyers are not rational, analytic, adversarial, and/or competitive types. And even "rational, competitive" types would probably have better personal/work relationships and be healthier and happier if they accessed their emotional intelligence more. It is now recognized that "it is a terrible mistake to try and conform all [law students and] lawyers to a single, aggressive adversarial mode" (Silver, 1999, p. 1191).

The better approach is to value and cultivate (equally) litigators as well as negotiators, problem solvers, social justice advocates, wise counselors, and especially ethically motivated leaders who are inwardly moved by problems/events/crises to right action.

Law schools lack balance between the rational and the emotional in terms of how law students are taught to think and act. The kind of academic rational intelligence that is cultivated and prized in law school often renders law students insufficient preparation for the conflicts, ethical and otherwise, that they will face in lawyering and in life. By denying room for emotion, law schools also deny room for ethics and morality:
The high level of emotional detachment created in law school does not necessarily breed superabundant reasoning ability. Rather, it breeds boredom and disinterest, which are useful for lawyers who need to distance themselves from the effects of their actions, but crippling for those who insist on finding meaning in their work. (Litowitz, 2006, p. 33)

Empathy researcher Martin Hoffman has further stated that "the roots of morality are to be found in empathy since it is....sharing [someone’s] distress that moves people to act to help them" (cited in Goleman, 2005, p. 105). According to Hoffman, this same capacity for "empathetic effect," or putting oneself in another’s place, leads people to make certain moral choices (p. 105). With little or no basis in emotion and empathy, law schools are built on narrow standards of success. If law schools are to become more humanistic, they must make more room for the valuing of emotion in legal education and lawyering. They can no longer afford to ignore the fact that "our humanity is most evident in our feelings" (Goleman, p. 41).

*Emotional Intelligence and the Law Student Experience*

A primary criticism of legal education is its traditional emphasis on the intellectualization of law and lawyers in training to the detriment of the emotional life and ultimate professional practice. Lawyers have been taught to resist acknowledging the reality and power of their emotional lives. Law school tends to teach its students "to avoid the necessity of caring about people" in order to function efficiently in a "detached" legal capacity (Silver, 1999, p. 1194).

American trial lawyer Gerry Spence recently stated in reference to his legal education, "in the cases I read in law school, and since then, passion was treated like
some crazy stepsister locked in the closet. The law had no relationship to living, suffering persons" (cited in Litowitz, 2006, p.33). This denial of the reality of emotion has taken its toll on the health of students and lawyers. In recent years, alternative dispute resolution and mediation lawyers have come to learn that understanding others’ thoughts and feelings is the essential key to conflict resolution (Nailon, 2005). Given these realities, it would be beneficial if those in legal education practiced and cultivated emotional intelligence not only to enhance the collective mental health of all participants, but also to prepare students for the emotional dimensions of lawyering. The time has come to take passion out of the closet and to mainstream emotional intelligence in law schools so that students no longer have to divorce themselves from the human condition as a prerequisite for entering and succeeding in the legal profession.

It is now being increasingly recognized that fundamental aspects of legal education need to be altered in ways that allow for the reintroduction of emotion, personal morality, and even spirituality into law and for the reunion of the rational and the emotional in legal discourse, beginning with the law schools. Andrew S. Watson suggested that the classroom itself should be "a laboratory for exploring the power of the emotions and psychic life" (cited in Silver, 1999, p. 1194). Watson, a psychiatrist and legal educator, describes teaching law and other subjects as "a process [that] stirs [the] inner emotions although we never specifically identify the causes of a particular student’s form of response" (cited in Silver, p. 1195). In Watson's view, "the teacher must also show willingness to acknowledge openly his responsibility for the feelings he arouses" (p. 1195). Watson argues that law teachers should make efforts to make explicit and validate what the vast majority of students are feeling in the classroom environment.
While not discounting the importance of the need for students to develop the capacity to understand and cope skillfully with the pressures of inevitable adversarial situations, Watson points out that students' feelings and reactions in law school can often be validated simply by ensuring that they know that many of their peers are experiencing similar feelings and reactions and that the teachers are aware of and expect these reactions. Having this simple knowledge, in itself, is "an important empowering realization" (Watson, cited in Silver, p. 1195). Students can take this knowledge into their professional lives, where they will likely feel more comfortable acknowledging and addressing their own and their clients' feelings in given situations.

**Application of EI Theory**

Lawrence Krieger argues that those in positions of authority in the legal world have a special responsibility to find more and better ways to encourage and assist law students in maintaining and developing their emotional intelligence while proceeding through the law school experience. Simply making students aware of the ideas and studies of Goleman, Silver, Watson, and others discussed in this paper can help law students significantly. The information can be made available to them in text format, online, or via class discussion led by an expert in the field. Opportunities could be provided for discussion, reflection, and student feedback. Students can be directed to further expert resources. Krieger uses his own self-written manuals and booklets (also made available through his website) to teach this type of information to his law students at Florida State University College of Law. He has found student response to be positive and immediate, particularly when this information is presented by a role model (Krieger, 1998-99). Students have demonstrated a stronger understanding of this particular learning
unit than any other unit taught to them (Krieger). In addition to learning about the booklets and manuals, Krieger's students write daily reflective journals which include observations on these topics. Students write about specific topics, such as "healthy, happy, sane or sick" attitudes and behaviours they have observed in lawyers, professors, other legal authority figures, and themselves (Krieger, p. 38).

In clinical course work, Krieger’s students are encouraged to challenge and question the ethics and morality of their supervisors’ decisions, practices, and perspectives. They are also encouraged to express their views using Maslow’s self-actualization theories as a framework. Ultimately, the goal with such exercises is for students to experience emotion and emotional value-laden behaviours behind EI.

Integrating these ideas and theories as well as information about law student distress studies into a first-year course (such as the first-year legal writing program offered at most Canadian law schools) offers one possible opportunity to make it available to students. If students are provided with various perspectives on humanistic attitudes and ways of being and doing, they will incorporate these perspectives into their learning experience and, ideally, into their later work and lives as well.

In order to work effectively, the attitude of the teacher and the teaching method are critical. Teachers need to be "demanding without shaming, and to find ways to encourage creativity, self-reliance, and the expression of personal beliefs and values in the classroom" (Krieger, 1998-99, p. 42). The goal for teachers is to model and encourage in students open expression, emotional and intellectual camaraderie, preferences, concerns, fears, and goals, rather than offering purely intellectual learning activities.
Strategies for Creating Emotionally Intelligent Law Classrooms

Various specific strategies have been suggested by reformers to use to create a more emotionally intelligent legal educational environment. Such strategies include, but are not limited to, the following:

1. Use creative problem solving (CPS) methods of instruction as an alternative to the case method. CPS is an educational and professional approach that is both multidimensional and multidisciplinary in nature. It is included as a component or vector in the Comprehensive Law Movement (to be discussed in Chapter Four) and has been described as follows:

   CPS proceeds on the theory that lawyers can join together with other professionals to provide more effective solutions to clients' problems. [It] assumes that not all problems require legal solutions; and not all legal problems require a lawsuit.... In our society many non legal problems tend to masquerade as legal problems. [With CPS], conflict...is viewed as requiring exploration of opportunities for integrative...win-win solutions. The adversary process is viewed as a last resort. Emotion is viewed as integral to the problem solving process, as is human psychology, group dynamics, intuition and values. Listening and collaboration are the salient skills. (Kerper, 1998, p. 354)

   Creative problem solving involves a way of looking at legal problems more holistically than the present case method approach used by many law schools and lawyers. It reflects an open-mindedness, an "assumption of not knowing," and requires from the teacher and learner a certain intellectual and emotional vulnerability (Kerper, 1998, p. 366). It asks participants to look at issues (and their potential for resolution)
broadly and holistically like an open-minded beginner, not an expert with predetermined perspectives. Such open-mindedness encourages emotional involvement in learning.

2. Use experiential learning, including pervasive skills training, in all 3 years of law school in as many courses as possible (Silver, 1999). This type of learning calls upon the student to bring his or her whole personality and character, including feelings and emotions, to learning ideas and skills in a direct, hands-on way. Learning evolves over time and is retained more deeply.

3. Directly acknowledge student and lawyer stress and distress and help students to understand their origins and triggers. Information on this topic could be made an explicit part of the newer, perspective-oriented material being taught in some first-year law school programs in Canadian law schools.

4. Express more positive reinforcement and reassurance and encourage the expression of feelings and concerns by students, especially those in first year. Cultivate richer opportunities for peer collaboration, mentoring, and faculty-student engagement, via group and roundtable discussions, surveys, and by inviting other feedback and dialogue inside and outside the classroom.

5. Create a more emotionally healthy learning environment by changing assessment/evaluation across the entire curriculum, but particularly in first year. Start by dispensing with the bell curve grading approach and any 100% exams. Provide more varied and progressive assessment by way of short and more complex assignments; include and assess journal assignments; offer choice in presenting work in either written, verbal, technological, or other format; assess individual, pairs, and group work, student panels, field work, leadership and conflict resolution skills. Offer and evaluate specific
skill development, for example, drafting documents or conducting interviews. Allow also for not just faculty assessment but also peer and student self-assessment. Above all, make assessment ongoing and meaningful. Students who experience meaningful education feel more emotionally connected to the experience.

6. Create a curriculum that reflects more extensive collaboration between law school faculty and other professionals, such as behavioural science and health professionals, educators from other fields, practicing lawyers from different legal fields, judges, social activists, social workers, spiritual experts, and so on (Silver, 1999). For example, a law professor and a psychologist could coteach first-year classes about MI theory and emotional intelligence to enlighten the students who may not be aware of such concepts. Such an approach signals to students that the law school recognizes, values, and wants to cultivate rather than undermine their emotional health, so as to facilitate an optimal educational experience.

7. Cultivate communication skills by creating opportunities for work and problem resolution that encourage interaction, collaboration, and original thought and expression. Silver points to Professor Andrew Watson's class exercise at the University of Pennsylvania as instructional (Silver, 1999). The exercise involved showing to a class a 5 minute clip from a movie of an expert interviewer talking with a family about their emotional problems. The expert in the movie demonstrated verbal and nonverbal communication to find out what lay beneath the surface of the family's words. The professor then turned the movie off and invited the class to "free associate" about what they thought was going on in the family. The observations and reactions of the class were then pooled together into a synopsis, from which the class formulated a detailed
description of the family members, their roles, attitudes, and behaviours. The professor then turned the movie back on to find out what actually developed with the family. The student group was shocked by the accuracy of their suggestions and perceptions. This exercise helped the students to see that human beings share similar perceptions about other people (Silver, 1999). Such an exercise can reinforce to students the value of free association, group collaboration, and the pooling of human resources and the value of tapping into their own inner intuitions in attempting to understand clients and their legal issues within wider contexts.

8. Generally, devote equal time in the curriculum to the three-point development of knowledge, skills, and values. Structure "verticality" into the curriculum, which would allow for each year to build on the knowledge, skills, and values acquired during the previous year (Silver, 1999). The three-point approach would facilitate the development of the whole law student; and verticality in the curriculum would foster deeper understanding and competence.

*Contemplative Lawyering: A Working Course Example*

To encourage the valuing of their emotions, law students can be taught to appreciate the power of the unconscious, nonverbal, mindful behaviour and self-knowledge. The Contemplative Lawyering course taught by Professor Deborah Calloway at the University of Connecticut School of Law is an example of mindful teaching. In her course, Professor Calloway uses a variety of meditation methods and techniques to teach students to focus without distraction, listen, develop genuine compassion, empathy, and respect for others, accurately define the issues and needs of others, facilitate communication between others, engage in self-critique, and work with and through
emotional conflict. These goals are achieved as students learn and evolve through mindful meditation and discussion. They come to understand how the roots of emotions such as anger, jealousy, and arrogance lie below much human conflict (Calloway, 2006). The meditation practices are also designed to help students focus without distraction when reading, interviewing, counseling clients, and even presenting arguments in court.

Professor Calloway meets with her students early each morning for one hour for meditation and teaching sessions. She also assigns weekly exercises to assist them in applying what they have learned in her class to their other legal studies and skill work during the rest of the day. She provides feedback regularly by having the students write and submit biweekly journals for comment. The final part of the course involves visits and talks by lawyers from local law firms and government agencies who are experienced mediators. These lawyers help the students to understand the importance of what they are learning in terms of how it will minimize stress and enhance the meaning and quality of their future legal work. Calloway (2006) notes that the course meditation techniques enhance practice skills development, improve short-term learning, and relieve law school stress.

**Summary: MI and EI Sensitive Law Schools Are Possible**

The current and future law student population is made up of intellectually sophisticated individuals who come to law school with a wider variety of educational, technological, cultural, volunteer, and vocational experience than ever before. They are also often older than previous student bodies, as more students are extending their educations and more law schools have opened up their schools to students who attend later in life. The world that these students will work and live in after law school is also
increasingly sophisticated. It asks more of current law students on many levels (i.e., intellectual, emotional, and technological) than it did in the past.

Law school pedagogy often fails to adequately reflect this new reality. It could better realize that law students are complicated adult learners who live in a complicated, multifaceted world. As such, they expect, and thrive in, more intellectually sophisticated and democratic learning environments. In the traditional law school setting, law students are not always treated with the type of respect espoused by adult learning methodology and more consistently accorded to adult learners in other educational settings, such as graduate education and professional business and medical schools. Traditionally, critics have condemned law schools for being paternalistic and infantilizing students. This is an unhelpful approach to take toward those who entrust themselves to the law school learning environment. Embedding MI and EI theories into the law school environment and pedagogy would help to create an environment of respect and a heightened sensitivity to individual learning/personality/cultural/educational preferences and differences, thereby laying the groundwork for a richer, more sophisticated, mature learning experience.

Reimagining law schools with actively embedded emotionally intelligent ideas and cognitively challenging practices is a realistic and humane goal for the new millennium. The examples above indicate that these ideas are being considered both implicitly and explicitly by a number of legal institutions. New courses reflecting these ideas have been received with enthusiasm by the students who experience them.

Many law students enter law school with a sense of justice and altruism, but this sense is often lost by graduation. This loss reverberates beyond the student to the law
schools, the profession, and the public. It can be reversed in part by working toward a new reality reflecting law schools as cognitively and emotionally enlightened spaces.
CHAPTER FOUR: THE HUMANISTIC MOVEMENT OF THE MOMENT: COMPREHENSIVE LAW

Humanistic law advocates point to certain inspired philosophical movements that have been slowly moving Western culture away from its recent history of marked individuality and "back" toward a greater regard for community and relationships. These same ideas and movements are also inspiring higher education, including legal education, toward a more humanistic story. Susan Daicoff, citing California Western Law School professor Thomas Barton, describes this era as a return to the original humanistic Renaissance ideals following the more recent Enlightenment period, with its emphasis on personal freedom, independence, detachment, and individuality (Daicoff, 2004). This post-Enlightenment period is once again resurrecting the importance of human connection long eclipsed by the idea of intellectual and social separation, rational classification, and hierarchies. The new, emerging culture values and respects community, cultural identity and differences, and human connections to each other, their institutions, and their communities. In such an environment, a more humanistic legal education paradigm could potentially be forged.

Daicoff and other humanistic law advocates have expressed concern that the traditional legal education and professional system does not honour the fact that opposing parties may still have ongoing relationships with each other and/or with their communities after a legal dispute is over. The various alternative forms of relationship-oriented resolution favoured by humanistic law seek to maintain and preserve those relationships instead of sacrificing or destroying them in the name of individual rights. Advocates of this type of law ask "what is best in a broad, holistic sense" rather than
seeking more conventionally narrow, rule-driven, monetary-oriented solutions (Daicoff, 2004, p. 188). Humanistic minded professors and lawyers are aware of and wish to prevent the "psychological and emotional destruction that litigation and rights-oriented legal methods and practices wreak" on parties (Daicoff, p. 173). The goal is to effect long-term harmony rather than short-term harm.

The Comprehensive Law Movement

One of the more recognized terms currently gaining visibility in the humanizing movement is Comprehensive Law. The term "Comprehensive Law" was coined by Susan Daicoff, a psychotherapist and professor of law at Florida Coastal University School of Law in Jacksonville, Florida, as a way to describe various humanizing, holistic approaches to the study and practice of law. Professor Daicoff chose this term because it covers a wide-ranging or all-inclusive approach to the legal resolution of matters. The Comprehensive Law Movement is made up of what Daicoff calls "vectors" or branches of therapeutic and humanistic teaching and practice approaches espoused by various humanistic law advocates (Daicoff, 2004). For example, there is the therapeutic jurisprudence vector, the restorative justice vector, the creative problem-solving vector, and so on. The major vectors are visually depicted in this writer's design in Figure 3.

While they all differ somewhat, the vectors share in common two main goals: (a) the desire to optimize human well-being/relationships and add harmony to the ongoing relationships between people, in communities, and in the world. The key aim is to provide solutions to legal concerns that are conducive to human well-being; and b) caring about and making room for considerations beyond the strict legal rights of the parties involved, such as personal needs, resources and goals.
Collaborative Law
Preventive Law (PL)
Restorative Justice
Therapeutic Jurisprudence (TJ)
Procedural Justice
TJ/PL Combined
Holistic Law
Creative Problem Solving
Dispute Resolution
Mediation
1. Optimizes human well-being
2. Considers extra legal factors

Figure 3. Major vectors of the Comprehensive Law movement.
These extra-legal factors are considered when choosing strategies and planning outcomes that the lawyer and client together agree to work towards (Daicoff, 2004; Keeva, n.d.). The vectors described by Daicoff are different from and more sophisticated than the approaches and practices traditionally taught in law schools in that they look at the immediate case at hand not in isolation but as one piece of the complex, dynamic puzzle that typically characterizes a client’s life and his or her personal and professional relationships.

American lawyer Stella Rabaut, who facilitates retreats on law as a healing profession, describes the Daicoff vectors as being rooted in "heart stuff": qualities such as "collaboration, healing, restoration, peace-building and human connection" (cited in Stahura, n.d., para. 16). Rabaut points to Comprehensive Law qualities as having always been considered by the legal profession to be less valuable in determining legal outcomes, in that they are not intellectually based or typical "head stuff" (para. 16). Comprehensive Law, however, does not advocate a blanket rejection of teaching the head stuff or intellectual aspects such as doctrinal knowledge and analytical skills; it continues to acknowledge such knowledge and skills as a fundamental part of a comprehensive legal education and practice. The focus of the movement and its proponents is to call for more recognition of the human relational aspects of practicing law, starting with the teaching and modeling of these aspects in the law schools.

The Comprehensive Law approach espouses the idea that teaching students the importance and necessity of bringing one’s heart to law practice allows for more creativity and is less likely to lead to burnout and unhealthy learning and work habits. Students would learn not to approach a conflict or issue strictly with predetermined ideas
and standard solutions in mind. They would learn to focus more on listening and creating a way for clients to feel restored, truly heard, and a genuine part of their own solution. In learning about making a difference for clients in this way, students can better connect their learning to their own higher goals and humanistic values. Their learning and work become less distressing.

Applying Comprehensive Law approaches to legal education and practice will allow for all members of society to benefit, not just law students and lawyers. The current traditional system is costly in many ways. Most lawyers in North America have been taught in law school that it is their future occupational mandate to be fighting someone or something. This "hired gun" or "Rambo litigator" mentality creates an unhealthy dependency by society on lawyers, because people or corporations tend to hire an "expert" to fight their battles rather than trying to resolve issues themselves more quickly and efficiently. Comprehensive/humanistic lawyers criticize this fighting mentality as creating an overreliance on the legal system by the public (Daicoff, 2004; Stahura, n.d.; Vogel, 2001). In law school students learn to perpetuate this limited, unhealthy system. By including Comprehensive Law resolution approaches in the curriculum, law schools will provide their students with a wider variety of tools with which to involve and assist their clients in owning, resolving, and even preventing their legal conflicts.

The Comprehensive Law movement is humanistic and holistic. It provides different, richer alternatives for law students, academics, and lawyers who want to move from unhealthy to healthy behaviour and change how they learn and help themselves and others. The movement's growth in popularity and use reflects a growing shift in terms of perspective: More legal processes are becoming preventative and therapeutic rather than
punitive and damaging. They are slowly becoming guided and propelled by a desire for what lawyer Patrick Wiggins describes as "a desire for wholeness" rather than "a fear of loss" (cited in Stahura, n.d., para. 32). Canadian law students would benefit from the inclusion of information and skill development linked to this movement in the law school curriculum.

The Comprehensive Law Movement and Ethic of Care Lawyering

The Comprehensive Law movement is attractive in the sense that it calls for ethical decision making. In this way, it reflects and complements ways of teaching, learning, and practicing law with one's emotions, values, and ethic of care intact. Promoting human well-being and considering factors other than legal rights fits the instincts and character of individuals who possess what has been described as "a feeling preference or an ethic of care" (Daicoff, 2004, p. 192). Many of the vectors or branches of Comprehensive Law, such as creative problem solving or preventive lawyering, optimize human well-being by preserving or improving human relationships. Students and lawyers with a feeling preference or an ethic of care approach to problem resolution "inherently value human relationships and interpersonal harmony" in their study and work environment (Daicoff, p. 192). This type of educational and practice approach also encourages and allows students and lawyers to more easily bring their own personal moral values into learning, teaching, and work-related situations. Having a core moral base in turn improves student, professor, and lawyer mental and spiritual health.

Reaction and Challenges to the Movement

The movement has not experienced any extreme resistance. However, Krieger (2002), whose work chronicling the dark side of legal education is discussed in Chapter
Two, has expressed criticism of the unspoken institutional denial of the many problems pervading legal education and the profession: problems that are presently being challenged by Comprehensive Law alternatives. This pervasive, yet hidden insider denial of shortcomings is a challenge to the progress of the movement. The majority of faculties and deans in North America, Canada, and the UK struggle to acknowledge or confront problems in law schools despite growing empirical research and other forms of reporting on pervasive distress in law schools and the profession. Many professors and their students remain unaware of these empirical studies and also of holistic teaching/practice alternatives such as those inherent in the Comprehensive Law vectors.

Daicoff and others have found that those law students who are taught (or otherwise made aware of) humanizing practice ideas are very receptive to and inspired by its ideas, many of which they see as fitting well with their own future practice aspirations (Daicoff, 2004; Keeva, n.d.). Judges are also very open to it, according to Daicoff, while law professors are often the most resistant to it.

*Does the Movement Leave Room for Traditional Law?*

Most (though not all) proponents of the movement point out that advocating and implementing humanistic or comprehensive law methods and practices does not necessarily entail a complete rejection of traditional law methods. Humanistic law provides wider dimensions, more customized solutions, and richer processes for teaching the resolution of, and actually resolving, human conflicts and legal problems. Daicoff and others point out that traditional law approaches still may be used in situations of interpersonal conflict involving individuals or groups that refuse to negotiate or collaborate or who prefer or insist on the use of traditional procedural methods and
settings to resolve their dispute. In some cases, the two approaches can be intertwined, or even practiced side by side. Proponents of new methods do emphasize that above all, "the Comprehensive Law movement should not be second class compared to traditional law" (Daicoff, 2004, p. 193). It is hoped that many of the movement's approaches will gain a place on the centre stage of future legal education and practice. As mentioned previously, women now outnumber men in many Western law schools. The number of Canadian students outside the traditional Western culture and experience will also hopefully continue to grow. It is these nontraditional students who are seen as likely to be drawn to practicing law in these humanistic ways (Daicoff).

Given all of the above considerations, care would have to be taken not to present the movement's ideas to students as inferior to or less valuable than traditional law approaches. It could best be presented as a mainstream alternative equal in value to the more traditional ways of learning and practicing law:

The perception that such law is "touchy-feely" – what soft hearts do because they just cannot cut it in litigation or what one does if one flunks out of litigation or fails at traditional law – is enormously detrimental to the success of this movement. (Daicoff, 2004, p. 193)

The ideal approach would be to teach all law students in both traditional and Comprehensive Law methods, ideals, philosophies, and practices so that they can bring any or all of these approaches to their work, especially if their work involves individuals who will continue to be involved in some sort of ongoing personal or working relationship with each other once a particular matter is resolved.
The Therapeutic Jurisprudence and Preventive Law (TJ/PL) Vector

Two alternative humanistic lawyering approaches forming part of the Comprehensive Law movement are therapeutic jurisprudence and preventive law. These approaches are both included in the Daicoff vectors (1999, 2000, 2004). They represent ways of approaching the law in a less adversarial, more humane and therapeutic way.

Therapeutic jurisprudence. The concept of therapeutic jurisprudence first originated with law professors David Wexler of the University of Arizona and University of Puerto Rico and Bruce Winick of the University of Miami. It has been defined by Wexler and Winick as "the study of the role of the law as a therapeutic agent" (Wexler and Winick, cited in Wexler, n.d., para. 1). Therapeutic jurisprudence grew out of mental health law and attempts to bring into the legal system other disciplines such as psychology, psychiatry, behavioural sciences, and social work (Wexler, n.d.). It recognizes that law is "a social force that often produces therapeutic or anti-therapeutic consequences" (Daicoff, 2000, para. 8). Therapeutic jurisprudence explores how the law and related legal procedures and decisions impact on the emotional life and psychological well-being of legal participants by asking whether there may be other, less damaging ways of resolving such typically contentious issues as criminal charges, child custody disputes, and personal injury and other litigious claims. This approach can be considered separately from or in tandem with traditional approaches as a way of looking at legal issues and conflicts in a richer, broader way. It makes room for addressing and considering a wide variety of legal and other personal issues of concern to the client. The goal is to determine whether traditionally harmful disputes can be more creatively and less harmfully resolved.
Preventive law. Preventive law, for its part, seeks to intervene in legal matters before disputes turn into major crises or even arise at all. Rather than focusing on damage control after the fact, it favours proactive intervention and seeks to avoid litigation and other conflicts (Daicoff, 2000, 2004). In this way, it is similar to medical "check-ups" that patients undergo in order to prevent medical problems and illnesses from developing. Lawyers who practice preventive law focus on relationship maintenance and taking practical steps such as advance document preparation in order to head off potential future crises. This concept originated with Professor Edward Dauer of the University of Denver College of Law and the late Louis Brown (Daicoff, 2000).

TJ/PL combined. Therapeutic jurisprudence and preventive lawyering have been integrated into a single approach to law known as TJ/PL and written about extensively by Dennis Stolle and others (Daicoff, 2000, 2004). The theoretical ideas of TJ work well with the more practical, task-oriented PL which can include practicing law office procedures such as conducting periodic client check-ups, making and maintaining basic checklists, and planning various legal instruments like wills and trusts in advance (Daicoff, 2004; Goldman & Larkin Cooney, 1999).

TJ/PL has been lauded as a more humanistic and value-oriented way of learning and practicing law; one that "focuses less on right and wrong and more on human behaviour and relationships" (Daicoff, 1999, p. 826). The combined approach allows for connecting the ethic of care inherent in TJ to the practice of PL. It has been praised as an approach that is integral to alleviating some of the high-stakes crisis-oriented legal responses currently dominating legal practice. It offers an alternative way of practicing that focuses on both emotional well-being and legal rights (Daicoff, 2004). Its inclusion
in Canadian legal education would be a positive, mind-opening development for Canadian law students.

**The Practical Application of TJ/PL**

Advocates of TJ/PL argue that law students should be taught to access legal issues and problems in a therapeutic way from the very beginning of law school. Including TJ/PL in legal education would provide a welcome alternative for students (particularly those with an ethic of care orientation) in the existing traditional environment.

Wexler, Daicoff, and other legal reformers suggest that TJ/PL needs to be legitimized and mainstreamed by being explicitly included in legal education either through separate courses or, ideally, infused throughout the entire curriculum (Daicoff, 1999). Daicoff and others suggest that teaching TJ/PL can be done in various different ways:

1. By teaching students to recognize and contemplate in lawyer-client relationships "psychological or psycho-legal soft spots" (i.e., depression or other forms of distress resulting from legal problems) via the inclusion of concrete examples of lawyer-client interactions and client problems in the curriculum (Daicoff, 1999). For example, stories or narratives of lawyers’ and clients’ experiences could be gathered in either written or some other media format and relayed to students. The students could then be taught how to look for therapeutic issues in the gathered stories and to find and draw out unspoken or unaddressed issues or concerns to improve upon and enrich future lawyer/client dialogue/interaction. Guest specialists from the helping professions could assist in these lessons.
2. By teaching students to think about the "best treatment" (holistic approach) for all of their future clients' interests rather than considering only their clients' "strict legal interests" (narrow traditional approach); (Daicoff, 1999). Students could be taught to consider not just immediate legal needs but also a client's emotional, psychological, economic, and/or therapeutic needs, depending on the circumstances. To ensure that all students are reached, these considerations could be emphasized through the entire curriculum rather than by teaching one or more specific, alternative "therapeutic values" oriented courses.

3. Some students will be more skilled at and open to identifying and dealing with therapeutic issues. As mentioned, Daicoff refers to these students as having more of a feeling preference and a stronger ethic of care perspective. Others will be more drawn to adversarial litigation. These students have more of a thinking perspective and rights-oriented approach to resolving disputes (Daicoff, 2004; Gilligan, 1982). Daicoff suggests that all students should be given the opportunity to learn, practice, and value both approaches and to discover empirically which approach they prefer by being offered psychological testing as to their personality strengths and practice preferences. This will also assist them in their choices of courses and careers (Daicoff, 1999).

4. By providing opportunities for the cultivation of self-awareness, for self-assessment, and peer consultation in law school in order for students to be able to fulfill expectations in this regard as future working lawyers (Daicoff, 1999, 2004).

5. By giving students the opportunity to provide TJ/PL type legal counseling in clinics in order to develop their expertise in this area. Daicoff credits Wexler with suggesting that because most clinics deal with clients in crisis, outreach programs should
be established to encourage clients to come in for legal check-ups and to learn to expect this as a standard part of legal representation (Daicoff, 1999).

6. By providing specific communication training to students in order to encourage them to develop the practice of looking for subtle as well as more obvious concerns and solutions when representing clients. The goal is to encourage students to deeply consider all potential answers, to revisit issues, to accept that not all issues will be immediately resolved, and to fully understand the bigger perspective involved in a client’s wider concerns, hopes, fears, and goals before offering legal advice (Daicoff, 1999).

7. By teaching legal ethics codes and rules differently to emphasize "careful, holistic consideration of the entire effect of litigation on the client" (Daicoff, 1999, p. 847).

8. By arranging for professionals from disciplines other than law (i.e. medicine, psychology, social work, and so on) to teach law students to consider offering to future clients the opportunity to consult with them in tandem with medical health professionals, psychotherapists, psychologists, counselors and other experts, especially when the client is facing an emotionally arduous legal problem such as divorce, wrongful dismissal, or medical malpractice, to name a few examples. In this vein, law students themselves could be given opportunities to actually learn/work with peers who are studying other professions, such as medical or social work students, if and where possible (Daicoff, 1999).

The Skills and Values Development (LSV) Program

In the 1990s, law professors Pearl Goldman and Leslie Larkin Cooney created an innovative, therapeutic 3-year Lawyering Skills and Values (LSV) program at Shepard
Broad Law Centre at Nova Southeastern University in Fort Lauderdale, Florida. This writer has created a visual depiction of the course layout in Figure 4. The program is now a successfully embedded part of the entire law school curriculum offered at the centre. The two main goals of the program are (a) to focus on experiential learning in simulated or real environments and (b) to teach students to use an ethical client-centered approach to lawyering. A central feature of the program is its integration of therapeutic jurisprudence and preventive law into the skills curriculum to create greater student awareness of the psychological aspects of the lawyer-client relationship (Goldman & Larkin Cooney, 1999).

Goldman and Larkin Cooney explain that the program is designed to prepare students for law practice by presenting them with the opportunity to engage in practical and ethical problems that they can anticipate encountering in their future work. The clinic and classroom settings offer a safe environment for skills instruction and application, experimentation, and reflection (Goldman & Larkin Cooney, 1999). In clinical student work periods, teachers are able to supervise, mentor, and intervene when necessary to protect a client's interest. Ultimately, the goal of this extensive experiential learning is "to sensitize students to the benefits of integrating, planning, and prevention with an ethic of care in client representation" (Goldman & Larkin Cooney, pp. 1127-1128). The course creators envision this new approach as being used in conjunction with traditional methods of instruction such as the case law method, which the authors see as a still useful tool for teaching rules and legal reasoning.

First year design (LSV I and II). The first year of the program focuses on practice skills. It is taught by fulltime faculty.
Figure 4. Lawyering skills and values (LSV) program.
In first semester (LSV I) students learn how to plan and conduct cases and practice such skills as interviewing, counseling, negotiating, legal drafting, oral advocacy. They are introduced to both pretrial litigation and alternative dispute resolution approaches. They learn how to negotiate settlements, conduct legal research, counsel clients, and prepare legal documents and correspondence. Much learning takes place through role playing, and students take on the roles of both lawyer and client. Students also watch and critique a videotaped counseling session. In the second half of the year (LSV II) they learn and proceed through the various steps to litigation and trial. Legal research, writing, and analysis are integrated throughout the year with ethical issues and practice skills in each case file. Students evaluate their own and each other’s performances and conduct ongoing debriefing and dialogue with each other and their professors (Goldman & Larkin Cooney, 1999).

Second year design (LSV III and IV). In second year the focus on experiential learning continues and expands. Second year is taught by adjunct professors who are also experienced practicing lawyers. Students are assigned to small "law offices": This becomes their "classroom." They can choose one of two tracks:

1. Transactional track: In the first semester (LSV III-T) the focus is on conducting legal transactions, drafting correspondence and legal documents, interviewing and counseling clients, maintaining billing, records, and developing client files. In the second half of second year (LSV IV-T), students in the transactional track take a business from initial stages to more advanced stages. Students negotiate and draft more sophisticated documents and continue to develop negotiation and conciliation techniques. Throughout, ethical issues are identified and addressed (Goldman & Larkin Cooney, 1999).
2. Litigation track: In this stream, students focus on trial advocacy. They learn litigation skills and strategies by applying them to "cases." They represent a "client" from initial interview through to trial. They conduct an appeal, preparing necessary documents and oral arguments. They also prepare for and participate in a mediation process. Again, ethical issues are raised, identified, and addressed throughout (Goldman & Larkin Cooney, 1999).

*Third year design.* Third year focuses on clinical experience. Clinic instructors include fulltime faculty and clinical instructors, professors who teach in the program, and field placement supervisors. Students continue to learn and develop skills and values needed in law practice. They choose one of several clinical placements such as business practice clinic or children and family law clinic. Clinics are combined with classroom instruction in doctrine, skills, policy, or interdisciplinary areas. Third-year students also attend seminars with distance learning technology where they connect and communicate with their peers on clinic placements. The year begins and ends with in-class work, including initial intensive instruction in doctrine/skills/policy and ending with debriefing, wrap-up classes, and evaluation (Goldman & Larkin Cooney, 1999).

*How Is TJ/PL Integrated Into the LSV Curriculum?*

The LSV curriculum created by Goldman and Larkin Cooney reflects TJ/PL aims in that it focuses on teaching ethical, client-centered lawyering. Instruction in client counseling is extensive, multidimensional, and experiential. For example, in first year, students take on the role of both client and lawyer in different counseling exercises wherein they learn to identify and appropriately respond to client distress (Goldman &
Larkin Cooney, 1999). Counseling and debriefing sessions allow for extensive communication and connection between students and their peers and professors.

   In the second year "small office" setting, students receive individualized sensitive counseling skills training. This training is reinforced in third year in the clinical setting under senior supervision and direction. The seven clinics also provide effective settings for establishing systems of legal check-ups. The clinics allow students the opportunity to practice resolving matters in ways that avoid harmful litigation and other adversarial procedures and enhance the psychological well-being of clients (Goldman & Larkin Cooney, 1999).

Student Response and Benefits

   The LSV course teaches students how to combine skill and value development in their future practice: One does not have to be learned at the expense of the other. Students themselves observed that the course experiences were "invaluable as part of their own legal education" and helped them to understand the importance of becoming "thoughtful and careful practitioners" (Goldman & Larkin Cooney, 1999, p.1145). Other proponents of this approach to legal education have observed that students who role play and otherwise practice counseling skills come away from the experience more enlightened as to the vulnerability that clients can feel when faced with the world of lawyers and the legal system (Goldman & Larkin Cooney).

Summary

   The Comprehensive Law movement encourages a more humane way of practicing law. The vectors represent alternative dispute resolution philosophies or approaches designed to protect and promote the well-being of individuals and groups involved in
legal matters. Concerns, issues, and goals beyond simple legal rights are acknowledged. The teaching and learning of the therapeutic ideas and approaches found in the movement’s vectors would be a positive addition to the Canadian law school experience. Ideas intrinsic to the vectors can be used to teach the approaches espoused by the vectors themselves. Therapeutic jurisprudence and preventive lawyering in particular work well together in treating the whole client and protecting him or her from unnecessary risk or harm. The LSV course provides a workable example of the possibility of embedding TJ/PL into the law school curriculum. Through this type of course students can receive and participate in a rich learning experience and develop the skills and values to put the ideas intrinsic to Comprehensive Law and any of its vectors into practice.
CHAPTER FIVE: THE FUTURE: CAN TECHNOLOGY HELP TO HUMANIZE LEGAL EDUCATION?

At first glance, the terms technology and humanistic legal education do not appear to be easily compatible. However, recent innovative uses of technology at various Western law schools point to its potential to significantly enrich legal education by connecting law students more deeply and creatively to their learning and to their fellow participants in the legal and wider community environment.

Internet communications technology (ICT) has come to powerfully influence some areas of higher education in the last decade. Business and medical schools in particular represent two areas that now rely heavily on the digital world. Law schools have been slower to take advantage of the rich potential offered by this form of educative communication.

At the same time, law reformers have become increasingly vocal in advocating the need for law schools to create learning environments wherein law students can experience their educations less like passive spectators and more like active and collaborative participants. Many students crave more team and skills-based learning and what Dewey called "experiential education" (Dewey, 1997).

Learning in Multiuser Virtual Environments (MUVEs)

One way in which this move from spectator to participant is starting to be better realized in the legal environment is through more experiential course work involving safe but instructional simulation exercises. Simulation in legal education has been described as "the creation of scenarios within which learners play roles, interact with people, create
documents and make choices based on their legal knowledge and all available data" (Maharg, 2007, p. 153).

The newest way in which experiential/simulation learning is currently being conducted in forward-thinking law school programs is via computer-based, virtual world simulation applications. The simulation programs used by these schools take place in multiuser virtual environments (MUVEs). While multiuser virtual environments (also described as virtual world platforms) have been most commonly associated with the online gaming industry, they are being increasingly adopted for commerce, professional, military, and vocational training, social and economic research and experimentation, and various fields of education (Maharg, 2007). They have real potential in particular for legal education.

When using MUVEs, students are drawn into active participation with others within a safe but potentially complex world. They can move from being observers of problems and issues in traditional textual narratives, neutrally analyzing it from the outside, to being participants within the simulation. In essence the students become "agent[s] within the problem" (Maharg, 2007, p. 155).

Parallels have been drawn between the performing arts and MUVEs: They are both worlds where players take on various parts and voices in evolving and potentially infinite collective dramas whose narratives must be carefully considered and acted upon, just as in a live play or in life itself (Maharg, 2007). This type of experience operates not just to provide or transmit solutions to objective problems but also to stimulate debate and practical action. It also promotes personal reflection, since each player knows that his/her actions affect other players and outcomes. By acting as a dramatic forum that not
only draws students into practical, intellectual, and moral dilemmas but also allows them to create and access their own and other narratives, MUVEs can operate to humanize legal education.

In the new millennium, various forms of online games and simulations with virtual world platforms have proliferated. The worlds vary greatly in size, culture, historical setting (ranging from mythical to futuristic), types of characters, and the types of stories and activities taking place within them.

Players or students log on to the screen of the simulation and usually take on the character or persona of an "avatar" through which the onscreen virtual world is experienced. Many avatars can log on and participate simultaneously. Avatars are chosen by individuals from a range of characters, genders, and species, including but not limited to human beings, and can be given certain skills and emotional and intellectual characteristics. Like real people, avatars can potentially see, hear, feel, think, move, communicate, create relationships, create and exchange possessions, live, and die. These ways of being and doing require skills, social interactivity, and learning, all of which are developed within the virtual world interaction, making the games innately social (Maharg, 2007).

The communication structure within MUVEs allows for both private person-to-person communication and wider "zone" chat with groups of players within a certain radius or zone. Emotions and gestures as well as information can be communicated. For example, regular conversing as well as whispering, yelling, crying, laughing, eating, applauding, pointing, and waving can all be accessed under the "Emote" menu of some MUVEs (Maharg, 2007). As in the real world, relationships and the interactions and
activities that are conducted within them in virtual communication worlds are long term and potentially unending.

For purposes of legal teaching and learning, MUVE simulations are attractive in that they allow for the ongoing development of relationships between student participants, whose presence, communications, decisions, and actions change the dynamic in the virtual world engaging them. They also allow for students with different values, learning preferences, and knowledge and skill backgrounds to participate in and learn from the experience all at the same time. Players can also move to different levels or arenas of expertise and/or interaction at their own pace.

Educational researcher James Gee is a vocal proponent of this new learning domain, since it fits closely with his vision of the learning and the educational process as being "not about definition [but] about simulations of experience" (Gee, cited in Maharg, 2007, p. 162). Gee’s views reflect those of other reformers who see the learning of rules and their consequences and meaning-making as best achieved in the process of experimentation, practice, and situated action.

*Berkman Island in Second Life: Harvard Law School*

The MUVE called Second Life (SL), created by Linden Lab Research Inc., is one of the most widely known web-based virtual worlds in North America (Mulcahy, 2007). SL is a three-dimensional virtual world consisting of avatars living in societies almost entirely custom created by them. This world is useful for educational purposes in that its environment is wide open to interpretation and manipulation by users who simply immerse themselves in a lived experience of their choosing. Avatars or people in the Second Life world can create buildings, homes, offices, clothing, artwork, documents,
vehicles, and entire communities within which they can interact and communicate. (Mulcahy).

Second Life is currently being used by Harvard Law School and New York University Law School to enrich their law school environments and curriculum. At Harvard Law School, a course entitled *CyberOne: Law in the Court of Public Opinion* is taught in the virtual environment called Berkman Island within SL (Harvard Law School, n.d.). The course is offered jointly through Harvard Law School, the Harvard Extension School, Cambridge Community Television, and the World Wide Web for both classroom and clinical credit and as an independent study option as well.

Course designers Charles Nesson, Rebecca Nesson, and Gene Koo, all Harvard law professors, describe CyberOne as a course in persuasive, empathetic argument that takes place in the internet space. The course includes the study of different media technologies so as to understand how their characteristics and distribution methods affect the discourse that takes place through them (Nesson, Nesson, & Koo, 2006). In the CyberOne course students can analyze in both physical and virtual classrooms how the characteristics of new media like podcasts and blogs affect and promote the voices and arguments of those who use them.

CyberOne allows Harvard to bring the content of a law course to a variety of audiences from the main law school classroom audience to the Harvard extension school audience, to community and worldwide public audiences through communications technology like the internet, in part via Second Life. Students come to understand how new media forms can help them to get their own voices out into the community and
world. The key theme of the course is to give individuals and universities a greater voice and greater access in the world (Nesson et al., 2006).

The Second Life virtual environment is a central component of the CyberOne course. This component is primarily directed at Harvard Extension School (distance) law students. It brings intimately into the law school community those students taking the course at a distance. Within the virtual world of Second Life, all law students and faculty are able to interact directly with each other. They adopt avatars who "attend" lectures and tutorials, meet and dialogue with peers, develop online learning exercises, collaborate on projects, and contribute to the creation of actual online course content dealing with issues such as governance, disputes and their resolution, and the uses of MUVEs themselves, all in buildings on Berkman Island inside Second Life. The virtual environment has been reconstructed to look like actual Harvard law buildings (Harvard Law School, n.d.; Nesson et al., 2006). The course allows Harvard to use the tools of cyberspace to connect in creative ways to its own students and the wider public.

Harvard’s use of Second Life as a virtual platform for critical debate and learning about media and the law is innovative and instructional in showing other law schools the potential for rich, multitiered learning using virtual environments.

*Democracy Island in Second Life: New York University Law School*

New York University Law School (NYU Law) has also incorporated the use of an MUVE for legal educational purposes. NYU Law also has a space within Second Life, called Democracy Island, which functions as a three-dimensional virtual space for its students to enter and use for social, community, and political engagement. The aim of Democracy Island’s founder and creator, Beth Noveck, is to allow students and others to
exploit new social and visual technology, to interact and learn how to communicate effectively, make decisions, and exercise power (Maharg, 2007). The space is structured to encourage interaction, much like in a real-world local town meeting.

Within this safe, virtual space, students engage in democratic, social, legal, and political discourse and activity to learn about law and its place and potential in the world in a multinarrative, multidimensional, interdisciplinary way. In their personas in the virtual world, students can communicate, feel, and act in the world as lawyers, leaders, clients, students, and so on, developing experience, empathy, and expertise in dialogue and discourse. NYU Law students develop clearer perspectives about law and its power and place in the local and larger society interacting on Democracy Island within the Second Life virtual world.

The Benefits of Second Life

The idea of using virtual worlds such as Second Life in legal courses is an idea fertile with possibility. Legal scholar and Dewey enthusiast Paul Maharg is certain that Dewey himself would recognize in Second Life "an example of an experimental Laboratory School in human relations" (Maharg, 2007, p.169). MUVEs like Second Life are forms of situated/experiential learning that are likely to become increasingly utilized by humanistic-minded legal education institutions in the near future.

MUVEs Allow for Deep Transactional Learning

As helpful as they appear to be as a general learning tool, can Second Life and other MUVEs cultivate deep learning in law? When and why would the use of virtual worlds be most appropriate and helpful in legal education? As technology-based learning
forms, can they contribute to the humanization and civilization of the legal educational environment?

In his study of law schools and virtual environments in *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-first Century* (2007), Paul Maharg argues that there are certain characteristics that the virtual legal world has over the real legal world, and that it is these characteristics that help to establish virtual legal worlds as deep and rich ways to teach and learn law.

A key humanizing characteristic that Maharg links to virtual environments is the deeply "transactional" nature of the learning that can take place in them. By "transactional learning," Maharg refers to John Dewey's view of the definitive educative experience as consisting of an ongoing multilayered interaction between the learner and his or her environment:

[An] experience is always what it is because of a transaction taking place between an individual and ...his environment....The environment...is whatever conditions interact with personal needs...to create the experience....Education must be conceived as a continuing reconstruction of experience; [so] that the process and the goal of education are one and the same thing. (Dewey, cited in Maharg, 2007, pp. 173,174)

The ongoing, virtual online simulation experiences that students are immersed in are a form of this deeper "transactional learning" in the sense that the learning arises from "the interaction of a person's internal life and external conditions"(Maharg, 2007, pp. 173-174). It is a more ambitious, problem-based form of education, where learning is not simply transmitted, it is constructed—physically, cognitively, emotionally, and
reflectively. Students in a three-dimensional virtual environment produce meaning, activity, and text in a way that involves much more "analysis of and judgment on the world" (Maharg, 2007, p. 172) than if they were acting in a traditional academic setting. The transactional learning that happens in this type of virtual world "goes beyond learning about legal actions to learning from legal actions" (Maharg, p. 175). Such learning also cultivates a reflective approach in students. Maharg explains that students in these environments are transacting on multiple levels: they are thinking about the transaction but also across the transaction and even "above" the transaction. They are able to both participate in the process of learning and also disengage themselves from the process in order to consider it from a distance and reflect their choices. (Maharg). The goal is to give students experience of various legal operations, not only to learn about different elements of actual lawyering but to develop a "meta" or broader and deeper understanding of the whole legal process and the way it fits into the world, including "the relational and ethical dimensions" (Maharg, p. 175) of legal exchanges, thoughts, and actions. In this sense, the transactional nature of the simulation learning environment lends to it a holistic quality.

Ardcalloch: A Virtual Transactional City: Glasgow Graduate School of Law

Under Maharg's direction, Glasgow Graduate School of Law (GGSL) in Scotland has created its own example of transactional learning in action by way of a professional legal practice course set within a fictional virtual city called Ardcalloch (Maharg, 2007). The learning that goes on within this course/city is even more transactional and less traditional than the learning that takes place in the virtual spaces used by Harvard and NYU Law. For example, student participants might "attend" a traditional lecture via their
avatars or personas on Harvard's virtual Berkman Island, whereas within Ardcalloch, GGSL students take on more complicated long-term roles of lawyers who can contact and communicate with "clients" and other professionals, institutions, public bodies, and so on to obtain information that they then use in their roles as practicing lawyers in training. (They do not take on avatar personas.) Other roles are played by online tutors and other characters and facilitators.

The city of Ardcalloch is an educational world designed for the students as a place where professional legal practice narratives and norms can be played out and where students can start to build their own professional identities and contemplate and appreciate the idea and meaning of becoming a professional lawyer. As trainees in virtual law firms, students can "try on" different ways of "fitting their real selves into their online self as a legal professional" (Maharg, 2007, p. 177).

Ardcalloch is a sophisticated transactional environment, providing for students a backdrop in the form of city resources, office environments, clients, information, and other characters for legal transactions, virtual law offices, IT communications systems embedded in the virtual community, close simulations of actual legal transactions, and a safe environment within which the students can practice legal and wider transactions and welcome other disciplines and even law students working in other jurisdictions (Maharg, 2007, pp. 177-178).

An example of a long-term multistep transactional opportunity provided for students is the Personal Injury transaction, which requires the students to negotiate and finalize an agreed settlement over a period of weeks between two student firms, one representing the injured party and the other the insurer, within the virtual world of
Ardcalloch (Maharg, 2007). Through this layered transaction, students develop skills in team collaboration, negotiation, document drafting, interpersonal communication, and dispute resolution while becoming adept at virtual world communications technology.

To provide for more interactive transactional opportunities, more subjects have been gradually added to the Ardcalloch environment over time (such as Private Client and Conveyancing). The ultimate goal at GGSL is for online transactional learning to be implemented in stages across the entire graduate law school curriculum. All new transactions have developed around the original town map of Ardcalloch (publicly viewable on the school's website). The map exists as a web page, with many small photographs attached to streets to give the sense of an actual place, complete with online directory. A full-service virtual law office has also been created.

While Ardcalloch was designed as a learning system for Scotland's slightly different system of graduate law students with a strong grasp of the legal fundamentals who are nearing the end of their legal educations (Maharg, 2007), a simpler version of it could be implemented in an online virtual world first- or second-year skill development and/or conceptual law course. Each "transaction" on Ardcalloch lasts approximately 3 months, during which time there are no formal classes except for feedback meetings. A course using this approach in first or second year could combine it with in-class experiential learning over one semester or over an entire year.

Problems and Challenges

Maharg and other virtual learning proponents note that, because of their vast potential for informational and interactive complexity and human connectivity, multiuser virtual simulation environments can be very powerful learning environments, and
accordingly, their use must be considered with care and thought. There are some practical and substantive challenges. Site security is an issue that all participants are apprised of. Another problem is the question of which rules should be made explicit in a transactional learning environment and which rules should remain unspoken to be discovered and negotiated by students (Maharg, 2007). Regarding tutors, there is debate as to how much "helpful" information transmitted by tutors to individuals in the virtual environment is enough and how much is too much. There are also concerns as to whether there is a way for tutors to provide this information in a more interactive way rather than simply transmitting it directly. MUVE game users normally devise practice guidelines or "game rules" setting out expected practices, purposes, and tasks that are to take place within the game; and educational users need to commit to the same type of intellectual construction of interaction parameters with their learning environments. The course has called upon its teachers to make adjustments in their teaching resources from academic learning resources to more workshop and skill development resources (Maharg).

Student feedback to the course has been extremely positive, ranging from a heightened confidence that "the skills .... learned in this class will be invaluable in... traineeship" to a clearer understanding of what is involved in eventual practice "and the implications of [practicing law]" (Maharg, 2007, p. 199).

Online simulations within law school settings are in their infancy. Outside of law schools, to date, they have been designed mostly to fit the needs of a particular discipline. For example, in the military and aviation industries, flight simulation programs are used to train pilots to fly planes. In the medical field, many clinical operational procedures are modeled within programs (Maharg, 2007). These disciplines all primarily use
computerized simulation programs to teach specific tasks. The Harvard, NYU, and GGSL law programs offer interactive simulation learning within a virtual environment rather than via computerized simulation programs. Maharg points out that their environments are not yet as sophisticated or immersive as typical three-dimensional MUVE games. The interactions currently available to GGSL student users are also much more restricted than the interactions that would be available in most online games (Maharg).

Maharg’s work in this area points to some of the limitations of virtual environment. He notes that MUVEs cannot completely replace or replicate the random events or the sensory and informational detail that exists in the real world. But they do provide opportunities for multidimensional situated learning within a safely constructed, complex environment. As Maharg points out, the aim with virtual learning environments for law schools is "not to replicate reality but to simulate aspects of it" for learning purposes (2007, p. 177).

**Summary: Humanizing Legal Education With MUVEs**

The learning, transactional and otherwise, that can take place using virtual reality scenarios reflects the best kind of learning on several different levels. The potential for this type of learning is extensive. Its gaming origins present it as a creative, fun, nontthreatening environment that is safe for experimental learning.

In virtual transactional worlds, collaboration is key. Students collaborate in several ways. They do so with their peers and with faculty and also with tutors, who act as mentors and guides rather than teachers (Maharg, 2007). Maharg explains that simulations work best when student learning is "scaffolded" or supported by "good work or helpful procedures and by the availability of tutors as guides, either to answer basic
questions directly, or to suggest ways of action to students who are stuck [in some way] in the process" (pp. 175-176). Online simulations encourage and enhance team and group work in student-created worlds involving self-designed guilds, families, partnerships, groups, teams, law offices, courtrooms, classrooms, panels, boards, institutions, focus groups, activist groups, and so forth (Maharg). Collaboration can potentially take place across many physical borders. For example, students from different disciplines, institutions, cultures, or even different countries, can become valuable resources for each other. Students can also interact with nonstudents (i.e., lawyers, educators, medical, social work or spiritual professionals, and others) to learn information, techniques, communication and leadership skills, healthy and ethical living and working practices, and ways of being, and so on.

The Harvard, NYU, and GGSL examples show that in virtual spaces students also experience education in a multidisciplinary way. They can develop deeper experiences of law by connecting on projects and assignments and other endeavours with individuals in other disciplines and worlds. In some MUVEs, students can also develop empathy and insight into the experiences of other individuals by adopting avatars with different physical, gender, cultural, vocational, or other characteristics.

Online virtual learning environments also allow for more varied and meaningful assessment. In systems like Berkman or Democracy Island or Ardcalloch, work could be assessed in areas such as preparing a legal document or contributing ideas to a collaborative discussion or project. Other team-oriented projects or activities could be peer assessed; and yet other work could be self-assessed.
Online simulations also develop multiple intelligences. The students in these environments communicate on multiple levels: cognitively, spatially, linguistically, emotionally, interpersonally, and so on. Maharg and other educator/reformers have observed that students invest more of themselves into education where they can partially or wholly create, organize, and structure their own learning environments (Maharg, 2007). They can choose to design how they want to learn information, and in some cases, the information itself. Learning in a simulation environment is both standard and customized. It can be a similar learning experience for all learners, yet at the same time, it is also dramatically different for each learner. None of these courses require students to have prior background knowledge of Second Life or other MUVE use. The courses are introduced, in stages, as part of the process. Students using Second Life applications are only required to be "comfortable with computers and learning to use new applications" (Nesson et al., 2006).

The area where MUVEs have the most potential to humanize legal learning is in the area of ethical and professional development. In traditional educational settings, law students learn information, ideas, and hopefully, ethical and professional standards and expectations. These same standards and expectations can be communicated within the virtual environment. In MUVEs, students learn new things about themselves and their own abilities and strengths, and they learn everything in relationship (Maharg, 2007). Especially in the Ardecalloch example, students are learning to think simultaneously about specific legal and broader ethical issues, just as they would have to in actual practice, all while an interaction or transaction is evolving.
The above virtual education models being used by Harvard and NYU with Second Life and by GGSL with the Ardcalloch virtual city demonstrate that MUVE simulations using transactional learning theory can be used effectively in law school curricula to teach, learn, and assess even the most conceptual of legal subjects. Virtual environment learning also complements and supports many of the learning and teaching concepts put forth in the multiple and emotional intelligence theories and Comprehensive Law approaches discussed in Chapters Three and Four in this paper. It also makes room for metareflection and value considerations espoused in spiritually based education ideas and practices to be discussed next in Chapter Six of this paper. Maharg and B. S. Bloom describe virtual education as enabling "one of the chief aims of education...[that being] the development and integration of skill, knowledge and values" (Maharg, 2007, p. 202). While perhaps not immediately apparent on its technological face, virtual education has the potential to help to humanize law schools.
CHAPTER SIX: THE IDEAL FUTURE: SPIRITUAL LEGAL EDUCATION

The subject of religion and spirituality is rarely considered or discussed by lawyers in connection with their legal education or practice. The very words cause discomfort in individuals in the legal field, probably because they have been taught that this subject matter has nothing to do with effective or good lawyering, or possibly may even interfere with effective (i.e., objective) lawyering. The general discomfort with spirituality and work may be due to what legal scholar Marjorie Silver characterizes as the "deep ambivalence... about the appropriate boundary between the personal and the public" that many professionals, including lawyers, generally share in Western societies (Silver, 2007, p. xxxiv). Most lawyers seem to feel that their religion or belief system, or lack thereof, is strictly a personal matter. But is it? And should it be? Lawyers are in the position of being called to uphold a sacred trust: serving society in the interest and pursuit of justice. It is difficult to carry out such a professional pursuit without bringing into the work one's personal values.

Law schools are entrusted with the care and responsibility of teaching each new generation of potential lawyers how to best respond to this serious and special calling and carry out this societal trust. Therefore, it behooves members of the public to want to know how and what student lawyers are taught and who they are encouraged to become as professionals. More than in some other professions, it is incumbent upon lawyers above all to do the right thing. In order to be able to do this, lawyers need to have developed the necessary characteristics, skills, care, and courage to do it. Yet many lawyers have experienced a loss of personal identity and meaning in the educative
process and they enter the profession poorly equipped to carry out such a lofty and
challenging mandate. This is where spirituality comes in.

Infusing a sense of spirituality into law and legal education can help students and
lawyers to make their work meaningful; to care more about what they do, and to feel
more connected to themselves and others in the legal world. It can help legal participants
to avoid perceiving or practicing law as a purely profitable or practical business
endeavour. It can help to remind them that law is a calling. A more spiritual, morally
based approach in education and work will help students and lawyers to become happier
and healthier and to better enjoy what they do. Ways of teaching spiritual practice exist
and can begin in law school.

What Is Meant by Spirituality?

Spirituality has been described and defined differently by different people.
European psychiatrist and concentration camp survivor Viktor Frankl believed that
spirituality is connected to man’s search for meaning, a search and journey that is
intrinsic to being human and is a central path to true happiness (Frankl, 1985). Law
professor David Hall, who has studied Frankl and written extensively on the subject of
spirituality and law, has described spirituality as involving "the intentional decision to
search for a deeper meaning in life and to actualize in one’s life the highest values that
can be humanly obtained" (Hall, 2005, p. 7). Hall proposes that, while spiritual values
and beliefs may be rooted in religious traditions, they can just as validly spring from
other human experience. Therefore, even atheist and agnostic lawyers can be spiritual if
they are searching for what Hall describes as the "sacred" aspects of life and if their
thoughts, words, and actions reflect the highest ideals of the profession and life. Law
Professor Calvin Pang widens the definition further by adding that the spiritual is "a personal dimension that is in us whether or not we give it nourishment, attention or value" (Pang, 2007, p. 495).

A small but growing group of humanistic and spiritually oriented legal scholars and practitioners are calling for a richer marriage between spirituality and legal education and practice. They argue that personal values and professional practices must be integrally related; that such integration is essential for practicing law as a healing profession; and furthermore, that the absence of such integration "contributes to a kind of moral disconnect that threatens lawyers’ psychological and emotional well being" (Silver, 2007, p. xxxiv). It is difficult to sustain interest and commitment to a course of study or work when one cannot find meaning in it aside from its material/temporal potential.

**Lawyers, Law Schools, and Brokenness**

Spiritual leaders point to the commonalities in all major religions such as Buddhism, Christianity, Judaism, and Islam, which are all centrally concerned with restoring relationships and loving and serving others. Above all, they are concerned with what Timothy Floyd calls "healing brokenness" (2007, p. 473). This brokenness is profoundly evident at all levels of human existence: in divorced, dysfunctional, and abusive families, divided communities, the failure of formal institutions, the loss of meaningful traditions; in material excess, addiction, abduction, the breakdown of the environment, escalating natural disasters, the destruction and extinction of entire ways of life, and disputes on the personal to the global level (Floyd). Law students themselves are often "broken" by the time they leave law school, even as they are taught that they will be expected to solve much of the "brokeness" around them once they leave the school.
environment. In their future professional work, they will act for individuals and organizations, often by instituting claims and responding to fallout arising from broken relationships, contracts, promises, lives. Therefore, it is critical that they are helped to reach this position of responsibility in a state that is as humanly whole as possible.

Floyd and Parker Palmer (1998) have both discussed the idea of a "hidden wholeness" in humanity espoused by Catholic spiritual writer Thomas Merton. Floyd points out that "religious faith and spirituality embody the belief that brokenness is not the way the world is meant to be" (T. Floyd, 2007, p. 474). Bringing spirituality into education, work, and life allows individuals to embrace and connect to each other and to everything living. Floyd observes that the word religion comes from the Latin word "religare," which means "to bind together." There exists a fundamental human spiritual or religious desire to bind together to heal ourselves and to make what is broken whole (T. Floyd). Legal participants need to draw on these dual spiritual impulses when interacting with each other in legal study and practice. The traditional use of intimidation, competition, and male/rights-oriented justice has served to keep existing legal traditions secure, but at what cost? At this point in history, such traditions appear to be making the legal community feel ever more disconnected from their study and work and more personally broken.

Floyd observes that law students and lawyers have to work among so much conflict. Presently, due to the nature of their educations and the structure of the Western legal system, many lawyers exacerbate the situation by distancing clients and parties further via lawsuits and other aggressive claims. They and their clients end up existing in an inefficient and even toxic state of alienation and distrust, battle lines always drawn.
Learning to work this way and in this system begins in the alienating atmosphere of law school.

With a change in inner perspective things could be different. Precisely because they work in the midst of so much conflict, lawyers are presented with the power and opportunity to bring about healing, reconciliation, and resolution in many situations and for many people and organizations on a regular basis. To realize this goal, potential lawyers must be taught in law school the importance of becoming self-aware and open to the possibility of helping, healing, and reconciling conflict in less harmful ways. Floyd talks about the need for lawyers to listen more closely at the outset to each given fact, situation, or story that presents itself to them.

The primary moral question is not "what is good or right?" or even, "what should I do?" Rather, the first question in ethics should be "What is going on?" Paying close attention, truly understanding what is going on and understanding the people involved, is essential to acting morally. (T. Floyd, 2007, p. 480)

*What is going on?* is a question I and many other law students have asked ourselves in law school, often not discovering a satisfactory or real answer. Perhaps that is because it is usually only the law students who are asking the question.

In legal practice, *What is going on?* is a question that does not get asked in the first place; or one whose answer gets completely lost in costly, bloated, and unnecessary litigation, tactics of intimidation, and linguistic and evidentiary obfuscation. In the interests of time and other constraints, lawyers can behave in a reductionist manner and fail to listen carefully to the client or opposing side, or omit to ask key questions or pursue deeper insights. Much of legal education and practice tends to take on the
characteristics of a game rather than a human story. The needs and desires of the client can become lost, and the "winning" of a case can be hollow. One can become most effective as an advocate when one knows as much as possible about one's client. Moreover, as Floyd points out, the act of listening and posing careful, thoughtful questions to a client can in itself bring about some healing and resolution (T. Floyd, 2007). Currently law students and lawyers are often taught to pay attention to, prioritize, and ask the wrong things. Deeper listening skills and more therapeutic ways of connecting with clients and resolving disputes can be taught in law school.

The major religions emphasize that, in the helping professions such as social work and counseling, the habits of listening, awareness, mindfulness, and/or meditation are central to the work while also allowing for the ongoing spiritual development of the listener/counselor (T. Floyd, 2007). Law is also a helping profession. As such, its members and institutions could benefit by studying the therapeutic approaches to client communication and problem resolution used in other helping professions. In learning and developing more healing listening and communicating habits, students, professors, lawyers, and the public could experience law in a more healing way. If, as Professor Pang (2007) asserts, the spiritual is an inherent part of all human beings whether we acknowledge or value it or not, why not acknowledge and value it?

The legal profession can start by incorporating into legal pedagogy ways to treat its own students humanely, in part by teaching them to view themselves not as fighters but as advocates and agents of healing and reconciliation. Professors could ask themselves: What am I doing? What is going on in my class? With my students? How can I be more emotionally and spiritually intelligent and present in my work? They could
create more room in the classroom for their students to explore questions such as: What does being a law student/lawyer mean to me? Why do I want to be one? What do I expect to think/feel/act like in my study/work as a law student/lawyer? Does this law school provide a humanistic and healthy learning and teaching environment? How can I contribute to that ideal? How do I understand the terms human, emotional, and spiritual? How can I be a student and lawyer who thinks, acts, and feels with all of my cognitive, emotional, and spiritual intelligence capacities? How can I bring wholeness and humanity to my studies, work, and life?

The above discussion of spirituality and law, listening, healing, and making whole rarely if ever occurs in law schools in Canada. Opportunities for deep discussions about what legal education and lawyering should mean and be are eclipsed by surface discussions of doctrine, analysis, and practical or temporal matters. Rather than giving life to the sacred and spiritual in their students, law school usually kills it.

**Spiritual Law: Radical Criticisms and Visions**

In contemporary society, law has been reduced to a hierarchical body of power, rules, and arguments, a way for one individual or organization to "win" by profiting in some way from another's perceived weakness. Duncan Kennedy, Harvard law professor, cofounder of the Critical Legal Studies movement, and cowriter of *Legal Education and the Reproduction of Hierarchy: A Polemic Against the System: A Critical Edition* (2004), criticizes law and law schools as reflecting a reproduction of the "maiming" hierarchy structure that lies at the root of Western culture. As such, they perpetuate the legitimization of injustices present in society and reinforce the continuing alienation of the members of its important institutions.
The student, and then the lawyer, gradually gets lost in the manipulativeness of an analytic reasoning that is severed from the spiritual longings of the soul. So that the problem of alienation in the larger culture is replicated in legal [education, and] in the profession's way of representing the larger culture. (Gabel, 1999, para. 12).

Kennedy and his cowriters are among those critics who condemn law schools for teaching students to serve "a great nothing...the hierarchy with no heart or centre to it" (Gabel, 2004, p. 159). They see a pedagogical and professional structure that needs to be dismantled and transformed into a system that is more intellectually and politically democratic. Kennedy and spiritual law professor Peter Gabel further propose that law schools need to better reflect "cultures of justice": They adopt Martin Luther King's definition of justice as "love correcting that which revolts against love" (Gabel, p. 163).

Existing legal pedagogy is described by Gabel as exhibiting a "spiritual sickness" that must be healed by the creation of new methods of educating lawyers that "bind them to the moral ideal of creating a loving and caring society" (Gabel, 2004, p. 164). All stakeholders in legal education could undergo a spiritual awakening by recognizing legal education transformation as "a morally compelling, spiritual activity" rather than "merely an intellectual/political revolt" (p. 165).

Many of the radical ideas of Kennedy and Gabel have been long ignored or rejected by the conservative forces whose ideas continue to dominate legal education, law, and society. Gabel in particular has focused on seeking to create a new spiritual/political approach to law. This approach envisions legal institutions as conduits for cultivating empathy and compassion in their participants as part of a larger effort to
create a new global vision of a loving and caring world (Gabel, 2004). Rather than reinforcing wider society's flight from spiritual depth and serious meaning, Gabel's law schools would take responsibility and use their position of influence and power to teach a curriculum that values a more spiritually based sense of community and recognizes all legal participants as spiritual beings within that community (Gabel, 1999).

Gabel's vision for the fully realized law school calls for nothing less than its reincarnation as "a highly visible arena of resistance to the wider culture's alienation by embodying the spiritual aspirations unrealized in that wider culture" (Gabel, 1999, para. 16). While such a radical vision is unlikely to be broadly realized in the near future, spiritually based ideas continue to edge their way into the legal education consciousness, as evidenced by the growing spiritual education movement based in the U.S. The inclusion of a spiritual dimension in legal pedagogy is key to bringing law students and lawyers out of their present spiritual crisis and moving them toward true humanistic change. Without developing a soul, the schools and the profession will continue to lose worthy students and lawyers.

How Can Spirituality Be Restored in Legal Education?

In his book *The Spiritual Revitalization of the Legal Profession: A Search for Sacred Rivers* (2005), Northeastern University law professor David Hall states:

The soul and spirit of the lawyer is the most overlooked, underdeveloped and underutilized tool of the profession. Its lack of use, development and growth is the source of many of the problems and limitations of lawyers and the profession. (p. 92)
Hall proposes that the failure of law schools to systematically explore and embrace the spiritual dimension has had negative consequences for the profession and for those who are drawn into it (Hall, 2005). In his view, "law schools should play a critical role [in the process of developing]...a deeper sense of values and spiritual insights [that] is needed in order for lawyers to become more ethical and find more meaning and satisfaction in the profession" (Hall, p. 191).

Most contemporary legal educators and lawyers believe that good law teaching and lawyering is rational, efficient, factual, and dispassionate and can only be effectively studied and practiced as a discipline detached from religious or spiritual influences. Yet if one considers the earlier stated definition of spirituality as essentially "the human search for meaning and connection," it becomes apparent that there is an intrinsic and undeniable spiritual dimension to the study and practice of law and to the administration of justice. Spiritual insight and development can offer guidance and meaning to all aspects of life, including and perhaps especially the life of someone in a helping profession such as law.

Those in the medical field appear have grasped this truth for some time: Studies show that 77% of patients want their doctors to consider issues of spirituality in their care, thus prompting medical professionals in recent years to reassess the role of spirituality and religion in medical education and the profession (Hall, 2005). Nearly 50 medical schools in North America currently offer courses in spirituality and medicine (Hall). While doctors are clearly called to "heal the mind and body" (p. 52), lawyers and others in helping professions are also called in many cases to help their clients to achieve
not simply a legal solution but "wholeness and emotional health" (p. 52). This is a broader and more humanistic way of viewing the legal professional calling.

**Strategies for Integrating Spirituality and Legal Education**

Perhaps the most challenging part of envisioning teaching law as a spiritual experience is the absence of a clear theoretical framework to assist law teachers in moving beyond the traditional law school approach of "transmit, measure and test" (Hall, 2005, p. 52). Some strategies for incorporating a spiritual framework into the broader legal education pedagogy and/or curriculum have been recently suggested by various spiritually minded legal reformers.

*Teaching to the Soul*

Hall states that "if [society] wants law students to be less stressed, depressed and conflicted, then legal education must teach to the hearts and souls of its students and not just to their minds" (2005, p. 196). Law schools as institutions and legal teachers as individuals can both take steps to make this happen.

*As institutions.* Law schools as a whole can start to do this by adopting broad institutional initiatives such as: (a) articulating (perhaps via the dean’s opening week speech and/or at regular student body gatherings) an open, holistic, inviting vision of lawyering in a compelling way with each incoming set of students; (b) communicating to the students that the law school sees the law as a serious moral and spiritual calling and inviting students to reflect on why they are at law school; (c) reinforcing these messages and the school’s vision and mission directly in innovative, required courses entitled, for example: "Law as a Serious Moral and Spiritual Calling." In such courses students could be invited to discuss and resolve ethical dilemmas involving issues such as racial,
cultural, or economic class conflicts and to look for deeper spiritual and moral issues within typical legal problems; (d) providing for courses/course sessions wherein students are asked to identify conflicts between their own values and those of the profession and asking how they intend to resolve those conflicts (Hall, 2005, pp. 208-211).

As individuals. Individual teachers can also take steps to cultivate their own and their students' inner lives. Parker Palmer, in The Courage to Teach: Exploring the Inner Landscape of a Teacher's Life (1998), suggests that the best teaching comes from the soul, and that a teacher's ability to know his or her students and subject well depends heavily on self-knowledge. Good teaching "cannot be reduced to technique" but emanates from the personal identity and integrity of the teacher (Palmer, p. 10). A well-developed personal identity and teaching style must include elements of the intellectual, the emotional, and the spiritual. Teaching with the mind, heart, and spirit together is education at its best. All three elements need to be interwoven holistically into pedagogical discourse (Palmer).

Good teachers not only exhibit strong personal character and identities but are also capable of and skilled at evoking in their students a capacity for connectedness: The holistic law professor would be able to "weave a complex web of connectedness" between themselves, their subjects and their students in the classroom, whether they are using the lecture method, narrative story telling, collaborative problem solving, group discussion, or supervising skill development in the clinical environment (Palmer, 1998, p. 17). Key to Palmer's teaching philosophy is the idea that the connections made by teachers are more important than their methods. Teachers could best connect by bringing their own unique experiences, perspectives, talents, and strengths to their teaching. For
example, if a teacher is musical, he or she could teach a subject by writing a song about it and performing part of the lesson on a musical instrument or bringing music into the classroom in some other way. If a teacher has artistic ability and knowledge, he or she could teach a subject through the use of visual or performing art and the messages/work of artists. It is not only the diversity of students that needs to be respected, honoured, and even celebrated, but the diversity of teachers as well. The aim is to create environments in the law school where teachers feel free to employ the techniques that allow them to openly reveal themselves and encourage their students to do the same (Hall, 2005; Palmer).

Hall suggests the following ways that individual law teachers can initiate efforts to "teach to the soul": (a) create a safe learning environment or sanctuary in their classrooms and other learning spaces where students feel comfortable offering their own personal insights to the discussion; (b) ensure that student sharing is respected even where there is strong disagreement; (c) set a tone at the outset of the course that communicates that values and emotions are a relevant part of the learning process and that exploring these aspects is a central course objective; (d) share their own emotional and human dilemmas about the case law and doctrine being studied; (e) model for students the art of balancing emotion with respect for opposing views; (f) pursue "doctrinal widening" by creating opportunities and exercises that encourage students to challenge existing norms and doctrines in order that they do not develop doctrinal "tunnel vision" (Hall, 2005, pp. 200-206).
The Hale and Dorr Course: Northeastern University School of Law

The Hale and Dorr course is an innovative and experimental course on "values and spiritual growth in the study and practice of law" (Hall, 2005, p. 212) developed primarily by Hall and Professor Jane Scarborough at Northeastern University School of Law in conjunction with the Boston law firm of Hale and Dorr. In the course (originally involving two law professors, three partners from a law firm, and 20 second- and third-year students), each student and lawyer is asked to list the values that are important to them. They are then asked to use the values to develop a personal mission statement for the legal profession. The point of the statement is to encourage students to reflect on and clarify their values; to see which values conflict with those of the profession; and to keep the statement to use as a personal compass to accompany them on their continuing journey in the profession (Hall).

These statements are then compiled into a class mission statement. A common theme in the individual mission statements is the theme of law serving some noble purpose in society. Typically embedded in the overall perspective of students is the concept of law as a calling to public service, which in turn invokes in the students and other participants "a spiritual notion of their work" (Hall, 2005, p. 215).

Another assignment requires each student to write a letter to themselves about how they see themselves as lawyers and what they hope to be in the future. These sealed letters are later mailed to the students, unopened, 5 years later, after they graduate. In this small way, this law school course succeeds in "institutionalizing [an] act of self-reflection and self-renewal" (Hall, 2005. p. 219).
Over time, those who have taken part in the course tend to experience the clarification and development of their values. For example, Hall observed that students who initially viewed big firm practice as being in conflict with their professional values have been able to come to appreciate the worthiness of this type of work following open and intensive discussions with lawyers in the course who come from such firms (Hall, 2005).

Overall, the Hale and Dorr course has required a significant investment in time and resources on the part of Northeastern University for just one course. But the course has been positively received by all participants, for whom it has made a difference in their education and work. The course ideas provide workable examples of ways of embedding more spiritual, value-based thinking into law school curriculum, an example to which Canadian law schools can look for inspiration and practical guidance.

The Reflective Lawyer Course: Suffolk University Law School

The Reflective Lawyer course was created by Clinical Law Professor Cheryl Connor at Suffolk University Law School in Boston. The course is linked to required clinical practice experiences undertaken by the students. It focuses on "the transformation of the legal state of consciousness" (Gabel, 2002, para. 1). Unlike other law classes in her law school, or most law schools, Professor Connor's class borrows from the Indigenous tradition and convenes in a "sacred circle," wherein students are encouraged to explore their states of mind and emotion in relation to law school and their clinical placements. The course content explores Eastern and Western teachings about the nature of suffering and injustice, and students are engaged in meditation, contemplation, and prayer (Gabel, para. 2).
The course is a radical departure from the typical law school experience. Students have enthusiastically welcomed the opportunity to take part in something different even though it involves risk on their part. Professor Connor described the initial general student response to the course as being "great... relief as they were able to let down their functional external selves and allow themselves to be seen and heard fully as human for the first time in law school" (Gabel, 2002, para. 3).

Strong emotions are expressed by students within the safety and sanctuary of the circle. Here, students discuss issues, problems, and experiences connected to their clinical practice that may have affected or upset them in some way. For example, one student working in a prosecutor’s office expressed concern over having to engage in an office-wide competition to see who could bring in the most prosecutions and win the longest sentences (Gabel, 2002, para. 5). Students are required to keep weekly journals expressing their highest desires and aspirations in connection with their legal and wider lives. Space is created by Connor for regular moments of collective silence in the class.

The Reflective Lawyer course demonstrates to students and others that integrating spirituality and law succeeds well when methods like Professor Connor’s are used. In the Canadian context, if offered as part of the clinical course experience, such a course would allow students the space to develop their intuitive, emotional, and spiritual voices along with their practical skills.

Developing Spiritual Intelligence (SQ) in Law School Students

It has been suggested that there exists not only logical intelligence (IQ) and emotional intelligence (EQ) but also spiritual intelligence (SQ). Professor Danah Zohar and Dr. Ian Marshall have studied spiritual intelligence and suggest that it lies at the heart
of human innovation and creative leadership (Pegasus Communications, 2004; Zohar and Marshall, 2000). They further suggest that it can be assessed by way of what is essentially an exercise in reflection. To that end they have devised a series of questions organized into seven sections representing possible spiritual paths or journeys (of which at least three will be commonly relevant to each person). Each of the seven spiritual paths is linked to four groups of questions relating to: (a) a general survey of relevant experiences, (b) common obstacles to progress, (c) themes for further progress, and (d) some transpersonal or more conventionally spiritual aspects of any given path. The seven paths are: (a) duty, (b) nurturing, (c) understanding, (d) personal transformation, (e) brotherhood, (f) servant leadership, (g) the centre (Holistic Education Network, n.d.). A visual depiction of this assessment is designed by this writer in Figure 5.

Examples of questions suggested by Zohar and Marshall (2000) for reflection within these paths are:

1. What is your present moral code? What is its source? How do you follow it?
2. Can you, in intimate relationships, be open and honest about difficult topics?
3. Can you usually see some value in both sides of an argument? If so, what happens? Can you progress beyond this point?
4. Are you intellectually seeking something? Try to define what it is you want to understand better. What might help you with this? Hinder you?
5. About what do you feel passion (i.e., relationships, causes, art, vocation)? Are there ways of feeling that you try to avoid? In any given emotional situation, do you see many possible styles of expressing your feelings?
Figure 5. Spiritual intelligence (SQ) assessment.
6. Consider an example of personal behaviour that moves you. What are its pros and cons? Are there examples of rebels or rogues with whom you identify? What can you learn about yourself from that?

7. Is justice important to you? For everyone, or just a few groups with whom you can identify? Have you ever felt that you could lay down your life for certain people or causes?

8. Have you ever had visions of or longings for the way an ideal group or society could live? Did you do anything about it?

9. If your deep vision is challenged, do you give up?

10. Are you willing to stand up and be counted for what you most value, even if it has no immediate chance of being accepted by others? Have you ever experienced something holy, sacred, or as an intelligent source of energy larger than yourself?

11. If you were to die tonight, would you feel that your life has been worthwhile?

(Holistic Education Network, n.d.)

Many of these questions for assessing spiritual intelligence appear to be particularly relevant for law students. Studies show that upon entering law school, many law students are idealistic and view their future in law as not simply a job or profession but a calling to serve the interests of justice and the public, particularly those who have no voice or whose voice is compromised in some way. By the end of law school, many students lose this perspective and come to think the opposite: They have learned to remove emotion, passion, and spiritual ideals from legal considerations. Upon graduation, many students, especially those carrying heavy debt, consider their original views to be naïve, simplistic, unattainable, idealistic, impractical, and/or unprofitable.
Incorporating some type of ongoing spiritual assessment or reflection into the law school curriculum would help to reverse the above trend. It would communicate to the students that the powers that be value the importance of spiritual intelligence and reflection in legal education. Making such discourse central to law school pedagogy would reinforce to students the idea that law is the calling they originally thought it was: a calling to which one must bring all of one's intellectual, emotional, spiritual, and moral resources.

**Spiritual Law Schools: The Ideal**

Recent spiritual and holistic ideas gleaned from different cultures, traditions, and learning disciplines hold significant promise for the humanizing and healing of legal education. Some of these ideas have begun to be used to formulate different curriculum and practice teaching and learning strategies. These strategies have been successfully applied in actual law school pedagogy and curriculum, particularly in the U.S. The particular examples referred to in this chapter successfully use therapeutic and preventive ideas and practices, MI theory concepts, emotional intelligence, and spiritually based practices. Such strategies, if applied widely by participants in the legal community, have the potential to make legal education more therapeutic, intellectually sophisticated, emotionally intelligent, and morally and spiritually meaningful.
CHAPTER SEVEN: SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

At the end of the first decade of the 21st century, most Canadian law schools, like their American and UK counterparts, continue to perpetuate numerous unhealthy, pedagogically limited values, norms, and practices. The research reveals that many participants in legal education, particularly in first year, are distressed and depressed. They feel disappointed in and distanced from their teaching and learning. The less than humane educative approach used by the vast majority of North American law schools was recently described by Northwestern University Law School Dean David Van Zandt in 2007 as follows: "For years, we've simply relied on students being very smart, and then basically gave them academic training and then threw them out [into the world]" (Baldas, 2007, para. 16). These findings support my own personal experiences in law school, which serve as a prism through which I have explored questions about historical, current, and emerging challenges facing law schools and considered their possibilities for becoming places that reflect a more humanistic, aesthetic education. Until recently, there has been widespread institutional failure to address the unhealthy values and attitudes that students are exposed to via standard curricula and overall pedagogical paradigms. Research findings show that the alienation from self and morality that begins in law school flows into the legal profession, affecting its members and the public it serves.

The limited paradigms and perspectives that mark Canada's legal institutions have remained in place until now as a result of the forces of history and tradition. Any new humanizing efforts are faced with neo-liberal political and global market forces. The infusion of humanizing theories, practices, and values into educational fields such as
medicine, the social sciences, and even business has failed to affect Canadian law schools to date in the same way. There are few examples in the Canadian literature relating to humanistic and healing ways of teaching and learning law or proposing holistic legal institutional attitudes and environments. This study addresses this gap by exploring new extralegal perspectives from such fields as humanistic psychology, Comprehensive Law, virtual technology, and spirituality and examining how these perspectives can be integrated into Canadian legal education to make it healthier, richer, and more humane. These perspectives and concepts are examined as emerging themes in the field of humanizing law, with a view to determining the feasibility of their theoretical and practical integration into legal education.

Strategies for integrating these theories into legal pedagogy and curriculum have been explored and analyzed. Examples of successful curriculum created by current law professors have been presented. The paper also suggests one original MI-based family law course model and proposes a general model of what the ideal holistic Canadian law school of the future might look like.

Conclusions

Legal education needs humanistic input. A variety of approaches are possible to achieve this. This paper finds that it is possible to link Multiple and Emotional Intelligence theories, Comprehensive Law vectors, virtual technology, and spirituality to the theory and practice of legal education. Integrating these ideas and concepts to legal education could result in deeper, more meaningful, and positive learning experiences for law students. Specifically, such integration enhances (a) theoretical understanding, (b) skill development, (c) relationship building, and (d) emotional and moral growth. Those
who teach and learn using these strategies report greater enjoyment in their work and learning, a sense of being intellectually challenged, greater confidence in teaching and lawyering skills, and richer relationships with coparticipants. Overall, participation in these new ways of teaching, thinking, and learning has resulted in positive, humanizing experiences for both law students and their teacher/mentors. Given the above, Canadian law students stand to benefit significantly if law schools were to consider including any or all of the proposed cognitive, emotional, technological, and spiritual dimensions in their pedagogical vision.

Implications

In the event that Canadian law schools were to adopt or integrate the theories and ideas discussed in this paper, what would be the implications for the schools?

Implications for Theory

Integrating MI theory, Comprehensive Law ideas, spirituality, and/or new technology-based learning theories into a law school would require a substantial investment of time, effort, and training. Faculty would need to be trained in these theories and in their use, and may express resistance. They would also have to be persuaded to emotionally and philosophically commit to their value. Text and other teaching material would need to be reconsidered. Classrooms may have to be reconfigured to allow for the transmission of ideas via increased collaborative and workshop-oriented interaction. New curriculum would have to be created. Precedents currently exist but are rare. New curriculum ideas could be introduced slowly and in stages. They could be offered initially on a course-by-course basis or to a limited number of students in a particular year or stream and then offered more widely from there. The ideas in the LSV course previously
discussed in Chapter Four of this paper were created and implemented in stages and eventually became a successfully embedded part of the entire law school curriculum. The Glasgow Graduate School of Law virtual learning technology program discussed in Chapter Five was also introduced one course at a time and now offers several course topics in the virtual learning format, with more in development. In Canada, a newer Law Co-op program combining theory and practice is offered at the Faculty of Law at the University of Victoria. It currently offers space to a limited number of students only (35 in total) with demand currently exceeding availability (University of Victoria Faculty of Law, 2003). Ideally, all interested law students would eventually be able to take part in such a program at all law schools.

Implications for Practice

The introduction of MI/EQ theories and practices, Comprehensive Law techniques, virtual world simulation learning, and/or SQ assessment exercises would result in learning environments that would be much more collaborative and skill development oriented than the existing theoretical, lecture style, individual learning-oriented status quo. Such changes would require those in the legal academy to commit to the idea and value of dramatically increasing the training and skill development portion of the curriculum. Reevaluating the importance of teaching and practicing skill development is already underway at some law schools, as evidenced by the increase in clinical opportunities and creation of more co-operative work/study.

Clinical practice and skill development spaces, virtual learning environments, and spaces for reflective and meditative practices would need to be provided. This would be economically prohibitive in some cases. Schools could consider sharing special
practice experts/mentors, physical or virtual learning environments, and communications and "practice" facilities with other law schools or other public and private institutions. For example, a virtual learning technology unit such as the one developed at GGSL, could be based in a law school but shared with numerous other disciplines (or vice versa) at the same university or even other universities or institutions.

**Ethical Implications**

By making their environments MI/EQ sensitive, creating meaningful virtual learning worlds, and broadly incorporating spiritual practices such as reflection, journaling, and SQ assessment into their entire curriculum, law schools would be communicating their desire and intention to restore ethical and moral perspectives to a more central place in the law school story. Such changes would also indicate an appreciation and respect for different student learning styles and the willingness to better accommodate those styles. They would also communicate to students the institutional intention to cultivate a more student-centered and student-sensitive epistemology. The realization of this possibility would have major implications in terms of the depth and quality of the law student experience and of future lawyering in Canada.

**Where Do Canadian Law Schools Want to Go?**

Canadian legal education is in crisis and in need of a new, unifying character and vision. It is at a philosophical and structural crossroads and will likely move in one of three directions:

1. It will become ever more corporatized and allow market and global forces to reinforce a morally neutral business paradigm. This approach is attractive to some schools because it perpetuates the status quo, is economically and politically expedient,
will attract the most "success"-oriented students, and requires the least amount of internal structural change.

2. It will move toward a model of teaching and learning that reflects the holistic ideas and practices such as those analyzed within this paper, currently being adopted by reform-minded law schools and other professional schools such as medicine and graduate education. This approach is the most idealistic, as it will require the exercise of radical leadership and moral authority. It is the most economically prohibitive and would necessitate fundamental philosophical and structural reorientation on the part of leadership and faculty. It also flies in the face of powerful economic and political trends described elsewhere in this paper. For students, however, it would provide a dramatically richer education experience.

3. It will not move aggressively in either direction, but instead each individual law school will realize a particular combination of both. The schools will allow themselves to continue to be directed by market forces, moored by traditionally accepted but essentially limited theories and practices, but will move forward with certain academic and clinical curricular additions on an ad hoc basis with the depth and amount of change varying from law school to law school depending on its budget, faculty, the philosophical orientation of its leaders, and political trends of the moment. External incentives (such as private or corporate sponsorships or government financial support for the creation of particular programs/centres) would also continue to influence pedagogical priorities. Some changes will likely be limited or peripheral in terms of their effect on the student experience, and some will result in genuinely transformative, value-oriented, student-centered experiences. Research, history, and the intrinsic pragmatic legal education persona all
indicate that this third path is the most likely path that will be followed by Canadian law schools. Such a path, while not the ideal, would be welcome for the positive changes that it would bring to the student experience most of all.

It is true that the creation of true humanistic and healing law schools will require a change in intellectual vision and in values and the falling away of philosophical and structural barriers. Of fundamental concern is the likelihood that, as long as law schools fail to establish underlying change in their value orientation, they will remain subject to harmful internal and external forces that could continue to threaten the personhood of law students and the lawyers they become.

While more extreme humanistic and holistic changes may have seemed unrealistic even 10 or 20 years ago, they have suddenly become more possible today than ever before, for a number of reasons. The recent (and continuing) flood of women into the profession has created groundbreaking change in terms of the field’s emerging dominant personality type. Women are generally imbued with an ethic of care orientation and will bring that perspective into their decision making and practices as they gain positions of influence and power within legal academia. More minorities are entering the profession as well. Many bring with them nontraditional worldviews and less confrontational dispute resolution traditions, such as the restorative justice approach practiced by Indigenous populations. Some nontraditional students also bring with them more culturally based reflective practices than are commonly present in Western education. Older mature students are also returning to education, and more of them are attending law schools, bringing with them the wisdom and variety of their collective prelaw experiences. Finally, future generations of students coming into law schools will be well versed in
internet communications technology, gaming, virtual worlds, and simulated learning environments. They will be able to learn and interact in web-based learning environments with more skill and ease than current or earlier generations. Such a learning environment would be more familiar and comfortable to many law students of the future than would a traditional text and written and spoken word learning environment. Global virtual learning experiences may be not only welcomed but expected by future generations as the new norm.

All of these different and new populations together will bring a variety of sophisticated and wiser holistic perspectives, values, and expectations to the legal education environment. Simultaneously, the increasing potential for cross-institutional and cross-cultural communication and curricular democratization continues to grow as a result of globalization and the dominance of the World Wide Web in human relations (Maharg, 2007). Global virtual and other web-based connections can be made available to law schools in a way not nearly as economically prohibitive as first world global physical connecting would be. Such connections will transform the meaning of words such as "learning environment," "interacting," "transacting," and hopefully "legal education." For the first time in history, a different set of individuals will be presented with previously unavailable opportunities to influence the content, look, and feel of legal education in the years to come.

**Promising Evidence of the New Humanism in Canadian Law Schools**

Canadian schools have begun to adopt some new course designs, curriculum practices, technological communication forms, and clinical experiences, some of which
reflect the ideas and practices examined in this paper. Does this mean that holistic Canadian law school environments are a real future possibility?

In 2007, two leading North American law schools, namely Harvard Law School in the U.S. and Osgoode Hall Law School in Canada, made self-described "groundbreaking" announcements. Harvard announced what the school described as "the most sweeping changes to ... first year curriculum in 100 years, requiring first year students to take three new courses, including a class on legislation and regulation, another covering global systems, and a third focusing on problems and theories" (Baldas, 2007, para. 10). Osgoode Hall Law School also made changes to its first year curriculum "for the first time in 30 years" (Hill, 2007, para. 10), by making a first-year ethics course mandatory. Simultaneously, Osgoode Hall has reinforced the value of legal research with the recent confirmation that the new Osgoode course was created in part in response to "the growing emphasis in the academic literature of the importance of ethics and professionalism in legal education" (Hill, para. 10).

Other faculties across Canada are rethinking their course offerings and methodologies. Recent reforms made by the law school at McGill University in Montreal (McGill) are noteworthy. McGill is now offering what has been described as a trans-systemic curriculum (Arthurs, 2007). It is an ambitious, multidimensional curriculum which includes courses (in both English and French) that integrate civil and common law perspectives, domestic and international perspectives, and legal perspectives with those of other disciplines (Arthurs, 2007). The curriculum reaches beyond domestic legal concerns and attempts to help students to make connections between various legal perspectives, state and non-state systems, and other non-legal disciplines. The McGill
curriculum has been described as "an ideal-type...a thought experiment in what might happen to legal education in this era of globalization [and] neo-liberalism" and an approach that challenges "predictable outcomes" and "fixed values" (Arthurs, 2007, para. 27-28).

A recent healing innovation has been the establishment of Wrongful Conviction workshops at three different law schools (University of British Columbia [UBC], Osgoode, and University of New Brunswick [UNB]) in the wake of the Donald Marshall, David Milgaard, and Guy Paul Morin cases. At UNB, the workshop is conducted in seminar/clinical format wherein students examine what causes wrongful convictions. The students develop investigative skills for credit by examining and becoming involved in an actual murder case. They meet with inmates, speak with various participants in the case, and help counsel prepare a brief that could then go to the justice minister. Osgoode and UBC offer similar real-life experiences in their courses, both part of a wider initiative called the Innocence Project (Hill, 2007; Osgoode Hall Law School, 2007). The UNB course is an excellent example of the successful marriage of the academic and the clinical in a Canadian law school course. It also cultivates within the students a sense of social justice, a sense of compassion for innocent victims, and a chance to develop a powerful perspective on the strengths and fallibilities of the criminal justice system.

Two other law schools, at the Universities of Windsor and Ottawa respectively, have developed an ongoing "virtual exchange," whereby students studying in one school can take a course at the other law school via video conferencing (Hill, 2007). This method of sharing courses and resources via internet communications technology (ITC)
represents a simpler alternative to the virtual world courses currently offered at Harvard, NYC Law, and GGSL, all previously described in Chapter Five of this paper.

Other recent Canadian law courses reflecting humanistic characteristics include a Law of the Olympic Games course at the University of British Columbia, involving an interdisciplinary mix of sports and entertainment law, intellectual property and finance along with private-public relationships and environmental sustainability, within the real world example of the Olympic Games to be held in British Columbia in 2010 (Hill, 2007).

On their face, some of these changes appear to be clear steps in the right direction. But they do not appear to be truly "groundbreaking," that is, reflective of the underlying paradigmatic changes that need to occur before law schools generally can be called morally based, humanistic, or even fully mentally and emotionally healthy places. As Harvard acknowledges, first year in particular leaves an indelible "imprint" on students (Baldas, 2007). Other deans have recently acknowledged that despite pockets of positive change to first-year curriculum as noted above, law schools are still "failing... students" in many other respects and that ultimately, "a strong and responsive curriculum has to... address the full person" (Baldas, 2007, para. 27).

**Recommendations for Future Research**

Some specific issues arising out of this study potentially merit further research.

*Moral Leadership*

- Can law schools better model authentic authority and moral leadership?
- How can Canadian law schools raise (or equalize) the profile of learning and practice in the area of social justice, poverty law, and other public service work?
**Harmful Practices**

- To what extent are harmful practices in legal education linked with current pervasive lawyer dissatisfaction in Canada?
- What are the most effective ways to raise awareness of the effects of harmful practices in Canadian law schools?
- What current law school policies and practices are working best/least?

**Admission and Tuition**

- To what extent do admission and tuition policies and barriers affect the student body representation and ultimately the legal profession?

**Faculty Qualifications**

- Would requiring law teachers to obtain some type of degree in education, or some other teacher training, make a difference in faculty awareness of humanistic teaching philosophies and methods and in the ability of law teachers to incorporate such methods into their own curriculum?
- How best can faculty in other disciplines be linked to the law school environment?

**Curriculum/Teaching Methods**

- Is there is any value in retaining Socratic style teaching methods?
- How could the Comprehensive Law vectors' themes and practices be best integrated into Canadian legal education, and what priority should this approach be accorded?
- How can more meaningful student engagement and assessment be achieved?
• How can legal educators create more opportunities for spiritual and ethical discussion and practice in the curriculum?

*Learning Environment/Technology*

• What is the feasibility and value of establishing virtual learning environments, and introducing into the law school environment "smart" rooms, malleable classrooms, "law offices," meditation spaces, green spaces, and other holistic spaces?

**A Proposed Holistic Model**

What would the ideal holistic Canadian law school look like? This writer proposes a general picture of what it could look like (See Figure 6). It would have the physical openness and accessibility of the University of Victoria, the social justice orientation of the University of Windsor, the sensitivity to minority cultures reflected in the customized Asian and Indigenous study programs and community links at the University of British Columbia and the University of Toronto law schools, and the global perspective of McGill University's law school. It would have a diverse student population whose academic, work, and volunteer experiences, communication skills, and personal interviews and portfolios would be equally instrumental in facilitating their admission.

The ideal holistic law school would have small class sizes and tuition fees similar to those of east coast schools, with a recently suggested fee payment policy that would allow students to potentially defer payment partially or completely until after obtaining work postgraduation (Pardy, 2004). The school would offer co-op and other experiential learning programs spanning various disciplines, institutions, real and virtual worlds, and even physical countries. Its programs would consist of possibly more than the existing
Figure 6. Ideal holistic Canadian law school.
standard of approximately 15 hours per week of classes or the standard 3-year LLB or JD (Toronto) degree in order to allow for deeper interdisciplinary and multidisciplinary work, broader experiential learning and skill development, and the incorporation of new curriculum reflecting some of the ideas explored within the paper. The school would offer engaged, humanistic teachers like Susan Daicoff and William Green; and it would offer courses on how to deal with law student distress and alienation, using the handbooks and studies of Lawrence Krieger.

The school would be bright, light, eco-friendly, and connected to its surrounding environment. It would be physically welcoming, multidimensional, cognitively and emotionally intelligent, and technologically connected. Its humanistic faculty would hail from many disciplines and be educated in the latest teaching, learning, and assessment education theories and practices.

The ideal school would offer arts and skill/theory-based, MI-sensitive education in engaging ways to an intellectually, economically, culturally, and age diverse student population with whom it would share a meaningful and value-rich educational experience. The ideal holistic Canadian law school would cultivate holistic law students who would go on to serve society in a multitude of helpful ways that would reflect the moral leadership and humanity with which they were taught.
References


Law School Survey of Student Engagement Annual Survey Results (2006).


McKinney, R. (2003). Depression and anxiety in law students: Are we part of the problem and can we be part of the solution? *The Journal of the Legal Writing Institute, 8*, 1-25.


http://blogs.law.harvard.edu/cyberone/administration/course-description

http://www.lsac.org/canadianCFC/Canadian_homepage.asp

http://www.fcis.oise.utoronto.ca/~daniel_schugurensky/assignment1/1969mcmaster.html

Osgoode Hall Law School. *The Osgoode Hall law school innocence project.* (2007). At
http://www.innocenceproject.ca


University of Victoria Faculty of Law. (2003). *Admission to law co-op*. At http://www.law.uvic.ca/Admissions/admission_to_law_coop.php


