

## Fundamental Principles and Challenges of Humanizing Legal Education

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*So once it would have been— 'tis no more;  
I have submitted to a new control:  
A power is gone, which nothing can restore;  
A deep distress hath humanized my soul.<sup>1</sup>*

A few months ago at the breakfast table, I mentioned to my husband that I was going to be giving a speech about humanizing legal education. He tore himself away from the newspaper, looked up at me with an expression that told me he was really trying to be interested, and asked, “Oh, is this another one of those computers and law conferences—are law professors worried they’ll lose their jobs to computers?”

His question made me realize that while the humanizing legal education community has been recognized as an official section of the American Association of Law Schools (AALS);<sup>2</sup> has an active listserv with student, scholar and attorney members;<sup>3</sup> and has hosted international conferences such as this one; there is no clear definition of “humanizing legal education.” In this essay, I suggest three principles that underlie the scholarship of those who seek to humanize legal education and then ask some hard questions about the economics of legal education that challenge our ability to meet any of these principles.

### I. FIRST, DO NO HARM<sup>4</sup>

To begin, scholars devoted to humanizing legal education might

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1. William Wordsworth, *Nature and the Poet*, in *THE GOLDEN TREASURY*, (Francis T. Palgrave, ed., 1875), available at <http://www.bartleby.com/106/276.html>.

2. American Association of Law Schools, Section on Balance in Legal Education, [http://www.aals.org/services\\_sections\\_lh.php](http://www.aals.org/services_sections_lh.php) (last visited Jan. 18, 2008).

3. See List Serve, [http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool/listserv.html](http://www.law.fsu.edu/academic_programs/humanizing_lawschool/listserv.html) (last visited Jan. 18, 2008).

4. The phrase, of course, comes from the physician’s Hippocratic Oath, and I am certainly not the first to use it in connection with discussions of the effect of legal education on our students. See, e.g., Laurie A. Morin, *Reflections on Teaching Law As Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 *TULSA L.J.* 227, 242 (2000) (arguing that law faculty should practice mindfulness and create space for students to reconnect with their own goals and values).

consider the language we choose: what is it to “humanize” something? According to the Oxford English Dictionary, “humanize” means to “make more humane” or “give a human character to.”<sup>5</sup> My sixth grade teacher—a dedicated and fearful old woman who suffered fools not at all—always told us that you could not define a word with the same word or a derivative of that word. Inspired by Mrs. Nugent, I looked up “humane” and found that the first definition of the term is “having or showing compassion or benevolence.”<sup>6</sup> Humanizing, then, must be about compassion and benevolence. At a minimum, humanizing should remove that which is inhumane or dehumanizing. Thus, a consistent theme of the scholarship of humanizing is that law schools need to identify negative stressors in the law school environment, reduce or eliminate those as much as possible, and help the students to manage those that cannot be eliminated.

This seems so self-evident, but at one time it was not so clear. In 1991, the same year that Gerry Hess, with characteristic idealism and enthusiasm, was creating the Institute for Law School Teaching, I wrote my first published law review article called *Fear and Loathing in the Law Schools*.<sup>7</sup> My thesis was a fairly straightforward one: many aspects of legal education created undue and unnecessary stress which interfered with learning. My faculty colleague who had been assigned to guide me through the tenure process read it and told me it was nicely written, but probably would not count as legal scholarship. He asked, “Couldn’t you write something I can agree with?” I know he did not mean it that way.

What was it that was so foreign in that article? That we were creating threatening learning environments? That those environments undermined student learning; and that student learning could be enhanced by balancing demand and reward, and by placing more control in the hands of the students? I recall clearly another colleague’s reaction to my article at that time. This caring teacher, passionately committed to the law and justice, said I had it all wrong: “If they can’t take the heat, they should get out of the kitchen. The practice of law is brutal. We need to get them ready for it.” Getting them ready for it meant creating an equally brutal, demanding, and disorienting educational experience.

I do not mean to suggest that my senior colleagues were uncaring and anything less than fully committed to their teaching responsibilities. I do believe, however, that a subtle but significant headwind in reform of legal education is grounded in the professoriate’s sense of helplessness.

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5. OXFORD ENGLISH DICTIONARY 445 (1st ed. 1970).

6. HighBeam Encyclopedia, <http://www.encyclopedia.com/SearchResults.aspx?Q=humane> (last visited Jan. 18, 2008).

7. B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627 (1991).

ness about their role as teachers. All but a few of us labor under the disability that we are not trained to be, nor professionally formed as, teachers. Our philosophies and practices of teaching are formed by our own experiences as students. Thus, for some, it is difficult to conceive the power and influence we have as teachers to influence our students' learning or professional development. The hauntingly eloquent article by William Prosser in 1948, *Lighthouse No Good*,<sup>8</sup> is a classic expression of the thesis that professors do not—and seemingly cannot—know how to teach. Prosser tells the tale of asking a respected senior colleague how to teach, who responded:

“I think teaching law is rather like herding sheep. You run around behind the students and bark at their heels, and head off the ones that start for the hilltops, and after a while, if you create enough commotion, they move down the valley and arrive at a destination without ever knowing how they got there. Of course,” he added after further thought, “whether it’s the right destination is another question, and there is always somebody who wants to argue about that.”<sup>9</sup>

The professoriate has moved beyond Prosser and believes that we can teach, given education and practice. Hopefully, the days of institutional and professorial hazing as a necessary part of that teaching are rapidly receding. Those committed to that end can feel good about the progress made. We have lobbied our colleagues to consider the emotional climate of legal education and to address the debilitating effects of stress on our students, lest we continue to build a profession with significant problems of substance abuse, depression, and other stress-related problems.<sup>10</sup> We have given speeches at orientation<sup>11</sup> and published pamphlets for students<sup>12</sup> to instruct them in the self-management approaches that will help them to cope with the demands of law school. We have held numerous conferences and workshops, and written an impressive collection of scholarship on the subject of the learning environment.<sup>13</sup>

Since 1991, law schools have made significant progress in creating

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8. William L. Prosser, *Lighthouse No Good*, 1 J. LEGAL EDUC. 257 (1948), reprinted in 28 STETSON L. REV. 1017 (1999).

9. *Id.* at 1027.

10. Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1346-47 (1997) (“More recently, lawyers and social scientists have documented a growing dissatisfaction among lawyers and an internal, negative attitude toward the profession in the last ten years. Approximately 20% of lawyers are extremely dissatisfied with their jobs. As evidence of this dissatisfaction, lawyers are currently experiencing a significantly higher level of depression (19%) and substance abuse (15-18%) than individuals in other professions (among the general population, only 3-9% is depressed, and only 10-13% is chemically dependent.”).

11. See, e.g., Barbara Glesner Fines, *Law School and Stress* (1999), available at <http://www.law.umkc.edu/faculty/profiles/glesnerfines/BGF-STRS.HTM>.

12. Larry Krieger, *The Hidden Sources of Law School Stress* (2006), available at [http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool/images/EP.pdf](http://www.law.fsu.edu/academic_programs/humanizing_lawschool/images/EP.pdf).

13. Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 76-86 (2002).

more supportive environments for students. If politics of the AALS are any indication, we have had enormous success. There are now two AALS Sections—Academic Support, created in 1998, and Balance in Legal Education, created in 2006—whose missions include attention to learning environments. Today, nearly every law school in the nation has some form of academic support beyond the Dean of Students. Increasingly, law schools include student services programs directed toward stress management. In 2007, the Law School Survey of Student Engagement (LSSSE) was administered in seventy-nine law schools.<sup>14</sup> More than seventy-five percent of students rated their legal education good or excellent.<sup>15</sup> There is still progress to be made, however.

Legal education cannot truly be humanized while so many faculty members are wedded to an educational philosophy grounded in a competitive ethos. Legal institutions are in a race to the top, often of such meaningless scales as *U.S. News & World Report*.<sup>16</sup> Law schools reward faculty based on external, quantitative standards of excellence. Excellent scholarship is that which has more pages, more footnotes, garners more citations from others, and gets more downloads from the Social Science Research Network (SSRN). Law schools reward students likewise: better students are those who are involved in more activities, produce more academic work, and are able to amass more academic honors. It is ironic that one way humanistic scholarship has gained greater attention is because Ken Sheldon and Larry Krieger's work<sup>17</sup> has now demonstrated empirically that supportive educational cultures improve student academic achievement. Yet, at the core of humanistic educational philosophy is the understanding that the more individuals aim for the external rewards of achievement, the less likely they are to reach their goal. Accordingly, a law school that seeks to improve its numbers and those of its students by humanizing its educational process simply doesn't get it: "you can't get there from here."<sup>18</sup> Competitive cultures create powerful extrinsic motivators that undermine intrinsic motivation, skew and narrow learning, communicate a

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14. Law School Survey of Student Engagement, [http://lssse.iub.edu/html/quick\\_facts.cfm](http://lssse.iub.edu/html/quick_facts.cfm) (last visited Feb. 14, 2008).

15. LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, STUDENT ENGAGEMENT IN LAW SCHOOL: KNOWING OUR STUDENTS 14 (2007), available at [http://lssse.iub.edu/2007\\_Annual\\_Report/pdf/EMBARGOED\\_LSSSE\\_2007\\_Annual\\_Report.pdf](http://lssse.iub.edu/2007_Annual_Report/pdf/EMBARGOED_LSSSE_2007_Annual_Report.pdf).

16. U.S. News & World Report—America's Best Graduate Schools 2008: Complete Guide to Law Schools, [http://grad-schools.usnews.rankingsandreviews.com/usnews/edu/grad/rankings/law/law-index\\_brief.php](http://grad-schools.usnews.rankingsandreviews.com/usnews/edu/grad/rankings/law/law-index_brief.php) (last visited Feb. 14, 2008).

17. Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 263-64 (2004).

18. Who knows where this phrase comes from. It is the punch line to an old joke about getting directions from a Yankee. My best shot at a citation is ODGEN NASH, YOU CAN'T GET THERE FROM HERE (1957). I am not the only author who has found that the phrase aptly describes education reform that fails to address the pernicious effects of competition. Jeff Howard, *You Can't Get There from Here: The Need for a New Logic in Education Reform*, 124 DAEDALUS 85 (1995).

preference for hierarchy and control by the “winners,” and undermine professional values of cooperation and service.<sup>19</sup>

Though law faculty and administrators increasingly are willing to talk about these issues of supportive educational climates, until resources reflect this commitment, the talk is mere lip service. For example, we know that learning is enhanced if students are engaged, and we know that *their* engagement depends on *our* engagement. Yet, the LSSSE results indicate that “about 15% of [first-year students] and about one quarter (24%) of [second-year students] *never* received prompt feedback from faculty members.”<sup>20</sup> “One in three 3Ls (31%) spent fewer than eleven hours per week reading and preparing for class.”<sup>21</sup> Why, when we know what is required for engaged and balanced learning environments, do we not make the structural and curricular changes necessary to create these environments? The entrenched belief in the value of competition and the importance of faculty control are significant impediments to reform.

Currently, no law school has a student-teacher ratio of less than ten to one, even though Interpretation 402-1 of the Standards for Approval of Law Schools and Interpretations now permits a school to include persons other than full-time tenured or tenure-track professors in computing this ratio.<sup>22</sup> Of course, some professors count less than others: Interpretation 402-1 counts teacher/administrators at 0.5; non-tenure track teachers—clinicians and legal writing instructors—at 0.7; and adjuncts and librarians at 0.2.<sup>23</sup> The percentage allocated for non-tenure-track clinicians and legal writing instructors is especially telling of our priorities. While these faculty members, on average, spend the most individualized time with students, they only count for 70% of a faculty member in terms of student-teacher ratio.<sup>24</sup>

Why are those faculty members who have the most engagement with students often given the fewest resources, status, and power?<sup>25</sup> Why do law schools continue to favor classroom teaching over clinical and experiential teaching? The simple answer is that teaching is only one of our priorities. All resources must be balanced in achieving the two primary aims of law schools: scholarship and teaching. Today, it

19. Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 896 (1997).

20. LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, ENGAGING LEGAL EDUCATION: MOVING BEYOND THE STATUS QUO 9 (2006), available at [http://lssse.iub.edu/2006\\_Annual\\_Report/pdf/LSSSE\\_2006\\_Annual\\_Report.pdf](http://lssse.iub.edu/2006_Annual_Report/pdf/LSSSE_2006_Annual_Report.pdf).

21. *Id.*

22. See AM. BAR ASS'N, 2007-2008 ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 30-31 (2007), available at <http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%204.pdf> (allowing those teachers employed full-time on a tenure track or its equivalent to be counted in computing the student-teacher ratio).

23. *Id.* at 31.

24. See *id.* at 30-31.

25. Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 16 BERKELEY WOMEN'S L.J. 3, 9-13 (2001).

seems that all resources must be balanced in achieving yet a third aim: reputational enhancement. In that balancing act, it is difficult to give teaching real weight. How can a law school leverage a faculty member's dedicated, respectful, energized devotion to student learning into a glossy brochure to improve one's reputational rankings in *U.S. News & World Report*? How can prospective faculty members shine at the recruitment conference with their experience and enthusiasm for supportive educational climates? In contrast, a faculty member's expertise in a subject, publications, speaking engagements, and news reports that attest to that expertise, can indeed be the subject of reputational marketing.

At one time, I would have argued that we could mitigate the harm our institutional cultures of competition create.<sup>26</sup> Today, I am less certain that anything short of fundamental institutional reform will do the job. "Add humanizing and stir" is not an effective recipe when the core and overwhelming message of the institution is competition and control. To do no harm, law schools must deliberately and courageously choose to ratchet down or step out of the hyper-competitive value system that pervades our institutions and reapportion resources and institutional priorities to create positive learning environments for students. Helpful first steps include: reallocating some of the funding used to market "reputation" into educating students, eliminating or reducing the significance of ranking systems for students and institutions, as well as making the choice to teach less quantity and more quality. What if only three classes were taught during the first year rather than four or five, and in those three classes, students could work at a pace somewhat closer to a balanced work schedule? What if those students were given the opportunity to work against a pre-determined set of criteria rather than grading them on a comparative basis? What if reflective practice and ethical judgment, taught through experiential learning opportunities, were just as critical a part of the first year of law school as analytical reasoning taught through Socratic dialogue? Clearly these would be radical changes, but only a fundamental restructuring can remove some of the negative lessons we implicitly deliver in law school.

## II. WE TEACH STUDENTS NOT JUST SUBJECTS

Certainly doing no harm—creating positive, supportive learning environments—is the starting point in valuing our students. We must do more, however, than merely remove negatives if we are to place the

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26. Glesner Fines, *supra* note 19, at 908-09 ("Even if we are inclined to accept the indictment of competition, political realities press upon us to overlook these negatives. Law schools are unlikely to eliminate grades, rankings, or required curves. Yet, we need not conclude that nothing can be done to counteract the competitive influence of these grading systems.").

highest priority on the humans we are educating. Having taught nearly twenty different courses in the curriculum at one time or another, I have been known, when asked what I teach, to quip, "I teach students." But it's no joke. And, indeed, if I go beyond my dictionary and begin to search in the history and philosophy of education, I find that classic of humanistic educational philosophers, Rousseau, who instructs: "Begin thus by making a more careful study of your pupils, for it is clear that you know nothing about them."<sup>27</sup>

Much of the work in humanizing legal education has been about making this careful study of our pupils and the compassion and benevolence we might extend to them. Student-centered teaching is as fundamental to our humanistic educational philosophy as is client-centered counseling to humanistic psychology or legal practice.<sup>28</sup> We teach our students as individuals, with all their diverse personalities,<sup>29</sup> intelligences,<sup>30</sup> backgrounds, and circumstances. We have examined a host of disciplines for insights into how we can teach in a way that respects these diverse ways of knowing<sup>31</sup> and have worked to support students' control over their own learning.<sup>32</sup> Here, too, there is much progress to report. Many faculty members are eager to learn about their students' learning styles and generational characteristics.

Why do we want to learn about our students? So that we can better teach them the law is certainly one reason. There is more we can and should teach, however, and student-centered legal education must reach to help students learn about their personal identities and professional development. For some professors, there is a tension between student-centered education and the demands to produce professionals. Those who ascribe to a theory of humanizing legal education believe that the two are inextricably intertwined. The professional development of stu-

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27. JEAN JACQUES ROUSSEAU, EMILE, OR ON EDUCATION (Grace Roosevelt, trans., Paris 1762), available at <http://www.ilt.columbia.edu/pedagogies/rousseau/index.html> (last visited Feb. 2, 2008).

28. Several scholars advocate for a more client-centered approach to lawyering, wherein the lawyer exercises an "ethic of care" in her role as counselor. See Paul J. Zwier & Ann B. Hamric, *The Ethics of Care and ReImagining the Lawyer/Client Relationship*, 22 J. CONTEMP. L. 383, 407 (1996) (urging lawyers to engage in a care-based analysis to problem solving that requires more emotional and physical involvement). The model relies upon the lawyer to engage more fully in a client's legal issue, moving away from the simplistic "rights-based" approach to explore the depths of the client's situation. See *id.*; Stephen Ellmann, *The Ethic of Care As an Ethic for Lawyers*, 81 GEO. L.J. 2665, 2667-68 (1993) (arguing that despite the tension between zeal, as required by the ethical rules of professional conduct, and the ethic of care, there might be a middle ground to incorporate the values of care into zealous advocacy).

29. Don Peters & Martha M. Peters, *Maybe That's Why I Do That: Psychological Type Theory, The Myers-Briggs Type Indicator, and Learning Legal Intervening*, 35 N.Y.L. SCH. L. REV. 169, 174-75 (1990).

30. Kristen A. Dauphinais, *Valuing and Nurturing Multiple Intelligences in Legal Education: A Paradigm Shift*, 11 WASH. & LEE RACE & ETHNIC ANC. L.J. 1 (2005).

31. Paula Lustbader, *Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 J. LEGAL EDUC. 448, 450 (1999).

32. Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2 MICH. ST. DCL L. REV. 447, 451 (2003).

dents, and their ability to perform as competent, ethical attorneys, requires that they learn more than mere doctrine and analytical skills. Proponents of humanization are concerned that students develop themselves as confident, caring, reflective<sup>33</sup> professionals, discerning their own values and purposes, and knowing how to work with others collaboratively and to understand diverse perspectives.

Here is where the skeptics might take issue: “These are not the goals of a law school education!” they would protest. “These are adults! It’s not our job to help them ‘find themselves’ or ‘understand others.’ They’ll do that on their own.” It is not that opponents would disagree that the goals of the humanizers are important—simply that it is not the law school’s job to help the students reach these goals. They are confident that students will come out of law school better and more well-rounded without their intercession. It is a classic belief. Consider Chief Justice Holmes’s discussion:

One heard Burke saying that law sharpens the mind, by narrowing it. One heard in Thackeray of a lawyer bending all the powers of a great mind to a mean profession. One saw that artists and poets shrank from it as from an alien world. One doubted oneself how it could be worthy of the interest of an intelligent mind. And yet one said to oneself, law is human—it is a part of man, and of one world with all the rest. There must be a drift, if one will go prepared and have patience, which will bring one out to daylight and a worthy end.<sup>34</sup>

Students will drift to a worthy end, but they do not drift without guidance or influence. Students do not just “pick up” their development as professionals along the way. To the contrary, students will be formed by our teaching regardless of our intention. Professional development, like morals teaching, is more often “caught than taught.” Indeed, I have argued that fundamental features of our institutional structure, such as grading curves and solitary evaluation methods, prefer values of competition and institutional control while the values of learning, cooperation, equality, and professionalism remain underprivileged.<sup>35</sup> Marjorie Silver argues that “[l]egal education should cultivate emotional intelligence” and law schools should take responsibility for preparing students for the emotional aspects of lawyering.<sup>36</sup> Bob Schuwerk demonstrates for us a course structure that can assist students in considering what it means to be a professional and the ways in which their intellectual training may be affecting their moral and ethical reasoning.<sup>37</sup> David Wexler and

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33. Justine A. Dunlap & Peter A. Joy, *Reflection-In-Action: Designing New Clinical Teacher Training by Using Lessons Learned from New Clinicians*, 11 CLINICAL L. REV. 49, 76 (2004).

34. OLIVER WENDELL HOLMES, *Brown University—Commencement*, in COLLECTED LEGAL PAPERS 164-65 (1920).

35. Glesner Fines, *supra* note 19, at 879.

36. Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCHOL. PUB. POL’Y & L. 1173, 1174 (1999).

37. John Mixon & Robert Schuwerk, *The Personal Dimension of Professional Responsibility*,

Bruce Winick, as part of their overall advocacy for a therapeutic jurisprudence, have argued for an approach to teaching and practicing law that “focuses our attention on this previously underappreciated aspect, humanizing the law and concerning itself with the human, emotional, psychological side of law and the legal process.”<sup>38</sup>

Reform, however, has come slowly, and we have far to go. While seventy to ninety percent of students agree that law school gives them a broad legal education, teaches them to think critically and analytically, helps to develop legal research and writing skills, and fosters self-directed learning, fewer than fifty percent believe that law school has helped them understand themselves or develop a personal code of values and ethics.<sup>39</sup> Only about one third found that law school helped them learn to work effectively with others, develop clear career goals, or contribute to the welfare of their community. At the bottom of the pile, only about twenty-five percent of students agreed that law school contributed to their understanding of people of other racial and ethnic backgrounds.<sup>40</sup>

The scholarship of humanizing legal education must develop more tools for helping students become reflective, cooperative practitioners. The Washburn University School of Law Humanizing Legal Education Symposium demonstrated some fine examples of that emerging scholarship: using insights from positive psychology<sup>41</sup> and counseling theory,<sup>42</sup> we are learning even more concretely and empirically how to help students deal with the stress of law school. There is better understanding of what harms our students’ sense of self—the pressure of extrinsic rewards that robs students of intrinsic motivation and the lack of control and autonomy over their schedules, lives, and learning in law school.<sup>43</sup> More work is needed to learn what can be done to enhance the personal and professional well-being of law students. Faculty members should

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58 LAW & CONTEMP. PROBS. 87, 92-114 (1995).

38. David Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T.M. COOLEY L. REV. 125 (2000); see also Bruce J. Winick, *Using Therapeutic Jurisprudence in Teaching Lawyering Skills: Meeting the Challenge of the New ABA Standards*, 17 ST. THOMAS L. REV. 429 (2005).

39. LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, STUDENT ENGAGEMENT IN LAW SCHOOLS: A FIRST LOOK 12 (2004), available at [http://lssse.iub.edu/2004\\_annual\\_report/pdf/LSSSE%202004%20Annual%20Survey%20Results.pdf](http://lssse.iub.edu/2004_annual_report/pdf/LSSSE%202004%20Annual%20Survey%20Results.pdf).

40. *Id.*

41. See, e.g., Lawrence S. Krieger, Professor, Florida State University of Law, Address at Washburn University School of Law Humanizing Legal Education Conference/Symposium: Empirical Insights on the “Why” and “How” of Humanizing Legal Education (Oct. 20, 2007) (providing concrete suggestions on how to assist our students in finding balance in law school); Denise Riebe, Professor, Brooklyn Law School, Address at Washburn University School of Law Humanizing Legal Education Conference/Symposium: Using Positive Psychology to Promote Personal and Professional Wellbeing (Oct. 20, 2007) (same).

42. Martha Peters, Professor, Elon University School of Law, Address at Washburn University School of Law Humanizing Legal Education Conference/Symposium: A Model for Stress Intervention: Toward Humanizing Legal Education (Oct. 20, 2007) (providing a comprehensive set of tools for counseling students under stress).

43. See Glesner, *supra* note 7, at 627-28; see also Glesner Fines, *supra* note 19, at 884-85.

consider, in the design of each course and the overall curriculum, how, where, and to what extent students are formed as professionals and persons.

### III. PEACE AND JUSTICE

A third value found threaded throughout all of the humanizing literature is more about explicit values education. The call to humanize legal education is part of a much larger call to humanize the profession by recapturing the essence of professional values—peacemaking, problem solving, and justice work. Both the public and attorneys themselves are increasingly disillusioned about lawyers and the law.<sup>44</sup> The answer to humanizing legal education and legal practice lies in rekindling professional values of peacemaking and service. It is little wonder that many of the voices one hears in the humanizing community are those of faculty members and practitioners working in fields such as alternative dispute resolution,<sup>45</sup> therapeutic jurisprudence,<sup>46</sup> collaborative law practice,<sup>47</sup> holistic lawyering,<sup>48</sup> and public interest practice.<sup>49</sup>

Yet, here too, much remains to be done. Just over four percent of attorneys work in legal services, public defender, or public interest practice.<sup>50</sup> The ratio of private attorneys to the general U.S. population is 1:525 but the ratio of legal aid attorneys to the U.S. poverty population is 1:6861.<sup>51</sup> In the most recent update of the famous sociological study of the Chicago Bar Association, the authors noted that the percentage of attorneys who worked for corporate clients increased from fifty-three percent to sixty-four percent between 1975 and 1995, while the percentage of attorneys representing individuals had fallen to twenty-nine percent in that time.<sup>52</sup> In the competitive culture of our law schools, our

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44. Deborah L. Rhode, *The Professional Responsibilities of Professors*, 51 J. LEGAL EDUC. 158, 159 (2001) (citing an ABA report while noting that “[l]ess than a fifth of the public has confidence in the honesty and integrity of attorneys. And less than a fifth of practitioners believe that practice has lived up to their expectations in connecting to the social good.”).

45. See, e.g., Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers and their Clients*, 7 HARV. NEGOT. L. REV. 1, 3 (2002).

46. Winick, *supra* note 38, at 429.

47. Pauline H. Tesler, *Collaborative Law: A New Paradigm for Divorce Lawyers*, 5 PSYCHOL. PUB. POL’Y & L. 967 (1999) (arguing that if “[p]erformed well, collaborative law can have a transformative effect on lawyers, clients, families, and communities”).

48. Susan Daicoff, *Law as a Healing Profession: The “Comprehensive Law Movement,”* 6 PEPP. DISP. RESOL. L.J. 1 (2006).

49. Keith Sealing, *Dear Landlord: Please Don’t Put a Price on My Soul: Teaching Property Law Students That “Property Rights Serve Human Values,”* 5 N.Y. CITY L. REV. 35 (2002).

50. NATIONAL ASSOCIATION FOR LAW PLACEMENT, AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 27 fig.3.1 (2004), [http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After\\_JD\\_2004\\_web.pdf](http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After_JD_2004_web.pdf).

51. See LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 16 (2005), [http://www.lsc.gov/press/documents/LSC%20Justice%20Gap\\_FINAL\\_1001.pdf](http://www.lsc.gov/press/documents/LSC%20Justice%20Gap_FINAL_1001.pdf).

52. JOHN P. HEINZ ET AL., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR 42 tbl.2.1 (2005).

students sometimes come to view representing individuals, especially low or middle-income individuals, as careers that are second best.

At the same time, for many attorneys in a variety of practice areas—knowing that their work is of value to society and that they are contributing to the public good—is a critical factor in their job satisfaction.<sup>53</sup> To humanize the profession, we must find ways to allow students to conceptualize themselves as attorneys, as public servants, and as agents of justice.

#### IV. ECONOMIC CHALLENGES TO HUMANIZING

Humanizing legal education is concerned with the whole student, with developing the student's capacity to meet the needs at the top of Maslow's hierarchy—self-actualization and concern for others.<sup>54</sup> However, the challenge is that, while focusing on the top of Maslow's needs hierarchy, it is easy to forget that money matters, because money supplies the bottom of the need hierarchy. Money is the single greatest challenge to humanizing legal education because economics drives much of the form and structure of legal education.

Why is the Socratic Method, in large classes with one exam at the end of the semester, still used today? It is an incredibly efficient method of education.<sup>55</sup> Why do we have a caste system of faculty in which low-paid, non-tenure track women shoulder the lion's share of labor-intensive skills instruction and academic support?<sup>56</sup> Discrimination aside, it is cheap.<sup>57</sup> How can adjunct teachers make up half of the fac-

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53. See NATIONAL ASSOCIATION FOR LAW PLACEMENT, AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 49 (2004), [http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After\\_JD\\_2004\\_web.pdf](http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After_JD_2004_web.pdf).

54. Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 428 (2005).

55. See ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 63 (1983). Michael Hunter Schwartz reports that his former colleague, Susan Keller, said it best: "It's hard to change Langdell's methodologies when we still follow Langdell's economics." Conversation with Michael Hunter Schwartz, Professor of Law, Washburn University School of Law, in Topeka, Kansas (Oct. 20, 2007).

56. The 2007 Survey of American Law Schools by the Association of Legal Writing Directors indicates that approximately seventy-three percent of legal research and writing faculty are women. ASSOCIATION OF LEGAL WRITING DIRECTORS LEGAL WRITING INSTITUTE: 2007 SURVEY RESULTS app.3, at A-3 (2007), available at [http://www.alwd.org/surveys/2007/2007\\_Survey\\_Results.pdf](http://www.alwd.org/surveys/2007/2007_Survey_Results.pdf); see also Stanchi & Levine, *supra* note 25, at 11. This percentage has been relatively unchanged since the development of legal writing programs. Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 325-26 (2000) ("Like elementary school teaching, the job has become gender-stereotyped as female, and the stability of the statistics suggests that it will remain that way indefinitely."). See generally Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 KAN. L. REV. 775, 778-79 (2001) (discussing occupational segregation in law schools); Jo Anne Durako, *Dismantling Hierarchies: Occupational Segregation of Legal Writing Faculty in Law Schools: Separate and Unequal*, 73 UMKC L. REV. 253 (2004) (describing occupational segregation, pay differentials, work load imbalances and other working conditions of legal writing faculty).

57. "Legal writing professors were being paid, in adjusted dollars, 53% of the average median salary paid to associate professors. The difference was \$33,708. They were being paid, in adjusted dollars, 41% of the average median salary paid to full professors. The difference was \$56,132." Stan-

ulty in law schools when we know almost nothing about them or their teaching styles?<sup>58</sup> Again, they cost almost nothing.

Why are the numbers of law schools and law graduates growing, despite increasing tuition rates and debt load, when the market for lawyers has grown stagnant?<sup>59</sup> Why are students paying up to 267% more for their education, compared with costs in 1990?<sup>60</sup> Why does student debt continue to rise, increasing debt to private non-government subsidized lenders?<sup>61</sup> How can students choose careers based on their own personal values and the value of professional service when twenty-five percent of our students graduate with more than \$100,000 of cumulative debt?<sup>62</sup>

While law school costs have exploded and debt loads have soared, associate compensation has not. According to the National Association for Law Placement, the median salary for first-year associates in private practice was \$80,000 in 2004, the last year that figures for comparison were available.<sup>63</sup> The widening income inequality one sees in the United States today exists for established attorneys as well. One recent study found that between 1975 and 1995, the inflation-adjusted average income for attorneys in the top twenty-five percent of earners grew by twenty-two percent, while income for the other seventy-five percent of earners dropped.<sup>64</sup>

How can students become agents for justice when the beginning salary for attorneys in public interest work was \$36,656 in 2004?<sup>65</sup> How can students follow their own career goals without feeling that anything other than corporate representation is second-best when attorneys in small firms earn dramatically less than those in larger firms?<sup>66</sup> When debt loads soar and salaries stagnate or fall, students simply cannot be

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chi & Levine, *supra* note 25, at 11.

58. The American Association of Law Schools (AALS) reports that of all faculty members at ABA accredited law schools, 7266 are full time and 7081 are part time. SPREADSHEET OF ABA-ACCREDITED LAW SCHOOLS' VITAL STATISTICS (2007), available at <http://www.abanet.org/legaled/statistics/charts/OG%20Left%20Page%201%202008.xls>.

59. See, e.g., Amir Efrati, *Hard Case: Job Market Wanes for U.S. Lawyers*, WALL ST. J., Sept. 24, 2007, at A1 ("Evidence of a squeezed market among the majority of private lawyers in the U.S., who work as sole practitioners or at small firms, is growing. . . . According to the Internal Revenue Service, the inflation-adjusted average income of sole practitioner has been flat since the mid-1980s.").

60. Leigh Jones, *As Salaries Rise, So Does the Debt*, 28 NAT'L L.J. 1 (2006), available at <http://www.law.com/jsp/law/careercenter/CareerCenterArticleFriendly.jsp?id=1138701909390>.

61. See COLLEGEBOARD, STUDENTS RELYING MORE HEAVILY ON PRIVATE LENDERS 1 (2006), [http://www.collegeboard.com/prod\\_downloads/press/cost06/student\\_debt\\_06.pdf](http://www.collegeboard.com/prod_downloads/press/cost06/student_debt_06.pdf).

62. In 2002, almost 87% of law students borrowed to finance their legal education, "with 81% borrowing federal funds." AM. BAR ASS'N COMM'N ON LOAN REPAYMENT AND FORGIVENESS, LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE 23 (2003). "At least a third of all law students also take out private loans (not including loans from family members)." *Id.*

63. Jones, *supra* note 60, at 2.

64. Efrati, *supra* note 59.

65. The National Association for Law Placement, New Research on Attorney Salaries at Public Sector and Public Interest Organizations (2004), <http://www.nalp.org/content/index.php?pid=191>.

66. Jones, *supra* note 60, at 24.

empowered to step out of the income race. Indeed, a national study recently “found that law student debt prevented 66% of [law] student respondents from considering a [public service career].”<sup>67</sup> Equally distressing, student loan debt is even affecting such fundamental life choices as marriage and child rearing.<sup>68</sup> A law school that leaves students with enough debt to force dehumanizing choices is not at all humanized.

To truly humanize legal education we must step out of the classroom and hallways and advocate on behalf of our students. We must step into the admissions and financial aid offices and take into account the values of investing in our students. We must step into the state houses to advocate on behalf of law, lawyers, and legal education. That we are at a crisis point is perhaps no better illustrated than by my own alma mater—the University of Wisconsin Law School—which this past year faced legislation that passed the Wisconsin House of Representatives whose aim was to defund the law school. The reason? Not because Wisconsin has a surplus of state-funded law schools.<sup>69</sup> Not because Wisconsin’s quality of education or scholarship is poor. The reason stated by Rep. Frank Lasee, the bill’s sponsor, was simply: “We don’t need more ambulance chasers. We don’t need frivolous lawsuits. And we don’t need attorneys making people’s lives miserable when they go to family court for divorces. And I think that having too many attorneys leads to all those bad results.”<sup>70</sup>

Clearly, we need to take our skills in education to reach out to the public and help them understand the value of law and the importance of investing in law school. The recently enacted College Cost Reduction and Access Act<sup>71</sup> is a good first step. This Act offers to students who have borrowed from the William D. Ford Federal Direct Loan Program an opportunity to have a portion of their debt forgiven after ten years of public interest work.<sup>72</sup> But much more is needed.

At a minimum, we must be sure our students understand the finances of law school and the profession and have the courage to tell that truth without fear of its impact on our own economic circumstances.

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67. AM. BAR ASS’N COMM’N ON LOAN REPAYMENT AND FORGIVENESS, *supra* note 62, at 9.

68. Chris Gaylord, *For Graduates, Student Loans Turn into an Albatross*, THE CHRISTIAN SCI. MONITOR, May 17, 2006, <http://www.csmonitor.com/2006/0517/p01s02-usec.html> (citing a report that found that 38% of graduates held off buying their first house because of student loans, 14% put off marriage, and 21% delayed having children).

69. University of Wisconsin Law School is the only public law school in the state. State Bar of Wisconsin, *Wisconsin Law Schools* (2008), [http://www.wisbar.org/AM/Template.cfm?section=wisconsin\\_law\\_schools1](http://www.wisbar.org/AM/Template.cfm?section=wisconsin_law_schools1). Marquette, a private, religiously affiliated law school is the only other law school in the state. *Id.*

70. Ryan J. Foley, *Tired of Lawyers, Lawmaker Wants to Cut Law School's Funding*, ASSOCIATED PRESS, July 13, 2007, [http://www.gazetteextra.com/lxr\\_toomanylawyers071307.asp](http://www.gazetteextra.com/lxr_toomanylawyers071307.asp).

71. The College Cost Reduction and Access Act, Pub. L. No. 110-84, 121 Stat. 784 (2007).

72. Annie Marie Chaker, *Easing the Financial Burden*, CHARLOTTE OBSERVER, Oct. 14, 2007, available at <http://www.charlotte.com/business/story/318388.html>.

We must carefully consider the cost of each additional change we make in law school. If changing the culture of law schools seems a difficult task, changing the economics of law schools may prove even more difficult. Yet, if we sincerely seek to do no harm, to teach the whole student, and to prepare students to be peacemakers and agents of justice, we must put our values into action in the most concrete of terms.

I close by returning to Rousseau:

Propose what is feasible, they repeatedly tell me. It is as if I were being told to propose what people are doing already, or at least to propose some good which mixes well with the existing wrongs. Such a project is in certain ways much more unrealistic than my own, for in that mix the good is spoiled and the bad is not improved. I would rather follow exactly the established method than adopt a better method halfway. There would be fewer contradictions in man, for man cannot aim at the same time at two opposite goals. Fathers and mothers, what is feasible is what you are willing to do. Must I answer for your will?<sup>73</sup>

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73. ROSSEAU, *supra* note 27.