TOWARD MYTHOS AND MYTHOLOGY: APPLYING A FEMINIST CRITIQUE TO LEGAL EDUCATION TO EFFECTUATE A SOCIALIZATION OF BOTH SEXES IN LAW SCHOOL CLASSROOMS

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"In the last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them." Felix Frankfurter[1]

INTRODUCTION

Current literature citing the decline of the legal profession, including lawyers' neglect of the public good, their inattention to client needs, their profit-maximization techniques and an overall crisis in ethics and morale, is nothing short of overwhelming.[2] Scholars, practitioners and other observers are constantly offering critiques, suggestions and recommendations as to how society's legal community might revive its reputation and refocus its objectives.[3] Much attention has been given to the inadequacy of the legal academy, especially law schools, in preparing law students to be ethical and productive practitioners.

The feminist critique of legal education has been particularly persuasive in exposing the shortcomings of law school classrooms, most frequently from the perspective of female law students.[4] This article

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[1] Letter from Felix Frankfurter, Professor, Harvard Law School, to Mr. Rosenwald 3 (May 13, 1927), *quoted in* RAND JACK & DANA C. JACK, MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS 156 (Cambridge University Press 1989).

[2] *See generally* MARY A. GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY (1994); ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993); Deborah L. Rhode, *The Professional Problem*, 39 WM. & MARY L. REV. 283 (1999) [hereinafter Rhode, *Professional Problem*]; WALTER BENNETT, THE LAWYER'S MYTH: REVIVING IDEALS IN THE LEGAL PROFESSION (2001); BENJAMIN SELLS, THE SOUL OF THE LAW: UNDERSTANDING LAWYERS AND THE LAW (1994); Harry T. Edwards, *A New Vision for the Legal Profession*, 72 N.Y.U. L. REV. 567 (1997).

[3] *See also infra* Part III.

[4] *See, e.g.*, Morrison Torrey et al., *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267 (1998); Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547 (1993) [hereinafter Rhode, *Missing Questions*]; Banu Ramachandran, *Re-Reading Difference: Feminist Critiques of the Law School and the Problem with Speaking from Experience*, 98 COLUM. L. REV. 1757 (1998); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994) [hereinafter Guinier, *Becoming Gentlemen*]; Lani Guinier, *Lessons and Challenges of Becoming Gentlemen*, 24 N.Y.U. REV. L. & SOC. CHANGE 1 (1998) [hereinafter Guinier, *Lessons and Challenges*].

considers another application of feminism to legal education: that law students of both genders would benefit invaluably from introducing the values traditionally associated with women, and traditionally undervalued, because an emphasis on collaboration, context, emotions, ethics and empathy will effectuate a much needed socialization of both sexes.[5] This article departs from traditional feminist emphasis on the disadvantages to women law students in the current education system by shifting the perspective from the viewpoint of dissenting women to the voice of lawyers and society generally decrying the decline of the profession. Current feminist advocacy regarding what is missing and what must change in legal education applies directly to a general evaluation of law schools' inadequacies, and should be incorporated into efforts to reform and improve legal education.

In light of the feminist critique identifying a dangerous imbalance favoring masculine teaching and learning styles, the author proposes two avenues of reform for law schools. First, law schools must conscientiously and systematically teach skills that expand the traditional concept of lawyering to permit expression of a more altruistic and holistic approach, broadening the context within which a legal problem is evaluated. Such a context would accommodate ethical considerations and emotion and would facilitate communication through negotiations and other "softer" forms of dispute resolution. Second, law faculty, in their roles as professor and mentor, must foster an awareness of the profession's powerful mythology, propounding ideals above all else of justice and service, those ideals tragically silenced and lost by the sharp, objective rhetoric of the case method system. Mythology underscores the intertwined relationship between morality and legal service and also recognizes the value of narrative and its potential to sharpen our understanding of our own professional identity.

I. TRACING THE DECLINE OF THE LEGAL PROFESSION

A. *Observations and Prescriptions*

Entire treatises and books have been devoted to chronicling the demise of the legal profession. Most recognize that lawyer dissatisfaction begins in law school. Students report extreme self-punishing attitudes, obsessive self-doubt, apathy, withdrawal from normal activities, fear, apprehension, a sense of impending doom and panic attacks.[6] Interpersonal relationships with friends and family are strained and relationships with other students are

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[5] *See, e.g.*, Rhode, *Missing Questions*, *supra* note 4, at 1551-54.

[6] *See* Michael L. Perlin, *Stepping Outside the Box: Viewing Your Client in a Whole New Light*, 37 CAL. W. L. REV. 65-66 (2000).

characterized by enmity, hostility and overt contempt.[7]

Furthermore, lawyers are generally dissatisfied with their career choice; thirty-three percent of all lawyers say they are "very satisfied" with their work, down from forty-one percent in 1984.[8] A 1998 article reports that a majority of lawyers say they would choose another career if they could choose again, and three-quarters would not want their children to become lawyers.[9] About one quarter of young attorneys are dissatisfied with their current position, and a slightly greater number are dissatisfied with the practice of law in general.[10]

Some of these factors are particular to the current and specific market for legal services, such as the growth of the Bar and competition among lawyers to secure business for their services.[11] Many critics also agree that other causes reflect a cultural trend that prioritizes commercial objectives and facilitates an eroding sense of social obligation.[12] For example, billable hour requirements for lawyers in law firms have almost doubled in the last fifteen years, now averaging 2000-2500 hours per year.[13] Benjamin Sells attributes the distress plaguing the profession to incivility among lawyers, unaccommodating work conditions imposed by big firms, lack of loyalty among lawyers to their firms, and the drive for the economic bottom line.[14]

Many scholars have gone further in their prescription of the problem, declaring a death or ailment of the "heart" or "soul" of the profession.[15] These authors are suggesting that something very deep and pervasive is affecting professional image and morale. As Sells describes the phenomenon, "the soul of the law is suffering."[16] Symptoms consequent of this crisis include severe depression and increased drug abuse and suicide rates.[17] For example, lawyers are almost four times more likely to be depressed than the general population; one third either suffer from clinical depression or substance abuse, which are both at twice the general prevalence rates for those disorders.[18] In a survey of 105 occupations, lawyers ranked first in experiencing depression.[19] Feelings of isolation, social

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7 *See id.*

8 *See* SELLS, *supra* note 2, at 99.

9 *See* Rhode, *Professional Problem*, *supra* note 2, at 296-97.

10 *See id.*

11 *See id.* at 284.

12 *See id.*

13 *See* SELLS, *supra* note 2, at 99.

14 *See id.*

15 *See generally* BENNETT, *supra* note 2; KRONMAN, *supra* note 2; SELLS, *supra* note 2; Edwards, *supra* note 2; *see also* Samuel J. Levine, *Faith in Legal Professionalism: Believers and Heretics*, 61 MD. L. REV. 217 (2002).

16 SELLS, *supra* note 2, at 16.

17 *See id.* at 17.

18 *See id.* at 99.

19 *See id.*

alienation, psychological unrest, anxiety and obsessive behavior by individual lawyers are more typical within the profession than in the general population.[20] One in four lawyers experiences feelings of inadequacy and inferiority in interpersonal relationships.[21] Forty-four percent of lawyers feel that they do not have enough time to give their families and fifty-four percent say that they do not have enough time for themselves.[22]

More than half of all lawyers believe incivility is a significant problem within the legal profession.[23] Some states report that substance abuse is a factor in up to seventy-five percent of all disciplinary complaints involving lawyers.[24] One professor attributes the cynical image of the lawyer created by the media to a lack "of positive image-building of the lawyer," and a failure to "shap[e] . . . law students and new lawyers into ethical practitioners."[25]

In his chapter about how the legal profession should envision a new professional ideal, Walter Bennett urges lawyers to embark on a type of personal journey to discover their true professional goals and understand their inner strengths and weaknesses so that they might grow toward achievement of those goals.[26] Bennett characterizes this journey as a spiritual quest for the proverbial grail, which ultimately symbolizes the answer to the question: "Whom do lawyers serve?"[27] He encourages lawyers to devote themselves to serving the greater society in the spirit of community, urging service based on a carefully developed moral consensus founded on professional values.[28] The public good, he argues, is the pursuit of justice.[29] Although concededly justice does not immediately take on an agreed-upon meaning, he believes nonetheless that in light of the emotional and spiritual uncertainty lawyers face daily, they are still best qualified to participate in the debate, which identifies and promotes the ideal of justice.[30] Underlying lawyers' approach should be a sustained faith in the profession itself and a persistent effort to look beyond winning in daily objectives.[31] The profession's participants and critics blame the market, the Bar, legal education and a host of other targets; their solutions are practical, theoretical and spiritual. Certainly there is no consensus emerging that

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20 *See id.*

21 *See id.*

22 *See* SELLS, *supra* note 2, at 99.

23 *See id.* at 100.

24 *See id.*

25 *See* Levine, *supra* note 15, at 217-18 (quoting Patrick J. Schlitz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 707 (1998)).

26 *See* BENNETT, *supra* note 2, at 124.

27 *Id.* at 125.

28 *See id.* at 129-37.

29 *See id.* at 138.

30 *See id.* at 138-40.

31 *See id.* at 141-44.

uniformly identifies and remedies these wide-ranging and pervasive problems that are crippling one of oldest and most noble professions in our nation's history. This article will consider many of the voices participating in this discussion and offer the most promising solutions based on this evaluation.

B. *The Business-Professionalism Dichotomy*

The prevailing argument within the legal community attributes the decline of professionalism in the practice of law to a new obsession with commercial success and the dominance of business-related priorities in lawyers' agendas.[32] The business-professionalism dichotomy identifies the ideological discrepancy whereby the legal profession continues to hold on to its community service-oriented, republican ideals in the face of its own transformation into what most of the public and the profession itself recognize as a business focused almost exclusively on profit and winning at all costs. The profession is the target of criticisms of hypocrisy and absence of moral conviction, propounded in familiar lawyer jokes and by a sneering media.

Adherence to the professionalism ideal persevered from the nineteenth century throughout the 1960s; it explained why the legal elite deserved to be the governing class and why its financial success was legitimate.[33] The Professionalism Paradigm maintained a belief in the capacity of most lawyers and the general efficacy of the invisible hand of reputation.[34] They created bar associations designed to add additional regulation necessary to prevent lawyers from behaving unethically.[35] Importantly, the profession relied heavily on rhetoric making a fine distinction between business and profession, which purported to make a contract with society that community interests would be valued above a lawyer's individual gain.[36] The profession has continued to use this rhetoric despite the unmistakable decline of professionalism in the face of business demands.[37] Many commentators have cited changes in the market for legal services, bar rules, legal education or

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[32] *See* Levine, *supra* note 15, at 218.

[33] *See* Russell G. Pearce, *Lawyers as America's Governing Class: The Formation and Dissolution of the Original Understanding of the American Lawyer's Role*, 8 U. CHI. L. SCH. ROUNDTABLE 381, 403 (2001) [hereinafter Pearce, *Governing Class*].

[34] *See id.* at 400.

[35] *See id.*

[36] *See* Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229, 1231 (1995) [hereinafter, Pearce, *Professionalism Paradigm*] (explaining that the Professionalism Paradigm rested on a purported bargain between the profession and society in which the profession agreed to act altruistically for clients and society in exchange for autonomy).

[37] *See id.* at 1241 ("The major puzzle for the Professionalism Paradigm was preserving the Business-Profession dichotomy when most lawyers earned their living by selling their services on the market.").

the diversity of the profession.[38] Others cite societal factors like the loss of faith in elites and the shift from communitarianism to individualism.[39]

Whether lawyers or other community leaders believe that the profession should sustain a commitment to the Professionalism Paradigm, it can hardly be disputed that a "Business Paradigm" is emerging to challenge it. Most will acknowledge that business forces are threatening traditional professional values, but there is sharp disagreement as to whether to raise consciousness and renew these commitments making them central to the Bar and to law schools, or to reevaluate our professional foundation and accommodate new and competing priorities.[40]

In his discussion of lawyers' disorderly conduct and disobedience, Benjamin Sells suggests that lawyers' preferred explanation for this destructive behavior is that the practice of law is no longer a profession but a business, in which concerns for the 'bottom line' have supplanted concerns for civility, where the stimulus is economic pressure.[41] He argues that to restore our civility, lawyers should strive to become good citizens who are "less concerned with imposing order and more involved with engendering a sense of shared community where values are embraced and lived intimately."[42] Sells then qualifies his apparent argument for a revival of professionalism, saying that rather than law trying to be a profession *instead of* a business, it just simply needs to be "a better neighbor," which will not happen unless lawyers relinquish their defensive obsession with order and obedience.[43] Sells encourages a willingness to accommodate a Business Paradigm as long as it retains more traditional commitments to service. Other scholars who have agreed with this approach argue that incorporating both sets of competing values will "free the law practice of the taint of hypocrisy, foster a realistic community ethic of commitment to the common good, and deliver quality legal services." Faith in an exclusive Professionalism Paradigm will be impossible to sustain so that reinterpreting

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[38] *See* Pearce, *Governing Class*, *supra* note 33, at 407.

[39] *See id.*

[40] *Compare*, Transcript, *The Second Driker Forum for Excellence in the Law*, 42 WAYNE L. REV. 115, 118-19 (1995) [hereinafter Driker Forum] (remarks of Anthony T. Kronman) ("[T]he ethical, spiritual and moral traditions of our profession have a durability that will allow us . . . to look back to these traditional ideals and to find guidance and support and strength in them as we try to work our way out of the professional cul-de-sac in which I think we've arrived."), *with* Ward Bower, *Law Firm Economics and Professionalism*, 100 DICK. L. REV. 515, 516 (1996) ("The economic pressures in the law firm today are real and the focus on profitability necessary . . . [T]hese challenges need not cause a lawyer or a firm to compromise detachment, professionalism, ethical practices, or competent lawyering [because] [e]ffective management and good business practices are not inconsistent with traditional 'professional' lawyering.").

[41] *See* SELLS, *supra* note 2, at 32. Sells also suggests that "the problem with this kind of stimulus/ response analysis is that it tries to explain incivility as merely the result of external pressures," reflecting a cultural trend to place blame elsewhere, but where we should really be looking inward to psychological dysfunction of the actors themselves. *Id.*

[42] *Id.* at 33.

[43] *Id.*

business as a legitimate endeavor in law practice will help to revive an honest image of lawyers.[44]

Other leading commentators recognize commercial threats to traditional professional ideals, but insist on returning to the Professionalism Paradigm to cure the profession's ailing morale. Anthony Kronman, author of one of most respected defenses of professionalism, *The Lost Lawyer*, observes that America's large firms have become "unembarrassedly commercialistic" where the "bottom line [is] the only line."[45] Where there are no strong competing ideals or mythologies emerging to replace professionalism today,[46] he deems it the duty of law schools and lawyers to reaffirm and protect the professional character of lawyers.[47] Proponents of the Professionalism Paradigm urge renewed adherence to the professionalism model in an approach resembling religious faith in established truths.[48] Walter Bennett's plea to the profession to recall professional mythologies like the Lawyer-Statesman and the Pillar of the Community[49] implies a similar defense of the professionalism model. Bennett suggests that by using historical mentors like Thomas Jefferson and Atticus Finch to guide our understanding of today's professional identity, mythology can impart teachings in traditional ideals that will revive the profession's demise.

Evaluating the legal profession's professional paradigms informs more than our understanding of lawyers' successes and failures in meeting their professed goals. To the extent that law schools are responsible for preparing our nation's lawyers for practice, paradigms also impart a great deal about how effectively the current structure and content of legal education accomplishes professional preparation. This article will now turn to an application of the feminist critique of legal education; specifically it will argue that traditional teaching styles and substantive curriculum predominantly impose a masculine-centered training that inhibits and impairs lawyers in effective problem solving and service to clients. The feminist evaluation of today's legal education implores law schools to introduce teaching approaches traditionally associated with females and feminine modes of reasoning in order to instill a healthy, balanced psyche and skill set that will empower lawyers to provide a more holistic service to

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44 *See generally* Pearce, *Professionalism Paradigm*, *supra* note 36.

45 *See* Driker Forum, *supra* note 40, at 121-22.

46 *See id.* at 125-26.

47 *See* KRONMAN, *supra* note 2, at 12.

48 *See* Levine, *supra* note 15, at 227-35 (discussing religious methodology in *The Lost Lawyer*); *see also* Rob Atkinson, *Law as a Learned Profession: The Forgotten Mission Field of the Professionalism Movement*, 52 S.C. L. REV. 621 (2001) (using the 'mission field' as the metaphor for a recommitment to the law as a learned profession which entails maintaining what is at the heart of professionalism: meaningful work in the service of individual citizens and the public interest).

49 *See infra* Part IV.B.

clients. Not coincidentally, problems characteristic of the demise of the profession can be traced and attributed to the very shortcomings in legal education that the feminist critique identifies. In this sense, the professional paradigms provide a conceptual foundation in understanding legal education's deficiencies.

Moreover, it seems that the business-professionalism dichotomy resembles the emerging tension between masculine and feminine styles of learning, teaching and practicing law. Excessive focus on commercialistic priorities is arguably influenced by legal education's dominant emphasis on male norms. Similarly, to the extent that feminists revere problem solving techniques which go beyond strictly rational, scientific reasoning to consider ethics, emotions and the social context of legal issues, renewal of the Professionalism Paradigm endorses the feminist call for emphasis on service and benefits to people rather than to self.

II. FEMINIST CRITIQUE OF LEGAL EDUCATION: INCORPORATING "FEMININE" APPROACHES

A. *Disclaimer: Use of Gendered Descriptions to Evaluate Legal Education*

Scholars readily use the terms "masculine" and "feminine" to characterize certain traits or tendencies of law students or lawyers. These gendered terms can create misunderstandings when they are meant to represent characteristics which are neutral or non-gendered, but which have been traditionally associated with one specific gender, and where such definition is not intended to assign gender to a trait for purposes of a discussion. In my application of a feminist critique to legal education, I seek to avoid the dangers of gender stereotyping and will consequently try to use other, less jargonistic terms to convey the archetypal qualities associated with gender. Masculine, feminine and other related terms are meant to characterize the opposing qualities of any given *individual's* personality regardless of gender.[50]

Carl Jung posited that the human mind is divided into opposites and that all individuals exhibit these opposing sides to varying degrees, giving us our own unique personality.[51] He proposed that "each of us has rational, logical capacities expressed" in conscious and deliberate behaviors (*animus*).[52] The other side is an "intuitive, feeling side" that operates, in part, on a subconscious level (*anima*).[53] Legal education expressly promotes

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[50] This disclaimer was inspired by Walter Bennett's, *The Lawyer's Myth: Reviving Ideals In The Legal Profession. See* BENNETT, *supra* note 2, at 94.

[51] Honorable Sam Joyner, *A Planetary Survey of Feminist Jurisprudence: If Men are From Mars and Women are From Venus, Where Do Lawyers Come From?*, 33 TULSA L.J. 1019, 1021-22 (1998).

[52] *Id.* at 1021.

[53] *See id.*

and pursues the calculating, analytical side of the psyche to the exclusion (and, I argue, to the detriment) of students in training. Such an imbalance favoring the masculine archetype can lead to an "excess [of] arid intellect."[54] Bennett too, posits that self-realization and social consciousness are possible only where the opposing sides are integrated in a harmonious balance; anima has been overwhelmed and largely lost while animus is overly encouraged.[55]

Other terms used in my analysis will include *logos* and *mythos*,[56] which similarly characterize gender archetypes, characteristics of which are exhibited or carried by most people. Characteristics associated with the rise of *logos*, or masculinity, include ascendance of the rational as the only way of problem solving, linear movement in analysis toward a single conclusion, and abstraction which aims to disembody thought from emotion.[57] This approach is characterized by the use of force, and values individuality and independence over relationships and mutual obligation.[58] Its comparative opposite is *mythos*, or femininity, which includes a preference of narrative to abstract logic, decision-making embedded in context, and a holistic and inclusive approach that accepts emotion as an integral part.[59] Contrasted to power and force, *mythos* values compromise and conciliation that engenders building relationships and gaining power through empathy and mutual understanding.[60] This article puts forth evidence that legal education is suffering from an almost exclusive emphasis on the masculine or presence of *logos* and *animus*.

Another way scholars have characterized these archetypes is to speak in terms of the type of power legal education bestows upon the practitioner. Bennett, for example, suggests that today's legal education confers a very narrow definition of power upon the lawyer in training therefore resulting in a profession of "dominators and manipulators."[61] This power of dominance and control, as he characterizes it, accommodates "only one type of resolution, winning or losing."[62] This kind of power is not conducive to preserving a community; rather, lawyers need to be empowered with a creativity that builds and sustains relationships through its ability to empathize and care about other human beings.[63] These abilities are better

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54 *See id.* at 1022.

55 *See* BENNETT, *supra* note 2, at 109.

56 *See id.* at 94-95 (citing GISLA LABOUVIE-VIEF, PSYCHE & EROS: MIND AND GENDER IN THE LIFE COURSE 39-61 (1994)).

57 *See* BENNETT, *supra* note 2, at 94-95.

58 *See id.*

59 *See id.* at 95.

60 *See id.*

61 *Id.* at 108.

62 *Id.*

63 *See* BENNETT, *supra* note 2, at 108-09.

characterized as powers rather than skills, because it seems they stem from a deeper sense of self and are born of a political agenda. They unmistakably reflect Jung's opposites and shed light on the feminist critique to follow. The archetypal distinctions also contribute to an understanding of my recommendations that legal education must promote professional mythology and award greater emphasis to alternative dispute resolution ("ADR").

B. *Overview of the Problems in Legal Education*

In *The Lawyer's Myth,* Walter Bennett acknowledges that law school empowered him with a new set of values within which to operate; sadly, however, he reflects that his story is not one of the professional entering practice and using his newfound skills to achieve ends of social justice, but rather it is the story of a man known for his instinct for the jugular and his ability to fight hard and win.[64] Bennett's work details the intellectual, emotional and ethical disorientation he experienced in law school at the University of Virginia,[65] and especially the degradation he experienced due to the adversary ethic:[66]

> I began to feel myself severed from my roots- adrift in a moral vacuum where the ranking hierarchy, immersed completely in the process of the law, not only gave no moral direction but seemed indifferent to whether you had one. Moral commitment, or lack thereof, was superfluous. What counted was one's ability to 'think like a lawyer'. . . . [67]

Indeed, law schools' attempt to legitimate their structural organization and teaching methods by formally presenting them to the student as the foundation of "thinking like a lawyer."[68] Proceeding under the reasonable assumption that a lawyer's work will include dealing with people (listening to clients, developing rapport with them and educating and persuading judges, jurors and adversaries), then all relationships will involve some degree of human interaction and emotional crisis.[69] Thus, it is crucial to learn not only to *think* like a lawyer but also to *behave* like a lawyer, which would entail the lawyer in a dual role as lawyer-counselor.[70]

The American Bar Association's famous (or, here, perhaps infamous) MacCrate Report[71] has been criticized by such leading scholars as Carrie

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64 *See id.* at 25.

65 *See id.* at 15.

66 *See id.* at 20.

67 *Id.* at 15.

68 Guinier, *Becoming Gentlemen, supra* note 4, at 69.

69 *See* Perlin, *supra* note 6, at 73.

70 *See id.* at 74.

71 *See Legal Education and Professional Development—An Educational Continuum,* 1992 A.B.A. SEC. ON LEGAL EDUC. AND ADMISSIONS TO THE BAR (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992) [hereinafter "MacCrate Report"].

Menkel-Meadow for memorializing a set of unbalanced and superficial educational priorities. Menkel-Meadow charges that the Report "attempt[s] [a] kind of taxonomic, scientistic, classificatory, and schematic thinking about lawyering," that it is "too over-determined, too rigid and too incomplete," and that it "assumes or subsumes a particular view of the legal system as an adversarial one in which the best of all worlds is achieved if everyone and everyone's lawyer looks out for themselves."[72] She contends that the Task Force's approach is an excessively narrow one, refusing to characterize a professional as needing a wide range of skills that would include being a human being who exercises judgment, cares for her fellow human beings and has a vision of professional work beyond litigation.[73] Legal education mirrors the prioritization of the MacCrate Report, emphasizing cognitive learning over behavioral, experiential, affective and normative modes of learning.[74] The result is a kind of "technocratic problem-solver" who employs a scientized form of lawyering, which should be contrasted with the client-centered problem solver who attempts collaborative negotiation at the outset of a dispute.[75]

1. Introduction of the Feminist Framework

Law school experiences like Bennett's and attacks on the MacCrate Report exemplify an emerging consensus on the shortcomings of legal education. Feminist jurisprudence[76] is one philosophical critique of the traditional rule orientation of legal formalism or positivism. Feminist critique is mainly concerned with promoting a caring, results-oriented approach to the law.[77] Like their colleagues, feminists approach a legal issue by examining the facts of a dispute, identifying the essential features of those facts and determining what legal principles should guide resolution of the dispute. The general difference is that this process unfolds not in a linear, sequential or strictly logical manner, but rather in a pragmatic, interactive manner.[78] In other words, feminists do not reject the rule of law, rather they contextualize it by emphasizing personal experience and learning through

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[72] Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing From the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 594 (1994).

[73] *See id.*

[74] *See id.* at 596.

[75] *Id.* at 603-04.

[76] For a cursory overview of feminist jurisprudence, see FRANCES SCHMID HOLLAND, FEMINIST JURISPRUDENCE: EMERGING FROM PLATO'S CAVE—A RESEARCH GUIDE (1996). For more comprehensive treatment of feminist issues, see generally JUDITH G. GREENBERG, FEMINIST LEGAL THEORIES: INFLUENCING LAWS AND LEGAL PROCESSES (1993); NANCY LEVIT, THE GENDER LINE: MEN, WOMEN, AND THE LAW 189-94 (1998) (describing the stages of evolution of feminist legal theory to date).

[77] *See* Joyner, *supra* note 51, at 1030-31.

[78] *See id.* at 1031.

empathy.[79] Within this broader critique, however, feminist analysis offers an additional, more specific evaluation that assigns archetypal qualities to educational priorities.

Applied to legal education, feminists argue that the feminine approach to decision-making is different than the male approach,[80] especially in their legal problem solving. The feminist style is based on preserving relationships, nurturing, and an express ethic of care and compassion that is more concerned with the results of a particular factual situation than with enforcing universal rules. Women differ in the way they draw conclusions about truth, knowledge and authority in their overarching concern for fairness and primary reliance on intuitions and feelings.[81] The criticism follows that the structure and methodology behind legal education (the Socratic method, issue-spotting exams, large classrooms, unpatrolled and informal networks, unapproachable professors, rigorous and heavily emphasized class ranking, etc.) not only creates an intimidating environment that does not as effectively engage women's initiative or problem-solving abilities,[82] but it also fails to promote the most effective lawyering for either sex.

The nature of legal reasoning and the language through which it is expressed is significantly influenced by male norms.[83] Because the law has largely been defined by men, feminists conclude that definitions, which are presumed to be objective and neutral, are, in reality, based primarily in assumptions of the liberal intellectual and philosophical tradition.[84] Consequently, this form of reasoning is heavily gendered, exalting one form of reason above all others as the only form and precluding any discussion about values.[85] Women who succeed in such a system are arguably bicultural in that they have effectively learned to function as social males and on some level have "become gentlemen." The problem is that their attempted gender transformation does not predict their chances of excelling in practice,[86] nor does it foster psychological stability. Clearly, a more balanced and comprehensive education could effectuate a more productive socialization of both males and females that would enhance the quality of services in legal practice.

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[79] *See id.*

[80] Developmental psychologist Carol Gilligan is credited first and foremost with the argument that the differences between men and women result in differing methods and tendencies in their decision-making. *See* CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982).

[81] *See* Joyner, *supra* note 51, at 1023.

[82] *See* Guinier, *Becoming Gentlemen*, *supra* note 4, at 63.

[83] *See* Lucinda M. Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886, 886-87 (1989).

[84] *See id.* at 893.

[85] *See id.* at 892, 896.

[86] *See* Guinier, *Becoming Gentlemen*, *supra* note 4, at 83.

One significant disagreement within the feminist camp concerns the feasibility or desirability of declaring what qualities such as the ethic of care or contextual reasoning are qualities expressed specifically by women. To argue that teaching and encouraging these characteristics and skills in lawyering is necessary to benefit women since they are associated with the female style reflects biological determinism[87] that polarizes women and men in the classroom and in practice. Such an approach might shut men out of a dialogue about improving legal education and impose a false understanding that lawyering can only be accomplished through *either* an exclusively rational, abstract, objective approach *or* an empathetic, collaborative and contextual approach. Such a conceptual division threatens the idea of a uniform professional identity with common standards and goals, and is also a false view of the realities of men and women's concerns and abilities in practice.

Carol Gilligan's influential book *In a Different Voice*, argues that males and females employ differing modes of moral reasoning. Men reason according to the "logic of the ladder," based on abstracted and universalistic principles; women, on the other hand, reason based on ethic of care founded on the structure of the web, grounded in a relational, connected, contextual form focusing on people and the substance of the problem.[88] Carrie Menkel-Meadow, among other scholars, however, notes that research and experience suggest that both sexes exhibit the ability to reason under both modes and can even shift back and forth among them.[89] Men and women will typically maintain a default position or starting point in their reasoning,[90] but acknowledging both genders' more expansive capabilities reflects a more optimistic and realistic viewpoint. Assuming this is true, legal education should recognize and promote both types of reasoning and teach all students how to evaluate the problem and use their discretion according to the situation.

Deborah Rhode, another leading feminist scholar, also criticizes Gilligan's gendered division of the lawyering skill set. She argues that, "[t]o divide the world . . . along gender lines is to ignore the ways in which biological status is experienced differently by different groups under different circumstances."[91] Howard Gardner's multiple intelligences theory[92] posits that there are multiple intelligences or competencies at the individual level and that different problems will be best addressed by different

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87 *See* Carrie Menkel-Meadow, *Portia Redux: Another Look at Gender, Feminism, and Legal Ethics*, 2 VA. J. SOC. POL'Y & L. 75, 81 (1994) [hereinafter Menkel-Meadow, *Portia Redux*].

88 *See* GILLIGAN, *supra* note 80, at 62-63.

89 *See* Menkel-Meadow, *Portia Redux*, *supra* note 87, at 81.

90 *See id.*

91 *See* Rhode, *Missing Questions*, *supra* note 4, at 1550-51.

92 *See generally* HOWARD GARDNER, FAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES (1983).

intelligences.[93] Gardner evidences the existence of eight and one half intelligences that go beyond Socrates' rational man and suggests that, "each individual has unique measures or expressions of these intelligences that may be educated for and mobilized in different ways."[94] The idea that each person will be inclined to exercise decision-making according to cultural experiences or personal inclinations begs of a legal education teaching that (or which teaches that) differing responses to legal problems will be based on situations and not gender.

Countless other articles and studies to date superficially focus on the unique experience and skill set of female law students and their consequent alienation and struggle in the traditional law school classroom.[95] One danger inherent in such contentions is that the women, and not the education, should change. Arguably, relational feminism has failed to address variations across culture, class, race, ethnicity, age and sexual orientation, because in truth there is no generic woman.[96] Recent studies suggest that there is an absence of strong gender differences in negotiating conduct and legal decision-making on issues that involve interests traditionally associated with women.[97] Deborah Rhode argues persuasively that legal education should socialize both sexes to incorporate a more complete and inclusive range of lawyering skills.[98]

2. Narrowed Views and the Socratic Method

Legal education suffers most from the exclusive emphasis on learning through the Socratic method. The case method teaching tool, as taught through a Socratic-style dialogue between student and professor, inhibits students' creative problem solving potential and renders their assumptions about legal reasoning tragically shortsighted and narrow.[99] The case method ignores what is arguably crucial information that should influence lawyering and legal outcomes, such as what happened to the parties before litigation, what effect the dispute has on other parties, and what non-legal effects a strictly legal application of rules will have on parties subject to its ruling.[100] Feminist jurisprudence indicts the Socratic method for its tunnel vision resulting from exclusive reliance on past precedent, rule and regulation, and its "compulsive concentration on what can be predicted, controlled,

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93 *See* Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education?*, 6 HARV. NEGOT. L. REV. 97, 117 (2001) [hereinafter Menkel-Meadow, *Aha*].

94 *Id.*

95 *See, e.g.*, Guinier, *Lessons and Challenges*, *supra* note 4.

96 *See* Rhode, *Missing Questions*, *supra* note 4, at 1551.

97 *See id.* at 1553.

98 *See id.* at 1554.

99 *See* Perlin, *supra* note 6, at 66-67.

100 *See id.* at 69.

manipulated, possessed or preserved."[101]

It is clear that the case method style of learning is very effective in teaching students unmistakably important and fundamental skills, including analytical skills and synthesis of multiple concepts.[102] It is especially effective in preparing students to become appellate litigators.[103] Yet, regarding our reliance on the Socratic lecture as our dominant educational paradigm, Deborah Rhode urges us to ask: "[w]hat values concerning interpersonal interaction does such a system reinforce?"[104] It allegedly "dehumanizes" the law by "diminishing the student's creativity by rewarding neutral, logical responses rather than responses that allow students to consider the problem from their personal perspectives."[105] The case method is best characterized by its pervasive rationality, hierarchical framework and pursuit of objectivity. Each of these characteristics is fundamental in exposing students to one type of legal reasoning, but exclusive reliance on them distorts an understanding of the many aspects of a legal problem. The dialogue takes place against a backdrop of a hierarchical and authoritarian relationship between student and professor and a competitive ethos of class participation and peer evaluation.[106]

Linear thinking is a powerful adversarial tool and crucial to traditional work, yet it narrows students' focus in the sense that feelings, emotions and other distractions of the rational process are minimized or eliminated.[107] Bennett describes the resulting image to be the perfect, unerringly rational judge who is able to make a perfectly rational, and presumably fair, judgment; but to the extent that the rational voice has divorced itself from the context of human experience, true justice will not be possible.[108] Legal education socializes students to compete, not collaborate[109] and this type of conditioning leaves students ill-prepared to serve individuals.

Moreover, the case method demands an objective evaluation of facts and principles from students; the purpose of objective analysis is to force the legal mind to "sort out those facts that are irrelevant to the legal issues at hand while accentuating others that support or oppose a particular position."[110] Sells argues that objectivity can have an anesthetizing effect on the lawyer's soul because it "translates visceral human experience into

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101 Joyner, *supra* note 51, at 1032.

102 *See* Perlin, *supra* note 6, at 71; *see also* Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. CAL. REV. L. & WOMEN'S STUD. 37, 39 (1997).

103 *See* Perlin, *supra* note 6, at 68.

104 Rhode, *Missing Questions*, *supra* note 4, at 1554.

105 Rosato, *supra* note 102, at 42.

106 *See* Rhode, *Missing Questions*, *supra* note 4, at 1555.

107 *See* BENNETT, *supra* note 2, at 98-99.

108 *See id.* at 99.

109 *See* Rhode, *Missing Questions*, *supra* note 4, at 1558.

110 SELLS, *supra* note 2, at 40.

schemata"[111] to the detriment of the people involved. Objectivity requires the lawyer to maintain a degree of abstraction, which prevents the lawyer from becoming significantly involved in the case,[112] mandating a safe distance from people and emotions. The Socratic method cultivates the "litigious mind,"[113] which simply wants to know the rules in order to gauge how they can be used against the other side and how far they can be stretched to gain an advantage, independent of considerations of what the rules are actually intended to accomplish.[114]

An education that embraces creative problem solving aims to "make law a more sensitive and respectful shaper of the social, physical and relational environment," and to empower lawyers with the necessary skills and attitudes to turn to negotiation and other "softer" forms of dispute resolution where appropriate.[115] Bennett calls for training in teamwork, communication and awareness of group dynamics. He specifically cites a need to learn the other side of communication (other than writing persuasively to express oneself), which is achieved through empathetic listening.[116] He calls on professors to foster awareness of the self and of others, including potential prejudices and other behaviors that will affect progress.[117] He lists needed leadership skills such as brainstorming, distributing and delegating work, motivating others and long range planning and scheduling.[118] Other skills neglected by the case method and yet necessary for holistic lawyering include fact-investigation, planning, drafting, research, trial strategy and tactics, interviewing, counseling, and negotiating, ethical and social responsibility, and understanding law as a social institution.[119]

Bennett notes that a fundamental difference between undergraduate and legal educations concerns the pursuit of knowledge. In college, knowledge and information are accumulated in a process of continual augmentation with cursory evaluations, whereas in law school, information is evaluated and discrimination is constantly applied to rate information in terms of relevancy in a narrowing process to reach a singular conclusion.[120] Bennett describes the perpetual discrimination required in legal reasoning as the Socratic method's arrogance:[121]

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111 *Id.* at 41.
112 *See id.*
113 *Id.* at 83.
114 *See id.*
115 *See* Perlin, *supra* note 6, at 77.
116 *See* BENNETT, *supra* note 2, at 8.
117 *See id.* at 9.
118 *See id.*
119 *See* Perlin, *supra* note 6, at 71.
120 *See* BENNETT, *supra* note 2, at 16.
121 *See id.* at 20.

> The fallacy [of the legal method] is the notion that one can dismiss ideals from an educational process without them being replaced by other goals and motivations. It is the notion that by dismissing those higher, often confusing ideals such as justice, one can simply learn to think like all lawyer in some sort of antiseptic space uncontaminated by moral considerations.[122]

Where legal education concentrates on only one, narrow set of reasoning skills, not only is the lawyer without the guidance of an ethical foundation from which moral considerations emerge, but also such training does not allow for emotional development that equips lawyers to manage stress and emotionally significant situations.[123]

Sells concurs with Bennett's observations when he notes that legal education is uncomfortable with "big ideas" like altruism that escape analytic definition.[124] Law seeks certainty and clarity in its preference for fact-based arguments and well-defined legal issues.[125] He maintains that law's emphasis is more on means than ends, noting for example, a professional distinction between altruistic goals and practical procedures like due process.[126]

In light of the Socratic method's important contributions, and despite the dangerous and destructive reliance legal education currently places on this type of training, the best solution seems to be to retaining the case method, but significantly revising or supplement it. One scholar calls for "humanizing" the law school classroom with three reforms.[127] These reforms appear to respond to problems created by the case method discussed here. First, law schools should promote an ethic of care that counters the unnecessary competition and alienation that affects many students.[128] Providing positive feedback to participating students, treating students and their ideas with respect, and aiding dialogue among students are examples.[129] Second, professors should try to reform the Socratic method to use it more meaningfully to teach their courses.[130] Professors should consider other teaching styles to partially replace or supplement the dominant case method style with lecture, problems, role plays, games or less structured discussions.[131] Finally, professors should try to demystify the learning process.[132] The professor participating in the Socratic method will often

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122 *Id.*
123 *See* Perlin, *supra* note 6, at 73.
124 SELLS, *supra* note 2, at 36.
125 *See id.*
126 *See id.*
127 *See* Rosato, *supra* note 102, at 59.
128 *See id.* at 59-60.
129 *See id.* at 60.
130 *See id.* at 61.
131 *See id.*
132 *See* Rosato, *supra* note 102, at 61.

withhold the answers to the questions posed in class (either because the professor does not know it or because they want the students to derive the answer for themselves); debriefing with students to identify whether the objectives of the questioning were achieved assures students of the utility of the case method rather than just assuming it is a tool used to humiliate.[133]

III. SOLUTIONS FOR IMPROVING LEGAL EDUCATION: IMPLEMENTING THE FEMINIST CRITIQUE

A. *Toward Mythos*

Walter Bennett describes the decline of the legal profession as follows:

> The malaise affecting the legal profession is a wounding of its creative and procreative powers and that malaise grows primarily out of the fight with and wounding by our own warrior selves . . . the warrior-like, *super-masculine part of our professional psyche has at least temporarily prevailed* in the internal struggle for the soul of the profession.[134]

Bennett observes that lawyers today elevate winning to be the only measure of success, that they encourage adversarialism despite an atmosphere of moral doubt and incivility toward others, and that the current style of lawyering devalues things human beings do to give their lives a greater purpose and a spiritual meaning.[135] Bennett, among others, encourages lawyers and legal educators to renew possibilities for moral growth and more holistic lawyering by bringing the elements of *mythos*[136] to legal minds. As Anthony Kronman explains, "a good legal education is a process in which the seeing, thinking and feeling parts of the soul are reciprocally engaged."[137]

It would seem that at a fundamental level, renewing the *mythos* or *anima* in the structure and substance of legal education would require a greater commitment to ethical teachings and an embrace of a broader context within which legal problems are solved. This broader context would acknowledge emotion as a legitimate and necessary consideration in relationships with clients and colleagues, and it would call on interpersonal skills like empathy and well-facilitated communication to accomplish this more comprehensive and holistic legal approach. Emotion and ethics must be recognized together in efforts to improve legal education, because they

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133 *See id.* at 61-62.

134 *See* BENNETT, *supra* note 2, at 11 (emphasis added).

135 *See id.*

136 *See supra* notes 57-61 and accompanying text.

137 *See* KRONMAN, *supra* note 2, at 5.

are intimately linked in what they accomplish. Sells argues that we should think of ethics as emotion: ethical sense arises from within us, making itself known and inviting a response from us.[138] Emotion is a word rooted in the meaning "to move outward," and through ethics we move outward, beyond selfishness to larger ideas of community.[139] Bennett identifies the legal academy's obsession with strict rationality devoid of moral reasoning with Oliver Wendell Holmes' advocacy for a limited purpose formula for the moral role of lawyers.[140] He responds that such an attempt to "separate legal education from moral considerations without an attendant effort to in some fashion reunite them is an arrogant act and has lead to much of the ethical malaise present in the profession today."[141] Under these premises, the argument follows that law schools should take responsibility for obligating students to consider ethical implications in their decision-making.

These arguments also imply that that law school ethics or professional responsibility courses are not adequate to instill the level of ethical evaluation necessary to fully appreciate moral implications of legal practice. Indeed, much attention has been given to the superficiality of such courses in their claims to prepare students ethically for practice. Certainly, the course is effective in introducing the Model Rules of Professional Conduct; and while the rules are important, they nonetheless "mask the complexity of the moral dimension of lawyering practices; they cannot instill the commitment necessary for a morally sensible life"[142] Deborah Rhode describes the current approach to teaching legal ethics in law schools as "teaching legal ethics without ethics." There is a passionate and ongoing debate in legal scholarship as to whether law schools should be responsible for a more ambitious undertaking of teaching ethics, and *if* such an undertaking is even possible.[143] Russell Pearce advocates that only when we recognize legal ethics as the most important subject in the law school curriculum will we see a more ethically astute population of lawyers.[144] He calls for a three-credit first year course followed by an advanced course in the second or third years exploring what it means not only to think like a lawyer but also to be a lawyer, with considerations of ethics rules in the context of their purpose and their history.[145]

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138 *See* SELLS, *supra* note 2, at 167.

139 *Id.* at 168.

140 *See* BENNETT, *supra* note 2, at 21.

141 *Id.* at 22.

142 James R. Elkins, *Lawyer Ethics: A Pedagogical Mosaic*, 14 NOTRE DAME J. L. ETHICS & PUB. POL'Y 117, 202 (2000).

143 *See, e.g., id.; see also* Elkins, *supra* note 142; Russell G. Pearce, *Legal Ethics Must Be the Heart of the Law School Curriculum*, 26 J. LEGAL PROF. 159 (2001-02) [hereinafter Pearce, *Legal Ethics*]; Christopher L. Eisgruber, *Can Law Schools Teach Values?*, 36 U.S.F. L. REV. 603 (2002).

144 *See* Pearce, *Legal Ethics*, *supra* note 143, at 159.

145 *See id.* at 160.

Certainly it is difficult to impart or impose values on individuals. It seems at least fair to argue that law schools can improve the behavior and moral understanding of its students. At the heart of such efforts would be fostering a connection between the problems presented and the students' minds through the ideals of justice and democracy.[146] Making this connection would encourage students to act upon their preexisting commitments to these ideals brought with them initially to law school.[147]

Mythos will help return law schools' attention to our true professional goal of being service providers.[148] Currently, law students are taught to see their clients' problems as legal problems, but in real life, problems are more complex and will likely implicate the client's quality of life.[149] Many feminist scholars and other critics of legal education argue that a legal curriculum must include better training for problem solving. An exercise in problem solving is different from strict legal analysis and certainly from winning, because it focuses on the substantive outcome possibilities.[150] The premise is that better solutions can be reached between disputants through collaboration rather than adversity.[151] Problem solving is traditionally associated with alternative methods of dispute resolution like negotiation and mediation, but this article suggests that training in problem solving can benefit law students whether they litigate or negotiate. After all, the attendant skills learned and the philosophy behind the approach all address the overwhelming presence of *logos* or *animus* that contribute to the profession's decline and lawyers' career dissatisfaction.

Problem solving challenges the assumptions that underlie our culture of adversarialism, with its emphasis on argument, debate, threats, hidden information, deception, persuasion, and toughness.[152] The results of the adversarial approach are often stalemate or "mindless midpoint compromise."[153] When a "win" is issued, the result is often "imprecise justice" in the sense that the relief ordered might not truly address what the parties were seeking.[154] Judicial relief is limited to verdicts of guilt or innocence, injunctions and monetary damage; to the extent that the jurisdiction of courts to craft fitting judicial remedies is limited,[155] engaging in productive information-sharing sessions where parties can reveal their true

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146 *See* Eisgruber, *supra* note 143, at 611.

147 *See id.* at 612.

148 *See* Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 WASH. L. REV. 319, 323 (1999).

149 *See id.*

150 *See* Carrie Menkel-Meadow, *When Winning Isn't Everything: The Lawyer as Problem Solver*, 28 HOFSTRA L. REV. 905, 906 (2000) [hereinafter Menkel-Meadow, *Winning*].

151 *See* Menkel-Meadow, *Aha*, *supra* note 93, at 98.

152 *See* Menkel-Meadow, *Winning*, *supra* note 150, at 907.

153 *Id.*

154 *Id.* at 908.

155 *See id.*

goals and desires will, in some cases, most effectively resolve a dispute.[156]

Creative problem solving is interdisciplinary in nature, and in that sense directly challenges the "narrowness of vision" that this article addresses.[157] An important resource to the creative problem-solver will be the ability to collaborate with professionals from other disciplines in seeking a solution; lawyers might find it helpful to recruit a team of helpers that will bring other perspectives and skills sets that contribute to the best overall solution for the client.[158] Other contributing professionals might include physicians, psychologists, sociologists, accountants, or professors of other specialties.

Shifting the focus away from maximizing individual gain, the problem solver aims to create the transaction, plan for the future, improve relationships and perhaps even seek joint gain and achieve justice.[159] Among the many skills and capabilities necessary for this approach is creativity. Where lawyers are not bound by precedent and boilerplate language in casting their arguments and proposals,[160] they will turn from cognitive thought processes to social processes in order to identify solutions.[161] Some scholars maintain that creativity can be taught or improved through education, at least to the extent that people can be made aware of multiple ways to think about a particular problem.[162] Where people can be conditioned to exercise their multiple intelligences and avoid narrow, domain-limited ways of framing and solving problems, they might become better at "thinking out the box."[163]

Beyond creativity, other problem solving skills which can be addressed by law school curricula might include "question framing, investigative skills, quantitative skills for valuation of cases and issues, listening skills," "emotional awareness," "empathy," "the ability to synthesize" and coordinate, skills in conflict management and group leadership, among others.[164] Good problem solving requires many modes of thinking beyond analytic and analogical thinking to incorporate broader contexts.[165] Even at the level of conventional case method analysis, students can be taught "alternative ways of structuring and solving legal problems at the same time that" they identify the relevant facts, arguments and conclusion.[166] There is often more at stake

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156 *See* Menkel-Meadow, *Aha, supra* note 93, at 98.
157 *See* Weinstein, *supra* note 148, at 322.
158 *See id.* at 325.
159 *See* Menkel-Meadow, *Winning, supra* note 150, at 910.
160 *See* Menkel-Meadow, *Aha, supra* note 93, at 98.
161 *See id.* at 99.
162 *See id.* at 119.
163 *Id.*
164 Menkel-Meadow, *Winning, supra* note 150, at 910-911.
165 *See* Menkel-Meadow, *Aha, supra* note 93, at 99.
166 *Id.* at 135.

than the court may acknowledge; there might be other people involved or there might be a history between the disputants, for example.[167]

Incorporating ADR into law school curriculums, not only in the form of a required course but systematically throughout substantive courses, will introduce necessary problem solving skills. Starting client contact early would be important not only for healthy exposure, but also to encourage developmental skills.[168] Structured simulation in negotiation or counseling classes provide practical and effective forums for development of such skills. Menkel-Meadow advocates the incorporation of the multiple intelligences theory into these practical skills courses, whereby students hone cognitive, writing, interpersonal, intrapersonal and problem solving skills.[169] She envisions a comprehensive program of education, which builds on sequences of knowledge acquisition and skills development, like much of what characterizes clinical educations.[170] Walter Bennett similarly urges the legal academy to recontextualize educational processes by supplementing rigorous legal analysis instruction with courses in ADR in order to make legal education more morally relevant.[171] Bennett blames the scaled grading system, the inaccessibility of faculty to students and reliance upon the Socratic dialogue, and responds with pleas for more innovative approaches to teaching legal ethics in order to reorient us to a moral community.[172]

B. *Law Schools' Consciousness of Professional Mythology*

Introducing *mythos*-related styles and characteristics to legal education should contribute volumes to the profession's destructive imbalance that currently triumphs linear, rational thinking to the detriment of collaborative, contextual thinking. These recommendations approach the problem of the legal profession's decline from a practical perspective, with proposals to implement instructional reforms in the classrooms. Yet, to address a phenomenon described as "demise" and "malaise" we are using language implying the death of something with a soul. The legal profession boasts a rich and proud history of service, enjoying high periods of societal admiration and respect, and at all times agreeing to assume major responsibilities for enforcing rights and entitlements. That the profession has lost the respect of the society it serves and in light of the widespread dissatisfaction and disillusionment suffered by many of its members, there is considerable room to argue that practical solutions may fall short. It seems that in addition to practical remedies, a more ephemeral solution, which

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167 *See id.* at 136.
168 *See id.* at 137.
169 *See id.* at 138.
170 *See id.* at 99.
171 *See* BENNETT, *supra* note 2, at 169.
172 *See id.* at 170.

provokes spiritual responses, is also urgently in order.

Bennett's, *The Lawyer's Myth*, pursues this kind of solution in his discussion on returning to our professional mythology in order to renew our professional identity. Sells argues that the most important first step in understanding anything psychological is to get an image. Images have a broader range of expression and are consequently more precise.[173] They have the power to channel and shape our thinking.[174] Myths offer us images that are meant to explain and illuminate the mystery that characterizes our lives,[175] and in this discussion those mysteries which characterize our profession.

Myths influence people through the power of their narrative. Narrative is the "human compulsion to fashion our experiences and perceptions into morally meaningful forms,"[176] to impart a sense of ethical duty and prepare law students for service. In the sense that narrative gives voice to many of the *mythos*-inspired facets of lawyering, like emotions, desires, hopes, values and ideals, considerations of narratives will provide a crucial link to the practical remedies this paper discusses. Narratives relate our professional story by providing us with a contextual understanding of whom we are and what we mean to accomplish.[177] This narrative context can in part constitute the broader context of problem solving which goes beyond traditional rational analysis to include situational, social and historical frameworks.

Bennett discusses professional mythologies on two levels. First, he identifies and summarizes the generic, historical roles that emerged to symbolize types of lawyer role models. These are "narratives [that] evolved which helped define lawyers in terms of their own character and identity and their relation to the greater society."[178] They influence us today in their power to engage our minds and our emotions and encourage "growth in the form of deeper understanding, broader perception and greater consciousness."[179] The dominant narrative myth is the Lawyer-Statesman.[180] This man serves in a society characterized by republican ideals and embracing public virtue, and he strikes a balance between his own private interests and the public duty that protects the common good.[181] Importantly, he serves independently of political and marketplace forces and he operates under ethical limits as to the extent to which he will be willing to

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173 *See* SELLS, *supra* note 2, at 23.

174 *See* Elkins, *supra* note 142, at 133.

175 *See* Jo Carillo, *Disabling Certitudes: An Introduction to the Role of Mythologies of Conquest in Law*, 12 U. FLA. J.L. & PUB. POL'Y 13, 13 (2000).

176 BENNETT, *supra* note 2, at 23.

177 *See id.* at 24.

178 *Id.* at 28.

179 *Id.* at 29.

180 *See id.* at 57.

181 *See id.* at 30.

pursue his client's interests when the public good is at stake.[182]

The Pillar of the Community is a more localized and less formal version of the Lawyer-Statesman; he is well known in local government, on civic boards and in church, and he pursues the fairness and public good but not on as grand a scale as the Lawyer Statesman.[183] The Champion of People and Causes represents another, related narrative. This lawyer pursues a cause of the less powerful, bringing his compelling presence to the courtroom to fight against overwhelming odds.[184] Bennett maintains that these narratives function to give transcendent meaning to our professional lives, reassuring us on an emotional level and connecting us to the world around us.[185] These mythological lawyers are important for their commitments to client and societal interests, the very characteristics that are painfully absent from lawyering today. These types of myths contribute invaluably to lawyers' sense of professional identity. Lawyers themselves "comprise law's self-image and are the psychological sources for the common attitudes that guide lawyers in their daily practice."[186] Sells believes that law's overriding desire is to maintain social order, but that there is no consensus on how to achieve this.[187] Myths have the power to play an influential role in forming such a consensus.

A second type of myth running throughout *The Lawyer's Myth* symbolizes a more general and intensely spiritual myth that seeks to bestow the deepest level of meaning upon the practitioner. It is the story of the young knight Parcival who is sent out by the Fisher King to discover whom the grail serves.[188] In his quest, Parcival discovers the answer is not a simple one and that he must commit his higher consciousness to understanding that he serves something greater than himself.[189] The moral of the story for the lawyer is that lawyering is a psychic commitment to understanding that "we are not the center of the universe but merely a part of it, that there are causes and purposes much greater than ourselves."[190] This myth contributes to the healing of the legal profession by helping us first define community (people with shared ideals serving something greater than itself) and then reconceive this definition in the context of our world.[191]

At the level of introduction into legal education, Bennett argues that curriculum as well as clinical and other types of programs should

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182 *See* BENNETT, *supra* note 2, at 30.
183 *See id.* at 33.
184 *See id.* at 38.
185 *See id.* at 51.
186 SELLS, *supra* note 2, at 15.
187 *See id.* at 28.
188 *See* BENNETT, *supra* note 2, at 54.
189 *See id.*
190 *Id.*
191 *See id.* at 94.

reincorporate narratives into teaching.[192] The "indefinite character of mythology is perceived to be an impediment to the scientific methodology of law"[193] in light of the predominance of male norms and the Socratic method in law school classrooms. He suggests that a clinical program might be the best forum to accomplish this, because in contrast to the classroom where the focus is on mastery of the material, the clinic focuses on fulfilling the needs of the client.[194] Where student evaluation is based on how the student serves and works with someone else, the contributions of the narrative emphasizing service are entirely appropriate.

CONCLUSION

This article's address of the much-noted decline of the legal profession makes several key observations that shed light on the problem. First, the dissatisfaction lawyers are experiencing in their careers and the complaints lodged against the quality and delivery of their services are directly influenced by the shortcomings of legal education. Second, the entry of women in unprecedented numbers into the legal profession has inspired much of the current demand for a more care-oriented, contextual and holistic law practice. Women's observations and calls for reform are the product of their disorientation in a practice that is commercially driven and morally void. Moreover, while the reforms demanded by women may be traditionally associated with gender-specific tendencies and talents, the problems intuitively targeted by women are actually affecting both sexes as members of the profession. Implementing the suggestions of a feminist critique of legal education would effectuate a socialization of both sexes that would help repair the profession's reputation and reorient lawyers with a clear vision of professional identity that will strengthen and stabilize the professional community.

At the educational level, law school curriculum and programs should revise and supplement the Socratic method of teaching to facilitate the understanding that, while the case method system is effective in developing rational reasoning skills, it nonetheless teaches only one skill in a broader set of skills necessary to legal analysis. Professors must expose students to interpersonal and intrapersonal skills foundational in negotiation and other alternative dispute resolution methods, and to the extent possible, foster creativity in problem solving and encourage ethical evaluations concurrently with the exercise of these other skills. Professors must also try to connect to students' spiritual reserves, raising consciousness about the profession's mythological history in order to sharpen a sense of professional identity and

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192 *See id.* at 79.

193 BENNETT, *supra* note 2, at 79.

194 *See id.* at 172.

sense of purpose grounded in service. These reforms are admittedly ambitious, and yet such efforts are seemingly necessary to address the tragic shortcomings of one of the nation's most noble and important professions.