

## **A Liberal Education in Law: Engaging the Legal Imagination Through Research and Writing Beyond the Curriculum**

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### ***I. Introduction***

In his essay, *Doctrine in a Vacuum*, James Boyd White describes a bleak vision of students' experience of law school after the first year:

The case method . . . is likely to be seen no longer as a method of exploration and dialectic, a technique for discovering what is problematic in the law or in life, but as a way of distancing oneself from that—a way of reducing experience to the level of the Gilbert's Outline. The implied contract between the student and teacher shifts its focus: our insistence to the student, "You are responsible for these texts as you have never been responsible for anything in your lives," all too frequently becomes the acceptance of a correlative, "and responsible for nothing else in the world." The focus on discrete texts, which is the key to the concentration of attention in the first year, thus becomes a focus on doctrine in a vacuum. . . . The student can reduce the course to the black-letter law, either through the hornbook or the more laborious method of reading the cases, or to the application of a theory; the teacher cannot prevent it, and his examination in any event often seems to ask for nothing that a bright student cannot provide on the basis of hornbook reading.

Law school on such terms trivializes law and education alike. The traditional casebook . . . presents severely edited opinions as if they were all that one needed to know, and often does the same with other writers as well—a paragraph each from Bentham, Kant, and Plato, for example. The whole thing feels to some like a charade, a complex way of doing something that is at heart rather simple and

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1. © Carol M. Parker 2002. All rights reserved. Carol M. Parker is Associate Professor & Director of Legal Writing at the University of Tennessee College of Law. The author is grateful to Judy Cornett, Fran Ansley, and Jerry Phillips for their comments on an earlier draft of this essay.

unimportant. . . . Legal education seems no longer to be learning to think like a lawyer but learning to think like a bar exam.<sup>2</sup>

The vision of lawyers trained to think like bar exams in turn trivializes legal thought so as to suggest one (or both) of the stock caricatures of the nature of law: (1) that law is simply the mechanical application of rules; and (2) that law is simply the vehicle for the exercise of power by the powerful. If those statements do not define our sense of the nature of law and legal thought, then the passage must raise the question, “How do lawyers think—or how do we hope they think?”

An answer may be glimpsed in Professor White’s idealized version of a graduate course in British nineteenth-century history, offered in contrast to the specter of law school at its worst. In this history class, the professor

would not assume that everything that counted would be said or referred to—“covered”—in class, but rather that the class would treat a set of questions, chosen for their interest and importance, as examples of the historical mind at work. The students would be assumed to know much more, and to learn much more, about this period and its history than was ever said in class. Bibliographies too large for any one to read would be circulated. The idea would be that each student was different; that each was engaged in an educative process for which he was responsible . . . . Such a history course would not teach facts or themes or doctrine in a vacuum: it would take place in a context, partly of the student’s making, including his prior reading, his contemporaneous reading and independent thought, and his imagined future intellectual life.<sup>3</sup>

If we were to so conceive a law school class, what questions might we choose “for their interest and importance” to exemplify the *legal* mind at work? How does it work? If the sort of individual engagement in learning envisioned in that history class—the ability to “ask questions that will generate new material; and the capacity to organize it all in new ways”<sup>4</sup>—is what legal education seeks to foster, then what should we tell students through our curricula? Perhaps what we should say to them, not lightly but quite seriously, is this: Use your imagination.

Each word in that short sentence is essential to its message. First, “imagination” represents a conception of legal thought that not only animates White’s writings but also finds support in cognitive theory.<sup>5</sup> Second, the word

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2. James Boyd White, *Doctrine in a Vacuum*, in *From Expectation to Experience: Essays on Law and Legal Education* 8, 13-14 (U. Mich. Press 1999) (note that White cautions that the description is a caricatured view of law school life).

3. *Id.* at 15-16.

4. *Id.* at 20.

5. See Steven Winter, *A Clearing in the Forest*, 10 *Metaphor & Symbolic Activity* 223 (1995). The cognitive linguist, Mark Johnson, has written, “Without imagination, nothing in

“use” states an educational imperative that practice is the path a novice must travel in seeking expertise. And finally, “your” recognizes the unique contribution that each student can make to the cultural enterprise—which is the core premise of liberal education, that is, an education that seeks to develop students’ individual capacities.<sup>6</sup> Those words offer a lens through which to envision a curriculum, in Professor White’s words, not as “professional training alone but as the education of the individual mind.”<sup>7</sup>

## **II. “Imagination”**

Practicing law—and learning law—is at heart an imaginative enterprise. In law, as in poetry, the mind works through metaphor.<sup>8</sup> Metaphor is more than a means of expression: it is the “imaginative means by which we conceive the multiple relations of a complex world.”<sup>9</sup> Only through cognitive processes that are “imaginative, associative, and analogical” are we able to adapt to the “contingent and changing situations” of our lives.<sup>10</sup> From the particular case, we imagine a universe of general principles; from a general principle, we imagine myriad particular circumstances. Legal thought constructs the language—tentative and imperfect—that permits recursive

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the world would be meaningful. Without imagination, we could never make sense out of our experience. Without imagination, we could never reason toward knowledge of reality.” Mark Johnson, *The Body in the Mind: The Bodily Basis of Meaning, Imagination, and Reason* ix (U. Chi. Press 1987).

6. White, *supra* n. 2, at 16. See e.g. Martha C. Nussbaum, *Cultivating Humanity* 19 (Harv. U. Press 1998) (“Liberal education . . . is, and should be, Socratic, committed to the activation of each student’s independent mind and to the production of a community that can genuinely reason together about a problem, not simply trade claims and counterclaims.”).

7. White, *supra* n. 2, at 17. White argues that focusing on the character of individual thought concerning legal materials

makes hard and practical professional sense, for the most valuable attainment that a student will carry with him from our law school into the great world is not intellectual baggage in the form of boxes and trunks full of rules, distinctions, arguments, and so on, but a more fully educated mind. His mind is the instrument by which he will earn his living; it is also the organ by which he will claim to find or make meaning in his life—including moral meaning—and by which he will organize his own experience into a coherent and tolerable whole.

*Id.*

8. See James Boyd White, *The Judicial Opinion and the Poem: Ways of Reading, Ways of Life*, 82 Mich. L. Rev. 1669 (1984).

9. Steven L. Winter, *Death is the Mother of Metaphor*, 105 Harv. L. Rev. 745, 759 (1992).

10. Winter, *supra* n. 5, at 227.

travels between realms of the general and the particular.<sup>11</sup> Choosing among the possibilities, we imagine their moral consequences.<sup>12</sup>

Drawing on studies by cognitive scientists, Steven Winter has argued that “human rationality is a matter of imagistic association; it is precisely in that sense that rationality is imaginative.”<sup>13</sup> These studies suggest that metaphoric structures are not random. Rather, these structures develop through our interactions with the world, building on earliest sensorimotor experiences.<sup>14</sup> As the ability to abstract from concrete experience develops, “we use social experience and general cultural knowledge to categorize and to understand.”<sup>15</sup>

Just as Professor White rejects an educational model that rewards “thinking like a bar exam,” Professor Winter rejects both “the determinacy aspired to by analytic logic and the arbitrariness assumed by most social coherence theories.”<sup>16</sup> Instead, the commonality of physical experience and the orderly processes of cognitive development are sources of universality in law’s metaphors;<sup>17</sup> the particularity and variety of social experiences provide their dynamic.

### III. “Use”

If this view of the role of imagination in legal reasoning makes sense, an important goal of legal education must be to foster development of the transformational language of conceptual metaphors. A law school curriculum that emphasizes research and writing provides experiences for students to use their legal imagination and gain expertise in legal thought.<sup>18</sup>

By providing opportunities to express original thoughts in law’s metaphors, a compositional approach to legal education encourages students to *use*, and thus to develop, their legal imagination. At the beginning, students’

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11. Professor White describes law “as an expressive and rhetorical activity,” stating, “The [lawyer’s] mind must be a source of its own energy, of invention, of what the rhetoricians called *ingenium*: the power to make something new . . . --the capacity . . . to recreate or represent the world in language.” White, *supra* n. 2, at 20.

12. “Ethical dilemmas are hard to see; we walk right past them. . . . It takes imagination to see how ethics work[ ] in our everyday professional lives.” James R. Elkins, *Lawyer Ethics: A Pedagogical Mosaic*, 14 Notre Dame J.L., Ethics & Pub. Policy 117, 145-46.

13. Winter, *supra* n. 9, at 772 n. 18 (citing Steven L. Winter, *Contingency and Community in Normative Practice*, 139 U. Pa. L. Rev. 963, 992-95 (1991)).

14. See generally George Lakoff & Mark Johnson, *Philosophy in the Flesh* (Basic Books 1999).

15. Winter, *supra* n. 5, at 234.

16. *Id.* at 229.

17. See Steven L. Winter, *The Cognitive Dimension of the Agony Between Legal Power and Narrative Meaning* 87 Mich. L. Rev. 2225, 2252 (1989) (“Communication is possible because humans share the experience of embodied interaction with the environment.”). Imaginative processes may be described as embodied because they “emerge[ ] from the neural structure of the brain. . . . [and] operate[ ] on the ‘raw material’ provided by our embodied experiences, both physical and social.” Winter, *supra* n. 5, at 228.

18. “The central task of education, argue the Stoics following Socrates, is to confront the passivity of the pupil, challenging the mind to take charge of its own thought.” Nussbaum, *supra* n. 6, at 28.

use of law's metaphors is unexamined and naive; as students progress, they will gain insight into the patterns of conceptual metaphors. As Professor White explained, a compositional mode of legal education would define the student

not as a learner of facts and doctrines and rules, nor even as the learner of a set of rhetorical moves—of the means of persuasion available to the lawyer—but as a speaker and writer, the maker of new compositions. Attention is focused on what the student can find to say in the language of the law, upon his capacity to transform that language, and thus upon the resources and character of his own mind.<sup>19</sup>

To emphasize composition is not to retreat from the goals of skills education espoused in the MacCrate Report,<sup>20</sup> but rather to provide a context in which those skills may be practiced. By working through legal questions that are authentic and complex,<sup>21</sup> students connect their previous experiences to the new texts and wider social contexts and are better able to transfer their analytic skills in research and writing to solve novel legal problems. In so doing, they move toward the goal of becoming experts in their field.<sup>22</sup>

#### **A. Expertise and the Education of the Individual Mind**

Is the notion of acquiring expertise relevant to Professor White's vision of a liberal education in law? A review of studies of individuals working in a variety of fields has identified common differences between experts and novices, including the following:

1. Experts notice features and meaningful patterns of information that are not noticed by novices.
2. Experts have acquired a great deal of content knowledge that is organized in ways that reflect a deep understanding of their subject matter.
3. Experts' knowledge cannot be reduced to sets of isolated facts or propositions but, instead, reflects contexts of applicability; that is, the knowledge is "conditionalized" on a set of circumstances.

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19. White, *supra* n. 2, at 18-19.

20. ABA Sec. Leg. Educ. & Admis. to the Bar, *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 3 (ABA 1992).

21. See *infra* nn. 37-39, and accompanying text.

22. See generally Brook Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning* 36 *Ariz. L. Rev.* 287 (1994).

4. Experts are able to flexibly retrieve important aspects of their knowledge with little attentional effort.<sup>23</sup>

In addition, when elements of a possible solution are in disharmony, an expert is able to step back from an initial interpretation to search for a deeper understanding of issues.<sup>24</sup>

These attributes describe people with highly developed abilities to recognize meaningful relationships among ideas and to adapt to “contingent and changing circumstances.”<sup>25</sup> It is no leap at all to imagine an expert lawyer in these terms. As these attributes describe the working of imagination—of an individual’s mind constructing understanding of the world—they are consistent with Professor White’s vision of lawyers as makers of new compositions.

The most striking aspect of expert knowledge, so conceived, is the degree to which it is contextualized.<sup>26</sup> Experts’ “knowledge is not simply a list of facts and formulas that are relevant to their domain.”<sup>27</sup> Instead, experts have efficient access to information based on deep understanding of interrelationships of concepts.<sup>28</sup>

Research shows that it is not simply general abilities, such as memory or intelligence, nor the use of general strategies that differentiate experts from novices. Instead, experts have acquired extensive knowledge that affects what they notice and how they organize, represent, and interpret information in their environment. This, in turn, affects their abilities to remember, reason, and solve problems.<sup>29</sup>

For example, studies of expertise in historians and physicists suggest that where experts respond to basic principles, novices tend to respond to surface characteristics of problems.<sup>30</sup> The novices’ strategy is less useful. Discussing

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23. National Research Council, *How Experts Differ from Novices*, in *How People Learn: Brain, Mind, Experience, and School* 19 (John D. Bransford et al. eds., Natl. Acad. Press 1999).

24. *See id.* at 35 (“The ability to recognize the limits of one’s current knowledge, then take steps to remedy the situation, is extremely important for learners at all ages.”).

25. Winter, *supra* n. 5, at 227.

26. National Research Council, *supra* n. 23, at 31. Experts’ knowledge “includes a specification of the contexts in which it is useful.” *Id.* When approaching new problems, experts need not think through all of the possibilities; the ones most likely to succeed are apparent to them because relevant memory is organized in chunks, which permits them to think through a more limited, higher quality set of possibilities than would a novice. *Id.* at 20-24.

27. *Id.* at 24.

28. *Id.* at 20-24.

29. *Id.* at 19.

30. A study of physicists indicates that “experts’ thinking seems to be organized around big ideas . . . such as Newton’s second law.” *Id.* at 25. Novices, by contrast, “tend to perceive problem solving in physics as memorizing, recalling, and manipulating equations to get answers.” *Id.* at 26. Their answers “were based on the presence of surface elements, such as a pulley or an inclined plane.” K. Anders Ericsson, *The Acquisition of Expert Performance: An*

these studies, a report of the National Research Council states, “Responding to the surface characteristics is not very useful, since two problems that share the same objects and look very similar may actually be solved by entirely different approaches.”<sup>31</sup>

This aspect of novice thinking has important implications for use of computer-assisted legal research in law schools. Responding to changes brought by the new technology will require law schools to do more than purchase software and presentation equipment and train students to become efficient managers of information. Instant access to vast quantities of often uncatalogued information via word searches presents challenges that demand increased focus on education in the art of understanding.<sup>32</sup>

### **B. Practicing Legal Thought**

Studies of experts in various endeavors have identified some of the ways in which experts differ from novices and suggest that expertise is acquired through “deliberate practice.”<sup>33</sup> The term “deliberate practice” refers to the undertaking of learning activities that present “a well-defined task with an appropriate difficulty level for the particular individual, informative feedback, and opportunities for repetition and for correction of errors.”<sup>34</sup> Mechanical repetition—such as simply reading and rereading text—will not suffice; concentration is essential.<sup>35</sup> Studies of acquisition of expertise suggest that about ten years of deliberate practice seem to be necessary to become an expert in an endeavor.<sup>36</sup>

Constructivist learning theory offers guidance as to the sorts of experiences that foster students’ development as makers of new compositions.<sup>37</sup> Assuming that learners construct knowledge as they seek meaning in their experiences,<sup>38</sup> a constructivist theorist would expect an effective educational program to do the following:

1. Provide complex learning environments that incorporate authentic activity.

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*Introduction to Some of the Issues*, in *The Road to Excellence: The Acquisition of Expert Performance in the Arts and Sciences, Sports, and Games* 1, 14 (Lawrence Erlbaum Assoc. 1996) (citing M.T.H. Chi et al., *Expertise in Problem Solving* in Robert J. Sternberg, *Advances in the Psychology of Human Intelligence* vol. 1, 75 (Lawrence Erlbaum Assoc. 1982)).

31. National Research Council, *supra* n. 23, at 26.

32. For a thorough and fascinating discussion of the changes, see Molly Warner Lien, *Technocentrism and the Soul of the Common Law Lawyer*, 48 *Am. U. L. Rev.* 85 (1998).

33. See Ericsson, *supra* n. 30, at 20-21.

34. *Id.*

35. See *id.* at 34.

36. *Id.* at 10.

37. See generally Michael Schwartz, *Teaching Law by Design: How Theory and Instructional Design Can Inform and Reform Law Teaching* 38 *San Diego L. Rev.* 347, 379-82 (2001).

38. See Marcy P. Driscoll, *Psychology of Learning for Instruction* 360 (Allyn & Bacon 1994).

2. Provide for social negotiations as an integral part of learning.  
...
3. [Ask students to examine material from multiple perspectives or metaphors.]  
...
4. [Foster the students' awareness of their own roles in the process of constructing knowledge.]  
...
5. Emphasize student-centered instruction.<sup>39</sup>

Each of these attributes is directed toward developing students' ability to transfer knowledge learned in one context to new sets of circumstances—to draw connections from what has been learned in one context to new sets of circumstances encountered in another context.<sup>40</sup>

Compositional education seems likely to provide the sort of practice necessary to begin the process of developing expertise in creative legal thought.<sup>41</sup> Through independent research, students seek meaningful connections among legal authorities, factual circumstances, and social goals; by writing, they articulate those connections to create new compositions. The written compositions permit law teachers and other audiences to provide informative feedback, which students can incorporate into later drafts or generalize to use in composing other documents.<sup>42</sup>

Moreover, composition teaches metacognition. The process of revising writing so as to communicate more precisely forces the writer to be conscious of the concepts that organize analysis of a legal problem.<sup>43</sup> Having gained deeper understanding of those concepts, the writer will be better able to generalize understanding of that problem to novel situations.

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39. *Id.* 365-66. See generally *id.* at 365-71.

40. See generally National Research Council, *Learning and Transfer in How People Learn: Brain, Mind, Experience, and School* 39 (John D. Bransford et al. eds., Natl. Acad. Press 1999).

41. Laurel Currie Oates, *Beyond Communication: Writing as Means of Learning*, 6 *Leg. Writing* 1 (2000). After reviewing research concerning the relationship of writing to learning, Professor Oates notes that writing assignments that require students "to write, and thus think, in the way that a lawyer writes and thinks" force students to "monitor their comprehension, assess the importance of various pieces of information, recognize structures, and make connections between pieces of new information and between new information and previously acquired knowledge, all of which are acts that can result in knowledge transformation." *Id.* at 21-22.

42. For a discussion of writing as a means of socialization into legal discourse, see J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 *Wash. L. Rev.* 35, 56-61 (1994).

43. See National Research Council, *supra* note 23, at 37 (noting that "[i]nstruction that enables students to see models of how experts organize and solve problems may be helpful"). Strategies for developing metacognition may be found in the sorts of imaginative writing suggested by Peter Elbow. See Peter Elbow, *Writing with Power* (Oxford U. Press 1981).



While a compositional approach to education may appear more time-consuming than some other methods of teaching doctrine or skills, studies in acquisition of expertise suggest that the time is well spent<sup>44</sup>:

Learners . . . are often faced with tasks that do not have apparent meaning or logic. . . . [T]hey may need to take time to explore underlying concepts and to generate connections to other information they possess. Attempts to cover too many topics too quickly may hinder learning . . . because students (a) learn only isolated sets of facts that are not organized and connected or (b) are introduced to organizing principles that they cannot grasp because they lack enough specific knowledge to make them meaningful.<sup>45</sup>

Students who are encouraged to direct their own learning and who receive and reflect upon regular feedback on their written work may be better able to evaluate the extent of their progress and the quality of their work and thereby become more effective self-learners throughout their professional lives.<sup>46</sup>

#### **IV. “Your”**

Finally, a curriculum that says to a law student, “Use *your* imagination,” recognizes that each student must construct his or her own understanding of law through the structures of his or her unique experience. Professor Winter writes:

Most of us were brought up to believe that we spoke prose and that poetry, creativity, metaphor, and the like were special gifts. One of the truly wonderful aspects of the recent developments in cognitive theory is the democratization of imagination, the discovery . . . of “that part of the ability of every language-user which is poetic.”<sup>47</sup>

Students come to law school from diverse academic and cultural backgrounds. First-year classes may stifle aspects of imagination in the

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44. “[Too often in non-compositional courses] there is only superficial coverage of facts before moving on to the next topic; there is little time to develop important, organizing ideas.” National Research Council, *supra* n. 23, at 30.

45. National Research Council, *supra* n. 40, at 46 (citations omitted).

46. By contrast, the traditional one-exam evaluation of first-year doctrinal courses may imbue students with a sense of powerlessness. One student noted, “After five months spent learning a new language, being made to feel the irrelevance of their prior experience, and having no one take any interest in their views or progress, it is no surprise that students receive their grades as a definitive statement regarding their . . . potential as lawyers.” *Note: Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 Harv. L. Rev. 2027, 2036 (1998).

47. Winter, *supra* n. 5, at 243 (quoting A. MacIntyre, *Whose Justice? Which Rationality?* 382 (Notre Dame U. Press 1988)).

process of focusing on legal method and doctrine.<sup>48</sup> Whether or not a narrow focus is useful for beginners, those aspects of imagination need not—and should not—be cordoned off indefinitely.<sup>49</sup> A compositional approach to legal education offers individuals greater opportunities to build on their own experiences to create an understanding of law. Phillip Kissam has written that

more writing would make legal education more democratic as well as more effective [by providing] more equal attention to individual students in terms of supervision and feed back . . . . More writing exercises with their various kinds of feedback loops and extra time for deliberation, reflections, and revisioning, would provide more choices to students about how they acquire and apply legal knowledge.<sup>50</sup>

Moreover, composing new texts requires students to reflect on ethical questions raised in context and on their own roles in the legal system in ways that reading and discussing appellate opinions may not.<sup>51</sup> Jonathan Freiman observes,

The case method presents at best a skeletonized version of moral choice: fact-scoured appellate opinions that nudge students' attention toward the epiphenomenal legal issues. At worst, the case method's focus on manipulation distracts students from the work of learning to stand in the midst of competing ethical claims.<sup>52</sup>

Research and writing assignments that require students to seek out and make sense of a variety of sources in resolving authentic problems do not provide the cues to the “right” answer inherent in presentations of the reasoning that

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48. See Elizabeth Mertz, *Teaching Lawyers the Language of Law: Legal and Anthropological Translations*, 34 *John Marshall L. Rev.* 91, 94-110 (2000).

49. A curriculum that devalues students' prior educational and personal experiences may impede learning even of doctrine. See National Research Council, *supra* n. 40, at 56 (“[A]ll learning involves transfer from previous experiences. This principle has a number of important implications for educational practice. First, students may have knowledge that is relevant to a learning situation that is not activated. By helping activate this knowledge, teachers can build on students' strengths. Second, students may misinterpret new information because of previous knowledge they use to construct new understandings. Third, students may have difficulty with particular school teaching practices that conflict with practices in their community.”).

50. Philip C. Kissam, *Lurching Towards the Millennium: The Law School, the Research University, and the Professional Reforms of Legal Education*, 60 *Ohio St. L.J.* 1965, 2009 (1999).

51. See Brook K. Baker, *Incorporating Diversity and Social Justice Issues in Legal Writing Programs*, 9 *Persp.* 51, 57 (Winter 2001) (“By criticizing legal texts, students can . . . discover their interpretive responsibilities—their power to transform law in the pursuit of social justice.”).

52. Jonathan M. Freiman, *Steps toward a Pedagogy of Improvisation in Legal Ethics*, 31 *John Marshall L. Rev.* 1279, 1291 (1998) (discussing the value of simulation exercises in professional ethics classes).

supports a court's decision. In resolving authentic, complex problems, students form and examine their professional values.<sup>53</sup>

### **V. Composition in the Classroom**

Given the many demands on legal education and the various constituencies law schools must satisfy, is it possible for law school curricula to emphasize compositional modes of education? I believe that the answer is clearly yes: the models for change are operating—and very effectively—already. If we were to ask recent graduates to describe their most meaningful educational experiences in law school, I believe that many of them would say that those experiences occurred when they represented clients in law school clinics, when they worked as editors and authors on law reviews, or when they argued cases in moot court competitions.

These experiences share many of the attributes present in the history class described by Professor White. In each of these settings, students direct their learning within the context of an authentic task; they must draw upon and find the sources that will help them resolve the unique questions presented by their clients' problems, their scholarly inquiry, or the issues on appeal. Like Professor White's idealized history class, these experiences do not teach "facts or themes or doctrine in a vacuum," but rather "in a context, partly of the student's making, including his prior reading, his contemporaneous reading and independent thought, and his imagined future intellectual life."<sup>54</sup> Each requires the student to compose in the language of law within the unique internal and external context of the question.

These activities all present opportunities for research and writing, not just across, but *beyond*<sup>55</sup> the law school curriculum—at least beyond that curriculum that is bound to coverage of heavily edited judicial opinions collected in casebooks. Each satisfies constructivist conditions of learning by providing learning environments that are authentic and complex, that involve collaboration with others, that require students to consider various perspectives on doctrine and problems, and that encourage independent thought.<sup>56</sup>

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53. Marcy Driscoll notes that "an expected outcome of examining multiple perspectives in a reflective way is the learner's commitment to views compatible with self-chosen values." Driscoll, *supra* n. 38, at 109 (citing D.J. Cunningham, *Beyond Educational Psychology: Steps toward an Educational Semiotic*, 4 *Educ. Psychol. Rev.* 165 (1992)). See also M.P. Driscoll & D. Lebow, *Making It Happen: Possibilities and Pitfalls of Cunningham's Educational Semiotic*, 4 *Educ. Psychol. Rev.* 211 (1992).

54. White, *supra* n. 2, at 16.

55. This phrase is borrowed from scholarship on service learning. See e.g. Steve Parks & Eli Goldblatt, *Writing Beyond the Curriculum: Fostering New Collaborations in Literacy*, 62 *College Eng.* 586 (2000).

56. See National Research Council, *supra* n. 40, at 39.

Many other opportunities for compositional learning are available in traditional courses as well.<sup>57</sup> For example, Philip Kissam has described a “limited research, analytic paper” that he assigns to his Constitutional Law students, in lieu of an exam in that course.<sup>58</sup> In this paper, students are asked to “develop the best possible Constitutional arguments for two alternative premises, and then advance a reasoned judgment for choosing one of the premises over the other.”<sup>59</sup> Over the course of the semester, students select a topic from a lengthy list prepared by the teacher and submit a prospectus, an outline (optional), and a ten-page paper, with feedback throughout the process. Students fulfilling this assignment undertake complicated research; read heterogenous, complex materials critically; compose new texts; and respond to feedback from the teacher.<sup>60</sup> In doing so, they gain experience in examining doctrine from multiple perspectives in consultation with others and greater awareness of their role as critical readers of legal authorities.

A course directed to a topical area may use an extended simulation exercise to accomplish constructivist goals. For example, a health care policy course I recently taught included a six-week simulation in which students acted as a “blue-ribbon panel” commissioned to study cases exemplifying ethical challenges in managed care in order to advise the State of Tennessee as to appropriate responses to those challenges. The cases were drawn from an ethics textbook on managed care, which also includes discussions of the cases by leading ethicists.<sup>61</sup> Each student assumed principal responsibility for researching legal issues raised by one of the cases and provided the panel with background on the legal framework surrounding the issue and a preliminary recommendation for responding to the problem. For example, preliminary recommendations might encompass a proposal for legislation, agency regulation, funding for educational or other programs, lobbying for action by the federal government, or doing nothing at all. Each student prepared an outline summarizing relevant legal authorities and other sources that might be useful to the panel. The student then discussed the proposal and authorities with a subcommittee of six to eight other students and, occasionally, experts from other disciplines including a research cardiologist and an ethicist.

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57. For additional examples, see generally Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561, 589-600 (1997). An emphasis on compositional modes of study is warranted especially because the profession demands it at the same time that institutional forces within universities and in the profession work against it. As Philip Kissam has written, “The ideology of excellence [with its emphasis on objective measures of excellence] may contribute to diminished interests in reading, writing, and intellectual exploration among those students who learn to pursue excellence rather than reason or culture.” Kissam, *supra* n. 50, at 1976. “[They] may be less capable or less interested . . . in writing competently about complex matters without extensive instruction or practice.” *Id.* Meanwhile, however, pressures on faculty imposed by the ideology of excellence discourage expenditure of time and energy on extensive instruction and feedback. *Id.* at 1977.

58. Kissam, *supra* n. 50, at 2012-13.

59. *Id.* at 2012.

60. *Id.* at 2013.

61. *Ethical Challenges in Managed Care* (Karen Gervais et al. eds., Geo. U. Press 1999).

Finally, the students distributed the outline and reported the proposal to the entire class. With that feedback, as well as comments and optional conferences with me, each student then fleshed out the proposal in a position paper, which appeared as a chapter in the blue-ribbon panel's final report. The simulation thus involved student-directed study of issues currently facing the State of Tennessee within an authentic context, with each student undertaking research using both legal and non-legal materials and developing his or her proposals in negotiation with others.

Finally, seminar courses and independent study projects are obvious vehicles for compositional education in law schools. A course that requires a substantial scholarly research paper provides space for students at least once in their law school careers to identify a question of importance to them—one that is worthy of their time and care—and think that question through: in short, to pursue an education of their individual minds.<sup>62</sup>

This sort of “senior thesis” assignment has been criticized as superfluous because few students are likely to write law review articles after they graduate from law school. Perhaps that prediction is correct, but teaching students to write effective professional documents is not the assignment's primary purpose. Rather, its goals are to foster independent, critical thinking and reflection and to help students become better readers of legal scholarship.

At its best, the process of selecting and researching an issue of personal relevance and writing the paper under close supervision of a faculty member requires students to think deeply about legal issues and to take personal responsibility for the conclusions they reach. That process encourages students to reflect on their roles in the legal system, and to consider the functions and legitimacy of institutions within that system. In composing their papers, students develop and test their understanding of the conceptual framework of a legal issue of their choosing and gain both a thorough understanding of an area of law and a greater awareness of their role as a composer of new legal texts. The experience is enhanced by faculty supervision, including review of the project through several stages of

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62. The scholarly research paper is a common form of an upper-level writing requirement. For example, the University of Tennessee College of Law requires the following expository writing assignment:

All students must successfully complete a substantial research paper under faculty supervision. To fulfill this requirement, students should write a research paper in which they (1) identify a problem or question they believe to be important and demonstrate that importance to their reader; (2) research and analyze the response or relationship of the legal system to the issue or similar issues, with the research to include primary sources; (3) if appropriate, evaluate the success or failure of efforts to deal with the problem or respond to the question; and (4) propose and defend a solution to the problem or present a sensible way of thinking about the question.

development<sup>63</sup> and, where possible, by other students' critiques of their drafts and a student's own opportunity to critique other students' drafts.

## **VI. Conclusion**

The passages from James Boyd White's essay, *Doctrine in a Vacuum*, with which this paper began, prompt two questions: First, how do lawyers think—or how do we hope they think? And second, how can law school curricula be designed to expose students to questions that exemplify the legal mind at work, so as to promote individual engagement in learning and development of expertise in legal thought?

Research on the acquisition of expertise in a variety of fields suggests answers to the first question: We hope they seek and recognize connections in texts. We hope they pursue knowledge and discern meaning. We hope they are alert to circumstances in novel situations, which may permit useful analogies to precedent and potential to transform doctrine to adapt to changing circumstances. We hope they exercise critical thinking. We hope they exercise independent judgment while working in collaboration with others.

Constructivist theory offers guidance as to the sorts of questions our curricula should pose to exemplify legal thinking and engage students in independent thought. The questions we choose are those that arise in authentic contexts and require students to use the imaginative structures of legal reasoning and language to make their unique contributions to law and society.

Research and writing across—and beyond—the curriculum provide opportunities for expression of original thought and promote education of the individual mind. A law school curriculum that emphasizes compositional education recognizes the value of each student's contribution to legal thought and provides essential preparation for the profession.

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63. Documents to be reviewed may include the following: a proposal and preliminary bibliography, a preliminary outline or bibliographic essay, a detailed outline, and interim drafts.