SO WHY NOT AN EXPERIENTIAL LAW SCHOOL . . .
STARTING WITH REFLECTION IN THE FIRST YEAR?

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I. INTRODUCTION

Urged on by increasingly agitated calls from across the legal community for more “practice ready” graduates, law schools are now more than ever engaged in a good-faith struggle with questions of how to most effectively develop and implement coursework designed to achieve that aim.1 Over a relatively short period of time, most schools have responded by introducing an expanding array of clinics, externships, and skills-focused simulation courses.2 Historically treated by many within the teaching academy as an approach to be avoided, experiential education is now being touted as the remedy curative of the legal education’s problems.3

This essay proposes that effective implementation of experiential education must begin with training law students on how to learn from

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2 *Id.* (detailing the “abundant opportunities for students to ‘learn by doing’” recently implemented by law schools in the New York City area).

experience during the first year of law school. Part II briefly reviews the seismic shift that has taken lawyer training from doctrine-exclusive to skills-heavy in focus, Part III overviews the reflective pedagogies and practices from which so many of the benefits of experiential education emanate. Part III also considers the ways in which two Australian law schools and one American law school have added reflection to the first-year curriculum. Thereafter, Part IV offers a prescription for incorporating reflective learning into the first year as a means of readying students for the extensive legal training—including clinics, externships, and simulation coursework—that lies ahead. By adopting a comprehensive experiential curriculum commencing at day one, it is argued that students will be permitted a deeper form of learning from the outset and be that much more practice ready upon graduation.

II. The Turning (Experiential) Tide of Legal Education

In his June 1932 report to the Alumni Advisory Board of the University of Chicago Law School, entitled *Why Not A Clinical Lawyer-School*, Jerome Frank raised a sharp challenge to the notion, espoused by Harvard professor C.C. Langdell and “accepted by [university law schools] as more or less sacrosanct,” that “the printed opinions of judges are . . . the exclusive repositories of the wisdom which law students must acquire to make them lawyers.”4 Frank lamented the growing dissonance between the “library law” pedagogy commonly employed to train lawyers and the broad set of skills and sensibilities needed to succeed in day-to-day legal practice.5 To best prepare future lawyers, Frank insisted, law schools must follow the medical school methodology of exposing students to complete records of cases (not simply “upper court opinions”) and using the trial and appellate courts as supplemental classrooms.6 Harkening back to the hands-on focus that characterized early legal training in the United States, he called for an education structured around law school legal clinics and field-based apprenticeships in which students learning under the supervision of veteran legal practitioners would gain a hands-on “[k]nowledge

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5 *Id.* at 908. Frank’s was not the only critique of its time that focused on the disconnect between legal education and law practice caused by the appellate case method of training. *See also* Jerome Frank, *A Plea for Lawyer-Schools*, 56 Yale L.J. 1303 (1947); K.N. Llewellyn, *On What Is Wrong with So-Called Legal Education*, 5 Colum. L. Rev. 651 (1935).

6 Frank, *supra* note 4, at 923.
of what courts and lawyers do . . . [and] visual demonstration of the possible value of a rich and well-rounded culture in the practice of law.”

For the many decades that followed Professor Frank’s call for reform, the experiential-coursework-as-centerpiece aspect of his vision remained just that.\(^8\) In the late 1960s and 1970s, the advent of the clinical movement introduced curricular changes that once more promoted student “learning by doing” in the role of the lawyer.\(^9\) Still, as law schools began to contemplate the extreme paradigm shift that experiential-centered reform represented, clinical coursework and the status of those teaching and supervising remained at the periphery of legal education.\(^10\) By and large this remained true even after the issuance in 1992 of the MacCrate Report, in which the American Bar Association’s Section of Legal Education and Admissions to the Bar called for law schools to impart legal skills and professional values through heightened focus on practice.\(^11\) Although the MacCrate Report daringly touted an increased reliance on simulation courses and live-client

\(^7\) Id. at 923. (“ Whether it be painting or writing or practicing law, the best kind of education in an art is usually through apprentice-training under the supervision of men some of whom have themselves become skilled in the actual practice of the art. That was once accepted wisdom in American legal education. It needs to be rediscovered.”).

\(^8\) Filippa M. Anzalone, *Education for the Law: Reflective Education for the Law*, in *HANDBOOK OF REFLECTIVE INQUIRY: MAPPING A WAY FOR KNOWING FOR PROFESSIONAL REFLECTIVE INQUIRY* 85, 88 (Nona Lyons ed., 2010), available at http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1518&context=lsfp (“Except for the legal realist movement in the 1930s, most late nineteenth and early twentieth century attempts at educational reform did little to move away from Langdell’s theoretical conceptualism.”).


\(^10\) See Tamar Birckhead, *Clinical Legal Education and the Future of the Academy*, PRAWFSBLAWG (July 11, 2013, 12:32 AM), http://prawfsblawg.blogs.com/prawfsblawg/2013/07/clinical-legal-education-and-the-law-school-crisis.html (noting that “students can graduate from an ABA-accredited law school and sit for the bar exam having met only the minimum ABA-accreditation requirement of a single credit (out of an average of [eighty-nine] academic credits) of professional skills, meaning that they can be deemed ready to practice law without ever handling a client’s problem”).

clinics as a means of producing more fully developed lawyers,\textsuperscript{12} the embrace of traditionally focused legal academics remained cool and the ensuing years saw law schools continue to grapple with questions of whether and how to develop and incorporate experiential curricula.\textsuperscript{13}

In 2007, however, the issuance of two provocative assessments of legal education—The Carnegie Foundation for the Advancement of Teaching’s \textit{Educating Lawyers: Preparation for the Profession} and the Clinical Legal Education Association’s \textit{Best Practices for Legal Education: A Vision and a Road Map}—rebuffed any lingering questions about whether experience-based training would have a significant place in the future of legal education.\textsuperscript{14} Analyzing findings from a two-year comparative study of law school curricula, the Carnegie Report implored law schools to bolster student preparation by focusing beyond tradi-

\textsuperscript{12} Anzalone, \textit{supra} note 8, at 89 (“[T]he so-called MacCrate Report was a momentous wake-up call to the legal academy. It stands as the most significant paradigm shift in legal education for over a century and it added impetus to the work of the clinical legal movement in American law schools.”); Green, \textit{supra} note 1 (“At the same time, the MacCrate Report acknowledged that law schools still did not produce fully developed lawyers. While clinical courses could ‘help students understand the importance of the skill of organization and management of legal work, . . . it remains for the first employer, or mentor, to translate this awareness into a functioning reality.’” (quoting \textit{The MacCrate Report}, \textit{supra} note 11, at 235)).

\textsuperscript{13} Anzalone, \textit{supra} note 8, at 88 (“In fact, the last 40 years have been a time of naval gazing in the legal academy as it attempts to adjust and realign itself to strike the right balance between traditional theoretically based learning models and learning by doing.”); see also Russell Engler, \textit{The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow}, 8 \textit{CLINICAL L. REV.} 109, 146 (2001) (“[T]here is little evidence to believe that the MacCrate Report transformed legal education, or led to sweeping changes when measured by the more ambitious criteria or goals . . . . It would be hard to identify a school at which dramatic curricular changes were triggered by the MacCrate Report. Indeed . . . nearly a decade after the MacCrate Report, both the ABA and the legal academy are still ambivalent toward the essential tenet that law schools must prepare students for the practice of law and the exercise of sound judgment to solve client problems.”).

tional doctrine to develop lawyering skills and professional identity.\textsuperscript{15} Like medical training, the authors proposed, legal education must foster a more holistic inculcation of foundational knowledge, practical abilities, and professional values by employing integrated pedagogical approaches extending beyond lectures and the Socratic teaching method.\textsuperscript{16} Although it did not make explicit use of the term “experiential learning,” the Carnegie Report touted simulation exercising, clinical experiences, and other hands-on approaches to provide future lawyers with a more complete professional education.\textsuperscript{17}

A six-year collaborative work, \textit{Best Practices} looked within the legal academy and across other professional disciplines in proposing a similar set of comprehensive recommendations for improving legal education. At the heart of those recommendations, the authors premised that the training of lawyers must make greater use of teaching methodologies that “integrate . . . theory and practice by combining academic inquiry with actual experience.”\textsuperscript{18} According to \textit{Best Practices}, curricular reform should endeavor to advance student attainment of specific cognitive and practice skills as well as professional and ethical values through the development of articulable teaching goals and enhanced experiential coursework focusing on those skills and values.\textsuperscript{19}

\textsuperscript{15} As to how to most effectively teach law students to become responsible professionals, the Carnegie Report speaks to three apprenticeships of professional education. The first apprenticeship is described as intellectual or cognitive, and emphasizes the knowledge and way of thinking of the profession. \textit{The Carnegie Report}, supra note 14, at 28. The second apprenticeship addresses the “forms of expert practice shared by competent practitioners.” \textit{Id.} The third apprenticeship of identity and purpose “introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible.” \textit{Id.}

\textsuperscript{16} \textit{Id.} at 80–81, 107–08 (describing clinical education as the “distinguishing feature” of medical training and noting that the enhanced clinical focus in medical schools is “based on the recognition that learning professional knowledge and skill ‘in role’ is a distinct pedagogical genre and needs the same care and attention as the didactic teaching that dominates the first two years of medical school.”).

\textsuperscript{17} \textit{Id.} at 115 (“Law schools, we believe, need to give the teaching of practice a valued place in the legal curriculum so that formation of the students’ professional judgment is not abandoned to chance. The past several decades of progress in pedagogies for teaching lawyering, including well-organized clinical experiences with actual clients, hold the promise of rescuing this vital function of apprenticeship for practice from the vagaries of curricular accidence and establishing it as a basic part of legal preparation.”).


\textsuperscript{19} \textit{Best Practices}, supra note 14, at 190 (concluding that among the areas that can best be taught in clinical courses are “the values, behaviors, attitudes, and ethical re-
Spurred on by the Carnegie Report and *Best Practices*, the American Bar Association (ABA), state bar associations, and proponents within the practice community have called in seeming unison for law schools to make the curricular changes necessary to graduate more “practice ready” lawyers. In 2011, the ABA House of Delegates “urg[ed] legal education providers to implement curricular programs intended to develop practice ready lawyers, including, but not limited to, enhanced capstone and clinical courses.”20 More recently, lamenting a general quality of unpreparedness shared by new lawyers,21 state bar associations in California, Illinois, and elsewhere announced the exploration of changes to bar admissions requirements that, if adopted, would force law schools to mandate experiential and skills learning on a broad scale.22 Through it all, lawyers across the spectrum

requirements of a lawyer (professionalism”); Antoinette Sedillo Lopez, *Leading Change in Legal Education—Educating Lawyers and Best Practices: Good News for Diversity*, 31 Seattle U. L. Rev. 775, 776 (“The specific suggestions in *Best Practices* for small group learning, collaborative learning, skills training, values education, cultural competence, professionalism training, personal and professional balance, and outcome-based assessment represent a potential for profound changes in the manner in which legal education is delivered in this country.”).


21 See State Bar of Cal., Task Force on Admissions Regulation Reform: Phase I Final Report 1 (June 24, 2013) [hereinafter California Task Force Report], available at http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_(FINAL_AS_APPROVED_6_11_13)_062413.pdf (Although “law schools have gradually incorporated clinical experience and competency training into their core curriculum . . . many new lawyers . . . are now entering the profession . . . without the solid foundation necessary to represent clients in a competent manner and with nowhere to turn to build that foundation.”); Special Comm. on the Impact of Law Sch. Debt on the Delivery of Legal Servs., Ill. State Bar Ass’n, Final Report and Recommendations 3 (2013) [hereinafter Illinois State Bar Report], available at http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%2003-08-13.pdf (“[T]he Special Committee received testimony that the tight job market facing recent law graduates may have—at least in part—resulted from the inadequate training of law students . . . The majority of lawyers who testified indicated that new lawyers are not adequately prepared for practice . . . .”).

22 See California Task Force Report, supra note 21, at 15–16 (detailing proposed California Bar pre-admission competency training requirement in which applicants in law school would have to complete fifteen academic units of for-credit skills coursework, externships, clerkships, or apprenticeships); Illinois State Bar Report, supra note 21, at 6 (recommending that the second and third years of law school be trans-
of practice have chimed in with similar pleas for more vocational training as a means of developing students who are otherwise graduating without the robust skill set necessary to work with clients. Solidifying the place of experiential coursework as something more than a passing trend, the ABA recently amended its law school accreditation standards to require, beginning with the classes entering law school in 2016, that all law students complete at least six credit hours of clinics, externships, or simulation courses before graduating.

Even before the adoption of the ABA’s enhanced requirement, calls for more hands-on coursework from within the legal academy had grown stronger and more resolute. In the last decade, however, a new dawn has emerged for experiential education, with even the most traditionally experiential-averse faculties adopting new and innovative courses across the clinic, externship, and simulation spectrum. Kept away, often intentionally, from the limelight throughout much of the history of legal education, experiential education has now been thrust as the newest star on the curricular stage.

formed “to help students transition into practice through apprenticeships in practice settings, practical courses, and teaching assistantships, rather than more doctrinal courses”).

See David Segal, What They Don’t Teach Law Students: Lawyering, N.Y. TIMES (Nov. 20, 2011), http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all&_r=0 (quoting a corporate general counsel who opines: “[t]he fundamental issue is that law schools are producing people who are not capable of being counselors . . . . They are lawyers in the sense that they have law degrees, but they aren’t ready to be a provider of services.”).


See, e.g., Erwin Chemerinsky, Why Not Clinical Education?, 16 CLINICAL L. REV. 35, 35 (2009) (“Many forces are pushing law schools to improve skills training for their students. There is no better way to accomplish this than through clinical education. There is thus an unprecedented opportunity to expand clinical education at American law schools.”).

See Segal, supra note 23 (detailing the efforts of Vanderbilt Law School to adapt its curriculum to incorporate more experiential and skills-focused coursework).


Acclimating hurriedly to the now-pervasive demand from constituencies within and outside of the law school, faculties have reacted by offering supply in the form of significant experiential enhancements to the upper-level curriculum. While a small number of schools have incorporated non-traditional, skills-focused courses in the first year, most have retained a traditional-looking first-year course diet consisting of well-entrenched foundational courses in legal doctrine (torts, contracts, criminal law, etc.) along with legal research and writing.

Herein it is asserted that as the emphasis on experiential learning grows in legal training, law schools must not stop at merely adding new hands-on course options during the second and third years. To ensure that such courses are as efficacious as intended, law schools must introduce in the first year the reflective techniques and concepts that are essential for students to truly know how to learn from the subsequent experiential course and practice opportunities they will be afforded.

[which] . . . means that students are asked to move between the actual practice of law and the law's theoretical foundations).

29 See, e.g., Legal Skills in Social Context, Ne. Univ. Sch. L., http://www.northeastern.edu/law/experience/lssc/index.html (last visited Oct. 12, 2014) (describing a first-year course introducing “the core skills of effective team lawyering” and placing students “into practice through an extensive legal research project on behalf of a community-based or public service organization”); Lawyering Program, Alb. L. Sch., http://www.albanylaw.edu/academics/lawyering/Pages/default.aspx (last visited Sept. 15, 2014) (describing a first-year course which places students in mock firms for a year-long simulated lawsuit in an effort to introduce students to the legal profession and foster professional skill development while performing traditional first-year research and writing assignments); Curriculum, Gonz. Univ. Sch. L., https://www.law.gonzaga.edu/academics/curriculum/ (last visited Sept. 15, 2014) (describing two required skills and professionalism labs, one focused on litigation and one focused on transactional work); Clinics and Experiential Learning, U. Conn. Sch. L., http://www.law.uconn.edu/academics/clinics-experiential-learning/clinics-experiential-education (describing a required spring course focused on “three core lawyering skills—client interviewing, counseling, and negotiation”); Clinics & Experiential Learning, Yale L. Sch., http://www.law.yale.edu/academics/clinicalopportunities.htm (last visited Sept. 15, 2014) (discussing a school policy whereby students were allowed to enroll in clinical courses during spring semester of the first year); see also Ruan, supra note 18, at 430 (noting the increased faculty collaboration “to offer students exposure to ‘real life’ clients in the first year of law school”).

30 See Segal, supra note 23 (noting that while Vanderbilt Law School added a first-year class introducing students to federal administrative agencies, statutes, and regulations, the then-Dean’s efforts to “sell his faculty members on a retooled first-year Contracts class” were not successful when “[s]ome members of the faculty got over stressed by all the change.”).

III. REFLECTION AS THE CORNERSTONE OF EXPERIENTIAL LEARNING

Championed as something of a panacea for what ails legal education, experiential courses do much more than simply allow students to obtain “hands-on experience” or “practical skills training.” Although they frequently differ in terms of form and substance, the pedagogical underpinnings of all experiential offerings share an aim to deliberately place the student within a construct that perpetuates realization of and constant thought about professional skills and values. Engaged in a greatly enhanced form of “learning by doing,” the student is trained to assess the foundational material provided by the live and simulated legal work in a way that stimulates analytical thought, surveys creative legal theory, and promotes an augmented sense of personal identity.

Beyond seeking to impart the skills and values that will help prepare new graduates to engage in legal practice, experiential pedagogy aims to equip students with the aptitude to think about their work in a deliberate and ongoing way that transcends the academic setting. Long a cornerstone of experiential education, this process of “reflective practice” or “reflection-in-action” teaches the student how to learn from experience. In the more controlled law school environment, guiding the student through the methods and benefits of reflection upon the experiences at hand instills in the future lawyer an appreciation for the manner in which consistent self-evaluation can foster continued development throughout professional life.
A. How Students Utilize and Benefit from Reflective Learning

Although his teachings were not directed toward lawyers in particular,38 Donald Schon famously articulated the elements of the reflective methodology so often employed by applied legal educators in his 1983 book *The Reflective Practitioner.*39 As implemented within law school experiential coursework, the reflective cycle generally guides the student through intentional contemplation at three distinctive points in time relative to a specific action, such as a client interview, interaction with opposing counsel, or court appearance.40 Before taking the action, the student carefully thinks through the possible approaches, implications, feelings, and apprehensions at play.41 During the action, the student seeks not only to fulfill all responsibilities, but also to remain aware of all aspects of his performance in carrying out the tasks at hand.42 Following the completion of an action, the student devotes time to examining the effects of the action and the manner in which he undertook it.43

The longstanding reliance on reflective techniques to bolster experiential education is premised on the notion, enunciated in a recently issued Harvard Business School working paper entitled *Learning by Thinking: How Reflection Aids Performance,* that concomitant “doing” and “thinking about doing” strongly enhances individual learning:

[We]e depart from previous work equating direct learning with only learning-by-doing and introduce the construct of “learning by doing”—i.e., learning that comes from reflection and articulation of the key lessons learned from experience . . . . We argue that learning from direct experience can be more effective if coupled with reflection—that is, the intentional attempt to synthesize, abstract, and articulate the key lessons

40 See J.P. “Sandy” Ogilvy, Learning from Experience, in LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS 1, 3–6 (2d ed. 2007) (describing the “Experiential Learning Cycle” of planning, doing, and reflecting).
41 *Id.* at 5–6 (detailing and offering an example of the “planning” phase of the experiential learning cycle).
42 *Id.* at 6 (detailing and offering an example of the “doing” phase of the experiential learning cycle).
43 *Id.* at 6 (detailing and offering an example of the reflection, analysis, and integration steps that make up the third phase of the experiential learning cycle); see also Barry, *supra* note 35, at 146–47 (overviewing reflective practice as conceptualized by Schon).
taught by experience. Reflecting on what has been learned makes experience more productive. We further argue that the boost in learning generated by reflection is induced by the impact of reflection on self-efficacy defined as “the belief in one’s capabilities to organize and execute the courses of action required to manage prospective situations.” That is, we hypothesize that reflection builds one’s confidence to achieve a goal (i.e., self-efficacy), which in turn translates into higher rates of learning.\(^{44}\)

In short, students who use reflective tools to supplement performance of a specific task are much more likely to complete that task than others in better and more efficient fashion the next time around.\(^ {45}\) And like effective research and persuasive writing, reflection is a skill that should be continuously honed and utilized by the practicing lawyer to ensure continued growth and competency long beyond graduation.\(^ {46}\)

In the moment of law school, reflective methodologies can also assist in producing a more insightful, comfortable, and satisfied law student.\(^ {47}\) While traditional doctrinal teaching has proven effective in imparting the end-game substantive knowledge that a student “needs” to know, reflective exercising makes the doctrine more tangible by allowing the student to weigh it against her own beliefs and values.\(^ {48}\) Re-


\(^{45}\) *Id.* at 5 (“Our findings suggest that reflection is a powerful mechanism by which experience is translated into learning. In particular, we find that individuals perform significantly better on subsequent tasks when they think about what they learned from the task they completed.”); Gerald Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401, 408–09 (1999) (offering that drafting legal documents like wills and complaints helps students to discover limits on their knowledge in order for them to improve).

\(^{46}\) *BEST PRACTICES*, *supra* note 14, at 43 (quoting Ronald M. Epstein, MD & Edward M. Hundert, MD, *Defining and Assessing Professional Competence*, JAMA, Jan. 9, 2002, at 228 (“Competence depends on habits of mind that allow the practitioner to be attentive, curious, self-aware, and willing to recognize and correct errors.”)).

\(^{47}\) Emily Zimmerman, *An Interdisciplinary Framework for Understanding and Cultivating Law Student Enthusiasm*, 58 DePaul L. REV. 851, 913–15 (2009) (arguing that an Introduction to Legal Education Course that would “address the evolution of legal education, the design of legal education, critiques of legal education, and the connection between legal education and law practice . . . could provide an opportunity for students to develop enthusiasm for law study during their first semester of law school and lay the groundwork for the remaining semesters of law school”).

\(^{48}\) Anzalone, *supra* note 8, at 86 (“Reflective practice helps students vet their own beliefs and value systems against the mores and norms of the legal profession. Through reflection, they are invited to examine themselves and the profession they are about to enter as they learn how to be lawyers.”).
flection also invites the student to play a more active role in his own learning.49 A student who is having trouble grasping complicated doctrine can often better access the material when guided to evaluate it in the context of other life experiences before and during law school. Further, when integrated into the larger class setting, reflective practice can offer students the opportunity to share, and thus shed, feelings of both stress and self-doubt commonly shared by others.50

Law clinics and externship courses have long made use of activities such as journals and other forms of self- and peer-assessment to enhance learning and foster the development of reflective sensibilities for utilization in practice moving forward.51 Still, despite the demonstrated benefits of reflective pedagogy, law schools’ emphasis on reflective skills is generally reserved for experiential coursework as offered to the student in the second and third years of law school.52 This proposal stresses that law schools should be introducing students to reflective practice in a more formalized and systematic way during the first year.53 Doing so is necessary to ensure that from the start, students are sufficiently equipped with the comprehensive set of tools and requisite coping mechanisms necessary to succeed through the entire law school experience and in professional practice thereafter.54


50 Anzalone, *supra* note 8, at 86 (“Reflective practice is integrative and even healing, it can encourage learners to draw on their own life experiences before and during law school, thus coming to the understanding that learning how to become a professional lawyer is not just about what takes place in the sometimes daunting law school classroom.”), see generally Judith McNamara et al., *Learning to Reflect in the First Year of Legal Education: The Key to Surviving Legal Education and Legal Practice*, QUEENSLAND UNIV. TECH. (2009), http://eprints.qut.edu.au/27280/1/c27280.pdf (concluding that “reflective practice is the means by which students can become sufficiently emotionally intelligent to become balanced and happy lawyers”).


52 See McNamara et al., *supra* note 50, at 7 (noting that literature on the topic “focuses on the use of reflection in legal clinics or other practice oriented subjects”).

53 See Roy Stuckey, *Education for the Practice of Law: The Times They Are A-Changin’,* 75 Nw. L. Rev. 648, 674 (1996) (stating that law schools adding student reflection, *inter alia* during all three years of law school would not significantly disrupt the traditional law school curriculum).

54 McNamara et al., *supra* note 50, at 9.
B. Incorporation of Reflective Learning into the Law School First-Year Curriculum: Existing Efforts in Australia and North Dakota

Asserting the benefits of the earlier introduction of reflection into the curriculum, at least two law schools in Australia have successfully incorporated reflective learning into the first-year curriculum. More recently, the University of North Dakota School of Law expanded its first-year coursework to include a Professional Foundations course with a central purpose of introducing the skill of reflection to its new students. The manner in which these schools have exposed first-year students to reflection, and the reasons for doing so, provide a guidepost for the enhanced instruction on and use of reflection during the first year of law school.

1. James Cook University: Foundational Reflection in the First Year

At the James Cook University in Townsville, Queensland, Australia, the Faculty of Law, Business and Creative Arts has sought to “carefully and deliberately introduc[e] [reflective skills] to students at the foundational and developmental levels to prepare them” for the clinical course experiences offered in their final law school year.55 Early during the first year, each student participates in a multi-layered foundational reflection that initially requires the student to prepare and submit for peer review a short answer (six-hundred words) to a problem set focusing on a recently taught area of substantive law.56 Once the student’s answer is anonymously peer-reviewed and marked according to a pre-established rubric, the student receives a sample answer as well as limited positive and constructive feedback from the peer reviewer.57 Thereafter, having both played the role of peer reviewer and having his work reviewed, the student engages in a second reflective stage in which he considers the comments of the peer reviewer and again assesses the originally submitted answer. The third stage of the reflection exercise asks the student to evaluate how she will plan for similar assignments in the future by identifying one positive

55 Shircore et al., supra note 31, at 126 (explaining that, much like clinics, externships, and simulation courses in American law schools, Work Integrated Learning (WIL) and capstone courses are those in Australian schools that “allow students to consolidate and apply previous learning, consolidate and demonstrate ‘soft’ skills and provide a vehicle for professional socialisation and identity formation”).
56 Id. at 128.
57 The peers receive training on both the use and purpose of the rubric. The peer assessments are returned to the subject with little turnaround time to ensure timely and effective feedback. Id. at 128–29.
area and one area for future improvement. A final stage requires the student to implement the takeaways from the reflection exercise into future tutorial assignments.

Weighing the value of the first-year reflection assignment, members of the James Cook faculty have noted its impact as "a mechanism to enable students to gain an appreciation in relation to their written assignments while also facilitating the fundamentals of self-evaluation and identification of action necessary to improve performance." Pedagogically, the lessons from the exercise combine to introduce the skill of reflective practice to the student, help the student improve her written product, and empower the student to evaluate her work in a more streamlined fashion so that improvements across all subjects can be realized more immediately. Looking beyond James Cook’s first year, early introduction of reflection has acted as a “scaffold” in providing a more holistic education from day one and preparing the student for more developmental reflective journaling in the second year and the reflection-in-action experience of the clinical third year. Having been exposed to the benefits of reflective learning throughout the law school experience, graduates are more likely to possess the skills and sense of professional identity necessary to effectively transition into legal practice.

2. Queensland University of Technology Law Faculty: Reflection in the First-Year Legal Research and Writing Course

At Queensland University of Technology (QUT) Law School in Brisbane, Queensland, Australia, faculty have made use of various approaches to similarly add reflective pedagogy into the first-year curricu-

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58 Id. at 129. Collectively, the second and third stages are referred to as the “reflective piece” of the exercise.
59 Id. (“As the reflective exercise is conducted within a series of tutorials that incrementally build towards a piece of summative assessment, students can utilize what they learn[ed] and experienced in the reflection exercise to assist them with their future assessment.”).
60 Shircore et al., supra note 31, at 128.
61 See id.
62 Id. at 129–30 (describing the reflection techniques incorporated into the second and third-year curricula at James Cook).
63 Id. at 128 (“Effective reflection promotes the acquisition of lifelong learning skills and can be used to assist students to develop a sense of professional identity. Using reflection to better understand values, assumptions and ethical frameworks relevant in the workplace also promotes effective decision-making and professional practice.”).
Within the first-year legal research and writing course, students engage in reflection at points before, during, and after a specific course assignment. Initially, students are asked before their first small-group tutorial to complete a questionnaire designed to solicit information about learning styles and expectations. Subsequently, while performing assigned research, students engage in continuous critique and reassessment of their research strategies based on the introduction of new knowledge and skills following the initial assignment. Following the completion of a given research task, students evaluate the obstacles faced during the course of performance.

Building on the foundation of the above-described reflection techniques, QUT launched in 2009 a more comprehensive introduction to reflective lawyering in the form of two semester-long courses—Foundations A in the first semester and Foundations B in the second semester—designed to instill in new students competencies in independent work, effective time management, and the use of reflection to assist in future legal study. At the outset of Foundations A, students are instructed on “studying law and what it means to be a lawyer” before completing a reflection exercise that asks the student to think about “their own understanding of the law, the legal system and justice and on why they are studying law.” Later, but still early in the Foundations A course, students engage in a second set of reflective exercises in which they are asked to complete a formalized self-audit of skills and to again reflect on their understanding of the law to that point. Faculty members provide students with feedback on this second reflection with a focus on positive reinforcement, “address[ing] the sense of helplessness that students experience in the first year,” and “develop[ing] a community of learning.”

During the second-semester Foundations B unit, a third reflective task involves students again taking the initial skills audit, reflecting on

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64 See Judith McNamara & Rachael Field, Designing for Reflective Practice in Legal Education, 2 J. LEARNING DESIGN 66, 66–76 (2007) (detailing the delivery and assessment of reflective learning in the core first-year unit of legal research and writing); McNamara et al., supra note 50, at 7–9 (detailing a comprehensive framework for incorporating reflection into the first year).

65 McNamara & Field, supra note 64, at 68, 74.

66 Id. at 68.

67 Id.

68 McNamara et al., supra note 50, at 7.

69 Id. at 7.

70 Id.

71 Id.
the ongoing evolution of their skills, and setting learning goals for the second semester. In the fourth and final reflective exercise, performed after that semester’s first piece of formal assessment is returned in the legal research and writing course, the students reflect on the feedback received and strategize as to how it might be used to enhance future performance. To guide this particular exercise, faculty members provide students with detailed instruction on reflection and reflective writing.

Underscoring QUT’s introduction of reflective practice within its first-year curriculum was the belief that doing so would aid students in “develop[ing] the emotional intelligence necessary to survive the study and practice of law.” The more emotionally intelligent student, the QUT faculty have reasoned, is better able to wade through the persistent stressors that present during the first year and subsequently throughout the law school experience and legal practice. Further, that student, with a greater appreciation for and ability to make use of reflective skills, is likely to be “more able to learn from experience, cope with uncertainty and anxiety, exercise sound judgment, assess his or her own skills and abilities, develop career goals and plans and implement strategies to achieve those goals, accept critical feedback and continue to improve skills and aptitudes.”

3. The University of North Dakota School of Law: Professional Foundations Course in the First Year

With an aim of “focus[ing] student learning squarely on developing the foundations of professional persona,” the University of North Dakota School of Law (“North Dakota”) recently introduced its first-year Professional Foundations course during the Spring 2014 semes-

72 Id.
73 Id.
74 Id. at 1.
75 Id. at 4 (“A key reason for persistent emphasis on the importance of teaching first-year law students how to reflect is our recognition of the strong resonance between the stressors first-year law students face at law school, and the stressors they will face as practitioners of law.”).
76 Id. at 3.
77 In the interest of full disclosure, the author notes that he was a visiting member of the University of North Dakota School of Law faculty during the 2007–08 and 2008–09 academic years. Beyond conversations with former colleagues well after the introduction of the Professional Foundations course, the author has had no involvement in the introduction, teaching, or assessment of the course.
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The course employs a team-taught, ungraded approach to “create an intentional semester-long space, outside of any particular substantive law setting, in which students [are] expressly encouraged to cultivate a reflective mindset and the habits of being that are vital to the development and exercise of sound professional judgment.” Throughout the course, students participate in interactive exercises and complete writing assignments designed to explore the notion of “good lawyering.” Students also act in lawyering roles for the purpose of feeling what it is like to “act as a fiduciary responsible for the welfare of others” and to “feel for themselves what it means to square personal and professional values.”

In implementing the Professional Foundations course, the North Dakota faculty has made explicit that “[t]he critical course goal is to enhance the students’ ability to be personally reflective and mindful of their behavior in various professional settings.” Among its other stated aspirations, however, the faculty is aiming to prompt within students at the earliest point realization of “a career path that suits sensibilities and aspirations.”

79 Id. Designed and coordinated by Professors Patti Alleva and Michael McGinniss, nearly all of the North Dakota faculty contributed to the teaching of the course. Id. “The varied line-up of professors . . . introduce[d] first-year students to more than first-year faculty and help[ed] to ensure a diverse educational experience with contributions made from multiple perspectives and areas of expertise.” Id.
80 Id.
81 Id. The course was broken down into the following weekly components: the first five sessions (Weeks 1–5) will concentrate on course basics, transitioning from the first to the second semesters, and fundamentals of professional role and identity. The next three sessions (Weeks 6–8) provide the platform for students to explore and personalize these fundamentals in a variety of lawyer-client relationships. The next four sessions (Weeks 9–12) will facilitate that exploration and personalization in a variety of practice environments. The last session (Week 13) will allow for a retrospective look at lessons learned and provide the opportunity for synthesis and taking stock of what each student’s professional future may hold.
82 Id. (noting that “the course learning goals revolve around exploring and experiencing a number of highly important professional qualities, including dealing with unpredictability, confronting mistakes, displaying courage, acting diligently, being empathetic, maintaining integrity under pressure, and cultivating sympathetic detachment”).
83 Id.
IV. BRIDGING THE GAP: A PRESCRIPTION FOR INCORPORATING REFLECTIVE SKILLS TRAINING INTO THE FIRST YEAR AT AMERICAN LAW SCHOOLS

To ensure a proper bridge to and maximal value from today’s proliferated experiential course offerings, the time is now to comprehensively train and immerse students in reflective practice during the first year.\(^{84}\) Along the lines of the innovative foundational courses implemented by the QUT Law School faculty and the University of North Dakota School of Law, law schools can do so by offering an ungraded, one-credit Introduction to Experiential Learning course [hereinafter “Introduction Course”] course designed to provide students with instruction on reflection, an ongoing series of reflective opportunities, and constant feedback on and assessment of the completed reflection exercises.\(^{85}\) That course might incorporate the following components:

- In a half-day orientation program just before the start of other first-year classes, Introduction Course faculty will introduce and explore the benefits of ongoing reflection and self-awareness.\(^{86}\) Making use of topics such as “why I went to law school,” faculty will demonstrate and then lead a rounds-style group reflection aimed at fostering discussion of personal values, professional skills, and what it means to be a legal practitioner. Faculty will strive to provide an initial forum for students to safely share and receive feedback on the excitement, concerns, and anxiety they are feeling about the transition into the law school experience. Faculty will also walk students through and provide examples of written reflection. At the program’s conclusion, students will be asked to write and submit a reflective journal entry on one of a broad series of topics relating to expectations for the law school experience. Feedback on the journal will be provided to the student for the purpose of responding to the sentiments expressed in the reflection and guiding written reflection moving forward.\(^{87}\) On an ongoing basis and in accordance with a carefully explained rubric, faculty will assess

\(^{84}\) McNama et al., \textit{supra} note 50, at 4 (“[T]he first year of legal education is a critical time for law students to be introduced to the skill of reflective practice.”).

\(^{85}\) \textit{Id.} at 7 (providing an overview of a reflective learning framework comprised of four steps: “first, providing students with instruction on reflection; second, intervening in the student’s reflective practice by creating structures and protocols to help students to reflect; third, using criterion referenced assessment to enhance the design of reflective assessment, and fourth, providing feedback on the students’ reflection . . . [and] proposing a model . . . [that] advances [this framework] by taking a holistic approach to developing students’ reflective capabilities”).


\(^{87}\) \textit{Id.} at 343 (suggesting topics for an initial reflective writing assignment during orientation).
both the in-class rounds and written journal aspects of student reflection.\textsuperscript{88}

- During the first semester of the first year, the Introduction Course will meet weekly and earn students one ungraded credit for completion. With a focus on facilitating student transition into law school and effective learning, faculty will guide students through reflection exercises concentrated on their experiences within the law school classroom. At the semester’s start, students will complete a survey eliciting candid self-assessment based on a broad listing of skills and values. These skills and values are ones that will become critical to their work over the course of their law school experience. Throughout the semester thereafter, faculty will present and guide in-class reflection on a range of topics relating to classroom performance, learning styles, providing and accepting critique, time management and organization, coping with stress and other learning obstacles, and professional development and career planning. Reflective skills will be further developed and assessed through the use of student journal assignments on a similar range of topics.

- During the second semester of the first year, the Introduction Course will remain a one-credit, ungraded course and be comprised of two segments: a field-based segment akin to an observational externship course and a once-weekly, faculty-led seminar. In the field-based course component around which the course will center, students will spend two hours each week rotating through a diverse series of judicial and practice settings. Students will not perform actual legal work, but rather learn through absorption—watching and consulting with the judges and lawyers whose day-to-day activities they will be observing. To help ensure maximal learning from their field-based immersion, the seminar will now seek to expose students to the essential habits of the reflective practitioner and include ongoing student reflection upon the skills, relationships, issues, and mindsets they are observing in the context of live legal practice. Students will continue to be assessed and receive feedback—both by peers and faculty—on targeted in-class discussions and weekly journal assignments on topics such as ethical lawyering, promotion of justice, continued acquisition of skills in the professional setting, work-life balance, and relationship formation in the workplace. At the year’s end, students will once more submit to the skills and values assessment survey and have the opportunity to reflect and receive faculty feedback on survey results.

Viewed through a narrow lens, a dedicated first-year course with reflection as its focal point will almost certainly ready students for the beefed-up experiential courses that now account for a significant portion of the upper-level law school curriculum.\textsuperscript{89} Considered more

\textsuperscript{88} For an excellent discussion of possible criteria for evaluating student reflective journals, see Kelly S. Terry, \textit{Embedding Assessment Principles in Externships}, 20 CLINICAL L. REV. 467, 489–98 (2014).

\textsuperscript{89} Timothy Casey, \textit{Reflective Practice in Legal Education: The Stages of Reflection}, 20 CLINICAL L. REV. 317, 350 (2014) (asserting the need to introduce reflection at an earlier stage of the law school curriculum and inviting the reader to “[i]magine a world
broadly, careful efforts to craft heightened exposure to reflection in
the early term will avail students of an initial set of key skills and values
sufficient to render them more prepared for the concurrent chal-
lorances of the first year and the innumerable tests to come throughout
the remainder of law school (not just in experiential courses). From
nearly any perspective, emphasizing and inculcating reflective capabili-
ties is a necessary step for those schools hoping to graduate the more
practice ready lawyer.90

V. CONCLUSION

In an article proposing that law schools introduce reflective learn-
ing, among other concepts, to students as early as first-year orientation
programs, Professor Paula Lustbader noted the irony in the following:

[T]hat in institutions where the Socratic Method is the main currency,
law schools do not do more to promote reflection. Socrates himself
states, “life without enquiry is not worth living.” Through reflection and
discernment, students develop skills to endure and excel with grace in
humility in law school as well as in the profession.91

Although legal educators have at long last embraced the need to
offer students more exposure to practice within the law school curricu-
lum, they may be doing those same students a great disservice by not

where students entering the clinic as third-years would have two years’ experience de-
veloping their reflective capacity”).
90 Some examples of schools other than those discussed above that are making use of
reflection in the first-year curriculum are the University of California-Irvine School of
Law and Mercer University School of Law. See Drew Coursin, Acting Like Lawyers, 2010
Wis. L. Rev. 1461, 1472–73 (2010) (describing the University of California-Irvine’s post-
Carnegie implementation of a year-long course called “The Legal Profession,” in which
students are exposed to “various legal-practice settings through panels and role-playing
exercises” and noting that “[a]ccording to [UCI’s] Dean [Erwin Chemerinsky] . . .
[s]tudents will gain invaluable experience working on complex legal simulations and
interacting with real clients sooner than most law students”); First-Year Curriculum
Courses, MERCER UNIV. SCH. L., http://www2.law.mercer.edu/courses/index.cfm?block
id=1 (The article describes The Legal Profession course taught during the first year at
Mercer, in which “[s]tudents learn about what ‘professionalism’ means for lawyers and
why it matters. They see what pressures the practice of law places on professionalism in
different settings. The students explore the many ways in which the legal profession
seeks, imperfectly, to create and perpetuate the conditions that promote professional-
ism. This course also examines the extraordinary challenges and opportunities that
come with a life in the law, and the students study ways in which professionalism con-
tributes to the satisfaction that lawyers find in their calling. In addition to class read-
ings, discussions, guest speakers, and an exam, the students write two papers reflecting
on their career goals.”).
91 Lustbader, supra note 86, at 337.
placing a greater emphasis on preparing them how to learn from experience at the earliest possible point. By promoting the skills and habits of reflective practice in a comprehensive way during the first year, law schools can fill this ever-growing gap in legal training and turn out a far better caliber of student and practitioner in the process.\footnote{Casey, supra note 89, at 351 (“If we develop in our students the habit of reflective practice, we affect not only the legal education curriculum, but also the culture of the practice of law.”).}