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Is There Sufficient Human Resource Capacity to Support Robust Professional Identity Formation Learning Outcomes?

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ARTICLE

IS THERE SUFFICIENT HUMAN RESOURCE CAPACITY TO SUPPORT ROBUST PROFESSIONAL IDENTITY FORMATION LEARNING OUTCOMES?

JEROME M. ORGAN

As of April 2017, there were roughly eighty law schools with published learning outcomes available on their law school webpages.¹ While over twenty of these law schools had adopted a “basic” set of learning outcomes that did no more than track the language set forth in Standard 302,² over fifty of these law schools embraced more robust learning outcomes, particularly in relation to some aspect of professional identity formation.³

This purposeful emphasis on professional identity formation is something relatively new to law schools and to law professors.⁴ How well posi-

1. The Learning Outcomes Database has a complete listing of all law schools that have published learning outcomes on their law school webpage along with links to each of the sets of learning outcomes. See *Learning Outcomes Database*, HOLLORAN CTR., <https://www.stthomas.edu/hollorancenter/resourcesforlegaleducators/learningoutcomesdatabase/> (last updated Nov. 2017) [hereinafter *Learning Outcomes Database*].

2. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016–2017, at 15–16, (2016), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf [hereinafter ABA Standards]. See also *Learning Outcomes Database*, *supra* note 1 (at the bottom of each tab is a list of law schools with demarcations of those law schools with “basic” learning outcomes).

3. See *Learning Outcomes Database*, *supra* note 1 (the Learning Outcomes 302(c) and (d) tab delineates those law schools with more robust professional identity formation learning outcomes); see also Neil W. Hamilton, *Professional-Identity/Professional-Formation/Professionalism Learning Outcomes: What Can We Learn About Assessment from Medical Education?*, 14 U. ST. THOMAS L.J. 357 (2018) (listing the number of law schools with various professional identity formation learning outcomes).

4. Professional identity formation for law students has only received purposeful attention in the last decade or so, since the publication in 2007 of the Carnegie Report, *Educating Lawyers, Preparation for the Practice of Law*, in which there was extensive discussion of the “third apprenticeship”—the apprentice of professional identity. See WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW* 126–161 (2007) [hereinafter *EDUCATING LAWYERS*] (discussing the “third apprenticeship”); see also *supra* notes 1–3 and accompanying text.

tioned are law schools to pursue these robust learning outcomes associated with professional identity formation? Do law schools have the human resource capacity to implement and assess these robust learning outcomes?⁵

The genesis of the Workshop portion of the February 2017 Symposium/Workshop that generated the articles for this Symposium issue of the Law Journal was our concern about what will happen in the coming years at the many law schools with robust learning outcomes associated with professional identity formation. In his article, *Integrity: Its Causes and Cures*,⁶ David Luban notes that if you think about integrity in terms of consistency between beliefs/principles and actions/conduct, there are two ways to accomplish consistency. One is the “high road,” in which one changes one’s actions/behavior to conform to one’s principles. One is the “low road,” in which one modifies one’s principles to conform to one’s actions/behavior.⁷ These dilemmas arise for institutions as well as for individuals.

In the next several years, as law schools with robust learning outcomes associated with professional identity formation prepare for their ABA Sabbatical Site Visit associated with ongoing accreditation,⁸ those schools with robust learning outcomes will have to make a decision. One choice might be to conform their actions to their principles—Luban’s “high road”—by finding ways to measure and assess student performance regarding these

5. The human resource capacity to foster professional identity formation within law schools includes faculty, adjunct faculty, administrators, and staff members, particularly people in the Dean of Students offices, the Career and Professional Development Offices, and the Academic Success Programs. See Jerome M. Organ, *First-Year Courses/Programs Focused on Professional Development and Professional Identity Formation: Many Flowers are Blooming*, PD Q., Aug. 2017, at 24 (describing the varied engagements of faculty, administrators, and staff in professional development courses/programs); *Professional Development Resources Database*, HOLLORAN CTR., <https://www.stthomas.edu/hollorancenter/resourcesforlegaleducators/professionaldevelopmentdatabase/> (last visited Feb. 21, 2018) (containing syllabi and/or descriptions of various first-year courses/programs focused on professional development, including professional identity formation). Indeed, Lou Bilionis advocates an enterprise-wide focus on professional identity formation which necessarily contemplates drawing on the human resource capacity of everyone in the law school to support professional identity formation. Louis D. Bilionis, *Professional Formation and the Political Economy of the American Law School*, 83 TENN. L. REV. 1, 9–12 (2016). For purposes of this article, however, I will focus primarily on the extent to which full-time faculty have the human resource capacity to do more to foster professional identity formation.

6. David Luban, *Integrity: Its Causes and Cures*, 72 FORDHAM L. REV. 279 (2003).

7. *Id.* at 279–280. In his companion piece in this issue, Bryant Garth also uses the metaphor of the “high road” in discussing ways in which law schools can do more to foster professionalism and professional identity formation in their students and graduates. Bryant G. Garth, *The Elusive “High Road” for Lawyers: Teaching Professional Responsibility in a Shifting Context*, 14 U. ST. THOMAS L.J. 270 (2018).

8. The ABA’s accreditation process for law schools has been structured so that a law school that is fully accredited will be visited every seventh year to reassess its ongoing compliance with the ABA Standards. See *Law School Site Visits*, A.B.A., http://www.americanbar.org/groups/legal_education/accreditation/law_school_site_visits.html (last visited Apr. 2, 2017). Recently, the Managing Director for the Section of Legal Education and Admissions to the Bar informed law schools that a new ten-year accreditation cycle was expected to be implemented starting in the 2018–2019 academic year. Posting of Barry Currier, barry.currier@americanbar.org, to Accreditation Compliance Listserv (Jan. 18, 2018) (on file with author).

more robust professional formation outcomes.⁹ Another choice, however, might be to conform their principles to their actions—Luban’s “low road”—by amending their learning outcomes if it just seems too difficult to teach and to assess development of these more robust aspects of professional identity formation. The faculty at these law schools may have aspired in their initial drafts of their learning outcomes to pursue these robust learning outcomes associated with professional identity formation and to develop curricular interventions and means of assessment to determine whether their students and graduates have progressed on these learning outcomes. But they may discover that developing the curricular interventions and the means of assessment is more difficult than they had anticipated, resulting not in further efforts to do better, but in further efforts to reform the learning outcomes to be more “realistic” and more easily accomplished.

Do most law schools have sufficient human resource capacity, particularly among their full-time faculty members, to accomplish what needs to happen in terms of generating developmental rubrics, curricular interventions, and corresponding assessment tools to support robust learning outcomes related to aspects of professional formation? Perhaps not, particularly if these professional formation learning outcomes require development of new measures of performance and new methods of assessment.¹⁰

Thus, one very realistic possibility is that over the coming years we see a retrenchment in the extent to which law schools have “aspirational” learning outcomes associated with professional identity formation. The Holloran Center for Ethical Leadership in the Professions plans to monitor this on the Learning Outcomes Database, which serves as a clearinghouse of learning outcomes information.¹¹ The Holloran Center plans on tracking changes in learning outcomes over time to see what has happened with this “learning outcomes” experiment across legal education, Will most law schools follow the “high road,” or will most law schools follow the “low road”?

9. One of the most significant and instructive resources on assessment is GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* (2000). Over the last decade plus, however, a number of other people also have written thoughtfully about the need for greater attention to assessment in legal education. See, e.g., Steven Friedland, *Rescuing Pluto from the Cold: Creating an Assessment-Centered Legal Education* (Aug. 15, 2017), <https://ssrn.com/abstract=3019431>; Barbara Glesner Fines & Judith W. Wegner, *Creating an Institutional Culture of Assessment, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* 415 (Deborah Maranville et al. eds., 2015); Michael Hunter Schwartz et al., *Revisiting the Characteristics of Effective Education, in BUILDING ON BEST PRACTICES, supra*, at 67; Ruth Jones, *Assessment and Legal Education: What Is Assessment, and What the *# Does It Have to Do with the Challenges Facing Legal Education?*, 45 *MCGEORGE L. REV.* 85 (2013).

10. See Friedland, *supra* note 9 (discussing design theory as a tool to foster an assessment-centric culture within law schools).

11. In managing the *Learning Outcomes Database, supra* note 1, the Holloran Center for Ethical Leadership in the Professions will be tracking changes in law school learning outcomes and will be maintaining an archive so that those interested can see how law school learning outcomes have evolved over time.

Part I of this article recognizes that we do not know very much about the human resource capacity of law school faculty members to encourage greater emphasis on professional identity formation, and looks to a variety of data points that may allow us to infer some information about the human resource capacity of law school faculty members to foster professional identity formation. Part II identifies two structural changes associated with legal education over the last decade—one based on accreditation standards and one based on the changing market for law school graduates—that may provide greater incentives for law schools to focus more on professional development, including professional identity formation. Part III describes the Rogers “diffusion of innovation” theory and provides descriptions of the characteristics of law school faculty members who might fit into each of the Rogerian categories of innovation adopters. Finally, Part IV describes next steps that might help facilitate greater engagement with professional identity formation so that those law schools with robust learning outcomes related to professional identity formation retain them and find ways to assess them.

I. THERE IS MUCH WE DO NOT KNOW ABOUT THE HUMAN RESOURCE CAPACITY OF FULL-TIME FACULTY MEMBERS TO FOSTER PROFESSIONAL IDENTITY FORMATION

The research Professor Neil Hamilton and I have done, and our experiences working with our own students, suggest that one of the guiding principles in working with students on professional identity formation is to meet them where they are.¹² The same guiding principle works with faculty members at law schools—we need to meet them where they are in promoting professional identity formation. But where are they? In reality, we know very little about the attitudes of faculty members, administrators, and staff members toward aspects of professional identity formation or about their capabilities to help students make progress on the professional identity formation learning outcomes many schools have adopted. There is no direct information about the human resource capacity of faculty members to foster professional identity formation at most law schools, but looking back over the last twenty-five years since the MacCrate Report, we can draw some inferences.¹³

12. Neil Hamilton & Verna Monson, *Legal Education's Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student's Professional Formation (Professionalism)*, 9 U. ST. THOMAS L.J. 325, 374 (2009).

13. A few years ago, I created a survey to try to answer this question—to get a real sense of attitudes and beliefs and orientations toward the responsibility of law schools, and of law faculty, to promote professional identity formation, along with a sense of the extent to which respondents felt like they and their colleagues were capable of supporting professional identity formation. To date, I have not implemented the survey, but I think it would be a fruitful endeavor and I would be interested in working with those who might agree that it would be a fruitful endeavor. A copy of the most current draft of the survey instrument is on file with the author.

A. *Inferences We Can Draw About the Human Resource Capacity Among Faculty Members to Foster Professional Identity Formation*

In the absence of empirical data, what can we reasonably infer about where our faculty colleagues are with respect to attitudes, beliefs, and orientation toward the responsibility of law schools, and of law faculty, to foster professional identity formation?

Twenty-five years ago, the MacCrate Report was published, calling on law schools to place greater emphasis on providing a legal education that encompassed “skills and values” of the profession.¹⁴ As Bryant Garth notes in his companion piece in this issue; however, this emphasis on values did not gain much traction partly because the Task Force “‘failed to confront obstacles to the dominant culture of the Bar and Academy,’” a culture which emphasized “the ‘hired gun’ model of representation” and the marginalization of legal ethics within law schools.¹⁵ Looking back twenty-five years, therefore, one can infer that there were not many faculty members across legal education who placed a significant emphasis on professional identity formation.

Next, consider what we can infer from understanding what Bill Sullivan and his colleagues wrote about legal education in *Educating Lawyers* ten years ago.¹⁶ In discussing the three apprenticeships—the apprenticeship of knowledge and analytical skills,¹⁷ the apprenticeship of practical skills,¹⁸ and the apprenticeship of professional identity¹⁹—the authors of *Educating Lawyers* told us legal education has made the least progress with respect to the third apprenticeship of professional identity.²⁰ Indeed, the authors noted that, to the extent that law students have an appreciation of professional identity, it is shaped largely by and through the profound emphasis on the first apprenticeship of knowledge and analytical skills.²¹ From this we can

14. TASK FORCE ON LAW SCH. & LEGAL PROFESSION: NARROWING THE GAP, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 207–221 (1992) [hereinafter MACCRATE REPORT] (this became known as the “MacCrate Report,” as the Chair of the Task Force was the late Robert MacCrate).

15. See Garth, *supra* note 7, at 273 (quoting Russell Pearce, *MacCrate's Missed Opportunity: The MacCrate Report's Failure to Advance Professional Values*, 23 PACE L. REV. 575, 585 (2003)).

16. See EDUCATING LAWYERS, *supra* note 4, at 27–33.

17. *Id.* at 47–86.

18. *Id.* at 87–125.

19. *Id.* at 126–161.

20. *Id.* at 28–33.

21. *Id.* at 74–86. In her book, *The Language of Law School*, Elizabeth Mertz did a linguistic analysis of the first-year classroom experience across several law schools. Elizabeth Mertz, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* (2007). Her analysis affirms the preeminence of the first apprenticeship in shaping law students, as she found that the profound analytical and linguistic focus of law school training changes student values, *id.* at 1, “un-moor[s] . . . the self,” *id.* at 137, and marginalizes fairness, *id.* at 10, 120, morality, *id.* at 95, 120, and emotional engagement, *id.* at 95, 120. This echoes many of the insights shared by the late

infer that, as of a decade ago, most faculty members at most law schools did not consider professional identity formation to be an important aspect of their teaching responsibilities.

A few years after *Educating Lawyers*, Brian Tamanaha published his critique of legal education, *Failing Law Schools*.²² In describing a number of the problems plaguing legal education, one of the most significant problems he cited was essentially the attitude of faculty, who are more focused on themselves, and on reducing their teaching loads while focusing on their scholarship, than on their students.²³

All this suggests that, as of several years ago, one could infer that law schools largely lacked the human resource capacity among full-time faculty members to encourage greater support for professional identity formation. *Educating Lawyers* told us that the faculty members across multiple law schools were not placing significant emphasis on professional identity formation.²⁴ *Failing Law Schools* highlighted for us that one of the reasons for the lack of significant emphasis on professional identity formation is that most faculty members at most law schools were more focused on their own success than the success of their students.²⁵

B. *How Retirement Trends and Hiring Trends May Be Changing the Composition of Faculty*

How might changes in faculty composition over the last decade impact the general orientation toward professional identity formation? There are three broad cross-currents at work that may influence how the capacity of faculty to support robust professional identity formation has changed over the last decade.

First, there has been a significant decline in the number of full-time faculty²⁶ in the midst of what has been an unprecedented decline in the

Dean Roger Cramton in his seminal article, *Ordinary Religion of the Law School Classroom*. Roger C. Cramton, *Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 261 (1977) (“The question is whether the selection and training of law students does not neglect humane aspects of personal development and experience, the emotional aspects of the professional relationship, and the development of capacities of imagination, empathy, self-awareness, and sensitivity to others.”).

22. BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012).

23. *Id.* at 39–61.

24. *See supra* notes 19–21 and accompanying text.

25. *See supra* notes 22–23 and accompanying text.

26. According to Matt Leichter, who posts on the The Last Gen X American blog, there were 1400 fewer full-time faculty in 2016 than in 2010, a decline of roughly sixteen percent. *See* Matt Leichter, *Which Law Schools Are Shedding Full-Time Faculty? (2016 Edition)*, LAST GEN X AM. (Jan. 17, 2017, 7:00 AM), <https://lawschooltuitionbubble.wordpress.com/2017/01/17/which-law-schools-are-shedding-full-time-faculty-2016-edition/> (citing data pulled from the Standard 509 Reports the ABA Section of Legal Education and Admissions to the Bar requires law school to publish).

number of matriculants to law school since 2010.²⁷ At many law schools, this decline in faculty has been among more senior faculty.²⁸ Thus, this could mean a shift in the demographics of law faculty so that there is a smaller percentage of more senior faculty and a larger percentage of more junior faculty. To the extent that more senior faculty were somewhat responsible for the state of legal education reflected in *Educating Lawyers*, the accelerated departure of some more senior faculty from the legal academy may provide an opening for more focus on professional identity formation.

Second, there has been a growth in the number of faculty with both a JD and a PhD over the last few decades, a trend that is expected to continue.²⁹ This increased hiring of faculty members with a JD and a PhD has been most pronounced among top twenty-six law schools over the period from 2011 to 2015, with forty-eight percent of new hires at top twenty-six law schools having both a JD and a PhD.³⁰ Even among lower-ranked law schools, however, roughly eleven percent of new hires between 2011 and 2015 were people with a JD and a PhD.³¹ Notably, there are meaningful differences in the extent to which faculty hired with a JD and a PhD have had experience practicing law in comparison with those hired with just a

27. See Jerry Organ, *The Composition of Graduating Classes of Law Students—2013–2016—Part One*, LEGAL WHITEBOARD (Dec. 29, 2014), <http://lawprofessors.typepad.com/legalwhiteboard/2014/12/the-composition-of-graduating-classes-of-law-students-2013-2016-part-one-.html> (noting decline among first-years from over 49,000 in fall 2010 to less than 38,000 in fall 2013); Bill Henderson, *Supply of Law Graduates is Shrinking but So Is Demand (006)*, LEGAL EVOLUTION (May 14, 2017), <http://www.legalevolution.org/2017/05/supply-law-graduates-shrinking-demand-006/> (noting decline in number of law school graduates from over 46,000 in 2013 to a projected number of less than 34,000 in 2019).

28. At a number of law schools, this loss of faculty has come among senior faculty who have taken early retirement. See, e.g., Paul Caron, *Albany Law School Offers Buyouts to Eight Tenured Faculty*, TAXPROF BLOG (Feb. 5, 2014), http://taxprof.typepad.com/taxprof_blog/2014/02/albany-law-school.html (buyouts offered to eight long-tenured faculty members); Dan Miner, *Downsizing Planned for UB Law School*, BUFFALO BUS. FIRST (Mar. 18, 2014), <http://www.bizjournals.com/buffalo/news/2014/03/18/downsizing-planned-for-ub-law-school.html> (noting that buyout being offered to tenured professors over fifty-five); Mitch Ryals, *Why Gonzaga University School of Law Offered Buy-outs to Its Tenured Professors*, INLANDER (Nov. 21, 2015), <https://www.inlander.com/Bloglander/archives/2015/11/21/why-gonzaga-university-school-of-law-offered-buy-outs-to-its-tenured-professors> (buyouts offered to all tenured faculty). But see Paul Caron, *Denver to Slash Ten Junior Faculty Positions Through Voluntary Buyouts*, TAXPROF BLOG (Mar. 25, 2014), http://taxprof.typepad.com/taxprof_blog/2014/03/denver-law-school-.html (noting faculty buyout program focused on junior, tenure-track faculty).

29. See Lynn M. LoPucki, *Dawn of the Discipline-Based Law Faculty*, 65 J. LEGAL EDUC. 506, 539–540 (2016). LoPucki notes that five percent of law faculty had PhDs as of 1988. *Id.* at 506 (citing Robert J. Borthwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 213 (1991)). Her research showed, however, that twenty-one percent of faculty at top twenty-six law schools in 2010 had PhDs. *Id.*

30. *Id.* at 520 tbl.5.

31. *Id.* at 536 tbl.16.

JD.³² In addition, the duration of their practice experience is also much shorter.³³ This pattern of hiring more JD-PhD candidates for law faculty positions is recognized as being likely to shape the educational experience at law schools, probably in a way that does not support professional identity formation given the extent to which this hiring pattern means that, at many law schools, fewer faculty members will have significant legal practice experience.³⁴

On the other hand, since the publication of the MacCrate Report, there has been a significant growth in experiential education, with more faculty members supervising externships, offering skills instruction, or teaching clinics.³⁵ This increase in the number and percentage of faculty involved in experiential learning provides a group of people who may have a more natural interest in fostering professional identity formation, given the nature of their teaching, which focuses more on the law student in the role of lawyer.³⁶ Given that many of these faculty members have joined the legal academy in the last two decades, they are less likely to be among the “senior faculty” who have been leaving the legal academy. That said, whether these faculty members are as well situated to foster a greater emphasis on professional identity formation is complicated by the fact that many of these faculty members do not have the same status as doctrinal faculty members and may not be as central to the educational culture at many law schools.³⁷

32. *Id.* at 522–523 tbls.6 & 7 (showing that a significantly smaller percentage of those faculty with a JD-PhD hired at top twenty-six law schools between 2011 and 2015 had practice experience in comparison with those hired with just a JD).

33. *Id.* (showing that the length of practice experience was much shorter for those with JD-PhDs than for those with just a JD).

34. *Id.* at 539 (“It is [the] change in faculty composition that matters, because the faculty’s composition at any given time determines the institution’s nature.”).

35. One of the most comprehensive sources of data on clinical and experiential education is the Center for the Study of Applied Legal Education, which has survey data available for several years over the last decade. See *Survey Results*, CTR. FOR STUDY APPLIED LEGAL EDUC., <http://www.csale.org/results.html> (last visited Mar. 17, 2018). In addition, some recent articles also make clear the growth in clinical faculty and experiential faculty. See, e.g., Todd A. Berger, *Three Generations and Two Tiers: How Participation in Law School Clinics and the Demand for “Practice-Ready” Graduates Will Impact the Faculty Status of Clinical Law Professors*, 43 WASH. U. J.L. & POL’Y 129, 133–134 (2014) (discussing growth in clinical programs); James H. Backman & Cory S. Clements, *Significant but Unheralded Growth of Large Externship Programs*, 28 BYU J. PUB. L. 145, 185–188 (2013) (setting for data documenting growth in clinics and externships).

36. Clinical and experiential education are designed to facilitate a reflective and experiential learning process designed to help students understand how the law and lawyering work in action. See *The Need for CSALE*, CTR. FOR STUDY APPLIED LEGAL EDUC., <http://www.csale.org/need.html> (last visited Feb. 21, 2018).

37. See Berger, *supra* note 35, at 135–144.

II. STRUCTURAL MOMENTUM TO SUPPORT A GREATER EMPHASIS ON PROFESSIONAL IDENTITY FORMATION SINCE *EDUCATING LAWYERS* AND *BEST PRACTICES IN LEGAL EDUCATION*

Since the publication of *Educating Lawyers* and *Best Practices for Legal Education* (“*Best Practices*”) in 2007, there are two forces that have coalesced to create momentum across law schools to support a greater emphasis on professional development, including professional identity formation. First, the ABA Section of Legal Education and Admissions to the Bar has promulgated new accreditation standards that took effect in August 2014 and compel law schools to develop learning outcomes and corresponding assessment regimes to determine how successful they are in meeting their learning outcomes.³⁸ Second, the employment market for law school graduates has become significantly more challenging, while law schools are correspondingly being held more accountable for the employment outcomes of their graduates.³⁹ Combined, these two developments create significant momentum for law schools to place greater emphasis on professional development, including professional identity formation.

A. *Educating Lawyers, Best Practices, and the New Accreditation Standards*

While the MacCrate Report may not have generated much momentum regarding greater integration of professional identity formation across legal education, the publication of *Educating Lawyers*, which coincided with the publication of *Best Practices*,⁴⁰ did generate some momentum for greater efforts on professional identity formation.

The publication of *Educating Lawyers* brought attention to the need for greater focus on the “third apprenticeship” of professional identity formation. This generated a fair amount of scholarly attention in the ensuing

38. See *Transition to and Implementation of the New Standards and Rules of Procedure for Approval of Law Schools*, A.B.A. (Aug. 13, 2014), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_august_transition_and_implementation_of_new_aba_standards_and_rules.authcheckdam.pdf; *Managing Director’s Guidance Memo: Standards 301, 302, 314 and 315*, A.B.A. (June 2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf; see also *infra* notes 45–46, 50 (discussing specific Standards related to learning outcomes and assessment).

39. See *infra* notes 51–55 and accompanying text (discussing greater attention to employment outcomes in recent years).

40. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP* (2007) [hereinafter *BEST PRACTICES*].

years,⁴¹ and also has prompted the development of efforts such as the Holloran Center, Educating Tomorrow's Lawyers, and others.⁴²

The publication of *Best Practices*—which included chapters on identifying learning outcomes⁴³ and on assessing student learning and institutional effectiveness⁴⁴—presaged and laid the foundation for the development of the ABA Section of Legal Education and Admissions to the Bar's recent revisions to the law school accreditation standards. These revised standards included Standard 302, which compels law schools to identify learning outcomes,⁴⁵ and Standards 314 and 315, which compel law schools to implement assessment procedures to determine the effectiveness of their programs of legal education in accomplishing those learning outcomes.⁴⁶

With the adoption of Standard 302, the ABA Section of Legal Education and Admissions to the Bar now requires, for the first time, that law schools establish learning outcomes.⁴⁷ With the adoption of Standard 314,⁴⁸

41. For a listing of books and articles on legal education reform, a number of which respond to EDUCATING LAWYERS or to BEST PRACTICES, see Gould L. Libr., Touro C.—Jacob D. Fuchsberg L. Ctr., *Legal Education Reform Bibliography* (Touro L. Ctr. Legal Studies Research Paper Series No. 15-03, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2500987.

42. The efforts of the Holloran Center have been informed significantly by EDUCATING LAWYERS. A number of other law schools also have embraced a greater emphasis on professional identity formation since the publication of EDUCATING LAWYERS and BEST PRACTICES. For two examples, see *Parris Institute for Professional Formation*, PEPP. U. SCH. L. <https://law.pepperdine.edu/parris-institute/> (last visited Mar. 17, 2018), and *Center for Ethical Formation and Legal Education Reform*, REGENT U. SCH. L., <https://www.regent.edu/acad/schlaw/programs/cef/home.cfm> (last visited Mar. 17, 2018). More recently, a number of law schools have implemented courses or programs focused on professional development including professional identity formation for first-year students. See Organ, *supra* note 5, at 24–26 (describing the number of law schools with first-year courses/programs focused on professional development including professional identity formation).

43. See BEST PRACTICES, *supra* note 40 (Chapter Two is titled “Best Practices for Setting Goals for the Program of Instruction” and discusses establishment of learning outcomes).

44. See *id.*

45. See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016–2017, at 1, 15 (2016). Standard 302 specifically states that a “law school shall establish learning outcomes that shall, at a minimum, include competency in the following: (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.” *Id.*

46. See *id.* at 23–24. Standard 314, titled Assessment of Student Learning, specifically provides as follows: “A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.” *Id.* at 23. Standard 315, titled Evaluation of Program of Legal Education, Learning Outcomes and Assessment Methods, specifically provides as follows: “[t]he dean and the faculty of a law school shall conduct ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.” *Id.* at 23–24.

47. See *id.* at 15.

which addresses assessment of student learning, and Standard 315, which addresses the evaluation of the program of legal education, learning outcomes, and assessment methods,⁴⁹ law schools have a specific mandate to develop assessment programs focused on determining the extent to which their program of legal education is accomplishing the learning outcomes they have established.

In addition, with the adoption of Standard 303(a)(3), the ABA Section of Legal Education and Admissions to the Bar now also requires law schools to assure that each graduate has at least six credit hours of experiential education.⁵⁰ This should generate more opportunities for students to learn while in the lawyer role, providing more opportunities for an emphasis on professional identity formation. It also could generate a continued growth in the number of faculty members who are investing time and energy in creating and supervising these experiential learning opportunities.

These accreditation changes should generate more momentum for efforts directed at fostering professional identity formation and should also result in more human capacity invested in assuring experiential learning, which could be supportive of professional identity formation.

In response to the new accreditation standards that have been adopted since *Educating Lawyers* and *Best Practices*, law schools likely will need to redirect faculty resources (or other instructional resources, whether adjunct faculty or staff) toward satisfying these new educational requirements.

B. Emphasis on Employment Outcomes Also Generates Momentum for Greater Focus on Professional Identity Formation

The economic downturn that began in 2008 had a profound impact on law schools in the ensuing years. The roughly immediate impact of the economic downturn was a significant reduction in hiring of law school graduates across multiple segments of the market.⁵¹ At the same time, however, applications to and enrollment in law schools grew, peaking in 2010.⁵² Thus, even as more people became aware of shrinking post-graduate em-

48. *See id.* at 23–24.

49. *See id.*

50. *See id.* at 16–17. Standard 303(a)(3) provides: “To satisfy this requirement, a course must be primarily experiential in nature and must: (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302; (ii) develop the concepts underlying the professional skills being taught; (iii) provide multiple opportunities for performance; and (iv) provide opportunities for self-evaluation.” *Id.* at 16.

51. *See, e.g., Class of 2011 Has Lowest Employment Rate Since Class of 1994*, NAT’L ASS’N L. PLACEMENT (July 2012), <http://www.nalp.org/0712research> (describing the lowest employment rate for law graduates in nearly two decades and noting particularly the lowest percentage of graduates in private practice, with a large decline in large firm hiring and a corresponding increase in small firm hiring).

52. *See Enrollment and Degrees Awarded 1963–2012 Academic Years*, A.B.A., https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enroll-

ployment opportunities, more people were deciding to go to law school. The results, predictably, presented challenges for many law school graduates, particularly in the period from 2009 through 2013.⁵³

In this time period, however, even as many graduates struggled to find meaningful employment opportunities, law schools continued to publish glowing reports regarding the employment outcomes of their graduates.⁵⁴ This disconnect between what was happening in the marketplace and what was being reported by law schools resulted in the ABA Section of Legal Education and Admissions to the Bar developing and mandating that each law school report employment outcomes on a standardized model: the Employment Summary Report.⁵⁵

The implementation of a standardized reporting model for law school employment outcomes has made comparisons across law schools much easier. As a result, law schools are paying greater attention to the employment outcomes of their graduates. For example, a number of law schools developed law school-funded positions to assist their graduates in finding a positive transition into the legal market,⁵⁶ while other law schools developed “incubator” law firms to help graduates transition more successfully into the legal market.⁵⁷ In addition, as noted above, a number of law schools have implemented professional development courses in the first year in an effort to better prepare their students for the practice of law and the post-graduate employment market.⁵⁸

C. Greater Empirical Evidence of Competencies of Successful Lawyers

The last decade also has seen growth in the empirical data available regarding the skills, competencies, and characteristics of successful law-

ment_degrees_awarded.authcheckdam.pdf (last visited Mar. 17, 2018) (showing first-year enrollment peaking in 2010 with 52,488 first-year students).

53. See, e.g., Bernard A. Burk, *What’s New About the New Normal: The Evolving Market for New Lawyers in the 21st Century*, 41 FLA. ST. U. L. REV. 541, 564–569 (2014); Deborah J. Merritt, *The Job Gap, the Money Gap, and the Responsibility of Legal Educators*, 41 WASH. U. J.L. & POL’Y 1, 6–10 (2013); Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 197–204 (2012).

54. Ben Trachtenberg, *Law School Marketing and Legal Ethics*, 91 NEB. L. REV. 866, 874–893 (2013) (providing examples of misleading descriptions of employment outcomes for law school graduates).

55. See *Council Approves Changes in Collection and Publication of Law Graduate Placement Data*, A.B.A. (Dec. 3, 2011), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/2011_council_action_replacement_data.authcheckdam.pdf; *Section of Legal Education Employment Summary Report*, A.B.A., <http://employmentsummary.abaquestionnaire.org/> (last visited Feb. 21, 2018).

56. Jerry Organ, *Of Transfers and Law-School-Funded Positions*, LEGAL WHITEBOARD (Aug. 12, 2015), <http://lawprofessors.typepad.com/legalwhiteboard/2015/08/of-transfers-and-law-school-funded-positions.html>.

57. For a directory of law school lawyer incubator programs, see *Lawyer Incubator Directory*, A.B.A. https://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_directory.html (last visited Mar. 17, 2018).

58. See sources cited *supra* note 5.

yers. One of the most notable efforts in this regard is the Shultz-Zedeck study, which identified twenty-six “effectiveness factors” for successful lawyers.⁵⁹ More recently, Educating Tomorrow’s Lawyers released *Foundations for Practice: The Whole Lawyer and the Character Quotient*, reporting on the results of its *Foundations for Practice* survey, documenting a number of characteristics, competencies, and skills necessary for lawyers to be successful in the short term.⁶⁰

With greater emphasis on the need to help students transition successfully into the legal market, with greater information available about the skills, competencies, and characteristics needed to be successful, and with the requirement that law schools establish learning outcomes for their program of legal education, it should not be that surprising that many law schools have developed fairly robust learning outcomes associated with professional identity formation.⁶¹ But, will they maintain these robust learning outcomes in the coming years when they are required to assess the progress they are making on their learning outcomes, particularly given that many of these robust professional formation learning outcomes require new or different methods of assessment than those law schools have traditionally implemented?

III. WHAT NEEDS TO HAPPEN TO MAKE GREATER EMPHASIS ON PROFESSIONAL IDENTITY FORMATION A REALITY?

A. *Diffusion of Innovation Theory*

One can think about the engagement with professional identity formation as an “innovation” in legal education. Everett Rogers’ *Diffusion of Innovation* describes the general process by which innovations take root and become embraced within social systems.⁶² For this type of “innovation” to take root, it needs to find fertile soil among faculty members, administrators, and staff members at a growing number of law schools until it reaches a “tipping point” that triggers more widespread acceptance.⁶³ When innovation is successful, one can think of the “adopter” community as falling into something of a bell-shaped curve over time with five groups represented in the community: 1) the innovators (roughly 2.5%); 2) the early adopters (roughly 13.5%); 3) the early majority (roughly 34%); 4) the late majority

59. Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 L. & SOC. INQ. 620, 630 (2011).

60. See Educating Tomorrow’s Lawyers, *Foundations for Practice*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., <http://iaals.du.edu/foundations> (last visited Mar. 17, 2018) (evaluating over 100 characteristics, competencies, and skills across several categories, and identifying those that practicing lawyers believe are most essential to success in the short-term, medium-term, and long-term for new lawyers).

61. See *supra* notes 1–3 and accompanying text.

62. EVERETT ROGERS, *DIFFUSION OF INNOVATION* (1995).

63. MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* (2000).

(roughly 34%); and 5) the laggards (roughly 16%).⁶⁴ One complication in using Rogers' diffusion of innovation theory is that within legal education there is both an individual engagement and a collective engagement. Law professors are not likely to generate a "tipping point" by themselves without a larger engagement of these innovations across the collective enterprise that is the law school. Legal education is not likely to experience a "tipping point" unless a number of law schools have collectively decided to embrace the innovation. Legal education and law schools thus present something of an organizational challenge for diffusion theory.⁶⁵

How much fertile soil is there among law school faculty members to implement the innovations needed in terms of pedagogy and assessment to support the robust professional identity formation learning outcomes described above? In Part I, this article summarized a general historical context from which one would infer that there is not much fertile soil across legal education. To the extent that the MacCrate Report's call for greater emphasis on professional values could be seen as an "innovation," it was an innovation that gained little traction over the next fifteen years, as faculty members at law schools were not naturally focusing on professional identity formation as of 2007.⁶⁶ Although there has been greater emphasis since 2007, particularly with the growth in experiential learning, it remains to be seen whether the social network within and across law schools is prepared to embrace the innovations called for as a result of the move toward learning outcomes and assessment, particularly as they relate to greater emphasis on professional identity formation.

That said, in this part of the article, I will try to describe the characteristics of faculty members who might fit into the different diffusion categories set forth above.

B. Innovators

Through the Holloran Center for Ethical Leadership in the Professions, Professor Neil Hamilton and I have hosted workshops over the last five summers with nearly two hundred faculty members, administrators, and staff members from thirty-five law schools. Some of these law schools and many of these faculty members, administrators, and staff members represent those who might be considered the "innovators" within the Rogers

64. See Bill Henderson, *What is the Rogers Diffusion Curve? (004)*, LEGAL EVOLUTION (May 8, 2017), <http://www.legalevolution.org/2017/05/rogers-diffusion-curve-004/>.

65. In a recent series of blog postings, Bill Henderson wrote about aspects of organizations that support innovation (or not). See Bill Henderson, *Innovation in Organizations, Part I (015)*, LEGAL EVOLUTION (July 20, 2017), <https://www.legalevolution.org/2017/07/innovation-in-organizations-part-i-015/>; Bill Henderson, *Innovation in Organizations, Part II (016)*, LEGAL EVOLUTION (July 23, 2017), <https://www.legalevolution.org/2017/07/innovation-in-organizations-part-ii-016/>; Bill Henderson, *Innovation in Organizations, Part III (017)*, LEGAL EVOLUTION (July 27, 2017), <https://www.legalevolution.org/2017/07/innovation-in-organizations-part-iii-017/>.

66. See *supra* notes 14–25 and accompanying text.

“diffusion of innovation” construct. They have a vision about how to improve legal education to better prepare graduates for an evolving legal marketplace by focusing on the skills and competencies associated with professional identity formation and they have a passion for finding new and creative ways to foster professional identity formation in their classes and within their institutions.

C. Early Adopters

Some faculty members may be interested in being early adopters with respect to professional identity formation. With these faculty members, there already is an interest and a predisposition to do more to foster professional identity formation. These faculty members may appreciate that they are already providing some focus on professional identity formation, but they may not have had professional identity formation as a label to describe some of their efforts. They may just need help in terms of having access to tools and resources to help them implement pedagogy providing more focus on professional identity formation and to implement assessment measures to determine the extent to which students at their law schools are advancing with respect to any number of professional identity formation learning outcomes.

These “early adopter” faculty members, with some predisposition to work on professional identity formation outcomes and competencies, are great candidates for collaboration. We need to work with them regarding some of the ideas associated with professional identity formation, talk with them about concepts they would be most comfortable teaching, and brainstorm with them about ideas for pedagogy and for assessment.

D. Early Majority—Interested but Challenged

Some faculty members may be inclined to move forward under the professional identity formation flag, but may feel like they need some help because it is a different conception of their responsibilities as professors than how they have traditionally seen themselves. These faculty members may feel like they will not be very good at helping students form their professional identity partly because they were not hired with these teaching goals or learning outcomes in mind. These faculty members may not feel particularly well-equipped to implement learning outcomes associated with professional identity formation, even if they are somewhat interested in doing so.

They may see themselves more as being engaged in “knowledge transfer” and in helping students develop critical thinking skills—the hallmarks of “first apprenticeship” teaching. But they may also appreciate that the role of the lawyer as professional is distinctive and that students would benefit

from having thought more about what it means to be a lawyer while they are gaining knowledge and sharpening their analytical skills.

These faculty members may require a little more direction, but because of their favorable disposition toward fostering professional identity formation, they fit more into the early majority category than into one of the following categories. They may need help to identify one or two concepts they could integrate into their classes without too much disruption. They may need examples of ways to foster professional identity formation inside and outside the classroom. They may not be sure how to provide formative or summative assessment regarding professional identity formation learning outcomes and may need more direction regarding assessment. But with the right support, they likely will be willing to put more effort into adding professional identity formation into their conception of their responsibilities as professors.

On the other hand, in the diffusion of innovation literature, there is some discussion of the “chasm” between the early adopters and the early majority.⁶⁷ Perhaps because of the cultural reality of law school in which traction for professional identity formation education will require both individual adopters and institutional adopters, there may be more of a gap between early adopters and the early majority than might be desired.

E. Late Majority—Reluctant to Change and Concerned About Bar Passage

Law professors tend to be conservative by nature, reluctant to change what they do. For many years, the explicit focus of legal education has been the “first apprenticeship” of knowledge transfer and critical thinking skills.⁶⁸ Thus, some faculty members may be reluctant to change, partly because they feel they are good at what they do, and they might not be confident about their ability to do something different—to foster professional identity formation. In addition, some of these professors may have concerns about knowledge transfer and preparing graduates to pass the bar exam, particularly given the recent declines in bar passage rates nationally and at many law schools.⁶⁹ Many faculty members will express this concern in the context of a reluctance to give up on the breadth of “coverage” in a

67. See GEOFFREY A. MOORE, *CROSSING THE CHASM: MARKETING AND SELLING DISRUPTIVE PRODUCTS TO MAINSTREAM CUSTOMERS* (3d ed. 2014).

68. See EDUCATING LAWYERS, *supra* note 4, at 47–86 and accompanying text.

69. See, e.g., Derek T. Muller, *The Collapse of Bar Passage Rates in California*, EXCESS DEMOCRACY (Dec. 14, 2016), <http://excessofdemocracy.com/blog/2016/12/the-collapse-of-bar-passage-rates-in-california> (discussing the three-year decline in bar passage rates at the vast majority of California ABA-accredited law schools between 2013–2016); Mark Hansen, *What Do Falling Bar-Passage Rates Mean for Legal Education—and the Future of the Profession?*, A.B.A. J. (Sept. 2016), http://www.abajournal.com/magazine/article/legal_education_bar_exam_passage (discussing national decline in bar passage rates since 2013).

course believing that broader coverage will help better prepare graduates for the bar exam.

Concern about bar passage is real and legitimate. Bar passage rates have been declining. The first-time bar passage rate in July 2013 for graduates of ABA accredited law schools was eighty-two percent—roughly 39,000 out of 47,500 first-time takers from ABA accredited law schools passed the July bar exam in 2013.⁷⁰ The first-time bar passage rate in July 2015 for graduates of ABA accredited law schools was seventy-five percent—roughly 30,000 out of 40,000 first-time takers from ABA accredited law schools passed the July bar exam in 2015.⁷¹ For July 2016, the first-time bar passage rate for graduates of ABA accredited law schools had fallen to seventy-four percent.⁷² There clearly are challenges we need to grapple with as law schools in helping our students and graduates make sure they are as well-prepared for the bar exam as possible.

To some extent, the decline in bar passage rates was anticipated. With the decline in the number of applicants to law school between 2010 and 2013, law schools collectively lowered their admissions standards and welcomed a smaller class of students that had a higher percentage of students at risk of bar failure.⁷³

But, is there necessarily a tension between professional identity formation and knowledge transfer and bar preparation? There is some research to suggest that professional identity formation is not in tension with knowledge transfer and bar passage, but may be synergistically related to bar passage. The research of Larry Krieger and Ken Sheldon demonstrates that students with lower entering class credentials at one law school outperformed students with higher entering class credentials at another law school in terms of bar passage rates largely because of greater autonomy support at the law school with the lower entering class credentials.⁷⁴ An emphasis on professional identity formation—helping students reflect upon what they want to do as a lawyer and who they want to be as a lawyer—can be one means by which a law school might provide autonomy support to its students.

In placing this emphasis on professional identity formation, law schools may help their students take more ownership of their legal education and their transition into the profession. By facilitating greater self-

70. 2013 Statistics, NAT'L CONF. B. EXAMINERS, 6, 19, (Mar. 2014), <http://www.ncbex.org/dmsdocument/144>.

71. 2015 Statistics, NAT'L CONF. B. EXAMINERS, 14, 27 (Mar. 2016), <http://www.ncbex.org/dmsdocument/195>.

72. 2016 Statistics, NAT'L CONF. B. EXAMINERS, 14, 27 (Mar. 2017), <http://www.ncbex.org/dmsdocument/205>.

73. Organ, *supra* note 27.

74. Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883, 891 (2007).

directedness, an emphasis on professional identity formation might make students take more responsibility for their academic preparation for the bar exam and for bar exam preparation itself. More may need to be done to demonstrate the extent to which professional identity formation supports better bar exam results, but this at least provides something of an antidote to the perception some faculty may have that they have to choose between knowledge transfer and professional identity formation.

F. Laggards—Those Disinterested in or Perhaps Even Hostile to the Concept of Professional Identity Formation

Finally, some of our faculty colleagues may simply be disinterested in the professional identity formation enterprise. They may conceive of their own identity as something of an independent contractor—responsible for teaching their courses—without considering whether they are engaged in a collective educational enterprise.

Others may be hostile to the concept of learning outcomes focused on professional identity formation. Some faculty may resist supporting professional formation learning outcomes because they think that law schools should not be engaged in this type of purposeful formation of professional identity. They may believe law schools cannot do this because students come to us as fully-formed moral creatures,⁷⁵ or they may believe that law schools should not do this because law school should be a value-free zone in which faculty members should not affirmatively represent a certain understanding of what it means to be a lawyer.⁷⁶

Both of these beliefs, however, are myths. Our students do not come to us as fully-formed moral creatures.⁷⁷ The psychology literature and the social science literature is increasingly robust regarding the extent to which moral development continues or can continue across a lifespan⁷⁸ and re-

75. See Deborah L. Rhode, *Lawyers and Leadership*, 20 PROF. LAW. 1, 12 (2010) (quoting Judge Richard Posner as describing efforts to instill ethics in law students as “futile”); see also *Educating Lawyers*, *supra* note 4, at 133 (noting that law professors “often argue that by the time students enter law school it is too late to affect their ethical commitment and professional responsibility”). *But see* Neil Hamilton & Verna Monson, *Answering the Skeptics on Fostering Ethical Professional Formation (Professionalism)*, 20 PROF. LAW. 3, 3–5 (2011) (describing psychology research of Robert Kegan and Lisa Lahey demonstrating ongoing moral/ethical development across a lifetime).

76. See *EDUCATING LAWYERS*, *supra* note 4, at 135 (noting that some law professors view efforts to promote professional formation as illegitimate inculcation of values). *But see* Joseph William Singer, *Normative Methods for Lawyers*, 56 UCLA L. REV. 899, 913–927 (2009).

77. See Hamilton & Monson, *supra* note 75.

78. See, e.g., ROBERT KEGAN & LISA LASKOW LAHEY, *IMMUNITY TO CHANGE: HOW TO OVERCOME IT AND UNLOCK THE POTENTIAL IN YOURSELF AND YOUR ORGANIZATION* 13–14 (2009).

garding the extent to which this generation of students is experiencing “emerging adulthood” that lasts well into their twenties.⁷⁹

More significantly, however, this perception or belief is a myth because law schools are, in fact, doing this all the time.⁸⁰ Law school is inherently a formation experience—it just happens that at most law schools this happens as a result of pervasive inattentiveness rather than purposeful design.

In the medical school literature, this is frequently described as the “hidden curriculum.”⁸¹ If we wanted to go back beyond the MacCrate Report in terms of legal education we would see references to “the ordinary religion” of the law school classroom in Dean Roger Cramton’s 1978 article, *Ordinary Religion of the Law School Classroom*.⁸² In *Educating Lawyers*, Bill Sullivan and his team described this reality as it existed in the last decade—that the profound emphasis on the first apprenticeship of cognition/analysis and the lack of meaningful emphasis on the third apprenticeship of professional identity essentially results in a “warped” or impoverished understanding of what it means to be a lawyer.⁸³ Professional identity in many law schools is shaped more by the analytical/cognitive aspects of the first apprenticeship than by the “relational” and “character” aspects of being a lawyer that were highlighted in the recent *Foundations for Practice* survey from Educating Tomorrow’s Lawyers.⁸⁴

Moreover, as Joseph Singer notes in *Normative Methods for Lawyers*, the reality is that law schools are engaged in values-based conversations, and need to be to prepare our students to be successful advocates.⁸⁵

If we are forming our students, should we not try to be somewhat intentional about how we do that? Should we not make a choice about how we are trying to form them rather than having it happen in haphazard and inconsistent ways?

IV. OVERCOMING CHALLENGES AND SUPPORTING INNOVATION

If we accept that we are engaged in professional identity formation, whether we are doing so consciously or not, then it does not matter whether

79. See, e.g., CHRISTIAN SMITH ET AL., *LOST IN TRANSITION: THE DARK SIDE OF EMERGING ADULTHOOD* (Oxford Univ. Press 2011).

80. See Singer, *supra* note 76; MERTZ, *supra* note 21; Cramton, *supra* note 21.

81. See, e.g., Hannah R. Arterian, *The Hidden Curriculum*, 40 U. TOL. L. REV. 279 (2009); Fred W. Hafferty, *Beyond Curriculum Reform: Confronting Medicine’s Hidden Curriculum*, 73 ACAD. MED. 403 (1998); Fred W. Hafferty & Ronald Franks, *The Hidden Curriculum, Ethics Teaching, and the Structure of Medical Education*, 69 ACAD. MED. 861 (1994).

82. See Cramton, *supra* note 21.

83. See EDUCATING LAWYERS, *supra* note 4, at 24, 56–59; see also Mertz, *supra* note 21.

84. See generally ALLI GERKMAN & LOGAN CORNETT, *EDUCATING TOMORROW’S LAWYERS, FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT* (2016), <http://iaals.du.edu/foundations/reports/whole-lawyer-and-character-quotient> (reporting results of the Foundations for Practice survey project).

85. See Singer, *supra* note 76, at 901–913.

we may not be very good at this or whether we have been trained for it. If we are doing it, we should be trying to do it better, in whatever way we can. Why not try to be a little more thoughtful about professional identity formation and do what we can to be a little more intentional? Why not focus energy not only on assessing our students' ability to "think like a lawyer," but also on their ability to collaborate, to empathize, and to build relationships of trust with clients?

As noted previously, lawyering skills courses, other experiential courses, and clinical courses are engaging with students "in role"—which should provide situations that are ripe with opportunities to reflect on what it means to be a lawyer.⁸⁶ Students may have chances to see how it feels to engage in counter-attitudinal advocacy.⁸⁷ Students may have a chance to reflect upon where they see themselves on the continuum between authoritative and client-centered in working with clients.⁸⁸ Students may have chances to work on communicating bad news⁸⁹ or showing diligence, trustworthiness, or teamwork.⁹⁰ These situations also are not that hard to create in a doctrinal course. For example, if one shifts perspective from how a judge might decide a case to how a lawyer might advise a client, one can create opportunities for students to reflect on their role and to think about the relational aspects of client service.⁹¹

Is this going to be a challenge? Yes, it is. We are trying to change culture within a fairly conservative institution in which self-interest tends to outweigh institutional interests.⁹² Nonetheless, the learning outcomes and assessment concept inherently call for greater collaboration and more of an institutional perspective than an individual perspective. Winds of change are blowing—we just need to find ways to harness the energy of that wind by finding willing colleagues to help us continue to move forward.

The Holloran Center for Ethical Leadership in the Professions is not a neutral observer, as it wants robust professional identity formation learning outcomes to survive and wants more law schools to embrace them. Accordingly, the Holloran Center is going to do what it can to help law schools

86. See *supra* notes 35–37 and accompanying text.

87. See Luban, *supra* note 6, at 281–283.

88. See DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 4–11 (3d ed. 2012) (discussing the traditional authoritarian approach to lawyering (with lawyer in charge) with a more modern client-centered approach to lawyering in which client autonomy receives greater attention).

89. See MARJORIE CORMAN AARON, *CLIENT SCIENCE: ADVICE FOR LAWYERS ON COUNSELING CLIENTS THROUGH BAD NEWS AND OTHER LEGAL REALITIES* (2012).

90. See Gerkman & Cornett, *supra* note 84 (describing some of the competencies, characteristics, and skills needed for success early in one's legal career, including diligence, trustworthiness, and teamwork).

91. See R. WILSON FREYERMUTH ET AL., *PROPERTY AND LAWYERING* (3d ed. 2012) (phrasing most notes in the context of the advice a lawyer would give a client rather than how a judge would decide a case).

92. See *supra* notes 22–23 and accompanying text.

generate ways of defining progress with respect to these professional identity formation learning outcomes along with tools for assessing progress. Indeed, this Symposium/Workshop represents the beginning steps of that process.⁹³

Several of the other articles in this issue of the University of St. Thomas Law Journal provide building blocks for how to move forward productively to foster professional identity formation. For example, Professor Neil Hamilton discusses the shift from a time-based learning culture to a competency-based learning culture and draws on lessons we can learn from medicine.⁹⁴ Lou Bilonis talks about the enterprise-wide approach to professional identity formation and the importance of being more intentional about capturing and engaging formational learning outside the law school as well as outside the classroom.⁹⁵ Susan Brooks provides a number of insights on ways to foster relational lawyering.⁹⁶ Barbara Glesner Fines suggests creative ways to think about programmatic assessment.⁹⁷ Ben Madison and Natt Gantt offer some insights on where we might expect to find our students as we seek to engage them in more purposeful efforts at professional identity formation.⁹⁸

In addition to the articles that comprise this issue of the University of St. Thomas Law Journal, however, the other product of the Symposium/Workshop is a set of working groups that are working over the next several months to generate stage development rubrics and methods of assessing five competencies associated with professional identity formation that have shown up frequently in law school learning outcomes to date—collaboration/teamwork, cultural competency, integrity, professionalism, and self-directedness. Sometime in the coming year or two, the Holloran Center hopes to make available the work product from those working groups, giving law schools some of the tools they need to assess student learning and programmatic effectiveness relating to these five competencies.

93. As the Saturday portion of the Symposium Workshop, we had working groups focused on brainstorming regarding behaviors that might be associated with five competencies—cultural competence, integrity, professionalism, self-directedness, and teamwork/collaboration—with the goal of generating over the next year a set of stage-development rubrics for measuring where students are with respect to each of these competencies. In the coming months, the working groups will report back with their stage development rubric models and then will develop assessment mechanisms that could be used with these stage development rubrics.

94. Hamilton, *supra* note 3.

95. Louis D. Bilonis, *Bringing Purposefulness to the American Law School's Support of Professional Identity Formation*, 14 U. ST. THOMAS L.J. 447 (2018).

96. Susan L. Brooks, *Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students' Professional Identity Formation*, 14 U. ST. THOMAS L.J. 377 (2018).

97. Barbara Glesner Fines, *Picturing Professionals: The Emergence of a Lawyer's Identity*, 14 U. ST. THOMAS L.J. 404 (2018).

98. See Larry O. Natt Gantt, II & Benjamin V. Madison, III, *Self-Directedness and Professional Formation: Connecting Two Critical Concepts in Legal Education*, 14 U. ST. THOMAS L.J. 465 (2018).

The Holloran Center also is continuing to host summer workshops on professional identity formation for teams of faculty members, administrators, and staff members from several law schools in an effort to create innovators and early adopters who can create the momentum for further progress in facilitating the wider adoption and retention of professional formation learning outcomes across more law schools. Between the summer of 2013 and the summer of 2018, the Holloran Center will have hosted eleven workshops with nearly 250 faculty and staff members from over forty law schools.

In addition, starting with a gathering in May 2017 of those law schools with first-year courses or programs focused on professional development including professional identity formation, the Holloran Center will be investing in further gatherings to support these courses/programs and to encourage more law schools to adopt and implement such courses/programs.⁹⁹

There are reasons for optimism that the present experience within legal education associated with professional identity formation will bear more immediate and long-lasting fruit than the values initiative of the MacCrate Report—but only time will tell. The Holloran Center will continue to track law school learning outcomes over the next several years to document whether professional identity formation is an innovation that has taken root across legal education or whether the structural, institutional, and individual challenges of embracing the innovation of professional identity formation ultimately erode the current momentum associated with professional identity formation.

99. See Organ, *supra* note 5 and accompanying text.