Self-Knowledge for Lawyers: What It Is and Why It Matters

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A. Two views of legal education

Anyone who has taught in law schools for three decades or more has witnessed a paradigm shift in legal education. From the 1960s through the 1980s, it was common to ask how law school differs from the kind of practical training that might be acquired in, say, apprenticeship to a practitioner. A frequent answer was to compare law schools with graduate schools in arts and sciences and to argue that the law students were taught similar skills of reasoning, normative evaluation, cultural contextualization, and self-examination.[1] For the most part it was taken for granted that academic scholars aspired to these traits, that graduate schools fostered them, and that law schools could and should emulate graduate schools in these ways.

While it is hardly controversial that these arguments were commonly made, it is not necessarily obvious that graduate schools really achieved these goals, nor is it obvious whether and how these goals might be addressed in a law curriculum. The underlying perspective was the projection of social reality. In these decades, many law school teachers began their careers as historians, philosophers, literary scholars, and social scientists. They migrated to law schools from an oversaturated job market in humanities and social sciences, and they proceeded to reconfigure their new homes in the styles to which they were accustomed. They rationalized their new jobs as variations of what they had been doing all along—which in no way invalidates their account.[2]

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1. A comprehensive and influential discussion of the assimilation of law schools to graduate schools, and also of the differences between the processes and goals of the two kinds of institutions, is Jack M. Balkin & Sanford Levinson, *Law and the Humanities: An Uneasy Relationship*, 18 Yale J.L. & Human. 155 (2006). The authors argue that philosophy, history, and economics have had the most impact on legal pedagogy because they provide skills useful in law practice and can be assimilated into legal scholarship without "transforming" it. *Id.* at 181-82.

2. An early critic of what he called the "graduate school" model of legal education, with its putative emphasis on "theory" over practice, was Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 Mich. L. Rev. 34 (1992), and Harry T. Edwards, *The Growing Disjunction Between Legal Education: A Postscript*, 91 Mich. L. Rev. 2191 (1993). Professor Edwards refers to the migration of liberal arts and social science scholars to

This account is now distant, and the underlying prescriptions for legal education seem quaint and, to many, largely irrelevant. "Training for practice" is the new mantra for many legal academicians and commentators.[3] The odd phrase "experiential training" (isn't every kind of training by definition experiential?) is invoked to reflect dissatisfaction with the traditional use of the classroom for the discussion of information and ideas and to invite an oddly backward-looking revolution in which students are prepared as effectively as possible for immersion in practice, a kind of apprenticeship-on-stilts. Given the perceived urgency of accelerating students' evolution into competently practicing lawyers, the supposed benefits of delving into the humanities and social sciences are often regarded with skepticism and condescension.[4] Not coincidentally, this comes at a time when graduate schools themselves are increasingly uncertain about their endorsement of the skills they foster as a foundation for a productive scholarly life.

B. A fresh perspective

There has never been homogeneity in how legal education is described and justified. The law-school-as-graduate-school model always had its critics, as any model is likely to have. Those who endorsed it were hardly unanimous in their understanding of it.[5] Similarly, the contemporary exponents of experiential learning have a spectrum of views and offer diverse critiques of the role of humanities in law school.

Law schools will always be home to more or less heterodox faculties; every cohort will include members who would make experiential learning the focus of legal education and others who see traditional methods of conceptual discussion and analysis as the core of graduate and professional education. My aim is neither to adjudicate the debate nor to advocate compromise. It is rather to examine the familiar arguments for the "graduate school" approach and rethink, refocus, and recalibrate them, to make them newly fresh, interesting, and perhaps persuasive.

Both proponents and critics of what I shall call the "humanities" focus in legal education can list as if by rote the familiar benefits. It has been noted for generations that infusing hybrid (or hyphenate) courses on philosophy (jurisprudence), law and literature, and legal history in the law school curriculum enhances so-called "perspective" and analytical skills. These

law faculties as leading to an "explosion of interdisciplinary work" and "increasing rejection of the importance of doctrinal analysis."

3. *See, e.g.*, David Segal, *What They Don't Teach Law Students: Lawyering*, New York Times (Nov. 19, 2011), https://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html.

4. See *supra* note 2.

5. For many scholars, the most useful tools for reshaping legal understanding were drawn from the social sciences, from economics and sociology, and, to a lesser extent, psychology. For others, the skills to be gleaned from philosophy and history were essential for the well-rounded and adept lawyer both professionally and personally.

skills include logical analysis, abstract conceptualization, psychological understanding, appreciation of good writing styles, and empathy.[6] Doubtless these are important skills. But the list is overfamiliar. Endless examples can be devised of the logical conundrums and fallacies that infect legal thinking. Endlessly, many novels and plays can be dissected to show how social and personal circumstances affect personal responsibility and self-regard. All of these examples are likely to be instructive and relevant for some law students. At the same time, they do little or nothing to address the question of the *relative* importance of this kind of learning in law school. They are predictable, therefore uncompelling, moves in the debate. Moreover, they prompt such unanswerable questions as whether these skills are ones that students should learn much earlier in their education than in professional school, and whether law students are susceptible to having their habits of thought changed in these ways.

Both conceptually and rhetorically, the case for humanities courses in law school must be made new. We can begin by identifying three ways of making the case, at three different levels of generality. The first, most general, account is to explain, if possible, a single goal that is achieved by such educational experiences, one that is distinctively beneficial to law students and that is for the most part not addressed through other experiences in law school. The second, somewhat less general, is the familiar approach identified above. It assumes that these courses yield a variety of special skills, and it argues for the relevance of these skills in the lives of lawyers.

The third, even less general, approach is to give examples of ideas and experiences that students are likely to have only in the context of such courses and to make evident their formative importance.[7]

Note that the second approach not only is familiar but seems to reflect common sense. "Why study philosophy in law school?" "Here are the skills you will gain." "Why study literature?" "Here are the additional skills you will develop." And so on. But the first and third approaches help us understand why putting forward the skills argument is limited and unlikely to convert anyone who is not already disposed to favor it.

Lawyers *have* skills, but their identity is more than the intersection of skills, and their lives are more than the deployment of skills. If one were to give a global account of the *point* of the humanities, it would be that they

6. The role of literature in prompting law students to exercise empathy and to consider the relationship of rationality and emotion is the subject of a number of well-argued articles. *See, e.g.*, Paul Gewirtz, *Commentaries: Aeschylus' Law*, 101 Harv. L. Rev. 1043 (1988); Renee Newman Knake, *Beyond Atticus Finch: Lessons on Ethics and Morality from Lawyers and Judges in Postcolonial Literature*, 32 J. Legal Prof. 37 (2008). The latter article focuses on the relationship of professional roles and the "moral compasses" of attorneys.

7. Articles that focus on the importance of self-conscious storytelling as a way of seeing the social effects of law contextually are an important subgenre of law and literature. *See*, *e.g.*, Judy Scales-Trent, *Using Literature in Law School: The Importance of Reading and Telling Stories*, 7 Berkeley Women's L.J. 90 (1992); Linda H. Edwards, *The Humanities in the Law School Curriculum: Courtship and Consummation*, 51 Wake Forest L. Rev. 355 (2016).

respond to the question, "Who am I?" Accordingly, literature compels us to reflect on human nature and human experience. It expands the realm of life circumscribed by our actual place, time, and physical circumstances to allow us to inhabit endlessly many other times, places, bodies, and minds, to inhabit *any* possible realm that imagination is capable of constructing. The study of history takes us to actual places and times to which we have no immediate access, in which we cannot be present. Philosophy makes us self-aware of the parameters of experience: the nature of knowledge, the sources of ethical and aesthetic awareness, the structure of reasoning, and other aspects of human nature. The sense of self that we take from all these investigations is itself inevitably a work in progress, an incompletable project.

A full account of why literature, history, and philosophy have an important place within legal education requires a fresh account that links humanities training with success and fulfillment as a lawyer. I began the first section by alluding to the assimilation of legal education to graduate studies in arts and sciences. This effort at assimilation masks a paradox while responding to it indirectly. The paradox is that arguably the training of lawyers depends on turning away from the question "Who am I?"—on discouraging rather than facilitating self-reflection. To the extent that lawyers implement the interests of clients, they are expected to put forth values and seek outcomes that they may not support, to construct versions of events and motives that may not accord with their sense of univocal truth. Equally importantly, lawyers may serve legal regimes—governments and codes—that do not reflect their way of conceiving a benign and progressive world. The underlying message is that as a lawyer one must put aside what one stands for as a private person or citizen and become an instrument for what other individuals or "the system" stand for.

No wonder some legal educators may fear that an overactive or overly scrupulous inquiry into "Who am I?" may inhibit the development of lawyers-as-instruments and may exacerbate psychological conflict. By contrast, the habit of putting self-inquiry aside allows students to experience both the alienation and exhilaration of reinventing themselves as tools for clients. But the exhilaration is likely to fade as the alienation deepens.

The effort a generation ago to infuse the elements of graduate education in the liberal arts into law schools can be seen not so much as the cultivation of discrete skills but as an effort to counter the instrumentalist aspects of lawyering with habits of independent self-reflection. Covertly, the model of the lawyer shifted from being the agent and tool of clients to being the architect of public policy and the arbiter of truth. While a preoccupation with self-knowledge would be an impediment to serving the former role, it is arguably enabling and even essential for the latter roles. Therefore, those who argue for the irrelevance of the humanities in legal education can also be seen as arguing for a reversion to the instrumentalist paradigm of lawyering. To the extent that humanities encourage self-reflection in addition to imparting skills, that habit is not simply irrelevant but an obstacle to seeing oneself as an instrument.

This conclusion represents, of course, only the most superficial engagement with the psychology of legal education and lawyering. It begs the important question of how self-reflection and self-understanding are related to well-being, happiness, and mental health. How can we educate lawyers not merely for competent or even exemplary performance of their jobs, but also for satisfying lives? Is the latter a goal that law schools should pursue, and if so, how is it related to educating for competence? What role can exposure to the humanities play in furthering these goals?

Near the beginning of this section I identified three ways of making the case for the humanities in legal education. I have tried to explain the difference between arguing that the humanities yield special instrumental skills that make one a more competent lawyer and arguing that they are likely to make one's life better—better insofar as they are ways of addressing rather than avoiding the question "Who am I?" At this point the link between self-inquiry and self-knowledge on one hand and living well on the other is a promissory note. We credit Socrates with the observation that the unexamined life is not worth living, but we may in the end be ambivalent about its truth. It is common to have misgivings about the overexamined life; it is clear that preoccupation with self need not necessarily yield truths but rather distortions, rationalizations, and falsely positive or negative convictions. In other words, it is widely believed that contentment and success depend upon looking outward toward one's role in the world and in society rather than looking inward to excess.[8]

The justification of the examined life, therefore, wants clarification. If it is clear that the humanities or liberal arts aspire to evoke the examined life, it is less clear what that self-aware kind of life is, whether realized by aspiring lawyers or anyone else. In the rest of this article, I will try to flesh out this notion by giving examples, as promised above, of the kinds of experiences students are likely to have only by immersing themselves in the humanities and by arguing for the importance of these experiences both in the professional lives of lawyers and in their sense of well-being.

The list of experiences I have in mind is inexhaustible. What they have in common is that they are based in questions that are at once philosophical and psychological, questions that in one form or another have been with us for millennia and have no obvious answers, no algorithm for solution. They are questions that one may not encounter explicitly within common professional training. But they are also questions that, once raised, are inescapable tools for understanding one's profession, one's self, one's culture and experience.

In other words, both philosophy and literature, when they are effective, compel us to identify, confront, and evaluate what might be considered the default assumptions, the default ways of thinking and responding to countless

8. A debate about this matter can be found in Timothy D. Wilson & Jonathan W. Schooler, *Thinking Too Much: Introspection Can Reduce the Quality of Preferences and Decisions*, 60 J. Personality & Soc. Psychol. 181 (1991) and J. Gregory Hixon and William B. Swann, Jr., *When Does Introspection Bear Fruit? Self-Reflection, Self-Insight, and Interpersonal Choices*, 64 J. Personality & Soc. Psychol. 35 (1993).

experiences, that define who we are as unique individuals. In each of the next three sections, I explore different ways, exemplary rather than paradigmatic, in which humanistic texts and discussions can prompt tectonic shifts in one's sense of self.

C. The divided self: From Christ to Hyde

The trope represented by the dualism of Dr. Jekyll and Mr. Hyde[9] runs deeply through our culture, through both religion and secular thought. It involves several claims about human nature. One is that we have inclinations toward both good and evil and that these dispositions run so deep that they are warring personalities. A second claim is that the lure of evil is deeper and more profound than the attraction of the good. The benign side of our person must be consistently vigilant to keep Mr. Hyde in check. A third claim is that being good is fueled by rationality while evil is a matter of emotions run rampant. Moreover, rationality and goodness are connected to consideration for others while emotionality and evil are entirely selfish. Thus we use our reason to protect ourselves from our "natural" inclination to be monsters. Finally, as implied by the first three claims, human nature is deeply flawed insofar as all of us have the socially and personally destructive energy of evil and ungoverned emotions at our core.

This account is, I suggest, both familiar and deeply strange, indeed deeply suspect. It is hard to avoid rendering the account without slipping into the language of Christianity. Accordingly, both God and Satan are rivals for our allegiance. Being a devil has its enchantments and allure. The price of salvation is constant vigilance and forbearance against many of our natural inclinations. We are all plagued by original sin. Salvation is not our natural destiny but a mark of the beneficence of God.

The danger of yielding to temptation and disobeying God is, of course, as much a theme of the Old Testament as the New, as much a part of the story of the Judaic God as the Christian one. But the initial account is not merely a reflection of the omnipresence of Judeo-Christian religion in our culture and our representations for human nature. Jekyll and Hyde are equally relevant to our secular framework of thought.

While it may be debatable whether Sigmund Freud is in some sense a religious thinker, his model of the structure of mind has had inestimable influence on secular accounts of psychology and on secular culture.[10] The "id" is the most basic stratum of human nature, the realm of instincts and impulses; it is the domain of appetites, the motivating forces that reflect our animal nature. They demand satiation, and they are definitively self-regarding. Other persons are the instruments and the obstacles to satisfying these appetites.

9. Robert Louis Stevenson, The Strange Case of Dr. Jekyll and Mr. Hyde (1886) was originally published by Longman Publishers in January 1886.

10. Of the several models of the mind that Freud put forth, the one to which I make reference is the subject of Sigmund Freud, The Ego and the Id (1923).

They are reflected in our conscious life by our emotions. Reason comes to play in two other strata. The "superego" is the monitor that embodies social constraints, that exists to counter the socially irrelevant and potentially destructive impulses of the unrestrained id. And the "ego" mediates between the id and superego. As it translates and sublimates the energies of the id into the choices of a self-conscious person, it comes to define our existence as social beings while it navigates between conflicting demands. It is the rider on the unruly beast.

The identification of Mr. Hyde with the id, with Satan, and with naked emotions and unconstrained impulse is an easy and familiar identification to make, as is the identification of Dr. Jekyll with reason, aspiration to Godlike benevolence, and constraint through adherence to social norms. The pervasiveness of this model is, of course, not conclusive evidence of its truth or usefulness. Doubts abound. Why should we assume that emotions and impulses are fundamentally selfish and socially destructive, that they need in general to be constrained and "kept in check"? Might empathy and concern for others be at least as natural a part of our human endowment as their absence? Indeed, might their absence signal a kind of emotional pathology? Alternatively, why align reason with deference to social well-being and conscience? We are all familiar with many malign uses of reason in personal and political contexts. Reason, in this view, is neither Godlike nor informed by morality—although it may distinguish us, for better or worse, from animals.

Greek culture did not favor a dualistic Jekyll-Hyde view of human nature, and many influential thinkers, Rousseau and Jung among them, rejected this kind of dualism. It is sensible, of course, to focus not so much on the truth of the model as on its usefulness. Its truth, as with any general model of an aspect of experience, is measured by its usefulness in giving a framework within which we organize the world around us and inside us.

What does this have to do with self-knowledge and legal education? The assumption of this kind of dualism in human nature is, we have seen, deeply embedded in our culture and therefore in common ways of thinking. At the same time, as with most matters elicited in philosophy, it is rarely made conscious and explicit, rarely explored critically. The process of asking oneself how much one buys into this assumption and how much of a role it plays in one's understanding of experience is manifestly a step toward self-knowledge and has three consequences.

First of all, we can ask to what extent we mistrust our emotions and impulses. We all vary in the extent of our self-assurance, our self-monitoring, our spontaneity. We take our individual proclivities as given. Unless and until we seek psychiatric help, unless and until we sense dysfunction, we rarely examine the assumptions that underlie these habits that determine our reflection and our personality. Psychology and philosophy offer different direct routes for such examination, and literature is a less direct route. But considering the role of Jekyll-Hyde duality in our self-understanding is one way of pointing ourselves toward a fruitful and perhaps endless series of questions.

Second, the role that this duality plays in conceiving and creating ourselves is mirrored by the role it plays in how we deal with and think about others. Do we generally mistrust others and think of them as fundamentally selfish? Do we expect them to be transparent or opaque; do they generally harbor hidden motives, perhaps unconscious aims? Is social interaction a zero-sum game, a realm in which we must constantly guard against descent into Hobbesian rivalries? Or can we trust the expressed feelings and motives of others to be benign and expressive of empathy until we have evidence to think otherwise?

Self-investigation of one's inclination to be constrained by the Jekyll-Hyde model of human nature has a third consequence beyond the likelihood that it will generally clarify and reshape our view of ourselves and our responses to others. For lawyers it has particular resonance. At every turn, law is a manifestation of trust and mistrust. It is needed when trust fails or is expected to fail. The Jekyll-Hyde model offers a handy account of when and why relations of trust break down, why we need legal resources to anticipate such breakdowns and to give remedies when breakdowns produce harm. But it may be too facile for the lawyer to rely on the model as the law's raison d'être. Our own experiences may accord or not with that model, and adopting it without reflection can inhibit the lawyer's work as much as it facilitates it. Lawyers avoid conflict not merely by erecting rigid structures that constrain conduct, but also by creating opportunities for shared efforts and mutual success. Knowing how to use resources and skills for good results means assessing other persons and situations without the blinders that can come with the Jekyll-Hyde model, without that kind of cynicism. It means being able to assess fellow attorneys, clients, and anyone else implicated in one's work with perceptiveness and sophistication.

The question "Who am I?" is answered in part by asking: "What are the parameters, for the most part unconscious ones, by which I find my way in the world? What, for example, are the expectations and general assumptions about human nature that affect my dealings with myself and others?" To say that this kind of self-awareness facilitates the work of lawyers is an understatement. The humanities, reinforced by psychology, define the place where such self-awareness comes to fruition.

D. Judgment

Albert Camus's celebrated novel *The Fall*[11] is disturbing for most readers. It constitutes the first-person narrative of a self-described judge-penitent, a onetime Paris criminal defense attorney, Clamence, who falls away from his profession into debauchery and extreme self-persecution and self-doubt. He ultimately becomes the habitué of an Amsterdam bar, endlessly and insistently collaring strangers with whom to share his story as, presumably, an object lesson of self-discovery. It is at the same time a story of self-annihilation.

11. La Chute (the original French title) was first published in France in 1956.

As the novel ends, Clamence suggests to his interlocutor, whom he also identifies as a lawyer, that he is a mirror, that he reflects not his own life but that of the listener, and implicitly that of each of Camus's readers. The story, which at many points seems to be about pathology, is offered as a general account of human experience.

The paradox implicit in being a judge-penitent is at the book's core. Clamence, who describes himself as having a "passion for heights"—for bridges, mountains, the upper decks of buses, anywhere above other persons—argues that our lives are animated by acts of judgment, by judging ourselves to be superior to others and finding supporting evidence. He suggests that he became a lawyer because it put him in position to judge clients, rival lawyers, and noninitiates in the field of law; it allows one to amass victories that affirm one's special nature. His narration is full of judgments, largely critical, about others. Indeed, Clamence says that we judge others with the purpose of forestalling or trumping their judgments of us; mutual judgment is an endless competition, compared with which the so-called last judgment after our deaths is a minor affair. As an attorney, he lives in terror of being shamed through others' judgment. As a judge-penitent in Amsterdam, he persists in judging without end. But he does so paradoxically by claiming that he can judge himself more harshly and unequivocally than anyone else, and he can do so in light of the insight that it is the essence of human nature to engage in this rivalry.

As with the Jekyll-Hyde model of human duality, Clamence's theory of judgment and alienation is a catalyst for reflection. Is this account true of my own habits of thought? Am I in the constant practice, perhaps unconsciously, of judging others critically? Is this an inveterate habit in the somewhat desperate service of maintaining self-esteem? Do I believe that others also engage in similar practices of judging?

A significant part of Camus's message seems to be that law is a refuge for those who would indulge the habit of judgment and rationalize it as a professional necessity rather than a potentially self-destructive aspect of human nature. Clamence tears the camouflage away and demands that we ask ourselves how much of the self-absorption that he both criticizes and inhabits is a driver of our own lives.

To be clear, I am not endorsing Clamence's account of human nature, and I am hardly certain that Camus endorses it. But I am endorsing the value of having anyone, and particularly law students, consider their own relevant dispositions. One's reasons for choosing a career in law and one's choice through the thicket of career options are often shrouded in mystery. It is a sound hypothesis that those reasons also guide the choices one makes in one's nonprofessional life. If, at bottom, one's relations with others are premised on zero-sum games of mutual judgment, flaw-finding, and looked-for condemnation, then recognizing those parameters for what they are seems an essential part of the examined life.

E. Interlude

The notion of self-knowledge and the processes of self-reflection and self-understanding need more explanation. It is easy to be dismissive of self-knowledge. I know a lot about myself without reflection or effort: my age, my race, my name, my appearance, my memories, and so on. It might be said that when we talk about self-knowledge, we often mean something only slightly more elusive. Am I morally conscientious and respectable or not? Am I empathic and considerate? Am I a pessimist or optimist? Am I well-organized or even compulsive about order, or do I lack these characteristics?

Accordingly, we are tempted to think that once we have sorted through these and similar options about character, personality, and skills, we have arrived at self-knowledge. We conclude that it's not so hard. Even if we concede that we might be deluded in some ways and might defer to others, friends or psychiatrists, to correct our beliefs about ourselves, we imagine that the process of self-knowing yields closure. In particular, we might believe that by the time we reach graduate education in professional school, we have more or less achieved such closure and hardly need exposure to the humanities to reopen matters that were resolved in adolescence, in the process (literally) of becoming an adult.

The notion of self-knowledge that shapes my argument could hardly be more different. It presumes that the notion of self-knowledge in the paragraph just above is in fact the opposite of knowledge, a rationalization that serves as evasion of thought and reflection. It is a view of self ultimately constructed of bromides and cant.

Our notion of ourselves as persons in general and as *unique* persons has a social, interpersonal basis. As our awareness and responsiveness first develop, we become conscious of ourselves as persons in a world of persons. As those around us enable us to survive and deal with our needs, we develop patterns of behavior out of the depth of our dependence and fears. For each of us, the pattern of development is unique. Over time, trust and mistrust aggregate. We have experiences that allay our fears and others that intensify them. As consciousness grows, we shape an idea of our own nature on the basis of how others act toward us. We develop self-reliance and self-esteem with unique nuances, and we develop deficiencies. This is true of us in our earliest years, and it remains true throughout our lives. As adults, we for the most part remain vulnerable to the good opinion, love, and hostility of others—and they retain this power over us. Our goals and sense of destiny are a function of the relative security that we feel and the various hopes and needs with which we identify.

We continue to be affected by others and to affect them in turn. Our habits of respect, deference, and receptivity—and their opposites—persist throughout our lives, but they are informed and changed by new experiences. As we reshape the ways in which we see and deal with others, *if* we do, our own sense of who we are is likely to change. We may see the inadequacies of simplistically

regarding ourselves as optimistic or not, religious or not, kind or not, cautious or not, intelligent or not, and so on.

This implies that self-examination can be an endless process with its object a moving, chimerical target, and that self-knowledge is an enterprise without any possible completion. It is of inestimable value for that reason. It has to be part of a lived life of choices, relationships, and goals. The choice is not between looking outward and looking inward, as they are arguably complementary. Looking outward—setting and achieving goals, professional and private, and getting satisfaction from doing so—arguably presupposes that we are perceptive about and appropriately critical of the self that is doing so.

While it might be argued that this is implicit in legal education, it is hardly explicit or widely acknowledged. My first two examples of humanities-based questions and hypotheses suggest the impact of making it explicit. If law students rarely ask themselves whether human nature is well-described by the Jekyll-Hyde dualism, they nonetheless conduct their lives with settled expectations. Is criminal law, or even law in general, the expression of the need for society to suppress the spontaneous and universal disruption that is characteristic of spontaneous and natural desires? Or is law itself the expression of spontaneous emotions and desires, the expression of natural inclinations toward empathy, caring, and sacrifice? I would argue that every encounter a lawyer has, every argument she makes, and every strategy she devises is likely to be informed by her (often unconscious) position on this conceptual issue.

The same can be argued for Camus's suggestion about the pervasiveness and function of judgment. How thoroughly are we committed to fortifying our self-regard by critical judgment of others? How generally do we make such judgments to stave off being judged ourselves or to counter judgments by others? It is important, I would argue, for lawyers to know when their decisions are affected and corrupted by this contest-to-the-death. What convictions about the attitudes and actions of others lie at the heart of their decisions?

If there is little profit in *over*indulging such questions, there is a kind of self-blinding in ignoring them altogether. The humanities foster the habit of reflecting on human nature in general and one's own human nature in a way that balances philosophical, psychological, and autobiographical questions, a way that captures Socrates's intent.

I have already stressed that the prompts that one can infer from the humanities with regard to exploring human nature are inexhaustible. The particular prompts that we find in Jekyll-Hyde and in *The Fall* have moral implications. Jekyll-Hyde is about the sources of what society calls good and bad actions; *The Fall* is about the rivalries in which persons condemn each other and claim superiority. But not all of the lessons in the humanities are so clearly related to morality. The next section shows that some of these lessons involve habits of mind that implicate logic and fallacies.

F. Dichotomies

Dichotomies—either-or bits of reasoning and experience—are built into the nature of law and lawyering. Legal representation is often, though not always, adversarial. The parties to a dispute are often in a win/lose contest. The interests of clients are typically opposed to the interests of other parties.

Other professions are not oppositional in the same way. Doctors have the shared goal of improving health and extending life. Scholars engage in the enterprise of extending knowledge, often (but not always) a cooperative endeavor. Anyone engaged in creative enterprises, whether in the arts or technology, is concerned to produce the best product she can. Her success is not directly dependent on the failure of an opponent.

Oppositional thinking is an important part of legal education. One is taught to construct arguments and counterarguments. One is taught as well that public policy may have unexpected complexity, that for every argument in favor of a particular policy there may be less apparent arguments against it. In a sense this kind of training can be subversive. Students may take away the lesson, unconsciously perhaps, that every commitment they have ever had stands on uncertain bases, and that they need to live their lives ready to adopt and jettison commitments opportunistically, as situations demand.

Thinking in dichotomies is therefore an indispensable tool, but a dangerous one. To use it effectively students must learn when to use it, when to identify a situation as subject to either-or interpretation and when not to do so, and when an either-or situation yields to resolution (and when that is not so). Immersion in philosophical and literary examples can make this clear. It can make students self-aware of how they have been using or abusing this tool.

1. *Dichotomies and truth*

It is said, and widely questioned, that adversarial processes are effective at uncovering truth.[12] We all know the essential arguments for and against. On one hand, it seems plausible that if one seeks to determine criminal guilt or innocence (or a civil violation of law) one should create incentives and opportunities for opposed advocates to make the best cases they can for the respective sides of the issue. On the other hand, we know that the skills of opposed advocates are rarely in balance, that strategies are available to win cases that have little to do with uncovering truth, that rules of evidence can exclude probative evidence and allow misleading evidence, and that highly relevant information may be unavailable to both sides.

Philosophers point to a much deeper problem with the assumptions behind the system. They question whether the truth, such as it is, is likely to line up with either side of the adversarial process, whether the process is capable of recognizing more complex versions of the truth, and most importantly whether the notion of truth can usually be used univocally at all. Consider, for

12. A particularly interesting discussion is David Luban, *The Adversary System Excuse*, *in* David Luban, The Good Lawyer 83 (1984).

example, the assumptions within criminal law that responsibility attaches to intentional acts, and that acts either are or are not intentional. When we reflect on our own actions and those of others outside the context of criminal law, we recognize easily that we are affected by ambivalence, habit, and unconscious motives. Accordingly, psychologists rarely sign on to an intentional-or-not dualism and to the notion of either-or truth in such matters.

The problem is not merely that psychological truth is complicated and that criminal law, to be manageable, needs simple and often binary categories. It is also that there may be many stories about a single individual's actions, and each story may have a claim to truth. Just as there can be many different and revealing biographies of Lincoln or Einstein, there can many variant accounts by psychologists and others of why defendant X committed his alleged crime and what responsibility he bears.

By examining the concept of truth, one of the tasks of philosophy, we can come to understand when it is univocal, when it is binary, and when it is essentially controversial and multiform. Truth is univocal in many cases, of course—when it is question of my age, or the number of persons in a room, or the year in which United States declared independence. We treat it as provisionally binary on those occasions when two conflicting stories can be told and when we need and seek to devise a decision procedure to adopt one as truth. But the causes and nature of human events, including actions and events that invite criminal charges or other legal allegations, are rarely reducible to a single uncomplicated story or a pair.

Part of the answer to the question "Who am I?" is elicited by the answer to "How do I assess truth?" Legal education centered on litigation puts one in the habit of thinking in dichotomous terms, in deploying a binary attitude toward truth. Whether one thinks of litigators offering conflicting stories of the truth or of judges who resolve the conflict through a decision procedure, often one that is tangential to genuine truth-determination, the law and lawyers have little tolerance for proliferating stories.

2. *Dichotomies and the nature of law*

A significant part of one's professional identity as a lawyer is disclosed by one's attitude to the nature of law. Both within law school and within a professional life, it is easy for lawyers to avoid coming to terms explicitly with questions of philosophical jurisprudence. But philosophers of law, arguably since the time of Plato,[13] have offered a stark, seemingly binary, choice with regard to the law's nature. A lawyer's position with regard to that choice, while implicit, is often revealed by arguments and actions.

13. The binary arguments between Socrates and the sophists in *Gorgias* (on the uses and purposes of rhetoric) and in *Republic* (on justice and law) anticipate many arguments about the nature of law in the jurisprudence of the past two centuries.

On one hand, positivists identify law with power and social organization.[14] By their account, law is the product of a distinctive institutional structure associated with authority and general obedience. Such a structure is a necessary and sufficient condition for law's existence. The opposing position, sometimes called naturalism,[15] is that while a structure of this kind may be necessary, it is not sufficient, because it sets no constraints on the content of law. Although defining the relevant constraints is not easy, the constraints must be normative and reflect the pursuit of collective human aims such as justice.

The dichotomy encapsulated in the notions of law as power and law as justice is one that is scarcely raised for law students except in the study of jurisprudence. Yet it elicits a fundamental difference in orientation, a difference in the points of view toward law and toward one's professional role that are inculcated in law school. Once students are made aware of the options, they notice them everywhere in legal materials and arguments—in the structure of casebooks, in the pedagogy of teachers, in the arguments of attorneys, in the reasoning of judges—and they come to self-identify as positivists or naturalists or to reflect upon their own often conflicting attitudes.

An analogous dichotomy is embodied in a jurisprudential debate of more recent vintage. Self-described liberals, who adhere to classical liberalism as represented by John Stuart Mill, describe the goal of legal judgment as neutrality with regard to individual, private choices about how to conceive and live the good life. They argue that the rules that govern public order, whether they emanate from legislatures or courts, should be filled with content (as naturalists suggest) *only* to the extent that they assure equal treatment of the interests of those affected by law and equal opportunity for those affected. Such a regime is said to instantiate equal respect. Proponents of the movement within legal theory called "critical legal studies" consider the goal of neutrality ephemeral and ultimately pointless. Their claim is that *any* regime of public order will favor and encourage some choices of how to live one's life and disfavor others.[16]

In this instance again, students of legal philosophy become aware of a dichotomy in perspective that runs deeply through the materials of their education and through the attitudes they can expect to have and encounter during their professional lives. Asking themselves where they stand in this frequently intractable debate yields self-knowledge. And self-knowledge, in turn, typically prompts reassessment of one's experience and commitments.

In these instances, two kinds of questions seem inevitable. The first kind assumes the truth of the dichotomies; one asks, "Am I a positivist or

14. The most influential proponent of positivism in modern jurisprudence is H.L.A. Hart, whose seminal work is H.L.A. Hart, The Concept of Law (1961).

15. The work of Ronald Dworkin is often associated with naturalism, even though he abandoned the term early in his long scholarly career. A high-water mark of his use of term is his lecture *"Natural" Law Revisited*, 34 U. Fla. L. Rev. 165 (1982).

16. The critical legal studies movement is often said to have come to general scholarly attention with the appearance of *Critical Legal Studies Symposium*, 36 Stan. L. Rev. 1-674 (1984).

a naturalist? Am I convinced that neutrality for rules of public order is a mirage or not?" The second kind, however, may be an attempt to question and transcend the dichotomies. Is law *both* a manifestation of power and a repository of justice? Are both positivism and naturalism positions that need refinement and modification? Is the critical assault on liberalism and neutrality too simplistic? In other words, are there some pieces of legislation and some judicial decisions that can be well-defended as promising neutral treatment of individuals regardless of where their preferences lie, and other kinds of legal decisions that seem irreducibly political in nature, irreducibly ones for which any decision will favor one way of life over another?

Exploring these issues further is beyond the scope of this article. What is evident is that they are fundamental issues for law students and lawyers in knowing their intellectual predilections. One can ignore these issues or simply fail to see them as formative positions, but nonetheless they are implicit in one's identity as a lawyer—and as a citizen. As we have seen, part of their interest and complexity lies in the fact that, at one level, they seem to offer a set of mutually exclusive alternatives, a dichotomy of identifications, and at a deeper level they force one to consider whether the dichotomy itself is illusory and whether one's convictions about law, once examined, reflect the possibility of bridging and transcending the alternatives.

3. *Dichotomies and literary interpretation*

The Jekyll-Hyde account of human nature makes us think not only about human nature, but also about dichotomous thinking—in two ways. First of all, it represents a dichotomy between two selves, good and evil. Second, once the Jekyll-Hyde model is looked at critically and seen as problematic, we uncover another dichotomy at a higher (meta-) level. This is the distinction between those who find the model persuasive and those who don't. In other words, "Who am I?" is susceptible of being addressed by asking, at the meta-level, "Am I really invested in seeing persons on this model of good and evil, passions at war with rationality?" Depending on the answer, one must ask either "Being invested in the model, how are Jekyll and Hyde (the id and the superego) manifest in my life?" or "Rejecting the model, how do I see feelings and thought as connected in my life; what is my substitute model?"

When law itself, rather than human nature, is the subject of literary treatment, the author's imagination may also prompt either-or thinking, and a deeper level of uncertainty. Accordingly, law can be a symbol of order imposed on the chaotic state of nature, or it can be a symbol of mindless and self-defeating complexity that disrupts the benign patterns of nature. In Kafka's parables,[17] it is decidedly the latter. Law can be the collective realization and institutionalization of our moral sensibilities, or it can be a system in which the powerful subjugate the powerless more efficiently and unconscionably than

17. *See* Franz Kafka, Collected Stories (Willa Muir & Edwin Muir trans.,1971), especially *Before the Law*, *An Imperial Message*, *Advocates*, *The New Advocate*, *The Nature of Our Laws*, and *In the Penal Colony*.

they could ever do without law. Dystopian novels typically demonstrate the latter. Law can be intelligible or unintelligible, rational or mindless, benign or malign. As soon as these polarities are made evident, we can come up with arguments for each possibility.

These either-or alternatives are not present merely in those idle moments when we consider the nature of law from the standpoint of philosophy or literature. They affect and pervade the choices we make, as practitioners, judges, and legislators, in our professional lives. The lawyer who believes law is irrational, immoral, or deeply biased will choose her clients, frame her arguments, structure her expectations, and understand her interactions differently from someone who does not share those convictions. A literary work that extrapolates these characteristics by turning law into a symbol will lead the lawyer to identify and reflect upon her convictions and to question them.

What does it mean to identify and perhaps transcend dichotomies? Consider the rationality of law. Adjudicating the differences between partisans on each side of the question of rationality involves noting several facts. Those who create the law and interpret it commit themselves, one assumes, to striving for rationality in terms of logical coherence, practical applicability, and defensible goals. Persons who are citizens—and anyone in his or her capacity as the addressee of law—may find these goals more aspirational than real, may find it hard to see coherence or defensible values in the law's effects.

Literature facilitates the apprehension and identification of these overriding attitudes. It is hardly possible to read Kafka, Hugo, Balzac, Dickens, Chandler, or Hammett without reassessing one's views on what the legal and social organization of society does for and to individuals, and to arrive at a renewed sense of wanting to address what law does and represents. Literature does what legal philosophy alone cannot do. It goes beyond the examination of arguments about the nature of justice and the role of natural law to make problematic the holistic impact of law as a benign or malign dimension of experience. Such works as *Judgment at Nuremberg, 1984, A Clockwork Orange, The Handmaid's Tale,* and *Sophie's Choice*—disparate as they are—do more than raise questions about justice and oppression. They reflect what law can symbolize in real and possible worlds, and they compel readers to orient themselves about the conceptual possibilities.

G. Self-knowledge for lawyers reconsidered

It takes most of a lifetime to realize that life itself is not a matter of ends and goals. It is natural for law students, like anyone else, to think in terms of objectives and to define themselves accordingly. Life is defined by graduating from law school, passing the bar, getting a satisfactory job, perhaps making partner or gaining security in some other professional capacity, and so on.

Self-knowledge can also be described as a goal. When Sigmund Freud titled one of his last articles (1937) "Analysis Terminable and Interminable,"

he alluded to this issue. Is analysis a task that can be completed? Is self-knowledge achievable with something like finality? Just as law students and lawyers eventually realize that ends and goals are illusory, that life remains problematic and uncertain after the bar exam is passed and after one "makes partner," those who value the examined life understand that self-understanding is a process without end, and that self-knowledge is an enterprise and not a goal.

This is so for two reasons. The first is that, as we have seen, the question "Who am I?" is inexhaustible. We have glanced at three questions among the infinite number that yield clues—three important questions, to be sure, but only three. One question, as we saw, is "What is my view of human nature? Specifically, how do I approach the widespread cultural meme that identifies emotion with malevolent (selfish) impulses and reason with benevolent (socially conscientious) modes of control?" It is hard to overestimate the extent to which a lawyer is likely to be affected professionally and personally by this bit of self-knowledge.

The second question asks whether one lives one's life consciously and unconsciously through the medium of judgment and through the determination and condemnation of others' worth. This extends beyond moral judgment or judgments about skills; it extends to their worthiness as human beings. And, in Camus's analysis, we are covertly and obsessively judging ourselves.

And the third question involves our disposition to invoke dichotomies when we must deal, as we do most of the time, with what is true and what is not. Is the truth a univocal story, whether it is the truth about why an individual acted, about the essential nature of law, or about the various dilemmas that experience with law compels us to contemplate (law as rational or not, law as benign or not, law as the rationalization of violence or not)?

The first reason for seeing self-knowledge as an enterprise and not a goal was that the number of revelatory questions we can ask is infinite, and each question is itself inexhaustible. The second reason is different and equally important. Our posture as individuals regarding each of these questions is a work in progress. The self that we are examining is itself in process of change. Self-reflection appears to have a kind of subject-object stability, a reliable distinction between observer and observed, but that is an illusion. The object of observation, the self, is morphic, and it changes in part *because* it is being observed. Asking and trying to answer any of the relevant questions is itself likely to affect our disposition to do the thing that is being investigated.

All of this is paradoxical only when we try to put it into words. The experience of self-reflection and of changing our minds and habits as a result of reflection is a universal experience, notwithstanding that philosophers and psychologists have struggled for centuries with only moderate success to explain it. In studying what we call humanities or the liberal arts, we come to identify what is unique, what is cultural, and what is universal in the selves we inhabit. I would argue that the success of lawyers, unlike the success of

more purely skill-based jobs as farming, surgery, plumbing, engineering, etc., depends over and over again on understanding the self that is acting in a social and political world.

H. Afterthoughts

A topic for another day is subtextual to this essay. It is the relationship between self-knowledge and professional and personal satisfaction. Lawyers are notorious for ranking low by most measures of happiness[18] and high by most measures of depression, alcohol abuse, divorce, and suicide.[19] The suggestion that habits of self-investigation and goals of self-knowledge might ameliorate these predicaments is intuitively plausible. And it is equally plausible that the things we do in law school predispose students to these habits and goals.

At the same time, it would be foolish to argue that a dose of jurisprudence and a slug of law and literature are likely to have a decisive impact on the lives of lawyers. The social, structural, and economic circumstances that shape lawyers' lives are not simply attitudinal. But one can hope that self-reflective lawyers may be in a better position to affect these circumstances for both personal and social benefit.

18. *See* G. Andrew H. Benjamin, et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 Int'l J. L. & Psychiatry 233 (1990); Steven J. Harper, *Unhappy Attorneys and the Expectations-Reality Gap*, 32 GPSolo 72 (2015); Megan Seto, *Killing Ourselves: Depression as an Institutional, Workplace and Professional Problem*, 2 W. J. Legal Stud. xv (2012). The latter article is on Canadian lawyers.

19. *See* Rick B. Allen, *Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial?*, 31 Creighton L. Rev. 265 (1997).