

# Anthrogy: Towards Inclusive Law School Learning

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## I. INTRODUCTION

Imagine a law school classroom in 1965. Who do you see in the room? You probably envision a large, amphitheater-style room filled with white male students, pen in hand, taking notes in a designated notebook. You may see a woman, or a person of color, but it is unlikely you see more than a small handful of these non-traditional law students in the entire classroom. And on their left hands, holding the paper as they take notes in a notebook? You probably see that at least half the class, if not more, are wearing wedding bands. If you checked their wallets, you would find that many have wallet-sized school pictures of their children. When they finish class, many of the men go home to a wife. Some would go home to their parent's house.

Now think about what you see in a law school classroom in 2019. More than half the class is female, and anywhere from ten to fifty percent of the class would identify as a person of color. The formerly non-traditional law students now make up a majority of the class. If you looked behind the computer screens at the typing fingers, you would only see a small number of wedding bands. Some students sporting wedding bands would be in marriages with a partner of the same sex; several other students without wedding bands would be openly dating same-sex peers. A small number of students would have pictures of their child as wallpaper on their computer screen. Many students will have silly internet memes or pictures of their pets on their computer screens. Additionally, up to ten percent of the class will have some form of disability under the Americans with Disabilities Act; it would not be uncommon to see a student in a wheelchair, or a student with a comfort animal in their arms or lap. Several other students in the room qualify as a person with a disability, but their disabilities are invisible, managed with the help of medication only discovered in the last thirty years.

The differences between law school classrooms in 1965 and 2018 are more than just superficial. Law students today occupy a very different social, economic, legal, and regulatory, world than law students of the past. These

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changes have profoundly shaped the students we teach, as well as the doctrinal subject matter we teach them. However, the delivery of legal education, especially within the first year and in large, upper-division courses, has not changed with our students or advances in cognitive science focused on learning. Beginning in the 1980s, introduced by Frank Bloch and others in clinical legal education, law schools began adopting andragogy as a methodology, or theory, for teaching law students, alongside the casebook method and Socratic method in doctrinal, or podium, courses.<sup>1</sup> Andragogy is defined as “the art and science of helping adults learn.”<sup>2</sup> However, when andragogy and the fundamentals of adult learning were being developed, “adult learners” were a much more homogenous group than today’s law students. Andragogy was developed in the 1960s and 1970s,<sup>3</sup> and built on the experience of white men from middle-class and upper-middle class homes;<sup>4</sup> few would qualify as persons with disabilities because the American with Disabilities Act was not passed and signed into law until 1990.<sup>5</sup> Although andragogy was one of the first learner-centered, humanist teaching methodologies focused on the adult learner; when law schools adopted andragogy, legal education was just beginning to democratize. Andragogy’s roots as a teaching methodology, and its introduction into law schools, reflected the socioeconomic needs and cultural norms of the late twentieth century.

At the time it was introduced, andragogy did offer benefits over “chalk and talk;” where most law students passively took notes while one student at a time actively engaged with their professor in a Socratic dialogue. While andragogy has sustained several modifications and revisions over the last fifty years,<sup>6</sup> it does not reflect the life stage or life experiences that blur the boundaries of childhood and adulthood for over half the current student body in most law schools. Andragogy, designed as a teaching methodology for traditional adults seeking continuing education or to gain credentials for upward mobility in their current profession,<sup>7</sup> fundamentally differs from legal education, where students do not yet know the requirements for successful lawyering or effective representation of clients. The tremendous

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<sup>1</sup> See Bloch *infra* note 255; Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 374, 374-90 (1973). See also Linda Morton et al., *Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLINICAL L. REV. 469, 469 (1999).

<sup>2</sup> MALCOLM S. KNOWLES ET. AL., THE ADULT LEARNER 40 (8th ed. 2015).

<sup>3</sup> *Id.* at 3.

<sup>4</sup> See Sander *infra* note 43; American Bar Association *infra* note 8; David Karen, *the Politics of Access to Higher Education*, 99 AMER. J. OF ED. 208, 212 (2011).

<sup>5</sup> ADA Nat’l Network, *Timeline of the ADA*, <https://adata.org/ada-timeline> (last visited Aug. 14, 2019).

<sup>6</sup> Knowles, *supra* note 2 at 3.

<sup>7</sup> *Id.* at 3-4.

diversity of law students signals a need to adopt teaching methods to better reach students who look like no generation before them, as well as law students who look very similar to law students of prior generations. To develop better teaching methods, we need a better understanding of who are students are and what they need to succeed as students and professionals. Expanding on the work of sociologists Jeffery Jensen Arnett and Katherine Newman, this article will explain how law students are fundamentally different than prior generations, and how the development of a new life stage, that of “emergent adulthood,” is operating within law schools. This new stage of life, along with the dramatic demographic changes within the law student population, require a more inclusive teaching and learning methodology in law schools. This article will discuss and analyze the demographic changes within law schools as well as the features of emergent adulthood, describe how we can better meet the needs of all law students by understanding who they are. Drawing on research on cognitive science and learning, education, sociology, and economics, this article suggests that laws schools move from teaching methods developed for another demographic and adopt more inclusive term, andragogy, to describe teaching and learning methods designed to engage all students.

## II. THE NEW DEMOGRAPHICS OF LAW SCHOOL

Who are our law students, and why are they different from law students from generations past? The change in the demographic composition of law schools over the last sixty years has been dramatic and underappreciated; the prior life experiences, and education of the current class of law students is fundamentally different from the cohorts that shaped legal curriculum during the twentieth century; in 1960, 96.6% of enrolled law students were men.<sup>8</sup> By 1980, men made up 68% but by 2008, that percentage had dropped to 53.3%. In 2017, men had dropped to less than half of the entering class of law students, comprising 47% of the entering class--women made up the majority of law students in 2016.<sup>9</sup> The average age for men to get married was 22 in 1960; by 2016, it was 29.5.<sup>10</sup> Similarly, in the United States, the average age for women to be married was 20 in 1960, but rose to 28 by

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<sup>8</sup> American Bar Association, *First Year and Total J.D. Enrollment by Gender 1947 – 2011*, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/jd\\_enrollment\\_1yr\\_total\\_gender.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf) (last visited Aug. 14, 2019).

<sup>9</sup> American Bar Association, Section of Legal Education and Admission to the Bar, *Statistics*, [https://www.americanbar.org/groups/legal\\_education/resources/statistics.html](https://www.americanbar.org/groups/legal_education/resources/statistics.html) (last visited Aug. 19, 2019).

<sup>10</sup> Kim Parker and Renee Stepler, Pew Research Center Fact Tank: News in the Numbers, *As U.S. Marriage Rate Hovers at 50%, Education Gap in Marital Status Widens*, <https://www.pewresearch.org/fact-tank/2017/09/14/as-u-s-marriage-rate-hovers-at-50education-gap-in-marital-status-widens/> (last visited Aug. 14, 2019).

2019.<sup>11</sup> One in ten lesbian, gay, bisexual, or transgender (LGBT) people were married to a same sex spouse in 2017, and a majority of same-sex couples who live together are married.<sup>12</sup> There is no data to contrast the current percentage of same-sex couples in law school to prior generation, since same-sex couples could not legally marry throughout the United States until 2015.<sup>13</sup>

These demographic changes mark a dramatic shift in the life experiences of the average law student; half of all law school applicants in 2015 were between 22-24 years old, with 22 year old's making up the single largest group of applicants.<sup>14</sup> The average law student is no longer white, male, and married; the average law student today is an unmarried woman who has not yet had children; she has almost one-in-three chance of being a racial or ethnic minority,<sup>15</sup> and might be in a same-sex relationship.

Along with the demographic changes to law school enrollment, the nature of college education has changed in the last fifty years. The undergraduate educational experience for a member of the Baby Boomer generation, or a member of Generation X, differed dramatically from the educational experience of the Millennial generation, or the newest cohort, Generation Z. Many recent college graduates studied just one-fourth as much as their parents did in undergrad. A college student in 1960 would expect to study roughly forty hours a week; by 2004, full-time undergraduate students studied approximately 27 hours a week.<sup>16</sup> The most recent study of undergraduate student study time, published in 2015, found that students spend 3.2 hours a day attending class and studying;<sup>17</sup> per week, that is 22.4 hours a week on academic preparedness; accounting for roughly 12-15 hours of time in class, students are studying just 7.4-10.4 hours per week. The 2004 study found the decrease in study time is found across majors, from all demographic subgroups, across race, gender, and ethnicities, and for students who worked and those who did not.<sup>18</sup>

As undergraduate student study time has decreased, over the same time

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<sup>11</sup> A.W Geiger and Gretchen Livingston, Pew Research Center Fact Tank: News in the Numbers, 8 *Facts About Love and Marriage in America*, <https://www.pewresearch.org/fact-tank/2019/02/13/8-facts-about-love-and-marriage/> (last visited Aug. 14, 2019).

<sup>12</sup> *Id.*

<sup>13</sup> *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

<sup>14</sup> Law School Admissions Council, Data Library, [https://www.lsac.org/docs/default-source/data-\(lsac-resources\)-docs/analysis-applicants-by-age-group.pdf](https://www.lsac.org/docs/default-source/data-(lsac-resources)-docs/analysis-applicants-by-age-group.pdf) (last visited Aug. 19, 2019).

<sup>15</sup> American Bar Association, Legal Education & Admission to the Bar, *2018 1L Enrollment by Gender & Race/Ethnicity (Aggregate)*, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2018-fall-fyclass-enrollment-gender-race-aggregate.xlsx](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2018-fall-fyclass-enrollment-gender-race-aggregate.xlsx).

<sup>16</sup> Philip Babcock & Mindy Marks, *The Falling Time Cost of College: Evidence From Half a Century of Time Use Data*, 93 REV. ECON. & STAT. 468, 468 (2011).

<sup>17</sup> NSSE Sightings, *Time Use During College: Is it Party or Study Time?*, <https://nssesightings.indiana.edu/2017/01/05/time-use-during-college-is-it-study-or-party-time/> (last visited Aug. 19, 2019).

<sup>18</sup> Babcock & Marks, *supra* note 16, at 468.

period, the cost of a college education has increased far greater than the rate of inflation. In the ten-year period between 2005-2015, “prices for undergraduate tuition, fees, room, and board at public institutions rose 31%, and prices at private nonprofit institutions rose 24%, after adjustment for inflation.”<sup>19</sup> There are many hypotheses speculating on who, or what, is to blame for the tuition increases. The decreases in state subsidies to public universities and colleges has meant higher tuition for students.<sup>20</sup> Others blame the increase in tuition and fees to the “constant expansion of university administration” and “the recent trend towards seven-figure salaries for high-ranking university administrators.”<sup>21</sup> Still others blame the increase on the Bennett Curve; as financial aid increases, colleges “capture” the increases by raising tuition, or in the alternative, decreasing institutional aid.<sup>22</sup> All these possible explanations for the increase in college costs are considered controversial, but the result is the same: graduates leave college with large amounts of debt before their adult life even begins.

The trend towards leaving college with significant student loan debt is not new, but the amount of debt has increased substantially in the last twenty years. Between 2001 and 2016, the real amount of student debt has tripled.<sup>23</sup> The average student takes on \$6,600 in loans per year; they owe an average of \$22,000 by graduation.<sup>24</sup> Horror stories about students unable to pay even the minimum on their student loans, or placed in the wrong repayment programs, abound.<sup>25</sup> Student debt effects people throughout their lives; first-home purchases are put off, and job opportunities are significantly curtailed.<sup>26</sup> One way to avoid repayment of student loan debt is to continue

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<sup>19</sup> National Center for Education Statistics, Fast Facts, *Tuition Costs of Colleges and Universities*, <https://nces.ed.gov/fastfacts/display.asp?id=76> (last visited Aug. 19, 2019).

<sup>20</sup> Douglas A. Webber, *State Divestment and Tuition at Public Institutions*, 60 *ECON. EDUC. REV.* 1, 1 (2017)

<sup>21</sup> Paul F. Campos, *The Real Reason College Tuition Costs So Much*, *N.Y. TIMES*, (Apr. 4, 2015), <https://www.nytimes.com/2015/04/05/opinion/sunday/the-real-reason-college-tuition-costs-so-much.html>.

<sup>22</sup> Nicholas Turner, *Who Benefits from Student Aid? The Economic Incidence of Tax-Based Federal Student Aid*, 31 *ECON. EDUC. REV.* 463, 463 (2012).

<sup>23</sup> Laura Feiveson et al., *FEDS Notes, Student Loan Debt and Aggregate Consumption Growth*, <https://www.federalreserve.gov/econres/notes/feds-notes/student-loan-debt-and-aggregate-consumption-growth-20180221.htm> (last visited Aug. 19, 2019).

<sup>24</sup> Ben Miller, *The Student Debt Problem is Worse Than We Imagined*, *N.Y. TIMES* (Aug. 25, 2018), <https://www.nytimes.com/interactive/2018/08/25/opinion/sunday/student-debt-loan-default-college.html>.

<sup>25</sup> See Christina Couch, *3 Terrifying Student Loan Horror Stories*, *BANKRATE* (June 10, 2013), <https://www.bankrate.com/loans/student-loans/student-loan-horror-stories/>; Laura Kiesel, *Sallie Mae Student Loan Horror Stories Bring Slap On The Wrist*, *THE STREET* (Feb. 27, 2014) <https://www.thestreet.com/story/12457243/1/sallie-mae-student-loan-horror-stories-brings-a-slap-on-wrist.html>; Ron Lieber, *A Student Loan Nightmare: A Teacher In The Wrong Payment Program*, *N.Y. TIMES*, (Oct 27, 2017), <https://www.nytimes.com/2017/10/27/your-money/paying-for-college/student-loan-payments.html>.

<sup>26</sup> Phyllis Korkki, *The Ripple Effects of Rising Student Debt*, *N.Y. TIMES* (May 24, 2014), <https://www.nytimes.com/2014/05/25/business/the-ripple-effects-of-rising-student-debt.html>.

to graduate or professional school. The U.S. Department of Education website on Federal Student Aid states “if you are enrolled in an eligible college or career student at least half-time...your loan servicer will notify you that deferment has been granted.”<sup>27</sup> This provides a perverse incentive to continue schooling; defer student loans, and add additional loans to the total, in order to put off repayment of an overwhelming debt. Many students saddled with student loan debt hope to make enough money at a profession requiring post-graduate education to pay off their undergraduate and graduate school loans.<sup>28</sup> Student debt at least partially explains why current generations of students “view college as a financial rather than philosophical training ground,” where learning and intellectual curiosity take a backseat to concerns about finding a job and paying off school debt.<sup>29</sup>

In summary, who are our law students? Our classes are younger, have experienced fewer major life events such as marriage and raising children, are much more likely to be carrying significant student loan debt from their undergraduate education, and much less likely to have a robust and rigorous study habits. “Demographic diversity” has been “accompanied by differences in preparation, learning styles, personal habits, expectations, and abilities.”<sup>30</sup> Our students are under much greater stress than prior generations to find a job that can pay for their student loans, or allows them to enter the public service loan forgiveness program. Law schools can no longer assume that incoming law students are already adults, as the milestones that mark the transition to adulthood more often than not come after law school graduation, sometimes a decade or more after bar passage. Law schools have struggled to develop a teaching methodology that leverages the valuable history of legal education with the needs of students who are unlike the students the model was built to serve.

### III. THE RISE OF “EMERGENT ADULTHOOD”

The term “emerging adult” was coined three decades ago; sociologists have been studying this new developmental period, or life stage, since the 1990s.<sup>31</sup> Emerging adulthood differs from generational labels because it

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<sup>27</sup> Federal Student Aid, *Deferment and Forbearance*, <https://studentaid.ed.gov/sa/repay-loans/deferment-forbearance> (last visited Aug. 19, 2019).

<sup>28</sup> Erik Sherman, *Why Student Loans Swamp Millennials: Job Pay Hasn't Kept Up With School Costs*, FORBES (Sept. 4, 2018), <https://www.forbes.com/sites/eriksherman/2018/09/04/why-student-loans-swamp-millennials-job-pay-hasnt-kept-up-with-school-costs/#7de22be74a5a>.

<sup>29</sup> Marjorie M. Buckner & Michael G. Strawser, “*Me*”llennials and the Paralysis of Choice: Reigniting the Purpose of Higher Education, 65 COMM. EDUC. 361, 361 (2016).

<sup>30</sup> Meredith George & Wendy Newby, *Inclusive Instruction: Blurring Diversity and Disability in Law School Classrooms Through Universal Design*, 69 U. PITT. L. REV. 475, 492 (2008).

<sup>31</sup> Jeffrey Jensen Arnett, EMERGING ADULTHOOD: THE WINDING ROAD FROM THE LATE TEENS THROUGH THE TWENTIES v-vi (2004).

represents long and enduring changes to the phases of human development.<sup>32</sup> Generational, or age cohorts (i.e., The Greatest Generation, Baby Boomers, Gen X, Millennials, and now, Gen Z, iGen, or Digital Natives) describe people born with in a 15-20 year period who have been shaped by distinct formative events during a shared life stage.<sup>33</sup> Life stages are inherently sociocultural in nature; the concept of adolescence was developed in the United States by G. Stanley Hall during the turn of the twentieth century.<sup>34</sup> Hall believed adolescence represented a time suspended between childhood and adulthood; it was facilitated by the “prolongation of dependency in urban and industrial society... [and] deflected pressure for adult behavior away from teenagers.”<sup>35</sup> Unlike the transition between childhood and adolescence, which is marked by significant biological changes, the transition between adolescence and adulthood is marked by events, the most singular and important being marriage.<sup>36</sup> Emerging adulthood, like adolescence and the teen years before it, “grew out of a specific set of historical, material, and cultural conditions.”<sup>37</sup> Beginning in the 1960s, the average age of first marriage has increased by almost a decade, from 20 to nearly 30.<sup>38</sup> But a 25 year old is definitely not an adolescent; so what do you call a person who is not an adolescent, but has not reached any of the milestones traditionally associated with adulthood?

Emerging adulthood, as a life stage, or life period, was developed in the 1990s after decades of social change coalesced with complex demographic and socioeconomic phenomena to disrupt the “clearly marked path” to marriage and adulthood.<sup>39</sup> The 1990s marked the emergence of some important, long-term shifts that would have a profound impact on the way late teens and emerging adults in their twenties began to experience the world. Young people coming of age in the 1990s lived through macroeconomic changes that upended the economic stability of families;<sup>40</sup> many people coming of age in the 1990s were children of divorce,<sup>41</sup> and

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<sup>32</sup> *Id.* at 4 (“the characteristics of today’s young people are not merely generational. The changes that have created emerging adulthood are here to stay...”).

<sup>33</sup> Pew Research Center, U.S. Politics & Policy, *The Whys and Hows of Generations Research*, <https://www.people-press.org/2015/09/03/the-whys-and-hows-of-generations-research/> (last visited Aug. 19, 2019).

<sup>34</sup> Joseph F. Kett, *Reflections on the Role of Adolescence in America*, 8 HIST. FAM. 355, 356-57 (2003).

<sup>35</sup> *Id.* at 358.

<sup>36</sup> Arnett, *supra* note 31, at 208; *See also infra* Hamilton note 190, at 129.

<sup>37</sup> SARAH E. CHINN, INVENTING MODERN ADOLESCENCE 6 (2009).

<sup>38</sup> *Id.* at 8.

<sup>39</sup> Richard Settersten & Barbara E. Ray, NOT QUITE ADULTS ix (2010).

<sup>40</sup> *See* Kristen Harknett & Arielle Kuperberg, *Education, Labor Markets, and the Retreat from Marriage*, 90 SOCIAL FORCES 41, 45 (2011).

<sup>41</sup> Paul R. Amato, *Children of Divorce in the 1990s: An Update of the Amato and Keith (1991) Meta-Analysis*, 15 J. FAM. PSYCHOL. 355, 355 (2001).

grew up during the culture wars of the 1980s and 90s, pitting the “Moral Majority” and political correctness against social freedoms.<sup>42</sup>

A. *The Development of a New Framework for Not-Childhood-Not-Yet-Adulthood: Emerging Adulthood*

Emerging adulthood is not the only label for the life stage in-between adolescence and adulthood. A variety of academics, from sociology, human development, education, and economics, as well as journalists, have researched and written about the growing gap between the teen years and traditional adulthood. Each academic tends to see the gap through their own scholarly lens, and their terms for this age of delayed milestones vary. Certain key ideas emerge; the sense that this age cohort lacks direction or focus until a later age; that broad, macroeconomic shifts have delayed the benchmarks and milestones that signal the arrival of adulthood, and that these shifts have not affected all people in the same way. In this sense, emerging adulthood speaks to the very cohort that tend to enroll in law school; middle-class college graduates with high expectations for personal and financial success and few of the personal stressors that often mark the onset of adult responsibilities.<sup>43</sup>

Sociologists focused on higher education and declining rigor in colleges, Richard Arum and Josipa Roksa, coined the term “aspiring adults” to explain the age after college.<sup>44</sup> Their follow-up to *Academically Adrift, Aspiring Adults Adrift* addressed what happened in the post-graduate years to the students who were “adrift” in college.<sup>45</sup> Arum and Roksa’s *Aspiring Adults Adrift* spends much time analyzing the immediate post-graduate outcomes for young adults, but spends comparatively little time analyzing the post-graduate outcomes and choices for young adults that choose graduate and professional school after college.<sup>46</sup> But Arum and Roksa do note how changes in the culture of undergraduate education have contributed to delays in reaching the benchmarks required to reach traditional definitions of adulthood. The rise of “hook-up culture,”<sup>47</sup> or casual sexual experimentation

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<sup>42</sup> Joseph Tamney & Stephen Johnson, *Explaining Support for the Moral Majority*, 3 SOC. F. 234, 234-235 (1988). See generally TIM CLYDESDALE, *THE PURPOSEFUL GRADUATE* 201 (2015); Reva B. Siegel, *Dead or Alive: Originalism as Popular Constitutionalism in Heller*, 122 HARV. L. REV. 191, 234-236 (2008).

<sup>43</sup> Richard H. Sander, *Class in American Legal Education*, 88 DENV. U.L. REV. 631, 637 (2011).

<sup>44</sup> Richard Arum, SOCIAL SCIENCE RESEARCH COUNSEL, <https://www.ssrc.org/staff/arum-richard/> (last visited Oct. 20, 2019); Academia, Josipa Roksa, UNIVERSITY OF VIRGINIA, <http://virginia.academia.edu/JosipaRoksa> (last visited Oct. 20, 2019).

<sup>45</sup> RICHARD ARUM & JOSIPA ROKSA, *ASPIRING ADULTS ADRIFT: TENTATIVE TRANSITIONS OF COLLEGE GRADUATES 2* (2014).

<sup>46</sup> *Id.* at 47-51.

<sup>47</sup> LAURA SESSIONS STEPP, *UNHOOKED: HOW YOUNG WOMEN PURSUE SEX, DELAY LOVE AND LOSE AT BOTH* 5 (2007); ELIZABETH A. ARMSTRONG & LAURA T. HAMILTON, *PAYING FOR THE PARTY: HOW COLLEGES MAINTAIN INEQUALITY* 86-87 (2013).



and nonchalance in college relationships, is “generally not meant to imply any degree of commitment or long-term expectations.”<sup>48</sup> Two years out of college, or by the 2L year for law students, half of college graduates were in a stable, long-term relationship,<sup>49</sup> a marked decrease from a generation ago.<sup>50</sup> If college does not foster relationships leading to marriage, and marriage is the singular marker of adulthood, college students graduate without the most important formative experience on the way to responsible, traditional adulthood.

Richard Settersten, Professor of Human Development at Oregon State, in conjunction with the MacArthur Foundation and journalist Barbara E. Ray, did a broad empirical study of the changes on the road to adulthood. They did not coin a new term for young adults on the “slower path to adulthood,” but he did call this cohort “not quite adults.” Settersten focuses much of his attention on emerging adults who did not, or could not, attend college. While this cohort is valuable, precisely because they are missing from law school classrooms, and their perspective is missing from classroom discussions. Their absence informs a lot of what we know about college graduates who do go on to pursue advanced degrees. The same macroeconomic shifts that foreclose a college education to many students also delays the path to adulthood for college graduates. The inability to pay for an increasingly expensive undergraduate education, wage inequality, and distrust of traditional institutions such as marriage, forces lower income teens into premature adulthood and encourages middle-and-upper-income teens to delay adult milestones until they reach personal and financial stability.

A more in-depth analysis of the effects of globalization and macroeconomic shifts leading to emerging adulthood was conducted by sociologist Katherine Newman. Newman’s inquiry was particularly focused on how the economics of globalization and weak welfare states in economically developed nations established emerging adulthood as a new life stage internationally.<sup>51</sup> Newman points to the “common demographics” in developed, post-industrial nations; “weaker job prospects, less security in employment, greater demand for advanced educational credentials, and creeping underemployment, with fewer jobs available to meet the expectations of well-educated workers than are needed to absorb job seekers pouring out of universities.”<sup>52</sup> These common demographics lead to a

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<sup>48</sup> ARUM & ROKSA, *supra* note 45, at 93.

<sup>49</sup> *Id.*

<sup>50</sup> Kay Hymowitz et al., *Knot Yet: The Benefits and Costs of Delayed Marriage in America*, THE NAT’L MARRIAGE PROJECT AT UNIV. VA. ET AL., 12 (2013), <http://nationalmarriageproject.org/wordpress/wp-content/uploads/2013/04/KnotYet-FinalForWeb-041413.pdf>.

<sup>51</sup> KATHERINE S. NEWMAN, *THE ACCORDION FAMILY: BOOMERANG KIDS, ANXIOUS PARENTS, AND THE PRIVATE TOLL OF GLOBAL COMPETITION* 155 (2012).

<sup>52</sup> *Id.* at 84.

pathway to adulthood “often strewn with obstacles [while] the imperative to push past them is weaker than it once was.”<sup>53</sup> Newman’s focus was less on developing a new life stage to explain delays in reaching adult milestones than explaining the economic forces that created “boomerang kids”—forces that are unlikely to subside without profound changes to the social safety net.<sup>54</sup>

The most robust, and thorough, theory was developed by sociologist Jeffery Jenson Arnett in the early 1990s. Arnett’s focus is on change from a milestone-based understanding of adulthood, to a self-discovery based understanding of adulthood.<sup>55</sup> Arnett’s work began when he was a junior professor in Missouri in the late 1980s, working in the sociology of adolescence; when he surveyed his students about the transition to adulthood, their answers did not involve marriage or children. His students noted several “intangible and psychological” milestones; “accepting responsibility for one’s actions, making independent decisions, and becoming financially independent.”<sup>56</sup> His work with people between the ages of 18 and 25 led him to believe this period is a distinct developmental period, not just a brief passage between adolescence and adulthood.<sup>57</sup> Arnett developed five essential qualities or main features, that distinguish emergent adulthood from adolescence and adulthood; it is an “age of identity explorations, or trying out various possibilities, an “age of instability,” a “self-focused age,” an “age of feeling in-between, in transition, neither adolescence nor adulthood,” and an “age of possibilities, when hopes flourish, when people have unparalleled opportunity to transform their lives.”<sup>58</sup> These main features of emergent adults are broadly drawn; not all people between the ages of 18-25 have the freedom and financial support to experience emergent adulthood, and some people take much longer to move through these stages to reach adulthood.<sup>59</sup>

The first feature of emergent adulthood, an “age of identity explorations, or trying out various possibilities,” is described by Arnett as the “central feature” of emerging adulthood.<sup>60</sup> Adulthood becomes a “process of self-discovery”<sup>61</sup> not marked by rigid milestones,<sup>62</sup> but a process of identity formation. The process of identity formation is one of trying on careers and

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<sup>53</sup> *Id.* at 3.

<sup>54</sup> *Id.* at 5 (“Those days of status transitions—clear, publicly recognized steps towards autonomy, residential independence, and the birth of a new family—have given way to a more psychological perspective. You are an adult when you feel like one.”).

<sup>55</sup> Arnett, *supra* note 31, at v.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 8.

<sup>59</sup> *Id.* at 7.

<sup>60</sup> *Id.* at 8.

<sup>61</sup> NEWMAN, *supra* note 51, at 13.

<sup>62</sup> *Id.* at 5.

lifestyles, religions and personal principles, before decided on how to be an adult.<sup>63</sup> Unlike generations before them, emerging adults do not feel the need to take on an adult identity, with accompanying responsibilities, immediately after adolescence. Erik Erikson and sociologists working during the mid-twentieth century believed identity formation took place during adolescence, or during the teen years.<sup>64</sup> Identity formation is allowed in industrialized nations because teens, and now emerging adults, have the economic freedom to try on different roles before deciding on the right one for them. This is not true of all people in industrialized societies; people who must find gainful employment immediately following schooling do not have the leisure to try on different roles; they must become a breadwinner after adolescence in order to help support their family.<sup>65</sup> Identity explorations come with the caveat that some identities, such as that of parent, cannot be “tried on”; the overwhelming responsibilities attendant with parenthood leave little room to explore other, even nonconflicting, paths. Similarly, marriage is not something that is easily tried on and left behind; for this reason, emerging adults with the financial resources to explore different life paths see marriage and parenthood as a burden to be avoided, not a milestone to be reached.<sup>66</sup>

The age of identity explorations poses a number of challenges to traditional legal education and the application of andragogy to legal education. The two milestones that emerging adults try to avoid—marriage and parenthood-- are also the milestones that provide foundational experience and a mental model for many doctrinal courses in law school. Mental models help us learn because they are a framework, an “intellectual conception of how things work.”<sup>67</sup> Andragogy supposes that the learner has mental models, built from prior experience, to help the adult learner be self-directed and autonomous. An emergent adult who has not had the traditional adult experiences does not have a mental model for the sale and purchase of a home, acquisition of a mortgage, or binding consumer contracts, that contextualize the material they are learning.

The age of identity explorations also poses unique problems in terms of professional identity formation. Like marriage and parenthood, the professional role one must assume during law school is not one that can be easily discarded unless one also wants to discard their education and future career. There are inherent conflicts between the instability of emerging adulthood and the adult self-image necessary to successfully navigate legal education. Emerging adults have “more focused” identity explorations than

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<sup>63</sup> Arnett, *supra* note 31, at 9.

<sup>64</sup> *Id.* at 8.

<sup>65</sup> NEWMAN, *supra* note 51, at 115.

<sup>66</sup> Arnett, *supra* note 31, at 6.

<sup>67</sup> Judith Welch Wegner, *Cornerstones, Curb Cuts, and Legal Education Reform*, 2013 J. DISP. RESOL. 33, 43 (2013).

adolescents, aimed at learning about their abilities and directing their interests towards a long-term, satisfying career.<sup>68</sup> Similarly, emergent adults desire for flexibility and exploration is in direct conflict with the professional responsibilities attendant with a legal career.

Emergent adulthood is also the “age of instability,” in more ways than one. Emerging adults experience residential instability, as they move from one place to the next, from one relationship to another, and as they try to leave their familial home.<sup>69</sup> Many emerging adults will be living far from home to attend law school, away from the support of family and friends for the first time. For these emerging adults, law school will uproot them from an established support system. The buffers to student distress are removed as known stressors that go with law school, as well as the well-documented issues of depression and substance abuse in law schools, are initiated.<sup>70</sup> If not living with their parents during their law school career, prior generations of law students would enter legal education with a spouse or long-term significant other able to provide a support system to the student. Law schools see this instability in student services and academic support; students without residential stability and support systems are more likely to experience both personal and academic distress that interferes with their academic career.

The age of instability also coincides with the onset of mental illness for many emerging adults; emerging adulthood itself “brings with it a greater likelihood of mental illness as a function of the maturation between adolescence and adulthood.”<sup>71</sup> Serious mental illness, such as bipolar disorder and schizophrenia, first manifests for many people during emerging adulthood, between the ages of 18-25, but mental illness can be brought on by the consequences of being a student.<sup>72</sup> The identity explorations of emerging adulthood that result in greater maturity and steps towards adulthood in some students result in confusion and a feeling of being overwhelmed in other students.<sup>73</sup> This situation is exacerbated in law students; the experience of law school, but its very nature, is overwhelming and stressful.<sup>74</sup> For students to succeed despite mental health issues, students must “have a clear career goal...and have developed a supportive social network.”<sup>75</sup> Therein lies the paradox for emerging adults in law school;

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<sup>68</sup> Arnett, *supra* note 31, at 9-10.

<sup>69</sup> *Id.* at 11.

<sup>70</sup> Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 262 (2004).

<sup>71</sup> Susan P. Stuart, “Hope and Despondence”: *Emerging Adulthood and Higher Education’s Relationship with its Nonviolent Mentally Ill Students*, 38 J.C. & UNIV. L. 319, 324 (2012).

<sup>72</sup> *Id.* at 357.

<sup>73</sup> *Id.* at 353.

<sup>74</sup> Sheldon & Krieger, *supra* note 70, at 262.

<sup>75</sup> *Id.* at 360-361.

identity exploration is facilitated by the residential independence that removes established social support systems, the removal of established support system results, in some vulnerable students, in confusion and the onset of mental illness. The social support systems that emerging adults can no longer rely on are also essential for academic and personal success for many students with pre-existing mental health issues.

Emerging adulthood is a “self-focused age,” when familial household rules and standards fall away, college and graduate school allows previously unparalleled freedom to explore potential identities without concomitant responsibilities.<sup>76</sup> The self-focused age comes at a time when research has shown that “young people have reported diminished capacities to care about, and connect with, other people in recent decades.”<sup>77</sup> This does not mean that emerging adults will never care about others, or never develop a healthy orientation towards others; the lengthening of the period between adolescence and traditional adulthood has lengthened the period of time that emerging adults can commit to finding themselves before they commit themselves to long-term relationships with others.<sup>78</sup>

The self-focus of emerging adulthood, can, like identity exploration, come at the expense of the professional focus on client advocacy and inhibit the formation of a professional identity encompassing zealous advocacy for others. With the onset of requirements to participate in experiential and clinical education programs, law students are expected to look beyond themselves, to place their client’s needs before their own self-interest. Many emerging adult clinic students are still engaged with finding their personal strengths and values; legal education asks them to adopt a professional identity before their personal identity is fixed. This tension between emerging adulthood and self-image required for effective advocacy have become even more salient in light of ABA Standards 303 (a)(3) and 304, which “requires each law student to satisfactorily complete... one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement.”<sup>79</sup> A responsible and ethical attorney, or attorney-in-training, cannot run off to Cabo on a moment’s notice.

Emerging adults also feel “in-between, in transition, neither adolescence nor adulthood.” Emerging adults say they feel “ambiguous, with one foot in *yes* [I am an adult] and the other in *no* [I am not an adult].”<sup>80</sup> The reasons

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<sup>76</sup> Arnett, *supra* note 31, at 12.

<sup>77</sup> Lauren A. Newell, *Rebooting Empathy for the Digital Generation Lawyer*, 34 OHIO ST. J. ON DISP. RESOL. 1, 61-62 (2019).

<sup>78</sup> Arnett, *supra* note 31, at 116.

<sup>79</sup> *Program of Legal Education*, AMERICANBAR.ORG [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-chapter3.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-chapter3.pdf) (last visited Aug. 19, 2019).

<sup>80</sup> Arnett, *supra* note 31, at 14.

that emerging adults feel in-between relates to the “top three criteria” for adulthood; 1) accepting responsibility for yourself 2) making independent decisions 3) becoming financially independent.<sup>81</sup> While it is expected that most matriculating law students have mastered the first two criteria before entering legal education, the tremendous expense associated with a legal education forecloses the possibility of reaching the third criteria for many, if not most, law students. This inability to meet the subjective criteria associated with adulthood no doubt contributes to first- and second-year law students’ reluctance to embrace an adult self-image. When one is dependent on others for their financial survival, even if the dependency is on the federal government for loans, it prevents the self-determination that is essential to an adult self-image. This is quite different than the experience of Boomer and some Gen X law students, who recall a time when they “literally could (work as a law) clerk during the school year and summer and pay... law school tuition.”<sup>82</sup>

The transition between adolescence and adulthood presents problems for law students who must adopt an adult self-concept in order to adequately represent client interests. Attorneys must be adults; attorneys deal with client lives, families, and freedom, as well as business deals worth millions of dollars. Increases in law school tuition make it impossible for all but the independently wealthy to self-finance legal education and bar study; this increases dependence on parental resources for many students, even if the only resource is their childhood bedroom or space in their basement to prepare for the bar exam.

Lastly, emerging adulthood is known as the “the age of possibilities, when hopes flourish, when people have unparalleled opportunity to transform their lives.” Empirical research has suggested that this is true for many matriculating law students; they begin law school with the same psychological profile as other people their age; they “appeared quite happy and healthy at the beginning of their career, with relatively intrinsic and prosocial values.”<sup>83</sup> Many approach law school with a decidedly ideological goals; “public-spirited motivations” are one of the top motivations “for considering a JD, including seeing it as a pathway to a career in public service, being helpful to others, and advocating for social change.”<sup>84</sup> However, empirical research shows that law schools disabuse students of their ideological motivation by the end of their first year of law school; one

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<sup>81</sup> *Id.* at 15.

<sup>82</sup> Avery G. Wilks, *In an Era of Rising College Costs, USC’s Law School is Slashing Tuition Significantly*, THE STATE (June 28, 2019, 02:57 PM), <https://www.thestate.com/news/politics-government/article232064457.html#storylink=cpy> (quoting House budget committee chairman Murrell Smith).

<sup>83</sup> Sheldon & Krieger, *supra* note 70, at 271.

<sup>84</sup> Association of American Law Schools, *Highlights from Before the JD: Undergraduate Views on Law School*, (2018) <https://www.aals.org/wp-content/uploads/2018/09/BJDReportsHighlights.pdf>

theory posits students move from a “justice-oriented consciousness” to a “game-oriented consciousness.”<sup>85</sup> The research into why law students move from a public interest-public service orientation is incomplete.<sup>86</sup> Empirical research on the psychological changes experienced by first year law students finds that hope is one of the first motivations sacrificed in law school, with up to half of first-year students becoming depressed by the end of their 1L year.<sup>87</sup>

The five features of emerging adulthood tell us a lot about the struggles facing many law students when they begin their journey to a JD. Law school is not built for a population that is undecided, unfocused, and inexperienced. The five features are not, in and of themselves, problematic; these features have many positive attributes. Self-focus can also encompass “a striking capacity for self-reflection.”<sup>88</sup> Instability and identity formation allow for exploration; by exploring alternate life paths, and rejecting paths that are not the right fit, emerging adults are more likely to thoughtfully choose partners, careers, and education that will result in long-term happiness. The challenges faced by emerging adults pursuing a legal education are reflective of the mismatch between the expectations of matriculating law students and the expectations of them by the legal academy. In order for students to learn what it means to be a lawyer, we need to meet them where they are, developmentally and academically.<sup>89</sup> By understanding emerging adults--their experience, inexperience, self-doubts, and beliefs--we can adjust our expectations to meet their needs, and hopefully, produce lawyers who are better prepared for careers of life-long learning.

It is important to note who is not included in the description of emerging adults. Like Settersten, Arnett notes that emerging adulthood does not extend to all people in the U.S. Arnett notes that “members of minority groups may be less likely to experience their late teens and early twenties as a period of emerging adulthood”;<sup>90</sup> the financial stresses concomitant with low socioeconomic status force many young adults in their late teens and early twenties to immediately join the labor market in order to share household expenses with parents and siblings.<sup>91</sup> While it would be remiss to ignore the struggles of working class and poor young adults, most do not have the opportunity to attend or complete college, and therefore do not have

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<sup>85</sup> John Bliss, *From Idealists to Hired Guns? An Empirical Analysis of "Public Interest Drift" in Law School*, 51 U.C. DAVIS L. REV. 1973, 1984, 2032 (2018).

<sup>86</sup> *Id.* at 2032.

<sup>87</sup> Sheldon & Krieger, *supra* note 70, at 262.

<sup>88</sup> Arnett, *supra* note 31, at 25.

<sup>89</sup> SUSAN A. AMBROSE ET AL., 7 *Research-Based Principles for Smart Teaching*, HOW LEARNING WORKS, 130-132 (2010); *See also* Neil Hamilton & Jerome M. Organ, *Thirty Reflection Questions to Help Each Student Find Meaningful Employment and Develop an Integrated Professional Identity (Professional Formation)*, 83 TENN. L. REV. 843, 870 (2016)

<sup>90</sup> Arnett, *supra* note 31, at 22.

<sup>91</sup> Newman, *supra* note 51, at 115.

the fortuity to attend law school, which is the focus of this article. However, it is important to note that the absence of students from lower socioeconomic households' changes, and probably diminishes, the legal education of the students who can afford post-graduate education; their experiences are not discussed, their perspectives are not heard, and their voices remain silenced. Law students are not hearing from the populations who they will later represent; while in practice, they will have more difficulty fully comprehending their clients' struggles and relating to them with empathy. Their legal arguments will be weaker for the lack of awareness of the broader challenges facing populations that encounter the legal system but are not a part of the legal establishment.

### *1. Socioeconomic Roots of Emergent Adulthood*

Perhaps the most significant single driver of delayed adulthood is economic; changes in the labor market, the burden of student loans, combined with a weak social safety net and increases in the cost of housing mean that college graduates must “boomerang” to their familial home before reaching independence.<sup>92</sup> Emerging adults born in the late 1980s and throughout the 1990s grew up facing continual economic headwinds that make it more difficult to get a foothold in adulthood; they “came of age amid several unfortunate and overlapping economic trends. Those who graduated from college as the housing market and financial system were imploding faced the highest debt burden of any graduating class in history.”<sup>93</sup> Past generations of law students interacted with and reached the status transitions to adulthood earlier than current law students because the housing and labor markets allowed them to make adult transitions at an earlier age. Current generations of law students graduate from college owing almost \$30,000 in student loans; two-in-three college seniors had to borrow in order to attend college.<sup>94</sup> These loans, which must start repayment 6 months after graduation, unless they are deferred, limit the ability of emerging adults to achieve adult milestones.<sup>95</sup> Despite college degrees, college graduates “must contend with the ill winds blowing through labor markets, which cannot absorb them as they once did.”<sup>96</sup>

One path for “meandering” young adults is graduate or professional school. However, with debt from their undergraduate years, emerging adults find that “the best way forward is to move back temporarily”; to pay off debt

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<sup>92</sup> *Id.* at 42.

<sup>93</sup> Adam Davidson, *It's Official: The Boomerang Kids Won't Leave*, N.Y. TIMES MAG. (June 20, 2014), <https://nyti.ms/1qtbj2v>.

<sup>94</sup> The Institute for College Access & Success, *Student Debt and the Class of 2017*, (Sept. 2018), [https://ticas.org/sites/default/files/pub\\_files/classof2017.pdf](https://ticas.org/sites/default/files/pub_files/classof2017.pdf).

<sup>95</sup> Newman, *supra* note 51, at 4.

<sup>96</sup> *Id.* at xx.



and save money for professional education.<sup>97</sup> The lack of residential independence has consequences for law students;<sup>98</sup> it is difficult to understand the challenges of acquiring a mortgage, navigating a real estate closing, or squabbles with neighbors and housing associations if you have never owned your own home. For graduates who move home and then return to school, or go from undergrad straight to law school, their first time signing a lease, or dealing with landlords, may be immediately before their first semester in law school. Some may have not ever signed a contract; their phone may be on their parents' cell phone plan, and their car may be a hand-me-down from their parents.

The economic obstacles on the "pathway to adulthood" create hardships in romantic relationships, the type of relationships that should lead to marriage. Residential independence is a form of "cultural capital that young people use to evaluate one another against some imagined ideal."<sup>99</sup> The intimate relations that are instrumental to romantic bonds can be difficult to navigate under a parent's roof; even if the parent has given permission for such activities, there is stigma.<sup>100</sup> A twenty-three year old college graduate, living at home with her parents, explains it this way; "I try to be respectful. I am living in their house, so I don't bring home boyfriends."<sup>101</sup> The teenage bedroom, the symbol of independence for teens since the 1950s,<sup>102</sup> is a signal of dependence when the occupant is a twentysomething and the bedroom is in their parent's home. This may be one factor, yet unexplored, for the rise in hook-up culture during the college years; if romantic relationships must be put on hold after college, why form the bonds in the first place?

The rise in romantic late bloomers coincides with another change in the way younger generations form attachments: digital technology and social media. A survey of college students in 2016 found that undergraduates spent "four fewer hours a week socializing with their friends and three fewer hours per week partying" than college students in the 1980s; in total, college students are spending seven fewer hours every week interacting face-to-face with peers.<sup>103</sup> What are college students doing if they are not studying, going to class, socializing with friends, or partying? They are spending their time in front of screens, in the form of social media (SnapChat, Instagram, TikTok, World Star, and Facebook), video gaming, surfing the internet, and

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<sup>97</sup> *Id.* at 4.

<sup>98</sup> *Id.* at 5.

<sup>99</sup> *Id.* at 75.

<sup>100</sup> Newman, *supra* note 51, at 76.

<sup>101</sup> Davidson, *supra* note 93.

<sup>102</sup> Sarah E. Chinn, *Get Out of My Room! A History of Teen Bedrooms in America*, 104 *J. of Am. Hist.* 1041 (2017), <https://doi-org.libproxy.umassd.edu/10.1093/jahist/jax491>.

<sup>103</sup> JEAN M. TWENGE, IGEN: WHY TODAY'S KIDS ARE GROWING UP LESS REBELLIOUS, MORE TOLERANT, LESS HAPPY—AND COMPLETELY UNPREPARED FOR ADULTHOOD\* AND WHAT IT MEANS FOR THE REST OF US, 71 (2017).

watching YouTube, BuzzFeed, and Netflix.<sup>104</sup> This is not a transitory trend; younger teens are also spending significantly more time online with friends instead of socializing with friends in person.<sup>105</sup> In-person social interaction has a wealth of benefits that are essential to the growth and maturation of teens and emerging adults.<sup>106</sup> One of the oft-mentioned benefits of digitally-mediated communication is the ability to avoid awkward social interactions, and for emerging adults with less social experience, more and more interpersonal interactions are considered awkward.<sup>107</sup> Where it was once understood that picking up a friend meant knocking on their door and saying hello to their parents and siblings, today's youth and emerging adults send a text from the driveway to let their friend know they are waiting; it is "awkward" to greet a friend's parents or family, even when they are expected.<sup>108</sup> Emerging adults have less developed interpersonal skills, and the lack of interpersonal skills has significant implications for legal education. Emerging adults come to law school without practice having difficult conversations, such as the ones that must happen in clinics between student-attorneys and their clients, job interviews, and between students and peers and faculty, are less prepared for the role they must assume when they reach law school.

While statistical research on the decline in social skills is just emerging,<sup>109</sup> law schools should understand that the socialization process for incoming students is radically different than the socialization process experienced by prior generations of law students. Matriculating students need explicit coaching on professional interpersonal interactions, and this coaching needs to begin in the first-year classroom. The legal academy cannot expect students to have the skills for experiential education when they do not have the foundational skills for face-to-face interaction.

## *2. Sociocultural Roots of Emergent Adulthood: Civil Rights, Feminism, and Access to College*

Emergent adulthood has sociocultural as well as macroeconomic roots. In the past fifty-five years, several landmark cases changed the legal landscape and opened college and graduate and professional school admissions to a broad group of Americans previously excluded from higher education. The changes to the legal landscape arrived in concert with medical, social, and cultural changes that allowed people who previously

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<sup>104</sup> *Id.* at 57–58, 65, 72.

<sup>105</sup> *Id.* at 72.

<sup>106</sup> *Id.* at 88–89.

<sup>107</sup> *Id.* at 77.

<sup>108</sup> JEAN M. TWENGE, IGEN: WHY TODAY'S KIDS ARE GROWING UP LESS REBELLIOUS, MORE TOLERANT, LESS HAPPY—AND COMPLETELY UNPREPARED FOR ADULTHOOD\* AND WHAT IT MEANS FOR THE REST OF US, 77 (2017).

<sup>109</sup> *Id.* at 90.

could not attend primary, secondary, or higher education to enroll. The first of these landmark events was the passage of Title VI of the Civil Rights Act of 1964, which prohibited discrimination based on race, color, and national origin; this was followed by Title IX of the Education Amendments of 1972, which prohibited sex discrimination.<sup>110</sup> Later advances were made on behalf of students with disabilities, beginning with Section 504 of the Rehabilitation Act of 1973, the first federal statute to broadly prohibit disability discrimination, and later, the Education for all Handicapped Children Act (now known as the Individuals with Disabilities Education Act) and in 1990, the passage of Title II of the Americans with Disabilities Act of 1990, which prohibits disability discrimination by public entities, including colleges and graduate and professional schools.<sup>111</sup>

The legal changes that opened enrollment to previously excluded groups did not expand educational opportunities without broad sociocultural changes brought about by advances in medicine, particularly advances in pharmaceuticals, and revolutionary social changes. The introduction of oral contraceptives for women opened the doors to higher education for women, doors that been closed due to the responsibilities attendant to early parenthood. Advances in pharmaceuticals to treat the symptoms of mental and behavioral disorders allowed people who previously could not attend college to graduate, and also to pursue postgraduate education. The legal, sociocultural, and macroeconomic trends worked in tandem, but did not result in a sea change in higher education for several decades. The result was a greatly expanded college demographic that looked nothing like prior generations of college students, and had different needs than the all-white, majority-male classes that preceded them.

One of the most dramatic changes to the composition of law school classes involves students with disabilities. Advances in pharmaceuticals allows people with formerly incapacitating invisible disabilities, such as schizophrenia, bipolar disorder (formerly manic depression), Tourette's Syndrome, anxiety, and major depressive disorder, to attend school, go to college, and commence graduate education.<sup>112</sup> Simultaneously, with the advent of pharmaceuticals to help psychiatric disorders, the Education for All Handicapped Children Act (EHCA), later codified as the Individuals with Disabilities Education Act (IDEA), gave children with disabling conditions access to k-12 education, something that had been previously denied to many of them.<sup>113</sup> In 1990, the Americans with Disabilities Act

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<sup>110</sup> U.S. DEPT. OF EDUC. OFFICE FOR C.R., *Impact of the Civil Rights Laws*, <https://www2.ed.gov/about/offices/list/ocr/docs/impact.html> (last updated Jan. 1999).

<sup>111</sup> *Id.*

<sup>112</sup> Lynn C. Koch et al., *Integrated Postsecondary Services and Supports for College Students with Psychiatric Disabilities*, 48 J. OF APPLIED REHAB. COUNSELING 16, 16 (2017).

<sup>113</sup> U.S. DEPT. OF EDUC. OFFICE FOR C.R., *About IDEA*, <https://sites.ed.gov/idea/about-idea/> (last visited Aug. 14, 2019).

(ADA) gave students with disabilities physical access and accommodations at universities, allowing them to physically enter college campuses, ensure reasonable accommodations in the classroom, and preventing discrimination against them in admissions and access to courses. The combination of these developments radically changed the landscape of college and graduate school campuses, in ways seen and unseen.

Students with significant mental and behavioral health issues are an increasing part of the law school landscape. The National Alliance on Mental Illness estimate in 2016 that 20% of enrolled college students have a mental health condition; many of these students will go on to post-graduate education.<sup>114</sup> Advances in pharmaceuticals that address mental and behavioral health issues are one significant reason for the increase enrollment of students with disabilities. For decades, the first-line approach to major mental and behavioral health issues was treatment with chlorpromazine, or Thorazine.<sup>115</sup> Although the discovery and clinical success of chlorpromazine in the 1950s was an enormous advance for the treatment of psychiatric disorders, the side effects of the drug prevented patients from participating in work, school, and other everyday life activities.<sup>116</sup> The success of chlorpromazine heralded the development of other derivatives with similar activity.<sup>117</sup> Beginning in the 1990s, a number of revolutionary atypical antipsychotic drugs were introduced in the American market.<sup>118</sup> The advent of atypical antipsychotics allowed people who would formerly be institutionalized or homebound to pursue an education.

In addition to the advent of atypical antipsychotics, a revolution in the development of antidepressant medications and medications to treat the symptoms of bipolar disorder were occurring simultaneously in the 1950s. Like the discovery and clinical use of chlorpromazine, antidepressant pharmacology went through a “veritable revolution” in the 1950s, with the discovery and clinical use of imipramine (a tricyclic, or TCA) and iproniazid (a monoamine-oxide inhibitor, or MAOI), as well as drugs to treat mania and the symptoms of bipolar disorder, lithium, meprobamate and chlordiazepoxide.<sup>119</sup> Prior to the discovery of pharmaceutical therapeutic tools, the only treatment for depression was electroconvulsive therapy,

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<sup>114</sup> Koch *supra* note 112, at 16 (noting that there is no precise number of law students with mental health issues, so percentages are extrapolated from numbers on undergraduate campuses).

<sup>115</sup> Winston W. Shen, *A History of Antipsychotic Drug Development*, 40 *COMPREHENSIVE PSYCHIATRY* 407, 408 (1999).

<sup>116</sup> *Id.*; see also Drugs.com, *Side Effects of Chlorpromazine*, <https://www.drugs.com/sfx/chlorpromazine-side-effects.html> (last visited July 15, 2019).

<sup>117</sup> Shen, *supra* note 115, at 409.

<sup>118</sup> *Id.* at 412.

<sup>119</sup> Francisco López-Muñoz & Cecilio Alamo, *Monoaminergic Neurotransmissions: The History of the Discovery of Antidepressants from the 1950s Until Today*, 15 *CURRENT PHARM. DESIGN* 1563, 1563 (2009).

which resulting in severe, long-term memory loss and other life-altering side effects.<sup>120</sup> The late 1980s heralded the second revolution in the development of drugs to treat depression and bipolar disorder, with the advent several new drugs without the side effects of MAOIs. The first SSRI (selective serotonin reuptake inhibitor), fluoxetine (known as Prozac), came onto the pharmaceutical market in 1987.<sup>121</sup> Since its introduction in 1987, fluoxetine has become the most written-about drug (along with chlorpromazine) in the history of pharmacology.<sup>122</sup> By 1990, fluoxetine was the most prescribed drug in the United States, and by 1994, sold more than any drug worldwide except Zantac.<sup>123</sup> In the early 1990s, several other SSRIs used to treat depression were introduced to the market, expanding the range of treatment of depression and affective disorders.<sup>124</sup>

These advances in the treatment of mental and behavioral health disorders made it possible for people who would never have had the ability to attend school to make it through high school and pursue a college education. Approximately 21.4% of youth age 13-18, and 13% of children aged 8-15 will experience a severe mental health condition; the advent of antipsychotic and antidepressants opened the door for many of these students to continue their education, something not possible before the 1990s.<sup>125</sup>

At roughly the same time pharmaceuticals revolutionized the treatment of mental and behavioral health disorders, the United States enacted legal protections for children with disabilities that allowed them to attend primary and secondary school. In 1970, Congress enacted the Education of the Handicapped Act, which authorized grants to states to create programs for the education of handicapped children.<sup>126</sup> While the Education of the Handicapped Act was a first step, significant momentum to change restrictive state statutes that prevented children with disabilities from being

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<sup>120</sup> *Id.*; see also Jonathan Sadowsky, *Electroconvulsive Therapy: A History of Controversy, But Also of Help*, SCI. AM. (Jan. 13. 2017) <https://www.scientificamerican.com/article/electroconvulsive-therapy-a-history-of-controversy-but-also-of-help/> (Last visited July 15, 2019); E. Verwijk et al., *Doctor, Will I Get My Memory Back? Electroconvulsive Therapy and Cognitive Side-Effects in Daily Practice*, 59 TIJDSCHRIFT VOOR PSYCHIATRIE 632 (2017) (“Secondly, ECT causes cognitive side effects in multiple domains . . . which can be roughly classified into postictal confusion (immediately after treatment), anterograde amnesia (during the course of treatment), retrograde amnesia (after the course of treatment) and side effects on non-memory domains (attention and executive functioning)”).

<sup>121</sup> López-Muñoz & Alamo, *supra* note 119, at 1576.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 1578.

<sup>125</sup> Teri Brister, *Navigating a Mental Health Crisis A NAMI resource guide for those experiencing a mental health emergency*, NATIONAL ALLIANCE ON MENTAL ILLNESS, [https://www.nami.org/About-NAMI/Publications-Reports/Guides/Navigating-a-Mental-Health-Crisis/Navigating-A-Mental-Health-Crisis.pdf?utm\\_source=website&utm\\_medium=cta&utm\\_campaign=crisisguide](https://www.nami.org/About-NAMI/Publications-Reports/Guides/Navigating-a-Mental-Health-Crisis/Navigating-A-Mental-Health-Crisis.pdf?utm_source=website&utm_medium=cta&utm_campaign=crisisguide) (last visited July 15, 2019).

<sup>126</sup> Kathryn M. Coates, *The Education For All Handicapped Children Act Since 1975*, 69 MARQ. L. REV. 51, 53 (1985).

educated in their local public schools was achieved with the decisions in *PARC v. Pennsylvania*,<sup>127</sup> which targeted the exclusion of handicapped children from public schools in Pennsylvania, and *Mills v. Board of Education of District of Columbia*, which challenged laws, regulations, and practices in Washington D.C. that excluded primarily African-American children with disabilities from receiving a public education.<sup>128</sup> The decisions in *PARC* and *Mills*, affirming children with disabilities the right to public education, were effectively codified by Congress with the passage of section 504 of the Rehabilitation Act of 1973, and the Education for All Handicapped Children Act of 1975.<sup>129</sup>

Simultaneous with legal and medical developments for students with disabilities were advancements in women's rights and birth control. Birth control and the rise of second wave feminism dramatically changed the college, and later, the graduate and professional school landscape in ways that could not have been predicted fifty years ago. The advent of oral contraceptives for women, or "the pill," in 1960 ushered in an era where young women could be free of the burdens of early parenthood, and engage in intellectual pursuits during their twenties and thirties.<sup>130</sup> It took until 1972 for oral contraceptives to be widely available, when the decision in *Eisenstadt v. Baird* allowed unmarried women to freely seek oral contraceptives from their health care providers.<sup>131</sup> Prior to the legal right to obtain oral contraceptives, in 1960, only 59 women were enrolled in higher education for every man attending college.<sup>132</sup> By 1976, just four years after *Eisenstadt* and Title IX of the Education Amendments of 1972, which prohibited sex discrimination, 80 women were enrolled in higher education for every man; an increase from 37% to 47%. This increase happened at the same time total enrollment in institutions of higher education "more than tripled, increasing from 3.6 million students to 11.3 million students," indicating that women not only greatly increased their representation among men, but also their absolute numbers in the classrooms in colleges across the country.<sup>133</sup>

The increase in enrollment in higher education had an immediate and profound effect on the age of marriage and parenthood in the United States. The average age of first marriage and parenthood—the traditional signifiers of adulthood—moved for both men and women from the late teens and early

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<sup>127</sup> Pa. Ass'n for Retarded Child. (*PARC*) v. Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971).

<sup>128</sup> *Mills v. Bd. of Educ.*, 348 F. Supp. 866 (D.D.C. 1972).

<sup>129</sup> Coates, *supra* note 126, at 55-56.

<sup>130</sup> Martha J. Bailey, *Fifty Years of Family Planning: New Evidence on the Long-Term Effects of Increasing Access to Contraception*, 5 (Nat'l Bureau of Econ. Research, Working Paper No. 19493, 2013), <https://www.nber.org/papers/w19493.pdf>.

<sup>131</sup> *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

<sup>132</sup> David Karen, *The Politics of Class, Race, and Gender: Access to Higher Education in the United States, 1960-1986*, 99 AM. J. EDUC. 208, 212 (1991).

<sup>133</sup> *Id.*

twenties, to the late twenties.<sup>134</sup> This change is not surprising; it is difficult to balance family and education. Colleges, with dorms and cafeterias, do not generally support family formation. Without the responsibility concomitant with parenthood, young adults enrolled in college have at least four more years to explore religions, careers, and other life choices.

Also occurring concurrently with the dramatic increase in women in college, was the almost equally dramatic increase in enrollment by people of color. Title VI of the Civil Rights Act of 1964, which prohibited discrimination based on race, color, and national origin, opened the doors to higher education after a number of landmark legal cases ended de jure segregation in higher education.<sup>135</sup> Before the passage of the Civil Rights Act, African-Americans were 4.3% of the students enrolled in higher education in 1960; by 1975, African-Americans represented 9.8% of students enrolled in higher education.<sup>136</sup> In a seventeen year period, African-American enrollment more than tripled. By 2016, African-American students made up 12% of the student population at public colleges and universities, 13% of the student population at private, non-profit colleges and universities, and 29% of the student population at four-year, private, for-profit universities; African-American students make up 14% of the undergraduate population in total.<sup>137</sup> By 2017, 36% of African-Americans aged 18-24 enrolled as undergraduate or graduate students in two or four year institutions of higher education.<sup>138</sup>

These changes to the demographic makeup of colleges demonstrate that emergent adulthood, first identified by scholars as a unique period of life in the 1990s, was more than just the after effect of macroeconomic changes and globalization; emergent adulthood was an outgrowth of legal, social, and medical advances that opened up higher education to a broad swath of students who had previously been shut out of college admissions. As college moved from a luxury credential acquired by upper-middle class men to a prerequisite to employment,<sup>139</sup> the traditional signifiers and benchmarks of adulthood—marriage, parenthood, home ownership, career stability—became secondary to a definition of adulthood that emphasized personal growth and responsibility. But even as the definition of adulthood changed

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<sup>134</sup> Arnett, *supra* note 31, at 5.

<sup>135</sup> See *Sipuel v. Bd. of Regents*, 332 U.S. 631 (1948); *Sweatt v. Painter*, 339 U.S. 629 (1950); *McLaurin v. Okla. State Regents for Higher Educ.*, 339 U.S. 637 (1950).

<sup>136</sup> Karen, *supra* note 132, at 212.

<sup>137</sup> Postsecondary National Policy Institute, *African American Students in Higher Education*, <https://pnpi.org/african-american-students/#> (last visited Aug. 14, 2019).

<sup>138</sup> NATIONAL CENTER FOR EDUCATION STATISTICS, *College Enrollment Rates*, [https://nces.ed.gov/programs/coe/pdf/coe\\_cpb.pdf](https://nces.ed.gov/programs/coe/pdf/coe_cpb.pdf) (last visited Aug. 14, 2019).

<sup>139</sup> See Sanford Shugart, *The Challenge of Deep Change: A Brief Cultural History of Higher Education*, 41 PLAN. FOR HIGHER EDUC. 7, 11 (2013). (Describing post WWII higher education and the GI Bill; “No other Western nation had considered, much less attempted, making higher education available to the masses.”)

to accommodate the delays created by enrollment in higher education, students and young adults did not meet even their modified definition of adulthood until much later than prior generations of students.

#### IV. EMERGING ADULTS AND LAW SCHOOL TEACHING AND LEARNING

Most relevant to first-year law professors, incoming students need much greater scaffolding to master fundamental concepts in legal analysis and reasoning, and need additional context when introducing topics, they have not experienced in their personal life. During the second and third year of legal education, clinical professors need to provide significant instruction in the basics of professional behavior before students can even meet a client. While adding a little more detail to lectures on such topics as the transfer of real property and drafting contracts may seem like an easy solution, the challenges to understanding material removed from personal experience is far more complex. The challenge cannot be solved by adding more responsibilities to already overwhelmed and understaffed academic success programs, who have taken on significant additional responsibilities as current generations of law graduates struggles with the bar exam, and ASPs have primary responsibility for growing ABA-required statistics and disclosures. To leverage the expertise of ASPs, law schools need to invest in additional ASP faculty, as well as training for existing professionals. Law schools need to address the deficits in undergraduate education, as well as the demographic and social changes that have upended assumptions about the experience and knowledge of matriculating law students.

##### A. *Different Learning Needs*

The hallmarks of the emergent adulthood—marriage later in life (or not at all), less career-focused workplace experience before law school matriculation, and less time living independently throughout their twenties—also means that emergent adults begin their legal careers with a weaker foundational knowledge base for advanced legal doctrine and skills. Foundational, or, prior, knowledge underpins all other cognitive processes.<sup>140</sup>; “there is widespread agreement among researchers that students *must* connect new knowledge to previous knowledge in order to learn.”<sup>141</sup> Foundational, or, prior, knowledge form the foundation for all other cognitive processes.<sup>142</sup> Knowledge and remembering form the base of Bloom’s Taxonomy; knowledge (in the original taxonomy) and remembering (in the revised taxonomy) are “preconditions for putting skills

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<sup>140</sup> Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, 48 VAL. U. L. REV. 41, 52 (2013).

<sup>141</sup> SUSAN A. AMBROSE ET. AL., *How Learning Works: 7 Research-Based Principles for Smart Teaching* 15 (Jossey-Bass ed. 2010).

<sup>142</sup> Stuart & Vance, *supra* note 140, at 52.



and abilities into practice.”<sup>143</sup> Knowledge is not only developed in formal education; knowledge includes information and skills gained through real life experiences.<sup>144</sup> Students with no “known information” or knowledge in a domain, cannot analyze or differentiate new knowledge. Students may try to draw on prior knowledge that is inappropriate, or incomplete, which will distort their understanding of new information.<sup>145</sup>

Legal education assumes core foundational knowledge in order to situate new learning. Prior experience with the mechanics of purchasing a home, or renting an apartment, provide the schema, or framework to teach complex legal doctrine and advanced skills that comprise “thinking like a lawyer.”<sup>146</sup> Familiarity with this process of purchasing a home (if not a comprehensive understanding) provides fundamental framework for understanding the complex legal requirements for purchase and sales contracts, and the basics of mortgages that comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act. Experience interpreting the rules in a residential lease provide the rudimentary schema that allows students to understand how statutory requirements for lead abatement intersect with the common law implied warranty of habitability. Students who have never lived outside of a college dormitory and their family home have little or no experience with signing a lease, purchasing a home, or acquiring mortgage, making the course material at best, confusing, and at worst, incomprehensible.

Lack of core foundational knowledge and schema also prevents students from using one of the tools of learning, elaboration.<sup>147</sup> Elaboration is “the process of giving new material meaning by expressing it in your own words and connecting it with what you already know.”<sup>148</sup> Elaboration creates learning because it creates multiple neural pathways to information, by using the information in a number of different methods, under different circumstances, and employing different senses. In law school, an example of elaboration is the exhortation by professors to “put it in your own words” in your case briefs.<sup>149</sup> By “putting it in your own words,” students need to have a solid understanding of the case within the broader framework of the topic. Without a framework for understanding the case or the topic, students have a difficult time interpreting the holding, and find it impossible to elaborate on the rule elucidated in the case. Elaboration is also the key to

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<sup>143</sup>Patricia Armstrong, *Bloom's Taxonomy*, CTR. TEACHING VAND. U., <https://cft.vanderbilt.edu/guides-sub-pages/blooms-taxonomy/>.

<sup>144</sup> AMBROSE ET. AL., *supra* note 141, at 17.

<sup>145</sup> *Id.* at 20.

<sup>146</sup> Stuart & Vance, *supra* note 140, at 54.

<sup>147</sup> TERRY DOYLE & TODD ZAKRAJSEK, *THE NEW SCIENCE OF LEARNING: HOW TO LEARN IN HARMONY WITH YOUR BRAIN* 112-113 (2d ed. 2019).

<sup>148</sup> Peter C. Brown et. al., *MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING*, 5 (2014).

<sup>149</sup> Jason Dykstra, *Bridging the Gap: Transitioning Law School Legal Writing Skills to Practicing Law*, *ADVOC.* 62, 63 (2016).

analogical reasoning between cases. Students need to understand cases well enough to see how other cases they are reading have similarities, despite different facts and phrasing by the factfinder. If students are locked in the exact words of a rule from a case, they cannot see how the same rule, phrased differently, may be at work in another case.

Lastly, elaboration is key to transfer. In order for legal education to be valuable in practice, students need the ability to transfer knowledge and skills to novel situations where the same skills and knowledge can be used to problem-solve. Knowledge and learning need multiple connections to established knowledge in order to transfer to new, or novel, situations. If students do not have a framework or schema for their learning, and the connections between knowledge gained in law school and real-world application are weak, and students will not be able to transfer their knowledge in practice.

If learning to “think like a lawyer” requires foundational knowledge and schema that many law students lack at matriculation, legal education is, at best, incomplete or insufficient for emerging adult students. Students without a schema, or framework to build connections between existing knowledge and new learning cannot understand the doctrine or apply new skills; understanding is fundamental to the process of interpretation; interpretation, and methods of interpretation, are one of the essential tools taught to novice law students. Law schools “inculcate...students the interpretive conventions of the discipline”<sup>150</sup> as a part of teaching law students to “think like a lawyer.” Lack foundational knowledge and schema for legal learning causes a breakdown in legal education; without the prerequisite knowledge, students—even exceptionally talented and gifted students—cannot master the advanced skills necessary “think like a lawyer” and practice in the profession.<sup>151</sup>

Lack of foundational knowledge and schema for legal learning presents another challenge to legal education, one that Academic Success professionals are uniquely familiar with; student procrastination and complaints that law school is “boring.” Academic literature has a number of definitions of boring; the most salient to a discussion of law school described boredom as “an experience associated with a negative attitude toward an activity, along with a reduction of physical actions, an inability to specify what one desires, a passive attitude hoping for a change from an external source, and a sense of time distortion.”<sup>152</sup> Empirical studies of student boredom link the aversive emotion of boredom with students who are either under-challenged or over-challenged by their work.<sup>153</sup> While it is certainly

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<sup>150</sup> Kris Franklin, *Theory Saved My Life*, 8 N.Y. C. L. REV. 599, 607 (2005).

<sup>151</sup> Stuart & Vance, *supra* note 139, at 61.

<sup>152</sup> Virginia M.C. Tze et.al., *Evaluating the Relationship Between Boredom and Academic Outcomes: A Meta-Analysis*, 28 EDUC. PSYCHO. REV. 119, 120 (2016).

<sup>153</sup> *Id.* at 122.

true that some law students may be under-challenged by classes and readings in law school, it is far more plausible that students who express boredom with law school academics are over-challenged because they have no schema in which to situate the information in the readings or class discussions. Research has found that when students know little, “or nothing, about something, it becomes harder to make these connections and as a result, [the required assignments] seem ‘boring.’”<sup>154</sup> When students are bored, they have lower self-efficacy or self-directed learning; boredom has a negative relationship with effective learning strategies, such as elaboration and metacognition.<sup>155</sup> A bored student who does not attend to the case reading, plays on the internet during class discussion, is not only unprepared for their exams, but will be re-learning the material when they encounter it on the bar exam. The bar exam expects students to have a foundational understanding of the material, so that bar study is recall, overlearning, and application of law to novel facts. Overlearning “creates ‘automaticity’ with respect to what is learned, [and] one can recall learning with minimal attention and, therefore, focus greater attention on using the recalled material to perform higher-level intellectual skill.”<sup>156</sup> Overlearning allows bar takers faster, or automatic, recall, so they can spend their time on “higher-level intellectual skills of” analysis and organization of arguments. If a student is learning the material for the first time, they do not have the time to overlearn the material. This results in slower performance on a high-stakes, timed exam. In sum, lack of foundational knowledge and schema leads students to believe law school is boring; boredom has a negative relationship to the empirically-validated learning strategies necessary for academic success, leading students to engage in shallow or superficial learning strategies that have consequences through the bar exam and licensure.<sup>157</sup>

Lack of foundational knowledge and schema for first year courses may sound like an insurmountable challenge to law schools, but there are techniques developed for higher education that can support students with the innate ability to succeed in law school, but lack the sophisticated foundational knowledge and schema necessary to understand, interpret and apply advanced doctrinal knowledge in their courses. Students without foundational knowledge or experience can be assisted by peers with more advanced understanding by creating Communities of Practice.<sup>158</sup> Communities of Practice expand on Lev Vygotsky’s zone of proximal development; the zone of proximal development is defined in current

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<sup>154</sup> DOYLE & ZAKRAJSEK, *supra* note 147, at 148-149.

<sup>155</sup> Tze, *supra* note 152, at 123.

<sup>156</sup> Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 373 (2001).

<sup>157</sup> *Id.* at 122.

<sup>158</sup> Catherine A. Cherrstrom et. al., “*The Group Is Vital*”: *Adult Peers in Community for Support and Learning*, 29 ADULT LEARNING 43, 44 (2017).

literature on adult learning as the “difference between what a person can achieve acting alone and what the same person can accomplish when acting with support from” someone more learned or experienced.<sup>159</sup> The zone of proximal development is also described as “a metaphor to assist in explaining the way in which social and participatory learning take place.... The ...law of cultural development asserts the primacy of the social in development [in learning].”<sup>160</sup> When students of any age encounter material outside their zone of proximal development, learning can be facilitated by a Community of Practice; a CoP connect people, provide shared context, enable dialogue, stimulate learning, capture and diffuse existing knowledge.<sup>161</sup> While Academic Success professionals and professors routinely encourage students to form study groups, few students know how to form study groups that will facilitate learning. Study groups are often formed among friends, used to crowd-share outlines (a poor study technique), and distribute class notes.<sup>162</sup> CoP’s require structured peer mentoring, where a “seasoned peer” interacts with “targeted students, sharing his or her knowledge and experience.” Most, if not all, law school cohorts include traditional adult learners with experience that can help contextualize material for emergent adult law students; few law schools provide structured, monitored CoP’s to help students without the proper background information to understand or apply law school learning. CoP’s can also be managed by veteran attorney adjuncts that also act as coaches for their students. Coaching students in professional norms, interpersonal communication, and goal setting can bridge the gap between where emerging adult students are and where they need to be by the time they begin experiential and clinical education.<sup>163</sup>

CoP’s would be relatively easy to create and manage by either an ASP in coordination with doctrinal faculty, or by doctrinal faculty in coordination with administrators. Professors would need to identify the foundational prior knowledge that is essential to the higher-order knowledge and skills taught in first-year classes,<sup>164</sup> and assess student’s knowledge in a manner that does not shame, embarrass, or stigmatize them. Law schools can administer a diagnostic test at orientation, or the start of the school year, to measure students prior knowledge, and sort them into a CoP that matches their deficits with a group leader with particular knowledge and experience in that

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<sup>159</sup> *Id.* at 43.

<sup>160</sup> HARRY DANIELS, *VYGOTSKY AND PEDAGOGY*, 56 (2001).

<sup>161</sup> Cherrstrom et. al., *supra* note 158, at 44.

<sup>162</sup> Lynn C. Herndon, *Help You, Help Me: Why Law Students Need Peer Teaching*, 78 UMKC L. REV. 809, 819 (2010) (while the author asserts the benefits of study groups, crowd-sharing outlines is contraindicated by current research, which posits that students should create their own outlines, and then share with peers).

<sup>163</sup> Judith L. Ritter, *Growin’ Up: An Assessment of Adult Self-Image in Clinical Law Students*, 44 AKRON L. REV. 137, 185 (2011); *see also, infra* Hamilton note 190.

<sup>164</sup> *Id.* at 34.

area.<sup>165</sup> If all students are sorted into a CoP, there is less concern that CoP's themselves would create stigma for students. Students can be sorted by their specific foundational knowledge deficits, and the CoP can focus their meetings on the topic where students have the least foundational knowledge. Academic Support can train CoP leaders to work with emerging adult students, creating interactive lessons to share their knowledge in a manner that both builds community and support among students and provides peer mentoring in a way that empowers student learning.

CoP's can also be used to support seminars where upper-class and traditional adult students "share information and co-construct learning" with emerging adult students.<sup>166</sup> A seminar series where a student either leads a presentation on an area of expertise that can help create foundational knowledge for doctrinal learning, or works with professionals in the community to create a seminar on an area of expertise, also helps build leadership and presentation skills for the student seminar leaders. While the third year of law school is frequently derided as useless or boring, a student-led seminar series can combine content "with participants' professional experience" to help first year students "see content from a new and different viewpoint."<sup>167</sup> In this way, CoP's can also expand perspective-taking, an essential skill for law students, and one that is increasingly missing from many emerging adult skill sets.

CoP's can be employed beyond the first year of law school to support learning in 2L and 3L courses that require foundational knowledge and schema to understand complex legal doctrine. During the second and third years of law school, students are encouraged to take Family or Domestic Relations Law, Corporations or Business Organizations, Evidence, Trusts and Estates, and Secured Transactions because they are on most bar exams. Like first year courses, learning in each of these courses is facilitated by foundational knowledge and schema; most emergent adult law students will be foundational knowledge in at least one of these subjects, if not most of these subjects. CoP's can be used to form study groups for these upper-class courses, which could then operate to form bar success work groups, to provide support.

*1. More help with professional norms and formation of professional identity*

Perhaps the most critical problem facing legal education is the challenge emerging adulthood poses to professional identity formation and inculcation of professional norms and responsibility. Unlike some of the other challenges facing law schools, problems of professional identity formation

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<sup>165</sup> Ambrose et al., *supra* note 141, at 28.

<sup>166</sup> Cherrstrom et al., *supra* note 158, at 43–44.

<sup>167</sup> *Id.* at 47.

are long documented, first in the MacCrate Report in 1992,<sup>168</sup> and in 2007, by *Educating Lawyers: Preparation for the Practice of Law*<sup>169</sup> (known as the Carnegie Report), researched and published by the Carnegie Foundation for the Advancement of Teaching, and *Best Practices for Legal Education* (known as Best Practices), published by the Clinical Legal Education Association (CLEA).<sup>170</sup> The challenges of professional identity formation and professional norms have deep roots, but there are unique issues specifically facing emerging adults who came of age during in an atmosphere of uncertainty and anxiety over financial stability. Unlike the current generation of law professors, many of whom saw their parent (most likely their father) work in the same field, and possibly for the same employer for decades,<sup>171</sup> emerging adults came of age during right-sizing, downsizing, globalization, “free agents” and independent consultants.<sup>172</sup> The economic uncertainty faced during the formative years by emerging adults “snipped off the last threads of company loyalty.”<sup>173</sup> Companies show less loyalty to their workers due to the increasing complex and competitive global market, and young workers have responded by becoming comfortable with job-hopping and personal branding in place of loyalty to an uncertain employer. But the lack of loyalty has come at a price; young workers “are becoming less likely to see work as central to their lives, and in defining who they are as individuals.”<sup>174</sup> Young workers look for work that is meaningful, and work-life balance that allows them to put family and friends first in their lives.<sup>175</sup>

This shift towards self-reliance and balance in employment relationships represents a challenge to the professional responsibilities and ethical requirements of the legal profession. Prior generations of law students did not need to take a big leap to understand professional responsibility; they were raised to believe in a social bargain or contract,<sup>176</sup> between employers

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<sup>168</sup> American Bar Association, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap, *Legal Education and Professional Development—An Education Continuum*, 1992, [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2013\\_legal\\_education\\_and\\_professional\\_development\\_maccrate\\_report.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report.authcheckdam.pdf) [hereinafter MacCrate Report].

<sup>169</sup> William M. Sullivan, et. al, *Educating Lawyers: Preparation for the Profession of Law*, The Cargnagie Foundation for the Advancement of Teaching [http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary\\_pdf\\_632.pdf](http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf) [hereinafter Carnegie Report]

<sup>170</sup> Roy Stuckey et al., BEST PRACTICES FOR LEGAL EDUCATION (Clinical Legal Education Association eds., 2007) [hereinafter Best Practices].

<sup>171</sup> Settersten & Ray, *supra* note 39, at 58 (“[I]n 1973, about one-half of men between ages thirty-five and sixty-four had been with their employer for at least ten years. By 2006, fewer than 40% could make that claim.” It is likely that the Great Recession of 2008 increased the percentage of workers who have less than 10 years with their current employer.)

<sup>172</sup> *Id.* at 55.

<sup>173</sup> *Id.* at 61.

<sup>174</sup> *Id.* at 59.

<sup>175</sup> *Id.* at 58–62.

<sup>176</sup> Thomas Kochan et al., *Negotiating a New Social Contract for Work: An Online, Distributed Approach*, 34 NEGOT. J. 187, 188 (2018).

and employees, where both parties exchanged loyalty in return for commitment.<sup>177</sup> During law school, students are expected to embrace the professional norms and responsibilities of the profession, and for prior generations of law students, this was an extension of the loyalty they saw their parent's demonstrate towards their employer. As the social bargain between employee and employer has broken down, so has students' implicit understanding of professional norms. A "majority" of emerging adults "prefer careers with less commitment"; this is in opposition to the model code of professional responsibility for lawyers—lawyers cannot be "less committed" to zealous advocacy for their clients. For emerging adults, who know of no social contract between employer and employee, it takes more time and learning to understand why the legal community, in contrast to other fields, requires an iron-clad commitment and an ethical responsibility to clients.

The first time many law students are faced with the professional norms and ethical requirements of the legal profession is in experiential education. Professors working in experiential education know they are at a "crossroads,"<sup>178</sup> where the leadership of clinical leadership has vastly different life experiences and expectations than the students they teach in clinics. Changing parent-child relationships towards independence have altered the degree to which emerging adults are ready for responsibility without substantial oversight and assistance, which is contrary to the ethos of mutual learning in clinical education.<sup>179</sup> Emerging adults find "abstract assignments and too much freedom overwhelming"; yet these are exactly the experiences students need in clinical education to prepare them for practice. Emerging adults "look externally for direction and approval rather than taking responsibility for their own learning."<sup>180</sup> This is in conflict with the "'mantra' among many clinical teachers that direct supervision does not empower a student."<sup>181</sup> Due to the importance of professional responsibility, clinical professors must adhere to and enforce rules; emerging adults find that this reduces "trust and harmony" with the professor.<sup>182</sup> This conflict between the values and goals of clinical legal education and the expectations of emerging adult students frustrates both parties. Clinical professors are forced to teach the norms of professional behavior and communication before beginning the process of working with clients; this disrupts the

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<sup>177</sup> Settersten & Ray, *supra* note 39, at 54.

<sup>178</sup> Praveen Kosuri, *Clinical Legal Education at a Generational Crossroads: X Marks the Spot*, 17 CLINICAL L. REV. 205, 206 (2010).

<sup>179</sup> Bloch, *supra* note 255, at 349. See also T. Kody Frey and Nicholas T. Tatum, *Hoverboards and "hovermoms": helicopter parents and their influence on millennial students' rapport with instructors*, 65 COMM. EDUC. 356, 359 (2016).

<sup>180</sup> Buckner & Strawser, *supra* note 29, at 361.

<sup>181</sup> Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505, 518 (2012).

<sup>182</sup> Frey & Tatum, *supra* note 178, at 360.

educational process and allows for less time understanding client needs and professional responsibility.

The struggle to help students form a professional identity consistent with the rules of professional responsibility has been made more immediate by the adoption of ABA Standard 302, requiring law schools to establish learning outcomes that include competency in “exercise of proper professional and ethical responsibilities to clients and the legal system” and “other professional skills needed for competent and ethical participation as a member of the legal profession.”<sup>183</sup> In addition, Standard 303 requires students to “satisfactorily complete...one or more experiential course(s) total[ing] at least six credit hours.”<sup>184</sup> Students must engage in experiences “to learn while in a lawyer role” with an “emphasis on professional identity formation.”<sup>185</sup> This puts more pressure on experiential and clinical law professors to provide more support to more students, while more and more of those students are unprepared for the basics of legal representation and client communication.

One of the struggles facing emerging adults participating in clinics is the lack of an adult self-image in a profession that demands very high levels of professional responsibility and commitment. Emerging adults do not yet see themselves as adults, capable of handling adult responsibilities, and this has profound significance to clinic professors who must prepare students to represent clients.<sup>186</sup> Despite student skills and preparation, a “student’s child or adolescent self-image prevents him or her from full participation” in the courtroom or with a client.<sup>187</sup> Professor Judith Ritter has asserted that the law school pedagogy itself does not help law students view themselves as fully adult, where emphasis is placed on analytical skills and doctrine in the classroom, not on their adult role representing clients.<sup>188</sup> Ritter suggests coaching or training students to understand where they are in the “developmental life cycle,” and “raising student awareness of the challenge of an adult self-image.”<sup>189</sup>

Professor Neil Hamilton of University of St. Thomas School of Law has written extensively on the challenges emerging adults as they develop an adult self-image. Law students need to “change from thinking like a student—where he or she learns and applies routine techniques to solve well-structured problems—towards acceptance and internalization of responsibility to others (particularly the person served) and for that student’s

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<sup>183</sup> American Bar Association, *supra* note 79, at 15.

<sup>184</sup> *Id.* at 16.

<sup>185</sup> Jerome M. Organ, *Is There Sufficient Human Resource Capacity to Support Robust Professional Identity Formation Learning Outcomes?*, 14 U. ST. THOMAS. L. J. 458, 468 (2018).

<sup>186</sup> Ritter, *supra* note 162, at 138.

<sup>187</sup> *Id.* at 139.

<sup>188</sup> *Id.* at 151.

<sup>189</sup> *Id.* at 159.



own pro-active development towards excellence as a practitioner...”<sup>190</sup> Professor Hamilton has created a first-year curriculum, ROADMAP, based on surveys of law students, to help students make the adjustment from student to practitioner, and from exploration to excellence “across the whole arc of his studies, career, and life.”<sup>191</sup> ROADMAP consists of four central components;

- 1) Five hours devoted to working through a fourteen-step self-assessment, including an assessment of strengths and a plan for professional development.
- 2) Reading a 257-page book summarizing research on competencies that different types of legal employers and clients want lawyers to have.
- 3) Four self-assessments based on student strengths using STRENGTHSFINDER 2.0, a trustworthiness assessment, an assessment of motivating interests, and a 360-degree assessment of student strengths in terms of competencies.
- 4) A 45-60-minute veteran lawyer who works as a coach to question students on their professional development plan and provide feedback.<sup>192</sup>

ROADMAP was designed by Prof. Hamilton specifically to provide emerging adult law students who are still developing their identity, and are “at the dependent or interested stages of taking ownership over their own proactive professional development” the opportunity to grow into the professional identity they need to become a competent attorney.<sup>193</sup> The ROADMAP curriculum does something that most law schools fail to do; it “start[s] by both where going where each student is and engaging each student at the student’s current developmental stage.”<sup>194</sup>

Prof. Ritter’s suggestion is consistent with Prof. Hamilton’s research on emerging adults in law school; 60% of beginning-of-fall 2Ls (or 2Ls beginning their second year) were not ready to take ownership or responsibility for their own professional development.<sup>195</sup> Coaching or training must begin before students reach clinics or field placement, so they are ready to work with clients when they are enrolled in experiential learning

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<sup>190</sup> Neil W. Hamilton, *Professional Formation with Emerging Adult Law Students in the 21-29 Age Group: Engaging Students to Take Ownership of Their Own Professional Development Toward Both Excellence and Meaningful Employment*, J. PROF. LAW. 125, 126 (2015).

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 140.

<sup>193</sup> *Id.* at 131.

<sup>194</sup> Hamilton & Organ, *supra* note 89, at 878.

<sup>195</sup> Hamilton, *supra* note 190, at 132.

and clinic courses. Prof. Hamilton's ROADMAP curriculum, designed to develop ownership of professional development in the first year—before many states allow students to be certified to participate in clinics—would help students be ready for the self-directed learning essential to successful participation in clinics, externships, and field placement.<sup>196</sup> For coaching or training to be left to clinic professors themselves means that professors and law students have less time to meet learning outcomes identified by the ABA or become practice-ready for employers. The time for coaching or training students to be ready for clinics may take time away from doctrine or analytical skill-building in the first-year classroom, however, classroom or podium professors may find that their students are better prepared for discussions about the morality or policy consequences of certain actions, because higher levels of moral reasoning, and the construction of moral principles, are developed alongside adult self-image.<sup>197</sup>

## 2. *Technological competence (or is it incompetence?)*

One of the most common misconceptions about incoming students is technical competence. Our current classes of emergent adults are also digital natives; they were born to a world where the internet always existed, cell phones (and smart phones) have always been ubiquitous, and in their memory, and Facebook was never limited to just college students.<sup>198</sup> The concept of wired internet is completely foreign to them. But the universality of digital connectedness has obscured some of the problems where most communication is mediated by screens, where social networking is ubiquitous, but professional platforms are viewed as opaque and unfamiliar. Being a digital native is not the same thing as being digitally competent;<sup>199</sup> the difference is in what digital technology is used and how it is used by many emerging adults.<sup>200</sup> A study of millennial college students found that while they reported daily use of cell phones and personal computers, their use of personal computer was limited to checking email and accessing the internet, not using “creative or innovative technologies.”<sup>201</sup> The same students ranked their knowledge of educational technologies and understanding of software as “extremely low” before taking a course on digital literacy.<sup>202</sup> The paradox of digital connectedness is that the ubiquity of technology has not been paired with effective or responsible use.<sup>203</sup>

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<sup>196</sup> *Id.* at 131.

<sup>197</sup> *Id.* at 155-156

<sup>198</sup> Diane Marks, *Literacy, Instruction, and Technology: Meeting Millennials on Their Own Turf*, 17 ASS'N FOR ADVANCEMENT COMPUTING EDUC. J. 363, 364 (2009).

<sup>199</sup> Stuart & Vance, *supra* note 139, at 27.

<sup>200</sup> *Id.*

<sup>201</sup> Marks, *supra* note 198, at 367.

<sup>202</sup> *Id.* at 371.

<sup>203</sup> Stuart & Vance, *supra* note 139, at 27.

### 3. *Guidance with interpersonal communication and cross-sociocultural understanding*

Going hand-in-hand with lack technological competence is the erosion of interpersonal communication skills. This presents another emerging adulthood paradox. Although undergraduate education focuses on self-development over academics,<sup>204</sup> and current generations of students are noted for their preference for group work over individual projects,<sup>205</sup> college students have weak interpersonal communication skills that leave them unable to engage in the face-to-face interaction that is essential to success as an attorney.<sup>206</sup> A longitudinal study of 3200 emerging adults found that emerging adults, as a group, “lack competent and ethically responsive communication.”<sup>207</sup> The study found teachers in public schools “sidestepped discussions of difficult issues and controversies.”<sup>208</sup> This inability to discuss difficult issues and controversies does not change once emerging adult reach college; in an attempt to prevent hate speech and protect “sensitive” students from perceived harm, colleges have enacted “speech codes and restrictive Title IX enforcement mechanisms” with the “unintended consequence of chilling speech.”<sup>209</sup> While these well-meaning regulations were designed to protect minorities from hate speech, they have also resulted in a “heckler’s veto” of controversial ideas and speech.<sup>210</sup> Extremes of speech, “racists and sexists who create a hostile learning environment as well as delicate snowflakes who scream out for vindictive protection at the slightest threat to their comfort” do not constitute the majority of speech or the majority of students on college campuses, but the threat of such speech, and the threat of legal action under Title IX, “undermines...dialogue that can result in more than counterpoints and rise to the level of mutual understanding.”<sup>211</sup> The college years should be a time to explore new ideas, even new ideas that may be considered taboo, however, the fear of causing offense results in self-censorship on college

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<sup>204</sup> Arum & Roksa, *supra* note 45, at 70.

<sup>205</sup> Michael Wilson & Leslie E. Gerber, *How Generational Theory Can Improve Teaching: Strategies for Working with the “Millennials”*, 1 CURRENTS TEACHING & LEARNING 29, 31 (2008).

<sup>206</sup> *Id.* at 30.

<sup>207</sup> Paula S. Tompkins, *Teaching communication to emerging adults*, 65 COMM. EDUC. 367, 368 (2016).

<sup>208</sup> *Id.*

<sup>209</sup> Terri R. Day & Danielle Weatherby, *Speech Narcissism*, 70 FLA. L. REV. 839, 842-843 (2018). See also Katlyn Syn Patton, *Trumping the First Amendment: Student-Driven Calls for Speech Restrictions on Public College Campuses*, 68 CASE W. RES. L. REV. 189, 196-200 (2017) (noting that the Foundation for Individual Rights in Education (FIRE) found that 33.9% of 345 public colleges and universities employed a speech code that “clearly and substantially restrict[s] freedom of speech.”)

<sup>210</sup> Day & Weatherby, *supra* note 209, at 851.

<sup>211</sup> Christopher J. Roederer, *Free Speech On The Law School Campus: Is It The Hammer or the Wrecking Ball That Speaks?*, 15 U. SAINT THOMAS L.J. 26, 27-28 (2018).

campuses, preventing the open exchange of ideas that results in personal and intellectual growth.<sup>212</sup>

A lack of interpersonal skills, specifically the inability to “recognize and think critically about difficult and divisive issues” is a particularly fraught issue for law schools; the essence of class discussion is to recognize and think critically about issues such as women’s rights, affirmative action, and the criminal justice system, issues that by their very nature are “difficult and divisive.” At the center of “thinking like a lawyer,” defined by most academics as the core skill to be mastered in law school, is the ability to see both sides of a problem, to understand that objective truth is often a matter of perspective. John Ventola, former cochairman of the hiring committee at Choate, Hall & Stewart, now practice group leader,<sup>213</sup> noted that an “open-minded view of the world is a very valuable attribute for lawyers, who shouldn’t think about things rigidly but should take into account different viewpoints.”<sup>214</sup> Students who enter law school with the belief that a “nonjudgmental” mind set is achieved by avoiding “meaningful engagement that explore and examines differences” are likely to struggle academically; to be nonjudgmental in law school means exploring and examining differences in order to understand and think critically about them.<sup>215</sup> To be engaged in learning in law school means active participation, even if that means asking questions during a Socratic dialogue or discussion. Students who ignore difficult issues or remove themselves from discussion due to discomfort are diminishing their own learning at the cost of skills they will need in practice.

The underlying cause of this breakdown in interpersonal communication and subsequent breakdown in critical thinking skills can be attributed to a multitude of sources. The current generation of emerging adults, collectively known as Gen Z, iGen, or Digital Natives, have spent much of their young lives immersed in digital communication through text messaging and social media.<sup>216</sup> The mediation of communication through screens prevents the immediate recognition and response to the message being delivered; it is easy to disconnect from the emotional import of a message when you cannot see or feel the impact of the message on others. In contrast to the finding that emerging adults struggle with meaningful engagement with divergent points of view, emerging adults communicating through digital mediums can engage in discussions of difficult topics, but only when they are anonymous or disconnected from the response to their speech.<sup>217</sup> The lack of experience

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<sup>212</sup> Day & Weatherby, *supra* note 209, at 848.

<sup>213</sup> Choate, *John Ventola Biography*, <https://www.choate.com/attorneys/john-ventola.html> (last visited July 17, 2019).

<sup>214</sup> Ron Alsop, THE TROPHY KIDS GROW UP, 17 (2008).

<sup>215</sup> Tompkins, *supra* note 207, at 368.

<sup>216</sup> Twenge, *supra* note 103, at 2; *see also* Newell, *supra* note 77, at 48-52.

<sup>217</sup> Newell, *supra* note 77, at 63.

discussing difficult topics, and corresponding inexperience with empathetic responses in face-to-face interpersonal communication,<sup>218</sup> not only diminishes discussions in the classroom, but also impedes learning in clinics and experiential education, where empathy, or at the very least, sympathy, is essential to client relationships.<sup>219</sup>

Legal education needs to acknowledge the inadequacies in interpersonal communication and social skills to design a curricular response that ameliorates these deficits. Communities of Practice, Prof. Hamilton's ROADMAP curriculum, along with Prof. Ritter's coaching, employed throughout the first year of law school, can support students acquisition of adult self-image while also supporting their interpersonal communication skills by providing coaches, in the form of either upper-class students or attorney-adjuncts, to demonstrate how to communicate with peers and clients in a professional manner.<sup>220</sup> ROADMAP and coaching can be incorporated into Communities of Practice, or they can be adopted as a separate intervention in the first year. Part of an adult self-image is responsibility for the accept responsibility for yourself,<sup>221</sup> including the effects of your communication with others.

#### 4. *Students with disabilities and universal design*

With the growth in the number of students with disabilities attending college and graduate and professional school, law schools need to be more open to adapting Universal Design, sometimes referred to as Universal Design for Learning (UDL) or Universal Design for Instruction (UDI), for the law school curriculum. Universal Design (UD) was not originally planned for education; it was created by Ronald Mace of North Carolina State University in the 1970s. UD begins with the idea that architecture and design fields should "proactively consider human diversity in the design of public spaces so that the resulting environments and products are usable...by [a] diverse public."<sup>222</sup> UD is underpinned by the idea that all spaces should be accessible to all people; accessibility should be not an afterthought or an add-on, because accommodations for people with disabilities also serve people without disabilities; a ramp is an accommodation for a person in a wheelchair, but it is also helpful for a parent pushing a stroller and the FedEx delivery person wheeling a cart of packages.<sup>223</sup>

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<sup>218</sup> *Id.* at 61.

<sup>219</sup> *Id.* at 5, 24-48.

<sup>220</sup> Neil Hamilton, *Leadership of Self: Each Student Taking Ownership over Continuous Professional Development/Self-Directed Learning*, 58 SANTA CLARA L. REV. 567, 576 (2018).

<sup>221</sup> Jeffrey Jensen Arnett et. al., *Clark Univ. Poll of Emerging Adults*, 8 (2012).

<sup>222</sup> Sally S. Scott et al., *Universal Design for Instruction: A New Paradigm for Adult Instruction in Postsecondary Education*, 24 REMEDIAL & SPECIAL EDUC. 369, 371 (2003).

<sup>223</sup> *Id.*

Universal Design for Learning (UDL) and Universal Design for Instruction (UDI) extended this line of reasoning to education. UDL and UDI became a topic of research in the late 1990s and early 2000s;<sup>224</sup> academics began asking there was better way of designing post-secondary curriculum that “preserves the integrity of the course while promoting learning for a broader range of students.”<sup>225</sup> UDI/L not only makes lessons accessible for students with diagnosed disabilities, but also makes lessons more accessible for all students.<sup>226</sup> The benefit of designing curriculum using principals of UDI/L is that after-the-fact instructional changes and courses retrofitted to comply with the ADA are frequently “time-consuming and difficult to implement.”<sup>227</sup> In large classes, the need to accommodate many students with different types of disabilities requires multiple separate modifications, which are not only presents administrative difficulty, but also threaten to dilute instructional goals and stigmatize students with disabilities. Many law professors have heard from students who complain that a peer with a disability gets something they should have (copies of PowerPoints, extra time) and the modifications are unfair or constitute cheating the curve or the normed grading system adopted by many law schools. In contrast ad hoc adjustments to a syllabus and lesson plan to comply with ADA mandates, UDI/L uses a holistic and cohesive curriculum design process, that seeks the meet the needs of a diverse range of students.<sup>228</sup> Additionally, UDI/L is common on undergraduate campuses;<sup>229</sup> for many matriculating law students, it has always been a part of their educational experience.<sup>230</sup>

UDI/L is guided by nine principles; the nine principles provide a guide or framework, rather than “a rigid procedure or prescription for instruction.”<sup>231</sup> Although a comprehensive description of how UDI/L can be applied to and incorporated into legal education is beyond the scope of this article, the principles illustrate the ease with which UDI/L can be used to design courses and curriculum that meet the needs of a diverse student body. The principals;

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<sup>224</sup> Joan M. McGuire et al., *Universal Design and Its Application in Educational Environments*, 27 REMEDIAL & SPEC. EDUC. 166, 169 (2006).

<sup>225</sup> Scott et al., *supra* note 222, at 372.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.* at 374.

<sup>229</sup> See Division of Undergraduate Education and Student Success, *Universal Design for Learning*, UNIV. OF OR., <https://aec.uoregon.edu/faculty-resource-universal-design-learning> (last visited Oct. 20, 2019).

<sup>230</sup> Jason S. Palmer, “*The Millennials Are Coming!*”: *Improving Self-Efficacy in Law Students Through Universal Design in Learning*, 63 CLEV. ST. L. REV. 675, 675 (2015).

<sup>231</sup> Scott et al., *supra* note 222, at 374.

- 1) Equitable use: instruction designed to be useful and accessible to people with diverse abilities;
- 2) Flexibility in use: instruction should be designed to accommodate a wide range of abilities;
- 3) Simple and intuitive: instruction is designed a straightforward and predictable manner;
- 4) Perceptible information: instruction is designed so that necessary information is communicated effectively to the student regardless of ambient noise or sensory inputs;
- 5) Tolerance for error: instruction anticipates variation in individual student learning pace and prerequisite skills;
- 6) Low physical effort: instruction designed to minimize nonessential physical effort to allow maximum attention to learning;
- 7) Size and space for approach and use: instruction is designed with consideration for appropriate size and shape for approach, reach, manipulations, and use regardless of student's body;
- 8) Community of learners: the instructional environment promotes interaction and communication among students and students and faculty;
- 9) Instructional climate: instruction is designed to be welcoming and inclusive.<sup>232</sup>

Communicating to faculty that UDI/L is a guide when designing courses and curriculum, not a rigid prescription, is essential to get buy-in; law professors who believe that this is another mandate from above are likely to reject UDI/L, and believe that UDI/L is potentially infringing upon their instructional freedom. UDI/L actually provides the opposite of a restriction; by considering the needs of all students at the outset, it frees professors from legally-mandated, ad-hoc adjustments to their courses.

UDI/L is not the only shift that needs to be made to make legal education accessible to students with disabilities. A large, and growing, group of matriculating students come to law school with invisible mental and behavioral disabilities.<sup>233</sup> Students with psychiatric disabilities require “facilitated integrated treatment with academic supports” in order to succeed in undergraduate education; those that do succeed and go on to post-graduate

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<sup>232</sup> McGuire, *supra* note 224, at 170 (reprinted from Sally S. Scott et al., *Principles of Universal Design for Instruction* (2001)).

<sup>233</sup> The National Survey on Drug Use and Health show “a shocking rise in depression in a short period of time: 56% more teens experienced a major depressive episode in 2015 than in 2010.” Assuming teenagers born in 2015 will be entering law school within the next ten years, a dramatic rise in the number of students struggling with pre-existing mental illnesses should be expected. Twenge, *supra* note 103, at 103-108, 93-118.

education will continue to need these supports in order to complete law school.<sup>234</sup> Traditional academic support programs (ASPs) are designed to work with underrepresented populations and students in academic difficulty, not students with disabilities. Additionally, ASPs are usually one-person programs, sometimes two, including someone who works in bar support. ASPs have a large caseload working with students in academic difficulty, and these programs are not built for the sort of long-term, one-on-one counseling needed by students with psychiatric disabilities. Some law schools have adjusted to this new population by adding a licensed counselor to the staff.<sup>235</sup> Law schools associated with a nearby university can leverage the resources of the undergraduate counseling center to provide additional supports for students with mental and behavioral health issues. Having a designated therapist or counselor to work with graduate and professional school students can also provide support to students who need an integrated personal-academic team in place in order to succeed in post-graduate education.

##### 5. *Fundamental skills instruction*

Much has been said and written about the skills deficits of incoming law students. Beginning with “Academically Adrift” by Richard Arum and Josipa Roksa, books and articles have documented the decline in academic rigor and study skills of undergraduate students. This presents a particular challenge to law schools. Law schools are not an extension of undergraduate education; succeeding in law school requires academic focus, diligence, close reading and critical thinking skills that build upon strong academic skills that should have been mastered in undergrad. Except for the most academically astute students, this is not the situation.<sup>236</sup> Law schools have struggled with the increased (and increasing) remedial academic needs of incoming students, as well as challenges presented by the increase in emerging adult students alongside traditional adult students. This is unlikely to change in the future. Law schools need to build fundamental skills instruction into the first-year courses so incoming students can master the doctrinal and skills necessary to succeed in law school, on the bar exam, and in practice. Like deficits in professional identity formation and foundational knowledge, Communities of Practice, ROADMAP, and coaching can help ameliorate some of the fundamental skills deficits in matriculating students. Adding seminars on basic civics, grammar and punctuation, as well as close

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<sup>234</sup> Koch et al., *supra* note 112, at 16.

<sup>235</sup> UConn Center for Excellence in Developmental Disabilities, *Jane Thierfeld Brown*, U. CONN., <https://uconncedd.org/person/jane-brown/> (The University of Connecticut School of Law was one of the first law schools to have a psychologist on staff).

<sup>236</sup> See Rebecca Flanagan, *The Kids Aren't Alright: Rethinking the Law Student Skills Deficit*, 2015 BYU EDUC. & L.J. 135, 136 (2015).



reading of primary texts, can fill in some of the gaps in fundamental skills.

V. WHERE WE ARE AND WHERE WE NEED TO GO: THE CASEBOOK  
METHOD, ANDRAGOGY, AND PEDAGOGY TODAY

The strengths, challenges, and needs of emerging adults in the law school classroom require the legal academy to rethink how we teach and why we teach the way we do. Despite incremental changes, law school teaching methods have remained remarkably stable; “as American law schools have developed, their academic genes [in Langdell and Eliot] have become dominant.”<sup>237</sup> A brief review of the history of law school teaching, and the two major disruptions to legal education, trace the slow movement towards more scientifically sound methods of instruction, as well as how far we have to go to meet the needs of all matriculating students--emerging adults and traditional adults--entering the legal academy. The stability and resilience of law school teaching methods dating back to the nineteenth century frames the difficulty of implementing change in law school, despite transformation in who we teach, what we teach, how law practices operate.

Much has been written about the signature pedagogy of law schools; the casebook method.<sup>238</sup> Developed by Christopher Columbus Langdell and Charles Eliot at Harvard in the nineteenth century, the case-dialogue method of instruction ushered in the creation of formal legal education as a graduate program of study.<sup>239</sup> The casebook method was not based on either research or theories of learning; the casebook method is a reflection of the broad “spirit of science” sweeping universities at that time.<sup>240</sup> From the start, the casebook method introduced by Langdell at Harvard was the subject of criticism and controversy.<sup>241</sup> Despite the controversy, growth of cognitive science, and the volumes of research on how people learn, the “scientific” method of discerning the law through appellate opinions, and questioning by a professor acting as a court, survives.

A. *Criticism and Incrementalism: Experiential Education and Academic Support*

Criticism of law school teaching methods has been a constant, while Langdellian methods predominated as the method of teaching in law school for over eighty years. At the start of the twentieth century, two reports by the Carnegie Foundation analyzed law school methods; Josef Redlich’s *The Common Law and the Case Method in American Law Schools* published in

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<sup>237</sup> William M. Sullivan, et. al, *supra* note 169.

<sup>238</sup> Robert Stevens, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, xv (1983); *see also* Carnegie Report, *supra* note 169 at 4.

<sup>239</sup> Stevens, *supra* note 238 at xv.

<sup>240</sup> *Id.* at 52.

<sup>241</sup> *Id.* at 41.

1914, and Alfred Z. Reed's *Training for the Public Profession of Law* in 1921.<sup>242</sup> Despite the criticism about a unitary bar and universal standards, and the casebook method, these methods have persisted. In the 1930s, Jerome Frank began the call for a return to a modified apprenticeship model, with "lawyer schools."<sup>243</sup> Despite Frank's call in the 1930s, there were few efforts at improving legal education, or providing for more practical training alongside the casebook method, for several decades.

Real change did not come until the sociocultural and demographic changes during the 1960s opened law schools up to other methods of teaching law students. The first large scale change to law school teaching was the addition of clinics. Although clinical education first gained ground in the 1950s,<sup>244</sup> it became a part of the foundation of legal education with the publication of the MacCrate Report in 1992. The second major change to law school teaching and learning came with the development of Academic Support Programs. Now usually know as Academic Success, or Academic Enrichment, these programs are an outgrowth of legal writing programs and Minority Affairs offices that were created in response to the struggles of students who were previously left out of the academy.<sup>245</sup> The roots of change in law school teaching in learning are important to note because they arose from sociocultural and demographic changes, not advances in learning science. Advances in how to best teach, and how students best learn, have not produced change in graduate and professional programs, not just law schools.<sup>246</sup> However, historically, changes in who attends law school, and their successes and struggles, have resulted in improved methods and programs for all law students.

The MacCrate Report, published by the American Bar Association in 1992, was called an "epochal document" at the time of its publication.<sup>247</sup> The MacCrate Report set out ten fundamental lawyering skills and four professional values that all law students should master before they begin practice.<sup>248</sup> Despite the groundbreaking calls to professional and clinical competence in the report, it was never fully implemented. By 1995, commentators were already lamenting the "failure to establish a coherent

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<sup>242</sup> *Id.* at 112–113.

<sup>243</sup> Katherine R. Kruse, *Getting Real About Legal Realism, New Legal Realism and Clinical Legal Education*, 56 N.Y.L. SCH. L. REV. 295, 296 (2012).

<sup>244</sup> Stevens, *supra* note 238 at 212.

<sup>245</sup> Louis N. Schulze, Jr., *Alternative Justifications for Law School Academic Support Programs: Self-Determination Theory, Autonomy Support, and Humanizing the Law School*, 5 CHARLESTON L. REV. 269, 276–77 (2011).

<sup>246</sup> Derek Bok, *We Must Prepare Ph.D Students for the Complicated Art of Teaching*, CHRON. HIGHER ED. (Nov. 11, 2013) <https://www.chronicle.com/article/We-Must-Prepare-PhD-Students/14289>.

<sup>247</sup> Michael Norwood, *Scenes from the Continuum: Sustaining the MacCrate Report's Vision of Law School Education into the Twenty-First Century*, 30 WAKE FOREST L. REV. 293, 293 (1995).

<sup>248</sup> Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 113 (2001).

strategy for the implementation of this vision.”<sup>249</sup> The MacCrate Report implicitly embraced many of the features of andragogy, including the notion that legal education should embrace experiential education, that legal education should be more connected to “what students need to know to be prepared to practice law upon graduation,” which would connect legal education to the internal motivation of most law students.<sup>250</sup>

The twenty-first century brought two more critiques of legal education; the Carnegie Report, and CLEA’s Best Practices in Legal Education. Both books, published in 2007, again call upon law schools to embrace modern teaching methods while retaining the “signature pedagogy,” or the case dialogue method, in legal education.<sup>251</sup> Both the Carnegie Report and Best Practices criticize law schools lack of professional identity formation,<sup>252</sup> while reserving some praise for the “first apprenticeship,” or the intellectual or cognitive apprenticeship, which “focuses on the student on the knowledge and the way of thinking of the profession.”<sup>253</sup> Both the Carnegie Report and Best Practices level many of the same criticisms of legal education that are addressed in this article. Twelve years after their publication, legal education has not adopted many of the suggestions articulated by either document, and the justifications for improving legal education have only become stronger in the last decade.

The one thing law schools, as a whole, have not done is apply advances in learning and cognitive sciences to the teaching methodology. While graduate and professional education in general has been slow to adopt best practices in teaching methods, law schools are unique in their reticence to reconsider teaching methods to better serve their students.

Most troubling, legal education has also failed to recognize the changes to their student body. Students need more scaffolding, more support and to master the practice and professionalism expected of graduates. The rise of emergent adulthood comes at a time when law practices expect new hires to be “practice ready” on their first day.<sup>254</sup> Students are left with a gap in their preparation; not yet ready to master professional norms while in law school, graduates are expected to have mastered professional norms and professional responsibility on their first day as practicing attorneys.

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<sup>249</sup> Norwood, *supra* note 247, at 305.

<sup>250</sup> Bryan F. Taylor, *Through the Looking Glass: Perceptions on the Law School Learning Experience*, 61 LOY. L. REV. 275, 282 (2015).

<sup>251</sup> Carnegie Report, *supra* note 169, at 24.

<sup>252</sup> *Id.* at 129, 133; Best Practices, *supra* note 170, at 81.

<sup>253</sup> Carnegie Report, *supra* note 169, at 28; Best Practices, *supra* note 170, at 19.

<sup>254</sup> Louis N. Schulze Jr., *Alternative Justifications for Academic Support II: How "Academic Support Across the Curriculum" Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 CAP. U. L. REV. 1, 2-3 (2012).

*B. Where We Are and What We Have Become: The Methodology of Legal Education*

Although clinical legal education began, in earnest, in the 1960s, it was still an emerging practice twenty years later, when Frank Bloch wrote *The Andragogical Basis of Clinical Legal Teaching*. *The Andragogical Basis of Clinical Legal Teaching* brought the theory of andragogy, and really, the first teaching theory separate from the case method, into law schools.<sup>255</sup> Frank Bloch modified the original andragogical framework as devised by Malcolm Knowles to fit the contours of clinical legal education, and introduced andragogy to clinical legal education as “new justification for legal education based on value as methodology.”<sup>256</sup> While Bloch’s introduction of andragogy into law school teaching and learning amounted to a watershed moment, a short history of origins of educational theory, pedagogy and andragogy, helps frame why andragogy needs to evolve into a more inclusive methodology across the legal academy to meet the needs of all matriculating students.

Pedagogy has roots in Ancient Greece, through the middle ages, German “tenets of humanism, realism, philanthropism, and naturalism,” and Rousseau in France, to what we can call modern pedagogy.<sup>257</sup> The fundamentals of modern pedagogy, developed by such luminaries as John Dewey,<sup>258</sup> Jean Piaget,<sup>259</sup> Lev Vygotsky,<sup>260</sup> and Maria Montessori,<sup>261</sup> focused much of their empirical work on the study of children. While work on brain development has shown how brains grow and develop from birth to roughly the age of twenty-five, the early scholars of pedagogy did not have the advanced imaging technology to see that post-adolescent brain maturation, specifically the increased myelination of the cortex and frontal lobe maturation, and relied on observation to conduct studies on learning.<sup>262</sup> Because of the limitations of science and economics, few theorists believed adults could learn, and therefore, only children were considered proper subjects to study learning and education. Today, there is little science to support the idea that children and adults learn differently, only that the social context and environment of learning differs as students age.<sup>263</sup> There is

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<sup>255</sup> Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982).

<sup>256</sup> *Id.* at 325.

<sup>257</sup> W.H. Payne, *Compayre's History of Pedagogy*, 7 SCI. 469, 469 (1886) (book review).

<sup>258</sup> Carol Garhart Mooney, THEORIES OF CHILDHOOD: AN INTRODUCTION TO DEWEY, MONTESSORI, ERIKSON, PIAGET, AND VYGOTSKY, 14 (2<sup>nd</sup> Ed., 2013)

<sup>259</sup> *Id.* at 77–78.

<sup>260</sup> *Id.* at 99.

<sup>261</sup> *Id.* at 36.

<sup>262</sup> Melissa S. Caulum, *Postadolescent Brain Development: A Disconnect Between Neuroscience, Emerging Adults, and the Corrections System*, 2007 WIS. L. REV. 729, 743 (2007).

<sup>263</sup> Dale Feuer & Beverly Geber, *Uh-Oh...Second Thoughts About Adult Learning Theory*, TRAINING, Dec. 1988 at 31, 32.

considerable research that suggests children's capacity to learn is limited by their age and biology, while adults over the age of 25 do not have biological limitations on their learning.

Due to practical and economic limitations, it wasn't until the nineteenth century that theorists considered the needs of adult learners. The term andragogy was first used in Germany as early as 1833,<sup>264</sup> but was developed in the United States by Edourd Lindeman<sup>265</sup> and Malcolm Knowles. Andragogy was first introduced in the United States in the 1920s, with the publication of Eduard Lindeman's *The Meaning of Adult Education* in 1926 and Edward L. Thorndike's *Adult Learning* in 1928, roughly sixty years after Langdell developed post-graduate legal education in the United States.<sup>266</sup> Thorndike was revolutionary during his time because his area of study was the *ability* of adults to learn, something previously dismissed by learning theorists. While Eduard Lindeman "laid the foundation for a systemic theory of adult learning," he was not particularly interested in adults per se; he theorized that his work with adults was in contrast to "conventional" education, or pedagogy, delivered to children during their formative years.<sup>267</sup> The pedagogical model of education assigns responsibility for student learning on the teacher; all decisions regarding what, how, and when things will be learned is directed by the teacher.<sup>268</sup> This teacher-centered pedagogical model assumes the learner will be submissive to the teacher, a "dependent personality."<sup>269</sup> Andragogy was developed as a counterpoint to pedagogy or "conventional education."<sup>270</sup> Prior to World War I, pedagogy was the "only existing educational model."<sup>271</sup> In contrast to the pedagogical teacher-centered model of instruction, andragogy assumes the learner has an adult self-concept and intrinsic motivation to learn.<sup>272</sup>

Although the nascent field of adult education continued to grow through the 1930s, 40s, and 50s, the ideas that would become andragogy did not coalesce into a coherent framework until Malcolm Knowles began his work in 1950, with the book *Informal Adult Education*.<sup>273</sup> Knowles developed his theory of andragogy, or adult learning, for the next fifty years, until his death in 1997. The conditions under which Knowles did most of his research inform his theory; he developed a theory to serve adults engaged in continuing education, supplemental education, and education required for

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<sup>264</sup> MALCOLM KNOWLES, *THE ADULT LEARNER: A NEGLECTED SPECIES* 28-30 (1973).

<sup>265</sup> Knowles, *supra* note 2, at 33.

<sup>266</sup> *Id.* at 19.

<sup>267</sup> *Id.*

<sup>268</sup> *Id.* at 41.

<sup>269</sup> *Id.*

<sup>270</sup> Knowles, *supra* note 2, at 33.

<sup>271</sup> *Id.*

<sup>272</sup> *Id.* at 43.

<sup>273</sup> *Id.* at 40.

advancement in an established career.<sup>274</sup> As Knowles theory matured, he moved away from the idea of andragogy as a method of teaching adults, and adopted the view that andragogy was the end “of a spectrum,” where sometimes pedagogical assumptions were most appropriate, at other times andragogical assumptions, regardless of the age of the learner.<sup>275</sup> An examination of Knowles assumptions of pedagogy and andragogy demonstrate the need for a more inclusive theory of legal learning that accommodates the needs of traditional adults, emerging adults, with an understanding of the unique structure and function of law schools as both graduate education and professional training.

C. *Applying the Assumptions of Andragogy and Pedagogy to Legal Education: Meeting in the Middle*

Knowles begins his analysis with the learner’s need to know.<sup>276</sup> Bloch did not analyze this assumption as applied to clinical legal education, because Knowles did not add it to his assumptions until 1989, seven years after the publication of *The Andragogical Basis of Clinical Legal Education*. The assumption that learning is driven by “adults need to know why they need to learn something” is the most basic, or fundamental assumption of andragogy.<sup>277</sup> Pedagogy, in contrast, assumes “learners only need to know....if they want to pass and get promoted.”<sup>278</sup> Law students exhibit behaviors reflective of both these assumptions; law students certainly learn things because they “want to pass and get promoted”; this extrinsic motivation is frequently cited as a source of law student distress.<sup>279</sup> However, the law school is a choice, not a requirement like primary and secondary schooling, and one hopes that most law students have some understanding of why they are in law school. However, the first year of law school, with its slate of required classes, resembles a more pedagogical approach to learning; students have little choice in what they learn, and if they did not spend time interning with lawyers before matriculation, they may have no idea why Property, Torts, Contracts, Civil Procedure, Criminal Law, and Legal Writing form the core of the 1L curriculum at nearly all of the 205 accredited law schools.

The second assumption of andragogy is where Bloch begins his analysis, with the learner’s self-concept. The learner’s self-concept, specifically the learner’s self-concept as an adult, is where we see the most conflict between andragogy and the needs of emerging adult law students. Pedagogy assumes

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<sup>274</sup> *Id.* at 4 (referring to andragogy and “workplace learning” and andragogy as “the single most popular idea in the education and training of adults.”); Knowles, *supra* note 264, at 1-2.

<sup>275</sup> Knowles, *supra* note 2, at 43.

<sup>276</sup> *Id.* at 43, 224.

<sup>277</sup> *Id.* at 43.

<sup>278</sup> *Id.* at 41.

<sup>279</sup> Sheldon & Krieger, *supra* note 70.

“the teacher’s concept of the learner is that of a dependent personality.” In contrast, andragogy assumes “adults have a self-concept of being responsible for their own decisions...they develop a deep psychological need to be seen by others and treated by others as being capable of self-direction.”<sup>280</sup> As previously discussed, most emerging adults do not enter law school with an adult self-concept; many are content with a pedagogical model of professorial control in the classroom, even if it is not in their long term self-interest. There is little apparent self-direction in the Socratic classroom or the casebook method; students have no say in the materials or the pace of the learning, and cold-calling students in class gives the professor all the control and direction in the classroom. Unlike other areas of adult learning, most law students do not have the foundational legal experience to know what they need to know to practice as a licensed attorney. While many, if not most, first year law school classes use a modified Socratic method, and anecdotally, cold-calling seems to be on the decline, first year law students are allowed very few choices inside or outside the classroom. For emerging adult students, this return to pedagogical methods is both comforting and comfortable; millennials, who make up just one cohort of emerging adults, “look externally for direction and approval rather than take responsibility for their own learning.”<sup>281</sup> Law schools have not adopted a methodology that moves students from dependent learner to self-directed learner, although self-direction is key to lifelong learning necessary for success in practice. To orient students towards self-directed learning, legal education needs to be highly structured yet allow student control over their learning. This structured, noncontrolling pedagogical approach in the classroom is in many ways, necessary, because few first-year law students know enough about the legal profession to be self-directing at the outset of their education; they do not know what they need to know. Legal education can be less controlling, yet retain structure, by offering students as much choice as possible; meaningful rationales when no choice can be provided; and caring about the student's point of view.<sup>282</sup> An example of a noncontrolling, structured teaching method would be giving students the option for a timed, in-class exam, or a take-home exam. Both of these options strengthen skills students need to succeed as lawyers, and give students choices about a high-stakes exam. This autonomy-supportive, structured, yet non-controlling approach moves students from extrinsic motivation and direction, to intrinsic motivation and self-direction. Allowing students some autonomy in the classroom can also move students

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<sup>280</sup> Knowles, *supra* note 2, at 44.

<sup>281</sup> Buckner & Strawser, *supra* note 29, at 361.

<sup>282</sup> Paula J. Manning, *Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes*, 43 CUMB. L. REV. 225, 232 (2013).

towards an adult self-concept, where they are responsible for themselves and have the authority to craft a professional identity consistent with client representation. By adopting highly structured, noncontrolling teaching methods, legal education allows students the autonomy to retain intrinsic motivation to learn.

Despite emerging adult's preference for external direction, law students need to develop self-directed orientation to learning.<sup>283</sup> Self-directed learning is defined as the "process in which individuals take the initiative...in diagnosing their learning needs, choosing and implementing appropriate learning strategies, and evaluating learning outcomes."<sup>284</sup> Most emerging adults do not have fundamental study skills;<sup>285</sup> many come to law school expecting detailed, explicit review sessions,<sup>286</sup> study guides that tell them exactly what will be tested and how it will be tested,<sup>287</sup> and opportunities for extra credit if they fail to meet explicitly-stated criteria in the syllabus.<sup>288</sup> Although they were likely told in college that an hour of class should result in two to three hours of study time, their experience is that this is not true; most were studying just a few hours a week for all of their classes.<sup>289</sup> To successfully reach emerging adult law students, self-directed learning needs to be taught, not assumed.<sup>290</sup> Law is a profession of lifelong learning, and teaching student how to study and learn is essential to their success as attorneys.<sup>291</sup>

Most podium law professors export the teaching of lifelong learning skills to Academic Support (ASP) or Legal Writing Programs. ASPs see

<sup>283</sup> Schulze, *supra* note 245, at 302, 304.

<sup>284</sup> Malcolm Knowles, *Self-Directed Learning: A Guide for Learners and Teachers* 18 (1975). *See also* Hamilton & Organ, *supra* note 89, at 856.

<sup>285</sup> Jeffrey R. Young, *Homework? What Homework?*, CHRON. HIGHER EDUC., Dec. 6, 2002, <http://chronicle.com/article/Homework-What-Homework-/2496>. *See also* Babcock & Marks, *supra* note 16.

<sup>286</sup> Maryellen Weimer, *Test Review Sessions: A Better Design*, FACULTY FOCUS (March 5, 2013) <https://www.facultyfocus.com/articles/effective-teaching-strategies/test-review-sessions-a-better-design/>; Stacy Jackson, *An Effective Review Session (Without Teaching to the Test)*, Graduate Student Instructor Teaching and Resource Center, <https://gsi.berkeley.edu/jacksons-2011/>; Vanderbilt University, Center for Teaching, *Ask Professor Pedagogy: Leading Review Sessions* (July 26, 2013) <https://cft.vanderbilt.edu/2013/07/ask-professor-pedagogy-leading-review-sessions/>; Yale Poorvu Center for Teaching and Learning, *Review Sessions*, <https://poorvucenter.yale.edu/teaching/teaching-how/chapter-3-languages-labs-and-review-sections/review-sessions>.

<sup>287</sup> Etty Vandsburger & Rana Duncan-Daston, *Evaluating the Study Guide as a Tool for Increasing Students' Accountability for Reading the Textbook*, 42 J. OF COLLEGE READING AND LEARNING 6, 12, 16 (2011); Candice C. Hollingsead et. al., *Study Guides: Teacher Tips A Review of Literature with Practical Implications*, 20 LANGUAGE ARTS J. OF MICH. 17, 17-18 (2004).

<sup>288</sup> Dana S. Dunn & Jane S. Halonen, *The Extra-Credit Question: Should You Offer It or Resist?*, CHRON. HIGHER EDUC. (Apr. 3, 2019), <https://www.chronicle.com/article/The-Extra-Credit-Question-/246015>. *See also* Simon A. Lei et. al., *Resistance to Reading Compliance Among College Students: Instructors' Perspectives*, 44.2 C. STUDENT J. 219, 226 (2010).

<sup>289</sup> Babcock & Marks, *supra* note 16.

<sup>290</sup> Schulze, *supra* note 245, at 306.

<sup>291</sup> Renee Nicole Allen & Alicia R. Jackson, *Contemporary Teaching Strategies: Effectively Engaging Millennials Across the Curriculum*, 95 U. DET. MERCY L. REV. 1, 16 (2017).



students who struggle academically, in many cases, because they do not have the foundational knowledge or schema to understand and interpret what is taught in class, and do not have the self-directed learning skills to teach themselves what they do not know or understand.<sup>292</sup> Because most ASPs are limited in what material they can use to teach students study skills, the lessons often feel removed from the learning in the classroom.<sup>293</sup> Most students only see ASPs if they are academically at-risk, which is too late for many students.

Legal Writing Programs are often tasked with teaching students the research and writing skills they should have mastered in college, as well as the domain-specific tasks associated with lawyering. This is too much to ask of one class, during one, maybe two, semesters of law school. And like ASP, the skills taught in Legal Writing feel disconnected from the learning in podium courses, and for the most academically at-risk students, wholly isolated from skills they need to succeed in their podium courses. Clear writing is clear thinking, and few students have the opportunity to elucidate their doctrinal thinking through writing in their doctrinal classes. This is not a criticism of the work done by legal writing professors; by leaving legal writing, and skills in general, outside of the doctrinal curriculum, students cannot integrate knowledge and skill.

Law schools have several options that would provide support to emerging adults students as they move to an adult self-concept. Law schools can adopt what Prof. Schulze refers to as “ASP across the curriculum.”<sup>294</sup> ASP across the curriculum involves leveraging the benefits of ASP to help law schools respond to the criticisms of legal education. By using an already existing resource, law schools can help emerging adults understand the teaching in the doctrinal classroom. Many ASPs already use peer mentoring; by adapting peer mentoring to foster Communities of Practice<sup>295</sup>, where students without background knowledge can leverage the knowledge of their peers to enhance their understanding, as well as running ROADMAP and coaching. It is critical to note that leveraging the skills and knowledge of existing ASPs cannot be done without additional resources. ASPs are frequently underfunded and understaffed, and any additional responsibilities need to be met with additional resources for staffing and training.

Leveraging ASPs to provide broad support for emerging adult law students should include adoption of Prof. Hamilton’s ROADMAP curriculum, which can support self-directed learning as well as professional identity formation.<sup>296</sup> Many of the academic challenges faced by emerging

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<sup>292</sup> Neil Hamilton, *Formation-of-an-Ethical-Professional-Identity (Professionalism) Learning Outcomes and E-Portfolio Formative Assessments*, 48 U. PAC. L. REV. 847, 859 (2017).

<sup>293</sup> Schulze, *supra* note 245, at 284.

<sup>294</sup> Schulze, *supra* note 254, at 27-30.

<sup>295</sup> Cherrstrom et. al., *supra* note 158, at 44-49.

<sup>296</sup> Hamilton, *supra* note 190, at 139.

adults are problems rooted in a lack of self-direction, a result of an adolescent self-image. Many emerging adults come to law school without intrinsic self-direction; they rely on parents and professors to tell them what to do and how to do it.<sup>297</sup> Law schools assume matriculating students are self-directed and know how to study and learn independently. When students fail to meet academic standards because they do not know how to study and do not know how to help themselves, they are referred to ASPs for academic assistance. Prof. Hamilton's ROADMAP curriculum provides law students with a step-by-step plan to move from an emerging adult self-concept to an adult self-concept, capable of meeting the tasks associated with competent, novice legal representation. Although ROADMAP was developed to assist students with formation of professional identity, the adult self-concept that is necessary to form a professional identity also moves them to self-directed learning.<sup>298</sup> The interventions and strategies that foster professional formation are also effective at fostering academic proficiency; by adopting ROADMAP, students will also develop the skills to master first-year skills and doctrine.

The third assumption of andragogy is the role of learner's experiences.<sup>299</sup> Pedagogy assumes the "learner's experience is of little worth as resource for learning; the experience that counts is that of the teacher."<sup>300</sup> In contrast, andragogy assumes "adults come into an educational activity with both a greater volume and different quality of experience from that of youths....It also means that for many kinds of learning, the richest resources for learning reside in the learner's themselves."<sup>301</sup> This is where we see another gap between the assumptions of pedagogy and andragogy; unlike pedagogy, law students prior experiences are essential for the foundational knowledge and schema necessary to understand domain-specific legal curriculum, but emerging adult law students do not have the volume and quality of law-related, foundational experiences that will enable them to fully understand first-year course content. To meet the learning needs of emerging adult law students, law schools need to provide the foundational knowledge and schema that emerging adults lack because they have not yet assumed an adult role or assumed adult responsibilities that build context through experience. Foundational knowledge and schema can provide students with the mental models that will enable them to make connections between what they know and what they need to learn, enabling them to engage in higher-order, effective study skills, such as elaboration, that makes

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<sup>297</sup> Shmuel Shulman et. al., *Emerging Adulthood: Age-Related Tasks and Underlying Self Processes*, 20 J. ADOLESCENT RES. 577, 582-583, 586-587 (2005).

<sup>298</sup> Hamilton, *supra* note 190, at 126-127.

<sup>299</sup> Knowles, *supra* note 2, at 44. See also Bloch, *supra* note 254, at 331.

<sup>300</sup> *Id.* at 42.

<sup>301</sup> *Id.* at 44-45.

learning “sticky.”<sup>302</sup> By adopting CoP, law schools can bridge the disconnection between foundational knowledge and law school learning, and move students from the teacher-dependent learning to self-directed, lifelong learning.

The fourth assumption of andragogy is the learner’s readiness to learn. In pedagogy, the “learners become ready to learn what the teacher tells them they must learn if they want to pass and get promoted.”<sup>303</sup> Most experts in learning and child development would argue that this assumption of pedagogy is incomplete; children need to be developmentally ready to learn a task.<sup>304</sup> Similarly, andragogy posits that “adults become ready to learn those things they need to know and be able to do in order to cope effectively with their real-life situations.”<sup>305</sup> Both pedagogy and andragogy rely on the learner being developmentally ready to master a task. For pedagogy, this is often biological readiness; children cannot learn what is outside the scope of their brain development, which is driven by biology. While emerging adults before the age of 25 are still developing cognitively,<sup>306</sup> biology is usually not what limits their readiness to learn. In andragogy, “the critical implication...is the importance of timing learning experiences to coincide with developmental” needs.<sup>307</sup> A law student’s developmental needs should match their educational goals,<sup>308</sup> but most of legal education separates doctrinal learning from the experiential, or clinical, education that provides meaning and purpose to doctrinal education. At most law schools, students are asked to wait until their second or third year of law schools to apply and practice what they have learned. But this artificial division between doctrine and experience also limits understanding; students without foundational knowledge are not given the school-sponsored or formal, educational opportunity to see a closing, attend a criminal hearing, or witness a deposition.

There are several rationales for this division, one of which is state laws that limit student representation in courts or proceedings.<sup>309</sup> However, first-year law students, who would benefit most by seeing how the law is applied and practiced while they are learning doctrine and skills, would not need to be certified by the state in order to observe. By adding guided observations to the first-year curriculum, professors and students do not need to “sit

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<sup>302</sup> Brown et. al., *supra* note 148, at 5.

<sup>303</sup> Knowles, *supra* note 2, at 42.

<sup>304</sup> Mooney, *supra* note 257, at 77, 81.

<sup>305</sup> Knowles, *supra* note 2, at 45.

<sup>306</sup> Caulum, *supra* note 262, at 732; Michael N. Tennison & Amanda C. Pustilnik, “*And If Your Friends Jumped Off A Bridge, Would You Do It Too?*”: How Developmental Neuroscience Can Inform Legal Regimes Governing Adolescents, 12 IND. HEALTH L. REV. 533, 556 (2015).

<sup>307</sup> Knowles, *supra* note 2, at 45.

<sup>308</sup> *Id.* at 226.

<sup>309</sup> See Georgetown Law School, *Student Practice Rules—Clinical Research Guide*, <https://guides.ll.georgetown.edu/c.php?g=271042&p=1808947>.

passively and wait for readiness to develop naturally.”<sup>310</sup> Guided observations can supplement CoP to “induce readiness through exposure to models of superior performance...simulation exercises, and other techniques.”<sup>311</sup>

Guided observations also support a mature orientation to learning. Pedagogy supposes a “subject-centered orientation to learning...Learning experiences are organized according to the logic of the subject-matter content”; as currently configured at most law school, the first year represents a pedagogical orientation to learning.<sup>312</sup> Because students are rarely given the opportunity to observe the practice of what they are learning, the first year is organized around what makes sense while teaching Property, Torts, Civil Procedure, Criminal Law, and Contracts. In contrast, the andragogical model assumes “adults are life-centered (or task-centered or problem-centered) in their orientation to learning. Adults are motivated to learn to the extent that they perceive that learning will help them perform tasks or deal with problems they confront in their life.” A first-year that deprives students of the opportunity to observe and discuss how their learning would be used in the situations they encounter in their guided observations misses a critical learning opportunity that most students would appreciate.

The last principle of andragogy is the motivation to learn.<sup>313</sup> Adults are “responsive to external motivation, but the most potent motivators are internal pressures.”<sup>314</sup> In contrast, pedagogy supposes that learners are motivated to learn by external motivators, such as parental pressure.<sup>315</sup> This last principle of andragogy is less descriptive of adult learners than the other principles, and it can be asserted that all learners are best motivated by an internal desire to know and learn. The most salient element the andragogical motivation are the roadblocks to learning for adults, such as a negative self-concept as a student.<sup>316</sup> Motivation to learn, and retention and transfer of knowledge, is fostered by an “emotional connection to the learning,” where the learning itself results in a “positive emotional impact” and learning is enhanced.<sup>317</sup> This is a particular challenge in law schools, where studies confirm that law students “experienced large reductions in positive affect, life satisfaction, and overall [well-being]” after their first year.<sup>318</sup> Further research by Krieger and Sheldon has found that there are ways to ameliorate the distress experienced by almost 40% of the students, and these steps are

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<sup>310</sup> Knowles, *supra* note 2, at 46.

<sup>311</sup> *Id.*

<sup>312</sup> *Id.* at 42.

<sup>313</sup> *Id.* at 47.

<sup>314</sup> *Id.*

<sup>315</sup> *Id.* at 43.

<sup>316</sup> Knowles, *supra* note 2, at 228.

<sup>317</sup> *Id.*

<sup>318</sup> Sheldon & Krieger, *supra* note 70, at 272.

the same that help students develop self-directed learning skills. By giving students by offering students as much choice as possible; meaningful rationales when no choice can be provided; and caring about the student's point of view.<sup>319</sup> By offering students choices within the highly-structured first year of law school, law schools can diminish the negative affect of legal education by giving students some sense of control.<sup>320</sup> With less negative affect, students are more likely to emotionally connect with their learning, and increase their intrinsic motivation to learn.

The weaknesses inherent in using either pedagogy or andragogy as a methodology for law school teaching and learning make explicit the need for a more comprehensive methodology—a middle ground between pedagogy and andragogy-- and inclusive terminology, for law school learning. While the adoption of andragogy by clinical legal education in the 1980s marked more sophisticated and evolved understanding of teaching and learning in legal education, it no longer serves our students or the needs of the profession. By embracing a new term, and a new understanding of law students, legal education allows for the flexibility to meet the needs of students throughout the “spectrum” of learning needs.<sup>321</sup>

#### VI. TOWARDS AN INCLUSIVE METHODOLOGY: ANTHROGOGY

The term “anthrogogy”; generally attributed to Prof. David Trott from a speech in 1991, anthrogogy was the answer to the question “Is there a generic set of principles that guide lifelong learning?”<sup>322</sup> Anthrogogy was intended as a humanist system of teaching<sup>323</sup> that encompasses learners of all ages, and bridges the *peda* (child) and *andro* (man) divide; it is the middle ground between dependent and self-directed learning.<sup>324</sup> The name is not without critics; “gogymania” in the 1980’s spurred criticism that “theory building” took away from developing sound teaching practices.<sup>325</sup> The criticism of gogymania actually supports the use of the term to describe a new methodology for teaching law students; the authors “question the need for and significance of labeling education for different adult groups,”<sup>326</sup> but the methods that created the labels have acquired meaning, and the meaning is a poor fit for matriculating law students. The labels matter less than the

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<sup>319</sup> Manning, *supra* note 282, at 232.

<sup>320</sup> Corie Rosen, *The Method and the Message*, 12 NEV. L.J. 160, 183 (2011).

<sup>321</sup> Knowles, *supra* note 2.

<sup>322</sup> David C. Trott, *Anthrogogy*, Paper Presentation at the Annual Meeting of American Association for Adult and Continuing Education, (Oct. 1991) (transcript available through ERIC document delivery service, on file with author).

<sup>323</sup> *Id.* at 9.

<sup>324</sup> *Id.* at 5.

<sup>325</sup> *Id.* at 6, *see also* Bradley Courtenay & Robert Stevenson, *Avoiding the Threat of Gogymania*, 1983 LIFELONG LEARNING: THE ADULT YEARS 10, 10 (1983).

<sup>326</sup> Courtenay & Stevenson, *supra* note 325, at 10.

methods, and a new methodology for teaching law students is overdue. Anthrogy, derived from anthropo, or everyone, signals to students that law school can be inclusive, welcoming, and meet the where they are.

## VII. CONCLUSION

Emerging adults are not new, and they are definitely here to stay. Matriculating law students are more diverse, demographically, socioeconomically, and educationally; they are less likely to have reached adult milestones before matriculation and less likely to bring an adult self-concept to law school; and they have weaker study skills and fewer fundamental skills, such as critical reading, writing, and analysis, than prior generations of law students. Emerging adults are a product of macroeconomic headwinds beyond their control; instead of blaming students, we need to meet them where they are and adjust our expectations to their experience. And it is critical to remember that emerging adult law students make up only half the class of entering law students; regardless of age, roughly half of entering law students would be defined as an adult, including reaching traditional milestones before matriculation. This diversity--of age, experience, and self-image--is best served by teaching methods reflective of today's law students as well as developments in cognitive science that expand what we know about how all people learn, remember, and transfer knowledge across domains and through time. Law schools, at their best, develop students into lifelong learners, capable of learning the law and incorporating changes in the profession as technology and laws evolve.

Anthrogy would not mean fundamentally changing law school, but it would mean change in an academy that has remained steadfast in their opposition to altering their methods. Law schools adopting an anthrogy approach would assess their students as orientation to determine where they are in terms of self-concept as an adult, as well as what they know about foundational concepts in first-year courses. Based on the results of the ROADMAP assessment and an assessment of foundational knowledge, students would be sorted into small Communities of Practice, where upper-division students with greater foundational knowledge can help first-year law students expand their context while providing them with critical peer support. Students would be offered opportunities for guided observation of lawyering throughout their first year, to provide additional context to their doctrinal learning. Law professors would provide explanations for their educational choices, and allow students choices, such as the option of an in-class or out-of-class final exam. Law school courses will integrate principles of universal design for instruction and universal instructional design into law school course design and support the inclusion of students with disabilities in the classroom and in the profession. Academic Support programs would

be empowered to help emerging adult law students by coordinating Communities of Practice, guided observations, as well as formative assessments throughout the first-year, to measure student learning and adjusting supports to meet the changing needs of students. Understanding and embracing the students we have, instead of the students used to have or the students we wish we had, is at the heart of anthrogogy in law schools. Anthrogogy will be a work-in-progress, as all meaningful teaching and learning theories should be

Moving away from adult learning teaching methods, such as andragogy, that no longer represent the learning needs or identities of today's law students, anthrogogy will remain a work-in-progress because the science of learning continues to grow through empirical work in education. Remaining cognizant of the diversity of experiences, beliefs, and abilities of our students, will allow law professors to better meet the needs of current matriculating law students as well as future generations of students.