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Experimenting with Problem-Based Learning in Constitutional Law

Barbara J. Flagg*

Problem-based learning (PBL), first developed for use in a professional setting at McMaster University in Ontario, Canada in the 1960s, is an approach to adult education that has gained widespread acceptance in medical education, most notably in the United States at Harvard Medical School.¹ The goal of PBL is to develop students' skills at "clinical reasoning" and "self-evaluation and study."² In other words, the problem-based approach emphasizes applied knowledge and aspires to help students learn how to learn.

At McMaster University, medical students work in small groups at their own pace on a problem they select from a menu of faculty-designed problems meant to present a range of issues relevant to the subject matter of a given course. Each group meets regularly with a

* Professor of Law, Washington University, St. Louis. I would like to thank Jane Aiken, Susan Appleton, Pauline Kim, Kim Mohr, Kim Naegele, Kate Nash, and Jessica Weltman for their helpful comments on an earlier draft of this Article. And special thanks to the former students who allowed me to reprint their stories.

1. The New Pathway program at Harvard Medical School was initiated on an experimental basis in 1985 and became the sole program for practice-oriented M.D. students in 1987. (There is a research-oriented program as well, which has a different curriculum for the first two years.) The curriculum for the first two years in the New Pathway program is quite similar to that at McMaster University; it is "a problem-based approach that emphasizes small group tutorials and self-directed learning, complemented by laboratories, conferences, and lectures." Harvard Medical School Plan of Instruction for the Cannon, Castle, Holmes, and Peabody Societies, at <http://www.medcatalog.harvard.edu/programs/cchp-plan.html> (last visited Feb. 12, 2002). In the discussions of problem-based learning that follow, I rely most heavily on the extensive description of the McMaster program provided by one of its founders, Howard Barrows, in HOWARD S. BARROWS & ROBYN M. TAMBLYN, PROBLEM-BASED LEARNING: AN APPROACH TO MEDICAL EDUCATION (1980).

2. At McMaster the stated objectives are that the physician "should be able to evaluate and manage patients with medical problems effectively, efficiently, and humanely (clinical reasoning)," and "should be able to continually define and satisfy his particular educational needs in order to keep his skills and information contemporary with his chosen field and to care properly for the problems he encounters (self-evaluation and study)." BARROWS & TAMBLYN, *supra* note 1, at 7.

tutor whose role is more that of a facilitator than a dispenser of information. The tutor guides the students, largely by posing appropriate questions for further thought or study, as they move through a process of initial information-gathering, hypothesis formation, additional study, application of the new information to the initial hypothesis, and so forth. Finally, when the students have satisfactorily resolved the problem, the tutor leads a discussion intended to formalize and integrate what the students have learned, both as to substance and as to self-study techniques.³

In the spring semester of 2001, I adopted a variant of the PBL approach in my Constitutional Law II course, which covers the Fourteenth Amendment and is an elective open to second- and third-year law students. In this class, students worked in groups of four on a series of increasingly complex problems, with the objective in each case of preparing a bench memo or judicial opinion resolving the problem. Initially, I provided the students with the problem and a list of cases relevant to its disposition; they were free to do any additional research they wished. I met with each group at least once weekly to discuss their progress, answer questions where appropriate, and make suggestions for further inquiry, etc. There were no full-class meetings during this time. At the end of the period allotted for each problem (approximately two and one-half weeks), the class reconvened as a whole to critique selected papers completed by class members, and to review the substance of the doctrines and principles implicated by the problem in question. Over the course of the semester the students took on a total of four problems and writing assignments, all but one of which raised multiple constitutional issues.⁴

PBL differs from the problem method, as we use the latter term in legal education, in several respects. In PBL, students' initial exposure is to the problem itself, rather than to applicable background information, such as cases or statutes. In legal education the problem method sometimes supplements the case method, by providing more or less complex hypotheticals which test the application of rules

3. A discussion of the theoretical foundations of the McMaster program follows *infra* at text accompanying notes 72-89.

4. A more complete description of the 2001 Constitutional Law II course, including the basis on which grades were assigned, follows *infra* at text accompanying notes 90-101.

embedded in decided cases. However, there also are several good problem-based coursebooks, which do present the problem first, and thus make it the lens through which students read and discuss cases. These coursebooks generally are designed for use in a typical medium-to-large law school class, in which the teacher leads a discussion of the assigned reading material.⁵ In contrast, PBL employs a tutorial structure: students work on each problem at more or less their own pace and follow avenues of inquiry determined by their own thought processes. As my description of Constitutional Law II will reveal, the objective of allowing students to work at their own pace necessarily must be compromised to accommodate other demands on their time. However, flexibility with respect to the conceptual routes taken along the way to “solving” a problem is perhaps the major advantage of PBL; it allows students to feel that they “really own the material.”⁶ Finally, PBL (as I used it, modeled on the McMaster approach) consists entirely of small-group, active learning processes. The demands of the problem-based approach render small group work highly desirable, if not essential, as it facilitates creative thinking and provides built-in feedback on unproductive avenues of inquiry.

Though I explicitly modeled the 2001 course on PBL, the considerations that led me to use that approach were not primarily theoretical. Rather, electing to try PBL was the culmination of a series of experiments with active learning techniques in Constitutional Law II that, by and large, had not been guided by any of the now-extensive literature on adult learning and active learning techniques in legal education.⁷ When I became acquainted with published descriptions of PBL, I found the approach attractive because it seemed successful and well tested in practice. Most

5. For an excellent description of this method, see Myron Moskowitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992).

6. This is a comment made by one of the students who took the 2001 course.

7. See Arturo L. Torres & Karen E. Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods for Law Teaching*, 1994 GONZ. L. REV. 1 (Special Edition); Arturo López Torres & Mary Kay Lundwall, *Moving Beyond Langdell II: An Annotated Bibliography of Current Methods for Law Teaching*, 2000 GONZ. L. REV. 1 (Special Edition).

Because I had read few, if any, of the works described in these excellent bibliographies at the time of the experiments described in this Article, I have decided not to reference them as I discuss my own journey.

importantly, it seemed to hold some promise of addressing some of the weaknesses I had found in the techniques I had previously tried.

My use of PBL, and of the various approaches that preceded it, was motivated by a set of intuitive concerns about the efficacy of the traditional, “Socratic” approach to law teaching, and by related concerns about legal education generally that students had brought to my attention. Over time, I had come to question whether traditional classroom techniques produced a level of subject-matter mastery⁸ commensurate with that of which I thought my students capable. I also had begun to question the traditional, single-shot essay examination, both with respect to the outcomes it produced—there were occasional but recurring inconsistencies between exam results and what I thought I knew about individual students—and with regard to the fairness of a process that based students’ final grades in part on skills rarely, if ever, given explicit attention in the classroom.⁹ Moreover, I began to suspect that the classic presentation of the material carried normative presuppositions that systematically disadvantaged cultural outsiders,¹⁰ especially to the extent that professors never made those presuppositions explicit. In short, I experienced growing doubt, from the teacher’s perspective, about the educational value and fairness of law teaching as I knew and practiced it.

In addition, I began to hear stories from students about negative effects law school was having on their lives, both personally and professionally.¹¹ One dominant theme in these stories is a concern about hierarchy and respect. This concern takes varied forms: it appears in stories about the faculty-student relationship in and outside the classroom, the stratification among students produced by the grading system, the real or perceived differential treatment of students by faculty, administrators, and employers (and, to a lesser

8. By mastery, I mean students’ ability to use key constitutional concepts correctly and consistently with discourse norms in an applied context, as, for example, the ability to use those concepts correctly and cogently on a typical law school essay examination.

9. See *infra* text accompanying note 20.

10. I use this term to refer to students who do not share the law’s normative assumptions and/or framework.

11. Many of these stories came to me in writing, in a course titled *Nontraditional Perspectives*. See *infra* text accompanying notes 23-34.

extent, by other students) based on grades, law review membership, or other recognized “credentials,” and the generally disheartening effects of competition and class rank. A second pervasive theme in the student stories I have heard concerns the exclusion of the whole person from the classroom and legal analysis, and by implication, from law practice generally. Students routinely tell stories in which teachers convey messages that personal experience and personal value structures are not appropriate components of legal analysis. Taken together, the processes of stratification and depersonalization described in these stories often have adverse effects on law students’ self-esteem, and they cannot but impede substantive mastery.

Because these experiential concerns motivated my experiments in Constitutional Law II, they provide the principal perspective from which I evaluate the success of each of them. However, I elected to try PBL in part because it sets forth objectives that seem as appropriate to legal education as to medical education, and so I think it fair to evaluate my PBL approach from the perspective of those objectives as well. Finally, I had the opportunity in the summer of 2001 to attend the Association of American Law Schools (AALS) Conference titled “New Ideas for Experienced Teachers.”¹² Like most, if not all, of the conference participants, I found the “How People Learn” framework that Professor John Bransford presented enormously helpful.¹³ Though that experience came too late to inform the spring semester’s implementation of PBL, I believe it can be prospectively useful as I continue to adapt PBL to the context of legal education.

In the body of this Article, I first elaborate the concerns that led me to tinker with, and eventually abandon, the Socratic method of teaching in Constitutional Law II. I next briefly describe the various active learning techniques I tried before settling on PBL, and assess them from the standpoint of the concerns that led me to them. Finally, I provide a detailed account of my semester with PBL, and analyze its successes and failures in light of its own internal objectives as well as my and my students’ concerns and goals. As a coda, I look to the future aided by insights gained from “How People Learn.”

12. June 9-13, 2001, Calgary, Alberta, Canada.

13. See *infra* text accompanying notes 136-48.

I have three objectives in recounting this personal odyssey. The first, regarding the descriptive portions of the article, is to share techniques and my experiences with them with teachers who may be interested in trying similar approaches. The second, more closely connected to the analytic aspects of the piece, is to share the deeper questions about legal education that have arisen for me in the course of this experimentation. Third, and most importantly, I hope that reading this account will prompt others to think about the choices they make in teaching law. If this Article accomplishes that goal—even if readers conclude that they never would try the things I have tried—I will regard this project as a success.

I. MOTIVATING CONCERNS FROM THE TEACHER'S PERSPECTIVE

I began teaching law in the fall of 1988, and my first class was Constitutional Law II. I taught it in very nearly the classic “Socratic” manner, using one of the several casebooks then on the market.¹⁴ As is often the case with new law teachers, what I remember most vividly from that first year is the long hours of preparation; it took me, on average, eight hours to prepare for each day’s one-hour class meeting. I wrote a traditional essay examination, and I have no clear recollection of any reaction to the students’ written answers other than relief when the grading task was complete.

However, I began to experience some nagging discomfort the second time around, in the fall of 1989. Because enrollments in this course were fairly large,¹⁵ I began to realize that I had little or no meaningful contact with many of the students; I had no clear sense of who they were, educationally speaking. More importantly, I began to be dissatisfied with what I was seeing on the students’ final exams. Based on the class discussions, I began to suspect that most, if not all, of the students had a better understanding of constitutional law than

14. I spent the bulk of the classroom time engaging students in one-on-one discussions of assigned material (from a standard casebook). There were some modest departures: each day, two or three students had been assigned, as “experts,” the task of reading unedited versions of the cases assigned for that day. In addition, I made some use of hypotheticals and gave occasional review lectures.

15. The enrollment during the first three years I taught Constitutional Law II averaged 116 students per year.

the exams reflected.¹⁶ Alternatively, if the exam answers *were* accurate indicators of the students' achieved competence, I was disappointed with those results. I should, I thought, be able to impart a better fundamental understanding of the Fourteenth Amendment in particular, and constitutional law generally, than those exams exhibited.

Over the next several years, my discomfort and suspicions increased. In addition to my dissatisfaction with students' overall level of performance, there were isolated but repeated instances in which I was quite convinced that the grade a particular student achieved was inaccurate as a relative measure. Often this happened when I had had fairly extensive interactions with the student outside of class, and thus had a developed sense of his or her strengths and weaknesses, but every now and again I had the same impression of a student whom I knew only through class participation.

For many years I didn't *do* anything about these concerns, though I did think about them with some regularity. Over time, I realized that the gap between my perception of students' mastery of the subject and their performance as a group might be, at least in part, a consequence of the fact that the final exam required the students to communicate in writing, which was never the case during the semester. I also realized that my grading schemes generally put considerable weight on argumentation—providing reasons in support of conclusions—while the classroom discussion did not give argumentation the same weight. It never occurred to me that pervasive exam anxiety might be another factor depressing the quality of work produced on the final exams.¹⁷

With respect to results that seemed to evaluate individual students inaccurately in relation to their peers, I formed a couple of hypotheses. First, as it was apparent that students came to law school with a range of personal experiences and values nearly as broad as

16. Most striking were mistakes students made in applying important concepts; I had not been aware of similar mistakes in class discussions. As stated in the text, my first reaction was to give more credence to what I saw in class than what I saw on the exams. However, in retrospect I think it more likely that students harbored mistaken or incomplete understandings that were not exposed in class, but did come to light on the written exam.

17. This may be an obvious point, but I did not fully appreciate the extent to which exam anxiety plays a role until around 1997.

that to be found in the larger society, there inevitably would be some for whom the normative assumptions of law seemed more foreign than they did to others. For these “cultural outsiders,”¹⁸ understanding might be rendered more difficult by the gap between their understanding of the world and the law’s. Second, some students arrive at law school with a clearer sense of what steps are necessary to succeed than others: they have a better understanding of what it means to outline, for example, or what kinds of discourse are appropriate on an exam.¹⁹ The group that arrives with a shakier grasp of what is expected may overlap partially with the group I have described as “cultural outsiders,” but the two do not overlap completely.

Finally, as I very slowly put all of this experiential information together, I came to hold the view that ranking students on the basis of skills to which little or no classroom time is devoted is simply unfair. The list of skills necessary to perform well on an essay exam is quite extensive. It includes, at least, an understanding of the relevant legal doctrine, principles and policies, a mental or written outline of that information (depending on whether the exam is open- or closed-book) that enables the student to access it efficiently, the ability to identify appropriate legal issues, the ability to express oneself reasonably well in writing, the ability to form persuasive arguments (providing reasons in support of conclusions), the ability to manage one’s time, and the ability to control one’s anxiety (to the extent it is present). Of these skills, only the substantive ones (understanding legal rules, principles, and policies) get any regular attention in class, though I do recognize that norms of legal argument are modeled indirectly in the cases we have students read and in the questioning that goes on in many Socratic classrooms. Though it seems obvious that it’s poor educational practice to hope that students acquire skills we are not attempting to teach, my point here is a different one. Because ranking so deeply affects students’ career opportunities, I

18. I want to emphasize that “cultural outsiders” is not equivalent to “nonwhites.” The former group includes anyone whose normative universe is different from, and inconsistent with, that embodied in the law.

19. I do not mean to discount the roles hard work and natural ability play in determining outcomes for students, but I was trying to account for relatively weak performances by students I knew to be bright and hard working.

don't think it can be justified unless we at least try to teach the full range of skills on which that ranking is based.²⁰

Each of these concerns indicates that teachers use active learning techniques that include repetition and feedback. Teachers can improve overall mastery by having students apply the legal doctrines being studied to new situations.²¹ Providing students multiple opportunities to write legal arguments will help develop their skills of expression and argumentation, especially if individualized feedback is available.²² Whatever the factors may be that account for anomalous individual performances, actively practicing legal reasoning can only help to expose and correct cultural and other biases and lacunae. Finally, any time spent in class and during the semester doing tasks that mirror the tasks on which students will be graded addresses the fairness concerns described above.

II. CONCERNS ARISING FROM THE STUDENTS' PERSPECTIVES

As clear as this all seems to me now, it took me many years to fit the pieces together. Along the way, I was gathering another set of data, about the ways students experience law school. In my third year of teaching I began offering a course titled *Nontraditional Perspectives: An Introduction to Critical Legal Studies, Feminist Jurisprudence, and Critical Race Theory*. From the beginning, the method of instruction in this course was, like the subject matter, not traditional; the staples of class time were (and remain) small group discussion and student-led large group sessions. In many respects, this course might provide an interesting contrast with *Constitutional Law II*, but that is not the subject of this Article. Rather, I mention *Nontraditional Perspectives* at this point because it was the occasion for my receiving, in writing, expressions of students' concerns about legal education.²³ Typically, one of the three assignments for the

20. I did not reach this conclusion until about 1997. Even after that, I assumed that the grading system could not be changed, and so my experiments were conducted within the confines of that assumption.

21. Many teachers do this through the extensive use of hypotheticals.

22. At Washington University, these opportunities are provided to all law students in the first year Legal Research and Writing course and in a required upper class seminar.

23. I have also received written material from students by routes other than this course.

class asks students to tell a story about some aspect of legal education and then analyze that story from a Critical perspective. This assignment frequently elicits real-life stories that reflect aspects of the law school experience students find uncomfortable, disturbing, and at times intensely painful.

A. Students Frequently Write about Hierarchy and Respect

My experience in legal education is difficult for me to discuss. It's the experience of not doing well, of failing to "make the grade." This is central to my legal experience because of the ultimate importance of grades; they are, for now, the ultimate definer. To cope, I feel as if I've built walls around my feelings and I'm afraid of what will come out if I break the walls down; I've been that hurt, but I came to law school with great expectations.

The first semester was probably like anyone's first semester, the constant studying, briefing, outlining, and competition!!! Then came the grades and the greatest shock to my sense of self I've ever known. I was again the failure I'd been as a teenager; it's as if my successes of the past few years never happened.

I've never discussed how I've done with anyone, but I don't go out of my way to dispel the myth that I'm doing well. I guess it's because I was lucky enough to get a job in the legal profession without having been asked the one question I dreaded: how are your grades? I feel as if I've been living a lie, I feel as if I've let my family and friends down, and somehow lost what I had those few short years when it seemed as if I might be somebody; that I might be a winner instead of a loser.

I feel educated. I feel as if I've received an immense amount of information and recall most of it. So incredibly, I've probably memorized more black letter law than anyone I know because of my memory, but the prestige, the "race," and the resulting sense of self seem to have less to do with whether you feel "bettered" as a person, and more to do with rank.

All my preparation, my intent interest in the legal education I was receiving, my desire to do well, and all the different approaches I've tried on law school exams, seem to have meant nothing. Not because I feel it's all meant nothing, because I *do* feel better educated, I do feel like I'm an intelligent person who is worth something, but those members of the legal world's "club," both inside and outside the walls of this law school, constantly tell me, even scream at me, that I'm not one of them, that I'm not worthy of a pat on the back, and that I'm a failure.²⁴

* * *

Reconciling my deep objections to the ranking system with the fact that it has been very good to me has been one of the ongoing challenges of law school. My first indication that the ranking system would be significant came when I was awarded a scholarship contingent upon maintaining a position in the top quarter of the class.²⁵ I was nervous and ever mindful of this contingency. I would sometimes sit in class and survey the rows, calculating my probable class rank on the basis of students' participation. I very much disliked doing this. I knew that I was making a lot of assumptions about strangers and discounting vast areas of their personalities. On the other hand, tens of thousands of dollars I didn't have were riding on my class rank and sizing up the competition did not seem unreasonable. [. . .]

After grades came out I became visible. Professors I'd never had began to acknowledge me in the halls. I heard flattering rumors about myself. Heady stuff! I also noticed that many of the intelligent, creative, hard working people I knew were making self disparaging comments about their abilities and accomplishments. Often these comments were relational—

24. Student author, 1991. Used by permission.

25. It's probably worth noting that Washington University no longer awards scholarships on this contingent basis.

my GPA was cast as a commentary on their worthiness as law students.²⁶

* * *

Although I succeeded in earning good grades my first semester in law school, I was severely depressed by the reality that my success was achieved at the expense of my peers. In the final days of my last semester of law school I realize that I used this depression to sabotage my law school career. The evaluation techniques that are used in law school establish a numerical hierarchy for each entering class. This hierarchy is determined by using a mandatory median for course grades. A crude definition of a mandatory median might state that there is success only when everyone else is beaten.

My success in law school was hollow. “Success is bad in law school because it feels relative, not personal; it means ‘I did better than you’ rather than ‘I did better than last time.’” [citation omitted] At first, my goal was to master the course material. I looked forward to any positive recognition of my accomplishments. But when I received the recognition in the form of good grades and a Dean’s letter of commendation, I realized the accomplishments in fact also caused the unhappiness of others. It was impossible for me to better myself without harming others. I could not live with that reality. For better or worse, I am not “competitive” by nature. It is against my nature to “beat” someone—even if the win is during a simple recreational game. More significantly, I frequently feel a sense of discomfort when I am the winner and someone else is the loser.

The discomfort I felt because of my success in law school manifested itself in several ways. I minimized my achievements. I attributed my success to sheer luck and chance instead of hard work. I was embarrassed to admit I received good grades. In the end, feeling guilty that I succeeded where

26. Student author, 1991. Used by permission.

others did not perform as well, I decided to stop striving for academic achievement. I chose to distance myself as much as possible from the law school community and do the bare minimum to get through the painful experience and move on.²⁷

* * *

I came to law school with hopes of entering an advanced learning environment. I knew it was a professional school and, being critical of how over-consumerized education had become, I should have known better. Nonetheless, there I was, not halfway through my first semester of my first year, starving, withering, and a part of me dying. So, I reached out; I visited all of my first-year teachers and many other faculty members (some self-proclaimed feminists) that I thought might be helpful. I asked each faculty member I visited for help finding authors, books, or articles that took a critical perspective on the law. I explained that I had an intellectual background in this area and I wanted to supplement my current education. Oddly, without one exception, professors could not understand my request. A few took the time to sit down with me, but the result was no different from the others who shooed me out of their offices summarily—I left empty-handed, humiliated, and feeling like I spoke a foreign language. In some sense this was because I did not know the legal jargon (critical race theory, feminist jurisprudence), yet I spoke clearly, succinctly, and genuinely. Ironically and at the same time, I [asked] for a character reference [from] a professor with whom I had spoken at great length before attending the law school and during my first semester. She turned me down, refusing to support me officially because she had never had me in one of her 80 person, never-know-three-quarters-of-the-students'-names classes. It took quite a bit of gumption to make these requests and afterwards I felt crushed from all angles. I went looking for knowledge (essential for education

27. Student author, 1991. Used by permission.

but nonetheless missing from the classroom), help, and support but found ridicule, rejections, and dismissal.

A year and a half later I was lucky enough to be in the top ten percent of my class and to [land a prestigious law review position]. Then, the same professor who denied me the character reference offered to write a letter of support for a particular award. She did this even though I had purposefully had no additional contact with her in or out of the classroom since the rejection mentioned above and even though the offered recommendation was much more intricate and required more knowledge than the character reference. Professors had also begun to engage in dialogue with me earnestly and at great length, even when I was being similarly critical of the current systems and structures of the legal system (including legal education). Had I begun to speak the legal language and developed my reasoning abilities to now have the voice to speak critically? Or was it that others stopped to listen because at the beginning of my third year I was cloaked with the labels of success? I asked the same questions as I had a year and a half before, but now I had a voice that others heard. Grades and status suddenly made credible that which was not only discreditable but also seemingly inaudible.²⁸

* * *

As I listened to my classmate describe what he planned to write about for his seminar term paper, I wondered with concern how he could have attended class but gained so little insight into the issues and perspectives the professor wanted us to focus on in our papers. Yet, when he turned to me and asked if I thought he was on the right track, I found myself saying, "Yes, I think your ideas are good; write your paper exactly as you've described it." The part of me that would have quickly reached out to try and to help him better understand the assignment before coming to law school was quickly suppressed by a law-school developed self which reasoned,

28. Student author, 1999. Used by permission.

“Everyone for herself—I’ve had to work really hard to figure out this assignment by myself, so really, he should have to do the same. Anyway, he already has an advantage over me just by the fact of his insider status in the ‘old boy network.’” But hours later, I listened uneasily as my inner voice first chided me for being so competitive and then reminded me that I’d come to law school so I could more effectively work with others to remedy social problems and yet I had refused to help one who turned to me for assistance. Chastised, the next day I sought out my classmate and gave him the insights I’d previously withheld. Nevertheless, when later in the day another of my classmates asked me for lecture notes for classes he’d missed I found myself listening to his request with great resentment, and only grudgingly agreeing to share notes. At the same time, I tried to think of a way around actually complying, reasoning, “How dare he ask [me] to give him my notes when we’re here competing against each other.” Again, when I thought about this experience later, I realized that I hated the way my interaction with others in law school, particularly men, had changed from the camaraderie and support of undergraduate classes to an interaction of individual competition where success was measured by the individual ranking one held against classmates rather than by shared enjoyment and depth of knowledge gained and fostered with supportive interaction with peers. I no longer felt like a whole, satisfied person. Rather, my days in law school were filled with edgy tension and a sense of hollowness, isolation, and despair.²⁹

* * *

“Ms. Y?” Professor X said.

“I’m sorry . . .” I stumbled, forcing out the next words, “I don’t have that case with me today . . . I, ummm . . .”

29. Student author, 1998. Used by permission.

And he moved on to someone else. It was the first time in my law school career that someone had been unprepared, and that someone was me. I stared at my notebook in front of me, praying for the minutes until the end of class to pass quickly; trying not to cry.

I left class and called my husband. Sobbing, I tried to explain what had happened. Attempting to comfort me, he told me to go talk to my friends.

“I can’t talk to anyone about this. I don’t have friends when it comes to this.”

“What are you talking about?” he asked.

I do not think that I understood myself until the words were out of my mouth. “Every single person in that room today was happy when X called on me and I didn’t know the answer. Even the ones who say they are my friends, especially them,” I responded.

“Why would you ever think that?”

“Because I would have been happy had it happened to them.”

I was disgusted at what I had just said. I was disgusted at how much I had let law school change me. Most of all, I was disgusted at how very true my statement was. I later tried to explain the situation to my brother, who had finished law school just the year before and was a constant source of reassurance and general advice. On this subject matter, however, he did not have much to say. Basically, that it happened to everyone and that I should just drink it away with my friends.

What my brother did not understand was that it was not being unprepared that bothered me so much. I could make up for that in future classes, or on the exam. What bothered me

was my complete aloneness, feeling as though no one was on my side.³⁰

* * *

B. Another Set of Student Concerns Revolves Around the Alienation of Personal Experience and Personal Values

I came to law school after working for several years as a social worker, assisting people with HIV disease. Frustration with my inability to advise my clients regarding the workings of the legal system led me here. A legal education, I thought, would provide me with the skills to better help those in our society who are under served and unprotected. As I prepare to graduate, I wonder how much of my vision and enthusiasm I have lost. Has the person who came here been co-opted by the very system she sought to change? I believe so.

A woman in law school learns very quickly that the classroom and courtroom are not places for “feelings” talk or for sharing one’s own experiences. I remember vividly my first-year Contracts class. It was a subject so foreign to my experience that I frantically grasped at anything that would make it familiar and identifiable to me.

We read a case about a woman with limited resources who signed a contract to purchase a stereo which permitted the seller to repossess all her appliances should she default on the stereo payments regardless of the payment status of the other appliances. This was a case I understood and with which I could identify. I came to class prepared to talk about the unjustness of the store’s treatment of this uneducated woman. I wanted to share my understanding of the cycle of poverty that would lead someone to spend more than they had on a luxury item. There were stories I could use to help others identify with the woman in the case. I was ready to discuss societal and legal

30. Student author, 1999. Used by permission.

solutions to the problems of poverty and unfairness in business dealings. I wanted to talk about right and wrong.

My professor quickly informed me that legal discourse does not involve the terms “right” and “wrong.” This case was about adhesion contracts and unequal bargaining power. These equitable concepts do involve a sense of what is unfair about the bargain but the point of the case was to talk about how these concepts are applied. Morality, remedying the cycle of poverty, bringing justice to those who take advantage of the poor, these were not relevant to class discussion. It is not about right and wrong, it is about “the law.” Amid the embarrassed laughter of my classmates, I quickly vowed never to open my mouth again in class. In one class period, I learned that the values I felt were important to instill in legal discussion were irrelevant and illogical. My stories and my perspective were wrong.³¹

* * *

I visited a first year [. . .] course

Professor X’s first question posed to the class was, “What did you think about the decision in this case? Do you think they got it right?” The student’s answer, it seemed to me, was entirely off point. He responded by saying, “What the court seemed to be saying was” Professor X listened patiently to the student’s answer, and when the student finished speaking, X’s response did *not* indicate that he had not gotten the answer he wanted. To the contrary, Professor X’s next questions attempted to help the student flesh out his articulation of what the court had said. Professor X never attempted to find out what the student actually thought about what the court had held; that issue was left unaddressed, though it had seemed to be of primary importance as it was the first question asked. Once the discussion had taken off with respect to the court’s ruling, there was no discernible effort on

31. Student author, 1999. Used by permission.

the part of Professor X, or any of the students, to get back to the initial question on the table, i.e., what does a student, or do the students generally, think about what the court had done.

I selected this event because it seemed exemplary in describing some of what I have experienced thus far in law school. My experience in legal education has taught me that what I think is of negligible import. Legal education has attempted to alienate me from my own thinking, my own mind, and experiences—or so it has often seemed.³²

* * *

C. Finally, I Include Two Stories that I Find Difficult to Categorize

I never imagined that I would find myself in a law professor's office one day, struggling to complete sentences, choking out words that came through only in erratic staccato because of the irrepressible release of sobs that had been contained within me over the course of a torturous semester.

After jumping through all of the bureaucratic hoops, with a cancellation along the way, I was finally granted an appointment to see him; *he was, after all, a very busy man*. I had come to abdicate the silence that was slowly driving me mad. Yet when I entered the office that morning, my resolution was stunned by the sound of my examination booklet slapping down on a table in front of me and I forced myself to smile as I quickly sought a seat in the nearest chair.

I was a student in his [. . .] course. The course was described as introductory; however, after the first couple of meetings, the professor had successfully “weeded out” those that were intimidated or turned off by the complex presentation of the first portion of the class, which included [. . .] problems. I was one out of five women that remained among approximately forty students.

32. Student author, 1998. Used by permission.

The class was taught by the classic Socratic Method. Everyone was formally addressed by “Mr.” or “Ms.” and the professor made it a point to try to call upon as many students as possible within the 1 ½ hour period. He posed complicated questions and expected sophisticated answers. I always dreaded the few seconds that he gave to assemble something intelligible, much less intelligent, before my silence was interpreted as ignorance rather than mere contemplation. I did not feel comfortable just blurting out the first thing that came to mind because I wanted to be certain that my answer was the one he was seeking. But by the time I organized my thoughts, he had already moved onto someone else.

Hence, I was motivated to prepare for his class more by fear than by interest. Rather than benefiting in any way from class discussion, I spent most of my time in class worrying about whether or not I was going to be able to answer his next question without being backed into a corner of self-doubt and confusion. I became more and more dismayed as I discovered that even when I thought I knew what I was talking about, I obviously didn't. My self-esteem was steadily deteriorating, and in a public forum, at that.

One day, however, driven by the frustration that had begun to overwhelm me, I obediently regurgitated the court's holding and rationale in a case, but stated that I thought that it was unfair. I could not bring myself to agree that an affirmative statement made to another party during the sale of a house did not constitute an express warranty in this particular case. The court's opinion was essentially just an opinion. The rationale was based upon the manipulation of a mere technicality, which I thought was completely unjust. *A wrong had been committed, so why not just provide a remedy already?* I argued my point, but instead of receiving support or approval, I was merely told that even if it was construed to be an express warranty, the party would still have lost because of the parol evidence rule. So that is what it boiled down to: if you can't sufficiently argue one technicality, then bring in another rule. From that class on,

whenever the case was referenced, the professor smugly referred to it as “the case that so enraged Ms. Y.”

To avoid further humiliation, I resolved to suppress my personal inclinations in evaluating these cases and trudged through the rest of the semester, learning the law and applying it just like the judges in the cases did. Of course, there were times when it was appropriate to question a court’s holding and rationale, and times when the analysis was obviously flawed. However, I was never the one to bring it up, nor did I really care to anymore.

So after diligently spitting out everything that I had memorized, I was shocked when I received my grades. All of my life, I had excelled in everything that I had wholeheartedly pursued. Sometimes I had to work harder or longer to accomplish my goals, but I was eventually rewarded with a long list of achievements in academics, sports, and music. As an Asian American woman, I constantly felt the need to prove myself to a society in which acceptance and respect was attained by the measure of your success—meaning, how many people you are able to pass in a never-ending race. Now, in my most important pursuit to date, I was struggling just to keep up with the pace and meanwhile, falling further and further behind the pack. The confidence that once inspired me, and the dedication that had always propelled me to keep on keeping on had grown faint, as I became more and more tired and short of breath.

Now, as I sat at the table in a corner of my professor’s office, with this booklet that ultimately represented my success in law school (my life) before me, I only wanted to know how I could have done better, how I could have done it *right*, because my grade very obviously reflected that I had done it all wrong. But before I was able to ask for enlightenment, another bluebook was tossed in front of me.

“This is a good examination; read it and compare yours with it.” He then returned to his desk and resumed whatever it was that he was doing before I had interrupted him with my

pointless visit. I stared blankly at the two examinations for a moment before opening the exemplary booklet and reading the words that I should have written. I struggled to focus on the content of the exam, but I was preoccupied by the lump that began to grow in my throat. I tried to swallow it down, but it only grew worse. A stinging sensation hit my eyes, and then my vision blurred and I could hardly see through the tears that had quickly welled up in my lower lids. Still, I continued to flip through the pages, unable to do anything else. I noticed that the student had referenced cases, but had almost always provided supplemental comments to the decisions, or critiqued the court's failure to recognize certain alternatives. *That was what a good examination consisted of?* I had been afraid to voice my opinions in class; there was no way that I would have risked doing so on an exam.

When I looked up, my professor was typing away at his computer. He glanced over at me, and said, "Okay?" That was when the floodgates were released. Through my tears, I told him that I thought that it was unfair to base an entire semester's worth of learning on just one examination. I had worked hard in the class. The words that I had written were not a representation of my full knowledge of the subject matter. I had written what I thought I was supposed to write, not necessarily what I wanted to write.

I sensed his uncomfortableness with the situation, especially now that I was blubbing through my tears. He came out from behind his desk, armed with a box of Kleenex and in an awkwardly soft voice, he reassured me that I was an intelligent woman, a good writer, and that I would make an excellent lawyer. However, what I had written on my examination was just too basic. We were in law school to learn a particular way of thinking, and although he believed that I had prepared each day and understood the material, because the final examination system was really the only objective way to gauge my knowledge in a standard manner, the grade that I had been given for the course was unfortunately concrete. He assured me that he had full faith in my abilities and my

aptitude as a legal scholar and he wished me the best in the future. So basically, I walked out of his office that day, with nothing but a patronizing pat on the back. I was not in there to make him change my grade, *God forbid*, nor to receive empty reassurances about my legitimacy as a law student. All I was seeking was help, and all I received was an acceptance of my helplessness.³³

* * *

My experience as a first year law student revolves around my Property class, but I think that it is helpful to understand my expectations upon entering law school. I had discarded religion in college, but I saw in Law the human potential to self-consciously create its own moral code. I imagined law students crowded into a smoke-filled Parisian cafe earnestly questing to create ourselves as gods, the creators of law. I imagined battle with law professors and courts; earnest battle which would lead through the invisible hand of conflict to the discovery of enduring principles. I imagined Law as praxis, informed by theory, but devoted to practical justice.

My inevitable disappointment arose from three sources. The legal method, *stare decisis* and reasoning by analogy, seemed devoid of any realization of Society's self-transformative potential. Professors were more interested in legal thinking than in thought or praxis. But my greatest disillusionment came from the other students. I don't think most students thought about Law as transformative. They certainly didn't want to talk about Law. For the "bright" students, Law was a game. The "less gifted" students spent their time futilely trying to grasp the language of Law.

But Law came naturally to me. In Property, Professor Z introduced the fee simple: "An estate which is possibly infinite in duration." The variations on the fee simple, defeasible, contingent, or subject to an executory interest, were logical

33. Student author, 1999. Used by permission. This author asked me to report that though each of the incidents described actually occurred, they took place in two different courses.

predicates defining the length of the estate. Analytically, Property was exactly like Calculus, Geometry, and Computer Programming, subjects in which I had excelled. I spent no more than thirty minutes per day skimming the case material for Property and found that I had a better understanding of future interests than any one in the class. I always had the right answers, or knew the right issues. I saw horizontal, vertical, and tangential force vectors which other people would describe as an automobile collision. It was natural that I would see estates and contingencies in property rather than land or chattels. I began to love the law, especially Property, because it was a mirror image of my own values and ways of thinking.

After a couple of weeks, a strange thing happened. Professors would no longer call on me. I was hurt and angry. Here was this body of Law, in which I saw my own reflection, and I was being excluded from classroom discussion. I propped my hand up for the entire hour in Property but the professor never called on me. I sat through weeks of “Socratic” classroom quibbling, only to have the professor arrive at a conclusion that I reached without thinking.

I was miserable in class and around other students, but I took solace from the fact that I was brilliant at this Law thing. I often wondered whether I had developed poor reality testing to shield me from the possibility that I was going to fail out of law school. But my first semester grades extinguished any self-doubt I experienced. I made no outlines, took only token class notes, and hardly prepared for class, yet I ranked in the top ten students.

My anger and frustration with law school’s failures merged into my achievement, and I became elitist. [I believed] I was really more intelligent than the rest of the students, and even my professors. Although most people didn’t see the world like I did, I was *right* because the Law agreed with me. The Law made my understandings universal truths. Everyone else had clouded vision. Law school existed to weed out the stupid people.

I also began having trouble at home. The Law, and my own upbringing, emphasized the importance of family. I wanted a more traditional relationship. I had always washed the dishes, cooked, and cleaned the laundry, but now I wanted my companion to take some of these chores. I pressed for marriage (and more sex). I thought it was fair, since I would soon be earning the money in the household, and plenty of traditional women would jump at the opportunity to marry a wealthy, powerful, relatively good looking lawyer.³⁴

* * * * *

I have reproduced these stories as written because I think it important that the students' experiences be recounted in their own words. Accordingly, I keep my own comments to a minimum, but there are a few points I think worth making. First, none of these stories is unique. Each aspect of each story reflects experiences that are widely shared, at least among the students who take Nontraditional Perspectives.³⁵

Many of the stories reproduced here have to do with the grading/ranking process, and indeed that is one of the most prevalent themes in the papers I receive. However, I would like to direct the reader's attention at this point to the secondary effects of that system: the difficulties many students have integrating their grades (high as well as low) with their sense of themselves, the ways grades and rank affect their interactions with others, and the ways grades affect how they are, or perceive themselves to be, treated by others, both students and faculty. Though in this Article I will end up questioning

34. Student author, 1991. Used by permission. I have to add that the analysis that followed, in the paper submitted to me, made it clear that this student had caught himself becoming "elitist," and, in my view, may well have exaggerated the negatives in his self-description out of disgust.

35. The enrollment in Nontraditional Perspectives has averaged sixty-one students per year during the past four years, and just over fifty students per year over the eleven year period I have been offering the course. As the graduating class size at Washington University has ranged between 200 and 240 students during that time, approximately one-quarter to one-third of each graduating class takes this course. Based on the frequency with which I receive these kinds of papers, I estimate that the sorts of experiences they reflect are shared by somewhere between ten and twenty percent of the student population, at minimum. I also have known a significant number of students who do not share these experiences.

the grading system itself, I did not reach that point until this past year. Before now, I took the existing grading system³⁶ as a given, and I conducted my experiments within the boundaries created by that assumption. Thus the concerns that arose for me out of these stories had more to do with issues of respectful treatment and students' self-esteem than with the grading system per se.

I read the stories about competitiveness in much the same way; many students are not comfortable with competition and, whether "winning" or "losing," face real challenges in dealing with it. I do not find it easy to dismiss this discomfort as the inevitable byproduct of an adversarial legal system; too many things that lawyers do require cooperation more than competition. One of my motivations, then, has been to try to find ways to create a less competitive environment for those students for whom competition is an obstacle.

Another dominant theme in the papers I receive has to do with the messages students receive that their personal experiences, views, and values have no place in legal analysis. Even if that is a correct characterization of (most of) the final analytic products a lawyer produces, the exclusion of personal experience is not a sound educational practice, and I include some discussion of that point in the final section of this Article. However, during the years in which I experimented with Constitutional Law II, the principal lesson I drew from these stories was more intuitive: I saw that many students had experienced a need to be more engaged as whole persons in the course of their legal studies.

Finally, I included one story (the next to last one listed above) in which the professor's behavior might be seen as that of an insensitive single individual. Even though I have received several similar stories over the years that clearly did not refer to this same professor,³⁷ in another sense this reaction might be justified, because I also have heard stories in which individual professors treated distraught students with kindness, respect, and encouragement. However, the

36. At this time at Washington University, the faculty rules imposed a mandatory median on the grades assigned for any course, regardless of size, but did not have a mandatory curve. The faculty has recently adopted a grading system that has a mandatory mean with a suggested distribution that mirrors a standard normal distribution.

37. I say this because of the courses named in the stories; I don't know the identity of this or most individual teachers who appear in the students' stories.

point here is a larger one: that we too easily and too often forget that there may be a very large gulf between what we intend and the ways our behavior is experienced by students.³⁸ I think that this story illustrates the point most compellingly.

Overall, then, and over time, these and the many similar stories I read painted for me a picture of a distressed and distressing inner landscape. I did not and do not know exactly how many students share these kinds of experiences; I do not know that this question matters.³⁹ I felt that if even a substantial minority of law students experienced legal education as these authors did, it was a problem I wanted to try to address. Thus, there have been several aspects of my experiments that were intended (often naively and sometimes quite unsuccessfully) to address the range of “quality of life” issues reflected in these stories.

III. PRELIMINARY EXPERIMENTS

For the first several years I taught Constitutional Law II in nearly the traditional manner, using a commercially available casebook and something approximating the traditional Socratic method in class. During the first two years I also assigned one or two students the role of “expert” for a day, asking those students to read and prepare to report on the unedited version of the case or cases that appeared in edited form in the casebook for that day, because I thought it important that students have some contact with Supreme Court decisions as they actually are written. I supplemented the question-and-answer format with orally-presented hypotheticals on occasion, and I gave review lectures from time to time. At the end of the

38.

Of all the pedagogic tasks teachers face, getting inside students’ heads is one of the trickiest. It is also one of the most crucial. When we start to see ourselves through students’ eyes, we become aware of what Perry calls the ‘different worlds’ in the same classroom. We learn that students perceive the same actions and experience the same activities in vastly different ways.

STEPHEN D. BROOKFIELD, *BECOMING A CRITICALLY REFLECTIVE TEACHER* 92 (1995) (citation omitted).

39. The data on lawyer dissatisfaction and distress suggest that these and related issues affect a large proportion of practicing lawyers as well. At the same time, I reiterate that I have known many students who do not experience these sorts of distress to any significant degree.

semester students took a timed, open book essay examination.⁴⁰ In short, there was absolutely nothing atypical about my classes and little that could be characterized as an active learning technique.

In the spring semester of 1996, two new circumstances converged: it was my first full semester of Constitutional Law II after having been granted tenure, and I had an unusually small enrollment in the course.⁴¹ Though I had not been consciously uncomfortable conforming to the traditional classroom approach, I did feel an increased sense of freedom to experiment, and the class size cried out for it. I had some experience with small group work when teaching informal logic to undergraduates in the 1970s.⁴² That experience had taught me that groups almost always made progress on problems where individuals might become stuck, and that small group work often is fun and engaging.⁴³

Thus, I turned first to the familiar, and sometimes set my class to work in small groups on specific questions that I formerly would have posed to individual students. For example, students worked in small groups for a week on a project the objective of which was to illuminate conceptions of equality fundamental to the guarantee of Equal Protection. At the end of the week, each group submitted a short paper, which I later returned with written comments. I then discussed the problem and various answers with the entire class. Though I used this technique only sporadically,⁴⁴ I found it promising enough to structure the next year's course around it, because students

40. The final exam was the sole basis for the course grade, except that I reserved the right to enhance final grades slightly on account of excellence in class participation. I almost always exercised this option with respect to one or two students.

41. The average enrollment in my Constitutional Law II classes for the previous four years was seventy-three; in 1996 the enrollment was thirty.

42. As a Lecturer, I taught a number of introductory Philosophy courses to undergraduates at the University of California, Riverside, and at California State University, San Bernardino, between 1974 and 1979.

43. In a course at California State University, San Bernardino titled *Argument and Evidence* I taught argument techniques in a problem-solving format. Students worked in groups of five on a problem that required them first to develop the relevant facts, then choose one of four possible "solutions," then formulate arguments favoring the chosen solution over the alternatives, and finally to defend their choice in debate with the other members of the class. This approach was highly effective in developing the students' argument skills, and it was the only segment of the course that seemed to have any real impact on that development.

44. In 1996 I used only one other, week long, small group problem, on the topic of affirmative action.

seemed to enjoy the work and came away with a stronger grasp of the few issues studied in this manner.⁴⁵

In the spring of 1997, using the same casebook as the previous year, I scheduled the class to meet for two-hour sessions twice a week, rather than meeting for four one-hour classes, so that I could make more extensive use of small group work. Additionally, I secured permission from the faculty to limit course enrollment, at least on a trial basis.⁴⁶ The organization of the course was the same as in prior years, but four of the seven substantive units were problem-oriented.⁴⁷ At the close of each of those four units, I reviewed the concepts and information I thought most crucial, usually by means of lecture.

Following an introductory period, during which students discussed the assigned readings and accompanying questions in small groups before convening as a whole class to compare small group ideas,⁴⁸ I spent a week on the conceptual project used in 1996.⁴⁹ Then, for two weeks the students set to work in groups of five or six on a new project, which involved a series of worksheets I had prepared in advance.⁵⁰ Each sheet posed one or more questions and specified relevant pages in the casebook. The answers to the worksheet questions were the principal points I had tried to elicit during class discussion the previous years. Students did not have the questions prior to class; I expected them to spend class time working in groups. When a group had completed one or two pages, they were to check with me before proceeding to the next worksheet. I circulated among the groups, answering questions and commenting

45. However, even though I spent class time on a practice exam at the end of the semester, I then gave the usual timed final exam and saw no change in outcomes.

46. This was an unusual arrangement at Washington University, where enrollment caps are disfavored. In this case, the cap rotated annually between my section of Constitutional Law II and that of a colleague. In 1997 enrollment in my course was limited initially to thirty-six, but after attrition, it settled at twenty-eight.

47. I did not yet have the concept or terminology of PBL; I mean here that students had the task, in one way or another, of solving a problem.

48. I'll refer to this as the small group/large group method.

49. See *supra* text accompanying note 44. This time students worked on the problem in groups, but submitted written answers individually. I used those answers as the basis for class discussion, but gave no written feedback (the answers could be submitted in outline form).

50. This exercise addressed the requirement of discriminatory intent in constitutional disparate impact cases.

on tentative answers.

From my present perspective on learning theory, this approach seems to have considerable merit,⁵¹ but it did not work well in practice even with an enrollment of only twenty-eight students. There simply wasn't enough time for me to discuss the kinds of questions and difficulties some groups were having, and make my way around the class to all five groups. Consequently, I modified the approach somewhat for the next small group project, also one I had used in 1996, by having the groups do more work outside class and submit written work that I could review outside class.⁵² However, that change came at the cost of giving up the personal interaction I had built into the first project. This was a significant loss, because meeting with the groups, listening to them discuss and debate various issues, and responding in focused ways to specific questions and concerns had been one of the things I both most enjoyed and thought most productive in my undergraduate courses.⁵³

Finally, I included the most extensive project I had yet tried: a three week exercise in the area of modern substantive due process that required groups to write two memos on a question raised by cases then pending before the U.S. Supreme Court. It was almost, but not quite, a problem-based exercise: I spent the first day setting forth the doctrinal framework for analyzing the issues presented.⁵⁴ The students then spent the next four class sessions plus time outside of class working on two assigned memos.⁵⁵ I spent the final day reviewing the project with the whole class.

In summary, in 1997 I spent five weeks (of a fourteen week semester) covering the material in a traditional, case-based manner, and I spent two weeks using a case-based but small group/large group format. During the remaining seven weeks—half the semester—the students worked in small groups on (more or less) problem-based

51. *See infra* text accompanying note 147.

52. This was the problem on affirmative action, which I modified to some extent.

53. I eventually addressed this issue in 2001.

54. I presented the doctrinal framework using the small group/large group technique. In addition, I selected a student to lead the large class discussion that synthesized the work of the small groups. This exercise worked well.

55. The students had a Thursday and Tuesday class for work on the first memo, which was due on Wednesday at noon, and the same schedule for the second memo.

projects. The materials with which they worked came principally from a casebook (with occasional supplements), and the course coverage tracked exactly what it had been in 1996 and 1995. Once again, I gave a timed essay examination, taken by each student individually, that was the sole basis for the final grade.⁵⁶ Though I thought many of the class discussions had been more sophisticated than in previous years, I cannot say I saw any real improvement on the exams as a whole. Thus, while I (and the students, I believe) found class time more enjoyable than when I used the Socratic approach, this new approach did not address my concerns about mastery.⁵⁷

I launched the second generation of my experiments with small group work in the spring of 1999 and used the new approach again in the spring of 2000.⁵⁸ I adopted Professor Derrick Bell's book titled *Constitutional Conflicts*,⁵⁹ though I did not use it in precisely the manner he does. The book itself has two parts. Part I consists of a series of problems—one per chapter—presenting significant issues in constitutional law. Each chapter includes a brief overview of the doctrine relevant to that chapter's problem, and a list of Supreme Court decisions one would want to consult in resolving the problem. Part II consists of all the edited cases to which each chapter's list refers. Each problem is framed as if it were to be heard by the U.S. Supreme Court. The problems are extremely well thought through, and nicely balanced, so that it is possible for students to make very good arguments on each side of the issues presented.

For my course, I selected twelve chapters that corresponded to the topics I generally covered in Constitutional Law II, and scheduled one week per chapter. The class met twice a week (on Tuesdays and Thursdays). The class spent the two-hour class on Tuesday reviewing

56. Again, there was the possibility of a slight upward adjustment for excellent participation; *see supra* note 40.

57. Nor were my concerns about anomalous outcomes addressed, and I was just beginning to be conscious of the fairness issue. It's possible that some of the student concerns about respect and personal values were ameliorated in this format.

58. In 1998, sixty-nine students enrolled in Constitutional Law II, as it was not my turn to have the enrollment cap. I used truncated forms of small group projects early in the semester, but generally felt there was little opportunity to experiment because of the size of the class. I gave a twenty-four hour take-home exam, and saw no change in outcomes.

59. DERRICK A. BELL, JR., *CONSTITUTIONAL CONFLICTS* (1997).

the assigned cases and discussing the doctrinal framework to be used in arguing that weeks's hypothetical. The Thursday class session consisted of oral argument and discussion of the problem.

I divided the students in the class into twelve groups. Each week three groups were on call. One was designated "Chief Justices," and the other two groups had responsibility for arguing each side of the case, respectively. The responsibilities of the Chief Justices included leading the class in discussion of the cases and doctrines on Tuesday. I met with this group during the first hour on Tuesday, while the other members of the class were meeting in their small groups to clarify questions and reduce to writing an outline of the doctrine governing the problem at issue. During the second hour the Chief Justices led the rest of the class in creating a single doctrinal outline from the products produced by the small groups; I tried to intervene as little as possible. On Thursday, the first hour was given to oral argument of the assigned problem. The Chief Justices took the lead in questioning the advocates for each side, and in moderating the final discussion in which the remaining class members, acting as Associate Justices, attempted to reach a resolution of the problem. Following the oral arguments, each "on call" group had a week in which to complete and submit to me a written brief or opinion (depending on role).

As there were twelve student groups, twelve problems covered, and three possible roles per problem, each group served in each role once during the semester.⁶⁰ In 1999, a limited enrollment year for me, each group consisted of only two or three students.⁶¹ I thought groups of two too small to secure the benefits of group work, so I paired each group with another whose job was to serve as consultant, helping to test, *inter alia*, understanding of the cases and argument strategies. The consulting group did not have responsibility for writing, however. In practice, then, each group had some responsibility beyond reading the assigned cases every other week, though they had a writing assignment due only every fourth week. As students later told me, they found this schedule difficult to mesh with

60. As parties, each group appeared once as the constitutional challenger and once defending the government's position.

61. The enrollment in 1999 was twenty-seven after attrition.

their other responsibilities, and having a larger enrollment in 2000,⁶² I abandoned the consultant role the second year. As a result, those students had specific preparation responsibilities only every fourth week.⁶³

In Professor Bell's course (which at N.Y.U. School of Law is a required, five hour course covering all of the constitutional topics in the book), students prepare written briefs and circulate them to the class prior to oral argument, each of which occupies a single class session. Professor Bell participates actively in the discussion in class (and, both before and after, by e-mail), ensuring that there is consideration of every aspect of each problem and issue contained therein. In contrast, at the time I was using this material, I had in mind a process that was as student-guided as possible. Thus, though I met with each group of Chief Justices during the first hour on Tuesday to avoid the presentation of doctrinal errors, I tried to stay out of the process as much as possible. I did ask at least one question of each side during oral argument, but I was encouraged to discover that students usually raised every issue on my list, and I kept my interventions brief.

I read and graded the written briefs and opinions as soon as I could after they were turned in, generally not as quickly as would be ideal, but always before those groups again had writing responsibility. I made extensive written comments on each paper, suggested areas for improvement, and assigned a letter grade. Borrowing another procedure from Derrick Bell, each week the students who were neither on call nor serving as consultants (in 1999) were to write brief opinions resolving the case. I later reviewed these and graded them on a "check," "check-plus," "check-minus" basis. I assigned a grade to each student for participation (taking into account their oral arguments, general class participation, and the brief

62. The enrollment initially was forty-nine, which created twelve groups of four students and one group of five. One student withdrew from the course, but did so too late for the students to be willing to reform groups, so there was one group of three for the remainder of the semester (in addition to the one group of five).

63. Professor Bell's lists of cases included some that provided background for the problem; in the format I used they became too burdensome for the students. Accordingly, I reduced the list of assigned cases somewhat, doing so increasingly the second year. I also, again especially during the second year, modified the editing slightly.

opinions), and each student evaluated him- or herself on factors such as effort and improvement.⁶⁴ The papers counted eighty percent; my evaluation and the students' evaluations counted ten percent each. Thus, group work made up the most significant portion of the final grade. Because this was a departure from standard practice at my school, I gave students the option of taking a final exam that I would grade individually, but none exercised that option.⁶⁵

Because consideration of each chapter began with a discussion of the cases and doctrinal framework, this was not genuinely a problem-based course.⁶⁶ I think it would be more aptly labeled an example of the problem method as we commonly use that term in law teaching; perhaps the problem method writ large, as equal time was devoted to the hypothetical and "the law." A purely problem-based method exposes students directly to a problem from the outset, without prior exposure to background information (such as applicable cases in law). In problem-based learning students must identify the information needed to resolve a problem, and they are responsible for developing the techniques necessary to acquire that information.

My assessment of my version of Professor Bell's "Constitutional Conflicts" approach is mixed. With respect to overall mastery of the material, I couldn't have been happier during the first year. The level of discussion was significantly higher than I had ever experienced (including the two immediately preceding years) in Constitutional Law II; the students employed key concepts correctly and fluently in their arguments and in deliberations on the problems. Moreover, the written work I graded was far superior to anything I had seen on exams.⁶⁷

However, there seemed to be a significant decline in mastery in 2000, the second year. While the level of students' oral and written work remained high (for example, the latter did not exhibit the sorts of errors I had seen on exams prior to implementing this approach),

64. The class selected these criteria.

65. Had any student taken the exam, the relative values would have been forty percent for the papers and forty percent for the exam.

66. Professor Bell's approach is more nearly truly problem-based. Though the casebook does include a brief overview of the doctrine applicable to each chapter, his format does not devote the preliminary class time to doctrinal frameworks that mine did.

67. Perhaps this is to be expected. *See infra* note 113.

its overall quality was not as outstanding as it had been the previous year. The principal differences between 1999 and 2000 were class size (forty-eight (in 1999) vs. twenty-seven (in 2000)) and the frequency of assignments for which students had explicit responsibility. It's tempting to draw the fairly obvious conclusion that harder work tends to produce better work products; the students in 2000 worked in larger groups on a more relaxed schedule.⁶⁸

My concerns about anomalous individual results took a different form than in the past: they became concerns about individuals receiving "undeserved" grades because others in their group did the bulk of the work. Because the groups doing the writing assignments were so small in 1999, and because I got to know each person fairly well, I felt pretty confident that there were no "free riders" that year. I am not as sure about 2000, with a larger class size, larger groups, and some groups I did not get to know as well (I believe some groups simply divided up the assigned tasks, though that does not necessarily mean there were members who did less than a fair share of the work). I have to conclude that grading on the basis of group work products always carries some risk of "unfair" results, so this approach does not solve that problem.

Student self-esteem issues ranked high on the list of reasons I adopted this approach. I hoped that the experience of working through a problem on one's own (with a small group of peers) might have the effect of demonstrating to students that they are capable of producing very good quality work, and so have a positive impact on their self-esteem.⁶⁹ I did not survey either class on this question, but my own impression is that the experience may have had that effect, to a modest degree, for some students. Especially with respect to the oral arguments, students seemed to recognize excellence (which was a common occurrence) and those who presented exceptional arguments took well-deserved pride in their accomplishments.⁷⁰ However, it didn't appear that students uniformly took pride or

68. The distribution of talent is a possible factor also. In 1999, because of the pairing of groups, two different groups had the benefit of working input from each of the most skilled students.

69. This was the reason I tried to be relatively inactive in class.

70. The students never saw each others' papers, and so were not in a position to assess each other's written work.

satisfaction in working through problems on their own; many expressed a desire for more guidance and feedback.⁷¹

Because of the assigned roles, I don't think there was much room for exploration of personal values and personal experience in relation to constitutional law. In fact, I likely (and inadvertently) reduced even the little potential for personal exploration by stressing doctrinal analysis to the detriment of a deeper consideration of Fourteenth Amendment principles. I have to say I did not make significant progress on this dimension in 1999 and 2000.

Though the approach I tried has some potential, I decided not to continue it in that form after two years. Three central reasons motivated this decision. First, it had not really addressed the mastery issue, at least in the larger class, and I wanted to look for a method that could be successful in an uncapped enrollment course. Second, I concluded that students needed more feedback from me, both as a means of enhancing mastery and in response to the issues of hierarchy and self-esteem. Third, I wanted to emphasize written work and de-emphasize or eliminate the oral arguments. I felt that students' writing skills lagged behind their skills at oral presentation, and that most legal careers would more consistently require the former.

At the same time, I came away from three years of intensive, though intuitive, experimentation convinced of the value of small group work focused on problem-solving. I wanted to try and develop a format that would accommodate larger enrollments, and that would provide students more extensive feedback, emphasize written work, and increase personal contact with me. I finally began reading the literature on adult learning and alternative methods of instruction, and I came across accounts of problem-based learning in medical schools.

IV. PROBLEM-BASED LEARNING

A. The Theory

PBL is informed, fundamentally, by the principle that teaching and learning methods ought to be "appropriate to the outcomes

71. This issue persists; *see infra* note 117 and accompanying text.

expected of students.”⁷² For medical students, the tasks to be performed by physicians define those expected outcomes. McMaster University Medical School characterizes the physician’s principal tasks as the ability to “evaluate and manage patients with medical problems effectively, efficiently, and humanely,” and to “continuously define and satisfy his particular educational needs in order to keep his skills and information contemporary with his chosen field and to care properly for the . . . problems he encounters.”⁷³ Thus, McMaster designs the methods of instruction and evaluation specifically to develop and assess the skills of clinical reasoning and self-evaluation and study.

Barrows points out that educational programs can be subject-based or problem-based; teacher-centered or student-centered.⁷⁴ Problem-based methods have two educational objectives: “the acquisition of an integrated body of knowledge related to the problem, and the development or application of problem-solving skills.”⁷⁵ This approach is ideal for the development of clinical reasoning (or other applied) skills, because it engages students in exactly the tasks at which they are expected to become competent. At McMaster, program developers give considerable attention to analyzing the internal components of the clinical reasoning process, and designing problems that implicate each element of that process.⁷⁶

It’s important to emphasize that the problem-based approach is an effective way to impart information and knowledge as well as problem-solving skills. It may be more effective than rote memorization because most people seem to have better retention of information they have had to use than information merely committed to memory. At minimum, research has shown PBL to be no less effective than traditional teaching methods (such as lectures) in transmitting basic science concepts to medical students.⁷⁷

72. BARROWS & TAMBLYN, *supra* note 1, at 3.

73. *Id.* at 3-5.

74. *Id.* at 7-15.

75. *Id.* at 12.

76. *See id.* at 19-70, 156-62.

77. *A Randomized Controlled Trial Evaluating the Impact of the New Pathway Curriculum*, at <http://www.ed.gov/offices/OPE/FIFPSE/LessonsII/harv-med.html> (last visited Aug. 20, 2002).

The second axis along which educational programs can be differentiated is whether they are teacher-centered or student-centered; a problem-based program can be either.⁷⁸ In Barrows' terminology, a teacher-centered program or course is one in which "[t]he teacher decides what information and skills the student should learn, how it is to be learned, in what sequence, and at what pace."⁷⁹ In contrast, in a student-centered program, "the student learns to determine what he needs to know."⁸⁰ In practice, at McMaster this means that the student has some responsibility for identifying his long-term professional goals and the specific areas he wishes to study, and within a course or area of the curriculum, selecting the problems to undertake and the emphasis to give various aspects of the problems chosen.⁸¹

Student-centeredness contributes significantly to the objective of developing life-long learning and self-evaluation skills. The student is made aware of himself as someone who is responsible for his own education.⁸² Moreover, I believe student-centeredness helps explain the emphasis Barrows places on presentation of the problem first. One might wonder whether most, if not all, of the benefits of a problem-oriented approach (better comprehension and retention of information; development of problem-solving skills) might not be equally available in a course in which problems appear as exercises subsequent to the presentation of substantive material.⁸³ Even if that were the case (and there is an argument to be made that it is not⁸⁴), the pure problem-first approach allows students greater flexibility in tailoring the problem to their own educational objectives, and thereby fosters life-long learning.

78. Similarly, a subject-based program can be teacher-centered or student-centered. BARROWS & TAMBLYN, *supra* note 1, at 7.

79. *Id.*

80. *Id.* at 9.

81. For example, in a neurology course, students could choose from a menu of twenty-two problems that together represented a comprehensive coverage of the field, but the course designers felt that students demonstrated satisfactory competence by working through any six of the twenty-two available problems. *Id.* at 161. Thus, students had considerable latitude in directing their own course of study.

82. *See generally id.* at 91-109.

83. That is, a course employing the problem method as usually seen in legal education.

84. *See infra* text accompanying notes 117-19.

A problem-based method presents multiple opportunities for formative assessment—interim feedback designed to allow students to correct errors—during the problem-solving process.⁸⁵ As for final assessment, Barrows describes a range of summative techniques that may be used to certify students' ultimate competence.⁸⁶ The overriding principle in summative assessment is that the faculty must be clear about the educational objectives they wish their students to achieve, and must choose assessment measures appropriate to those objectives.⁸⁷ As for grading, McMaster uses a pass-fail system,⁸⁸ and Barrows remarks that such a system helps reduce some students' resistance to problem-based learning by eliminating grade competition and encouraging cooperation in learning.⁸⁹

In summary, the McMaster program is problem-based and student-centered. Students work in small groups (usually five) with a tutor in a noncompetitive environment. The curriculum is tailored to some extent to the individual's professional goals, and as a whole emphasizes the acquisition of long-term professional skills rather than more immediate competencies such as the ability to pass medical board exams. It should be obvious to anyone who has any familiarity with American legal education that importing PBL into that setting will present considerable challenges.

B. The Problem-Based Learning Experiment

In 2001, motivated by what I had learned from reading about PBL as well as my own experiences in 1999 and 2000, I made significant changes to the problem-oriented format used the previous two years. I did retain the element of small group work. I dropped the introductory discussion of cases and doctrine, adopting the problem-first approach of PBL. I also adopted the tutorial model, shifting to fewer problems (four rather than twelve), a longer period for work on

85. There is a detailed description of this process in BARROWS & TAMBLYN, *supra* note 1, at 71-90.

86. *Id.* at 113-22.

87. *Id.* at 112.

88. The McMaster grading system employs "rigorous and demanding criteria of performance" and requires "careful evaluation" of the student's performance. *Id.* at 185.

89. *Id.*

each (three weeks rather than one), and regular small group meetings with me, serving in the role of tutor. I shifted the focus of the work from oral argument to written analysis, and from advocacy to judgment. I asked the students to work with unedited Supreme Court opinions. Finally, I made the decision that all groups would work at the same time on the same problem.⁹⁰

Thus, in 2001 each group of four students received a brief statement of the problem and a list of Supreme Court cases at the beginning of each problem unit; there was no introduction to the issue, cases, or doctrines. Each group was to work for two weeks on the assigned problem, meeting with me once each week. There were no large class meetings during this time. A written assignment was due at the end of the second week. During the third week the class met as a whole to discuss selected papers and to review the doctrine and principles implicated by the problem. The class repeated this cycle three times, for a total of four problems completed at the end of the semester.⁹¹

As I said, I fashioned this approach in response to my own experience as well as my understanding of PBL; the motivations are intertwined. I had long been satisfied with the results of small group work and with classes emphasizing problem-solving; these are obviously congruent with PBL. I adopted the problem-first approach largely because of the PBL literature, though this choice was supported by the fact that I had felt in 1999 and 2000 some disjointedness when making the switch from the content-oriented first day on a chapter to the problem-oriented second day. The tutorial aspects of the course were explicitly modeled on PBL. I hoped this change would address the mastery issues that had not been consistently resolved by the earlier method, because students would have at least two opportunities to receive feedback before a written work product had to be submitted.⁹² Finally, I devoted a week on

90. The enrollment in 2001 was forty-three. The students worked in groups of four, with one group having just three members.

91. Each problem after the first presented multiple constitutional issues, and contained decreasingly clear cues identifying the issues students were to address. Overall, the course coverage was reduced only slightly in comparison with previous years.

92. In practice, there was significant variation among groups. The students were supposed to bring written outlines to the second meeting with me. Some did not do so at all; some

each problem to large class discussion largely in response to Barrows' insistence that time to formalize and integrate what has been learned is crucial to problem-based learning.⁹³

Curricular or institutional considerations motivated the remaining instructional elements of the 2001 course, not PBL. I thought students needed more work on written expression than oral argument, and I wanted to try problems calling for an exercise of legal judgment (as in a bench memo, judicial opinion, or opinion addressed to a client) rather than advocacy (as in a written brief).⁹⁴ I thought it would be valuable, especially in the long term, for students to have the experience of working with unedited opinions.⁹⁵ And once I made those decisions, I thought I saw a way to deal with the issue of enrollment caps. If groups need not be assigned roles for oral arguments, all could work on the same aspect of a problem at the same time, and enrollment would be limited only by the number of groups with which I could meet each week.

Then there were the matters of evaluation and grading. The PBL literature reinforced what I already believed about the importance of formative⁹⁶ feedback. I introduced three opportunities for this kind of feedback. First, the meetings with me while the problem papers were being written were intended to help students clarify their understanding of the issues, cases, doctrines, and possible arguments implicated by the particular problem. Second, after groups turned in each set of papers, I circulated two or three of them to the whole class (without identifying the authors) for discussion during the first of the two whole-class meetings concluding work on a problem.⁹⁷ I intended this to be an opportunity for students to learn by comparing their own work to others'. Finally, I provided written, ungraded

brought briefs of cases rather than outlines of answers to the assigned problem. At the other extreme, I saw and commented on multiple outlines (and multiple drafts) in some instances.

93. BARROWS & TAMBLYN, *supra* note 1, at 103.

94. I wanted to emphasize judgment because it is implicated in nearly every form of legal representation.

95. It was permissible to do independent research and use other sources of any kind.

96. At this point I had the concept, but not this terminology, which means feedback given during work on a problem, in order to allow students to correct errors and improve what is being done.

97. Over the course of the semester I circulated one paper from each group to the whole class for this purpose.

feedback on each completed paper, in the hope that students would be able to build on successive efforts in the course.

I also was attracted to the idea of self-evaluation. In PBL it implements the concept of student-centeredness by affording students one additional aspect of responsibility for their education. Moreover, it contributes significantly to the objective of creating life-long learners. The ability to self-evaluate is essential to knowing when more learning is in order, and it is a key ingredient in effective self study.⁹⁸ Additionally, I gravitated toward self-evaluation because law students too often report that they don't understand the criteria on which they are being graded. I thought that involving them in self-evaluation would help make the criteria comprehensible (and justifiable), and provide some sense of self-determination and control.

I had used a limited form of student self evaluation in 1999 and 2000. In those classes, students graded themselves on what loosely could be described as "participation" in the course. Each year the students themselves articulated the precise criteria to be applied, and each individual graded him- or herself on those criteria, writing a statement explaining the grade. The self-evaluation counted for ten percent of the student's final grade.⁹⁹ I had been quite satisfied with this procedure those two years. While a few evaluations seemed self-serving, the clear majority were quite candid, and some were extremely moving. I did not ask students to reflect on the experience, but my subjective sense was that it was well received and that for some it did provide a small sense of empowerment.

I determined to repeat that process in 2001, and to expand on it. In addition to the "participation" grade, I decided to make the class responsible, as a group, for articulating the criteria on which I was to grade the papers, though I would be the one to apply those criteria. Because I thought experience, informed by the various forms of formative feedback described above, would be a necessary foundation for this task, I waited until the class had completed three projects before beginning work on this aspect of evaluation. At that

98. BARROWS & TAMBLYN, *supra* note 1, at 110.

99. I assigned a grade worth another ten percent. My criteria primarily had to do with effective participation in the oral arguments and in the large class discussions.

point, I selected five passages from the papers that had been circulated to the class, and asked each group to complete a written comparison of their own work (on the same issues, respectively) and the sample work. I then collected all the criteria explicit or implicit in all of the written comparisons, provided some structure, and circulated that product to the class as a draft of the grading criteria.¹⁰⁰ I scheduled a class discussion that included the questions whether any items on the draft should be deleted, whether there were additional criteria to be added, and what weight should be given to each item or category for the final grading analysis. The outcome of that session was a grading scheme or grid that I used to score all of the papers that had been completed during the course of the semester. The class also chose the relative weights to be assigned each aspect of the course. They settled on twenty percent for each paper, and ten percent each for the self-evaluation and my “participation” grade.¹⁰¹

C. Assessment

From the internal perspective of PBL, I think this course worked as one would expect, given the ways it did and did not conform to the PBL model. On the one hand, my course was genuinely problem-centered: students encountered the problem first, without any preliminary exposure to cases or other information relevant to the problem’s resolution. On the other hand, it was teacher- rather than student-centered. I chose the problems, the order in which they were presented, and to some extent the resources students were to consult.¹⁰² In addition, the existence of other demands on the students’ time required setting a firm schedule for each problem, so students were not able to work at their own pace.¹⁰³ Finally, and

100. For example, each of the groups identified correct statements of the applicable law, the absence of irrelevancies, and support for conclusions as ingredients of a good analysis (along with many other factors).

101. In practice, I did not ask that the “bottom line” of the self-evaluations be expressed in terms congruent with the scoring scheme for the papers that emerged from the class discussion of that issue. Thus, I wasn’t quite sure how to integrate them, and consequently the self-evaluation and participation grades had relatively slight effect on the grades assigned for the course.

102. See *supra* text accompanying note 79.

103. Barrows cautions that students in a problem-based program must have adequate

perhaps most significantly, students were graded comparatively.

According to Barrows, the educational objectives of problem-centered learning are “the acquisition of an integrated body of knowledge related to the problem, and the development or application of problem-solving skills.”¹⁰⁴ If “integrated” is taken to mean knowledge that is not merely memorized, then I think the problem-based approach worked as well in this course as in the McMaster program.¹⁰⁵ By the end of the semester almost all of the students showed an excellent working knowledge of the concepts I regarded as key.¹⁰⁶ However, if “integrated knowledge” is taken to mean the sort of multilayered knowledge one would see in a medical problem-solving context,¹⁰⁷ the nature of the problems I used precludes a similar result. My problems were one-dimensional in comparison with those described by Barrows; they did not present issues of fact, client interviewing, or litigation strategy. One could, clearly, construct problems in constitutional law more closely resembling those presented by simulated patients in the McMaster approach.

A similar caveat applies to the second educational objective, the development of problem-solving skills. If one defines it narrowly, to mean in this context the ability to construct analyses of constitutional problems, I regard the course as a qualified success. Though not all students produced analyses I would describe as excellent, all but one group did produce work superior to what I had previously seen on exams. Moreover, by the end of the semester students showed real facility at another type of problem solving, issue identification. The fourth problem consisted of a set of facts that could be synthesized in several different ways, to support distinct Fourteenth Amendment

unstructured time to work on problems, and that there must not be competition associated with the demands of a structured, traditional course. BARROWS & TAMBLYN, *supra* note 1, at 186.

104. *Id.* at 12.

105. Of course, in legal education we rarely assess memorized material in the way frequently done in medical schools. In fact, even in the traditional law school classroom “integrated knowledge” is modeled in the cases studied and, in some respects, in the professor-student dialogue.

106. For example, “levels of scrutiny” is a key concept I would like students to master. For a more complete discussion of mastery in 2001, see *infra* text accompanying notes 112-19.

107. For example, basic science information, pathological mechanisms, possible diseases, and interpersonal skills easily could be implicated in a single clinical problem.

claims. Almost all the groups were able to sort through the issues quickly and competently. If, however, one gives “problem-solving” its broadest definition, to reflect more closely the full range of issues a lawyer would confront in taking on a constitutional problem, my approach did not enhance students’ problem-solving skills, because it did not implicate them.

I think one lesson here is the crucial importance of framing one’s course objectives carefully and clearly, before designing problems to implement them. In retrospect, I think my problems did not go far beyond the relatively narrow range of analytic skills that normally form the content of “substantive” law courses.¹⁰⁸ I designed the problems as I did without really thinking about this question; my expectations for the course were formed years ago when teaching it in the traditional manner. Though I might make the same choice in the future (that is, to structure the problems to present mostly or solely analytic challenges), it would be far preferable to make that choice consciously.

The principal goal of student-centered educational programs is the creation of life-long learners; along the way, students often exhibit increased motivation and self esteem as they take increasing responsibility for their own education.¹⁰⁹ As my course was teacher-based, it did not and could not achieve the objectives of student-centered education to any significant degree.

I did attempt to introduce a measure of student-centeredness by involving students in the grading process. I hoped that having students participate in formulating the criteria on which the papers would be assessed might give them some sense of control over their educational destinies. Speaking charitably, I now would describe this impulse as naive. Though I found the written assignment in which students compared their own work with others’ to be very well done by most of the groups, the in-class discussion of the grading criteria was painful for everyone. The experience clearly did not generate a feeling of empowerment for most students.¹¹⁰ In retrospect, the near-

108. One important exception is the fact that the format did implicate collaborative skills.

109. BARROWS & TAMBLYN, *supra* note 1, at 10-11.

110. There were some exceptions, as evidenced by some comments in the large class discussions and on the course evaluations.

impossibility of the task is apparent: the students were being asked to navigate unfamiliar territory (articulating evaluation criteria) in a context in which, because of comparative grading, self-interest predominated. It was hardly a recipe for empowerment.¹¹¹

However, this experience raises for me the question whether we should not do more, institutionally speaking, to allow law students to take responsibility for their legal education. It is, after all, a professional education; lawyers have to exercise independent professional judgment on behalf of their clients. As is the case with the training of physicians, a student-centered curriculum seems inherently more suited to that professional objective.

Turning to the evaluation of the 2001 Constitutional Law II course from the perspective of my own concerns, I begin with overall mastery. I believe the students' comprehension of the material to be superior even to that attained in 1999. Interestingly, in this format the proportion and type of substantive mistakes I saw on the first paper were roughly equivalent to what I used to see on exams. However, that was the third week of the semester. On the final paper, which, as described earlier, presented problem-solving as well as conceptual challenges, there were almost no mistakes and, nearly uniformly, a very high level of discussion.¹¹² Intuitively, I attribute the salutary results to students' hard work, both absolutely and relatively. The 2001 class worked even harder than the 1999 class: they wrote four papers rather than three, and their schedule was more demanding.¹¹³

I asked the 2001 class to complete a questionnaire that posed questions related to the concerns I have been discussing in this article.¹¹⁴ With respect to mastery, the questionnaire asked "Do you think you have learned more/about as much/less about the subject-matter of the class than in other four-hour law school courses?"

111. I believe my failure to anticipate this fact illustrates Brookfield's point that students frequently experience classroom events quite differently than do teachers. See BROOKFIELD, *supra* note 38, at 92.

112. One group did not succeed in this respect.

113. I am making no magical claims for PBL; one would expect the product of a group's hard work over two and one-half weeks to be superior to what one student can produce in an hour on a timed exam. The point is that if we are training students to perform these analytic tasks, surely they are better served by having done the former rather than only the latter.

114. Students completed these evaluations anonymously.

Explain. To what do you attribute the difference (if any)?” Of the forty-three students in the class, twenty-nine said they thought they had learned more, nine about the same, three less, and two did not answer the question.¹¹⁵ The explanatory comments of those who said they learned more interpreted “more” to mean a better understanding of the material, a greater depth of understanding,¹¹⁶ knowing how to apply the concepts, and the likelihood that the knowledge would be retained for a longer period than in a traditional course. Several of those who answered “about the same” either gave no explanation or indicated they did not know how to make the comparison. Some in this category thought they had worked harder than in other classes to attain “about the same” results. All three who thought they learned less expressed a desire for lectures or other ways of tapping the professor’s knowledge.

The students who thought they learned more attributed the benefits to the group discussions (in that they required greater depth of thought than preparing for a traditional class), the exposure to varied perspectives within their groups, more time spent on the course in toto, and time spent throughout the semester rather than cramming at the end for an exam. These explanations are entirely consistent with my own impressions and intuitions. However, I do find it interesting that just two of the twenty-nine “learned more” evaluations mention feedback as a factor contributing to learning.

A final mastery-related question for me is whether I think the problem-first method proved superior to my previous approach, which exposed students first to an overview of applicable doctrine. At this point I can’t reach a conclusion, largely because I made other changes (such as the more intense work schedule) that more powerfully explain the improved results. However, presenting the problem first clearly did not have detrimental effects on the students’ work. I did not ask the students to comment on the problem-first question, because they would have had no point of comparison. However, I did ask for “other comments” at the end of the questionnaire, and a few students said they would have liked to have

115. There is a strong correlation between “learned more” responses and those expressing a positive experience of the problem-solving process.

116. However, five students expressed reservations about the breadth of the course.

a lecture or other introduction to the issues before beginning work on each problem.¹¹⁷ After two years with some form of introduction and one without, I am inclined to think the benefits have more to do with comfort than actual learning. However, students' comfort is important in itself, and a factor in learning as well. Nevertheless, I come away thinking this is one of the areas in which challenging students' expectations is the better thing to do, especially if it leads to better learning.¹¹⁸ In the absence of strong data on that point, it's at least true that presenting the problem first offers law students a more practice-like experience, and I think it a desirable part of the curricular mix, after the first year.¹¹⁹

As noted earlier,¹²⁰ some concerns about anomalous results take a different shape in the context of group work than when students are assessed individually (that is, concerns about some marks being too low are replaced by concerns about marks that might be too high). However, another question remains relatively constant: whether extrinsic factors such as normative bias and unfamiliarity with the discourse operate as barriers to learning and also infect final assessments. Here these potential barriers would affect group rather than individual processes.

Though no method guarantees that these concerns will be completely addressed, I found the 2001 model much more satisfactory than the 1999-2000 approach. First, in the earlier years students spent a great deal of time and energy preparing for their oral arguments, but then were graded on written briefs and opinions. Though some discourse assumptions could be addressed during this process, others, having more directly to do with written expression, were not.¹²¹ In contrast, in 2001 the students' attention was focused

117. Not surprisingly, these comments came disproportionately from those who did not feel they learned "more" in this class. (There were a total of seven such comments: three from those who thought they learned "less"; two from those who learned the "same"; and two from those who learned "more.")

118. See BROOKFIELD, *supra* note 38, at 20-21.

119. A problem-first approach requires students to read cases differently than when preparing for a traditional law school class; they must approach the case issues in a manner more closely approximating the conditions of legal practice.

120. See *supra* text accompanying notes 68-69.

121. I recall telling one student, who gave wonderful oral arguments, to just write down what she had said in class. She was never able to do it, and I did not fully explore the reasons.

entirely on written work, about which they met with me early and often. Thus their assumptions about written discourse largely did not remain unexplored, and so mistaken assumptions did not infect the final written products.¹²²

Second, I thought going in that the tutorial feature of the 2001 approach might help address both normative and discourse biases, and I think it worked reasonably well in practice in that regard. Meeting with just four students at a time, at least once a week, allowed me to get to know (most of¹²³) them individually and gain some sense of the normative and discourse-related assumptions they brought to the assigned tasks. In several instances I was able to help students uncover and, where appropriate, modify, their unconscious assumptions and expectations. The tutorial approach has almost infinite potential for this sort of work: I found it limited by my own inexperience more than anything else.¹²⁴

The remaining anomalous-outcome concern for the PBL approach has to do with the possibility that, if individuals are assigned grades on the basis of group work, some will receive grades higher than they “deserve” because they did not contribute in fair measure to the group’s work or work product. This is a genuine risk. Various prophylactic measures can be taken, such as asking students to

In general, students could consult with me while preparing their arguments and while drafting their briefs. I saw much more of them during the former period.

122. This approach also resolves my fairness concerns and avoids the influence of exam anxiety.

123. A few individuals almost never spoke during small group meetings with me.

124. My most glaring failure had to do with what are called “policy arguments” in constitutional discourse. Early in the semester several groups proposed arguments that seemed to me, as presented, to fall into that prohibited category. Eager to point them in more productive directions, I typically would dismiss these arguments without fully examining the reasons the students were bringing them forward. I gave the same cursory treatment late in the semester to a group that was, nevertheless, bent on retaining the “policy” argument I recommended they abandon. This group then discovered in a Supreme Court opinion an argument exactly analogous to theirs, and so I had to accept it as within the bounds of appropriate discourse. When their paper was circulated to the class, I found myself trying to explain why I had apparently changed my “no policy arguments” stance. A more careful and nuanced exploration of the earlier “policy” approaches, which in fact differed in important ways from the later one, would have left the students in a better position to negotiate this difficult aspect of constitutional discourse.

Another facet of this incident has to do with the reproduction of hierarchy. The group that did press on despite my “no policy arguments” response likely felt comfortable challenging me in a way others did not. (I owe this insight to a member of that group.)

affirm, under the honor code, that they made substantially equal contributions to the graded work product, or having students evaluate each member of their work group, during and/or at the end of the semester.¹²⁵ However, the risk of “undeserved” grades probably cannot be eliminated altogether.

It seems to me that problem-based approaches necessitate group work, if the assigned problems are to have any richness or complexity. Working individually presents significant risks that the problem-solver will become stuck in one sense or another; in a group someone almost always finds a way out of a blind alley, offers a different perspective on an issue, etc.¹²⁶ Thus the benefits of problem-based learning should be counted among the positives to be balanced against the risks of group work. In addition, lawyers often have to work collaboratively, and I think it important to expose students to the demands of collaborative work at some point during their time in law school. Taken together, the benefits of group problem-solving work seem to me to outweigh the risks inherent in assigning group grades.

I share students’ concerns about the issues of hierarchy and respect. One of the many attractions the tutorial model holds for me is that it creates an individualized learning environment. Students can work through problems in their own way, testing possibly incorrect hypotheses, taking risks in argument and analysis, and so forth. In this sense learners, rather than the teacher, set the teaching/learning agenda. Structuring a class this way can alter the teacher-student hierarchy in a manner that is positive for students, though the teacher/tutor still is responsible for guiding the learning process.¹²⁷ Moreover, having access to the teacher’s time and attention should send a message to students that they are valued and respected members of the learning community. Ideally, the tutorial structure erodes distinctions among students, because each is taken on his or her own terms. I hoped that in each of these respects adopting the

125. I didn’t do this in 2001, but probably will in the future.

126. There are also the logistics of a tutorial problem-solving course to be considered; I can meet with eleven groups weekly, but not with forty-three individuals.

127. Nevertheless, as explained earlier, it is not student-centered learning. See *supra* text accompanying notes 102-03.

tutorial model would have some counterbalancing effect on the hierarchies of law school culture.

On the first dimension, I regard the process as moderately successful. It seemed to me, subjectively, that there were a number of students in the class who enjoyed being treated as responsible learners and who enjoyed working through the problems. At the same time, small group discussions with me often seemed motivated more by a search for the “right answer” than anything else. This mixed impression is partially confirmed by the student questionnaire. When I drafted it, I was not clear how to address this question, and so I asked an open-ended question that read: “Students often report that law school has a negative impact on their self-esteem. Has this class had a negative/positive/little or no impact on your self-esteem? Explain. If there has been either a negative or positive effect, which aspects of the course would you identify as the cause?” Thirteen students said the course had had a positive effect. Of these, six cited interactions with me as at least one of the factors leading to the positive result. Another three named the process of working through problems on their own as the positive aspect. The remaining four discussed general competence in constitutional law and/or improvement during the course as the way in which their self-esteem was enhanced. Two students said their self-esteem had been lowered (one because his or her analysis of the issues seemed inadequate compared with other students’, the other because other group members did not seem to listen to that student). Twenty-eight students said the class had little or no impact on their self-esteem. Clearly, the evaluation question I drafted did not target my present interest very accurately. However, about two-thirds of the students who thought they learned “more” in this class also expressed moderate to strong approval of the problem method, so I suspect that as many as half of the students in the class found its structure in some sense affirming.

I was not at all successful at challenging the reproduction of hierarchy among students in 2001.¹²⁸ Some students came to believe that I gave different groups different answers to the same questions,

128. I think the 1999 course was more successful in this respect.

and that I spent more time with some groups than others. Both beliefs were fueled by concerns that some groups were gaining a competitive advantage over others, and they significantly undermined any message of equal respect that otherwise might have been expressed in the tutorial setting.

The belief that I gave different answers to different groups was in fact incorrect; the belief that I spent more time with some groups than others was not. I think it likely that no matter how well I dealt with the particulars of these issues (and I left ample room for improvement¹²⁹), they reflect a fundamental dilemma. On the one hand, the tutorial approach is built on the proposition that learners' needs vary, and thus so do effective teaching responses. On the other hand, in a competitive, comparative grading environment, absolute even-handedness seems the only fair (and safe) way to proceed. In such a setting, any form of different treatment is bound to create at least some competitive anxiety, even when it does not actually amount to competitive disadvantage.

As a critical theorist, I reject the proposition that identical treatment is per se equal treatment. As a law teacher/tutor, I know that different student groups have different needs; identical treatment would not have been good educational policy. At the same time, I understand the driving force of students' fears, because grades and rankings have such significant professional consequences. It is not a dilemma easily resolved.

Tutorial programs undoubtedly work best in noncompetitive environments. As a practical matter, law schools are not going to become noncompetitive in the foreseeable future.¹³⁰ For now, I intend to come at the problem from another direction. As I worked on this Article, I realized that I had not seen this sort of anxiety in 1999 or 2000. I suspect the operative difference is that in those years no two

129. With respect to the belief that I gave out different answers, I attempted to explain, in a large class meeting, that I had not done so and why one might have that perception. Judging by the students' evaluations, I did not persuade everyone. I never did discuss the time differentials with the class, and I probably should have, ideally at the beginning of the semester. I think it inevitable that I'll become embroiled at some points in very sophisticated discussions with some groups, and that other groups may need extended periods of time for other reasons.

130. Noncomparative grading might reduce the effects of competition, because in principle everyone would receive a grade appropriate to actual performance.

groups wrote papers on exactly the same topic.¹³¹ In contrast, in 2001 everyone worked on exactly the same questions, in a format in which many were trying to extract from me cues as to how to proceed and what to say.¹³² I plan to try and recreate the earlier atmosphere by assigning somewhat different perspectives to different groups for each problem.¹³³ I hope that if different groups are taking on slightly different tasks, they will not be, or need to be, so concerned about what others are doing.

More deeply, the anxiety present in the 2001 experience leaves me pondering the extent of the conflict between grade-based hierarchy and educational values. I wonder whether, institutionally, we are clear about the costs of competitive and comparative grading, in terms of the injuries they inflict on individual students and on the educational process, and whether we are certain that the supposed benefits justify those costs.

As probably is obvious, I would be more comfortable teaching in a noncompetitive environment, and I empathize strongly with the students who have written stories about competitiveness. This concern is one of the reasons I offer students an opportunity to do group work, and especially in the last three years, an opportunity to do collaborative graded work. My own experience in 2001, featuring somewhat closer observation of group interactions, did not alter the satisfaction I have felt with this aspect of the various experiments all along. I also asked students to report on their experience this year. The evaluation question was: "Has working in a small group been a positive/negative/neutral experience in this class? Explain." Twenty-five of the students described their group experience as positive, for reasons including the exchange of ideas, gaining an improved understanding of the material, and the formation of positive relationships. Twelve students characterized the experience as neutral

131. For each chapter, three different papers were submitted: one brief for each side, and a judicial opinion.

132. In 1999 and 2000 the groups worked for a shorter period on each problem without regularly scheduled meetings with me, so there was less comparative scrutiny of my behavior.

133. I plan to articulate four slightly different perspectives for each problem: to approach it as a bench memo, a judicial opinion, a brief, or a vote-counting exercise (for example). I will randomly assign each group one perspective for each problem and each group will do all four by the end of the semester.

or mixed. The five of these who described both positives and negatives tended to mention the benefits of group discussion in the former category, and joined those (six) who found the experience negative overall in naming unequal sharing of work, scheduling difficulties, and intragroup friction as the negative factors. I find nothing surprising in these comments, though I would like to reduce the incidence of negative experiences. This is an area in which clearer formulation of my course objectives is in order.

I also have been concerned to make a space for the expression of personal experience and personal values when students are considering legal principles and doctrines; I think such expression can enhance understanding and allow students to explore their own relationship with the law. I find small group discussions to work very well for this purpose, especially in Constitutional Law II. The issues raised in this course often are socially controversial ones, and individuals may have strong views one way or the other. One student told me that her group regularly discussed their own views and values first, then turned to questions of constitutional interpretation and how the assigned problem ought to be resolved. This is exactly as I would have it.¹³⁴

Shifting from advocacy-oriented problems to ones calling for the exercise of legal judgment was an additional step in this direction. I thought that asking students to make decisions (within defined boundaries), instead of assigning predetermined positions, would foster even more extensive consideration of students' own values in the small group discussions. The course evaluations suggest this may have been the case. Twenty-eight of the students reported that they felt it permissible to bring personal experience and/or values to bear when discussing the problems, and of these twenty-two indicated that personal views had formed an important part of the group's deliberations. Most of the fourteen who said they did not bring personal views to bear indicated that they thought those views to be irrelevant or unimportant.¹³⁵ Here again, I see potential for

134. I think it very important that the expression of personal views not be required or graded. Brookfield makes a related point, stating that there are risks of exaggeration with "mandated confessionals." BROOKFIELD, *supra* note 38, at 13-14.

135. One student said he or she felt discouraged from bringing personal views into the

improvement, by raising the question of the role of personal values and experience with the class, probably at several points during the semester.

In summary, I'm pleased with the use of PBL in teaching Constitutional Law II, though I see several aspects of the course in need of revision. Viewed solely from the perspective of this year's experience, I would omit the exercises in which I tried to involve the students in constructing grading criteria, and I would change the nature of the assignments so that the entire class is not working on exactly the same problem at the same time. There are a number of areas in which my communication with the students could be improved. Beyond that, this seems a good time to reevaluate and refine the course objectives. Looking ahead, I find it enormously helpful to add the "How People Learn" framework to the analytic mix.

V. LOOKING FORWARD

In 1998 the National Research Council published a report titled "How People Learn," which synthesizes basic research on the ways people, both children and adults, learn.¹³⁶ "How People Learn" summarizes an extensive body of research on learning, and identifies three key findings that "have both a solid research base to support them and strong implications for how we teach."¹³⁷ Those findings are:

1. Students come to the classroom with preconceptions about how the world works. If their initial understanding is not engaged, they may fail to grasp the new concepts and information that are taught, or they may learn them for purposes of a test but revert to their preconceptions outside the classroom.¹³⁸

conversation; one answer was unresponsive.

136. HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL (John D. Bransford et al. eds., National Academy Press, Expanded Edition 2000).

137. *Id.* at 14.

138. *Id.* at 14-15.

2. To develop competence in an area of inquiry, students must: (a) have a deep foundation of factual knowledge, (b) understand facts and ideas in the context of a conceptual framework, and (c) organize knowledge in ways that facilitate retrieval and application.¹³⁹

3. A “metacognitive” approach to instruction can help students learn to take control of their own learning by defining learning goals and monitoring their progress in achieving them.¹⁴⁰

Even at this level of generality, the potential of these findings to generate important questions for legal education is obvious. “How People Learn” also sets forth a framework for constructing and assessing good learning environments. Such an environment has four attributes: It is learner-centered, knowledge-centered, assessment-centered, and community-centered.¹⁴¹

“Schools and classrooms must be learner-centered. Teachers must pay close attention to the knowledge, skills, and attitudes that learners bring into the classroom.”¹⁴² Moreover, “[t]eachers in learner-centered classrooms also pay close attention to the individual progress of each student and devise tasks that are appropriate.”¹⁴³ At the AALS conference, I found Professor Bransford’s discussion of his work on the differences between the problem-solving of novices and experts extremely helpful. Professional education may be thought of as a process of training novices in a particular domain to become experts. It’s important, he said, to deal with experts’ blind spots—ways of thinking and doing that seem natural to the expert but are inaccessible to the novice.¹⁴⁴ Learner-centered approaches keep novices’ needs and abilities at center stage.

Though no one model of instruction is an end in itself, the tutorial approach seems inherently learner-centered. In theory, it is

139. *Id.* at 16.

140. *Id.* at 18.

141. Note that this terminology is different from Barrows’.

142. HOW PEOPLE LEARN, *supra* note 136, at 23.

143. *Id.*

144. I found particularly helpful Professor Bransford’s description of adaptive expertise (the ability of experts to fashion new ways of solving problems), and his discussion of the fact that experts generally exhibit comfort with uncertainty (as often is not the case with law students). *See id.* at 31-50.

instruction organized around the learners' needs. In practice, I see much more I could do to elicit and explore law students' preconceptions, attitudes, and assumptions regarding the values of constitutional law and the norms of legal discourse, as well as those relating to the key substantive concepts with which they engage. Beyond that, I wonder how I might become more attuned to the needs and abilities of my students. I came to law school at the age of thirty-seven with a very different personal history than most law students, and something analogous can be said of many teachers. Given these differences, it's almost impossible to form an understanding of what students are experiencing on the basis of one's own experience. Even where histories are similar, law teachers by definition are persons who did well in law school. We may not know how it feels to experience the issues of self esteem reflected in the stories reproduced earlier, or what it's like to struggle with conceptual mastery. We need better information, from learning theorists, about what works for those who learn differently from the ways we learned.¹⁴⁵

"To provide a knowledge-centered classroom environment, attention must be given to what is taught (information, subject matter), why it is taught (understanding), and what competence or mastery looks like."¹⁴⁶ At the AALS conference, Professor Bransford explained that implementing this objective means prioritizing and aligning the curriculum. One should identify key ideas and skills; prioritize what is important for students to know and do. Alignment means providing experiences that enable students to develop the key knowledge and skills.

It seems simple enough, but I personally rarely have moved beyond the question of "coverage" in Constitutional Law II. I do know which concepts I regard as key, and I have given some thought to the development of problem-solving skills in the problem-oriented versions of the course, though I have not always been clear about

145. Speaking for myself, I think one of the principal reasons I did not experiment sooner in light of my concerns about mastery was the fact that the methods I was using seemed to work well enough for some students (and it was easy to dismiss the less positive results for others because of the heavy emphasis on ranking students in the law school culture).

146. HOW PEOPLE LEARN, *supra* note 136, at 24.

precisely which skills I would like students to develop. I have not thought deeply about what problem-solving mastery, of any type, would look like for second- and third-year law students. I have consigned my interest in collaborative skills to the dark hole of small group interactions, without seriously considering the possibility of making that a high-priority course objective. I changed the assignments to emphasize writing, but I have no picture of what level of competence I would like students to achieve. I have a somewhat more developed sense of what kinds of argumentation I expect good students to produce. PBL seems relatively well aligned with most of these objectives, but without more clarity as to their precise character, alignment too is difficult to assess.

Formative assessments—ongoing assessments designed to make students’ thinking visible to both teachers and students—are essential. They permit the teacher to grasp the students’ preconceptions, understand where the students are in the “developmental corridor” from informal to formal thinking, and design instruction accordingly. In the assessment-centered classroom environment, formative assessments help both teachers and students monitor progress.¹⁴⁷

In one sense, the 2001 version of Constitutional Law II provided multiple formative assessments—through group members’ feedback on one’s ideas, through the written feedback I gave on each assignment, and through the use of multiple similar assignments. Yet I come away from Professor Bransford’s discussion of the importance of formative assessment wondering whether there’s more I could do in the tutorial context, especially with respect to what I see as the subcomponents of a good analysis. Maybe I’ll consider a set of mini-assignments, for example, to be completed before beginning the first full-scale problem. Or perhaps the situation calls for a more carefully calibrated menu of questions I can pose to students as they work through the first one or two problems. I need to think about small-scale as well as large-scale formative assessment.

147. *Id.*

Finally, “[l]earning is influenced in fundamental ways by the context in which it takes place. A community-centered approach requires the development of norms for the classroom and school, as well as connections to the outside world, that support core learning values.”¹⁴⁸

According to Professor Bransford, a community-centered approach requires building a shared vision with students of what learning looks like, and of what expertise looks like in a particular domain.

This is the deepest and most intractable area of inquiry for me as I look ahead, largely because the creation of a larger community is beyond my individual control. Having never before experienced a conflict between the grading system and the goals I had in view in any given year, I was brought up quite short by the pronounced conflict that came to the surface in 2001. I come away persuaded that competitive grading is fundamentally at odds with core learning values. What to do about it is a question for my institution, and for the larger community of legal education.

VI. CONCLUSION

Overall, using PBL in Constitutional Law II was a positive experience for me as a law teacher. I was delighted with the level of mastery attained by the students, with respect both to active subject-matter knowledge and problem-solving skills. The tutorial approach gave me access to individual students’ assumptions and preconceptions to a degree that was unmatched in any previous format for this course. Though I did not take full advantage of the opportunities presented, I expect to improve in this area. The largest negative for me (and, I think, for the students), was the extent to which a hierarchy among the students was created and maintained, partly due to my own mistakes and shortcomings, and partly because of the competitive environment in which the course is situated.

Thus, I plan to make a number of practical changes in Constitutional Law II for 2002. One set of modifications represents attempts to contend with the larger law school culture, in which

148. *Id.* at 25.

students are graded competitively and comparatively, and to carve out a space in which relatively noncompetitive learning can take place. The second set of modifications will be made in light of the insights of learning theory, which provide me a rich set of questions to which I do not yet know the answers. Finally, in response to this Article, I hope to hear from others undertaking similar experiments.

