SELF-KNOWLEDGE AND LEGAL THOUGHT

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I

How important is self-knowledge to legal scholarship and legal thought? As law becomes ever more influential in American life, as lawyers assume a growing role as thinkers and policy makers exercising a decisive influence on social choice, the question of self-knowledge must be confronted. Ideology and consciousness clearly play vital roles in law from scholarship to the political selection of judges. In turn, self-knowledge is a crucial component of consciousness.

Self-knowledge is important for mental and physical health, for the full development of the faculties of every individual. With these aspects of self-knowledge, I am not directly concerned here. In this article, I seek to raise the issue of how self-knowledge affects what legal thinkers do professionally; whether we are better or worse scholars, policy makers, adjudicators, because of the presence or absence of self-knowledge. I am concerned with the ramifications and reach of self-knowledge: does it affect only our private psychology, or does it enter into our understanding of society? And I want to inquire about self-knowledge as a task: can the well-educated person assume that she or he also possesses, without any special effort or program, an adequate education in self-knowledge? Or is self-knowledge, for even the most sophisticated thinker, an undertaking in itself, and a formidable and daunting task?

Some members of the newest generation of legal thinkers are well aware of the question of self-knowledge and its importance, not merely for their private lives but for their work. The editor-in-chief of the Yale Law Journal for 1987-88, Scott Brewer, has expressed this challenge in terms of legal thinking. In the April, 1988 issue of the Journal, he writes:

Legal interpretation is often as much a process of self-discovery as of textual felicity. The principle of interpretative candor demands more than that judges be as candid as their often hurried reflection allows. Given the complexity of holistic normative judgment, judges are sometimes not aware of the norms that guide them. To guard against this oversight, candor calls on all legal interpreters, and especially judges, to undergo the patient work of Socratic self-analysis to

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1. See Reich, Law and Consciousness, 10 Cardozo L. Rev. 77 (1988).
identify their guiding norms both for themselves and for others. Given the importance of candor for those interpreters whose judgments signal and occasion the imposition of violence upon others, failure to undergo this self-examination must be considered willful self-ignorance, and that ignorance is a loss of candor.2

How deep must this self-examination be? Can it be limited to examining those factors which seem accessible, such as the influence of our known economic interests or cultural prejudices? These might be similar to what Jerome Frank meant by the “social pre-conceptions, the value judgments which members of any given society take for granted” plus the “uniquely personal prejudices,” “unconscious sympathies for, or antipathies to” witnesses, lawyers or parties.3 Judge Frank, in common with other legal realists of his time, believed that a legal thinker could “make himself aware of his biases of this character, and by that very self-knowledge, nullify their effect.”4

But might the challenge of self-knowledge also require something deeper than a candid search for prejudices and unspoken assumptions? Conceivably it could require a process as long and arduous as psychoanalysis, a process as radical as an unsparring exploration of one’s own innermost fears and feelings. For example, some men may have unconscious prejudices against the value of intellectual contributions made by women. Masquerading as objective judgments, such prejudices resist the kind of candid self-examination advocated by Jerome Frank. Peter Gay, in his recent biography of Freud, has shown that even the great master of self-examination harbored unconscious negative attitudes toward women throughout his life, attitudes that resisted the most searching self-analysis.5 At this level, self-knowledge would require a much more substantial commitment of time, energy, resources—and courage—than mere “candor” implies. It would require policy makers and legal philosophers to be truly serious about self-knowledge, making it a part of the law school curriculum and, in a substantial way, a part of the working life of everyone who is serious about being a legal thinker.

Self-knowledge differs from other kinds of knowledge in one vital respect: we usually know when we lack other kinds of knowledge, but we may be totally unaware of our lack of self-knowledge. This is because self-knowledge is subject to resistance and repression, and we often vigorously deny our own ignorance. I lack knowledge of modern physics or mathematics or computer science; I do not know what it is like to grow up in a ghetto, but at least I recognize these kinds of ignorance. On the other hand, I may have unconscious prejudices against blacks or women of which I am totally unaware. Charles Lawrence has written:

Freudian theory states that the human mind defends itself against the discomfort of guilt by denying or refusing to recognize those ideas, wishes, and beliefs that

4. Id. at xxii.
conflict with what the individual has learned is good or right. While our historical experience has made racism an integral part of our culture, our society has more recently embraced an ideal that rejects racism as immoral. When an individual experiences conflict between racist ideas and the societal ethic that condemns those ideas, the mind excludes his racism from consciousness.  

It is too easy to think that the goal of becoming an intelligent, well-educated, sophisticated, successful person carries with it an assurance of self-knowledge. Persons to whom competence and confidence are important may be more unwilling than anyone else to acknowledge that they are incompetent observers of themselves. For example, a recent biography of Abe Fortas explores the astonishing lack of self-knowledge on the part of an individual universally acknowledged to be one of the finest legal minds of his day. From 1955 to 1960 I occupied an office next door to Fortas' office in the firm of Arnold, Fortas, and Porter, where I worked as a young associate. Fortas was brilliant; he was knowledgeable, shrewd and realistic, and he was exceptionally sophisticated in the culture of psychiatry and psychoanalysis. He was also a product of Yale Law School's legal realism with its searching skepticism and rigorous questioning of unspoken assumptions. Yet I can testify from many personal experiences that Fortas could not recognize, acknowledge or correct many mistakes in the way that he viewed and treated the many people who worked in the firm. I always was amazed at how he disrupted the efficiency of the office by hurting people who were intensely loyal to him. He was unable to see how his actions affected others. It was this same inability to view his own actions that led him, after he became a Supreme Court Justice, to compromise his position fatally by continuing to act as President Johnson's confidential political advisor on matters, such as the Vietnam War, which were totally inappropriate to the role of a Justice.

Abe Fortas was not alone in the unhappy combination of intellectual superiority and absence of self-knowledge. Washington, D.C., in the years I worked there, (1953 to 1960), had many other legal luminaries with the same deficiency. The outstanding lawyers, judges, and legal scholars of the time, even if they were intellectually receptive to Jerome Frank's warnings against prejudice, were still a long way from giving any serious attention to self-knowledge. Some, indeed, would have considered a preoccupation with self-knowledge to be a sign of soft-headedness and intellectual flabbiness. Justice Hugo L. Black, a great and exceptionally compassionate judge, showed little patience with any kind of introspection. His son recounts many instances of prejudice concerning women and unthinking cruelty towards members of his own family that even the slightest inclination toward self-knowledge would have deterred.

8. H. Black Jr., My Father: A Remembrance 123-31 (1975). For example, Justice Black, according to his son, thought that "scholarship should never play too big a role in a woman's life."
William O. Douglas, who was a leading legal scholar of the realist school prior to his long and distinguished Supreme Court career, often seemed almost frighteningly distant from any sort of self-inquiry. He could appear totally oblivious of other people’s feelings, and this led to aberrations, such as specially inviting a person to go on a Sunday hike with him along the C & O Canal and then starting the hike before that person arrived at the parking lot. An hour or two and several miles down the canal towpath, the Justice might remark to another hiking companion, “I wonder what happened to Dave? He said he wanted to come hiking today.”

II

When I joined the Yale Law School faculty in 1960, I accepted the prevailing belief that self-knowledge was a private and personal matter, entirely separate from one’s ability to think and write about legal and public policy issues. Unlike some of my mentors from Washington’s legal world, I did think that self-knowledge was important for me, but only for personal reasons. I resolutely tried to separate my private psychological problems from the area of my work, believing that they could only hurt, not help, my ability to reason and think. So long as it did not interfere with doing my job, I could seemingly accept any amount of personal confusion; the only cost was private. Indeed, I had read somewhere that repressed and sublimated sexual energy might be utilized to improve one’s capacity for work, producing more and better law review articles as some sort of benefit from inner deprivation.

For five years, this strategy seemed to work. I was given tenure, wrote articles on weekends that would otherwise have seemed intolerably lonely and isolated, and felt on good terms with faculty and students. The law school supplied every need, from material security to an abundance of serious and stimulating conversation, cocktail parties, and stately academic dinners with distinguished guests. It was an exhilarating place to be.

But then something untoward began to happen. Without knowing why, I gradually withdrew from many of the activities of the law school and found it harder and harder to attend faculty meetings and social events. “Charlie’s never around,” I heard my colleagues say. Even teaching, always a major source of satisfaction, became labored and difficult. I was baffled and worried by this inexplicable failure to do my job. And of course I felt very guilty. No one said a word.

I decided to try enlarging my intellectual horizons as a possible remedy for the mysterious malaise. I was drawn to literature and the humanities. Perhaps if the study of law could be made more humanistic, my interest could be renewed. I put this prescription in the form of a polemic, *Toward the Humanistic Study*

*Id.* at 124. "A woman who behaved in what he regarded as a masculine way made him uneasy, for he believed that a real woman cultivated an appearance and personal ways calculated to attract and please men and serve as the hub of a family." *Id.* at 123.
of Law. In this article I urged the study of literature as an aid to understanding law. And I resolved to take this prescription myself:

All of this leads to the law schools' greatest responsibility and opportunity. Today we lack—and desperately need—a profession concerned with the overall structuring of society. Where most areas, even philosophy and the social sciences, have become increasingly specialized, students of law have, of necessity, remained generalists. This is so because law touches all areas of life, and because it touches life in a prescriptive sense—by the setting of standards—and thus it unavoidably treats of society as it ought to be. Hence, the study of law as a subject matter must be a study of society in the moral sense of ought and should. Herein lies law's true kinship with literature and with the other arts which seek a critique and an overview of society. Herein lies law's responsibility to be, not merely in apostrophe but in reality, the queen of the humanities.

Yale has a renowned English Department, and I started auditing courses in literature. I attended the lectures, did the reading, and began acquiring books on literary criticism. I had lunch with my new teachers and with their graduate assistants, drank teas at the Elizabethan Club, and talked about literature with fellow students. Among the subjects I enjoyed were courses in Milton, the Victorian novel, poetry of the romantic period, seventeenth century poetry, and twentieth century fiction. I have fond memories of tramping across the campus on snowy days to sit in the back of a steam-heated classroom for a lecture on D.H. Lawrence or Henry James.

In 1967 I had enough enthusiasm for my new subject of literature to try integrating it with law. I wrote an article entitled *The Tragedy of Justice in Billy Budd*, arguing that sterile legal reasoning, as employed by Captain Vere in Melville's story, could lead the law astray, whereas a more humanistic vision was needed to breathe life and justice into legal forms. This was my conclusion:

For us in this day, the novel is a reminder of the indispensable importance of the artistic vision in the structuring of society—an expression of the need for society to accept the natural in man. Law, as a *creation* of man, needs the imagination and the insight of art so that it is not drawn in such a way as to imprison the human spirit. Law and society need the help of the artist, to the end that we do not forget man's natural humanity, which is embodied, timeless and unforgottably, in the fresh young image of the Handsome Sailor.

But in 1967 law and literature had not yet been recognized as a legitimate area for law school study. I decided to try enlarging my intellectual horizons still further, by exploring social criticism, particularly the thinkers who had developed the theme of alienation. This led me to the so-called Freudian Left, to Herbert Marcuse, and to Karl Polanyi's visionary study of the effect of the market on

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10. Id. at 1408.
12. Id. at 389.
human society. I started teaching an undergraduate course, "The Individual in America," in which I combined legal materials with my new interests to produce a sort of "law and society" course in the Department of American Studies.

One issue that disturbed me concerning my role in the law school was that it was a position of real power and influence, and yet I could not feel satisfied that I was making the best possible use of that power. I often asked myself, who really runs this country? Who makes the real decisions; who merely carries them out? Having worked on Wall Street and in Washington, I did not find the source of decisions in either place. The President and, even more so, Congress seemed prisoners of prevailing assumptions about social reality. It was the assumptions that really governed our choices, I came to believe. What assumptions? I thought that one such prevailing assumption was that "intractable" social problems must be dealt with by force and repression. At home, this assumption underlay the growing "war" on crime. Abroad, it underlay the war in Vietnam.

An organizational chart of the American system would disclose no Office of Assumptions, no Council on Social Reality, no Executive Director of Higher-Order Norms. But if such a function existed, it might be accurately located at the Yale Law School, plus some similar institutions. It is at such places that higher-order norms are sought, created and maintained. Legal scholars were the makers and keepers of the norms, I felt, as much or more than anyone else. The buck stopped, not on Harry Truman's desk, but at a Gothic building in New Haven. If this was an accurate statement of the power we possessed, then what was our task? Scott Brewer, in the article I quoted earlier, writes:

One great danger in a system that demands justificatory reasoning is that acts of interpretative judgment regarding familiar texts come to travel too smoothly along grooves cut by tradition and habit, in which what was at some point a live struggle with difficult issues becomes a frozen relief. An interpretation cannot be justified unless it both acknowledges the feasibility of alternative patterns of inference and either accepts new interpretive patterns or actively defends its choice not to do so. . . . Real justification of an interpretive judgment requires that interpreters constantly alienate themselves from habitual patterns of interpretive influence, that they move from "is" to "ought" in legal interpretation, asking not what a text does mean, but why we ought to use the higher-order norms that make it mean one thing or another.  

Back in 1968, I did not have the benefit of this acceptance of the need to link legal thinking to the questioning of fundamental social norms. But I continued along this path. I decided to write a book challenging the whole trend toward repression and questioning the assumptions upon which repression rested. Originally entitled The Struggle For a More Human Society this book took for its theme the philosophy of Justice Brandeis, well expressed by him in a great dissent, that the corporate state destroys the true wealth of a nation, "the

14. Note, supra note 2, at 842.
courage, the energy and the resourcefulness” of ordinary people; “that only by releasing from corporate control the faculties of the unknown many, only by reopening to them the opportunities for leadership . . . can Americans secure the moral and intellectual development which is essential to the maintenance of liberty.” 15 The Greening of America16 was a deliberate questioning of many norms with the goal of restoring power to those whom Brandeis called “the unknown many.”

With the The Greening of America I was able to glimpse just how far assumptions about society need to be questioned, how much the ability to do such questioning requires personal self-knowledge, and, therefore, how much my own personal repression had smothered my creativity as a legal scholar. I was wrong when I believed that my personal repression had no effect on my professional thinking or career. The same repression that cuts one off from inner reality prevents one from questioning social reality as well. And so long as I did not question the underlying assumptions of the legal system, the law seemed claustrophobic, a closed system.

But it is one thing to recognize the need to question legal assumptions. Actually attempting to do so is another matter entirely. It is not easy to break through assumptions accepted as true by nearly everyone. A scholar may be intellectually committed to questioning assumptions, but while he tries to do this something still blocks the view. I will call this stubborn phenomenon “the social unconscious.”

III

The most fundamental changes that occur in society are not the result of conscious choice. They may occur without our knowledge, often despite our resistance and denials. The destruction of the natural environment, the breakup of traditional families, the loss of individual autonomy are examples of these unsought, unwanted changes, never voted upon by the people, never enacted by the Congress, never promulgated by the President. Whenever such changes occur, they increase the amount of information that is sent to the domain of the unconscious, and the area of social reality we are conscious of as social individuals is diminished. Thus self-knowledge progressively may be lost by reason of rapid social change. A whole society may suffer a loss of self-knowledge in this way.

The paradigm for such a loss of self-knowledge may be found in the history of individual neurosis. A child who has untrustworthy parents learns not to trust. Years later the adult individual comes into contact with many other kinds of people, some of whom, at least, are far more trustworthy than were the parents. Thus, the child’s world actually has changed into a very different adult world. But the neurotic individual will continue to mistrust everyone. By perpetuating a childhood view despite the changed external reality, the adult has suffered a net

loss of knowledge: the child saw his world accurately enough; as an adult, his knowledge of the world has become inaccurate. The anthropologist Marvin Harris has shown that exactly the same phenomenon holds true for societies. In his remarkable study, *Cannibals and Kings*, Harris shows what happens to social self-knowledge when a meat-eating society loses its sources of meat due to long-term natural changes in the food supply. The society will become vegetarian; its religion and customs that approve the eating of meat will give way to a religion and customs that forbid the eating of meat. But this whole cultural transformation will be unconscious. The society does not see itself as having undergone change.

Perhaps never in human history has social change occurred more rapidly than it is occurring here and now. And perhaps never has denial been so prevalent, and the loss of self-knowledge so widespread. We see this phenomenon in politics, where vital issues disappear entirely and are replaced by image and denial. We deny that we have become a corporate state, in which hierarchy, management, and authority largely have replaced older ideals of democracy, equality and personal autonomy. If we acknowledge the reality of the corporate state, we would try to make laws to guarantee the security, participation, and rights of individuals in this new environment. But if we remain unconscious of the true forms of our society, we will fail to correct the powerlessness and injustices that threaten us.

Social change can thus produce a large area of social reality that is unknown to the individual whose consciousness has not caught up. This area is illustrative of what I call "the social unconscious"—the presence of social reality that is unconscious in the same way that repressed inner reality is unconscious.

How is this "social unconscious" related to repressed inner reality? First, both exhibit the phenomena of unconsciousness and the repression of reality. Second, both are examples of "not knowing what we don't know." But they are more deeply related. The two kinds of unconsciousness form a continuum, because the material we repress individually and the material that society represses are akin to one another. In a society that represses its former carnivorous appetite, the individual's appetite is also repressed.

Rapid social change is but one source of the "social unconscious." Another source of cultural repression derives from social stereotypes. Charles Lawrence writes:

Second, the theory of cognitive psychology states that the culture—including, for example, the media and an individual's parents, peers, and authority figures—transmits certain beliefs and preferences. Because these beliefs are so much a part of the culture, they are not experienced as explicit lessons. Instead, they seem part of the individual's rational ordering of her perceptions of the world. The individual is unaware, for example, that the ubiquitous presence of a cultural stereotype has influenced her perception that blacks are lazy or unintelligent. Because racism is so deeply ingrained in our culture, it is likely to be transmitted.

by tacit understandings: Even if a child is not told that blacks are inferior, he learns that lesson by observing the behavior of others. These tacit understandings, because they have never been articulated, are less likely to be experienced at a conscious level. 18

There are many other sources of the "social unconscious." We are a society which has become addicted to illusions, as the 1988 presidential campaign gave overwhelming evidence. Given all the mechanisms by which knowledge of social reality is manipulated, distorted and denied, those legal thinkers who recognize a need for candor face a tremendously difficult challenge. They face vast unknowns in the world for which they are undertaking to discover or prescribe principles and norms. The Legal Realists made the task seem much too easy. All one had to be was a parlor iconoclast, and one's "rapier-like wit" would penetrate false assumptions about social reality. Today we must recognize that reality can be far better hidden. Today every legal thinker, conservative, liberal, or moderate, must be concerned with questioning social reality, lest his or her philosophic assumptions be invalidated by "the social unconscious."

IV

In the twenty years since 1968 there has been an extraordinary greening of legal scholarship. From Law and Economics to Critical Legal Studies, from Law and Medicine to Law and the Humanities, there has been a revolutionary opening up of the scope and quality of legal thought. This revolution reflects the fact that law is today perhaps the most important social process by which fundamental choices are made. Judge-made law has achieved its powerful position as choice-maker while the political-legislative process has been stalemated and reduced to slogans and symbols. For better or worse, judge-made law at this moment in this society has risen from being merely a "neutral system of ordering" to a starring and glamorous role as the choice-making "mind" of the nation.

This transformation of the law is a prime example of unconscious social change. The new role of the law was not brought about by either a clear democratic decision or by a considered intellectual decision. The change happened despite all the talk about how courts are not the place for policy-making. Indeed, since the very first proclamation of "neutral principles" in 1959, 19 we have continued to repeat the orthodoxy that law is still adjudicative in its essence, not the realm of philosopher-kings and their edicts. Nevertheless, all of the newly risen schools of legal philosophy are alike in that they do give recognition to the prime policy-making role of the law, even as the national myth denies that this is so.

All of the contemporary schools of legal thought are also alike in that they cannot succeed without self-knowledge. Without self-knowledge any legal philos-

18. Lawrence, supra note 6, at 323.
ophy is in danger of getting lost in a wilderness of false assumptions about social reality. Thus, much legal philosophy takes for granted that we are able to "balance conflicting interests." For example, law enforcement's "interest" in making searches of private property may be balanced against the individual's "interest" in privacy. But all balancing assumes the location of a "center." This "center" is just another assumption that needs to be questioned.

For example, consider the current dispute about sightseeing flights over Grand Canyon. Low flying small airplanes and helicopters have become an established part of the Grand Canyon National Park; their almost-constant noise can be heard at all levels and within all recesses of the Canyon. The controversy is framed in terms of whether unlimited flights should continue or whether certain limits should be imposed, such as a prohibition against flying below the Canyon rim. The unspoken assumption is that sightseeing flights should be deemed legitimate but balanced against other uses of the Canyon. The "center" of this dispute is assumed to be somewhere between different levels of intrusion by aircraft.

But maybe the Grand Canyon's essential values are totally destroyed by any sightseeing flights at all, ever. Maybe its value depends upon timeless silence, the spiritual experience of a primeval temple of nature where intrusive noise is as out of place as in a library or at a symphony concert. Maybe the value of sightseeing from aircraft is negligible. Maybe the sightseeing flights over the Grand Canyon are like flying over a university library in comparison with studying in that library. Surely, self-knowledge is a necessary guide to this question. Only self-knowledge can tell us the true value of silence in a place where all the layers of the earth's crust are exposed in a one-and-only museum of the earth's beginnings.

A comparable issue is the growing police practice of spying on homes and private property by aircraft overflights. The most recent Supreme Court decision held that a police helicopter may hover at 400 feet above a person's house.20 Maybe spy-plane intrusions into the home have become the norm, and the only question is at what altitude the official observation and monitoring of private life shall be conducted. Self-knowledge would open up the larger question of how much spy-planes at any level deprive us of our sanctuaries and retreats.

But self-knowledge has a larger role to play in legal thinking than assisting a balancing process. Law is not merely a conduit for public values, it is generative of public values. And at a time when public values have been overwhelmed by rapid social change, the task of law should be regenerative—to recreate lost values, or to create new values replacing the old. Professor Owen Fiss has eloquently described this task:

Beyond that [the contribution of the civil rights movement and feminism], it is difficult to know how a belief in public values might be regenerated. Such

a process of social regeneration depends on events that are beyond our control and that are even hard to imagine. It seems to me, however, that law itself might have an important role to play in this process, for law appears as generative of public values as it is dependent upon them. The Warren Court and the transformative process that it precipitated in American society not only presupposed a belief in the existence of public values but was also responsible for it. Brown assumed that the Constitution embodied a commitment to racial equality, and that this value was so real and so important as to warrant moving mountains (almost). It also generated and nurtured a commitment to racial equality that far transcended the law.  

What Owen Fiss calls “a process of social regeneration” sounds to me a lot like the process I have described as “the greening of America.” Professor Fiss warns that in the absence of regeneration, the law “will be entirely particularistic” and:

it will be wholly instrumental. In neither case will it be capable of sustaining or generating a public morality. It will be law without inspiration. This will mean the death of the law, as we have known it throughout history, and as we have come to admire it.

This passage gives me a shock of recognition. My own malaise about the law twenty years ago sounds a lot like the feeling that the law is dying.

Professor Fiss says that he finds it “hard to imagine” how a process of regeneration might come about; he fears it may depend upon “events that are beyond our control.” The only source I can imagine is self-knowledge. There is a common misunderstanding, insidiously fostered by those who seek to repress social regeneration, that self-knowledge is the same thing as selfishness. In truth, self-knowledge is the opposite of selfishness; it is our individual window on the sources of morality common to all humankind. Self-knowledge, like Emerson’s Over-soul, is a light. “From within or from behind, a light shines through us upon things and makes us aware that we are nothing, but the light is all.”

V

The vision of law schools as the places where the nation’s policy scientists are trained, once a utopian thought, has come ever closer to realization. As this reality approaches, the question becomes, what is the proper education for a policy professional? And once that question is asked, I believe that an adequate response must include self-knowledge as part of that education. Policy making by legal professionals does not carry the guarantees of the democratic process.

22. Id.
23. Id. at 15-16.
24. Id. at 15.
Policy makers should at least be accountable to the voice of human nature within.

Legal self-knowledge deserves recognition in the law school curriculum. There is a wide range of materials and subject matter that might be used for a seminar or course which would invite students to reflect on their own thinking about law and public policy. Many law schools have courses in jurisprudence, legal theory, law and literature, or law and social change, and these courses necessarily touch on self-knowledge. But I think a course that focuses directly on Law and Self-knowledge or Law and Consciousness is needed. Such a course or seminar would not have to look outside the law library to find materials that would be helpful to students.\(^{26}\) Individual teaching could widen and deepen the course in many directions. Certainly there should be room for an assessment of personal and professional goals. The pioneer work, *Becoming A Lawyer: A Humanistic Perspective on Legal Education and Professionalism*\(^{27}\) suggests where others might follow.

Self-knowledge would be of crucial importance to legal thinking under any social conditions. But today's conditions are special. Just as many thinkers see this society as having suffered severe damage to its public values, so do many others see these times as having damaged and destroyed the inner individual. Critical Legal Studies, in particular, has made a valuable contribution to recog-

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26. Some materials from "conventional sources" might include the following:

1) Biography is always fascinating, especially when the subject's self-knowledge is a central issue. I recommend B. A. Murphy, Fortas: The Rise and Ruin of a Supreme Court Justice (1987) for a study of a brilliant but ultimately self-destructive lawyer whose lack of self-knowledge was the central factor in his downfall.

2) Every student should have some knowledge of what Critical Legal Studies scholars are saying. An excellent, even readable collection is D. Kairys, The Politics of Law: A Progressive Critique (1982).

3) For an insight into how profoundly ideology influences law and how a different point of view makes possible new choices that many people do not even imagine, there is no better article than John Griffith's Ideology in Criminal Procedure: A Third "Model" of the Criminal Process, 79 Yale L.J. 359 (1970).

4) The role of the unconscious in legal thinking is vitally important. Charles Lawrence's article, The Id, The Ego, and Equal Protection: Reckoning With Unconscious Racism, 39 Stan. L. Rev. 317 (1987) is perhaps the best to date on how the unconscious functions to defeat legal self-knowledge.


7) Although feminist jurisprudence rates a course of its own, some of its teachings also belong to, indeed, are invaluable to, the study of law and self-knowledge. See, e.g., Women In Legal Education—Pedagogy, Law, Theory, and Practice, 38 J. of Legal Educ. 1 (1988).

nizing the illness of alienation. Recovery and healing are tasks for the individual, and social regeneration is a task for society; but it is my own belief that both forms of healing must be pursued simultaneously. For the professional, the individual part of this task may prove even more daunting than the societal portion; this, at least, has been my own experience.28

Many legal thinkers, most notably John Hart Ely,29 have warned that if legal policy making gets too far away from its democratic roots, it faces trouble. In exactly the same spirit, I would add that if legal policy making gets too far from its roots within the individual, it faces trouble. Let the legal scholar therefore be a scholar in Emersonian sense. Let the legal scholar be the embodiment of Emerson’s vision of the American Scholar:

He is the world’s eye. He is the world’s heart. . . . Whatsoever oracles the human heart, in all emergencies, in all solemn hours, has uttered as its commentary on the world of actions—these he shall receive and impart.30

The scholar must understand the lesson that “in yourself is the law of all nature. . . . in yourself slumbers the whole of Reason. . . . this confidence in the unsearched might of man belongs . . . to the American Scholar.”31

I can only add that the far horizons opened by self-knowledge belong to, and are urgently needed by, our present and future legal thinkers.

31. Id. at 22.