

ARGUING FOR THE ECLECTIC: PERSONALITY AND THE LEGAL PROFESSION

Book review of *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* by Susan Swaim Daicoff

by
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Entitled Arguing for the Eclectic: Personality and the Legal Profession, this book review describes and comments on Professor Susan Daicoff's provocative book, Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses. The subject of lawyer personality is of increasing interest to legal scholars and empiricists in other fields such as psychology, sociology, political science, and business administration. It has also gained the attention of legal educators and those concerned with the administration of legal institutions. Because lawyers perform key roles in the legal system as well as other social institutions, the impact of personality and other elements of lawyers' psychology are highly relevant to legal education, dispute resolution, ethics and professionalism, legal advocacy, and jurisprudence, just to name a few. The Review closely examines Professor Daicoff's argument, breaking it down for the reader and adding context so that both the argument and its implications can be readily ascertained.

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I. INTRODUCTION

After reading Susan Swaim Daicoff's new book, *Lawyer, Know Thyself*,¹ one might be tempted to call for a new regime of affirmative action programs in law school admissions based upon the personality types of aspiring lawyers. Daicoff makes a strong case that the profession's current problems may be attributable, in part, to the narrow range of personality characteristics found among the majority of law students and the challenges that law school and the profession pose for the few who fall outside that narrow range. While the empirical evidence for the influence of personality on the legal profession—as well as the theoretical justification for personality typology itself—is far from conclusive, her work establishes the need to take these questions seriously and the need for a research agenda to pursue them.

To illustrate the problems she sees, in the book's preface, Daicoff paints a fictional and composite portrait of an obviously bright, ambitious, but not particularly self-aware and somewhat aimless young student who achieves success in law school and is offered an associate position at a large law firm complete with an outsized salary and an outsized billable hour requirement.² The tale of his subsequent descent into personal difficulty and career dissatisfaction sets the stage for Daicoff's six chapter investigation of what she calls the "tripartite crisis" in the legal profession: (1) declining professionalism and generally unseemly behavior among lawyers and judges; (2) a growing negative public perception of lawyers and the legal profession; and (3) increasing career dissatisfaction and symptoms of mental distress among lawyers.³ The dénouement of her fictional lawyer's journey is his effort to construct a personally satisfying and meaningful life as a practicing attorney, and this mirrors the final chapter of the book in which Daicoff delineates the multiple strands of a growing movement toward responsive changes in the legal profession.⁴

In the end, the relationship between personality and the tripartite crisis proves to be complex, and it is likely that other psychological and non-psychological factors play an important role. Much remains to be studied, and *Lawyer, Know Thyself* is only a first step, Daicoff herself admits. And so it would be premature to begin vetting law school applicants using psychological instruments in the hope that careful selection might lead to a kinder, gentler—not to mention happier and more effective—generation of lawyers. But after reading this book, I am persuaded that leaders of the legal profession—judges, legal educators, professional organizations, and the managers of public law offices and private law firms—must begin to address the underlying causes of the problems Daicoff identifies: problems that challenge the very foundation of our nation's collective experiment in self-governance.

¹ SUSAN SWAIM DAICOFF, *LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES* (2004).

² *Id.* at ix–x.

³ *Id.* at xv.

⁴ *Id.* at xiii, xv.

II. AN OVERVIEW OF THE ARGUMENT

The basic structure of *Lawyer, Know Thyself* is a series of linked arguments positing the existence of the tripartite crisis in the legal profession, suggesting a substantial role for psychological and personality-based explanations, and culminating in a review of recent trends in the law that explicitly or implicitly attempt to respond to the crisis. Daicoff initially gathers empirical evidence of a stereotypical lawyer personality—one that is demonstrably different from the range of characteristics found in the general public—then turns to studies suggesting that similar psychological attributes are possessed both by law and pre-law students.⁵ She then presents her main argument that these traits help explain both the sometimes low standards of professional behavior among lawyers and the declining public opinion of the profession.⁶ Daicoff next focuses on the proposition for which there is the strongest empirical evidence, to wit: the existence of high levels of psychological distress among law students and lawyers.⁷ After examining different hypotheses linking these indicators of distress to typical lawyer personality traits, she concludes with a discussion of developing alternatives to traditional legal practice that offer hope for addressing important aspects of the tripartite crisis.⁸

Professor Daicoff is well-situated to observe and comment on the problems she describes in her book. She practiced tax, corporate, and securities law after obtaining her law degree from the University of Florida, and an LL.M. in tax from New York University. Later, she earned a master's degree in clinical psychology and practiced as a psychotherapist for two years. Daicoff has taught law since 1995, first at Capitol University School of Law, and since 1998 at the Florida Coastal School of Law. She is a fellow with the International Centre for Healing and the Law, an organization that promotes the ethic of healing in the legal profession.⁹ She has also chaired both the Section on Law and Mental Disability of the Association of American Law Schools and the Legal Education Committee of the International Alliance of Holistic Lawyers.¹⁰

Daicoff has studied and written about the lawyer personality since 1991, and in a series of groundbreaking articles published in the late 1990s, she identified and explored the tripartite crisis in the legal profession.¹¹ In her new

⁵ See *id.* at chs. 1, 2, 3.

⁶ See *id.* at ch. 4.

⁷ See *id.* at chs. 5, 6.

⁸ See *id.* at ch. 7.

⁹ *Id.* at 215.

¹⁰ Susan Daicoff, *Curriculum Vitae*, <http://users.law.capital.edu/sdaicoff/cv0400.htm> (last visited Feb. 7, 2006).

¹¹ See generally Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997) (describing the “tripartite crisis,” assembling research on lawyer and law student personality, and discussing theoretical bases for linking the two); Susan Daicoff, *Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with*

book, she draws upon and updates the scholarship in these articles, and offers the legal profession a true gift by synthesizing her efforts into a single volume.

III. A LOOK INSIDE

A. *The Tripartite Crisis*

Daicoff first sets out the evidence for the existence of the tripartite crisis. She finds that claims about a high incidence of unethical behavior among lawyers are largely anecdotal, and that empirical evidence is “virtually nonexistent.”¹² Similarly, she characterizes the evidence of the public’s low opinion of the legal profession as “scarce.”¹³ In contrast, she finds that the growing evidence of widespread job dissatisfaction and emotional distress among lawyers is substantial and troubling.¹⁴

Throughout the book, Daicoff draws on a range of disparate studies focusing on various aspects of personality and behaviors found in lawyers, law students, and pre-law students. She does not have the benefit of a long-term, theoretically rigorous, and consistent body of research upon which to draw.¹⁵ But if one understands the project as primarily theoretical—rather than descriptive and prescriptive—this justifies her reliance on propositions that she herself warns have yet to be satisfactorily demonstrated through empirical studies. Thus, she characterizes her effort as a “first step” in what she hopes will be an ongoing effort to understand the influence of personality on lawyers, the practice of law, and the legal system.¹⁶

Two important and reasonable assumptions about the crisis are central to the argument of the book. First, she assumes that the three strands of the crisis are interrelated and mutually reinforcing.¹⁷ Second, she posits that the crisis is made more troubling because of the important role lawyers play in our civil

Professionalism by Reference to Empirically-Derived Attorney Personality Attributes, 11 GEO. J. LEGAL ETHICS 547 (1998) [hereinafter Daicoff, *Spots*] (critically evaluating, in light of psychological studies and theory, the wisdom and likely success of frequently offered prescriptions for the crisis in the profession). See also Susan Daicoff, *Making Law Therapeutic for Lawyers: Therapeutic Jurisprudence, Preventive Law, and the Psychology of Lawyers*, 5 PSYCHOL. PUB. POL’Y & L. 811, 811 (1999) (arguing that integrating the perspective of therapeutic jurisprudence with the practice of preventive law offers a potentially satisfying career choice for lawyers with “certain humanistic values and interpersonally oriented decision-making preferences”).

¹² See DAICOFF, *supra* note 1, at 14.

¹³ *Id.*

¹⁴ *Id.* at 4–12. For example, Daicoff describes the evidence of career dissatisfaction among lawyers as “grim” and calls the evidence of high levels of psychological distress “depressing.” *Id.* at 6, 8.

¹⁵ See Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 262–63 (2004) (stating that “there has been very little theory-guided research at all, concerning these issues and problems”).

¹⁶ DAICOFF, *supra* note 1, at 162.

¹⁷ *Id.* at 4.

society and because of the ubiquitous presence of lawyers in our public life as judges, legislators, government officials, lobbyists, and in many other capacities apart from the role of legal advocate.¹⁸

B. The Lawyer Personality

Daicoff next examines the popular notion that there is a stereotypical lawyer personality. Relying on a variety of empirical studies, she finds credible evidence that law students and lawyers differ from the general population in important respects.¹⁹ From these sources, she concludes that the outstanding components of the lawyer personality are: (1) a marked drive to achieve; (2) a preference for an impersonal, strictly logical approach to problem solving; (3) a masculine orientation favoring dominance, aggression, and competitiveness; (4) an emphasis on rights and obligations over emotions and interpersonal relations; and (5) high levels of psychological distress.²⁰ As she admits, on the whole the empirical evidence is “scanty, spotty, and at times conflicting.”²¹ If true, however, her conclusion has important implications for the legal profession, the legal system, and society in general.

Not all of these implications are negative: formal logic, dispassion, thoroughness, and ambition are vital to many legal tasks and may be beneficial to all. Legal research and analysis, as well as advocacy, are examples of tasks which demand several of these qualities. But this is certainly not the case for every task that lawyers commonly perform. Nonetheless, it appears that, in both legal education and in the legal profession, there is a mostly unquestioned emphasis on analytical approaches to lawyering, and a systematic failure to appreciate and teach critical nonanalytical skills and competencies.²² One commentator has, rather colorfully, characterized the resulting problem this way: “Lawyers who lack analytical ability, of course, are useless, . . . [b]ut

¹⁸ *Id.*

¹⁹ *Id.* at 40–41.

²⁰ *Id.* at 41. A corollary to this argument is that law students and lawyers with “atypical” personalities face unique difficulties in law school and as lawyers, regardless of whether they attempt to, or refuse to, conform to the norms of traditional legal practice. *Id.* at 42, 155–57, 161–63.

²¹ *Id.* at 41. Of course, anecdotal evidence of a lawyer personality abounds.

²² See Graham B. Strong, *The Lawyer’s Left Hand: Nonanalytical Thought in the Practice of the Law*, 69 U. COLO. L. REV. 759, 761–63 (1998). Strong traces this overemphasis on the logical analytical mindset to at least as far back as the late nineteenth century, when Harvard Law School Dean Christopher Langdell championed the “case method” approach that still predominates in legal education more than one hundred years later. *Id.* at 759–61. Strong argues that many legal tasks require, or benefit from, an approach that is more akin to that of an artist, rather than that of a scientist. Even in advocacy and legal analysis tasks, he concludes that critical “nonanalytical” components include “the reading of emotion, the management of information in a narrative form, and the creative generation of factual hypotheses.” *Id.* at 797–98.

lawyers who are *too* devoted to deductive, analytical thinking are a menace²³

C. Declining Standards of Professionalism and Low Public Opinion

Professor Daicoff next explores the relationship between lawyer personality and two strands of the tripartite crisis: lack of civility and professionalism among lawyers, and the public's declining opinion of lawyers. She suggests that there is a direct correlation between typical lawyer traits (aggressiveness, dominance, competitiveness, a need for achievement and material success, career and moral uncertainty among many law students, and high levels of distress) and commonly noted concerns about a lack of professionalism (discourteous and uncivil behavior, lawyer misconduct, materialism, and increasing commercialism). At the risk of oversimplification, I would summarize the quandary she points to as follows: lawyers, on the whole, lack interest in other people²⁴ and tend to be socially insecure,²⁵ yet they are lynchpins in a system that is integral to and dominated by social relations. Given the problematic behaviors and characteristics found among lawyers in these studies, it can hardly be a surprise that the public has difficulty appreciating their value to society. Also, it should be no surprise that these same traits negatively impact levels of collegiality and professionalism in the law.

Finding troubling indications that this is indeed the state of affairs in the profession, Daicoff concludes this portion of her inquiry by asking a provocative question: should lawyers change their personalities? In answering her own question, Daicoff expresses skepticism that such a change could be effected, and she admits that she would be hesitant to prescribe any change if low public opinion and complaints about professionalism were the only problems.²⁶ Her prescription for the profession is to create new alternatives to

²³ Strong, *supra* note 22, at 762 n.15 (quoting Kenneth L. Karst, *Law and the Ways of Knowing*, OHIO ST. UNIV. L. REC., 1978-79, at 1, 2).

²⁴ See DAICOFF, *supra* note 1, at 100 (stating that lawyers often lack sensitivity to emotional concerns and interpersonal relations). The lack of concern for interpersonal relations may also make it difficult for a lawyer to appreciate the impact of his or her information gathering style on those who do not share this preference for logical and impersonal reasoning. Cf. Don Peters & Martha M. Peters, *Maybe That's Why I Do That: Psychological Type Theory, the Myers-Briggs Type Indicator, and Learning Legal Interviewing*, 35 N.Y.L. SCH. L. REV. 169, 169 (1990) ("Published studies of actual client interviews suggest that lawyers often fail to [conduct such interviews] effectively. These studies describe legal interviews as dominated by lawyers and routines. Rapport is ignored as clients are typically given little chance to respond to anything other than standard, often pointed questions. Lawyers control the topics discussed and the depth with which they are covered. Interruptions are frequent.").

²⁵ See DAICOFF, *supra* note 1, at 103 (discussing an empirical study finding that law students are frequently "awkward, defensive, and insecure," despite their success in school, outward confidence, and professional aspirations).

²⁶ *Id.* at 109 ("Absent a consideration of the problem of lawyer distress, therefore, it would be easy to conclude that lawyers should not change. The typical lawyer personality appears to be adaptive to the practice of law, if not almost necessary.").

traditional law practice for those who do not possess typical lawyer personalities, and in her final chapter she discusses the indications that this is occurring already.²⁷

But I, for one, wonder if Professor Daicoff is too quick to abandon the notion that lawyer personality and behavior should be addressed directly. By accepting uncritically the judgment that such traits are instrumental to the practice of law, she passes over possible avenues to address or overcome the problems they create. One might question, for example, whether the strong adversarial orientation of our legal system—which arguably elicits a heightened emphasis on the very personality attributes in question—should remain unmodified in the face of so much dissatisfaction on all sides. One might also question whether the typical law school admissions process and educational mission are sufficiently sensitive to the need for a broader range of personality types and a broader range of professional skills and capacities to fill the many diverse roles lawyers play in our society. At a minimum, more research is needed regarding the impact of legal education in the development of lawyer personality, behavior, and ethics before one can dismiss the idea of attempting to address those matters directly.

In any case, Daicoff concludes this section by arguing that high levels of lawyer and law student distress require that personality issues be addressed in some manner.²⁸ Accordingly, she next examines the evidence of this distress and the relationship between it and the typical (and atypical) lawyer personality.

D. Lawyer and Law Student Distress

Professor Daicoff's description of the "excessive amounts of psychopathology in the legal profession" begins with her assertion that law students, despite an outer veneer of confident sociability, competency, and leadership potential, are frequently troubled on the inside, often "insecure, defensive, distant, and lacking in maturity and socialization."²⁹ She reviews several recent and empirically rigorous studies of law students and concludes that what evidence exists suggests that traditional legal education has a negative effect on the well-being of students, who appear to have been fairly normal prior to law school.³⁰ She cites an unpublished 2001 study by law professor Lawrence Krieger and psychologist Kennon Sheldon that examines

²⁷ *Id.* at 162–63.

²⁸ *Id.* at 109.

²⁹ *Id.* at 113–14.

³⁰ *Id.* at 121. *See also* Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 115, 126–29 (2002) (reviewing empirical studies of law student distress, concluding that "[s]omething distinctly bad is happening to the students in our law schools," and offering specific recommendations for directly addressing the problem with law students).

the effects of legal education on the health and well-being of students.³¹ The study reveals new clues to the puzzle of law student distress and the effects of law school.

Employing a psychology model known as “self-determination theory” (SDT), Sheldon and Krieger set out to determine whether changes in personal values and motivations during the first year of law school might explain previously observed declines in law students’ overall health and well-being during that year.³² Stated simply, SDT holds that people feel better when they are engaging in an activity because they find it interesting and enjoyable; in contrast, when people engage in an activity because they feel they are being forced by others or by circumstances to do so, this tends to undermine their sense of autonomy and the ability to perform that activity happily and productively over time.³³ Additionally, SDT holds that persons who engage in an activity primarily to satisfy *internal* goals and values (e.g., intimacy, community, and personal growth) evidence a greater sense of satisfaction and sense of well-being than persons who engage in an activity primarily to satisfy *external* goals and values (e.g. money, image, status, and fame).³⁴ Using empirically rigorous measures and experimental design, these researchers found that first-year law students suffered a significant decline in health and well-being, and that this correlated with a move away from intrinsic toward extrinsic goals and values, along with a shift away from self-determined motivations toward external sources of motivation.³⁵

Although, like past studies, this one stops short of establishing a causal relationship between legal education and distress in law students, it represents an important step in explaining the problem by integrating accepted psychological theory with the growing body of empirical data. The authors of the study conclude that the components of the problem are “multi-factorial,”³⁶ and much research remains to be done. Nonetheless, the negative effects of law school on the sense of well-being, combined with personality factors and perhaps other influences, appear to be implicated in the high levels of law student distress.

³¹ This research is ongoing, and a new iteration of their work was recently published. See Sheldon & Krieger, *supra* note 15. Krieger has previously discussed the results of his work with Sheldon in an earlier article. See Krieger, *supra* note 30, at 122–24.

³² Sheldon & Krieger, *supra* note 15, at 263–65.

³³ *Id.* at 263–64.

³⁴ *Id.* at 264.

³⁵ *Id.* at 281 (“[S]tudents declined in their endorsement of intrinsic values over the first year, specifically moving away from community service values and moving towards appearance and image values. In addition, students felt less self-determined in their law school goals by the end of the year, specifically pursuing their goals less for reasons of interest and enjoyment, and more for reasons of pleasing or impressing others. These two findings support the supposition that law school may bring about some negative changes in student motivations and values.”).

³⁶ *Id.* at 280.

As with law students, there is plenty of evidence of inordinately high levels of distress among lawyers.³⁷ Daicoff finds little research on the *causes* of this distress and what little exists is inconclusive. There is a significant *correlation* between distress, however, and job dissatisfaction, but it is not known whether one causes the other, or whether they “simply coexist.”³⁸ It may be, for example, that the “undermining effects” of law school found by Sheldon and Krieger persist into legal practice, though we will have to await further research on this question.

E. The Role of Personality in Lawyer and Law Student Distress

Professor Daicoff next turns specifically to the question of how personality may relate to lawyer and law student distress. She cites with approval the theory of Stephen Reich that the very structure of the advocacy role validates and encourages the lawyer to adopt a socially approved or required “mask” of dominance and competency.³⁹ Thus, a persona that is aggressive, ultra-competent, and bears the markings of worldly success may itself translate directly to the lawyer’s bottom line and is therefore in his or her self-interest if, as frequently appears to be the case, clients as well as colleagues believe that these behaviors and signs indicate good lawyering.

But if, as Daicoff speculates, that same lawyer is typical and has private feelings of anxiety and self-doubt, the pressure to conform to these perceived external ideals might lead to excessive demonstrations of aggression, dominance, and competence in an attempt to overcome, or compensate psychologically for, these troubling inner feelings.⁴⁰ Under such conditions of acute cognitive dissonance, it seems reasonable to expect unhealthy levels of emotional distress and psychopathological coping mechanisms, accompanied by an increased need to maintain the external indicators of success, resulting in excessive materialism and professional status seeking. In the end, a complex picture emerges suggesting that the locus of the problem lies somewhere within the confluence of external pressures and the preexisting personality factors that law students and lawyers possess.⁴¹

³⁷ See DAICOFF, *supra* note 1, at 8–12.

³⁸ *Id.* at 124.

³⁹ *Id.* at 114–15 (citing Stephen Reich, *California Psychological Inventory: Profile of a Sample of First-Year Law Students*, 39 PSYCHOL. REP. 871, 873 (1976)).

⁴⁰ See, e.g., Daicoff, *Spots*, *supra* note 11, at 588 (“Reich’s research intimates that lawyers may actually feel inferior, insecure, and awkward on the inside despite a confident exterior. If this supposition is true, lawyers might have a great desire to avoid feeling weak and vulnerable; because they already feel weak and insecure on the inside, they value dominance and confidence, and do not want their inner weakness to show. Lawyers’ dominance, aggression, and ambition thus may serve a psychological function as well as a practical end, by overcompensating for and concealing undesirable feelings of insecurity, inadequacy, inferiority, and weakness.”).

⁴¹ See DAICOFF, *supra* note 1, at 14. Daicoff also states that the minority of lawyers and law students who possess “atypical” personality traits are also likely to suffer distress, and concludes that any of these traits—typical or otherwise—may lead to distress if they are extreme in nature. *Id.* at 155–58.

Having set forth several alternative hypotheses to explain the relationship between personality and distress, Daicoff circles around to her earlier discussion of the work of Professors Sheldon and Krieger. She asks whether personality is related to distress at all, and, instead, if shifting values may account for the problems lawyers and law students experience. Suggesting that the latter phenomenon is a likely, if not complete, explanation for distress, she quotes their prescription for how law schools might attempt to address this problem:

1) . . . promote the regular experience of authenticity, relatedness, competence, self-esteem, and security in our students . . . 2) . . . support intrinsic motivation in law students—inherently enjoyable or personally meaningful work—while we teach the fundamentals of legal analysis and professional technique . . . [and] 3) . . . promote optimal human values in students (towards personal growth, intimacy, community enhancement, altruism), rather than the desire for money, power, status, and image.⁴²

It seems that, with very little modification, this would be a worthy addition to the vision and goals statements of any legal organization or firm. Of course, it may be that the leaders who determine the goals of such organizations are precisely those who have flourished in a system and under conditions that so many others find inhospitable, and thus it is too optimistic to hope that they would actively support such change in the legal culture. Yet there are forces promoting change and determined to address the challenges of the tripartite crisis, and it is to these efforts that Professor Daicoff turns her attention in the final chapter.

F. Alternatives to Traditional Legal Practice

Before cataloguing the movements within the profession and the legal system generally that have arisen in response to the problems she identifies, Daicoff briefly digresses to explore the broader intellectual currents that she sees moving society as a whole away from privileging scientific thinking and individualism. Choosing as relevant examples the fields of psychology and philosophy, she describes the modes of analysis and the values championed in the age of the Enlightenment and in modernity that are characteristic of this country's constitutionalism and early legal culture.⁴³ Daicoff demonstrates how the assumptions of these earlier eras have been systematically questioned and how our understanding of these fields has expanded in the past century.⁴⁴ She makes a strong case that current efforts to examine and reform the dominant conceptions of the legal system are not mere isolated attempts to address diversity concerns and a handful of difficult professional and ethical issues. Rather, Daicoff believes that the culture is changing around the law, and the

⁴² *Id.* at 159 (quoting Lawrence S. Krieger & Kennon M. Sheldon, *Does Law School Change Law Students? Values, Motives, and Well-Being in a First Year Class* (unpublished manuscript, 2001)).

⁴³ *Id.* at 171–72.

⁴⁴ *Id.*

challenge seems to be how the legal system—an inherently conservative institution⁴⁵—will respond to these changes.

Turning back to her main project, Daicoff identifies a developing set of diverse trends and activities (she uses the term “vectors”) that she names the “comprehensive law movement.”⁴⁶ Specifically, these are: preventive law; alternative dispute resolution and mediation; procedural justice scholarship; therapeutic jurisprudence; specialized problem-solving courts such as drug courts and family law courts; efforts by some to integrate preventive law with therapeutic jurisprudence; restorative justice programs; collaborative law; holistic law; and an inclusive approach its adherents call creative problem-solving.⁴⁷

Daicoff asserts that many commonalities exist among these movements, that “synergy continues to build,” and that they share two essential claims in common which serve to distinguish them from traditional notions of legal practice: (1) a “goal of optimizing human well-being,” and (2) a “nonexclusivity of rights.”⁴⁸ By “optimizing human well-being,” she means that the comprehensive law movement seeks a more psychologically satisfying result for persons involved in the legal system; that it tries to promote an overall positive impact, either on the individual or on the individual’s relationships to other persons or to his or her community; and it attempts to promote a broader version of what is good for the client, rather than focusing on narrow (usually monetary) concerns that too often are the focus of litigation in the courts.⁴⁹ By “nonexclusivity of rights,” she means that the disputants may have a multitude of concerns, that they are not strictly focused on their legal rights even though extra-legal values are rarely addressed in the context of litigation.⁵⁰ Concerns such as the parties’ needs, emotions, relationships, sense of meaning, and psychological well-being can easily overshadow monetary concerns, but these are usually reduced to a lump sum in the calculus of court-related settlements and verdicts.⁵¹

After gathering its strands and deducing the common concerns, Daicoff issues several caveats about the comprehensive law movement.⁵² First, she warns us that comprehensive law practice should not be viewed as secondary or subordinate to traditional law practice.⁵³ This, she says, would be “enormously

⁴⁵ See, e.g., PHILIPPE NONET & PHILIP SELZNICK, LAW AND SOCIETY IN TRANSITION: TOWARD RESPONSIVE LAW 67 (Transaction Publishers 2d ed. 2001) (1978) (stating that “formal justice is consistent with serving existing patterns of privilege and power”).

⁴⁶ See DAICOFF, *supra* note 1, at 175.

⁴⁷ *Id.* at 175–86.

⁴⁸ *Id.* at 187.

⁴⁹ *Id.* at 188–89.

⁵⁰ *Id.* at 189–91.

⁵¹ *Id.* Cf. ROBERT H. MNOOKIN ET AL., BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES 108 (2000) (stating that “litigation . . . does not usually incorporate a broad consideration of the parties’ interests, resources, and capabilities”).

⁵² See DAICOFF, *supra* note 1, at 193–96.

⁵³ *Id.* at 193.

detrimental to the success of this movement, both for lawyers and for clients.”⁵⁴ Second, she cautions that these alternative approaches will not be appropriate for all lawyers, and those with more typical personalities will still find their services needed in some forms of litigation and other advocacy roles.⁵⁵ Third, she emphasizes the importance of obtaining the client’s full and knowing consent in choosing an approach to achieve the goals of the representation.⁵⁶ Daicoff also expresses her belief that an ethical aspiration of “zealous advocacy” is not compatible with her notion of comprehensive law, and thus existing ethical codes should be expanded to “explicitly encompass” the core values of the comprehensive law movement.⁵⁷ Finally, she argues that law schools need to teach courses in the area of comprehensive law, including at least an introductory course, so that law students are made aware of these alternative currents in the law.⁵⁸

IV. CONCLUSION

Lawyer, Know Thyself shines the light on a few very troubling issues associated with legal education and the practice of the law, and, hopefully, will prompt discussions within the profession about these problems. Despite the lack of definitive empirical research fully substantiating her theories, Professor Daicoff’s book is a persuasive and important beginning point for meaningful dialogue about legal education and the legal profession.

Because of its academic content, *Lawyer, Know Thyself* does not always make for an easy or quick read. The book is heavily annotated and offers a helpful and nearly exhaustive compilation of studies and other writings relevant to these issues. But aside from occasional repetitiousness—which may be unavoidable, given the argument that the various aspects of the crisis she describes are interrelated—her style is generally clear and straightforward. She helpfully suggests in her preface that the book need not be read cover to cover, but instead may be approached in various groupings if only one or maybe two topics are of interest to the reader.⁵⁹ Her arguments are novel and provocative, and the book would make an excellent text for the sort of course in comprehensive law approaches that she suggests, but also in first-year law school courses in lawyering skills and professionalism, or elective courses in client counseling, negotiations, appropriate dispute resolution, and ethics. The book would also be useful in undergraduate legal studies, sociology, or social psychology courses surveying the legal profession.

Professor Daicoff obviously has a progressive agenda for the law and for lawyers. Aside from her focus on alternative law movements in the final chapter, an indication of this view is the prominent mention in her preface of

⁵⁴ *Id.*

⁵⁵ *Id.* at 193–94.

⁵⁶ *Id.* at 194.

⁵⁷ *Id.*

⁵⁸ *Id.* at 195.

⁵⁹ *Id.* at xv.

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Steven Keeva's excellent book on this subject, *Transforming Practices*.⁶⁰ Personally, I have great sympathy for her aims. If I were the Legal Education Czar, I would make both Keeva's book and *Lawyer, Know Thyself* mandatory reading for all first-year law students. And I would have them write book reviews, just to be sure they had read them carefully.

⁶⁰ STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (1999).