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A RESPONSE TO
PROFESSOR VERNELLIA R. RANDALL'S
THE MYERS-BRIGGS TYPE INDICATOR,
FIRST YEAR LAW STUDENTS AND PERFORMANCE

CYNTHIA V. WARD*

Professor Vernellia Randall's study of the relationship between personality type and law school performance addresses a very current and hotly debated question: Are law schools doing the best possible job of educating their students? She answers with a clearly articulated "no."¹ However, a complete answer to this question necessarily engages broader scholarly discussions over the role of law schools, and law practice, in society.

Professor Randall sets forth two somewhat different complaints about legal education. First, she argues that law schools fail to communicate to students the essential elements of a successful legal education and to teach them what it means to "think like a lawyer."² Randall attributes her own high class rank in law school to the "significant advantage" she enjoyed as someone who had previously learned to study effectively.³ Randall criticizes "[l]egal education's failure to teach skills to [students possessing] varying levels of entering abilities;" a failure that effectively requires students to "enter[] with sufficiently high levels of the requisite skills so that the legal educational system's failures minimally affect on their success."⁴

Professor Randall's point is that law schools ought to be willing and able to offer a successful education to students who, unlike Randall and others who do well in the current system, do *not* enter with high levels of such skills. Programatically this argument would lend support to calls for more remedial programs in the first year of law school, as well as greater attention to basic writing, mechanical, and study skills, in order to ensure that all students, whatever their entering

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¹ Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63 (1995) (discussing author's observations of the "general incompetency of the legal education system.")

² *Id.* at 65.

³ *Id.* at 103.

⁴ *Id.* at 65-66.

level of preparation, have the maximum chance to succeed at learning to “think like a lawyer” within the framework of the pedagogical status quo.

Randall’s second argument, which appears to be the main focus of her piece, can be distinguished from the first. Having surveyed a first-year class at Dayton for the purpose of comparing students’ scores on the MBTI personality test with their first-year grades, she concludes that legal education “favor[s] . . . a particular type”⁵ of *personality* (not merely a high level of previously acquired skills), namely persons whose scores on the Myers-Briggs Type Indicator (MBTI) reveal them to be “INTJs”—introverted (as opposed to extraverted), intuitive (as opposed to sensing), thinking (as opposed to feeling), and judging (as opposed to perceiving).⁶

However, even assuming that Professor Randall is right on both counts—that the best law students are those who have acquired certain skills before law school, and that students with INTJ personality types do better than others—why should we care? After all, legal education is not an end in itself; it is meant, in general, to prepare students for law practice in some form. Thus, assuming threshold rules of fairness in law school admissions (*e.g.*, the admissions process does not exclude minorities on the basis of their race or women on the basis of their gender), any argument for changing law school pedagogy must be rooted in some claim about the nature of law practice—for example, that law school insufficiently prepares students for practice as it now exists, or that law practice itself must be changed via the acceptance, cultivation, and graduation of different kinds of students as well as the hiring of faculty possessing priorities, goals, and methods that would help prepare students to make whatever changes to the practice are seen to be necessary.

The first claim—that law schools should better prepare students to take their places in law practice as we know it—has been the basis for complaints by the practicing bar and some academics that law schools are failing adequately to teach the trade. This accusation has recently been set forth in the so-called MacCrate Report, which charges that legal education is too theoretical and should focus less on abstract concepts and more on “skills training” and early introduction of students

⁵ *Id.* at 103.

⁶ *Id.* at 102. I evaluate the legitimacy of this conclusion below.

into real-world practice situations.⁷ The argument here accepts, in general, the existing power and role of the legal profession, takes the position that law schools are the servants of law practice as it now exists, and concludes that legal education ought more effectively and efficiently to serve the current needs of the bar.

The second claim—that law practice must be changed and that law schools can and should play a part in changing it—engages feminist, critical race theory, and critical legal studies critiques of legal education. Scholars in these areas worry that the law and lawyers are serving elitist and oppressive roles in society at large, and they would like to use law-school education to change this.⁸ Feminist scholars, for example, have charged that the legal profession is essentially “male” insofar as it celebrates adversarial process; abstract, rational thought; and impartial judgment, while explicitly or implicitly disparaging the more relational, particularistic, and empathic

⁷ Section of Legal Education and Admissions to the Bar, American Bar Association, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development—An Educational Continuum* (Chicago, 1992) [MacCrate Report]. The task force included six law professors, eight deans, seven practitioners, and five judges. Jonathan Rose, *The MacCrate Report's Restatement of Legal Education: The Need for Reflection and Horse Sense*, 44 J. LEGAL EDUC. 548, 550 n.10 (1994). Professor Rose points out that the MacCrate Report is the latest in a long series of studies of law-school education and skills training. Rose, *supra* at 549, nn.6-7 (listing other well-known studies). Professor Rose notes that the “heart and soul” of the MacCrate Report is its Statement of Fundamental Lawyering Skills and Professional Values, which lists ten fundamental lawyering skills that, the report concludes, law schools ought to emphasize more strongly. *Id.* at 552-53.

In two recent articles Judge Harry Edwards has advanced the claim that “many law schools—especially the so-called ‘elite’ ones—have abandoned their proper place, by emphasizing abstract theory at the expense of practical scholarship and pedagogy.” Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992). Law-school education, charges Edwards, has become too theoretical and should refocus its energies on training students for practice and on hiring and developing law faculty who wish to do “useful” scholarship, “not to fight ivory-tower conflicts that are irrelevant to the outside world.” *Id.* at 38. See also Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191 (1993) (further developing this argument). But see Derrick Bell & Erin Edmonds, *Students as Teachers, Teachers as Learners*, 91 MICH. L. REV. 2025 (1993) (worrying that Judge Edwards’ recommendations will disadvantage scholars, especially minority scholars, whose theoretical work raises important fundamental questions about the structure of law in our society).

⁸ See, e.g., Carrie Menkel-Meadow, *Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law*, 42 U. MIAMI L. REV. 29 (1987) (“The story of law in the United States is largely a story about one group of people, middle to upper class white males . . . making law for all others in society.”) See generally Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982); Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOC. ACTION 71 (1970).

thinking that is characteristic of women.⁹ These scholars have advocated structural changes in the profession including a de-emphasis on competitive "win-lose" adjudication and more reliance on noncombative adjudicatory methods such as mediation.¹⁰ They have also recommended that legal education offer more opportunities to students who want to learn about such methods.¹¹ Similarly, critical race theorists have argued that the legal profession is insufficiently diverse and have criticized law schools for failing to recognize and cultivate minority students and faculty who will bring new perspectives—especially the perspective of economic and social disadvantage—to a profession they see as composed too heavily of society's elite.¹² Some of these arguments draw on the foundational work of critical legal scholar Duncan Kennedy, who has repeatedly accused law schools of reproducing and reinforcing social hierarchy via the instillation in students of corrupt values.¹³

Professor Randall's arguments for reform of legal education necessarily rely upon one or another of these foundational assaults on the law and legal practice. Why, for example, are law schools wrong to insist that entering first-year law students already possess a high level of certain basic skills? The discussion above makes clear that several answers are possible. First, making unjustified assumptions about students' entering level of skills might result in graduating law students who are

⁹ See generally Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39 (1985); Carrie Menkel-Meadow, *The Comparative Sociology of Women Lawyers: The "Feminization" of the Legal Profession*, 24 OSGOODE HALL L.J. 897 (1987); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988).

¹⁰ See generally Leslie Bender, *Feminist (Re)Torts: Thoughts on the Liability Crisis, Mass Torts, Power, and Responsibilities*, 1990 DUKE L.J. 848; Ruth Colker, *Feminism, Theology, and Abortion: Toward Love, Compassion, and Wisdom*, 77 CAL. L. REV. 1011 (1989); Menkel-Meadow, *supra* notes 8-9; Carrie Menkel-Meadow, *Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-opted or "The Law of ADR,"* 19 FLA. ST. U. L. REV. 1 (1991).

¹¹ See, e.g., Carrie Menkel-Meadow, *Women as Law Teachers: Toward the "Feminization" of Legal Education*, in ESSAYS ON THE APPLICATION OF A HUMANISTIC PERSPECTIVE TO LAW TEACHING 16 (1981); Menkel-Meadow, *supra* notes 8-10.

¹² See, e.g., Derrick Bell, *The Supreme Court 1984 Term, Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4, 39-57 (1985). See generally Derrick Bell, *The Final Report: Harvard's Affirmative Action Allegory*, 87 MICH. L. REV. 2382 (1989); Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984) (charging that minority scholarship on civil rights issues is ignored by "inner circle" of white males who dominate the field). For a discussion of the advantages to law of minority viewpoints, see Mari Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989).

¹³ See generally Kennedy, *supra* note 8.

unprepared for the rigorous writing and analytic demands of law practice. Here the argument dovetails with that of the MacCrate Report and would lead to the conclusion that more basic skills and practical exercises ought to be offered at law school in order more quickly and effectively to assimilate law students into practice. However, justice-based arguments of the kind that concern feminists and critical scholars might also ground this type of recommendation. For example, due to systemic societal disadvantage, it may be that women and minorities who possess top-level intellectual abilities are nevertheless relatively less well-trained, at *pre-law* educational levels, than are white males. If this is the case it might become a matter of justice, not merely efficiency, for law schools to do their part in remedying this unfair treatment by making available to female and/or minority students training in the basic skills required to function successfully in the law.¹⁴

The important thing to note here is that proposals to reform law school education via more skills training are necessarily based upon *some* fundamental claim about the nature of law practice.

Similarly, Professor Randall's second line of attack on legal education—that it unjustifiably favors persons whom the MBTI test would label introverted, intuitive, thinking, and judging—can also be employed in ways that either serve the legal status quo or would lead to dramatic reform of the legal system at large. Suppose it is true that legal education disproportionately rewards a certain type of personality. Again, why should we care? One reason might be that other, non-INTJ personality types—those that gravitate toward extraversion, sensing, feeling, and/or perceiving¹⁵—are equally (or more) capable of “thinking like lawyers” and of successfully practicing law as we know it. If this were true then a preference for the INTJ type over the ESFP¹⁶ type would reflect an error in judgment that ought to be remedied in order to produce the best possible set of practicing attorneys within the current system of law.¹⁷ But an argument of this kind necessitates the

¹⁴ Professor Randall appears to adopt this view. See Randall, *supra* note 1, at 66 n.4.

¹⁵ See generally Randall, *supra* note 1, for definitions of all the elements of the Myers-Briggs Type Indicator.

¹⁶ In MBTI terminology, the acronym “ESFP” stands for Extraverted (as opposed to Introverted), Sensing (as opposed to Intuitive), Feeling (as opposed to Thinking), and Perceiving (as opposed to Judging). See Randall, *supra* note 1, at 75.

¹⁷ See, e.g., Lani Guinier, et al., *Becoming Gentlemen: Women's Experiences at One Ivy League*

development of a strong connection between personality style and success at law practice—a connection Professor Randall never establishes.¹⁸

At a more revolutionary level one might argue that legal education's favoring of INTJs results in a legal system that helps maintain the domination of elites over the poor, women, and/or minorities. If white males, for example, tend disproportionately to possess INTJ personalities while women and minorities tend to fall into other categories, then the effect of favoring INTJs over others would be to privilege white males. Urging law schools to make room for other kinds of people might then be a matter of remedying systemic injustice in the law. Although Professor Randall does not explicitly draw them out, certain parallels between relational feminist arguments for law reform and the elements of the MBTI test might be very relevant here. For example, if it is true, as Randall hypothesizes, that legal education currently favors "intuitive" personalities over "sensing" ones, this could imply a bias toward abstraction, toward rewarding students who prefer to deal in abstract generalities rather than "personal, concrete experience."¹⁹ Similarly, if law school (and practice?) favors "thinking" students over "feeling" ones, this might imply a bias toward impersonal, syllogistic thinking as opposed to thinking that prioritizes human relationships, compassion, and the centrality of individual values.²⁰ Some feminist scholars would add that these biases have the effect of disadvantaging women—who,

Law School, 143 U. PA. L. REV. 1, 85-86 (1994) ("The law school's definition of lawyering potential—as measured by a single evaluative methodology and a dominant pedagogy—may simply be outmoded in light of contemporary professional developments, which include alternative dispute resolution, emphasis on negotiation rather than litigation, and client counseling") (footnotes deleted); "[C]ooperative approaches to negotiation not only are common in forums that emphasize mediation and alternative dispute resolution, but also are associated with traditional advocacy." *Id.* at 96.

¹⁸ Beyond her merely conclusory statement that law practice needs all personality types, see Randall, *supra* note 1, at 103.

¹⁹ *Id.* at 88, 90 ("intuitive law students tend to do well in law school because they excel at theoretical topics and abstract theories"); *Id.* at 90 (identifying the "cognitive style" of sensing law students as "staying connected to practical realities around them" and the "study style" of sensing law students as "approaching abstract principals and concepts by distilling them out of their own personal, concrete experience").

²⁰ *Id.* at 91 (Noting that "thinking" law students are "syllogistic and analytic," and that they "are likely to undervalue . . . the importance of human relationships in legal problems . . . and the art of communication."). "Feeling" students, on the other hand, "need to be encouraged to keep that perspective," which focuses on the "human angle" of law, "attending to relationships," and "personalizing issues and causes they care about." *Id.* at 92, 93, 95.

whether because of socialization or biology, tend to emphasize relationships, communication, the personal, and the practical over impersonal, syllogistic abstraction.²¹ Such critics would conclude that, as a matter of equality and justice, law schools must open themselves to new ways of thinking and learning.²²

Professor Randall's results offer little support for the idea that law school systematically advantages white males over women and persons of color. Consider the breakdown across the four sets of opposing preferences that comprise the MBTI test Randall gave to the first-year class at Dayton. The test revealed that 51.3 percent of the students surveyed were extraverts, while 48.7 percent were introverts.²³ That is, the class appeared almost evenly balanced between introverts and extraverts. The gender breakdown showed that 57.8 percent of female students were extraverts, compared to 46.7 percent of males—a difference that Professor Randall notes is not statistically significant.²⁴ Similarly, 52.9 percent of students of color were extraverts, compared with 51.1 percent of whites—again, a difference that is not statistically significant.²⁵

This even-handed breakdown was repeated along the Sensing-Intuitive dimension, where 48.1 percent of students preferred sensing, compared with 51.9 percent who preferred intuition. Among students of color, 52.9 percent preferred intuition over sensing, compared with 51.8 percent of whites;

²¹ See, e.g., Lani Guinier et al., *supra* note 17, at 3 (finding "strong academic differences" between male and female law-school graduates, with men performing significantly better than women overall); "All women have finally been welcomed into the Law School's hierarchy, but it seems that a significant number are welcome to stay at the bottom. The combination of highly visible, competitive pedagogical strategies in large first-year classrooms, peer hazing, and an institutionalized emphasis on replacing *emotions* with *logic* and *commitments* with *neutrality* may be sufficient to socialize many students into their *place*, even those who are trying to resist." *Id.* at 71 (footnotes omitted). "These data plead . . . for a reinvention of law school, and a fundamental change in its teaching practices, institutional policies, and social organization." *Id.* at 100.

²² It is probably important to note that the sort of group-based personality assignments necessary to these arguments have come under increasing disrepute for making illegitimately "essentialist" judgments about the viewpoints and characteristics of women and minorities while ignoring the differences between group members. See, e.g., Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990). However, relational feminists continue to do important work both in legal theory and in practice-related scholarship. See generally *supra* notes 9-12.

²³ Randall, *supra* note 1, at 80.

²⁴ *Id.*

²⁵ *Id.*

and 55.6 percent of males preferred intuition compared with 46.9 percent of females; again, neither of these differences was statistically significant.²⁶

With respect to the Thinking-Feeling preference set, 77.9 percent of students overall preferred thinking, while 22.1 percent preferred feeling. Among the males surveyed, 82.2 percent preferred thinking, compared with 71.9 percent of the females; and 94.1 percent of students of color preferred thinking, compared with 75.9 percent of whites. Once again, neither difference was statistically significant.²⁷

Finally, the Judgment-Perception preference set produced somewhat different results along the gender dimension. Overall, 67.5 percent of students preferred judgment, compared with 32.5 percent who preferred perception. Of the students of color, 64.7 percent preferred judgment over perception, compared with 67.9 percent of whites (*not* a statistically significant difference); but the male-female breakdown *did* yield a statistically significant difference, with 78.1 percent of females preferring judgment, compared to 60.0 percent of males.²⁸ However, Professor's Randall's results indicated that "[s]tudents preferring judging had *higher* mean FSGPA (2.568) than students preferring perception (2.523),"²⁹ and although this difference was not statistically significant, "[t]he students' . . . [Judgment-Perception] continuous scores decreased as their first semester grades increased. *That is, the more the student preferred judgment, the better the student performed.*"³⁰

²⁶ *Id.* at 86.

²⁷ *Id.* at 91-92.

²⁸ *Id.* at 96-97. Professor Randall notes that the proportion of women law students preferring judgment is substantially higher than the percentage of women generally who do so. Relational feminists would undoubtedly see this as a significant fact; if, for example, it is "woman's nature" to prefer perceiving to judging, law schools may be disserving women by preferring those who judge to those who perceive. However, this immediately calls forth the standard arguments against relational feminism. What, for example, are we to say about the first-year female law students who, by a significant margin, prefer judging to perceiving? Are they not "real" women? But if your definition of a "woman" is "someone who looks at the world in a relational, communicative, perceiving (as opposed to judging) way," then many biological females are *not* women, while at least some biological males *are* (see Randall's results re: males who were relational, etc.). In short, you are not talking about feminism anymore; you are simply arguing for equal opportunity for relational, communicative folks. For further discussion of *that* argument, see *infra*.

²⁹ *Id.* at 97. (emphasis added) (footnote omitted).

³⁰ *Id.* (emphasis added). The difference was not statistically significant.

I am neither a psychologist nor a statistician and will therefore not attempt to evaluate Professor Randall's methodology, the appropriateness of her choice of the MBTI test over other personality tests, or the applicability of her findings to students at other law schools. However, to the extent her results *do* have general applicability they do not appear to support claims that law-school education has the effect of disadvantaging women and minorities. Randall's results indicate that, along three of the four dimensions evaluated, race- and gender-based differences were not statistically significant. Further, along the fourth dimension—that of judging v. perceiving, a statistically significant difference *did* exist between men and women, with women significantly more likely than men to prefer judging. However, as Randall notes,³¹ judging seems to be at least a somewhat favored thinking style in the current law-school system, so this difference would, if accurate and generalizable, work to the *advantage* of women.

All of which serves only to highlight the significance in law school of personality differences considered *apart* from race and gender. In other words, if it is true, as Professor Randall's findings suggest, that INTJ's are favored over other personality types in law school, should we care about this independently of race and gender questions? The answer to *that* question, of course, depends on what one expects law schools to be and to accomplish. Is it the obligation of law schools, for example, to make available a legal education to every person who *wants* one? Or are there legitimate ways of screening out some students in favor of others, either by denying admission to some or by styling the law-school learning environment so that certain kinds of persons will do better than others?³² If so, how do we decide whom to screen out; that is, what screening criteria are legitimate? As the discussion above has indicated, these questions are not answerable without some agreed-upon conception of law school's proper relationship to practice, and the proper nature of law practice itself. Those who seek

³¹ *Id.* at 97-98.

³² Professor Randall argues that the MBTI should not be used for admissions purposes, since it does not measure or account for all the qualities that determine a particular individual's law-school success. *Id.* at 102. But, if her results are reproduced and become applicable to all law students and law schools, it is hard to see the justification for *not* using them—in conjunction, of course, with all other legitimate factors used in the admissions process—to help gauge each prospective student's potential success in law school.

merely to obtain students better prepared to practice law as we know it might be well satisfied with the idea that it takes a certain type of personality to do well in the legal profession, and might want to use Professor Randall's data to seek more accurate ways of identifying INTJs and recruiting them to law school. On the other hand, those who feel that law school should be preparing students to make law less adversarial, hierarchical, and competitive, and more nurturing and relational, will care very much that legal education rewards and (to some extent) molds students into persons who prize qualities such as impartiality, syllogistic logic, and abstract generality over the more relational, communicative, particularistic approach that might make our law practice more communitarian and more attuned to the voices of the most disadvantaged. While Professor Randall's results offer an opportunity to address the core question of whether we need basic reform of law practice, they do not, by themselves, offer an answer to that question.