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Using Student Development Theory to
Inform Business Law Curriculum and Pedagogy:
A Response to the Secretary of Education's
Commission on the Future of Higher Education

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Using Student Development Theory to Inform Our Curriculum and Pedagogy:
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Eric Yordy

I. INTRODUCTION

On September 19, 2005, United States Secretary of Education Margaret Spellings announced the creation of a Commission on the Future of Higher Education.[2] In announcing the Commission, Secretary Spellings stated, "It is time to examine how we can get the most out of our national investment in higher education. We have a responsibility to make sure our higher education system continues to meet our nation's needs for an educated and competitive workforce in the 21st century."[3] The Commission, made up of leaders from the higher education, business and government communities, was charged with creating a national dialogue with educators, business leaders, policy makers and families.[4] As the title of the Commission suggests, the main purpose of the dialogue was to investigate questions about the future of higher education in our nation – questions related to quality and output among others.[5]

Approximately one year later, the Commission released a report discussing the broad issues facing higher education and recommending action.[6] With regard to student learning, the Commission noted that students who earn degrees are not meeting expectations related to basic skills such as reading, writing, problem-solving and critical thinking.[7] In response to the Commission report, Secretary Spellings set forth five actions to pursue.[8] Two of her actions directly address student learning: action four provides matching funds for universities that publicly report student learning outcomes and action five pulls together members of the accrediting agencies to move toward new measures of accreditation that focus on learning.[9]

In the field of undergraduate legal education, we are in the perfect position to aid students in stretching their abilities and developing the critical thinking and problem-solving skills that the Commission identified as lacking. Teaching these skills, however, requires us to move from a view of undergraduate legal education as a preparation for law school courses and instead focus on teaching relevant legal principles and ideas to undergraduate students who intend to pursue careers in business.

Like many faculty members in other disciplines, most undergraduate business law professors are trained in the discipline of law and not as educators. Experiences in learning law include answering intense questioning while professors struggle with the Socratic Method, briefing complicated and verbose court opinions, participating in Moot Court and legal clinics, and synthesizing gargantuan amounts of material in to outlines for our one exam. Because of this background, it is easy for faculty members to approach teaching undergraduate law courses in one of

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[1] Per instruction of journal, author information has been redacted, but this footnote reserved for inclusion of that material.

[2] Press Release, U.S. Dep't of Educ., Secretary Spellings Announces New Commission on the Future of Higher Education, (Sept. 19, 1995) (found at http://www.ed.gov/news/pressreleases/2005/09/09192005.html. Last viewed on 10/5/2006.)

[3] *Id.*

[4] *Id. See also* U.S. Dep't of Educ., *A Test of Leadership: Charting the Future of U.S. Higher Education* at 32-40. Washington, D.C., 2006 (containing biographies of all Commission members and staff).

[5] Press Release, U.S. Dep't of Educ., Secretary Spellings Announces New Commission on the Future of Higher Education, (Sept. 19, 1995) (found at http://www.ed.gov/news/pressreleases/2005/09/09192005.html. Last viewed on 10/5/2006.)

[6] U.S. Dep't of Educ., supra note 4.

[7] *Id.* at 3.

[8] Secretary Margaret Spellings, Secretary Spellings Prepared Remarks at the National Press Club: An Action Plan for Higher Education, (Sept. 22, 1995) (found at http://www.ed.gov/print/news/speeches/2006/09/09262006.html. Last viewed on 10/19/2006.)

[9] *Id.*

two ways: replicating of their law school experience or (taking the extreme opposite approach), teaching a class where memorization of legal principles is rewarded without further developmental encouragement.[10]

Research shows that the cognitive and ethical development of undergraduate students occurs in a step-like fashion and that students generally transition through a number of stages during their college years.[11] The study of law can and should assist the student in this cognitive progression. An understanding of college student development is important for legal scholars in order to work with students and maximize our impact on the development of the skills required or desired in our graduates through curriculum planning and appropriate pedagogical teaching methods.[12]

This article will review the Commission's report as it relates to the teaching of legal topics in business, will review literature and research on college student development and will set forth some recommendations for curriculum changes and pedagogical tools for teaching legal topics in business in ways that are both developmentally appropriate and responsive to the needed skills that students today are perceived to be lacking.

II. THE SECRETARY OF EDUCATION'S COMMISSION ON THE FUTURE OF HIGHER EDUCATION'S REPORT

In September, 2006, the Secretary of Education's Commission on the Future of Higher of Education released its report titled A Test of Leadership: Charting the Future of U.S. Higher Education.[13] In the report, the Commission reviewed higher education in light of six key areas: access, cost and affordability, financial aid, learning, transparency and accountability, and innovation.[14] Two discussion points directly impact the teaching of legal topics in business: student learning and faculty innovation.

A. The United States as a Leader in Student Learning

With regard to student learning, the Report noted that the United States has slipped to a rank of 12 in higher education attainment worldwide.[15] As one of the recommendations, the Commission stated that institutions of higher education "should measure and report meaningful student learning outcomes."[16] The report specifically stated that "Faculty must be at the forefront of defining educational objectives for students and developing meaningful, evidence-based measures of their progress toward those goals.[17]

B. A Lack of Innovation as a Threat to Our Educational System

The Commission identified as a concern that too many colleges and universities seem resistant or unable to change with modern society. The structure of higher education is such that new teaching and content delivery

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[10] *See* Marc Lampe, *A New Paradigm for the Teaching of Business Law and Legal Environment Classes*, 23 J. Legal Stud. Educ., 1, 2-4 (2006); Lucille M. Ponte, *The Case of the Unhappy Sports Fan: Embracing Student-Centered Learning and Promoting Upper-Level Cognitive Skills Through an Online Dispute Resolution Simulation*, 23 J. Legal Stud. Educ., 2, 169, 175 (2006) (discussing the teaching tools used by faculty in business law courses). The author is not implying that all faculty members take either of these approaches or that there are not some highly qualified legal professors who are aware of and sensitive to the cognitive development of college students. The author also is not arguing that the approach taken by traditional law schools is either appropriate or inappropriate for the level of learners at the law school. See Elena Kagan, *HLS faculty unanimously approves first-year curricular reform.* October 6, 2006 (discussing the reforms to Harvard Law School's curriculum and approach to include increased attention to team work as well as the United States legal process and system). *See also* Patricia M. King, Student Cognition and Learning, in Student Services: A Handbook for the Profession, 219-20 (Susan R. Komives & Dudley B. Woodard, Jr., eds.), (3rd ed. 1996).

[11] Student Services: A Handbook for the Profession, 145-243 (Susan R. Komives & Dudley B. Woodard, Jr., eds.), (3rd ed. 1996).

[12] Karen Arnold & Ilda Carreiro King College Student Development and Academic Life, x (discussing that Student Affairs professionals base their profession on the student development theories, but that these theories have not been widely explored by faculty) (1997).

[13] U.S. Dept. of Educ., supra note 4.

[14] *Id.* at 1-5.

[15] *Id.* at 12.

[16] *Id.* at 23.

[17] *Id.*

methods are not highly rewarded. They state, "We urge [institutions of higher education] to develop new pedagogies, curricula and technologies to improve learning. . ."[18] As part of the recommendations, the Commission points to multi-disciplinary research and curricula as well as international education.[19] Student development theories also support the conclusion that we need to re-evaluate our curriculum and pedagogical methods.

Both student learning and curriculum and pedagogical innovation can be enhanced by an understanding of student cognitive development. The theories set forth mostly by academics in the realm of student affairs or educational psychology can help us improve our students skills and address these two areas of concern in the Commission's report.

III. REVIEW OF LITERATURE ON COLLEGE STUDENT COGNITIVE DEVELOPMENT

Student Affairs professionals have long been concerned with college student learning and how educators can impact it.[20] A number of theorists, from William G. Perry to Marcia Baxter-Magolda have interviewed, observed and assessed students from a variety of backgrounds and collegiate experiences.[21] Professionals have researched identity development of ethnic majority students, ethnic minority students, bi-racial students, women, men, heterosexual, homosexual and bisexual students.[22] Different personality types have been explored as have different learning styles.[23] From a faculty member's perspective, the key area of study is in the cognitive development. Cognitive development theories generally are based on the work of Jean Piaget and examine how students think and process information.[24] This section looks at some of the major theories of cognitive and moral development of college students.

A. *Perry: From Dualism to Relativism*

Perhaps the best known researcher into college student cognitive development, and the one whose work serves the basis of nearly all other college student cognitive development theories, is William G. Perry, Jr. Perry was a Harvard professor of education and founder of the Bureau of Study Counsel at Harvard.[25] On the basis of 464 interviews in total and 84 students followed for the entire four years of their undergraduate career at Harvard or Radcliffe, Perry distilled a nine-position theory of cognitive development.[26] According to the research, students generally progressed through the nine stages from a dualistic viewpoint of the world, where they expected definitive right answers to all questions with teachers, parents and religious leaders as the authorities on those answers, to a complex viewpoint students expect multiple answers to many of life's questions and perform ongoing introspective analyses and synthesis to develop their own convictions and beliefs.[27] A brief description of Perry's positions follows:

Perry refers to Positions 1-3 as representing the "Modifying of Dualism."[28] While moving through these positions, students begin with a worldview where right is defined by others and their place in that world is to blindly

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[18] S. Dept. of Educ., supra note 4 at 24.

[19] *Id.* at 24-25.

[20] Arnold & King supra note 9 at vii.

[21] See William G. Perry, Forms of Ethical and Intellectual Development in the College Years: A Scheme. 10-11 (1999) (originally published by Holt, Rinehart and Winsong, Inc. Copyright 1968, 1970); Mary F. Belenky, Blythe M. Clinchy, Nancy R. Goldberger & Jill M. Tarule, Women's Ways of Knowing 9 (1986); Marcia Baxter Magolda, Knowing and Reasoning in College: Gender-Related Patterns in Students' Intellectual Development. 23, 29 (1992); and Student Services: A Handbook for the Profession, 145-243 (Susan R. Komives & Dudley B. Woodard, Jr., eds., 3rd ed. 1996).

[22] Student Services: A Handbook for the Profession, 145-243 (Susan R. Komives & Dudley B. Woodard, Jr., eds., 3rd ed. 1996).

[23] *Id. See also* Ponte, supra note 7 at 172-5 (discussing Blooms Taxonomy and Learning Domains).

[24] *See* Nancy J. Evans, Theories of Student Development, in Student Services: A Handbook for the Profession, 173 (Susan R. Komives & Dudley B. Woodard, Jr., eds.), (3rd ed. 1996) (discussing the foundations of student development theory).

[25] Perry, supra, note 18 at xlvii.

[26] *Id.* at 10-11.

[27] *Id.*

[28] *Id.* at 65.

obey the authorities (Position 1: Basic Duality).[29] The viewpoint gradually changes so that absolute truths still exist but the authorities have varying degrees of competence in knowing and sharing those truths and there is some acknowledgement that there may be room to disagree (Position 2: Multiplicity Pre-legitimate).[30] Finally, students acknowledge or realize that the unknown is legitimate and that people may hold differing viewpoints, but the validity of those viewpoints and uncertainties are grounded in a belief that no one has been able to identify that absolute truth that still exists somewhere (Position 3: Multiplicity Subordinate).[31]

Students move from this realm of absolute truths to "The Realizing of Relativism" (Positions 4-6).[32] Students recognize the legitimacy of differing viewpoints and "truths" (multiplicity) without the need for a hidden absolute truth.[33] While Perry stated that Position 4 (called Multiplicity Correlate or Relativism Subordinate), is comprised of two approaches to knowledge, the more common is that students view the existence of multiple truths as a pedagogical tool professors use to teach students how to think about subjects.[34]

When a student is living in Position 5 (Relativism Correlate, Competing or Diffuse) they move from a perspective where relativism is an artificial creation for classroom use to the extreme opposite view where nearly everything can, and should, be seen from multiple perspectives and that absolute truths are the exception rather than the rule.[35] Students realize that reading every word of a text for the right answer is less effective or "true" than reading broadly for principles and main points.[36] Professors move from being experts with the answers to being someone with a love of a subject that has experience in grappling with the uncertainties and may know the right questions to ask.[37] Students step away from themselves and their histories to look at questions from objective standpoints.[38]

As students enter Position 6 (Commitment Foreseen), they realize that relativism permeates life, but they need to find some stability and to take a stand the issues.[39] The students do not yet commit to any particular stance on issues, but realize they will have to in the future. They begin to realize that the "truth" on many issues will come from their own beliefs and decisions and that progression will require effort on their part.[40]

Finally, in Positions 7-9 (the Evolving of Commitments),[41] students begin to make initial commitments to positions in some areas and yet realize that the process of gathering information and making consistent commitments will be a never-ending process.[42]

Perry's studies, and his theory, have been criticized by many.[43] One particular criticism notes that Perry and his colleagues believed that students entered the university after the transition to Position 5.[44] Other researchers discovered that students at less elite schools entered at a lower-level position, closer to 2 or 3 and some did not even reach Level 5 by the time they had graduated.[45] In addition, Perry and his colleagues have been criticized for studying only white males.[46] It is this particular criticism that led to the development of the key cognitive theories for women discussed below.

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[29] *Id.* at 66.

[30] Perry, supra, note 18 at 81.

[31] *Id.* at 99.

[32] *Id.* at 65.

[33] *Id.* at 105-6.

[34] *Id.* at 111.

[35] Perry, supra, note 18 at 123-7.

[36] Perry, supra, note 18 at 132-4.

[37] *Id.* at 135-40.

[38] *Id.* at 140.

[39] *Id.* at 149.

[40] *Id.* at 155-7.

[41] Perry, supra, note 18 at 65.

[42] *Id.* at 170-1.

[43] Patrick G. Love & Victoria L. Guthrie, Understanding and Applying Cognitive Development Theory, 14 (1999).

[44] *Id.*

[45] *Id.*

[46] Evans, supra, note 21 at 174. *See also*. Love & Guthrie, supra, note 40 at 14.

B. *Belenky, Clinchy, Goldberger and Tarule: The Voices of Women Learners*

Where Perry and his colleagues studied predominantly wealthy white males, Belenky, Clinchy, Goldberger and Tarule collaborated to discover and describe the "missing voices of women" in cognitive development theories.[47] Belenky and her colleagues interviewed 135 women of diverse age, ethnic heritages, socioeconomic status and education levels.[48] Rather than a Perry-type position-based theory where progression through the positions indicates increased complexity of thinking and learning, Belenky and her colleagues distilled the information in their interviews into five knowledge perspectives of varying complexity, but specifically stated that they did not believe that a stage-like progression occurred with their perspectives.[49] They named their five perspectives of knowing, which are described below, Silence, Received Knowledge, Subjective Knowledge, Procedural Knowledge and Constructed Knowledge.

In the Silence perspective, women focus on concrete actual experiences as opposed to reflective thinking or imagination.[50] Women with this perspective have little or no ability to generalize from specific examples to broad categories of knowledge.[51] The perspective is characterized by dependence on others for knowledge and a view of authority figures as all-powerful.[52] Women in this perspective often "blindly obey" authorities without questioning or processing the words spoken by them.[53]

An appreciation of language as a key to learning indicates a move to a perspective of Received Knowledge.[54] For these women, learning comes from listening to others and contemplating their words.[55] Women move from the blind obedience of silence to a desire and ability to really understand the words spoken.[56] These women still view information as being right or wrong – reminiscent of Perry's idea of dualism – and authorities remain the source of truth and knowledge.[57] Disagreement among authorities is either impossible or puzzling and leaves women with this perspective frustrated or overwhelmed.[58] Similarly, the production of original work is complicated and confusing for these students.[59] Compilation of imparted truths is a more manageable task.

The recognition of the value of insight and an appreciation for relativistic truth characterize the Subjective Knowledge perspective.[60] Learning is a highly active process, with the listener not just receiving information, as in the prior perspective, but processing and analyzing information to determine if it is true for her.[61] Many Subjective Knowers rejected "masculine" ways of knowing: logic, reason, analysis and abstraction as "their" way while intuition is the preferred feminine way of knowing.[62] The concept of authority becomes almost exclusively internal.[63] In fact, Belenky and her colleagues found that often some sort of crisis of trust in traditional male authorities often pushed women to this perspective.[64] From an educational standpoint, the subjectivist female may have a hard time in classes recognizing that there is some expertise and authority of faculty members because such expertise is based in a presumption that knowledge can be objective.[65]

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[47] Mary F. Belenky, Blythe M. Clinchy, Nancy R. Goldberger & Jill M. Tarule, Women's Ways of Knowing. 9 (1986).

[48] *Id.* at 11-12.

[49] *Id.* at 15.

[50] *Id.* at 26-27.

[51] *Id.* at 27.

[52] Belenky, Clinchy, Goldberger & Tarule, supra, note 44 at 28-31.

[53] *Id.* at 28.

[54] *Id.* at 36.

[55] *Id.* at 37.

[56] *Id.* at 37.

[57] Belenky, Clinchy, Goldberger & Tarule, supra, note 44 at 37-39.

[58] *Id.* at 41.

[59] *Id.* at 40.

[60] *Id.* at 52-86.

[61] *Id.* at 54.

[62] Belenky, Clinchy, Goldberger & Tarule, supra, note 44 at 171.

[63] *Id.* at 68.

[64] *Id.* at 58.

[65] *Id.* at 89.

A move to Procedural Knowledge entails a move to a more measured and analytical approach to learning.[66] While the Subjective Knowing female believes that the right answer comes from within and is based on her own intuition and feelings, the proceduralist female believes in multiple correct approaches to learning and knowledge.[67] Women in this perspective may appear hesitant to speak, but behind the hesitation is not related to fear or "blind obedience" as in the Silent perspective, but instead is related to complex thought processes.[68] In fact, for Procedural Learners, the process of thinking is more important than the outcome or the decision.[69] While Procedural Learners are focused on the process, they may focus on it in different ways.[70] Some (called Separate Learners by Belenky and her colleagues) will focus on objective rules and guidelines (such as the criteria for analyzing a poem).[71] They approach knowledge in an adversarial manner, attempting to disprove information and doubting all interpretations until they come to a conclusion of their own.[72] Experts are viewed by Separate Learners as people who have gone through this objective process to come to their own conclusions and are on an even level with the students – the key benefit of the expert is their expertise in this process and their experience using it, not their expertise in a subject.[73] The other Procedural Learners (called Connected Learners) focus on relationships or the feelings of others (such as what the poet intended to convey).[74] Connected Learners use empathy – an attempt to understand how the other person is thinking and feeling about a subject in order to determine if the approach to the issue is the approach that the Connected Learner wants to adopt.[75] Again, the final judgment of the issue is less important than understanding others.[76]

Belenky and her colleagues called the final perspective Constructed Knowledge: Integrating the Voices.[77] In this perspective, women concentrate on finding intellectual room for both the procedural learning and the subjective learning.[78] Truth becomes contextual and the learner as a person becomes an intimate part in the discovery of it.[79] Experts or authorities are persons who have integrated various objective views of an issue with their subjective experiences to determine truth.[80] In this perspective, the process of seeking the truth, integrating one's experiences with external information and synthesizing the information is exciting.[81] The resulting decision is merely a benefit of the engaging and exciting process.

In the Belenky model, the more complex perspectives included the recognition that learning is an active process. The interviews they conducted and the answers that they used to distill their knowledge perspectives were broad-based and covered topics from self-image to classroom experiences.[82] Marcia Baxter Magolda, a professor at Miami University, interviewed students more directly regarding their ideas about learning and their role in the learning process.

C. *Baxter Magolda: Epistemological Reflection*

Marcia Baxter Magolda conducted a longitudinal study, interviewing 101 students (mainly Caucasian students but evenly divided by gender) throughout their university careers at Miami University of Ohio between

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[66] *Id.* at 93.

[67] Belenky, Clinchy, Goldberger & Tarule, supra, note 44 at 94.

[68] *Id.* at 94-95.

[69] *Id.* at 95.

[70] *Id.* at 100.

[71] *Id.* at 101-112.

[72] Belenky, Clinchy, Goldberger & Tarule, supra, note 44 at 101-112.

[73] *Id.*

[74] *Id.* at 101

[75] *Id.* at 115

[76] *Id.* at 116

[77] Belenky, Clinchy, Goldberger & Tarule, supra, note 44 at 1132.

[78] *Id.* at 1132-134.

[79] *Id.* at 138.

[80] *Id.* at 1139-140.

[81] *Id.* at 140.

[82] Belenky, Clinchy, Goldberger & Tarule, supra, note 44 at Appendix A.

1986 and 1991.[83] Her resulting Epistemological Reflection Model focused on students' perceptions of how learning occurs.[84] As a result of her interviews Baxter Magolda proposed that there are four basic ways of knowing: Absolute Knowing, Transitional Knowing, Independent Knowing and Contextual Knowing.[85] Baxter Magolda believed that students progress through the ways of knowing in a stage-like process, with a majority of freshman in the Absolute Knowing category while seniors or fifth-year students reside in the Independent and Contextual Knowing categories.[86] As in the prior theories, the level of complexity in the students' approaches to learning increases.

Students adopting the Absolute Knowing approach to learning believe that instructors have the concrete and absolute truth and their job is to share it with the students.[87] The role of the student is to soak up the knowledge like a sponge – to take from the instructors and to let the instructor know that the student believes material is interesting through class comment or question.[88] Education is a give and take relationship between the faculty members and the individuals, with peers playing a minor role, if any, in the acquisition of knowledge.[89] Debate and questioning between peers is seen as useful, but only to help clarify the truths the instructor has shared, not to elicit various perspectives or new knowledge.[90]

When a student begins to attempt an understanding of the information, rather than merely collecting or acquiring it, the student is moving in to the realm of Transitional Knowing.[91] Student with this approach are concerned with application and use rather than simple acquisition or memorization.[92] Students acknowledge and embrace the idea that there may be multiple right answers or that there may be no right answer.[93] Students may feel free to disagree with or argue with an authority or expert.[94] The aim of the Transitional Knower is find useful information and to learn under what circumstances conflicting information is useful.

Students progress to the Independent Knowing stage when they begin to develop unique and independent perspectives about issues and topics.[95] Faculty members no longer exist to impart the right answers to students, but to aid the students in the development of their own ideas.[96] Students seek out different perspectives on issues, read extra materials about subjects that interest them and enjoy debating the different ideas and approaches related to topics.[97] Students become confident in their ability to take a stand or form an opinion and usually feel free to share their positions with others.[98] Others' perspectives and conflicting information that exists are useful for debate, disproval and discussion, but are simply the starting point for the students' unique conclusions about the subject matter. Their perspectives are seen as distinct and students feel no need to relate them to each other or to the community around them.

As students integrate concern for their environment – those people around them – in an attempt to find compatible beliefs or ideas, the students move to the Contextual Knowing realm which is similar to Belenky and her colleagues Constructed Knowledge category.[99] Students continue to think independently, but the opinions and beliefs of others become important as guides and tools, not just for debate and discussion.[100] Differing perspectives

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[83] Marcia Baxter Magolda, <u>Knowing and Reasoning in College: Gender-Related Patterns in Students' Intellectual Development</u>. 23, 29 (1992).

[84] *Id.* at 29.

[85] *Id.* at 30.

[86] *Id.* at 70-72.

[87] *Id.* at 74.

[88] Magolda, <u>supra</u>, note 80 at 74-81.

[89] *Id.* at 78.

[90] *Id.* at 92.

[91] *Id.* at 105

[92] *Id.* at 105.

[93] Magolda, <u>supra</u>, note 80 at 106-108.

[94] *Id.* at 116.

[95] *Id.* at 138.

[96] *Id.*

[97] *Id.* at 146.

[98] Magolda, <u>supra</u>, note 80 at 140.

[99] *Id.* at 168-170.

[100] *Id.* at 169.

are no longer seen as being equally valid in a vast cavern of knowledge, but instead are seen as interdependent and varying in their level of practicality and realism.[101] Students begin to assign value to different ideas and thoughts based on evidence and context not simply on the base information.[102]

The theories discussed above are among the most well-known and discussed theories on the cognitive development of college students. Many others exist.[103]

In general, theorists agree that cognitive development is a progressive development and that college students enter the institution most often in a dualistic stage or approach. The call to higher education to improve the critical thinking and problem-solving skills of our students requires us to understand this developmental process and to be innovative in our curriculum and pedagogical techniques.

IV. UTILIZING STUDENT DEVELOPMENT THEORY IN PLANNING CURRICULUM AND PEDAGOGY

Many undergraduate business law faculty members hope and wish that students would approach learning from an advanced cognitive developmental level. We want them to debate the nuances of the law, to tease out complex hypotheticals and to make judgments on court opinions. This is how we were trained in law school and most of us had fun doing that; it is why we pursued faculty positions. Unfortunately, the research shows that most of our students do not approach learning at such high levels when they begin their higher education career.[104] Some do not reach that level until years after they graduate. It is our responsibility to assist students in developing higher-level thinking skills. We can do this through curriculum design as well as appropriate pedagogical methods.

A. Curriculum Redesign: Teaching Subjects in an Order that Encourages Cognitive Development

The topical coverage in an undergraduate business law course can be tailored and arranged to assist students in developing higher-level thinking skills. Beginning a course with a historical look at the law and the constitutional basis for regulation of business is not uncommon, but may overwhelm students of all levels, but especially those students in Perry's dualistic positions, Belenky's Silent or Received knowers and Baxter Magolda's Absolute knowers.[105] Students would be better served by beginning a business law course with a discussion of how law impacts business and how business professionals interact with the legal system, making the information relevant to something they know – their chosen major and future.[106]

Marc Lampe, Professor of Business Law and Social Responsibility at the University of San Diego, shared several thoughts on curriculum development in a recent article in the Journal of Legal Studies Education.[107] Lampe argued that business law students need topics such as alternative dispute resolution, risk management and attorney relationship management for practical future business reasons.[108] Learning about these skills will give students knowledge that will help them "in the real world."   Student cognitive development also supports his curriculum suggestions. The approach proffered by Lampe – the addition of a unit on managing the attorney relationship and legal audits, increased attention to ADR and self-help law – as well as his practical approach to teaching traditional topics[109] lend themselves to development of a curriculum that encourages cognitive development.

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[101] *Id.* at 170.

[102] *Id.* at 173 - 187

[103] *See e.g.* King, supra note 7 at 222-243 (discussing Marton and Saljo's research on deep learning, Ornstein's research on modes of consciousness; Kolb's experiential learning model, Gardner's theory on multiple intelligences, and Kitchener and King's Reflective judgment model among others).

[104] *Supra* notes 44-45.

[105] *See* Business Law Today: The Essentials (7th ed., Roger L. Miller & Gaylord A. Jentz, eds.) 2006, Chapter 1 entitled "The Historical and Constitutional Foundations"; West's Business Law: Text and Cases (10th ed., Kenneth W. Clarkson, et al., eds.) 2006, Chapter 1 entitled "The Legal Environment of Business"; Henry R. Cheeseman, Business Law: Legal Environment, Online Commerce, Business Ethics, and International Issues (6th ed.) 2007, Chapter 1 titled "Legal Environment of Business and E-Commerce" for examples of author recommended placement of Constitutional Law as an entry topic for a business law course.

[106] *See* Lampe, supra note 7 at 2-4 (arguing for a business-based curriculum rather than a law-based curriculum).

[107] *Id.* at 1.

[108] *Id.* at 1, 7 ("The goal here is to provide a method to prepare students to manage their legal exposures in an efficient, cost-effective, and ethical manner" as opposed to teaching them the law.)

[109] *Id.* at 1.

By beginning a class with the more practical and straightforward topics of hiring and attorney, managing an attorney-client relationship and self-help law issues, faculty members can teach to the dualistic thinkers while imparting valuable information to the higher-level thinkers. Dualistic viewers will appreciate the straightforward discussions of the "do's and don'ts" of hiring and managing an attorney while higher-level learners can evaluate the information for its practical use in their own lives. As the students feel comfortable with some of the legal vocabulary that can be shared in these early discussions, faculty members can introduce new topics, such as ADR and ethics using appropriate pedagogical tools such as those discussed in the next section of this article. These subjects will push students to think at a higher level, beginning to see the relativity of the law and the multiplicity of disputes while allowing them to slowly begin that transition to higher-level thinking. Students who already have reached that level of thinking will still be engaged by the nature of the new material and the logical progression from simple examples to more complex case studies.

As students begin to recognize and understand the complex and uncertain nature of law (which alone may cause dualistic students to cringe from the beginning), additional traditional legal topics can be introduced. Statutory topics such as intellectual property or the Uniform Commercial Code can be taught at basic levels with increasing complexity as students learn the legal terms. These, and other traditional topics, also should be taught with the cognitive development models in mind – students will not progress from a dualistic mode to higher-level thinking in a matter of weeks nor as a result of progressive materials in just one course. Faculty members can, however, continually demonstrate to students how the law relates to their future while incorporating the "fun" case examples and complex hypotheticals that characterize a traditional legal education.

By approaching the curriculum with a progressive complexity, as well as by using progressive pedagogical methods, faculty members can aid students in the transition from dualism to multiplicity.

B. Pedagogical Methodology: Utilizing Teaching Tools that are Valuable for Learners at all Developmental Stages

Because our students come to us in very different places cognitive development stages or levels, we need to careful not to teach to one cognitive level to the exclusion of others. Teaching as if all of our students are at Perry's position 5 may overwhelm freshman but be appropriate to a junior, senior or graduate student. Teaching to Magolda's Absolute Knowing learners may result in few high-level thinkers attending class because of a perceived lack of challenge and may allow the lower-level thinkers to maintain their concrete, dualistic beliefs of knowledge. There are some very good and simple pedagogical tools that we can use to accommodate the needs of all of our students and continue to encourage development.[110] A brief description of three such tools follows.

1. The Ethics Continuum

The teaching of ethics is often an early subject in many business courses, including business law. Ethics often is, and should be, taught in introduction courses as well as more advanced courses. The use of an ethics continuum can help students to clarify their thinking about different topics, push students to think beyond their current cognitive levels and introduce the decision-making skills that the Secretary of Education's commission found lacking. The continuum can be modified for use in large and small classes.

One highly effective way to visually determine the different levels of cognitive development in students is to have students stand and move around the room as the continuum questions are asked. If logistics make it difficult or impossible to move within the classroom, the activity can be done in a hallway or even outside. In large classes, where the physical movement of the number of students would make the exercise impractical or impossible, faculty members may modify it and make it more private – with students answering on a sheet of paper.

The faculty member instructs the students that one side of the room is the "agree" side and the other side of the room is the "disagree" side. The space in the middle of the room is for a judgment somewhere between the two. For large classes, students should be told to rate each statement on a scale of 1-5 or 1-10 (whether 1 = strongly agree or strongly disagree is up to the individual faculty member and makes no difference). Students are asked to make judgments about a series of statements. In one example, the statements are as follows:

- It is ethical to talk to someone who works for a competitor.
- It is ethical to have a social life that includes regular contact with someone who works for a competitor.
- It is ethical to talk to someone who works for a competitor about trends in the industry.

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[110] Some of the tools discussed in this section may be used by faculty already to teach a legal principle. What may be new to many faculty members are the discussions about how students arrive at conclusions and the process of using the tool which encourage cognitive growth.

- It is ethical to talk to someone who works for a competitor about pricing and market share.
- It is ethical to work with a competitor to set prices or divide the market if it won't hurt consumers.

In this continuum, students are asked to think about their feelings about anticompetitive activities and consorting with competitors. In moving through the questions, students often will have questions for the faculty member. For example, with question number 1, students often ask, "What are we talking about?" In my courses, I do not answer their questions but rather ask them to make a judgment with as few assumptions as possible.

Most students at all levels find the first and last questions relatively easy to answer. As the middle questions are discussed, the struggles to come up with a decision increase. Some students – those who have progressed on the cognitive development scales to a high-level – have their answers and have thought through the questions. Those who are at a lower level are forced to make some decision.

Key to this exercise is the discussion of rationale. After each question, students are asked to explain why they moved to the part of the room where they currently stand. To ensure that students are thinking about how they come to their conclusion (and to teach different approaches to ethics); the faculty member moderates the discussion to focus on the process of coming to a decision, not whether one answer was right and one wrong. Faculty members should feel free to "preview" the substantive legal issues by sharing what is legal or illegal along the continuum. Other examples of ethics continuum chains are located in Appendix 1.

Many other legal topics can be inserted in to the ethics continuum exercise. The exercise not only can be used as a stand-alone exercise for an ethics unit, but also can be revived during units on traditional legal topics to include the ethical dilemmas faced by business professionals.

2. The Simple Negotiation Exercise

In teaching alternative dispute resolution, a hands-on negotiating activity can be fun, educational and can encourage cognitive development. Again, keeping in mind the cognitive development level of students is important.

A simple negotiation exercise where students are paired up with one student assigned to be a seller and the other assigned to be the buyer provides an opportunity to have students look at their own assumptions and learning. Each student receives a short instruction sheet. The buyer is given a maximum price and an ideal price. The seller receives information on the cost of the good, a minimum sales price and an ideal sales price. The difference between the prices ranges from $200-$500. The seller's minimum sales price is only $50 below the buyer's maximum purchase price. The actual instruction sheet used is located in Appendix 2.

Without prior discussion about negotiation, the students are given approximately 10 minutes to "make a deal." At the end of the negotiating period, the students are asked to discuss the process. The faculty member asks the following questions (and others): Who started the discussion? What dollar amount was the first mentioned? Did the first party use a "take it or leave it" approach with the highest purchase/lowest sales price? Through this discussion, high level thinkers can demonstrate and share their approaches, while low-level thinkers are not penalized or bewildered by an esoteric, theoretical discussion on negotiation techniques. Class discussion can then move forward using different class members' approaches as real-life examples.

3. The Copyright Fair Use Mini Case Studies

Intellectual property is a subject which students of all cognitive levels can appreciate. During discussions on copyright infringement and fair use, miniature case studies can be used to encourage students to think critically and practice those deep problem-solving skills.

The faculty member can discuss the protection of copyright and the balance between protecting the creator of the intellectual property and the interests of society to continue to advance knowledge (which may require the use of copyrighted material). The four factors of the Fair Use Doctrine then are discussed.[111] Once the students understand the factors, the faculty member introduces a variety of short case studies. The faculty member then asks the first question: Is the use is a violation of copyright? Students are asked to make a judgment based on their initial reaction. The faculty member then analyses the case study factor by factor.
An example of such a case study is:

A faculty member in the English department copies 3 pages from a 1000 page "non-fiction" book about space for discussion of literary style.

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[111] 17 U.S.C. § 107.

Other topics for case studies include using popular culture items in decorating a restaurant, holding a concert of contemporary music to make money for gifts for underprivileged children, and combining different popular logos in to one distinct logo for a new company that does something similar to one or more of the companies whose logos were integrated in to the final product. The faculty member discusses what factors clearly favor fair use or clearly appear to be a violation of the copyright. As with all legal case studies, these case studies will not have clear answers. Each should contain at least one "neutral" factor and at least one factor designed to encourage students to analyze the underlying rationale for the Fair Use Doctrine. The discussion of the less clear factors follows with the faculty facilitating both viewpoints. Included should be discussion about potential court views as well as continued probes in to the students' opinions about the factors and the situations.

The examples discussed in this section are designed to teach students the legal and ethical principles that we are expected to teach as well as aid them in a gradual progression of cognitive development.

V. CONCLUSION

Simple pedagogical tools and a thoughtful curriculum can be highly effective in assisting students to develop the higher level critical-thinking and problem-solving skills that have been identified as lacking in our graduates. Rather than overwhelm students by demanding the highest level of thinking from their first days, we can use student cognitive development theories to understand our students' current levels of thinking and to develop curricular tools that will help students move from dualistic thinking to the complex thinking demanded by society today.

In the preamble to the Commission on the Future of Higher Education's report, the commission notes that "Three hundred and seventy years after the first college in our fledgling nation was established to train Puritan ministers in the Massachusetts Bay Colony, it is no exaggeration to declare that higher education in the United States has become one of our greatest success stories."[112] We can answer the call to maintain this success and move to reclaim lost ground internationally[113] with a purposeful and educated use of student cognitive development theory.

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[112] U.S. Dep't of Educ., <u>supra</u> note 4 at vi.

[113] *See supra*, note 15.

APPENDIX 1: Ethics Continuum Exercises

1. Hiring employees and paying them at minimum wage
2. Hiring illegal aliens and paying them below minimum wage but enough that they make more than they could at home
3. Opening a factory overseas where you can hire children (OK – so under 16, but over 12) for almost nothing – assume legal in that country and that the children will be looking for work

1. Murdering someone
2. Causing someone's death to protect a life
3. Causing someone's death to protect property
4. Causing someone's death at their request to ease pain and suffering.

1. A manufacturer of liquor advertises its product
2. A manufacturer of liquor targets advertising to teens
3. A manufacturer of liquor advertise its product in a way that clearly will attractive to teens but with warnings or statements that it is illegal to drink under the age of 21.

APPENDIX 2: Negotiation Exercise

Person/Team A
You are in the market for a diamond ring. You have made a selection from the buyer and now are negotiating the price. You want this ring for a special occasion, but will pay no more than $1850 for it. Ideally, you would like to pay as little as $1500. As you negotiate, you may use any strategy you wish. Here are some examples: 1) Offer 1850 up front with a "take it or leave it"; 2) Offer 1500 and work your way up through offer and counteroffer; 3) Require the seller to make the first offer.

Remember, if the seller refuses to negotiate or refuses to offer you the ring within your price range (1850 or less), you have no deal.
Minimum price: none   Ideal purchase price: $1500   Maximum price: $1850

Person/Team B
You sell diamond jewelry. You are currently meeting with a customer who has expressed interest in a diamond ring. You paid $1500 for the ring from the wholesaler. Based on market value and standard mark-up practice in your industry, you will not accept any less than $1800 for the ring. Ideally, you would sell the ring for $2000. As you negotiate with the buyer, you may use any strategy you wish. Here are some examples: 1) Offer to sell for $1800, with a take it or leave it approach; 2) Offer to sell for $2000 (or higher) and work your way down through offer and counteroffer; 3) require the buyer to make the first offer.

Cost to you: $1500   Minimum Selling Price: $1800   Ideal Price: $2000 or higher