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PRELUDE

THE PERSONAL AS PREDICATE

PATTI ALLEVA*

In March 2006, Carol Gilligan was the University of North Dakota School of Law's Inaugural Distinguished Scholar-in-Residence. In conjunction with her visit, the NORTH DAKOTA LAW REVIEW commissioned this special symposium to honor Gilligan's influence on legal theory. Professor Patti Alleva was the primary coordinator of Gilligan's two-day residence program. The LAW REVIEW asked Professor Alleva to provide a short profile of Gilligan and the program as context for the symposium.

Few people alive today have done more to research and advance the understanding of human relationships than Dr. Carol Gilligan. She is an internationally-acclaimed and widely-read psychologist, teacher, and scholar.¹ The University of North Dakota School of Law invited Gilligan to be its Inaugural Distinguished Scholar-in-Residence in recognition of her enduring contributions to modern thought in both legal and non-legal realms. Her 1982 classic *In A Different Voice: Psychological Theory and Women's Development*²—now translated into eighteen languages—fundamentally altered the understanding of human psychology and resulted in widening ripples of influence on other disciplines. In 1996, *Time* named Gilligan one of America's twenty-five most influential people, noting the broad interdisciplinary impact of her signature work:

How likely is it that a single book could change the rules of psychology, change the assumptions of medical research, change the conversation among parents and teachers and developmental

* The Rodney & Betty Webb Professor of Law, University of North Dakota School of Law. My heartfelt respect and appreciation to Carol Gilligan. It was truly a privilege to have her with us. And special thanks to Paul LeBel and Laura Rovner for comments on earlier drafts, and to law student Elizabeth Pendlay for helpful research assistance.

1. Gilligan's New York University School of Law Faculty Profile offers additional information about her illustrious career. See *Faculty Profile for Carol Gilligan*, <http://its.law.nyu.edu/faculty/profiles/index.cfm?fuseaction=bio.main&personID=19946> (last visited June 8, 2006). It includes a detailed curriculum vitae. *Id.* (follow "Full CV" hyperlink).

2. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

professionals about the distinctions between men and women, boys and girls? Yet many who read Carol Gilligan's book *In A Different Voice* . . . find that their views on gender will never be the same. . . . Gilligan, a professor at Harvard's Graduate School of Education, has forced scholars across many disciplines to reckon with the differences in the way boys and girls develop their moral faculties and world views.³

Thus, Gilligan challenged foundation assumptions of a discipline. She sought to reconfigure the baseline for assessing human development first, by including women's voices, which had been "inconspicuously missing"⁴ from psychology, and then by accounting for the authentic voices of *both* men and women in new and renewing ways.⁵ Her many honors (and ten honorary degrees) attest to her prodigious impact.⁶ They include a *New York Times* 1992 Notable Book of the Year,⁷ the 1992 Grawemeyer Award in Education,⁸ the 1998 Heinz Award in the Human Condition,⁹ and the

3. *America's 25 Most Influential People*, TIME, SPECIAL REPORT, June 17, 1996, at 52, 66.

4. Carol Gilligan, *Getting Civilized*, 63 FORDHAM L. REV. 17, 17 (1994). See CAROL GILLIGAN, *Letter to Readers*, 1993, in IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT, at xxvi (2d ed. 1993) ("I wrote *In A Different Voice* to bring women's voices into psychological theory and to reframe the conversation between women and men.").

5. See, e.g., Carol Gilligan, *Mommy, I Know You*, NEWSWEEK, Jan. 30, 2006, at 53 ("Both sexes suffer when one is not understood. . . . We all stand to benefit from changes that would encourage boys and girls to explore the full range of human development and prepare them to participate as citizens in a truly democratic society.").

6. Gilligan's innovative work has not been without controversy. E.g., MARY BECKER, CYNTHIA GRANT BOWMAN, & MORRISON TORREY, CASES AND MATERIALS ON FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY 101 (2d ed. 2001) (noting works critical of Gilligan); Pamela S. Karlan & Daniel R. Ortiz, *In A Different Voice: Relational Feminism, Abortion Rights, and the Feminist Legal Agenda*, 87 NW. U. L. REV. 858 (1993) (critiquing *In A Different Voice* and relational feminism).

7. LYN MIKEL BROWN & CAROL GILLIGAN, MEETING AT THE CROSSROADS: WOMEN'S PSYCHOLOGY AND GIRLS' DEVELOPMENT (1992).

8. Grawemeyer Award Profile for Carol Gilligan, <http://www.grawemeyer.org/winners/index.html> (follow "Previous Winners—Education" hyperlink; then follow "Carol Gilligan" hyperlink) (last visited June 8, 2006). The profile explains:

By listening to the way children and teen-agers speak about themselves and their lives, Carol Gilligan changed the way educators think about adolescent development and education. . . .

. . . .

[*In A Different Voice*] challenges the notion that moral development is the same for girls and boys. . . . Past research considered only the male perspective, and women's "voices" have been lost in the process of accommodating researchers' expectations. By incorporating the gender differences into their work, researchers more effectively can study adolescent development and teachers can help adolescents become more well-rounded individuals.

Id. at ¶¶ 1, 3-4.

9. Heinz Award Profile for Carol Gilligan, <http://www.heinzawards.net/recipients.asp?action=detail&recipientID=18> (last visited June 8, 2006). The profile explains:

2006 Medallion of the University, the State University of New York at Albany's highest honor.¹⁰ Gilligan received the Medallion for "her distinguished career and groundbreaking scholarship, which has fundamentally reshaped the fields of psychology, education, and gender studies."¹¹ Her Heinz Award profile echoes these tributes. It explains that Gilligan has "literally shaken the foundations of the psychological and educational worlds[,] . . . creat[ing] a new basis for inquiry, showing that listening to different voices is fundamental to understanding the human condition" and "making it possible . . . to think more deeply about social justice."¹² Thus, "[i]n her thoughtful way," the profile concludes, "[Gilligan] transformed the discussion."¹³

So in 1997, when Harvard created its first professorship in gender studies, the Patricia Albjerg Graham Chair, Gilligan occupied it. By 2002, when Gilligan became University Professor at New York University after 34 years on the Harvard faculty, then-Dean John Sexton of the NYU School of Law had called Gilligan "one of our nation's great thinkers and educators" and "a leading figure in the discussion of gender and culture."¹⁴ Indeed, Gilligan's pioneering work in gender and relational reasoning has had a profound effect on feminist legal discourse.¹⁵

Dr. Carol Gilligan receives the Heinz Award in the Human Condition for courageously challenging long-held assumptions about human development in a way that has transformed assumptions of what it means to be human.

. . . In 1982, after years of research, she re-defined both women's and men's experience in her landmark book, *In [A] Different Voice*.

. . . By introducing women's voices, Dr. Gilligan has been able to demonstrate that all people, including men, are fundamentally relational. In so doing, she has given society a much fuller understanding of the human condition.

. . . .

. . . Her willingness to revisit basic psychological assumptions continues today as she brings new questions and insights from her studies with women to the examination of boys and their journey to manhood.

Id. at ¶¶ 1-3, 7.

10. Release, University at Albany, *Carol Gilligan to Receive UAlbany Medallion at 2006 Center for Jewish Studies & School of Education Celebration* ¶ 2 (April 17, 2006), available at http://www.albany.edu/news/releases/2006/apr2006/gilligan_medallion.shtml.

11. *Id.*

12. Heinz Award Profile, *supra* note 9, at ¶¶ 6-8.

13. *Id.* at ¶ 6.

14. Press Release, New York University, *Renowned Psychologist Carol Gilligan Joins NYU Faculty* ¶ 5 (March 5, 2001), available at http://www.nyu.edu/publicaffairs/newsreleases/b_gilligan.shtml.

15. *E.g.*, BECKER ET AL., *supra* note 6, at 97 (excerpting *In A Different Voice* and noting that "some familiarity with [Gilligan's] work has become necessary to follow feminist discussion in the 1990[s]"); DAVID CRUMP, HOW TO REASON ABOUT THE LAW: AN INTERDISCIPLINARY APPROACH TO THE FOUNDATIONS OF PUBLIC POLICY 330-31 (2001) (noting Gilligan's influence on feminist jurisprudence); Joan W. Howarth, *Women Defenders on Television: Representing Suspects and the Racial Politics of Retribution*, 3 J. GENDER RACE & JUST. 475, 483 n.40 (2000)

Gilligan's latest book, *The Birth of Pleasure*,¹⁶ has been hailed as a "thrilling new paradigm"¹⁷ as well as "bold and boundary-breaking."¹⁸ In it, Gilligan brings her psychological perspectives about the "inner" world full cycle into the broader social and political arenas of the "outer" world, contextualizing psyche in culture and spotlighting the inextricable connection between the two. She argues, via a narrative weave of qualitative research, literary insight, and self-disclosure, that a person's ability to speak, act, and love authentically suffers when he or she internalizes culturally-prescribed notions of "male" and "female" which work to divide men and women within themselves and against each other.¹⁹ Ultimately, Gilligan concludes that these schisms at the individual level undermine political equality at the social level because authentic democracy presupposes personal authenticity: "Democracy rests on an ideal of equality in which everyone has a voice."²⁰ And the voice at the heart of Gilligan's civic vision is the authentic or "natural" voice—"the voice that carries

(noting that "[a] significant body of legal scholarship builds on Gilligan's work"); Banu Ramachandran, *Re-Reading Difference: Feminist Critiques of the Law School Classroom and the Problem with Speaking from Experience*, 98 COLUM. L. REV. 1757, 1765 (1998) (noting the "many feminists" who "drew on" Gilligan's work); Carrie Menkel-Meadow, *Portia Redux: Another Look at Gender, Feminism, and Legal Ethics*, 2 VA. J. SOC. POL'Y & L. 75 (1994) (revisiting her earlier work with Gilligan's theories); Deborah L. Rhode, *Gender and Professional Roles*, 63 FORDHAM L. REV. 39, 40-41 (1994) (describing Gilligan as representing "[o]ne important strand of feminist theory"); Elizabeth M. Schneider, *Hearing Women Not Being Heard: On Carol Gilligan's Getting Civilized and the Complexity of Voice*, 63 FORDHAM L. REV. 33, 33-34 (1994) (noting Gilligan's "considerable impact" on feminist legal theory). See also KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS 186-87 (2006) (referencing Gilligan and positing that the "psychological discourse about authentic selves" should inform the civil rights discourse and move it toward thinking about "our common humanity").

16. CAROL GILLIGAN, *THE BIRTH OF PLEASURE: A NEW MAP OF LOVE* (Vintage Books 2003) (2002).

17. Terri Apter, *Will You Still Love Me?*, TIMES LITERARY SUPPLEMENT 32 (Aug. 9, 2002) (book review).

18. Mary Sykes Wylie, *The Untold Story: Carol Gilligan on Recapturing the Lost Voice of Pleasure* ¶ 4 PSYCHOTHERAPY NETWORKER (2004), <http://www.psychotherapynetworker.com/interviews.htm> (quoting columnist Ellen Goodman).

19. See *THE BIRTH OF PLEASURE*, *supra* note 16, at 5, 7. "[P]atriarchy," Gilligan asserts, "establish[es] hierarchy in the heart of intimacy. . . ." *Id.* at 21. "[I]n dividing men from men and men from women . . . [it] . . . creates a rift in the psyche, dividing everyone from parts of themselves." *Id.* at 7. Put another way: "Patriarchy and other forms of social hierarchy do not thrive on genuine relationships but require the suppression of genuine relationship in favor of adherence to the rules of status or caste." Peggy Cooper Davis, *We Can Do Better*, 14 YALE J.L. & FEM. 263, 267 (2002) (interpreting Gilligan's approach). Accordingly, "[t]he separations and inner divisions that psychologists have considered as a given in human nature appear[] instead as an adaptation to a particular cultural landscape." *THE BIRTH OF PLEASURE*, *supra* note 16, at 23.

20. *THE BIRTH OF PLEASURE*, *supra* note 16, at 16. See *id.* at 229 ("Both love and democracy depend on voice. . ."). As Gilligan earlier amplified: "[V]oice is a powerful psychological instrument and channel, connecting inner and outer worlds. . . . [I]t is a new key for understanding the psychological, social, and cultural order—a litmus test of relationships and a measure of psychological health." *Letter to Readers, 1993*, *supra* note 4, at xvi.

rather than covers a person's inner world."²¹ The democratic collective will thrive when its individual participants speak and act authentically, in the fullness of who they really are or want to be.²² In this way, Gilligan calls for re-imagining the political as personal and, in essence, for revitalizing democracy from the inside out by giving every individual who resists personal inauthenticity a direct role in achieving a just society.

Scholar-in-Residence Program. In keeping with the expansive and organic nature of Gilligan's work, the law school designed her residence program to cross subject boundaries so that various audiences, both non-legal and legal, could benefit from her versatility. To share cultural and literary perspectives with the University and extended communities, Gilligan participated in UND's Thirty-Seventh Annual Writers Conference, appearing in a panel discussion with other authors titled *Writing the Threshold: Writing Across Social, Political, and Gendered Borders*.²³ She also did a public reading from *The Birth of Pleasure*, and, as a delightful surprise, shared some of her forthcoming novel at the same session. In her keynote address, delivered to a riveted audience in a packed moot courtroom at the law school, Gilligan reflected upon her intellectual travel from *In A Different Voice* to *The Birth of Pleasure*.²⁴ She recounts that journey as part of this symposium.

21. THE BIRTH OF PLEASURE, *supra* note 16, at 22. Gilligan contrasts the authentic "transparent voice of the core self" (which speaks from "human emotional experience") with the inauthentic "autobiographical voice" (which carries a story about the self that does not reflect who people really are, and "divide[s] them from knowing or saying what they knew to be true about themselves"). *Id.* at 8, 9. The inauthentic voice "overrides what we know and feel and experience . . . [and] tells us what we should see and feel and know." *Id.* at 9. According to Gilligan, this "voice-over" or "dissociation" starts at different ages for boys (in early childhood) than girls (in adolescence). *Id.* at 5, 23-24, 30, 32.

22. *The Birth of Pleasure*, *supra* note 16, at 206. For Gilligan:

Freeing love means freeing the voice so it can carry the full range of emotion and the subtleties and nuances of thought; it imposes psychic equality in the sense of everyone's having a voice and feeling free to speak. To say this is to see the affinity between love and democracy; to see that love is the psychic grounding for a democratic society—not an idealized love, but the actual gritty pleasure of living in relationship.

Id.

23. The annual week-long Writers Conference, a highlight of the academic year, has brought many distinguished authors to campus. Appearing with Gilligan on the *Writing the Threshold* panel were Robin Magowan, Sam Pickering, Mark Salzman, and Fan Shen. See University of North Dakota Writers Conference, <http://www.undwritersconference.org/> (last visited June 8, 2006).

24. Carol Gilligan, Inaugural Distinguished Scholar-in-Residence Keynote Address, *From In A Different Voice to The Birth of Pleasure: An Intellectual Journey*, at the University of North Dakota School of Law (March 24, 2006).

For the law school community in particular, Gilligan held special “office hours” for law students to discuss her work in a more informal setting. Over the course of two hours, many interested students came to the Tisdale Lounge to meet and talk with Gilligan, who answered questions and shared insights about a broad array of subjects, including student-teacher dynamics, law and culture, literature and psychological discernment, and the role of theater in cultural conversation.²⁵ She also conducted a special seminar with the law faculty to encourage personal exploration in the professional setting through “free-writing” exercises that use reflection and free association to prompt deeper thinking and feeling about self and other. To prepare for this exchange, the faculty participated in two other seminars before Gilligan’s arrival.²⁶ The first, *On the Psychology Side: Exploring Gilligan’s Work in Relational Reasoning*, centered on critical examination of Gilligan’s theories, especially her conclusions about relational reasoning, issues of difference and self-expression, and the resolution of moral controversy. The second, *On the Law Side: Thinking About Law, Lawyering, and Teaching Law Through The Frame of Relational Reasoning*, had as one of its main goals exploring the implications of Gilligan’s work for how and what we teach—an area that turned out to be one of the most thought-provoking aspects of Gilligan’s visit because of its implications for legal education.

In fact, Gilligan has already been applying her psychological insights to law teaching. As Affiliated Faculty at NYU School of Law, she leads workshops for faculty in the Lawyering Program, a special curriculum designed to encourage first year law students to think critically and creatively about legal problem-solving *and* professional relationships by tapping a variety of intellectual capacities.²⁷ Professor Peggy Cooper Davis, Director of this innovative interdisciplinary program, has explained the critical connection between law teaching, lawyering, and “psychological logic”:

25. Gilligan’s stage adaptation of *The Scarlet Letter* has been performed in New York City as part of the 2005 WomenCenterStage festival.

26. These seminars were conceived and co-facilitated by my colleague Professor Wenona Singel and myself.

27. For a description of NYU’s Lawyering Program and the interdisciplinary theory supporting it, see <http://www.law.nyu.edu/lawyeringprogram/index.htm> (follow “Theory” hyperlink). See also *Workways Forum*, <http://www.law.nyu.edu/workways/index.html> (detailing a project “for discussion, research, and curricular development addressing the varieties of mental work involved in lawyering”). The law professors of the *Workways* collaboration have “enlisted” social scientists to help “broaden their sights in the training of lawyers” and to help them understand “the neglected [intellectual] capacities that are crucial” to law practice and administration, but are devalued by the traditional law school curriculum. *Id.* (follow “Overview” hyperlink).

The relational work that Carol [Gilligan] and I are doing with law students is . . . grounded in the belief that excellence in lawyering requires developed interpersonal and intrapersonal intelligence. Lawyering is an interactive and strategic enterprise, and strategic interaction requires psychological insight. We aspire to teach students to think critically about interactions with clients, witnesses, decisionmakers, colleagues, and opposing counsel. . . . Our goal is to make them smart, strategic and conscious of when and how the choices they make in a written or oral interaction reduce or enhance their ability to conceptualize and achieve a client's ends or affect the shape of the law.²⁸

Parallels. The cutting-edge work of Cooper Davis and Gilligan inevitably raises (once again) a vital question for legal educators: Are law schools doing enough to explore and harness the “personal” that is the “professional”? As this multi-faceted approach to lawyering pedagogy reinforces, “successful law practice turns on relational intelligence, that is, the psychological ability to read oneself and others.”²⁹ This ability requires self-awareness. Thus, teaching intentionally to promote self and relational understandings in law students seems not only important, but imperative.³⁰

28. *We Can Do Better*, *supra* note 19, at 268, 270. See *id.* at 266-71 (describing in more detail “relational work” and Gilligan’s role in the Lawyering Program).

29. Rachel F. Moran, *Foreword to Taking Stock: Women of All Colors in Legal Education*, 53 J. LEGAL EDUC. 467, 468 (2003) (describing Gilligan’s and Cooper Davis’s work in the Lawyering Program).

30. E.g., Daisy Hurst Floyd, *Reclaiming Purpose—Our Students’ and Our Own*, THE LAW TEACHER 1, 2 (Spring 2003) (noting that self-awareness and reflection are “essential skills for finding meaning and purpose in law practice, as well as for forming and sustaining relationships”); James R. Elkins, *The Legal Persona: An Essay on the Professional Mask*, 64 VA. L. REV. 735, 736, 746, 754-55 (1978) (describing the lawyer’s “professional mask” that “‘cover[s]-up’ . . . the self” and arguing that “[t]hrough self-awareness and an understanding of the legal persona the lawyer can begin to achieve the potential for becoming a humanistic helper and thinker”). Clinicians, of course, have been far ahead of the curve on this. Unfortunately, many students graduate from law school without a clinical experience.

Exploring the particulars of self-awareness and law school pedagogy is beyond the scope of this piece. But interesting questions arise in this area. What does it mean to be “self-aware”? “Other-aware”? What threshold of self-understanding qualifies as “aware enough” for purposes of lawyering? And how do we teach self-awareness? Or teach “to” it? And assess it, especially if it may evolve over both time and experience and may not fit neatly into a semester timetable? Is teaching self-awareness primarily a job for psychologists or therapists or the undergraduate liberal arts curriculum? It is challenging enough to teach critical thinking about legal doctrine. How do we also teach law students to think critically about their personal preconceptions, feelings, and reactions, and those of others in the professional arena? Law students are already faced with a barrage of new learning about the law—is there any room for new learning about self and other, especially if this learning can be difficult or disorienting? And are law professors equipped to handle the aftermath if and when a student’s journey of self-reflection takes him or her to uncomfortable places?

In this regard, Gilligan's legacy reminds of the need to revisit traditional approaches and to consider adding what may be missing (perhaps "conspicuously"³¹ so) from the baseline of the required law school curriculum—safe, structured learning opportunities for all students (1) to explore the psychological dimensions of lawyering, (2) to grapple with what it means, from both theoretical and practical perspectives, to be self-aware, other-aware, well-rounded professionals who cultivate "wisdom beyond technique,"³² and (3) to recalibrate, if necessary, the personal with the professional in developing a conception of self as lawyer.³³

Providing students thoughtful opportunities to learn about the interpersonal dynamics of lawyering should help them to become more deliberative and responsible decisionmakers, increasing their self-consciousness about that they say, do, and advise. This, in turn, should help them to achieve a more integrated professional identity that expressly accounts for their personal preconceptions, experiences, and values. In this way, teaching to self-awareness will validate their growth as lawyers in the crucible of who they are and hope to be, and work to animate their professional visions with personal aspirations. And asking students to focus on the preconceptions, experiences, and values of others (especially clients) should heighten their sensitivity to those who think, act, and live differently than they do. This may challenge students to re-examine their assumptions about people and situations—a key part of effective decisionmaking—and help to make real the powerful humility in open-mindedness.

Moreover, encouraging students to find an authentic professional voice anchored in greater consciousness of self and other should engage them more fully in the teaching and learning enterprise. Metacognition—"the ability to be aware of our own learning processes and what we do or do not

31. See *Getting Civilized*, *supra* note 4, at 17.

32. See ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 2* (1993) ("[E]arlier generations of American lawyers conceived their highest goal to be the attainment of a wisdom that lies beyond technique—a wisdom about human beings and their tangled affairs that anyone who wishes to provide real deliberative counsel must possess.")

33. To address some of these concerns with second and third year law students, I created a course called *Professional Visions: Law, Literature, and the Role of Lawyers in the Social Order*. Through novels, short stories, films, and legal philosophy, we explore the special role of lawyers and law in society, the textured nature of professional relationships, and the concrete dilemmas that lawyers face in developing professional identities and exercising professional judgment. The readings provide a rich base of human experience for these explorations. Ultimately, the course encourages students to become more self- and other-aware as we play out the personal (and social) consequences of professional decisionmaking in the context of hypothetical situations based on the lives of our literary characters. Turning those characters into "clients," and giving them legal problems to be solved, helps bring to life the interpersonal aspects of representation, especially in conjunction with simulations and role plays. For more details about *Professional Visions*, see *Faculty Headliners*, 1 *LAW MATTERS* 4 (Spring/Summer2003), available at <http://www.law.und.nodak.edu/Alumni/lawmatters.php>.

know”³⁴—can spur understanding and assist students in new learning situations, an academic and professional necessity. And encouraging interpersonal reflection might even connect them more directly to the justice mission by emphasizing that law is fundamentally about people—and helping people to realize their potential within the social order. Which brings us back to Gilligan. And authentic voice. And the personal as predicate to larger things.

And so, the University of North Dakota School of Law extends sincere thanks to Dr. Gilligan for an inspiring residence that challenged us to look both deeply within and broadly without. We celebrate, through memories of her visit and with this symposium, the scholar and person that is Carol Gilligan—an extraordinary thinker and social reformer who *herself* dared to speak in a different voice and listen with a different ear in order to help ensure that individuals are free to speak, act, listen, and live authentically—free to follow the ethereal pulls of wonder and understanding into the realm of new realizations.

34. Mary Kay Kane, President’s Message, *Teaching and Scholarship: Beginning the Dialogue*, AALS NEWSLETTER J10 (Aug. 2001), <http://www.aals.org/presidentsmessages/pmaug01.html>. See also MARILLA D. SVINICKI, LEARNING AND MOTIVATION IN THE POST-SECONDARY CLASSROOM 128 (2004) (defining metacognition as the “executive function” of “thinking about thinking” or “marshalling a learner’s cognitive resources in service of learning”).
