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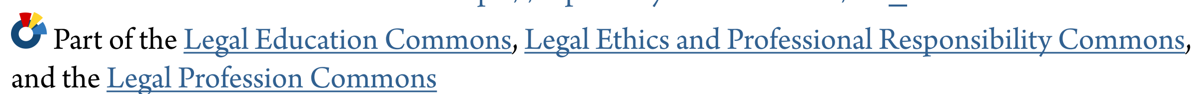
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AGAINST PRACTICE

*Anthony V. Alfieri**

EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW. By *William M. Sullivan, Anne Colby, Judith Welsh Wegner, Lloyd Bond & Lee S. Shulman.* San Francisco: John Wiley & Sons, Inc. 2007. Pp. x, 225. $40.

> "[T]he challenge of professional preparation for the law [is] linking the interests of educators with the needs of practitioners and the members of the public the profession is pledged to serve—in other words, participating in civic professionalism" (p. 4).

INTRODUCTION

Legal education is against practice. More than a half century after Jerome Frank's call for a clinical-lawyer school,[1] and nearly two decades after the MacCrate Commission's plea for professional development,[2] many American law schools continue to privilege theory over practice in teaching, scholarship, and institutional mission. In teaching, law schools elevate formal knowledge and case-dialogue pedagogy over practical judgment and policy analysis. In scholarship, law schools favor doctrinal synthesis and critique over field-based research on "law in action." And in mission, law schools promote a self-regarding vision of lawyer-guild professionalism, role differentiation, and dyadic adversarial conflict over civic professionalism, role integration, and community-based social justice.

The animus of theory-centered traditions toward practice obscures the interdisciplinary breadth, empirical richness, and moral import of lawyer roles and relationships. The same animus reduces professionalism to a largely aspirational function sounded in tropes to alumni, students, and the

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1. *See* Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933).

2. *See* THE MACCRATE REPORT (Joan S. Howland & William H. Lindberg eds., 1994); TASK FORCE ON LAW SCH. & THE PROFESSION, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT (1992). More recently, see ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007).

bar. The results of this animus reinforce conventional roles and relationships among lawyers, clients, and communities; fortify the socioeconomic inequalities of entrenched civil and criminal justice systems; and preserve the disparate treatment suffered by women and minorities in the legal services marketplace. Acquiescence to role convention and sociolegal inequality diminishes the curricular importance of professional development opportunities and programmatic social justice initiatives. Absent a meaningful commitment to professional development and social justice in the law school curriculum, institutional mission succumbs to the reigning orthodoxies of the adversary system and the ethics of the legal marketplace.[3]

The theory/practice dichotomy in law school teaching, scholarship, and mission relegates clinical-lawyer instruction to the periphery of legal education and consigns clinical faculty to a subordinate caste status differentiated by inferior compensation, limited governance, and segregated space.[4] Despite this academic caste hierarchy, an increasing number of law schools have made progress in integrating clinical-lawyer perspectives into their pedagogies, scholarship, and curricular missions.[5] Indeed, numerous schools at all tiers now embrace policy-oriented, problem-solving methods of pedagogy; recognize interdisciplinary, practice-based scholarship; and incorporate "lawyering" skills courses into the traditional core curriculum. Paradoxically, by carving pedagogies of practice out of positivist norms of neutrality and scientific technique, and individualist norms of liberal legalism, law schools have fashioned a new formalism severed from difference-based identity, context, and community. Pedagogies of practice common to both clinics and skills courses point to the rise of this new formalism in claims of neutral lawyer judgment, technical "lawyering" process values, and client-centered representation indifferent to the other-regarding interests of community building.[6]

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3. *See* LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE (1997); MILTON C. REGAN, JR., EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER (2004); Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515 (2007).

4. *See* pp. 92–93. Broadly defined, clinical educators include instructors supervising in-house clinics and externships, or teaching "lawyering" skills simulation courses. Elliott S. Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. LEGAL EDUC. 375, 375–76 (2001). On disparities in clinical faculty compensation and governance, see CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., REPORT ON THE 2007-2008 SURVEY 31 (2008), *available at* http://www.csale.org/CSALE.07-08.Survey.Report.pdf (reporting on clinical faculty members' voting rights and ability to participate in law school committees); Taskforce on Clinicians & the Acad., Am. Ass'n of Law Sch. Section on Clinical Educ., Draft Statement of Fundamental Principles 2, 6, 8–10 (Apr. 30, 2007) (on file with author) (discussing unequal governance rights and inferior compensation and resources). The Draft Statement of Fundamental Principles cites the "caste system" perpetuated by the unequal status of clinical educators in law school institutional governance and "its stigmatizing impact" within the law school faculty. *See* Taskforce on Clinicians & the Acad., *supra*, at 9.

5. Jill Schachner Chanen, *Re-Engineering the JD: Schools Across the Country Are Teaching Less About the Law and More About Lawyering*, A.B.A. J., Jan. 2007, at 42; Jonathan D. Glater, *Training Law Students for Real-Life Careers*, N.Y. TIMES, Oct. 31, 2007, at B9.

6. In-house clinics attempt to resist this tendency by addressing client identity and community in multidimensional contexts replete with emotional, narrative, spatial, and symbolic

This Review examines the theory/practice dichotomy in legal education through the prism of the Carnegie Foundation's[7] *Educating Lawyers: Preparation for the Profession of Law*. Descriptively, it argues that the Foundation's investigation of law school curricular deficiencies in the areas of clinical-lawyer skills, professionalism, and public service overlooks the relevance of critical pedagogies in teaching students how to deal with difference-based identity and how to build cross-cultural community in diverse, multicultural practice settings differentiated by mutable and immutable characteristics such as class, gender, and race. Prescriptively, it argues that the Foundation's remedial call for the curricular integration of clinical-lawyer practices similarly overlooks the utility of critical pedagogies in teaching students not only how to understand difference, but also how to represent difference-based clients and communities here and abroad.

The Review is divided into two parts. Part I explores the Carnegie Foundation's assessment of law schools in preparing students through contemporary case dialogue and in integrating alternative-practice pedagogies. Part II analyzes the ramifications of the Foundation's report for the application of alternative curricular frameworks, particularly critical pedagogies grounded in difference-based identity and community. These frameworks are briefly sketched in a study of the West Coconut Grove Historic Black Church project at the University of Miami Law School's Community Economic Development and Design ("CEDAD") Clinic. The case study demonstrates both the difficulty and the necessity of developing theory/practice pedagogies effective in dealing with difference-based identity in the context of representing communities of color.

I. (MIS)EDUCATING LAWYERS: THE CARNEGIE FOUNDATION CRITIQUE

The Carnegie Foundation's critique offers an abridged cultural and social history of legal education predicated on the vision of law as a "public profession" and of lawyers as agents charged with "important public responsibilities" (p. 1). The critique gleans this sociocultural history from a cross-section of sixteen law schools of varying tiers surveyed during the 1999–2000 academic year. The Foundation views the preparation of lawyers in law school as "the crucial portal to the practice of law" (p. 1), illuminating "the daily practices of teaching and learning through which future legal professionals are formed" (pp. 1–2).

To better understand legal education and its implications for the profession, the Foundation focuses on "how learning occurs" in law and in other professions such as medicine (pp. 2, 192–94). Focusing on how law school

complexity. *See* Anthony V. Alfieri, *Faith in Community: Representing "Colored Town"*, 95 CAL. L. REV. 1829 (2007).

7. William Sullivan is a Senior Scholar at The Carnegie Foundation for Advancement of Teaching; Anne Colby is Co-Director of The Carnegie Foundation's Preparation for the Professions Program; Judith Wegner is a Senior Scholar at The Carnegie Foundation; Lloyd Bond is a Senior Scholar at The Carnegie Foundation; Lee Schulman is President of The Carnegie Foundation.

"forms minds and shapes identities," it links the common aim of all professional education to the cultivation of specialized knowledge and professional identity (p. 2). Next it highlights the "modes of teaching and learning" that law schools use to accomplish that common aim (p. 3). Two modes of teaching and learning stand central to this analysis—the classroom experience of Socratic case dialogue[8] and the clinical experience of lawyer apprenticeship.[9] Both modes of pedagogy contribute to the development of legal understanding and the formation of professional identity.[10] Yet, both produce different and often inconsonant sets of legal skills and professional norms. That dissonance, echoed throughout the law school experience, challenges the Foundation to search the history of legal education for means of pedagogical reconciliation and curricular integration.

A. *The Evolution of Case-Dialogue Pedagogy*

The Carnegie Foundation traces the current dissonance in the professional enterprise of legal education to the evolution of the modern law school as a contested, hybrid institution (pp. 4–5, 78–82). This evolution displays a historic tension between the conventions of the practitioner community and the canons of the modern research university. From the practitioner community, law schools derive traditions of craft, judgment, and public responsibility. From the research university, law schools deduce ideals of knowledge, reason, and truth—academic ideals that emphasize objective, quantitative measurement and formal knowledge abstracted from the daily context of practice (p. 5). Akin to philosophical positivism, this widely adopted academic epistemology heralds the value of importing "scientifically generated" forms of knowledge as "technical instruments for managing events in more rational ways" (p. 5). Legal positivists grasp "law as an instrument of rational policymaking—a set of rules and techniques rather than a craft of interpretation and adaptation embedded in the common law" (p. 5). This institutional seizure of scientific methodology and technical rationality, the Foundation shows, "undermined the academic legitimacy of practical knowledge" in legal education (p. 5).

To the Carnegie Foundation, the waning legitimacy of practical knowledge under positivist legal theory stemmed from a failure to blend academic

8. On the reformist backdrop of the case-dialogue method, see Bruce A. Kimball, *Young Christopher Langdell, 1826–1854: The Formation of an Educational Reformer*, 52 J. LEGAL EDUC. 189 (2002). *See also* David D. Garner, *The Continuing Vitality of the Case Method in the Twenty-First Century*, 2000 BYU EDUC. & L.J. 307.

9. On the curricular adaptations of the apprentice system, see James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83 (1991).

10. The Carnegie Foundation observes: "Professional schools are not only where expert knowledge and judgment are communicated from advanced practitioner to beginner; they are also the place where the profession puts its defining values and exemplars on display, where future practitioners can begin both to assume and critically examine their future identities." P. 4.

and practitioner traditions of legal training in "reciprocal enrichment."[11] That failure breached the legal profession's "contract with society" (p. 21). Repairing this breach and restoring public trust requires academic/practitioner goal integration, a reappraisal of signature pedagogies, and a recovery of professionalism (pp. 21–33). For the Foundation, the opportunity to transform legal education springs from the potential union of innovative practice pedagogies, professional norms, and case-dialogue traditions (pp. 33–43).

The predominance of case-dialogue pedagogy in law schools signals the triumph of formal knowledge and scientific rationality in legal analysis (pp. 5–7). Marked by the ascendance of university-housed academic specialists,[12] the rise of an abstract jurisprudence of "general ideas and principles" in American law produced a new legal scholarship of doctrinal synthesis and a new method of training in legal knowledge "separate from learning to practice" (pp. 5–6). The new scholarship assimilated the model of formal, scientific discourse, engrafting it on constitutional, statutory, and common law materials (pp. 5–7). Assimilation resulted in the shifting of academic research norms away from practice contexts toward an emulation of the arts-and-sciences disciplines (pp. 11-12). The new methodology likewise favored legal knowledge and reasoning over practice skills,[13] deferring practice experience until postgraduate entry into the profession.[14] Preference for formal knowledge and objectivity helped rationalize the legal process, the Foundation concedes, but worked to diminish the relationship of legal education to morality and public responsibility (p. 7). The consequent "loss of orientation and meaning" among faculty and students reveals the "shadow side" of modern legal education and fuels recurrent accusations of professional self-absorption and public irresponsibility (p. 7).

For the Carnegie Foundation, case dialogue symbolizes legal education's signature pedagogy.[15] The reliance of the case-dialogue method on the in-class tactics and dynamics of the Socratic process furnishes students cognitive instruction in the realist task of fitting rules to contextually unmoored facts.[16] According to the Foundation, the Socratic process affords flexibility

11. P. 5; *see also* Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

12. *See* John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135, 1135–36, 1138–39 (1997); Philip C. Kissam, *Lurching Towards the Millennium: The Law School, the Research University and the Professional Reforms of Legal Education*, 60 OHIO ST. L.J. 1965, 1968–78 (1999).

13. *See generally* ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER" (2007).

14. The need to teach new associates law-office management exemplifies such misplaced deferment. *See* Debra Moss Curtis, *Teaching Law Office Management: Why Law Students Need to Know the Business of Being a Lawyer*, 71 ALB. L. REV. 201 (2008).

15. Pp. 47–50; *see also* Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1 (1983); Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About it*, 60 VAND. L. REV. 609 (2007).

16. *See* Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Legal Realist Pedagogy*, 60 VAND. L. REV. 483, 494–508 (2007).

in adjusting case dialogue and exposes indeterminacy in the application of rules (pp. 47–50). To a more limited extent, it also expands the interpretative and policy repertoire of students. Nonetheless, the Foundation contends that the case-dialogue method generates diminishing returns, particularly when extended beyond the first-year classroom.[17] This decline in pedagogical efficacy[18] is not seen elsewhere in professional education, for example in medical school, where a continuum of theory/practice integration holds curricular sway.[19] To correct the curricular overreliance on case-dialogue methods in law school, and to counter the ethical relativism and nihilism that may ensue,[20] the Foundation considers alternative methods of practice-based instruction that enhance the formative, identity-making dimension of legal education.

B. *The Turn to Practice: Clinical Programs and "Lawyering" Courses*

The Foundation's turn toward practice integration borrows from apprentice traditions and the cognitive sciences. Earlier invoked in the MacCrate report, apprentice traditions help to overcome the trade school stigma often associated with practice pedagogies.[21] Bolstered by advances in the cognitive study of learning,[22] the traditions now give greater meaning to the formation of professional expertise (pp. 95–100). The apprentice model of practice supplies cognitive techniques and operating procedures to enrich legal knowledge and professional effectiveness. Those techniques include case and composition theory, legal writing, skill simulation, and negotiation (pp. 102–13). Case theory in particular affords students an opportunity to move from novice experimentation to expert practice and, ultimately, to

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17. Pp. 75–78; *see also* Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235 (2001).

18. For empirical research on pedagogical efficacy, see Stefan H. Krieger, *The Development of Legal Reasoning Skills in Law Students: An Empirical Study*, 56 J. LEGAL EDUC. 332 (2006).

19. Pp. 59–84; *see also* Andrew J. Rothman, *Preparing Law School Graduates for Practice: A Blueprint for Professional Education Following the Medical Profession Example*, 51 RUTGERS L. REV. 875 (1999); *cf.* Molly Cook et al., *American Medical Education 100 Years after the Flexner Report*, 355 NEW ENG. J. MED. 1339 (2006).

20. On ethical relativism and nihilism in legal education, see Anthony V. Alfieri, *Denaturalizing the Lawyer-Statesman*, 93 MICH. L. REV. 1204 (1995) (book review).

21. Pp. 91–93. For sympathetic accounts of the MacCrate report, see Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001), and Peter A. Joy, *The MacCrate Report: Moving Toward Integrated Learning Experiences*, 1 CLINICAL L. REV. 401 (1994).

22. *See* Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 329–32 (1995); Nancy L. Schultz, *How Do Lawyers Really Think?*, 42 J. LEGAL EDUC. 57, 60 (1992).

formal knowledge. This process fosters the exercise of judgment in context and builds professional identity and purpose.[23]

To surmount the positivist ethos of the research university, the Foundation recommends practice pedagogies that unite the disparate parts of legal education by reconnecting craft with formal knowledge. It locates this unity in an alternative conception of craft-informed knowledge animating the work of engaged practitioners in clinical, "lawyering" skills, and legal writing courses. For this practitioner community, "law is a tradition of social practice that includes particular habits of mind, as well as a distinctive ethical engagement with the world" (p. 8). Understanding law as a practice tradition tied to cognitive development, skill, and social interaction redefines legal education as a practical discipline. To the Foundation, "the practical disciplines embody forms of knowing that blur distinctions among cognition, action, and intention" (p. 8). Learning to apply these forms of knowing requires the teaching of practical judgment.

The Carnegie Foundation defines practical judgment in terms of "the ability to both act and think well in uncertain situations" (p. 9). On this definition, judgment is in part a function of professional expertise. The skillful application of professional judgment "means involvement in situations that are necessarily indeterminate from the point of view of formal knowledge" (p. 8). The Foundation explicitly aims to enhance professional judgment through critical analysis. This craft-guided critical analysis treats professional practice as an instance of "judgment in action" (p. 9). In order "to make practice more effective, comprehensible to students, and open to critical assessment" (p. 9), the Foundation notes, analysis demands reflection.

Clinical education satisfies this demand by providing contexts in which students "observe, simulate, attempt, and then critically reflect on their work" (p. 9). The clinical case conference and practicum employed in the CEDAD Clinic's Historic Black Church project, for example, provide contexts in which students assess community-based practice situations, critically reflect on church-client and community needs, and reach collaborative judgments about remedial legal, political, and social solutions. Indeed, the clinical pedagogy of participatory analysis, critique, and reflection enables CEDAD students to broaden their perception of faith-based racial identity and deepen their appreciation for black church ministries and congregations, thus enlarging their professional repertoires of experience and judgment. Experiential learning of this sort revives the normative purposes of the profession (p. 10).

The Carnegie Foundation's endorsement of the application of theoretical work to the domain of practice generates alternative pedagogies and analytic frameworks culled from the interpretation of client and community contexts and case narratives. Unsurprisingly, the narratives reveal "much more being

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23. *See* pp. 111–25. The Foundation argues that "case theory calls attention to the important role played by the problems of particular clients in specific situations in giving impetus to the legal process." P. 124.

taught and learned in any pedagogical situation than can be consciously abstracted in the form of procedures or techniques" (p. 11). The lessons of client and community narrative carry moral consequences for legal relationships, political alliances, and social activities, faith-based and otherwise.[24] A decisive dimension of a lawyer's multiple roles and relationships "is responsibility for clients and for the values the public has entrusted to the profession" (p. 12). Basic to legal knowledge, that responsibility drives the increased curricular integration of "lawyering" skills courses.[25]

C. *Professional Reformation*

The Carnegie Foundation's integrated model of legal education combines "conceptual knowledge, skill, and moral discernment" with the capacity for situated judgment (p. 12). Bridging the gap between analytical and practical knowledge and revitalizing professional integrity hinge on (1) extending the field of legal knowledge and (2) honing the moral capacity for good judgment acquired by students in clinical settings,[26] such as the CEDAD Clinic's Historic Black Church project. The mutual enlargement of theoretical and practical legal knowledge, the Foundation maintains, "will progress best when it is directed by a focus on the professional formation of law students" (p. 13).

1. *Curricular Integration*

The Carnegie Foundation's vision of integrity-promoting purposive education rests on the curricular integration of legal analysis, practical skill, and professional identity (pp. 191–202). Legal analysis, the Foundation observes, serves as "the prior condition for practice because it supplies the essential background assumptions and rules for engaging with the world through the medium of the law" (p. 13). Practical-skills training requires introduction to the cognitive perspective of practice and, moreover, immersion in the development of advocacy and counseling methods.[27] Professional identity[28] uses professionalism, social responsibility, and ethics as the catalysts for an integrated legal education. To merge legal analysis and practical

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24. On the normative lessons of narrative, see Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991). *See generally* ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW 110–42 (2000).

25. Pp. 11–12. The Carnegie Foundation defines "lawyering" courses to include legal writing instruction, simulated practicums, and in-house clinics. P. 17. *See generally* Arturo López Torres, *MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom*, 77 NEB. L. REV. 132 (1998).

26. *See* p. 13.

27. The practical skill of intervention in advising and counseling clients grows through modeling, habituation, experiment, and reflection. Both simulated and clinical forms of modeling dictate pedagogies blending formal legal analysis, practical habits of mind, and skills of social interaction.

28. *See* Daisy Hurst Floyd, *Lost Opportunity: Legal Education and the Development of Professional Identity*, 30 HAMLINE L. REV. 555 (2007).

skills in a significant way, the Foundation insists, "professionalism needs to become more explicit and better diffused throughout legal preparation."[29]

The Carnegie Foundation's framework for a more integrated approach to legal education recognizes that reliance on law school case-dialogue pedagogy for the purposes of professional socialization produces adverse, unintended consequences (pp. 185–88). Chief among those consequences is the neglect of practical judgment, lawyering skill, and professional identity. To mitigate such widespread neglect, the Foundation proposes comprehensive change to the first-year and upper-level curricula.[30] Borrowing from business and medical school education, it urges continuity and innovation in case-teaching methodology in the classroom and in the field (pp. 197–200). Innovation requires not only leadership and vision, but also learning-based assessment procedures appropriate to case pedagogies.[31] By design, assessment procedures measure both conceptual knowledge and competence. Measures of conceptual knowledge rest on traditional standards of evaluation inside the classroom. Measures of competence, by contrast, require alternative criterion-referenced appraisals of "lawyering" skills and ethical-social development outside the classroom (pp. 164–80). The appraisal of classroom and fieldwork performance, the Foundation points out, depends on an institutional climate of reform and intentionality (pp. 180–84).

2. *Professional Identity and Purpose*

To the Carnegie Foundation, "the formation of competent and committed professionals deserves and needs to be the common, unifying purpose" of legal education (p. 13). This mission gives "renewed prominence to the ideals and commitments that have historically defined the legal profession in America" (p. 13). Renewing the ideals and commitments of the profession depends on communication and reciprocal learning among faculty and students through curricular reorganization and innovative pedagogy. Reorganization moves legal ethics and professionalism to the center of the

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29. P. 14; *see also* Antoinette Sedillo Lopez, *Teaching a Professional Responsibility Course: Lessons Learned from the Clinic*, 26 J. LEGAL PROF. 149, 152–54 (2002) (describing a situation where professionalism would have resolved a clinic dispute).

30. Pp. 194–200; *see also* Michael A. Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year*, 12 CLINICAL L. REV. 441, 476–99 (2006); Margaret M. Russell, *Beginner's Resolve: An Essay on Collaboration, Clinical Innovation, and the First-Year Core Curriculum*, 1 CLINICAL L. REV. 135, 147–56 (1994).

31. Pp. 188–92; *see* E. Tammy Kim, *Who's Learning What? Toward a participatory legal pedagogy*, 43 HARV. C.R.-C.L. L. REV. 633, 635–37 (2008) (arguing that proper leadership from students, faculty, and law school administration may help the enterprise of legal education "move one step closer to ensuring that the legal profession represents and responds to the needs of the entire citizenry"); Clifford S. Zimmerman, *"Thinking Beyond My Own Interpretation": Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 971–86 (1999). Zimmerman expresses "concern about the framework for evaluation of teaching methods." *Id.* at 971.

curriculum.[32] Innovation incorporates ethics and professionalism instruction throughout the curriculum.

Research on education and moral development underscores the importance of the pervasive method of legal ethics instruction.[33] That method treats legal professionalism as an ideal, a practice, and a means of social contribution. An ethically sensitive apprenticeship model correlates professional identity with the public value of "doing justice."[34] When ethical-social values pervade the apprenticeship process, professional identity and purpose gain a greater sense of responsibility, seen for example in the expanding commitment of the CEDAD Clinic's students in West Coconut Grove where attendance at evening church meetings and Sunday services has become routine. Enhanced responsibility augments the presence of moral-legal dialogue in law school and the potential for pro bono work, demonstrated for example in the cooperative development of a lawyer referral network jointly administered by the CEDAD Clinic's students in West Coconut Grove and black lawyers volunteering under the auspices of Miami's Wilkie D. Ferguson Jr. Bar Association.

Pervasive professional responsibility dialogue links the "lawyering" roles of advocacy and service. It also unifies the cognitive, practical, and ethical-social dimensions of the apprenticeship process around the focal point of competence.[35] That process installs a continuum of teaching, learning, and modeling positive professional ideals across first-year and upper-level experiences. Engaging professional ideals in core courses, "lawyering" practicums, and legal clinics demonstrates the possibility of purposive legal education (pp. 145–61).

II. (RE)EDUCATING LAWYERS: ALTERNATIVE THEORY/PRACTICE PEDAGOGIES

The Carnegie Foundation's model of educational reform falters in slighting the integration of critical pedagogies in formal legal analysis, practical-skills training, and professional-identity building. Descriptively the model overlooks alternative theoretical frameworks and practice pedagogies acknowledging difference-based identity, context, and community. Prescriptively the model omits remedial strategies aimed at integrating

32. *See* Russell G. Pearce, *Teaching Legal Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L.J. 719, 735–39 (1998); Deborah L. Rhode, *Teaching Legal Ethics*, 51 ST. LOUIS U. L.J. 1043, 1051–57 (2007).

33. Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31, 50–56 (1992); Alan M. Weinberger, *Some Further Observations on Using the Pervasive Method of Teaching Ethics in Property Courses*, 51 ST. LOUIS U. L.J. 1203 (2007).

34. *See* Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 CAL. W. L. REV. 219, 248–55 (2007); Deborah L. Rhode, *Legal Education: Professional Interests and Public Values*, 34 IND. L. REV. 23, 38–45 (2000).

35. *See* Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993) (pointing out that law schools "construct competence" and change notions of competence).

difference-based identity, context, and community into law school pedagogy inside and outside the classroom. Reforming law school and reeducating the legal profession require a fuller description of the role of identity and community in "lawyering" and a bolder prescription for their pedagogical and practical integration. Many of these pedagogies are embedded in clinical education and legal education more generally yet remain isolated and segregated from the broader curriculum. Exhibited in clinical and hybrid outreach programs to minority racial groups and subordinate cultures, the pedagogies demand alternative academic and experiential training regimens for students emphasizing civic leadership.[36]

A. *Critical Pedagogies in Legal Education*

Critical pedagogies extend the modern traditions of liberal legalism, particularly their condemnation of ascribed caste or status hierarchies, and embrace the postmodern contingencies of racial and cultural identity. Affirmation links liberal legalism and postmodern contingency in a shared commitment to difference-based identity and antisubordination practice norms. These norms guide interdisciplinary, community-based collaborations employed in representing historically stigmatized groups encountered in Miami's West Coconut Grove and elsewhere. The Carnegie Foundation ignores such alternative norms and their critical frameworks.

The Foundation's disregard of alternative norms and frameworks in formulating its model of educational reform inhibits the comprehensive transformation of practice pedagogies tied to legal analysis, "lawyering" skills, and professional identity. Pedagogical transformation requires closer attention to identity, context, and community in everyday practice, especially in dealing with minority racial groups and subordinate cultures. Critical pedagogies prove useful to representing historically stigmatized groups not only in condemning ascribed caste or status hierarchies, but also in understanding the complexity of racial and cultural identity, especially faith-based identity in individual, group, and institutional settings. Both liberal legalism and postmodern contingency aid this revision by challenging neutral pedagogical perspectives and engendering practical cross-cultural collaborations.

A transformative commitment to difference-based identity and antisubordination practice norms commands the abandonment of neutrality claims in rendering lawyer judgments about the means and ends of representation.[37] The Carnegie Foundation's stance of neutrality, entrenched in the MacCrate

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36. *See* Ben W. Heineman, Jr., *Law and Leadership*, 56 J. LEGAL EDUC. 596 (2006) (urging law school graduates to aspire to be leaders as well as counselors); Donald J. Polden, *Educating Law Students for Leadership Roles and Responsibilities*, 39 U. TOL. L. REV. 353 (2008) (same).

37. The stance of neutrality combines elements of scientific rationality and doctrinal analysis. *See* Barry Friedman, *Neutral Principles: A Retrospective*, 50 VAND. L. REV. 503 (1997); Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 10–20 (1959).

report,[38] tolerates the use of stereotype and stigma in the "lawyering" process. Difference-based stereotype and stigma based on race, gender, or sexuality deforms the cognitive, emotional, and behavioral content of advocacy. The classically liberal purpose of client-centered "lawyering" fails to cure stereotypes of client or group difference.[39] Without cross-cultural and difference-based identity analysis, client-centered methods perpetuate stigma-induced marginalization in law and society. Suffused in neutrality, these methods seldom call for the contextual reassessment of client and community identity. However, only that reassessment will alter lawyer perception and interpretation of client difference, and facilitate lawyer-client as well as lawyer-community interaction across differences.[40] Reassessment entails lawyer introspection, cultural self-awareness, and cross-cultural skills.[41]

Client-collaborative reassessment confronts stereotypes that impute marginalizing traits or behaviors to communities of color inside and outside their church congregations.[42] Confronting stereotypes through cross-cultural collaboration involves the identification of segregating differences, the exploration of multiple explanations for client behavior, and the elimination or mitigation of lawyer bias.[43] Although the depth of lawyer bias and the force of color-blind neutrality hinder such identification and explanation, collabo-

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38. *See* Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 593 (1994) ("[The MacCrate Report] enacts a particular picture of the lawyer, as principally a litigator, a 'means-ends' thinker who maximizes an abstracted client's goals."); Burnele V. Powell, *Somewhere Farther Down the Line: MacCrate on Multiculturalism and the Information Age*, 69 WASH. L. REV. 637 (1994).

39. *See generally* Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369 (2006) (examining the history, development, and theory of the client-centered approach to lawyering); Laurie Shanks, *Whose Story Is It, Anyway?—Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLINICAL L. REV. 509 (2008).

40. *See* Gary Blasi, *Advocacy Against the Stereotype: Lessons From Cognitive Social Psychology*, 49 UCLA L. REV. 1241, 1266–81 (2002); Ian Weinstein, *Don't Believe Everything You Think: Cognitive Bias in Legal Decision Making*, 9 CLINICAL L. REV. 783 (2003). Blasi noted that "it is unlikely that . . . [there will be] long-lasting or widespread reductions in prejudice, so long as we leave unchanged the institutional and social structures that facilitate the perpetuation of stereotypes and the resulting discrimination, unintended and otherwise." Blasi, *supra*, at 1266. *See also* Lorraine Bannai & Anne Enquist, *(Un)Examined Assumptions and (Un)Intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U. L. REV. 1, 3 (2003) (asserting that law schools should teach students to recognize cultural bias because such bias could be based on "untruths, stereotyping, or a simple lack of respect for differences").

41. *See* Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369 (2005); *see also* David Dominguez, *Beyond Zero-Sum Games: Multiculturalism as Enriched Law Training for* All *Students*, 44 J. LEGAL EDUC. 175, 178 (1994) (promoting a "negotiable learning" model where students work closely to negotiate key decisions which provides opportunities "to reconcile divergent cultural interests, value judgments, and priorities").

42. *See* Michelle S. Jacobs, *People From The Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 401–11 (1997).

43. *See* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 64–67 (2001); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373 (2002).

ratively enlarging the scope of client participation in the "lawyering" process through individual decision making and collective action transforms practical judgment.[44] Further, it sometimes expands client and community problem solving beyond case-specific needs to encompass issue-focused, neighborhood-wide campaigns,[45] thereby motivating broader affinity groups to participate in democracy-enforcing legal-political advocacy about commonly shared grievances such as crime, fair housing, and municipal equity.[46]

B. *Critical Pedagogies in the Classroom*

The Carnegie Foundation's neglect of critical norms and frameworks in designing its model of educational reform hampers the comprehensive transformation of classroom pedagogies fastened to legal analysis, "lawyering" skills, and professional identity. To be inclusive and wide-ranging,[47] pedagogical transformation requires the classroom infusion of multiple identity narratives, layered contextual descriptions, and silenced community histories.[48] The contextual exploration of client narrative and community history in parsing stories of dominant/subordinate group competition and sociocultural conflict emerges out of a mixture of classical liberal and critical-outsider jurisprudence coupled with interdisciplinary investigation.[49] Liberal jurisprudence gives voice to authentic self-elaboration, individual liberty, and collective equality. Critical jurisprudence reveals caste status, class subordination, and the stigmas of race, gender, and sexuality.[50] Interdisciplinary investigation discloses ethnographic, psychological, and sociological insight.

Tailored to both clinical and nonclinical classrooms, mixed jurisprudential and interdisciplinary pedagogies of practice illuminate the cognitive, affective, and normative elements of legal roles and relationships in guiding

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44. *See* Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 486–515 (2000); Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541, 589–611 (2006).

45. *See* Gerald P. López, Keynote Address, *Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041, 2049 (2005); Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N.Y.U. L. REV. 59 (2004).

46. *See* Lucie White, *"Democracy" in Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073 (1997).

47. *See* Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 LA RAZA L.J. 140 (1995); Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 J. LEGAL EDUC. 402 (1998).

48. *Compare* DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (1991), *with* Jacobs, *supra* note 42, at 346 (observing that the client-lawyer models employed by clinical programs "fail to address . . . the effects of race, class and, to a lesser extent, gender").

49. *See* Susan Bryant & Elliott S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195 (2007).

50. *See* Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081, 2093–99 (2005); David B. Wilkins, Essay, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502 (1998).

lawyer, client, and community decision-making.[51] Built on learning theory,[52] those elements comprise intuition,[53] empathy,[54] and emotional intelligence.[55] Each of these behavioral elements is relevant to practice and professionalism training in "lawyering" courses,[56] simulations,[57] externships,[58] and university-wide, cross-disciplinary clinical settings.[59]

Joining jurisprudential and interdisciplinary classroom pedagogies also elucidates the values and techniques of ethical discretion and moral decision making in the "lawyering" process.[60] Among the historic black ministries of West Coconut Grove, the calls for moral education,[61] theology,[62] spiritual-

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51. *See generally* THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION (Marjorie A. Silver ed., 2007); Keri K. Gould & Michael L. Perlin, *"Johnny's in the Basement/Mixing Up His Medicine": Therapeutic Jurisprudence and Clinical Teaching*, 24 SEATTLE U. L. REV. 339 (2000).

52. *See* Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213 (1998); Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37 (1995).

53. *See* Kandis Scott, Clinical Essay, *Non-Analytical Thinking in Law Practice: Blinking in the Forest*, 12 CLINICAL L. REV. 687 (2006).

54. *See* Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 CLINICAL L. REV. 135 (2002); Peter Margulies, *Re-Framing Empathy in Clinical Legal Education*, 5 CLINICAL L. REV. 605 (1999).

55. *See* Ann Juergens, *Practicing What We Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching*, 11 CLINICAL L. REV. 413 (2005); John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323 (2008).

56. *See* Peggy Cooper Davis, *Slay the Three-Headed Demon!*, 43 HARV. C.R.-C.L. L. REV. 619, 623 (2008) ("Clinical and simulation work should guide students to think critically about the interplay of logic, psychology, and culture . . . ."); Judith L. Maute, *Lawyering in the 21st Century: A Capstone Course on the Law and Ethics of Lawyering*, 51 ST. LOUIS U. L.J. 1291 (2007).

57. *See* Karen Barton et al., *Authentic Fictions: Simulation, Professionalism and Legal Learning*, 14 CLINICAL L. REV. 143 (2007).

58. *See* Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLINICAL L. REV. 347 (1999); Carolyn R. Young & Barbara A. Blanco, *What Students Don't Know* Will *Hurt Them: A Frank View From The Field On How To Better Prepare Our Clinic and Externship Students*, 14 CLINICAL L. REV. 105 (2007); *see also* Lisa G. Lerman, *Professional and Ethical Issues in Legal Externships: Fostering Commitment to Public Service*, 67 FORDHAM L. REV. 2295 (1999).

59. *See* Kathleen Coulborn Faller & Frank E. Vandervort, *Interdisciplinary Clinical Teaching of Child Welfare Practice to Law and Social Work Students: When World Views Collide*, 41 U. MICH. J.L. REFORM 121 (2007); Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work's Empowerment Approach*, 13 CLINICAL L. REV. 459 (2006); Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 WASH. L. REV. 319 (1999).

60. *See* Neal Kumar Katyal, Comment, Hamdan v. Rumsfeld*: The Legal Academy Goes to Practice*, 120 HARV. L. REV. 65, 119–22 (2006); Deborah L. Rhode, *Moral Counseling*, 75 FORDHAM L. REV. 1317, 1320–33 (2006). Katyal maintains that there is a "need for law schools to start a moral conversation and to encourage students to practice law in an 'ethical' manner." Katyal, *supra*, at 121.

61. *See* Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLINICAL L. REV. 1 (1997); Thomas Shaffer, Legal Essay, *The Profession as a Moral Teacher*, 18 ST. MARY'S L.J. 195 (1986).

62. *See* Melissa Harrison, *Searching for Context: A Critique of Legal Education by Comparison to Theological Education*, 11 TEX. J. WOMEN & L. 245 (2002).

ity,[63] and religion[64] in "law" converge in a moral conversation about "lawyering."[65] The Carnegie Foundation implicitly invites this conversation by promoting a vision of civic professionalism inspired by renewed public responsibility.[66] That vision hinges on the capacity for reflective moral judgment acquired from ethical, legal, and social skills, and applied in classrooms, clinics, and communities.[67] Realizing the Foundation's vision of student ethical-social development and law school-community collaboration warrants new forms of theory/practice integration[68] and outreach.[69]

Critical forms of theory/practice pedagogy regularly emerge from client and community collaborations in clinical education, often in the field of civil rights and poverty law. Erected here, four critical frameworks stand out in affording pedagogical opportunities for curricular revision.[70] Fundamental to community-based clinical education, the frameworks view the law as a social and cultural practice and look skeptically upon legal judgments as descriptively incomplete. Moreover, the frameworks view legal reasoning as

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63. *See* Calvin G.C. Pang, *Eyeing the Circle: Finding a Place for Spirituality in a Law School Clinic*, 35 WILLAMETTE L. REV. 241 (1999); Lucia Ann Silecchia, *Integrating Spiritual Perspectives with the Law School Experience: An Essay and an Invitation*, 37 SAN DIEGO L. REV. 167 (2000).

64. *See* Margaret E. Montoya, Introduction, *Religious Rituals and LatCrit Theorizing*, 19 CHICANO-LATINO L. REV. 417 (1998); Russell G. Pearce, Forward, *The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1705 (1998); *see also* Amelia J. Uelmen, *An Explicit Connection Between Faith and Justice in Catholic Legal Education: Why Rock the Boat?*, 81 U. DET. MERCY L. REV. 921 (2004).

65. *See* MILNER S. BALL, THE PROMISE OF AMERICAN LAW: A THEOLOGICAL, HUMANISTIC VIEW OF LEGAL PROCESS (1981); THOMAS L. SHAFFER, FAITH AND THE PROFESSIONS 1–38 (1987).

66. *See* Steven K. Berenson, *Institutional Professionalism for Lawyers: Realizing the Virtues of Civic Professionalism*, 109 W. VA. L. REV. 67 (2006) (book review) (remarking that the Foundation desires a resurgence of civic professionalism to challenge the dominance of technical professionalism). *See generally* Mary Ann Dantuono, *A Citizen Lawyer's Moral, Religious, and Professional Responsibility for the Administration of Justice for the Poor*, 66 FORDHAM L. REV. 1383 (1998) (noting that religion can positively impact civic obligations).

67. *See* Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths From Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994) (endorsing scholarly clinical projects that "would envision the clinical training student-advocates need in order to work effectively with [community] groups"); *cf.* Linda F. Smith, *Why Clinical Programs Should Embrace Civic Engagement, Service Learning and Community Based Research*, 10 CLINICAL L. REV. 723 (2004) (contending that law school clinics could benefit from the community service based learning movement).

68. *See* Anthony V. Alfieri, Story, *Clinical Genesis in Miami*, 75 UMKC L. REV. 1137 (2007). *See generally* Symposium, *Race, Economic Justice, and Community Lawyering in the New Century*, 95 CAL. L. REV. 1821 (2007) (discussing community lawyering and the changing meaning of community).

69. *See* Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008); Robert Greenwald, *The Role of Community-Based Clinical Legal Education in Supporting Public Interest Lawyering*, 42 HARV. C.R.-C.L. L. REV. 569 (2007).

70. For prior groundwork in the practical uses of critical theory under the frameworks of cultural studies, critical-outsider jurisprudence, pragmatism, and democratic theory, see Anthony V. Alfieri, Essay, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805 (2008).

multivariable and open-ended, and cast the process of lawyering as deriving legitimacy through client participation.

The critical view of law as a social and cultural practice arises out of cultural studies.[71] Essential to the critical reflection of clinical practice,[72] cultural studies scholarship denotes "lawyering" as an interpretive practice applicable to multiple oral, written, and social texts in action. That interpretive practice locates the social reality of difference-based client and community identity in the interwoven constructions of law, culture, and society[73] seen and heard for example within the congregations of the Historic Black Churches of West Coconut Grove. Situating client or group identity in law, culture, and society refutes neutral claims of a natural or necessary mode of construction in advocacy and politics. From this standpoint, neither the socioeconomic condition of the West Grove churches nor the socio-legal identity of their congregations is attributable to a natural or necessary racial order. In fact, both are constructed in the interpretive and material movements of law, culture, and society often captured within the "lawyering" process.[74]

The critical view of legal judgments as descriptively incomplete follows from the insights of cultural studies and additionally borrows from critical-outsider jurisprudence in treating identity as multifaceted and unstable.[75] The constituent parts of critical-outsider jurisprudence—critical race theory, feminist theory, and queer theory—proffer identity as a shifting aggregation of multiple categories beyond stock accounts of race, gender, sexuality, or

71. *See* Austin Sarat & Jonathan Simon, Introduction, *Beyond Legal Realism?: Cultural Analysis, Cultural Studies, and the Situation of Legal Scholarship*, 13 YALE J.L. & HUMAN. 3 (2001) ("[L]egal scholarship itself should . . . more fully embrace cultural analysis and cultural studies.").

72. Beryl Blaustone, *Teaching Law Students to Self-critique and to Develop Critical Clinical Self-awareness in Performance*, 13 CLINICAL L. REV. 143 (2006); Anahid Gharakhanian, *ABA Standard 305's "Guided Reflections": A Perfect Fit for Guided Fieldwork*, 14 CLINICAL L. REV. 61 (2007). *See generally* DONALD A. SCHÖN, THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION (1983) (exploring how nonlegal professionals solve problems based on reflection from practice); Donald A. Schön, *Educating the Reflective Legal Practitioner*, 2 CLINICAL L. REV. 231 (1995).

73. *See* Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807 (1993).

74. *See generally* Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL'Y & L. 161 (2005); Ann Shalleck, *Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019 (1997).

75. *See* Ian F. Haney López, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CAL L. REV. 1143, 1152 (1997) ("[A]ll racial identities, not least those of Mexican Americans and Latinos/as more generally, are intelligible only as social constructions."); Imani Perry, *Cultural Studies, Critical Race Theory and Some Reflections on Methods*, 50 VILL. L. REV. 915 (2005) (reflecting on "the usefulness of cultural studies to studies of race and the law"); Gerald Torres & Katie Pace, *Understanding Patriarchy as an Expression of Whiteness: Insights from the Chicana Movement*, 18 WASH. U. J.L. & POL'Y 129 (2005) (discussing how members of one ethnic group might identify themselves as part of another); Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education*, 10 ASIAN L.J. 65 (2003).

religious faith.[76] Acknowledging the multiple dimensions and changing qualities of difference-based client and community identity renders "lawyering" judgments of fact and law incomplete and partial.[77] Applied to the congregations of the West Grove's Historic Black Churches, this view counsels CEDAD's clinical students to proceed carefully in describing what they see and hear, and to advance slowly in reaching judgments of client motivation and purpose.

The critical view of legal reasoning as multivariable and open-ended draws from outsider jurisprudence coupled with the realist caution of pragmatism.[78] Critical pragmatism contextualizes lawyer advocacy judgments exposing legal reasoning as situational.[79] Entangled in the representation of difference-based client and community identity, those practical judgments produce highly contingent, provisional outcomes.[80] The critical impulse of pragmatism encourages revisiting the roles, relationships, and goals of client and community representation in order to test the validity of "lawyering" judgments in action.[81] For CEDAD clinical students working in partnership with the congregations of the West Grove's Historic Black Churches, this counterintuitive encouragement produces useful reflection and self-doubt about "lawyering" solutions, as well as ongoing experimentation in developing community-based, participatory remedies.

The critical view of lawyering as legitimated through client participation comes out of democratic theory.[82] Engrafted on difference-based identity

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76. *See* Kim Brooks & Debra Parkes, *Queering Legal Education: A Project of Theoretical Discovery*, 27 HARV. WOMEN'S L.J. 89 (2004); Carolyn Grose, *A Field Trip to Benetton . . . And Beyond: Some Thoughts on "Outsider Narrative" in a Law School Clinic*, 4 CLINICAL L. REV. 109 (1997); *see also*, Kimberly E. O'Leary, *Using "Difference Analysis" to Teach Problem-Solving*, 4 CLINICAL L. REV. 65 (1997).

77. *See* Leslie G. Espinoza, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 MICH. L. REV. 901 (1997); Judith G. Greenberg, *Erasing Race from Legal Education*, 28 U. MICH. J.L. REFORM 51 (1994).

78. *See generally* Hilary Putnam, *Pragmatism and Realism*, 18 CARDOZO L. REV. 153 (1996) (comparing realist caution of pragmatism).

79. *See* Martha Minow & Elizabeth V. Spelman, *In Context*, 63 S. CAL. L. REV. 1597 (1990); Margaret Jane Radin & Frank Michelman, Commentary, *Pragmatist and Poststructuralist Critical Legal Practice*, 139 U. PA. L. REV. 1019 (1991); Daria Roithmayr, *"Easy for You to Say": An Essay on Outsiders, the Usefulness of Reason, and Radical Pragmatism*, 57 U. MIAMI L. REV. 939 (2003).

80. *See* Mark Neal Aaronson, *We Ask You to Consider: Learning About Practical Judgment in Lawyering*, 4 CLINICAL L. REV. 247 (1998) (positing effective practical judgment as a means to discern differences in client and community identity); Paul Brest & Linda Krieger, *On Teaching Professional Judgment*, 69 WASH. L. REV. 527 (1994).

81. *See* Alan M. Lerner, *Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solvers*, 32 AKRON L. REV. 107 (1999); Laurie Morin & Louise Howells, *The Reflective Judgment Project*, 9 CLINICAL L. REV. 623 (2003).

82. *See* V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 93–96 (2002) (linking improved advocacy results to client participation and empowerment). To address the breadth of community-wide economic, political, and legal challenges, problem-solving pedagogies must reach beyond the scope of individual client representation. *See* Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client-Representation*, 8 CLINICAL L. REV. 405 (2002).

and antisubordination practice norms, democratic legal theory encourages client participation in the "lawyering" process through community-based collaborations inside and outside of neighborhood church congregations. Facilitating client participation in the "lawyering" process educates clients in rights discourse, creating opportunities for individual empowerment and collective mobilization.[83] Empowerment and mobilization depend on educating clients in "lawyering" skills and training lay advocates to represent underserved groups and communities.[84] Civic engagement in fostering grassroots, democratic initiatives among clients and client groups helps transform the standard conception of the "lawyering" process as lawyer driven and professional identity as lawyer dominant. Joining the congregations of the West Grove's Historic Black Churches in strategic planning about legal-political rights education and social-service capacity-building breaks away from the standard conception of lawyer domination in community advocacy.

C. *Critical Pedagogies in Community Action: The Historic Black Church Project*

The Historic Black Church project is part of the University of Miami Law School's ongoing nine-year effort to assist Miami's economically distressed West Coconut Grove community. Housed at the School's Center for Ethics and Public Service, the project is spearheaded by the CEDAD Clinic, a joint venture collaboration with the University's School of Architecture and Florida Legal Services. The purpose of the project is to provide multidisciplinary resources in education, law, and social services to underserved low-income residents by establishing congregation-based church partnerships through the West Grove's sixteen-church Ministerial Alliance. Exemplifying critical pedagogies, the project combines poverty law instruction[85] and community-based skills training[86] with student-centered ethical and social development strategies to advance racial justice.[87]

83. *See* LANI GUINIER & GERALD TORRES, THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY (2002); Susan D. Bennett, *Little Engines That Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 WIS. L. REV. 469; Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399 (2001).

84. Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 250–54 (1999).

85. *See* JoNel Newman, Essay, *Re-Conceptualizing Poverty Law Clinical Curriculum and Legal Services Practice: The Need for Generalists*, 34 FORDHAM URB. L.J. 1303, 1318–24 (2007). *See generally* Marie A. Failinger, *A Home of Its Own: The Role of Poverty Law in Furthering Law Schools' Missions*, 34 FORDHAM URB. L.J. 1173 (2007).

86. *See generally* Susan D. Bennett, *Embracing the Ill-Structured Problem in a Community Economic Development Clinic*, 9 CLINICAL L. REV. 45 (2002) (discussing the diversity of skills learned in a community economic development clinic); Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLINICAL L. REV. 445 (2002).

87. *See generally* Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287 (2001); Anthony V. Alfieri, *Teaching Ethics/Doing Justice*, 73 FORDHAM L. REV. 851 (2004); Jon C. Dubin,

The project entails several interrelated experiential learning initiatives encompassing rights-education seminars, capacity-building workshops, and oral history church archive compilations.[88] The project's rights-education seminars address a wide range of topics affecting the West Grove's church congregations, including children's health, education, elder law, tenants' rights, homeowner protection, crime prevention, and voting rights.[89] The church-based seminars afford both students and church activists the opportunity to learn substantive law while integrating critical pedagogies into classroom and community settings. Legal analysis of this kind supplies students and activists with the constitutional, statutory, and doctrinal rules needed to engage with the world through the medium of the law.

The project's capacity-building workshops, by comparison, focus on community-wide economic development and nonprofit legal compliance.[90] These church-based workshops offer practical-skills training in financial management and nonprofit governance spanning a variety of substantive areas from corporate to tax law. Learning to assist client groups and organizations occurs through modeling, habituation, experiment, and reflection. Both simulated and clinical forms of modeling dictate pedagogies blending formal legal analysis, practical habits of mind, and skills of social interaction.[91]

In contrast, the project's ongoing assembly of oral history church archives,[92] and the planned establishment of a national consortium on

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Clinical Design for Social Justice Imperatives, 51 SMU L. REV. 1461 (1998); Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929 (2002).

88. *See generally* Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51 (2001) (describing the benefits of experiential learning programs); James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71 (1996) (same).

89. The Center For Ethics and Public Service Forms an alliance with black churches in West Coconut Grove: Partners from the Pulpit, VERITAS, http://www6.miami.edu/veritas/summer2008/nb/nb.html (last visited Nov. 21, 2008).

90. *See* Project Description, Community Economic Development and Design Clinic, Historic Black Church Project (Fall 2008) (on file with author).

91. *See* David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191 (2003); Harriet N. Katz, *Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools*, 59 MERCER L. REV. 909 (2008); Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report Into a Doctrinal Course*, 3 NEV. L.J. 32 (2002).

92. The archives are compiled and stored at individual churches through a student-faculty partnership with local schools in Coconut Grove. The oral histories of each congregation and ministry are assembled and videotaped by high school, undergraduate, and law students. Both high school and undergraduate students also participate in faculty supervised multimedia projects (drawing, painting, and photography) documenting the churches in conjunction with their congregations and affiliated youth groups. *See* Project Description, *supra* note 90. Such multimedia projects offer partnership opportunities with university fine arts departments and law school legal writing programs. *Cf.* Rebecca A. Cochran, *Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service*, 8 B.U. PUB. INT. L.J. 429 (1999) (proposing to use legal research and writing programs as a means of engaging students in pro bono work). *See generally* Sarah O'Rourke Schrup, *The Clinical Divide: Overcoming Barriers to Collaboration Between Clinics and Legal Writing Programs*, 14 CLINICAL L. REV. 301 (2007) (advocating increased communication between legal research and writing programs and clinical programs).

campus-church-community collaboration linking faith-inspired civic engagement and service learning in higher education, work to invigorate professionalism norms of social responsibility, historical witness, and ethical reflection.[93] By plan, critical pedagogies stress the public purpose of the profession. Fundamental to that purpose is the formation of professional identity guided by other-regarding interests.[94] Viewed against the backdrop of the Historic Black Church project, both the formation and reformation of professional identity is underway.

Conclusion

Joint law school-community initiatives like CEDAD's Historic Black Church project enrich the mission of clinical education and legal education more generally by addressing difference-based identities, contexts, and communities through innovative theory/practice pedagogies. Both CEDAD and the Carnegie Foundation advance these pedagogies in the hope of encouraging "more informed scholarship and imaginative dialogue about teaching and learning for the law" and prodding legal educators to build "a stronger commitment to the public mission and purpose of the vocation and the institution they have chosen to serve" (p. 19). And yet, both the Foundation and CEDAD falter when they overlook the relevance of critical pedagogies in teaching students how best to engage with difference-based identity in the context of representing communities of color. The traditions of civic professionalism help shape that engagement. The critical pedagogies arising out of the campus-community collaboration between CEDAD's clinical law students and the West Grove's Historic Black Church congregations help ground it in mutual faith.

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93. P. 14; *see also* Peter A. Joy, Essay, *The Law School Clinic as a Model Ethical Law Office*, 30 WM. MITCHELL L. REV. 35 (2003); Thomas L. Shaffer, *On Teaching Legal Ethics in the Law Office*, 71 NOTRE DAME L. REV. 605 (1996).

94. *See* Floyd, *supra* note 28.