

**TO FORGE NEW HAMMERS OF JUSTICE: DEEP-SIX THE  
DOING-TEACHING DICHOTOMY AND EMBRACE THE  
DIALECTIC OF “DOING THEORY”**

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This essay is a reflection on the relationships between law and social movement, and their importance for legal education in the oughties. It is a response to remarks of Steve Wizner and Jane Aiken at the celebration of the University of Maryland’s first thirty years of commitment to experiential education in the service of poor and unrepresented people. Steve and Jane eloquently articulated the tensions that inhere within law schools’ experiential programs in expanding justice today. Steve asks whether the institutional shift from practicing law with self-selected students in legal services offices independent of law schools, to running law school clinics as faculty members with multiple commitments, too deeply compromises “our identities as advocates for the poor and unprivileged, as fighters for social justice.”<sup>1</sup> Jane modulates his query’s pointedness with equal parts realism and respect for each individual clinician finding his or her own place within the dichotomy they characterize as ‘teaching versus doing.’ Posed in this manner, the challenge merits somber deliberation among those who recognize the roots of clinical legal education in the emancipation efforts of the War on Poverty. Today, a sizeable corps of clinical faculty is fanned out across most of legal education in the U.S; how *should* we evaluate this stunning inroad into the traditions of law schooling? This timely and important question is aimed at clinical legal education in the aggregate, beyond individual clinicians’ private tradeoffs.

In this essay I want to consider the thesis that clinical legal education, in the aggregate, has abandoned the commitments of the War on Poverty era to garner a warm place by the academic fire. If the Ford Foundation-funded Council for Legal Education and Professional Responsibility (CLEPR) were to re-evaluate the effectiveness of the clinical branch of legal education in 2004, would it find its original

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1. See Stephen Wizner, *Walking the Clinical Tightrope: Between Doing and Teaching*, 4 U. OF MD. L.J. OF RACE, RELIGION, GENDER & CLASS 259 (2004).

purpose—to engage the law schools to redress the legal problems of the poor and disenfranchised—sufficiently well-met to justify the program?<sup>2</sup> Would clinical programs’ effectiveness on behalf of the poor compare favorably to clinical education’s impressive growth and acceptance in academia?

To pursue this program evaluation, we need some yardstick. Several potential assessment measures can be inferred from our speakers’ remarks. The first two are quantity measures, and are the easiest, most familiar, and the least enlightening in a meaningful evaluation: (1) Quantification of legal service to the poor (caseloads, clients “served,” the number of students involved in the work, the number of lawyer and law student hours deployed); and (2) Evidence as to the social or market *value of the legal work provided*, such as the dollar value of that work had it been billed by lawyers in private practice, or fees earned in fee-shifting matters. Additional desirable outcome measures, far more difficult to obtain, compile, and interpret, would include: (3) Examination of substantive outcomes (matters won or lost, substantive results achieved for clients, rule-changes gained or prevented, client satisfaction, or other outcome measures); (4) Impacts on students (the number of students who seek similar work, later in law school, and upon graduation, whether paid or pro bono); and (5) the intellectual capital generated and distributed, in papers written, positions argued, in courts and legislatures, courses and journals, and carried forward to law offices, dinner tables, bar meetings and judges’ chambers as our graduates move on in their careers.

## I. RESPONSES TO ADVOCATES OF BOTH SIDES

Even in the absence of findings from such an evaluation, I suggest three responses to the question whether clinical educators have essentially given up the fight against the oppressions of poverty, by accepting the compromises inherent in academic employment.

### *A. This is Not Your Parents’ Clinical Legal Education*

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2. From 1959 through 1965, the Ford Foundation provided grants to nineteen law schools, and renamed the program in 1968. See Orison S. Marden, *CLEPR: Origins and Programs*, in *CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 5* (Council on Legal Education for Professional Responsibility ed. 1973). In 1968, the Ford Foundation announced its commitment of \$12 million to incorporate clinical education “as an integral part” of the nation’s law school curriculum.

Steve Wizner proffered the threshold measure, whether today's clinicians are still "true to the roots of clinical legal education."<sup>3</sup> Staying true to one's roots has moral power and validity for persons, as for movements. But the War on Poverty, declared in 1964, isn't every clinic's roots. Most law schools did not start their clinical programs in the 1970s, prompted by Ford or other benefactors, intent on soldiering in the War on Poverty.

In fact, clinical education has been part of law schooling for more than a century, since law students and faculty took part in the first iteration of legal aid bureaus established for the explicit purpose to assist people who could not afford to hire a lawyer.<sup>4</sup> Respected legal educators in the first decades of the twentieth century called for "clinical lawyer schools," and from 1959 through 1978 the Ford Foundation provided grants to law schools to pilot such programs. But most law school clinics got their anchor in the academy as a result of greatly expanded federal funding through Title IX, from 1978 to 1997,<sup>5</sup> and from the ABA's law school accreditation standard, amended in 1996, which requires law schools to provide "real-life practice experience," without emphasis on the professional ethic or clinical tradition to provide legal representation to those whom the bar customarily leaves unrepresented.<sup>6</sup> The progress of clinical legal education from anti-poverty endeavor to mainstream academe was further aided by the MacCrate Report which, in 1992, referenced lawyers' roles in securing justice for the poor, but devoted most of its heft to shift professional skills and values training from law firms to law schools.<sup>7</sup>

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3. See Stephen Wizner, Remarks at the Conference and Dinner Celebrating 30 Years of Clinical Legal Education at the University of Maryland School of Law (April 2, 2004) (transcript on file with the University of Maryland Law Journal of Race, Religion, Gender & Class).

4. The development of legal aid bureaus around 1900 is detailed in Jerold Auerbach's classic, *UNEQUAL JUSTICE* (1976). The participation of law students and faculty has been recounted by Peter Joy. See Peter Joy, *The Law School Clinic as Model Ethical Law Office*, University of Washington Faculty Working Paper Series (October 1, 2003) (unpublished manuscript at <http://ls.wustl.edu/Academics/Faculty/Workingpapers/index.html>) [hereinafter Joy].

5. Joy, *supra* note 4, at 41.

6. AMERICAN BAR ASSOCIATION, *STANDARDS FOR APPROVAL OF LAW SCHOOLS* § 302(c)(2) (2002).

7. AMERICAN BAR ASSOCIATION, *REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CURRICULUM* (1992) (popularly known as the MacCrate Report). Commentators at the time decried the depoliticization and conversion of much of clinical education to vocational legal education. See Jon Dubin, *Clinical Design for Social Justice Imperatives*, 51 *SMU L. Rev.* 1461, 1466 n. 28 (1998).

Sadly then, I conclude that Steve has overstated the extent to which there is today one ‘clinical legal education movement.’ Look around at the techno-clinics, designed essentially to impart lawyer skills, law office management and technology, or to enhance substantive specialties in which law schools compete for students. Consider the proliferation of clinics featuring international, business, health care, and environmental and land use law. The Association of American Law Schools (AALS)<sup>8</sup> and Clinical Legal Education Association (CLEA)<sup>9</sup> formally embrace this justice-neutered view of clinical education.

My purpose here is not to demean the educational value of these developments, nor their potential for public service, but only to note that law school clinics have grown like kudzu—viewed by some longtime denizens of legal academia as a costly invading species, and subjected to a variety of management strategies by law school deans. Experiential education has won fans far beyond the anti-poverty field as an effective methodology for honing students’ skills and competencies for practice, and it appeals to many applicants while affording a new vein of interdisciplinary scholarship to exploit. A good clinical program is a savvy marketing strategy for law schools today.

The situation may be better, or may be worse, than we think. Better in that during the same period in which clinics have gone in-house and mainstream, American law schools have been incubating a tremendous array of clinics, courses, externships, centers, symposia, alternative journals, public interest programs, mentoring opportunities, and student organizations, many of which facilitate law students’ engagement with the justice dilemmas of today, and many of which do encompass the harms associated with poverty.<sup>10</sup>

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8. Although I expect many teachers share the view that clinical education is more a philosophy of the lawyer’s role in society, than it is a mere methodology, the Association of American Law Schools embraces the method view.

Both clinics and pro bono programs serve important educational values. They each provide students an opportunity to learn about the legal needs of people who are poor [and] the satisfactions of serving a client. *But the principal goal of most clinics is to teach students lawyering skills and sensitivity to ethical issues* through structured practice experiences and opportunities to think about and analyze those experiences. Association of American Law Schools, *Learning to Serve* at <http://www.aals.org/probono/report.html> (1998).

9. See Clinical Legal Education Association Bylaws, at <http://www.cleaweb.org/about/bylaws.html>.

10. It would be interesting to learn how, if at all, these are related in their origins or operations, to clinical courses. To what extent is this growth supporting, or independent of, the original clinical legal education project of redressing the injustices associated with poverty? Are they sought by students who aim to do this work after graduation, and if so, are

On the other hand, it may be worse in that the justice needs and claims of the poor are arguably at their weakest since the 1940's (and without the employment boom that accompanied the U.S. entry into World War II). In economic terms, 35.9 million children, women and men, remain enmeshed in poverty across the U.S.:<sup>11</sup> hungry, homeless or scantily housed, working hard at dodging the pandemics of violence in public streets and private spaces, ill-served by school systems, scraping by with too little income gained at the cost of wearying hours and the shrinkage of wages, welfare, and hours in the day to hold it all together, much less advance on the ladders of opportunity available to people of means. Socially and politically, the poor are disenfranchised, profoundly isolated from the institutions that make the rules, with insufficient allies (such as labor unions, churches, and credible protest leaders of the justice movements of the civil rights era, or media outlets) to get traction in the political conversations and budgetary decisions at any level of government or industry.

*B. The Possibility that [Doing] Less is More*

One tension between 'teaching' and 'doing' in clinical education is the vexing dilemma about what is "more" legal assistance for poor and disadvantaged clients. In this symposium, Steve Wizner emphasized the quantitative, bemoaning the tradeoff in the number of clients represented, and the number of hours and brain cells expended in academic commitments far-removed from getting justice for poor clients.<sup>12</sup> Jane Aiken underscored the qualitative opportunity in that numerosity tradeoff: clinical teachers' scholarship, augmented by their faculty membership, may importantly increase the venues for advocacy to redress the legal harms suffered by our clients.<sup>13</sup> These perspectives necessarily conflict in the lives of clinicians who strive to achieve a balance that satisfies one's conscience as well as one's employing academic institution.

While many clinicians feel the rub of writing requirements, and may mutter, "When has a law review article ever changed the world

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they useful to that aim?

11. U.S. Census Bureau News, *Income Stable, Poverty Up, Numbers of Americans With and Without Health Insurance Rise*, Census Bureau Reports at [http://www.census.gov/Press-Release/www/releases/archives/income\\_wealth/002484.html](http://www.census.gov/Press-Release/www/releases/archives/income_wealth/002484.html).

12. See Stephen Wizner, *Walking the Clinical Tightrope: Between Doing and Teaching*, 4 U. MD. L. J. RACE, RELIGION, GENDER & CLASS 264-66 (2004).

13. See Jane H. Aiken, *Walking the Clinical Tightrope: Embracing the Role of Teacher*, 4 U. MD. L. J. RACE, RELIGION, GENDER & CLASS 270-72 (2004).

for my clients? This isn't the best use of my time!" there is some evidence supporting the view that the discipline of practice-informed scholarship carries forward the seeds of legal change and increased justice.<sup>14</sup>

The utility of scholarship in legal-theory development was embraced in the classic expositions of clinical legal education in the United States. They focus on teaching students the methodology of reflection-upon-practice, and teaching for the big stage of lawyers embedded in the justice needs of their era, not just the small arena of effective mastery of lawyerly skills. Gary Bellow urged the focused interrogation of students' performances in the roles of lawyer, so as to foster introspection that facilitates understanding of lawyering and the "legal order."<sup>15</sup> Similarly, Tony Amsterdam emphasized teaching students how to learn systematically from experience, embedded in the rich and uncontrolled realities of the facts of clients' lives as entangled in the law.<sup>16</sup>

Each of these giants has modeled useful reflection-in-scholarship. Subsequently, legal educators drew on theorists of professional development, who have stressed that the most effective professionals differentiate from their peers by developing the ability to learn well from reflection on one's actions, so as to transform raw conduct into meaningful experience.<sup>17</sup>

### *C. The Dichotomy is not Legal Theory v. Law Practice*

In the CLEPR era, virtually every clinical teacher came into the academy from the front lines of legal services and public defender offices. They did so seeking to remain useful and effective for clients, to replenish the ranks by preparing new advocates, and to persist for the long haul in combating the legal fallout of poverty. Oh, sure, law

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14. Based on their practice choices and publications, I believe Steve and Jane actually agree, as lawyers and educators, that effective legal representation for disadvantaged people includes, in addition to the social good in achieving immediate results for individuals, the importance of changing the legal rules and relationships that constrain our poor clients, and the utility of some legal scholarship and faculty membership for their advocacy work.

15. See Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education As Methodology*, in *CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING* 374 (Council on Legal Education for Professional Responsibility ed., 1973).

16. See Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 *J. LEGAL EDUC.* 612, 616 (1984).

17. See, e.g., DONALD A. SCHON, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* 21–69, 128–67, 287–354 (1984).

schools offer better pay and benefits, and a somewhat more civil arena than the lower courts to engage ideas for achieving justice in disputes involving the poor. But largely, it is the frustration with the limitations of conventional advocacy to effect meaningful change in the legal arrangements that repeatedly ensnare poor people,<sup>18</sup> which drove many to seek the regenerative potential in the intellectual resources of law schools.

A primary purpose of much of the best legal scholarship is to challenge the reigning structure of legal rules and constraining institutions.<sup>19</sup> In this volume, scholarship is offered as a partial offset for the diminution in direct legal representation of clients. The soundness of that argument turns on the characteristics of that scholarship. Social justice clinicians may add, beyond the usual qualities, the question of where to publish, and for whom—in the pages of a law review, versus an op-ed in a national newspaper with a circulation of millions<sup>20</sup> or other media such as interactive websites. But expanding one's search for and assessment of legal scholarships beyond law reviews supports rather than minimizes the importance of social justice practitioners studying, generating, and “doing theory.”

The development of transformative legal theory arises repeatedly on the front lines, and interdependently with the works of scholars. Two examples of transformative litigation familiar to anti-poverty lawyers and clinicians illustrate this point, *Goldberg v. Kelly*<sup>21</sup> and *Javins v. First National Realty*.<sup>22</sup>

*Goldberg v. Kelly* ushered in the civil due process revolution. In holding that an adversarial hearing was required prior to termination of subsistence benefits, the U.S. Supreme Court accorded to poor people the same procedural protections that the privileged traditionally enjoyed for their property interests. Justice Brennan's opinion in *Kelly* extended the arguments of John Kelly's lawyers into a synthesis of academic and philosophical insights about the nature of property, and then, into the imperative idiom of constitutional law. Counsel and

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18. Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 NLADA BRIEFCASE 106 (1977); Marc Galanter, *Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974).

19. One example would be the development of the tort of sexual harassment under Title VII of the Civil Rights Act of 1964. See CATHERINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979).

20. On the relative merits of publishing for wider audiences, see Douglas L. Colbert, *Broadening Scholarship: Embracing Law Reform and Justice*, 52 J. LEGAL EDUC. 540, 546 (2002).

21. 397 U.S. 254 (1970).

22. 428 F.2d 1071 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970).

Court alike were deeply influenced by legal scholarship, in particular Charles Reich's *The New Property*, published in 1964.<sup>23</sup>

This revolutionary conceptualization has rocked welfare rights advocacy ever since. Mr. Kelly's lawyers were pioneers in poverty law, and included Steve Wizner and Ed Sparer among others, who worked at that time in the first neighborhood legal services program, Mobilization for Youth Legal Services, and thereafter has been seasoned in their work as scholars and teachers as well.<sup>24</sup>

*Javins v. First Nat'l Realty Corp.*<sup>25</sup> also illustrates the vital interdependence of justice-seeking scholarship and justice-serving representation. The 1970 D.C. Circuit case widely regarded as the bellwether of the revolution in landlord-tenant law, legal services lawyers argued a theory that had some predicates in scholarly literature and in obscure case law. Leaping the divide from property to contract, Judge Skelly Wright recognized a contract-like 'warranty' of habitability by landlords taking poor folks' money for housing, on the theory that the rental of an urban apartment was closer kin to the purchase of modern-day goods made by distant producers covered by warranties of merchantability.<sup>26</sup> Brilliant!

*Javins* was not conceived without progenitors, for like other important steps in the litigation trail to modern tenants rights, *Javins* had been preceded by a large literature of scholarly critiques of the outmoded nature of landlord-tenant law.<sup>27</sup> Additional tools in lawyers' hands were a few reported cases that had taken similar paths in other

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23. See Sylvia A. Law, *Some Reflection on Goldberg v. Kelly at Twenty Years*, 56 BROOK. L. REV. 805 (1990). Sylvia Law relates a further blending of the sites of theory-building, noting that the amicus brief filed in support of Mr. Kelly by the National Institute for Education in Law and Poverty, (whose successor publishes Clearinghouse Review), was signed by Christopher N. May, of counsel—who had authored the note, May, *Withdrawal of Public Welfare: The Right to a Prior Hearing*, 76 YALE L.J. 1234 (1967). See also Law at 808 n.9 (1990).

24. Sylvia Law credits Ed Sparer as the intellectual architect of *Goldberg v. Kelly* and much welfare rights advocacy in that era. *Id.* at 819. Sparer's work over his life demonstrates both the possibility and importance of faculty members' work in both domains of theory and representation. It also reveals the synergy between legal-theory building and thoughtful practice. Sparer was an influential advocate, a practitioner of engaged legal scholarship, founder of the Health Law Project and Professor of Law and Social Policy at the University of Pennsylvania Law School, and the inspiration for the annual conference that bears his name.

25. 428 F.2d 1071, 1074–80 (D.C. Cir. 1970).

26. *Id.*

27. See, e.g., Hiram Lesar, *Landlord and Tenant Reform*, 35 N.Y.U. L. REV. 1279 (1960); Thomas M. Quinn & Earl Phillips, *The Law of Landlord-Tenant: A Critical Evaluation of the Past with Guidelines for the Future*, 38 FORDHAM L. REV. 225 (1969); Robert S. Schoshinski, *Remedies of the Indigent Tenant: Proposals for Change*, 54 GEO. L.J. 519 (1969).

jurisdictions, and the use of housing codes to define habitability.<sup>28</sup> These important factors prepared the way for revolutionary change but could not self-execute. What ignited them was the passionate pursuit of social and racial justice generated by the movements for civil rights.

In *Kelly* and in *Javins*, of course, it mattered that there were lawyers who listened to clients, and presumably were touched and taught by their struggles, as much clinical scholarship observes.<sup>29</sup> Yet to harness this form of highly relational legal service to the engines of imperative legal change, surely there is room in a contemporary movement for freedom from poverty for activists who build theory and argue for it, in every venue, clinic, classroom, courtroom, and branch of public discourse.

In which case, let's make the argument between teaching and doing a productive one. Do the ways we "teach" engage students in *doing* now, *and* preparing for the long-haul lawyering that any movement for social change requires?

## II. WHAT THE WORLD NEEDS NOW

*Kelly* and *Javins* illustrate a truth about significant legal change, which is discomfiting for the assessment of much clinical legal education as preparation for a renewed war on poverty's injustice. Antipoverty work requires its agents to act "not as a mirror to reflect the world, but as a hammer with which to shape it."<sup>30</sup> The lawyers' work in these two cases would not have made the differences they did for millions of urban tenants or benefits-holders, in the form of legal rights and material progress, unless the lawyers on the scene were prepared and capable in several key respects. The *Kelly* and *Javins* lawyers were prepared to *recognize the pattern* created by extant legal rules that systematically injured many people of limited means, and to *imagine a more just legal rule and rationale*, as well as

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28. See *Ingalls v. Hobbs*, 31 N.E. 286 (Mass. 1892); see also *Gladden v. Walker & Dunlop* 168 F.2d 321 (D.C. Cir. 1948) (landlord has duty to maintain portions of apartment 'under his control' including plumbing, heating and electrical systems); *J. D. Young Corp. v. McClintic*, 26 S.W.2d 460 (Tex. Civ. App. 1930) (implied covenant of fitness in lease of building under construction); *Steeffel v. Rothschild*, 72 N.E. 112 (N.Y. 1904) (duty to disclose latent defects).

29. See J.P. Ogilvy and Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography*, 7 CLINICAL L. REV. S1 (2nd ed. 2001).

30. The quote is widely attributed to Bertoldt Brecht, who was speaking of artists. See Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 431 n. 22 (2000).

to make or *seize the opportunity to advance claims* to produce more just results. The lawyers commandeered theory where they could find it, in the constitution and in the primordial ooze of common law precedent. Their narration of material facts had less to do with their clients' individualized experiences, than with the summative burden of law's hubristic dominance on the poor generally.<sup>31</sup>

This is discomfoting for much of clinical course design, curriculum, and teaching methodology, because hewing close to clients' individualized experience is the most familiar, and least controversial, image of lawyers in society. Coaching students to master the paradigmatic skills of client service is similarly the least controversial norm of clinical education. Yet, the constitutional democracy on which legal education's organization is premised (as is widely argued by innumerable academics, activists, and others across the U.S.) is being disassembled by a cadre of lawyers operating in government, private industry, and a welter of consultancies while many of us discuss taped interviews. A contemporary CLEPR would, I hope, fund strong forms of social justice advocacy, rather than the vague profusion of preliminary practice skills that characterizes many clinics' curricula today.

CLEPR, like *Kelly* and *Javins*, did not spring from the heads of lawyers who were inured to the larger society. The civil rights movement that surfaced after World War II as a struggle against segregation in the South had become a national effort by the 1960's. In 1963, Martin Luther King, Jr. gave his "I Have a Dream" speech, and in the March on Washington, 200,000 people assembled to demand racial justice. President Johnson declared the "War on Poverty" in March 1964 and, in July, signed the Civil Rights Act of 1964. From 1965–1967, riots erupted in Watts, Cleveland, Chicago, Atlanta, Detroit, and then in Washington, D.C. In the same years, professional journalists brought the Vietnam War into American living rooms, and the ready availability of information to counterbalance official policy fed the zeitgeist to 'question authority' and challenge established interests. As U.S. casualties exceeded 6,000 by 1967, protests drew from 50–100,000 people in several cities. In the spring of 1968, opposition was so intense that President Johnson felt compelled to announce that he would not seek reelection.

Today, the need is equally as great for lawyers with appetite and expectation for serious struggle over the basic rules of the legal

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31. It is also imperative that lawyers realized they were adjuncts to popular movements, rather than free agents.

order. In the War on Poverty era that birthed the modern clinical legal education movement, the fact that thousands of young lawyers felt compelled by the social ferment of that time suggests two lessons for us educators. First, remember what lawyers are good for. The present time is no less fractious than the 1960s. Although the issues may be framed differently now, it is predictable who will remain at the bottom of the jurisprudential well. Unless poor people and their advocates rise on the social currents of this day to deploy all the tools of the law—legal theory, legal process, legal rulemaking, law enforcement, as well as standard advocacy skills and lawyer functions commonly taught in experiential courses. Needed now are theories and practices that support liberty and opportunity for the poor and disenfranchised, in their contests with the rich and super-franchised.

Second, social currents are not just found, they can be influenced, and not only by unanticipated triggering events, but by persistent, systematic work to move ideas and beliefs.<sup>32</sup> Many activists from the 1960s on say that the racial and economic caste system compelled them to stand for justice: against segregation, for voting rights, for legal norms that would embrace a more inclusive social contract. But the truth also is that the legal effort to dismantle discrimination had been underway for generations, chipping away tirelessly, and making the road for the aggressive struggles of the 1960s and 1970s. Neither element of the Civil Rights Movement would have been possible without lawyer-law professor-dean Charles Hamilton Houston. Houston designed, not a clinical course, but a law school whose curriculum he organized to equip lawyers for their essential duty as social engineers. “A lawyer’s either a social engineer or he’s a parasite on society,” he taught.<sup>33</sup> A social engineer is “A highly skilled, perceptive, sensitive lawyer who understood the Constitution of the United States and knew how to explore its uses in the solving of ‘problems of local communities’ and in ‘bettering conditions of the underprivileged citizens.’”<sup>34</sup>

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32. The contemporary conservative ascendancy in American law, governance and politics is one telling illustration. By one estimate, this trend has been facilitated by effective strategies that 79 conservative foundations have used to support the activities of 350 right-wing think tanks intending to reshape public policy at the federal, state, and local levels. *See, e.g.*, JEFF KREHELY ET AL., NATIONAL COMMITTEE FOR RESPONSIVE PHILANTHROPY, *AXIS OF IDEOLOGY: CONSERVATIVE FOUNDATIONS AND PUBLIC POLICY* (2004), at <http://www.ncrp.org/PDF/AxisofIdeology-ExecutiveSummary.pdf>.

33. GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* 84 (1983).

34. *Id.*

All legal teaching teaches about both law and practice, yet not all learning-by-doing teaches students that it is just, and possible, to aid the poor or dismantle poverty. Not enough law teaching makes this attempt; and much doing focuses the eye on a smaller prize. While a single clinical course may begin to move students toward skillful advocacy *and* theory development *and* strategic practice, and then ... what? It is not common to teach the extensive legal and social history of resistance and reformation from which to take heart. We need to do a better job of sharing what we have discovered about the transferability of the processes for devising and delivering legal change that supports material, social and political inclusion for our clients.

It is daunting to undertake teaching that bridges the theory-practice duality, but it is surely important to help students to harness the understandings achieved by the synergy of head, hand and heart, in order to raise up each generation of warriors for justice for the poor. Cognitive learning is not sufficient to educate about the entrenchment of law in poverty's cruelties and to alter students' map of the legal world.<sup>35</sup> Nor is "doing" alone sufficient to equip most law students as capable lawyers for poor people facing the complex, commingled legal harms they endure. "Teaching"—through readings, records, research, discussion, writing, didactics, modeling, field work, observation—is also necessary to equip students with rule-mastery, and operational command of the legal rules and policies. The key reason to combine teaching and doing is to optimize learning, especially the lesson that law is open-textured, chock-full of choices and opportunities to reframe the disputes, and thus to unsettle the ordinary workings of the law which so often disadvantage poor people. Retaining time in the course for explicit teaching is enormously useful in helping students to learn, together, particularly from materials and experiences that run counter to the implicit culture of law-schooling that the most disabling of law's inequities lie outside the rules themselves.

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35. Too much "unexamined stuff" is taught implicitly in first year doctrinal courses, including limiting notions of lawyers' responsibilities, aggrandized notions of the neutrality of legal precedent and process, and unstated premises that lawyers are available to all parties who have serious claims and that their counsel are "equal." If we leave it unexamined in experiential courses, we cannot count on that neat package—exonerating lawyers, enervating poor people—coming undone.

### III. NO TIME LIKE THE PRESENT

Ditching the useless dichotomy is all the more important at this political moment, when the claims of the poor need some new legal traction. To continue to slog uphill in this vein, students need to know that they are gaining a skill set more specific than some “experience”; and they need more than reflection that affords a glimpse of the inequities in power, privilege, exclusion and oppression. Whether the social struggles to come are supported by legal arguments made in familiar doctrinal categories, or sound in civil and human rights, or church-state separation, or taxation and capital market regulation, here is a short list of predicate skills which are essential in becoming prepared for the work of striving against the status quo of poverty amid riches. We can aim to equip our students with the contextual, sensate, and rigorously observed recognition of the following: (1) that legal rules are produced in response to evidentiary accounts, which do not exist until constructed by lawyers; (2) that parties' different perspectives, and their different opportunities for representation by counsel, importantly shape such factual accounts; (3) that clients, lawyers, and judges all face a range of choices for resolving "doctrinal" questions—legal rules are not self-executing; that the class, gender, and race of the people implicated by legal disputes may influence the operation of legal decision-making at each of these junctures; and (4) that lawyers play various, sometimes significant roles, in causing many of the legal problems of poor and disenfranchised people.

This is a set of preliminaries for students beginning their training, of course. Effective lawyering requires fluency in the law that comes with further experience and practice than law school clinics can offer—a deep and practical understanding of law as the language for speaking norms of justice, and a toolbox of customary rites for settling disputes, unsettling oppression, and resolving social conflicts.

### IV. LOOKING TOWARD THE LONGITUDINAL LAWYER SCHOOL

No one clinic can do it all; and trimming clinics to focus too narrowly risks evading the meaningful arena altogether. Many law clinics affirm or imbue students with the readiness, will and ability to battle social injustice. This is important, worthwhile, and ... just the beginning. Multiple clinic opportunities, indeed concentrations of

study in the welter of knowledge- and capacity-types pertinent to social justice work, can aid in preparing new lawyers for the rigors of this life's work. Because institutions differ widely in their commitments and resources, other enhancements of social justice teaching and learning are needed, such as clinics' connections with non-clinic courses,<sup>36</sup> and ramped-up curriculum-advising. Beyond the J.D., more intentional and collegially supported forms of mentoring and post-graduation encouragement of alumni are demonstrably important in our local communities. Law school clinics and faculty could forge fuller collaborative connections between clinics and the progressive bar, including many legal services providers, through visiting practitioners, co-counseling relationships, and the design of symposia that bring together the relative strengths and perspectives of 'the academy' and 'the field.'<sup>37</sup>

Even in the absence of a contemporary CLEPR to underwrite the effort, we in the social justice wing of clinical legal education would do well to devise longitudinal modes of social justice instruction—wider and deeper during law schooling, and extended through various forms of post-degree collaboration and cross-fertilization between sites of social justice practice. The Wizner/Aiken debate can be the last occasion on which experienced clinical educators oversell the dichotomy between the teaching and doing of their work, and its corollary, the dichotomy of practice versus theory, provided we embrace the critical dialectic of robust, social-justice “doing-theory.”

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36. For example, students in a Legal Writing, Analysis, and Research course taught by Professors Michael Milleman and Steven Schwinn, in conjunction with Renee Hutchins and her clinic students, developed the legal theories that won freedom for Walter Arvinger, wrongfully convicted of murder and imprisoned for more than 36 years. After two-years of work by faculty and students, Governor Erlich commuted Mr. Arvinger's sentence and released him in December 2004. See University of Maryland School of Law, Walter Arvinger Defense Team Wins Martin Luther King, Jr. Diversity Awards at [http://www.law.umaryland.edu/news\\_detail.asp?news=23](http://www.law.umaryland.edu/news_detail.asp?news=23) (last visited Mar. 1, 2005).

37. Just one example is the welfare conference and community conversation held at the University of Maryland in October 2001. The two-day conference, by design, involved a wide sector of concerned community participants, as well as national political leaders and legal scholars, to inform policy makers and identify local action opportunities on the impacts of welfare policy and administration on no-income and low-income families. See *Welfare Reform Ends: What's Next*, IN PRACTICE: NEWSLETTER OF THE CLINICAL & LEGAL THEORY AND PRAC. PROGRAMS AT U. MD. SCH. L., Fall 2001, at 9.