REFLECTIONS ON THE PRACTICE OF A THEORY: LAW, TEACHING, AND SOCIAL CHANGE

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I. INTRODUCTION

We have gathered at this conference to consider ways in which we can extend our teaching beyond the classroom and into arenas of political engagement. What are some effective pedagogical possibilities that can challenge or change entrenched external power arrangements? The answer to this question involves building an "action pedagogy."

Elvia has movingly demonstrated that it remains possible to teach law in ways that can advance social justice, even in the face of an institution's manifest hostility. I have the privilege to speak from the sharply divergent stance of significant institutional support: the University of Maryland recruited me to design a required first year course to introduce law students to the legal needs of poor people. I arrived ten years ago and began working with others to develop what became the "Legal Theory and Practice" (LTP) courses at Maryland.

A detailed description of the political origins and objectives of LTP courses is in the conference materials.[1] Today I want to address

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Several remarkable colleagues co-created the Legal Theory and Practice courses considered here. This essay is dedicated to the memory of Marc Feldman, who began this work at Maryland with me in 1988, and who passed away this autumn. Marc should be remembered as a passionately committed advocate and law teacher, and as a pioneer in the critical project to reinvent law schooling. Marc was great John-Henry of a figure whose life work was swinging his mighty hammer to build that road to justice.

1. *See* Barbara L. Bezdek, *"Legal Theory and Practice" Development at the University of Maryland: One Teacher's Experience in Programmatic*

two dilemmas encountered in building the LTP courses, which may apply to other action pedagogy projects. The first dilemma involves the law teacher's stance in relation to the law school institution. The second dilemma involves the law teacher's relation to the client and social movements that one's teaching may assist. Despite the ambitious scope and resource-intensity of Maryland's LTP endeavor, I conclude with a much leaner and more flexible approach of the teacher's project in aid of social change.

The Law School wanted us to design a course that would demonstrate to students the value of devoting at least some of their future practices to the representation of poor and disadvantaged people.[2] But we brought to this task an understanding that law school actively contributes to the inaccessibility of legal justice to the poor and socially disenfranchised. Nevertheless, we took as our cornerstone the expectation that each lawyer bears responsibilities to poor people. Accordingly, we sought to convey via the LTP courses an understanding of legal process rooted in responsibility to the poor. We have worked along four axes to contest those aspects of ordinary legal education that numb students into the belief that law is value-neutral: (1) timing; (2) doctrine, theory, and experience (recalibrated); (3) action learning; and (4) moral agency.

(1) Timing. Our threshold premise has been that the socialization mechanisms of legal education are a significant cause of students' detachment from an active concern for equality and justice. LTP courses must therefore take place early in students' legal educa-

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Context, 42 WASH. U. J. URB. & CONTEMP. L. 127 (1992).

2. The Law School received this charge from the Advisory Council to the Maryland Legal Services Corporation, also called the Cardin Commission after its Chairperson, Congressman Benjamin Cardin. *See id.* at 128; Richard Boldt, et al., *Students and Lawyers, Doctrine and Responsibility: A Pedagogical Colloquy*, 43 HASTINGS L.J. 1107, 1107 & n.1 (1992). The concept of professional responsibility embodied in the Cardin Commission's charge reflects an arguably vigorous and progressive tradition within the bar. *See, e.g.*, David Luban, *The Noblesse Oblige Tradition in the Practice of Law*, 41 VAND. L. REV. 717, 717-18 (1988) (discussing Louis D. Brandeis's vision of the law practitioner as a kind of public servant); William H. Simon, Babbitt v. Brandeis: *The Decline of the Professional Ideal*, 37 STAN. L. REV. 565, 565-71 (1985) (discussing a progressive-functionalist vision of law).

tion, preferably in the first year when the most intensive socialization into the legal profession takes place.[3]

(2) Doctrine, Theory, and Experience (Re-calibrated). LTP courses integrate the doctrinal study of a first year subject with the practice of that body of law on behalf of impoverished clients. Our aim has been to be more theoretical and more practical in our treatment of legal doctrine. This vital approach helps students uncover the social vision inherent in the subject matter of each course. Specifically, each LTP course undertakes a critical examination of some field of legal regulation—most often torts, civil procedure, or property—while students actually work for clients. LTP courses seek to uncover the gaps and the links between legal rules, their asserted justifications, and their differential applications to the poor and disenfranchised. When appropriate, the courses also include insights from non-legal fields.

(3) Action learning. LTP courses emphasize learning by doing. Our students escape the classroom. They go to clients' homes and neighborhoods, waiting rooms, courtrooms, schools, shelters, or wherever poor people encounter the law. We try to ascertain what both lawyers and unrepresented people do with legal rules, using real-world data drawn from outside the classroom.[4] By melding representational work with required subjects, LTP courses restore to law study the many non-doctrinal elements of human decision-making and social context that give power and meaning to the practice of law. Over the years, students have represented tenants challenging dangerous defects in rental housing, victims who have suffered lead paint poisoning, battered women charged with homicide, and children with disabilities who have been disciplined or otherwise mistreated by school authorities. Students have also helped formulate legislative and litigation strategies for homeless school children who

3. Law schooling exaggerates the importance of external rules, claims and defenses, and analytic reasoning. It treats these as the subject of thought processes that can and should be conducted independently from other thought processes. This compartmentalization is one of the basic ways in which traditional legal education signals the irrelevance of social context, moral reasoning, and concerns for justice and equality.

4. *See* Bezdek, *supra* note 1, at 135-37 and accompanying notes.

have been denied access to schools, as well as strategies for minority communities seeking environmental justice.[5]

(4) Moral agency. Stressing the moral obligation to assist the poor is of paramount importance in the LTP courses. Whether students will devote all or part of their careers to the legal problems of poor and oppressed people, the enduring visions of justice that they develop in the LTP courses will shape policy throughout the nation. In addition to making law through formal channels in their capacity as counselors, legislators, and judges, our graduates will enact their social vision in corporate boardrooms, churches and synagogues, bars and clubs, and living rooms. By helping them to become responsible actors and equipping them to use law in real circumstances, LTP courses provide students with an early opportunity to apply the law and understand that it can ameliorate poverty and injustice.[6]

II. INSIDER/OUTSIDER DILEMMA I: WORKING FROM WITHIN THE LAW SCHOOL

Our more critical perspective of the legal profession and its gatekeeper, legal education, was not the most welcome stance inside the law school. We discomfited many of our colleagues. And for us, the stresses have accumulated over time. It is difficult to work inside the world of traditional education and yet remain an authentic critic with outsider instincts and actions. This dilemma presents a significant and persistent question: Where to stand? In other words, how may a teacher reform the institution while acting on the larger social

5. The typical LTP course carries 5 to 7 credits in the second or third semester, of which students spend an average of ten hours per week engaged directly with clients' legal matters. In some years, LTP is offered in upper year courses such as Professional Responsibility, Women and the Law, Law and Health Care, and Complex Litigation.

6. In my LTP courses, a central task has been to wrestle personally with the parameters of this responsibility in the formative stages of legal education. *See* Barbara L. Bezdek, *Reconstructing a Pedagogy of Responsibility*, 43 HASTINGS L.J. 1159 (1992) (describing an approach for equipping students to consider their career-long responsibilities to those disadvantaged in the legal system by poverty and arguing for teachers and students to examine together the career-related responsibilities they share as a result of the epidemic of deepening poverty).

vision to which the teacher feels duty-bound. Three voices argue in my head.

The first voice warns that "the institution can eat you alive." Let us posit a conscientious teacher with principled commitments who tries to foster dialogue inside the teacher's institution, based on the belief that dialogue is one important method for pursuing social change. Yet the teacher discovers that dialogue cannot be sustained because, (1) some colleagues hate the teacher's work and try to kill it, and (2) other members of the faculty do not much care what or how the teacher teaches as long as they enjoy similar non-discursive autonomy. Even in my comparatively luxurious situation, in which there is little overt animus, I find myself scrapping about policies in the law school that affront the social vision that informs my teaching. And this constant conflict sucks me in, wears me down, and precludes me from spending more of my talents, time, and energy on the "in-the-world" teaching that I promised myself and my students I would continue.

The second voice asserts: "You cannot change the law school. Save your energy for the urgent work in the real world." This voice whispers doubt: If we cannot reform this one institution, perhaps we are fooling ourselves in believing that we can change the unjust practices of still more distant and entrenched power structures.

But the third voice reminds me that "it is important to make even small changes." Law school is one of the key places that can either support or derail students on their paths to promote justice. It is thus crucial to make even small changes to provide oases of support and training for students who understand their work to be social justice. Furthermore, holding one's ground in the face of the dominant forms of legal education constitutes a significant act of resistance. Each of these small struggles may improve the educational climate by degrees and contribute to a competing reality within the law school.

A. Risks of the Divided Self

These three discordant voices pose real risks to teachers. One risk is that the teacher will lose sight of the connections between the workplace and the world beyond—the two sites of struggle. A related risk is that the teacher will be consumed by the angst and fear

of failing, of being capsized while striving to balance social issues and a concern to preserve one's livelihood.

An immediate survival strategy for teachers lies in recognizing unproductive struggle and devising a plan to harness one's strength. Count yourself lucky, as I do, if that plan includes even one honest colleague who supports you in your struggle, to whom you can admit that you cannot do everything you believe you should, who understands that you need both to work and to nurture the loving relationships in your life, and who can say back to you: "Get a grip. This fight includes you."

In addition, a survival plan should help teachers to distinguish those in-house struggles that are unproductive tar pits. It should also help teachers allocate their resources strategically. One great cost of the LTP undertaking is its mass and intensity, demonstrated by the many academic credits of the courses, the constant interaction of students and clients, the multiple activities coordinated with the hectic calendars of real life, and the artificial imperatives of the 15-week term. These features make it difficult for LTP teachers to consult and act together outside their courses without herculean effort. And this daily pressure contributes to the inherent difficulty of responding to outrageous hate crimes such as those against James Byrd and Matthew Shepherd or to the cumulating horrors and epidemic despair of violence, drugs, and human destruction that plague our nation.

B. Requirements, Resistance, and Revisions

We have had several hundred students pass through the various LTP courses in the last ten years. How should we assess the results of the effort?

1. Requirements

Perhaps the most unique feature of Maryland's curriculum is the requirement that each day student take a course that engages him or her in the legal problems of the poor. Is this a good requirement? On balance, it is.[7] LTP courses reach many more students than those

7. Three years ago we recognized that we could not staff enough LTP courses for all our students. After an extended deliberation in which there was a strong lobby to eliminate the requirement or to move it to the second year, the faculty agreed to fudge the requirement. Now everyone is required to take

who would sign up for a course on critical legal theory, poverty law, or critical lawyering, at least at my school. They deliver significant learning experiences even for students who do not relish the program's legal focus on the poor. And they provide such students with terrific insights into the role that the law plays both in perpetuating poverty and in assisting the poor. LTP courses are no longer controversial because they are a regular part of the required curriculum. Moreover, many members of the faculty warmly embrace the wide band of teaching objectives shared by the courses.[8] The ultimate measure of the LTP courses' success, however, lies in the students' capacity to identify the social visions privileged in the law in their other classes, in their employment decisions, and in the daily tasks of their future jobs.

2. Resistance

Over the years, some students have resisted aspects of the LTP courses mightily, some thoughtfully, and some in downright ugly ways. Students have argued that LTP requirements result in inequitable workloads and law review competition, based on the view that first year students in LTP courses had less time for their other courses. Some students objected to aspects of the course content as inappropriately political, based on the view that other forms of teaching in the school were not. Still other students objected to the courses as a form of illegitimate coercion of students by the faculty, based either on status or on viewpoint discrimination.

After a period of inquiry and dispute, our faculty decided to give students much more choice in terms of courses that satisfy the Cardin requirement.[9] Opposition to the program on that ground has now evaporated. Students are invited to choose to take an LTP course when they matriculate in the fall of their first year. Several LTP

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one of the "Cardin courses," which include most of the clinic offerings and occasionally other seminars with related external placements. *See supra* note 2. This is one of the compromises we made in order to retain the basic requirement of engagement with legal problems of poor people.

8. LTP courses retain a piece of the required doctrinal curriculum not just because of their educational value. They also satisfy the constant need to staff required first year courses. LTP courses offer one phalanx of the faculty the quid pro quo for contributing to curriculum coverage.

9. *See supra* note 2 and accompanying text.

courses have found ways to give students some selection of legal work within the course. Upper year students who still need to meet the Cardin requirement go through a lottery for slots in upper year LTP or clinic courses.

Important lessons remain. Some students appear to reject the project of critical inquiry, perhaps because it is too discomforting. Of course, such rejection does not obviate the teacher's obligation to seek to discover the precise points of resistance and identify what role the teacher may play in promoting or diminishing them. The more the course is situated in action for which there are contested political readings, the greater the risk of a student feeling the "structural coercion" of the course and not wanting to either work hard at the assignment or tell the teacher so. Possible pedagogical responses to ameliorate students' negative reactions necessarily include scrupulous attention by the teacher to balanced readings and class discussion, with time allotted for hearing legitimate points on all sides of the triggering issues. These are among the most vexing questions for teachers, and they play out differently if students have opposing commitments, have authority issues, or are less than skillful in articulating strongly held views.

3. Revisions

A suitable measure of success of LTP courses might be their ability to help students "seize the disorienting moment." As I have suggested above, LTP courses set an elaborate table to provide students with an experience of potentially profound disorientation, in contrast to the overly ordered notions of neutral law offered by a generic legal education. According to adult-learning theorists, transformative learning occurs in that gap between how students understood the world until a moment ago and new, contrary perceptions.[10] Students explore those disjunctions throughout the LTP learning venues and seek to assimilate their disorienting experiences and ideas.[11]

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10. Readers will find an application of transformative learning in several modes of law teaching. *See* Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 52-56 (1995).

11. A number of means are available to teachers to assist students in reflec-

III. INSIDER/OUTSIDER DILEMMA II: REDEFINING SOCIAL CHANGE

Let me shift focus now to the world outside the law school. On what scale can the teaching of law contribute to social change, as the SALT challenge suggests? According to the conception of social change that often passes through law school corridors, change emanates from judicial and legislative decisions in which lawyers, judges, and politicians are the primary players. Social change, however, should be understood by law teachers to encompass the substance and ferment of familiar "movements." Such movements occur when people who share significant commonalities in their life situations are prompted to action by their mutual understanding that they suffer injuries shaped and sustained by the social and legal structures of political and economic power. According to this theory, people are the agents of social change rather than the lawyers who keep governments up and running.

This vision of social change may frustrate lawyers because it asks them to step aside and allow oppressed people to act for themselves. Social activists admonish would-be allies of oppressed people that there is often good reason for activists to be suspicious of self-identified volunteers.[12]

This vision of social change, however, is in tension with our shared sense—fueled by the legal and material inequities that hamper growing numbers of women and children, people of color, and other minority groups—that we lawyers and law teachers must actually

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tion and reorientation, including discussion in class or in small groups, student journals, reaction-reflection papers or self-evaluations. Learning theorists contend that challenging existing structures of thought and meaning—up to but not beyond the point where learners react defensively—can help develop adults' ability to think critically. *See id.* at 47-50.

12. See Paulo Freire's caution about members of the oppressor group who seek to ally themselves with the oppressed:

> [T]hey almost always bring with them the marks of their origin: their prejudices and their deformations, which include a lack of confidence in the people's ability to think, to want, and to know . . . . Those who authentically commit themselves to the people must re-examine themselves constantly . . . . The convert who approaches the people but feels alarm at each step they take, each doubt they express and each suggestion they offer, and attempts to impose his "status," remains nostalgic towards his origins.

PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 42-43 (Myra Bergman Ramos trans., continuum rev. ed., 1989) (1993).

redouble our efforts. For me, this urgent necessity to act has taken the form of a community economic development practice. This practice offers legal services and support to the communities surrounding our law school that are striving to pick up the balls dropped by government, law enforcement, and lenders.

In this setting, I consider whether I am working with a "social movement." My invitation to join in this community's work has been conditional, brokered by my roles as a lawyer, subject to testing, revocable. I am invited into layers of the struggle, yet the signposts of role, class, identity, geography, and history refract my invitation and my answer. I am not a birthright member of the community, yet I am expected to be present in some struggles beyond the scope of my retainer, and I assent. In this work, I am neither an insider nor an outsider. I am a traveler through intersections. Where can they lead?

IV. THE TEACHING PROJECT IN AID OF SOCIAL CHANGE

What do the above reflections suggest for our law teaching? On the view of social change I use here, law is important for two reasons. First, the law is an object for critical reflection about power and justice. It is a primary tool for reproducing the existing power imbalances and for proclaiming the justness of that order. Second, individuals can, on occasion, utilize the law as a strategic resource in concrete struggles for social change.

Unless we continue to change the traditional law school curriculum, many law students will settle for a vision of social change rooted in self-importance and limited responsibility for inequality. Many law teachers and lawyers will also settle for this myopic vision. But self-importance and limited responsibility are inappropriate signposts to plant in today's society. Indeed, our society is plagued by the highest levels of income disparity and incarceration in modern history. And this dismal reality was constructed by lawyers who assist the federal and state governments in implementing taxation policies, deregulation of industries, hyper-regulation of the poor, government budget policies, criminal laws, election laws, and a whittled-down Bill of Rights.

Legal education must impress upon law students the socioeconomic reality that engulfs our people. This process requires some

disorientation and reorientation of many of our students. Any number of courses can "extend our teaching beyond the classroom" by teaching law in the context of social reality. And we can include two strategies in virtually any course. First, we can teach our students to view the law as exercising a significant influence on the distribution of societal resources and power. Second, we can encourage students to view the role of lawyers as potentially useful to social movements by putting lawyers' special training to work and transplanting reformed understandings of justice into the legal settings that constitute our societal sense of right. Together, these strategies constitute an "action pedagogy" capable of reforming both legal education and legal practice.