Reconstructing a Pedagogy of Responsibility

by
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Candidly speaking, the Legal Theory and Practice (LTP) courses' essential purpose is to inculcate values leading our graduates to represent poor and underrepresented people and communities.[1] Thus, the LTP program was born under the cloak of a particular concept of "professional responsibility." While the profession has a long tradition of so exhorting its members, it must be admitted that it has little to show for it.[2]

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1. This was a charge directed to the Law School by the Advisory Council of the Maryland Legal Services Corporation (also known as the Cardin Commission, for its Chair, Congressman Benjamin Cardin). *See Introduction* to *Students and Lawyers, Doctrine and Responsibility: A Pedagogical Colloquy,* 43 HASTINGS L.J. 1107, 1107-08 n.1 (1992); *see also* MARYLAND LEGAL SERVICES CORPORATION, ACTION PLAN FOR LEGAL SERVICES TO MARYLAND'S POOR 35 (Jan. 1988) [hereinafter ACTION PLAN] (reporting that four out of five poor persons in Maryland lacked necessary civil legal assistance and recommending, among several dozen proposals, that the State's two law schools develop educational approaches that instill in law students, as a professional value, each lawyer's responsibility to serve the poor and underrepresented of the State).

2. The Cardin Commission's charge followed in the rhetorical footsteps of many of the legal profession's most prominent reformers on behalf of justice for the poor. One of the most famous criticisms of the misallocation of lawyers among rich and poor was that of Louis Brandeis, who urged American lawyers that: "We hear much of the 'corporation lawyer' and far too little of 'the peoples' lawyer,' " and that "the great opportunity in the law" is "to protect also the interests of the people." Louis D. Brandeis, *The Opportunity in the Law, in* BUSINESS—A PROFESSION 329, 337 (1933). A vigorous and sincere progressive tradition can be traced within the bar. *See, e.g.,* David Luban, *The Noblesse Oblige Tradition in the Practice of Law,* 41 VAND. L. REV. 717 (1988); William Simon, Babbitt v. Brandeis: *The Decline of the Professional Ideal,* 37 STAN. L. REV. 565 (1985); *cf.* JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA (1976) (elitism and pervasive exclusion based on sex, race, ethnicity, class, and religion are arguably the more widespread incidents of the profession's traditions).

From my perspective, the project in which my colleagues and I engage is this: To create in the law school a crucible in which students' overly ordered notions of resort to the law might mingle with their poor clients' circumstances, so that an impulse, conviction, conversion, decision, or mere openness might ignite, with the result that our graduates would see ways to include the legal needs of poor people in their future practices. At the heart of the reconceived courses we call Legal Theory and Practice, lies the expectation that each lawyer can, and does, bear responsibilities to poor people. A central LTP teaching task is to enable each student to wrestle with the parameters of this responsibility, personally, in the formative stages of legal education.

Learning responsibility suffers from the same phenomena of law school socialization described herein by Theresa Glennon, and it requires a corresponding counter-socialization.[3] Law schooling exaggerates the importance of external rules, of claims or defenses, and of analytic reasoning. It treats these as the subjects of thought processes that can and ought to be conducted in relative insularity from other thought processes. In so doing, traditional legal education signals the irrelevance of social context, moral reasoning, care and connection among people (clients, lawyers, law students), and inward inquiry for intuitions about justice or for motivations of response to others in need, instructing students to lay these concerns aside.

The means of counter-socialization that I discuss here involve the direct provocation of another to ask: What is my own responsibility as a lawyer to people who are poor? LTP courses seek to insist that students ask themselves this question, beyond the points of comfortable unself-consciousness. The courses require students to value values, and engage in valuing, not only as a matter of doctrinal deconstruction, but also in the introspection that attends the moral choices we each necessarily make in work that affects others. This is deeply challenging in two important respects. First, the question is experienced as "personal," that is, as directed to one's most private person, not merely to socially defined and publicly performed roles like "student" or "lawyer."[4] Furthermore,

3. *See* Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education,* 91 W. VA. L. REV. 305, 347-55 (1989); Toni Pickard, *Experience as Teacher: Discovering the Politics of Law Teaching,* 33 U. TORONTO L.J. 279 (1983) (control-abuse-alienation cycle of the classroom reflects the similar process in the world outside; internalization of the existing social structures and hierarchy, occurring outside of awareness, is accepted as inevitable).

4. Roles of this kind can be constraining and, as Boldt and Feldman suggest, pose a real risk of reinforcing alienation through the adoption of another layer of role-based, limiting behavior. Richard Boldt & Marc Feldman, *The Faces of Law in Theory and Practice: Doc-*

the question presupposes a link between others' poverty and oneself that is likely to conflict with most students' social experience and law school instruction. Asked, as it is, in the context of legal work in communities of poor people, it brings to the foreground a social system whose distribution of goods and resources is highly dependent on legal relations, and it draws attention to the law-trained cadre available for hire to make that system function.[5]

In this piece I attempt to articulate an enhanced concept of responsibility, and a method for pursuing this counter-socialization in the moral domain of law and lawyers' work. I begin by discussing the dominant notions of lawyers' responsibilities, which are inhospitable to the development by law students of a view of law practice that encompasses service to poor communities. I then describe an approach for equipping students to consider their own career-long responsibilities to those disadvantaged in the legal system by their poverty. This approach is based on an investigation and "reconstructed knowing" of the real world operations of law and poverty, and a climate of personally challenging moral conversation. I conclude that it is possible for teachers and students to examine together the responsibilities the epidemic of deepening poverty imposes on the plans each of us makes for law practice. For faculty members (from whose perspective this is written), this requires great clarity in our own minds and hearts, and thus in our work with students.

I. "Responsibility" for Lawyers: Moral Mush in Law School

A principal lesson of the traditional first year curriculum is that lawyers' responsibility is limited. Even with today's expanded use of problems and role-plays in classroom courses, the standard conception of

trine, Rhetoric, and Social Context, 43 HASTINGS L.J. 1111, 1113 (1992). Yet there are ways that such roles can be enabling as well. For some, roles provide an opportunity to break through some of the alienation produced by law school culture, or by social institutions in which law school is embedded. On the liberating potential of lawyer roles for members of socially or politically subordinated groups, see Homer La Rue, *Developing an Identity of Responsible Lawyering Through Experiential Learning,* 43 HASTINGS L.J. 1147 (1992); *see also* Regina Austin, *Sapphire Bound!,* 1989 WIS. L. REV. 539 (propounding this view as to the roles of minority feminist legal scholars).

5. In relative terms, the most powerful wings of the profession, and most of the resources spent on legal work, are captured by the big institutional players that shape the nation. In addition, the legal profession has historically supplied a significant proportion of top management for big corporations. *See* Robert W. Gordon, *The Independence of Lawyers,* 68 B.U. L. REV. 1, 31 n.88 (1988) and source cited therein.

For the view that gentlemen-lawyers in New York City are responsible for, and profit from, the unmerited privilege, the discrimination, the oppression of the poor, that is around them, see Peter M. Brown et al., *Professional Responsibility: Has the Rise of the Megafirms Endangered Professionalism?,* A.B.A. J., Dec. 1989, at 38.

lawyers' functions and social roles sells to each class of incoming lawyers an excused status. If harms were inflicted, disputing parties are responsible; if decisions have objectionable results or effects, they were made by judges; robbers are entitled to counsel at public expense, so surely robber barons are if they can pay the freight. Lawyers merely facilitate transactions, solve problems, make the legal system go. Lawyers' work is to provide the technical know-how by which clients pursue each other, and lawyers are explicitly absolved from the taint of their clients' evil ends so long as the means are "clean."[6]

Law schools' explicit instruction about responsibility delivers a similarly limiting message. Three overt curricular expressions coexist. The most common, and most vigorously criticized, is the application of legalism to "responsibility."[7] The teaching of what purport to be ethical rules for the legal profession lapses into an imitation of the legalistic methodology of the bulk of the curriculum. It is deadening, taught as ahistorical, apolitical, and removed from social contexts. It teaches students to regard legal relationships as separate from the world in which they exist, having no history and no ramifications for others or for social institutions. The effect, and it is fair to say the effort, is to separate the lawyer and her own ethical sensibilities from the broader social world in which she will function.[8]

A second approach is professionalism. It proceeds from a broader notion of lawyers' role, making reference to sociohistorical context, and extolling the positive role of lawyers in shaping society. From this vantage point, it makes a call on lawyers to act in the public interest and enact American liberal-democratic political ideals of inclusion.[9] Some

6. *See, e.g.,* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2(b) (1989) (a lawyer's representation "does not constitute an endorsement of the client's political, economic, social or moral views or activities").

7. This turn has been criticized by many thoughtful observers of legal education. *See, e.g.,* Theresa Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility,* 43 HASTINGS L.J. 1175, 1175-76 nn.3-4 (1992).

8. This facilitates the process described by Theresa Glennon, in which students come reinforced in the notion that morality is a merely private matter. *Id.* at 1176-77.

9. For the narrow purpose of delimiting this category, let me note that this rubric catches what is otherwise a wide and divergent range of voices on the content of "professionalism." *Compare* MODEL CODE OF PROFESSIONAL RESPONSIBILITY pmbl. (1983) *and* ABA COMM'N ON PROFESSIONALISM, "IN THE SPIRIT OF PUBLIC SERVICE": A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986) (illustrating the ceremonial rhetoric of the American Bar Association) *with* DAVID LUBAN, LAWYERS AND JUSTICE (1988) (adherents of "purposive lawyering"); Frank I. Michelman, *Foreword: Traces of Self-Government,* 100 HARV. L. REV. 4, 36-47 (1986) (a revivalist of the 19th century notion of "civic virtue") *and* William Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics,* 1978 WIS. L. REV. 29, 61-91.

purveyors of professionalism have the aggravating tendency to speak in noble abstractions. They speak of the responsibility of "the legal profession" to represent "the poor," a plea that is made personal for most of the bar only when the prospect of mandatory pro bono looms.[10] One further note in the chorus urging a return to halcyon days of a public-regarding legal profession, is the concern that the practice of law has become overly commercialized, a business rather than a "profession."[11]

A third avenue for addressing lawyers' responsibility that has ventured into law schools is a kind of pragmatics. Its focus is to render ethical dilemmas of law practice more relevant, interesting, or compelling by grounding them in actual practice. It may take the form of classroom-based problems, or, as in recent years, it may serve as an argument for the recognition of clinical courses in the core curriculum.[12] While incarnations of this spirit may be concretely helpful to some poor people in that some real legal services may be offered through law school clinics or required pro bono programs, the larger effect of the approach is to

10. For a review of the unsatisfactory performance of most voluntary pro bono efforts, see Esther F. Lardent, *Mandatory Pro Bono in Civil Cases: The Wrong Answer to the Right Question,* 49 MD. L. REV. 78, 88-92 (1990). Many mandatory pro bono requirements are motivated primarily by the sense that the critical shortage of legal services to indigents denies them "equal access to the justice system." *See, e.g., id.* at 83; ACTION PLAN, *supra* note 1. Increased numbers of Americans living at or below the poverty line, compounded by society's greater legal complexity and the decline of federal funding for civil legal services, compel a sense of urgency and renewed commitment for some elements of organized bars. *See, e.g., id.* at 1-2, 4, 17.

Without detracting from the intention and effect of the efforts of many pro bono attorneys, one may observe that the conception of pro bono as the bar's response to this emergency is a limited, and limiting, one. In important part, it assumes: (1) that effective attention to the sharp encounters of the poor with legal matters is to be accomplished through representation of individual claims—and thereby detracts from the perception and redress of legal operations that unduly burden people who are poor; and (2) that these claims are pressed through the episodic charity of lawyers. A full critique is beyond the scope of this piece.

11. The concern serves as an added rationale for mandatory pro bono proposals. *See, e.g.,* ABA COMM'N ON PROFESSIONALISM, *supra* note 9; Barlow F. Christiensen, *The Lawyer's Pro Bono Publico Responsibility,* 1981 AM. B. FOUND. RES. J. 1 (arguing from the profession's tradition of service and from lawyers' monopolistic role in the justice system); David L. Shapiro, *The Enigma of the Lawyer's Duty to Serve,* 55 N.Y.U. L. REV. 735 (1980) (arguing for a hortatory "duty" proceeding from traditional ethical aspirations, rather than prescription); David Luban, *Mandatory Pro Bono: A Workable (and Moral) Plan,* 64 MICH. B.J., Mar. 1985, at 280-83 (emphasizing that lawyers contribute directly to the problem of unmet legal need through the self-selected allocation of their privileged status to affluent clients in an adversarial system).

12. Indeed, this was one of the selling points made by the special faculty committee chairman appointed to review the initial development of the LTP courses. ("We have been looking for ways to enhance the teaching of professional responsibility, and [here is a proven method].")

contribute to the marginalization of poor people in the curriculum.[13] Exhorting students to the pragmatic quick-fix approach to isolated legal problems of poor people does not promote, and actually discourages, lawyers' attention to the systemic hostility of law's operation to poor people.

None of these three visions of professional responsibility renders a picture of the world, or of lawyers' work in it, that reaches the nub of "responsibility" to which the LTP courses are directed.[14] What each lacks is concern with the deepest question lawyers' work poses: Who should I be?, or who should I become?[15] This is, of course, a lifelong inquiry. In LTP courses, which occur early, but briefly in our students' legal careers, the question takes a more specific form: Who am I in relation to poor people?

II. Responsibility in Legal Theory and Practice

All LTP courses require that students bear responsibility for some legal work involving them in the lives of clients in some productive sense. In my view, this offers a window with three frames that open for students both outwardly—onto the gritty material and socially constituted world—and inwardly—onto that stream of beliefs, values, and meanings swirling in each of us. First, LTP courses insist that students look full face on the operational meanings of law for poor people, clients and those similarly situated to our clients—the silent others who are not now and are not likely to be assisted by a lawyer to privately seek redress. This frame represents the obligation to investigate the effects of the legal system upon the poor as well as the nonpoor.

13. *See* Boldt & Feldman, *supra* note 4, at 1130.

14. Legalistic rules of the profession fail to provide an answer, and when they fail, the student learns experientially the weight and waffle in rule-following. Reference to systemic role notions eventually fail to rationalize and reconcile contradictory currents of knowledge about the manipulation and enforceability of law, and collapses into cynicism, relativism, or "mere politics." Pragmatism requires a response to the "problem" now, and slowly snares one into a view of lawyers' work as solving problem after problem, without the capacity or need to ask more deeply about their sources.

15. Gerald Frug's observation expresses my own view: "Answers to these [fundamental] questions may be tentative and contestable, but no one, in my view, actually experiences the task of answering them as meaningless or arbitrary." Gerald Frug, *Argument as Character,* 40 STAN. L. REV. 869, 876 (1988) (citations omitted). I am grateful to Howard Lesnick for this reference.

For an application of a similar conception to lawyers' professional identity, see Thomas L. Shaffer, *Inaugural Howard Lientenstein Lecture in Legal Ethics: Lawyer Professionalism as a Moral Argument,* 26 GONZ. L. REV. 393, 409 (1990/91).

Second, students are expected to contemplate seriously what responsibilities follow for themselves, in light of their knowledge of the operations of the law and their privileged place as lawyers therein. This frame represents the obligation to ask and answer: What actions ought I to take on behalf of poor and powerless people?

Third, this knowledge is utilized to reexamine theory, to search out the values implied and expressed in the customary categories and explanations of the law implicated by the needs and consequences identified. This frame represents the obligation to forge alternative responses.

These frames, together, form the nub of an enhanced pedagogy of responsible law practice. I focus here on the first and second frames, and I refer readers to the essay by my colleagues Richard Boldt and Marc Feldman for one operational account of the third frame. My experience teaches me that all three must proceed together in forming an actualized ethic for our students to employ themselves and their practices on behalf of poor people. Neither the knowledge of cruel or unfortunate systemic effects on people, nor the invention of responses to poor people's legally described needs, move into the world of action without the predicate decision: I will.

A. Responsibility and the Investigation of Law's Links to Poverty

The will to view one's responsibility as linked to others' impoverishment and disadvantaged status, has scant observable support among lawyers. Certainly as evidenced in the standard law school curriculum, the legal profession is not particularly curious or concerned about the material conditions or life chances confronting poor people. Nor is it anxious to see its own complicity in powering the engines of the law that do the business of lawyers' paying clients.[16]

16. The fusion of legalism and professionalism that predominates legal education features duties to fulfill obligations created by some aspect attributed to the individual professional—e.g., by her undertaking a lawyer-client relationship, or perhaps by her obtaining a special license in society vis-a-vis the justice apparatus. This conception of responsibility assumes a society of separate selves, and creates a picture of moral decisionmaking as a framework by which an individual can know at discrete moments how to make rational decisions.

In contrast, the relational conception of responsibility discussed in the following piece by Theresa Glennon, assumes connectedness among people: a type of consciousness, awareness, or sensitivity that *we* can affect another person's life, and that each of us carries the responsibility not to harm others. This notion is not bounded by moments of decision in the way the first is; it is rooted in the need to take cognizance of social connections, perceiving people in their own terms. *See* Nona Plesser Lyons, *Two Perspectives: On Self, Relationships and Morality, in* MAPPING THE MORAL DOMAIN 21, 22-23 (Carol Gilligan et al. eds., 1988).

Prevalent cultural assumptions encourage us to see ourselves as helpless in the face of accelerating poverty.[17] From this acculturated vantage, we see most immediately the overwhelming odds stacking the deck against legal action, and legal theorizing, on behalf of the poor. This perception is so full in our faces that, unattended, it crowds out recognition of human suffering, of visceral injustice, as well as the impulse for change.[18]

I believe a central task of LTP courses is to equip students to recognize and break down the rhetoric of poverty, which operates as a key element in the distancing between student and client of which my colleagues speak. To do this, it is necessary to break through students' disconnection from the context of their clients' lives, to create a connected way of knowing something of the crush of poverty and its entanglements with the law.[19] This entails forging a "reconstructed knowing"[20] of the social world, and of its primacy in comprehending law, which otherwise tends to be obscured by the dissection of law into insular subjects, and the separation of theory from practice.

One effort to do so is illustrated by the LTP/Property course.[21] The unifying work of the course was to identify the problems experienced by poor tenants in obtaining fair results in one particular legal institution,

17. *See* Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness,* 79 GEO. L.J. 1499 (1991).

18. For legal professionals, this attitudinal training is crippling in two ways. First, one is helpless as an individual, in the sense that poverty is huge, complex, and intractable, so that surely our actions make no dent. Second, our socially constituted roles as lawyers do not equip us to respond (i.e., we are without the power or authority to deal with the issues). *Id.* at 1509.

Authority, in the standard conception of lawyers' roles, is vested in agent-lawyers by clients or, in occasional circumstances, by virtue of the tradition that a lawyer is an officer of the court. Both notions omit virtually all poor persons, who are clients relatively infrequently. BARBARA CURRAN, AMERICAN BAR FOUND., REPORT ON THE 1989 SURVEY OF THE PUBLIC'S USE OF LEGAL SERVICES (1989). To different degrees, both notions affirm that there is no "bystander liability" for the one class of persons specially educated to make the justice system go.

19. As Theresa Glennon notes, not all of our students are as removed from this reality as the text suggests. For some, such knowledge is first-hand; for others, it is gained through work or life experiences. But the possession of such knowledge does not mean that it is readily drawn upon, or spoken of, in class discussion. It is much harder to say whether such experience figures in these students' developing basic frameworks. Glennon, *supra* note 7, at 1184.

20. This phrase was suggested by Kathleen Ann Sullivan, citing MARY FIELD BELENKY ET AL., WOMEN'S WAYS OF KNOWING 131-52 (1986), to express the process in which one relates information learned, tests information against experience, and translates this interior learning for use in external settings where it can be compared against external normative understandings. *See* Kathleen A. Sullivan, Self-Disclosure, Separation, and Students: Intimacy in the Clinical Relationship (1991) (unpublished manuscript, on file with author).

21. The course, taught to 24 first year students, was a joint venture with colleagues Richard Boldt and Everett Goldberg. It spanned January through May of 1990.

Baltimore's Rent Court, and to propose means to redress them. The course began with a substantial effort to redefine the subjects and methods for classroom learning. The legal rules governing landlords and tenants, and a basic sense of their operation, were presented through a series of counseling exercises conducted and analyzed in class. Students spent considerable time and energy each week applying this knowledge to legal work on behalf of indigent tenants. In the early weeks of the course, students participated in the representation of tenants in warranty of habitability cases in the court. On one level, this served as intensive training as to the local rules, practices, and players. Beyond this, students' work took them to clients' homes and streets, where in the course of interviewing and investigating, they heard from clients, met their clients' kids, felt the winter cold and damp of ramshackle rowhouses, saw what passed for dinner, and for Christmas. Being specially invited, as law students, into households in which there is no phone, no steady job, beds in the "dining room," and barely enough money for the rent, provided an essential basis for the responsibility conversation described below.

Thereafter, students conducted a highly structured court observation study, conducted detailed exit interviews with over one hundred tenants concerning their experiences with the court, and provided *pro se* counseling to countless tenants in the court house. The choice of legal work with a systemic focus was an intentional effort to better equip students to see beyond experience with individual clients, which is often positive and empathic,[22] to reach the negative stereotypes about "the poor" that are promoted by contemporary poverty rhetoric. Small group discussion sessions, which provided the forum for uncovering the value premises of both the legal materials studied and of the law-practice data generated by the students' work in the court, were the front line for student attention to the attitudes and values piqued through meeting tenants and learning about the contours of tenants' lives through the more formal information-gathering of the court-watching and exit interview projects.[23]

22. And thus relegated by many students to the margins of their understanding of law and of poor people (e.g., "My client is atypically likeable, hardworking, and deserving."). *See* Boldt & Feldman, *supra* note 4, at 1118-19.

23. To provide structure for students' field observations, course materials included multidisciplinary readings concerning low-income housing, poverty, and the differential operation of law and legal institutions for poor people. "Poverty" was examined as a matter of legal definition for purposes of benefits programs; as variously framed by sociologists in scales of income and structures of opportunity, education, and other statuses; and as experienced by people unemployed, employed at wages below the poverty line, "disemployed" by plant closures, or foreclosed from employment by any combination of the many circumstances that burdened as much as 15% of the population during the economic "recovery" in the mid-1980s.

Field investigation of this kind presents the vehicle through which students' knowledge of "law" is reconstructed. They begin to understand law as an operation, a network of relationships, dependent upon an array of complicated social facts scarcely conjured by words like "poverty," "welfare," "tenant," or "unemployed." Social facts and relationships are not accounted for by neatly categorized principles of law. New knowledge is created, in part just by virtue of having to act in the world,[24] and in part by the intellectual effort to meld these interpersonal and hands-on learning encounters with study materials (readings that offer factual depictions of poverty; sociological data on links between poverty, race, employment, and wage structures; and comparable material particular to the practice setting in which the students engage).[25] The method yields a qualitatively different way of knowing. The ways in which legal concepts are understood after they have been used in the scrutiny of a legal institution and in counseling *pro se* tenants therein, are not the ways they were understood from diligent bookish study.

While the reconstructed knowing that may be accomplished through investigation of the law's effects on poor people is a necessary predicate, it is not an adequate substitute for students' wrestling with the direct question of one's own responsibility to the poor and unrepresented.[26] Here is where the conversation can get dicey.

Peter B. Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor,* 39 HASTINGS L.J. 1, 11 (1987).

24. This role performance triggers perception, feeling, intuition, and cognition, which combine in new ways, producing knowledge at different levels of awareness, complexity, particularity, and immediacy. *See* Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as a Methodology, in* CLINICAL EDUCATION FOR THE LAW STUDENT 374, 382 (Council on Legal Education for Professional Responsibility, Inc. ed., 1973).

25. *See supra* note 23.

26. Here I do not mean to resolve the ongoing debate about the degree to which legal education shapes student values, perceptions, and careers. While many critics assume that this is so, for example Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy,* 32 J. LEGAL EDUC. 591 (1982), *reprinted from* THE POLITICS OF LAW (David Kairys ed., 1982), and ROBERT V. STOVER, MAKING AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL (Howard S. Erlanger ed., 1989), much of the empirical research on law student attitudes treats market forces as a stronger influence than experience in professional school. *See, e.g.,* Kenneth H. Barry & Patricia A. Connelly, *Research on Law Students: An Annotated Bibliography,* 1978 AM. B. FOUND. RES. J. 751; E. Gordon Gee & Donald W. Jackson, *Current Studies of Legal Education: Findings and Recommendations,* 32 J. LEGAL EDUC. 471 (1982); Lawrence K. Hellman, *The Effects of Law Office Work on the Formation of Law Students' Professional Values: Observation, Explanation, Optimization,* 4 GEO. J. LEGAL ETHICS 537 (1991); Thomas E. Willging & Thomas G. Dunn, *The Moral Development of the Law Student: Theory and Data on Legal Education,* 31 J. LEGAL EDUC. 306, 342-43, 358 (1981). Regardless of whether law schooling generally produces value changes of the kind and extent claimed, my remarks presume that conscious inquiry into the

B. Responsibility and Poverty in Moral Conversation

The premise undergirding the Cardin Report directive[27] is that each lawyer is implicated in the structures of law and their consequences, which privilege certain interests at the dullingly regular expense of impoverished others. This premise of responsible connectedness is a moral position, a core question-and-answer for living one's life. By lodging the question perpetually in the life of each "responsible" lawyer, it responds to the question posed earlier: Who am I in relation to poor people?

The perception of obligated and responsive connectedness is not a stance that has immediate widespread appeal. It is discouraged by the individualist tradition dominant in legal culture and in the larger culture as well.[28] Furthermore, we all have much more experience of ourselves as innocent, than we have impulses to see ourselves so connected as to be implicated in others' oppression and vulnerability. It is others who jail people, evict people, set the benefits levels, and create the cultural disdain for "the undeserving poor."[29] Isn't it? Unlike most of law schooling, LTP courses invite students to reexamine this comforting conclusion.

Students' reported experiences in Socratic classrooms suggest that one of the first lessons learned in law school is to witness others made to suffer and be forced to stand silent in the face of that suffering.[30] The instruction to hold one's tongue in the law school classroom "prepares one to [tolerate] the suffering that one sees out in the world."[31] If law school delivers the lesson that compassion must give way to process, little

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meanings and effects of one's actions nourishes the link between cognitive and moral development, and that it is important and positive for this to be made a feature of legal education, given the paucity in law schools of any emphasis on ideas like personal values or commitments. For a thoughtful review connecting the works of developmental education theorists William Perry, Karen Kitchener, and Patricia King to the branches of moral development theory associated with Lawrence Kohlberg, Carol Gilligan, and Norma Haan, respectively, see Paul T. Wangerin, *Objective, Multiplistic, and Relative Truth in Developmental Psychology and Legal Education,* 62 TUL. L. REV. 1237 (1988).

27. *See supra* note 1.

28. *See* Glennon, *supra* note 7, at 1175-76. Howard Lesnick offers the view that the notion that "private" choices are inappropriate for conversation outside familial circles is rooted in the human practice throughout history of punishing people for holding perspectives that are unpopular or diverge from dominant ones. Howard Lesnick, *The Wellsprings of Legal Responses to Inequality: A Perspective on Perspectives,* 1991 DUKE L.J. 413, 445.

29. For a history of this notion in the social policies of the United States, see Joel F. Handler, *"Constructing the Political Spectacle": The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History,* 56 BROOK. L. REV. 899, 906 (1990); *see also* Martha L. Fineman, *Images of Mothers in Poverty Discourses,* 1991 DUKE L.J. 274 (1991).

30. James R. Elkins, *Pedagogy of Ethics,* 10 J. LEGAL PROF. 37, 58 (1985).

31. *Id.*

wonder that many students acknowledge so little about the functions and effects of legal arrangements in the society.

The classroom example illustrates a fundamental aspect of social conditioning about responses to wrongs. It presents the sort of moment when, squirming under the discomforting weight of whether to object or accede to an exercise of disproportionate power, one perceives the individual who is suffering, or the social system that enables the harm. Some may respond through empathy with identifiable other persons—the victim or victor. Others may, instead, perceive the net of socially allocated resources—such as power, authority, self-possession, and confidence in the classroom example—in which the suffering one is now ensnared.

Law students' work with poor clients offers parallel problems of perceptual focus. Numerous clinical students in any given year develop empathic, caring, identifying relationships with their clients,[32] across culturally significant boundaries of race, class, gender, and related life circumstances. However, too seldom does this privatized relational experience work its way into students' awareness of the ideological and sociocultural constructs of the legal world in which they move.[33]

Venturing into a poor people's law practice in Baltimore makes vivid for LTP students that ours is a world marked by wide disparities in the distribution of money, of political power, and of personal opportunity for making significant life choices. Many LTP students observe firsthand that the social system that accomplishes these distributive outcomes is supported by legal rules and institutions that take little or no account of their clients' justifiable claims. This discovery opens students to consider the challenges thus posed to social and legal arrangements they now see as problematic.

The LTP/Property students discovered in Rent Court, not the neutral body adjudicating conflicting factual or legal claims rendered by

32. Perhaps these are more precisely described as student feelings for their clients, rather than as reciprocal relationships.

33. Here lies the most troubling counterweight to the long-standing argument that experiential education is important *because* bearing responsibility for client work is an inherently synthesizing and motivating methodology that breathes real life into the bread-and-butter ethical dimensions of lawyers' work. While this is potentially true, it is an insufficient predicate for the LTP courses. Clinical legal education, without more, focuses in a self-absorbed way on lawyer performance and on assessment of clients' problems and case outcomes as defined by the laws, procedures, methods, and culture owned particularly by the legal profession and the interests it serves. In this respect, it may be more like than unlike much education that occurs after graduates join law firms.

For a helpful review of research on the relation of legal education to personal and professional values, which notes the paucity of information on the effects of law school clinical experience in socializing students for professional responsibility, see Hellman, *supra* note 26.

their other first-year courses, but instead a forum operated for the speedy and convenient collection of rent by landlords, at taxpayers' expense. To the surprise of several students, few tenants they met were scofflaws. Many struggled each month to pay some sixty percent of their meager household incomes to rent hovels, and the effort to scrape it together each month left little time, energy, or expectation that telling the judge about the trouble with the heat and the leaky pipes was likely to make much difference.[34]

Students' reactions to the poverty, the people, and the legal responses they encountered, created numerous openings for conversation between teacher and student about the possible meanings for their responsibilities as lawyers. Most students departed the course with a sharper awareness that to be poor in Rent Court meant as little, and as much, as the utter inability to raise another fifty dollars from family or friends.[35] This led to some introspection far removed from the ordinary discourse of the classroom. Some students shared moments of surprising candor. "I never would have believed one could work so hard, and still make so little." "He needed that sum to avoid an eviction; I spent that much on the weekend, and I can't even think what it was for." "It occurred to me to wonder, can I stand outside the courtroom and talk with one more tenant, wearing a ninety-eight dollar 'barn jacket'?"

The day that tenants waited in line for advice from the white law students, believing the black law students must be tenants too, provoked pained and halting efforts later to express aloud the differing perceptions within the group about the links between race and the maldistribution of resources about which we shared some data: access to habitable housing, to lawyers, to law school. Others wrestled with the ways they saw themselves as like, and not like, the tenants with whom they worked.[36] Each

34. A full account of the students' investigation of the court and the differential burdens it places on tenants to vindicate their claims of rent-impairing conditions, as compared to the smooth facilitation provided landlords, is recounted and analyzed in Barbara Bezdek, *Silence in the Court: Subordination and Participation of Poor Tenants' Voices in Legal Process,* 20 HOFSTRA L. REV. (forthcoming 1992).

35. Along the way, discussion in my LTP courses has included the existence and power of poverty myths, including those declaiming who is poor and why; the adequacy of welfare grants; the supposed ease of life without work; and the purported safety in the social security net.

36. One student described the bond she felt on a deep level with her client, who, while the same age as the student, lived a life the student thought was "almost impossible for me to imagine." The student came from a family of lawyers. Her client was the mother of and primary provider for six, who had lived her entire life "as a poor woman" in the hardscrabble neighborhoods of South Baltimore. The student sought to make a personal connection between them through their lawyer-client relationship, "hoping, perhaps, to better understand both of us."

of these is, I contend, a form of inquiry into the moral dimensions of one's lawyering.

Conclusion

Up to this point, my effort has been to describe a method by which students are launched into searching investigation and scrupulous reflection concerning the meanings of poverty for lawyers in the 1990s. I must acknowledge several barriers to having this conversation with students, in a required course.

The inquiry is discomforting. It threatens our experience of innocence. In our culture, one's real thoughts on moral questions are presumed to be private, reserved to circles of one's own selection. It is unfamiliar to regard the relation of teacher and student as mutual in such a sense. There is little vocabulary to help us have this conversation. There is a certain contemporary resistance to reflectiveness. The dominant socialization depicts lawyers as pragmatic problem-solvers who get things done, not poets who wallow in angst or therapists whose expertise is empathy.[37] For faculty members, it is worrisome to press the responsibility question to students in its personal form. To do so crosses a barrier of practice and perceived propriety about the bounds of teaching.[38] It is more familiar to rephrase the question in its abstract and absolving versions. Should our state adopt a mandatory pro bono requirement? Are there circumstances in which it is moral to disclose confidences? Can we identify ways that property and contract doctrines reify and celebrate conservative social views that attribute inequalities in status, bargaining power, or wealth-accumulation to the talents and abilities of individuals?

To retreat to abstraction avoids the common response for many students, when the conversation impinges on the moral dimensions of the work, to feel that one's own moral weight and worth is being questioned by the faculty member and that this is out-of-bounds. Students doubt that such questions are fair for a teacher to ask, and may confuse a teacher's attention to their decisionmaking process with some ultimate

37. Being practical directs focus away from the impacts of feeling, personality, life circumstances, or nonlegal moral fixtures like the resurgence of religion evidenced in the lives of many contemporary law students. The approach depicted by Theresa Glennon attempts to solve this problem by making explicit the reality, and pertinence, of these aspects in students' explorations. She makes an invitation to moral discourse and to visions of law practice filled with the potential for deep connection rather than dissociation. *See* Glennon, *supra* note 7, at 1179.

38. However, these bounds have been set by a limited notion of teaching as transferring units of knowledge. Other bounds are needed where the teaching objectives are expanded as in our LTP courses.

judgment about their merit as responsible persons. Thus, it is necessary to answer the unspoken premise that this interior conversation is personal, private, or otherwise not relevant to the students' professional training.

At this juncture, I conclude that such an answer must be in form and substance, an invitation.[39] One can offer to students the view of each lawyer bearing responsibilities to the poor, a world view from which to see oneself as making choices that have consequences both for oneself and for others.[40] I find it is possible to meet others in such conversations, not in argument so much as in a kind of discipline of moral consciousness. It is no use to insist or expect that students see the social world and its moral universe as I do.[41] Yet, I can ask that they take seriously the counter-pictures of the bonds among law, poverty, and practice that I offer. In conversations where we tell each other where we stand, what we believe, and explore what we should do, there is the perhaps unexpected opportunity to be reinforced—in the sense of discovering that we are not in the world by ourselves. Especially when we engage in this conversation with others who hold very different views, we may find that there is more to account for than to assume.

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39. For a breathtaking elaboration of this idea which, if heeded, should revolutionize the legacy of Socrates in legal education, see Emily Fowler Hartigan, *The Power of Language Beyond Words: Law as Invitation,* 26 HARV. C.R.-C.L. L. REV. 67 (1991). She proposes that:

> The invitation of law is beyond words . . . . It is as simple as Socrates' notion that justice in the soul, justice in the republic and justice in the world are of one form . . . ; it is as complex as the attempt to say a truth that resides in the whole of the universe . . . . As Socrates said that the only real power is the power to persuade another to do the right thing for the right reasons, . . . [and] that persuasion is a gentle draw, more than a compelling force, an invitation more than a command.

Id. at 75, 89.

40. It is a difficult teaching problem to create the space in which this sort of conversation occurs. By "space" I mean more than its implication of a free or safe zone; I mean to include both conceptual capability and the will to relax the reflexive grip on familiar obscuring premises. I have found it to be extremely hard to keep this space open where it is most needed, namely, at precisely the point in the analytic process where arguments are fully stated and valuing is necessary to complete the process of analysis.

41. No teacher can wholly prescribe or overcome adult students' perspectives on the world. Neither the petty coercions of academic settings, nor even the power of rational argument, can do more than silence, temporarily, contrary beliefs about the world. *See* Lesnick, *supra* note 28, at 442 (suggesting that when we put forward our logical and rhetorical constructs in dialogue, we expose these, intentionally, to some degree of risk, challenge, and change). But these are proxies for more basic beliefs to which we are deeply attached, and which we reserve from that arena of exposure and risk. Most of us are unable to surrender our most cherished beliefs even in the light of a felt compulsion from reason to do so. *Id.* at 443. The degree to which any student takes to heart the discipline I espouse is, by necessity, her own doing.

Standing where I do in students' legal careers, I am fortunate to see some evidence of students learning that the choice is meaningfully theirs not to close out the poor and underrepresented of their communities. This is the initiation of an interior conversation about the deep contours of the professional life the student contemplates, and can yet fashion, if she will.