EDUCATION FOR A PUBLIC CALLING IN THE 21ST CENTURY

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A decade ago, an issue of the Association of American Law Schools' Journal of Legal Education[1] was devoted to ruminations on selecting lawyers for the twenty-first century. Although some of the papers in the Journal issue offered congratulatory messages to legal educators and the Law School Admissions Council for their work,[2] others more critically assessed legal education and the admissions process, warning of an impending "mid-life crisis"[3] caused in part by an unreflective period of maturation. Focusing on two decades of "applicant explosion,"[4] affording the conscious creation of "a more intellectually elite profession,"[5] a number of the authors who submitted papers wondered whether law schools and law faculty had acted responsibly in exercising their monopolistic power to determine who will be able to practice law[6] and what will be taught. The collection of Journal articles generally reflected a self-conscious recognition that not only the test-taking process of identifying who enters law school, but also who teaches and how we teach deserved deeper introspection. One commentator—a non-

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1. Symposium, *Law School Admissions in the 21st Century*, 34 J. Legal Educ. 343–478 (1984).

2. *See, e.g.*, Thomas O. White, *LSAC/LSAS: A Brief History*, 34 J. Legal Educ. 369, 371–73 (1984); Calvin Woodward, *Justice Through Law—Historical Dimensions of the American Law School*, 34 J. Legal Educ. 345, 362–368 (1984); Craig W. Christensen, *Is It Really Better to Be Smart Than Passionate?*, 34 J. Legal Educ. 426, 428–429 (1984); Bruce I. Zimmer, *Survival after the Boom: Managing Legal Education for Solvency and Productivity*, 34 J. Legal Educ. 437 (1984).

3. Shirley S. Abrahamson, *The LSAT for the 21st Century*, 34 J. Legal Educ. 407, 411 (1984) (criticizing LSAT and law faculty for unduly focusing on intelligence and not on other qualities important for the practice of law).

4. Walter B. Raushenbush, *Law School Admissions, 1984–2001: Selecting Lawyers for the* 21st *Century*, 34 J. Legal Educ. 343, 343 (1984).

5. *Id. See also* Howard S. Erlanger, *Towards a Sociology of Law School Admissions*, 34 J. Legal Educ. 374, 374 (1984) (admissions process produces group of students who represent an elite in terms of prior academic accomplishments which are in fact highly correlated with certain social characteristics).

6. *See, e.g.*, Woodward, *supra* note 2, at 362 (major way one becomes qualified to take the bar examination is by attending a law school); Erlanger, *supra* note 5, at 374 (law school admissions is first hurdle). *But see* Erlanger, *supra* note 5, at 377 (there is self-selection by applicants).

lawyer—posed a question ripe for contemplation at that time: "What *is* a good lawyer?"[7]

I believe that we have an opportunity to define good lawyering for the twenty-first century as a public calling which emphasizes a professional obligation to promote equality in the legal system. It is at least as important for legal educators and practitioners to consider the kind of education which responds to such a public calling as it is for us to consider how to provide skills training for the development of competence in the practice of law.

In the decade since the Journal issue, in law reviews, conferences, and symposia, individuals in legal academia have forcefully challenged the established orthodoxy of legal education. Legal educators have been more willing to confront how legal education has failed. It has become acceptable, for example, to question the necessity for distanced, hierarchical training in law school.[8] Drawing upon the writings of Carol Gilligan and other feminists in writing and teaching, legal educators began to wrestle with the law's devaluing of caring and nurturing as desirable qualities and related that devaluing to the unconscious silencing of some students.[9] Other scholars, influenced by post-modern writing in other disciplines, offer new perspectives on client counseling and critical reflections on how lawyers choose to respond to clients' world views.[10] In part as the result of the clinical movement, which was only beginning to emerge at the time of the Journal of Legal Education's symposium,[11] there is now greater willingness by some law teachers and scholars to connect theory and practice, challenging not only how we study and

7. Robert Coles, *The LSAT—Reflections on an Experience*, 34 J. Legal Educ. 412, 422 (1984); *see also* Abrahamson, *supra* note 3, at 409 (we are uncertain about the kind of lawyering skills or traits we want to find in lawyers). Not surprisingly, Coles was chided for his remarks by another participant. Christensen, *supra* note 2, at 427–29.

8. *See, e.g.*, Theresa Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43 Hastings L.J. 1175, 1177 & nn.11–12 (1992).

9. *Id.* at 1179 n.22.

10. *See, e.g.*, Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 Cornell L. Rev. 1298, 1299–1302 (1992) (lawyer's role to empower and not to subjugate client; does not silence but seeks to enhance the speaker's voice by adding own); Anthony V. Alfieri, *Stances*, 77 Cornell L. Rev. 1233, 1233 (1992) (literature on lawyering has revealed "a sociological world of lawyer/client discourse . . . that is contested"; in this world knowledge of lawyer is partial). For a more recent example of how these and other writers have drawn insights from the narratives of clients which challenge traditional models of legal ethics and service, *see* Symposium, *Critical Theories and Legal Ethics*, 81 Geo. L.J. 2457–2726 (1993).

11. The AALS Section on Clinical Legal Education is today one of the largest sections with a membership of nearly 600. In 1992, the AALS held a day-long program on "Theory and Practice: Finding Bridges to the Classroom" which drew approximately 400 law faculty.

teach but also how we practice law.[12] These efforts and the efforts of others, such as scholars who are committed to formulating critical race theory,[13] have pressed us to explore how we as lawyers in teaching and in practice perpetuate the oppression against which we purport to defend.[14] Legal education in this way has begun to include the perspectives of clinicians and women and—more incrementally[15]—of people of color who have come to the academy with skepticism about the focus of legal education and of the traditionally recognized objectives and means of legal institutions.[16]

At least one of the commentators in the 1984 Journal of Legal Education issue expressed real doubt that law schools would seriously contemplate teaching lawyering practice skills such as fact-gathering and

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12. *See* Cunningham, *supra* note 10, at 1301 ("law has come to define the problems of ordinary people in ways that may have little meaning for them, and to offer remedies that are unresponsive to their needs as they see them." (quoting John M. Conley & William M. O'Barr, *Rules Versus Relationships: The Ethnography of Legal Discourse* 177 (1990)). Cunningham relates that "client" is derived from the Latin verb "cluere" (to be named). Because "advocacy is a practice of speaking for [the client,] . . . the advocate . . . inevitably replays the drama of subordination in her own work." *Id.* (citing Lucie E. White, Goldberg v. Kelly *on the Paradox of Lawyering for the Poor,* 56 Brook. L. Rev. 861, 861 n.2 (1990)).

For a description of the University of Maryland's programmatic effort to incorporate theory and practice and to press students to critically examine how the legal system treats underrepresented client populations by combining classroom teaching and field experience in service on behalf of poor people, *see* Richard Boldt et al., *Students and Lawyers, Doctrine and Responsibility: A Pedagogical Colloquy,* 43 Hastings L.J. 1107–86 (1992) [hereinafter *Colloquy*].

13. *See, e.g.,* Richard Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets and Name-Calling,* 17 Harv. C.R.-C.L. L. Rev. 133 (1982); Charles R. Lawrence III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus,* 1990 Duke L.J. 431; Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story,* 87 Mich. L. Rev. 2320 (1989); Kimberle Williams Crenshaw, *Race Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law,* 101 Harv. L. Rev. 1331 (1988). *See also* Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights,* 22 Harv. C.R.-C.L. L. Rev. 401 (1987).

14. Cunningham, *supra* note 10, at 1298.

15. *See The Legal Educator: Who We Are,* The Newsl. (Association of Am. Law Sch., Washington., D.C.), Feb. 1994, at 16, 16–17 [hereinafter *AALS Newsletter*] (over past four years percentage of minorities who are assistant professors increased from 19.5% to 27.3%; the increase in minorities who are full professors increased 1.6% in the last four years).

16. *See, e.g.,* J. Cunyon Gordon, *A Response from the Visitor from Another Planet,* 91 Mich. L. Rev. 1953, 1955 (1993) (one foot in both worlds of academia and practice).

As an example of the interest of law teachers in pursuing more socially conscious teaching methodologies, the Society of American Law Teachers has held two and planned three teaching conferences since May, 1993 devoted to "re-imagining" traditional law school courses at which faculty share ideas about teaching techniques and materials useful in addressing class, disability, gender, race, and sexual orientation, and ideas about integrating such issues of social concern into the curriculum.

negotiation in the classroom.[17] His conclusion that law faculty would continue to confine themselves to teaching conventional legal doctrine and analysis has been disputed. Nonetheless, notwithstanding the clinical and other efforts described above, controversy remains concerning how to construct an effective law school curriculum and provide a pedagogical focus which will adequately equip lawyers to respond to the social and economic needs of the new century.[18]

A decade after the Journal of Legal Education symposium, the Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (known as the MacCrate Report)[19] offers direction. It recognizes the educational strengths of clinical teaching but challenges law schools to do more. It warns that the survival of a "unified profession" depends upon law students acquiring certain skills and values in law school, as well as cultivating them later, when their practice has begun.[20] Legal education's institutional response to the MacCrate Report, particularly its reaction to the Report's Statement on Skills and Values,[21] has underscored its purpose to maintain a predominate role in defining the education of law students. It also reflects a diversity of views among law schools about the MacCrate Report's focus on providing standards for

17. Woodward, *supra* note 2, at 360–368. Historian Calvin Woodward observes that in contrast to legal education institutions in other nations, law schools in the United States train students for private practice and do not concern themselves with providing the public sector with experts in policy. Woodward concludes that the honing of analytic skills and the development of law reviews as outlets for critical scholarly analysis of law in American law schools provide special strength to lawyers and make a "formidable" contribution to America. *Id.* at 366. Contrast, for example, the position of Judge Harry T. Edwards, United States Court of Appeals for the District of Columbia, who has complained that much of the scholarship found in elite law journals is irrelevant to the practice of law and does not appropriately assist decision makers, or students. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession,* 91 Mich. L. Rev. 34, 36–57 (1992).

18. John Costonis chronicles the history of similar debates throughout the existence of American legal education. John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education,* 43 J. Legal Educ. 157 (1993). A related controversy concerns the criticism lodged by Judge Edwards that "elite" law faculties have become pre-occupied with "impractical" scholarship and have contingents of faculty who are "disdainful of the practice of law." Edwards, *supra* note 17. Judge Edwards lays responsibility on both law schools—in their move toward "pure theory" and law practitioners—in their move toward "pure commerce"—for losing regard for ethical practice.

19. Section on Legal Educ. and Admissions to the Bar, American Bar Ass'n, *Legal Education and Professional Development—An Educational Continuum* (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992) [hereinafter *MacCrate Report*].

20. *Id.* at 120.

21. *Id.* at 135–221.

assessing skills training.[22] Some of the comments concern whether in an environment of scarce resources support will be available for restructuring curriculum or for encouraging pedagogical innovation.[23] There is also suspicion that the practicing bar's purpose in supporting the Statement of Skills and Values is to promote a standards-centered framework for legal education which will have the effect of discouraging intellectual diversity and removing the critical edge of the academy.[24] Thus law schools have responded by reasserting their institutional autonomy to define the direction of legal education suitable for their faculty and students for promoting "the interplay between legal education and lawyering."[25]

This focus on establishing institutional autonomy in defining the place for skills-training can cause us to miss a critical opportunity—knocking for at least the past decade—to engage in serious reflection on how legal education can better contribute to the profession's conception of its public responsibility. Inequalities of service and of access to justice in the legal system have burgeoned despite tremendous growth and diversification of the profession in the last sixty years.[26] The MacCrate Report claims its vision of the skills and values to be acquired by new lawyers is built on an understanding of "the profession's relationship to

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22. The Association of American Law Schools endorsed the "opportunities for shared leadership and shared responsibility . . . of law schools and the organized bar for educating students and graduates to function responsibly in the profession." *Statement of the Association of American Law Schools on the MacCrate Report* (AALS Memorandum 93-32) (May 18, 1993) [*hereinafter AALS Statement*]. The AALS, however, emphasized that the Statement of Skills and Values should be viewed as a "work in process" and it should be "discussed, critically analyzed and progressively refined" (citing *MacCrate Report* at 327) and cautioned that it "not [be] used as a measure of performance in the accrediting process" (citing *MacCrate Report* at 132). The *MacCrate Report* is certainly not the first effort to acknowledge the disparity between what law students are taught in law school (even in the eighties and nineties) and what lawyers find important in their practice. *See, e.g.*, Frances Kahn Zemans and Victor G. Rosenblum, *The Making of a Public Profession* (1981) (survey found highly rated skills such as fact gathering, "instilling others' confidence in you," and negotiation skills lacking in legal education); Costonis, *supra* note 18, (chronicling debate about legal education).

23. *See, e.g.*, John Costonis, *supra* note 18, at 176–187 (1993) (elaborating on costs associated with Statement of Fundamental Skills and Professional Values if implemented and recognizing that not one of the 64 recommendations of the *MacCrate Report* speak to the issue of generating additional resources for the law school); *id.* at 196 (bar should bear more of burden of costs of legal education).

24. *Id.* at 187–189; *AALS Newsletter, supra* note 15, at 3.

25. *AALS Statement, supra* note 22.

26. *See, e.g.*, Boldt et al., *supra* note 12, at 1107–08 n.1, 1159 nn.1–2 (noting Maryland's requirement—in recognition of the inadequacies of the market system—that law students provide service to the underrepresented).

the American legal system."[27] Its conception of the lawyer's role and relationship to the system is grounded in the assumption that the manner in which law has been practiced during the years of growth, based on the ability of clients to pay for services, will continue.[28] While it also recognizes the significant role that private lawyers played in challenging Jim Crow and providing pro bono service to indigent clients in the past,[29] there is little to suggest that the profession itself was affected by those efforts and little consideration of the positive potential for a reconstruction of the profession or of a reformulation of its responsibility for the future.[30]

Until recently most legal educators had a similar vision: Business interests have driven how we train lawyers and continue to dominate our curriculum and our assessment of who we are. For example, in law school teaching we continue to view litigation as a means by which major social issues which cannot get a fair hearing may be brought to the public, "cast in the form of a private dispute."[31] We do not generally teach our students to view the law as capable of "influenc[ing] significantly the distribution of societal resources and power,"[32] nor do we encourage them to view the lawyer's role as reformist.[33] Thus, in the last decade discussions about unequal access to the legal system or lack of adequate representation centered on establishing and meeting affirmative action goals in law school admissions and faculty recruitment and providing pro bono assistance in the public interest without acknowledging or assuming more direct responsibility for our failure to

27. *MacCrate Report, supra* note 19, at 120.

28. The practice of law grew from a service activity estimated at $4.2 billion a year in 1965 to one estimated at $91 billion a year in 1990. *MacCrate Report, supra* note 19, at 18. The *MacCrate Report* states: " A striking feature of the changes since World War II has been the growth in demand for all kinds of legal services, particularly from the business community." *Id.* at 17.

29. *MacCrate Report, supra* note 19, at 47–57, 70–72.

30. For a discussion of the present posture of professional responsibility which views lawyers as disconnected from the social world, *see* Barbara Bezdek, *Reconstructing a Pedagogy of Responsibility,* 43 Hastings L.J. 1159, 1162 (1992).

31. Woodward, *supra* note 2, at 364.

32. Richard Boldt & Marc Feldman, *The Faces of Law in Theory and Practice: Doctrine, Rhetoric, and Social Context,* 43 Hastings L.J. 1111, 1111 (1992).

33. *See, e.g.,* Jane E. Schukoske, *Teaching Law Reform in the 1990s,* 3 Hastings Women's L.J. 177 (1992). For a description of innovative projects which have been undertaken by a loosely structured consortium of legal academicians from a variety of law schools and supported by the Ford Foundation, *see* Symposium, *Interuniversity Poverty Law Consortium,* 42 Wash. U. J. Urb. & Contemp. L. 57, 57–247 (1992).

promote social justice.[34] During the Nixon and Reagan years, when public financial support for legal assistance was curtailed and public-interest advocacy law filled some of the gaps of the legal system,[35] having lawyers voluntarily provide access for those unable to afford representation was generally accepted as a realizable goal of the private bar in fulfillment of its pro bono role. But the urgent problems associated with poverty today, and the effect of drugs and violence in society have led to a refocusing of public attention and an allocation of public resources markedly different today than in earlier times, affecting the capacity to provide adequate and meaningful legal representation to the poor.[36] The 1990s, moreover, have confirmed the reality of only measured economic growth in the future for law practice as well as other business, pressing firms to reassess what is necessary and what can be excised from budgets. Not only does this "economic turbulence"[37] create the risk that the Bar will be tempted to burden law schools with lawyer training costs,[38] there is also the risk that the profession will move even farther away from embracing an obligation to provide adequate services to those unable to pay for them.[39]

These economic and social developments should not be ignored when we give meaning to the tenet of professional responsibility "that every person in our society should have access to the independent professional services of a lawyer of integrity and competence,"[40] a notion which the MacCrate Report purports to flesh out in the Statement of Skills and

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34. Howard S. Erlanger & Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress,* 43 J. Legal Educ 199, 200–202 (1993) (describing projects in laws schools which grew out of critiques of liberal thinking about law's instrumental value in producing social change). *See, e.g.,* Bezdek, *supra* note 30, at 1162–72 (noting that the ABA has historically exhorted its members with little showing for it and arguing that lawyers should confront the fact that lawyers make the legal system function). *See also* Robert W. Gordon, *The Injustice of Lawyers,* 68 B.U. L. Rev 1, 31 (1988) (image of lawyers as agents without power).

35. Thurgood Marshall, *Financing Public Interest Law: The Role of the Organized Bar,* Address to the Award of Merit Luncheon of the Bar Activities Section of the American Bar Association (August 10, 1975), (*in MacCrate Report, supra* note 19, at 72).

36. An example of this shift in public policy is the Clinton Administration's treatment of welfare reform. *See, e.g., A Draft Proposal on Welfare Raises Cabinet Concerns,* N.Y. Times, Mar. 23, 1994, at A1. *See also, e.g.,* Reginald Leamon Robinson, *"The Other Against Itself": Deconstructing the Violent Discourse Between Korean and African Americans,* 67 S. Cal. L. Rev. 15, 25 n.23, 30–31 nn.43–50 (describing dominant class view that black poverty is a "victimizerless" social crime for which African Americans must take complete responsibility).

37. Costonis, *supra* note 18, at 195.

38. *Id.* at 195–96.

39. Some commentators have viewed voluntary pro bono efforts as unsatisfactory in any event. *See* Bezdek, *supra* note 30, at 1163 n.10.

40. *Model Code of Professional Responsibility,* EC 1 (1980).

Values. That tenet, however, concerns more than expanding the number of skills to which a student is exposed in law school and a young lawyer masters in practice. Giving meaning to this tenet for lawyers practicing in the twenty-first century requires us to do more than draw upon paradigms of lawyering for civil rights in the 1960s, when in the midst of economic prosperity we experienced a great expansion in the delivery of legal services, and when the legitimacy of protecting group interests was not questioned by the courts. The interpretation of the tenet must be made in the context of a legal system that is now seriously overburdened[41] and dysfunctional[42] for many citizens.

The determination of how best to provide our services and what qualities serve the interests of those who need them in light of this reality could lead to a reconstruction of the profession and a rethinking of the educational needs of lawyers entering the system. Thus, my view is that an effort to define lawyering as a "single public profession of shared learning, skills and professional values" which is focused on the past and not enlightened by serious contemplation of how changing social needs and economic constraints affect the profession is shortsighted and potentially unproductive.[43]

It is this concern which provokes some legal educators to emphasize the scholarly reflections which have already occurred and to promote dialogue concerning what it means to educate the lawyer for the twenty-first century. As the AALS has observed in its formal response to the MacCrate Report,

> [t]he education of lawyers must not merely involve the acquisition of knowledge and skills; it must include the cultivation of creative thinking and imagination, an appreciation of the commonality of the human condition, and the development of a sense of judgment

41. *See, e.g.,* Nancy Lewis, *D.C. Judges Try to Raise 3,200 Abused or Neglected Children,* Wash. Post, Jan. 9, 1994, at A1 (3,200 children now under long-term court supervision, all without a loving parent who can provide security and nurturing, and overwhelming every portion of the process); Denise-Marie Santiago, *A Voice of Neglected Children: The Caseloads Are Heavy and the Endings Aren't Always Happy. The City Is Under Court Order to Provide More Child Advocates,* Philadelphia Inquirer, Dec. 19, 1993, at B1 (demand for child advocates (lawyers and social workers) has burgeoned as poverty, violence, and drugs continue to wreak havoc with families; the need has become a critical issue for the city, which is under federal court order to provide representation for every one of its 10,669 dependent children by July 1).

42. *See, e.g.,* Cunningham, *supra* note 10, at 1301 ("law has come to define the problems of ordinary people in ways that may have little meaning for them, and to offer remedies that are unresponsive to their needs as they see them"); Austin Sarat, *". . . The Law Is All Over.": Power, Resistance and the Legal Consciousness of the Welfare Poor,* 2 Yale J.L. & Human. 343 (1990).

43. *MacCrate Report, supra* note 19, at 120.

> and responsibility. Hence, lawyering includes the ability to understand and to critique existing and emerging visions of the profession in relation to interdisciplinary and multi-cultural perspectives . . . .[44]

I believe that legal educators have been more willing than not to recognize that more than litigation-focused skills and case analysis are needed for our students and lawyers of the future.[45] Thus, although there are still tough issues concerning the predominate private practice orientation of our substantive law curriculum,[46] particularly in the first year when students become acculturated,[47] faculties have concluded that there is some obligation to teach skills. The teaching of skills to promote competency, however, is not all we should be concerned about.

In the Journal of Legal Education issue mentioned above, historian Calvin Woodward described the focus of American law schools on doctrine and analysis as a mark of distinction of American law schools, in contrast to others around the world, engendering in law faculty a critical perspective about law that promoted its healthy development.[48] Ironically, some of the writing that reflects the increasingly critical edge of members of the faculty that Woodward commended has also been criticized as irrelevant and not advancing the interests of practitioners and judges who seek thoughtful, but more doctrinal-focused information. It has also been said to foster alienation and cynicism among students.[49] A challenge facing some legal educators outside as well as inside law school clinics is how to translate their critical thinking into teaching which can foster in students a sense of urgency about the need for law reform and equip them to appreciate "the connection between legal rules, lawyers' choices, and the realities of law's impact on the lives of the poor."[50] This is a project uniquely suited to the law school educational environment, and it is here where leadership and direction is necessary to shape the profession of the twenty-first century.

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44. *AALS Statement, supra* note 22.

45. *See, e.g.,* Costonis, *supra* note 18, at 187–196 & n.11.

46. *See, e.g.,* Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum,* 37 UCLA L. Rev. 1157 (1990).

47. *See, e.g.,* Boldt & Feldman, *supra* note 32, at 1142–45.

48. Woodward, *supra* note 2, at 361–68.

49. Edwards, *supra* note 17, at 38.

50. *Colloquy, supra* note 12, at 1108.

To be sure, the MacCrate Report recognizes that among the professional values needed for the profession to survive into the twenty-first century, are the values of promoting justice, fairness, and morality.[51] My concern, however, is that neither the profession as presently conceived, nor legal education as presently designed will equip the lawyer of the twenty-first century to promote these values in the most effective or meaningful ways.[52] This is so not only because legal education has traditionally focused most institutional resources upon courses which are of commercial concern or relate to the private affairs of more affluent persons rather than law reform, problems of the public sector, or problems of the people who are victims of the legal system.[53] It has also promoted intellectual elitism in faculty recruitment and student admissions decisions and thereby privileged those who are more likely to come from affluent backgrounds and lack familiarity with the "dirty realism"[54] of the legal system.

There have been a few notable institutional ventures in response to these concerns. The program at Stanford University Law School designed to provide students practical training and theoretical support comes to mind as one of the earnest efforts to create a curriculum aimed at training students to work with outsiders.[55] More recently, faculty at the University of Maryland Law School have developed a program which focuses on the public responsibilities of lawyers to the poor, linking pedagogy and public service.[56] There are also a few schools, like North Carolina Central Law School, which have had an historical mission of educating lawyers to serve the poor and rural communities in which they are located and which do so substantially without the financial resources of more elite institutions. North Carolina Central's struggle for recognition that its program is appropriately tailored to its mission may be indicative of the risks which can confront an institution which devotes itself to curricular innovation without a clear commitment

51. *MacCrate Report, supra* note 19, at 213–221.

52. *See, e.g.,* Lesnick, *supra* note 46 (inaccurate messages in law school that life experience in general is irrelevant to learning to be a good lawyer); Schukoske, *supra* note 33 (omitted in legal education is how to think critically about morals and politics based on the best learning available from the social sciences and from ethical discourse).

53. *See* Erlanger & Lessard, *supra* note 34; Schukoske, *supra* note 33, at 191; Gordon, *supra* note 16.

54. Gordon, *supra* note 16, at 1965 (arguing the importance of emphasizing "the reality of reality" in light of lack of student familiarity with it).

55. *See, e.g.,* Gerald P. Lopez, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Antigeneric Legal Education,* 91 W. Va. L. Rev. 305 (1989).

56. *See Colloquy, supra* note 12, at 1108.

by accrediting bodies to tolerate unorthodox alternatives for lawyer training.[57] In light of those risks, there needs to be discussion including law schools, law faculty—clinicians and teachers of doctrine—and practitioners about the profession's relationship to the American legal system in a way that recognizes current problems confronting the legal system, more fully appreciates the work of lawyers in everyday practice, and takes account of the capacity of law trained people to participate in effecting change. It should be obvious that I see this work as concerning practitioners and law teachers who are interested in considering the social consequences of doctrine and rhetoric and that their reflections should be freed, to the extent possible, from institutional constraints which serve to minimize the logical professional connections which are potentially available.[58]

From this vantage point, a national institute, similar to that envisioned in the MacCrate Report, could be a useful vehicle as a means of promoting competence in practice and continuing education. I have in mind, however, including participants more critical than the Report's proponents of conventional notions of professionalism and "public calling,"[59] to consider alternatives for the next century. A newly created institute can avoid an isolationist approach to the issues because it has the potential to attract individual participants freed of the burdens of preconceived notions of influence related to power and prestige within established institutional circles. Thus, rather than drawing upon existing organizations of the bar and academy which could introduce institutional barriers to open discussion, I would seek the participation of individuals in a new professional nonprofit venture.[60]

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57. *See* President's Message, *AALS Newsletter, supra* note 15, at 3 (alluding to the fact that state legislatures and organized bar associations may use the MacCrate Report Statement of Standards and Values to regulate law schools and acknowledging that AALS has to deal with the "balancing question of how we ensure quality education and avoid the Association becoming a micro-manager").

58. This observation is based on my own experience working with the AALS Professional Development Committee, a committee concerned with providing professional development programs of interest to member institutions' faculties, and the ALI-ABA Committee on Continuing Professional Education, a committee concerned with providing continuing education to practicing lawyers, as well as with several ad hoc committees formed to evaluate the MacCrate Report and its recommendations.

59. *MacCrate Report, supra* note 19, at 320.

60. The similar interests in ensuring excellence in the provision of continuing legal education of the American Bar Association and American Law Institute through the ABA's Division of Professional Education and the ALI-ABA Committee on Continuing Professional Education have led to consideration of merging professional education activities into an independent 501(c)(3) entity. The MacCrate Report identifies this proposed entity as a possible vehicle for pooling

In addition to law professors and practitioners, the Institute might draw upon the research and practice of others who have thought about related professional concerns. There are a number of possible avenues for collaboration in research and dialogue worth exploring. The Institute could be a place to draw international scholars who have in the past criticized law schools in developing countries for assisting in perpetuating a legal system essentially geared to protect the interests of the propertied rather than addressing the needs of the poor, and failing to address problems arising from the inequitable distribution of lawyer-services.[61] Much has already been accomplished in other disciplines concerning effective learning modalities for adults, and we could learn from the inclusion of these experts. Medical professionals have begun to consider how a concept of caring can be developed in health care settings where a cure for disease or other health problem is not available. A sharing of ideas about an ethic of care with these professionals would be helpful to build upon the teaching experiences and scholarly work of law teachers[62] and advance an understanding of how the lawyer's "public calling" leads her to respond to and cope with intractable social problems associated with poverty and systemic dysfunction. We could also learn from considering how the medical profession also has begun to train professionals to participate in decisions about how to provide comprehensive care, utilizing teamwork as a means of responding to the patient's needs, and efficiently deploying scarce resources.[63]

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resources of the continuing legal education organizations which, if joined by AALS, could provide a place for educational research and development concerned with creating an educational continuum related to professional skills and values the Report identifies. *See MacCrate Report, supra* note 19, at 319–323. [At the time of publication, despite support from the ABA leadership, the proposal to merge continuing education activities had been rejected by the ABA's Board of Governors.]

61. *See* International Legal Center, *Legal Education in a Changing World* 19–24 (1975). The authors saw law schools as capable of becoming

> multipurpose centers to develop human resources and idealism need[ed] to strengthen legal systems; they can develop research and intellectual direction; they can address problems in fields ranging from land reform to criminal justice; they can assist institutions engaged in training paraprofessionals; they can help to provide materials and encouragement for civic education about law in schools and more intelligent treatment of law in the media; they can organize, or help organize, advanced specialized legal education for professionals who must acquire particular kinds of skills and expertise.

Id. at 39.

62. *See, e.g.,* Glennon, *supra* note 8, at 1179 (start from a position of understanding of interrelatedness of individuals and groups in society and develop an "ethic of care").

63. *See, e.g., AIDS Plan for Poor Seen as a Model for Other Ills,* NY Times, Feb. 22, 1994, at B3 (patient population, whose psychological and social problems often require as much attention as the

In short, my conception of professional excellence starts from an orientation of greater responsibility than appears presently to be contemplated in the MacCrate Report to ensure that the legal system is responsive to the needs of the poor and addresses problems arising from the inequitable distribution of lawyer services which will become even more acute in the twenty-first century. Legal education should socialize students to be more sensitive to existing inequities and should provide opportunities for them to think about the problems of mobilizing resources to ensure that the legal system can serve underrepresented poor clients' interests as well as the interests of corporate and other paying clients.

A national institute with leadership provided by legal educators as well as practitioners could be a place for the cultivation of thinking about the legal profession's capacity to respond to these issues of social justice and to clarify the values important to the practice of law in contemplation of a more "pro-active" public role. Like those who were critical of the Statement of Skills and Values of the MacCrate Report because the Report fails to consider the financial dimension of the skills training undertaking,[64] I am concerned about the loftiness of any proposal for change which ignores costs. I am confident that an undertaking which focuses attention on an aspirational concept of "what it means to be a lawyer"[65] and which seeks to connect that exploration with the interests of those disadvantaged by the legal system (rather than self-serving professional concerns about competence in skills) more closely matches the scholarly enterprise of legal educators who are laboring in clinics as well as teaching in courses concerned with more traditional legal method and analysis. Thus, there may be opportunity to tap traditional sources of funding and support for written work and symposia.[66] Because there are clearly links between the development of professional skills in serving clients and these issues of social justice, I see a real connection of this work to that of CLE organizations both in terms of their interests in public service and in professional competency training. It is also not inconceivable that public and private foundations would support an

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medical ones, addressed by team of professionals who help patients avoid hospitalization by treating comprehensively and focusing on preventative care).

64. *See, e.g.*, Costonis, *supra* note 18, at 174–196.

65. *MacCrate Report, supra* note 19, at 321.

66. In its response to the MacCrate Report, the AALS has already asserted its leadership in continuing the dialogue about what it means to be a lawyer through its annual meetings and conferences. *AALS Statement, supra* note 22. *See also* Gordon, *supra* note 16 at 1955.

ongoing evaluation of the social justice implications of a redefinition of values of the profession since similar support has been forthcoming in the past.[67] I agree with the position of the MacCrate Task Force that the interest and support of practitioners in professional development and values should lead to their financial participation through the organized bar and continuing legal education organizations.

Like the MacCrate Task Force, I believe the time for decision making has come.[68] But my interest is in provoking a searching inquiry about public service in the profession that draws upon the creative imagination in thinking about the future of legal education and skills and values training.

67. The Ford Foundation, for example, has provided funding for projects by the National Legal Aid and Defender Association and the ABA Litigation Section to provide legal aid for individual matters of significance to large groups. *See MacCrate Report, supra* note 19, at 71. *See also supra* note 33 (referring to Foundation-supported projects of Interuniversity Poverty Law Consortium).

68. Part of the concern expressed by John Costonis and others relates to the fact that the "admissions explosion" has ended and law schools may be competing for students to support their programs. Potential applicants, however, often know little about the curriculum or pedagogical leanings of law schools to which they apply. *See* Erlanger, *supra* note 5, at 383–84.