

The Purpose of Legal Education

Etienne C. Toussaint*

When President Donald Trump launched an assault on diversity training, critical race theory, and The 1619 Project in September 2020 as “divisive, un-American propaganda,” many law students were presumably confused. After all, law school has historically been doctrinally neutral, racially homogenous, and socially hierarchical. In most core law school courses, colorblindness and objectivity trump critical legal discourse on issues of race, gender, or sexuality. Yet, such disorientation reflects a longstanding debate over the fundamental purpose of law school. As U.S. law schools develop anti-racist curricula and expand their experiential learning programs to produce so-called practice-ready lawyers for the crises exposed by the COVID-19 pandemic, scholars continue to question whether and how, if at all, the purpose of law school converges with societal efforts to reckon with America’s legacy of White supremacy.

This Article argues that the anti-racist, democratic, and movement lawyering principles advocated by progressive legal scholars should not be viewed merely as aspirational ideals for social justice law courses. Rather, querying whether legal systems and political institutions further racism, economic oppression, or social injustice must be viewed as endemic to the fundamental purpose of legal education. In so doing, this Article makes three important contributions to the literature on legal education and philosophical

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legal ethics. First, it clarifies how two ideologies—functionalism and neoliberalism—have threatened to drift law school’s historic public purpose away from the democratic norms of public citizenship, inflicting law students, law faculty, and the legal academy with an existential identity crisis. Second, it explores historical mechanisms of institutional change within law schools that reveal diverse notions of law school’s purpose as historically contingent. Such perspectives are shaped by the behaviors, cultural attitudes, and ideological beliefs of law faculty operating within particular social, political, and economic contexts. Third, and finally, it demonstrates the urgency of moving beyond liberal legalism in legal education by integrating critical legal theories and movement law principles throughout the entire law school curriculum.

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Workin' on the weekend like usual

Way off in the deep end like usual

—Drake¹

[T]wo souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.

—W.E.B. Du Bois²

INTRODUCTION

The first half of law school has been tough. Beyond the steep learning curve, feelings of anxiety, isolation, and even depression have surfaced from the many micro- and, at times, macro-aggressions that linger in the classroom.³ Even more, a strange sense of disorientation has invaded your spirit.⁴ Ambitions of wielding the law as a sword of justice have felt blunted by the shield of neutrality, objectivity, and “colorblindness” pervading the judicial opinions in your first-year courses.⁵ With contracts, property, criminal law, and other core courses now

1. FUTURE & DRAKE, *Life is Good, on HIGH OFF LIFE* (Freebandz & Epic 2020).

2. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 8 (Brent Hayes Edwards ed., 2008) (1903).

3. See K.G. Molina & LawProfBlawg, *Welcome to Law School, First-Generation Students*, ABOVE THE LAW (Aug. 20, 2019), <https://abovethelaw.com/2019/08/welcome-to-law-school-first-generation-students/> [<https://perma.cc/69LX-W6TM>] (“A lack of institutional knowledge about the professional world, law school, and the legal community can make the ledge loom even more precariously.”); Felipe Hernandez, *Dear HLS, Racism Lives Here Too*, HARV. L. REC. (Feb. 16, 2018), <http://hlrecord.org/dear-hls-racism-lives-here-too/> [<https://perma.cc/BA8M-6ZPN>] (“Inexplicably, we often avoid open discussions of racism and inequality while studying laws that perpetuate, and are sometimes explicitly rooted in, racism, [W]hite supremacy, xenophobia, ableism, and social inequality.”).

4. This Article uses the term “disorientation” to describe the way law students and law faculty alike can experience both physical (e.g., fatigue, anxiety, etc.) and psychological (e.g., depression, moral angst, etc.) harms when they discover their lived experiences and cultural identities in conflict with dominant legal discourse in law school. See Staci Zaretsky, *The Struggle: Law Students Suffer from High Rates of Depression and Binge Drinking*, ABOVE THE LAW (May 12, 2016), <https://abovethelaw.com/2016/05/the-struggle-law-students-suffer-from-high-rates-of-depression-and-binge-drinking/> [<https://perma.cc/6P7N-C3ZV>] (“More than 3,000 law students from 15 law schools responded to the 2014 Survey on Student Well-Being, a study on mental health issues and alcohol and drug use . . . Eighteen percent of survey respondents said they’d been diagnosed with depression . . . More than one in six had been diagnosed with depression while in law school. Thirty-seven percent of law students screened positive for anxiety, and 14 percent of them met the definition for severe anxiety.”); Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 113–15 (2002).

5. See, e.g., Cedric Merlin Powell, *Rhetorical Neutrality: Colorblindness, Frederick Douglass, and Inverted Critical Race Theory*, 56 CLEV. ST. L. REV. 823, 837–38 (2008) (discussing the Court’s adoption of colorblind constitutionalism, which guarantees that questions of race are either simplified or ignored); MICHAEL K. BROWN, MARTIN CARNOY, ELLIOTT CURRIE, TROY DUSTER, DAVID B. OPPENHEIMER, MARJORIE M. SHULTZ & DAVID WELLMAN, *WHITEWASHING RACE: THE MYTH OF A COLOR-BLIND SOCIETY* 193 (2003) (noting how the Court’s claims to uphold a “colorblind Constitution” actually “hollow[] out the principles of political equality established by . . . the Fourteenth and Fifteenth Amendments”).

behind you, a handful of electives and the law school clinical program feel like your only hope: the places where strivings for justice can dismantle systems of oppression through zealous advocacy;⁶ the places where righteous indignation can uproot hierarchy through critical dialogue and progressive legislative reform;⁷ the places where disempowered and marginalized citizens can build community power through “rebellious lawyering.”⁸

Now is the time, you think, even as memories of the police killings of George Floyd and Breonna Taylor remain fresh in your mind; even as the names of loved ones lost too soon to the coronavirus still linger upon your breath; even as fears of nation-wide evictions hit far too close to home for comfort. Even as all these ruminations are silenced in the doctrinal classroom where black letter law avoids the polarization of politics, where shame convinces budding lawyers to stick to the relevant facts of the case, where violence can leap from the page and overwhelm you with anxiety, angst, and even depression. Yet, just as you hunger to amplify the voices of marginality wafting across the American landscape,⁹ you also observe the law school curriculum with a measure of bitterness. While conservative politicians attack the teaching of critical race theory in the classroom—attacks launched using former President Donald Trump’s weaponry against “race-based ideologies”—you struggle to recall much substantive engagement with the issue of race in your core law school courses, much less an exploration of critical legal theories. At the end of long days, you

6. See, e.g., Lindsay M. Harris, *Learning in “Baby Jail”: Lessons from Law Student Engagement in Family Detention Centers*, 25 CLINICAL L. REV. 155, 194 (2018) (“UDC Law students on service-learning trips between 2007 and 2011 found that the ‘client impact in the service-learning context felt more immediate and powerful,’ than in their clinics. At the same time, however, the students ‘recognized that they were able to be so effective as legal advocates because of the clinical skills they had previously gained.’”).

7. See, e.g., Bridget J. Crawford, Margaret E. Johnson, Marcy L. Karin, Laura Strausfeld & Emily Gold Waldman, *The Ground on Which We All Stand: A Conversation About Menstrual Equity Law and Activism*, 26 MICH. J. GENDER & L. 341, 354 (2019) (“Social media has provided a platform to support people sharing their experiences with menstruation and to connect menstrual advocacy campaign across the globe.”).

8. See, e.g., Susan R. Jones, *Representing Returning Citizen Entrepreneurs in the Nation’s Capital*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L. 45, 48 (2016) (“The George Washington University Law School Small Business and Community Economic Development Clinic (SBCED Clinic or Clinic) in Washington, D.C., provides legal representation to the nonprofit organizations that support returning citizens as well as direct representation to returning citizens.”); see also Alexi Nunn Freeman & Jim Freeman, *It’s About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 155–58 (2016) (describing analytic tools and strategic resources lawyers can use to meaningfully support grassroots power-building); GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* 30 (1st ed. 1992) (defining rebellious lawyering as “[l]awyering against subordination”).

9. To be sure, the term “America” encompasses two continents, North and South America, not a country. While the terms “America” or “American” are used colloquially herein to refer to the country of the United States of America, this Article does not deny that their usage as shorthand for the United States has imperialist connotations and roots. See, e.g., Daniel Immerwahr, *When Did the US Start Calling Itself “America,” Anyway?*, MOTHER JONES (July 4, 2019), <https://www.motherjones.com/politics/2019/07/when-did-the-united-states-start-calling-itself-america-anyway/> [<https://perma.cc/2GFD-YKPB>].

recall Charles Hamilton Houston's words with affection and wonder, silently, *Am I becoming a social engineer, or merely another parasite on society?*¹⁰

You may be a law student, a law professor, or perhaps simply a practicing attorney imbued with memories fond. But rest assured, if you feel even remotely like this, it's not you, and you are not alone. Across the country, as cities grapple with the social, economic, and environmental crises exposed by the COVID-19 pandemic, a growing coalition of law students are organizing "DisOrientation" programs at their law schools to challenge the doctrinally conservative, racially homogenous, and socially hierarchical culture of legal education.¹¹ Law faculty, too, are writing about the need for curricular reform attuned to the needs of the current generation and responsive to the deep political divides challenging progressive law reform.¹² Even more, practicing attorneys increasingly decry the "acts of silencing" embodied in legal discourse that privilege a "colorblind," apolitical, and "objective" jurisprudential stance, while student activists criticize the relegation of deep critique of systemic racism and structural oppression to the limited seats of upper-level electives and law school clinics.¹³ Many law schools have already begun to implement new initiatives geared toward increasing debate on racial and economic justice in the law classroom.¹⁴ These initiatives sound promising and most of them are long overdue. And yet, without a fundamental rethinking of the baseline purpose of legal education, followed by

10. GENNA RAE MCNEIL, GROUNDWORK: CHARLES HAMILTON HOUSTON & THE STRUGGLE FOR CIVIL RIGHTS 84 (1983) ("A lawyer's either a social engineer or he's a parasite on society." (quoting Charles Hamilton Houston speaking to his students)).

11. Collective of DisOrientation Student Organizers, *DisOrientation: A Call for Self-Preservation*, HARV. L. REC. (Oct. 7, 2019), <http://hlrecord.org/disorientation-a-call-for-self-preservation/> [<https://perma.cc/GJ7W-H6R4>] (advertising city-wide disorientation events in Chicago, Philadelphia, Michigan, San Francisco, Washington D.C., Los Angeles, and New York City).

12. See Kelli Dunaway, *Preparing the Next Generation to Lead*, LAW PRAC. MAG., Nov.-Dec. 2019, at 52; Renee N. Allen & Alicia R. Jackson, *Contemporary Teaching Strategies: Effectively Engaging Millennials Across the Curriculum*, 95 U. DET. MERCY L. REV. 1, 3-7 (2017); Tiffany D. Atkins, *#ForTheCulture: Generation Z and the Future of Legal Education*, 26 MICH. J. RACE & L. 115, 122-36 (2020).

13. See sources cited *supra* note 12; see also Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 MICH. J. RACE & L. 847, 882-84 (2000) (claiming a "silencing of students . . . that is connected to a hegemonic method of education that is intended to produce students who are dedicated to the maintenance of the status quo, even though that status quo is oppressive to them"). *But see* Dorothy E. Roberts, *The Paradox of Silence: Some Questions About Silence as Resistance*, 5 MICH. J. RACE & L. 927, 930 (2000) ("[A]mbiguity should make scholars cautious about their own interpretations of silence The distinction between what is compelled and what is defiance is not always apparent. Moreover, some conduct that superficially appears to oppose the dominant structure actually supports it.").

14. See, e.g., Dermot Groome, *Educating Antiracist Lawyers: The Race and the Equal Protection of the Laws Program at Dickinson Law*, RUTGERS RACE & L. REV. (forthcoming) (manuscript at 9); Amy C. Gaudion, *Exploring Race and Racism in the Law School Curriculum: An Administrator's View on Adopting an Antiracist Curriculum*, RUTGERS RACE & L. REV. (forthcoming) (manuscript at 12-13); *Diversity of Law School Deans Is Changing the Approach to Legal Education*, LEGAL INNOVATORS (June 17, 2021), <https://www.legal-innovators.com/events/webinar-diversity-of-law-school-deans-is-changing-the-approach-to-legal-education/> [<https://perma.cc/X64P-HGCH>] (discussing efforts of various law schools to increase diversity, equity, and inclusion).

a comprehensive overhaul of the law school experience, we are bound to end up right where we began.

So, what is the purpose of law school? Legal scholars have rigorously debated this question throughout much of law school's history.¹⁵ Some have argued that law schools exist primarily to teach law students legal theory in preparation for substantive lawyering skills training offered by clerkships and entry-level legal positions. Others have asserted that law schools should integrate substantive lawyering skills training throughout the curriculum to enable the early development of professional responsibility and lawyering judgment. Still others have emphasized the need for law schools to provide pro bono legal services to indigent members of their local communities through law school clinics, coupled with rigorous debate on law and legislative reform through engaged legal scholarship and student activism. This Article does not settle once and for all the delicate balance between theory and practice in legal education.¹⁶ No one can do that.¹⁷ Instead, it declines that debate altogether and asks a

15. See, e.g., Luna Martinez G., *An Identity Problem: Can Law School Be a Tool for Social Change*, 29 BERKELEY LA RAZA L.J. 31, 32 (2019) (“[T]here is a contradiction between the idea we have of the purpose of law schools, the way law schools self-identify and present themselves, and their actual institutional commitments.”); Wayne S. Hyatt, *A Lawyer’s Lament: Law Schools and the Profession of Law*, 60 VAND. L. REV. 385, 389–92 (2007); Bethany Rubin Henderson, *Asking the Lost Question: What Is the Purpose of Law School?*, 53 J. LEGAL EDUC. 48, 52 (2003) (“[T]he purpose of law school is to teach a heterogeneous group of people, who come from widely different backgrounds and with widely differing goals, to think like lawyers.”); Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 374, 383 (Council on Legal Educ. for Prof. Resp. ed., 1973); Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 912 (1933) (“Students trained under the Langdell system are like future horticulturists confining their studies to cut flowers, like architects who study pictures of buildings and nothing else.”).

16. Decades of critical scholarship from law faculty with expertise in both legal theory and clinical pedagogy have revealed the intersectionality of both modes of legal education. See, e.g., Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1990) (examining the relationship between clinical education and feminist jurisprudence). Further, the American Bar Association (ABA) suggests a multidimensional purpose to law school. Standard 302(a)–(d) of the ABA’s 2019–2020 Standards and Rules of Procedure for Approval of Law Schools provides:

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following: (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

ABA, *Program of Legal Education*, in ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2019–2020, at 15 (2020), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf [https://perma.cc/4VWS-XX8Z].

17. Besides, scholars have already clarified that law school’s purpose is evocative of its institutional structure—hybridized. As the Carnegie Foundation argues, “Professional schools are not only where expert knowledge and judgment are communicated from advanced practitioner to beginner, they are also the place where the profession puts its defining values and exemplars on display, where

different question: what would the balance between theory and practice look like in a law school founded on challenging the underlying neoliberal assumptions of modern U.S. law and political economy?

It turns out that we have been asking the wrong questions, fighting the wrong fights, and harming our students along the way. While there is growing market pressure for law schools to modify their curricula to produce “practice-ready” lawyers,¹⁸ and while there is growing social and political pressure for law schools to become anti-racist by more intentionally engaging racial justice in the classroom,¹⁹ tension remains within the legal academy on whether and how, if at all, law schools should pursue such goals. Many scholars contend that practice-readiness demands a shift from an insular focus on skill generation toward a progressive pedagogy and praxis engaged in community-driven and justice-oriented systemic critique.²⁰ Yet, some law schools convey an unspoken belief that practice-readiness can be achieved by a neutral doctrinal curriculum and formalistic skill-based clinical pedagogy, even though it often promotes a “self-

future practitioners can begin both to assume and critically examine their future identities.” See WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 4 (1st ed. 2007). See also Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 279, 284 (2012) (“[W]hen a law school’s curriculum is structured in an integrated and coherent fashion, to cultivate the law school’s intellectual and practical aspects as an academic unit of a university and a professional trade school, students are simultaneously prepared not just for work in the world as we know it today, but for work in the world that has yet to appear on the horizon.”).

18. See, e.g., Roland B. Smith & Paul Bennett Marrow, *The Changing Nature of Leadership in Law Firms*, N.Y. ST. BAR ASS’N. J. 33, 33 (Sept. 2008) (“The traditional practice model is under pressure.”); Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 CAL. W. L. REV. 219, 248–51 (2007); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 38–39 (1992). But see Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 331 (2001) (“[Even we clinicians] may have felt ourselves pushed by our law schools to describe our teaching in those modest terms, but we must be careful not to buy into that characterization of what we are about.”).

19. See Keeshea Turner Roberts, *Law Schools Push to Require Anti-Racism Training and Courses*, 46 HUM. RTS. MAG. (Dec. 13, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/rbgs-impact-on-civil-rights/law-schools-push/ [<https://perma.cc/3VAE-YG9M>]. Notwithstanding such calls, there has also arisen staunch resistance from the political right to the teaching of critical race theory in schools across the country. See Sarah Schwartz, *Map: Where Critical Race Theory Is Under Attack*, EDUC. WK. (June 11, 2021), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> [<https://perma.cc/UL7X-57G2>].

20. Sameer Ashar’s vision of legal education evokes bell hooks’ articulation of critical pedagogy, which defines the classroom as a liberatory co-learning space that confronts dominant market pressures and develops engaged students with critical consciousness of systems of oppression. Compare Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. 193, 210 (2016) (arguing that the practice of poverty law requires law professors “to develop in [themselves] and in [their] students the capacity of deep critique, of thinking beneath and beyond liberal legalist approaches to social problems”), with BELL HOOKS, *TEACHING TO TRANSGRESS: EDUCATION AS THE PRACTICE OF FREEDOM* 36 (1994) (describing an “intent to educate for critical consciousness”).

regarding vision of lawyer-guild professionalism.”²¹ Given the pluralistic nature of the university and its culture of academic freedom, perhaps it is to be expected that not every U.S. law school will evoke a progressive social and political vision of the lawyer as a “public citizen”—a representative of clients and an officer of the legal system with a “special responsibility for the quality of justice.”²² Yet, a growing sense of anxiety, isolation, and disorientation among law students nationwide reveals an axiomatic truth: a misguided mission not only distorts legal education’s fundamental purpose, but also defines law school culture, for better or for worse.²³ This dilemma begs the following questions that are the focus of this Article’s exploration: Does legal education’s purpose demand more than training in black letter law and practical lawyering skills? More specifically, must law schools engage the moral tensions between the lawyer’s *professional* ethical obligations and the lawyer’s *individual* moral commitments?²⁴

These questions have inspired a plethora of scholarship in philosophical legal ethics and legal education over recent decades. This Article revisits these old conversations to historicize new debates on the utility of critical race theory and movement lawyering in legal education.²⁵ In so doing, this Article argues

21. Anthony V. Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1073 (2009) (noting “in mission, law schools promote a self-regarding vision of lawyer-guild professionalism, role differentiation, and dyadic adversarial conflict over civic professionalism, role integration, and community-based social justice”); Stephen Wizner, *Is Learning to “Think Like a Lawyer” Enough?*, 17 YALE L. & POL’Y REV. 583, 583 (1998).

22. MODEL RULES OF PRO. CONDUCT pmbl. (AM. BAR ASS’N 2002).

23. See Shawn Healy & Jeff Fortgang, *The Full Weight of Law School: Stress on Law Students Is Different*, ABA STUDENT LAW., Mar. 2018, <https://www.lclma.org/2019/01/18/the-full-weight-of-law-school-stress-on-law-students-is-different/> [<https://perma.cc/6PWP-U39G>] (“96% of law students experience significant stress, compared to 70% of med students and 43% of grad students.”); Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 519 (2007) (defining culture as “[t]he incentive structures and peer pressure, dominant rituals and unspoken habits of thought that construct and then define the interpersonal, institutional and cognitive behaviors and beliefs of members of the education community”).

24. See David Luban & W. Bradley Wendel, *Philosophical Legal Ethics: An Affectionate History*, 30 GEO. J. LEGAL ETHICS 337, 338 n.2 (2017) (“By ‘role morality’ we mean the moral obligations and permissions associated with social roles—for example, the lawyer’s moral duties of confidentiality and zeal, as well as the lawyer’s moral permission to promote client interests even at the expense of worthier ones.”).

25. For an overview of the historic debate on critical race theory in legal education, see *infra* Part III.A and accompanying notes. For insight into contemporary debates on the topic, see, for example, Rashawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*, BROOKINGS (Nov. 2021), <https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory/> [<https://perma.cc/7YN6-RVUN>]; Alexi Freeman & Lindsey Webb, *Yes, You Can Learn Movement Lawyering in Law School: Highlights from the Movement Lawyering Lab at Denver Law*, 56 HOW. HUM. & C.R. L. REV. 55 (2020).

that the anti-racist,²⁶ democratic,²⁷ and movement lawyering²⁸ principles advocated by progressive legal scholars in recent history—many of which engage critical theories of law—should not be viewed merely as aspirational ideals for public interest lawyers and social justice law courses, nor as fodder for political debate. Rather, the study of the way legal systems and political institutions further racism, economic oppression, or social injustice must be viewed as endemic to the purpose of legal education.

This thesis is based on three observations. First, viewed through the lens of institutional theory,²⁹ law school is perhaps best understood as a hybridized institution with at least two core purposes: (1) a *pedagogical* purpose to train law students how to understand, contextualize, and ethically practice the theory of law; and (2) a *business* purpose to provide an educational service to paying customers who desire marketable skills and credentials for law practice.³⁰ These driving institutional logics have historically been in tension,³¹ resulting in a plurality of pedagogical approaches shaped by diverse ideological views of the relationship between law and society. Many of these views have proven, wittingly or unwittingly, to be reinforcing of legal systems that are patently racist, sexist, and classist.³² Indeed, one can be trained in both the theory and practice of law while simultaneously developing a professional lawyering identity that reinforces, sustains, and even advances systems of domination and

26. See, e.g., John O. Calmore, “Chasing the Wind”: Pursuing Social Justice, Overcoming Legal Mis-Education, and Engaging in Professional Re-Socialization, 37 LOY. L.A. L. REV. 1167 (2004); Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305, 358–86 (1989); Norrinda Brown Hayat, *Freedom Pedagogy: Toward Teaching Antiracist Clinics*, 28 CLINICAL L. REV. 149 (2021); see also *infra* Part III.A (discussing anti-racist discourse among critical legal scholars).

27. See, e.g., Ashar, *supra* note 20, at 193; see also *infra* Part III.A (discussing democratic theory discourse among critical legal scholars).

28. See, e.g., Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5 (2016); Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1879 (2007); see also *infra* Part III.B (discussing movement law discourse in legal scholarship and law practice).

29. For an introduction to institutional theories, see Henry Farrell, *The Shared Challenges of Institutional Theories: Rational Choice, Historical Institutionalism, and Sociological Institutionalism*, in KNOWLEDGE AND INSTITUTIONS 23 (Johannes Glückler, Roy Suddaby & Regina Lenz eds., 2018).

30. See Goldfarb, *supra* note 17, at 283 (“Law school has long had a dual identity—or, less charitably, a split personality—as both an academic department in a university and a school that trains students for a professional trade.”); SULLIVAN ET AL., *supra* note 17, at 4 (describing law schools as hybrid institutions, with Harvard Law School being among the first to blend the modern research university with the legal profession).

31. See Julie Battilana & Silvia Dorado, *Building Sustainable Hybrid Organizations: The Case of Commercial Microfinance Organizations*, 53 ACAD. MGMT. J. 1419, 1420 (2010) (defining “institutional logics” as “taken-for-granted social prescriptions that represent shared understandings of what constitutes legitimate goals and how they may be pursued”); see also Goldfarb, *supra* note 17, at 284 (“[L]aw schools have lived in the creative tension between the intellectual and the practical with varying degrees of success.”).

32. See, e.g., Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1991) (“[R]ace and gender intersect in shaping structural, political, and representational aspects of violence against women of color.”).

hierarchy.³³ Some scholars have gone so far as to question whether the community needs that guided the expansion of modern clinical legal education have caved to the pressures of a so-called professional crisis in the legal community.³⁴ Other scholars argue that the “monumental shifts” in the practice of law in recent decades have been shaped by market-centered “cultural forces.”³⁵ Such postulations are more than conjecture. An emphasis on market-based notions of practice-readiness in legal education can overshadow the importance of deep critique of political economic structures, and can even justify apolitical classroom discourse that shuns debate on the morality of legal institutions that further inequality.³⁶ Even more, an aversion to “moral activism”³⁷ among lawyers can prompt formalistic experiential learning courses in law school that commoditize the lawyering practice and subvert law school’s role in provoking broad structural reform.³⁸ Thus, the question of whether “a good lawyer [can] be a good person,” as Charles Fried put it in 1976, is not only the subject of moral philosophy and political philosophy, but also of legal

33. See Roderick A. Macdonald & Thomas B. McMorrow, *Decolonizing Law School*, 51 ALTA. L. REV. 717, 732 (2014) (“Some have characterized the object of legal education as training for hierarchy.”); Phyllis Goldfarb, *Pedagogy of the Suppressed: A Class on Race and the Death Penalty*, 31 N.Y.U. REV. L. & SOC. CHANGE 547, 549 (2007) (“[C]ontextualizing case law in a variety of ways offers some hope of illuminating its plausible animating forces and assumptions. This approach is especially promising when used to examine cases concerning American criminal justice because the methodology can be directed toward highlighting the attitudes found within mainstream legal culture for inflicting state violence on the disempowered.”).

34. ROBIN L. WEST, *TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM* 7–10 (2014); see Anthony V. Alfieri, *Educating Lawyers for Community*, WIS. L. REV. 115, 130 (2012) (describing “widespread reports of a growing crisis inside the legal academy and the profession, and outside in regulatory bodies at state and national levels”).

35. Alfieri, *supra* note 34, at 131 (describing “a ‘monumental shift’ in the practice of law illustrated, for example, by the growth in lateral lawyer migration, the emergence of multi-tier partnerships, the increase in partner de-equitization and expulsion, and the transformation of the structure of large law firms”); Goldfarb, *supra* note 17, at 280 (arguing that shifts in law practice are animated “by changes in social, economic, and cultural forces such as the internationalization of markets, the incursion of technology, and a series of economic and global cataclysms occurring since the turn of the millennium”).

36. Ashar, *supra* note 20, at 203 (“The legal education reform discourse since the 2008 recession is composed almost exclusively of proposals undergirded by neoliberal assumptions and constructs.”). Criminal law is but one field where scholars have argued that its institutions can further social inequality. For an example of the way a legal institution can further inequality and provoke debate on its moral legitimacy, see generally, PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* (2017) (arguing that the criminal justice system functions to surveil, criminalize, and enact violence on Black men).

37. DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 160 (1988) (defining “moral activism” as “a vision of law practice in which the lawyer who disagrees with the morality or justice of a client’s ends does not simply terminate the relationship, but tries to influence the client for the better”).

38. Law school’s role here is distinct from the legal academy’s role, which provokes structural reform outside the classroom via scholarly discourse. The push for formalism in the law classroom is arguably designed to fill a gap in the marketplace for lawyer apprenticeships. See Kamille Wolff Dean, *Teaching Business Law in the New Economy: Strategies for Success*, 8 J. BUS. & TECH. L. 223, 233 (2013) (“Law firms are increasingly less likely to formally train entry-level associates through an apprenticeship experience during the first years of practice. Instead, recent law school graduates are now expected to perform at a profitable level from the start of their careers.”).

education.³⁹ Lawyering, as “part of a scheme of political institutions and practices that has the governance of the community as its end,” mediates the “political purpose of the legal system in a pluralist society.”⁴⁰

This Article contributes to the literature on legal education by amplifying a third “public purpose” of legal education. Law school’s public purpose is defined herein as furthering the common good and public interest of society by: (1) critiquing law and public policy through justice-oriented legal scholarship; and (2) serving marginalized populations through pro bono lawyering practice. By engaging law students in deep experiential critique of the law’s (and, by extension, the lawyer’s) substantive role in furthering injustice and entrenching both political power and social hierarchy, law schools position their future lawyers to embrace their professional role as public citizens.

This Article’s second observation is the way law school’s quest for institutional legitimacy within an increasingly neoliberal culture has undermined the public purpose of legal education.⁴¹ Even where law schools have embraced a mission that integrates the norms of public citizenship into their pedagogy and praxis, that mission can meander into murky waters under the pressure of internal and external forces, often leaving behind a dismembered and disfigured institution when market forces bite.⁴² For example, the dangers of neoliberalism are visible in the growing popularity of transactional law clinics that prepare law students for venture capital and start-up law practice in the flourishing technology sector.⁴³ While such transactional law clinics serve an important

39. Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060, 1074 (1976).

40. Luban & Wendel, *supra* note 24, at 352 (“By a pluralist society, we mean a society of people with many different, sometimes competing, moral and religious beliefs. Concrete decisions must be made about a wide range of matters of importance to the community, yet citizens of that community disagree about what constitutes a good life, what ends are worth pursuing, and what facts bear on the resolution of these controversies.”).

41. See Katherine Hobson, *Law Schools Work to Make Students More Employable*, U.S. NEWS (Mar. 11, 2014), <https://sports.yahoo.com/news/law-schools-students-more-employable-140000891.html?guccounter=1> [<https://perma.cc/3RW2-FHTZ>]; Patrick G. Lee, *Law Schools’ Course Emphasis Shifts from Textbooks to Skill Sets*, WALL ST. J. (July 11, 2011), <https://www.wsj.com/articles/SB10001424052702304793504576434074172649718> [<https://perma.cc/VAW6-R5QC>].

42. See also Jack Karp, *Are Law Schools Helping Students Who Want to Help Others?*, LAW360 (Mar. 31, 2019), <https://www.law360.com/articles/1143092> [<https://perma.cc/JQE9-X2YG>] (“The job recruitment process at many law schools, where interviewing for BigLaw internships often begins shortly after students’ first year, can also steer students away from public interest jobs.”).

43. See Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1, 10 (2015) (“[T]here has also been rapid increase in the number of business law clinics in the last decade.”). Importantly, such clinics are distinct from so-called Community Development Law Clinics that teach similar transactional lawyering skills but focus on the needs of community-based and marginalized clients. For example, the Small Business & Community Economic Development Clinic at The George Washington University Law School and the Community Development Law Clinic at the University of the District of Columbia David A. Clarke School of Law each prioritize the representation of low-income individuals and community-based organizational clients who lack access to legal services.

pedagogical purpose by teaching business lawyering skills that are not traditionally emphasized in the doctrinal law classroom,⁴⁴ the content coverage, client selection, and classroom design of such clinics can undermine the *public* purpose of law school if they fail to engage the experiences of historically marginalized populations differentiated across racial and class divides.⁴⁵ Even more, it remains unclear whether the rising popularity of venture capital and start-up law school clinics is tethered to the rising pressures that many law graduates face to secure high-paying jobs to pay off exorbitant student loans.⁴⁶ Some progressive business law professors who teach venture capital or start-up law practice, such as Dana Thompson and Carliss Chatman, have argued that law schools should be training future transactional lawyers to become “social engineers” who seek to leverage their social capital to empower historically marginalized communities.⁴⁷ Still, despite the value of pluralism to academic freedom, the normalization of law school curricula that drift the public purpose of legal education toward market-based expectations of professionalism has led to distortions of professional lawyering identity in its earliest formation.⁴⁸ Law school’s fundamental challenge lies not in its endorsement of neoliberal values, *per se*, but rather in the way neoliberal culture can warp substantive discussions about law and justice.

Such distortion speaks to a third observation, manifested in the voices of law students across the United States who convey disorientation with the traditional law school curriculum.⁴⁹ Echoing W.E.B. Du Bois’s articulation of the experience of “Black folk” during the Jim Crow era of state-sponsored racial apartheid,⁵⁰ many law students—particularly racially and ethnically minoritized

44. See Lisa Penland, *What a Transactional Lawyer Needs to Know: Identifying and Implementing Competencies for Transactional Lawyers*, 5 J. ASS’N LEGAL WRITING DIRS. 118, 122 (2008) (noting that transactional lawyering skills are not traditionally taught in law school); Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 WASH. U. J.L. & POL’Y 85, 86 (2013).

45. See Goldfarb, *supra* note 17, at 306–07 (“Faced with time constraints and over-commitment, clinical professors sometimes choose to forego explicit attention to other educational opportunities inherent in the same practice scenarios.”).

46. See Elizabeth Olson, *Burdened with Debt, Law School Graduates Struggle in Job Market*, N.Y. TIMES (Apr. 26, 2015), <https://www.nytimes.com/2015/04/27/business/dealbook/burdened-with-debt-law-school-graduates-struggle-in-job-market.html> [<https://perma.cc/MK9V-DYFF>].

47. Dana Thompson, *Lawyers as Social Engineers: How Lawyers Should Use Their Social Capital to Achieve Economic Justice*, 26 MICH. J. RACE & L. 1, 6 (2021); see, e.g., Peter Jetton, *Starting Up: W&L Law Students Help Launch Local Businesses*, W&L MAG. (Nov. 4, 2021), <https://columns.wlu.edu/starting-up/> [<https://perma.cc/TJM5-JMPG>].

48. See Alfieri, *supra* note 21, at 1073 (“The animus of theory-centered traditions toward practice obscures the interdisciplinary breadth, empirical richness, and moral import of lawyer roles and relationships.”).

49. See Collective of DisOrientation Student Organizers, *supra* note 11; see also Atkins, *supra* note 12, at 138 (“Legal education is out of step with many of our entering law students, including Gen Zers who want to create and live in equitable environments and who are not afraid to engage in activism to achieve that end.”).

50. DU BOIS, *supra* note 2.

students, but also White students too—experience a sense of “double consciousness,” or duality of identity, in law school. Law students typically learn professional lawyering identity through the quotidian gaze of judicial opinions that assert a neutral and objective doctrinal stance, yet often elide issues of race, class, and gender that permeate law’s construction and everyday operation. The experience, as Shaun Ossei-Owusu puts it, can be “intellectually violent” to students,⁵¹ subjecting them to micro- and explicit-aggressions, or unresolved racial anxieties that hinder their learning process and negatively impact their academic performance.⁵² Beyond the challenges of diversity, equity, and inclusion that pervade the legal academy for law students and law faculty alike,⁵³ such cognitive disruption calls into question the legal academy’s role in “the reproduction of hierarchy.”⁵⁴ To be sure, there are many social determinants that might explain feelings of disorientation among law students. The COVID-19 pandemic has only complicated matters by adding an additional potential causal factor into the mix. This Article seeks merely to isolate potential causal factors of disorientation in legal education that stem from law school pedagogy. In so doing, it strives to highlight strategies for curricular reform.

To elucidate these observations and amplify the call for infusing critical legal theories and movement lawyering principles into legal education, this Article proceeds in three parts. First, Part I reviews the existential identity crisis plaguing legal education. This descriptive analysis focuses on the feelings of disorientation among law students and law faculty alike who find their lived experiences and cultural identities in conflict with dominant legal discourse. These feelings evoke a Du Boisian “double consciousness” that overwhelms professional identity formation and law teaching. To clarify how such disorientation manifests, this Part argues that law students are acculturated to a distinctive morality in law school—liberal legalism⁵⁵—that can infringe upon professional lawyering identity formation by hindering critical legal consciousness.

Next, Part II follows by discussing the politics of law school identity across its history in the United States. This normative assessment begins by exploring the historic debate between legal formalists and legal realists in the legal academy on the appropriate methods of legal reasoning and jurisprudential analysis to govern lawyering, and consequently, law teaching. In so doing, it

51. Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can Be Intellectually Violent*, ABA J. (Oct. 15, 2020), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent [https://perma.cc/67UU-PHXV].

52. See *infra* notes 76–78.

53. See MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 4–6 (2019); Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 317 (2014).

54. Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 591 (1982).

55. See *infra* Part I.B.

reveals how both groups deemphasized the importance of a theoretical study of substantive justice in legal education, thereby committing to a “functionalist” view of the law that constrains the role of law in society.⁵⁶ Then, this Part discusses how market-based notions of practice-readiness that frame legal theory with neoliberal ideals, such as individualism, entrepreneurialism, and privatization, have threatened to drift law school’s public purpose. When law teaching deemphasizes critical legal theories that challenge dominant cultural views of the government’s role in shaping democracy and resolving social inequality, it reveals the entanglement of market fundamentalism and liberal legalism in modern legal education.

Finally, Part III calls for law schools to move beyond liberal legalism as the dominant normative framework guiding legal education. Specifically, this prescriptive analysis synthesizes important insights from critical outsider jurisprudence and movement lawyering scholarship (or movement law) that collectively frame a more democratic vision of lawyering practice-readiness. By deconstructing the liberal assumptions embedded in traditional legal education and offering a reconstructive vision of professional lawyering identity, this framing suggests that law school can maintain its institutional hybridity, and more importantly avoid succumbing to market pressures, by weaving its public purpose throughout its legal pedagogy. Taken together, these insights point toward the need for a reformed legal pedagogy that takes seriously the call of public citizenship upon the legal vocation.

I.

LAW SCHOOL’S IDENTITY CRISIS

Are law students justified in their demands for curricular reform? Or, is their disorientation symptomatic of personal dilemmas and internalized societal traumas that transcend the boundaries of legal education?⁵⁷ As Part I.A reveals, law students and law faculty alike increasingly navigate the legal academy with a disorienting sense of “double consciousness”—a feeling evocative of W.E.B. Du Bois’s articulation of the life of “Black folk” in post-antebellum America that plagues professional identity formation.⁵⁸ Students of diverse backgrounds and lived experiences, including students racialized as White, are often made to see themselves through the neutral, objective, and colorblind gaze of the antiquated

56. See *infra* Part II.A.

57. See Bryan R. Parker, Scott Langley & Nadia Lee, *Boiling Point: Why Mental Health Is the ‘Existential Crisis’ Facing the Legal Profession*, LAW.COM (Aug. 16, 2021), <https://www.law.com/2021/08/16/boiling-point-why-mental-health-is-the-existential-crisis-facing-the-legal-profession/> [https://perma.cc/QKR9-A7ZT] (citing mental health as an issue facing the entire legal profession).

58. See DU BOIS, *supra* note 2, at 8.

judicial opinions that fill first-year legal casebooks.⁵⁹ Many of these students harbor an awareness of law’s nuanced meaning for marginalized and minoritized communities, yet such insights are silenced in doctrinal discourse.

Law faculty, too, wrestle with whether and how, if at all, to integrate discussion on the contentious political dimensions of law into the law classroom. Yet, politics inevitably finds its way in. As Part I.B reveals, law students are acculturated to a distinctive morality in law practice, which scholars have termed *liberal legalism*.⁶⁰ This culture, as this Article argues, has drifted law school’s public purpose away from the democratic norms of public citizenship. Collectively, these observations convey a longstanding, and still unresolved, identity crisis facing modern legal education.

A. Institutional Disorientation

For law students differentiated by race, class, and gender, generally—and for racially and ethnically minoritized students, in particular—the law school experience kindles feelings of disorientation that, in many ways, parallel Du Bois’s concept of “double consciousness.”⁶¹ In his seminal work, *The Souls of Black Folk*, Du Bois described double consciousness as a sense of “always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity.”⁶² Beyond the challenges of diversity, equity, and inclusion that continue to shape the learning

59. Indeed, in 2020, leading law faculty from across the country—from Harvard Law School, Stanford Law School, Duke University School of Law, UCLA School of Law, and Boston University School of Law, among other law schools—convened at the Boston University School of Law to discuss “Racial Bias, Disparities and Oppression in the 1L Curriculum.” Rich Barlow, *Is Justice as Color-blind as the Casebooks Say?*, BU TODAY (Feb. 25, 2020), <http://www-test.bu.edu/articles/2020/is-justice-as-color-blind-as-the-casebooks-say/> [https://perma.cc/QE8U-GR6E].

60. Robin West, *Law, Rights, and Other Totemic Illusions: Legal Liberalism and Freud’s Theory of the Rule of Law*, 134 U. PA. L. REV. 817, 820 (1986).

61. DU BOIS, *supra* note 2, at 8.

62. *Id.*

experiences of law students⁶³ and law faculty⁶⁴ alike, as meticulously detailed by Meera Deo,⁶⁵ racially and ethnically minoritized law students are routinely made to see themselves through the gaze of White male judges.

To be sure, aiming for a “critical mass” of diverse students and law faculty in the law classroom supports the “inclusive” conception of legal education theorized by the Supreme Court in *Grutter v. Bollinger*.⁶⁶ But, as Anastasia Boles has argued, “*Grutter*’s vision of racial inclusivity will require law schools to move beyond the inadequate strategy of structural diversity” and “shift the culture of legal education.”⁶⁷ While the drafting of neutral judicial opinions governed by objective legal principles supports the formalist vision of doctrinal analysis, scholars have demonstrated that even judges can be influenced by racial prejudices and cultural biases in unconscious ways.⁶⁸ Accordingly, many law students who read such opinions experience what Du Bois described as “a peculiar wrenching of the soul,” giving rise to professional ambitions that feel torn between “preten[s]e or revolt,” their ideals soaked in “hypocrisy or radicalism.”⁶⁹

Such feelings are too easily varnished as the commonplace frustrations that law students must digest on the road toward professional identity formation, or

63. See generally Meera E. Deo, *The Promise of Grutter: Diverse Interactions at the University of Michigan Law School*, 17 MICH. J. RACE & L. 63, 103–09 (2011) (explaining how the exclusion of “classroom conversations about race, gender, or sexual orientation . . . may be especially problematic for students who share and value these characteristics as central to their own sense of identity”); Meera E. Deo, Walter R. Allen, A.T. Panter, Charles Daye & Linda Wightman, *Struggles & Support: Diversity in U.S. Law Schools*, 23 NAT’L BLACK L.J. 71, 83–86 (2009) (quoting a White law student as saying, “And it’s hard to talk about cases which involve discrimination of ethnicities when they’re not even in the room”); Nancy E. Dowd, Kenneth B. Nunn & Jane E. Pendergast, *Diversity Matters: Race, Gender, and Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL’Y 11, 25–26 (2003) (“Almost 70% of students agreed or strongly agreed that racial/ethnic and gender diversity ‘enhances how students think about problems and solutions in class [and] enhances my ability to get along better with members of other races.’”) (alteration in original); Rachel F. Moran, *Diversity and Its Discontents: The End of Affirmative Action at Boalt Hall*, 88 CALIF. L. REV. 2241, 2298–99 (2000) (“An Asian-American woman in the first-year class stated that she would be more likely to have a mentoring relationship, if there were someone like her on the faculty.”); Brian Owsley, *Black Ivy: An African-American Perspective on Law School*, 28 COLUM. HUM. RTS. L. REV. 501, 504 (1997) (“As law schools open their doors to a more diverse student body, many different voices ring out in classrooms and corridors.”).

64. See, e.g., Meera E. Deo, *The Ugly Truth About Legal Academia*, 80 BROOK. L. REV. 943, 964–84 (2015); Katherine Barnes & Elizabeth Mertz, *Is It Fair? Law Professors’ Perceptions of Tenure*, 61 J. LEGAL EDUC. 511, 516–17 (2012); Richard Delgado & Derrick Bell, *Minority Law Professors’ Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349, 350 (1989).

65. See DEO, *supra* note 53.

66. *Grutter v. Bollinger*, 539 U.S. 306, 306, 332 (2003) (upholding the University of Michigan Law School’s affirmative action plan).

67. Anastasia M. Boles, *The Culturally Proficient Law Professor: Beginning the Journey*, 48 N.M.L. REV. 145, 147 (2018).

68. See *infra* note 186 and accompanying text.

69. DU BOIS, *supra* note 2, at 136.

the hunger pangs of learning to think like a lawyer.⁷⁰ In truth, they are the byproduct of neoliberalism's enduring cultural dominance within the legal academy. As Harold McDougall explains, "Minority students, especially, experience stress and tension as they seek to accommodate the demands of the neoliberal world while trying to remain grounded in their own communities and cultural contexts."⁷¹ Often, the source of such stress and tension is invisible. As Charles Lawrence revealed in 1987,⁷² unconscious racism explains why some people behave in prejudiced or biased ways that perpetuate systemic racism. Unconsciously held beliefs about the morality of law in relation to the lived experiences of historically marginalized populations can manifest in implicit biases,⁷³ racial anxieties,⁷⁴ and stereotype threats⁷⁵ in the classroom that hinder the learning experience for impacted students. Outward manifestations of such prejudice or bias, in the form of macro- or micro-aggressions,⁷⁶ can disorient students, negatively impacting them on a biological, cognitive, emotional, and behavioral level.⁷⁷ Such "cognitive disruption," can negatively impact student performance outcomes, reifying existing stereotypes and biases.⁷⁸

Importantly, even for the law students racialized as White that comprise the majority in most law school classrooms across the United States, a similar sense of double consciousness manifests by graduation that can perhaps best be characterized, in the words of Du Bois, as "a painful self-consciousness, an almost morbid sense of personality, and a moral hesitancy which is fatal to self-

70. Bennett Capers, *Law School as a White Space*, 106 MINN. L. REV. 7, 34 (2021) (explaining that law school often trains student to "focus on form, authority, and legal-linguistic context, and to discount and even devalue morality, content, and social context").

71. Harold McDougall, *The Challenges of Legal Education in the Neoliberal University*, 72 NAT'L LAWS. GUILD REV. 65, 70 (2015).

72. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 323 (1987).

73. Boles, *supra* note 67, at 161 ("Even in a class utilizing anonymous grading, there are dozens of faculty-student interactions during a law student's tenure that may be degraded by implicit bias, including class discussions, feedback on papers, feedback on practice exams, office hour visits, email communications, letter of recommendation requests, and review of final examination performance. In addition to degraded classroom experiences and faculty interactions, implicit bias may cause a variety of negative physical and mental health effects in students.")

74. *Id.* at 164 ("For example, imagine a [W]hite law professor and student of color meeting in office hours for the first time in the [W]hite law professor's office. If the law professor is experiencing unconscious racial anxiety during the conversation, the faculty member is less able to engage the student, build rapport, answer questions, and appear friendly.")

75. *Id.* at 165 ("The consensus in the rich research about stereotype threat is that the anxiety about performing poorly distracts from performance. For example, a student taking an exam and experiencing stereotype threat will need to split their attention between performing the task—taking the exam—and anxiety about confirming a negative stereotype.")

76. *Id.* at 168 ("There are three general categories of microaggressions: (1) microinsults, a verbal communication that evidences cultural insensitivity; (2) microinvalidations, communication that negates the experience of a personal of color; and (3) microassaults, conscious derogations like avoidant behavior or name-calling.")

77. DERALD WING SUE, MICROAGGRESSIONS IN EVERYDAY LIFE: RACE, GENDER, AND SEXUAL ORIENTATION 97 (2010).

78. *Id.* at 101.

confidence.”⁷⁹ In our modern age of video-recorded police killings of unarmed Black citizens and White nationalist uprisings in response to Black Lives Matter protests, many White people fear being labeled as a racist. Such “racial anxiety” finds its way into law school, especially when classroom discourse fails to offer space for students to make sense of the many contradictions between law and society that feel animated by difference-based identities, such as race, sex, or gender. It manifests in “decreased eye contact, nervousness, discomfort, awkwardness, and stiffness” in the classroom, which conditions many White students to avoid racial issues on the job after graduation and relegates the concept of public citizenship lawyering to occasional pro bono activities, but not broader reaching racial justice activism.⁸⁰

These insights underscore the hidden dangers of “colorblindness” as an analytical approach toward studying the rule of law in the United States. As Franz Fanon suggested, many Americans experience a “colonial alienation of the person” due to an internalized colonial mentality.⁸¹ Culturally defined modes of superiority and inferiority that stem from colonial histories can fracture the psyche of citizens—inducing depression, anxiety, shame, guilt, etc.—when they observe dissonance between their material existence and Western cultural ideals. For example, when certain Black lived experiences are deemed “other” than the Western cultural ideal, the integrity—stemming from the Latin word *integritas* for “wholeness” or “unbroken state”—of some Black people can be diminished if they lose social esteem, notwithstanding the retention of self-esteem.⁸² As Fanon explained, the “systematic negation of the other person . . . forces the people [colonialism] dominates to ask themselves the question constantly: ‘In reality, who am I?’”⁸³ To go further, some people racialized as White similarly find themselves asking the same question—Who am I?—when they are instructed to embrace a vision of White cultural identity that collides with their material existence.⁸⁴ The sense of integrity of a low-income White person, for

79. DU BOIS, *supra* note 2, at 136.

80. Boles, *supra* note 67, at 162.

81. FRANTZ FANON, *BLACK SKIN, WHITE MASKS*, at x (1986).

82. This is because a social recognition of self-worth, or social esteem, validates the meaning of individual human agency as an equal expression of inherent humanity. See Joseph Raz, *Free Expression and Personal Identification*, 11 OXFORD J. LEGAL STUD. 303, 313 (1991) (“People’s relations to the society in which they live is a major component in their personal well-being. It is normally vital for personal prosperity that one will be able to identify with one’s society, will not be alienated from it, will feel a full member of it.”); GEORGE H. MEAD, *MIND, SELF, AND SOCIETY FROM THE STANDPOINT OF A SOCIAL BEHAVIORIST* 162 (Charles W. Morris ed., 1962) (“A person is a personality because he belongs to a community, because he takes over the institutions of that community into his own conduct . . . [O]ne has to be a member of a community to be a self.”).

83. FRANTZ FANON, *THE WRETCHED OF THE EARTH* 250 (Jean-Paul Sartre ed., 1961).

84. Compare Savala Nolan, *It’s Time for White People to Have Tough Conversations with Their White Friends and Relatives*, TIME (Feb. 7, 2022), <https://time.com/6145211/white-people-tough-conversations-race/> [<https://perma.cc/5VZD-5Z9E>] (describing “[W]hiteness” as “the habit of doing things that give you the feeling or appearance of caring about racial justice without having to pay much

example, can be diminished if they lose critical self-esteem, notwithstanding the conferral of social esteem (what some might call “White privilege”).

In both instances, if one agrees that both a perception of self-worth and an ethics of recognition is foundational to the experience of humanity, as Georg Wilhelm Friedrich Hegel argued,⁸⁵ then a fractured sense of integrity results in a damaged personhood. When one’s integrity as a whole person is *broken*, as it were, by a lack of societal recognition, one’s dignity is harmed because their inherent equality and individual self-determination, as a liberated agent, is called into question.⁸⁶ Applying these insights to legal analysis in the law school classroom, when a law professor ignores the way certain cultural ideals shaped by racial ideology can contradict the material lived experiences of certain law students, the professor also ignores the way such alienation can diminish the integrity, and consequently, the dignity of those students, harming their personal and professional development.

When law students are gifted with the “second sight” of legal reasoning by well-meaning law professors, they come to see the work of law in the U.S. political economy as navigating a set of conflicting ideals—a kind of “double consciousness” in the words of Du Bois,⁸⁷ a world of public and private domains. In one instance, law students come to embrace a liberal theory of lawyering that, in practice, has erected socio-political regimes that can craft, sustain, and even dismantle systems of domination and hierarchy. And, in another, law students come to cherish the democratic ideals of liberty and equality, virtues that offer pathways toward an engaged citizenry amidst the ongoing contradictions of a cultural milieu marred by social inequities.⁸⁸ Echoing the work of American philosopher Ralph Waldo Emerson,⁸⁹ there is a romantic, almost spiritual,

of a cost”), with Alec MacGillis & ProPublica, *The Original Underclass*, ATLANTIC (Sept. 2016), <https://www.theatlantic.com/magazine/archive/2016/09/the-original-underclass/492731/> [<https://perma.cc/9R7J-4ARK>] (“Several prominent liberals have theorized that what’s driving rising mortality and drug and alcohol abuse among [W]hite Americans is, quite simply, despair over the loss of their perch in the country’s pecking order.”).

85. See PAUL RICŒUR, *THE COURSE OF RECOGNITION* 17, 19 (David Pellauer trans., 2005); ROBERT R. WILLIAMS, *HEGEL’S ETHICS OF RECOGNITION* 10 (1997).

86. See Charles Taylor, *Hegel: History and Politics*, in *LIBERALISM AND ITS CRITICS* 177, 179–80 (Michael J. Sandel ed., 1984) (“The idea that our highest and most complete moral existence is one we can only attain to as members of a community obviously takes us beyond the contract theory of modern natural law, or the utilitarian conception of society as an instrument of the general happiness.”).

87. W.E.B. Du Bois used the phrase “second-sight” to describe the way African Americans often see themselves, sometimes necessarily, through the racialized vantage point of White Americans. DU BOIS, *supra* note 2, at 8. Du Bois believed that this second sight develops a sense of “double consciousness” in African Americans: an awareness of being an inferior “Negro” in the eyes of White Americans; and an awareness of being a liberated and equal American (at least in theory) under the U.S. rule of law. *Id.*

88. See ROBERT GOODING-WILLIAMS, *IN THE SHADOW OF DU BOIS: AFRO-MODERN POLITICAL THOUGHT IN AMERICA* 81–82 (2009).

89. RALPH WALDO EMERSON, *The Transcendentalist*, in *NATURE, ADDRESSES, AND LECTURES* 309 (Riverside Press 1898) (1855) (describing the doctrine of transcendentalism, which

longing to transcend the social and economic challenges that stem from the material conditions of what Du Bois called “the problem of the color-line.”⁹⁰ A yearning to be free from the guilt and shame of America’s vicious legacy of White supremacy; a deeply held and sincere desire to become colorblind, as it were. Yet, this spiritual longing is inescapably pitted against the pragmatic, material, and mundane needs of the aspiring lawyer (e.g., paying off massive student loan debt) and the professional needs thereof after passing the bar exam (e.g., prioritizing client interests).

Thus, many law students are made to feel that they must practice law amidst these contradictions, or “within the veil,” as it were, encouraged to “work and climb . . . through streaming eyes and hear with aching ears . . . so flashed and fleshed through this vast hanging darkness that the Doer never sees the Deed and the Victim knows not the Victor and Each hate All in wild and bitter ignorance.”⁹¹ Students are counseled to align their passions toward private or public ends, with many vacillating between both poles throughout their careers. In so doing, young lawyers navigate a sense of ambivalence, an inner turmoil of the spirit over their decision to adorn a professional lawyering identity that often comes with unflattering reputational attributes.⁹² Indeed, estimations of a lawyer’s ability to bring about systemic reform are often intimately tied to that lawyer’s perceived social ranking. For Du Bois, the process of striving for Black folks in America is an effort to merge the two selves: one identity marred by the silencing power of White supremacy, and “a better and truer self” driven towards visions of liberation with “neither of the older selves to be lost.”⁹³ Likewise, striving in the law school context can perhaps best be articulated as a “painful self-consciousness”⁹⁴—an honest perception of the lawyer’s muddled historic identity as a purveyor of social atrocity,⁹⁵ one undistorted by prejudice and hierarchy. Yet, it is also a perception colored by the historic desire of American

professed the inherent goodness of people and nature, emphasized individualism and personal freedom, and argued that divinity permeated all nature and humanity).

90. DU BOIS, *supra* note 50, at 3.

91. W.E.B. DU BOIS, *DARKWATER: VOICES FROM WITHIN THE VEIL* 246 (1920).

92. See Carla Messikomer, *Ambivalence, Contradiction, and Ambiguity: The Everyday Ethics of Defense Litigators*, 67 *FORDHAM L. REV.* 739, 740–41 (1998); Felicity Nelson, *Why Do People Hate Lawyers So Much?*, *LAWS. WKLY.* (Feb. 17, 2015), <https://www.lawyersweekly.com.au/sme-law/16179-why-do-people-hate-lawyers> [<https://perma.cc/EQ4E-DZ25>].

93. DU BOIS, *supra* note 2, at 195.

94. *Id.*

95. For a historical account of the role of law as a tool of racial oppression, see generally A. LEON HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD* (1978) (providing a history of race and the law during America’s colonial period); A. LEON HIGGINBOTHAM, JR., *SHADES OF FREEDOM: RACIAL POLITICS AND PRESUMPTIONS OF THE AMERICAN LEGAL PROCESS* (1996) (providing a history of race and the law from the colonial period to the late twentieth century).

lawyers to be seen as “co-worker[s] in the kingdom of culture,”⁹⁶ not as mere linchpins in the engine of capital accumulation and social control.

This existential identity crisis, so to speak, also weighs heavy on the minds of law faculty who yearn to unravel the tortious web of political and economic contingencies that cincture legal doctrine. They too feel constrained in the law classroom by the practical demands of preparing law students for the bar exam.⁹⁷ In both the doctrinal and clinical classroom, “regnant”⁹⁸ patterns of lawyering are often prioritized due to a domineering corporate culture that shapes legal consciousness, defines institutional roles, and constrains visions of social change.⁹⁹ However the teaching of regnant lawyering approaches, this Article argues, is not the problem per se; it is the absence of their counterparts. When the public purpose of legal education is compromised in service toward private market ends and the repayment of student loans, law students risk internalizing a professional lawyering identity that contradicts, and in some cases subverts, the stated norms of public citizenship that *should* ground the legal profession. Unfortunately, those lofty norms, in practice, too often remain out of reach. Yet, if student disorientation is, in part, an emotional and physical response to the neoliberal trend in legal education, it is certainly not a new phenomenon.

B. Moral Acculturation

To combat the pressures of neoliberal culture in legal education, scholars have long argued for the inclusion of race-conscious pedagogies, critical legal theories, and culturally proficient teaching methodologies in law school

96. DU BOIS, *supra* note 2, at 195 (“This is the end of his striving: to be a co-worker in the kingdom of culture, to escape both death and isolation, to husband and use his best powers.”).

97. Joan Howarth, *Teaching in the Shadow of the Bar*, 31 U.S.F. L. REV. 927, 928 (1997) (“All but the most elite law schools face constant pressure regarding bar passage rates.”); Emmeline Paulette Reeves, *Teaching to the Test: The Incorporation of Elements of Bar Exam Preparation in Legal Education*, 64 J. LEGAL EDUC. 645, 645 (2015) (noting that the phrase “teaching to the test” is commonly associated with “teaching a scripted, narrowed and dumbed-down curriculum concentrated on memorization of facts and the lower-level thinking skills needed to pass standardized tests”).

98. See Alfieri, *supra* note 28, at 10 (“By ‘regnant’ lawyering, [Gerald] Lopez means a style of lawyering piloted by the traditional assumptions of legal and popular culture, assumptions that ‘long had kept Latinos, among others, at the margins and on the bottom’ of society.”).

99. This claim stems from the Author’s personal observations and experiences. But others have expressed similar views. See, e.g., Aaron Weinman, *Why One Law Firm Partner Likened a Recruiting Wave of Juniors to the ‘Wild West,’* BUS. INSIDER (Aug. 23, 2022), <https://www.businessinsider.com/big-law-hiring-talent-jobs-latham-watkins-2022-8> [<https://perma.cc/W3FY-CRUB>] (“Big Law typically recruits and interviews students at the start of their second year of law school, but intense competition has shops like Latham & Watkins tapping students before they finish their first year.”). But see Leigh Jones & Vanessa Blum, *Pressure’s on: Big Law Targeted by Student Activists*, LAW.COM (Mar. 13, 2020), <https://www.law.com/2020/03/13/pressures-on-big-law-targeted-by-student-activists/> [<https://perma.cc/4VGN-6KZG>] (“Students at top law schools increasingly are putting pressure on law firms to change their ways.”).

classrooms.¹⁰⁰ Teaching law students how to resist America’s legacy of racial injustice in its rule of law requires a pedagogy grounded in principles of public citizenship.¹⁰¹ Although a discussion of such pedagogical principles is beyond the scope of this Article,¹⁰² it would undoubtedly emphasize, I argue, a lawyer’s awareness of critical theories of law as a prerequisite to public citizenship lawyering.¹⁰³ Law students must learn how to critically engage the “cultural DNA” of client communities before they can serve as effective public citizens—not simply for matters of racial justice, but perhaps more importantly, for matters of democratic citizenship that cut to the very core of the American democratic project.¹⁰⁴ Such a pedagogy would eliminate antiquated teaching practices from the classroom that reinforce oppressive power dynamics between the law student and the law professor.¹⁰⁵ In so doing, law schools will train law students to

100. See, e.g., Steven K. Homer, *Using Interculturally Aware Teaching-Methods (in Revisiting the Characteristics of Effective Education)*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 85–89 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo López eds., 2015); Sheila I. Vélez Martínez, *Towards an Outcrit Pedagogy of Anti-Subordination in the Classroom*, 90 CHI.-KENT L. REV. 585 (2015); Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 25 BERKELEY LA RAZA L.J. 1 (2015); Spearlt, *Priorities of Pedagogy: Classroom Justice in the Law School Setting*, 48 CAL. W. L. REV. 467 (2012); Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange: Making up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1 (2010); Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635 (2008); Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 362–64 (2001); Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School Teaching*, 32 WILLAMETTE L. REV. 541, 573 (1996); Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN’S STUD. 33 (1994).

101. Other scholars, such as Susan Jones, have called for leadership coaching—already a mainstay in graduate business schools—to be integrated into the law school curriculum to help students on their path toward professional identity formation. See Susan R. Jones, *The Case for Leadership Coaching in Law Schools: A New Way to Support Professional Identity Formation*, 48 HOFTSRA L. REV. 659, 661 (2020).

102. But see Etienne Toussaint, *The Miseducation of Public Citizens*, 29 GEO. J. POVERTY L. & POL’Y 287, 315–35 (2022) (proposing foundational pedagogical principles of public citizenship and clarifying how such norms can ground the legal profession’s public purpose).

103. *Id.* at 317 (arguing that “the professor who seeks to prepare students must deconstruct the ‘indeterminacy’ of legal theory and the materiality of ideology in legal reasoning to deepen the law student’s understanding of legal judgments” and “guide their students toward critical consciousness of the intersectionality of law and politics”).

104. Harold McDougall, *The Rebellious Law Professor: Combining Cause and Reflective Lawyering*, 65 J. LEGAL EDUC. 326, 331 (2015) [hereinafter McDougall, *The Rebellious Law Professor*] (explaining that “[t]he cultural DNA produced by each human community over time, carrying the imprint of its distinct problem-solving techniques, constitutes a rich storehouse of potential solutions for many social, economic, political, and medical problems”); see also Harold A. McDougall, *Reconstructing African American Cultural DNA: An Action Research Agenda for Howard University*, 55 HOW. L.J. 63, 69 (2011) (noting the link between cultural DNA and participatory democracy).

105. See McDougall, *The Rebellious Law Professor*, *supra* note 104, at 340 (“It is the rebellious law professor’s job to build bridges not just between law and economics, politics, history or psychology.

become armor bearers of justice and stalwarts of democracy. Unfortunately, in too many instances, the doctrinally conservative, racially homogenous, and politically neoliberal strains in legal education risk turning law schools into training grounds for hierarchy.¹⁰⁶

Scholars have further argued that the dominance of legal formalism in law school curricula is amoral—producing law graduates who enter the legal profession with a blunted ethical compass and dulled sense of moral responsibility.¹⁰⁷ This critique was waged by early scholars of philosophical legal ethics. For example, in 1975, Richard Wasserstrom published *Lawyers as Professionals: Some Moral Issues*, which questioned whether a one-sided loyalty to clients “renders the lawyer at best systematically amoral and at worst more than occasionally immoral in his or her dealings with the rest of mankind.”¹⁰⁸ In 1978, William Simon published *The Ideology of Advocacy*, which critiqued the principles of partisanship, neutrality, and non-accountability in traditional legal ethics.¹⁰⁹ Simon argued that a lawyer’s moral convictions should play a central role in their lawyering activities.¹¹⁰ More recently, David Luban has built upon this intellectual tradition by calling for lawyers to use moral judgment in their engagement with client issues.¹¹¹

It is also to build bridges to ‘lay’ problem-solvers whose intellectual discipline is rooted in their own community’s cultural DNA.”)

106. See Kennedy, *supra* note 54, at 592–95.

107. See, e.g., Heidi Boghosian, *The Amoralism of Legal Andragogy*, 3 STAN. AGORA 1, 2 (2002), <https://agora.stanford.edu/agora/volume2/articles/boghosian/boghosian.pdf> [https://perma.cc/LVZ2-J2UG] (“Law students trained as legal technicians do not know how to question or even identify the moral or political implications of legal doctrine.”); Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 193, 194 (1991) (describing results of a study that “demonstrated that the first year of law school has an insignificant effect on men’s moral reasoning but a substantial impact on women’s moral reasoning”); Maury Landsman & Steven P. McNeel, *Moral Judgement of Law Students Across Three Years: Influences of Gender, Political Ideology and Interest in Altruistic Law Practice*, 45 S. TEX. L. REV. 891, 910–11 (2004) (“Legal education has been subjected to criticism because of its purported amoral character.”); Stephen Wizner, *Can Law Schools Teach Law Students to Do Good? Legal Education and the Future of Legal Services for the Poor*, 3 N.Y.C. L. REV. 259, 263 (2000) (“Changing the curriculum will not achieve the desired end unless its purpose is to transform the law school culture by imbuing the curriculum with an intellectual and moral concern for social and economic justice.”); Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 287–88 (2001) (“Relying on pure case-handling as the medium in which we teach about justice reflects a belief that we communicate values through our content choices rather than by engaging the student in the moral and ethical discourse about those choices.”).

108. Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1, 1 (1975).

109. William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29, 36–37 (1978).

110. See *id.* at 130–42. But see Robert W. Gordon & William H. Simon, *The Redemption of Professionalism?*, in LAWYERS’ IDEALS/LAWYERS’ PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION 234 (Robert L. Nelson, David M. Trubek & Rayman L. Solomon eds., 1992) (arguing that “an important part of the explanation for the emergence of professional rhetoric and institutions may lie in a sincere (and to some extent, normatively plausible) aspiration for autonomy, solidarity, and responsibility in the workplace”).

111. See LUBAN, *supra* note 37, at 148–74.

As the critical legal studies movement grew in the 1980s, other scholars argued that law schools were promoting an apolitical legal doctrine and competitive classroom culture that served the needs of a prestige-driven corporate marketplace, rather than the needs of individuals historically subordinated by the law.¹¹² For example, Duncan Kennedy asserted that law's underlying cognitive structure embedded a contradiction between individual will and collective values.¹¹³ Other scholars such as Elizabeth Dvorkin, Jack Himmelstein, and Howard Lesnick similarly argued that law schools were crippling the emotional and moral well-being of their students, driving many to view the study of law as distinct from their personal interests in social justice movements.¹¹⁴ Carrie Menkel-Meadow and Deborah L. Rhode brought a feminist perspective to the study of legal ethics, pushing back against the patriarchal cultural norms in dominant legal discourse.¹¹⁵ David Wilkins interrogated tough moral questions raised by lawyers whose racial and ethnic identities conflicted with the racial biases and stereotypical views of their clients.¹¹⁶

Similarly, Catholic legal theorists during this period, such as Thomas Shaffer, critiqued the moral neutrality of legal education, suggesting that law professors must engage students in discussion of the moral virtues that undergird

112. See Kennedy, *supra* note 54, at 594 (arguing that law schools, while political in nature, present themselves to students as apolitical while reinforcing patterns of hierarchy and domination); see also Drucilla Cornell, *Toward A Modern/Postmodern Reconstruction of Ethics*, 133 U. PA. L. REV. 291, 351 n.330 (1985) (arguing that introducing Barthian readings in law schools would help reintroduce moral debate and prevent law professors and lawyers from "running away from their moral responsibilities in the name of some unjustifiable technical mumbo-jumbo"); Joseph William Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1, 8 (1984) ("[T]he absence of determinacy, objectivity, and neutrality [in the legal profession] does not condemn us to indifference or arbitrariness."); Alan D. Freeman, *Truth and Mystification in Legal Scholarship*, 90 YALE L.J. 1229, 1230 (1981) ("The point of delegitimation is to expose possibilities more truly expressing reality, possibilities of fashioning a future that might at least partially realize a substantive notion of justice.").

113. See Duncan Kennedy, *The Structure of Blackstone's Commentaries*, 28 BUFF. L. REV. 209, 211-12 (1979).

114. See ELIZABETH DVORKIN, JACK HIMMELSTEIN & HOWARD LESNICK, *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM* 105 (1981) (discussing a commentator who described legal education as "a process of learning to separate ourselves from human reality").

115. See Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163, 1163 (1988) (examining the barriers confronting professional women, including female lawyers); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39 (1985) (exploring the ways in which the emergence of female lawyers might shape the legal profession).

116. See David B. Wilkins, *Race, Ethics, and the First Amendment: Should a Black Lawyer Represent the Ku Klux Klan?*, 63 GEO. WASH. L. REV. 1030, 1033 (1995); see also David B. Wilkins, *Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, 45 STAN. L. REV. 1981, 1983-84 (1993) (arguing that law school curriculum affects the legal profession's ability to combat the systemic subordination of Black people).

legal doctrine to reclaim the public purpose of lawyering in America.¹¹⁷ Shaffer advocated an approach to teaching legal ethics that “edges students into deeper moral reflection . . . [and] brings them to the connection between being a lawyer and being a religious believer, or to the morals we bring to the law: the way we thought before we learned to think like lawyers.”¹¹⁸ More recently, scholars such as Steve Sheppard have argued that law schools are abandoning the teaching of justice altogether, training students for law practice that minimizes solidarity with marginalized communities and downplays social injustices shaped by the color of law.¹¹⁹

While empirical data reveals a steady decline in the average law student’s proclivity for a career in public interest law,¹²⁰ Robin West contends that law students are not in fact losing their “moral compass.”¹²¹ Instead, to West, law schools convey and model a range of strictly process-based moral values that are internalized by law students throughout their course of study.¹²² For example, law students are exposed to the moral necessity of *fair process*, whether by digesting the nuances of due process in civil procedure, or by discovering the importance of the right of appeal in criminal law.¹²³ Further, law students are attuned to the moral value of *horizontal equity* (also known as legal equality, whereby a legal system treats “like cases alike” as a way of maintaining faith in ancestral wisdom, establishing the predictability of the law, and furthering social conservatism), whether by comparing categories of injury in torts, or by measuring types of damages in contracts.¹²⁴ Even more, law students are taught the moral virtue of *accumulated knowledge* and *human fallibility*, whether by exploring rules of precedent that honor shared community with ancestors, or by learning to appreciate contrasting viewpoints through deference to an impartial adjudicatory system.¹²⁵

117. See, e.g., THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER (1981); Thomas L. Shaffer, *Faith Tends to Subvert Legal Order*, 66 FORDHAM L. REV. 1089, 1097 (1998) (exploring the conflict of law with a person’s religious convictions); Thomas L. Shaffer, *The Legal Ethics of Radical Individualism*, 65 TEX. L. REV. 963, 964 (1987) (arguing that the idea “that fact and value are separate . . . deprives legal ethics of truthfulness and of depth”).

118. Thomas L. Shaffer, *On Teaching Legal Ethics with Stories About Clients*, 39 WM. & MARY L. REV. 421, 423 (1998).

119. See Steve Sheppard, *Teach Justice*, 43 HARV. C.R.-C.L. L. REV. 599 (2008).

120. David W. Raack, *Law School and the Erosion of Student Idealism*, 41 J. LEGAL EDUC. 121, 122 (1991) (reviewing ROBERT V. STOVER & HOWARD S. ERLANGER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL (1989)); see also Erica Field, *Educational Debt Burden and Career Choice: Evidence from a Financial Aid Experiment at NYU Law School*, 1 AM. ECON. J. 1, 3 (2009) (“A recent survey of 1622 law school graduates found that 66 percent did not consider a public interest job because of law school debt.”).

121. WEST, *supra* note 34, at 48.

122. *Id.*

123. *Id.* at 48–54.

124. *Id.*; see also, e.g., Cass R. Sunstein, Commentary, *On Analogical Reasoning*, 106 HARV. L. REV. 741 (1993) (exploring how analogical reasoning operates in law).

125. WEST, *supra* note 34, at 48–54; see also Anthony T. Kronman, *Precedent and Tradition*, 99 YALE L.J. 1029, 1029 (1990) (discussing justifications of law’s deference to precedent).

As students learn to articulate diverse arguments across these various modes of legal reasoning—from procedural fairness, to legal equality, to historical precedent—they express implicit moral values, whether they be a “universalist regard for the common humanity of persons” or an “instinctual and unthinking, discrimination between them.”¹²⁶ By graduation, law students come to not only embrace these moral values—in some cases, without even realizing it—but also their attendant framings of liberty and equality. Thus, I agree that it seems far reaching to conclude that law students are being trained to become amoralists, as some suggest. Rather, law students are being acculturated toward a distinctive type of morality that shapes their professional lawyering identity—*liberal legalism*.¹²⁷

Robin West defines liberal legalism in the United States—which she terms “American legalism”—not as a jurisprudential articulation of the nature of law, but rather as “a particular set of values both reflected in and grounding a complex set of practices, articulated in a large, even vast, collection of texts, and yielded by a swath of shared history . . . that defines a way of being in the world.”¹²⁸ In other words, the modern practice of using analogical reasoning and precedential authority to guide legal analysis means legal conclusions will often reflect both the evolution of U.S. legal history and the moral commitments of those trained in U.S. law. These moral commitments—e.g., a concern for basic fairness, a respect for horizontal equity, a regard for precedent, and a deference toward individual rights, to name a few—reflect a distinct perspective on human dignity, human equality, human liberty, and human moral striving.

Law school’s challenge lies not in its inculcation of these values, which are deeply embedded in America’s political traditions. Rather, the problem arises from the moral virtue that is often missing: justice. As Phyllis Goldfarb argues, “[L]egal culture induces acquiescence to institutional structures that are built on the values of liberal capitalism while obscuring recognition that these values are preordained choices derived from a particular set of power relations.”¹²⁹ Indeed, while law students grow accustomed to debating the *procedural* fairness of law, rarely do they engage the *substantive* justice of those very same legal rules,

126. WEST, *supra* note 34, at 52.

127. Sometimes the concept is referred to as legal liberalism. See Robin West, Lecture, *Reconsidering Legalism*, 88 MINN. L. REV. 119, 136 (2003) (defining “liberal legalism” as a “foundational commitment . . . that the ‘first duty’ of the state is to protect citizens against violence [which was embraced] by the architects, theorists, lawyers, and jurists of the English common law; by the framers of the American Constitution and by the patriots who fought for it; and perhaps most consequentially, by the drafters of the Constitution’s Reconstruction Amendments, who argued not only for a duty of protection, but a duty to provide equal protection of the laws to all citizens, [B]lack as well as [W]hite.”).

128. WEST, *supra* note 34, at 55.

129. Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717, 721 (1992).

which tend to imbue the unfair power dynamics that current notions of justice would oppose.¹³⁰

To be sure, this claim does not imply that law students are not taught to critique the merits of legislation and judicial opinions. The primary goal of Socratic questioning—when it is done right—is to inspire such debate.¹³¹ Rather, it reveals that law students *do* explore whether rules are applied fairly across varying constituencies, and law students *do* consider whether rules advance public policy by maximizing benefits over costs, or by promoting efficiency over waste. Yet, importantly, law students rarely assess whether these framings of law’s underlying normative commitments—i.e., fairness as equality of access; public good as the maximization of collective welfare, etc.—are themselves morally just.¹³² Even more, law students are not customarily given tools to meaningfully answer such philosophical questions because law school courses rarely discuss theories of justice and their implications for human behavior within political economic institutions.¹³³

Instead, doctrinal law school courses often convey a jurisprudence rooted in a “fidelity to law” framing of professional lawyering, not an identity rooted in a fidelity to community or social justice.¹³⁴ In *Lawyers and Fidelity to Law*, Bradley Wendel—esteemed for his work on morality and legal ethics in liberal

130. See WEST, *supra* note 34, at 56 (“What at least modern law students almost never receive is even an introduction to what justice—including: ‘distributive,’ ‘corrective,’ or ‘social’ justice, as well as legal justice—might require of the substance of law.”).

131. Elizabeth Garrett, *Becoming Lawyers: The Role of the Socratic Method in Modern Law Schools*, 1 GREEN BAG 2D 199, 201 (1998) (“The Socratic Method should not be a destructive tournament where gladiators of unequal power and experience vie to the death. Rather, the effort is a cooperative one in which the teacher and students work to understand an issue more completely. The goal is to learn how to analyze legal problems, to reason by analogy, to think critically about one’s own arguments and those put forth by others, and to understand the effect of the law on those subject to it.”).

132. Joseph William Singer, *Normative Methods for Lawyers*, 56 UCLA L. REV. 899, 904 (2009) (noting that students “quickly learn to make sophisticated arguments about interpreting precedent and statutes, making analogies and distinguishing cases, debating the judicial role (active or restrained), and discerning the advantages and disadvantages of rigid rules versus flexible standards. They also learn to use cost-benefit analysis, measuring the expected consequences of alternative rules of law in monetary values and adding the costs and benefits to determine which rules appear to maximize social welfare. But students are mute when I ask them to make or to defend arguments based on considerations of rights, fairness, justice, morality, or the fundamental values underlying a free and democratic society.”).

133. *Id.*

134. See W. BRADLEY WENDEL, *LAWYERS AND FIDELITY TO LAW* 10 (2010) (“[T]he obligations of lawyers must be understood as grounded in the ‘artificial reason of law’ and not ordinary moral reasons or considerations of substantive justice.”); see also Anthony V. Alfieri, *Fidelity to Community: A Defense of Community Lawyering*, 90 TEX. L. REV. 635, 639 (2012) (arguing that Wendel’s “fidelity to law” theory “exposes community lawyers to new terms of normative criticism and erodes the justification of their crucial work in American law and society”); William H. Simon, *Authoritarian Legal Ethics: Bradley Wendel and the Positivist Turn*, 90 TEX. L. REV. 709, 710 (2012) (arguing that Wendel’s argument “underestimates the extent to which social order depends on informal as well as formal norms and adopts a utopian attitude toward constituted power”).

democratic societies¹³⁵—describes “fidelity to law” as the highest value guiding the lawyer’s professional obligation, not fidelity to a client’s personal goals or to broader societal justice-oriented goals.¹³⁶ As Wendel explains, fidelity to law establishes the political legitimacy of positive law, and safeguards citizens’ rights and entitlements under law.¹³⁷ By elevating *procedural fairness* over individual preferences and interests, law separates “raw power” from the “reason-giving” judgments of public and private dispute-resolution proceedings, fostering peace and stability in democratic governance,¹³⁸ while upholding the adversarial structure of adjudication.¹³⁹ Further, procedural fairness welcomes “normative criticism” of good-faith claims of right or entitlement,¹⁴⁰ while allowing the lawyer to be “a friend” without bearing responsibility for institutional harms.¹⁴¹

Wendel grounds the fidelity to law framing in the standard conception of legal ethics, which confines the lawyer’s role to the ethical principles of: (1) partisanship; (2) neutrality; and (3) moral nonaccountability, ultimately affirming the amorality of law practice.¹⁴² Rather than cater to their clients’ individual preferences and interests, the lawyer’s primary role is to advocate for their clients’ legal rights and entitlements under law, which upholds the

135. See, e.g., W. Bradley Wendel, Essay, *Legal Ethics as “Political Moralism” or the Morality of Politics*, 93 CORNELL L. REV. 1413 (2008); W. Bradley Wendel, *Legal Ethics and the Separation of Law and Morals*, 91 CORNELL L. REV. 67 (2005); Alice Woolley & W. Bradley Wendel, *Legal Ethics and Moral Character*, 23 GEO. J. LEGAL ETHICS 1065 (2010).

136. WENDEL, *supra* note 134, at 70–71, 84 (“It is an implication of the legal positivism defended here that the validity and content of law is a matter of its social sources, not its wisdom, efficiency, or justice.”). *But see* Susan P. Koniak, *Through the Looking Glass of Ethics and the Wrongs with Rights We Find There*, 9 GEO. J. LEGAL ETHICS 1, 1 (1995) (arguing that legal ethics “imposes strong obligations to protect those who are most powerful and capable of protecting themselves and weak obligations to protect the powerless and most vulnerable”).

137. WENDEL, *supra* note 134, at 4, 86, 122, 177.

138. WENDEL, *supra* note 134, at 59–60.

139. Professor Monroe Freedman’s 1966 article on professional responsibility stimulated debate on the role of the lawyer in the adversarial system, culminating in the American Bar Association adopting the lawyer’s duty of zealous representation to clients in 1969. *See* Monroe H. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469, 1470 (1966) (“It is essential to the effective functioning of this system that each adversary have, in the words of Canon 15, ‘entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability.’”). *But see* DAVID LUBAN, LEGAL ETHICS AND HUMAN DIGNITY 19, 21 (2007) (“[A] lawyer’s nonaccountability does depend on the adversary system.”).

140. WENDEL, *supra* note 134, at 184.

141. *See* Charles Fried, *supra* note 39, at 1065 (examining whether “a decent and morally sensitive person can conduct himself according to the traditional conception of professional loyalty and still believe that what he is doing is morally worthwhile”).

142. *See* WENDEL, *supra* note 134, at 29–30; *see also* Alfieri, *supra* note 34, at 142 (“Partisanship . . . compels the lawyer to press his client’s interests ‘within the bounds of the law.’ Neutrality disassociates the lawyer from ‘the morality of the client’s cause’ and any conduct undertaken in support of that cause. Nonaccountability permits the lawyer to escape third-party censure as a defender of law breaking or wrongdoing.”).

legitimacy of the rule of law,¹⁴³ and affirms the client's autonomy before the law.¹⁴⁴ For the lawyer to do otherwise, under this view, represents a jurisprudential breach of faith¹⁴⁵ that undermines the social achievements of law and the loyalty of citizens to the rule of law.¹⁴⁶ Wendel further argues that the legal system's ability to resolve disputes in a public forum governed by reason imbues it with moral value that precludes a need for lawyers to consider "ordinary morality."¹⁴⁷ This restraint binds the lawyer to their prescribed roles and functions within the legal system, enabling an "institutional settlement" that preserves pluralism and "the positive legal obligations in the code of ethics."¹⁴⁸

In fairness, Wendel does admit that when legal outcomes fail to comport with norms of justice, thereby eroding political legitimacy, the lawyer can counsel moral dissent and political protest.¹⁴⁹ Yet, here, the primacy of fidelity to law comes into question, as ordinary morality and notions of substantive justice are critical to the lawyer's assessment of the perceived justice of their client's legal outcomes, lest the lawyer place sole faith in the inherent justice of the legal system itself.¹⁵⁰ In other words, what is justice, and who decides? As both Wendel and Luban note, defending a client's autonomy under a fidelity to law approach to lawyering can sometimes harm innocent parties, as evidenced in the famous Dalkon Shield intrauterine device products liability case.¹⁵¹ After the Dalkon Shield was found to cause infections that sterilized a disproportionately large percentage of women users, the A.H. Robins Company

143. See Luban & Wendel, *supra* note 24, at 353–54; Alfieri, *supra* note 34, at 143 ("The centrality of rights and entitlements to Wendel's interpretation of the Standard Conception of legal advocacy and ethics demands genuine, lawyer good faith in litigation and transactional representation.")

144. See Stephen L. Pepper, *The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities*, 11 AM. BAR FOUND. RSCH. J. 613, 617 (1986) ("The lawyer is the means to first-class citizenship, to meaningful autonomy, for the client.")

145. Alfieri, *supra* note 34, at 143 ("[I]nfidelity [to law] signals a lack of 'respect' not only for the law, but also for the legal system as a whole.")

146. WENDEL, *supra* note 134, at 9, 123, 132.

147. *Id.* at 36, 123.

148. Luban & Wendel, *supra* note 24, at 353–54. *But see* Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 413 (2006) ("[A]ttempting to build a lawyering theory around neutrality and non-interference is problematic . . . once we recognize the notion of positive liberty—helping people become the kind of persons they want to be—appeals to client autonomy can justify a fairly wide range of lawyering activities from . . . restraining a client temporarily; to confronting a client's inner pathologies of alienation or self-deception."); Katherine R. Kruse, *Beyond Cardboard Clients in Legal Ethics*, 23 GEO. J. LEGAL ETHICS 103, 103 (2010) (arguing that the problem of legal objectification leads lawyers to "overemphasiz[e] the client's legal interests and minimiz[e] or ignor[e] the other cares, commitments, relationships, reputations, and values that constitute the objectives clients bring to legal representation").

149. WENDEL, *supra* note 134, at 2–3, 82, 107, 114–16.

150. See Alfieri, *supra* note 34, at 149 ("Absent moral direction, the institutional roles and system-wide practices of lawyers risk illegitimacy.")

151. See WENDEL, *supra* note 134, at 24–26; LUBAN, *supra* note 130, at 35–36; RONALD J. BACIGAL, *THE LIMITS OF LITIGATION: THE DALKON SHIELD CONTROVERSY* 19–20 (1990).

was sued for defective product tort liability.¹⁵² During pre-trial discovery, the defense counsel developed a list of “dirty questions” to ask female litigants about their sexual and hygienic practices under a theory that there could have been alternate causes for the harms suffered by the plaintiffs.¹⁵³ Many concluded that the questions were designed as an intimidation tactic to convince women to abandon their case against the company.¹⁵⁴ More generally, it demonstrates how process can obscure substantive justice.

In contrast to a fidelity to law approach, Anthony Alfieri points toward a “fidelity to community” and social justice movements that “build[s] spiritual kinship,” “permit[s] lawyers to reflect emotionally and intellectually in situations of partisan conflict,” and “enable[s] lawyers to listen and communicate across boundaries of difference, power, and privilege.”¹⁵⁵ Even the standard conception of legal ethics, Alfieri contends, provides latitude for creative forms of partisanship, such as cooperative lawyer-client roles that facilitate “lawyer moral accountability and political participation” while supporting democratic community-building campaigns and what Gerald P. López called “rebellious” legal advocacy strategies.¹⁵⁶ For example, the organization *Law For Black Lives* was established as a community of lawyers and citizen activists working collaboratively to combat racial justice, promote progressive law reform, and build community power.¹⁵⁷ The commitment of such lawyers to grassroots social movements upholds the lawyer’s moral accountability for social injustice perpetuated by law. Consequently, it is spiritual kinship with social justice movements that feels blunted by Wendel’s

152. Robin Marantz Henig, *The Dalkon Shield Disaster*, WASH. POST (Nov. 17, 1985), <https://www.washingtonpost.com/archive/entertainment/books/1985/11/17/the-dalkon-shield-disaster/6c58f354-fa50-46e5-877a-10d96e1de610/> [<https://perma.cc/8E7T-WPWQ>] (describing the drivers of “16,000 product liability cases logjammed in courtrooms around the country . . . when the A.H. Robins Company declared bankruptcy”).

153. Leslie Ellen Tick, *Beyond the Dalkon Shield: Proving Causation Against IUD Manufacturers for PID Related Injury*, 13 GOLDEN GATE U. L. REV. 639, 660 (1983) (“If evidence of sexually transmitted bacteria was found at the time the IUD was removed, and especially if plaintiff is young and sexually active, defense attorneys may try to explore the plaintiff’s sex life in an attempt to prove that the infection was related to her sexual activity rather than to her method of birth control.”).

154. Morton Mintz, *A Crime Against Women: A. H. Robins and the Dalkon Sheild (sic)*, 7 MULTINAT’L MONITOR (1986), <https://www.multinationalmonitor.org/hyper/issues/1986/0115/index.html> [<https://perma.cc/AP5A-DXJR>] (“You inquired into their sexual practices and into the identity of their sex partners. You . . . ruined families and reputations and careers-in order to intimidate those who would raise their voices against you. You introduced issues that had no relationship whatsoever to the fact that you planted in the bodies of these women instruments of death, of mutilation, of disease.” (quoting Miles W. Lord, Chief U.S. District Judge for Minnesota, declaring to three officers of the A.H. Robins Company) (alteration in original)).

155. Alfieri, *supra* note 34, at 146, 155.

156. See Alfieri, *supra* note 34, at 147; see generally LÓPEZ, *supra* note 8 (discussing the concept of rebellious lawyering).

157. See generally LAW FOR BLACK LIVES, <http://www.law4blacklives.org/> [<https://perma.cc/5BVH-z9JR>] (last visited Jan. 27, 2023) (discussing the progressive legal goals of *Law for Black Lives* to combat racial injustice).

articulation of the social value of lawyering within the confines of liberal democratic institutions.

While fidelity to law facilitates political legitimacy, it also can produce a chilling effect upon the lawyer's consideration of ordinary morality and substantive justice during the lawyering process, infringing on their ability to express moral dissent and engage in political protest before ordered judgment renders an unjust decision.¹⁵⁸ For example, what moral compass guides the well-intentioned lawyer when U.S. law lags behind international human rights? While it may seem impractical, or even dangerous, for society to ask lawyers to make ongoing moral evaluations of their clients' goals,¹⁵⁹ one must consider whether it is a good idea for lawyers to "disentangle their judgments about what was required or permitted by the law of their society from their individual judgments about justice and morality."¹⁶⁰

The U.S. civil rights movement provides but one example of the moral failings of law, and the need for lawyers to protest unjust laws and advocate for law reform.¹⁶¹ The legal memos justifying the torture of detainees during the War on Terror provides yet another.¹⁶² The lawyer does not abuse law through disobedience to law. Rather, moral dissent and political protest aligns the lawyer with the morality and accountability of the client's cause, signaling a "legal-political partisanship . . . for which advocates must morally account."¹⁶³ It is the

158. Such a chilling effect may be to blame for the complicity of lawyers with several financial scandals in recent history. *See, e.g.,* Susan P. Koniak, *When the Hurlyburly's Done: The Bar's Struggle with the SEC*, 103 COLUM. L. REV. 1236 (2003) (exploring the role of the lawyer in the Enron and other corporate scandals of the early 2000s); William H. Simon, *The Kaye Scholer Affair: The Lawyer's Duty of Candor and the Bar's Temptations of Evasion and Apology*, 23 LAW & SOC. INQUIRY 243 (1998) ("[A]nalyz[ing] . . . broad ethical issues raised by the [Charles Keating] case about the participation of lawyers in financial scandals.").

159. *See* Woolley & Wendel, *supra* note 135, at 1095 ("[G]iven the social stigmatization suffered by many whistleblowers, it is unlikely that most individuals . . . would want to be mavericks. It seems odd to ground a general theory of ethical lawyering . . . on a complex of personal characteristics that occurs only infrequently in the form of exceptionally courageous and individualistic people."). *But see* David Luban, *How Must a Lawyer Be? A Response to Woolley and Wendel*, 23 GEO. J. LEGAL ETHICS 1101, 1116–17 (2010) (responding that a desire that "lawyers be 'relentlessly focused' on morality only [demands] that they cannot hide behind their role or the adversary system to release themselves from moral obligations that they would have if they weren't lawyers").

160. Jeremy Waldron, *Normative (or Ethical) Positivism*, in HART'S POSTSCRIPT: ESSAYS ON THE POSTSCRIPT TO THE CONCEPT OF LAW 413 (Jules Coleman ed., 2001).

161. *See generally* TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS 1954–63 (1988) (describing the efforts of civil rights activists, led by Martin Luther King, Jr., to combat racial injustice in the United States during the Jim Crow era).

162. *See generally* Jeremy Waldron, *Torture and Positive Law: Jurisprudence for the White House*, 105 COLUM. L. REV. 1681, 1681 (2005) (responding to the Justice Department memos that "suggested that it is not in all circumstances wrong or unlawful to inflict pain in the course of interrogating terrorist suspects"); David Luban & Katherine S. Newell, *Personality Disruption as Mental Torture: The CIA, Interrogational Abuse, and the U.S. Torture Act*, 108 GEO L.J. 333, 336–37 n.10 (2019) (discussing eight legal memos written by Department of Justice lawyers that "virtually guaranteed that U.S. interrogators working overseas would not be prosecuted for torture").

163. *See* Alfieri, *supra* note 34, at 156.

lawyer's good-faith belief in the ordinary morality and substantive justice of their client's cause that elevates their legal advocacy to a "moral witness" that preserves the plurality of political and cultural values within the demos.¹⁶⁴ Such "hopeful acts of faithful witness and defiance" enable a participatory democracy built upon "cooperative power not obedience to power."¹⁶⁵

This vision of public citizenship—the lawyer fueled by righteous indignation *against* those with corrupted power—has served as an important part of civil rights and social justice advocacy throughout U.S. history. Unfortunately, it remains peripheral to many law school curricula. As the next Section clarifies, this dilemma has long troubled legal education in the United States. Lest we remain doomed to repeat our mistakes, we must revisit history to remake the future.

II.

THE POLITICS OF LAW SCHOOL IDENTITY

Before exploring the call to transform legal education, one must first consider the competing interests and roles of a law school. More than simply a school, law school is perhaps best classified as an educational "institution"—an integrated network of formal rules, informal customs, and social norms that govern the interactions of students, teachers, researchers, and administrators operating within a dynamic learning community. Law courses, law clinics, law reviews, and legal research centers all comprise disparate aspects of the "schooling" of law, and collectively work toward achieving a commonly shared, multifaceted institutional purpose.¹⁶⁶ As a result, the hybridized nature of law school as a business entity bound by multiple varied, and at times competing, institutional logics has made its analysis complex.

One might deem law school as a political institution as well. Law school not only shapes the formation and evolution of law, but it also influences the political process. It does so by training the very lawyers who craft laws and public policies as lawmakers, enforce contracts and legal judgments as judges, protect democracy and citizenship as legislators, and champion the public interest as legal advocates and activists.

This Section adopts a historical institutionalist approach toward the study of law school's political identity, framing evolving patterns of institutional change in legal education as historically contingent and influenced by human

164. See Thomas L. Shaffer, *Law Faculties as Prophets*, 5 J. LEGAL PRO. 45, 50–51 (1980) (arguing that law faculties are moral specialists).

165. See Alfieri, *supra* note 34, at 156.

166. Some scholars have emphasized law school's academic purpose to train future attorneys, while others have championed its public purpose to critique law and public policy through legal scholarship and pro bono law practice. See *supra* notes 15, 18–21, 23 (describing law school's multifaceted purpose).

behaviors and ideological beliefs.¹⁶⁷ According to historical institutionalists, how one behaves within an institution, and how an institution evolves and changes across time in response to human behaviors, depends as much on the institution's historical context as it does on individual engagement with institutional rules and norms.¹⁶⁸ Given law school's historical role in training many of the individuals who construct, shape, and regulate the sociopolitical institutions that govern lawyer interactions, historical institutionalism provides the best analytical framework to consider how law school's purpose, and accordingly its cultural identity, has shifted across time in response to its historical, sociopolitical, and cultural context.

To clarify the institutional hybridity of law school, Part II.A discusses the historic debate between legal formalists and legal realists on the nature of law, the methods of legal reasoning and jurisprudential analysis, and their implications for legal education. Then, Part II.B demonstrates how ideology—specifically, market-based notions of lawyering practice-readiness within a primarily functionalist vision of law in society—have shaped conceptions of professionalism in legal education, effectively sidelining law school's public purpose. Collectively, these observations demonstrate that law school's identity crisis, as it were, is not new. Further, they reveal that the ongoing struggle to reconcile law school's purpose with societal calls for racial reckoning has been hampered by law school's pedagogical commitment to a functionalist view of law in society.

A. *Law School and Justice*

Law school has long been viewed as both a training ground for future attorneys to study formal principles of law and lawyering practice, and as a public forum to consider and debate law's evolution as an instrument of social change.¹⁶⁹ Discerning how law disrupts, resolves, or perpetuates social and

167. Social scientists have developed various approaches to studying the role of institutions in structuring human behavior. These so-called institutionalists can be divided into at least three categories based upon their fundamental theories of human nature: (1) rational choice institutionalists, who believe humans are strategic and rational actors that calculate the costs and benefits of choices to maximize personal gain; (2) sociological institutionalists, who reject the framing of humans as primarily self-interested and instead assert that humans are fundamentally social beings guided by a "logic of appropriateness"—an ethic dictated by cultural rules and social norms; and (3) historical institutionalists, who find a home between these two competing views of human nature, contending that "human beings are both norm-abiding rule followers and self-interested rational actors." Sven Steinmo, *Historical Institutionalism*, in APPROACHES AND METHODOLOGIES IN THE SOCIAL SCIENCES: A PLURALIST PERSPECTIVE 118, 126 (Donatella della Porta & Michael Keating eds., 2008).

168. As Sven Steinmo explains, "Historical institutionalists understand that behaviour, attitudes and strategic choices take place inside particular social, political, economic and even cultural contexts." *Id.* at 127.

169. While the Carnegie Foundation describes law school as an institution that "forms minds and shapes identities," linking its pedagogical purpose of teaching specialized knowledge to the cultivation of a professional lawyering identity in service to the public, it does not go as far as demanding that law

economic inequality has motivated the work of judges, lawyers, law makers, law professors, and law students since law school's inception. However, the diversity of behaviors, attitudes, and pedagogical practices of law faculty seeking to achieve law school's multifaceted purpose, and the concomitant experiences of law students in the classroom, have been shaped by differing views on the relationship between law and society. Is law the product of dominant cultural and political views, or is law the embodiment of abstract moral and philosophical principles applied to sociopolitical institutions? Consider first the early debates between legal formalists and legal realists on the nature of law and its implications for law teaching.

1. *Formalism and Realism in Legal Education*

Legal education's ability to address how law perpetuates inequality is minimized by its focus on formalism and realism. The formation of professional lawyering identity has historically occurred through two disparate modes of law teaching: (1) the *Socratic case-dialogue* model that still dominates the standard law school classroom experience;¹⁷⁰ and (2) the *legal apprenticeship* model that has become emblematic of clinical legal education.¹⁷¹ While both modes of law teaching shape how law students develop legal acumen and form professional lawyering identity, they have historically promoted inconsistent values and divergent professional norms.¹⁷² While the Socratic case-dialogue model emphasizes "formal knowledge and scientific rationality in legal analysis," the apprenticeship model invokes "traditions of craft, judgment, and public responsibility."¹⁷³ The dominance of formal knowledge in the modern research university—typified by an emphasis on logocentric thinking and deductive logical analysis—has primarily shaped the collective consciousness of U.S. law schools since their incorporation into the university.

schools provide students with tools to debate law's evolution as an instrument of social change. See SULLIVAN ET AL., *supra* note 17, at 1–2 (2007) (describing law as a "public profession" and lawyers as having "public responsibilities").

170. See Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1, 23 (1983) (discussing Langdell's case-focused method of teaching); Bruce A. Kimball, *Young Christopher Langdell, 1826-1854: The Formation of an Educational Reformer*, 52 J. LEGAL EDUC. 189, 226 (2002) (discussing Langdell's introduction of the Socratic method); David D. Garner, *The Continuing Vitality of the Case Method in the Twenty-First Century*, 2000 BYU EDUC. & L.J. 307, 308 (2000) (noting apprenticeship as a traditional path toward the practice of law). *But see* Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609, 613 (2007) (questioning the use of Langdell's Method, describing it as "so obsolete, so discontinuous with the profession").

171. See James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83, 85 (1991); Alfieri, *supra* note 21, at 1078 ("The apprentice model of practice supplies cognitive techniques and operating procedures to enrich legal knowledge and professional effectiveness.").

172. See Alfieri, *supra* note 21, at 1076 (noting "a historic tension between the conventions of the practitioner community and the canons of the modern research university"); Elizabeth Mertz, *Inside the Law School Classroom: Toward a Legal Realist Pedagogy*, 60 VAND. L. REV. 483, 494–508 (2007).

173. These characteristics are emblematic of the academic epistemology of the modern research university. See Alfieri, *supra* note 21, at 1076–77.

Building upon legal positivist theories of reason and truth birthed during the Enlightenment Period, the idea of formal knowledge in law, or *legal formalism*, gained prominence in the late nineteenth century as a guiding normative theory of law.¹⁷⁴ Legal formalism posits that lawyers and judges can use reason and rationality to discern abstract principles of law from the objective facts of court cases.¹⁷⁵ Influenced by this framing of law, Christopher Columbus Langdell, joined by fellow legal educators of his day, organized U.S. law into discrete subject areas—e.g., contracts, property, torts, civil procedure, etc.—that could be taught entirely from common law cases.¹⁷⁶ Prior to Langdell’s institutionalization of the case-dialogue method of law teaching at Harvard Law School—the method was later popularized by James Barr Ames¹⁷⁷—legal education in the United States primarily consisted of studying: (1) legal treatises that summarized the law; and (2) influential works of literature from the Western canon that wielded cultural and political authority.¹⁷⁸ To solidify law’s place in the modern research university, Langdell crafted an epistemology of law as a science. Teaching law students how to rationally apply objective legal principles to factual scenarios with analogical reasoning, Langdell thereby crafted the formality, autonomy, completion, and ultimately, the virtue of the common law.¹⁷⁹ Under Langdell’s vision, lectures summarizing the law were largely abandoned in favor of a Socratic pedagogy of interrogating students to elicit the important facts, legal issues, and court holdings of judicial opinions.¹⁸⁰ By utilizing critical thinking and deductive reasoning to discern legal conclusions from abstract factual scenarios, law students learned how to “think[] like a

174. According to the Carnegie Foundation, legal positivists view the law “as an instrument of rational policymaking—a set of rules and techniques rather than a craft of interpretation and adaptation.” See SULLIVAN ET AL., *supra* note 17, at 5.

175. WEST, *supra* note 34, at 70–74.

176. See ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH SOME ACCOUNT OF THE CONDITIONS IN ENGLAND AND CANADA 410, 458 (1921).

177. See ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, at 39 (1983).

178. See ROBERT A. FERGUSON, LAW AND LETTERS IN AMERICAN CULTURE 28–33 (1984); WEST, *supra* note 34, at 77–78.

179. See Patrick J. Kelley, *Holmes, Langdell and Formalism*, 15 *RATIO JURIS* 26, 35–36 (2002) (“Langdell invented the case study method of teaching law . . . based on Langdell’s belief that ‘law is a science, and . . . all the available materials of that science are contained in printed books’ . . . [and] consists of certain fundamental doctrines.” (second omission in original)); Joseph Williams Singer, Review Essay, *Legal Realism Now*, 76 *CALIF. L. REV.* 465, 499 (1988) (“Roscoe Pound called formalism ‘mechanical jurisprudence’ because the classical lawyers had a tendency to apply their general principles relentlessly—regardless of the underlying policies or the consequences of these policies in specific cases. Judicial method was seen as scientific, apolitical, principled, objective, logical, and rational.”).

180. Kelley, *supra* note 176, at 36 (“Writing about the study of jurisprudence, Langdell expressed his understanding of a distinct line between the study of law as it is and the study of law as it ought to be. He concluded that lawyers and law professors ought only to study the law as it is.”).

lawyer.”¹⁸¹ The Langdellian case-dialogue method, or *case method*, as it is commonly known today, became the dominant strategy of teaching cognitive lawyering skills to future attorneys.

Yet, almost from inception, the formalist approach to law teaching was met with resistance from those who believed that abstract legal theory requires social and political context to derive its true meaning.¹⁸² Legal formalists in the academy, affectionately called “Langdellian formalists,”¹⁸³ had rendered issues of morality and politics as irrelevant to doctrinal analysis because objective legal principles presumably stood independent from subjective political and social institutions.¹⁸⁴ Further, according to formalists, since judges merely deduce logical legal conclusions by objectively applying timeless legal principles to new factual scenarios, the role of the judge is fundamentally to uphold private property and contractual rights, while protecting liberal entitlements against “paternalistic or redistributive interventions by state or federal legislators,”¹⁸⁵ not to make new law.

However, in 1881, critics such as Oliver Wendell Holmes, Jr., argued that a sole focus on objectivity and rationality in doctrinal analysis disregarded “the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men.”¹⁸⁶ In 1908, in *Muller v. Oregon*, then-lawyer Louis Brandeis became one of the first lawyers to turn toward social science in litigation to help clarify the lived

181. See KARL N. LLEWELLYN, *THE BRAMBLE BUSH: THE CLASSIC LECTURES ON THE LAW AND LAW SCHOOL* 107 (11th ed. 2008) (explaining that first-year law students are “to acquire ability to think precisely, to analyze coldly, to work within a body of materials that is given, to see, and see only, and manipulate, the machinery of the law”); SULLIVAN ET AL., *supra* note 17, at 54 (“The ability to think like a lawyer emerges as the ability to translate messy situations into the clarity and precision of legal procedure and doctrine and then to take strategic action through legal argument in order to advance a client’s cause before a court or in negotiation.”).

182. See Gregory Scott Parks, *Toward a Critical Race Realism*, 17 CORNELL J.L. & PUB. POL’Y 683, 689 (2008) (describing the influence of Oliver Holmes, Louis Brandeis, Benjamin Cardozo, and Roscoe Pound); see also Gary J. Aichele, *Legal Realism and Twentieth-Century American Jurisprudence: The Changing Consensus*, in *DISTINGUISHED STUDIES IN AMERICAN LEGAL AND CONSTITUTIONAL HISTORY* 13–25, 30–43 (Harold Hyman & William P. Hobby eds., 1990) (noting that Nathan Roscoe Pound in the early twentieth century “advocated the study of law in a larger social context, arguing that the educational isolation of lawyers was unfortunate, and ‘in large part to be charged with the backwardness of law in meeting social ends, the tardiness of lawyers in admitting or even perceiving such ends, and the gulf between legal thought and popular thought on matters of social reform’”); ROBERT SAMUEL SUMMERS, *INSTRUMENTALISM AND AMERICAN LEGAL THEORY* 22–37 (1982).

183. Jeremiah A. Ho, *Law as Instrumentality*, 101 MARQ. L. REV. 131, 131 (2017).

184. See Alfieri, *supra* note 21, at 1077 (discussing how the formalist approach shifted academic research norms away from practice and “worked to diminish the relationship of legal education to morality and public responsibility”).

185. WEST, *supra* note 34, at 72 (“The formalists accordingly supported the *Lochner*-era Supreme Court’s use of constitutional adjudication to protect common law rights of property and contract against democratic redistribution through legislative enactments.”).

186. OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1 (1881).

experience of law.¹⁸⁷ Roscoe Pound brought such critiques into the debate on legal pedagogy, arguing for an interdisciplinary approach to the study of “law in books” and “law in action.”¹⁸⁸ Later, critics such as Jerome Frank in 1933 noted that the judicial opinion represents merely a fragment of the legal case, rendering it insufficient to convey the complexity of the lawyering process and the breadth of the legal issues at stake.¹⁸⁹ Even more, these realists, as they would become called, contended that the formalist approach to law study discounts the morality of law by diminishing the lawyer’s unique ethical responsibilities as a public citizen.¹⁹⁰ The absence of discourse on the morality of law, coupled with a Socratic case-dialogue method that often filters “radical” critiques of liberal ideas out of the classroom, would come to inspire feelings of “ethical relativism and nihilism” among law students, generating the disorientation that pervades many law schools today.¹⁹¹

As the American legal realist tradition grew during the early twentieth century, scholars began calling for expanded experiential learning programs.¹⁹² In the 1930s, law professors primarily at Yale Law School and Columbia Law School further developed the alternative theory of jurisprudence called *legal realism* as a response to the dominance of *legal formalism*.¹⁹³ Building upon the legacy of Holmes, Brandeis, and Pound, these legal realists rejected the notion

187. See Brief for the State of Oregon, *Muller v. Oregon*, 208 U.S. 412 (1908) (No. 107), 1908 WL 27605 (compiling statistics from medical and sociological journals to argue that women needed “special protection” because of their physical differences from men). *But see* Ruth Bader Ginsburg, *Lessons Learned from Louis D. Brandeis*, BRANDEIS NOW (Jan. 28, 2016), <https://www.brandeis.edu/now/2016/january/ginsburg-remarks.html> [<https://perma.cc/FK7K-TXJ4>] (noting that “the method Brandeis used to prevail in that case is one I admired and copied,” but Justice Ginsburg still sought to undo the precedent because it was an obstacle “to Supreme Court recognition of the equal citizenship stature of men and women as constitutional principle”).

188. See Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV. 12, 14–15 (1910) (discussing how the meaning of laws as they appear in bound volumes can differ from the meaning and significance derived from their application by legal decision makers, which shows “where and how legal theory has yielded to the pressure of lay ideas and conduct”).

189. See Frank, *supra* note 15, at 910–16 (“*It is absurd that we should continue to call an upper court opinion a case. It is at most an adjunct to the final step in a case (i.e., an essay published by an upper court in justification of its decision.)*”); Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 600 (2007) (“[L]awyers increasingly need to think in and across more settings, with more degrees of freedom, than appear in the universe established by appellate decisions and the traditional questions arising from them.”).

190. See Anthony V. Alfieri, *Denaturalizing the Lawyer Statesman*, 93 MICH. L. REV. 1204, 1213 n.45 (1995) (book review); see also Alfieri, *supra* note 21, at 1077 (“The consequent ‘loss of orientation and meaning’ among faculty and students reveals the ‘shadow side’ of modern legal education and fuels recurrent accusations of professional self-absorption and public irresponsibility.”).

191. Alfieri, *supra* note 21, at 1078; see also Paul D. Carrington, *Of Law and the River*, 34 J. LEGAL EDUC. 222, 227 (1984) (suggesting that “[un]constrain[ed] teaching” is nihilistic and harms the legal academy).

192. See, e.g., Frank, *supra* note 15, at 910 (“[T]he Langdell system (even in its revised version) concentrates attention on the so-called legal rules and principles found in or spelled out of the printed opinions But the tasks of the lawyer do not pivot around those rules and principles. The work of the lawyer revolves about specific decisions in definite pieces of litigation.”).

193. See SUMMERS, *supra* note 182, at 22–37.

of law as a static body of neutral principles and dissented on most, if not all, of legal formalism's objective framings of the rule of law.¹⁹⁴ To the legal realist, the concept of law is a product of human political will, not the manifestation of legal reasoning applied to facts. Indeed, legal principles applied to the facts of cases are rarely neutral and unbiased. Instead, as legal realists such as Benjamin Cardozo argued, they are deeply influenced by the political and moral choices of judges and lawyers.¹⁹⁵ Contrary to the objectivity of legal formalism, American legal realists argued that jurisprudence should rely upon empirical evidence, much like the methods of natural science,¹⁹⁶ thereby enabling sociological insights, for example, to serve as a gap-filler when the law fails to contextualize community needs properly.¹⁹⁷ Pound referred to such an approach as "sociological jurisprudence," whereby "the sociological jurist pursues a comparative study of legal systems, legal doctrines, and legal institutions as social phenomena, and criticizes them with respect to their relation to social conditions and social progress."¹⁹⁸

Within the academy, legal realists argued that law students should be exposed to law's practical application through the study of legislation, or what some scholars have deemed "legisprudence."¹⁹⁹ Such insights, they argued, challenge students to consider how existing legal rules and political arrangements reflect power imbalances in society that demand law reform.²⁰⁰ In many ways, legal realists sought a reconciliation of the construction of law as an abstract theory of principles with the operation of law as a practical tool for socio-political ends.²⁰¹ Early legal realists, such as Jerome Frank, believed that it was the duty of law schools to expose their students to the complex relationship between theory and practice, urging the creation of law school clinics in 1933 in one of the most influential early articles on clinical legal education, *Why Not a*

194. For an introduction to legal realism, see generally JEROME FRANK, *LAW AND THE MODERN MIND* (6th ed. 1949) (arguing that legal verdicts do not reflect the neutral application of legal rules to the facts of a suit, but instead reflect the psychological prejudices and biases of legal decision makers).

195. See generally BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 34 (2d ed. 1949) (discussing the way a judge's conscious and unconscious decision-making process is shaped by available information, precedent, custom, and subjective standards of justice and morals).

196. See generally JOHN HENRY SCHLEGEL, *AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE* (1995).

197. See CARDOZO, *supra* note 195, at 69, 71.

198. Roscoe Pound, *The Scope and Purpose of Sociological Jurisprudence*, 25 *HARV. L. REV.* 489, 516 (1912).

199. See Julius Cohen, *Toward Realism in Legisprudence*, 59 *YALE L.J.* 886, 888 (1950).

200. Singer, *supra* note 179, at 482 ("The legal realists criticized the idea of a self regulating market system which was immune from state involvement or control. They challenged the classical period's careful distinction between public and private spheres. . . . [T]he state determined the distribution of power and wealth in society both when it acted to limit freedom and when it failed to limit the freedom of some to dominate others.").

201. See LLEWELLYN, *supra* note 181, at 17 ("[A lawyer's work] is impossible unless the lawyer who attempts it knows not only the rules of the law . . . but knows, in addition, the life of the community, the needs and practices of his client.").

*Clinical Lawyer-School?*²⁰² Other legal scholars shared Frank's perspective on legal education, inspiring the creation of early experiments with clinical legal education at schools across the country, including the University of Denver in 1904, Harvard Law School in 1913, the University of Southern California in 1928, Duke Law School in 1931, the University of Tennessee in 1947, and the University of Chicago in 1957.²⁰³ Eventually, law schools began integrating public law courses into the curriculum that engaged the political dimensions of lawyering, such as constitutional law and administrative law.²⁰⁴ By the 1960s, funding from the Ford Foundation helped to launch the modern clinical legal education movement, enriching the public purpose of law school with pro bono legal service toward the local community.²⁰⁵

Thus, clinical legal education emerged, in part, to counter the shortcomings of Langdellian formalism and the positivist ethos of the modern research university that then dominated modern legal education.²⁰⁶ At the outset, law school clinics in the modern era of legal education were designed to teach law students practical lawyering skills²⁰⁷ and inspire a commitment to public service.²⁰⁸ More recently, the Carnegie Foundation has emphasized experiential

202. See Frank, *supra* note 15, at 910–13.

203. See J.P. “Sandy” Ogilvy, *Celebrating CLEPR’s 40th Anniversary: The Early Development of the Clinical Legal Education and Legal Ethics Instruction in U.S. Law Schools*, 16 CLINICAL L. REV. 1, 4 (2009); Robert I. Mordfin, *Fifty Years of Clinical Legal Education at Chicago Law*, U. CHI. L. SCH. (Aug. 4, 2009), <https://www.law.uchicago.edu/news/fifty-years-clinical-legal-education-chicago-law> [<https://perma.cc/ZN8C-66W4>].

204. See Alfieri, *supra* note 21, at 1074 (“Indeed, numerous schools at all tiers now embrace policy-oriented, problem-solving methods of pedagogy; recognize interdisciplinary, practice-based scholarship; and incorporate ‘lawyering’ skills courses into the traditional core curriculum.”).

205. In 1968, William Pincus, then the Vice-President of the Ford Foundation, coordinated the initial funding of the Council on Legal Education for Professional Responsibility (CLEPR). CLEPR gave law schools grants to establish a network of legal services offices for poor and marginalized populations across America. Responding to the emphasis on localism in community development during President Lyndon B. Johnson’s War on Poverty and Great Society programs, these legal services offices employed client-centered strategies, including strategic litigation, holistic socio-legal services, and individual casework. For a more detailed history of the modern clinical legal education movement, see Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 12–13 (2000); see also Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 GEO. L.J. 1669, 1682–83 (1995) (discussing how the Office of Economic Opportunity (the administering agency of the Economic Opportunity Act of 1964) invested in “back-up centers” housed at law schools focused on issues like housing and welfare to promote legal services for indigent populations).

206. See, e.g., Kelley, *supra* note 179, at 42–43 (“Consistent with positivist reductive epistemology, Holmes continually reduced morally-freighted terms in the law, such as intent, malice, and negligence, to descriptions of voluntary action with knowledge of circumstances enabling a reasonable man to foresee danger. . . . These reductions purge the law of metaphysical notions and relate liability standards to scientific laws of antecedence and consequence.”).

207. See Goldfarb, *supra* note 17, at 293 (“[T]he subject of clinical education is the habits of thought and behavior that lawyers need to effectively perform their professional responsibilities.”).

208. William Pincus & Peter del Swards, *Educational Values in Clinical Experience for Law Students*, Sept. 1969, at 3, reprinted in COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL

learning as a vehicle to enhance practical skills training. Specifically, they note clinical legal education's role in facilitating two critical apprenticeships that complement cognitive skills training: (1) a *skill-based* apprenticeship in lawyering practice; and (2) a *behavioral* apprenticeship in ethics and professional judgment.²⁰⁹ This practice-oriented perspective is also reflected in the ABA's 1979 Cramton Report,²¹⁰ the 1992 MacCrate Report,²¹¹ and the 2007 Best Practices for Legal Education report,²¹² each seeking to revive apprentice traditions in legal education by emphasizing the need to cultivate critical thinking, problem-solving, research, negotiation, communication, ethical judgment, and civic commitment skills among law students.²¹³

Eventually, both legal formalists and legal realists came to coexist in the legal academy, engaging in debate on the nature of law, the nature of adjudication, the role of politics in law, and the implications of the Constitution and the common law for the lived experiences of marginalized citizens.²¹⁴

RESPONSIBILITY: NEWSLETTERS, 1969–72, at 31–32 (“[Clinical education] can develop in the future lawyer a sensitivity to malfunctioning and injustice in the machinery of justice and the other arrangements of society.”); Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *FORDHAM L. REV.* 1929, 1933–35 (2002).

209. SULLIVAN ET AL., *supra* note 17, at 27–29.

210. ABA SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS (1979) (Cramton Report).

211. ABA, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (July 1992) (MacCrate Report); *see also* Peter A. Joy, *The MacCrate Report: Moving Toward Integrated Learning Experiences*, 1 *CLINICAL L. REV.* 401, 403 (1994) (“It is clear in reading the MacCrate Report that the type of lawyering skills and values training it advocates is training that takes place throughout the entire law school curriculum and continues after graduation as a practicing lawyer.”); Bumele V. Powell, *Somewhere Farther Down the Line: MacCrate on Multiculturalism and the Information Age*, 69 *WASH. L. REV.* 637 (1994) (criticizing the MacCrate Report for inadequately addressing racial and gender inequality in legal education and the profession); Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What’s Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 *WASH. L. REV.* 593, 594 (1994) (arguing that the MacCrate Report is “too over-determined, too rigid and, at the same time, too incomplete for me. It enacts a particular picture of the lawyer, as principally a litigator, a ‘means-ends’ thinker who maximizes an abstracted client’s goals.”); Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 *CLINICAL L. REV.* 109, 114 (2001) (“The Report’s laudatory treatment of clinical legal education is hardly surprising, given the central role played by clinicians in shaping the document.”).

212. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 1–5 (2007).

213. *See* Alfieri, *supra* note 34, at 133 (“The Cramton Report emphasized the cultivation of critical thinking and problem-solving skills. . . . [T]he MacCrate Report stressed the development of problem-solving abilities and the improvement of legal research, communication, and negotiation skills. . . . [T]he 2007 Carnegie Report urged the integration of practical skills and professionalism training throughout the law school curriculum, especially the encouragement of ethical judgment, interpersonal communication, and civic commitment.”).

214. In the late nineteenth and early twentieth century, formalism could more easily be viewed as aligned with libertarian politics and realism with progressivism. This is much less the case today, as

Further, law school curriculums eventually came to reflect both the formalist and realist traditions in legal education, emphasizing legal theory through case law analysis in the Socratic classroom while simultaneously offering experiential learning opportunities for skill simulation and legislative advocacy in the law school clinic.²¹⁵

Yet, it has become increasingly clear that this dominant dual approach to legal education—the so-called theory-practice dichotomy²¹⁶—has not positioned law students to develop critical lawyering judgment fully and a professional identity attuned to the moral complexities of lawyering in a political economy marred by systemic racism and structural inequality.²¹⁷ How do law schools ensure that in their turn toward practice, they teach their students how to identify strains of hierarchy, racism, and structural oppression that taint law and lawyering practice?

Consider next the philosophical underpinnings of legal formalism and legal realism. This Article argues that both legal formalism and legal realism exhibit focused attention on ensuring that legal decision-making can be perceived as a kind of science, but largely understate the imperative for lawyers to discern the morality of law itself. This substructure, ultimately reflecting a commitment to a “functionalist” view of the law,²¹⁸ has profound implications for legal ethics in the modern era.

2. *Morality and Ethics in Legal Education*

One of the accomplishments of Langdellian formalism, as articulated by Robert Ferguson in *Law and Letters in American Culture*, was to divorce the

the role of statutes and constitutional politics has evolved throughout the twentieth century. For example, where judicial activism was once viewed as protecting markets against legislative encroachment (prior to the New Deal), it has in more recent history been used on behalf of progressives to promote public virtues, such as during the civil rights movement (although the tide has seemingly turned in the twenty-first century with the installation of conservative justices). Generally, formalists maintain fidelity to legal history and deference to the common law as the essence of law’s authority. In contrast, realists view statutes and regulations as the embodiment of law’s evolving nature and a commitment to democratic principles as the essence of law’s authority. See WEST, *supra* note 34, at 75–76.

215. See Goldfarb, *supra* note 17, at 292 (“Although clinics are not typically well-integrated into the general law school curriculum, most law schools consider them indispensable, even if they are not always accorded all the trappings of academic respect.”).

216. Nisha Agarwal & Jocelyn Simonson, *Thinking Like a Public Interest Lawyer: Theory, Practice, and Pedagogy*, 34 N.Y.U. REV. L. & SOC. CHANGE 455, 464 (2010).

217. Professor Neil Hamilton of the University of St. Thomas School of Law in St. Paul, Minnesota has explored the topic of professional identity formation in depth. See, e.g., Neil Hamilton, *Professional-Identity/Professional-Formation/Professionalism Learning Outcomes: What Can We Learn About Assessment from Medical Education?*, 14 U. ST. THOMAS L.J. 357 (2018); Neil Hamilton & Sarah Schaefer, *What Legal Education Can Learn from Medical Education About Competency-Based Learning Outcomes Including Those Related to Professional Formation and Professionalism*, 29 GEO. J. LEGAL ETHICS 399 (2016); Neil W. Hamilton & Verna E. Monson, *Ethical Professional (Trans)Formation: Themes from Interviews About Professionalism with Exemplary Lawyers*, 52 SANTA CLARA L. REV. 921 (2012).

218. See *infra* notes 238–243 and accompanying text.

authority of U.S. law from the canon of the Western humanities.²¹⁹ Prior to the introduction of Langdellian formalism, legal education in the United States dating to the early 1700s primarily comprised the study of legal treatises, the opinions of British common law judges, and diverse texts of cultural and political authority.²²⁰ During this “Jeffersonian tradition” of legal education, as Robin West calls it,²²¹ law students were expected to follow one of two tracks: the young men could travel to England and train at the Inns of Court,²²² or they could apprentice in the law office of an established practitioner.²²³ In either case, they were expected to digest significant works of philosophy, science, and religion that engaged important moral and ethical questions of the day, such as the meaning of justice in America’s burgeoning democratic project.²²⁴ To be sure, not all seeking to practice law were trained in the Jeffersonian tradition. Indeed, African Americans and Jews, for example, were barred from such pathways to practice due to racial discrimination.²²⁵ Even for those who did not face such barriers, trained lawyers fell short of crafting laws and public policies that promoted justice as a moral virtue for all inhabitants of the land that would become the United States. Notwithstanding, the Jeffersonian lawyer—as a “man of law and letters”—understood the normative authority of culture and the ethical imperative for lawyers to consider culture’s influence on the rule of law.

Perhaps driven by a meritocratic vision of a legal profession divorced from the “high culture” of the political elite,²²⁶ Christopher Langdell shifted the education of law into the modern research university as a learned profession. By confining the content of legal education to the black letter law itself under the guiding normative theory of legal formalism, Langdell repositioned the lawyer’s stance from ideological spokesman of neoclassical ideals to professional advocate for the so-called common man.²²⁷ In so doing, Harvard Law School became the first modern American law school with Langdell serving as dean

219. The canon spanned a range of classical works of philosophy, religion, science, and literature, from Aristotle to Shakespeare to the Bible. See WEST, *supra* note 34, at 76–77; FERGUSON, *supra* note 178, at 7–8, 199–206.

220. WEST, *supra* note 34, at 78.

221. *Id.* at 77.

222. Law students were always men during this era of U.S. history. See MARIAN C. MCKENNA, TAPPING REEVE AND THE LITCHFIELD LAW SCHOOL 1 (1986); John H. Langbein, *Blackstone, Litchfield, and Yale*, in HISTORY OF YALE LAW SCHOOL: THE TRICENTENNIAL LECTURES 17, 19 (Anthony T. Kronman ed., 2004).

223. MCKENNA, *supra* note 222, at 1; STEVENS, *supra* note 177, at 3.

224. See 1 DAVID HOFFMAN, A COURSE OF LEGAL STUDY: ADDRESSED TO STUDENTS AND THE PROFESSION GENERALLY 23–34 (2d ed., Baltimore, Joseph Neal 1836) (1817).

225. See generally JEROLD AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA (1976) (discussing the emergence of a stratified bar in the twentieth century along the lines of race, religion, class, color, sex, education, social origin, and educational opportunity).

226. WEST, *supra* note 34, at 78.

227. *Id.*

from 1870 to 1895.²²⁸ Legal education was coordinated into a three-year post-baccalaureate degree program,²²⁹ and law was declared an autonomous body of knowledge. Consequently, legal education was severed from studying morality, philosophical ethics, and political theory.

Legal realists did not meaningfully engage the philosophical and moral dimensions of law in their critique of legal formalism. Legal realists argued that judicial opinions are inherently legislative, and therefore, judges should look beyond the law when assessing the facts of the cases in their docket.²³⁰ Some scholars pointed toward political science, economics, and ethics as necessary components of legal analysis and thus legal education. For example, in 1869, Yale Law School began permitting law students to enroll in interdisciplinary courses.²³¹ Cornell Law School began encouraging history and political science courses in the late 1800s.²³² However, in most instances, legal realists did not point toward historical works in the Western canon that clarified the cultural, philosophical, and political dimensions of law. Nor did they point toward contemporary works of literature and non-fiction that might reveal socio-political norms and cultural values that frame legal analysis. Instead, legal realists primarily urged courts to emulate the methods of natural science and turn toward empirical evidence. Indeed, during the 1880s, the American Bar Association called for more social science in the law school curriculum.²³³

Thus, the legal realist critique was largely a methodological process of deconstruction. By using empirical social science to promote skepticism about legal rules and legal facts,²³⁴ legal realists exposed the indeterminacy of legal judgments and their tendency to “pass off contingent judgments as inexorable.”²³⁵ By leveraging real-world empirical insights from statistics, economics, and sociology, legal realists contended that judges could fill

228. JOEL SELIGMAN, *THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL* 20 (1978).

229. *See id.*

230. *See* Karl S. Coplan, *Legal Realism, Innate Morality, and the Structural Role of the Supreme Court in the U.S. Constitutional Democracy*, 86 TUL. L. REV. 181, 183–84 (2011).

231. John H. Langbein, *Law School in a University: Yale's Distinctive Path in the Later Nineteenth Century*, in *HISTORY OF THE YALE LAW SCHOOL*, *supra* note 222, at 65.

232. STEVENS, *supra* note 177, at 74.

233. *Id.* at 57 n.49.

234. *See* Gregory Scott Parks, *Toward a Critical Race Realism*, 17 CORNELL J.L. & PUB. POL'Y 683, 693 (2008); *see also* G. Edward White, *From Realism to Critical Legal Studies: A Truncated Intellectual History*, 40 SW. L.J. 819, 821 (1986) (“Legal scholars who came to call themselves Realists began with the perception that many early twentieth-century judicial decisions were ‘wrong.’ They were wrong as matters of policy in that they promoted antiquated concepts and values and ignored changed social conditions. They were wrong as exercises in logic in that they began with unexamined premises and reasoned syllogistically and artificially to conclusions. They were wrong as efforts in governance in that they refused to include relevant information, such as data about the effects of legal rules on those subject to them, and insisted upon a conception of law as an autonomous entity isolated from nonlegal phenomena.”); WILFRID E. RUMBLE, JR., *AMERICAN LEGAL REALISM: SKEPTICISM, REFORM, AND THE JUDICIAL PROCESS* 48–68 (1968).

235. White, *supra* note 234, at 821–22.

knowledge gaps in the law with *contextual* judgments that would enable legal opinions to reflect the real world.²³⁶ Yet, while legal realists demonstrated the indeterminacy of law and the value of politics in legal education, neither legal formalists nor legal realists advocated for robust integration of morality, philosophical legal ethics, or political theory in their analysis of law, and in legal education more generally.²³⁷

Ultimately, legal formalism and realism remain trapped, as Robert Gordon explained in his 1984 influential article *Critical Legal Histories*, in a “functionalist” vision of law in society. Functionalism has long dominated liberal legal scholarship and has often prevented the law from adequately responding to the needs of society. Writers that adhere to this dominant tradition “divide the world into two spheres, one social and one legal.”²³⁸ The “legal system” is a “specialized realm of state and professional activity” that is auxiliary to society, and that realm is “called into being by the primary social world in order to serve that world’s needs.”²³⁹

Such a view dramatically reduces the scope of scholarly discourse to questions about the law’s *functional responsiveness* to social needs: “Is law a dependent or independent variable?” “Is everything about law . . . determined by society?” “[D]oes law have ‘autonomous’ internal structures or logic?”²⁴⁰ To put it simply, must researchers only consider how the legal system should *respond* to evolving social needs? The formalist emphasizes a restrictive notion of law as judge-made and thus focuses on doctrinal reform, whereas the realist recognizes the added importance of legislation and calls for broad-based public policy reform.²⁴¹ Yet, this false dichotomy presumes—and this insight is a key motivation for the integration of critical theory in legal education—that there is “an objective, determined, progressive social evolutionary path.”²⁴²

In other words, while formalists and realists differ on how the law must adapt to social movements, they tacitly agree that the “natural and proper” evolutionary movement of society is toward “the type of liberal capitalism seen in the advanced Western nations (especially the United States).”²⁴³ This moral

236. See Singer, *supra* note 179, at 470–471 (“Social context, the facts of the case, judges’ ideologies, and professional consensus critically influence individual judgments and patterns of decisions over time. The realists felt that study of such factors could improve predictability of decisions.”).

237. To be sure, as Gregory Parks explains, there was a diversity of thought amongst legal realists: “(1) the critical oppositional variant that sought to expose the contradictions in classical legal formalism, (2) the social scientific variant that employed the insights and methods of the empirical sciences, and (3) the practical political variant that designed, made, and enforced reform policies.” Parks, *supra* note 234, at 692.

238. Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 60 (1984).

239. *Id.*

240. *Id.*

241. Singer, *supra* note 179, at 502 (“Realist scholars often argued that the legislature was the appropriate policymaking branch to which judges should defer.”).

242. Gordon, *supra* note 238, at 61.

243. *Id.* at 59.

commitment to modern global capitalism and Western liberal democracy as the undisputed champion of modernity must be seen as that—a moral commitment that rejects alternate conceptions of political economy, such as socialism, authoritarianism, or variations of the two. Some legal realists, such as Karl Llewellyn,²⁴⁴ Robert Hale,²⁴⁵ and Charles Hamilton Houston,²⁴⁶ challenged this moral view, especially as it pertained to race relations during the Jim Crow era of state-sanctioned racial apartheid in the United States. But, as one might expect because of its functionalist commitments, legal realists largely avoided racial justice issues that called into question the structural underpinnings of the U.S. political economy.²⁴⁷ Indeed, an earnest consideration of alternate framings of modernity in the legal educational context would demand a critique of the law's very role in their denouncement. Critical legal theories of law emerged in the legal academy to push back against this position.

3. *Critical Pedagogies and Clinical Legal Education*

As clinical legal education expanded during the 1970s and 1980s, building upon the social and political ferment of the civil rights movement, the localist legal services approach to public interest lawyering faced criticism by leftist legal scholars of the emerging critical legal studies (CLS) movement. As Robert Gordon described the anti-authoritarian and moralistic movement in 1987:

CLS is a movement mostly of law teachers, but also including some practitioners, which started for most of us in the late 1960s or early 1970s out of a sense of dissatisfaction with our own legal education. . . . [I]t is a movement in pursuit of some shared political and social objectives . . . to realize the potential we believe exists to transform the practices of the legal system to help make this a more decent, equal, solidary society—less intensively ordered by hierarchies of class, status, 'merit,' race, and gender—more decentralized, democratic, and participatory both in its own forms of social life and in the forms it promotes in other countries.²⁴⁸

The CLS critique emerged alongside a change in the nature of public interest law practice and law school clinics. At law schools across the United

244. See Karl N. Llewellyn, *Group Prejudice and Social Education*, in *CIVILIZATION AND GROUP RELATIONSHIPS* 11 (R. M. Maciver ed., 1945).

245. See Robert L. Hale, *Rights Under the Fourteenth and Fifteenth Amendments Against Injuries Inflicted by Private Individuals*, 6 *LAW GUILD REV.* 627 (1946).

246. See Parks, *supra* note 234, at 694–95 (describing Charles Hamilton Houston's usage of legal realist methods in civil rights litigation).

247. See ROBERT L. ALLEN, *RELUCTANT REFORMERS: RACISM AND SOCIAL REFORM MOVEMENTS IN THE UNITED STATES* 85 (1974); Roger A. Fairfax, Jr., *Wielding the Double-Edged Sword: Charles Hamilton Houston and Judicial Activism in the Age of Legal Realism*, 14 *HARV. BLACKLETTER L.J.* 17, 34 (1998); Christopher Bracey, Note, *Legal Realism and the Race Question: Some Realism About Realism on Race Relations*, 108 *HARV. L. REV.* 1607, 1619 (1995).

248. Robert W. Gordon, *Unfreezing Legal Reality: Critical Approaches to Law*, 15 *FLA. ST. U. L. REV.* 195, 196–97 (1987).

States, law clinics began integrating a diversity of lawyering strategies across a wide spectrum of issue areas, from transactional lawyering for early-stage small businesses,²⁴⁹ to movement lawyering within distressed low-income communities,²⁵⁰ to legislative advocacy for environmental justice campaigns,²⁵¹ to the criminal defense of non-violent offenders in overpoliced low-income neighborhoods.²⁵²

This expansion has not been without its critics. Some legal scholars have questioned whether adopting a cross-disciplinary social justice mission within law school clinical programs has politicized law teaching.²⁵³ Others have questioned whether such progressive law clinics impose unwanted scrutiny from law school donors or public funders, harming the business purpose of legal education and underscoring neoliberalism's enduring influence on law school policies and practices.²⁵⁴ Yet, critical legal theorists maintain that lawyers always bring personal and political perspectives to their legal work with clients during the formation of professional judgment.²⁵⁵ Even more, scholars argue that political ideology and market forces—i.e., market fundamentalism in the modern U.S. political economy—have always shaped the culture of legal education,²⁵⁶ and in some cases, driving legal pedagogy away from the needs of subordinated, marginalized, and minoritized populations.

Furthermore, legal clinics are not a panacea. While recently proposed apprenticeship-styled models of law school curricular reform respond to the practice-readiness demands of the market, they can obscure the role law schools

249. See, e.g., Susan Jones, *Transactional Law, Equitable Development, and Clinical Legal Education*, 14 J. AFFORDABLE HOUS. & CMTY. DEV. L. 213–17 (2005); SUSAN D. BENNETT, BRENDA BRATTON BLOM, LOUISE A. HOWELLS & DEBORAH S. KENN, *COMMUNITY ECONOMIC DEVELOPMENT LAW: A TEXT FOR ENGAGED LEARNING* (2012).

250. See, e.g., Paul R. Tremblay, *Rebellious Strains in Transactional Lawyering for Underserved Entrepreneurs and Community Groups*, 23 CLINICAL L. REV. 311 (2016).

251. See, e.g., Anthony V. Alfieri, *Paternalistic Interventions in Civil Rights and Poverty Law: A Case Study of Environmental Justice*, 112 MICH. L. REV. 1157 (2014).

252. See Abbe Smith, *Gideon Was a Prisoner: On Criminal Defense in a Time of Mass Incarceration*, 70 WASH. & LEE L. REV. 1363, 1363–91 (2013).

253. See Eric Posner, *The Human-Rights Charade*, CHRON. HIGHER EDUC. (Nov. 17, 2014), <https://www.chronicle.com/article/the-human-rights-charade/> [https://perma.cc/H4L5-U3T4] (“[U]niversity programs and law-school clinics that ‘promote human rights’ are pretty much free to advocate any political position.”).

254. See Robert R. Kuehn & Peter A. Joy, *An Ethics Critique of Interference in Law School Clinics*, 71 FORDHAM L. REV. 1971, 1975–92 (2003).

255. See, e.g., Gordon, *supra* note 248, at 214–15 (“What liberal scholarship does not emphasize is how the discourse of courts and lawyers, like popular discourse, constantly, subtly, almost unconsciously, keeps privileging one possible set of regulatory policies—one possible view of the world—as natural, normal, rational, free, efficient, and *usually* OK and just.”).

256. See, e.g., Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CALIF. L. REV. 1449, 1475–92 (1997) (“The foregoing critical history of law school admissions illustrates the general deconstructivist insight that merit standards necessarily defer to and depend on subjective, socially constructed preferences about what constitutes social value, in this case in the legal profession.”); William C. Kidder, *The Rise of the Testocracy: An Essay on the LSAT, Conventional Wisdom, and the Dismantling of Diversity*, 9 TEX. J. WOMEN & L. 167 (2000).

play in shaping the moral dimensions of professional lawyering identity.²⁵⁷ Notwithstanding the growth of clinical legal education, law schools largely continue to divide legal theory and lawyering practice in both law teaching and legal scholarship. Further, in the conventional first-year law curriculum and many upper-level law courses, there remains an emphasis on the case-dialogue method over lawyering skills training. Indeed, the law school clinic is often framed as a transitional “learning laboratory” where students gain practical lawyering skills that will make them marketable for future employment. Yet, by relegating legal theory (and its critiques) to the formalistic case-dialogue classroom, and lawyering practice to the law school clinic, many law schools have reduced public citizenship to “a largely aspirational function sounded in tropes.”²⁵⁸

Although many law schools have begun to integrate policy-oriented and practice-based pedagogies throughout the law curriculum, these “pedagogies of practice” can, nevertheless, succumb to the pressures of market-centered limits on the scope of public citizenship.²⁵⁹ For example, some law school curriculums boast expanded experiential learning programs, yet overlook the pedagogical value of critical theories of law and movement law because such topics are deemed too political.²⁶⁰ In so doing, these programs risk training law students who will enter the profession without critical insights on how best to serve clients differentiated by class, gender, and race.²⁶¹ The modern “reformed” curriculum often grounds new pedagogical methods in “positivist norms of neutrality” and “individualist norms of liberal legalism.”²⁶² This results in a “new formalism” that elides cultural context, obscures systemic racism, and legitimates structural oppression by teaching law students how to sustain the status quo.²⁶³ As another example, some law faculty avoid classroom discussion on the dynamics of racial and class-based subordination, falling prey to ideologies of “colorblindness” in

257. Some scholars have emphasized educational reforms that prioritize the needs of top law firms and private sector employers, many of whom are also large law school donors. For example, William Henderson endorses a market-oriented approach to legal education whereby law faculty work hand-in-hand with legal employers to train students to meet market-based needs. See William Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 495–96 (2013). Similarly, Brian Tamanaha urges modifying the three-year law school model altogether by replacing clinical legal education with a third year of legal apprenticeships. See Brian Z. Tamanaha, *A Combination Apprenticeship and Law School*, N.Y. TIMES (July 31, 2014), <https://www.nytimes.com/roomfordebate/2014/07/31/do-it-yourself-lawyers/a-combination-apprenticeship-and-law-school> [<https://perma.cc/RC8A-JN3E>].

258. See Alfieri, *supra* note 21, at 1073.

259. *Id.* at 1074.

260. Such examples are numerous, yet the evidence is largely anecdotal. Readers are welcome to draw their own conclusions on the validity of the claim. More importantly, the possibility of the claim poses a threat to the broader goals of legal education that must not be ignored.

261. See Alfieri, *supra* note 21, at 1075.

262. *Id.* at 1074 (“Pedagogies of practice common to both clinics and skills courses point to the rise of this new formalism in claims of neutral lawyer judgment, technical ‘lawyering’ process values, and client-centered representation indifferent to the other-regarding interests of community building.”).

263. *Id.*

the law that ignore the sociocultural implications of bias and racialized narratives of minoritized populations.²⁶⁴ To be sure, such conversations can be both uncomfortable and difficult to manage.²⁶⁵ Yet, without such insights, law students may struggle to develop critical perspectives of law, legal judgments, and legal reasoning necessary to promote progressive reforms as practicing attorneys.²⁶⁶

B. Law School and Political Economy

Alongside the debate on the formalist and realist traditions in law teaching, the influence of neoliberalism on the legal profession has also threatened the public purpose of legal education.²⁶⁷ Law's engagement with moral conceptions of justice in the United States can be traced to the Court of Chancery in England, where citizens petitioned the Lord Chancellor for "equitable" remedies for certain non-monetary harms. As an administrative body concerned with natural law, chancery courts served as a counterweight to the application of rigid, and potentially harsh, common law rules that governed competitive market economies.²⁶⁸ The Lord Chancellor, serving as Keeper of the King's Conscience, applied *equitable* remedies—e.g., specific performance and injunctions—to remedy aggrieved parties who could not be adequately compensated with monetary damages.²⁶⁹ In other words, lawyers advocating before such forums sought to push back against the unfairness of legal systems themselves. Yet, such doctrines of equity in the United States have been on a century-long decline, influencing the trajectory of legal education.²⁷⁰ For example, the defense of unconscionability in contract law has been weakened and is now an uncommon

264. Again, such occurrences are frequent, yet the evidence is largely anecdotal. Readers are welcome to draw their own conclusions on the validity of the claim. More importantly, the possibility of the claim poses a threat to the broader goals of legal education that must not be ignored.

265. See Asad Rahim, *Race as Unintellectual*, 68 UCLA L. REV. 632, 667–68, 683, 689 (2021) (students explaining their reluctance and discomfort speaking about race in the law school classroom).

266. See Ashar, *supra* note 20, at 218 (urging law schools to craft opportunities for students to develop "the capacity of deep critique, of thinking beneath and beyond liberal legalist approaches to social problems"); see also SULLIVAN ET AL., *supra* note 17, at 8–10 (noting that when law is taught as a "tradition of social practice that includes particular habits of mind," ethical and moral decision-making becomes an integral component of professional expertise); WEST, *supra* note 34, at 172 (arguing that law school "should instill a critical stance toward the law").

267. Etienne C. Toussaint, *Dismantling the Master's House: Toward a Justice-Based Theory of Community Economic Development*, 53 U. MICH. J.L. REFORM 337, 380 (2019) ("[T]he rise of neoliberalism in America's political economy reveals an abiding truth—large and powerful corporate institutions also yield a powerful influence on our political system.").

268. Sharon K. Dobbins, *Equity: The Court of Conscience or the King's Command, the Dialogues of St. German and Hobbes Compared*, 9 J.L. & RELIGION 113, 113 (1991) ("Individual pleaders, often the poor and oppressed, have made appeals to equity in order to overcome the severe effects of the letter of the law.").

269. *Id.* at 114, 118–19.

270. WEST, *supra* note 34, at 62–63.

basis for relief.²⁷¹ The concept of a tort has become “demoralized,” more commonly conveying a reallocation of costs for efficiency purposes than equitable compensation to remedy an injustice.²⁷² The notion of “fairness” in adjudicatory civil procedure has given way to principles of contractual intent and freedom of bargaining, justifying arbitration clauses in contracts of adhesion that harm low-income workers.²⁷³

In sum, America’s doctrines of equity have undergone a steady process of privatization. One reason for this shift might be the influence of the law and economics movement, which sought to frame the functionality of law through the language of economics. As early as 1937, the Chicago Law School began to advocate for more economics training in legal education.²⁷⁴ Ronald Coase’s publication of *The Nature of the Firm* in 1937,²⁷⁵ followed by his tenure at Chicago Law School from 1964 to 1982, helped to develop law and economics approaches in torts, property, and contract law. In the 1970s, Guido Calabresi’s *The Cost of Accidents* and Richard Posner’s *Economic Analysis of Law* further strengthened the dominance of “efficiency” and “cost minimization” as normative principles guiding legal analysis.²⁷⁶ More recently, this shift toward market-centric framings of law has been amplified by the rising pressures of neoliberalism in American democracy.²⁷⁷

To be sure, legal scholars have long critiqued the rise of neoliberalism in the United States. Most recently, the scholarship emerging out of the Law and Political Economy Project (LPE), housed at Yale Law School, has advanced the critical view that “developments over the last several decades in legal scholarship

271. *Id.* at 62; see David L. Shapiro, *Courts, Legislatures, and Paternalism*, 74 VA. L. REV. 519, 535 (1988).

272. WEST, *supra* note 34, at 63.

273. See *id.* at 65; see also *AT&T Mobility v. Concepcion*, 563 U.S. 333, 352 (2011) (reversing the Ninth Circuit’s holding that AT&T’s compulsory arbitration clause was unconscionable and unlawfully exculpatory under California law and arguing that it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” under the Federal Arbitration Act); Jean Sternlight, *Tsunami: AT&T Mobility LLC v. Concepcion Impedes Access to Justice*, 90 OR. L. REV. 703, 704 (2012) (“By permitting companies to use arbitration clauses to exempt themselves from class actions, *Concepcion* will provide companies with free rein to commit fraud, torts, discrimination, and other harmful acts without fear of being sued.”).

274. Parks, *supra* note 234, at 699.

275. R. H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386 (1937).

276. GUIDO CALABRESI, *THE COSTS OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS* 3–4 (1970) (“[T]he continued trends toward nondefault liability in the courts for accidents in general and toward increasingly broad systems of general welfare legislation have caused commentators to ask how far the nonfault trend should go and whether nonjudicial systems of compensation would be more efficient.”); RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* 4 (9th ed. 2014) (“Central to this book is the further assumption that a person is a rational utility maximizer in *all* areas of life . . .”).

277. See David Singh Grewel & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 LAW & CONTEMP. PROBS. 1, 3 (2014) (“Neoliberal claims advance the market side of this contest in capitalist democracies between capitalist imperatives and democratic demands. The contest is persistent because of pressures that capitalist markets make on the legal and political order—pressures not just for familiar protections of property and contract, but also for a favorable return on investment and managerial authority.”).

and policy helped to facilitate rising inequality and precarity, political alienation, the entrenchment of racial hierarchies and intersectional exploitation, and ecological and social catastrophe.²⁷⁸ As LPE contributors David Singh Grewal and Jedediah Purdy explain, “Neoliberalism, like classical liberalism before it, is also associated with a kind of ideological expansionism, in which market-modeled concepts of efficiency and autonomy shape policy, doctrine, and other discourses of legitimacy outside of traditionally ‘economic’ areas.”²⁷⁹ Neoliberalism frames how lawyers and policymakers ask questions, envision progress, and construe the values of liberty, equality, and democracy into tangible policy-based solutions. For the practicing attorney, the moral imperatives of justice are pitted against the political demands of laissez-faire economics and free market capitalism.²⁸⁰ Further, as Corinne Blalock argues, neoliberalism operates in a hegemonic fashion as political rationality—a “discursive logic that legitimates exercises of power” by structuring the language of policy debates and defining the limits of governmental activism.²⁸¹ In so doing, neoliberal politics have justified the creation of laws and public policies that promote “rational” economic behaviors under the guise of protecting individual human rights. Yet, even as neoliberal culture has inspired “the creation of stable and well-protected property rights, enforcement of private contracts, and limitation of the arbitrary exercise of government power,”²⁸² it has also shaped assumptions about the capacity (and legitimacy) of government to enact progressive visions of collective well-being.

Legal scholars have also long debated the moral dimensions of the liberal philosophy that lie at the heart of neoliberalism.²⁸³ By perpetuating ideals of entrepreneurialism built upon private orderings of contract and property law, neoliberalism exalts private solutions to collective problems instead of public accountability to democratic ideals. By leaving individuals and families “facing entrenched profit-making interests on their own as they try to protect their health, seek an education, or look for social support,”²⁸⁴ neoliberalism strips government

278. *About, THE LPE PROJECT*, <https://lpeproject.org/about/> [<https://perma.cc/KF4C-2BYK>] (last visited Jan. 27, 2023).

279. Grewal & Purdy, *supra* note 277, at 3.

280. Toussaint, *supra* note 267, at 370 (“[D]ue to the dominant order of capitalism, and both the accumulation of wealth and the monopolization of capital amassed by a bourgeois class, liberal democracy in America has historically triggered a conflict of moral values—*equality* versus *liberty*.”).

281. Corinne Blalock, *Neoliberalism and the Crisis of Legal Theory*, 77 *LAW & CONTEMP. PROBS.*, 71, 84 n.74 (2014).

282. *Id.* at 84.

283. See, e.g., Robert P. George, *Moralistic Liberalism and Legal Moralism*, 88 *MICH. L. REV.* 1415 (1990) (reviewing JOEL FEINBERG, *HARMLESS WRONGDOING: THE MORAL LIMITS OF THE CRIMINAL LAW* (1988)); West, *supra* note 60, at 817–20.

284. McDougall, *supra* note 71, at 66.

of its substantive role in building a democratic vision of society²⁸⁵—what Martin Luther King, Jr., referred to as the “beloved community.”²⁸⁶ Accordingly, neoliberalism renders law “as a condition for the preservation (and optimization)” of the free market.²⁸⁷ In other words, under the political rationality of neoliberalism, the law’s job is merely to interpret the fairness of economic free enterprise, not to question free enterprise’s legitimacy in a democratic state built upon principles of liberty, equality, and fairness.

The conservative, neoliberal framing of political economy manifests in the virtues of liberal legalism, which emphasizes procedural fairness, individual rights, and precedential authority. The liberal principles that guide how lawyers or judges interpret the morality of laws and public policies are the same principles that can be inferred from prior legal cases, statutes, or constitutional texts. Thus, a *positive* morality—“the morality evident in the culture, among the population, or evidenced by its legal history”—is embedded in legalism’s deference to the authority of existing moral principles in law, marginalizing the possibility for *critical* moral inquiry.²⁸⁸ This perhaps explains why corporate lawyers or compliance lawyers are not routinely expected to question the *justice* of the laws that facilitate and sustain free enterprise’s legitimacy. Instead, such lawyers typically confine their professional lawyering role to a neutral assessment of law’s fairness in light of the prevailing positive morality of society—a positionality premised on the inherent justice of the rule of law.

The neoliberal framing of the political economy has also influenced the modern research university and, consequently, the business purpose of law school itself. The modern research university “replicates neoliberalism’s pattern” by encouraging “corporatization, managerialism, deprofessionalization, contingent labor, and ‘precaritization’” in the university setting.²⁸⁹ For example, both public and private universities across the United States are commonly structured as corporations with governing boards that include members of the business community. While private-sector corporate officers can help universities raise operating funds for important academic and public programs, they can also “encroach[] upon faculty autonomy” by wielding “increasing

285. See Blalock, *supra* note 281, at 87 (“The neoliberal framework, premised on the impossibility of enacting a collective substantive vision, clearly cannot ground the state’s legitimacy in democratic authority and pursuit of the common good the way liberalism does. . . . The metric for measuring the sovereign becomes the degree to which the sovereign successfully fulfills this role of not interfering until such a time as the market dictates state intervention is necessary to preserve individual liberty.”).

286. Martin Luther King, Jr., “*The Birth of a New Nation*,” *Sermon Delivered at Dexter Avenue Baptist Church*, in 4 THE PAPERS OF MARTIN LUTHER KING, JR.: SYMBOL OF THE MOVEMENT, JANUARY 1957–DECEMBER 1958 (Clayborne Carson, Susan Carson, Adrienne Clay, Virginia Shadron & Kieran Taylor eds., 2000), <https://kinginstitute.stanford.edu/king-papers/documents/birth-new-nation-sermon-delivered-dexter-avenue-baptist-church> [<https://perma.cc/F4NL-D9TL>].

287. Blalock, *supra* note 281, at 86.

288. WEST, *supra* note 34, at 69.

289. McDougall, *supra* note 71, at 66.

power over curricul[a]” and shaping research priorities.²⁹⁰ The corporatization of the university often motivates top administrators to “see[] [them]sel[ves] as responsible to investors and donors more than . . . to the constituency on campus, the academics and students.”²⁹¹ Influenced by their corporate board members, universities may adopt governing structures shaped by “managerialism” that engender hierarchy, instill bureaucracy, hinder transparency, preclude accountability, increase tuition expenses, saddle students with increased debt, and weaken faculty governance.²⁹²

Indeed, the increase in law school tuition has reached crisis levels.²⁹³ According to Paul Campos, “Private law school tuition increased by a factor of four in real (inflation-adjusted) terms between 1971 and 2011, while resident tuition at public law schools has nearly quadrupled in real terms over the past two decades.”²⁹⁴ Perhaps as a result, law school debt has reached crisis levels too. When Congress extended the federal Direct PLUS Loan program in 2006 to allow students to borrow the full amount of their tuition, many law schools began to increase their tuition rates. According to the *New York Times*, “In 2012, the average law graduate’s debt was \$140,000, 59 percent higher than eight years earlier.”²⁹⁵ As tuition rates soar and law firm salaries stagnate, the result has been declining interest in law school, especially among students from marginalized populations.²⁹⁶ With the average law school graduate debt now hovering at \$160,000, it is no surprise that “[f]ewer than 1-in-4 new law school graduates say their legal education was worth the financial cost.”²⁹⁷ Further, the burden of student loan debt is not evenly distributed across racial groups, reflecting

290. *See id.* at 67–69 (“Research and teaching are more and more corporate-funded and corporate designed, as the university seeks to increase revenue through corporate sponsorships and partnerships.”).

291. Katherine Franke, *University of Illinois Urged to Reinstate Professor Steven Salaita, Critic of Israeli War in Gaza*, DEMOCRACYNOW! (Sept. 9, 2014), https://www.democracynow.org/2014/9/9/university_of_illinois_urged_to_reinstate [<https://perma.cc/5JNJ-ADMW>].

292. McDougall, *supra* note 71, at 67–68.

293. *See, e.g., J.D. and LL.M. Tuition and Fees*, COLUM. L. SCH., <https://www.law.columbia.edu/about/departments/financial-aid/jd-and-llm-tuition-and-fees> [<https://perma.cc/F6S2-AFFW>] (documenting the cost of attendance at Columbia Law School for 2022–2023 as over \$110,000); *see also* Karen Sloan, *Price of Law School Hits New High at Columbia, with Others Close Behind*, REUTERS (Aug. 11, 2022), <https://www.reuters.com/legal/legalindustry/price-law-school-hits-new-high-columbia-with-others-close-behind-2022-08-11/> [<https://perma.cc/CCA9-JUYK>] (“[A] Columbia law student could spend more than \$330,000 to complete their three-year degree.”).

294. Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 178 (2012).

295. Editorial Board, *The Law School Debt Crisis*, N.Y. TIMES (Oct. 24, 2015), <https://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html> [<https://perma.cc/BR7S-DSD2>].

296. *See, e.g.,* Andrea Fuller, Josh Mitchell & Sara Randazzo, *Law School Loses Luster as Debts Mount and Salaries Stagnate*, WALL ST. J. (Aug. 3, 2021), <https://www.wsj.com/articles/law-school-student-debt-low-salaries-university-miami-11627991855> [<https://perma.cc/RBA9-BKTL>].

297. Melanie Hanson, *Average Law School Debt*, EDUC. DATA (Dec. 5, 2021), <https://educationdata.org/average-law-school-debt> [<https://perma.cc/CAH6-5MJL>].

underlying wealth disparities. For example, “Black or African American law school graduates loan debts are 97% higher on average than [W]hite law school graduates.”²⁹⁸

Worse still, the teaching of specialized knowledge in higher education has become de-professionalized, encouraging experimental models of teaching—e.g., internet-based learning with pre-recorded modules.²⁹⁹ Such models may reduce university-wide costs and foster innovation, but they also might narrow the role of tenured and tenure-track faculty in teaching. This narrowing of faculty roles can negatively affect the development of legal pedagogy as course development becomes outsourced and standardized. Contingent labor, such as adjunct faculty, has reduced university costs, but has also weakened faculty governance due to constant turnovers. It can also undermine the collegial atmosphere of academic institutions when adjunct professors are physically distant. According to a statement prepared by the American Association of University Professors (AAUP), “Student learning is diminished by reduced contact with tenured faculty members, whose expertise in their field and effectiveness as teachers have been validated by peer review, and to whom the institution has made a long-term commitment.”³⁰⁰ Further, contingent labor can instill insecurity among core faculty members who either fear that they will lose their job, or fear that they will lose their primary role in the educational experience of their students.³⁰¹

Neoliberalism’s greatest impact surfaces in the law classroom itself, where law students are acculturated into the legal profession by way of liberal legalism’s embedded assumptions about the rule of law. When law course materials are shaped by neoliberal framings of political economy, and are offered without alternative viewpoints, law students are less likely to debate law’s morality. Instead, they may assume the inherent justice of the law, and thus, may experience a sense of disorientation when their learning experience contradicts their lived experience. While cultural stereotypes and limiting beliefs may distort

298. *Id.*

299. See Susan D’Agostino, *Gap Between Online and In-Person Learning Narrows*, INSIDE HIGHER ED (July 13, 2022), <https://www.insidehighered.com/news/2022/07/13/law-school-gaps-between-online-and-person-learning-narrow> [<https://perma.cc/P4EZ-5MDY>] (“Online law school is a relatively new phenomenon. Prior to the pandemic, fewer than 10 law schools offered hybrid J.D. programs But once COVID-19 turned into a pandemic, the ABA offered temporary permission for then-in-person law schools to offer their programs online—and most followed suit.”).

300. COMM. ON CONTINGENT FAC. AND THE PRO. & COMM. A ON ACAD. FREEDOM AND TENURE, AAUP, CONTINGENT APPOINTMENTS AND THE ACADEMIC PROFESSION 173 (2003), <https://www.aaup.org/file/Contingent%20Appointment.pdf> [<https://perma.cc/H4NG-N5UD>].

301. See, e.g., Andi Curcio, *The Potential Adjunctification of Law School Faculties*, BEST PRACS. FOR LEGAL EDUC. BLOG (May 17, 2017), <https://bestpracticeslegaled.com/2017/05/17/the-potential-adjunctification-of-law-school-faculties/> [<https://perma.cc/5EXY-36PC>] (discussing proposed ABA Standard 403 in 2017, and noting with concern the result of a study that found “the growth in part-time undergraduate faculty resulted in ‘a decline in the overall percentage (though not in the absolute number) of tenured and tenure track faculty’ – with tenure systems ‘virtually non-existent in for-profit higher education’ institutions”).

notions of fairness in law,³⁰² the ideals of liberal legalism routinely frame how law students ask questions and where they seek answers.

As rising market demand for practice-ready lawyers amplifies a focus on bar exam preparation and practical lawyering skills training in the core curriculum, debate on the law's relationship to liberty, equality, and democracy have become largely elective experiences for self-selecting students. As a result, law students are increasingly encouraged to see themselves as consumers of marketable skills rather than public citizens-in-training tasked with molding America's democratic project with law as their chisel.³⁰³ To make matters worse, faced with the challenge of finding a well-paying job after graduation to pay exorbitant student loans,³⁰⁴ law students are often pressured to take jobs at high-paying firms, rather than pursue the nonprofit jobs that inspired many of them to go to law school.³⁰⁵

It is doubtful that many law schools will admit that they feed into this reality. To be sure, some law schools explicitly seek applicants who convey an appreciation for the moral dimensions of lawyering in their admissions essays, and even reward those who commit to social justice with merit-based scholarships.³⁰⁶ Yet, in many law schools, law students are inevitably taught that "thinking like a lawyer" entails analyzing hypothetical facts and abstract legal principles through the eyes of an objective and faceless "reasonable" person, not through the eyes of a marginalized or oppressed individual. Further, courts have neutralized legal analysis with appeals to "colorblindness" in judicial opinions, presumably due to a conviction that race and ethnicity should not matter in a neutral and unbiased legal system.³⁰⁷ As Chief Justice John Roberts put it, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."³⁰⁸

302. See, e.g., Isabel Bilotta, Abby Corrington, Saaid A. Mendoza, Ivy Watson & Eden King, *How Subtle Bias Infects the Law*, 15 ANN. REV. L. & SOC. SCI. 227 (2019) (highlighting how subtle and unconscious forms of prejudice and stereotypes influence law enforcement, legal decision-making, and the legal profession).

303. See McDougall, *supra* note 71, at 70; see also Joyce E. Canaan & Wesley Shumar, *Higher Education in the Era of Globalization and Neoliberalism*, in STRUCTURE AND AGENCY IN THE NEOLIBERAL UNIVERSITY 4–5 (Joyce E. Canaan & Wesley Shumar eds., 2008) (viewing "the marketization and commodification of higher education as indicative of the wider transition of previously public sector institutions as we move from the welfare state to the market state").

304. See Olson, *supra* note 46.

305. At least this was the Author's experience. See Etienne C. Toussaint, *American Fugitive*, CURRENT AFFS. (Apr. 25, 2021), <https://www.currentaffairs.org/2021/04/american-fugitive> [<https://perma.cc/JPQ2-XBES>].

306. For example, NYU Law's Root-Tilden-Kern Public Interest Scholarship Program annually awards a full-tuition scholarship to twenty incoming law students who promise to pursue a public interest law career. See *Root-Tilden-Kern Public Interest Scholarships*, NYU L., <https://www.law.nyu.edu/financialaid/jdscholarships/rootscholarship> [<https://perma.cc/V5ST-WUAC>].

307. Molly P. Matter, *The Shaw Claim: The Rise and Fall of Colorblind Jurisprudence*, 18 SEATTLE J. SOC. JUST. 25, 37, 40, 64–66 (2020).

308. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007).

Thus, even for law students interested in the moral dimensions of their professional lawyering identity, learning how to embody public citizenship across diverse cultural paradigms may take a back seat to fulfilling market-based expectations of practice-readiness that sustain law school's institutional legitimacy. Duncan Kennedy famously argued that such expectations can reproduce social and class stratification in law school, furthering hierarchy in America more generally.³⁰⁹ According to Kennedy, students “learn to suffer with positive cheerfulness interruption in mid-sentence, mockery, ad hominem assault . . . abrupt dismissal, and stinginess of praise.”³¹⁰ This silencing is not only disorienting for law students; it is disempowering,³¹¹ especially for those students who identify with marginalized populations.³¹²

To be sure, many law schools have begun to integrate diversity, equity, and inclusion initiatives and experiential learning programs that directly engage social movements and explore the role of law in advancing racial and economic justice.³¹³ Yet, these programs do not exist at every U.S. law school. As a result, in many cases, law students come to view the public purpose of law school as optional—an elective path in law practice that need not become a dominant part of one's professional lawyering identity beyond the minimum hourly commitment of pro bono services required for graduation from law school,³¹⁴

309. See Kennedy, *supra* note 54, at 601–02.

310. *Id.* at 604; see also DUNCAN KENNEDY, THE SOCIAL JUSTICE ELEMENT IN LEGAL EDUCATION IN THE UNITED STATES: THE SIR ELWYN JONES LECTURE 22–23 (2002) (“Social justice is everywhere [in legal education,] but it's disintegrated and it's politicized, under pluralist rules that require some of everything to be there, so that the school can maintain its reputation as a representative law faculty and avoid being treated as marginal.”).

311. See Charles Lawrence III, *Unconscious Racism Revisited: Reflections on the Impact and Origins of “The Id, the Ego, and Equal Protection,”* 40 CONN. L. REV. 931, 943 (2008) (“I was one of only three [B]lack students in my first year class, and I recall expending considerable intellectual and emotional energy in an effort to maintain my sanity as I struggled to make sense of a discursive world that rarely reflected my lived experience.”).

312. See, e.g., Lani Guinier, Michelle Fine, Jane Balin, Ann Bartow & Deborah Lee Stachel, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994); see also Sturm & Guinier, *supra* note 23, at 516 (finding that the culture of legal education “contributes to law student disengagement, particularly for women and people of color. . . . Students of color and women reported, at statistically significant higher rate, feeling invisible, isolated and alienated, and reported lower frequencies of volunteering in class and three times the experience of social exclusion.”).

313. These initiatives build upon the legacy of public interest lawyering in clinical legal education. See Goldfarb, *supra* note 17, at 303 (“Public service skills and values have deep roots in the history of clinical education, from its early beginnings as a vehicle for law students to volunteer their time in providing legal services to the poor to its current incarnation as an important part of the law school's academic program.”).

314. For example, Georgetown Law School recommends fifty voluntary hours of pro bono service by graduation, Berkeley School of Law recommends seventy-five voluntary hours, University of Pennsylvania Carey Law School requires seventy mandatory hours, and Columbia Law School requires forty mandatory hours. See *Pro Bono Pledge*, GEO. L., <https://www.law.georgetown.edu/experiential-learning/pro-bono-community-service/pro-bono-pledge/> [<https://perma.cc/68H2-QCFK>] (last visited Jan. 27, 2023); *The Pro Bono Pledge*, BERKELEY L.,

and in rare cases, required for admission to the bar.³¹⁵ If law schools embrace the public citizenship imperative in the preamble to the model rules of professional conduct, diversity initiatives and experiential learning programs must transcend market-based notions of practice-readiness. Specifically, they must shift beyond the formalistic skills training orientation that too often governs modern legal education.³¹⁶

III.

BEYOND LIBERAL LEGALISM IN LEGAL EDUCATION

Notions of lawyering practice-readiness within the legal academy remain mixed. While some law schools prioritize training in the practical lawyering skills in demand at top law firms, others emphasize experiential learning opportunities that develop critical perspectives on professional lawyering identity. Further, while some law faculty maintain a conservative approach toward law teaching by prioritizing the subject matter tested on state bar exams, others allow their pedagogy to be molded by progressive movements in legal theory and lawyering practice. This Section argues that law schools' intent on amplifying the public purpose of law school in their pedagogy and praxis must embrace both a critical theoretical and movement lawyering posture toward the doctrinal and clinical stance. More specifically, the reformed law school curriculum must guide students through a theoretical and experiential deconstruction of law and lawyering practice.³¹⁷ Such an approach will help guide law students from disorientation toward critical legal consciousness of the moral dimensions of their vocation.

Part III.A discusses how critical theories of law have challenged the fundamental assumptions of liberal legalism, uncovering the political and socio-cultural dimensions of law that call into question its legitimacy and determinacy.

<https://www.law.berkeley.edu/experiential/pro-bono-program/the-pro-bono-pledge/> [<https://perma.cc/A2H8-HVQX>] (last visited Jan. 27, 2023); *Pro Bono*, UNIV. PA. CAREY L. SCH., <https://www.law.upenn.edu/publicservice/pro-bono/> [<https://perma.cc/4G7T-QKWQ>] (last visited Jan. 27, 2023); *Pro Bono Requirement and Program*, COLUM. L. SCH., <https://www.law.columbia.edu/careers/public-interest/pro-bono-requirement-and-program> [<https://perma.cc/QM4U-LUUB>] (last visited Jan. 27, 2023).

315. In 2012, New York State became the first U.S. jurisdiction to require 50 hours of pro bono service as a requirement for admission into the New York State bar as a licensed attorney. A few other states, such as California and Montana, have considered similar requirements. *See Bar Pre-Admission Pro Bono*, ABA, https://www.americanbar.org/groups/probono_public_service/policy/bar_pre_admission_pro_bono/ [<https://perma.cc/DK5L-LKKL>].

316. *See* Wizner, *supra* note 18, at 332 (“In the early days of the clinical legal education movement, experiential learning and skills training were thought of as pedagogical means for enabling law students to transcend the limitations of traditional legal education. They were the means, not the end.”).

317. For an example of this type of deconstructivism in practice, see, for example, Marissa Jackson Sow, *(Re)Building the Master's House: Dismantling America's Colonial Politics of Extraction and Exclusion*, MICH. L. REV. (forthcoming).

Part III.B explores movement lawyering as a reconstructive vision of liberal legalism that challenges conventional modes of lawyering practice. Both critical legal theories of law and movement law share two fundamental aims in U.S. law practice: (1) achieving political legitimacy, notwithstanding law's historic role in the sociopolitical construction of systemic domination and hierarchy;³¹⁸ and (2) striving for justice, where the lawyer serves as a public citizen aspiring to dismantle vestiges of racial and economic oppression embedded in the law. Collectively, these insights point toward the need for a reformed legal pedagogy that will guide the strivings of law students toward new visions of American democracy. Both Part III.A and III.B end with a few examples of current law school efforts to address these challenges.

A. *Critical Theory as Reclamation*

In 1989, Mari Matsuda coined the term “outsider jurisprudence” to describe the insights and interventions of legal scholars who drew inspiration from, and advocated on behalf of, persons traditionally excluded from jurisprudential discourse.³¹⁹ Building upon the work of Matsuda and others, Francisco Valdes popularized the phrase “critical outsider jurisprudence” in the late 1990s to describe the various critical theoretical movements that had emerged in legal academia across time—i.e., critical legal studies, critical race theory, feminist legal theory, Latina and Latino critical legal theory (LatCrit theory), and queer legal theory, among others—each seeking, fundamentally, to advance the well-being of “outgroups in the United States and globally.”³²⁰ According to Valdes, the critical outsider positionality reflects an effort to “interject in substantive terms the needs, interests, and concerns of . . . traditionally subordinated groups . . . to overcome, in part through legal reform, the conditions of historical and contemporary subordination.”³²¹

These efforts point toward a broader critique advanced by critical educational theorists, more generally, about the dominant structure of education

318. For an example of the way U.S. law has produced systems of domination and hierarchy, see generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (1st ed. 2017) (describing how historic laws and public policy decisions passed by U.S. local, state, and federal governments created the racialized patterns of housing and socioeconomic disparities that persist today).

319. Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323 (1989).

320. Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education*, 10 ASIAN L.J. 65, 66–67 (2003) [hereinafter Valdes, *Outsider Jurisprudence*] (defining “critical outsider jurisprudence” as “the insights and interventions of multiple diverse scholars and activists that identify and align themselves, and their work, with outgroups in the United States and globally”); see also Francisco Valdes, Foreword, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997).

321. Valdes, *Outsider Jurisprudence*, *supra* note 320, at 67.

as an instrumentality of colonialization and power.³²² In order to teach students how “to assimilate and domesticate in the name of progress and prosperity,” such scholars argue, formal education often omits “the systematic imposition of supremacist politics” with an ultimate goal of “keeping each succeeding generation socially tranquilized, culturally subjugated, and politically subordinated.”³²³ In the context of U.S. law schools, Valdes argued in 2003 that “legal education historically was structured to privilege [W]hite-identified groups, persons, and values” and “to exclude feared or ‘different’ Others.”³²⁴ This explained, in his view, “why critical theory is still absent or marginal in formal law school curricula,” and why “traditionalist identity politics is alive, and rife[,] . . . aimed to ‘reclaim’ the national culture.”³²⁵ Almost twenty years later, Valdes’s point still resonates as Americans witnessed former President Donald Trump pledge to “make America great again” while sparking a political assault on the teaching of critical race theory in schools nationwide,³²⁶ and provoking, many argue, an insurrection upon the U.S. capitol to “save America.”³²⁷

Yet, just as traditionalists seek to reclaim so-called traditional American values, so too has critical theory historically been an act of reclamation in legal education. Critical legal theorists have long viewed legal education as a vehicle for both the production of power and knowledge. Consequently, law school is often deemed a “site of contestation” over the ongoing reconstruction of the

322. One of the most notable voices in this intellectual tradition is Paulo Freire. *See* Paulo Freire, *PEDAGOGY OF THE OPPRESSED* 68 (Myra Bergman Ramos trans., 30th Anniversary ed. 2000) (“Many of these leaders, however (perhaps due to natural and understandable biases against pedagogy), have ended up using the ‘educational’ methods employed by the oppressor. They deny pedagogical action in the liberation process, but they use propaganda to convince.”); *see also* ANTONIA DARDER, *CULTURE AND POWER IN THE CLASSROOM: EDUCATIONAL FOUNDATIONS FOR THE SCHOOLING OF BICULTURAL STUDENTS*, at xvii, 16 (2016) (“Critical educators perceive their primary function as emancipatory and their primary purpose as commitment to creating the conditions for students to learn skills, knowledge and modes of inquiry that will allow them to examine critically the role that society has played in their self-formation.”).

323. Valdes, *Outsider Jurisprudence*, *supra* note 320, at 69.

324. *Id.* at 70.

325. *Id.* at 71; *see also* Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *HARV. L. REV.* 1331, 1336 (1988) (“History has shown that the most valuable political asset of the Black community has been its ability to assert a collective identity and to name its collective political reality.”).

326. *See* Barbara Sprunt, *The Brewing Political Battle over Critical Race Theory*, NPR (June 29, 2021), <https://www.npr.org/2021/06/02/1001055828/the-brewing-political-battle-over-critical-race-theory> [<https://perma.cc/R4JF-AKVT>].

327. *See* Dan Barry, Mike McIntire & Matthew Rosenberg, ‘Our President Wants Us Here’: The Mob That Stormed the Capitol, *N.Y. TIMES* (Jan. 9, 2021), <https://www.nytimes.com/2021/01/09/us/capitol-rioters.html> [<https://perma.cc/HQ3N-XBPU>]; Lauren Leatherby, Arielle Ray, Anjali Singhvi, Christiaan Treibert, Derek Watkins & Haley Willis, *How a Presidential Rally Turned Into a Capitol Rampage*, *N.Y. TIMES* (Jan. 12, 2021), <https://www.nytimes.com/interactive/2021/01/12/us/capitol-mob-timeline.html> [<https://perma.cc/TVT8-C8DQ>].

American democratic project post-slavery.³²⁸ Critical scholars have also argued that the modern version of liberal education distorts its true origins. In *Cultivating Humanity in Legal Education*, Martha Nussbaum revives the insights of the Roman philosopher Seneca, who viewed an education (to paraphrase Nussbaum) as truly “liberal” only if “it is one that ‘liberates’ the student’s mind, encouraging him or her to take charge of his or her own thinking, leading the Socratic-examined life, and becoming a reflective critic of traditional practices.”³²⁹ Nussbaum further argues that law schools too often confuse the Socratic tradition of self-examination and laborious quest for truth; instead training and rewarding students to become “clever sophist[s]” with “a dazzling display of rhetorical persuasiveness.”³³⁰ Such tensions manifested in the emergence of critical legal studies in the 1970s by law professors who were inspired by the legal realist movement, skeptical of rights-based discourse growing out of the civil rights movement, and unsatisfied with the law and society movement that had emerged in the 1960s.

It was, in fact, the law and society movement that first advanced a concerted interdisciplinary critique of the functionalist view of law perpetuated by legal formalists and legal realists. Harry Ball of the University of Wisconsin led the charge in 1964 by convening sociologists and law professors during the American Sociological Association’s annual meeting.³³¹ Although not centered on legal scholarship, from its inception, the law and society association emphasized law reform as a mechanism for social change. As Gregory Parks explains, the movement committed itself “to governmental intervention in the economy, moderate wealth redistribution, and governmental intervention to ensure social equality for the disadvantaged.”³³² Whereas the functionalist vision of law focused on reforming law to serve the objective needs of society, law and society scholars defined law “as a social institution, as interacting behaviors, as ritual and symbol, as a reflection of interest group politics, as a form of behavior modification.”³³³ Law is a subjective sociopolitical system that shapes human needs and frames societal goals.³³⁴ Accordingly, the rule of law that structures society is, itself, subject to critique and reconstruction. It was, in fact, this view—a desire to critique the implications of empirical social science as legitimating

328. Valdes, *Outsider Jurisprudence*, *supra* note 320, at 72.

329. Martha C. Nussbaum, *Cultivating Humanity in Legal Education*, 70 U. CHI. L. REV. 265, 267 (2003).

330. *Id.* at 272–73.

331. See Felice J. Levine, *Goose Bumps and “The Search for Signs of Intelligent Life” in Sociolegal Studies: After Twenty-Five Years*, 24 LAW & SOC’Y REV. 7, 10 (1990).

332. Parks, *supra* note 234, at 701.

333. David M. Trubek, *Back to the Future: The Short, Happy Life of the Law and Society Movement*, FLA. ST. U. L. REV. 1, 6 (1990).

334. See David N. Schiff, *Socio-Legal Theory: Social Structure and Law*, 39 MOD. L. REV. 287, 287 (1976) (“According to a socio-legal approach, analysis of law is directly linked to the analysis of the social situation to which the law applies, and should be put into the perspective of that situation by seeing the part the law plays in the creation, maintenance and/or change of the situation.”).

the status quo sociological construction of society³³⁵—that led David Trubek to partner with Duncan Kennedy, Mark Tushnet, Roberto Unger, and others at the University of Wisconsin Law School in 1977 to launch a conference on critical legal studies.³³⁶

Like the legal realists, early CLS adherents argued that law is not a collectively neutral body of legal principles that are elucidated and operationalized through legal reasoning, but instead a codified instrument of social ordering that reflects cultural and political hierarchies, and perpetuates biases against disempowered and subordinated groups.³³⁷ CLS proponents also embraced the “rule skepticism” of legal realism, “the idea that our legal system, following its own rules, can produce diametrically opposed conclusions on most legal questions, revealing that doctrinal logic rarely compels a particular result.”³³⁸ Far from neutral and unbiased, law embeds various historical, social, economic, and cultural dimensions that render legal conclusions indeterminate.³³⁹ Robert Unger, a key member of the early CLS movement, argued that in seeking to uncover the inherent essence of law, judges often failed to question “basic institutional arrangements of the market economy, of democratic politics, and of civil society outside the market and the state,” compromising their judgment.³⁴⁰ Accordingly, the CLS movement called for a refashioning of the rule of law, one devoid of hidden interests and class domination facilitated by socio-political institutions, one characterized instead by greater emphasis on egalitarianism and liberty. Further, CLS scholars

335. See David M. Trubek, *Complexity and Contradiction in the Legal Order: Balbus and the Challenge of Critical Social Thought About Law*, 11 LAW & SOC'Y REV. 529, 566–67 (1977).

336. See Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1523 (1991).

337. For an introduction to critical legal studies and its critique of rights-based discourse, see generally Anthony Chase, *The Left on Rights: An Introduction*, 62 TEX. L. REV. 1541, 1559–60 (1984) (“[R]ights have a ‘relatively autonomous’ character, making them a double-edged sword: those without power can use them to enhance their strategic position in the struggle; those with power can use them to conceal the inequality built into a system of radical social and economic division.” (quoting the view of leftist rights advocate E.P. Thompson)); Allan C. Hutchinson & Patrick J. Monahan, *Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought*, 36 STAN. L. REV. 199, 204–05 (1984) (“[W]hile the Realists accepted the indeterminacy of legal reasoning, they remained firmly committed to liberalism. . . . The challenge for contemporary jurists has been to propose a theory of judicial decisionmaking that would satisfactorily resolve legal disputes, while displacing the Realist view that sound adjudication is a product of psychological maturity.”); Mark Tushnet, *Critical Legal Studies: An Introduction to Its Origins and Underpinnings*, 36 J. LEGAL EDUC. 505, 505–10 (1986) (“CLS accepts the critical aspect of Legal Realism but challenges its constructive program. Because it does so by using the critical techniques developed by the Realists, CLS is in this sense a true descendant of Realism.”); Singer, *supra* note 179, at 503 (1988) (“Most current legal scholars accept the realist message that it is wrong to attempt to answer legal questions by appealing to the inherent nature of the abstract concepts of property, contract, and liberty.”).

338. Goldfarb, *supra* note 129, at 718.

339. See Simon, *supra* note 110, at 66; Mark Tushnet, *An Essay on Rights*, 62 TEX. L. REV. 1363, 1384 (1984).

340. ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* 7 (Verso 2015) (1983).

condemned the apparent political consensus on “neoliberal orthodoxy, state capitalism, and compensatory redistribution by tax-and-transfer,”³⁴¹ urging government leaders to consider alternative forms of social and political organization.³⁴²

Several themes emerged from the CLS movement that are instructive for a legal pedagogy responsive to student disorientation and geared toward public citizenship. First, CLS scholars observed that the rule of law does not always determine the outcome of legal disputes. Law is frequently “indeterminate,” leading to unexpected conclusions when applied to the unique facts of a broad spectrum of cases.³⁴³ Second, CLS scholars highlighted the intersectionality of law and politics, arguing that the two domains should be viewed as interdependent, working side-by-side to shape the lives of citizens within liberal democratic regimes.³⁴⁴ Third, CLS scholars questioned many of the fundamental assumptions of law itself, including the deontological notion that society comprises autonomous individuals who make rational utility-maximizing choices that are protected under an equitable politico-legal regime of rights and entitlements.³⁴⁵ This primarily rights-based critique disrobed the perceived logical stability of law in capitalist political economies, casting doubt on the inherent justice of America’s socio-political institutions.³⁴⁶ As law professors began to weave these considerations into the law classroom, the utility of critical theory in reframing the foundational principles of legal doctrine became increasingly clear. As Antonia Darder puts it, critical legal education helped to “creat[e] the conditions for students to learn skills, knowledge and modes of inquiry that will allow them . . . [to] develop the critical capacities to reflect, critique, and act to transform the conditions under which they live.”³⁴⁷ In short, critical theory offered an opportunity for law students to avoid becoming merely

341. *Id.* at 15.

342. See Morton J. Horwitz, *Rights*, 23 HARV. C.R.-C.L. L. REV. 393, 404 (1988) (“The most promising way to ensure that rights may be used on behalf of the socially weak . . . is to ground rights theory in a substantive conception of the good society.”).

343. See Mark Tushnet & Jennifer Jaff, *Critical Legal Studies and Criminal Procedure*, 35 CATH. U. L. REV. 361, 376 (1986) (“If we shift the frame—from the individual to the systemic level, from abstract moral philosophy to specific institutions, and so on—we can produce alternative results. Yet neither the formalisms nor any metatheory specifies what frame we should use.”).

344. See Robert J. Condlin, “*Tastes Great, Less Filling*”: *The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 51–52 (1986); Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369, 369 (1982-83) (“The expansion of legal rights has only a limited impact on people’s real lives, and that even these limited gains can be wiped out by a change in the political climate.”).

345. See Mark Tushnet, *The Critique of Rights*, 47 SMU L. REV. 23, 33–34 (1993).

346. See, e.g., Clare Dalton, *An Essay in the Deconstruction of Contract Doctrine*, 94 YALE L.J. 997, 1005–09 (1985) (critiquing the foundations of contract law); Robin L. West, *Tragic Rights: The Rights Critique in the Age of Obama*, 53 WM. & MARY L. REV. 713, 714 (2011) (listing critiques of privacy rights, antidiscrimination rights, and contract rights).

347. DARDER, *supra* note 322, at 16.

market tacticians, and instead adopt a professional identity that reflected what Socrates called “the examined life.”

In the 1980s and 1990s, a group of Black and other racially and ethnically minoritized legal scholars pushed the CLS critique further. These critical race theorists (CRT),³⁴⁸ as they would become known, suggested that “the metadiscourse critiquing right-based discourse can, itself, be rendered indeterminate and alienating if soaked in the deceptive subtext of [W]hite supremacy,”³⁴⁹ thereby neutralizing the role of the state in sustaining systems of racial advantage and structural oppression.³⁵⁰ Further, according to Patricia Williams, rights-based discourse offered tools for marginalized populations to articulate the injustice of their lived experiences, erecting rights-based assertions as a banner “of both solidarity and freedom, of empowerment of an internal and very personal sort . . . a process of finding the self.”³⁵¹ Derrick Bell emerged as a leader of the movement, departing from the Harvard Law School faculty in 1981 to protest the lack of diversity in the faculty and the limited engagement with race in the law school’s curriculum. Bell’s casebook on race and civil rights, *Race, Racism, and American Law*, paved the way for a generation of scholars studying the intersections of race and the law.³⁵² From Charles R. Lawrence III, Cheryl Harris, Richard Delgado, Kimberlé Williams Crenshaw, and more recently, Devon Carbado and Angela Onwuachi-Willig, CRT scholars helped to clarify how dominant framings of power in law sheltered *de facto* race-based privilege, rendering the politics of race-neutrality and “colorblindness” as harmful to constitutional liberty and equality.³⁵³

348. For an introduction to key critical race theory writings, see generally CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stefancic eds., 3d ed. 2013); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995).

349. Etienne C. Toussaint, *Of American Fragility: Public Rituals, Human Rights, and the End of Invisible Man*, 52 COLUM. HUM. RTS. L. REV. 826, 867 (2021).

350. See Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. REV. 301, 303 (1987); cf. Jeffrey J. Pyle, *Race, Equality and the Rule of Law: Critical Race Theory’s Attack on the Promises of Liberalism*, 40 B.C. L. REV. 787, 787–89 (1999) (criticizing critical race theory).

351. See Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. REV. 401, 414 (1987) (“For many [W]hite CLSers, the word ‘rights’ seems to be overlaid with capitalist connotations of oppression, universalized alienation of the self, and excessive power of an external and distancing sort. . . . For most [B]lacks, on the other hand, running the risk—as well as having the power—of ‘stereo-typing’ (a misuse of the naming process; a reduction of considered dimension rather than an expansion) is a lesser historical evil than having been unnamed altogether.”).

352. DERRICK A. BELL, JR., *RACE, RACISM AND AMERICAN LAW* (2d ed. 1980).

353. See, e.g., Charles R. Lawrence III, *Passing and Trespassing in the Academy: On Whiteness as Property and Racial Performance as Political Speech*, 31 HARV. J. RACIAL & ETHNIC JUST. 7, 9–10 (2015); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1709 (1993); Delgado, *supra* note 350, at 303–07; Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 471–76 (1976); Kimberlé Crenshaw, *supra* note 32, at 1242–44 (1991); Angela Onwuachi-Willig, *Policing the Boundaries of Whiteness: The Tragedy*

Although CLS scholars had engaged in a theoretical deconstruction of law's formal neutrality, critical race theorists exposed the historical dimensions of law's relationship to ongoing systemic racism in the U.S. political economy—a process Anthony Cook described as “experiential deconstruction.”³⁵⁴ As CRT scholars argued, the absence of an *experiential* contextualization of law led CLS scholars to undermine the coercive nature of law in maintaining racial hierarchy and oppression within racially and ethnically minoritized communities.³⁵⁵ Thus, CRT challenged the very assumptions of classical liberalism embedded in legal education, foregrounding later assertions by legal scholars—building upon the work of political theorists and historians³⁵⁶—that the U.S. political economy is fundamentally a “racial capitalist” state.³⁵⁷

As law students learn about conventional lawyer roles and customary lawyer-client relationships from legal opinions in first-year case books and from legal clinics focused primarily on so-called market-readiness, law schools risk legitimating the socioeconomic inequities of existing civil and criminal justice systems. When should law students engage in critical dialogue about the intersections of law and political economy, conversations that might call into question the *efficiency* of the substructure that undergirds existing justice systems? When should law students grapple with the moral dimensions of being a “good lawyer,” debates that might call into question the *equity* of the neoliberal ideals that drive the market? The answer, I argue, is on day one of law school, and every day of law school thereafter, until graduation. By exploring law's sullied history and engaging critical theory in the law classroom, law students develop a more nuanced understanding of law's moral arc.³⁵⁸

However, while some law faculty engage critical outsider jurisprudence in the law classroom to examine the core values and beliefs that undergird the construction and operation of law, they often deviate from the pedagogical norm. As Bennett Capers puts it, law schools frequently function “as a White space,”³⁵⁹

of Being “Out of Place” from Emmett Till to Trayvon Martin, 102 IOWA L. REV. 1113 (2017); Devon W. Carbado & Cheryl I. Harris, *Intersectionality at 30: Mapping the Margins of Anti-Essentialism, Intersectionality, and Dominance Theory*, 132 HARV. L. REV. 2193, 2193 (2019).

354. Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 HARV. L. REV. 985, 992 (1990).

355. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 353–99 (1987); Williams, *supra* note 351, at 413–16.

356. See, e.g., CEDRIC J. ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* 2 (Univ. of N.C. Press, 2000) (1983); MANNING MARABLE, *HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA* 94 (1983); Charisse Burden-Stelly, *Modern U.S. Racial Capitalism: Some Theoretical Insights*, 72 MONTHLY REV. 8 (July–Aug. 2020).

357. See, e.g., Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151 (2013); Etienne C. Toussaint, *Black Urban Ecologies and Structural Extermination*, 45 HARV. ENV'T L. REV. 449 (2021).

358. See Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 J. GENDER, SOC. POL'Y & L. 161, 162 (2005).

359. Capers, *supra* note 70, at 22 n.88 (describing Whiteness as “a way of being in the world and seeing the world that forms cognitive and affective structures able to seduce people into its habituation and its meaning making” (quoting Willie James Jennings)).

which in layman's terms means they de-emphasize anti-racist discourse that calls into question the neutrality of the law classroom. In so doing, law schools fail to examine the racialized foundations upon which they stand. Even efforts to integrate experiential learning across the law curriculum, which some have falsely deemed the answer to the concerns of critical legal theorists, fall short. Law school clinics can, and in rare cases do, perpetuate legal formalist ideals that reinforce conditions of hierarchy and subordination in society.³⁶⁰ Indeed, when market forces shape either doctrinal or clinical pedagogy, the rhetoric of practice-readiness can lead law faculty to legitimate the status quo and limit the range of social arrangements within the law classroom or law clinic. Alternatively, if the apparatus of liberal rights and entitlements that frames modern lawyering practice and mediates the lawyer-client relationship is deemed indeterminate, then the neutrality of law school's theory-practice dichotomy is in fact illusory, along with its limitations.

Still, there are notable exceptions. For example, the University of California, Berkeley, School of Law (Berkeley Law) has long been at the forefront of the progressive legal education reform movement. Unique among other U.S. law schools, Berkeley Law houses its own interdisciplinary "law and society" graduate program in the social, philosophical, and humanistic study of law, offering both MA and PhD degrees in Jurisprudence and Social Policy.³⁶¹ Courses in this program, which range from the philosophy of law to critical legal theory, are cross-listed with the law school.³⁶² Further, Berkeley Law offers various courses exclusively on critical perspectives of law and lawyering, such as "Critical Race Theory" and "Anti-Blackness and the Law," alongside a recently introduced "Race and the Law" course requirement for graduation, which will go into effect for the Class of 2026.³⁶³

Another example is the Penn State Dickinson School of Law (Dickinson Law), which passed a faculty resolution in 2021 to "identify and challenge systemic prejudice wherever it exists."³⁶⁴ Soon thereafter, Dickinson Law

360. See Deborah Archer, Caitlin Barry, G.S. Hans, Derrick Howard, Alexis Karteron, Shobha Mahadev & Jeff Selbin, *The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty*, 26 CLINICAL L. REV. 127, 135–38 (2019) (collecting data showing that clinical law faculty of color are underrepresented among clinical law teachers).

361. *Jurisprudence & Social Policy*, BERKELEY GRADUATE DIV., <https://grad.berkeley.edu/program/jurisprudence-social-policy/> [<https://perma.cc/3X5D-74QF>].

362. *Id.*

363. Berkeley began working on its Race and the Law course requirement long before the ABA introduced its newly revised Standard 303 of the Standards and Rules of Procedure for Approval of Law Schools. Law students such as Amalee Beattie played an instrumental role in advocating for Berkeley's new requirement, evidenced by an August 2020 student proposal endorsed by 14 student organizations. See Christine Chamosky, *Berkeley Law to Implement Mandatory Diversity Course Starting in 2023*, LAW.COM (Feb. 23, 2022), <https://www.law.com/2022/02/23/berkeley-law-to-implement-mandatory-diversity-course-starting-in-2023/> [<https://perma.cc/H3EL-8EGK>].

364. Michael A. Mogill, *Faculty Resolution*, PA. ST. DICK. L., <https://dickinsonlaw.psu.edu/sites/default/files/2020-06/faculty-resolution.pdf> [<https://perma.cc/6CW6-2K2J>].

launched “a civil rights, equal protection, and social justice certificate program; a new required first-year course ‘Race and the Equal Protection of the Laws’; the creation of the Antiracist Development Institute and accompanying book series; and the Law Deans Antiracist Clearinghouse Project established by Dean and Donald J. Farage Professor of Law Danielle M. Conway.”³⁶⁵ As Dean Conway declared, “A statement is never enough Action has to follow these statements and resolutions. Compassion and commitment animate the work.”³⁶⁶

B. *Movement Lawyering as Self-Preservation*

In the same way that law faculty have engaged critical theories of law to demonstrate the law’s constitutive role in shaping political consciousness and the political economy, so too have scholars studied movement lawyering to expose law students to the limits and contradictions of conventional rights-based discourse and litigation-centric lawyering methods. As a development in U.S. legal theory and lawyering practice that represents an alternative mode of public interest advocacy, movement lawyering focuses “on building the power of nonelite constituencies through integrated legal and political strategies.”³⁶⁷ The history of U.S. public interest lawyering, particularly in the fields of civil rights and poverty law, reveals a steady shift away from the courtroom as the primary forum for legal advocacy.³⁶⁸ Critical legal historians, who claim the content of legal structures are deeply ideological, view this decay as part of the waning of liberal legalism as a dominant cultural construct.³⁶⁹ Many scholars now call for renewed commitments to social movements. Yet, social movements have existed since the very birth of the United States, from the Boston Tea Party to grassroots efforts to “break the molds of political discourse, project new possible futures, and create terrains of engagement for more people.”³⁷⁰

Thus, movement lawyering challenges the functional necessity of discrete schemas of law’s relationality to society. In so doing, it “unearths alternative arcs of history, often ignored in legal discourse, of people collectively generating

365. A *Leader in Antiracist Legal Education*, PA. ST. DICK. L., <https://dickinsonlaw.psu.edu/leader-antiracist-education> [<https://perma.cc/Q4T5-J8UE>].

366. *From Words to Action: Dickinson Law Course Examines Roots of Systemic Racism*, PA. ST. DICK. L., <https://dickinsonlaw.psu.edu/words-action-dickinson-law-course-examines-roots-systemic-racism> [<https://perma.cc/9F7R-RCH5>].

367. Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645, 1645, 1654 (2017) (defining movement lawyering as “a model of social change through law in which activist lawyers use impact litigation to advance progressive policy reform that is validated by activist courts”).

368. See Scott L. Cummings, *The Puzzle of Social Movements in American Legal Theory*, 64 UCLA L. REV. 1554, 1554 (2017); Scott L. Cummings, *The Social Movement Turn in Law*, 43 LAW & SOC. INQUIRY 360, 360–61 (2018); GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 422 (2d ed. 2008) (“U.S. courts can almost never be effective producers of significant social reform.”).

369. See Gordon, *supra* note 238, at 114–15.

370. Amna A. Akbar, Sameer Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821, 827 (2021).

ideas and struggling to build and practice alternative possibilities.”³⁷¹ By extension, movement law also furthers similar goals, which “approaches scholarly thinking and writing about law, justice, and social change as work done in solidarity with social movements, local organizing, and other forms of collective struggle.”³⁷² Rather than rely upon litigation-centric campaigns, movement lawyers represent mobilized clients through integrated advocacy and organizing strategies with a focus on building community power. In so doing, they challenge conventional notions of the lawyer’s role in promoting justice and igniting democratic transformation. For example, Scott Cummings describes how lawyers helped to mobilize a community-based labor campaign in Inglewood, California to challenge Wal-Mart’s development of a supercenter that would harm local businesses.³⁷³ Today, many movement lawyers draw insight and vision from the work of Gerald López, whose immense volume of scholarship has explored lawyering practice through the lens of cultural studies, race and ethnicity, political economy, and cultural history.³⁷⁴

In *Rebellious Lawyering: One Chicano’s Vision Of Progressive Law Practice*, Gerald López clarifies a vision of professional lawyering identity that challenges conventional modes of lawyering practice steeped in oppressive and paternalistic power structures.³⁷⁵ López’s vision of the “rebellious lawyer,” building upon prior foundational work in the field of public-interest lawyering,³⁷⁶ conveys a lawyer-client relationship that is more collaborative,³⁷⁷ community-

371. *Id.* at 859.

372. *Id.* at 826.

373. See Scott Cummings, *Law in the Labor Movement’s Challenge to Wal-Mart: A Case Study of the Inglewood Site Fight*, 95 CALIF. L. REV. 1927, 1927 (2007).

374. See, e.g., Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603 (1989); López, *supra* note 26, at 305; Gerald P. López, *An Aversion to Clients: Loving Humanity and Hating Human Beings*, 31 HARV. C.R.-C.L. L. REV. 315 (1996); Gerald P. López, *Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041 (2005); Gerald P. López, *A Rebellious Philosophy Born in East L.A.*, in *A COMPANION TO LATINA/O STUDIES* 240, 240–50 (Juan Flores & Renato Rosaldo eds., 2007).

375. LÓPEZ, *supra* note 8.

376. See, e.g., Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964); Edgar S. Cahn & Jean Camper Cahn, *Power to the People or the Profession?—The Public Interest in Public Interest Law*, 79 YALE L.J. 1005 (1970); Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1050 (1970); Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 NLADA BRIEF CASE 106 (1977); Gary Bellow & Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. REV. 337 (1978); Gary Bellow, *Legal Aid in the United States*, 14 CLEARINGHOUSE REV. 337 (1980).

377. See, e.g., Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427 (2000); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 160–61 (1994).

centric,³⁷⁸ and movement-oriented than the status quo.³⁷⁹ Gerald López refers to the “regnant idea of practice” to describe traditional approaches to lawyering—a reliance on orthodox lawyering strategies that filter the experiences of subordinated clients through dominant cultural narratives and political economic power structures.³⁸⁰ Regnant lawyering places attorneys at the masthead of legal campaigns where legal strategies and advocacy efforts—viewed by many as deeply elitist and paternalistic—lack meaningful client engagement, resulting in clients who feel isolated and alienated.³⁸¹ Conversely, López’s normative vision of professional lawyering identity urges a participatory and community-centered approach where the client’s lived experience becomes the center of advocacy. “By fusing rights discourse, human dignity, and moral agency,” Anthony Alfieri explains, “López reimagines poor people as autonomous, competent, and powerful self-determining agents.”³⁸² This mode of professional lawyering identity resists assuming that legal problems are best solved through the courts, and instead emphasizes community engagement and organizing as tools for empowerment.³⁸³ As Amna Akbar clarifies the method, lawyers work alongside social movements to:

- (1) challenge law and politics as usual as they frame issues, deploy tools, tactics, and storytelling, and advance theories of change and transformative visions; and
- (2) make use of strikes, protests, and direct action, build alternative institutions like bail funds, cooperative land trusts, and mutual-aid networks, and run campaigns for deep and widespread transformation.³⁸⁴

378. See, e.g., John Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 *FORDHAM L. REV.* 1927 (1999); Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 24 *AM. INDIAN L. REV.* 229 (1999); Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 *CLINICAL L. REV.* 333 (2009); Tomiko Brown-Nagin, *Does Protest Work?*, 56 *HOW. L.J.* 721 (2013); Hina Shah, *Notes from the Field: The Role of the Lawyer in Grassroots Policy Advocacy*, 21 *CLINICAL L. REV.* 393 (2015).

379. See, e.g., Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, 17 *J. AFFORDABLE HOUS. & COMMUNITY DEV. L.* 59 (2008); Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 *CALIF. L. REV.* 2133 (2007); Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 *CLINICAL L. REV.* 355 (2008); Douglas NeJaime, *The Legal Mobilization Dilemma*, 61 *EMORY L.J.* 663 (2012).

380. LÓPEZ, *supra* note 8, at 23.

381. *Id.* at 24; Alfieri, *supra* note 28, at 12 (“[T]he typical regnant lawyer is too constrained by his privileged cultural stance, advantaged socio-economic status, and hierarchy-infused professional education and training either to understand or to ‘crossover’ the boundaries of client and community difference.”).

382. Alfieri, *supra* note 28, at 10.

383. See, e.g., William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 *OHIO N.U. L. REV.* 455 (1994); Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 *UCLA L. REV.* 443 (2001); Aaron Samsel, *Toward a Synthesis: Law as Organizing*, 18 *CUNY L. REV.* 375, 398 (2015).

384. Akbar et al., *supra* note 370, at 850–51.

Thus, the rebellious approach offers lawyers an opportunity to work in solidarity with their clients³⁸⁵ who are seen as members of a community struggling against sociopolitical systems of oppression, not merely individuals with legal problems.³⁸⁶ Law professors can integrate such practices into the law classroom by carving out space for classroom discussion of the shortcomings and harms of lawyer-centric practices alongside the presentation of rules and doctrine.

By learning about social movements through the inclusion of community organizers and political activists as stakeholders in law school clinics, law students develop a critical consciousness of the political implications of their professional lawyering identity. In so doing, law schools provide future lawyers with “an immersive confrontation” with the social and economic justice challenges plaguing marginalized communities,³⁸⁷ and help them develop greater awareness of the scope of their calling as public citizens.³⁸⁸ Access to more information about the scope of the lawyer’s role combats what psychologists Amos Tversky and Daniel Kahneman call the “availability heuristic,” where a person estimates the probability of an event happening based upon the ease with which such instances come to mind.³⁸⁹ Students who lack information about the historical injustices perpetrated by law, or about justice-based critiques of conventional lawyering practices, may underestimate the probability of injustice being constructed and perpetuated by law today. Further, such students will not be mentally prepared to handle the anxiety, stress, and even depression that manifests from lawyering for justice amidst unjust circumstances.³⁹⁰ These insights point toward the need for an intentional pedagogical approach to teaching law students how to navigate the moral dimensions of their future law practice.

Several law schools have turned these insights into action. For example, many law schools have recently expanded their clinical and experiential education offerings to engage social movements, from Cornell Law School to Howard Law School to the University of Denver Sturm College of Law, among

385. See Alfieri, *supra* note 28, at 11 (explaining that the rebellious approach helps lawyers to avoid “mistak[ing] moments of client dependency, helplessness, and passivity as evidence of an immutable culture of poverty”).

386. *Id.* at 12 (“Lopez bemoans that clients ‘nearly vanish[]’ in the law-driven pursuit of ‘large-scale, media-covered litigation’ and client ‘non-legal’ concerns (e.g., family, health, and neighborhood preservation) fall overshadowed.”).

387. Ashar, *supra* note 20, at 219.

388. See, e.g., Robert W. Gordon, *The Return of the Lawyer-Statesman?*, 69 STAN. L. REV. 1731, 1762 (2017) (advocating for business lawyers to engage with a “sense of social duty”).

389. Amos Tversky & Daniel Kahneman, *Availability: A Heuristic for Judging Frequency and Probability*, 5 COGNITIVE PSYCH. 207, 208 (1973).

390. See Lindsay M. Harris & Hillary Mellinger, *Asylum Attorney Burnout and Secondary Trauma*, 56 WAKE FOREST L. REV. 733, 801–07 (2021).

many others.³⁹¹ Further, many law schools have doubled their longstanding commitment to community-based lawyering and grassroots legal advocacy, such as the CUNY School of Law, the University of the District of Columbia, David A. Clarke School of Law, and the American University Washington College of Law.³⁹² Some schools have even taken measures to venture beyond the confines of their local community, such as the University of South Carolina School of Law's "Palmetto LEADER," a fully operational mobile law office designed to help provide free legal services to rural and underserved communities across the state of South Carolina.³⁹³ Finally, many law schools around the country, such as Columbia Law School, Harvard Law School, Berkeley Law, Stanford Law School, and many others, have begun to form their own LPE chapters to coordinate educational programming, host community-based advocacy initiatives, and deepen student and faculty engagement with questions of social inequality that sit at the intersection of law and political economy.³⁹⁴

These efforts demonstrate that reforming legal education requires far more than incorporating room for critical dialogue in the law classroom. Attending to the fundamental public purpose of legal education—which remains threatened by neoliberalism and functionalism—demands ambitious and sweeping structural changes to law school's core curriculum, engagement with the job market, and a meaningful relationship with ongoing social movements.

391. See *Movement Lawyering Clinic*, CORNELL L. SCH., <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/movement-lawyering-practicum/> [<https://perma.cc/7V9D-C3K4>] (last visited Jan. 27, 2023); *Movement Lawyering Clinic*, HOW. UNIV. SCH. L., <http://law.howard.edu/content/movement-lawyering-clinic> [<https://perma.cc/953W-SKWP>] (last visited Jan. 27, 2023); Freeman & Webb, *supra* note 25.

392. See *Clinical Programs*, CUNY SCH. L., <https://www.law.cuny.edu/academics/clinics/> [<https://perma.cc/U4YN-MJRC>] (last visited Jan. 27, 2023); *Clinical Program*, UDC/DCSL, <https://law.udc.edu/clinicintro/> [<https://perma.cc/WE39-UURY>] (last visited Jan. 27, 2023); *Clinical Program*, AM. UNIV. WASH. COLL. L., <https://www.wcl.american.edu/academics/experientialedu/clinical/theclinics/> [<https://perma.cc/644A-HVDL>] (last visited Jan. 27, 2023).

393. *The Palmetto LEADER*, UNIV. S.C. SCH. L., https://sc.edu/study/colleges_schools/law/community_resources/palmettoleader/index.php [<https://perma.cc/8RPS-69G4>] (last visited Jan. 27, 2023).

394. See *Start a Student Group*, LPE, <https://lpeproject.org/student-groups/> [<https://perma.cc/9E3J-ARBA>] (last visited Jan. 27, 2023).

CONCLUSION

Critique does not tell people who they really are and what they ought to do. . . . [C]ritique challenges their understanding of who they are, and it leads them to resist their attachment to their social identities and ideals.

—David Couzens Hoy³⁹⁵

Progressive models of legal education that help law students contextualize the moral and ethical dimensions of the lawyering practice remain at the periphery of law school curricula. In many ways, the widespread focus on practice-readiness signifies a tacit acquiescence to the neoliberal demands of the private market.³⁹⁶ However, as Sameer Ashar argues, “[A]n expansive social vision is central to thick legal education reform proposals that do not hew to the current needs of private employers or austerity-era public entities.”³⁹⁷ While many law students across the country engage in social movements and law reform efforts through public interest clinics and student-led organizations, some law students graduate without ever meddling in political questions of power and resource allocation that are generally deemed outside the realm of legal education. Perhaps the attempt by some law faculty to avoid introducing political bias into the classroom is “an attempt to hide opposing political bias and preserve the status quo.”³⁹⁸

Motivations aside, if law schools want to positively impact the social and racial justice challenges plaguing America, then integrating critical theoretical perspectives and movement lawyering approaches into the classroom is a step in the right direction. If law schools want to provide a “liberating education” that furthers democratic cultural discourse and progressive law reform, then confronting cultures of domination and hierarchy embedded in law and law classrooms is a necessary next step.³⁹⁹ If law schools take seriously the call of public citizenship upon the legal profession—a calling, dare I say, that urges lawyering to become a “practice of freedom”⁴⁰⁰—then walking the walk toward justice begins at the crossroads of law, politics, and the failures of democracy.

395. DAVID COUZENS HOY, *CRITICAL RESISTANCE: FROM POSTSTRUCTURALISM TO POST-CRITIQUE* 14 (2004).

396. See Ashar, *supra* note 20, at 225 (“Many law schools have (again, reflexively) prioritized faculty salaries, new buildings, and higher position in the rankings over experiential education and community engagement.”).

397. See *id.* at 224.

398. See *id.* at 228.

399. See Freire, *supra* note 322, at 54.

400. See HOOKS, *supra* note 20, at 4.