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Law Clinics and Collective Mobilization

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LAW CLINICS AND COLLECTIVE MOBILIZATION

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Poor people are not served well by the kinds of advocacy currently taught and reinforced in most law clinics. The canonical approaches to clinical legal education, which focus nearly exclusively on individual client empowerment, the transfer of a limited number of professional skills, and lawyer-led impact litigation and law reform, are not sufficient to sustain effective public interest practice in the current political moment. These approaches rely on a practice narrative that does not accurately portray the conditions poor people face or the resistance strategies that activist, organized groups deploy. At the margins of the field, a growing number of law school clinics and innovative legal advocacy organizations have played a key role in developing a new public interest practice. These lawyers and law students support and stimulate radical democratic resistance to market forces by developing litigation, legislative, and community education methods aimed at advancing collective mobilization. This article offers a typology of clinical approaches, a critique of the canon, and a description of the features of an emerging alternative clinical model that promises to reconfigure public interest law.

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PROLOGUE

Social vision is part of the operating ethos of self-conscious law practice. The fact that most law practice is not done self-consciously is simply a function of the degree to which most law practice serves the status quo. Self-conscious practice appears to be less important, and is always less destabilizing, when it serves what is, rather than what ought to be.[1]

-Gary Bellow

Imagine a law school clinical program shaped by the legal needs of community collectives. The program would be subdivided in units identified with subsets of poor and socially marginalized people, rather than by traditional legal discipline or legal skill. For example, if a significant portion of the community identified as "immigrants," then there would be an immigrants' rights unit; if they identified as workers, then perhaps there would be a workers' rights unit.[2] The unit configuration would change over time, as the politics of community identification evolved. Although the clinic would not shed its function, shared with legal services and public defenders, as a service provider of last resort to poor people, it would grow over time to work primarily with populations in which there is political organizing. The clinic would both support the project of organizing the unorganized and condition the provision of services to communities on the establishment of collectives.[3] Cases of individual clients unconnected to a collective would receive the same skeptical scrutiny that most clinics currently apply to the addition of impact litigation to their dockets (on some of the same grounds, including the potential misuse of scarce legal resources).

Clinical professors would not start with a preexisting vision of what they would teach (from a text or case book or even last year's syllabus), but instead would work throughout the year to identify elements of the work that could be isolated, analyzed, and understood in greater depth by students for use after graduation. Activated students would bring their political commitments and preexisting relationships with collectives to the clinic and influence the docket of each unit through their participation. Clinical professors would welcome other students who are agnostic or even atheistic about the potential of law

[1] Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 301 (1996).

[2] I do not offer a ready definition, geographic or identity-based, for "the community." Law clinics must define the communities to which they are accountable through an assessment of available legal services and internal deliberation regarding capacity and goals.

[3] Stephen Wexler made an argument for this kind of legal clinic 38 years ago. *See* Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049 (1970).

to achieve social justice and identify projects on which they could test their hypotheses.

The clinic would become a center of activity in the community, a place where organizers and collective members interact with each other, build alliances, or mediate disputes (that seem inevitably to arise in progressive work). Clinical professors would take pride in the quality of the relationships that they and their students foster with organizers and members of collectives and take great care in providing foundational support for these organic developments in communities. Clinical professors and students would serve as facilitators between these collectives and other lawyers, in both the private and public sectors, who would otherwise be less mission-directed to foster organizing (and sometimes even hostile to it). These politically engaged collectives would rise and fall, as they confront and/or collude with state and market institutions. Members' lives would change through involvement in collectives; and their similarly situated, but unorganized, peers too might feel the effects of their work. Segments of the community would see some measure of justice, as well as inevitable disillusionment and disappointment.

Lawyers would graduate from this clinic with a set of beliefs about and experiences with the relationship between law, politics, and justice. They would have *knowledge* (not a set of iron *tools* or canonical *skills*) with which to provide foundational legal services to community collectives. They would have the seed of legal and political judgment, an understanding of the long and unending struggle of social justice organizations, and a sense of how the rules of the profession empower and limit their ability to participate in that struggle. Law schools would be centers of social justice, rather than merely vocational schools for lawyers who deploy professional skills to endow those with wealth and power with more of the same.

Teachers and students who seek to adopt such a model face many obstacles.[4] The limits on imagination that we accept and nurture within our profession may impose the most pervasive constraint on what is possible.

INTRODUCTION

Poor people are not served well by the kinds of advocacy currently taught and reinforced in most law clinics. The canonical approaches to clinical legal education, which focus nearly exclusively on individual client empowerment, the transfer of a limited number of professional skills, and lawyer-led impact litigation and law reform,

[4] *See* Part IV, *infra*.

are not sufficient to sustain effective public interest practice. These approaches meet the experiential and service goals of law school clinics and reinforce the norms of conventional practice in the legal profession. However, they rely on a practice narrative that does not accurately portray the conditions that poor people face, the resistance strategies that activist, organized groups deploy, or the new reality of public interest practice.[5]

At the margins of the field, a growing number of law school clinics and innovative legal advocacy organizations are playing a key role in developing a new public interest practice, one informed by the critical poverty law scholarship of the past several decades.[6] These lawyers and law students support and stimulate radical democratic

[5] Although I recognize that there exists a growing sector of legal practice in which lawyers in non-profit settings pursue conservative political goals, *see* Ann Southworth, *Conservative Lawyers and the Contest Over the Meaning of "Public Interest Law*," 52 UCLA L. REV. 1223 (2005), when I use the terms "public interest practice" or "public interest lawyers" in this article, I am referring to lawyers who advocate for clients and client groups that are socially, politically, and economically marginalized in the United States and are generally in support of left or progressive political causes. This article is a small contribution toward the "rearticulation" and "redeployment" of the term "public interest law" for the left. *See* 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, 1169-70 (2004) (describing right's deployment of "public interest law").

In reaction to my choice, Ascanio Piomelli has suggested that some may read into the term connotations that I do not endorse, including notions that: (1) there is a single, unclass-differentiated "public" whose interest (singular) can be ascertained and thus we need not distinguish between social classes with differing interests; (2) public interest lawyers are only those who work on non-self-interested causes that benefit others – rather than on causes that benefit themselves or the groups to which they belong; and (3) public interest lawyers are simply interested in ensuring the representation of those clients and groups that would not otherwise be represented, but do not necessarily endorse their clients' substantive goals or the consequences to which their lawyering leads. Email from Ascanio Piomelli, Professor of Law, University of California, Hastings College of Law (Nov. 5, 2007, 1:39 EST) (on file with author). I prefer to use the broadest term possible and to define its meaning through the legal work that I describe below in Section III.

[6] *See* Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879, 1906 n.113 (2007) (describing pervasive influence of critical poverty law scholars on public interest practice). Scholars such as Gerald López and Lucie White melded critical theory with narratives of alternative practice to urge lawyers across a variety of practice settings to work collaboratively with clients, communities, and activist groups to pursue collective, multi-faceted approaches to fighting subordination and effecting social change. *See, e.g.*, GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 546-63 (1987-88). Thoughtful activists such as Luke Cole and Jennifer Gordon developed new visions of legal practice on the basis of their groundbreaking work at the juncture of law and organizing. *See, e.g.*, Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619 (1992); Jennifer Gordon, *We Make the Road By Walking: Immigrant Workers, The Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407 (1995).

resistance to market forces by developing litigation, legislative, and community education methods to advance collective mobilization.

This article offers a typology of clinical approaches, a critique of the canon, and a description of the features of an alternative clinical model – with the ultimate aim of reconfiguring public interest law.[7] It offers a descriptive argument about the economic and political conditions that poor and marginalized people currently face and the limits of law clinics' institutional responses to such conditions. It also makes a normative argument about the implicit moral and political imperative of legal educators to engage in efforts of social reconstruction rather than social reproduction.

Part I of the article briefly describes the larger forces currently shaping public interest practice and clinical legal education. Part II surveys the canonical approaches to clinical education and identifies their major features and rationales. It then sets out the limitations of these approaches in three broad themes: first, the removal of the lawyer-client relationship from the socio-political sphere and the chiseling of clients away from their political and racial solidarities; second, the mistaken elevation of isolated, narrowly conceived skills training over a broader conception of necessary knowledge and skills for creating social justice; and third, the diminished institutional accountability of law school clinics to clients and communities. Part III sets forth an emerging, alternative clinical model centered around collective mobilization, focusing particularly on issues of clinic design and knowledge development. Returning to the critiques of the canonical approaches from Part II, it shows how the alternative model preserves and promotes the political and racial solidarity of lawyers and clients, provides contextualized opportunities for pervasive skills training, and makes law clinics more accountable to clients and communities. Finally, Part IV notes and responds to a few potential critiques and limi-

[7] My past work, *see* Ashar, *supra* note 6, a case study of collaboration between a law school clinic and an activist worker center in New York, as well as this article, fits into the scholarly framework suggested by Lucie White:

> In short, to move from a rhetorical endorsement of collaborative lawyering toward practical wisdom about how to work with community groups in ways that enhance social justice, clinical scholarship needs to undertake four tasks. First, we need to map out the internal microdynamics of progressive grassroots initiatives. Second, we need to observe the multiple impacts of different kinds of grassroots initiatives on wider spheres of social and political life. Third, we need to devise typologies, or models, or theories that map out a range of opportunities for collaboration. Finally, we need to study how lawyers work most effectively with different initiatives, and ask how student-lawyers can be trained to do this work. Such scholarly projects would focus, at once, on groups, social change effects, lawyering skills, and clinical pedagogies.

Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLIN. L. REV. 157, 160-61 (1994).

tations of the alternative approach.

I. CONTEXT

Socio-economic conditions and political developments have altered the ground on which progressive activists and public interest lawyers currently practice. To be sure, clinical legal education contains an enduring social justice rationale, but it too is susceptible to the status-quo-reinforcing pressures that the market and state currently place on institutional actors. Without presuming that poor and working-class people have ever had it easy, it is important to explore the specific conditions that they currently face in order to appreciate new and emerging approaches in clinical practice.[8]

A. Neoliberal Globalization

Public interest lawyers today represent clients in a period of rapid political and economic change. Poor people are besieged by unprecedented market forces with less protection by the state than at any other time in our recent history. Multinational corporate actors and their collaborators in government have advanced an agenda in both developed and developing nations – described by some as "neoliberal globalization"– with three major tenets: (1) weakening and impoverishment of the state so that it is unable to provide basic social protections; (2) privatization of formerly public functions; and (3) free and rapid movement of capital that facilitates lowered labor and environmental standards.[9] In the United States, the advocates of neoliberalism successfully fought to remove the federal social welfare entitlement in 1996 and to condition access to subsistence relief on participation in enforced labor programs, thus expanding the class of

[8] Steve Wizner debunks the idea that this is a unique "moment" for poor and marginalized people: "In any event, there has never been a 'golden age' for poor and marginalized people in America. The current moment may be worse, or different, in some important respects, but the fundamental, systemic, radical view of the situation of low income, oppressed communities is not just what's happening in the current moment." Email from Steven Wizner, William O. Douglas Clinical Professor of Law, Yale Law School (Aug. 29, 2007, 2:50 EST) (on file with author). Joe Rosenberg, my colleague at CUNY, shares this skepticism about the uniqueness of the current "moment" for poor people. It is the argument of this section that neoliberal globalization and ineffective social justice strategies have led to the development of new or renewed forms of public interest practice. This emerging practice, and the way in which it contravenes the widely accepted assumptions of clinical legal education, is what I describe in this paper. I agree fully with Wizner and Rosenberg that there are always people left at the bottom in America, no matter how institutions are structured above them and regardless of whether economic times are good or bad. I embrace their pragmatic search for social justice strategies that might reverse this fundamental condition.

[9] *See* JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 53 (2002).

low-wage workers in the economy.[10] The reserve wage[11] has fallen as our clients have become more vulnerable to their employers and other market actors, including banks and landlords.[12] Previously robust civil society organizations, such as unions and identity-based associations, have weakened[13] and increasingly depend upon corporate and governmental patrons.

In response to this environment, a growing number of small groups of poor and working-class people have risen to challenge the reordering of our economy and politics. These resistance movements self-consciously act locally and think globally, allying themselves (actually or symbolically) with grassroots movements outside the United States.[14] This resistance simultaneously opposes neoliberalism and constructs a decentralized "radical democratic" program.[15] In the area in which I work, immigrant workers and organizers have banded together along ethnic, geographic, and occupational lines in "worker centers" to improve their conditions of employment through direct action, litigation, and legislation.[16] These worker centers have drawn

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[10] *See* Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 426-28 (2001); Martha T. McCluskey, *Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State*, 78 IND. L.J. 783, 813-15 (2003).

[11] The "reserve wage" is the wage level below which an individual will not work. *See* Organization for Economic Co-operation and Development, *Trends in International Migration: Clandestine Immigration: Economic and Political Issues* 239-40 (1999), *at* http://www.oecd.org/dataoecd/20/61/2717683.pdf (last visited Feb. 14, 2008).

[12] *See* McCluskey, *supra* note 10, at 814.

[13] *See* Robert Putnam, *Bowling Alone: America's Declining Social Capital*, 6 J. DEMOCRACY, 65, 67-70 (1995).

[14] *See generally* LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY (Boaventura de Sousa Santos & César A. Rodríguez-Garavito eds., 2005).

[15] *See id.* at 12-18 (describing conceptual underpinnings of global oppositional movements and providing examples). *See also* Fran Ansley, *Inclusive Boundaries and Other (Im)possible Paths Toward Community Development in a Global World*, 150 U. PA. L. REV. 353, 405-11 (2001) (describing globalized social movements in U.S.); Robert Chang, *The End of Innocence or Politics After the Fall of the Essential*, 45 AM. U. L. REV. 687 (1996) (discussing radical democratic project of establishing solidarity among people of color to advance progressive agenda). For an insightful description of radical democratic politics in a social movement context, *see* BARBARA RANSBY, ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION 368-70 (2003). Critical lawyering theorist Ascanio Piomelli has drawn on the example of Ella Baker to argue that a collaborative or "rebellious" approach to lawyering with poor and working-class clients is grounded in and guided by precisely such a radical democratic vision. *See* Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLIN. L. REV. 541, 587-95 (2006).

[16] *See* JANICE FINE, WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM (2006); JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS (2005); Ashar, *supra* note 6, at 1892-95; Alan Hyde, *New Institutions for Worker Representation in the United States: Theoretical Issues*, 50 N.Y.L. SCH. L. REV. 385 (2005).

extensively in the course of their campaigns on legal resources provided by a small number of law school clinics.[17] Similarly informed and designed law school clinics have also had highly productive collaborations with environmental justice,[18] welfare rights,[19] and community development organizations[20] that are either directly or indirectly related to global social movements.

These organizations, in conjunction with emerging law school clinics and other public interest lawyers,[21] have enacted a program, labeled "constrained legalism" by Scott Cummings, to simultaneously advance their movement-building and law reform agenda.[22] Organizations have turned to these law school clinics, and other new, relatively agile legal entities,[23] because legal mechanisms of resistance from other eras no longer operate effectively in the current context.[24] The Legal Services Corporation, under assault by conservative forces since its founding, has been considerably weakened through reduced funding and regulations limiting access for poor people.[25] Legal ser-

[17] *See* Ashar, *supra* note 6, at 1895-99; Julie Yates Rivchin, *Building Power Among Low-Wage Immigrant Workers: Some Legal Considerations for Organizing Structures and Strategies*, 28 N.Y.U. REV. L. & SOC. CHANGE 397, 404-05 (2004). In New York, the CUNY Immigrant and Refugee Rights Clinic, Fordham Community Economic Development Clinic, and NYU Immigrant Rights Clinic, amongst others, have provided legal support to worker centers.

[18] *See*, *e.g.*, Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CALIF. L. REV. 1999 (2007) (discussing collaboration between Fordham Law School Community Economic Development Clinic and West Harlem Environmental Action).

[19] *See*, *e.g.*, Stephen Loffredo, *Poverty Law and Community Activism: Notes from a Law School Clinic*, 150 U. PENN. L. REV. 173, 189-96 (2001) (describing collaboration between CUNY Economic Justice Project and the Welfare Rights Initiative).

[20] *See*, *e.g.*, Susan D. Bennett, *Creating a Client Consortium: Building Social Capital, Bridging Structural Holes*, 13 CLIN. L. REV. 67 (2006); Scott L. Cummings, *Clinical Legal Education and Community Development*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 208 (2005).

[21] *See* Ashar, *supra* note 6, at 1895-99 (describing contributions of specific public interest legal organizations to immigrant labor organizing).

[22] Scott L. Cummings, *Critical Legal Consciousness in Action*, 120 HARV. L. REV. F. 62, 67-71 (2007) (defining "constrained legalism" as practice of public interest lawyers recognizing limits and exploiting opportunities offered by law to advance progressive aims).

[23] In New York, the Urban Justice Center, http://urbanjustice.org/, has an excellent record of support of progressive organizing in a number of areas, including immigrant labor.

[24] In suggesting this formulation in a faculty workshop, my colleage Janet Calvo captured a range of rights-regressive developments in poverty, employment, and labor law since 1980. *See, e.g.*, Sylvia A. Law, *In the Name of Federalism: The Supreme Court's Assault on Democracy and Civil Rights*, 70 U. CIN. L. REV. 367, 372 (2002) (discussing Rehnquist Court's "evisceration of the civil rights of workers, women, people with disabilities, and others.").

[25] *See* David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CALIF. L. REV. 209, 220-26 (2003); 45 C.F.R. 1600-44 (2006) (regulations prohibiting grassroots lobbying, legislative advocacy, organizing, and class action litigation).

vices lawyers continue to litigate individual cases in defense of their clients' rights with diminishing resources and are prevented from using more aggressive and collective strategies by high caseloads and funding restrictions.[26] Affirmative impact litigation to advance social welfare is rarer than in the 1960s and 1970s due to a more hostile and conservative federal judiciary, consequent diminution of rights in case law, and more aggressive conservative public interest legal advocacy.[27] The weakening of these traditional progressive legal approaches and the growth of nascent globally-linked movement organizations are fundamentally reshaping public interest practice.[28] To be sure, popular mobilization has been a recessive thread in public interest practice dating back to the earliest social justice movements in the United States.[29] As a host of lawyering theorists and organizers have long urged, increasing numbers of public interest lawyers are now refocus-

[26] *See id.*

[27] *See* Southworth, *supra* note 5, at 1266-67. *See also* Section II.B.3, *infra*, for critiques of impact litigation. Although there is much controversy about the accountability of lawyers to clients and the overall effect of impact litigation campaigns on popular mobilization, there is little dispute that public interest lawyers have successfully used federal litigation to challenge and restructure public institutions, generally to advance the interests of those who depend on such institutions for support and services, such as poor people, the disabled, and prisoners. *See* Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976); Charles F. Sabel & William H. Simon, *Destabilization Rights: How Public Law Litigation Succeeds*, 117 HARV. L. REV. 1015, 1021-53 (2004) (describing areas in which public law litigation has persisted, even as remedial methodologies have been reshaped by changing conditions).

[28] *See* Ashar, *supra* note 6, at 1917-26; Louise Trubek, *Crossing Boundaries: Legal Education and the Challenge of the "New Public Interest Law,"* 2005 WIS. L. REV. 455, 460-66 (describing new globalized frameworks for public interest legal advocacy).

[29] *See* Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 988 (2007) ("Marginalized groups have used legal reform precisely because they lacked power." *Id*.). Steve Wizner evocatively describes the collective mobilization thread that ran through the work of welfare rights attorneys in New York in the 1960's:

> We did, of course, provide legal support to the welfare rights movement and some of us helped to incorporate welfare rights organizations, and restricted our representation of clients in welfare cases to individuals who were members of, or would join, a welfare rights organization. My office at MFY represented many individual clients, and handled law reform litigation in cooperation with the MFY Law Reform Unit, but we also provided legal counsel to the Welfare Action Group Against Poverty, an organization of welfare mothers, the Two Bridges Neighborhood Association, a group of parents advocating on behalf public school children in that neighborhood, the Lower East Side Sewing Cooperative, which enabled a group of women to escape the oppressive conditions of sweat shops and contract independently with manufacturers, a Soul Food Catering Cooperative in which women living in public housing provided home-cooked meals for parties and events, as well as neighborhood offices. In addition, in those days each neighborhood office of MFY Legal Services was staffed not only by lawyers, but also had a social worker and a community organizer attached to the office.

Wizner, *supra* note 8.

ing their efforts on mobilization, particularly as they perceive the absence of protections the state once offered and the nascent, organized opposition to the neoliberal program.[30]

B. Social Reproduction

Schools too have been targets of the pressure that ascendant market forces have aimed at other state and civil society institutions.[31] Reproduction, rather than social critique, forms the core mission of the vast majority of educational institutions.[32] Functionality and efficiency, rather than individual expression and social integration, are

[30] *See* theorists discussed *supra*, note 6.

[31] Adult education scholar Ted Fleming, interpreting and applying the work of Jürgen Habermas (*see*, *e.g.*, JÜRGEN HABERMAS, 2 THE THEORY OF COMMUNICATIVE ACTION, LIFEWORLD AND SYSTEM: A CRITIQUE OF FUNCTIONALIST REASON (Thomas McCarthy trans., 1987) (1981)), contends that modern reality is divided into two spheres, "lifeworld" and "system." *See* Ted Fleming, *Habermas on Civil Society, Lifeworld, and System: Unearthing the Social in Transformation Theory*, TEACHERS COLLEGE RECORD, Jan 27, 2002, *at* http://www.tcrecord.org/content.asp?ContentID=10877 (last visited Feb. 14, 2008). Lifeworld is culture, society, and personality and is constantly being reproduced through individual interpretation, cultural transmission of ideas, and forms of social integration. *Id*. at 4. System is economic and political-legal apparatuses that are characterized by functionality, complexity, and bureaucracy. *Id*. Each exists in relation to the other and sustains our modern reality. However, political and economic conditions have fundamentally altered the balance and system has "colonized" lifeworld:

> Problems arise when the system, constructed to serve our technical interests, invade the practical domain of the lifeworld and intervenes in the processes of meaning-making among individuals and communities in everyday life. The lifeworld, [Habermas] says, is colonized by the functional imperatives of the state and the economy, characterized by the cult of efficiency and the inappropriate deployment of technology. . . . As a result the symbolic reproduction process of the lifeworld (cultural reproduction, social integration, and socialization) incorporates a discourse of functionality and individuals and groups increasingly define themselves and their aspirations in system terms and see themselves as consumers and clients.

Id. at 3. It is in this context that social institutions, particularly those such as schools that have historically offered a critical space to individuals and groups, are in danger of reinforcing a social vision favorable to hegemonic interests.

[32] *See* Duncan Kennedy, *Legal Education as Training for Hierarchy*, *in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 54 (David Kairys ed., 1998); *see also* Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 LAW & SOC'Y REV. 1, 13 (2007) (supporting social reproduction thesis in law school context), *citing* PIERRE BOURDIEU, PRACTICAL REASON: ON THE THEORY OF ACTION (Randall Johnson trans., Polity Press 1998) (1994); Anne Proffitt Dupre, *Should Students Have Constitutional Rights? Keeping Order in the Public Schools*, 65 GEO. WASH. L. REV. 49, 64-93 (1996) (contrasting social reconstruction and social reproduction and indicating that Supreme Court has recently shifted to ratify latter vision for schools). The social reproduction mission of schools is partly manifested in the movement to impose high-stakes testing on students at all levels of education. *See* Henry M. Levin, *High-Stakes Testing and Economic Productivity*, *in* RAISING STANDARDS OR RAISING BARRIERS?: INEQUALITY AND HIGH STAKES TESTING IN PUBLIC EDUCATION 39-50 (Gary Orfield & Mindy Kornhaber eds., 2001) (describing assumption that testing success results in higher worker productivity and concluding it is unsupported by available data).

the primary values that almost all of these public and private entities adhere to and advance.[33] Increasingly, individuals are viewed as consumers or human resources by corporations and as citizens, voters, or clients of bureaucracies by the socio-legal system.[34] The consequent loss of meaning has a self-reinforcing quality, with individuals further alienated from their own identities and from others.[35] Economic globalization weakens the power of the state and reduces the accountability of institutions to individuals.[36]

Adult education, especially, is a key institution in determining whether individuals and social movements will be able to contest and resist larger social conditions.[37] Transformative learning in adult education (developed by Jack Mezirow and applied in the clinical legal education context by Fran Quigley) is a means by which to sustain and enrich oppositional movements against the force of functionality and efficiency.[38]

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[33] *See* Fleming, *supra* note 31, at 3.

[34] *See id*. This is the thin conception of "citizenship" as a purely legal status rather than as a signifier of equal rights and political and social engagement. *See* Linda Bosniak, *Citizenship and Work*, 27 N.C. J. INT'L L. & COMM. REG. 497, 497-98 (2002).

[35] *See* Fleming, *supra* note 31, at 3.

[36] *See* PIERRE BOURDIEU, ACTS OF RESISTANCE: AGAINST THE TYRANNY OF THE MARKET 94-105 (Richard Nice trans., New Press 1999).

[37] *See* Fleming, *supra* note 31, at 6-7:

> Will adult education serve the system or the life-world? . . . Adult education is seen by the state as predominantly a matter of supporting the economy. But an education policy based solely on the needs of the market is deeply flawed. Frequently, adult education allies itself with the system rather than the life-world. The system has, however, adopted the discourse of lifelong learning that almost always involves the adaptation of isolated, individual learners to the corporate-determined status quo of the economy. Adult education is both part of the apparatus of the state (by engaging in policy making, delivering programmes and services) and highly critical of it. The relationship between the state and adult education is complex and frequently includes elements of resistance and contestation as well as reproduction.

Id. Paulo Freire and Myles Horton emphasized the liberationist potential of educational institutions and separately developed critical pedagogies that enabled participants to challenge the structures of power to which they were subject. *See* PAULO FREIRE, PEDAGOGY OF THE OPPRESSED (Myra Bergman Ramos trans., Continuum 2000) (1970); MYLES HORTON & PAULO FREIRE, WE MAKE THE ROAD BY WALKING: CONVERSATIONS ON EDUCATION AND SOCIAL CHANGE (1990).

[38] *See* Fleming, *supra* note 31, at 1 ("Transformative learning is the process of becoming aware through critical reflection of the frame of reference in which one thinks, feels, and acts. It involves becoming aware of its genesis in one's individual history and/or culture, the search for a new more developed frame, and acting on the basis of the new frame of reference." *Id*.); Jack Mezirow, *Learning to Think Like an Adult: Core Concepts of Transformation Theory*, *in* LEARNING AS TRANSFORMATION: CRITICAL PERSPECTIVES ON A THEORY IN PROGRESS (Jack Mezirow ed., 2000). Drawing on the work of adult education scholar Jack Mezirow, Quigley argues that clinical teachers have the opportunity to use "disorienting moments" – when students are confronted with situations that cause them to question their beliefs and commonly held understanding – to reflect and reorient. Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of*

Many of the pioneers of modern clinical legal education brought a passionate commitment to social reconstruction to their work.[39] Many leading clinical legal scholars aspire to, and believe they are engaged in, the work of reconstruction rather then reproduction — through their legal representation of poor clients and through the progressive values that they bring to their teaching.[40] Yet within each exhortation to teach social justice is a concession that competing values threaten to displace the ideals on which law school clinics were founded.[41] In this dissonance is a fact: there are fundamental flaws in the "code" underlying mainstream clinical legal education. The external pressure of the market to train lawyers for designated functions – unyielding in the current political moment – is both a direct and indirect cause of the dilution (and, sometimes, elimination) of the social justice mission of law school clinics.[42] The underlying economic and

Social Justice in Law School Clinics, 2 CLIN. L. REV. 37, 52-56 (1995).

[39] *See* Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 997-99 (2004) ("Thirty years ago a hardy band of public defenders and legal services attorneys stormed the academy." *Id*. at 998). *See also* Louise G. Trubek, *U.S. Legal Education and Legal Services for the Indigent: A Historical and Personal Perspective*, 5 MD. J. CONTEMP. LEGAL ISSUES 381, 384-86 (1994) (describing Edgar and Jean Cahn's vision for legal services linked to law schools and founding of Council on Legal Education for Professional Responsibility (CLEPR)); *but see* William H. Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487, 523-24 (1980) (criticizing CLEPR founder William Pincus for reinforcing practice norms and discouraging law reform through clinical education).

[40] *See*, *e.g.*, Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLIN. L. REV. 1 (1997); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1475-78 (1998); Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327 (2001).

[41] *See*, *e.g.*, Aiken, *supra* note 40, at 6 ("Legal education is failing both directly and indirectly. First, educators often act as if lawyers play no role in the achievement of justice. Consequently, legal educators neglect to address issues of justice when the opportunity arises. Second, in those circumstances in which justice is discussed, too often the message that students receive is that justice is merely the product of the application of neutral rules."); Dubin, *supra* note 40, at 1469 ("Since the 1980s, the emerging emphasis on clinical education's skills training and professional competency functions has led to law schools' increased reliance on less resource intensive models of instruction that downplay social justice and public service concerns."); Wizner, *supra* note 40, at 330 ("Clinical legal educators have not succeeded in inculcating in their students the belief that many of us had when we came to clinical teaching, that law is something that can be, and therefore should be, used in the struggle for social justice.").

Undoubtedly, savvy and dedicated teachers and administrators have mainstreamed clinical legal education for complex reasons, including the essential effort to validate its presence at law schools through tenured lines and hard-money funding. This effort is not one that I take for granted; however, it does beg the question of whether we intend to use our hard-won legitimacy within the legal academy to return to the first principles of those pioneering clinical educators whom we most valorize, such as Gary Bellow, or whether we will allow legitimization to delimit the scope and mission of our programs.

[42] Bill Simon offers a less controversial analysis of the deficiencies of legal education, particularly with regard to the preparation of students for "public problem-solving." He writes: "Law purports to address problems that are not amenable to case-by-case solution.

political conditions create an environment in which the internal incentive structures of law schools are altered to accommodate and abet market pressures.[43]

To be sure, many clinicians respond to market pressure with creative pedagogical experiments and gain strength through collaborations with defiant students not yet assimilated by the profession. These teachers and students constitute a recessive strain in clinical legal education that is not insignificant.[44] However, I believe it would be a mistake to use these programs to mask the nature of the status-quo-preserving forces in legal education and in the profession. Clinical legal education is not monolithic, but it is bound and constrained by the market pressures currently ascendant within law schools and law practice. Notwithstanding many clinicians' laudable work, clinical legal education is shaped by the code of its canonical approaches. In the next part, I discuss the features of these approaches and offer a critical assessment.

II. Canonical Approaches

As a segment of public interest law, law school clinics are marginal providers of legal services, in terms of number of cases on dockets and clients served.[45] Nonetheless, clinical practice exists in a vital dialectic relationship with public interest practice. Dominant and recessive threads in public interest practice crop up in clinics, just as

This was the basic point of the Brandeis tradition associated with Hart & Sacks and Willard Hurst that remains to be fully developed in the academy." Email from William H. Simon, Arthur Levitt Professor of Law, Columbia Law School (September 17, 2007, 1:50 EST) (on file with author). However, Simon himself recognizes that critical vision rather than social necessity drives the reordering of social institutions. *See* William H. Simon, Comment, *Babbitt v. Brandeis: The Decline of the Professional Ideal*, 37 Stan. L. Rev. 565, 586 (1985) ("The recent dismantling of a variety of Progressive and New Deal reforms underscores a central point of the scholarly critiques of Progressivism and Functionalism of the past two decades: Almost any area of society can be organized in a variety of ways, and the choice among them depends on controversial moral and political commitments, not on social necessity."). A social reconstruction agenda within legal education cannot be sustained without an underlying critical vision and a normative argument for the essential role of law clinics allied with resistance movements against the overwhelming forces of market and state.

[43] *See infra* note 116 and accompanying text.

[44] The alternative practitioners in clinical legal education that I cite below in Section III fall within this category.

[45] My colleague Pam Edwards points out that although law school clinics provide legal services to a small number of clients, these limited services are of great value to those individual clients. *See* email from Pamela Edwards, Professor of Law, CUNY School of Law (Oct. 24, 2007, 2:29 EST) (on file with author). I do not disagree with this point. However, my argument is that the retrenchment of legal services for poor people and the growing need for lawyers demand more from clinics than an individual case-centered approach.

dominant and recessive threads in clinical theory and education spread out into public interest practice. To evaluate the effectiveness of public interest law in advancing social justice, it is essential to critically evaluate the rationales and features of dominant approaches in law school clinics.[46]

A. Canon

1. Case-Centered

The individual case-centered model of clinical legal education is the predominant one in the United States.[47] With the exception of the impact litigation and public policy clinics discussed below, in most U.S. clinical programs today the service mission is generally considered secondary to pedagogical goals, especially as clinical education has moved from the margins closer to the center of law school curricula.[48] Many programs have endeavored to create modules of skills training focused on what is commonly understood to be the common denominator of modern lawyering: interviewing, counseling, and negotiation, along with pre-trial litigation, trial advocacy, and other traditional court-centered activities.[49] This mission configuration

[46] Deborah Maranville makes two important cautionary points for discussions of pedagogical methods in clinical legal education: (1) there is little empirical evaluation of the methodologies used by different programs; and (2) the approaches are so varied and hybridized that it is difficult to make generalizations about the field. *See* Deborah Maranville, *Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences*, 7 CLIN. L. REV. 123 (2000). My assessment of pedagogical "dominance" in the field is limited by the scope of my own experience and observations. However, as Maranville recognizes, we need to be able to talk about and critically analyze clinical methods even in the absence of conclusive empirical data. Further, because of the recent growth of clinical scholarship, it is possible to identify major ideas and concepts that either describe programmatic changes or challenge established practices.

[47] *See* David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLIN. L. REV. 191, 194-97 (2003) ("The case-centered approach is arguably the dominant one in the United States today. *Id*. at 192 n.4).

[48] To be clear, this does not describe all programs, many of which try to meld service and pedagogical missions. Nor do I intend to make a blanket indictment of all clinicians' motives and aims. We all do what we do for complex and contradictory purposes. However, by necessity, as transferable skills training and assumption of lawyer role in individual cases has become the core aim of clinical legal education, community-based advocacy has become a byproduct of clinical curricula.

[49] This approach is embodied in the contents of leading lawyering texts. *See* Robert D. Dinerstein, *Clinical Texts and Contexts*, 39 UCLA L. REV. 697 (1992) ("In the field of clinical legal education, textbooks matter. At their best, they serve not just as pedagogical tools reflecting doctrinal developments but as intellectual signposts. Clinical texts organize what we think we know about the world of lawyers and lawyering. They also let us see, sometimes unwittingly, what we do not yet know about that world." *Id*. at 697.). *See*, *e.g.*, ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING AND NEGOTIATING SKILLS FOR EFFECTIVE REPRESENTATION (1990); DAVID A. BINDER, PAUL B. BERGMAN, SUSAN C. PRICE & PAUL R. TREMBLAY, LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (2d ed. 2004) (including units on counseling, information-gathering,

yields a predominant, though not exclusive, model of clinical legal education with the following characteristics:[50]

- intake of individual cases on the basis of triage within a geographic catchment area;
- a view of cases as isolated vehicles by which to accomplish the primary pedagogical and secondary service goals of a law clinic;[51]
- induction of students into a style of client-centered practice that prizes maximum engagement with clients on questions of fact and strategy in litigation;[52]
- intake of cases that are small or simple enough for students to fully (and exclusively) assume the lawyer role;
- practice in a single mode of advocacy, most commonly litigation, but occasionally in transactional or alternative-dispute-resolution work.

These conventional clinics do serve poor people's individual legal needs in essential areas, such as public benefits, family law, asylum law, and other individual client-focused practices. These services are particularly vital in geographic regions with fewer public interest legal offices.

The individual case-centered model has had a mutually reinforcing relationship with the practice doctrine of "client-centeredness,"

decision-making); DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS (2002) (including units on ethics, theory of the client, client-centered representation, interviewing, collaboration, fact investigation); STEFAN H. KRIEGER & RICHARD K. NEUMANN, ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS (3d ed. 2007).

[50] Binder and Bergman, in their critique of the case-centered model, offer an alternative set of features of clinical courses: (1) organized around particular legal problems of poor and socially marginalized client populations; (2) students engaged in a wide variety of lawyering tasks in the course of representation, though not all students undertake all tasks because of the vagaries of live-client representation; (3) case and client needs dictate the learning program of the student, as they learn how to do only those tasks that arise in the course of the case; and (4) classroom component covers those lawyering tasks that are likely to arise in the ongoing cases. *See* Binder & Bergman, *supra* note 47, at 194-95. Because their focus is on the deficiency of skills training in the case-centered model, they accentuate the wide range of skills covered in class and the lack of control over the student learning due to live-client representation.

[51] *See* David Chavkin, *Spinning Straw into Gold: Exploring the Legacy of Bellow and Moulton*, 10 CLIN. L. REV. 245, 256 (2003) ("We should ask and re-ask at least one question: How can we use the resources available to us in the most efficient way to help the largest number of students possible develop into responsible and effective practitioners? The continuing process of developing answers to that question should define the ongoing development of clinical legal education in this country.").

[52] *See* Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994) (arguing that client voice should carry across fact development and legal strategy components of representation).

adopted widely by clinicians in the United States.[53] Katherine Kruse explains the doctrine's central tenets as requiring that lawyers gain awareness of the non-legal aspects of clients' situations, restrict their role to sharply circumscribed legal expertise, and ensure that clients make key decisions.[54] Additionally, lawyers are advised to gain an understanding of their clients' "perspectives, emotions and values."[55] Kruse explains that clinicians in the 1970s and 1980s – mostly lawyers who had worked in legal services and public defender offices after the rapid rise (and fall) of funding[56] – were attracted to client-centeredness and its subsequent modifications:

> The client-centered approach offered a pedagogical opportunity to explore these social justice values within the microcosm of the lawyer-client relationship, and within the tasks of interviewing and counseling individual clients in which clinic students were engaged. For some of these early clinical professors, a model of legal representation built around understanding clients' lives and respecting clients' values held out the hope of reframing social justice advocacy in ways that were both responsive to clients' situations and effective in identifying, from the bottom up, the structures of subordination that needed to be challenged for social change to be effective.[57]

Because the individual lawyer-client relationship was regarded by proponents of the case-centered model as microcosmic, clinicians sought to advance social justice by accepting the case of a poor person and then adopting a paradigm of relation that accentuated client decision-making autonomy.

Subsequent iterations of the dominant clinical model have further privileged pedagogy over social justice. David Chavkin sets out two central tenets of the pedagogically focused version of the individual

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[53] *See* Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLIN. L. REV. 369, 369-71 (2006) ("[T]he client-centered approach has so thoroughly permeated skills training and clinical legal education, it is not an exaggeration to say that client-centered representation is one of the most influential doctrines in legal education today." *Id*. at 370-71.). Lawyers and academics developed the client-centered approach against the paternalistic, lawyer-centered paradigm of practice that had characterized the profession. I do not seek to implicate the scholarly debate on the client-centered doctrine and its refinements. However, as Ascanio Piomelli points out, client-centeredness fails "to contest liberalism's radically atomized view of people as first and foremost 'individuals.' Because conventional client-centeredness does not question atomized individualism, it limits itself largely to improving the agent-principal relationship." Piomelli, *supra* note 5.

[54] *See* Kruse, *supra* note 53, at 377.

[55] *Id*.

[56] *See* Marc Galanter, *"Old and In the Way": The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 WIS. L. REV. 1081, 1103-04 ("In the course of fifteen years [between 1982 and 1997], the relative share expended on civil legal services for the poor was halved." *Id.* at 1104.).

[57] Kruse, *supra* note 53, at 384-85 (citations omitted).

case-centered model. First and foremost, clinical teachers must maximize students' educational goals over all else (especially client goals above and beyond the provision of competent legal services) because their salary is derived from student tuition.[58] In his view, impact litigation and law reform clinics are largely products of ego and law school marketing; he argues that fidelity to a purer educational mission dictates that clinics be structured "around the day-to-day issues that emphasize the ability of our students to become invested in their clients and in their lawyering experiences."[59]

Even assuming deliberate provocation in Chavkin's articulation of the necessity for the individual case-centered model, the pedagogically-focused version of the model exerts a strong pull on clinical teachers (and students as well, many of whom seem increasingly to view themselves as "customers" entitled to service from the law school). The perceived conflict between students and clients is the explicit or underlying subject of many sessions at the annual conference of clinical teachers in the United States. Such widely discussed issues as the appropriate level of directiveness in clinical supervision have this underlying conflict at their core. Even in the face of clinicians' fealty to their social justice mission, the pedagogical and student-focused benchmark measures of success in clinical education necessarily influence course offerings, case intake choices, and content of clinical seminars.

2. Skills-Centered

As law schools have become more committed to experiential learning and less bound by the Langdellian case method, clinical education has moved from the fringe to the center.[60] The promotion of such learning within law schools has brought resources to clinical programs, but it has also promoted the rhetoric of common denominator

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[58] *See* Chavkin, *supra* note 51, at 258, 260-61.

[59] *Id*. at 266. Interestingly, early studies of clinical legal education adopted the same formulation as Chavkin in describing supervisors and students interested in law reform as narcissistic. *See* Simon, *supra* note 39, at 530 (discussing work of law and psychiatry scholar Andrew Watson, who influenced early development of clinical legal education).

[60] *See* WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (arguing for greater attention in legal education to practical and ethical dimensions of lawyering and citing exemplary programs); Jonathan D. Glater, *Harvard Law Decides to Steep Students in 21st-Century Issues*, N.Y. TIMES, Oct. 7, 2006, at A10 (describing overhaul of Harvard first-year curriculum including addition of experiential course on problem solving); Posting of Peter Lattman to Law Blog, http://blogs.wsj.com/law/2006/11/30/stanfords-larry-kramer-wants-to-revolutionize-legal-education/ (Nov. 30, 2006, 16:47 EST) (copy on file with author) (discussing changes in Stanford Law second- and third-year curricula and greater focus on clinical programs). The recent reforms at elite law schools reflect curricular innovation that has taken place in all "tiers" of legal education over many years.

clinical legal education, aimed at facilitating the transfer of a limited set of narrowly defined lawyering skills from work with poor clients during law school to paying clients thereafter.[61] Although case-centered clinicians use skills transfer as a rationale for additional teaching resources and credits for their courses,[62] David Binder and Paul Bergman argue that "the case-centered approach to skills training shortchanges professional development"[63] because (1) lawyering tasks are dependent on case needs not student learning; (2) low caseloads result in students undertaking tasks an insufficient number of times for "far transfer" learning to occur; (3) supervisors cannot provide contemporaneous observations and are not present during a number of student-client communications; and (4) necessarily, in the service of ongoing litigation, students spend too much time on "near transfer" work in a particular case, such as the filing of documents and other less complex lawyering tasks.[64] Skills transfer is the central justification for modern clinical legal education, though there is disagreement between Binder and Bergman and other clinicians on *how* to teach skills most effectively.

To provide students with repeated iterations of the same "far transfer" tasks, Binder, Moore, and Bergman recommend, amongst other strategies, that clinics "borrow" portions of cases from other lawyers on which students can take the lead, such as depositions,[65] and preparing students for their role by using "high fidelity simulation practice."[66] Such practice includes the use of computer technology to train students in basic lawyering skills,[67] as well as the development of curricula based on a "standardized client" model.[68] The skill-centered

[61] *See* Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989) (arguing against legal education that views clients generically and legal skills as uniformly applied in different kinds of practice).

[62] Kruse, *supra* note 53, at 384-85 ("The focus on client-centered representation as an interviewing and counseling technique allowed those social justice goals to be advanced within an ostensibly apolitical framework of 'skills training,' making them less controversial and more palatable for introduction into the legal academy." (citations omitted)).

[63] Binder & Bergman, *supra* note 47, at 192.

[64] *See id*. at 203-04. As they elaborate: "Near transfer occurs when students are able to apply skills that they have been taught to tasks that are relatively routine and repetitive in nature . . . . Far transfer situations require the ability to adapt general principles to the unique needs of specific problems." *Id*. at 198.

[65] *See id.* at 215; David A. Binder, Albert J. Moore & Paul Bergman, *A Depositions Course: Tackling the Challenge of Teaching for Professional Skills Transfer*, 13 CLIN. L. REV. 871, 892-94 (2007).

[66] Binder & Bergman, *supra* note 47, at 202.

[67] *See*, *e.g.*, Larry C. Farmer, Lisa J. Nicholes & John Mayer, Demonstration of Instructional Technology at The Pedagogy of Interviewing and Counseling (Oct. 21, 2006) (conference program available at https://www.law.ucla.edu/docs/program_conference_-_final.pdf).

[68] *See* Karen Barton, Clark D. Cunningham, Gregory Todd Jones & Paul Maharg, *Val-*

approach is based partly on critiques and new emphases in medical education.[69]

Binder and Bergman recognize that no clinical program in the United States will uniformly adopt their approach to skills transfer.[70] Most clinicians use approaches and pursue goals and projects that are less consistent and focused than either Binder and Bergman or Chavkin would prescribe. The appeal of the skills transfer rhetoric lies in its clarity about the content and purpose of clinical curricula. This clarity assists clinicians in marketing clinical courses internally to law school faculty, students, and administrators and externally to bar associations, judges, and corporate and foundation contributors.[71] Although Binder and Bergman prescribe a minority view of how best to teach skills, their view that skills transfer is the highest priority of clinical programs is one that predominates the rhetoric of clinicians and sets institutional expectations.

3. Impact Litigation

Impact litigation or "big case" clinics constitute a small minority of clinical programs. Their advocates have argued for them with some hesitance,[72] understanding that they are flying in the face of the predominant individual, "small-case"-centered model championed by Chavkin and widely considered the most pedagogically appropriate model. Advocates of "big case" clinics also provoke the opposition of skills-focused clinicians such as Binder and Bergman, who seek to isolate and simulate narrowly contained lawyering tasks. Regardless, law

uing What Clients Think: Standardized Clients and the Assessment of Communicative Competence, 13 CLIN. L. REV. 1 (2006); Lawrence M. Grosberg, *Medical Education Again Provides a Model for Law Schools: The Standardized Patient Becomes the Standardized Client*, 51 J. LEGAL EDUC. 212 (2001).

[69] *See* Binder & Bergman, *supra* note 47, at 210.

[70] *See id*. at 213 ("As you read through these alternatives, remember that our purpose is to promote discussion, not to suggest that clinicians adopt any of these 'as is.' Clinical programs vary greatly from one school to another, and the mix of case-centered and skill-centered courses that may work well in one law school may not necessarily work for another.").

[71] For a candid explanation of the costs of clinical education and programmatic dilemmas, see Richard A. Matasar, *The MacCrate Report from the Dean's Perspective*, 1 CLIN. L. REV. 457, 488-91 (1994).

[72] *See* Wizner, *supra* note 40, at 327, citing Frank Askin, *A Law School Where Students Don't Just Learn the Law: They Help Make the Law*, 51 RUTGERS L. REV. 855 (1999). *See also* Nancy M. Maurer, *Handling Big Cases in Law School Clinics, or Lessons from My Clinic Sabbatical*, 9 CLIN. L. REV. 879 (2003). Public policy clinics share some of the characteristics of impact litigation clinics and have been increasing in number at U.S. law schools. Elizabeth Cooper at Fordham Law School directs an Urban Policy Clinic with organizational clients that more closely resembles the grassroots advocacy described in the next part of this article. *See* Posting of Ian Weinstein, http://www.lawclinic.tv/lawclinictv/2006/10/lawyers_as_poli.html (Oct. 3, 2006, 11:00 EST) (copy on file with author).

schools, especially elite ones, seem to find value in starting appellate and Supreme Court litigation clinics[73] that place faculty and law students in federal courts, collaborating with elite public interest and corporate pro bono lawyers. This model is also attractive for schools that seek to outsource expensive clinical training to adjunct professors who maintain nonprofit public interest practices and use students on larger cases.

Impact litigation clinics have brought class-action cases that include multiple claims, both federal and state (and increasingly, international law as well), and seek changes in the regulation or practices of government agencies. These cases are referred by public interest organizations (or less often from the clinic's individual case practice) and stretch over multiple academic years and involve a succession of student teams. Students work on discrete parts of cases depending on the stage in litigation. Less emphasis is placed on the skills associated with the development of the lawyer-client relationship (interviewing and counseling and theory of the case) and more on acquisition of the differing substantive and procedural knowledge necessary in each phase of litigation.

Students may experience a sense of purpose associated with law reform cases and projects.[74] Also, students may have the opportunity to take responsibility for completing complex or "far transfer" lawyering tasks, such as key depositions, oral argument on motions, and trial advocacy.[75] These opportunities may be limited by the litigation schedule and whether the case is leanly staffed or co-counseled by multiple senior lawyers who "first seat" at major points in the litigation. Impact litigation and law reform projects challenge teachers to identify learning opportunities for students in real-time[76] rather than "stacking" the docket for skill development that is pre-selected and for which teachers are prepared to lead classes and exercises in advance.

B. Critique

The code underlying the canonical approaches suffers from fundamental flaws. The focus on individual client empowerment, skills transfer, and lawyer-led social reform cumulatively undermines the as-

[73] *See*, *e.g.*, Pamela S. Karlan, Thomas C. Goldstein & Amy Howe, *Go East, Young Lawyers: The Stanford Law School Supreme Court Litigation Clinic*, 7 J. APP. PRAC. & PROCESS 207 (2005).

[74] *See* Paul Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLIN. L. REV. 545, 569 (1996).

[75] *See* Victoria Clawson, Elizabeth Detweiler & Laura Ho, *Litigating as Law Students: An Inside Look at Haitian Centers Council*, 103 YALE L. J. 2337 (1994).

[76] *See* Reingold, *supra* note 74, at 550.

pirations of law clinics. Scarce legal resources are spent in the name of pedagogy and in service of advocacy methods with limited impact. A number of clinicians have criticized aspects of the prevailing canon and it is my aim in this section to connect these points.

1. Isolating Clients

Gary Bellow saw the potential in linking high-volume legal services practice to a larger social justice vision. He rejected the notion that individual casework should be apolitical and bureaucratic:

> It's my own experience that these views – of the limited change potential in aggressively representing individual clients, and of the degree of professional circumspection, detachment and apoliticality necessary in legal aid work – are simply wrong. Both personal involvement and a political orientation in legal aid work seem to me essential to avoiding its further bureaucratization.[77]

This vision of legal work did not prevail in law school clinics. Although public interest lawyers entered clinical legal education opposed to the traditional norms of the profession, the client-centered approach that they adopted actually extended the emphasis on lawyer neutrality and caused them to focus almost exclusively on the individual lawyer-client relationship. The predominant mode of representation taught in law school clinics alienates clients from their progressive political and racial identifications. Further, it reduces potential political solidarity between law students and their clients to mutual therapeutic validation.

a. Politics

In 1993, Ann Shalleck argued that case-centered clinical programs have the potential to avoid simplistic constructions of the client – the displacement of actual clients by an "unobtrusive and unproblematic" representation[78] – in legal education but that they do not *guarantee* that students and faculty will acquire a sophisticated and nuanced understanding of poor and socially marginalized people:

> Without a different kind of dialogue about clients, bringing clinics into law schools could reinforce rather than challenge the construction of the client. If students learned only dominant forms of practice, and not the critiques of nor the alternative to those practices, they would learn in one more educational setting to substitute the constructed clients of legal discourse for the clients with whom they

[77] Gary Bellow, *Turning Solutions Into Problems: The Legal Aid Experience*, 34 NLADA BRIEFCASE 106, 119 (1977).

[78] Ann Shalleck, *Constructions of the Client within Legal Education*, 45 STAN. L. REV. 1731, 1731 (1993)

were actually working.[79]

Unfortunately, the canonical approaches to clinical education, including the case-centered model, marginalize organizational and movement representation and thereby contribute to a critically incomplete construction of poor clients.

Muneer Ahmad, writing fourteen years after Shalleck and reflecting on developments in mainstream poverty law and clinical practice settings, uses the prototypical client interviewing room to illustrate this point:

> We might think of the traditional lawyer-client relationship as represented spatially, if somewhat reductively, by the client interview room. In many poverty law settings, the client interview room is as impersonal as a laboratory, free of clutter or décor, numbered like an operatory. It is also modular, a space into which any lawyer and any client can be slotted. For many lawyers, the confines of the interview room are the primary site in which they interact with their clients, and in which their client and her goals are defined. Thus, the interview room tends to construct individuals in unitary terms as "client." The interview room represents a domesticated lawyer-client relationship.[80]

Ahmad goes on to argue for lawyers to take into account the cultural contexts of clients' lives through collaboration with community leaders and "interpreters" and through their own immersion in their clients' communities.[81]

These are essential strategies for public interest lawyering. Recognizing that "culture" is a complex, fluid, and problematized concept,[82] today political identification and race (partially but not wholly a proxy for politics)[83] are the most relevant and neglected aspects of the lawyer-client relationship in each of the canonical approaches to clinical legal education. The relative power of a client may change the relationship in the case-centered and impact litigation models (or skills-centered clinics focused on the lawyer-client relationship) and clinicians may come to learn a great deal about the non-legal aspects of the client's situation as well as their perspectives, emotions, and

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[79] *Id*. at 1741.

[80] Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1078 (2007).

[81] *See id*. at 1080-86. Ahmad draws on what he calls the "community lawyering literature," including the work of Gerald López and Lucie White, *supra* note 6. This literature has been reviewed, explicated, and extended by Ascanio Piomelli. *See* Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLIN. L. REV. 427 (2000); Piomelli, *supra* note 15.

[82] *See* Leti Volpp, *Blaming Culture for Bad Behavior*, 12 YALE J.L. & HUMAN. 89, 93-99 (2000).

[83] *See* Richard Thompson Ford, *Race as Culture? Why Not?* 47 UCLA L. REV. 1803 (2000) (distinguishing racial justice from expressive liberty concerns).

values. But in the "interview room," individual clients, and even classes of individual clients,[84] are removed from the collective formations and identifications through which they have constructed their politics. Ahmad makes an important point about the mistaken construction by lawyers of "client" identity:

> It is important to remember that while 'lawyer' is a professional role, and a privilege-confirming one that often informs the lifelong identity of those who inhabit it, 'client' is not. Rather, the client role is ephemeral. While becoming a lawyer requires many years of study and training, becoming a client, particularly a poor client, is typically incidental—if not accidental—and unfortunate. Whereas becoming a lawyer brings host of professional and social privileges, becoming a client brings none, and instead is frequently born from subordination, injustice, exploitation, or tragedy.[85]

Clinicians cannot use law to advance social justice if clients' collaborative construction of political identity is marginal in the representation.[86] Further, if clinicians implicitly or explicitly privilege cases and clients with no collective political identification, they distance the act of representation even further from the struggle for social justice.[87]

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[84] Class actions shoehorn collective action into an individualized lawyer-client framework and are defended by the bar as justified by the need to defend the personal interests of the members of the class. *See* Simon, *supra* note 39, at 505 n.57.

[85] Ahmad, *supra* note 80, at 1077.

[86] See Simon, *supra* note 39, at 503, for a trenchant critique of the reflexively individualizing nature of public interest law:

> Talking and thinking about the lawyer-client relationship as a community-of-two also tends to direct attention away from the relation between lawyering and political action. Throughout the past century, dominant social groups have pursued their interests both within and without the legal system through impersonal organizations which have achieved power through their ability to aggregate claims and discipline their members. By contrast, lawyers representing the disadvantaged have tended to ignore the possibilities of assisting their clients through organization and collective action and to confine representation to the separate assertion of individual claims. The bar has rationalized loyalty to established organizations by treating the organizations as persons entitled to personal care and trust. It has rationalized opposition to collective action by the disadvantaged by treating each participant as an isolated individual with personal interests which would be betrayed by any effort to achieve power by joining with others.

Id. (citations omitted).

[87] Though the approach of most clinical programs is not as problematic as that used by legal services offices, Gary Bellow's early critique still resonates:

> A further dimension of these narrow definitions of client grievances is that they are always dealt with individually. No efforts are made to enable clients with related problems to meet and talk with each other, or to explore the possibilities of concerted challenges to an institutional practice. Nor do the lawyers systematically review cases to expose patterns of problems, to deepen their knowledge of the bureaucracies with which they deal, or to express concerns as individuals or as an office about what they have uncovered.

Bellow, *supra* note 77, at 108 n.4.

b. Race

The continued attachment to the case-centered approach – with its general preference for individual clients and against cases associated with organizations and movements – contributes to many law graduates' lack of recognition of the ways in which racial subordination is reinforced in public interest practice and within the lawyer-client relationship. As Michelle Jacobs has argued, racially privileged[88] lawyers in clinical and other legal services settings have created models of practice through case selection and modes of relation between lawyers and clients that fail communities of color.[89] Jacobs' race- and class-based critique of client-centeredness can be extended to challenge the canonical approaches, particularly the case-centered model:

> Similarly, client-centered models reflect this philosophical approach and assume that clients reach the lawyers in a state of defeat, devoid of resistance and easily subject to manipulation. As clinicians are beginning to discover, the starting analysis may be defective. The assumption of defeat is an analysis made without looking at the real client in her full context—culturally, politically and economically. It is an assumption made from a position of privilege without considering the counterbalancing force which allows the client to survive under incredibly oppressive conditions. It may simply be that lawyers in a position of privilege, even well-intentioned ones, do not have the tools by which to recognize and measure the skills and the

[88] I use the term "racially privileged" instead of white because I believe that we all exercise privilege and all but a few of us have been subordinated for nearly immutable characteristics (e.g., skin color, limited English proficiency, departure from gender-normed behavior). Because we live within hierarchies of privilege and subordination – and racial hierarchy is particularly insidious and seemingly ineradicable – there is no single group in this tiered system that is always responsible for the subordination of others. Further, we exercise privilege and subordinate along multiple dimensions, even within historically marginalized groups. *See* Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1245-51 (1991) (discussing structural intersectionality of battered women of color). However, those closer to the top of hierarchies exercise privilege and have greater power to reinforce the status quo. *See* Sameer M. Ashar, *Immigration Enforcement and Subordination: The Consequences of Racial Profiling After September 11*, 34 CONN. L. REV. 1185, 1197-99 (2002). Those who control the discourse on racial identity are also able to redefine categories to create newly disfavored classes of people against whom subordination is tolerated and encouraged by state and private actors. *See* Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002).

[89] Michelle Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997). I believe that clinical programs and teachers have failed to own Jacobs' critique of their practice. On an even larger scale, legal services, public interest, and clinical lawyers have adopted the "rebellious lawyering" moniker, but few have assimilated Gerald López's critique and reformulation of public interest practice from the book that gave a name to the movement. *See* LÓPEZ, *supra* note 6.

power of resistance.[90]

The client-centered model, even its more sophisticated versions, is unduly focused on the relationship between the individual lawyer and the individual client rather than viewing these roles as necessarily representative of collectivities. Individual clients are a part of formal and informal movements of resistance and when clinicians make an effort to focus on cases referred by organizations and movements the lawyer-community dynamic is fundamentally changed. Grassroots groups set priorities for legal organizations and racially privileged lawyers learn to have less disabling relationships with their clients.

While clinicians have responded to Jacobs' call for cross-cultural training to improve counseling skills,[91] her call to recognize the strength of resistance and to give communities a role in setting the priorities of legal organizations has been largely ignored.[92] Clinicians (and public interest lawyers) typically see race when it is essential in a case and merits inclusion in a pleading or affidavit, but are often hesitant in their work more broadly to see clients' solidarity with other people of color (and impliedly in opposition to their racially privileged lawyers).[93]

Further, racially privileged clinicians (and again, public interest lawyers, more generally) are likely to fear enmeshment in racial politics when working with community-based collectives.[94] No clinician

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[90] Jacobs, *supra* note 89, at 352-53 (citations omitted).

[91] *See*, *e.g.*, Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001). My colleague Pam Edwards rightly argues that cross-cultural training may reify racial privilege; those with racial privilege may be further distanced from those without it as a consequence of strategies – such as counseling – that do not fundamentally attack the roots of such privilege. *See* Edwards, *supra* note 46.

[92] Despite training in cross-cultural interaction, many lawyers still label clients as "difficult," rather than recognizing that racial privilege provokes racial resistance. Racially privileged clinicians may not seek to recognize and promote their clients' racial identifications. Clinical educators (and the doctrinal architects of client-centeredness) often consign clients who do not return calls and make eye contact into the "difficult" category. *See* Jacobs, *supra* note 89, at 353-61. Racially privileged clinicians may seek to avoid linkage of behavior generally understood as difficult with racial subversion because it may reveal racism within a liberal guild that prides itself on its progressive, post-1960s consciousness. As a result, these clinicians tend to deracinate clients, especially clients with highly politicized racial identifications and who exhibit resistance to the confines of the conventional lawyer-client relationship.

[93] Lucie White recognized this dynamic at work in the welfare hearing about which she wrote in *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G*, 38 BUFF. L. REV. 1 (1990). Her client rejected their agreed-upon legal strategy pinning blame for an error on her case worker for a complex set of reasons, including a sense of solidarity with her fellow African-American case worker, from which White was excluded.

[94] Pam Edwards problematizes the term "racial politics" and argues that it describes any work across racial lines. *See* Edwards, *supra* note 45. My argument is that racially privileged clinicians are likely to seek to obscure or mask the racial identity of their indi-

wants to put herself or one's school in the middle of a conflict over community and political power with racial overtones.[95] Practice doctrines are molded and adjusted in accordance with our intellectual and emotional capacities, doctrines shape pedagogical models, and models propagate our capacities – with both strengths and limitations – in the next generation of public interest lawyers. Lack of race consciousness and an implicit fear of politicized racial solidarity is a crucial flaw in prevalent models of clinical legal education.

c. Therapeutics

Although most clinical faculty and students bring political commitments to their work, therapeutics has become the central thrust of instruction and the metric of success in conventional clinical cases, especially in the predominant case-centered model.[96] Whether a case is won or lost matters, but conventional client-centered doctrine creates a guiding assumption that building a trusting relationship between lawyer and individual client will create "justice" within the microcosm – or, in William Simon's language, the "community-of-two"[97] – and improve the chances of victory in court. Instruction in client interviewing, counseling, and building theories of the case is focused on the relationship between lawyer and client, the scope of interaction and collaboration, and the strength of client voice in the case.[98] The cu-

vidual clients (thinking that they are avoiding "racial politics") and collectives make it nearly impossible for lawyers to make this kind of move. *See generally* Anthony Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805 (2008) (discussing masking of stigmatized identities and potential role of lawyers in its uncovering).

[95] Clinicians' of color are not immune from these kinds of race-based fears, but it is likely that they have a more sophisticated and nuanced understanding of the currents in motion in community disputes that are partly rooted in racial difference. Relevant but not directly related to this hypothesis is an inquiry about the relatively low number of clinicians of color. In a part of the legal academy that one would expect to be most hospitable to people of color, the numbers remain fairly low and there doesn't appear to be significant change on the horizon, especially as clinical hiring looks more like academic hiring in terms of the reliance on elite-replicating measures of merit, such as prestigious judicial clerkships and law review membership. *See* Jon C. Dubin, *Faculty Diversity as a Clinical Legal Education Imperative*, 51 HASTINGS L.J. 445 (2000).

[96] This approach is taken to its logical end by advocates of therapeutic jurisprudence. *See*, *e.g.*, Bruce J. Winick & David B. Wexler, *The Use of Therapeutic Jurisprudence in Law School Clinical Education: Transforming the Criminal Law Clinic*, 13 CLIN. L. REV. 605, 609-11 (2006) ("[Lawyers] explicitly value their clients' psychological wellbeing, and in their problem analysis, problem-solving, and counseling efforts on behalf of their clients, seek not only to protect and promote their clients' rights and economic interests, but also to improve their emotional lives." *Id*. at 607.). I am skeptical of the proponents' assumptions that clients need to be healed emotionally and that this healing can be carried out through the lawyer-client relationship.

[97] Simon, *supra* note 39, at 501.

[98] *See* Miller, *supra* note 52.

mulative focus on the interpersonal – on developing strategies by which clients will accept and trust lawyers – is grounded in therapeutics. Simon criticized this tendency in clinical legal education in 1980 and called it the "Psychological Vision."[99] Joel Handler made an analogous critique of the poverty lawyering scholarship – as being unduly focused on lawyer domination of poor clients rather than social justice movement-building – in 1992 and described it as the product of postmodern politics.[100]

The critique of therapeutics in conventional clinical practice that I level is not that all clinicians and individual clients value feelings over political, social, and economic facts, nor that trust and connection are unimportant in legal work. Rather, my critique challenges the pedagogical methods and predominant models of practice that emphasize lawyer-client psychology (in the case-centered approach) and narrowly conceived lawyering techniques (in the skills-centered varia-

[99] Simon, *supra* note 39, at 495 ("In the Psychological Vision, power is obscured by psychologism, the reduction of the social to the personal. . . . It resists understanding power as a product of class, property, or institutions and collapses power into the personal needs and dispositions of the individuals who command and obey. From this perspective, it becomes difficult to distinguish the powerful from the powerless. In every case, both the exercise of power and submission to it are portrayed as a matter of personal accommodation and adjustment.").

[100] *See* Joel F. Handler, *Postmodernism, Protest, and the New Social Movements*, 26 LAW & SOC'Y REV. 697 (1992). Handler's work had an impact on the scholars about whom he spoke. *See*, *e.g.*, Lucie White, *"Democracy" in Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073 ("I decline to center the sketches on issues that have become familiar in clinical scholarship. . . . [These sketches do not] agonize over the question of which 'master' the community-based development practitioner should answer to as she does her work." *Id*. at 1078 (citation omitted).). His work encouraged scholars to bring larger political concerns back into the academic dialogue on poverty lawyering, *see*, *e.g.*, Lobel, *supra* note 29, and it predicted and fostered the sense amongst public interest practitioners that the single-minded focus on lawyer domination was overly limiting. In contrast, Simon's work has had little discernible impact on the development of clinical legal education for reasons that remain unclear (but certainly not because of its lack of sophistication or value). Robert Dinerstein, in his important and widely-cited refinement of the client-centered doctrine, dismisses Simon's critique of the Psychological Vision as being of a caricature of clinical practice. *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 572-74 (1990). In addition, Simon's characterization of clinical teachers as being disillusioned escapees from the challenges of public interest practice, *see* Simon, *supra* note 39, at 556, probably did not win him allies within the field, even amongst those whom one would expect to support his argument.

Ascanio Piomelli has deftly parried Handler's and Simon's critiques of critical poverty law scholars. *See* Piomelli, *supra* note 81 (discussing Handler, *supra*; William H. Simon, *The Dark Secret of Progressive Lawyering*, 48 U. MIAMI L. REV. 1099 (1994)). For the purposes of this article, I am less interested in intervening in that debate and more focused on Simon's earlier critique of mainstream clinical legal educators, who have incorporated some elements of the critical poverty law literature and ignored other elements. *See supra* note 89. My critique, composed of insights by scholars who sometimes find themselves in opposing camps on various issues, is of conventional clinical practice and the assumptions that underlie it, both implicitly and explicitly.

tion) and consequently overlook the relationship between the legal action and the pre-existing political engagements of both lawyer and client. John McKnight mounts a similar, cruder attack on the therapeutization of service provision generally in poor communities.[101] He argues that service-giving professionals (and "advocates," analogous in McKnight's telling to impact litigators) develop bureaucratic systems of service-provision for their own benefit and stifle community-based leadership and problem solving.[102] Without ascribing to program development either McKnight's motive of self-service or Simon's narrative of the career progression and disappointments of clinical teachers, traditional clinical practice does tend to propagate therapeutic lawyering as its primary frame of reference. This has its most deleterious effects in the public interest context, because it discourages poverty lawyers from learning how to use law to achieve social justice beyond the microcosm of the lawyer-client relationship.[103]

Clinicians rarely question the place of clinical programs in the legal profession and in the wider terrain of progressive politics. We lament the declining numbers of students who enter public interest practice and the political deactivation of our client base, but we see no programmatic causation in our own work.[104] We refrain from consid-

[101] *See* JOHN MCNIGHT, THE CARELESS SOCIETY: COMMUNITY AND ITS COUNTERFEITS 43-44 (1995). Thanks to Joseph Tulman of the University of the District of Columbia School of Law for bringing McKnight's work to my attention. For a similar critique specifically in the context of provision of legal services, see Raymond H. Brescia, Robin Golden & Robert A. Solomon, *Who's In Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831, 840-48 (1998).

[102] *See* MCKNIGHT, *supra* note 101, at 168-69. Though I find McKnight's tough critique to be plausible and important, the motives of service providers are nearly impossible to unearth from beneath stated intentions; all people act with multiple and sometimes contradictory motivations.

[103] The therapeutic client-centered approach in clinical legal education helps train highly effective lawyers for private sector entities, committed to the client-centered representation of wealthy individuals and corporations and free from progressive political commitments. *See* Simon, *supra* note 39, at 555 n.238 ("A pedagogy committed to the unmediated experience of the concrete has prepared students for conventional private practice by immersing them in the experience of a very different kind of practice. . . . Students destined to represent wealthy and powerful institutions are taught partisan advocacy in a setting involving representation of relatively poor and helpless individuals, that is, in precisely the setting where the profession's norms of loyalty and acceptance are least likely to provoke criticism and dissent."). *See also* Dinerstein, *supra* note 49, at 719-28 (noting corporate context of many problems used in client-centered texts). This is truer today than it was in 1980. *See* Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 18-19 (2004) (describing how in last 30 years private sector pro bono has replaced activist legal services lawyers as primary provider of legal assistance for poor).

[104] *Cf*. Archon Fung & Erik Olin Wright, *Thinking About Empowered Participatory Governance*, *in* DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE 4 (Archon Fung & Erik Olin Wright eds., 2003) ("Perhaps . . .. a retreat to privatism and political passivity is the unavoidable price of 'progress.' But perhaps the problem has more to do with the specific design of our institutions than with

ering whether, as a result of our case intake policies and pedagogical approaches, our programs don't actually reproduce the social conditions of neoliberal globalization, accelerate economic and social inequality, and constrict the political space in which poor people might most effectively contest and resist these developments. The numbness of mainstream clinical legal education to these concerns and its resistance to a collective empowerment agenda weakens the position of our clients and communities and propagates a functionalized profession that greases the wheels of local and international commerce[105] rather than fighting for political vitality at the bottom.

2. The Fallacy of Skills-Centeredness

Skills training and transfer has been used by clinicians at law schools across the country to build and propagate programs in the face of apathetic or hostile colleagues and administrators. Unquestionably, clinical educators have a responsibility to isolate basic legal tasks and competencies and conceptualize frameworks through which to teach law students these functions. To accomplish this, clinicians must develop sophisticated models and teaching methods.[106] However, programs with whole courses focused on instruction on individual lawyering tasks[107] do not teach students how to be lawyers, they teach them how to undertake a single task.[108] Even clinical programs that rely on a set typology of skills (and limit clinical practice to manageable cases that fit within that pedagogical scheme) risk having students focus on the micro-elements of practice rather than its complexities[109] and consequently obscure larger social justice ends. In this section, I

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the tasks they face as such.").

105 This is a paraphrasing of what the dean said to my law school class on our first day of classes.

106 For example, we have repeatedly applied sophisticated techniques to our analysis of fact development in cases on the docket of the CUNY Immigrant and Refugee Rights Clinic. *See* DAVID A. BINDER & PAUL BERGMAN, FACT INVESTIGATION: FROM HYPOTHESIS TO PROOF (1984). The classes in which we teach the methodology and application of these techniques are amongst those that are most appreciated by students during the year. We spend too little class time on fact development to give students a firm command over the material, but this is due to the inherent nature of pedagogy: there are limits and teachers make choices based on their assessment of how to organize an effective program. These time limits make the teaching of knowledge bases and approaches to lawyering more essential than focused training on a single lawyering task.

107 *See* Binder, Moore & Bergman, *supra* note 65.

108 Focused instruction on deposition-taking, for example, would shed light on fact development and discovery, theory of the case, and trial advocacy, but one of the central arguments of skills-centered advocates is that clinicians try to teach too much. Thus, one assumes that these important but peripheral litigation tasks would necessarily be given little time and attention in such classes.

109 *See* Jeanne Charn, *Service and Learning: Reflections on Three Decades of the Lawyering Process at Harvard Law School*, 10 CLIN. L. REV. 75, 82 (2003).

critique both kinds of programs and call them skills-centered, rather than cause-, community-, or organizing-focused.

Advocates of skills-centered models make too much of changes in medical education,[110] even on pure skills-training grounds. Given the sensible analogies that can be made between legal and medical education and the relative sophistication of medical education models, deference is understandable. However, that deference is misplaced when observers fail to account for differing educational and practice contexts. Problem-based, simulated medical education is part of an educational program that places students for the last two years of a four-year curriculum in heavily supervised live-patient practice. This is followed by two to three years of live-patient practice in residency programs and, for many doctors, one to three more years of practice in fellowship programs.[111] In suggesting that law schools follow medical educators by introducing more simulation in the curriculum, skills-centered advocates fundamentally misunderstand the baseline requirements in each professional training experience. Further, the simulated "standardized patient" model touted by advocates of a skills-centered clinical curriculum is used by medical educators mainly to test competencies rather than for frontline training purposes.[112] The bar examination and other evaluation devices in legal education may need to include more practice-oriented testing,[113] but a "standardized client" model would be a poor substitute for supervised live-client representation, which is systematically underemphasized at most law schools. There is also scant attention paid to the significant differences between medical cases, which while dynamic are generally rooted in objective physiological conditions, and legal cases, which are dynamic and involve fundamentally subjective readings of "facts" and "remedies."[114]

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110 *See* Binder & Bergman, *supra* note 47, at 208-13.

111 *See* David Stern, *Outside the Classroom: Teaching and Evaluating Future Physicians*, 20 GA. ST. U. L. REV. 877 (2004). In legal education, CUNY, University of New Mexico, and University of District Columbia are unique among law schools in requiring that every student be placed in a clinical practice setting prior to graduation.

112 *See id*. at 900-03.

113 *See* Kristin Booth Glen, *When and Where We Enter: Rethinking Admission to the Legal Profession*, 102 COLUM. L. REV. 1696 (2002) (proposing experientially-based Public Service Alternative Bar Exam).

114 High-fidelity simulation is a particularly important learning tool in medical education because of the emphasis on tasks that require hand-eye coordination and the little room for error in live-patient practice. Patient safety is a primary rationale for simulation in medical education. *See* M.J. Friedrich, *Practice Makes Perfect: Risk-Free Medical Training with Patient Simulators*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, Dec. 11, 2002, at 2808. In contrast, legal tasks, such as interviewing, counseling, and negotiation, involve longer time horizons and allow for joint teacher-student preparation, teacher intervention mid-performance, and reflection.

A skills-centered program suggests a limited understanding of the roles that most law graduates will play within the profession and in their communities. If the sole mission of clinical legal education is to prepare students to have limited roles as part of legal teams at large corporate firms, then perhaps a program that creates deposition or interviewing specialists would make sense.[115] However, if the goal is to educate lawyers who are able to represent clients on their entire cases shortly after graduation, law students must assume the lawyer role in their clinical work, build or maintain relationships with clients, and understand how their case, project, and/or client fits in the wider terrain in which they are working.

Perhaps courses focused on isolated skills sets satisfy the need of the legal academy to create and privilege scientific/technical areas of inquiry over other threads within clinical legal education (e.g., historical, political, sociological),[116] but the skills-centered focus fails as a rationale for the construction of a program. In vigilance and focus on teaching moments in the contexts of cases and projects, clinicians spend a significant amount of time isolating lawyering tasks and teaching students how to improve their work. Skills training is not a goal that should be set in opposition to case-centeredness and other models of clinical legal education. Rather, it is an essential and pervasive element nested within an approach to clinical teaching that privileges an overall understanding of the relationship between law and social change. Students will acquire skills in a context in which there is role assumption and some explication of their role in larger struggles for social justice.

3. Serving Many Masters[117]

The canonical approaches to clinical legal education serve many interests, but not politicized collectives of poor people. Impact litigation clinics serve abstract lawyer-constructed classes – rather than collectives defined by the clients themselves.[118] Whether the classes of

115 Even then, it is essential that young lawyers have an understanding of the complex context in which they play their part.

116 *See* Simon, *supra* note 39, at 553-54 ("[The Psychological Vision] offers an approach to legal theory and education which concedes the failure of the doctrinal tradition and yet meets the claims of professional legitimation and professorial consolation. Psychology appears as a way to focus on practical skills while continuing to portray law as a learned discipline. It provides a set of themes and jargon which help unify a set of values sufficiently abstract and amorphous to be compatible with almost any style of practice."). The narrow skills-centered focus may also permit faculty to obtain legitimacy and professional rank within the academy.

117 *See* Derrick A. Bell, *Serving Two Masters Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

118 *Cf*. Janet E. Mosher, *Legal Education: Nemesis or Ally of Social Movements?*, 35

aggrieved parties self-organize prior to acquiring lawyers or in the midst of legal representation, the character of the collective is defined by its acceptance under the state or federal rules of civil procedure.[119] Most classes of litigants are not self-defined and self-motivated with political goals outside of the legal action. Impact litigation outside of the class action context relies upon individual clients who rarely take part in the conceptualization or development of their own legal case.[120]

Practice in the case-centered model too serves individual clients, not collectives. The professional responsibility rules explicitly prohibit the influence of third parties in a representation. Because associational standing in litigation has limited reach,[121] the rules channel members of collectives into relationships of individual representation by lawyers.[122] These relationships and the rules then potentially cut these individuals off from the organizations and the resistance strategies through which they have gotten involved in the social conflict from which the legal action stems.[123] The case-centered model of

OSGOODE HALL L.J. 613, 632 (1997). Mosher argues that legal educators must embrace critique of the existing order pervasively throughout the curriculum but that critique must be informed by social movements. Otherwise, even critical legal scholar-teachers are teaching a meta-lesson to law students about the elite possession of knowledge and likely reproducing the status quo in the absence of the experience of the oppressed. *Id*. This analysis is applicable to the lawyer- and expert-centered impact litigation and public policy initiatives fostered in clinical legal education.

119 *See* FED. R. CIV. PROC. 23(a) (setting forth basic requirements to initiate formation of class in litigation); William B. Rubenstein, *Divided We Litigate: Addressing Disputes Among Group Members and Lawyers in Civil Rights Campaigns*, 106 YALE L.J. 1623, 1648-50 (1997) (discussing limits of democratic decision-making among plaintiffs in class action litigation).

120 When I worked at the Lawyers' Committee for Civil Rights in San Francisco we were often involved in "gang" litigation challenging state initiatives with many other public interest legal organizations. *See*, *e.g.*, Daniel P. Tokaji & Mark D. Rosenbaum, *Promoting Equality by Protecting Local Power: A Neo-Federalist Challenge to State Affirmative Action Bans*, 10 STAN. L. & POL'Y REV. 129, 137-39 (1999) (discussing litigation challenging Proposition 209). One of my colleagues jokingly suggested that we served as "coyotes" in these cases for the other legal organizations because of our ability to find actual clients. The relationships between clients and legal teams were highly mediated and resistant to notions of client control of litigation.

121 *See* Heidi Li Feldman, Note, *Divided We Fall: Associational Standing and Collective Interest*, 87 MICH. L. REV. 733, 735-41 (1988) (discussing limits imposed by individual interest prong of *Hunt v. Washington Apple Advertising Commission* test for associational standing).

122 *See, e.g.*, N.Y. LAWYER'S CODE OF PROFESSIONAL RESPONSIBILITY Disciplinary Rule (DR) 5-107 [1200.26] (B) ("Unless authorized by law, a lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal service for another to direct or regulate his or her professional judgment in rendering such legal services, or to cause the lawyer to compromise the lawyer's duty to maintain the confidences and secrets of the client under DR 4-101[1200.19](B)."). For a discussion of the individualistic, private law foundation of civil procedure, see Chayes, *supra* note 27, at 1285-88.

123 The rules governing the lawyer-client relationship permit lawyers to place barriers

clinical education inculcates a narrow vision of professional role amongst law students.[124] Even politically activated students learn to fear and avoid perceived deviations from the conventional lawyer role,[125] especially in conflicts between a member and the collective or between members.[126]

Case-centered clinics are primarily accountable to students and law school administrators, rather than clients, and fail to serve political collectives.[127] When clinical teachers elevate student interests – defined reductively as case intake to provide students with individual cases over which they will have full responsibility – over those of clients and communities, the meta-lesson to students is that lawyers may dispense with social justice to serve one's masters.

Law schools and universities, especially private institutions, are notoriously resistant to being held accountable to empowered community organizations and to answering for the choices that are made in program development.[128] McKnight, in a broader critique of ser-

between clients and activist organizations. Alternatively, after they have received legal assistance, clients may use the rules to end their involvement in organizing. *See* GORDON, *supra* note 16, at 185-97.

124 *See* Simon, *supra* note 39, at 528-29 (Psychological Vision in clinical education reinforces prevailing norms of profession and discourages criticism and resistance in lawyer-client relationships).

125 *See* Section III.B.4, *infra*.

126 For a constructive analysis of how lawyers can help mediate between individual autonomy and collective mobilization through law, see Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103 (1992). One of Ellmann's insights is that individuals sometimes construct their autonomy through group participation; the dichotomy between autonomy and community is not necessarily as pronounced as it may seem. *Id*. at 1122-23. Conflict of interest is, however, a central narrative in the regulation of an adversarial system in which lawyers owe clients zealous advocacy. Bill Simon tells the story of bar associations in the South that accused NAACP lawyers of having conflicts of interest between their group and individual clients in the context of their desegregation campaign. Simon, *supra* note 39, at 504. To Simon, this is a sign of the almost-fetishistic attachment of the guardians of the profession to individualistic lawyer-client relationships and of how they use conventional professional norms to preserve the status quo and prevent movements from using law. *Id*.

127 Chavkin uses the phrase "serving two masters" without irony in prescribing a total allegiance to student learning goals (after it is determined that clients will be served with some minimal level of competence). *See supra* note 51, at 261. Indeed, as students are increasingly seen by law schools (and see themselves) as customers, this emphasis on student satisfaction (and the fact that the performance of administrators and teachers is increasingly measured on the basis of student sentiment) grows stronger. In fact, as shown below in Part III, educational goals are most effectively advanced through engagement with social justice movements, rather than through litigation in isolation and without greater purpose.

128 *See* Enrique Armijo, *COPCS: Higher Education Institutions as Community Development Actors*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 365, 379-82 (2005) (discussing general lack of university accountability in community collaborations due to internal incentive structures).

vice organizations in poor communities, argues that this resistance is accomplished through professional mystification, so that only others within the profession have the authority to make judgments about programs.[129] In the clinical legal context, the U.S. News and World Report ranking of the reputations of programs and American Bar Association and Association of American Law Schools accreditation visits make some law schools more conscious of their peers' opinions and priorities than of the politicized client collectives in their own communities.[130]

Case-centered clinical programs are held accountable to clinical professors and students by their willingness to participate in fieldwork, to law school administrators through purse strings, and to individual clients through casework. Skills-centered clinics are accountable to professors, students, and partner organizations and firms who choose whether or not to share parts of their cases with clinics. Impact litigation clinics are accountable to professors, students, partner organizations and firms who choose whether to collaborate with clinics on large cases, and either class-designated or informally representative clients. Clinical programs operating under the canonical approaches are rarely accountable to client collectives and communities for their selection of cases, for the quality of the work, or for the outcomes that are achieved. Some clinics make efforts to facilitate the involvement of poor people in overall program development through mechanisms such as advisory boards. However, as with efforts made by non-profit legal organizations and foundations, boards without legal fiduciary duties are often deprecated in everyday practice under funding and casework pressures.

While case-centered and impact litigation programs' long-term relationships with clients can be collaborative, these relationships are largely restricted to the duration of the case and to the lawyer-client microcosm. The relationships with clients rarely have an effect on overall programmatic development (for good reason, clinicians are loath to take up their clients' time with institutional discussions and questions). This particular diffusion of accountability is accomplished through atomization.[131] Individual clients and even representatives of larger classes of clients are unable or unwilling to exert pressure on clinical programs in areas such as programmatic development and

[129] *See* MCKNIGHT, *supra* note 101, at 49.

[130] *See* Jack Haas & William Shaffir, *Ritual Evaluation of Competence: The Hidden Curriculum of Professionalization in an Innovative Medical School Program*, 9 WORK & OCCUPATIONS 131, 132 (1982) (professionalization includes "developing greater loyalty to colleagues than to clients").

[131] *See id*. at 129 (atomization destroys forums for community definition and action).

quality control. The diffusion of client power reinforces the historical tendency of clinical and legal services programs to neglect empirical analysis of their casework.[132]

Although clinics are increasingly accountable to foundations and government agencies through soft-money funding, those entities often use conventional auditing mechanisms that are inadequate in a pedagogical, low-caseload environment and that advance the notion that the work of law school clinics and legal services offices should be measured wholly by the total number of cases completed.[133] These types of measures do not accurately measure either the performance of clinics or their end-goal achievement.[134]

III. Alternative Model

In the emerging alternative model of clinical legal education animated by collective mobilization that I espouse, political and social vision shape intake and pedagogy, rather than being shaped by them. As Gary Bellow says in the epigraph to this article, absent an affirmative political and social vision, even self-conscious practitioners reproduce the status quo.[135] Programs that lack an explicit political and social vision conceal their implicit vision,[136] with deleterious consequences for law students, clients, and communities. In this section, I document the approaches to case intake that my colleagues and I have taken and delineate the knowledge bases gained through this alternative clinical fieldwork. The collective mobilization-oriented work that I describe below at CUNY and the University of Maryland is being carried out by clinicians at a number of other schools, including

132 *See* Charn, *supra* note 109, at 113-14 (call for evaluative and empirical clinical scholarship). *See also* Gary Bellow & Jeanne Charn, *Paths Not Yet Taken: Comments on Feldman's Critique of Legal Services Practice*, 83 Geo. L.J. 1633, 1636-37 (1995) (lack of data and empirical analysis in legal services offices).

133 *Cf.* Kathleen G. Noonan, Charles F. Sabel & William H. Simon, *The Rule of Law in the Experimentalist Welfare State: Lessons from Child Welfare Reform* 38 (2007) (unpublished manuscript, on file with author) ("Conventional auditing or quality control regimes generate measures of systemic performance, but they tend to focus on measures of categorical rule compliance or on narrow rigidly defined measures of performance.").

134 *See id*., at 56 n.140, citing Abhijit Banerjee, *Inside the Machine: Toward a New Development Economics*, Boston Review, Mar./Apr. 2007, at 12.

135 The individual lawyer-client orientation of the Harvard program designed by Bellow and his collaborators was a byproduct of the particular social and political vision that animated it, not an end in itself. *See* Bellow, *supra* note 77, at 121-22 (specifying issue identification and case aggregation strategy). Curricular and case intake choices followed the political/social vision rather than the reverse. The model of clinical legal education that we are advancing at CUNY is distinct from the Harvard clinics in many ways but shares with Bellow's program this essential characteristic: a political/social vision that shapes pedagogical choices.

136 *See* Kennedy, *supra* note 32.

American, Fordham, NYU, UC Hastings, UCLA, Villanova, and Yale in the areas of immigrant rights, welfare benefits, environmental justice, and community economic development.[137] Additionally, there is much work being done in parts of the country with which I am less familiar that would fit into the rubric of legal support for collective mobilization.[138] The work that I describe here is a contribution to what I hope is a growing literature describing and analyzing lawyering with activist collectives. At the end of this part, I apply the critiques of the canonical approaches to this alternative model.

A. Intake

At the heart of this alternative approach is the conviction that clinics should select cases and projects that support the mobilization efforts of groups working to change the social order. Like all public interest practitioners, clinics should ask three questions of any proposed case or project: (1) whether it fits into a broader campaign for reform with other similarly situated clients; (2) whether the representation will help create or sustain some form of collective resistance; and (3) who will stand for (or work with) the population and its cause when students graduate and clinics move on to new cases and causes. With organizational partners, the legal case or project is part of a larger mobilization effort that continues after the case or project is complete.

In this section, I document methods by which my colleagues and I identified collective mobilization cases in New York, where there are active organizing networks in the areas of immigrant labor and deportation defense, and in Baltimore, where networks of immigrant organizing were just emerging when I was there in 2002-03. In each of these environments, we faced challenges in finding and collaborating with politicized collectives and in identifying legal cases and projects that were appropriate for a clinic docket. With a firsthand sense of the difficulty in constructing clinics with a collective mobilization mission, my goal in this article is not to discount or hide these difficulties but to argue that the extra time and effort put into intake based on an articulated political and social vision promise to make clinical legal education more relevant for social movements and a more effective training ground for public interest lawyers.[139]

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[137] *See* Section I.A, *supra*.

[138] I was most excited by work being done by Leonard Sandler at the University of Iowa with disability rights activists. *See* email from Leonard Sandler, Clinical Professor of Law, University of Iowa (Mar. 29, 2006, 11:23 EST) (on file with author).

[139] As I will argue below in Section III.C, I believe that this form of clinical fieldwork is a better training ground for all lawyers, without regard for their practice setting upon graduation. I focus on public interest lawyers, because I believe they have been especially

1. Established Immigrant Organizing

In New York City, there are a significant number of worker centers organized by industry and along ethnic and racial lines.[140] One such group with which we work at the CUNY Immigrant & Refugee Rights Clinic, the Restaurant Opportunities Center of New York (ROC-NY), organizes groups of workers in the high-end restaurant industry in the city.[141] Union penetration in the industry is less than 1 percent.[142] Wage and hour violations are endemic because of an unyielding supply of immigrant labor with limited market power vis-à-vis their employers.[143] At the restaurants where the movers and shakers of the global economy meet, workers often receive 40 hours of pay for 50 to 80 hours of work.[144] Additionally, the workplace is highly stratified by race and ethnicity, from Latinos in the "back of the house" to whites in the "front of the house, with Bangladeshis and other people of color stationed in between as runners and bussers.[145]

ROC-NY analyzed the industry and carefully targets specific players in order to stimulate a positive ripple effect.[146] The organization has limited resources with which to initiate organizing campaigns or enforce contracts with employers; instead, it relies on the power of groups of workers who band together to challenge their own working conditions.[147] Individual employees complaining of bad work conditions are told by organizers to organize more of their co-workers.[148] If they successfully draw more workers to the fight, they present the proposed campaign to the members of the organization, all veterans of past or ongoing campaigns at other restaurants. As part of a multifaceted, overall strategy, the organization calls upon lawyers to file the legal grievances that will focus the campaign and mobilize courts and agencies against the bad employers.

With no shortage in New York City of employers committing wage and hour violations, the clinic could have a limitless supply of individual cases.[149] However, we choose to use the clinic's scarce legal resources to support organizing and collective action for broader re-

disserved by current models of clinical legal education.

[140] *See supra* note 16.

[141] *See* Ashar, s*upra* note 6, at 1889-92.

[142] *Id*. at 1881.

[143] *Id*.

[144] *See, e.g., id*. at 1901-02.

[145] *Id*. at 1911.

[146] *Id*. at 1891-92.

[147] *Id*. at 1890-91.

[148] *Id*. at 1911-12.

[149] *See* ANNETTE BERNHARDT, SIOBHAN MCGRATH & JAMES DEFILIPPIS, BRENNAN CENTER FOR JUSTICE, UNREGULATED WORK IN THE GLOBAL CITY: EMPLOYMENT AND LABOR LAW VIOLATIONS IN NEW YORK CITY 10-13 (2007).

form in an industry that has been shaped by accelerated migration and lowered labor standards and regulatory enforcement. The end result is that while we work on cases similar to that of a conventional public interest client-centered practice, our cases are linked to mobilization efforts that create the possibility of lasting change beyond the dollars won for an individual client.

The CUNY clinic has had a particularly successful record of collaboration with ROC-NY. We recently completed our second major campaign with the organization, focused on employment discrimination in the high-end sector of the industry,[150] and recently began a third litigation campaign in August 2007. Student teams working with ROC-NY have also drafted a workers rights manual for distribution by the City's Department of Consumer Affairs to all restaurants, undertaken legal research for a pending bill in the New York City Council, and helped brainstorm legislative approaches to the problem of employment discrimination in the industry. In addition to ROC-NY and other more conventional legal groups,[151] we have worked collaboratively with membership organizations in the following ways:

- *New York ACORN* is a chapter of the venerable national organization[152] and a powerful constituent of a statewide labor-community electoral coalition. A clinic student had deep ties to the organization after a stint as an organizer in its Brooklyn office and lobbied for us to work collaboratively on an immigration-related project. Executive Director Bertha Lewis, with an eye toward expanded immigrant organizing, asked us to work on a report delineating the naturalization backlog in New York and comparing it to delays in other cities and regions.
- *Andolan Organizing South Asian Workers* was founded in 1998 by a former domestic worker from Bangladesh and uses litigation and direct action techniques to advance their campaigns.[153] The organization has been a leading force against the abuse of the domestic workers of United Nations diplomats. The organization asked the clinic to represent an active member who worked as a domestic worker in federal wage and

[150] *See* Adam Ellick, *E.E.O.C. Backs Boulud Workers*, N.Y. TIMES, Aug. 1, 2007, at F2; Kim Severson & Adam B. Ellick, *A Top Chef's Kitchen is Far Too Hot, Some Workers Say*, N.Y. TIMES, Jan. 17, 2007, at F1.

[151] Those groups include Asian American Legal Defense and Education Fund, Center for Constitutional Rights, Human Rights First, New York City Bar Association, and New York State Defenders' Association Immigrant Defense Project.

[152] *See* GARY DELGADO, ORGANIZING THE MOVEMENT: THE ROOTS AND GROWTH OF ACORN (1986).

[153] *See* Andolan Organizing South Asian Workers, *About Us*, http://andolan.net/about-us.htm (last visited Feb. 14, 2008).

hour litigation against her former employers.

- *Asociacion Tepeyac* is composed of Mexican Catholic congregations in New York City. At the request of the New York Archdiocese, Jesuit Brother Joel Magallan Reyes was sent from Mexico to start a support network for the community in the city in 1997.[154] Organizer and NYU law student Jared Bybee asked the clinic to represent five restaurant worker-members of the nascent organizing unit in state wage and hour litigation against their employer.
- *Domestic Workers United* was founded in 2000 as a collaboration of the predominantly Filipino Women Workers Unit of CAAAV Organizing Asian Communities and Andolan.[155] The organization now also has bases of support in the Latino and Caribbean communities, has successfully lobbied for passage of a municipal law regulating employment agencies, and is currently campaigning for state legislation that would improve the terms and conditions of domestic work. The organization asked the clinic to represent a Latino member in federal wage and hour litigation against her former employer.
- *Families for Freedom* is a membership organization composed of the family members of current and former immigrant detainees.[156] In addition to the work described in the next section, clinic students defended a member in deportation proceedings on the basis of prosecutorial discretion.
- *Latin American Workers Center* is a Brooklyn-based organization founded by Oscar Paredes in 1997. The clinic was asked to design and carry out a pro se small claims training program for members.
- *New York Taxi Workers Alliance* (NYTWA) organizes thousands of independent contractors and has mobilized two major taxi strikes in the last ten years. NYTWA is the first worker center to join the New York City Labor Council.[157] The organization asked the clinic to undertake legal research for their fare increase and anti-GPS campaigns, as well as to interview organizers in cities across North America prior to the

154 *See* Asociacion Tepeyac, *Our Origin*, http://www.tepeyac.org/origin.html (last visited Feb. 14, 2008).

155 *See* Domestic Workers United, *History*, http://www.domesticworkersunited.org/programs.php (last visited Feb. 14, 2008).

156 Families for Freedom is described more fully below in Section III.B.4.

157 *See* Steven Greenhouse, *Taxi Workers' Alliance May Join Labor Group*, NEW YORK TIMES, Nov. 14, 2006, at B3.

convening of the first "Internationale" of TWA chapters in March 2007.

- *Queens Community House* is a settlement house founded in 1974. ESL teacher and organizer Zoe Sullivan asked the clinic to create a workers' rights training for ESL students that would lead to leadership development opportunities within the organization for Latino workers.
- *The Workplace Project* was founded in 1992 as an organizing center for Central American immigrants in Hempstead, New York.[158] The clinic filed federal wage and hour litigation on behalf of a group of day laborers against a contractor. Student teams are currently working with the organization on the development of an immigration raid response network.

Each of these relationships has resulted in effective work and important outcomes, as well as some collaborations that have had limited effect. Because we are engaged in a long-term exchange with these organizations, we learn from both our successes and failures. Together with these organizations we continually refine our ability to identify legal action that will advance organizing and mobilize necessary resources, from the clinic as well as elsewhere within the profession. Student teams come to understand that our role must sometimes include the formulation of legal options for our organizational partners, as well as the identification and recruitment of other private sector and public interest lawyers who might aid our partners in current and future campaigns.

2. Emerging Immigrant Organizing

Intake to advance collective mobilization is much more difficult when a clinician does not have established relationships with organizers or where organizing remains undeveloped. When I cofounded a civil rights clinic with an immigration focus at the University of Maryland School of Law in Baltimore in 2002, I immediately met with CASA of Maryland in Silver Spring, which had a long history of the strategic use of law by organizers in their work with day laborers and immigrant workers.[159] They had recently started a satellite office in Baltimore with a staff attorney and organizer and they welcomed the resources of the law school to expand the office's capacity.[160] Although CASA cases and projects could have filled the clinic

[158] *See* GORDON, *supra* note 16.

[159] *See* CASA of Maryland, *History*, http://www.casademaryland.org/index.php?option=com_content&task=view&id=18&Itemid=63 (last visited Feb. 14, 2008).

[160] The law school had been working with CASA before my arrival through seminars taught by labor scholar Marley Weiss.

docket, I was motivated to seek other organizational partners in multiple immigrant communities with varying capacities. A multiplicity of partner organizations provide students with the opportunity to compare the ways that different organizers approach social justice issues and the use of law in their campaigns.[161]

For the months prior to the start of the academic year, I scoured the internet, made phone calls, and traveled widely in the region attempting to establish relationships with immigrant organizations. For example, in Washington, D.C., I met with a back-up center on immigrant labor issues, the National Immigration Law Center (NILC), as well as an established legal organization with some organizing capacity, the D.C. Worker Justice Center. Although we formulated a project with NILC focused on a survey of the effect of Social Security No-Match rules around the country, neither of these lawyer-staffed organizations had a high need for the capacity of a law school clinic that did not have impact litigation or specific faculty expertise.[162] I also met with new immigrant service organizations in the D.C. suburbs, including a Southeast Asian community organization in Takoma Park, that had little to no involvement in legal and policy advocacy. I viewed these meetings as gestational, possibly yielding relationships with some yet-to-be hired staff organizer who might try to move the organization beyond service provision and find my business card in the office. When that happened, these visits might generate future clinic cases and projects.

With a colleague's encouragement, I ventured to the Eastern Shore of Maryland, a swath of the South, in terms of race relations and structures of economic exploitation, just off the Northeast Corridor.[163] African-Americans and Latinos labored in physically demanding and unsafe conditions in segregated occupational segments of the poultry industry for just above minimum wage.[164] Through a series of calls and email messages, I connected with the Delmarva Poultry Justice Alliance in Georgetown, Maryland, which was working to organize low-wage workers and gain the attention of the large unions. The poultry plant owners argued that a group of African-American work-

161 Mike Wishnie and Nancy Morawetz used this comparative method with great success when I co-taught the Immigrant Rights Clinic at NYU with them from 2000 to 2002.

162 At that time, the D.C. Worker Justice Center had a strong working relationship with the Legislation Clinic at Georgetown Law.

163 *See* SHERRILYN IFILL, ON THE COURTHOUSE LAWN: CONFRONTING THE LEGACY OF LYNCHING IN THE TWENTY-FIRST CENTURY xvi-xvii (2007) (describing high poverty rates, regional isolation, and white supremacist ideology of Eastern Shore counties).

164 *See* Robert Bussel, *Taking on "Big Chicken": The Delmarva Poultry Justice Alliance*, LABOR STUDIES JOURNAL, Summer 2003, at 1, 5-7 (describing wage and hour, health and safety, and demographic conditions in poultry industry in Eastern Shore region).

ers were not eligible for union membership under the National Labor Relations Act because of its agricultural exemption.[165] The workers' group, with the encouragement of a union local interested in organizing the plant, asked us to research how that reading of the law could be challenged. The union was not yet prepared to expend its resources in a losing battle with the powerful poultry industry. We focused on the legal work that might lead to their empowerment in the workplace.[166] Further, although I had been hired to start an immigration clinic, we consciously chose to work with African-American workers because it was important to work with any group of exploited workers and there was the possibility of work across racial lines with groups of intentionally divided but similarly exploited workers.[167]

We were led to the Eastern Shore on another case through a widely shared but generally under-used clinical resource: our students. One of my Maryland students[168] was so outraged by the secret detention of Muslim immigrants from Baltimore in the county jails of the Eastern Shore that he staked out the apartment where a group of them had lived before they were arrested.[169] This student, fearless and creative, discovered the names and location of the detainees from a Baltimore Sun reporter. He found two other students interested in working on the deportation defense case and I put it on our docket. That student-identified case brought us a great deal of attention from the immigration authorities and in the local press (it was Baltimore's small stake in the global war on terror, after all) as well as the wary approval of our law school administration. I encouraged the students to work "backward" toward community support for these immigrants at the local mosque, difficult work at a time when the Bush Administration's approach to terrorism had not yet been widely criticized and especially amongst frightened "mainstream" immigrants who sought to distance themselves from those who had been arrested and detained. To their great credit, the student team successfully convinced local Muslim leaders to write affidavits in support of our client and some of them appeared in court during the proceedings. Because our

165 29 U.S.C.A. §152(3) (West 2007) (excluding "agricultural laborers" from definition of employees covered by statute).

166 Because of the lack of public interest lawyers in the area, we could have provided a variety of services to this group of workers. We chose to focus on labor issues so that it would be leveraged to build organizing power amongst the workers.

167 *See* Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405, 411 (1998) (describing challenge of bridging divide between Thai and Latino garment workers in opposition to exploitative employers).

168 The student's name is Ryan Napoli. After graduation, he has worked as a staff attorney at MFY Legal Services and the West Side SRO Law Project.

169 *See* Scott Shane, *Cases Hint of Terrorism, Fizzle into the Mundane*, BALT. SUN, Nov. 19, 2002, at 1A.

client was a permanent resident of Canada, our remote advocacy with the Canadian government resulted in his passage home.[170] But in the course of our advocacy we worked to "collectivize" his plight in the community as we found it.

The docket that we constructed at Maryland was surely a work in progress. There was no quick route to collective mobilization in the areas of immigrant labor and deportation defense. But there was much work that could have continued in light of the influx of immigrants to Baltimore in the last decade as well as the long-established community organizing network in many neighborhoods in the city.[171]

To connect to political organizing, clinical faculty and students need time and support for creative outreach to build dockets that support social justice struggles. The current context of public interest practice across the United States demands intake criteria beyond the vision of law school clinics as isolated legal services offices. The conventional legal services vision of law school clinics might meet important needs for a small but significant subset of the poor and marginalized, but it is a practice largely devoid of larger political effect.[172] The resources we control are scarce and valuable and need to be allocated to have the broadest effect, in aid of the collective long-term struggles of oppressed people.

B. Knowledge Bases

It is possible to construct a pedagogical approach that stems from a political and social vision. Indeed, the lack of explicit politics – or an acceptable version of service-oriented legalism – in most law school clinics betrays a highly politicized basis for the allocation of scarce legal resources. This section will define a set of knowledge bases that stem from clinical fieldwork in support of collective mobilization. This approach yields focused inquiry with our students on basic legal functions, advocacy methods and strategic thinking, collaboration between lawyers and organizers, and role definition and the rules of professional responsibility.

1. Basic Legal Functions

The list of basic legal functions of a lawyer for a movement or-

[170] *See* Canada in Brief, *FBI Finds No Terror Link to Two Detained Canadians*, GLOBE & MAIL, Oct. 2, 2002, at A7.

[171] The law school at the University of Maryland has recently initiated an ambitious anti-violence project that, in part, leverages and networks community organizing in Baltimore. *See* Community Justice Initiative description, http://www.law.umaryland.edu/specialty/comjust/intro.asp (last visited Feb. 14, 2008).

[172] *See* Brescia *et al*., *supra* note 101, at 842 (noting that cases accepted onto poverty law dockets do not reflect community's highest priorities).

ganization is not much different from that of a lawyer for a small corporation or a small trade association in a capital city. As demonstrated from the list of client organizations with which we have worked at CUNY, students litigate in state and federal court and handle cases from early fact investigation and initial client interview through complaint-drafting, all aspects of discovery including motion practice, oral advocacy before judges, and negotiation with opposing counsel. We have not yet taken an affirmative wage and hour case to trial, though immigration defense cases almost always result in a full legal proceeding with witnesses, submission of documentary evidence, and direct and cross-examination before an immigration judge. We provide limited ongoing legal guidance to organizational clients, including advice on their first amendment rights during direct action protests, facilitation of relationships with pro bono and non-profit attorneys, and evaluation of cases that do not mature into full-blown litigation.

Students do legal research, write memoranda, and counsel individual and organizational clients. In non-litigation cases, students draft reports, legislative language, and memoranda. Students prepare and accompany members of client organizations to meetings with legislators. At the request of client organizations, we create training materials and structure multi-class curricula, carried out in community spaces. Students serve as the face of organizational clients in meetings with potential members and other advocates and lawyers. The particular lawyering tasks and fora are not especially predictable from case to case, though these core functions remain fairly constant. When non-litigation projects do not have a great deal of legal content, we decide whether to continue or end our representation based on student enthusiasm and our assessment of the importance of the tasks for our clients' organizing goals. We terminate representation mid-year if we think that the organization would be better served with research and advice offered by non-legal collaborators.

We construct our class syllabus at the beginning of each semester based on our estimate of what we think will be happening in our fieldwork. We choose to do substantive law "boot camp" classes at the beginning of each school year, so as to place students in their fieldwork as soon as possible.[173] We take students through a sequence of classes on basic legal functions, including client interviewing, work with interpreters, counseling, theories of the case, fact investigation, and legal drafting. We teach a unit on trial skills because one or more of our immigration defense cases goes to trial at some point during the

[173] This is another pedagogical approach that I learned from Wishnie and Morawetz when I taught with them at NYU.

year. Although we do not subscribe to a set chronology of class units or have a check-off list of topics, there is greater similarity than difference in the syllabi with which I have worked over the years.

Our classes are undoubtedly not as orderly as that of clinicians in the case-centered approach or as complete and thorough as those who subscribe to the skills-centered approach, but we see advantages in an "open source" syllabus that we encourage students to construct with us through their fieldwork experience. The pressure of actual performance invests classes on basic legal functions with greater depth and encourages students to immerse themselves in the lesson through an appreciation of the facts of their peers' cases. We do not neglect efforts to create justice within the microcosm between lawyer and client, even as we focus on how an individual case fits into a larger struggle for social justice. We try to use students' positive and negative feelings about their clients, cases, and the socio-legal context to stimulate collective learning.[174] In this way, we try to bring the transformative learning method[175] to all of our work, including instruction on basic legal functions.

2. Cross-Modal Advocacy and Strategy

Most public interest lawyers no longer operate in a single forum or use a single mode of advocacy. These lawyers develop campaigns on parallel tracks, including litigation, policy and legislative advocacy, community and public education, media advocacy, and international or transnational advocacy. As a result of critical scholarship,[176] as well as changes in the composition of the bench, litigation is now increasingly de-centered and no longer presumed to be the preeminent strategy for social change. Nonetheless, our organizational partners, already engaged in other mobilization and advocacy efforts, seek counsel to file cases before many different kinds of courts and agencies. These organizations are opportunistic and develop their campaigns through as many means as possible. They understand that each legal and political advocacy method is contingent and ineffectual in isolation. As noted above in Section III.A.1, the CUNY clinic pursues both litigation and client-led[177] non-litigation projects, usually in

[174] *See* STEPHEN D. BROOKFIELD & STEPHEN PRESKILL, DISCUSSION AS A WAY OF TEACHING: TOOLS AND TECHNIQUES FOR DEMOCRATIC CLASSROOMS (2005); FREIRE, *supra* note 37.

[175] *See* Quigley, *supra* note 38.

[176] *See* Ashar, *supra* note 6, at 1904-07.

[177] Clinics often fall into the trap of constructing clientless community education and policy advocacy projects. This is inherently in conflict with the mobilization agenda, which relies on organizers or a group of clients to determine their needs and devise at least a few rough collective solutions, which may or may not require the assistance of attorneys.

the areas of community education and policy advocacy. We find that litigation skills translate into the policy advocacy arena (and back) in interesting ways. For example, we use the concept of "framing" in policy advocacy in conjunction with seminars on theory of the case.[178] Excellent lawyering crosses modes of advocacy and draws upon overlapping sets of skills.

In this context, students must think tactically and strategically. Some in clinical education argue that we can rarely teach strategic thinking in live-client cases and must resort to simulated cases for this purpose.[179] However, the best way to draw meaningful lessons on strategy in public interest practice is to work on actual cases with mobilization potential. In classes and supervision meetings, we consider varying means by which to achieve the mobilization goals of an organizer or group of clients. We consciously broaden our sense of the range of successful outcomes in our fieldwork, resisting the assumption that victory in court is the sole path to social justice. In this context, litigation is only one tool in the arsenal of the public interest advocate. At each phase in mobilization litigation, lawyers must evaluate whether the clients' goals, including both their individual and political goals, are being achieved.

Conventionally, clinicians' lessons on strategic thinking are focused on the use of particular tactics in a single mode of advocacy preselected by the clinical instructor. I have questioned whether it makes sense to place the weight of complex decision-making on first-time lawyers.[180] However, I have been impressed by the capacity of students to consider strategic questions. The growing literature on the multiple competencies of successful lawyers provides some insight on why we have been able to focus on strategy.[181] Some students enter law school with sophisticated tactical and strategic thinking skills.[182] Clinic cases with mobilization potential provide an opportunity for those students to apply such skills in a new context. With proper su-

[178] This is an insight from Morawetz and Wishnie, when I co-taught with them at NYU. *See* Deborah A. Stone, *Causal Stories and the Formation of Policy Agendas*, 104 POL. SCI. Q. 281 (1989) (suggesting structure in which to analyze framing choices in policy advocacy).

[179] Richard K. Neumann, *On Strategy*, 59 FORDHAM L. REV. 299, 333-36 (suggesting that live-client clinical dockets are not likely to include strategy-rich cases).

[180] After all, this type of work is inconsistent with the linear, building block approach to which most clinical teachers subscribe. *See supra* note 49.

[181] Angela Olivia Burton, *Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm Into the Clinical Setting*, 11 CLIN. L. REV. 15, 42-43 (describing strategic thinking as essential type of intelligence for effective lawyering).

[182] At CUNY particularly, we are fortunate to work with students who have worked as advocates and organizers in a variety of fields prior to law school.

pervision, less experienced students learn from those with specific experiences and competencies through all aspects of team lawyering but especially in the area of strategic and tactical thinking. Finally, a developed sense of broader purpose helps student teams make it through the duller aspects of litigation. Supervision meetings in these cases offer many opportunities to consider the goals of a particular tactic and strategy.

3. Interdisciplinary Collaboration with Organizers

Practice is increasingly interdisciplinary: lawyers in all fields need to work with non-legal professionals to accomplish their clients' goals. Lawyers for poor people have worked extensively with social workers and caseworkers, especially on public benefits and family law issues.[183] Increasingly, criminal defense start-ups, such as Neighborhood Defender Service and Bronx Defenders, have integrated civil lawyers and caseworkers on their legal teams to provide more holistic services for their clients. There is a corresponding movement in law schools to train students to work in teams with social workers. For clinicians using the case-centered approach and especially concerned about the nature of the relationship between law students and an individual client, social workers promise to help build relationships of equality and make greater collaboration possible. Interdisciplinary practice with social workers has been one of the strategies used by clinicians to bring the goal of client-centered representation to fruition.[184] Client-centered lawyers must exercise power in ways that ensure that clients are fully engaged with the decisions that need to be made in a case. If a lawyer is concerned about client autonomy, she will search for mechanisms that facilitate the exercise of client decision-making power in the relationship. Interdisciplinary casework with social workers is one such mechanism.

This rationale for interdisciplinary practice further reinforces the domination of the case-centered model in clinical legal education, with social workers and other professionals used mostly to expand the mental resources of an individual client and to deepen lawyer-client relationships.[185] We choose to focus our teaching of interdisciplinary

[183] *See* Alexis Anderson, Lynn Barenberg & Paul R. Tremblay, *Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting*, 13 CLIN. L. REV. 659 (2007); Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-Examining the Nature and Potential of the Relationship*, 67 FORDHAM L. REV. 2123 (1999).

[184] *See id.* at 2126-34.

[185] Though this may be the predominant use of social work collaborations, at CUNY our students also collaborate with social work students from Hunter College who specialize in community organizing. Additionally, when Jane Aiken and Stephen Wizner argue that law students should be taught to approach poverty lawyering as "social work," it is the aspira-

practice on the interface between lawyers, organizers, and clients. In contrast to individual caseworkers, organizers are professionals whose very self-definition is grounded in strengthening the collective goals of groups of poor people.[186] Public interest lawyers should learn how to work with them, first, to mobilize the resources necessary to carry out our clients' interests and, second, to see legal cases through multiple frames of references.[187] Collectives often reinforce the resolve of individual litigants, especially when the case stretches over years, as is often the case in federal litigation.[188] Collectives advance the counseling goals of lawyers by serving as another forum in which clients may discuss their choices and decisions in the midst of a legal action (and an organizing campaign).[189] Collectives, especially when led by aggressive and savvy organizers, can bring the attention of media outlets and government agencies to a case that would otherwise be lost on a court docket. Moreover, organizers often challenge lawyers' framing of disputes. The strength and weakness of disciplines is that they anchor adherents in a frame, created on a foundation of particular

tional social justice elements of social work practice that they aim to emulate and enhance within law, rather than the individualistic focus on casework. *See* Jane Aiken & Stephen Wizner, *Law as Social Work*, 11 WASH. U. J.L. & POL'Y 63, 72-74 (2003).

186 Ascanio Piomelli makes a few essential points with regard to relationships between lawyers and organizers in struggles for social justice: "first, organizers' vision and decision-making are not always perfect or superior to that of lawyers; second, organizers too can fail to meet their own aspirations, as Gerald López sketches in *Rebellious Lawyering*; and third, there is much to learn from mistakes made during collaborative campaigns and clashes of vision between organizers and lawyers." Piomelli, *supra* note 5. Indeed, mistakes and clashes have driven our learning agenda in the clinic, *see* Section III.B.4, *infra*, and we aspire to forge the type of relationship with our organization partners that demands honest discussion and disagreement. *See* Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 303 (1996) (describing "alliances" with community partners characterized by mutuality, respect, and realism).

187 We are fortunate at CUNY to teach a significant number of students who have experience working with organizers prior to and during law school. Nevertheless, students are learning how to assume a new role in relation to social justice movements and we have found that it is helpful for them to be oriented by many of the works cited herein. *See*, *e.g.*, LÓPEZ, *supra* note 6; Bellow, *supra note* 186; Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001); Ellmann, *supra* note 126; William Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1994); Wexler, *supra* note 3; White, *supra* note 6.

188 As my CUNY colleague Steve Zeidman put it, working with individual clients without external support is "messy," perhaps as much so or even greater than in the context of lawyering with collectives. Individual client counseling presents many challenges, both psychological and political, and it is vital for poor litigants to have external support as they endure the legal process. *See generally* Steven Zeidman, *To Plead or Not to Plead: Effective Assistance and Client-Centered Counseling*, 39 B.C. L. REV. 841 (1998).

189 I understand that this flies in the face of the hermetically sealed lawyer-client relationship contemplated by the rules of professional responsibility. I will discuss this tension further in the next section.

intellectual and historical references. "Thinking like a lawyer" requires a broad understanding of multiple frames of reference,[190] as we participate in the strategic construction of advocacy positions in court and before legislatures and agencies. However, our training often narrows our thinking and organizers challenge us to think outside of our familiar and canonical frames of reference.[191] Organizers help build innovative theories of the case and expand the scope of fact investigation. This form of strategic thinking and consciousness of multiple frames of reference in clinical fieldwork has great pedagogical value in teaching students how to practice reflectively.

4. Lawyer Role and Professional Responsibility

In the 2006-07 academic year, two teams of students in the CUNY clinic helped a client organization called Families for Freedom ("F.F.F.") do intake in their offices. F.F.F. was formed by two young organizers in 2002 with the goal of mobilizing the families of immigrants in deportation and detention proceedings. Many immigrants have attorneys who do not serve them well[192] and one of the benefits of membership in the organization is the honest and free evaluation of their relative's legal case, especially when an attorney is not answering their calls. The two organizers – with the help of excellent lawyers at the Immigrant Defense Project of the New York State Defenders' Association, who work in a neighboring office – have mastered the laws of deportation, especially as it relates to immigrants with criminal convictions.[193] The organization asked for assistance from CUNY to help staff its weekly membership intake. The student teams watched the organizers do intake interviews, understood the forms they were to use, and entered data from the interviews into a membership database maintained by the organization. The student teams began to do intake interviews on their own almost immediately. One of the organizers would join them for the second half of an interview, when

190 *See* BINDER & BERGMAN, *supra* note 106, at 84-89 (explaining how fact-finders use their generalizations about human behavior to draw inferences from circumstantial evidence).

191 The institutional vision of organizers and social movements begs the question of whether lawyers have adequate training in the crafting of institutional frameworks responsive to collective problems. *See* Simon, *supra* note 42. For clinicians who work within the alternative model described in this article, a worthy task may be to derive general principles and describe transferable skills that advance the institutional dimension of public interest law. *See id*. This will also improve our ability to collaborate with organizers, policy advocates, and political decision-makers.

192 *See*, *e.g.*, Richard L. Abel, *Practicing Immigration Law in Filene's Basement*, 84 N.C. L. REV. 1449, 1487-89 (2006) (citing negative evaluations of quality of immigration bar).

193 *See* Families for Freedom, Deportation 101: The Training, http://www.familiesforfreedom.org/?q=thetraining (last visited Feb. 14, 2008).

there was more conversation about participation in F.F.F.'s political organizing campaigns. However, the students — with back-up from the organizers, the lawyers next door, and their off-site supervisor — learned about deportation cases and were often asked to provide explanations and/or reassurance about the conduct of a relative's case. Student teams provided immediate advice and also drafted memos and letters in response to questions posed by families.

After a few weeks of intake at F.F.F., the students spoke up in a case rounds class about their discomfort with the lack of clarity about their role at the organization, as well as their feeling that they were aiding in the unauthorized practice of law by the organizers, in violation of the professional responsibility rules.[194] We spent two classes discussing the students' work at F.F.F., identifying the issues that were causing them discomfort, determining whether the discomfort was connected to possible violations of professional responsibility rules or a more generalized unease with their role, and brainstorming strategies to overcome possible rule violations and discomfort. Ultimately, we came to the conclusion together that the students were working within the limits placed on all participants in law school clinics by relevant student practice orders and the rules of professional responsibility. In litigation, students have similarly grappled with and researched the implications of having organizers present during meetings with clients and the prohibition on third party influence on legal decision-making.

In this work – both non-litigation advocacy with groups that have an organizing mission and litigation on behalf of individual members of political collectives – law students are pulled between conventional interpretations of their role as shaped by the rules of the profession and the needs of organizers and activists. This context is a pedagogical gift for clinical teachers, as we help students grapple with ethical rules using immediate and urgent problems from their fieldwork. These questions undermine the formalism of the rules of professional responsibility and cause students to develop interpretations that both accommodate and shape their relationships with individual and organizational clients. Anti-formalistic, moral dialogue[195] – proposed by

194 *See* Simon, *supra* note 39, at 537-38 (criticizing therapeutic pedagogy for promoting role conformity and fostering sense of incoherence and irrationality with regard to norms and institutions outside of professional role).

195 *See* Robert Dinerstein, Stephen Ellmann, Isabelle Gunning & Ann Shalleck, *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLIN. L. REV. 755, 794 (2004) (defining moral dialogue in lawyer-client relationship as "counseling conversations in which you invoke morality, rather than solely law or the client's pragmatic self-interest, in an effort to persuade a client to make a particular decision.").

leading clinical scholars as central to effective counseling in the client-centered model[196] – takes place amongst students and with supervisors and clients. This dialogue is facilitated by the involvement of collectives and organizers, who engage in this mode of communication with group members on a near-constant basis. To be clear, we do not seek ethical controversies in our work, but when they arise, we treat them as welcome opportunities for students to apply the rules to problems from their clinical fieldwork and we view these experiences as one of the most important elements of the pedagogical experience.

C. Corrections

The critique of the canonical approaches to clinical legal education that I offered in Part II was broad. If one accepts some or all of the arguments, then many responses, articulations, and illustrations of current and projected "deviant" clinical work are possible. A program of clinical legal education linked to collective mobilization avoids the problems that I specify in my critique and presents excellent social justice and pedagogical opportunities for clinical teachers and students.

Construction of clients in solidarity. We construct individual clients as members of political collectives and in solidarity with other workers and immigrants. In our cases and projects, the interview room – employing Ahmad's allegory[197] – is crowded. Even in those instances in which only the members of the lawyer-client dyad participate, the voices and ideas of (often collective) third parties are understood to be present.[198] Lawyers do not attempt to erase third-party influence but instead construct their clients and themselves with a more realistic, accepting, and holistic understanding of their political identities.[199] Moreover, we build trust in the lawyer-client relation-

196 *See id*. at 793-804.

197 *See supra* note 80 and accompanying text.

198 Speaking in the context of the integration of interpreters in legal advocacy, Ahmad argues for "a more porous vision of the lawyer-client relationship, one in which the lawyer retains a central role, but is far more open to multi-dimensional collaboration." Ahmad, *supra* note 80, at 1076. *See also* Paul Tremblay, *Impromptu Lawyering and De Facto Guardians*, 62 FORDHAM L. REV. 1429, 1444-45 (1994) (discussing emerging ethic of care model and lawyer sensitivity to interests of parties outside of dyad).

199 Nancy Polikoff attends to the political commitments on the lawyer side of the relationship with clients. *See* Nancy Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443 (1996). She argues that activist-lawyers should adopt the client-centered model when representing movements, so as to ensure that there is some distance between legal advocates and movement activists. *Id*. at 459-69. I do not feel the internal role tension that Polikoff describes (though some of my students do) and I am comfortable with my role as an adjunct or supporter of activist movements. Nonetheless, I view myself as an "activist lawyer" because I am filling a role that is necessary to advance collective mobilization and social justice. This self-definition is especially

ship on the basis of our political solidarity with clients and their collectives.[200]

Race and resistance embraced. The movements with which we work have sophisticated conceptions of racial identity and cross-racial solidarity.[201] Race, especially race-based resistance to the dictates of the socio-legal system, is not left at the door of the interview room. Movement organizations seek to channel modes of resistance toward cross-racial (and cross-lingual) political action.[202] Lawyers are the beneficiaries of this approach and law students do not graduate from our program with simplistic or suppressed associations between "difficulty" and clients of color.[203] The process of building trust in race-differentiated lawyer-client relationships is never obviated. However, the assumptions that both lawyers and clients have about each other as they enter the relationship is significantly altered and improved from the individual case-centered model of representation.

Politics instead of therapeutics. While we attend to the dynamic within our relationships with clients and learn how to collaborate with them, we are not preoccupied with the potential of lawyer domination.[204] We do not view therapeutics as the closest systemic analogue to (or the conceptual framework through which to view) the legal representation of poor people. Because clients come to us in the context of campaigns, our relationship arises from progressive politics; with the organizers and other members of their collective, we fit the legal action into the broader agenda of the organization. Our (and their) goals for the legal action are to both make individual clients whole (in the case of unpaid wages) and to advance the political project of building power amongst immigrants and/or workers. Individual clients self-actualize, not through their relationship with us, but through

important in working with students searching for concrete ways in which to use their professional role to pursue their political commitments.

200 It is especially difficult to maintain trust in the context of disagreements between clients and organizers. The challenges of disunity in entity and individual representation are fairly common in both public interest and private sector legal practice. We try to act constructively in these situations to understand the interests in conflict and develop means by which to resolve them, in accordance with Ellmann's advice to lawyers advising collectives. *See* Ellmann, *supra* note 126, at 1135-70.

201 *See* Ashar, *supra* note 6, at 1923-25.

202 *Cf*. Jacobs, *supra* note 89, at 401-02 ("As lawyers and students, we must now find ways to understand and to use the client's resistance on their behalf." *Id*.).

203 Because our students are working with clients who understand and openly address the challenges and promise of cross-racial work, race consciousness is at the surface of the lawyer-client relationship as well. Students are likely to be able to see how lawyers might contribute to the "difficulty" presented by their clients. Additionally, organizers provide us with input on difficulties in the relationship with clients, especially those borne of race-blindness.

204 *See* Ashar, *supra* note 6, at 1919-20.

their solidarity with peers and visionary political organizers.[205] Although I am sympathetic to efforts within clinical legal education to provide "holistic" services to clients,[206] it seems short-sighted and somewhat lawyer-centered to think that we have the tools and resources to provide even a minimal amount of what our clients need.[207] Instead of holistic practice by lawyers, we think that poor people need solidarity with each other and consequent political power and we provide legal services that advance that project.[208] We have given up the illusion that lawyers might be able to liberate clients, one by one.[209]

Skills training in the context of role assumption. We use the insights of transformative learning theory to advance acquisition of transferable legal skills and reject clinical models that propose to focus courses on a single legal function.[210] Our students learn how to draft complaints and take depositions in the context of social justice campaigns and ongoing relationships with clients, organizers, and organizations. They learn how to undertake basic legal functions while thinking more broadly about their role, often set between clients and the socio-legal system. The role is fluid and each relationship is negotiated with empowered clients and designed to accomplish specific

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205 *See* McKnight, *supra* note 101, at 44 ("The individualizing, therapeutic definition of need has met a counteracting force in some of the 'liberation' movements. . . . [T]hese movements struggle to overcome the individualized-deficiency-oriented 'consciousness' communicated by the professional service ideology by affirming individual competence and collective action.").

206 *See* Mary Helen MacNeal, *Unbundling and Law School Clinics: Where's the Pedagogy?*, 7 Clin. L. Rev. 341 (2001) (expressing unease throughout with model of lawyering that departs from holistic provision of legal services).

207 I do not mean to imply that lawyers have nothing to offer clients. One of the main lessons that I draw from this work is the continuing and important contribution of law and lawyers to the mobilization of poor people through excellent representation and the securing of even limited legal remedies.

208 One of the central issues in the scholarship on client-centeredness is the enhancement of client autonomy and how forcefully lawyers should intervene to make those enhancements. *See* Kruse, *supra* note 53, at 434-40. The case-centered approach tends to ignore the potential of collectives and organizers to enhance clients' autonomy within their relationships with lawyers. Lawyer intervention is not the sole means by which to enhance client autonomy. Collective solidarity between similarly situated people is an alternative means by which to preserve and expand client autonomy.

209 *But see* Tracy Kidder, Mountains Beyond Mountains: The Quest of Dr. Paul Farmer, A Man Who Would Cure the World (2004) (discussing Farmer's strategy of deploying all possible means in service of individual patients). I do not deny that there is an important role to be played by law clinics in the service of individual clients. Even with a collective mobilization focus, the CUNY clinic continues to represent individual, unorganized clients in deportation proceedings, family court, and criminal court because of the dire need of these clients and our decision to focus our spotlight on the most glaring examples of injustice and systemic violence waged against poor people. We remain conscious of the need for poor people to create the conditions for their own liberation and skeptical of the checkered history of lawyer-led reform efforts.

210 *See*, *e.g.*, Binder, Moore & Bergman, *supra* note 65.

goals. Students learn how to undertake basic legal functions within this context and shaped by their role in the representation.

Preference for the poor.[211] We are conscious of students' individual learning goals and we try to find opportunities through which they may gain experience and knowledge in the areas that we identify together.[212] However, we also share the belief with students that the clinic exists to support resistance movements and to help build the power of poor people's collectives. We maintain a low caseload to ensure that we have time and space to identify lessons from our fieldwork, but the cases and projects that we do take become our primary shared labor and provide our learning agenda each year, not coverage of a certain area of substantive law or a pre-ordained list of lawyering skills. Students are not our customers, they are our partners in the clinic's work for poor people's movements.[213]

Greater institutional accountability. While it is beyond the scope of this article to propose a fully developed system of accountability for clinics (and other legal services offices),[214] institutional collaboration with empowered grassroots organizations provides a necessary element of accountability to our constituents. The diffusion of accountability that occurs in the individual case-centered model is lessened by the clinic's ongoing relationships with collectives and organizers. Over time and multiple representations, organizations are able to monitor the significance, quality, and scope of legal services far better than an individual client who enters and exits the clinic within a single academic year. Most organizers vociferously reject professional mystification and are unafraid to question resource allocation or the tactics used by lawyers in a case or project.[215] Movements also check the

211 *Cf.* PAUL FARMER, PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS, AND THE NEW WAR ON THE POOR 139-45 (applying liberation theology doctrine of "preferential option for the poor" to his public health work).

212 At the beginning of each semester, we ask students to identify their learning goals. Most often there is little conflict between what the student wants to learn and our clients' goals. Some tension is inevitable in all clinical programs (for example, when clients want to settle and students want to go to trial) and, like other clinicians, we take these opportunities to teach important lessons about professional responsibility.

213 There is a particular way in which grading wrecks the partnership between faculty and students, but we understand that evaluation is an element of our job and that grades matter for students in the job market. My colleagues Joe Rosenberg and Sue Bryant have a more expansive view of the uses of assessment tied to letter grades and argue that such evaluation may be used to set standards for excellent practice by our students.

214 *See* Kimberly O'Leary, *Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics*, 11 CLIN. L. REV. 335 (2005) (proposing several mechanisms to aid in strategic planning by law school clinics); William H. Simon, *Introduction*: *Lawyers and Community Economic Development*, 95 CAL. L. REV. 1821 (2007) (arguing for more discussion of "agent-community" accountability in clinical scholarship).

215 *See* Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Pro-*

power of foundations and government agencies to control the operations of clinics through inadequate auditing mechanisms, such as simplistic measures of total cases completed. Partner organizations and empowered client-members make both quantitative and qualitative evaluations of the services that they receive from law students and clinics. This data is essential retrospectively for self-evaluation and prospectively in thinking about program development and goals and measures of success for future collaborations.[216]

Resisting market-defined functionality. Legal scholar James Bohman has argued that Habermas' vision of radical democracy is marked by a commitment to long-term incremental change rather than outmoded stories of revolutionary social transformation.[217] One of the essential aspects of this vision is the development of alternative practices directed against the instrumentalization of work.[218] Clinical legal educators can use transformative learning in the context of the representation of collectives to enhance the motivation and autonomy of students, clients, collaborators and ourselves.[219] Above all, we must teach ourselves and our students to define the role that we intend to fill as lawyers and citizens, rather than being unconsciously inducted into a role set by the market. Organizers and client-activists model and teach us that it is possible to mobilize power in the face of the seemingly overwhelming force of market and state. Collaboration with (and the nurturing of) social movements both activates lawyers and law students and simultaneously underlies an essential transformative agenda for clinical legal education.[220] Clinical teachers can choose either to use their power to support collective mobilization or they can participate in the reproduction of the status quo.

IV. Limitations and Responses

Clinical legal education should support collective mobilization

cess for a Diverse Profession, 17 Vt. L. Rev. 459, 460 (1993) (teams promote collaboration across experience bases); Noonan *et al*., *supra* note 133, at 36 ("The other dimension of collaboration involves professionals. . . . In the reform practice model, decisions are collaborative and explicit. Key judgments are made by a team. The team is so cognitively diverse that its members must often make explicit assumptions that would remain unstated in more homogenous settings.").

216 We have not organized the collection of this data in a systematic way but, as a result of this writing, it is now one of my goals.

217 James Bohman, *Complexity, Pluralism, and the Constitutional State: On Habermas's Faktizitat und Geltung*, 28 Law & Soc'y Rev. 897, 926-27 (1994).

218 *See* Fleming, *supra* note 31, at 6.

219 *See id*. at 7-8.

220 *See* Lucie E. White, *The Transformative Potential of Clinical Legal Education*, 35 Osgoode Hall L.J. 603, 608-10 (1997) (arguing for self-transformation in clinical legal education).

and can do so without abandoning its central mission of educating law students for practice. As I have argued throughout this article, these concerns are not in opposition. There is some inevitable tension between client and student concerns, but even this can be a learning tool, if teachers are able to conceptualize the conflict for students and facilitate reflection. I discuss the tensions within the collective mobilization approach below, set forth likely objections to the model, and provide responses to those objections.

A. Pedagogy

The emphasis on politics and outcomes may make many clinicians uncomfortable. Without necessarily subscribing to an extreme privileging of student learning goals over social justice concerns, most clinicians derive primary pedagogical value from an intense focus on the process of legal representation a student undertakes in her fieldwork, rather than on the outcomes of that work. Clinical teachers and programs find differing points of compromise between social justice commitments and pedagogical goals. This balancing effort is understood to be a part of the role into which teachers have been inculcated and programs have accepted.

As I have argued above, the historical moment and the state of the legal profession demand that teachers and programs be conscious about their roles and think more about the outcomes of their work. This article also demonstrates that clinical legal education focused on collective mobilization does not entail any sort of abandonment of pedagogy. To the contrary, it simply requires that clinics be taught differently than in the canonical models and that they cover a different set of topics. But teaching is still a central function of this work, work which presents many pedagogical opportunities.

Indeed the alternative model is an enhancement of clinical pedagogy. Throughout this article, I have argued that current models of clinical legal education disserve clients and lawyers, especially future public interest lawyers. Though the campaign orientation of lawyering with collectives closely resembles transactional work and litigation on behalf of private sector entities, corporate lawyers receive on-the-job training on hierarchically staffed legal teams after they graduate from law school. Public interest lawyers (and small firm community lawyers) have only their time in clinics to prepare for practice in an environment fundamentally unlike the one in which many of the precepts of clinical teachers and programs were developed. Lawyering with collectives makes clinical legal education more porous and flexible so that pedagogy and programs shift shape as community (and consequently professional) needs change.

The alternative model enhances pedagogy by more intentionally integrating transformative learning opportunities in fieldwork. Students undertake fieldwork in the context of a wide range of types of advocacy and exposure, including street demonstrations, meetings with politicians, worker meetings, and oral advocacy before judges hostile to collective action. The lessons students draw from these practice settings about both legal advocacy methods and the socio-legal system become embedded in their long term memory.[221]

Clinical fieldwork in support of collective mobilization reconfigures and renews pedagogy rather than abandoning it. Clinical education should not construct ironclad pedagogical systems rooted in practice settings that no longer exist, nor can it remain impervious to change. Fixed pedagogical notions should not be used to shield clinical programs and law schools from the messiness of politics and social justice outcomes.

B. Client Healing

Empathy is a foundational element of clinical practice and pedagogy. If nothing else, it is hoped that law students leave clinical courses with a more empathetic understanding of the lives of poor and socially marginalized clients. By recognizing the interdependency between lawyer and client, it is thought that both can be made more whole. Clients receive material and empathetic assistance as they negotiate difficult straits in legal proceedings and lawyers receive the fruit of altruistic behavior. Some may fear that this therapeutic relationship between lawyer and client will be lost if clinics only represent collectives or individual members of collectives.

It is an open question whether the lawyer-client relationship is the proper site for the therapeutic healing of either the lawyer or client. Clients may be more likely to self-actualize through participation in collectives of people in their same material and spiritual circumstance. While there is an important place for cross-class and cross-racial identification, it seems a poor substitute to replace clients' political collective identity with the lawyer-client relationship. It may be important to a lawyer to find therapeutic value in relation to a client, but there are other places for most lawyers to go for that kind of solace and sustenance.

Even when representing collectives and members of collectives,

221 *See* Binder & Bergman, *supra* note 47, at 199 ("Storing educational training in their long term memories enables students to retrieve and apply what they've learned to new situations that arise after graduation. The issue this becomes how to design clinical courses in a way that promotes students' ability to conceptualize what they learn so that they encode those concepts in their long-term memories.").

there is room in the lawyer-client relationship for interpersonal identification and empathy. Indeed, a common move made by students early in these relationships is to see a contest between themselves and the organizers for the loyalty of member-clients.[222] This creates political problems in our relationships with organizations, but it is also a clear indication that empathy is not lost and can actually be enhanced in these representations. The fact that there is even a contest for the opportunity to relate to poor and socially marginalized people is a positive development for our clients.

C. Exercise of Professional Judgment

A broader critique of lawyering with collectives is that it requires lawyers to either forfeit or share the exercise of professional judgment with collaborators, including organizers and collectives of which the client is only a part.[223] In this account, clients do not receive advice from their lawyers unalloyed by the influence of the movement's larger political concerns. This is especially worrisome if one seeks to induct law students into the profession's commitment to the sanctity of the lawyer-client dyad. To introduce third party influence, even if there is formal compliance with the rules of professional responsibility, may confuse law students and lead them to construct more porous and ethically problematic relationships with clients in practice.

While this is often raised as a central problem in public interest law, lawyers for private actors manage to elide it. The profession has created loopholes in the sacred relationship between lawyer and client by endowing corporate collectives with personhood, thus bringing many voices to the lawyer-client relationship, and through the designation of "expert" status for professionals hired to build wealthy litigants' cases. Teaching students about shared professional judgment seems to prepare them for the realities of practice, rather than for a version that is only depicted in the formalism of the professional responsibility rules.

By lawyering in collaboration with organizers, students begin to learn how to delineate between legal and non-legal advice and counseling. Through joint relationships with clients (rather than a false canonical picture of practice as being of two people alone in an interview room), professional role and the proper exercise of professional judgment is sharpened rather than obscured. Students are well-served by having discussions about professional responsibility and

222 *See* Bellow, *supra* note 77, at 121 ("[A]n explicit political perspective, directed towards specific changes in particular institutions that affect the poor, and accountable individual legal service are intertwined.").

223 *See supra* note 122.

lawyer role at an early stage in their career in the low-caseload environment of the law school clinic, rather than later in the midst of a higher volume practice. Far from abandoning professional judgment, we help students understand and define when and how to exercise their analytical power.

D. Institutional Feasibility

Most law schools are dominated by private bar "benefactors" and boards of trustees. Even public law schools rely more heavily on private fundraising. Moreover, the desires and preferences of law students and law professors, even liberals,[224] are shaped by dominant market forces. Because the alternative model of clinical legal education that I propose has a significant and foundational normative vision critical of those forces, it is unclear whether it could take root within law schools and flourish.

Although the language of critique often renders both the subject and the alternative as monolithic visions, it is not my intention to argue for a single hegemonic approach to clinical legal education. I argue most essentially for an increased porosity and permeability of law clinics to the influence of organizers and community-based organization. Through a dedication to collaboration, clinicians and organizers will derive a range of legal needs that demand multiple models of service provision, from individual casework to impact litigation and community education to policy advocacy. Although I do not believe that all experiments in clinical legal education are identically responsive to the needs of poor and marginalized people, there is no question that innovation in the provision of legal services is an essential role of law clinics within the firmament of public interest law and that multiple approaches to advocacy and service provision will best serve students, lawyers, and clients. Thus, innovation as a central rationale for the initiation or expansion of alternative model clinics might blunt the op-

224 Ascanio Piomelli incisively sets out the key (though often tacit) tenets of liberalism in conflict with the collective mobilization vision articulated in this article:

> — its extreme preference for individual rather than group identity, analysis, and remedies;
> — its aversion to focusing on issues of power, rather than formal rights;
> — its discomfort with radical democracy and its fear of popular passions/excesses;
> — its assumption that the legal system alone is sufficient to make the very small, incremental adjustments necessary to move from status quo to social justice;
> — its presumption of rational expert professionals' greater ability to diagnose, design, and implement necessary social remedies – and its concomitant skepticism or hostility toward the ability of low-income and working-class people to do the same;
> — its valorization of judicial review and the importance of checking popular opinion and democratic agitation.

Piomelli, *supra* note 5.

position of conservative (and liberal) members of the legal academy and the profession.

The allure of innovation reinforces an important point: institutions are complex and contradictory. Professors and students at law schools with the greatest stake in preserving current distributions of wealth and power have engaged in some of the most radical collaborations with grassroots organizations.[225] In the midst of wealth and power at the elite schools, there is space for creative (and relatively marginal) redistribution of resources. In law school environments of relative resource deprivation, there is freedom to pursue collaboration with political organizers and organizations wherever they may lead, without fear of the withdrawal of nonexistent financial support. There are stories of backlash at public and private institutions and I do not mean to minimize the difficult position faced by my clinical colleagues who fight for their right to equal existence at their law schools. However, earlier generations of clinical legal educators have succeeded in creating a measure of space at most schools for collaborative work that is politically, pedagogically, and personally generative. My concern is that we use this space effectively.

V. Conclusion

This article is a modest attempt to identify and critique the assumptions and practices underlying the currently reigning approach to clinical legal education and to describe and advocate for an emerging alternative model of clinical education and lawyering. To be relevant, to withstand the forces that threaten to overwhelm clients and lawyers in the current moment, and to propagate sustainable and effective forms of public interest practice, clinical legal educators need to engage in a collective critical project re-coding the design elements and pedagogical approaches of law clinics. I end where I began, within a vision of a clinic rooted in community and committed to the collective mobilization of its clients. There is growing fragmentary evidence of this vision at law clinics across the country. With faith in the power generated by activated client collectives and a critical lens with which to view our work, we can transform the difficult reality we confront within ourselves, our institutions, and our communities.

[225] For example, Mike Wishnie at Yale is currently engaged in a nearly state-wide defense of undocumented immigrants against federal immigration and local police authorities.