INTERSECTING EXPERIENTIAL EDUCATION AND SOCIAL JUSTICE TEACHING

Paper Summary

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ABSTRACT

The movement toward experiential education in law schools is an important one in and of itself. This paper contends, however, that it also presents an opportunity to teach social justice lawyering, professionalism values, and lawyers’ ethical duties to serve the public. The paper proceeds in two parts. The first describes both why those invested in experiential education should consider incorporating social justice teaching into their methods and, conversely, why those with a commitment to social justice teaching should concern themselves with experiential education. It explores how all students benefit from exposure to social justice issues and how those issues help advance the goals of the Carnegie report to incorporate values and professionalism into the curriculum. It also documents how experiential education can provide critical support and opportunities to those students interested in a public service career. The second part offers examples of integrated experiential education and social justice teaching methods and models drawn primarily from the Society of American Law Teachers’ recent teaching conference at which these issues were explored.
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INTRODUCTION

The increasingly urgent calls for legal education reform often most strongly urge greater skills training during the three years of law school designed to produce practice-ready graduates. The Carnegie Report coupled that goal with others, most principally that law schools also incorporate greater “values” training, including, notably, professionalism and ethics. At the same time, many of us entered the academy motivated by our desire to contribute to solutions for some of society’s most difficult problems by instilling in our students a passion for serving their communities and using law as a tool for change, and that goal remains at the forefront of our minds. The intersection of improving skills training in the law school and teaching social justice offers opportunities for targeted approaches that advance both goals.

Of course, not all students will choose public interest careers or will take up social justice causes as lawyers. Nonetheless, teaching social justice is important to the mission of law school and to creating well-rounded lawyers. Like medical students who are required to study “cultural competency” for the provision of medical services no matter what type of practice they choose, law students should have basic understandings of the situations their clients may face and the problems in communities that the law can and, in some cases, cannot solve.

This mission also dovetails with the Carnegie Report’s focus on teaching ethics and professionalism. The preamble to the Model Rules of Professional Conduct highlights, in its first sentence, that a lawyer is a "public citizen who has a special responsibility to the quality of justice," and explains that "[a]s a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession." The rules also provide that every lawyer “has a professional responsibility to provide legal services to those unable to pay.” This voluntary pro bono service should be given to “persons of limited means” or organizations dedicating to protecting public rights or serving a community. Some schools, including Northeastern, require pro bono or public interest service as a condition of graduation, and recently New York adopted a fifty hour pro bono requirement as a condition of bar admission. Service as a lawyer in the public interest is central to the profession’s identity and mission.

Perhaps most importantly, so many of our students come to law school with a primary goal of attaining a career in public interest work, but abandon those goals during law school. Those that don’t abandon their goals often find the current legal education

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2 Preamble, ABA Model Rules for Professional Conduct.
3 ABA Model Rules for Professional Conduct, Rule 6.1.
4 Id.
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paradigm largely alienating. Some part of that alienation may be the inevitable result of teaching a subject matter, such as law, that is rules bound and precedent based—a backward rather than a forward looking approach that tends not to meet students expectations of how the law should operate. As Angela Harris has said, “Justice is the reason why many of my students have come to law school. But justice is not what the law provides.” We have an obligation to help our students see the law’s potential and openly acknowledge its limitations.

This article argues that not only is a shift to incorporate more skills-based training in legal education a laudable goal in and of itself, but for those committed to teaching social justice, there are two reasons why they should concern themselves with and dedicate themselves to supporting practice-ready reforms. First, skills training presents an almost unparalleled opportunity to incorporate social justice issues into core courses. Second, skills training is even more crucial for students interested in public interest careers than for those interested in traditional law firm practice, and experiential education is a way of making a social justice career a realistic possibility for a larger percentage of our students. This article will conclude by giving practical examples of curricular innovations that marry these goals, many of which were presented as part of the Society of American Law Teachers 2012 Teaching Conference.

I. The Synergy Between Experiential Education and Social Justice Teaching

Not since the rise of clinical education has there been a moment as full of opportunity to teach social justice issues as this one, which demands that experiential education not be limited to our clinics, fantastic as they are, but rather that it pervade our curriculum as a whole. In fact, experiential education in the clinical setting has long been interwoven with teaching social justice, and that mission is no less important in clinics today. It is therefore natural that expanding experiential opportunities beyond clinics would likewise expand social justice teaching opportunities for our students.

Skills teaching outside of clinics can involve a wide range of practices. A Civil Procedure course might incorporate an exercise to draft a complaint. Students in an immigration class may analyze possible defenses based on an actual Notice to Appear, the Department of Homeland Security charging document that initiates removal proceedings.

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6 Rachel Anderson, Marc-Tizoc González, and Stephen Lee, Toward a New Student Insurgency, 94 Cal. L. Rev. 1879, 1900 (2006) (“Instead of becoming disabled by the profound alienation that I felt from conventional legal pedagogy or succumbing to the meaningless drive of individualist competition that it can engender, participating in student organizations socialized me to identify with the radical counter tradition of organized student activism.”).

7 Angela P. Harris, Teaching the Tensions, 54 St. Louis Univ. L.J. 739, 743 (2010).

8 Stephen Wizner, Is Social Justice Still Relevant?, 32 B.C. J. Law and Soc. Justice 345, 345 (2012) (“From the beginning of clinical legal education, one central goal has been to engage law students in the pursuit of social justice through the provision of legal assistance to the poor and others who lacked access to legal services.”).

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An administrative law class may study the public comments on a proposed agency rule. Almost any course could incorporate an exercise in legislative drafting or policy analysis related to the underlying subject matter. In a wide variety of settings, students might engage in simulations, such as conducting client interviews, jury selection, or settlement negotiations.

Importantly, for every one of these examples, and the hundreds more one could imagine, the professor must choose the factual basis for the hypothetical case or simulation, the client whose file might be analyzed, the substance of the agency action to be studied, or the legal reform to be pursued. Each one of those choices provides an opportunity to broaden students’ exposure to situations, problems in society, and client interests that may be unfamiliar to students. By choosing these problems carefully, we can create a classroom discussion that incorporates ethical considerations and empower students to think about the ways that law may serve the ends of justice and its limitations in doing so. Incorporating social justice teaching into experiential education in doctrinal classes expands the reach of teaching these skills beyond those select students who elect to participate in a clinical experience.

Students who enter law school with a social justice career in mind are also much better served by increasing experiential education in doctrinal classes. Unlike students who pursue careers in a traditional law firm setting, students who work full time in the public interest after graduation do so in a wide variety of settings, the vast majority of which do not have the resources to conduct extensive on the job training. For example, with the exception of an elite few public defender offices, most indigent defense lawyers both within state public defender services and working as appointed counsel have very little opportunity for mentorship, practical exercises, or lessons from experienced attorneys. Legal services organizations likewise are so overworked and underfunded that they turn away a full fifty percent of eligible clients who walk through their door. Our graduates who go to work in these environments are going to need to hit the ground running and are not going to benefit from years of observation, participation in lower stakes portions of cases, and mentorship that students in large law firms will. Moreover, even at comparatively better off national public interest organizations engaged in impact

12 See, e.g., Bill Ong Hing, Legal Services Support Centers and Rebellious Advocacy: A Case Study of the Immigrant Legal Resource Center, Wash. U. J.L. & Pol’y 265, 269 (“[N]orthern California community-based organizations serving immigrants and refugees lacked adequate information, resources, training, and staffing to grapple with the increasingly complex legal and social challenges faced by their clients.”).
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litigation and policy work, new attorneys are given substantial responsibility from the day they walk in the door, often with their own caseload for which they serve as lead counsel.\(^{13}\)

In addition to these traditional public interest practice settings, increasing numbers of our graduates are hanging out a shingle as a solo practitioner or are collaborating to work in small firm settings. These practice settings offer great opportunities to serve the public interest by providing legal services to low and moderate-income individuals who cannot obtain representation through legal services organizations because of limited resources. In fact, seventy-five percent of low-income people who obtain representation do so from private attorneys, not legal services organizations.\(^{14}\) However, only twenty percent of the legal needs of low-income individuals are met.\(^{15}\) The opportunity for small firms and solo practitioners to serve these needs is therefore substantial. In fact, many graduates choose these practice settings precisely because it enables them to serve a community in need.\(^{16}\) These practice settings also provide little opportunity for on the job training and require students to enter the workplace with the basic skills necessary to quickly develop into an effective legal advocate or counselor.

None of this is to say we should not simultaneously strive for better training programs for public interest lawyers in all of the settings in which they practice. Given the reality of the constraints on such training, however, experiential education in law school can be a key component both for ensuring our graduates can handle the work they face in these settings and empowering them to take on these roles to serve the public interest and fulfill their goals in coming to law school. We support their public interest goals and ideals by giving them the tools they need to succeed in a "non-traditional" career path.

II. Operationalizing Social Justice Experiential Education in Doctrinal Classes

The 2012 SALT Teaching Conference was centered on the themes of access to justice and teaching social justice. In this time where law schools almost universally are reframing their identities, priorities, and vision in light of the economic downturn and so-called crisis in legal education,\(^{17}\) many of the conversations about pedagogy focused on the intersection of these themes with experiential education techniques. The presentations demonstrated incredible innovation both in individual courses and curriculum reforms. A sampling of

\(^{13}\) This was my own experience as a new attorney at Public Citizen Litigation Group in Washington D.C. While the was no shortage of mentorship and help available, I was given primary responsibility for my cases from day one.


\(^{15}\) Legal Services Corporation, Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans 1.


\(^{17}\) See generally, BRIAN TAMANAH, FAILING LAW SCHOOLS (2012) (arguing that law schools are in a crisis and must undergo fundamental restructuring).
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these ideas may give a flavor for the potential experiential education has to advance a social justice mission.

In individual doctrinal courses, a single professor has the ability to make amazing strides in experiential education. One panel at the conference explored race and the criminal justice system. Cynthia Jones called for the elimination of compartmentalization of doctrine and experiential education. She shared her strategy of having students involved in criminal law externship programs speak to the class about their experiences, what communities and individuals they see affected by the criminal justice system, and how the doctrinal points in class play out in the courts. 18 Adam Gershowitz invites a prosecutor and a criminal defense lawyer to his criminal law class to simulate picking a jury from the students in his class and discuss the jury selection process. This simulation gives students an opportunity to discuss whether the Batson rule against race-based use of preemptory challenges is effective. 19 John King divides his criminal law class into three groups to act as prosecutor, defense lawyer, and judge, and has each group decide a sentence to impose based on a presentence report. The initial sentence chosen is then compared to the sentence that would be imposed under the Federal Sentencing Guidelines, and the class can explore what assumptions may have led them to impose a sentence starkly different from the outcome under the guidelines. 20 Amna Akbar assigns non-traditional readings, such as governmental reports, non-profit studies, and newspaper articles to engage her students with how the doctrine plays out in the real world and impacts communities differently. 21 In each of these ways, professors have introduced practical skills and real world experiences into their classrooms and simultaneously exposed students to a social justice discourse.

Several panels explored reaching beyond the appellate litigation model to expose students to a wider variety of skills in a social justice context. For example, Mary Bowman and Ada Shen-Jaffe described posing a client problem to their class and dividing the class into groups to find solutions based on different lawyering skills such as impact litigation, legislation, policy solutions, and regulatory solutions. Each group had to construct a proposal based on that model and the class discussed the best approach. 22 Another panel presented the work of ALICE, the American Legislative and Issue Campaign Exchange.

18 Cynthia Jones, American University Washington College of Law, Panel Presentation at the 2012 SALT Teaching Conference, “Race and the Criminal Justice System—Harmonizing Clinical and Doctrinal Teaching to Advance Social Justice: Part One”.
21 Amna Akbar, The Ohio State University Mortiz College of Law, Panel Presentation at the 2012 SALT Teaching Conference, “Race and the Criminal Justice System—Harmonizing Clinical and Doctrinal Teaching to Advance Social Justice: Part One”.
22 Mary Bowman & Ada Shen-Jaffe, Panel Presentation at the 2012 SALT Teaching Conference, “Historical, Contemporary, and Skills Approaches to Social Justice Teaching.”
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which is a resource for progressive state and local legislation created in response to the conservative counterpart, ALEC. Joel Rogers discussed using ALICE as a teaching tool, encouraging students to think about state and local politics and careers in legislative work. David Marcello discussed a clinical model of taking a policy idea and getting it into draft legislation form over the course of a semester, the culmination of which occurs when students present their bill in a mock hearing before Louisiana legislators. The presenters discussed generally the potential for students’ legislative work to feed into the ALICE database of model laws, as well as using those laws in the database as teaching tools for students.

In another effort to expand students’ skill sets beyond the realm of appellate case law, Edward Rubin discussed more ambitious first year curricular reforms undertaken at Vanderbilt under which a first year course on the regulatory state was introduced. Rubin discussed how the basic first year curriculum based almost exclusively on the study of common law is a curriculum that does nothing other than support the status quo and that what is missing from this picture is the contemporary use of law as a tool for societal change. Studying regulatory law and the legislative and administrative implementation of government regulation in the areas of labor, investor protections, consumer protection, civil rights, environmental protection, and other areas, allows students to see the forward looking potential for law to achieve social goals. Moreover, it teaches a skill set most lawyers will need in practice, such as reading statutes and regulations, agency decisions, and primary documents related to the policy objectives of positive law.

These are just examples of the ways in which expanding experiential education in law schools can advance social justice teaching, and why those committed to the social justice mission of law schools should invest in experiential education. As we move forward with innovations, it is critical to contemplate not only what skills we impart on our students, but what values and ethics our skills training models.

26 Edward Rubin, Vanderbilt University Law School, Panel Presentation at the 2012 SALT Teaching Conference, “A Social Justice Lens Turned on Legal Education from the First Year to Practice: Next Steps.”
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III. Conclusion

Legal education is undergoing a self-reflective assessment and a moment of opportunity for pedagogical change. Experiential education is at the heart of calls for reform. As we contemplate how best to integrate experiential learning into the heart of our curriculum, we should heed the calls of the professional rules and standards to create an ethical bar and a group of future lawyers committed to their professional obligation to serve their communities and improve the standard of justice. Using experiential methods to teach not only skills but also expose students to social problems, public law, legal reform, and policy issues goes to making those students not only practice-ready, but profession-ready.