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BACK TO THE FUTURE OF CLINICAL LEGAL EDUCATION

PHYLLIS GOLDFARB*

Abstract: The premier strength of legal education resides in its dual identity as an academic department of a university and a professional school training future practitioners. This dual identity, which gives law school its unique blend of the intellectual and the practical, can support law graduates as the legal profession undergoes a profound restructuring. Traditional classroom education, when focused not on revealing legal doctrine but on cultivating foundational skills of analysis, interpretation, synthesis, and reasoning, will benefit law graduates even in an altered legal practice environment. Clinical education—which engages students in the multi-dimensional enterprise of representing clients to inculcate a wide range of generalizable skills and public service values—will need to assume a larger role in tomorrow’s legal curriculum. Because clinical learning emerges from yet transcends specific, holistic, lawyering contexts, it can enable law graduates to adapt to transformation in the legal profession of the future.

INTRODUCTION

A Zen Buddhist story depicts a rider on a horse that is galloping at a tremendous pace, as if rushing to an important destination. A bystander shouts out, “Where are you going?” The rider replies, “I don’t know. Ask the horse.”¹

In some respects, legal educators are riding that runaway horse. The legal profession is undergoing a seismic shift and it is difficult to determine exactly where it is headed. There is increasing commentary on the sources and contents of this shift, suggesting that it is animated

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* Jacob Burns Foundation Professor of Clinical Law and Associate Dean for Clinical Affairs, The George Washington University Law School. Thanks to George Washington Law School for supporting my research, the clinics, and my research on clinics, endorsing by example the intersection of the intellectual and the practical. Many thanks as well to Loughran Potter for valuable research support. I am especially grateful to the clinical faculty at Boston College Law School for organizing a stimulating symposium on the meaning of the Carnegie Report for clinical education, and to all the participants in the symposium, held at Boston College Law School on October 28, 2011, for their conscientious engagement with these issues.

¹ THICH NHAT HANH, *THE HEART OF THE BUDDHA’S TEACHING* 24 (2d ed. 1999).

by changes in social, economic, and cultural forces such as the internationalization of markets, the incursion of technology, and a series of economic and global cataclysms occurring since the turn of the millennium.² Even if changes in legal practice were in the offing anyway, these forces have intensified the quantity and the quality of change.

If law schools do not want to ride into these changes without a deliberate sense of purpose, if they do not want to go the way of Borders Books—a company closing many of its doors because it was not nimble enough to respond to the technological era³—then it is imperative that they join those who have begun considering what the likely changes in society and the legal profession will mean for the future of legal education.⁴ One of the few things that seem certain is that law schools will not weather societal changes comfortably by remaining the same.⁵ The traditional law school model now appears economically and education-

² See, e.g., THOMAS D. MORGAN, *THE VANISHING AMERICAN LAWYER* 96 (2010) (“[A]lternative information sources threaten the knowledge monopoly on which lawyers have depended”); ABA Standing Comm. on Research About the Future of the Legal Profession, *Working Notes: Deliberations of the Committee on Research About the Future of the Legal Profession on the Current Status of the Legal Profession*, 16 ME. B.J., 236, 236 (2001) (“The practice of law and the administration of justice are at the brink of change of an unprecedented and exponential kind and magnitude. This Age of Technological Revolution, together with the globalization of business and competition, are transforming our profession”); Sarah Kellogg, *The Transformation of Legal Education*, WASH. LAWYER, May 2011, at 19, 19 (“Forces at work in the world are fundamentally transforming the legal profession.”); John Markoff, *Armies of Expensive Lawyers, Replaced by Cheaper Software*, N.Y. TIMES, Mar. 5, 2011, at A1 (noting that organization of legal work is changing due to automation of formerly labor-intensive tasks).

³ Derek Thompson, *Books, Borders and Beyond: How Digital Tech Is Changing Retail*, ATLANTIC (Jul 20, 2011, 1:05 PM), <http://www.theatlantic.com/business/archive/2011/07/books-borders-and-beyond-how-digital-tech-is-changing-retail/242211> (“Borders Inc. is closing, undone by a perfect storm of book digitization, the growth of Amazon, and an inability to turn a brick-and-mortar company into a zeros-and-ones business.”).

⁴ See Karen Sloan, *Action on Law School Reform: Legal Educators Are Organizing to Finally Move Beyond the Talking Stage*, NAT’L L.J. & LEGAL TIMES, Aug. 22, 2001, at 1, 6–7 (describing the formation of a consortium of law schools—with financial support from the University of Denver’s Institute for the Advancement of the American Legal System—in an initiative called Educating Tomorrow’s Lawyers, designed to facilitate the development of new teaching methods for law schools); Michael A. Olivas, *Ask Not for Whom the Law School Bell Tolls*, AALS NEWS, Fall 2011, at 1, 3 (calling law faculty to “action as a community” to address “daunting developments in the world of legal education”).

⁵ Richard A. Matasar, *Does the Current Economic Model of Legal Education Work for Law Schools, Law Firms (or Anyone Else)?*, N.Y. ST. B. ASS’N J., Oct. 2010, at 20, 20, 26 (stating that “some schools will fail; others will adjust,” and that “[t]he years ahead suggest that law schools . . . must change or die”); Olivas, *supra* note 4, at 3 (“[N]ot all law schools can survive the end game of some of these events.”).

ally unsustainable.⁶ The emerging concern is that law schools cost too much and deliver too little of what our brave new world requires,⁷ a scenario that calls on legal educators to rethink the academic enterprise.

As with other kinds of challenges, attitude and approach matter. As vexing as it is to reconceive legal education, it is a viable endeavor, especially as law schools already have significant strengths to draw upon in facing the future, even if they need repackaging and reconceptualizing.⁸ In the reconstructive process ahead, reformers should ask the following questions: How can legal education survive these profound changes? How can it thrive in the world of the future? And how can it strive to contribute to the ability of the world to thrive in the decades to come? In addressing these questions, there is a strong argument that contextual educational methods—most notably clinical education—will

⁶ Matasar, *supra* note 5, at 22 (“The demand for legal education will decline at high-priced schools whose graduates are having difficulty repaying their loans.”); *see also* David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, Jul. 17, 2011, at BU 1 (explaining that some law students now borrow \$150,000 or more before they graduate, but the decline in post-graduation employment prospects makes such financing “a vastly riskier proposition” than it used to be). In a recent *New York Times* article that provoked controversy among law professors, David Segal asserted a need in the current climate for the law school curriculum to teach students more about law practice. *See* David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1 [hereinafter Segal, *What They Don’t Teach*] (“What [law students] did not get, for all that time and money, was much practical training.”); *see also* Editorial, *Legal Education Reform*, N.Y. TIMES, Nov. 26, 2011, at A16 (asserting that the “crisis” in American legal education can be addressed by teaching “useful legal ideas and skills in more effective ways”).

⁷ This perception has generated a phenomenon in the blogosphere in which underemployed law graduates decry legal education as a “scam.” *See* Lucille A. Jewel, *You’re Doing It Wrong: How the Anti-Law School Scam Blogging Movement Can Shape the Legal Profession*, 12 MINN. J. L. SCI. & TECH. 239, 240–42 (2011). Indeed, attorneys David Anziska and Jesse Strauss filed class action lawsuits against two law schools for fraudulent reporting of employment statistics. Karen Sloan, *Another 15 Law Schools Targeted Over Jobs Data*, NAT’L L.J. (Oct. 5, 2011), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202517930210&slreturn=1>. A New York judge recently dismissed the case. *See* Joe Palazzolo, *Judge Tosses Lawsuit Against Law School Over Employment Stats*, WALL ST. J.L. BLOG (Mar. 21, 2012, 3:12 PM), <http://blogs.wsj.com/law/2012/03/21/judge-tosses-lawsuit-against-law-school-over-employment-stats>. One of the attorneys in the action, David Anziska, stated: “We strongly believe that by the end of 2012, almost every school in the nation will be sued” Sloan, *supra* (quoting attorney David Anziska). Recently, the U.S. Senate began gathering information about law student debt and employment as a possible prelude to Senate hearings on legal education. *See* Ashby Jones, *Lawmakers Probe Law Schools’ Data*, WALL ST. J., Nov. 14, 2011, at A5 (reporting that the U.S. Senate is “strongly considering” hearings on legal education, student debt, and law schools’ representations about post-graduation employment prospects).

⁸ *See infra* notes 17–31 and accompanying text.

play a leading role in helping law schools of the future to survive, to thrive, and to strive to contribute to meeting society's needs.

To avoid the irony of examining the role of contextual legal education out of its context, Part I of this Article examines contextual legal education in general, and clinical legal education in particular, within the overall educational mission of the law school. Part I highlights the role that law school's dual identity, as both a professional school and an academic institution, can play in enabling legal education to navigate the uncharted waters in which we are already immersed. This dual identity is the source of our capacity to meet future challenges. At the same time, it is also a potential drawback if we do not modify and reorganize our longstanding approach to these two diverging, but reconcilable, features of our institutional character.

After laying the conceptual groundwork for this project of reconceiving and reconciling, which entails refashioning the law school's dual mission into an integrated curriculum,⁹ Part II proposes expansion of the clinical method of instruction.¹⁰ This Part argues that clinical methods, rooted in particular yet generalizable contexts, are the most promising that law schools have for confronting future challenges and realizing their potential as schools of both academic and professional instruction.¹¹ Elaborating on the nature of clinical methods, Part II connects these methods to a contextual pedagogy of skills and values, as recommended twenty years ago by the *MacCrate Report*, and of the three apprenticeships—cognitive, skills, and identity—as more recently framed and advanced by the *Carnegie Report*.¹²

Understood broadly, these methodological recommendations encompass education in service to others, undergirded by the disciplinary

⁹ See *infra* notes 17–65 and accompanying text.

¹⁰ See *infra* notes 66–137 and accompanying text.

¹¹ In this Article, I intend the meaning of “clinical methods” to be broad and to include a variety of pedagogies for teaching through students' involvement in actual lawyering matters, whether this occurs in in-house clinics, clinical components conjoined to law school courses, or other kinds of models. For a description of the many and varied forms through which students can engage in educational experiences involving real lawyering, see Deborah Maranville, Mary A. Lynch, Susan L. Kay, Phyllis Goldfarb & Russell Engler, *Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517 (2011–2012).

¹² See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 327–38 (1992) [hereinafter MACCRATE REPORT]; WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 27–29 (2007) [hereinafter CARNEGIE REPORT].

knowledge and strategic skills that effective service requires.¹³ The generalizability of these skills will aid future law graduates as they enter a changing profession.¹⁴ The sense of professional purpose that such education provides, the prospect that professional identity can serve a public good greater than oneself, is another feature of this kind of education that can enable law graduates to thrive in their professional lives and to contribute at the same time to the thriving of others.¹⁵

After exploring the nature and value of the clinical method of instruction, Part II addresses the argument that expanding these methods throughout the law school curriculum is economically prohibitive.¹⁶ While the costs of this expansion are great, the costs of non-expansion are arguably greater. Moreover, the reconceptualization project promoted by this Article may also yield some cost savings, freeing new resources to support the curriculum reform that legal education needs now more than ever.

I. THE TWIN NATURE OF LEGAL EDUCATION

A. *Current Strengths for Facing Change*

Law school has long had a dual identity—or, less charitably, a split personality—as both an academic department in a university and a school that trains students for a professional trade.¹⁷ Since the mid-

¹³ CARNEGIE REPORT, *supra* note 12, at 27 (“The common problem of professional education is how to teach the complex ensemble of analytic thinking, skillful practice, and wise judgment on which each profession rests.”).

¹⁴ The notion of “teaching for transfer,” to enable students to apply in a new context what they have learned in a previous context, has considerable currency among educational theorists. See Anthony Marini & Randy Genereux, *The Challenge of Teaching for Transfer*, in *TEACHING FOR TRANSFER: FOSTERING GENERALIZATION IN LEARNING* 1, 1–3 (Anne McKeough et al. eds., 1995).

¹⁵ See CARNEGIE REPORT, *supra* note 12, at 32 (“Professionals . . . do work that has a public purpose.”) (citing Nicholas Lemann, *Liberal Education & Professionals*, LIBERAL EDUC., Spring 2004, at 12, 15); see also WALTER BENNETT, *THE LAWYER’S MYTH: REVIVING IDEALS IN THE LEGAL PROFESSION* 128 (2001) (“Professionalism demands that we face . . . moral responsibility seriously and make deliberate choices that utilize our capacity to serve.”). Poignantly, Bennett asserts that “the search for professionalism is really a search for one’s wholeness as a human being.” BENNETT, *supra*, at ix.

¹⁶ See *infra* notes 129–135 and accompanying text.

¹⁷ Appointed to the Dane Chair at Harvard Law School in 1829, Joseph Story is credited with advancing the idea that law school was both an academic department of a university and a practical training center for lawyers. See MORGAN, *supra* note 2, at 189 (citing ALBERT J. HARNO, *LEGAL EDUCATION IN THE UNITED STATES: A REPORT PREPARED FOR THE SURVEY OF THE LEGAL PROFESSION* 40–50 (1st ed. 1953)). The authors of the Carnegie Report characterize law schools as “hybrid institutions.” CARNEGIE REPORT, *supra* note 12,

nineteenth century, law schools have lived in the creative tension between the intellectual and the practical with varying degrees of success.¹⁸ This duality of identity bodes well for the ability of law schools to face a transforming future. A law school's ability to respond to the challenges of the future rests largely on its ability to inhabit each side of its dual mission effectively and to use each in service of the other.¹⁹

Law school clinics are one of the key sites for advancing the law school's twin mission.²⁰ There are others as well.²¹ This Article contends, consistent with the *Carnegie Report's* recommendations, that when a law school's curriculum is structured in an integrated and coherent fashion,²² to cultivate the law school's intellectual and practical aspects as an academic unit of a university and a professional trade school, students are simultaneously prepared not just for work in the world as we know it today, but for work in the world that has yet to appear on the horizon.

Legal educators frequently assert that their goal is to teach students to think like lawyers.²³ Thinking like a lawyer is, for the most part,

at 4 (describing law schools as hybrid institutions, part of both the legal profession and the modern research university, with Harvard Law School in the nineteenth century as the first to blend the two).

¹⁸ One historian suggests, however, that Harvard Law School was essentially a trade school in the 1830s and that, after Joseph Story's death, Harvard adopted almost exclusively a textbook method of instruction. See MORGAN, *supra* note 2, at 189 n.32.

¹⁹ See CARNEGIE REPORT, *supra* note 12, at 12, 13.

²⁰ My previous effort to examine clinical education as simultaneously intellectual and practical is Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599, 1601 (1991).

²¹ While an examination of questions of curricular sequencing is beyond the scope of this Article, the predominant view among those who have addressed the relationship between the study of legal analysis in traditional legal education and the study of law practice in clinical legal education is that, where both are offered, the former should precede the latter at least to some degree. See, e.g., CARNEGIE REPORT, *supra* note 12, at 13 (“[L]egal analysis is the prior condition for practice because it supplies the essential background assumptions and rules for engaging with the world through the medium of the law. The analysis, critique, and development of legal doctrine . . . constitute the first, essential element of legal education.”). Others have suggested that students should be introduced to clinical legal education “early and often.” See Russell Engler, Professor of Law & Dir. of Clinical Programs, New England Law School, Remarks at the Boston College Journal of Law & Social Justice Symposium: The Way to Carnegie: Practice, Practice, Practice—Pedagogy, Social Justice, and Cost in Experiential Legal Education (Oct. 28, 2011), available at http://www.bc.edu/schools/law/newsevents/events/conferences/carnegie_symp_twlj/carnegie_video.html.

²² The authors of the Carnegie Report view their project as an effort “to imagine a more capacious, yet more integrated, legal education.” See CARNEGIE REPORT, *supra* note 12, at 12.

²³ See KARL N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 101 (1930) (“[The first year] aims, in the old phrase, to get you to ‘thinking like a lawyer.’”). But see ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A*

thinking logically and precisely about issues that arise in legal contexts.²⁴ The primary justification for the traditional first-year curriculum—in particular for its case-dialogue method, which the authors of the *Carnegie Report* label as the first year's signature pedagogy—is that it cultivates these thinking skills by teaching students close, detailed, and critical reading of judicial opinions and various ways of reasoning from these opinions.²⁵ In well-taught classes focused on appellate case excerpts, students can learn how to interpret judicial opinions; how to identify the rhetorical conventions of the genre; how the legal system uses analogical reasoning; how to understand, at least to some degree, the circumstances that gave rise to the opinions; and how to predict, at least to some degree, the circumstances to which these opinions may give rise.²⁶ At the conclusion of this educational process, students should be able to formulate considered responses to questions such as: What are the consequences of these decisions for other kinds of potentially analogous or potentially distinguishable situations? How do various decisions fit together to form a doctrinal pattern? Is the pattern a sensible one or does it need to be improved?

Analysis, synthesis, reasoning, and application to new situations of the legal doctrine that emerges from judicial opinions are fundamental lawyering skills,²⁷ which are at once both intellectual and practical en-

LAWYER” 3–6 (2007) (reporting results of a careful linguistic study of eight Contracts classes in eight law schools, showing that first-year law students undergo a transformation in their overall approach to language—not just in how to think like a lawyer, but in how to think, talk, read, and write like a lawyer—which entails focusing on legal categories and legal contexts rather than on social contexts and human situations).

²⁴ See LLEWELLYN, *supra* note 23, at 101 (“You are to acquire ability to think precisely, to analyze coldly, to work within a body of materials that is given, to see, and see only, and manipulate, the machinery of the law.”); see also CARNEGIE REPORT, *supra* note 12, at 54 (“The ability to think like a lawyer emerges as the ability to translate messy situations into the clarity and precision of legal procedure and doctrine and then to take strategic action through legal argument in order to advance a client’s cause before a court or in negotiation.”). But see Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 117 (2002) (“Thinking ‘like a lawyer’ is . . . critical, pessimistic, and depersonalizing[,] . . . [which is] usually conveyed, and understood, as a new and superior way of thinking, rather than an important but strictly limited legal tool.”).

²⁵ See CARNEGIE REPORT, *supra* note 12, at 47, 50–51.

²⁶ See generally Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612 (1984) (offering a trenchant description of the analytic modes of thinking that can and cannot be taught in the traditional law school classroom).

²⁷ Some of the most thoughtful teaching of these skills occurs in legal writing programs. See, e.g., Daniel L. Barnett, *Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique*, 38 U. TOL. L. REV. 651, 659 (2007); Jane Kent Gionfriddo, *Thinking Like a Lawyer: The Heuristics of Case Synthesis*, 40 TEX. TECH L. REV. 1, 4, 7

deavors.²⁸ Although the legal profession may change in a variety of ways in the not too distant future, it seems likely that thinking logically and precisely about legal issues and how they arise, reasoning from legal authority to subsequent scenarios, and other kinds of related analytic skills are broad and generalizable enough to serve a useful function even in an indefinite future.²⁹

Of course, lawyers need to think about much more.³⁰ Consequently, legal analysis skills are insufficient in and of themselves. Nonetheless, in the right proportion, continued emphasis at an early point in the law school curriculum on the development of analytic lawyering skills of this sort—what the *Carnegie Report* termed the “cognitive apprenticeship” of lawyering—seems a defensible choice for legal education.³¹

(2007); Nelson P. Miller & Bradley J. Charles, *Meeting the Carnegie Report's Challenge to Make Legal Analysis Explicit—Subsidiary Skills to the IRAC Framework*, 59 J. LEGAL EDUC. 192, 193 (2009); Susan E. Provenzano & Lesley S. Kagan, *Teaching in Reverse: A Positive Approach to Analytical Errors in 1L Writing*, 39 LOY. U. CHI. L.J. 123, 124 (2007).

²⁸ While legal analysis is often viewed as the intellectual content of the law school curriculum, it is, of course, an eminently practical skill that acquires meaning and value when employed in a legal practice setting. See Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 578 (1987) (offering an illuminating discussion of the frequent resemblance between what is deemed intellectual or theoretical and what is deemed practical).

²⁹ See CARNEGIE REPORT, *supra* note 12, at 74–75; Kellogg, *supra* note 2, at 19.

³⁰ Professors Todd Rakoff and Martha Minow suggest that we are overstating the degree to which the case-dialogue method of classroom teaching can teach students to think like lawyers. See Todd D. Rakoff & Martha Minow, *A Case For Another Case Method*, 60 VAND. L. REV. 597, 597, 600 (2007). It is misleading, they assert, to equate skills of legal analysis with thinking like lawyers, because:

[L]awyers increasingly need to think in and across more settings, with more degrees of freedom, than appear in the universe established by appellate decisions and the traditional questions arising from them By taking a retrospective view of facts already found and procedures already used by a court, the appellate decision does little to orient students to the reality of unfolding problems with facts still to be enacted, client conduct still to take place, and procedural settings still to be chosen and framed.

Of course, teachers fight against these restraints . . . [b]ut it is hard to do so at a deep level.

Id.

³¹ CARNEGIE REPORT, *supra* note 12, at 28 (describing law school’s cognitive apprenticeship as focusing on the “habits of mind” central to the legal profession, such as “analytical reasoning, argument, and research”).

B. *Limitations and Confusions*

At the same time, if law schools hope to thrive in the years to come, legal educators will have to vow to keep our eyes on the prize and not its shadow. Although the pedagogical goal of the law school's primary mode of classroom education is the development of particular analytical skills, law professors and law students often behave as if legal education's aim is to develop knowledge of substantive law.³² Too often, classes aspiring to analytic skill development morph into classes about the substantive legal framework of a particular subject, with professors expressing concern about whether they have covered enough of the substantive framework during the course of the semester.³³

Highlighting this problem, Professor Michael Dorf wrote a 2005 column in FindLaw's Legal Commentary blog in which he purported to condense into a few hundred words all the teaching of the first-year of law school.³⁴ The title of his column, *The Five-Minute Law School*, is an apparent allusion to a classic comedy routine by Father Guido Sarducci called Five-Minute University.³⁵ Not quite as terse or humorous but in the same vein, Professor Dorf summarizes first-year Criminal Law in a paragraph, observing that "[c]riminal liability typically only attaches to people who commit proscribed acts intentionally, or at least know-

³² One even deeper shadow side of the first year curriculum is law professors' tendencies to teach in a manner implying that moral or affective reasoning cannot ground legal authority, and therefore are inappropriate considerations in legal analysis. See MERTZ, *supra* note 23, at 99. While I am persuaded that this observation accurately captures a predominant mode of legal education, I do not see it as an invariable consequence of the case-dialogue method of first-year classroom teaching. In my view, consciousness of the consequences of the message implicit in the traditional law school classroom can lead to teaching methods that specifically alter the message, validate moral or affective grounds of analysis, and highlight their exclusion from ordinary legal decision-making. See Phyllis Goldfarb, *Pedagogy of the Suppressed: A Class on Race and the Death Penalty*, 31 N.Y.U. REV. L. & SOC. CHANGE 547, 548-50 (2007) (exploring classroom methods for providing greater context in the teaching of appellate case opinions to illuminate how law can be used to legitimize injustices).

³³ See BENNETT, *supra* note 15, at 171 (describing law professors' use of lecture as a backup teaching method in Socratic classrooms "when it is necessary to save time and cover material faster").

³⁴ See Michael C. Dorf, *The Five-Minute Law School: Everything You Learn in Your First Year, More or Less*, FINDLAW LEGAL COMMENT. (Aug. 3, 2005), <http://writ.findlaw.com/dorf/20050803.html>.

³⁵ See *id.* Father Guido Sarducci is a fictional character created by comedian Don Novello. See Moober1, *5 Minute University*, YOUTUBE (Dec. 1, 2009), <http://www.youtube.com/watch?v=qLAd4NzuqYM>. In his stand-up routine, the comic cleric talks of founding a university in which he will offer classes to teach only the information that the average college graduate remembers five years after graduation. *Id.* His Economics class is simply "supply and demand." *Id.* His Theology course is "God is everywhere." *Id.*

ingly.”³⁶ Tort, he explains, “means the breach of a legal duty imposed by law (rather than voluntarily undertaken by contract). That’s about a third of the course.”³⁷

Professor Dorf’s column implicitly suggests that precious pedagogical resources have higher and better uses than conveying substantive knowledge of existing legal principles. We can predict that knowledge of today’s substantive law, which may soon be altered or obsolete, will not be particularly useful in facing an uncertain future.³⁸ Although few legal educators argue that it is a high institutional priority to introduce students to the substantive legal framework of a wide swath of law’s numerous topic areas, looking at the overall curriculum of most law schools might lead one to conclude that this approach has been made a priority.³⁹ On the other hand, if legal reading, reasoning, research, and writing skills—the 4 Rs—are among a law school’s educational priorities, as they should be, then legal education should equip students to discover and synthesize the relevant legal principles in any substantive area, no matter how it evolves.⁴⁰

C. *Re-Imagining the Twin Mission*

This observation leads inexorably to the conclusion that maximizing the future value of law students’ three-year sojourn⁴¹ will require law schools to teach less about what the law is and more about what the

³⁶ Dorf, *supra* note 34.

³⁷ *Id.*

³⁸ See Amsterdam, *supra* note 26, at 618 (“Given the substantive proliferation, complexity, and fast-paced growth of modern law, it has been impossible to teach students the *corpus juris*, in any meaningful sense At best, the law schools could convey to students a very small and rapidly outdated portion of all the substantive law”).

³⁹ See *id.* (critiquing “the law schools’ traditional commitment of the overwhelming bulk of teaching resources to the multiplication of classroom courses in a wide variety of substantive subject matters,” which leads to questions about why law schools “teach case reading and doctrinal analysis to the same students twenty-nine times *sub nom.* torts, contracts, criminal law, admiralty, antitrust, civil rights, corporations, commercial law, conflict of laws, trusts, securities regulation, and so forth[]”).

⁴⁰ See *id.* While published treatises, reference books, practice manuals, and other compilations can help lawyers pick up the substantive legal framework of any area with relative ease, reasoned analysis is a foundational legal skill of lawyering. See BENNETT, *supra* note 15, at 22, 169 (describing reasoned analysis as “perhaps *the* basic skill” of lawyering, while simultaneously asserting that law school should teach much more).

⁴¹ Of course, there is nothing inevitable about the three-year law school curriculum. A handful of law schools have established a curriculum track for earning a J.D. in the span of two years. See Leigh Jones, *Law School in Two Years Flat: New Program May Have Led to Higher Enrollment*, NAT’L L.J. & LEGAL TIMES, May 29, 2006, at 4, 4.

law does and what lawyers do with law.⁴² Students must encounter law not just as a set of doctrinal principles, but also as a set of systemic processes. A curriculum designed to achieve these larger pedagogical aspirations would be organized around foundational professional skills and the contexts for using them, aimed not at having knowledge but at using knowledge.⁴³ Adopting a theme of skills development would give the law school curriculum a cohesive purpose consistent with Albert Einstein's observation that "[e]ducation is what remains after one has forgotten everything he learned in school."⁴⁴

The point is yet more obvious in other fields of study. Music students with aspirations toward the other Carnegie would benefit from understanding the underlying principles of music theory. Studying music teaches music students to think like musicians. But they cannot achieve their aspirations as Carnegie-bound musicians unless they can enact this thinking in performance over and over again.⁴⁵ That is what being a musician means. In the process of performance, a musician's understanding of music's underlying principles likely improves, deepens, and maybe even changes in some respects.

Likewise, the *Carnegie Report* counsels legal educators that law students become lawyers when they enact their understanding and analysis of legal principles in repeated lawyering performances.⁴⁶ That is what being a lawyer means. In the process, a law student's understanding of

⁴² See CARNEGIE REPORT, *supra* note 12, at 29 (observing that law schools undermine the "goal of training competent and committed practitioners" by neglecting the practical skills and professional identity apprenticeships "necessary to orient students to the full dimensions of the legal profession").

⁴³ *Id.* at 26 ("The emphasis is not on acquiring information, as such; rather, it is on learning the concepts and procedures that enable the expert to use knowledge to solve problems.").

⁴⁴ See GORDON W. GREEN, JR., MAKING YOUR EDUCATION WORK FOR YOU: A PROVEN SYSTEM FOR SUCCESS IN SCHOOL AND FOR GETTING THE JOB OF YOUR DREAMS 233 (2010) (quoting Albert Einstein).

⁴⁵ The title of this symposium, *The Way to Carnegie: Practice, Practice, Practice*, plays with the analogy between developing expertise in music and developing expertise in law. The title is a reference to a quip that appeared in print in the 1950s, attributed to violinist Jascha Heifetz. See BENNETT CERF, THE LIFE OF THE PARTY: A NEW COLLECTION OF STORIES AND ANECDOTES 335 (1956) ("Rumor is that a pedestrian on Fifty-seventh Street, Manhattan, stopped Jascha Heifetz and inquired, 'Could you tell me how to get to Carnegie Hall?' 'Yes,' said Heifetz. 'Practice!'")

⁴⁶ See CARNEGIE REPORT, *supra* note 12, at 8, 14. Or stated in the negative: "Learning the law thus loses a key dimension when it fails to provide grounding in an understanding of legal practice from the inside." *Id.* at 8.

law and legal principles is likely to improve, deepen, and change,⁴⁷ along with the ability to provide lawyering assistance in its multiple facets.⁴⁸ Both the Carnegie Hall-bound musician and the *Carnegie Report*-bred lawyer undergo a theoretically grounded developmental process of enacting underlying principles in performance, and only then do the principles acquire meaning, value, and life.⁴⁹

The analogy implicit in the double reference to Carnegie in the title of this Symposium, *The Way to Carnegie: Practice, Practice, Practice*, illuminates the problem of trying to justify educational disregard of professional performance. Performance is a fundamental part of the twin mission of a professional trade school located in a university, obliging legal educators to undertake the challenges of teaching in a serious way a usable craft.⁵⁰ Doing that requires a much sharper curricular focus than has prevailed thus far on the skill and value dimensions of legal education.⁵¹

Of course, none of this is new. Among others, Jerome Frank said as much in the 1930s.⁵² A fellow member of the Legal Realist school of thought, Karl Llewellyn, echoed Frank's critique of the law school method of instruction.⁵³ In 1992, the *MacCrate Report* called for law schools to place a greater emphasis on professional skills and values.⁵⁴

⁴⁷ See *id.* at 13 ("Legal doctrine does not apply itself However, this type of knowledge often comes most fully alive for students when the power of legal analysis is manifest in the experience of legal practice.").

⁴⁸ See *id.* at 14 ("[I]f legal education had as its focus forming legal professionals who are both competent and responsible to clients and the public, learning legal analysis and practical skills would be more fully significant to both the students and faculty.").

⁴⁹ See *id.* The difference is that musicians-in-training practice to prepare to perform and lawyers-in-training practice to prepare to practice. Due to the peculiarities of the English language, the means and the end in the legal profession sound one and the same, such that lawyers never get beyond practicing.

⁵⁰ See CARNEGIE REPORT, *supra* note 12, at 10 (indicating that teaching through law practice "requires deciding, for particular purposes, how and how much conceptual learning and substantive knowledge is important for illuminating and guiding practice").

⁵¹ *Id.* at 28 (asserting that the goal of professional education is "to teach the skills and inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional").

⁵² See Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 916 (1933) (emphasis omitted) ("Law students should be given the opportunity to see legal operations.").

⁵³ LLEWELLYN, *supra* note 23, at 23 ("[Lawyer's work] is impossible unless the lawyer who attempts it knows not only the rules of the law . . . but knows, in addition, the life of the community, the needs and practices of his client—knows, in a word, the *working situation* he is called upon to shape *as well as* the law with reference to which he is called upon to shape it."). For a description of legal realist thinking, see generally JEROME FRANK, *LAW AND THE MODERN MIND* (6th ed. 1949).

⁵⁴ See MACCRATE REPORT, *supra* note 12, at 120.

In 2007, *Best Practices for Legal Education* picked up the call for contextual legal education,⁵⁵ and the *Carnegie Report* translated this observation into apprenticeship parlance, citing the need for law schools to reinvigorate their apprenticeships of skills and professional identity.⁵⁶ There are nuanced differences between these proposals.⁵⁷ For purposes of this discussion, however, these nuances hardly matter, because together these voices sound an unrelenting theme: legal education must devote greater attention to what lawyers do in the world.⁵⁸

The difference that matters now is that a confluence of forces has lent a new urgency to the situation.⁵⁹ The very survival and sustainability of legal education may depend on how we respond this time.⁶⁰ The likely reason that law school teaching methods have remained fairly stable over time and relatively impervious to calls for change is that, for many years and for many people, things were working well enough.⁶¹ Although legal education has been costly and focused on a subset of important skills, jobs were plentiful, debt could be repaid over time, faculty could accomplish a considerable amount of research, and workplaces could invest resources in training law graduates, or at least absorbing and accommodating them while graduates cobbled together

⁵⁵ ROY STUCKEY & OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* 1–5 (2007).

⁵⁶ See *CARNEGIE REPORT*, *supra* note 12, at 32–33 (“[R]ecovering the formative dimension of professional education for the law lies in . . . a searching examination of the importance of experience with all three of the apprenticeships—cognitive, practical, and formative.”).

⁵⁷ Compare *CARNEGIE REPORT*, *supra* note 12, at 32–33, with *STUCKEY ET AL.*, *supra* note 55, at 1–5.

⁵⁸ Jerome Frank said this plainly. See Frank, *supra* note 52, at 913 (arguing that, without giving up the case-dialogue method of teaching or the law school’s “growing and valuable alliance with the . . . social sciences, the law schools should once more get in intimate contact with what clients need and with what courts and lawyers actually do”). The Carnegie Report strikes a similar chord, noting that “[i]t is in these situations of intensive analysis of practice that the fundamental norms and expectations that make up professional expertise are taught.” *CARNEGIE REPORT*, *supra* note 12, at 10; see also *id.* at 33 (“It is difficult to imagine a stronger emphasis on formation that does not also require schools to place more relative weight on preparation for practice, including exploration of the ethical demands of the profession.”).

⁵⁹ See Kellogg, *supra* note 2, at 19; *supra* notes 2–7 and accompanying text.

⁶⁰ See Olivas, *supra* note 4, at 3; Sloan, *supra* note 4, at 6–7; *supra* notes 2–7 and accompanying text.

⁶¹ See Rakoff & Minow, *supra* note 30, at 598 (explaining that the appellate case method of legal education has had staying power because it simultaneously serves multiple goals and constituencies, including the “intellectually respectable” instruction of “large numbers of students at relatively little expense”).

the skills they needed.⁶² Prognosticators are increasingly asserting, however, that this approach to legal education is no longer viable.⁶³ In times of economic restructuring and constraint, as now, the relationship between the workplace and the law school changes,⁶⁴ and the legal profession has deepened its reliance on legal education for preparing students to function effectively in a variety of professional settings.⁶⁵

II. EXPANDING THE CLINICAL PROJECT

How will law schools respond this time to the renewed challenge of the present market? Although the next chapter of the curriculum reform story is not yet written, there is reason to hope that law schools will indeed rise to the occasion and the opportunity.⁶⁶ This hope is rooted in the presence of clinical education in virtually every law school curriculum, and the capacity for legal education to tap this critical resource more fully and effectively.

For a variety of historical reasons, law school clinics began to proliferate more than four decades ago.⁶⁷ Although clinics are not typically well-integrated into the general law school curriculum, most law schools consider them indispensable, even if they are not always accorded all the trappings of academic respect.⁶⁸ Throughout these four

⁶² See Matasar, *supra* note 5, at 21 (reporting that these realities have changed dramatically); Nicholas S. Zeppos, *2007 Symposium on the Future of Legal Education*, 60 VAND. L. REV. 325, 326 (2007) (“[T]he law schools’ monopoly over the training of lawyers will not count for very much unless their students continue to command the handsome salaries that enable them to pay off their loans This depends on the continued economic health of the legal profession [employing] large numbers of entry level practitioners . . .”).

⁶³ See Kellogg, *supra* note 2, at 24 (“[T]uition has become a pressure point that threatens the entire enterprise.”); Matasar, *supra* note 5, at 21 (“[L]aw student educational costs are rising, student debt is rising, the job market is tanking, and there is no end in sight.”); *supra* notes 2–7 and accompanying text.

⁶⁴ Matasar, *supra* note 5, at 24–25 (examining changes in the economic relationship between law schools and legal employers); see also Segal, *What They Don’t Teach*, *supra* note 5 (stating that, “for decades, clients have essentially underwritten the training of new lawyers,” which, due to economic decline, they are no longer willing to do).

⁶⁵ Matasar, *supra* note 5, at 24 (describing the refusal of clients to pay for services of novice lawyers and the resulting pressure that legal employers are exerting on law schools to produce better trained graduates).

⁶⁶ See CARNEGIE REPORT, *supra* note 12, at 132; Kellogg, *supra* note 2, at 23.

⁶⁷ See Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 12–13 (2000) (describing the historical events in the 1960s and ’70s that led to the widespread creation of clinical programs in law schools around the country).

⁶⁸ See Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOW. L.J. 31, 40 (1993) (describing the marginalization of clinics, their faculty, and their students); Zeppos, *supra*

decades, law school clinics have been shouldering the lion's share of the pedagogical burden for developing in law students the sorely needed apprenticeships of skills and professional identity.⁶⁹ One implication of the *Carnegie Report* is the suggestion that law schools need more clinical education and that they need to accord it a more central place in legal education generally.⁷⁰ To grasp the *Carnegie Report's* argument, one must have a grasp on the nature of the method of instruction employed by clinical educators.

A. *Clinical Methods*

The language that I prefer for understanding the conceptual space that clinics occupy comes from Professor Tony Amsterdam: clinics provide an opportunity for law students, at an early phase of professional formation, to focus on “ways of thinking within and about the role of lawyers.”⁷¹ In other words, the subject of clinical education is the habits of thought and behavior that lawyers need to effectively perform their professional responsibilities.⁷² In the interests of curricular coherence, legal educators could do worse than to deploy this description as a basic operating principle for all of legal education.

While there is much more to learn about the pedagogical effectiveness of various methods of legal education,⁷³ there is reason to believe that students will better internalize good lawyers' habits of thought and action when they assume the role of lawyers and receive knowledgeable guidance while they are considering how to approach problems that lawyers encounter.⁷⁴ The goal is for these students to

note 62, at 326 (observing that “experiential modes of education have not been fully integrated into the academic curriculum”).

⁶⁹ See *CARNEGIE REPORT*, *supra* note 8, at 30–31, 120 (describing the need to bolster the skills and professional identity apprenticeships of legal education).

⁷⁰ *Id.* at 33, 120–21 (“It is difficult to imagine a stronger emphasis on [the formative dimension of professional education] that does not also require schools to place more relative weight on preparation for practice . . .”).

⁷¹ Amsterdam, *supra* note 26, at 612.

⁷² See *CARNEGIE REPORT*, *supra* note 12, at 28 (“The essential goal . . . is to teach the skills and inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional.”); see also Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 *CLINICAL L. REV.* 807, 834 (2007) (“[T]hrough this experience of lived responsibility [for outcomes that affect clients,] the student comes to grasp that legal work is meaningful in the ethical, as well as cognitive, sense.”).

⁷³ See Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 *CLINICAL L. REV.* 57, 59–60 (2009) (“[D]iagnoses of [legal education’s] inadequacies far outpace our understanding of potential solutions.”).

⁷⁴ See Amsterdam, *supra* note 26, at 616 (describing the clinical method of having students approach legal problems in the role of attorneys and subjecting their performance to

learn careful and thorough deliberation in service of action on behalf of others who have entrusted them with responsibility for a particular aspect of their well being.⁷⁵

When this enterprise is functioning at its best, the intellectual and the practical are not separable, not distinguishable, but tightly intertwined. The focus is not just on what the students are learning but on how their learning influences their professional judgment and manifests in strategic professional choices. Habits of thought are useful, discernable, and testable only when they are enacted. The emphasis is not on what students are getting but on what they are becoming.⁷⁶

Acting on behalf of others is a principal feature of lawyering and therefore it would seem to be a sensible feature of training to become a lawyer.⁷⁷ Numerous skills and values enable effective action on behalf of another. For example, lawyers must communicate and collaborate effectively with others and establish a sufficient interpersonal connection with clients to come to understand their objectives and their prospects.⁷⁸ Good lawyering also entails awareness of available processes and institutions from which the client might request a ruling or a remedy.⁷⁹ Strategic planning requires thorough consideration of the plausible alternative routes to a client's objectives, the capacity to weigh their relative risks and benefits, to make sound decisions among them, and to

rigorous analytical review with clinical faculty); Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 374, 383 (Council on Legal Educ. for Prof'l Responsibility ed., 1973) (describing the pedagogical value of having law students assume the role of attorneys); Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 186 (1989) (asserting that role assumption is the fundamental methodology of clinical education but challenging its use in certain instances).

⁷⁵ See Maynard J. Toll, *CLEPR from the Viewpoint of Legal Aid and Legal Services*, in CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 17, 25 (Council on Legal Educ. for Prof'l Responsibility ed., 1973).

⁷⁶ See CARNEGIE REPORT, *supra* note 12, at 45 ("The challenge is to align the practices of teaching and learning within the professional school so that they introduce students to the full range of the domain of professional practice while also forming habits of mind and character that support the students' lifelong growth into mature knowledge and skill.").

⁷⁷ See *id.* at 82 (arguing that, because law practice requires "engagement with situations," so too should legal education).

⁷⁸ See, e.g., STEPHEN ELLMANN, ROBERT D. DINERSTEIN, ISABELLE R. GUNNING, KATHERINE R. KRUSE, & ANN C. SHALLECK, *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* 23 (2009) (elaborating some of the issues that emerge from, and the skills important to, self-conscious understanding of lawyers' interactions with clients).

⁷⁹ See Amsterdam, *supra* note 26, at 614.

enable the client to participate effectively in the decision-making process.⁸⁰

While strategic planning and problem-solving on behalf of others are intellectual and practical skills that lawyers need, along with interpersonal skills that contribute to obtaining an understanding of the content for planning and judgment processes, even this somewhat cumbersome description is vastly oversimplified. Through interpersonal dynamics and planned activities, lawyers obtain an abundance of information. To seek it and to use it, lawyers must understand the potential value and relevance to a legal matter of each piece of information that they can imagine or acquire.⁸¹

This description also oversimplifies because a lawyer's development and processing of information consists of a number of related skills: how to analyze the information provided; how to frame potential legal theories within that information; how to deal with inconsistencies, omissions, and uncertainties in the details obtained; how to determine what other facts might be found or created that would be relevant and helpful; how to go about obtaining this information; and how to fold the information gathered into the refinement of a legal theory that will provide an organizing principle for the welter of detail.⁸² Moreover, to be used in a demand letter, a pleading, an adjudicative forum, or some other relief-seeking or help-seeking endeavor, this material must be organized into a narrative form, to persuade decision-makers that what is being sought is a fair resolution of the matter. Creating persuasive narratives involves yet another set of skills.⁸³

Describing the analytic components of any complex activity, including lawyer's work, is no easy feat, nor is teaching lawyer's work to law students through cultivation of the various skills embedded in it. It seems unlikely, however, that the interactive skills of lawyering, such as those involved in information development, strategic planning, and

⁸⁰ Amsterdam describes these sorts of lawyering activities as engaging analytic skills such as “[e]nds-means thinking,” “[h]ypothesis formulation and testing in information acquisition,” and “[d]ecisionmaking in situations where options involve differing and often uncertain degrees of risks and promises of different sorts.” *Id.* (emphasis omitted).

⁸¹ *Id.* (“Hypotheses about what is really relevant are the precondition of effective information gathering.”).

⁸² *Id.* at 615 (describing an important lawyer's task as deciding “which state of facts should be created in view of the relative costs and benefits of each including the comparative risks of the best, worst, and intermediate legal results that might obtain under each state of facts.”).

⁸³ For a text that illuminates the way that narratives operate throughout law and the legal system, see ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW* 110 (2000).

professional decision-making, can be taught in classes where facts are already organized, distilled, and determinate.⁸⁴ To the contrary, teaching lawyering in a deliberate way would seem to require the case method of instruction to move from a two dimensional to a three dimensional enterprise, that it be less about case comprehension and more about case creation, that it be less reductive and more realistic, based not on how cases are characterized for appellate judges but on how they arise from people and practices in the world. A generation ago, clinical educators conceived a holistic method like this as a basis for lawyering education.⁸⁵

B. *Teaching Effective Lawyering*

Although legal educators have learned a great deal about the skills of practicing law by qualitatively analyzing the work of law practice, recently we have started to acquire systematic, empirical knowledge of the large palette of lawyers' professional skills. After spending years engaged in an elaborate and costly research project with a large sample of subjects, Professors Marjorie Shultz and Sheldon Zedeck of University of California, Berkeley have conceptualized and statistically validated twenty-six skills vital to the arts of lawyering.⁸⁶ For a variety of complex political and institutional reasons, their research has not had the

⁸⁴ See Rakoff & Minow, *supra* note 30, at 601 ("Factual statements [in appellate opinions] do little to equip students to navigate overlapping and diverging witness accounts, gaps in forensic material, disputes over significance levels in statistical studies, or the influence of a narrative frame. Appellate opinions hide, rather than display, how 'facts' are constructed and [support] more than one narrative . . .").

⁸⁵ See *supra* notes 67–70 and accompanying text.

⁸⁶ See MARJORIE M. SHULTZ & SHELDON ZEDECK, FINAL REPORT: IDENTIFICATION, DEVELOPMENT, AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING 26–27 (2008), available at <http://www.law.berkeley.edu/files/bclbe/LSACREPORTfinal-12.pdf>. The research identified twenty-six effectiveness factors that Shultz and Zedeck grouped in eight categories: 1) intellectual and cognitive abilities, including analytic reasoning, problem-solving, and situational judgment; 2) research and information gathering abilities, including interviewing skills and fact-finding skills; 3) communication abilities, including listening and advocacy (oral and written) skills; 4) planning and organizational abilities, including organizing and managing one's own and others' work; 5) conflict resolution abilities, including empathy and negotiation skills; 6) entrepreneurship abilities, including advising and counseling clients and networking for business development; 7) collaboration abilities, including relationship-building and mentoring skills; and 8) character, including diligence, passion, and integrity. *Id.* The goal of the research was to develop other tests besides the Law School Admissions test (LSAT) to measure lawyering promise for purposes of informing law school admissions decisions. *Id.* at 15. While the research found these factors to comprise effectiveness in lawyering, they are skills with obvious value beyond lawyering. See *id.* at 25–26. Indeed, the effectiveness factors read like a compilation of skills for effectiveness in life in general.

blockbuster impact that it should have, nor has it been followed by research on the educational methods which will best cultivate the broader array of lawyering effectiveness skills that they identified.⁸⁷

Regardless, the reality that there is more to know about lawyering and legal education does not free us from the imperatives inherent in what we do know about our teaching and our times. Case reading, analysis, interpretation, and application reveal legal principles, but we know that they are also foundational lawyering skills and that emphasizing the skills dimension of these practices in our pedagogy broadens their value.⁸⁸ Accordingly, if legal educators seek to deepen our understanding of the effectiveness of pedagogical methods for inculcating a wide array of lawyering skills, nothing prevents us from adopting Shultz and Zedeck's empirically derived skill sets, intentionally designing a curriculum around developing them in our students, and then assessing whether we have accomplished the skills development that we sought.⁸⁹

For now, clinical education offers the most promising means available for cultivating many of the legal skills that Shultz and Zedeck identified.⁹⁰ Clinic students engage a wide-ranging and complex set of interdependent skills that lawyers use and then analyze and reflect on that engagement.⁹¹ Should law schools enable clinics to teach these skills to all law students?⁹² Should clinics be available in the first year of law school?⁹³ Are there other pedagogical approaches that can be devel-

⁸⁷ See Carol Ness, *Smarts, for Sure—But What Other Qualities Make a Good Lawyer?*, UC BERKELEY NEWS (Aug. 4, 2009), http://www.berkeley.edu/news/media/releases/2009/08/04_lawschool.shtml. The Law School Admissions Council (LSAC), the non-profit that administers the LSAT and markets LSAT preparation materials, provided initial financial support for the project but did not continue to fund the research in its later stages. *Id.* Christopher Edley, Dean of University of California Berkeley School of Law, offered this perspective: “Given the extraordinary quality of this research, the only excuse I can imagine for LSAC refusing to invest more is that they don’t want to undermine the market power of the LSAT. That’s the problem with private-sector funding for truth-telling research.” *Id.*

⁸⁸ See *supra* notes 23–44 and accompanying text.

⁸⁹ See *supra* note 86 and accompanying text.

⁹⁰ See *supra* notes 71–89 and accompanying text.

⁹¹ See STUCKEY ET AL., *supra* note 55, at 166–67.

⁹² See, e.g., Karen Tokarz, Peggy Maisel, Robert F. Seibel, & Antoinette Sedillo Lopez, *Toward Universal Clinical Legal Education: Why the Time Is Ripe for Requiring Clinical Courses for All Law Graduates*, N.Y.L. SCH., 2 (Sept. 21, 2010), http://www.nyls.edu/user_files/1/3/4/15/1009/Mandatory%20Clinical%20Legal%20Education%20draft%20Sept%2021%202010-1.pdf.

⁹³ See *supra* note 21 and accompanying text; see also Michael A. Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year*, 12 CLINICAL L. REV. 441, 442 (2006). Yale Law School already offers clinics to law students in the second semester of their first year. See *Clinics & Experiential Learning*,

oped, within or beyond the classroom, to help the clinics in their educational endeavors?⁹⁴ These are the sorts of questions that we need to be addressing at this pivotal moment in the history of legal education.

C. *Teaching Learning While Teaching Lawyering*

One of the twenty-six skills identified by Professors Shultz and Zedeck is self-development.⁹⁵ It appears on their list of the character traits for effective lawyering.⁹⁶ Translated into an educational goal, this research suggests that we explicitly endeavor to instill the skill of self-development into a student's character.⁹⁷ Shultz and Zedeck's report also discusses the skill of self-monitoring, which is, in part, the ability to learn appropriate actions for new situations.⁹⁸ How would one develop that ability? A good start might entail analyzing past situations to determine which actions worked well and which were less successful, then figuring out why.

The skill of self-development, as conceived by Professors Shultz and Zedeck, links with one of the major educational aims that has emerged from clinical instruction: facilitating students' capacities to learn from their own experience.⁹⁹ To the extent clinics are successful in doing so, graduates of clinics will have greater facility in extracting valuable learning from their post-graduation work. In Tony Amsterdam's words:

[T]hirty or fifty years in practice will provide by far the major part of the student's legal education, whether the law schools like it or not. They can be a purblind, blundering, inefficient, hit-or-miss learning experience in the school of hard knocks. Or they can be a reflective, organized, systematic learning experience—if the law schools undertake as a part of their cur-

YALE L. SCH., <http://www.law.yale.edu/academics/clinicalopportunities.htm> (last visited Mar. 17, 2012).

⁹⁴ See, e.g., Maranville et al., *supra* note 11, at 544–45, 547, 550, 553 (detailing the varieties of forms through which experiential education opportunities involving real legal matters can be offered to students).

⁹⁵ See SHULTZ & ZEDECK, *supra* note 86, at 27.

⁹⁶ *Id.*

⁹⁷ See *id.*

⁹⁸ *Id.* at 21.

⁹⁹ See Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284, 284–85 (1981) (developing a clinical methodology that entails “a process of teaching and learning by focusing on experiences”).

ricula to teach students effective techniques of learning from experience.¹⁰⁰

Clinical teachers attempt to achieve this goal by engaging students in analysis of their experiences.¹⁰¹ Clinic students are asked to make their thinking process visible, so that they can articulate, evaluate, and critique their choices in light of what has occurred.¹⁰² By asking students to engage a set of questions designed to develop insights about what worked well, what did not work well, and why these results transpired, clinical teachers seek to instill in students a conscious method for ongoing reflection on experience that they can carry with them into practice to support their continued self-improvement as practicing attorneys.¹⁰³

D. *Emphasize What Can Generalize*

Self-development and self-monitoring skills are especially useful to students who leave clinics for specialties outside of their clinic's practice areas. While it is ethically necessary for clinic students to serve their clients well,¹⁰⁴ it is at the same time educationally necessary for clinic students to learn generalizable lawyering habits, skills, and values.¹⁰⁵

¹⁰⁰ Amsterdam, *supra* note 26, at 616.

¹⁰¹ *Id.* at 617.

¹⁰² *Id.* at 616–17.

¹⁰³ *Id.* Professor Amsterdam suggests that clinic students learn to learn from experience by subjecting their lawyering performances to questions such as:

What were my objectives in that performance? How did I define them? Might I have defined them differently? Why did I define them as I did? What were the means available to me to achieve my objectives? Did I consider the full range of them? If not, why not? What modes of thinking would have broadened my options? How did I expect other people to behave? How did they behave? Might I have anticipated their behavior—their goals, their needs, their expectations, their reactions to me—more accurately than I did? What clues to these things did I overlook, and why did I overlook them? Through what kind of thinking, analysis, planning, perceptivity, might I see them better next time?

Id. at 617.

¹⁰⁴ See, e.g., Peter A. Joy, *The Ethics of Law School Clinic Students as Student-Lawyers*, 45 S. TEX. L. REV. 815 (2004).

¹⁰⁵ One of the generalizable skills and values that many clinics explicitly or implicitly seek to instill are those of systemic assessment or critique, skills which enable students to measure the legal system that they are actively observing against conceptions of justice and fairness. See Goldfarb, *supra* note 20, at 1659–60; see also Robert J. Condlin, “*Tastes Great, Less Filling*”: *The Law School Clinic and Political Critique*, 35 J. LEGAL EDUC. 45, 48–49 (1986) (arguing that clinics can help students to develop perspectives on the “nature of a fair and just legal system and the role of lawyer practices in operating and improving it”). This Ar-

Among the most valuable of these generalizable skills is a usable understanding of how one thinks and behaves for purposes of learning important lessons from experience that can be applied to future choices and actions.¹⁰⁶ This is a method with long-term benefits for clinic students, no matter what professional opportunities they encounter in the future. Additionally, to return to my opening theme, when the world of law practice undergoes significant changes, these are the skills that may help graduates adapt to change.¹⁰⁷

Some of the commentary on the changing landscape of legal practice has undervalued the role that clinical education can play in preparing students to face the legal profession of the future.¹⁰⁸ This is due in part to the fact that, outside the community of clinical educators, the intention to teach generalizable skills, especially a rigorous method of learning from experience, is not widely understood as an aspect of clinical legal education.¹⁰⁹ Clinic skeptics imply that practicing law in a legal services setting in a university is so much like practicing law as a new attorney in a typical law office that law schools should instead let students graduate early and receive income for their work, rather than taking their tuition dollars while they are enrolled in clinics.¹¹⁰ The implication of this view is that while clinical education may help students learn how to engage in lawyering as it is practiced today, it will not help them in the markedly different world of law practice that has yet to emerge.¹¹¹ Another questionable implication is that the university aspect of university-based legal services adds little of value to lawyers' training.

The challenge that this perspective poses to clinical education counsels clinical professors' intensified focus on our university-based

ticle addresses these skills under Part II.E, Pedagogy of Service, and endeavors to promote the notion that systemic observation and normative assessment operate at a skills level that clinics can cultivate. *See infra* notes 113–128 and accompanying text.

¹⁰⁶ *See* Amsterdam, *supra* note 26, at 616–17; *supra* notes 99–103 and accompanying text.

¹⁰⁷ *See* Amsterdam, *supra* note 26, at 616.

¹⁰⁸ *See* MORGAN, *supra* note 2, at 207–08.

¹⁰⁹ *But see* Larry Kramer, Dean, Stanford Law School, Keynote Address at the Boston College Journal of Law & Social Justice Symposium: The Way to Carnegie: Practice, Practice, Practice—Pedagogy, Social Justice, and Cost in Experiential Legal Education (Oct. 28, 2011), available at http://www.bc.edu/schools/law/newsevents/events/conferences/carnegie_symp_twlj/carnegie_video.html (articulating the importance and value of clinical legal education's attention to the skill of learning to learn).

¹¹⁰ *See* MORGAN, *supra* note 2, at 203–05.

¹¹¹ *Id.* at 208 (critiquing the Carnegie Report's recommendations for more clinical education because “increasing a student's exposure to the old regime is likely to be a profound waste of time and money”).

teaching mission as we provide profoundly needed legal services to individuals and communities. Skills such as communication, collaboration, strategic planning, problem-solving, fact development, decision-making, and systemic evaluation are likely to have some enduring value, even if they are used in somewhat different contexts in the legal profession of the future. Effective use of methods for learning from experience will enable law students who internalize them to grow and change as the legal profession transforms. Like other generalizable skills, reflective learning methods reach beyond the particular experience in which they are developed. Shultz and Zedeck's research supports the idea that these are expansive habits of mind and action that can facilitate the ability of law graduates to discern what they can do to perform proficiently in the transforming legal profession that lies around the bend.¹¹²

E. *Pedagogy of Service*

So far this Article has focused on the transferable skills pedagogy of clinical education, but the clinic's pedagogy of personal and social responsibility is inextricably interconnected with it.¹¹³ Operating at a skills level, this pedagogy also implicates the values dimension of legal education that the *MacCrate Report* addressed¹¹⁴ and the apprenticeship of professional identity and purpose that the *Carnegie Report* identified.¹¹⁵ As they are learning, students in clinical programs are providing

¹¹² SHULTZ & ZEDECK, *supra* note 86, at 24–27; *supra* notes 95–99 and accompanying text.

¹¹³ See, e.g., Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLINICAL L. REV. 505, 529–30 (1995) (describing the theoretical basis and practical implementation of experiential courses designed to promote moral reasoning); see also David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 71–72 (1979) (“[E]ffective use of the clinical method is the only presently available means of consistently facilitating learning of ‘professional responsibility’ in a meaningful, internalized way sufficient to form an affirmative structure capable of guiding behavior”); Condlin, *supra* note 105, at 66–67 (“[I]f one is interested in a moral philosophy of lawyering it is necessary to deal with these questions in the first person.”); David A. J. Richards, *Moral Theory, the Developmental Psychology of Ethical Autonomy and Professionalism*, 31 J. LEGAL EDUC. 359, 374 (1981) (“Professional education, which educates the most powerful class of people in our society, receives these people at a crucial age in which, in response to the circumstances of professional education, they will or will not develop better capacities for ethical reasoning concomitant with their professional identity.”).

¹¹⁴ See MACCRATE REPORT, *supra* note 12, at 138–41 (asserting that law school should instill values through asking students to personally provide competent representation; to strive to promote justice, fairness, morality, and the improvement of the profession; and to seek out professional self-development).

¹¹⁵ See CARNEGIE REPORT, *supra* note 12, at 126, 128–29.

vital legal services to people in need of them. What is the role of law schools and lawyers in responding to the legal needs of the communities around them? The very existence of clinical programs poses this question and proposes this answer: responding to these needs is an obligation of all who participate in the legal profession.¹¹⁶

Skills acquire value in their use. It matters for what purpose skills are used.¹¹⁷ Law is understood as a profession because it is intended to serve a public good.¹¹⁸ Among the obligations that the legal profession places on lawyers is that they work to give meaning to concepts such as fairness, equality under law, and equal access to justice.¹¹⁹ The integrity of the legal system depends on lawyers to do this.¹²⁰ So, the argument runs, professional skills are always serving professional values, we operate within a profession that has articulated particular values, and it is

¹¹⁶ The answer that clinical education proposes is consistent with a widely shared perspective on the obligations of professionalism. For example, Walter Bennett, a retired professor and judge, argues that lawyers, having been “granted by society a virtual monopoly on providing legal services,” must undertake a “serious, profession-wide commitment to represent poor people” and others who cannot afford legal services. BENNETT, *supra* note 15, at 142–43. Bennett strongly critiques the legal profession’s failure to fulfill this obligation, asserting that “[t]he chief ethical failing of the American bar is the fact that only approximately 20 percent of the legal needs of the United States’ 35 million poor people are being met by the legal profession.” *Id.* at 142. To excuse this “failing of the legal profession,” Bennett suggests, is “an astounding repudiation of the most basic professional responsibility.” *Id.* at 143; *see also* Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 *FORDHAM L. REV.* 2415, 2419 (1999) (describing the pro bono obligations of lawyers and law schools that follow from the legal profession’s monopoly on the provision of legal services); Rachel Moran, Op-Ed., *Bring Back Citizen-Lawyers*, *NAT’L L. J. & LEGAL TIMES*, Jan. 19, 2009, at 22, 22 (calling for the revival of an earlier era’s conception of citizen-lawyers who would use their skills to serve the common good).

¹¹⁷ BENNETT, *supra* note 15, at 125 (stating that professional responsibility entails lawyers’ persistent inquiries about whom they are serving, and an intention to serve the greater good); *see also* Talcott Parsons, *Professions*, in 12 *INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES* 536, 536 (David L. Sills ed., 1st ed. 1968) (“[F]ormal technical training . . . must lead to . . . mastery of a generalized cultural tradition . . . [and] some institutional means of making sure that such competence will be put to socially responsible uses.”) (quoted in Sandefur & Selbin, *supra* note 73, at 57 n.19).

¹¹⁸ *See* SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. B. ASS’N, *TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE* 6 (1996) (indicating that lawyers serve clients and the public “as part of a common calling to promote justice and public good”).

¹¹⁹ *See* Bennett, *supra* note 15, at 142 (asserting that the legal profession “must seriously undertake the pursuit of a broader ideal of justice,” including “giving voice to the voiceless in our current system” and providing fair access to the legal system for all, regardless of means).

¹²⁰ *See id.*

incumbent upon law schools to promote these professional values.¹²¹ An extraordinary benefit of clinical education is that it surfaces these values, they can be readily identified and discussed, and they emerge experientially from work that advances these values.¹²²

Public service skills and values have deep roots in the history of clinical education, from its early beginnings as a vehicle for law students to volunteer their time in providing legal services to the poor to its current incarnation as an important part of the law school's academic program.¹²³ It remains noteworthy that law schools in the 1960s and '70s began locating legal services offices in university settings and giving students academic credit for their participation, moving clinical education from an extracurricular to a curricular endeavor.¹²⁴ In part, law schools were responding to student demands for relevance in education in an era of antiwar protest and civil rights activity.¹²⁵ They were also operating from a perspective that universities have obligations to the communities in which they sit.¹²⁶ Presumably, locating a legal ser-

¹²¹ See MACCRATE REPORT, *supra* note 12, at 136 (among other values, law schools should instill in students the value of "striving to promote justice, fairness, and morality").

¹²² See Goldfarb, *supra* note 20, at 1659 ("Learning to articulate one's tacit normative framework is a vital feature of clinical skills training, for it helps young lawyers to avoid falling hostage to the unarticulated norms of the prevailing practices."); see also Condlin, *supra* note 105, at 50–51 ("The ability to judge day-to-day law practice against objective standards of justice and fairness is an essential quality of a good citizen and a good lawyer.").

¹²³ See Barry et al., *supra* note 67, at 5–13 (describing various stages of evolution of clinical programs); Maranville, *supra* note 11, at 521–26 (providing a thumbnail history of the development of clinical legal education).

¹²⁴ See Maranville et al., *supra* note 11, at 521–22; see also Rachel Moran, *Transformation and Training in the Law: Serving Clinical Legal Education's Two Masters*, AALS NEWS, May 2009, at 1, 2, available at <http://www.aals.org/documents/newsletter/april2009newsletter.pdf> ("The [clinical] movement was forged at a time of legal activism, when the courts were seen as a forum ripe for pursuing social change[, and] . . . bore a strong resemblance to the legal aid clinics that had taken root in low-income, disadvantaged communities around the nation.").

¹²⁵ See ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, at 216 (1983); see also PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL LEGAL EDUCATION 3 (1998) ("Clinical legal education was born in the social ferment of the 1960s."); Muneer Ahmad, Clinical Professor of Law, Yale Law School, Remarks at the Boston College Journal of Law & Social Justice Symposium: The Way to Carnegie: Practice, Practice, Practice—Pedagogy, Social Justice, and Cost in Experiential Clinical Legal Education (Oct. 28, 2011), available at http://www.bc.edu/schools/law/newsevents/events/conferences/carnegie_symp_twlj/carnegie_video.html (describing the importance of clinical education's historical roots in the protest movements of the 1960s and '70s).

¹²⁶ This perspective is apparent in the language regarding graduate and post-secondary education in the 1998 amendments to the Higher Education Act of 1965. See 20 U.S.C. §§ 1139–1139h (2006) (repealed 2008); Higher Education Amendments of 1998, Pub. L. No. 105-244, 112 Stat. 1581 (repealed 2008); Higher Education Act of 1965, Pub.

vices office in a university makes it a different animal than a legal services office located in another nonprofit setting or in the private workplace. It is crucial to think carefully about what the juxtaposition of university and legal services settings offers and how to realize the full potential of what it offers.

Teaching lawyering in the context of assisting individuals and communities subordinated by social structures, such as class, race, gender, culture, and education, opens dimensions for learning. These dimensions may include fostering greater awareness of lawyers' participation in a public service profession, developing understanding of what subordination means in people's lives and how it operates on a regular basis, and gaining perspective on the role that law can play both in addressing problems or exacerbating them.¹²⁷ These are intellectually challenging matters that universities invest considerable resources in exploring with students in other contexts.¹²⁸ It follows, then, that a legal

L. No. 89-329, 79 Stat. 1219 (repealed 2008). These amendments included an Urban Community Service section with a described purpose of "provid[ing] incentives to urban academic institutions to enable such institutions to work with private and civic organizations to devise and implement solutions to pressing and severe problems in their communities." § 752(a), 112 Stat. at 1798-99.

¹²⁷ See David Barnhizer, *The University Ideal and Clinical Legal Education*, 35 N.Y.L. SCH. L. REV. 87, 123-24 (1990) (arguing that because law practice implicates questions of social engineering and the pursuit of justice, clinics provide a curricular setting for examining models of justice-in-action, an inquiry germane to law school and university education).

¹²⁸ Subordination and social inequality are subjects that receive cross-disciplinary attention in university settings. For instance, Cornell University funds an interdisciplinary Center for the Study of Inequality to foster "research on social and economic inequalities, as well as the processes by which such inequalities persist." See, e.g., *CSI: Center for the Study of Inequality*, CORNELL UNIV. CENTER STUDY INEQUALITY, <http://inequality.cornell.edu> (last visited Mar. 17, 2012). Many schools offer courses addressing structural issues of subordination, such as Georgetown's "Social Inequality" course. See *Social Inequality*, GEORGETOWN UNIV. SCH. CONTINUING STUDIES, <http://scs.georgetown.edu/courses/2314/social-inequality> (last visited Mar. 17, 2012). The effort to understand issues of subordination and inequality also arises in the service-learning context, where community-related work is used to teach practical skills, improve the welfare of others, and impart to students a sense of social responsibility. Ernest Boyer, a former U.S. Commissioner of Education and President of the Carnegie Foundation for the Advancement of Teaching, was an early proponent of service learning. See ERNEST L. BOYER, *SCHOLARSHIP RECONSIDERED: PRIORITIES OF THE PROFESSORIATE* 77-78 (1990) ("If the nation's colleges and universities cannot help students see beyond themselves and better understand the interdependent nature of our world, each new generation's capacity to live responsibly will be dangerously diminished.") (quoted in Linda F. Smith, *Why Clinical Program Should Embrace Civic Engagement, Service Learning, and Community Based Research*, 10 CLINICAL L. REV. 723 (2004)). Many universities now have formal service-learning programs and centers, which engage students, in part, in understanding and seeking to redress social inequalities. See *GW's Center for Civic Engagement and Public Service*, GEORGE WASH. U., <http://www.gwu.edu/explore/campuslife/studentinvolvement/serviceengagement> (last visited Mar. 17, 2012); *Leadership and Community*

services practice in a university setting is a logical place to invest energy in exploring with students in a grounded way how law and social structures of subordination intersect, the way these issues manifest in people's lives, the legal problems they generate, and the impact that law and the legal profession can have in reinforcing or remediating these issues.

F. Facing Economic Realities

The educational depth of clinical methods and the level of responsibility for others' lives that a student-lawyer shoulders, limit the number of students that any clinical faculty member can teach at any one time.¹²⁹ Consequently, compared to the mass education of the large law school classroom, clinical education is a costly method of instruction.¹³⁰ In times of economic constraint, a call to expand clinical education may be difficult to heed.¹³¹

In conducting a broad economic analysis of law schools' curriculum and purpose, we should remember to take account of another emerging reality: in times of economic constraint, the scale of unmet legal need increases. Training a cadre of lawyers with the capacity to respond to the growing need for legal services among people who are increasingly unable to afford these services is an integral part of the mission of legal education.¹³² Clinically educated law graduates are a promising pool from which to draw the lawyers who will provide these services.¹³³

Service-Learning, U. MD., <http://www.csl.umd.edu> (last visited Mar. 17, 2012); *Service Learning Program*, MARQUETTE U., <http://www.marquette.edu/servicelearning> (last visited Mar. 17, 2012).

¹²⁹ See Amsterdam, *supra* note 26, at 617 ("Because they are highly individualized, clinical teaching methods require very low student-teacher ratios and are therefore relatively expensive.").

¹³⁰ See *id.*

¹³¹ See *id.* at 617–18; Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C. J.L. & Soc. JUST. 309, 328 (2012).

¹³² Legal education must take on this mission because the legal profession as a whole has taken on this mission, at least in its stated norms. See Rhode, *supra* note 116, at 2416–17; see also MODEL RULES OF PROF'L CONDUCT Preamble ¶ 6 (2010) (requiring lawyers as "public citizen[s]" to "devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel"). But see Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work's Empowerment Approach*, 13 CLINICAL L. REV. 459, 463–64 (2006) (decrying the profession's lack of guidance about how lawyers should address social justice issues).

¹³³ After analyzing the findings reported in *After the JD*, Professors Rebecca Sandefur and Jeffrey Selbin concluded that the report's positive correlation between clinical experience in law school and public service employment obtains only for those lawyers who came

Stated differently, the cruel dilemma of the moment is that the same economic conditions that make clinical education increasingly difficult for law schools to afford make clinical education increasingly necessary for law schools to offer. Legal educators will need to be creative in meeting this challenge.¹³⁴ The hard truth is that expanding clinical education may well require that something else contract, to enable law schools to bear the cost of increasing curricular reliance on the clinical methods that law schools need now more than ever.¹³⁵ Despite the challenges of making trade-offs, the situation may also pose a genuine opportunity to rethink the law school curriculum in a manner that makes legal education more adept. Circumstances may be forging the motivational conditions for a curricular overhaul long overdue.

G. *Too Little and Too Much*

A strength of clinical education lies in its multiple important goals and its contextual methods. There, too, lies a weakness of clinical education. With so much to accomplish by such labor-intensive means, it is tempting and sometimes necessary for clinical teachers to abandon some portion of what ideally we strive to achieve.

As classroom teachers sometimes limit their sights to substantive law coverage rather than the far more transferable skills of reasoning about cases, clinical teachers can limit their sights to the already complex and indispensable task of guiding student-attorneys to represent their immediate clients well. Faced with time constraints and over-

to law school with a commitment to public service. Sandefur & Selbin, *supra* note 73, at 102. In other words, clinical experience may work to sustain or intensify the public service commitments of those who enter law school with the intention of pursuing them, even if the evidence cannot show that clinics generate such commitments in students who enter law school for other reasons. *See id.*; *see also* LAW SCH. SURVEY OF STUDENT ENGAGEMENT, STUDENT ENGAGEMENT IN LAW SCHOOL: IN CLASS AND BEYOND 8 (2010), *available at* http://lssse.iub.edu/pdf/2010/2010_LSSSE_Annual_Survey_Results.pdf (reporting that law students with experience in clinic or pro bono work were more likely than other students to indicate that law school adequately prepared them to understand future clients' needs, to work cooperatively in a team, to understand professional values, and to serve the public good through the profession).

¹³⁴ *See* Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & Soc. JUST. 247, 274 (2012); Maranville et al., *supra* note 7, at 547, 550, 553 (describing the many structural permutations available for providing experiential legal education and for supporting the creative design of programs that involve students in learning through work on real legal matters).

¹³⁵ *See* Amsterdam, *supra* note 26, at 618 (suggesting that law schools can fund greater use of clinical teaching methods by reducing the "vast mass of large-class doctrinal teaching" and that this endeavor is "well worth the difficulties"); Barry, *supra* note 134, at 274; Joy, *supra* note 131, at 328.

commitment, clinical professors sometimes choose to forego explicit attention to other educational opportunities inherent in the same practice scenarios. In doing so, they may miss the chance to cultivate a broad array of generalizable skills; to support systemic evaluation of law, society, and legal institutions; to inculcate professional identity and the values of public service; and to instill methods of learning through critical review of experience.¹³⁶

The uncertainties of the future give us yet more reason to try, wherever possible, not to cut these corners. These are the very corners that will empower our students to adapt to what lies ahead in the world they will enter. It is worth mention that sometimes accomplishing these aspirational goals does not require making more time, but rather making alternate use of some of the time we already spend, particularly in the post-mortem phase of analysis of our three-dimensional cases. In other instances, clinical teachers may need to commandeer more resources to accomplish broader goals, but even a small infusion of new resources may greatly multiply the lasting effect of what we do.

Obviously, the time and resource questions are intimately interrelated, and both are formidable problems. Because the expansion proposed in this Article is not an additive model but a reconfiguration, legal educators can choose to do less of some things as a means to doing more of others.¹³⁷ A potential redeployment of resources toward clinical education may increase the availability of clinically trained faculty and enable clinical educators to teach more effectively within the time constraints that they have perennially faced.

Yet regardless of the prospects for resource redeployment, given the broad ambition for clinical methods, time and resource shortfalls will remain a persistent challenge. In the process of striving to address that challenge and to accomplish the significant goals that we have framed, we will be recommitting to our professional identity and purpose as legal educators. This recommitment will support our teaching as intentionally as we can in accord with our highest aspirations.

¹³⁶ See *supra* notes 86–122 and accompanying text.

¹³⁷ See *supra* note 135 and accompanying text; see also Maranville et al., *supra* note 11, at 538 (“Because no law school has unlimited resources, a decision to fund one project is often a decision to close the door on another.”).

CONCLUSION

Woody Allen famously said, “I’m not afraid to die. I just don’t want to be there when it happens.”¹³⁸ Likewise, some legal educators may say, “I’m not afraid of change. I just don’t want to be there when it happens.” Regardless of the choices that legal educators make, change is happening around us and will continue to happen. The horse has taken off and our choices are to watch where it goes or to seize the reins. This Article recommends the latter, so that we can exert as positive an influence as we can on the future of clinical legal education that starts now.

¹³⁸ See LAMA SURYA DAS, *AWAKENING TO THE SACRED: CREATING A SPIRITUAL LIFE FROM SCRATCH* 74 (1999) (quoting Woody Allen).