

5-2017

# The Economic Justice Imperative for Transactional Law Clinics

Lynnise E. Pantin

*Boston College Law School*, [lynnise.pantin@bc.edu](mailto:lynnise.pantin@bc.edu)

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/lspf>

 Part of the [Business Organizations Law Commons](#), [Civil Rights and Discrimination Commons](#), [Legal Education Commons](#), and the [Social Welfare Law Commons](#)

---

## Recommended Citation

Lynnise E. Pantin. "The Economic Justice Imperative for Transactional Law Clinics." *Villanova Law Review* 62, no.1 (2017): 175-211.

This Article is brought to you for free and open access by Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law School Faculty Papers by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact [nick.szydowski@bc.edu](mailto:nick.szydowski@bc.edu).

THE ECONOMIC JUSTICE IMPERATIVE FOR  
TRANSACTIONAL LAW CLINICS

LYNNISE E. PHILLIPS PANTIN\*

“A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”<sup>1</sup>

I. INTRODUCTION

The economic, political, and social volatility of the sixties and seventies, out of which clinical legal education was born, has certain mythical qualities for most law students, and perhaps some law professors. America still bears the scars of the economic policies of those previous eras, such as redlining,<sup>2</sup> blockbusting,<sup>3</sup> poverty and urban decay. While the realities of the era may seem out of reach for many of our students, those policies

---

\* Clinical Associate Professor of Law and founding Director, Entrepreneurship & Innovation Clinic, Boston College Law School. This Article was presented at the 2014 Clinical Law Review Writers’ Workshop at New York University School of Law, the 2015 New England Clinical Conference at Harvard Law School and the 2016 10th Annual Lutie A. Lytle Black Women Law Faculty Writing Workshop at the University of Iowa College of Law. I thank the facilitators and participants for their insightful comments and suggestions. Many thanks also go to my research assistants, Adam Goodman, Myra Mahmoud, Antonio Perotto, and Pekhna Singh for their assistance and contribution to the writing of this Article.

1. MODEL RULES OF PROF’L CONDUCT pmbl. (AM. BAR. ASS’N 2016).

2. See Camila Domonoske, *Interactive Redlining Map Zooms in on America’s History of Discrimination*, NPR (Oct. 19, 2016), <http://www.npr.org/sections/thetwo-way/2016/10/19/498536077/interactive-redlining-map-zooms-in-on-americas-history-of-discrimination> [<https://perma.cc/EX9P-DZSN>] (“In the aftermath of the Great Depression, the U.S. government set out to evaluate the riskiness of mortgages—and left behind a stunning portrait of the racism and discrimination that has shaped American housing policy . . . . In the late 1930s, the HOLC ‘graded’ neighborhoods into four categories, based in large part on their racial makeup. Neighborhoods with minority occupants were marked in red—hence ‘redlining’—and considered high-risk for mortgage lenders.”).

3. See Dmitri Mehlhorn, *A Requiem for Blockbusting: Law, Economics, and Race-Based Real Estate Speculation*, 67 *FORDHAM L. REV.* 1145, 1151–52 (1998). As Mehlhorn notes:

In the classic example, speculators would target a white neighborhood on the border of an expanding black [neighborhood]. White residents feared that the expanding [neighborhoods] would jeopardize their property values or their safety, and the speculators encouraged this fear. The speculators would make representations that minorities were moving in, or deluge the residents with offers of cash for homes. By inciting panic and offering to pay cash, the speculators procured homes at a discount which they immediately resold to [black buyers] at a substantial markup.

arising out of that era have contributed to the wealth gap in this country, which has worsened over the last twenty years.<sup>4</sup> Now more than ever, society needs social justice lawyers, not just practice-ready lawyers, and, in particular, not just litigators. Despite this need, transactional clinical pedagogy prioritizes the practice-readiness of students.<sup>5</sup> While an important concern, prioritizing student practice-readiness seems misguided at best and fails our students at worst.<sup>6</sup> The scarcity of legal services and the

---

*Id.* (footnotes omitted). See also Brent Gaspaire, *Blockbusting*, BLACKPAST.ORG, <http://www.blackpast.org/aah/blockbusting> [<https://perma.cc/V5KZ-6X48>] (last visited Jan. 19, 2017).

Blockbusting refers to the practice of introducing African American homeowners into previously all white neighborhoods in order to spark rapid white flight and housing price decline. Real estate speculators have historically used this technique to profit from prejudice-driven market instability. After intentionally placing an African American homeowner onto a block, speculators solicited white owners with tales of impending depreciation. Fearful residents often sold their homes to these speculators well below market value. As white residents began to flee in great numbers, other white residents sold their homes at even lower prices, thus further depressing housing prices in a self-fulfilling prophecy.

*Id.*

4. See Laura Sullivan et al., *The Racial Wealth Gap: Why Policy Matters*, DEMOS 1 (2015), [http://www.demos.org/sites/default/files/publications/RacialWealthGap\\_2.pdf](http://www.demos.org/sites/default/files/publications/RacialWealthGap_2.pdf) [<https://perma.cc/F9ZM-Z4BL>] (“The U.S. racial wealth gap is substantial and is driven by public policy decisions.”).

5. See Robert R. Statchen, *Clinicians, Practitioners, and Scribes: Drafting Client Work Product in a Small Business Clinic*, 56 N.Y.L. SCH. L. REV. 233, 234–35 (2012) (discussing educational opportunities afforded by “small business clinics,” such as “interviewing, researching, drafting, counseling, problem-solving, and other areas of expertise” (citing scholarship emphasizing importance of practical legal training)).

6. See, e.g., AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION (1992), [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2013\\_legal\\_education\\_and\\_professional\\_development\\_maccrate\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report.authcheckdam.pdf) [<https://perma.cc/6X7G-4GEL>] [hereinafter MACCRATE REPORT]; AM. BAR ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 16–17 (2015) [hereinafter STANDARDS AND RULES]. The idea that law schools should prepare students for the practice of law while learning in law school has been recognized for years. The MacCrate Report, which was released in 1992, specifically called for increased teaching of skills in order to prepare students for practice. See MACCRATE REPORT, *supra*, at 234 (discussing joint responsibility of bar and law schools to teach “skills instruction” and professional development). More recently, the American Bar Association (ABA) has emphasized practice-readiness. The 2014–2015 ABA standards governing experiential learning stressed the importance of practical training, and Standard 303(a)(3) mandated that law schools provide students with at least six credit hours of experiential education. See STANDARDS AND RULES, *supra*, at 16. In response to the recent call for practice-readiness, experiential learning opportunities have increased, and on-going conversations within academia and the Bar have occurred regarding the ABA’s call for law students to be practice-ready upon graduation. See, e.g., MACCRATE REPORT, *supra*, at 319–23 (discussing ABA and ALI’s proposal for nonprofit dedicated to professional development of law students and young attorneys).

question of whether for-profit clients, such as entrepreneurs and micro-entrepreneurs, are truly underserved populations further exacerbate the tension and effects of omitting social and economic justice teaching in favor of practice-readiness.<sup>7</sup> Because there are many people without access to legal services or involved in the criminal justice system without an attorney, it is hard to justify resources being allocated to support the entrepreneurial ecosystem.<sup>8</sup>

In law school, legal clinics are often “home” to public interest-oriented students.<sup>9</sup> Students are drawn to particular clinics because of the clinics’ social justice missions.<sup>10</sup> Many of these clinics are litigation oriented.<sup>11</sup> The traditional foundational pedagogy of clinical legal education gives students a vehicle for recognizing and combating injustice.<sup>12</sup> In the sixties, when clinical legal education was born, Reverend Martin Luther King, Jr. called for revolutionary social justice.<sup>13</sup> Thus, “[p]ioneers of

7. See Patience A. Crowder, *Designing a Transactional Law Clinic for Life-Long Learning*, 19 LEWIS & CLARK L. REV. 413, 417 (2015) (describing how transactional clinics expanded “the concept[ ] of . . . ‘underserved clients’ . . . to include . . . small business owners” and thus raised question of “whether transactional clinics are truly grounded in public service [and] social justice goals”).

8. See Paul R. Tremblay, *Transactional Legal Services, Triage, and Access to Justice*, 48 WASH. U. J.L. & POL’Y 11, 12 (2015) (observing that transactional legal services are “viewed as less important” than “litigation legal services” when “evaluated using a triage-driven social justice metric”).

9. See Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333, 370 (2009) (noting that “neighborhood-based clinics” are “particular[ly] suitab[le] . . . for public interest-minded students”).

10. See *id.* (stating “[n]eighborhood-based clinics advance social justice for poor communities” and noting that “public interest-minded students” are attracted to these clinics).

11. See Praveen Kosuri, *“Impact” in 3D—Maximizing Impact Through Transactional Clinics*, 18 CLINICAL L. REV. 1, 2 (2011) (“When clinicians talk about ‘impact’ clinical legal education it is almost exclusively in terms of litigation.” (citing scholarship examining clinical legal education)).

12. See Brodie, *supra* note 9, at 335 (observing that “the notion of the social justice mission of clinical education was joined by . . . the goal of teaching students not only lawyering skills, but also lawyering ‘values’ and the need for engagement with *pro bono* and other access to justice endeavors” (citing HARRY SANDICK & JOHN A. FREEDMAN, *A HISTORY OF THE HARVARD LEGAL AID BUREAU 12–14* (1996))).

13. See William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL’Y 101, 103 (2006). In *Time to Break Silence*, Martin Luther King, Jr. stated:

I am convinced that if we are to get on the right side of the world revolution, we as a nation must undergo a radical revolution of values. We must rapidly begin the shift from a ‘thing-oriented’ society to a ‘person-oriented’ society. When machines and computers, profit motives and property rights are considered more important than people, the giant triplets of racism, materialism, and militarism are incapable of being conquered.

*Id.* at 101 (quoting Martin Luther King, Jr., *Time to Break Silence*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 231, 240–41 (James M. Washington ed., Harper Collins 1991) (1986)).

clinical [legal] education identified the pursuit of justice as a primary educational value in [a] clinical experience for law students.”<sup>14</sup>

While litigators are heralded for setting the standard when it comes to “lawyering,” many scholars have written or commented on the necessity of including a greater breadth of transactional practice in the law school curriculum.<sup>15</sup> In response to demands from students and calls for teaching more transactional skills, transactional law clinics, in the form of entrepreneurship or business law clinics,<sup>16</sup> have recently sprung up in law schools around the country.<sup>17</sup> Yet, contrary to the ways public interest litigation is viewed, the diverse spectrum of non-adversarial law practice—the transactional aspect of lawyering whereby clients are represented outside of the courtroom—is rarely thought of as a mechanism for bringing about justice.<sup>18</sup> In the minds of many in legal education, the traditional image of a lawyer is that of a litigator: a heroic advocate engendering social change and legal reform in the court system.<sup>19</sup> Social justice lawyering and the legacy of those who have practiced it over decades often inspire many law students to attend law school. Students may draw inspiration from Nelson Mandela, Thurgood Marshall, Mahatma Gandhi, William Kunstler, Abraham Lincoln, Dovey Johnson Roundtree, Ruth Bader Ginsburg, Charles Ogletree, Arthur Kinoy, Clarence Darrow, Paul M. Smith, Margaret Burnham, Debo Adegbile, Pauli Murray, David Boies, or Bryan Stevenson. These lawyers are activists, dedicated to improving the law and bringing about justice.<sup>20</sup> Historically, at least in popular culture, bringing about justice has been understood to mean using the law for social change in an

---

14. Alina Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1, 13 (2015) (quoting Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 331 (2001)) (internal quotation marks omitted).

15. See, e.g., Karl S. Okamoto, *Teaching Transactional Lawyering*, 1 DREXEL L. REV. 69, 73 (2009) (stating “that law schools and the academy at large are giving [transactional lawyering] greater attention”); David V. Snyder, *Closing the Deal in Contracts. Introducing Transactional Skills in the First Year*, 34 U. TOL. L. REV. 689, 689 (2003) (stating “half[ ]” or “more than half[ ]” of law students “are going to be transactional lawyers”); Statchen, *supra* note 5, at 234 (discussing “[t]he recent and rapid growth of transactional clinics”).

16. In this Article, I distinguish between transactional business law clinics as compared to community economic development clinics. See *infra* Part III.

17. See Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 WASH. U. J.L. & POL’Y 85, 86 (2014) (“[T]ransactional legal clinics have grown exponentially and have manifested in increasingly diverse transactional specialties . . . .”); Statchen, *supra* note 5, at 234 (noting “recent and rapid growth of transactional clinics, and more specifically small business clinics” (footnote omitted)).

18. See Kosuri, *supra* note 11, at 2 (noting public interest lawyers are often thought of as litigators).

19. See Crowder, *supra* note 7, at 418 n.26 (recalling student that asked, “Are transactional lawyers real lawyers?” (internal quotation marks omitted)).

20. See Ann Southworth, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice*, 1996 WIS. L. REV. 1121, 1121 (stating that “[t]he archetypal activist lawyer is more warrior than engineer; she argues, in courts or administrative proceedings or in negotiations backed by threats of litiga-

adversarial context: the courtroom.<sup>21</sup> In fact, transactional practice sometimes is not thought of as “important” lawyering.<sup>22</sup> Business and corporate practice, in which a lawyer represents a corporate institution, are not often considered lawyering in the public service.<sup>23</sup> This question of the public interest, indeed the social justice nature of transactional practice, has recently been debated because notions of social justice are inherently diverse and varied.<sup>24</sup> Yet, transactional practice is often ignored when one thinks of the type of lawyer who is practicing on the frontlines of social justice issues.<sup>25</sup>

There is an entire body of scholarship regarding the missions and pedagogical objectives of transactional law clinics that practice in the field of community economic development.<sup>26</sup> In community economic development (CED) clinics, students have often taken up the cause of justice, but in business law clinics, the clinic directors may not have an overt social mission.<sup>27</sup> This Article specifically addresses the transactional law clinic, as opposed to the CED clinic, that practices in the fields of business law and entrepreneurship law. The thesis of this Article is that students can learn corporate skills in preparation for practice while accomplishing the social justice goals aligned with the missions of clinical education.<sup>28</sup> As

---

tion, that the law favors her client’s position with respect to existing claims and disputes”).

21. See Kosuri, *supra* note 11, at 4 (“The general public does not often think of transactional work as affecting social justice in the same matter as litigation. Transactional work rarely occurs in high profile venues that capture the attention and imagination of the general public as litigation does . . .”).

22. See Tremblay, *supra* note 8, at 12 (commenting “that transactional legal services [ ] tend to be viewed as less important matters when compared to litigation legal services”).

23. See Kosuri, *supra* note 11, at 4 (noting “transactional lawyers often represent businesses and institutions that typically connote something different than public interest or public good” and “words like ‘profit’ and ‘business’” are often referred to negatively “[i]n conversations about poverty and social justice”).

24. See Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 331, 339 (2012) (writing that clinical “pedagogy can be applied in any clinical experience” pertaining to “social issues” and experience should thus be promoted “to more students regardless of whether it explicitly includes traditional notions of social justice”).

25. See Kosuri, *supra* note 11, at 4; Southworth, *supra* note 20, at 1121.

26. See, e.g., Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399 (2002); Michael R. Diamond, *Community Economic Development and the Paradox of Power*, 1 IRISH REV. COMMUNITY ECON. DEV. L. & POL’Y I (2012); Laurie Hauber, *Promoting Economic Justice Through Transactional Community-Centered Lawyering*, 27 ST. LOUIS U. PUB. L. REV. 3 (2007); Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195 (1997).

27. See Kosuri, *supra* note 24, at 341 (using “venture finance clinic” as example of clinical offering seemingly “devoid of traditional social justice issues”).

28. See *id.* at 342–43 (noting that many clinical programs have social justice missions); see also Kosuri, *supra* note 11, at 8 (describing how “early transactional clinics were . . . CED clinics [that] expanded . . . to focus on representing . . .

more law schools develop transactional clinics, specifically business and entrepreneurship clinics, contextualizing clinical pedagogy and scholarship becomes increasingly important.<sup>29</sup>

While business law clinics have become quite popular, transactional pedagogy and transactional clinical pedagogy have not developed a clear methodology for incorporating economic and social justice into their teaching. In fact, in the transactional clinical space, there is substantial debate about whether social justice should be a primary or secondary goal or even a goal at all in the design of such a clinic, further raising questions about the justice-oriented lawyering happening in a business law practice.<sup>30</sup> That perception is often cultivated not by outsiders to the practice, but by the transactional lawyers and, by default, the clinicians themselves. As an increasing number of transactional business clinics develop,<sup>31</sup> transactional business clinicians are less likely to embrace transactional lawyering as a vehicle for achieving social justice, particularly in the context of a law school legal clinic.<sup>32</sup>

This Article challenges the dichotomy between practice-readiness and client service in a business law clinic and expands transactional clinical pedagogy by reinforcing the public interest and social justice functions served by such clinics. Further, this Article highlights the socio-historic contexts of transactional lawyering and argues that transactional lawyering and, specifically, the uniqueness of a transactional clinic, can offer a public service model to students.

The primary contribution of this Article is a perspective on transactional clinical pedagogy that is inclusive of the civil rights movement and the fight for economic rights. While prior scholarship fails to consider

---

groups bringing community and economic development resources to neighborhoods” (footnote omitted) (citing Jones, *supra* note 26, at 204 n.40)); Stephen F. Reed, *Clinical Legal Education at a Generational Crossroads: A Self-Focused Self-Study of Self*, 17 CLINICAL L. REV. 243, 248 (2011) (noting that “since the 1970s, new opportunities have arisen for . . . law school legal clinics helping entrepreneurs and small businesses” (citing Eric J. Gouvin, *Teaching Business Lawyering in Law Schools: A Candid Assessment of the Challenges and Some Suggestions for Moving Ahead*, 78 U. MO. KANSAS CITY L. REV. 429, 444–45 (2009); Thomas H. Morsch, *Discovering Transactional Pro Bono*, 72 U. MO. KANSAS CITY L. REV. 423, 430 (2003))).

29. See Kosuri, *supra* note 24, at 336–38 (discussing importance of integrating “lawyering” skills into legal education and providing clinical opportunities for students of varied “ideolog[ies], background[s], or interest[s]”).

30. See Crowder, *supra* note 7, at 415–17 (asking “whether transactional law clinics are truly grounded in public service”); see also Julie D. Lawton, *The Imposition of Social Justice Morality in Legal Education*, 4 IND. J.L. & SOC. EQUALITY 57 (2016) (discussing role of social justice in legal instruction).

31. See Susan R. Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 WASH. U. J.L. & POL’Y 249, 259 (2004) (noting that “majority of transactional legal clinics” arose in late 1970s and early 1980s following “critique of the traditional model of public interest lawyering that focused on litigation”).

32. See Kosuri, *supra* note 24, at 341 (describing lack of emphasis on “traditional social justice issues” in certain transactional clinics).

historical, economic, and race-related factors and government policies that create poverty in urban areas, this Article maintains that the concept of what it means to be “practice-ready” in the context of law school training of corporate lawyers needs to be revised. The current delivery of social and economic justice education is insufficient to meet the increasing demands of the world’s economic, political, and social climate. It is insufficient only to teach students techniques for contract drafting, for example, without some understanding of economic justice. Teaching solely for the technique of practice is a disservice to students. In fact, teaching solely to prepare students for practice has always been insufficient, which may be why economic and social inequality persists today. The law school curriculum has not taught these principles to students, and educators have not looked at the law in this way. Instructors need to train future corporate attorneys in both social justice and practice for two reasons: such attorneys should do pro bono work in addition to their paid corporate work,<sup>33</sup> and transactional attorneys are necessary to complete impactful transactional work after graduation from law school.<sup>34</sup>

This Article is divided into four parts. Part II of this Article uses narrative theory and includes a description of the author’s personal and professional trajectory to becoming a transactional lawyer and ultimately a clinician teaching transactional lawyering in a public interest context. Part III discusses the development of clinical legal education and describes the transition from a social justice orientation to a practice-ready orientation. Part IV discusses the practice-ready mandate and transactional clinical pedagogy. Part V of this Article contextualizes economic empowerment. It describes the potential for creating impact by empowering entrepreneurs, addresses the reasons why entrepreneurship is so important to economic justice, considers why economic justice should be part of the agenda of a transactional law clinic, and describes the work of a transactional lawyer through case studies of actual clients in a business law clinic.

## II. THE PAST IS PROLOGUE

In 1941, my grandmother was determined to change her circumstances. Leaving a life of poverty and subsistence living, which resulted from generations of sharecropping and the legacy of slavery, she and my then ten-year-old father journeyed to Chicago, Illinois, from Clarksdale, Mississippi. They joined what became six million other African-Americans who migrated from the rural south to the urban cities of the northern

---

33. See Edward W. De Barbieri & Anneliese Gryta, *Transactional Opportunities for Pro Bono Attorneys in CED*, AM. BAR. ASS’N 1, <http://apps.americanbar.org/buslaw/committees/CL746000pub/newsletter/200912/barbieri.pdf> [<https://perma.cc/A9V5-Y882>] (last visited Jan. 20, 2017).

34. See JANELLE ORSI, PRACTICING LAW IN THE SHARING ECONOMY: HELPING PEOPLE BUILD COOPERATIVES, SOCIAL ENTERPRISE, AND LOCAL SUSTAINABLE ECONOMIES 25–35 (2012).

United States from 1940 to 1970.<sup>35</sup> A product of a family that was the embodiment of the Great Migration, I was born in the late 1970s and grew up on the South Side of Chicago.<sup>36</sup> It was not lost on me that my father's life chances, and therefore my own, were greatly improved by my grandmother's bold and brave decision to make the journey to the unknown north. Growing up in this family in Chicago set up an interesting political context. In elementary school, Harold Washington became the first African-American mayor of Chicago, Reverend Jesse Jackson, Sr. was well known, and my family participated in programs stemming from Operation PUSH (People United to Serve Humanity), "a multi-racial, multi-issue, progressive, international membership organization fighting for social change."<sup>37</sup> The South Side of Chicago is the home of great public art murals often depicting racial injustices and political movements, especially anti-Apartheid positions. I have clear memories of looking at some of the mural art as I attempted to derive meaning from the artwork at a young age.

The most prominent feature of my upbringing was the city of Chicago itself. Because of government-sanctioned restrictive covenants, redlining, and racially discriminatory zoning laws, Chicago was, and still is, one of the most racially-segregated cities in the United States.<sup>38</sup> The racial segregation that existed—and that still exists—created clear and visible economic disparities based on geography that translated to race.<sup>39</sup> This context created a level of consciousness in my younger self about race and civil rights. The Civil Rights Movement was never far from my thoughts. In fact, I traveled to and from high school every day on a road named after Emmett Till, a fourteen-year-old boy from Chicago who was brutally murdered by

---

35. My story contextualizes the thesis of this Article. The narrative around my upbringing within Chicago and the legacy of the Great Migration and Civil Rights Movement shows the trajectory of a young person into an economic justice-minded corporate lawyer.

36. For a discussion of the Great Migration, see ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA'S GREAT MIGRATION* (2010).

37. See *Organization and Mission*, RAINBOW PUSH COALITION, [http://rainbowpush.org/pages/the\\_organization](http://rainbowpush.org/pages/the_organization) [<https://perma.cc/W7S7-JMQT>] (last visited Jan. 20, 2017).

38. See Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/> [<https://perma.cc/9U6S-FRRL>] (discussing redlining in Chicago and noting "[b]lack were herded into the sights of unscrupulous lenders who took them for money and for sport"); see also *Chicago Most Segregated City in America, Despite Significant Improvements in Last Decade*, HUFFINGTON POST (Jan. 31, 2012, 12:49 PM), [http://www.huffingtonpost.com/2012/01/31/chicago-most-segregated-c\\_n\\_1244098.html](http://www.huffingtonpost.com/2012/01/31/chicago-most-segregated-c_n_1244098.html) [<https://perma.cc/XY8N-SPWQ>].

39. See Matthew Bloch et. al., *Mapping Segregation*, N.Y. TIMES (July 8, 2015), <http://www.nytimes.com/interactive/2015/07/08/us/census-race-map.html> [<https://perma.cc/7GUB-FJ2U>].

white men for allegedly whistling at a white woman during a summer vacation spent visiting family in Mississippi.<sup>40</sup>

I share these aspects of my personal story to make the point that, growing up, I had a profound understanding of racism, inequality, and civil rights.

It was this upbringing that colored my thinking with respect to my career choice. It was of no surprise that I wanted to go to law school to become a public interest attorney. Specifically, I wanted to become a civil rights lawyer, following in the footsteps of my personal heroes: Paul Robeson, Thurgood Marshall, and Elaine Brown. In fact, one of the reasons I chose Columbia Law School was because Paul Robeson attended. I dreamed of working for the NAACP Legal Defense Fund and further envisaged clerking for Justice John Paul Stevens.<sup>41</sup> However, dreams about life after law school were quickly met with reality. Evidence and Civil Procedure dissuaded me from the life of a litigator. Additionally, if coursework were not enough, I quickly learned through my experience in Columbia Law School's litigation-oriented moot court competition that my intellectual interests and preferred ways of interacting in legal discourse were at odds with a litigator's adversarial, procedure-focused mindset. While trying to master the Federal Rules of Evidence, I also enrolled in federal taxation, corporations, and later securities regulation, primarily because I knew little or nothing about these subject areas. These classes drew me in. "Dealwork" seemed enticing and a good fit with my problem-solving personality.

Thinking that litigation was not for me, I mistakenly assumed that there was no place for me in public interest law. After graduation, I began practicing corporate law at a large law firm. However, the drive to pursue public interest work led me to seek pro bono work at the firm. In fact, I took on an asylum matter pro bono during my second year in practice. As a result, I had a terrifying and migraine-inducing, but successful, experience representing a brave and courageous woman who suffered persecution in her native country of Togo in her claim for asylum. If my forays through litigation-based coursework and moot court were not convincing enough, the practical experience of representing a real, sometimes detained, individual in front of a judge in an actual courtroom confirmed that litigation was not for me. Yet, I still had no idea that public interest transactional lawyering existed.

---

40. See generally DAVIS W. HOUCK & MATTHEW A. GRINDY, EMMETT TILL AND THE MISSISSIPPI PRESS (2008).

41. Justice John Paul Stevens is a proud South Chicago native and has been known as a liberal justice. See Jeffrey Rosen, *The Dissenter, Justice John Paul Stevens*, N.Y. TIMES (Sept. 23, 2007), <http://www.nytimes.com/2007/09/23/magazine/23stevens-t.html> [<https://perma.cc/P6XA-WES6>].

Later, I learned about a micro-enterprise project at a nonprofit organization, Volunteers of Legal Service.<sup>42</sup> The organization uses volunteer lawyers' expertise in business law to promote economic development in New York City by helping low-income micro-entrepreneurs and small businesses to surmount legal obstacles. I was thrilled. I could perform a much-needed public service that did not require me to go to court. I thought perhaps I was able to achieve some of the public interest goals that I mistakenly believed I had to toss aside because I did not want to pursue litigation. While I was at my law firm, I managed to maintain an extensive pro bono practice, representing nonprofit organizations, start-up entities, and artists.

Beyond the realization that I could use the skills I had developed in corporate practice to serve public interest goals, I also discovered that in the legal academy, there exists the possibility to teach transactional lawyering. I stayed in BigLaw practice because I was fairly happy and surrounded by smart and fun clients and colleagues. However, several years into my private practice life, I knew I wanted more professional fulfillment than what the BigLaw life offered. The potential for a career change was marked by my turning thirty years old. I indulged in the literature classified as the "Thirty-Year-Old's Guide to Life,"<sup>43</sup> all of which suggested that one must mark the auspicious occasion by engaging in self-reflection and navel-gazing or pay for the services of a career coach to determine if one is where one is supposed to be at the ripe old age of thirty.

In the long process of determining what came next, I identified the job that I had before law school that made me the happiest: teaching as a substitute teacher in an elementary school during the time that I took between college and law school. I decided to try out law school teaching to see if it brought me the same amount of pleasure and adrenaline as walking into a fifth grade classroom in the Washington, D.C., public school system. I took a position as an adjunct legal writing instructor and soon became hooked on teaching. The following year, I left corporate practice completely and transitioned full-time into the legal academy. At the time, I joined the faculty of the Legal Practice Program at New York Law School. Legal Practice is a required, eight credit, and graded year-long course, integrating elements of legal writing, research, client interviewing, counseling, negotiation, informal advocacy, and formal advocacy. The course is based on an experiential model in which students work in-role as lawyers to devise strategies and solutions to particular client problems. In my second year, a serendipitous moment occurred when I was given the opportunity to co-create, launch, and direct New York Law School's Transactional Law Clinic. I knew nothing about transactional clinics when I started teaching at New York Law School. I had participated

---

42. See VOLUNTEERS OF LEGAL SERV., <http://volsprobono.org> [https://perma.cc/EEA5-8HPR] (last visited Jan. 20, 2017).

43. I have no idea if this an actual book, but there were several books of this sort on the shelves of Barnes & Noble when I approached my thirtieth birthday.

in a lawyering clinic during law school, but I never thought a clinic would exist where I could put my corporate background to use in the service of public interest. Nevertheless, here I am, a self-described former corporate attorney from BigLaw teaching in a transactional clinic.

Through the process of designing and teaching in the new transactional clinic at New York Law School, I saw first-hand that a large cadre of law students were starving for transactional skill instruction and that those skills are best taught through experiential learning. The Transactional Law Clinic that I taught gave students the opportunity to provide transactional legal services to small businesses and non-profit organizations in the New York area. I recently joined the clinical faculty at Boston College to continue transactional clinical teaching and to develop an entrepreneurship and innovation clinic to add a second transactional clinic to the law school's curriculum. Through teaching in a transactional legal clinic, I am able to use my corporate background to engage in public interest transactional work, which I am thrilled about. I pursued clinical teaching to further that passion and pass it on to my students. I wanted to cultivate an understanding among my students that law is a mechanism for pursuing and achieving social justice and that transactional law is and can be an important tool in furthering social justice, as well.

Once I started teaching a business law clinic, I sought out other clinicians teaching in transactional clinics, seeking guidance about clinic design, client development, and clinical pedagogy within the transactional clinic context. During this search, I was confronted with the problematic belief that a social justice mission is not aligned with business law teaching, or vice versa. As I developed the clinic and thought about servicing for-profit clients—albeit low income, but for-profit nonetheless—I learned of the tension between the traditional social justice mission of clinical legal education and the proliferation of transactional clinics.<sup>44</sup>

As I developed my clinic and immersed myself in transactional pedagogy and skills, I began to see that the dichotomy between practical skills training and the practice of public interest is flawed. This dichotomy overlooks the value of transactional lawyers and the potential for transactional lawyering to contribute to social change. The problem is that this phenomenon of prioritizing practice-readiness could lead to less social justice-minded transactional lawyers.

There may be law students like me, who, believing themselves to be better suited for non-adversarial practice, gravitate to corporate law and transactional practice, despite being oriented toward public interest or social justice. The act of engaging in revolutionary social justice is not for everyone. Not all of those who share such values and belief in questioning

---

44. See Crowder, *supra* note 7, at 417 (stating that “[g]iven the strong historic ties between the origins of clinical legal education and social justice movements . . . there is a perennial question [of] . . . whether transactional law clinics are truly grounded in public service, social justice goals, and service delivery”).

the fairness and justice of laws and policies are comfortable in the courtroom or the media spotlight. Although dissatisfied with the status quo, they may prefer an alternative to what is commonly known as “social justice lawyering.” These students, unfamiliar with transactional public interest practice may focus on business and corporate law.

A personal story is so important to hear because students who would not understand the social justice movement of the 1960s and are coming up as lawyers in the innovation economy would not necessarily comprehend the important connections between economic empowerment, civil rights, and the transactional lawyering. Having described my thesis through the use of narrative theory,<sup>45</sup> Part III discusses the development of clinical legal education and describes the trajectory from a social justice orientation to a practice ready orientation.

### III. CLINICAL LEGAL EDUCATION FROM SOCIAL JUSTICE ORIENTATION TO PRACTICE READY ORIENTATION

#### A. *Social and Economic Justice Defined*

For purposes of my work and this Article, social justice is “[j]ustice in terms of the distribution of wealth, opportunities, and privileges within a society.”<sup>46</sup> Economic justice is a component of social justice.<sup>47</sup> Economic justice is a “set of moral principles for building economic institutions, the ultimate goal of which is to create an opportunity for each person to create a sufficient material foundation upon which to have a dignified, productive, and creative life beyond economics.”<sup>48</sup> Further, it is a moral principle of fairness and belief in the equal allocation of benefits among participants in an economy.

#### B. *The Birth of Transactional Law Clinics*

Modern clinical legal education stems from pedagogy that developed during the late sixties and early seventies as a response to the Johnson

---

45. “Narrative theory starts from the assumption that narrative is a basic human strategy for coming to terms with fundamental elements of our experience, such as time, process, and change, and it proceeds from this assumption to study the distinctive nature of narrative and its various structures, elements, uses, and effects.” See PROJECT NARRATIVE, *What Is Narrative Theory?*, OHIO STATE UNIV., <https://projectnarrative.osu.edu/about/what-is-narrative-theory> [https://perma.cc/M4DQ-K8BD] (last visited Jan. 20, 2017).

46. See *Social Justice*, OXFORD LIVING DICTIONARIES, [https://en.oxforddictionaries.com/definition/social\\_justice](https://en.oxforddictionaries.com/definition/social_justice) [https://perma.cc/G558-U6TJ] (last visited Jan. 21, 2017).

47. See Artika R. Tyner, *Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering*, 10 HASTINGS RACE & POVERTY L.J. 219, 223 (2013) (describing how “[l]awyers with a passion for social justice have expanded the traditional definition of ‘lawyering’ by exploring the role of lawyers in social justice initiatives in pursuit of equal justice under the law”).

48. *Economic Justice*, INVESTOPEDIA, <http://www.investopedia.com/terms/e/economic-justice.asp> [https://perma.cc/2EK5-4MHZ] (last visited Jan. 21, 2017).

Administration's "War on Poverty."<sup>49</sup> "Pioneers of clinical [legal] education 'identified the pursuit of justice as a primary educational value in clinical experience for law students.'"<sup>50</sup> Further, many of the "Great Clinicians"<sup>51</sup> have backgrounds in public interest, legal services, or as public defenders.<sup>52</sup> These clinicians have made a career of "represent[ing] poor people in welfare hearings, public housing evictions, consumer matters, or other arenas of inequality."<sup>53</sup> "[They] represented disempowered groups who were striving for economic and social justice. The idea of law reform was real, whether through 'individual' cases or through 'law reform.' It was an era where the possibilities of generating tangible social change through law seemed real."<sup>54</sup> Arguably, clinical teachers or clinicians teach "not only . . . legal knowledge and lawyering skills[,] but also the value of pursuing social justice."<sup>55</sup> However, until recently most law school clinical programs offer in-house clinics that focus on litigation, such as civil litigation.<sup>56</sup>

The first transactional clinics were focused on affordable housing and CED.<sup>57</sup> CED is an approach to working with government and private sectors to build strong communities, industries, and markets.<sup>58</sup> A CED clinic facilitates the work of government actors, community groups, and private sectors to further the development of specific communities, particularly low-income communities.<sup>59</sup> CED and community lawyering organically arose out of the drive for social justice in clinical legal education.<sup>60</sup>

---

49. See Kosuri, *supra* note 11, at 12 (describing how transactional clinics "trace [their] roots to Lyndon Johnson's 'War on Poverty'" through "[t]he establishment of the Economic Opportunity Act of 1964").

50. See Ball, *supra* note 14, at 13 (quoting Wizner, *supra* note 14, at 331).

51. See Reed, *supra* note 28, at 243 (describing "Great Clinicians" as "the finest law school legal clinicians" who are "unshakably committed to public service").

52. See Minna J. Kotkin & Dean Hill Rivkin, *Clinical Legal Education at a Generational Crossroads: Reflections from Two Boomers*, 17 CLINICAL L. REV. 197, 199 (2010) (stating that most clinicians "who formed the vanguard of clinical education in the 1970s and 1980s came to law school teaching from public interest/legal services/public defender backgrounds").

53. See *id.*

54. *Id.*

55. See Wizner, *supra* note 14, at 327.

56. See Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOWARD L.J. 31, 38 (1995) ("[M]ost clinics have been organized around student participation in litigation activities.").

57. See Jones, *supra* note 26, at 195.

58. See Cummings, *supra* note 26, at 401-02.

59. See, e.g., Robin S. Golden & Sameera Fazili, *Raising the Roof: Addressing the Mortgage Foreclosure Crisis Through a Collaboration Between City Government and a Law School*, 2 ALB. GOV'T L. REV. 29 (2009).

60. See Crowder, *supra* note 7, at 416 (describing how by "working with community groups and nonprofit organizations in underserved communities, the work of these clinics [is] directly linked to the social justice origins of clinical legal education").

In the 1990s, the modern “business law clinic,” which is markedly different than the traditional CED clinic, began to emerge.<sup>61</sup> In more recent times, transactional clinics have become even more common in the law school curriculum.<sup>62</sup> A business law clinic fulfills the mission of training students to be transactional lawyers by providing real-world experiences with actual clients.<sup>63</sup> These clinics tend to “emphasize entrepreneurship, innovation, and creativity,” as well as small business, and some clinics may move away from traditional clinical pedagogy.<sup>64</sup> The breadth of different types of transactional clinics is astounding. Transactional law clinics across the country focus on intellectual property,<sup>65</sup> social enterprise,<sup>66</sup> arts,<sup>67</sup> food law,<sup>68</sup> international transactions,<sup>69</sup> complex corporate deals,<sup>70</sup> and nonprofit organizations.<sup>71</sup>

Over time, the creation and momentum of transactional law clinics produced some measure of tension within the world of clinical legal education.<sup>72</sup> Clinical legal education has historically focused primarily on social justice or impacting the lives of clients served by the clinic.<sup>73</sup> When the newer clinical model—the business law clinic—began to proliferate law schools, it was driven primarily by the need to serve student demand

---

61. See Statchen, *supra* note 5, at 241 (stating “number of transactional clinics, and particularly [small business clinics], began to increase in the late 1990s”).

62. See Jones & Lainez, *supra* note 17, at 86 (noting that “transactional legal clinics have grown exponentially”).

63. See *id.* at 125 (noting legal clinics can provide “real world supervised practice” (internal quotation marks omitted)).

64. See *id.* at 87.

65. See *id.* at 90; see also Jennifer S. Fan, *Institutionalizing the USPTO Law School Clinic Certification Program for Transactional Law Clinics*, 19 LEWIS & CLARK L. REV. 327 (2015).

66. See Jones & Lainez, *supra* note 17, at 105.

67. See *id.* at 99.

68. See Emily M. Broad Leib, *Re-Tooling Law and Legal Education for Food System Reform: Food Law and Policy in Practice*, 38 SEATTLE U. L. REV. 1175, 1179–81 (2015) (discussing fields of food law and policy).

69. See Crowder, *supra* note 7, at 417.

70. For example, the University of Michigan Law School Transactional Lab represents corporate clients, often in-house counsel of large corporations. The Lab works with law students to prepare them to be junior attorneys with deal skills, sense, and knowledge. See, e.g., *The Transactional Lab & Clinic*, U. MICH. L. SCH., <http://www.law.umich.edu/clinical/transactionallab/Pages/default.aspx> [<https://perma.cc/JX9V-3XGA>] (last visited Jan. 21, 2017).

71. See generally Jones & Lainez, *supra* note 17, at 98–100 (describing clients and practices in transactional legal clinics).

72. See Statchen, *supra* note 5, at 242 (noting that “[d]espite [the] increase in transactional clinics, appropriate teaching materials have not been formally developed”).

73. See Frances M. Nicastro, Comment, *Southern Christian: A Call for Extra-Constitutional Remedies, Legal Clinical Education, and Social Justice*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 333, 348 (2001) (stating that “[a]t its birth, clinical legal education focused predominantly on legal instruction, but also contained a social justice component”).

and answer the call for law schools to prepare students to be practice-ready.<sup>74</sup>

When contemplating their law schools' clinical programs, clinic directors, law school deans, faculty, and other stakeholders face the tension between adhering to the historic foundational theories and practices of clinical legal pedagogy and focusing on the practice-readiness of their graduates.<sup>75</sup> The question of whether or not public interest is or should be the goal of a transactional clinic, or whether it is just a byproduct, is a perennial debate.<sup>76</sup>

On the one hand, CED and community lawyering grew naturally and organically as strategies to combat poverty; on the other hand, the rise of the transactional clinic may be attributed to the demand for more practice-ready students.<sup>77</sup> Professor Kosuri distinguishes between CED lawyers and transactional lawyers. He writes, "CED lawyers are advocates. . . . Though CED lawyers often represent clients in transactions, they are not transactional lawyers—CED lawyers' focus is on communities and community desires. Transactional lawyers, on the other hand, are focused on deals."<sup>78</sup> Further, he writes, "[w]here 'mission' permeates the world of CED lawyers, business objectives and goals direct transactional lawyers. In fact, one could argue that 'mission' gets in the way of getting the deal done. For transactional lawyers, every deal can get done, it is just a matter of market equilibrium. CED lawyers focus on social equilibrium instead."<sup>79</sup> Some CED lawyers view their role as supporting community-organization groups,<sup>80</sup> while transactional lawyers typically represent individual business clients. The differences between the two types of lawyers that Professor Kosuri outlines translate into the differences between the two primary types of law school clinics.

---

74. See Dina Schlossberg, *An Examination of Transactional Law Clinics and Interdisciplinary Education*, 11 WASH. U. J.L. & POL'Y 195, 202 (2003) (describing how small business clinicians "strive to introduce students to the realities of the practice of law before they leave the security of law school").

75. Here, imagine the oft-touted first-year associate who is painted as consistently unprepared for practice. Transactional clinics have arguably been created to fill this gap. See generally ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP, 16–26, 188–97 (2007) [hereinafter BEST PRACTICES REPORT] (mentioning transactional law clinics as programs that address divide between case study method of legal education and practice of law).

76. See Kosuri, *supra* note 24, at 340–41 (advocating that clinical faculty diversify or allow for diversity of mission that may not include social justice in clinical legal education).

77. See Kosuri, *supra* note 11, at 8 (writing that advent of transactional law clinics followed different trajectory from litigation and other types of clinical programs).

78. *Id.*

79. *Id.*

80. See E. Tammy Kim, *Lawyers as Resource Allies in Workers' Struggles for Social Change*, 13 N.Y.C. L. REV. 213–14 (2010).

As the business law clinic developed,<sup>81</sup> pedagogical goals diverged from the traditional goals and foundations of clinical legal education because business law clinics did not arise out of the canons of thought that drove traditional clinical legal education. To focus on economic justice is thought to engage in community lawyering and CED. Focusing on building professional skills and professional development is therefore thought of as the province of the business law clinic. Professor Kosuri writes, “[M]ost transactional clinics were founded at the beginning of this century to meet law student demands for [more] transactional skills training that reflected the reality of being a corporate lawyer.”<sup>82</sup>

Thus, the mandate for economic justice and social justice<sup>83</sup> as part of the clinic experience is noticeably absent in the business law clinic.<sup>84</sup> In fact, “[t]he clinicians who run them are usually far removed from the social justice imperative that inspired modern clinical legal education in the 1970s and 1980s.”<sup>85</sup> One of the main pedagogical goals of the business law clinic is the preparation of students for corporate and transactional practice.<sup>86</sup> Having discussed the development of clinical legal education and the trajectory from a social justice orientation to a practice-ready orientation, Part IV discusses the practice-ready mandate and transactional clinical pedagogy.

#### IV. THE PRACTICE-READY MANDATE AND TRANSACTIONAL CLINICAL PEDAGOGY

##### A. *The Practice-Ready Mandate*

Conventional wisdom is that legal education is in the midst of a radical, seismic shift that requires changes to the way the law school curriculum works.<sup>87</sup> Calls for providing practical training through clinical

---

81. See Statchen, *supra* note 5, at 247 (describing how “[n]on-directive and non-intervention theories have historically dominated clinical pedagogy,” making integration of transactional practice into clinical world seem difficult (citing Brodie, *supra* note 9, at 352 n.78)).

82. See Kosuri, *supra* note 11, at 9 (citing Northwestern’s Small Business Opportunity Center and New England Law School’s Small Business Clinic as examples).

83. Dr. Martin Luther King Jr. often said, “[t]he cause of economic justice is the cause of social justice.” See INTELLECTUAL PROPERTY, ENTREPRENEURSHIP AND SOCIAL JUSTICE: FROM SWORDS TO PLOUGHSHARES 213 (Lateef Mtima ed., 2015).

84. See Praveen Kosuri, *Clinical Legal Education at a Generational Crossroads: X Marks the Spot*, 17 CLINICAL L. REV. 205, 220 (2010) (noting that “[t]ransactional clinics are . . . less tethered to the past because [they] did not emerge from the fervor of the civil rights era”).

85. Kosuri, *supra* note 11, at 9.

86. See Crowder, *supra* note 7, at 416 (noting that “transactional law clinics are still considered [the] . . . newer kid on the clinical block with developing clinical pedagogies”).

87. See C. Michael Bryce & Robert F. Seibel, *Trends in Clinical Legal Education*, 70 N.Y. ST. B.J. 26, 26–27 (1998).

education have a long history.<sup>88</sup> Recently though, many from within and outside the academy have argued that law school curricula have focused entirely too much on litigation “to the exclusion of . . . transactional practice.”<sup>89</sup> In addition, students have increasingly demanded additional transactional opportunities within the law school curriculum. Further, the 1992 ABA MacCrate Report<sup>90</sup> and the Carnegie Report<sup>91</sup> addressed the need for law schools to broaden instruction to reflect the realities of law practice, which would require law schools to create more transactional learning opportunities for students.<sup>92</sup>

Given the Carnegie and MacCrate Reports and the calls from the private bar, there is a serious demand for law school graduates that are practice-ready.<sup>93</sup> In addition to demanding practice-ready skills, some have

---

88. Twenty years ago, the ABA issued an in-depth report that described a vision of the lawyering skills and professional values that new lawyers should seek to acquire and called on law schools to help develop them. See *generally* MACCRATE REPORT, *supra* note 6. The Carnegie Foundation issued a more recent yet similar report for the Advancement of Teaching under its Preparation for the Professions Series. See *generally* WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT]. A project of the Clinical Legal Education Association came to similar conclusions and provided a comprehensive set of recommendations for improving legal education. See *generally* BEST PRACTICES REPORT, *supra* note 75; Erwin Chemerinsky, *Why Not Clinical Education?*, 16 CLINICAL L. REV. 35, 37 (2009) (citing previous calls for legal education reform dating back to 1921 and observing that “[t]he Carnegie Commission report, for all the attention that it has received, is just the latest in a series that makes the same basic points about the need for more training in practical skills and more experiential learning”); John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, 25 OHIO ST. J. ON DISP. RESOL. 247, 256–59 (2010) (discussing curricular reform proposals dating back to 1914 that called for enhancing teaching of lawyering skills); Amy Deen Westbrook, *Learning from Wall Street: A Venture in Transactional Legal Education*, 27 QUINNIPIAC L. REV. 227, 244–62 (2009) (discussing calls for reform dating back to time of Christopher Columbus Langdell, dean of Harvard Law School, in late 1880s and founder of now-traditional Socratic, appellate case-method approach of legal education).

89. See Crowder, *supra* note 7, at 415 (noting that “[l]aw school curricula have historically failed to accurately reflect the realities of law practice by basing instruction almost entirely on litigation practice to the exclusion of business law and transactional practice” (citing Rachel S. Arnow-Richman, *Employment as Transaction*, 39 SETON HALL L. REV. 447, 447–50 (2009))).

90. See MACCRATE REPORT, *supra* note 6, at 268–69.

91. See CARNEGIE REPORT, *supra* note 88, at 12–13.

92. See Daniel Friedson, *An Access to Justice Case Study: A Practitioner’s Call for Leadership in Implementing Homeownership Legal Clinics and Equity Protection Partnerships*, 15 ROGER WILLIAMS U. L. REV. 499, 500 (2010) (stating that “the ‘Carnegie Report[ ]’ emphasizes that law students need to be instructed in the professional arts such as courtroom or transactional negotiations” (citing CARNEGIE REPORT, *supra* note 88)); Mark Heytman, *Regulating Law Schools: Should the ABA Accreditation Process Be Used to Speed the Implementation of the MacCrate Report Recommendations?*, 1 CLINICAL L. REV. 389, 389 (1994) (stating that “[t]he MacCrate Report . . . recommends that additional attention be paid . . . during law school . . . to insur[e] that lawyers are provided with the skills and values necessary to practice law”).

93. See Bryce & Seibel, *supra* note 87, at 26–27.

called specifically for teaching of transactional practice skills, arguing that law schools have overemphasized litigation skills.<sup>94</sup> Therefore, the transactional business clinic has emerged in the vacuum to provide law students with transactional practice skills.<sup>95</sup> Proponents of the transactional business clinic model might say that graduates who develop the skills required to function as lawyers from the first day on the job fare better both on the job market and in actual practice than those who do not learn those skills while in law school.<sup>96</sup>

Clinical instruction and experience in the role of a lawyer is thought to provide the ideal setting for developing lawyerly practice skills. Yet, even as a clinician, it is hard for me to see how participating in a semester-long clinic will indeed make law school graduates that much more ready for practice than their peers. That is not to say that a clinic experience is not valuable to a law student. Participating in a clinic is a way for law students to begin to develop lawyering practice skills. In fact, clinical experience and experiential learning are critical to the development of law students. While there is demonstrable value in clinical education, the value has to be tempered with what can reasonably be accomplished in a clinic setting. Simply acting as a lawyer does not give a student expert-level proficiency in the skills of professional practice. Michael Woronoff encourages realism when thinking about the level of expertise that can be achieved by students while in law school.<sup>97</sup> While the clinic arguably will enhance the graduates' experiences and build their skills in one area, there is no way that participation in a law clinic will make them experts.<sup>98</sup> Woronoff takes on the transactional clinic in particular writing that he would argue that given:

- (i) the limitation on the legal services provided by most transaction law clinics to only the simplest of matters, (ii) the vastly different nature of the clients, (iii) the limited time commitment of the students, and (iv) the fact that, due to the very low student-to-faculty ratio required, very few students can participate in any one semester, these clinics have only limited value.<sup>99</sup>

I do not agree completely with Woronoff, but I would argue that although students in a clinic setting are certainly able to develop an under-

---

94. See CARNEGIE REPORT, *supra* note 88, at 111–14.

95. See Schlossberg, *supra* note 74, at 195.

96. See *id.* at 218 (noting many law school students never receive practical training).

97. See Michael Woronoff, What Law Schools Should Teach Future Transactional Lawyers: Perspectives from Practice 6–7 (2009) (UCLA School of Law, Law-Econ Research Paper No. 09-17), <http://ssrn.com/abstract=1430087> [<https://perma.cc/PQF2-7BK9>].

98. Cf. MALCOLM GLADWELL, OUTLIERS (2008) 35, 39–42, 44–45, 47 (2008) (noting that expert status requires at least ten years or, put another way, 10,000 hours of relevant experience and practice).

99. Woronoff, *supra* note 97, at 12 (footnotes omitted).

standing of professional practice, such understanding and experience is limited, given the constraints of the clinical setting.

One of the major arguments for omitting social justice from the business law curriculum is the emphasis and focus on getting students ready for practice supersede a social justice curriculum. In the practice-ready camp, proponents have shifted the focus from serving clients to serving students.<sup>100</sup> Professional skills and professional development are important goals, certainly, but social and economic justice teaching adds texture to transactional teaching.<sup>101</sup> While one can certainly teach students to draft, for example, indemnity clauses or privacy policies, or counsel entrepreneurs about potential liability, discussions about social justice, economic empowerment, and social change enrich the student experience in the business law clinic in many different ways. Even if preparation for practice is the goal of a transactional clinic, that is not to say that students should work only on client matters similar to what they will see in practice.<sup>102</sup> Students need to be prepared for practice, but they also need to understand the world into which they will graduate.

In describing the “Millennialist Fantasy,” Robert Condlin eloquently refers to the failure of the practice-ready proponents argument as one that is “based on a kind of worker-bee myopia that fails to understand education’s principal contribution to development: to provide students with the knowledge and critical thinking skills needed to adapt received wisdom to changing circumstances, beliefs, and needs over time.”<sup>103</sup> For legal education, that means helping law students contextualize their work within larger society, develop professional identities, and pursue the cause of justice.<sup>104</sup> Thus, it becomes important to ground students’ development of practical lawyering skills in a more in-depth analysis of the economic landscape. Myopically emphasizing skills over service is destructive.<sup>105</sup> Further, practice-readiness does not need to be divorced from social justice. In the profession, understanding access to justice is required, as are lawyers who understand transactional matters.

### B. *Transactional Clinical Pedagogy*

As discussed above, real tension exists between conflicting ideas in a clinical setting regarding pedagogical goals of the clinic—preparation for

---

100. See Kotkin & Rivkin, *supra* note 52, at 201 (stating that new paradigm in clinical legal education has caused “a marked shift in emphasis from clients to students”).

101. See Schlossberg, *supra* note 74, at 222–26.

102. See Jay Mitchell & Michelle Sonu, *Food Banks and Investment Banks: Clinical Design for Corporate Practice*, 19 LEWIS & CLARK L. REV. 267, 282–83 (2015) (discussing variety of tasks performed in particular clinic).

103. Robert J. Condlin, “Practice Ready Graduates?: A Millennialist Fantasy,” 31 *TOURO L. REV.* 75, 98 (2014).

104. See Schlossberg, *supra* note 74, at 222.

105. See *id.*

practice—and public service objectives—meeting the needs of the community served by the clinic. There are some transactional clinicians who, for divergent reasons, choose one goal over the other. These reasons may include instructor interest, instructor status at the law school, client base, the school and its clinic culture and history, and demands of the law school community. In my estimation, I have yet to see real resolution of these tensions. Every clinician in each transactional clinic makes choices about teaching, clients, and client work. Some transactional clinics emphasize social justice and the larger economic context. Others emphasize skills training and professional development. Ultimately, transactional legal clinics have evolved since the first CED clinics; in such evolution, transactional clinical work may not always be mission or impact-driven.<sup>106</sup> Yet, the debate over the tension is lacking a complete analysis.

In their 2010 essays, Professors Praveen Kosuri and Steven Reed each analyzed how they arrived at their clinical teaching careers and “challenge[ ] the presumption of social justice as the driving force behind clinical legal education.”<sup>107</sup> In her response essay, Minna Kotkin writes that this view is “myopic” and that “[c]linical legal education is rooted in notions of [ ] service to clients and communities.”<sup>108</sup> Both Kosuri and Reed, in challenging foundational principles of clinical legal education, characterize their views as those of a new generation offering a different perspective regarding the future of clinical legal education.<sup>109</sup> Kosuri argues for greater neutrality in clinical legal education.<sup>110</sup> Further, Kosuri states that “a so called ‘social justice’ or law reform agenda for clinical education should not be presumed but rather should be considered one type of clinical strategy.”<sup>111</sup> Reed writes that his students at Northwestern “want[ ] to learn practical skills that will help them to become Great BigLaw Lawyers, not Great Public Interest Lawyers.”<sup>112</sup> Reed “conclude[s] it is better to give the law students good training they can put to use in BigLaw than to try to get them interested in helping indigent clients as a full time gig.”<sup>113</sup>

When I first read these pieces, to some extent I agreed with them, but I am challenged by the history of economic justice, the persistent spread of poverty, and the relentlessly growing gap between the rich and poor. In 2015, Professor Julie Lawton questioned the idea that law faculty should

---

106. See Jones & Lainez, *supra* note 17, at 87.

107. See Kotkin & Rivkin, *supra* note 52, at 198 (discussing work by Kosuri and Reed).

108. See *id.* at 203.

109. See *id.* at 202 (discussing “Millennial generation’s espoused desire to build their skill sets” and noting that it “reveal[s] a shift in emphasis from clients to students”).

110. See Kosuri, *supra* note 84, at 205, 208.

111. *Id.* at 208.

112. Reed, *supra* note 28, at 250.

113. *Id.* at 252.

impose their individual social justice morality on their students.<sup>114</sup> She asserts that while she “recogniz[es] the need for improving access to justice,” social justice is a “value judgment” and that law schools’ “attempt to inculcate students with the moral value of social justice work” may be problematic.<sup>115</sup> What is troubling is that the current scholarship fails to address the implications and consequences for economic justice if a business law clinic overlooks poverty and justice in favor of corporate practice-readiness. Social and economic justice is not just a value judgment, but also an imperative, given this country’s past. Lawyers need more than training as law students. They need practical skill training, as well as the skills to meet the challenges of poverty, which is increasingly hard to ignore. Lawyers need to understand social and economic justice because society requires lawyers as a profession to solve the challenges presented by the social tumult of our time, which are rooted in economic inequality.

The transactional clinical scholarship fails to address the history of the fight for economic justice and empowerment. The debate assumes that the question is should whether we should help our students become practice-ready, but it omits the historical and economic context through which any of these conversations should be placed. CED pedagogy tends to have this focus, but transactional clinicians often omit discussions of economic empowerment from the conversation.<sup>116</sup> In viewing the tension between the client-driven public service model and the student-driven preparation model as a problem reflecting generational differences of clinicians, they neglect to account for the historical role of economic empowerment and, by default, the role of transactional lawyer in economic justice.

The prior scholarship fails to consider historical, broader economic, race-related, and governmental policies that create poverty in the urban area. What is missing from the analysis is a perspective on the history of the civil rights movement and, in fact, any fight for economic rights. Economic empowerment is at the forefront of those movements. Transactional lawyering, while not battling it out in the courtroom, adds the scaffolding to these movements. Without transactions, such matters would simply be form over substance.

In training corporate lawyers, value should not be placed solely on public interest lawyers and litigators. Corporate lawyers should have a sense that economic rights are part of their responsibility, as well. These lawyers are bound by the same rules of ethical conduct. Justice for a corporate lawyer should look the same as that of a litigator.

---

114. See Lawton, *supra* note 30, at 57–58.

115. See *id.* at 57–58, 68.

116. See Jones, *supra* note 26, at 199 (noting that CED “encourage[es] economic independence and self-sufficiency through entrepreneurship for low-income people and minorities”).

While Part IV has discussed the practice-ready mandate and reviewed the relevant transactional clinical pedagogical scholarship, Part V discusses economic empowerment and entrepreneurship in a historical context.

V. ENTREPRENEURSHIP, ECONOMIC JUSTICE, AND THE TRANSACTIONAL  
BUSINESS LAW CLINIC

A. *The Economic Impact of Discrimination*

Growing up as I did, I recall learning about many moments during the Civil Rights Movement. The March on Washington (March)—where Dr. King delivered the incomparable “I Have a Dream” speech—was not just about ending racism. In fact, the March was named the “March on Washington for Jobs and Freedom.”<sup>117</sup> The March was and remains the largest political rally for civil rights in the United States.<sup>118</sup> The protesters were calling for both civil *and* economic rights for Black people. Although the March is easily characterized as an iconic moment in civil rights history where Dr. King delivered his speech, the participants demanded jobs and freedom from state-sanctioned discrimination. While the March is credited with helping to pass the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968, it was organized in response to federal and local governmental economic policies that discriminated based on race.<sup>119</sup>

Such policies included redlining, discriminatory lending, racially discriminatory zoning laws, and housing laws. These policies resulted in (1) the limits to access to capital for certain groups, often minority business owners, (2) limits to education, and (3) high unemployment—the combination of which results in wealth disparities in the United States. After key legislation was passed in the latter part of the sixties, history shows that the Civil Rights Movement was not as effective with respect to changing the landscape for entrepreneurs of color. Professor Robert Suggs discusses this phenomenon in the context of Jim Crow.<sup>120</sup> He writes,

Perhaps the absence of Jim Crow business legislation explains the failure, during the heyday of the civil rights era, to address problems of continuing racial barriers to business activity. There were no statutes to overturn, no egregious enactments whose immorality was clear. Instead, there existed only customs and prac-

---

117. See Shmuel Ross, *March on Washington for Jobs and Freedom: August 28, 1963*, WESLEYAN U., [http://www.wesleyan.edu/mlk/posters/march\\_on.html](http://www.wesleyan.edu/mlk/posters/march_on.html) [https://perma.cc/B9UD-J42Z] (last visited Jan. 24, 2017).

118. *See id.*

119. *See id.*

120. See Robert E. Suggs, *Racial Discrimination in Business Transactions*, 42 *HASTINGS L.J.* 1257, 1261–62 (1991).

tices quietly carried out within the zones of private and personal associations in which courts have refused to intrude.<sup>121</sup>

Small business ownership was a part of a poverty alleviation strategy for Black Americans. Hundreds of years of discriminatory practices often supported by government policies produced a dearth of Black entrepreneurs.<sup>122</sup> There is an entrepreneurial legacy in the Black community, but entrepreneurship took a sharp decline in the forties and fifties, which is attributed to the effects of Jim Crow laws.<sup>123</sup>

In 1968, after the riots that occurred in Chicago, Newark, Los Angeles, and Detroit, President Lyndon B. Johnson formed the National Advisory Commission on Civil Disorders (Kerner Commission).<sup>124</sup> The Kerner Commission found that the country was moving toward a “deepening racial division” as a result of discrimination and segregation.<sup>125</sup> “The [C]ommission recommended that the government invest in housing and jobs programs to improve living conditions for black people and end the segregation of many urban neighborhoods.”<sup>126</sup> Scholars and historians have stated that although President Johnson was a supporter of civil rights and social welfare, the President did not act on the Kerner Commission’s recommendations.<sup>127</sup>

121. *Id.* at 1262.

122. *See, e.g.*, DERRICK A. BELL JR., RACE, RACISM AND AMERICAN LAW §§ 9.1–9.9, at 589–632 (2d ed. 1980) (examining role of race in American law); IRA BERLIN, SLAVES WITHOUT MASTERS: THE FREE NEGRO IN THE ANTEBELLUM SOUTH 317, 319–20, 327–28 (1974) (describing laws that discriminated against blacks in early nineteenth century); LORENZO JOHNSTON GREENE, THE NEGRO IN COLONIAL NEW ENGLAND 298–315 (1968) (describing political, economic, and social barriers imposed on free blacks in New England during eighteenth century); A. LEON HIGGINBOTHAM, JR., IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS 32–36, 67, 86–87, 114–15, 123, 167, 227–28, 280–81 (1978) (chronicling various state legal and economic barriers faced by slaves); LEON F. LITWACK, NORTH OF SLAVERY: THE NEGRO IN THE FREE STATES, 1790–1860 153–86 (1961) (describing how discriminatory laws and attitudes kept Northern blacks out of commerce, professions, and skilled occupations); Flournoy A. Coles Jr., *The Unique Problems of the Black Businessman*, 26 VAND. L. REV. 509 (1973) (describing several eighteenth-century laws preventing slaves from carrying on businesses).

123. For a discussion of the growth in entrepreneurship among African Americans, see Alfred Edmond Jr., *Why the Growth of Black Businesses is Skyrocketing*, AM. EXPRESS <https://www.americanexpress.com/us/small-business/openforum/articles/what-is-the-state-of-black-entrepreneurship/> [https://perma.cc/X4QM-NKSL] (last visited Jan. 24, 2017).

124. *See generally* NAT’L CRIMINAL JUSTICE REFERENCE SERV., REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968).

125. *See id.* at 1.

126. LEARNING NETWORK, *Feb. 29 1968: Kerner Commission Reports on U.S. Racial Inequality*, N.Y. TIMES (Fed. 29, 2012, 4:05 AM), <https://learning.blogs.nytimes.com/2012/02/29/feb-29-1968-kerner-commission-report-details-racial-inequality-in-u-s/> [https://perma.cc/W794-Z72D].

127. *See* JOSEPH A. CALIFANO, JR., THE TRIUMPH & TRAGEDY OF LYNDON JOHNSON: THE WHITE HOUSE YEARS 261–64 (1991); *see also* Bill Moyers, *Transcript*, PBS (Mar. 28, 2008), <http://www.pbs.org/moyers/journal/03282008/transcript1.html> [https://perma.cc/KW6H-2K3L] (speaking to Reverend Kevin Turman, who

Because economic justice was “a key goal of the [C]ivil [R]ights [M]ovement,” recognizing the economic impact of past discriminatory practices in urban areas provides a context for understanding the importance of transactional legal work.<sup>128</sup> While litigation and advocacy have roles to play, economic empowerment is a key part of advancing the Civil Rights Movement’s agenda.<sup>129</sup>

The path to economic parity is fraught with unknown challenges, particularly as minority and female entrepreneurs face discrimination.<sup>130</sup> Discrimination in business is thought to be “a phenomenon of the past.”<sup>131</sup> Yet, for example, Black and Hispanic entrepreneurs are still discriminated against when seeking small business loans.<sup>132</sup> “[M]inority entrepreneurs are still treated significantly differently . . . than their white counterparts when seeking financing for a small business, even when all other variables—their credentials, their companies, even their clothes—are identical.”<sup>133</sup> This problem is incredibly significant because systematic racism squanders minority entrepreneurship from inception.<sup>134</sup> Eighty-four percent of entrepreneurs are white, despite gains by minority groups in entrepreneurship.<sup>135</sup> Moreover, entrepreneurs are 72% male.<sup>136</sup> Despite strides in entrepreneurial endeavors by women and minorities, white men

---

stated “the recommendations of the Kerner Commission were ignored or dismissed”).

128. See Gary Chartier, *Civil Rights & Economic Democracy*, 40 WASHBURN L.J. 267, 269 (2001) (citing ROY L. BROOKS ET. AL., *CIVIL RIGHTS LITIGATION: CASES AND MATERIALS* 3–6 (2d ed. 2000)).

129. See Ann Southworth, *Representing Agents of Community Economic Development: A Comment on Recent Trends*, 8 J. SMALL & EMERGING BUS. L. 261, 262 (2004) (writing that “[i]ndeed, civil rights and poverty lawyers have long performed some transactional work on behalf of their clients”).

130. See JESSICA GORDON NEMBHARD, *COLLECTIVE COURAGE: A HISTORY OF AFRICAN AMERICAN COOPERATIVE ECONOMIC THOUGHT AND PRACTICE* (2014). In her book, Dr. Nembhard highlights Black worker cooperatives, citing examples of the few entrepreneurial movements and enterprises created by Black owners. See *id.* at 32, 48–49, 52, 55, 63, 239–49.

131. See Suggs, *supra* note 120, at 1263.

132. See *id.* at 1257 n.4 (citing Timothy Bates, *The Changing Nature of Minority Business: A Comparative Analysis of Asian, Nonminority, and Black-Owned Businesses*, 18 REV. BLACK POL. ECON. 25, 37 (1989)).

133. J.D. Harrison, *Black, Hispanic Entrepreneurs Discriminated Against when Seeking Small Business Loans*, WASH. POST (June 3, 2014), [https://www.washingtonpost.com/business/on-small-business/black-hispanic-entrepreneurs-discriminated-against-when-seeking-small-business-loans/2014/06/03/70059184-ea86-11e3-9f5c-9075d5508f0a\\_story.html](https://www.washingtonpost.com/business/on-small-business/black-hispanic-entrepreneurs-discriminated-against-when-seeking-small-business-loans/2014/06/03/70059184-ea86-11e3-9f5c-9075d5508f0a_story.html) [<https://perma.cc/B9AJ-T4QW>].

134. See *id.* (discussing difficulty with which minority entrepreneurs obtain financing); Sterling A. Bone, Glenn L. Christensen & Jerome D. Williams, *Rejected, Shackled, and Alone: The Impact of Systemic Restricted Choice on Minority Consumers’ Construction of Self*, 41 J. CONSUMER RES. 451 (2014).

135. See Jordan Weissmann, *Entrepreneurship: The Ultimate White Privilege?*, ATLANTIC (Aug. 16, 2013), <http://www.theatlantic.com/business/archive/2013/08/entrepreneurship-the-ultimate-white-privilege/278727/> [<https://perma.cc/ERN7-H4KZ>].

136. See *id.*

therefore remain the dominant entrepreneurial group by a wide margin.<sup>137</sup>

Entrepreneurship is a vital component to achieving economic justice and realizing the dream articulated in Dr. King's speech.<sup>138</sup> Economic empowerment, income, and asset accumulation are large parts of the equation for economic justice. Transactional lawyers and transactional clinics naturally play a role in furthering economic justice through entrepreneurship.

In the aftermath of the recent economic crisis, entrepreneurship has come to the forefront of political discourse.<sup>139</sup> You cannot open a newspaper or a magazine without reading a story about mid-career professionals who have gone out on their own to open up businesses.<sup>140</sup> From food trucks to artisanal ice cream shops to restaurants, Americans have begun to establish start-ups, rather than take their chances with a slow job market.<sup>141</sup> Self-employment creates business opportunities and job prospects where they did not exist previously. Entrepreneurship is a path towards employment for those without formal education. Business owners have the potential to build wealth through asset accumulation. Further, microenterprise often serves as a second source of income for low wage-workers.<sup>142</sup> Further, small business drives economic innovation and job

---

137. *See id.*

138. *See* W. Sherman Rogers, *The Black Quest for Economic Liberty: Legal, Historical, and Related Considerations*, 48 *How. L.J.* 1, 12–13, 77, 93–95, 97, 118 (2004) (emphasizing need for Black entrepreneurship given legacy of slavery, Jim Crow laws, and Black Codes giving rise to Civil Rights Acts of 1875 and discussing Black-owned businesses that succeeded between 1910 and 1940 and through Civil Rights Era of 1950s–1970s). *But see* Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 *HOFSTRA L. REV.* 839 (2014) (using empirical data to examine whether entrepreneurship is effective poverty-fighting strategy).

139. In his speech at the 2016 Global Entrepreneurship Summit at Stanford University, President Obama underscored the importance of entrepreneurs in keeping societies and economies interconnected. *See* President Barack Obama, Address at the Stanford University Global Entrepreneurship Summit (June 24, 2016), <http://www.ges2016.org/press-releases/2016/6/24/remarks-by-president-obama-and-conversation-with-mark-zuckerberg-and-entrepreneurs-at-the-global-entrepreneurship-summit> [<https://perma.cc/UH4J-7MTP>]. He stated, “I believe we are better off in a world in which we are trading and networking and communicating and sharing ideas. But that also means that cultures are colliding and sometimes [it] is disruptive, and people get worried. You’re the bridge, you’re the glue.” *Id.*

140. *See* Martin Zwilling, *A New Era for Entrepreneurs and Startups Has Begun*, *FORBES* (Dec. 25, 2013, 2:36 PM), <http://www.forbes.com/sites/martinzwilling/2013/12/25/a-new-era-for-entrepreneurs-and-startups-has-begun/> [<https://perma.cc/785D-6ZAN>].

141. *See id.*

142. *See* Jones, *supra* note 26, at 196–97 (stating that “[m]icroenterprise development is [a] model in which small loans . . . are made available to persons starting very small businesses” (footnote omitted)).

creation.<sup>143</sup> Entrepreneurs look for opportunities to provide innovative services and products to the marketplace. In doing so, entrepreneurs have the potential to create wealth for themselves, and eventually as businesses grow, they can hire employees and build wealth within a community.

Additionally, “the number of minority-owned firms in the U.S. rose from 5.8 million in 2007 to 8.0 million in 2012.”<sup>144</sup> Notably,

a 46.3 percent increase in the number of Hispanic-owned firms over the period, from 2.3 million to 3.3 million, and a 34.5 percent rise in the number of black or African American-owned firms, from 1.9 million to 2.6 million . . . . Asian-owned firms climbed from 1.5 million to 1.9 million, an increase of 23.8 percent. For added context, total U.S. firms increased 2.0 percent during the same period, from 27.1 million in 2007 to 27.6 million in 2012. The 9.9 million women-owned firms in 2012 were up more than 2 million from five years earlier when there were 7.8 million women-owned businesses, a 26.8 percent increase. As a comparison, male-owned firms increased 6.8 percent from 13.9 million to 14.8 million during the same period.<sup>145</sup>

Furthermore,

[i]n 2013, the median weekly earnings for women 25 years old and older was \$740, compared with the \$912 their male counterparts earned. White women earned a median of \$722, Asian American women earned \$819, African American women earned \$606, and Latina women earned \$541, while non-Hispanic white males earned \$884.<sup>146</sup>

Poverty persists in this country.<sup>147</sup> There is a clear trend of concentration of income and wealth at the top, emptying out of the middle, and

---

143. See President Barack Obama, Address by the President to a Joint Session of Congress (Sept. 8, 2011), <https://www.whitehouse.gov/the-press-office/2011/09/08/address-president-joint-session-congress> [https://perma.cc/5JQ2-99EU].

144. Press Release, U.S. Census Bureau, Los Angeles County a Microcosm of Nation’s Diverse Collection of Business Owners, Census Bureau Reports (Dec. 15, 2015), <http://www.census.gov/newsroom/press-releases/2015/cb15-209.html> [https://perma.cc/2S9R-6ADX] [hereinafter U.S. Census Bureau Report].

145. *Id.*; see also JULES LICHTENSTEIN, DEMOGRAPHIC CHARACTERISTICS OF BUSINESS OWNERS 1 (2014), <https://www.sba.gov/sites/default/files/Issue%20Brief%20202,%20Business%20Owner%20Demographics.pdf> [https://perma.cc/3E7Z-XSAF].

146. Farah Z. Ahmad, *How Women of Color Are Driving Entrepreneurship*, CTR. FOR AM. PROGRESS (June 10, 2014, 9:00 AM), <https://www.americanprogress.org/issues/race/report/2014/06/10/91241/how-women-of-color-are-driving-entrepreneurship/> [https://perma.cc/CS5B-7D4W].

147. See Carmen DeNavas-Walt & Bernadette D. Proctor, *Income and Poverty in the United States: 2014*, U.S. CENSUS BUREAU 12–20 (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf> [https://perma.cc/L633-WBQH].

increasing poverty at the bottom.<sup>148</sup> Income- and asset-poor families are cut off from traditional legal and economic structures and thus vulnerable to the market system. Not only does this kind of poverty destabilize individuals and families, it jeopardizes the long-term vitality of cities and local economies.<sup>149</sup>

Minorities face additional barriers in urban areas, and scholarship has examined the additional barriers that minorities face in starting businesses. Specifically, “[c]ities are disproportionately non-White with over 52 per cent of Blacks and 21 per cent of Whites residing in central-city [neighborhoods], while suburbs are disproportionately White where 57 per cent of Whites but just 36 per cent of Blacks reside.”<sup>150</sup> Thus, entrepreneurship and increasing access to entrepreneurship are ways to achieve black economic parity in America.<sup>151</sup>

The economic crisis that stemmed from the Great Recession has further devastated cities. In Chicago, where the south and west side neighborhoods were devastated by the economic crisis, unemployment reached approximately 30% and may have been as high as 40% at one point.<sup>152</sup> “Concentrated poverty” resulting from the Great Recession sheds light on the high poverty rate.<sup>153</sup>

Further, the start-up ecosystem has some inherent inequities within it. For example, research about the demographics of participants in MassChallenge, an internationally known startup accelerator, shows some disparities in access. While MassChallenge does not disclose the demographics of its initial participants, they do keep track of their startups. “Since 2012, 36% of all MassChallenge startups have had at least one female founder . . . . 10% of MassChallenge Boston startups had at least

---

148. See *id.*; see also Craig Torres, *Yellen Calls Widening Racial Wealth Gap “Extremely Disturbing”*, BLOOMBERG (June 22, 2016, 1:43 PM), <http://www.bloomberg.com/news/articles/2016-06-22/yellen-calls-widening-racial-wealth-gap-extremely-disturbing> [https://perma.cc/UKJ8-CQ2M].

149. See Christian J. Ascunce, Note, *Incentivizing Local Reform and Urban Renewal During an Economic Crisis*, 88 NOTRE DAME L. REV. 1491, 1497 (2013) (describing how “residents of poor localities are unable to fund essential public services, such as schools, and the community falls into a state of disorder”).

150. Gregory D. Squires & Charis E. Kubrin, *Privileged Places: Race, Uneven Development and the Geography of Opportunity in Urban America*, 42 URB. STUD. 47, 49 (2005) (citing JESSE MCKINNON, *THE BLACK POPULATION IN THE UNITED STATES: MARCH 2002 2* (2003)).

151. See Ahmad, *supra* note 146 (addressing ways in which women of color are innovating through minority entrepreneurship efforts).

152. See *Chicago Tackles Youth Unemployment as It Wrestles with Consequences*, CHI. TRIB. (Sept. 2, 2016, 5:00 AM), <http://www.chicagotribune.com/business/ct-youth-unemployment-chicago-neighborhood-0904-biz-20160527-story.html> [https://perma.cc/792B-PEG9].

153. See Elizabeth Kneebone & Natalie Holmes, *U.S. Concentrated Poverty in the Wake of the Great Recession*, BROOKINGS (Mar. 31, 2016), <http://www.brookings.edu/research/reports2/2016/03/31-concentrated-poverty-recession-kneebone-holmes> [https://perma.cc/7WML-D5PC] (examining “concentrated poverty rate” according to race and ethnicity).

one African American founder, 24% had an Asian founder, and 13% had a Latino founder.”<sup>154</sup> These numbers seem to imply significant white male representation in MassChallenge startups considering that these percentages require only a single minority or woman in a group to be included in these diversity statistics. In 2014, the Boston Foundation and MassChallenge announced a \$450,000 grant that “support[s] entrepreneurs in under-resourced communities in Massachusetts, such as Roxbury, Mattapan, and Dorchester.”<sup>155</sup>

While this section discussed economic justice as it relates to the Civil Rights Movement, the next section discusses the potential to effect change by empowering entrepreneurs through law students in a transactional clinic.

### B. *Transactional Law Clinics and Access to Justice*

Access to civil legal services is a growing problem.<sup>156</sup> Access to transactional legal services is even direr.<sup>157</sup> “[T]ransactional law clinics advance social justice causes by providing legal services to client groups who have otherwise encountered racial or gender barriers to business development.”<sup>158</sup> Yet, somehow, assisting these entrepreneurs in building their business creates a tension within clinical teaching. When the word “profit” comes into the picture, it changes the conversation. Professor Kosuri writes “[c]linical legal education has always included words like ‘poverty’ and ‘indigency,’ but rarely words like ‘business’ and ‘profit.’”<sup>159</sup> There is the notion that poverty law and lawyering may occur only on behalf of the indigent.<sup>160</sup> Representing microenterprise clients, small business, and other for-profit clients in a law school legal clinic is often perceived as advancing notions of capitalism, moving away from what is traditionally thought of as lawyering in the public interest; it is rarely thought of as facilitating the integration of social justice into the law school curriculum.

---

154. See MASS CHALLENGE, IMPACT REPORT 2015 10 (2015).

155. See *id.*

156. See Steven Seidenberg, *Unequal Justice: U.S. Trails High-Income Nations in Serving Civil Legal Needs*, ABA J. (Jun. 01, 2012, 6:50 AM), [http://www.abajournal.com/magazine/article/unequal\\_justice\\_u.s.\\_trails\\_high-income\\_nations\\_in\\_serving\\_civil\\_legal\\_need](http://www.abajournal.com/magazine/article/unequal_justice_u.s._trails_high-income_nations_in_serving_civil_legal_need) [https://perma.cc/5PDJ-E57C] (stating United States scores fiftieth out of sixty-six nations surveyed “[w]hen comparing nations on the ability of their people to obtain legal counsel”).

157. See Tremblay, *supra* note 8, at 22–23 (noting that many entrepreneurs are indigent “[f]or purposes of affording private lawyers” because many startups “have limited funding for their business development” and are thus unable “to pay market rates for legal counsel”).

158. Crowder, *supra* note 7, at 417 (citing Jones, *supra* note 31, at 249–55; Jones, *supra* note 26, at 199–202).

159. Kosuri, *supra* note 84, at 214 (footnote omitted).

160. See Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 356 (2008) (writing that one of clinic’s main functions is that of “service provider of last resort to poor people”).

However, economic empowerment is a means to escape poverty as opposed to subsist in it. This is where the transactional lawyer comes in.

Although typical transactional clinic students represent clients on corporate, tax, real estate, or intellectual property matters, the work for these clients has potential for meaningful impact and, at the very least, the potential to create change for an individual or for the communities that the clients serve.<sup>161</sup> Social justice is not just wealth accumulation; it encompasses other intangibles that contribute to economic empowerment.<sup>162</sup> If low-income entrepreneurs are to have the same chances of success as all other businesses, they need to have access to legal advice.<sup>163</sup> “Without access to legal advice, the likelihood of starting a successful business diminishes tremendously,” and the likelihood that the business transaction may fail before it starts is also possible.<sup>164</sup> Transactional law clinics often assist low-income micro-entrepreneurs and small businesses in underserved communities in surmounting legal obstacles in order to start or grow small businesses.<sup>165</sup> Such assistance “increase[s] their personal financial security and stimulate[s] economic activity.”<sup>166</sup>

Supporting entrepreneurs, especially under-resourced micro-entrepreneurs, facilitates economic empowerment.<sup>167</sup> Providing a means to push a small business forward through the provision of legal services to an individual entrepreneur—who in turn can build wealth—constitutes economic empowerment. Economic empowerment is one means to achieve economic and social justice for the communities that the clinic serves.<sup>168</sup>

---

161. See Kosuri, *supra* note 11, at 9 (stating that “[m]ost transactional clinics were founded . . . to meet law student demands for transactional skills training that reflected the reality of being a corporate lawyer”).

162. See Diamond, *supra* note 26.

163. See Tremblay, *supra* note 8, at 22, 40, 42.

164. See *Summer 2016 Spotlight – Rolando Gonzales*, PROBONO.NET/NY, [https://www.probono.net/ny/profiles/item.7210-Summer\\_Spotlight\\_Rolando\\_Gonzalez](https://www.probono.net/ny/profiles/item.7210-Summer_Spotlight_Rolando_Gonzalez) [<https://perma.cc/28SD-WHAV>] (last visited, Jan. 25, 2017) (quoting Rolando Gonzales, New York City Pro Bono summer volunteer).

165. See, e.g., *Transactional Law Clinics*, HARVARD L. SCH., <http://clinics.law.harvard.edu/tlc/> [<https://perma.cc/SPE6-E4YY>] (last visited, Jan. 25, 2017).

166. See *Pro Bono Newsletter*, COVINGTON & BURLING (Spring 2016), [https://www.cov.com/-/media/files/corporate/pro-bono/pro\\_bono\\_newsletter\\_spring\\_2016.pdf](https://www.cov.com/-/media/files/corporate/pro-bono/pro_bono_newsletter_spring_2016.pdf) [<https://perma.cc/PY45-HC9K>] (discussing pro bono transactional work).

167. See Jones, *supra* note 26, at 199.

168. Litigation, the traditional model of public interest lawyering, often does not change the circumstances of individuals or the conditions of poverty in which low-income people live. See Louise G. Trubek, *The Worst of Times . . . and the Best of Times: Lawyering for Poor Clients Today*, 22 *FORDHAM URB. L.J.* 1123, 1128–34 (1995) (stating that entrepreneurship can have positive impact on lower-income communities and lawyers have key role to play in facilitation); see also Southworth, *supra* note 20, at 1121 (stating that “[m]ost public interest law work consists of seeking to change the behavior of others (usually government officials) on behalf of clients, chiefly through litigation” (quoting JOEL F. HANDLER ET AL., *LAWYERS AND THE PURSUIT OF LEGAL RIGHTS* 76 (1978))).

Self-employment resulting in economic empowerment for individuals is a path out of poverty at least for some, and it is one method of achieving social justice or social change.<sup>169</sup> Marrying economic empowerment as a means of social justice with the teaching of transactional skills demonstrates that social justice can be achieved in a transactional clinic.<sup>170</sup>

With respect to many of these budding entrepreneurs, many do not get started because they do not have legal support.<sup>171</sup> Every business has legal needs but not all have the ability to pay for it.<sup>172</sup> Most issues facing a start-up business are legal in nature: from formation and governance, to “licensing . . . tax; zoning considerations; intellectual property; [and] contracts.”<sup>173</sup> “[T]he need for legal assistance is just as great . . . as it is for any other business.”<sup>174</sup> Access to legal services is an issue for many of these types of clients served by transactional clinics.<sup>175</sup> “Few [legal services organizations] have directed their assistance to the growing community of social entrepreneurs, whose legal needs and approaches to social change often fall outside the norms of traditional pro bono legal matters.”<sup>176</sup> Moreover, transactional law clinics provide services to entrepreneurs, who ultimately will “create new jobs and have a positive impact on the community.”<sup>177</sup> Ownership of a business can help individuals lift themselves out of poverty and begin to build wealth.<sup>178</sup> Small businesses within a commu-

---

169. See Laurie A. Morin, *Legal Services Attorneys as Partners in Community Economic Development: Creating Wealth for Poor Communities Through Cooperative Economics*, 5 U.D.C. L. REV. 125, 131–32 (2000) (stating that self-employment is “crucial to ‘sustained’ change in low-income neighborhoods” (citing Jones, *supra* note 26, at 200–01)).

170. See Jones, *supra* note 26, at 199.

171. See Tremblay, *supra* note 8, at 22, 40.

172. See Hauber, *supra* note 26, at 16.

173. See *id.* (citing Southworth, *supra* note 20, at 1143–44) (“Every basic issue facing a start-up enterprise has a legal dimension . . .”).

174. *Id.*

175. See Jones, *supra* note 26, at 210 n.62 (stating that “[a]vailable capital for a new business is generally spent on equipment, inventory, marketing and related start-up costs”).

176. *Should Pro Bono Lawyers Help Social Entrepreneurs?*, LEX MUNDI PRO BONO FOUND., <http://www.lawforchange.org/NewsBot.asp?MODE=VIEW&ID=3889> [<https://perma.cc/2P7A-DJLM>] (last visited Jan. 25, 2017); see also Tremblay, *supra* note 8, at 15 (noting that when compared to litigation based legal services, “[f]ar fewer foundations and legal services providers allocate resources for entrepreneurship”).

177. See Salome Vakharia & Aruna Chittiappa, *New York Law School’s Dispute Resolution Team Wins Best Contract Award*, NEW YORK L. SCH. (May 2014), <http://www.nyls.edu/academics/wp-content/uploads/sites/143/2014/05/CEL-OCEL-Newsletter-April-2014-v1-Locked.pdf> [<https://perma.cc/V83M-YUXS>].

178. See *Build Business in NYC’s Most Underserved Communities*, INDIEGOGO, <https://www.indiegogo.com/projects/build-business-in-nyc-s-most-underserved-communities#/> [<https://perma.cc/9XJJ-NXSK>] (last visited Jan. 25, 2017); see also Hauber, *supra* note 26, at 5–6 (stating that “[w]ealth creation, in turn, leads to greater political engagement and power at the individual and community levels” (citing Kofi Lomotey, Provost, Fisk Univ., Address on Race and Wealth Disparities in the United States (Aug. 25, 2006))).

nity support the community by creating opportunities for employment as well as producing and supporting local goods and services.<sup>179</sup>

### C. *Training Social Justice-Oriented Corporate Lawyers*

Transactional clinics can offer the same model as other litigation-oriented, social justice-oriented, mission-driven clinics, but such transactional clinics are unique in that students can explore the lawyer's role in eliminating injustice through a specific transactional lens.<sup>180</sup> Further, students in a transactional clinic can explore dimensions of professionalism, specifically those contemplated by the ABA: "the responsibility of the lawyers to eliminate injustice."<sup>181</sup> Themes in the context of such clinics can include lawyering roles as counselor and strategic planner, as well as exposing students to different types of activism.<sup>182</sup>

The need to support businesses in urban areas—particularly minority-owned businesses, nonprofits, and social enterprises whose missions provide resources and support to individuals and the larger community—is particularly great.<sup>183</sup> The urban areas throughout the United States are challenged by poverty and unemployment.<sup>184</sup> Economic justice does not benefit just the individual entrepreneur, but also the country's economy as a whole.

Empowering individuals toward economic opportunity is economic justice. Business lawyers are vital to achieving economic justice because they can close the income gap by assisting individuals to achieve their business and economic goals. A traditionally marginalized entrepreneur who has little knowledge of the law as it relates to business matters needs to have access to a well-trained business lawyer. Legal representation at any stage of a business's development is invaluable.

If the professional expectation is that of working in service of justice, lawyers have a duty to assist individuals and communities in the pursuit of economic justice and empowerment, particularly in those communities where such goals were once out of reach because of historical practices. Law schools must train students to recognize that as future lawyers, it is important that law students understand the necessity to help low-income

---

179. See *Build Business in NYC's Most Underserved Communities*, *supra* note 178.

180. See Jones, *supra* note 26, at 207 (describing how transactional clinics "teach[ ] students basic skills [by] exploring lawyers' roles and exposing them to legal injustices in contrast to traditional clinics").

181. See Jones, *Promoting*, *supra* note 31, at 263, 265 (stating that "CED clinics provide a model that [ ] students can use to recognize and combat injustices throughout their careers as lawyers").

182. See *id.* at 292 (discussing lawyers' roles "as planners, counselors, and dealmakers").

183. See Jones, *supra* note 26, at 196.

184. See Elizabeth Kneebone, *The Growth and Spread of Concentrated Poverty, 2000 to 2008–2012*, BROOKINGS (July 31, 2014), <http://www.brookings.edu/research/interactives/2014/concentrated-poverty#/M10420> [<https://perma.cc/NPA6-HFCA>].

and underprivileged populations become economically self-sufficient and empowered. In the context of a business law clinic, clinicians should teach social and economic justice and stress the imperative of serving marginalized individuals and communities, even in the transactional context.<sup>185</sup>

D. *Economic Justice Contributions of a Transactional Business Law Clinic*

Students learn unique skills and values in a business law clinic. Students can observe and analyze the role of entrepreneurship in promoting economic justice. The clinic can empower students to become highly effective business law advisers by developing their arsenal of substantive knowledge and lawyering skills, empower clients by providing much-needed transactional legal assistance and community education that will promote and support innovation and entrepreneurship, and contribute meaningfully to the entrepreneurship and innovation ecosystem in the clinic's area. A business law clinic can, therefore, develop students' transactional lawyering skills, by providing direct legal representation to entrepreneurs and innovators.

E. *Client Selection as a Learning Tool*

Client selection is important in a business law clinic in terms of informing the legal work that students perform in the clinic as well as developing a clinic identity.<sup>186</sup> Additionally, client selection can facilitate learning about economic systems of injustice. Underrepresented and especially minority entrepreneurs and businesses benefit a lot by legal help to get their businesses on the right track, and such highly necessary legal work is contributing to economic justice.<sup>187</sup> In fact, a wide array of transactional clinics are accomplishing social justice every day, even when they may not intend to do so in an instance where practice readiness and skill building is the primary objective and it is not part of the clinic mission because of the clients that are selected for students. The difference between a business law clinic that gives primacy to skills and practice readiness over a clinic that focuses on social and economic justice at its core is that not only is the economic and social justice component explicit, but the client selection process is heavily informed by economic justice factors.

Clients in an economic justice-focused clinic could include micro-entrepreneurs, technology entrepreneurs, social entrepreneurs, artists, authors, filmmakers, and musicians who may be individuals, for-profit businesses, or nonprofits, all of whom may need transactional legal services. Selecting the types of clients with whom students work can create a learning moment and greater understanding of the socio-economic fac-

---

185. See Jon Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1501 (1988).

186. See *id.*

187. See Jones, *supra* note 26, at 199.

tors at work in starting a business.<sup>188</sup> Part of the reason I have my students work on different types of clients, and at different stages, from different backgrounds, and who serve different purposes (i.e., nonprofit vs. for-profit), is to help them further develop as lawyers and be not only practice-ready, but also have the ability to provide service to clients from all walks of life and all types of backgrounds. For that reason, I intentionally select, and I would suggest that transactional clinic directors intentionally select, clients who are racially, ethnically, or culturally diverse.

Below are examples of clients that have been served in a traditional business law clinic that I have directed. These range from early stage startups to businesses that have been in operation for five years. The early stage phase of a business is when many legal issues arise for the founders and also when the founders have the least amount of funds available to pay for legal services. The early stage of a business's life cycle is where a transactional business law clinic has the potential for the most impact. The businesses described below would not be able to get started or move forward without the free legal services offered by the clinic.

#### 1. *A Micro-Enterprise Client*

The client is a micro-enterprise business that is owned by an individual founder. The founder is an African-American woman seeking to develop an online clothing business in addition to offering brand-consulting services specifically for the fashion and design industry. The client needed advice relating to choice of entity, contract law, employment law, and intellectual property law. Clinic students first advised the client on the appropriate choice for the business's legal entity. Students in the clinic then drafted various contracts and employment agreements for the client. The client also sought the clinic's guidance with the launch of a fashion design incubator within a low-income neighborhood (Roxbury) in Boston, Massachusetts.

#### 2. *A Social Enterprise Client*

Another client that the clinic worked on was a Boston-based public benefit corporation that also operated a sister nonprofit corporation. The clinic had previously advised the client as the client successfully applied for federal and state tax exemption.

The client specializes in reducing the use of bottled water and is connected to drinking water access projects in schools parks, offices and health and wellness facilities. The client sought the clinic's advice related to operations as a benefit corporation as well as on the overall business's structure because the client wanted to seek investors in the future. Stu-

---

188. See generally Manoj Viswanathan, *Effective Client Selection in Transactional Clinics*, 16 *TRANSACTIONS* 389 (2015) (discussing client selection process for transactional clinics).

dents also advised the client on various governance issues, employment issues, and intellectual property concerns.

### 3. *A Nonprofit Organization Client*

Another client that the clinic assisted with was an organization that sought assistance forming a nonprofit incorporation and sought to apply for federal tax exemption. This client operates a reentry program for recently incarcerated individuals that actively assists with job referrals, mentoring, and reentry policy advocacy. Students advised the client on developing a nonprofit business purpose and assisted in forming the entity and applying for a federal tax exemption.

### F. *Client Work in a Business Law Clinic*

There are many projects that students can do in an entrepreneurship clinic that supports entrepreneurship and provides access to legal services. Services provided are free, non-litigation legal services and may include, in addition to business law advice, education for entrepreneurs, policy analysis and advocacy, and business resources through partnerships and referrals. Student lawyers in a clinic can engage in community legal education to educate certain populations about starting a business or advocacy regarding laws affecting small businesses.

Business law clinics can also challenge injustice and engage in advocacy outside of the courtroom through public interest transactional work. Therefore, students and practitioners in a transactional clinic accomplish that work by engaging in “lawyering” when representing their clients in transactions. This becomes important as students in a law school clinic are developing their professional identity as lawyers. In fact, while there are a variety of learning goals and outcomes in a law school clinic,<sup>189</sup> those learning goals often include developing a professional identity.<sup>190</sup> Patience Crowder suggests that “transactional law clinics present one of the purest paths for teaching law students about professional development and identity.”<sup>191</sup> Further, law schools are in the business of laying a foundation for students who may practice thirty, maybe forty years into the future. The coursework and experience that students get in law school will likely have a lifetime impact. A business law clinic meets student needs and interests. It prepares students for careers representing organizations, introduces them to pro bono work, supports an entrepreneurial

---

189. See Wizner, *supra* note 14, at 328 (stating that “[t]he law school clinic is a place where students should learn not only the techniques of advocacy, but also the importance of advocacy in helping individuals solve their problems, defend their rights, and achieve their goals”).

190. See SUSAN BRYANT ET AL., *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY*, 13–14 (2014).

191. Crowder, *supra* note 7, at 440 (supporting proposition that clinical teaching is one way transactional attorneys and law students can achieve social justice goals).

approach to law practice, and has the potential to be the students' first foray into forming a professional identity. Therefore, the experience that students have in a law school clinic will have an enormous impact on their careers.<sup>192</sup>

Aside from the skills that are learned in a business law clinic, there are important lessons to be learned about practicing law and about social justice within the context of clinic work. Supporting the work of social entrepreneurs and nonprofits promotes social innovation and sustainability because social enterprises generally have a positive impact on the way the business or organization operates, treats employees, engages in production, selects materials, and contributes to the environment, the communities in which it operates, and humanity in some way. Additionally, this particular corporate form is innovative in that it applies entrepreneurial approaches to addressing social, environmental, and human justice issues. Furthermore, the clinic emphasizes the greater economic landscape within which the clinic operates. The learning landscape allows students to critically reflect about the context of their client's legal problems. Therefore, being prepared for practice and being prepared for social justice work are not mutually exclusive.

A business law clinic can be part of a larger strategy to give underserved groups access to power, capital, and opportunity. Through both client work and the seminar component, students can be exposed to a variety of social systems that impact their clients and be encouraged to think reflectively about the nature of transactional advocacy in the public's interest. There is also potential for a social justice advocacy component to a transactional law clinic. For example, the clinic might focus research around ways to promote a legal agenda that allows for the creation and retention of wealth in the low-income communities that the clinic serves.<sup>193</sup> Another example is potential advocacy focusing on policy around start-up credits, tax incentives, and access to health insurance or policies promoting cooperative models and vehicles for building social enterprise.<sup>194</sup> Students may also research issues related to public policies

---

192. See BRYANT ET AL., *supra* note 190, at 14–15 (“[D]eveloping a professional identity is a lifelong process, [but] a clinical course offers students a unique opportunity to begin that process with peers in a educational environment that is both challenging and supportive.”).

193. Urban entrepreneurs encounter a myriad of obstacles as they attempt to develop and grow businesses. See Victor Fleischer, *Urban Entrepreneurship and the Promise of For-Profit Philanthropy*, 30 W. NEW ENG. L. REV. 93, 95 (2007) (stating “urban entrepreneurs face an enormous information barrier”).

194. Most recently, for example, New York Law School created a public interest center. Aptly named, the Public Interest Impact Center put all of the public interest centers, initiatives, and projects under one umbrella organization. See *Impact Center for Public Interest Law*, N.Y.L. SCH., <http://www.nyls.edu/impact-center-for-public-interest-law/> [<https://perma.cc/9TGU-PTL8>] (last visited Jan. 25, 2017). Included in the Center is a Social Entrepreneurship Initiative that aims to broaden the impact of the social sector by promoting awareness, offering education and information, and conducting research related to social entrepreneurship.

that affect clinic clients and provide community education workshops on substantive law issues pertinent to the clinic's practice areas.

As transactional clinical teachers, we should engage with larger, historical ideas to create a rich learning landscape for students. Given the context of the reality of many transactional clients, it is simply not enough to teach only transactional legal skills in an effort to prepare students for practice. Lastly, state bar requirements are trending toward requiring pro bono hours as a requirement for admission to the bar. Transactional clinics that focus only on practice-readiness cannot qualify as part of the requirement. Further, practice-readiness necessitates an understanding of justice. In the context of corporate law, that is economic justice.

## VI. CONCLUSION

This Article has argued that there is an economic justice imperative in a transactional business law clinic. A social justice component in a clinic is valuable to legal education of students because of student growth and the challenges to student privilege, and it is a critical component of their development. Understanding that social justice encompasses more than litigation and, in fact, is historically part of the work of transactional lawyers can help engage students with deeper thinking about their roles as lawyers after law school. Students can engage critically with law and the broader societal context through which students complete their client work in the clinic. As students engage in the process in the clinic, they are thinking deeper, beyond the practical skills taught in the clinic to begin the work of developing their professional identity. As this process takes shape, students begin to deepen their learning and hopefully start to analyze and explore the law critically, a process that is larger than the skills necessary to practice.

Finding ways to address the economic results of discriminatory policies and practices is a key part of moving civil rights forward.<sup>195</sup> Much of this work will happen outside of the courtroom.<sup>196</sup> The disproportionate concept of litigation as the vehicle through which social justice is achieved gives short-thrift to the potential (and indeed historic) work of the transac-

---

*See Curriculum*, N.Y.L. SCH., <http://www.nyls.edu/impact-center-for-public-interest-law/curriculum/> [<https://perma.cc/SMG7-W2YA>] (last visited Jan. 25, 2017). The Center supports students interested in (1) applying legal expertise to advance positive social change, (2) developing social entrepreneurship-related career resources and networking opportunities, (3) increasing awareness of social entrepreneurship and innovation, (4) collaborating with the nonprofit sector and social entrepreneurship organizations throughout New York City, and (5) facilitating opportunities for student involvement in community projects at the intersection of law and social enterprise. *See id.*

195. *See Hauber, supra* note 26, at 3 ("Combating the economic impact of discrimination in historically disempowered urban areas is critical in furthering civil rights . . . ." (citing scholarship on race and social and economic justice)).

196. *See Kosuri, supra* note 11, at 4 (describing how "there is no court proceeding . . . no fixed arena in which to challenge bad policy or rights violations").

tional lawyer. Social justice is not within only the province of the litigator. There are lawyers who are not in the courtroom, but who also advocate for change and social justice. Transactional work is actually a new tool to transform and restructure the world in order to make it a more economically just place.

As more law schools adopt transactional teaching as part of their mission to train tomorrow's lawyers, there is a real, tangible value in transactional clinics and transactional experiential learning. The value lies not only in teaching students how to be business lawyers by teaching business skills in practical context, but also in the possibility of teaching economic and social justice in the context of transactional lawyering and thus instilling a professional identity of service.<sup>197</sup> Law schools need to train students to promote economic justice by addressing the injustices that contribute to marginalization of low-income communities. The goals of clinical legal education, which include teaching law students to work for justice on behalf of those that do not have access to resources, is captured and packaged nicely in the phrase "lawyering." The innovative entrepreneur together with the entrepreneur's lawyer can accomplish social and economic justice. Lawyering in the pursuit of justice is therefore within the province of courtroom advocates as well as that of deal lawyers.

---

197. See Crowder, *supra* note 7, at 440.