

FROM THE GROUND UP: CRIMINAL LAW EDUCATION FOR COMMUNITIES MOST AFFECTED BY MASS INCARCERATION

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In the last 25 years, the American criminal justice system has increasingly marginalized and criminalized low-income communities of color. This phenomenon has been compounded by a national decline in civics education and a deep skepticism of criminal defense lawyers advocating on behalf of the most vulnerable indigent criminal defendants and their communities. This Article is an interdisciplinary proposal to put into action López's assertion that the rebellious lawyer for the subordinated "must translate in two directions, creating both a meaning for the legal culture out of the situations that people are living and a meaning for people's practices out of the legal culture." Employing Participatory Action Research, this Article explores a model for potential partnerships between legal clinics and public high schools to provide students who are most affected by the criminal justice system with a criminal law education. Such an education can impart practical tools to students to articulate and analyze legal theory and practice, thus extending López's commitment to sharing both power and responsibility for the American criminal justice system—between and among criminal defense attorneys, criminal defendants, and their communities.

I. INTRODUCTION

In *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*, Gerald P. López asserts that the rebellious lawyer for the subordinated "must translate in two directions, creating both a meaning for the legal culture out of the situations that people are living and a meaning for people's practices out of the legal culture."¹ Twenty-five years later, the need for this reciprocal model of rebellious lawyering is more critical than ever, particularly within increasingly marginalized, low-income communities where the American criminal justice system is experienced as both inaccessible and repres-

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¹ GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 43 (1992).

sive. One need only consider the relationship between criminal defense lawyers and the communities that they represent. These two stakeholders in the American justice system share the burden of translating without a common language. Additionally, access to even the most basic legal education, which was once considered core civics knowledge, is increasingly constrained for lay people. As a result, most criminal defense lawyers represent indigent clients who experience the full brunt of the justice system and have the least access to the most necessary, critical tools to contextualize their experiences and act with the empowered agency each citizen deserves.

Communication is key to the success of the criminal defense rebellious lawyer's representation and advocacy. This Article is based on a fundamental premise: if, as lawyers and educators, we share the theoretical and practical tools of our training with communities most affected by the justice system, we can illuminate and demystify the law while engaging in a larger effort to flatten and level the power relationships that contribute to the subordination and marginalization of communities. Alternative models of legal education can empower those most affected by the justice system and facilitate the translation of experience and knowledge between client and criminal defense lawyer. In Part II of the Article we will explore the structural correlation between racial and socioeconomic disparities in incarceration, access to civics education, and lay people's familiarity with the operations of governmental and legal institutions in New Orleans, Louisiana, where we worked as educators and where Editha trained as a lawyer. This reality—both documented and experienced—is a microcosm of the whole that explains the rightful skepticism of the communities most affected by the criminal justice system.

Because an American legal education is largely an exclusive pursuit, we then propose an expansion of access to, and a revision of, criminal law pedagogy that offers collective, reciprocal, and reflexive models to be employed at the secondary education level. Such a focus on those most affected by, and at risk from, the criminal justice system allows for *young people* to be repositioned and reimaged as architects in the renovation of the criminal justice system. In Part III, we explore Participatory Action Research (PAR) and prior applications of PAR within clinical legal projects as a potential framework for legal courses taught by clinical law students in public high schools. PAR embodies the belief that "critical expertise lies in those most oppressed."² In concert with Critical Legal Theory, PAR challenges both

² Michelle Fine, *Introduction* to REVOLUTIONIZING EDUCATION: YOUTH PARTICIPATORY ACTION RESEARCH IN MOTION 2 (Julio Cammarota & Michelle Fine, eds., 2008).

the objective neutrality of the law and claims of empirical objectivity made by social researchers. In the context of legal education, PAR theory also foregrounds the lived experience of those most affected by the criminal justice system. Overall, PAR is concerned with inquiry that leads to action to make a difference in the lives of the participants and the community, rather than a focus on research and documentation as an end goal. Within a PAR framework, the educator is positioned as facilitator who designs a critical inquiry into the root causes of the problem and collaborates with participants to influence policies affecting their communities.

A PAR-focused criminal law inquiry will prepare future criminal defense attorneys to value and understand the knowledge and experiences of the communities they serve, while providing community members with the opportunity to acquire the necessary institutional knowledge to contextualize and challenge inequities within the criminal justice system. This approach will foster a more reciprocal and egalitarian relationship between criminal defense attorneys and the communities they represent, and institutionalize the idea that communities who are most affected by the criminal justice system have the most comprehensive understanding of the criminal justice system.

While the particular design of this program will vary with the context of the specific community and the available resources, we propose PAR as a theoretical and practical model for facilitating legal education at the high school level. This proposal was inspired by the criminal justice course that Editha taught at the Bard Early College in New Orleans (BECNO) program shortly after her experience as a student in Tulane University Law School's Criminal Law Clinic. BECNO is a dual-enrollment, liberal arts program where eleventh and twelfth grade students from public high schools take college-level courses. Part IV will describe how Editha's BECNO students, who were more accustomed to authoritarian classrooms where their voices were subordinated, learned to engage in the kind of participatory learning environment often reserved for students in wealthier communities. We further describe how the students shared their communities' experiences with the criminal justice system in New Orleans and how they organically developed a critical analysis of legal practices in the social context of a liberal arts seminar where their voices were consistently valued and respected.

This Article will work towards the intersection of clinical legal education and secondary education policy and promote a means for building theory from the ground up, which López posits rebellious lawyering for the subordinated must do. In Part V, we propose models for potential partnerships between legal clinics and public schools in

order to provide the students who are most effected by the criminal justice system with the tools to articulate and analyze legal theory and practice. Ultimately, we hope to contribute to the theoretical and programmatic groundwork for lawyering and educating in a way that extends López's commitment to sharing both power and responsibility for the American criminal justice system—between and among criminal defense attorneys, criminal defendants, and their communities.

II. LEGAL EDUCATION, CIVICS, AND CRIMINAL JUSTICE

A. *The Marginalization and Criminalization of Communities of Color in New Orleans*

We were inspired to write this Article based on our experience teaching college-level courses to high school students of color at Bard Early College New Orleans (BECNO). Like many urban communities of color, the Black community in New Orleans has endured decades of systematic asset-stripping through a combination of economic and legal policies.³ As of 2011, more than half of all Black men in New Orleans were unemployed or had given up looking for work and only fifteen percent held an associate's degree or higher.⁴ Hurricane Katrina's "devastating effect on the labor market" disproportionately affected the sectors with the lowest average weekly wage.⁵ This decline exacerbated poverty in marginalized communities. In 2013, the child poverty rate in New Orleans stood at 39 percent, which was seventeen points higher than the national average.⁶ Despite the much-touted post-Hurricane Katrina Renaissance, economic and legal disparities persist.

The criminal justice system reflects this institutional inequity. In 2014, Louisiana boasted the highest incarceration rate for both juveniles and adults.⁷ According to the Bureau of Justice Statistics, an estimated 516,900 Black men were being held in state or federal

³ Clyde Woods, *Les Misérables of New Orleans: Trap Economics and the Asset Stripping Blues, Part 1*, 61 AMERICAN QUARTERLY 791 (2009).

⁴ Patrice Sams-Abiodun and Gregory Rattler, Jr. *Recognizing the Underutilized Economic Potential of Black Men in New Orleans*, LINDA BOGGS NATIONAL CENTER FOR COMMUNITY LITERACY 3 (2013), <http://www.gnof.org/wp-content/uploads/2015/10/Recognizing-the-Underutilized-Economic-Potential-of-Black-Men-in-New-Orleans.pdf>.

⁵ Michael L. Dorfman, Solidelle Fortier Wasser, and Bruce Bergman, *The Effects of Hurricane Katrina on the New Orleans Economy*, MONTHLY LABOR REVIEW 3, 7 (June 2007), available at <https://www.bls.gov/opub/mlr/2007/06/art1full.pdf?q=new-orleans-bowl>.

⁶ VICKI MACK, NEW ORLEANS KIDS, WORKING PARENTS AND POVERTY, THE DATA CENTER 1 (2015), http://www.datacenterresearch.org/reports_analysis/new-orleans-kids-working-parents-and-poverty/.

⁷ E. Ann Carson, *Prisoners in 2014*, BUREAU OF JUSTICE STATISTICS 7 (2014), available at <http://www.bjs.gov/index.cfm?ty=pb&detail&iid=5387>.

prison, accounting for 37 percent of the male prison population.⁸ In New Orleans, this divergence is striking. According to a report issued as part of a federal consent decree, the Orleans Parish Prison population is 87 percent African-American, while the city is only 60 percent African-American.⁹ The authors of the report describe this disparity as “extraordinary.”¹⁰

These statistics are representative of larger national trends.¹¹ Young people of color have been particularly affected by the growth of the penal system. The past twenty-five years have witnessed an increase in the number of prisons and the expansion of the security apparatus within schools.¹² Additionally, juveniles can be transferred from delinquency court to adult court by means of discretionary, presumptive, or mandatory waiver, depending on the jurisdiction and the type of crime with which they are charged.¹³ This trend indicates a marked shift away from the idea that juveniles must be protected from the adult court system and rehabilitated through the juvenile system.¹⁴ This movement away from rehabilitation is fueled in part by the adulteration and dehumanization of youth of color, particularly young men of color, who are affected at disproportionate rates. According to the Bureau of Justice Statistics, 2.7 percent of Black males and 1.1 percent of Latino males were serving sentences of at least one year in prison, compared to less than 0.5 percent of White males.¹⁵ Disturbingly, the largest disparity between White and Black male prisoners is

⁸ *Id.* at 15.

⁹ THE JFA INSTITUTE, ORLEANS PRISON PROJECT POPULATION UPDATE 5 (2015), available at <http://www.nola.gov/getattachment/Criminal-Justice-Coordination/Reports/Orleans-Parish-Prison-Population-Projection-2015.pdf/>.

¹⁰ *Id.* at 5.

¹¹ CHRISTOPHER HARTNEY & LINH VUONG, NAT'L COUNCIL ON CRIME & DELINQUENCY, RACIAL AND ETHNIC DISPARITIES IN THE U.S. CRIMINAL JUSTICE SYSTEM 5 (2009), available at http://www.nccdglobal.org/sites/default/files/publication_pdf/created-equal.pdf.

¹² BEYOND RESISTANCE! YOUTH ACTIVISM AND COMMUNITY CHANGE: NEW DEMOCRATIC POSSIBILITIES FOR POLICY AND PRACTICE FOR AMERICA'S YOUTH XVI (Shawn Ginwright, Pedro Nogera, & Julio Cammarota eds., 2006) [hereinafter BEYOND RESISTANCE!].

¹³ Katherine I. Puzone, *An Eighth Amendment Analysis of Statutes Allowing or Mandating Transfer of Juvenile Offenders to Adult Criminal Court in Light of the Supreme Court's Recent Jurisprudence Recognizing Developmental Neuroscience*, 3 VA. J. CRIM. L. 52, 65-66 (2015). In Louisiana, children who are at least 14 years of age may be transferred to adult court on the prosecutor's or court's own motion after a hearing. LA. CHILD CODE ANN. art. 857. Juveniles are subject to mandatory transfer if they are at least 15 years of age and indicted for first or second degree murder. Once transferred, they are thereafter “subject to the exclusive jurisdiction of the adult criminal court.” LA. CHILD CODE ANN. art. 305.

¹⁴ BEYOND RESISTANCE!, *supra* note 12 at XIV.

¹⁵ E. Ann Carson, *Prisoners in 2014*, BUREAU OF JUSTICE STATISTICS 15 (2015), available at <http://www.bjs.gov/index.cfm?ty=pb&detail&iid=5387>.

between inmates eighteen to nineteen years of age.¹⁶ In 2014, Black males were more than ten times more likely than Whites to be in state or federal prison.¹⁷ These statistics underline the vulnerability of young people of color and the need for new models of legal education within marginalized and criminalized communities of color.

B. Disparities in Access to Legal Representation and Attitudes Towards Legal Institutions

Louisiana also suffers from what has become a national crisis in underfunding public defender representation. “The constitutional obligation to provide criminal defense for the poor has been endangered by funding problems across the country, but nowhere else is a system in statewide free fall like Louisiana’s, where public defenders represent more than eight out of 10 criminal defendants.”¹⁸ The combination of systemic underfunding, disparities in access, and disproportionate treatment have led the communities most in need of legal remedies to be the least likely to actively seek those remedies.

Compounding the issue is that many indigent community members view legal institutions with skepticism. Sara Sternberg Greene recently conducted a study in order to “explore both why such a large proportion of poor people do not seek civil legal help and how these reasons may differ based on race.”¹⁹ Greene categorized her findings in four interrelated explanations for such inaction:

First, most respondents believed that the criminal and civil justice systems were one in the same, and negative past experiences with, and perceptions of, the criminal justice system made them resistant to seeking help for civil problems. Second, respondents (most referring to the criminal justice system) believed that the justice system is one in which justice can be bought, and thus, if one does not have the money to pay for an expensive lawyer, seeking out formal legal help is unlikely to resolve the issue. Third, negative past experiences with public institutions (both legal and non-legal) led respondents to want to avoid similar negative experiences, and they perceived involving themselves with the legal system as an experience that would reproduce those negatives feelings. Finally, in part as a way to make sense of their past perceptions of, and experiences with, the criminal justice system and other public institutions, many respon-

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Campbell Roberston, *In Louisiana, The Poor Lack Legal Defense*, N.Y. TIMES, Mar. 19, 2016, at A1. Funding cuts have led to layoffs, resulting in caseloads beyond the acceptable professional standard, so much so that as of January 2016, the American Civil Liberties Union had sued the state on this issue in federal court. *Id.*

¹⁹ Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1266 (analyzing study).

dents developed personal narratives as self-sufficient citizens who take care of their own problems and stay “out of trouble.” Seeking help from the legal system was counter to this identity.²⁰

One respondent highlighted economic disparities to explain the difference in quality of legal representation: “Look at O.J. He did it. His lawyers is how he got off. . . If he had a public defender, he’d be in jail. Everyone should have lawyers like that.”²¹ Such cynicism makes it difficult for clients to trust that their lawyer will advocate to the best of their ability unless they pay a high price. It is unsurprising, then, that indigent community members view legal institutions with skepticism.

C. Rethinking Civic Education and Engagement for Youth of Color

Meanwhile, civics education in public high schools, which arguably lays the groundwork for legal studies and democratic engagement, has declined steeply.²² The accountability regime enacted by the No Child Left Behind Act is based on reading and math scores.²³ Thus, an unintended consequence of this policy has been the reduction of time spent on other subjects.²⁴ Although forty state constitutions mention the importance of student civic literacy, civic education has been neglected in the past decades.²⁵ Galston reports that a single civics offering has taken the place of three courses which were common in the 1960s: civics, government, and democracy.²⁶ As Constitutional law scholar and education reformer Eugene Hickok points out, “It is ironic and disappointing that Americans’ civic literacy is so weak even though education reform has been a national priority for decades.”²⁷

In a 2005 national survey of school districts conducted by the Center on Education Policy, twenty-seven percent of school districts reported reducing time dedicated to social studies “somewhat or to a great extent.”²⁸ This narrowing of the curriculum has reduced opportunities for creativity and critical thinking among public school stu-

²⁰ *Id.* at 1288-89.

²¹ *Id.* at 1294.

²² William A. Galston, *Civic Knowledge, Civic Education, and Civic Engagement: A Summary of Recent Research*, 30 INT'L J. OF PUB. ADMIN. 6-7 (2007).

²³ CTR ON EDUC. POL'Y, NCLB: NARROWING THE CURRICULUM? 1 (July 2005).

²⁴ DIANE RAVITCH, *THE DEATH AND LIFE OF THE GREAT AMERICAN SCHOOL SYSTEM: HOW TESTING AND CHOICE ARE UNDERMINING EDUCATION* 107 (2010).

²⁵ Justice Sandra Day O'Connor, *The Democratic Purpose of Education*, in TEACHING AMERICA: THE CASE FOR CIVIC EDUCATION 6 (David Feith, et al. eds., 2011).

²⁶ William A. Galston, *Civic Education and Political Participation*, 37 POL. SCI. AND POLITICS 264 (2004).

²⁷ Eugene Hickok, *Civic Literacy and No Child Left Behind: A Lesson in the Limits of Governmental Power*, in TEACHING AMERICA: THE CASE FOR CIVIC EDUCATION 51 (David Feith, et al. eds., 2011).

²⁸ CENTER ON EDUCATION POLICY *supra* note 23 at 1.

dents and, instead, increased the focus on test preparation.²⁹ This effect is particularly pronounced in New Orleans, a majority charter school system, where schools are freed from standardized curriculum and governmental regulation.³⁰

Specifically, researchers have reported a gap in both civic participation and civic education for public high school students who are low-income and who are students of color. A survey of representative sample of 2,366 California high school students found that African-American students reported having “fewer civic-oriented government classes, current event discussions, and experiences in an open classroom climate than white students,” while “Latino students reported fewer opportunities to participate in community service, simulations, and open classroom climates than white students.”³¹ Similarly, a study from the Corporation for National and Community Service found that youth from low-income backgrounds were nine percent less likely to report participation in school-based service or service learning.³²

These gaps are also reflected in a report issued by the National Assessment of Educational Progress, a U.S. Department of Education assessment which measures civic knowledge in grades four, eight, and twelve and surveys students about access to civics education.³³ With regard to legal education, only 61 percent of students surveyed reported studying “how laws are made” and “the court system.”³⁴ Among eighth graders, tested in 2010, only 53 percent of African-American students and 56 percent of Latino students tested at or above the basic level on the assessment compared to 82 percent of White students.³⁵ The report indicated a similar correlation with income level, as only 52 percent of students eligible for free lunch scored at basic level or above while 85 percent of non-eligible students score at basic or above.³⁶ While we do not argue that these assess-

²⁹ David C. Berliner, *MCLB (Much Curriculum Left Behind): A US Calamity in the Making.* 73 THE EDUCATIONAL FORUM 284 (2009).

³⁰ Kristen L. Buras, *Race, Charter Schools, and Conscious Capitalism: On the Spatial Politics of Whiteness as Property (and the Unconscionable Assault on Black New Orleans)*, 81 HARV. EDUC. REV. 302 (2011).

³¹ Joseph Kane & Ellen Middagh, *Democracy for Some: The Civic Opportunity Gap in High School 4* (The Ctr. for Info. & Res. on Civic Learning & Engagement, Working Paper No. 59, 2008), <http://www.civicyouth.org/PopUps/WorkingPapers/WP59Kahne.pdf>

³² KIMBERLY SPRING, NATHAN DIETZ, & ROBERT GRIMM JR., CORP. FOR NAT'L & COMMUNITY SERV., EDUCATING FOR ACTIVE CITIZENSHIP: SERVICE-LEARNING, SCHOOL-BASED SERVICE AND YOUTH CIVIC ENGAGEMENT 5 (2006).

³³ U.S. DEP'T OF EDUC., CIVICS 2010: NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS AT GRADES 4, 8, 12, 39 (2010), <http://nces.ed.gov/nationsreportcard/pdf/main2010/2011466.pdf>.

³⁴ *Id.* at 12.

³⁵ *Id.* at 53.

³⁶ *Id.* at 53.

ments measure civic engagement, we posit that they indicate disparities in access to a basic understanding of governmental and legal institutions and processes. Taken cumulatively, the research supports the linked premises that there are significant racial and class disparities in: (1) access to civics education; and (2) familiarity with the operations of governmental and legal institutions.

The narrowing of curricula under school reform has coincided with a return to more conservative modes of instruction. In most urban districts, high-stakes testing regimes have worked to calcify the view of students as vessels to be filled by the “all-knowing adult teacher,” while school instruction focuses on a narrow, testable set of skills.³⁷ These top-down reforms have reinforced the view of students as subjects rather than actors and limited their access to civic engagement and real-world research opportunities.³⁸ This is a particularly acute concern for youth of color living in marginalized communities, where they collectively experience powerlessness, a state surveillance, and a lack of money.³⁹ Young people of color are ironically positioned as adults within the criminal justice system, but denied the agency of adulthood within the education system. The dominant view of young adults as living in a state of development and dependency denies their potential for social agency and is ultimately “detrimental to their capacity to participate in a democratic society.”⁴⁰ Justice Sandra Day O’Connor opined that this puts young people of color at a “disadvantage in learning skills necessary for effective civic engagement, such as leadership and communication” even though “such youth are most likely to face civic problems, such as crime, and to live in neighborhoods most in need of direct civic engagement.”⁴¹

This perception of young people of color in urban communities as subjects, rather than actors, persists despite higher levels of familial and financial responsibility borne by Black and Latino youth.⁴² The bureaucratic and economic pressures placed upon low-income families through welfare reform resulted in an increase in adult-like responsi-

³⁷ Greg Dimitriadis, *Foreword*, in BEYOND RESISTANCE! YOUTH ACTIVISM AND COMMUNITY CHANGE: NEW DEMOCRATIC POSSIBILITIES FOR POLICY AND PRACTICE FOR AMERICA’S YOUTH X (Sahen Ginwright, Pedro Nogera, & Julio Cammarota eds., 2006).

³⁸ *Id.* at XX.

³⁹ JOHANA WYN & ROB WRIGHT, RETHINKING YOUTH 142 (1997).

⁴⁰ Berry Checkoway & Katie Richards-Schuster, *Youth Participation in Educational Reform in Low-income Communities of Color*, in BEYOND RESISTANCE! YOUTH ACTIVISM AND COMMUNITY CHANGE: NEW DEMOCRATIC POSSIBILITIES FOR POLICY AND PRACTICE FOR AMERICA’S YOUTH 319 (Sahen Ginwright, Pedro Nogera, & Julio Cammarota eds., 2006).

⁴¹ O’Connor, *supra* note 25 at 7.

⁴² Jennifer Brooks, Elizabeth C. Hair, & Martha J. Zaslow, *Welfare Reform’s Impact on Adolescents: Early Warning Signs*, CHILD TRENDS RESEARCH BRIEF 4 (2001).

bilities among Black and Latino youth.⁴³ Yet urban youth of color are more likely to attend schools where opportunities for active engagement and collaboration are limited.

Consequently, the sharp decline in both civic engagement and the civic education of working class young people of color, who are disproportionately affected by the legal system, has resulted in limited public access to a structural and theoretical legal education. This has arguably burdened communication between public defenders and their clients, ultimately creating what we refer to as the “legal education gap” between advocates and those whom they represent. If individuals from marginalized communities do not have access to a fundamental legal education at the high school level, they are at a greater disadvantage in relationship to the legal system. This not only exacerbates relational and communication challenges between public defenders and the communities they represent, but also constricts the pipeline of future law students from marginalized communities.

Although traditional measures of civics hold value in terms of formal political participation, we espouse a more expansive view of civic engagement rooted Dewey’s concept of the Great Community, one wherein “the clear consciousness of a communal life, in all its implications, constitutes the idea of democracy,” and where “communication of the results of social inquiry is the same thing as the formation of public opinion.”⁴⁴ In other words, civic engagement need not be defined by participation in the formal operation and maintenance of public and community institutions, but by engagement in social inquiry and in the dissemination of that inquiry. Civics education is about “engaging in political action to accomplish results.”⁴⁵ As Dimitriadis points out, “Many young people are turning away from this system—but they are not giving up on democracy itself.”⁴⁶

III. PARTICIPATORY ACTION RESEARCH AS A CRITICAL FRAMEWORK AND PROGRAM MODEL

In this context, Participatory Action Research (PAR) provides an emergent, dynamic, and critical model for a civically-engaged, legal education that provides young people with the practical and theoretical tools necessary to engage in social inquiry. The desired result is action and positive policy changes in marginalized communities. PAR can be traced through two traditions: the Southern and the Northern

⁴³ *Id.* at 7.

⁴⁴ JOHN DEWEY, *The Public and Its Problems*, in THE ESSENTIAL DEWEY: PRAGMATISM, EDUCATION, DEMOCRACY 295 (1998).

⁴⁵ O’Connor, *supra* note 25 at 9.

⁴⁶ Dimitriadis, *supra* note 37 at X.

tradition.⁴⁷ In North America the movement was based on the idea that social science research should be rooted in the field rather than the laboratory, and employed to “solve practical problems,” rather than “research that produces nothing but books.”⁴⁸ In South America, PAR was associated with popular movements and influenced by indigenous culture and epistemologies, while sharing the anti-positivist tenets and commitment to action of the Northern tradition.⁴⁹ It developed in conjunction with Paolo Freire’s critical literacy, particularly his conception of Praxis, defined as “reflection and action directed at the structures to be transformed.”⁵⁰ At its core, Freire’s process, “involves a problem-posing education, the acquisition of dominant literacy practices, and participation in transformative dialogue and informed action (praxis) upon the world.”⁵¹

Describing the PAR movement’s methodological origins, Orlando Fals-Borda posited that it:

was counterproductive to consider the researcher and the researched, the teacher and their students, or the specialist and their clients, as discordant or antagonistic poles. Rather, we wanted to consider them both as people connected to each other by feelings, rules and attitudes, with diverse opinions and experiences that could be taken into account in the projects, jointly.⁵²

This theoretical position translated into a participatory research method in which the community identified the problem, developed the method of inquiry, engaged in the analysis, and acted to resolve the problem through available means.

Both traditions provide a lens and methodology through which community members can engage in structural change, while developing critical consciousness with regards to their position in relationship to the institutions that operate to subordinate them. Our proposal employs Youth Participatory Action Research (YPAR), which focuses on young people as participants in the iterative process of research, analysis, and action. YPAR emerged in consonance with Critical Youth Studies as a methodology through which young people might engage in organized critical inquiry into the structures that constrain them. More specifically, “YPAR teaches young people that conditions of in-

⁴⁷ Orlando Fals-Borda, *The North South Convergence: A 30-Year Assessment of PAR*, 4.3 ACTION RES. 352 (2013).

⁴⁸ Kurt Lewin, *Action Research and Minority Problem*, 2 J. OF SOC. SCI. PAGE. 35 (1946).

⁴⁹ Fals-Borda, *supra* note 47 at 355.

⁵⁰ PAOLO FREIRE, *PEDAGOGY OF THE OPPRESSED* 126 (30th ann. ed. 2000).

⁵¹ NICOLE MIRRA, ANTERO GARCIA & ERNEST MORELL, *DOING YOUTH PARTICIPATORY RESEARCH* 22 (2016).

⁵² Orlando Fals-Borda, *Action Research in the Convergence of the Disciplines*, 9(2) INT'L J. OF ACTION RES. 160 (2013).

justice are produced, not natural; are designed to privilege and oppress; but are ultimately challengeable and thus changeable.”⁵³ As we have noted, the secondary education system in the United States, by and large, treats young people as objects rather than subjects.⁵⁴ By engaging youth in the research process on civics and legal education, educators facilitate the development of critical literacy to make space for students to assess their position in relationship to the legal system and to participate in political activity that mitigates structural inequities.

While numerous YPAR projects have engaged youth in critical social inquiry, examples of projects and programs related directly to legal issues are limited. One exception is the work of law professors Emily Houh and Kristin Kalsem at the University of Cincinnati. In 2012, they collaborated with the non-profit organization Public Allies Cincinnati to employ a PAR project that addressed issues of race and gender in relationship to exploitative payday lending in Cincinnati.⁵⁵ Houh and Kalsem wrestled with questions posed by their law faculty colleagues in terms of outcomes, assessment, and “what—exactly, [it had] to do with the law.”⁵⁶ Their compelling rebuttal effectively summarizes our position on PAR and access to legal knowledge:

PAR provides us a way to give community stakeholders another tool to more carefully examine their situations and more systematically generate their own action agendas. Law is a tool that doesn’t need to be wielded only by lawyers or *pro-se* litigants, and not always or only in a courtroom, legislative session, or classroom. Everyone should have access to law for the purposes of self-empowerment and action, and legal PAR provides a democratic process by which to gain that access.⁵⁷

In this way PAR is expanded to embrace legal expertise. While the methodology maintains its focus on primary research, Houh and Kal-

⁵³ Julio Cammarota & Michelle Fine, *Youth Participatory Action Research: A Pedagogy for Transformational Resistance*, in BEYOND RESISTANCE! YOUTH ACTIVISM AND COMMUNITY CHANGE: NEW DEMOCRATIC POSSIBILITIES FOR POLICY AND PRACTICE FOR AMERICA’S YOUTH 4 (Sahen Ginwright, Pedro Nogera, & Julio Cammarota eds., 2006).

⁵⁴ MIRRA ET AL., *supra* note 51 at 4.

⁵⁵ The project, named Powershift by the co-researchers, involved a collaboration between the Center for Race, Gender, and Social Justice at the University of Cincinnati and Public Allies Cincinnati, an Americorps program focused on social change. Powershift co-researchers investigated payday lending in the predominately African-American and low-income West End neighborhood. Co-researchers learned PAR strategies, conducted interviews with community members and produced a research manual that documented methods and results as well as ‘zine intended to inform community members about the mechanisms and effects of payday lending. Emily M.S. Houh & Kristin Kalsem, *It’s Critical: Legal Participatory Action Research*, 19 MICH. J. OF RACE & L. 330, 331 (2014).

⁵⁶ *Id.* at 339.

⁵⁷ *Id.* at 342.

sem conceptualized an action-oriented research that embraces theoretical and practical legal knowledge, while facilitating formal policy influence and institutional change.

Similar legal advocacy collaborations that use PAR models include community-based environmental justice organizations like People Organizing to Demand Environmental and Economic Rights (PODER) and WE ACT for Environmental Justice in New York.⁵⁸ Giovanna Shay, the Litigation and Advocacy Director at Greater Hartford Legal Services, has also written about the application of PAR methodology to legal advocacy “informed by a model of ‘rebellious lawyering’ described by Gerald López and other critical legal scholars as a method of working to empower subordinated groups.”⁵⁹ Shay worked with members of Mothers for Justice, an organization of low-income women, to generate personal and policy responses to state welfare cuts in order to “provide a vehicle for poor women to speak out and tell the truth about their lives.”⁶⁰

While these projects involve adult participants, we propose employing YPAR to provide young people with theoretical and practical legal tools to promote community involvement, help develop their leadership skills, and to engage in meaningful, action-oriented research in collaboration with supportive adults. Building on a decade of Participatory Action Research at the City University of New York, the social psychologist and Co-Director of The Public Research Project, Michelle Fine proposed four foundational beliefs undergirding YPAR:

1. Youth grow up in profoundly uneven developmental contexts.
2. Oppression breeds multi-generational wisdom, desire and tactics of subversion.
3. Research grounded in theory and action.
4. Projects rooted in ethics and responsibility.⁶¹

We root our proposed YPAR model in these four tenets. For communities like New Orleans, these beliefs mean that we must recognize the “uneven and racialized geography of resources and opportunities” as well as the long history of institutionalized racism and terrorism

⁵⁸ Anna Lund, Michelle Ben-David & Ubaldo Fernandez, *Student Review of Selected Panels at the Thelton E. Henderson Center for Social Justice 2010 Symposium “Empowered Partnerships: Participatory Action Research for Environmental Justice”*, 1 ECOLOGY L. CURRENTS 38 (2011).

⁵⁹ Mothers for Justice & Giovanna Shay, *The Phenomenal Women of Mothers for Justice*, 8 YALE J. OF L. & FEMINISM 193, 194 (1996).

⁶⁰ *Id* at 196.

⁶¹ Michelle Fine, *Postcards From Metro America: Reflections on Youth Participatory Action Research for Urban Justice*, 41 THE URBAN REV. 1, 3 (2009).

against the Black community.⁶² We must also acknowledge the expertise and wisdom accrued by our students, their families, and the community regarding their experiences with criminal justice and racism at large. Considering the application of our own expertise in criminal law and educational research methods, it is vital that we recognize how epistemological and institutional instruments have done great damage to the communities with whom we seek to engage.

We also recognize that YPAR projects must be conducted with a reflexive understanding of individual positionality in identity and an assessment of institutional and epistemological loyalty. It is not enough to question who we are in relationship to a particular community; we must also consider the ideas and institutions in which we are invested and how that investment informs our beliefs and actions. For this project, this means bringing our personal backgrounds—which include working and living in primarily working-class Black and Latino neighborhoods in Boston, Oakland, Chicago, New Orleans, and New York City; having access to elite higher education institutions; questioning learned epistemological beliefs around what constitutes data and who is equipped to participate in policy formation; and questioning the validity of the criminal justice schema.

IV. EDITHA'S BECNO CRIMINAL LAW CLASS IN NEW ORLEANS

My experience teaching a criminal law class at BECNO, while anecdotal, provides the inspiration for our proposed project of increasing access to legal education in criminal law at the secondary education level. I first wrote about the possibility of this project in *The Legal Education Gap: How a High School Legal Education Can Lay the Foundation for a Just Society*, a chapter in a compilation of writings on the death of Trayvon Martin and its ensuing ramifications after George Zimmerman's acquittal.⁶³ That chapter recounted how at BECNO, a dual enrollment program in which approximately 150 high school students can earn both high school and college credit, a variety of programs are taught by professionals and academics from their respective fields who challenge the students to "engage in inquiry-based learning and higher-level thinking through a variety of college level texts."⁶⁴ The chapter offered a brief foray into my class as a call to academics to "consider practical routes of addressing the legal edu-

⁶² *Id.*

⁶³ Editha Rosario, *The Legal Education Gap: How a High School Legal Education Can Lay the Foundation for a Just Society*, in TRAYVON MARTIN, RACE, AND AMERICAN JUSTICE 145 (K.J. Fasching-Varner, Rema E. Reynolds, and Katrice A. Albert, eds., 2014).

⁶⁴ *Id.* at 147.

tion gap by instructing the young people most affected by it.”⁶⁵ By “legal education gap,” I described briefly the lack of legal understanding and knowledge referenced in Section 2 of this Article. In this Article, we build on that chapter by reflecting on the class in light of a PAR framework to suggest new, dynamic civics approaches for young people.

My BECNO class was based on Bard College’s Institute for Writing and Thinking (IWT), which promotes “practical, hands-on instruction in a collaborative learning environment [which] demonstrates for teachers how they can lead their students to discover rather than just setting out to find answers.”⁶⁶ Like Participatory Action Research, this pedagogy is based on a student-centered process that seeks to engage them from an authentic point of inquiry and response, rather than one that is primarily guided by the instructor’s point of view or thinking process. IWT instructional strategies are rooted in Peter Elbow’s writing-to-learn pedagogy which involves varying informal writing activities within the classroom.⁶⁷ Students engage in rigorous text analysis before being invited into a more traditional seminar format wherein the instructor facilitates discussion and engages the Socratic method, probing student analyses and modeling logical constructions. While the BECNO course and PAR embody a similar respect for student capacity and experiential knowledge, PAR focuses on primary research while IWT is focused on text analysis.⁶⁸ Like a law school student who takes environmental law while participating in the environmental law clinic, the pairing of theory and practice is both potent and generative. While the course I taught at BECNO did not integrate primary research or a policy action, it demonstrated the demand for such a model among young students of color whose communities are most affected by the criminal justice system.

⁶⁵ *Id.* at 146.

⁶⁶ *Id.*

⁶⁷ Peter Elbow, *How to Enhance Learning by Using High-Stakes and Low-Stakes Writing*, in MCKEACHIE’S TEACHING TIPS: STRATEGIES, RESEARCH, AND THEORY FOR COLLEGE AND UNIVERSITY TEACHERS (12TH EDITION) 192, 192 (Peter Elbow & Mary Dean Sorcinelli, 2005).

⁶⁸ The research-focused, text, and writing-based approaches are distinct in their content and methodology from other efforts to educate young people about the law, even if they share some common goals. For example, Street Law is a “law-school-based program that [has used] the law to educate, empower, and develop high-school students,” since 1972. Seán G. Arthurs, *Street Law: Creating Tomorrow’s Citizens Today*, 19 LEWIS & CLARK L. REV. 925, 943-47 (2015). The volunteer, student-drive program is taught in connection with 45 law schools and implemented in public high schools and other community centers. The structure differs from law school to law school. At Georgetown University Law Center, for example, where the program originated, law students enroll in a year-long clinic for credit wherein they teach a curriculum focused “on practical law, or the fundamental laws that affect a person’s everyday life.” *Id.*

I started teaching at BECNO while I was in my last semester of law school and enrolled in the Tulane Criminal Law Clinic. At the time, I was teaching Gender Law. I was struck by how motivated the students were to learn about the nuances of the law in general. Translating what I had learned to curious and engaged young people deepened my appreciation for the value of my legal education and revealed that teaching was part and parcel of being an effective, compassionate advocate. In my prior teaching experience, I had always considered myself a student-centered educator, but teaching while enrolled in the clinic revealed the necessity of making a similar paradigm shift in being an advocate. I began to think about advocacy as helping clients to navigate institutional power. This lead to prioritizing the possibility of creating of a space for clients to shape those institutions more directly. BECNO provided the perfect platform for investigating the possibilities and the related challenges.

Many of the Gender Law students asked questions about criminal law with a particular urgency, which inspired me to propose teaching a criminal law class at BECNO the following fall. I was no less inspired by my work in the criminal law clinic for a client who wanted to challenge his sentence under the Supreme Court ruling *Miller v. Alabama*.⁶⁹ I worked on preparing for a potential resentencing hearing by assessing how my client's past as a juvenile would be presented alongside his adult life in order to demonstrate his capacity for rehabilitation. This experience sensitized me to the adultification of youth in an immediate sense. I wanted to provide my BECNO students with the opportunity to simultaneously unpack their place in the criminal justice system and affect it.

The summer before the class began, George Zimmerman was acquitted of the murder of Trayvon Martin. I anticipated that my students would want to discuss the outcome, but was pleasantly surprised by their desire to learn anything and everything related to the case. In a sense, their inquiry into how an injustice such as the one that happened to Trayvon could, and continues, to happen intensified an imperative need to understand what was already deeply affecting their communities. As a result, our inquiry focused on investigating the social and economic context of the criminal justice system.

The class syllabus offered as its fundamental inquiry:

⁶⁹ In *Miller*, the Court held that it was unconstitutional for a judge to sentence juvenile defendants to mandatory life without parole without conducting an individualized sentencing hearing in which the judge considered the "mitigating qualities of youth," which included "immaturity, recklessness, and impetuosity." The Court explicitly relied on studies in concluding that, for the purposes of sentencing, children were psychologically different than adults. *Miller v. Alabama*, 132 S. Ct. 2455, 2464-69, 2475 (2012).

Why is Louisiana, the world's prison capital, also home to some of the country's most relaxed gun laws and severe civil rights violations? This course attempts to address this apparent contradiction by exploring the relationship between criminal law and justice, as well as criminal procedure and civil rights in Louisiana and under the Constitution to the United States.⁷⁰

Specifically, the curriculum began with an overview of the fundamentals of criminal law and the criminal justice system, including the major underlying philosophical theories of crime and punishment. We then explored the practical workings of trials, juries, and appeals in a format I called, "How a Charge Becomes a Conviction;" discussed the moral imperatives behind the categorization of different classes of offenses; identified the role of socioeconomic, racialized, and gendered identities in prosecution and incarceration rates; and debated the moral and practical limits of the death penalty.

Coursework was rigorous. Student participation was twenty percent of the final grade, along with: annotated readings; in-class writing and reflection responses that guided discussion; the completion of two critical essays focusing on comparison of theories of punishment and the application of law; and essay-based mid-term and final exams. Where I previously felt constrained by such a content-heavy subject, I experienced liberation in contextualizing the material this way. There was no indoctrination of the students with my point of view, but eager, critical debate and disagreement with me and among the students. Texts included limited case law, which the students and I briefed together as a class; excerpts of various law journal articles; and criminal law hypothetical exercises.

Intensive writing exercises were designed to begin and deepen discussion. For example, we analyzed the different sections of the *Miller* decision and explored the "mitigating qualities of youth" discussed in that case—immaturity, irresponsibility, impetuousness, and recklessness—which, the Court reasoned, meant that children are psychologically different than adults.⁷¹ This conclusion raised the students' concern with how the media portrayed Trayvon Martin as the aggressor, which I posited as an example of the adultification of youth. The discussion of Trayvon Martin served as an opening into the students' personal experiences with the criminal justice system. Nearly every student knew someone who had been, or currently was, incarcerated in Louisiana. Some students spoke to me privately about their concerns for family members and friends who were facing the possibility of incarceration. All of them expressed a general distrust of the

⁷⁰ Editha Rosario-Moore, Criminal Law (2013) (on file with author).

⁷¹ *Miller*, 132 S. Ct. at 2463-68.

criminal justice system in New Orleans and Louisiana and a fear that even if they were crime victims, they would be treated like adult perpetrators. We approached this fear by trying to unpack it.

The practical result of the class was that the students came away with an understanding of the criminal justice system and a theoretical framework for assessing the dysfunction and working for change. But it was difficult not to engender further distrust of the system and cynicism. At that time, the Louisiana Supreme Court had decided that *Miller* was not retroactive to the nearly 300 men and women who had been sentenced to mandatory life without parole.⁷² One student expressed to me that she had wanted to be a public defender, but after learning about the dysfunction of the criminal justice system, she no longer aspired to do the work. Others still communicated a passionate interest and desire to pursue true and significant criminal justice reform. This was, of course, the goal in teaching the course.

V. LEARNING HOW TO EDUCATE IN BOTH DIRECTIONS

PAR is useful in formulating the questions and setting up potential answers to two questions: (1) how can legal culture change from what we learn from communities affected most by mass incarceration?; and (2) how can these communities create meaning using legal frameworks?

In order to create meaning for legal culture out of real-life situations, PAR must consider what the students experience and seek to explore what must change in the legal culture. In this way, the teachers—criminal defense advocates—are taught. This contributes to alleviating the skepticism of public defenders and establishing the foundation for a critically informed relationship between marginalized communities and the legal institutions intended to protect them. To create meaning for people's practices out of legal frameworks, we must focus on community access to critical legal pedagogy that both enables and invites engagement with structural analysis. Through PAR, students will identify criminal justice problems in their communities, propose solutions through legal analysis, and formulate actions designed to mitigate or remedy those problems.

While the design of a legal YPAR model may differ, we propose the following core principles:

- Young people possess critical knowledge of the operations and effects of the criminal justice system on themselves, their fami-

⁷² *State v. Tate*, 130 So. 3d 829, 844 (La. 2012). This ruling has since been overturned since the Supreme Court held in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) that *Miller* was retroactive.

lies, and their communities. YPAR projects must be designed to access and apply this critical knowledge.

- YPAR projects must focus on inquiry, analysis, and action. While providing young people with an understanding of legal theory and legal principles is valuable, these tools must result in action designed to have some positive effect on the community.
- Young people must take the lead in the research process. While the YPAR facilitator provides institutional knowledge and analytical tools, projects should be designed to encourage youth leadership and agency. YPAR is fundamentally participatory and student-centered.
- YPAR facilitators must work actively to flatten power relationships between themselves, youth participants, and community members. This requires that facilitators engage in critical reflection about their relationship to legal and educational institutions, as well as their personal and political identity.

There are a number of potential partnership and program models that align with a PAR framework. While the design and infrastructure of each project would necessarily differ according to the community and institutional context, it is worth sketching some potential models and establishing the core principles of a legal YPAR project. If, for example, civics educators came from law school criminal defense clinics, we could focus on recognizing the social and democratic problems presented by the legal education gap.

We choose to focus on a clinical legal education as the source of educators because this environment provides law students with the opportunity to explore the complexity of the lawyer-client relationship in a real-world context.⁷³ This approach is grounded in the goal of “learning for transfer” or “the ability to generalize from lessons and skills gathered in one place and circumstances and transfer such lessons and skills to a different set of circumstances. Many suggest that this is the heart of clinical pedagogy.”⁷⁴ Such learning provides students with hands-on opportunities to “transform into self-learners [and] . . . become reflective self-evaluating transformative agents of education”⁷⁵ In the context of a criminal defense clinic, learning involves interacting with the communities who are represented in lectures only as the surnames in criminal case titles. Ideally, this experience should encourage students to reflect on their own positionality in

⁷³ Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLIN. L. REV. 489, 494 (2013).

⁷⁴ *Id.*

⁷⁵ *Id.*

relationship to the communities they will serve, whether they sustain a specific career as a criminal defense lawyer. YPAR would then serve as a model through which to collaboratively bridge the gap between lawyer and community, researcher and participant, and legal institutions and the marginalized communities they are intended to serve.

While the research topic of a YPAR inquiry would necessarily be student-generated, one example of a theoretical project could focus on police shootings of unarmed Black men. Students could interview members of the community and law enforcement officials while YPAR facilitators provide the legal and historical context and relevant concepts from sociology, psychology, and law to shape and guide the inquiry. With respect to police brutality, students can investigate the concepts of unconscious bias, institutional racism, White supremacy, and Whiteness as property through participatory workshop activities. Facilitators would help the students to develop their own theories of institutional behavior and individual bias to illuminate aspects of the phenomenon generated from their personal experiences. It is through this cycle of inquiry that a new theory-of-action develops to address policing practices and police accountability.

Potential collaborative partnership models might include:

- *University Law School Legal Clinic and Public High School/Educational Non-Profit Partnership:* This model would involve an expansion of the role of the legal clinic and include community research and education. YPAR projects would be implemented in concert with Civics and Government curriculum at the secondary education level, or developed in collaboration with educational non-profits. Law clinic participants could be trained in PAR methods or be paired with a PAR graduate student or researcher. The research findings would inform the legal clinic's community-engagement strategy and influence individual faculty's research agendas.
- *Early College High School/Law School Partnerships:* Early College High Schools, like BECNO, provide a greater degree of curricular flexibility and higher levels of autonomy for students. These partnerships offer the opportunity for law school students working in clinics to gain valuable teaching experience while engaging students in YPAR projects that allow for "translating in two directions" between the law school and the local community.

Actively expanding critical legal education into high schools may require resource commitments and collaboration between multiple institutions. But the benefits for institutional and individual stakeholders

ers outweigh potential costs. If clinical legal education is intended to provide practical experience in client advocacy, law school students would clearly benefit from a deeper understanding of the communities that they serve. A YPAR framework would also challenge law students to contextualize their beliefs about the relationship between legal institutions and marginalized communities, and to engage in a reflexive inquiry that would only strengthen their identity as legal advocates. Law schools and legal clinics would benefit from a reciprocal cycle of inquiry and advocacy, through which a more productive and transformational collaboration might develop with the local community.

More importantly, the community would benefit from the individual and collective empowerment that comes from understanding how to challenge the criminal justice framework that subordinates them. These partnerships deepen the engagement of young people with their communities and encourage participation in civic issues. Such projects may also diversify the legal education pipeline, which could, in turn, increase the level of trust between public defenders and the communities they serve. In New Orleans, we saw firsthand how deep the desire is among young people of color for legal knowledge. Our students already recognized how the criminal justice system impacted the lives of their community and were highly motivated to engage in sustained inquiry and advocacy. We can only imagine what a program more consciously rooted in YPAR could achieve on a larger scale.

VI. CONCLUSION

The rebellious criminal defense lawyer must be vigilant in balancing advocacy with expertise. It is thus critically important for both lawyers and educators who work within marginalized communities to recognize the limits of their expertise, reflect on their practices and privileges, and to avoid contributing to the subordination of their clients or students. We recognize that the proposed expansion of legal education into public high schools may not transform the current state of client/criminal defense lawyer relationships or remedy systemic inequities wholesale. Such transformation requires a multi-disciplinary approach beyond the scope of this Article. But by widening the capacity of clinical legal education and reimagining a more student and community-centered legal pedagogy, we hope to answer López's call to build theory from the ground up by increasing communication between criminal defense lawyers, defendants, and their communities.

Access to legal education provides theoretical tools, such as recognizing the value of community knowledge and identifying mecha-

nisms that constrain such knowledge, to better prepare young people to advocate for themselves and their communities through rigorous inquiry. Through this flattening of power dynamics in the classroom, future criminal defense lawyers can learn to advocate for their indigent clients without further subordinating them, and emerge without being subordinated themselves. In this context, the process of translating in many directions not only facilitates the efficacy of legal processes, but maintains the exchange of knowledge and balance of power as vital and fluid, and shifts epistemological and structural imbalances between institutions and the communities they are meant to serve.