

# LAWYERING CLOSE TO HOME

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*This essay incorporates ethnographic insights and narrative technique, rooted in part in Critical Race Theory and critical geography studies, to ground conversations about transformative pedagogy and praxis in the lived experiences of our students. Many of our students fight for radical social change and enter law school hoping to gain new tools for that mission. Increasingly, students are uniquely situated and motivated to engage in rebellious law practice, yet, fault lines in legal education create heightened challenges for some students with negative formative experiences with the state. Drawing from the work of Lani Guinier and Gerald Torres, this essay introduces the idea of authoritative interpretive communities in the law school classroom while addressing the unique world of legal practice for students working in areas in which they have personal experience. This essay specifically calls for disruptive innovations in lawyering in the family regulation system. Finally, it advances ideas for transforming legal education to better address the realities of race-class marginalized students so that they may participate—on their own terms—in today’s struggles for radical social change.*

## INTRODUCTION: THEORY AND METHOD

Even though we knew they were coming, we fell silent when they banged on the door. The muscles in Rafael’s forearm tensed as he held his tiny, six-month-old daughter. I pressed my nephew’s sweet-smelling head into my chest, nuzzling my chin on top, trying to convey the false sense that I could protect him. My mother, resigned into obedience, opened the door as two police officers and a Child Protective Services worker forcefully walked into the living room. They loomed in the low-ceilinged room, all wearing government-navy nylon jackets: a paramilitary team for taking babies.

By that point, the police state was not at all new to me or my family. This particular saga began in 2005 when my brother’s first son was born at a hospital in Rhinebeck, New York. The hospital per-

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formed a drug test on the baby's mother without her knowledge or consent,<sup>1</sup> and then reported the positive marijuana result to the State Central Register of Child Abuse and Maltreatment, often called the "SCR."<sup>2</sup> Caseworkers told us that my brother and his girlfriend had to complete "preventive services"<sup>3</sup> and abide by other mandates, or the children might be taken from them.<sup>4</sup> A year later my brother's daughter was born. Officials warned that the preventive services were not complete. When she was six months old, her maternal grandmother accidentally burned her foot with hot water during a bath in the kitchen sink. Too scared to take her to the doctor, we treated the burn at home the first day, and took her to the doctor the following day.<sup>5</sup> We were certain that the doctor would call Child Protective Services

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<sup>1</sup> See generally, Yasmeen Khan, *City Council Asks Why NYC is 'Tearing Families Apart' for Marijuana Use*, GOTHAMIST, (Apr. 11, 2019, 12:31 PM), <https://gothamist.com/news/city-council-asks-why-nyc-is-tearing-families-apart-for-marijuana-use>; Erin Cloud, Rebecca Oyama & Lauren Tiechner, *Family Defense in the Age of Black Lives Matter*, 20 CUNY L. REV. F. 68 (2017); Deborah Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 436 (2019) ("This practice reflects a disturbing convergence between racial and economic disparities and can have a profound impact on the lives of the poor women of color being tested at precisely the time when they are most in need of support.").

<sup>2</sup> The New York State Central Register of Child Abuse and Maltreatment keeps records of reports of abuse and neglect made to its child abuse hotline which triggers an investigation. N.Y. SOC. SERV. LAW §§422, 424 (McKinney 2019). Changes made to the law in 2020 stand to significantly benefit families ensnared by the family regulation system. See, e.g., Chris Gottlieb, *Major Reform of New York's Child Abuse and Maltreatment Register*, LAW.COM (May 26, 2020, 10:30 AM), <https://www.law.com/newyorklawjournal/2020/05/26/major-reform-of-new-yorks-child-abuse-and-maltreatment-register/> ("[The legislation] raise[s] the legal standard for determining that someone maltreated a child, shortens the length of time before records of neglect are sealed, and provides additional protections for accused parents before employers can access records.").

<sup>3</sup> Preventive services are supportive and rehabilitative services provided to children and their families for the purpose of avoiding a child's placement in foster care, enabling a child in foster care to return home, or reducing the likelihood that a child discharged from foster care might return to care. N.Y. SOC. SERV. LAW §409 (McKinney 2019). See also ALLON YARONI, ET AL., INNOVATIONS IN NYC HEALTH AND HUMAN SERVICES POLICY: CHILD WELFARE POLICY (2014) (noting that since 2000, New York City has increased spending on preventive services, and credits the decrease of children in foster care in part to its preventive services programs).

<sup>4</sup> In New York, preventive services are voluntary, unless the government obtains a court order for mandatory preventive services. N.Y. SOC. SERV. LAW §409 (McKinney 2019). However, in practice, caseworkers often present preventive services as *required* in order for the case to end or for children to remain home. See e.g., NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, PREVENTIVE SERVICES PRACTICE GUIDANCE MANUAL 1-2 (2015) ("Families may refuse to accept services, but if there is a risk to children's health or safety, further action by Child Protective Services may be needed.").

<sup>5</sup> Lawyers for parents in New York City note the medical system's differential treatment of white upper-class parents who may have inadvertently injured their children compared with that of poor people of color. See Jessica Horan-Block & Elizabeth Tuttle Newman, *Accidents Happen: Exposing Fallacies in Child Protection Abuse Cases and Re-uniting Families Through Aggressive Litigation*, 22 CUNY L. REV. 384, 395 (2019).

(CPS),<sup>6</sup> a likelihood that was confirmed when the police knocked on my mother's door later that afternoon and took the children.

My brother and his girlfriend were charged with neglect in Family Court,<sup>7</sup> and the children went into the foster system. For the next *five years*—including the three I was in law school—my family fought a “surveillant assemblage”<sup>8</sup> of judges, caseworkers, and not-for-profit service providers to get my brother’s children out of the foster system and to end the infantilizing supervision of our family. We endured incessant “home visits” and coerced submission to court-ordered services that were meaningless to us.<sup>9</sup> We were at the mercy of openly hostile government agents who set constantly shifting targets and goals. What was the current “service plan,” who decided it, and what was it based on?<sup>10</sup> We never knew exactly what was required.

The abusive intertwining of supposed rehabilitative services and

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<sup>6</sup> The Child Abuse Prevention and Treatment Act requires every state to compel members of certain professions and other specified individuals to report suspected abuse or neglect. 42 U.S.C. § 5106a(b)(2)(B)(i) (2018). *See, e.g.*, N.Y. SOC. SERV. LAW §§ 413-414 (McKinney 2019) (requiring members of nearly fifty specified professions to report suspected abuse or neglect); 23 PA. CONS. STAT. §§ 6311-6312 (2020) (requiring a broad array of individuals to report); N.J. STAT §§ 9:6-8.10 (2019) (requiring any person who suspects abuse or neglect to report). For a discussion of the history of mandatory reporting and the resulting trend towards over-reporting and over-labeling of child abuse and neglect, *see*, MARTIN GUGGENHEIM, *WHAT'S WRONG WITH CHILDREN'S RIGHTS* 192-94 (2005); Thomas L. Hafemeister, *Castles Made of Sand? Rediscovering Child Abuse and Society's Response*, 36 OHIO N.U. L. REV. 819 (2010); Gary B. Melton, *Mandated Reporting: A Policy Without Reason*, 29 CHILD ABUSE & NEGLECT 9 (2005). Reports from mandated reporters have declined during the COVID-19 pandemic, a phenomenon advocates say shows more empathy for families struggling with poverty. Shanta Trivedi, *Why the Drop in Child Welfare Reports Might be a Good Sign*, SLATE (May 14, 2020 1:26 PM), <https://slate.com/news-and-politics/2020/05/coronavirus-child-welfare-reports.html>.

<sup>7</sup> To resolve the neglect charges, my brother eventually entered a *nolo contendere* plea to neglect, a civil infraction. N.Y. FAM. CT. ACT §1051-A (McKinney 2019). The factual basis for his plea, entered years after the original petition was filed and the case finally went to trial, was that police found drugs in his home during a raid. His children were not present at the time of the raid; they had already been legally removed from his care.

<sup>8</sup> Kevin Haggerty & Richard Ericson, *The Surveillant Assemblage*, 51 BRITISH J. SOCIO. 605 (2000) (conceptualizing a networked, fluid and expansive modern surveillance apparatus that integrates information from previously separate systems).

<sup>9</sup> Surely, services are not uniformly unhelpful to families, although some parent advocates argue that any services provided through a local child welfare system, and not by trusted community-based organizations are experienced as harmful. *Rise Testimony, NY State Hearing on Family Involvement in the Child Welfare and Family Court Systems*, RISE (Dec. 6, 2019), <https://www.risemagazine.org/2019/12/rise-testimony-ny-state-assembly/>. But when tailored to the family and delivered in a trusting, non-judgmental environment, services like parent-child therapy can be transformative. *See, e.g.*, ‘*It helps you create that special bond*’- Two Mothers Explain How Parent-Child Therapy Helped Them, RISE (Sept. 1, 2015), <https://www.risemagazine.org/2015/09/it-helps-you-create-that-special-bond/>.

<sup>10</sup> A “service plan” is a list of services that parents and children are to engage in, collectively and individually, in consultation and cooperation with the parents or guardian, although case plans are often summarily made by caseworkers with little or no input from parents. N.Y. SOC. SERV. LAW § 409-e(2) (McKinney 2019).

regulative, coercive control was pervasive. Once, a caseworker scolded us for “allowing” one of the kids, then a toddler, to color on the wall. Another time, while walking a few blocks to the Hudson River on a summer night, the same caseworker pulled up alongside us in her car, questioning us about why we were going to the river after dark. When the case finally ended, the judge issued an order barring my brother from being alone with his children until they turned 18. At the time they were three, five and six years old.<sup>11</sup>

Legal systems like the family regulation system<sup>12</sup> and criminal legal system<sup>13</sup> violently bore down on our lives and ultimately shaped my identity. Against this background, I decided to become a lawyer. I did not expect that it would trigger a profound dissonance and confusion about my relationship with my community, family and self. In my “Advanced Family Law” class, taught by a former judge who presided over family regulation cases, the narrow, obsessive focus on judicial decisions and individual procedural rights felt sanitized and disembodied from what I experienced first-hand and saw every day in my community.<sup>14</sup> Reading criminal procedure cases invoked images of a police dog attacking my brother as he lay face-down. At events about mass incarceration I thought about him and the randomness of our circumstances—he was in prison while I listened to lawyers and academics analyze the system that put him there. Discussions around “re-entry” reminded me of his eventual release and the painful details of making a true effort to participate in the legal economy for the first time as a 35-year-old Latino with a felony conviction. None of these stories—or any others from students, clients, or others who struggled

<sup>11</sup> The order also designated the Dutchess County Department of Social Services a party to any action to modify or vacate the order and required that any challenge to the order be brought in Dutchess County Family Court, regardless of where the parties lived. Years later this proved problematic when my brother filed to vacate the order in Family Court in Brooklyn, New York where he was living with his son.

<sup>12</sup> Recently, activists and scholars have referred to the child welfare system as the “family regulation system” or “family policing/punishment system.” I use that language here. Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, THE IMPRINT (June 16, 2020 5:26 AM), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>; Movement for Family Power (@movfamily-power), TWITTER (June 11, 2020 9:54 PM), <https://twitter.com/movfamilypower/status/1271259572938985472>.

<sup>13</sup> See Sara Mayeux, *The Idea of the Criminal Justice System*, 45 AM. J. CRIM. L. 55, 61 (2018), for an account that traces the history of the idea of a ‘criminal justice system,’ situates it in the broader genealogy of systems theory, and argues that systems theories are ahistorical modes of description making ‘systems talk’ “not a good fit for the concerns and imperatives that are currently motivating [those] discussions.”

<sup>14</sup> Ascanio Piomelli comments that, “[J]aw school seemed invariably to equate judicial decisions with social change, and it acted as if the only power that matters is the power of well-crafted ideas.” Ascanio Piomelli, *Rebellious Heroes*, 23 CLIN. L. REV. 283, 289 (2016).

against state violence—made their way into the classroom in a meaningful way.<sup>15</sup>

In the social justice legal community, we talk a lot about “diversity” in the profession<sup>16</sup> and training lawyers from politically marginalized communities so that they can return—literally or figuratively—to fight with their people. We tout admissions data on diversity and showcase students lawyering in service to their communities. But we actually know very little, collectively, about what it means to occupy these roles. Today, I see students struggling in many of the same ways that I struggled: to reconcile the trauma they inhabit as a result of chronic—if not generational—state violence, with their roles as professionals in a system beholden to white supremacy; to find meaningful roles as lawyers in struggles for social justice and to work toward a vision of a world we actually want to live in. As teachers and mentors, our opportunity is both precious and precarious: if we fail to respond to these students’ experiences and nurture their visions for transformative change, we isolate them and obscure their potentially unique contributions for reimagining the state along with their communities.

This essay threads together narrative and theory with ethnographic insights, drawing heavily on Critical Race Theory (CRT)<sup>17</sup> in several respects. First, it employs narrative—often referred to as “legal storytelling”<sup>18</sup>—to offer “counter-accounts of social reality by subversive and subaltern elements of the reigning order”<sup>19</sup> and contribute to what cultural theorist Edward Said calls “antithetical knowledge.”<sup>20</sup> Second, it utilizes an anti-essentialist and intersectional

<sup>15</sup> My colleague Eduardo Capulong argues that the marginalization of clients begins in law school: “[o]utside of clinical instruction, law students deal rarely, if at all, with actual clients. The study of law is dehumanized—literally.” Eduardo R.C. Capulong, *Client as Subject: Humanizing the Legal Curriculum*, 23 CLIN. L. REV. 37, 38 (2016).

<sup>16</sup> See, e.g., *Diversity in Law School: Why Diversity Matters*, LAW SCHOOL ADMISSION COUNCIL, <https://www.lsac.org/discover-law/diversity-law-school#:~:text=access%20to%20justice%20is%20essential,to%20the%20greater%20legal%20community>. (last visited Aug. 30, 2020) (“Law school diversity enables individuals from a wide range of backgrounds to add their perspectives to the greater legal community. The profession needs lawyers who look just like you, and who share your life experiences.”).

<sup>17</sup> Critical Race Theory (CRT) is a political and intellectual movement that began in the 1980s in the United States. While there is no singular definition of CRT, its theorists are unified by at least one principle: “challeng[ing] the ways in which race and racial power are constructed and represented in American legal culture and, more generally, in American society as a whole.” Kimberlé Crenshaw et al., *Introduction, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* xiii (Kimberlé Crenshaw et al. eds., 1995).

<sup>18</sup> See RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 179 (3d ed. 2017).

<sup>19</sup> Crenshaw et al., *supra* note 17, at xiii; Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2437-38 (1989).

<sup>20</sup> EDWARD W. SAID, *COVERING ISLAM* 157 (Vintage Books 1997) (1981) (antithetical

approach, insisting on the “need to account for multiple grounds of identity when considering how the social world is constructed,”<sup>21</sup> considering intersectionality to be an indispensable theoretical lens.<sup>22</sup>

Narrative has long been a central methodological tool of CRT. Indeed, “th[e] embrace of outsider voices and narrative is so fundamental that CRT has been called “voice scholarship.””<sup>23</sup> CRT scholars have used narrative in various forms in legal scholarship,<sup>24</sup> including “personal histories, parables, chronicles, dreams, stories, poetry, fiction and revisionist histories.”<sup>25</sup> Proponents of storytelling<sup>26</sup> argue that it serves pedagogical functions,<sup>27</sup> that it is persuasive, it disputes

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knowledge is a “kind of knowledge produced by people who quite consciously consider themselves to be writing in opposition to the prevailing orthodoxy”); *see also* Crenshaw et al., *supra* note 17, at xiii (describing CRT writings as contributing “to what Edward Said has called ‘antithetical knowledge’”).

<sup>21</sup> Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1245 (1991). There is a deep legal academic literature on anti-essentialism. *See, e.g.*, Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master’s House*, 10 BERKELEY WOMEN’S L.J. 16, 19 (1995) (describing several ways that anti-essentialism and intersectionality, taken together, can help dismantle structures of racism and other oppression); Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (Or Other -isms)*, 1991 DUKE L.J. 397 (1991) (exploring the dangers of analogizing sexism to racism and other oppression); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (critiquing the failures of predominant feminist legal theory in marginalizing the experiences of Black women); Regina Austin, “*The Black Community, Its Lawbreakers, and a Politics of Identification*”, 65 S. CAL. L. REV. 1769, 1775 (1992) (arguing for an “integrated politics of identification”).

<sup>22</sup> There are numerous examples of intersectional applications of legal analysis and interpretation. For an entrée specifically related to women, families and foster care, *see, e.g.*, Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474 (2012); Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419 (1991).

<sup>23</sup> Bennett Capers, *Afrofuturism, Critical Race Theory and Policing in the Year 2044*, 94 NYU L. REV. 1, 27 (2019) (citing Monica Bell, *The Obligation Thesis: Understanding the Persistent “Black Voice” in Modern Legal Scholarship*, 68 U. PITTS. L. REV. 643, 646 (2007)).

<sup>24</sup> *See, e.g.*, Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); Delgado, *supra* note 19; Margaret F. Montoya, *Celebrating Racialized Legal Narratives, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY* 243 (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002).

<sup>25</sup> MARI J. MATSUDA, CHARLES R. LAWRENCE III, RICHARD DELGADO & KIMBERLÉ WILLIAMS CRENSHAW, *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* 5 (1993).

<sup>26</sup> For an introduction into critique of the use of narrative in legal scholarship, *see generally*, DANIEL FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997) (arguing that stories persuade through emotion, not reason, rarely leading to justice; that stories are not obviously normative, are atypical, and make dialogue difficult).

<sup>27</sup> Charles R. Lawrence III, *The Word and the River: Pedagogy as Scholarship as Strug-*

the notion of the objectivity of truth and is healing to victims of racial injustice.<sup>28</sup>

Narrative also works against epistemic injustice.<sup>29</sup> Epistemological questions are central to law. Who we believe and who we ascribe knowledge to are mediated by inherently political and interlocking domains of place, power and identity. Marginalized people are often harmed both in the denial of their individual capacity as bearers of knowledge and when significant areas of one's social experience are "obscured from collective understanding."<sup>30</sup> Because law "reflects the dominant society's interpretation of relevant social experience,"<sup>31</sup> it is axiomatic that such interpretation excludes marginalized peoples' experiences. This makes narrative crucial to the radical imagination of law,<sup>32</sup> as a "counterhegemonic mode of remembering"<sup>33</sup> and disseminating knowledge. Finally, legal scholarship is a "terrain worth contesting" for CRT scholars because, like epistemic injustice, legal scholarship is also involved in the production of knowledge.

In his 1986 essay *Violence and the Word* late Professor Robert Cover makes a similar point about knowledge and power.<sup>34</sup> "That one's ability to construct interpersonal realities is destroyed by death is obvious, but in this case, what is true of death is true of pain also, for pain destroys, among other things, language itself."<sup>35</sup> The mul-

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gle, 65 S. CAL. L. REV. 2231, 2279 (1992) ("Our stories have, for the most part, not been told or recorded in the literature that is the law. Accordingly, the first reason for embracing narrative is that more of our stories must be told and heard.").

<sup>28</sup> See KHIARA M. BRIDGES, CRITICAL RACE THEORY: A PRIMER, 58-73 (2018); See also Crenshaw et al., *supra* note 17, at xiii (noting that CRT "rejects the prevailing orthodoxy that scholarship should be or could be 'neutral' and 'objective'").

<sup>29</sup> See generally MIRANDA FRICKER, EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING 7 (2007) (explaining how the law and public policy sanction injustices relating to categories of knowledge and experience).

<sup>30</sup> *Id.*

<sup>31</sup> Rebecca Tsosie, *Indigenous Peoples and Epistemic Injustice: Science, Ethics, and Human Rights*, 87 WASH. L. REV. 1133, 1158 (2012).

<sup>32</sup> See Amna Akbar, *Toward A Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 409 (2018) ("But it would be wrong to think the movement has given up on law. The movement is not attempting to operate outside of law, but rather to reimagine its possibilities within a broader attempt to reimagine the state.").

<sup>33</sup> Hilary Malson, *Contested Memory, Part I: Syncopation*, MONUMENT LAB (Nov. 28, 2018), <https://monumentlab.com/bulletin/contested-memory-pt-1-syncopation#note-1>.

<sup>34</sup> Robert Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1602 (1986) ("Legal interpretation takes place in a field of pain and death.").

<sup>35</sup> *Id.*; See also Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 N.Y.U. L. REV. 1449, 1449 (2005):

"Our democracy prizes individual speech as the main antidote to governmental tyranny, yet it silences the millions of poor, socially disadvantaged individuals who directly face the coercive power of the state. Speech also has important cognitive and dignitary functions: It is through speech that defendants engage with the law, understand it, and express anger, remorse, and their acceptance or rejection of the criminal justice process. Since defendants speak so rarely, however, these speech functions

tidimensional pain of being stalked by the state may isolate race-class marginalized people even from each other, preventing the construction of collective interpersonal realities and solidarity. However, experiences of survival—and for many, flourishing—make subordinated narratives critical for transformative social change. Late Haitian historian Michel-Rolph Trouillot reminds us that, “[t]he ultimate mark of power might be its invisibility; the ultimate challenge, the exposition of its roots.”<sup>36</sup> Narrative emanating from the people who absorb and resist the brunt of this power help produce this exposition.

The methodological and theoretical strands I borrow from Critical Race Theory—namely, narrative, anti-essentialism and intersectionality—complement the theoretical framework of critical geography,<sup>37</sup> a lens I also use in this essay. Broadly, critical geography seeks to “expose the socio-spatial processes that (re)produce inequalities between people and places.”<sup>38</sup> Because I explore the ways in which power shapes lived experiences in particular *places*, critical geography offers an apt frame for analysis. As geographer Laura Pulido explains: “all living things that pass through a landscape leave a trace—an energy if you will—that inhabits the land. Just as individual trauma rests in the body, collective trauma rests in the land, even

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too often go unfulfilled. Finally, silencing excludes defendants from the social narratives that shape the criminal justice system itself, in which society ultimately decides which collective decisions are fair and who should be punished.”

<sup>36</sup> MICHEL-ROLPH TROUILLOT, *SILENCING THE PAST: POWER AND THE PRODUCTION OF HISTORY* XIX (1995).

<sup>37</sup> David Harvey advances a “peoples’ geography” as follows:

The geography we make must be a peoples’ geography, not based on pious universalisms, ideals and good intents, but a more mundane enterprise that reflects earthly interests, and claims, that confronts ideologies and prejudice as they really are, that faithfully mirrors the complex weave of competition, struggle, and cooperation within the shifting social and physical landscapes of the twentieth [and twenty-first] century. The world must be depicted, analyzed, and understood [as] the material manifestation of human hopes and fears mediated by powerful and conflicting processes of social reproduction. Such a peoples’ geography must have a popular base, be threaded into the fabric of daily life with deep taproots into the well-springs of popular consciousness. But it must also open channels of communication, undermine parochialist worldviews, and confront or subvert the power of the dominant classes or the state. It must penetrate the barriers to common understandings by identifying the material base to common interests.

David Harvey, *On the History and Present Condition of Geography: A Historical Materialist Manifesto*, 36 PROF'L GEOGRAPHER 1,1 (1984).

<sup>38</sup> PHIL HUBBARD, ET AL., *THINKING GEOGRAPHICALLY: SPACE, THEORY AND CONTEMPORARY HUMAN GEOGRAPHY* 62 (2002); *see also* Maya Stovall, “*It’s the Hood, but That Means it’s Home!*”: African American Feminist Critical Geographic Wanderings in the *Anthropology of Space and Place*, 27 TRANSFORMING ANTHROPOLOGY 50, 51 (2019) (“What is an African American feminist critical geography? It is an analytical approach to theorizing and investigating place and space, attuned to the inseparability from places and spaces of political-historical-economic-sociocultural constructions of classed, abled, gendered, sexed, sexualized, racialized, and/or cultured hierarchies.”).

when it's rarely visible and in the everyday landscape, due to our heavy investment in denial."<sup>39</sup> Last, critical geography fits well with CRT because it is also concerned with knowledge production and dissemination<sup>40</sup> and with the racial landscape of capitalism.<sup>41</sup>

This essay proceeds in four parts. Part I sketches a brief picture of my community of origin and offers ethnographic insights about state violence in order to lay the backdrop for discussions about the political-historical-economic-sociocultural roots of some law students in later sections and how these backgrounds might impact lawyering and necessitate changes in law schools. Part II exposes the fault lines in legal education that create heightened challenges for some students with negative formative experiences with the state, carrying potential consequences for all students. It also introduces the idea of authoritative interpretive communities in the law school classroom. Part III addresses the unique world of legal practice for students working in areas in which they have personal experiences and calls for disruptive innovations in lawyering in the family regulation system. Part IV advances ideas for transforming legal education to better address the realities of race-class marginalized students so they may participate—on their own terms—in today's struggles for radical social change.

## I. A GEOGRAPHY OF SOCIAL DEATH IN UPSTATE NEW YORK

Law remains one of the least diverse professions in the U.S.<sup>42</sup> It should come as no surprise that even most public interest and pro bono lawyers "reveal a breathtaking cluelessness—or willful flattening—of the nuanced realities" of communities from which their clients hail.<sup>43</sup> This section sketches a simplified and brief glimpse into one such community—my own<sup>44</sup>—through the lens of critical geography and my own experiences as emblematic of the profound enduring fractures constraining the lives of many of our students.

Like most people, my early years were shaped by geography writ

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<sup>39</sup> Laura Pulido, *Landscapes of Racial Violence*, in LATITUDES: AN ANGELENO'S ATLAS 63, 66 (Patricia Wakida ed., 2015).

<sup>40</sup> Linda Peake & Eric Sheppard, *The Emergence of Radical/Critical Geography Within North America*, 13 ACME 322 (2014).

<sup>41</sup> See Ruth Wilson Gilmore, *Fatal Couplings of Power and Difference: Notes on Racism and Geography*, 54 PROF'L GEOGRAPHER 15 (2002).

<sup>42</sup> In 2019, 88% of lawyers were white and in 2018, 8 out of 10 law professors were white. CLEA Committee for Faculty Equity and Inclusion, *The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty*, 26 CLIN. L. REV. 127, 128-30 (2019).

<sup>43</sup> Monica Bell, *Safety, Friendship and Dreams*, 54 HARV. C.R.-C.L. L. REV. 703, 710 (2019).

<sup>44</sup> The stories I tell here about myself, my family and my community, are meant to be illustrative rather than representative.

large—the “who,” “where” and “how” of life all coalescing in a unique mix. I have five siblings, all close in age and each embodying different identities inherited from our mothers and fathers. Collectively, we are Mexican/Indigenous Mexican, Uruguayan, Black and White. We mostly speak English and some of us also speak Spanish. A deeply rooted sense of difference was woven into my world from the beginning,<sup>45</sup> creating my self-perception as a woman of mixed race and culture.

We grew up in Poughkeepsie, New York, a small city in the Hudson River Valley, an “upstate” region north of New York City. In 2012 Poughkeepsie was 37% Black; 20% Hispanic/Latino; 37% White; and 19% foreign born.<sup>46</sup> The per capita income was \$23,526 and twenty-six percent of its 30,000 residents lived in poverty.<sup>47</sup> In the 1950s and 1960s, Poughkeepsie benefitted from industrial sprawl that accompanied white flight from New York City and other large urban areas, its diversified economy built around agriculture, river and canal-based shipping and manufacturing, heavily driven by IBM’s location in Poughkeepsie.<sup>48</sup> The city boasted various small factories that employed blue-collar workers of color and white workers.<sup>49</sup> But by the 1960s, Poughkeepsie saw the first stirrings of deindustrialization as manufacturing began to leave the city and even urban periphery economies underwent a structural shift from industry to service leading to manufacturing’s eventual move abroad.<sup>50</sup> The city’s economic base was unraveling. In 1967, Poughkeepsie was selected as a “Model City”

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<sup>45</sup> Geographer Laura Pulido’s account of how her identity and experiences influenced the development of her political consciousness resonates:

By the time I was seven I had become deeply interested in racial and economic injustice. On the one hand, I knew viscerally that Mexicans were considered to be racially inferior . . . but there was no public discussion of this, at least that I was aware of. There was, however, public discussion of the African American experience. I remember the feelings of outrage I experienced upon learning about slavery. In hindsight, the black struggle gave me a conduit to channel my own unarticulated feelings of pain and anger that would eventually find expression through the Chicana/o movement and my scholarship. . . Those emotions still motivate me today.

Joshua Barkan & Laura Pulido, *Justice: An Epistolary Essay*, 107 ANNALS AM. ASS’N GEOGRAPHERS 33, 33 (2017).

<sup>46</sup> United States Census Bureau QuickFacts, <https://www.census.gov/quickfacts/fact/table/poughkeepsiecitynewyork/IPE120218> (last visited December 16, 2019).

<sup>47</sup> *Id.*

<sup>48</sup> HARVEY FLAD & CLYDE GRIFFEN, *MAINSTREET TO MAINFRAMES: LANDSCAPE AND SOCIAL CHANGE IN POUGHKEEPSIE* 173, 192 (2009) [hereinafter *MAINSTREET TO MAINFRAMES*]; *see also, generally*, JOHANNA FERNÁNDEZ, *THE YOUNG LORDS: A RADICAL HISTORY*, 20-21, 55-56 (2020) (while outer rings of many cities experienced industrial sprawl in the 1950s and 60s coinciding with white flight, as a result, cities themselves lost hundreds of thousands of manufacturing jobs that many workers of color and white workers occupied).

<sup>49</sup> HARVEY FLAD & CLYDE GRIFFEN, *MAINSTREET TO MAINFRAMES* 197 (2009).

<sup>50</sup> *Id.* at 197-8.

by the Johnson administration's "War on Poverty", making it eligible for federal funding.<sup>51</sup> The project was to focus on the north side of the city, where the majority of Black residents lived, in a section that had not equally benefitted from the regional economic growth.<sup>52</sup> But by the 1980s, Poughkeepsie was hit hard by neoliberal policies on industry and trade and was particularly devastated by IBM's downsizing in 1985, which impacted the city collaterally.<sup>53</sup> In 1980, the city's unemployment rate was 9.6%, having risen from 5.6% in 1950.<sup>54</sup> Industrial and agricultural flight meant lower-paying jobs, which were often filled by immigrants from Mexico,<sup>55</sup> including my father. Overall, the City's majority non-white population bore the brunt of this restructuring, although poor white residents also suffered. My Italian American grandmother cleaned houses and rang grocery orders in a supermarket until she died of cancer; she nearly collapsed at the cash register.

With deindustrialization underway, abandonment of public education followed. Today, Poughkeepsie operates a de facto segregated public-school system. Although the city is 37% white, only 8% of public-school students are white.<sup>56</sup> Unsurprisingly, educational outcomes and opportunities are abysmal. Less than half of high school students graduate;<sup>57</sup> Poughkeepsie's middle school, high school and one elementary school (of several) have all been identified by New York State as "Priority Schools," meaning they were or currently are within the five percent of the lowest-performing schools in the state.<sup>58</sup> Poughkeepsie no longer offers full day Kindergarten, and only the city's

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<sup>51</sup> *Id.* at 217.

<sup>52</sup> *Id.* at 218.

<sup>53</sup> *Id.* at 261-279.

<sup>54</sup> *Id.* at 198.

<sup>55</sup> In the 1980s Latin Americans began immigrating to the Hudson Valley, and in the 1990s Poughkeepsie experienced a wave of immigrants largely from the Oaxaca region of Mexico. Poughkeepsie and Newburgh, cities on the Hudson River, have the Hudson Valley's largest Latinx populations. Leonard Nevarez & Joshua Simons, *Small-City Dualism in the Metro Hinterland: The Racialized "Brooklynization" of New York's Hudson Valley*, 19 CITY & CMTY 16, 28 (2020).

<sup>56</sup> The racial profile of Poughkeepsie City School District in 2016 was: 52% Black/African American; 32% Hispanic/Latino; 8% white; 6 % multiracial. NEW YORK STATE EDUCATION DEPARTMENT, POUGHKEEPSIE CITY SCHOOL DISTRICT ENROLLMENT 2015-2016, <https://data.nysesd.gov/enrollment.php?year=2016&instid=800000053351>.

<sup>57</sup> Nina Schutzman, *Poughkeepsie City School District Graduation Rate Fell 20 Percentage Points*, POUGHKEEPSIE JOURNAL (June 23, 2018, 12:08 AM), <https://www.poughkeepsiejournal.com/story/news/education/2018/06/22/poughkeepsie-city-district-graduation-rate-fell-20-percentage-points/677270002/>.

<sup>58</sup> Poughkeepsie Middle School was removed from receivership in 2019 while Poughkeepsie High School was similarly released in 2016. Morse Elementary School is currently under receivership. Poughkeepsie City School District, *FAQs on Receivership*, <https://www.poughkeepsieschools.org/Page/329> (last visited September 12, 2020).

poorest children are eligible for federally-funded Head Start preschool programs.<sup>59</sup>

To understand Poughkeepsie's current education crisis, it is necessary to examine the history of racial and economic tension between two communities in Poughkeepsie—residents of the city proper who were mostly people of color, and residents of Spackenkill, a largely white and relatively wealthy community in the southern part of Poughkeepsie.<sup>60</sup> In the late 1960s Spackenkill parents organized to create their own school district and construct a new high school so that their children would not attend Poughkeepsie High School, and arguably, so they could benefit from tax revenue from the IBM plant where many Spackenkill parents worked.<sup>61</sup> The campaign was contentious. It involved legislative maneuvering and three lawsuits, including one case that was eventually taken up by the state's highest court.<sup>62</sup> Most city residents and the State Department of Education opposed the project. As one city resident put it: "I see no other word for it than racism with the result of leaving Poughkeepsie to rot."<sup>63</sup> Citing integration efforts and the national movement to consolidate school districts, the State Department of Education refused to register the new school, but the parents successfully sued<sup>64</sup> and the Spackenkill Union Free School District was created in 1969. The Department of Education then declined to fund the construction of the new school, a decision that was upheld by an appellate court in 1971.<sup>65</sup> Spackenkill High School hired many of Poughkeepsie High School's most experienced teachers and graduated its first class in 1974.<sup>66</sup> It remains one of the last "free" school districts in New York, having resisted efforts to be consolidated, an example of private actors and courts operating to-

<sup>59</sup> Billy Easton, *Albany's Unkindest Cut of All*, N.Y. TIMES (May 25, 2012), <https://www.nytimes.com/2012/05/26/opinion/the-danger-in-school-spending-cuts.html>.

<sup>60</sup> Sue Brooks, *The Politics of School Districting: A Case Study in Upstate New York*, EDUC. FOUND. 15, 16 (Summer-Fall 2006).

<sup>61</sup> *Id.* at 15; *see also* Tiana Headley, *A Tale Of Two Districts: History Of Poughkeepsie Schools*, THE MISCELLANY NEWS, (Nov. 7, 2019), <https://misanctuarynews.org/2019/11/07/news/a-tale-of-two-districts-history-of-poughkeepsie-schools/>.

<sup>62</sup> *In re Carter v. Allen*, 250 N.E. 2d 30 (1969) (finding no statutory authority for regulation that allowed Commissioner of Education to deny registration of a public high school if, in Commissioner's judgement, the establishment of the school would conflict with district reorganization); *Saslaw v. Bd. of Regents*, 35 A.D.2d 475 (N.Y. App. Div. 1971).

<sup>63</sup> Brooks, *supra* note 60, at 20.

<sup>64</sup> *In re Carter v. Allen*, 250 N.E. 2d 30 (1969) (finding no statutory authority for regulation that allowed Commissioner of Education to deny registration of a public high school if, in Commissioner's judgement, the establishment of the school would conflict with district reorganization).

<sup>65</sup> *Saslaw v. Bd. of Regents*, 35 A.D. 2d 475 (N.Y. App. Div. 1971).

<sup>66</sup> FLAD & GRIFFEN, *supra* note 48, at 191.

gether to “create and promote racially identified space, and thus, racial segregation.”<sup>67</sup>

Residential segregation also persisted, with the city’s north side—where the majority of Black residents lived—described in desperate terms by the late 1960s: “Its 14,298 people have a disproportionate share of our social problems and substandard housing. . . It includes 98 percent of the City’s welfare cases, 95.6 percent of the City’s families earning less than \$2,000, 92 percent of the City’s unemployed, as well as 78 percent of the City’s deteriorated housing units.” In specific neighborhoods in the north side, deteriorated and abandoned housing was documented; on one street, nearly half of the housing units were without indoor plumbing.<sup>68</sup>

Neoliberal reforms in the 1970s and 1980s ushered in the active undoing of the protections of the social welfare system. Having dismantled the social welfare state to a husk, state and local government binged on nonproductive outlays like prisons and surveillance via the prison industrial complex, family regulation system, regulation of people receiving public benefits, and immigration enforcement.<sup>69</sup> For example, the carceral apparatus in Poughkeepsie continues to expand. In 2016, local government approved the construction of a \$132 million jail, scheduled to be completed in 2023, to replace the Dutchess County Jail in Poughkeepsie.<sup>70</sup> In 2018 the New York State Commission of Correction identified the current jail—where I have visited my brother and posted bail for friends and relatives—as one of the five “most problematic” facilities in New York State, along with the Rikers Island Prison Complex.<sup>71</sup>

I acutely felt the paradox of abandonment in the United States:

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<sup>67</sup> Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 450 (Kimberlé Crenshaw et al. eds., 1995).

<sup>68</sup> FLAD & GRIFFEN, *supra* note 48, at 216.

<sup>69</sup> See Ruth Wilson Gilmore, *Forgotten Places and the Seeds of Grassroots Planning*, in ENGAGING CONTRADICTIONS: THEORY, POLITICS AND METHODS OF ACTIVIST SCHOLARSHIP 31, 45 (Charles R. Hale, ed., 2008); Loïc Wacquant, *The Body, the Ghetto, and the Penal State*, 32 QUALITATIVE SOCIO. 101, 112 (2009) (“. . . the organized atrophy of the social wing and the sudden hypertrophy of the penal wing of the US state were not only concomitant and complimentary, but they targeted the same stigmatized population at the margins of wage labor. It was becoming clear that the ‘iron fist’ of the deregulated market called for and necessitated the ‘iron fist’ of criminal justice at the bottom of the class structure.”).

<sup>70</sup> Dutchess Legislature Moves Forward With Jail Bond Authorization, *Community Protests*, POUGHKEEPSIE JOURNAL (July 9, 2020, 8:57 PM), <https://www.poughkeepsiejournal.com/story/news/2020/07/09/dutchess-legislature-votes-favor-jail-bond-authorization/5410161002/>.

<sup>71</sup> New York State Commission on Correction, THE WORST OFFENDERS REPORT: THE MOST PROBLEMATIC LOCAL CORRECTIONAL FACILITIES OF NEW YORK STATE, February 2018, <http://www.scoc.ny.gov/pdfdocs/Problematic-Jails-Report-2-2018.pdf>.

we were at once resource deprived where it mattered and faced intense intervention where we deserved dignity and freedom.<sup>72</sup> I saw how systems that regulated poor people worked together, transferring people across bureaucracies, and in the case of CPS involvement, as sociologist Kelley Fong writes, “central institutions of social life, such as education and healthcare, become the point of entry to state assessment of intimate space and family relations.”<sup>73</sup> This reality meant that in my everyday life I faced representatives of the “death dealing institutions:”<sup>74</sup> police, social workers, and importantly—lawyers. White sedans with “OFFICIAL” license plates signaled that CPS workers were lurking. We knew what to say (and what not to say) when police asked for someone, or when we were pulled out of class and interrogated about whether we were ever hungry or if anyone had hit us.<sup>75</sup> Early on I understood that my community was a site of state violence and social repression, which had become key state strategies to “manage the social unrest and disorder that results from the dismantling of the social safety net.”<sup>76</sup> I came to suspect that all social workers were part of this system, including those in schools and extra-curricular programs.<sup>77</sup> My

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<sup>72</sup> Sociologist Kelley Fong writes that contemporary poverty governance merges support with punishment. Kelly Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AM. SOCIO. REV. 610, 614 (2020) (citing KAARYN GUSTAFSON, CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY (2011)).

<sup>73</sup> *Id.* at 613.

<sup>74</sup> Wilson Gilmore, *supra*, note 69, at 41.

<sup>75</sup> At least one federal circuit court has determined that the practice of social workers pulling children from class to interview them in connection with an investigation without consent or a warrant constitutes a seizure under the Fourth Amendment. *See Schulkers v. Kammer*, 955 F.3d 520 (6th Cir. 2020).

<sup>76</sup> Soniya Munshi & Craig Willse, *Foreword*, in *THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX* xvi (INCITE! Women of Color Against Violence, ed., Duke Univ. Press, 2017) (2007) [hereinafter *THE REVOLUTION WILL NOT BE FUNDED*]. *See also* Wacquant, *supra* note 69, at 109 (“...what urban sociologists present as ‘neighborhood effects’ turn out to be *effects of the state* inscribed in space, through the historical mediation of struggles over the definition, distribution, and appropriation of public goods.”); FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (1971) (arguing that managing poverty is a central task for government authorities).

<sup>77</sup> Critical and feminist scholars note that social work often serves carceral purposes. *See e.g.*, Beth E. Ritchie & Kayla M. Martensen, *Resisting Carcerality, Embracing Abolition: Implications For Feminist Social Work Practice*, 35 J. WOMEN & SOC. WORK 12, 12 (2019) (“It is the case that, increasingly, social services are adopting the logics of the Prison Nation and progressively building a relationship with the carceral state. Appropriately, we identify these services as carceral services that replicate control, surveillance, and punishment . . .); *see also* Heather Bergen & Salina Abji, *Facilitating The Carceral Pipeline: Social Work’s Role In Funneling Newcomer Children From The Child Protection System To Jail And Deportation*, 35 J. WOMEN & SOC. WORK 34 (2019) (“[E]xamin[ing] the historical and contemporary complicities of social work practice in reproducing state power in the service of settler colonial and white supremacist legacies in Canada.”); Cindy Blackstock, *The Oc-*

young mind in survival mode could not make nuanced distinctions; every authority figure was a potential threat.<sup>78</sup>

There has been no détente between my family and the state. For us, and many others in forgotten places, violence continues, and we live with the cumulative effects of debilitating social and economic policies. Becoming a lawyer doesn't insulate us from state violence.<sup>79</sup> During the time I wrote this essay, New York City Administration for Children's Services workers arrived at my home in New York City, on a "courtesy visit" from the Dutchess County child protective regime, regarding my nephews.

Conventional legal education and lawyering reifies the "us-them" dichotomy that is incongruent with our lives and radical visions of lawyering. It mistakenly teaches us to choose between identities when the state knocks on our door. Yet these events, and our responses to them, defy such regnant notions of what it means to be a social justice lawyer, and they contain latent opportunities to engage lawyers with their communities and broader struggles for social justice, which I explore further in the following sections.

## II. LOCATING AUTHORITATIVE INTERPRETIVE COMMUNITIES IN SOCIAL JUSTICE LEGAL EDUCATION

Many students from politically marginalized communities experience law school as outsiders in a hegemonic institution.<sup>80</sup> It is common amongst Black and Latinx students to practice staying vigilant about one's values in the face of conformist pressures in law school.<sup>81</sup> I, too, knew that by deciding to go to law school, I had already left behind my most radical self, furthering the professionalization of organizing

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*casional Evil Of Angels: Learning From The Experiences Of Aboriginal Peoples And Social Work*, 4 FIRST PEOPLES CHILD & FAM. REV. 28 (2009) (exploring how social workers' propensity to conflate good intentions, rational thought and good outcomes substantially interferes with their ability to see negative outcomes resulting from their work).

<sup>78</sup> Monica Bell theorizes the description in this paragraph as "legal estrangement": how the law creates and reinforces a sense of group non-citizenship, reflecting the intuition of poor communities of color that the law and its creators and enforcers operate to exclude them from society. Monica Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L. J. 2054, 2054 (2017).

<sup>79</sup> See Cover, *supra* note 34, at 1601 ("[i]nterpretations in law also constitute justifications for violence which has already occurred, or which is about to occur. When interpreters have finished their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence.").

<sup>80</sup> Nearly forty years ago, Duncan Kennedy argued that law schools train students to accept, participate in, and further social and political hierarchies. Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982).

<sup>81</sup> See e.g., Luna Martinez G., *An Identity Problem: Can Law School be a Tool for Social Change?*, 29 BERKELEY LA RAZA L. J. 31 (2019); Karla Maradiaga, *Un Astro de Nitida Luz*, 29 BERKELEY LA RAZA L. J. 31 (2019).

and social movements.<sup>82</sup> But there is a source in the law school classroom where we must look to ground our study of social justice lawyering, at least in classes where there are no live clients: the students in the room who know what the law means on the ground. These students form authoritative interpretive communities of immense value and potential in legal education.<sup>83</sup>

When we locate these communities, we must do more than acknowledge identities and how they might impact our lawyering.<sup>84</sup> We often sidestep the lived experiences of those identities by assuming that markers such as race, gender, or economic background produce similar experiences, making them proxies for those experiences. Anti-essentialism teaches us that they are not<sup>85</sup> and that we should always “make our categories explicitly tentative, relational and unstable.”<sup>86</sup> Identity characteristics often embody experiences, but they do not stand for any particular experience, values, or goals.<sup>87</sup> They are impor-

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<sup>82</sup> See Ramzi Kassem & Diala Shamas, *Rebellious Lawyering in the Security State*, 23 CLIN. L. REV. 671, 705 (2017).

<sup>83</sup> Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2745 (2014) (citing STANLEY FISH, IS THERE A TEXT IN THIS CLASS?: THE AUTHORITY OF INTERPRETIVE COMMUNITIES (1980); JAMES BOYD WHITE, JUSTICE AS TRANSLATION: AN ESSAY IN CULTURAL AND LEGAL CRITICISM (1990) (illustrating how social movements and organized communities create authoritative interpretive communities within the law)).

<sup>84</sup> Clinicians like my colleague Sue Bryant and others have deftly responded to the need for cross-cultural and race-conscious training. See, e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001) (advancing specific practices lawyers should undertake to build trust and facilitate understanding in cross-cultural lawyering); Jean Koh Peters & Susan Bryant, *Talking About Race, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 375, 377 (Susan Bryant, Elliott S. Milstein & Ann C. Shalleck, eds., 2014) (“focus[ing] specifically on teaching about racial injustice and developing ways to recognize, explore and confront residual and ongoing racial prejudice in our systems of justice.”); *But see*, Debra Chopp, *Addressing Cultural Bias in the Legal Profession*, 41 NYU REV. L. SOC. CHANGE 367, 375 (2017) (noting risks of “professional over-confidence in cultural competency model” and advocating to introduce the concept of “cultural humility” rather than “competency” into legal education); Robert M. Ortega & Kathleen Coulborn Faller, *Training Child Welfare Workers from an Intersectional Cultural Humility Perspective: A Paradigm Shift*, 90 CHILD WELFARE 27 (2011) (arguing that child welfare workers should abandon cultural competency framework and adopt humility approach that engages clients as experts in their particular culture).

<sup>85</sup> Anti-essentialism takes issue with the ways in which categorization presupposes homogeneity by suggesting that people who may be described by a particular category share an intrinsic similarity, making categorization inherently silencing and disempowering. See, BRIDGES, *supra* note 28, at 236.

<sup>86</sup> Harris, *supra* note 21, at 586.

<sup>87</sup> See e.g., Julie D. Lawton, *Am I My Client? Revisited: The Role of Race in Intra-Race Legal Representation*, 22 MICH. J. RACE & L. 13 (2016) (“examin[ing] the challenges of intra-race legal representation for lawyers of color, law students of color, and those teaching law students of color by analyzing how the dynamics of the lawyer’s and client’s racial sameness impact legal representation.”).

tant on their own, but such broad group identifiers are neither protective of specific interests, nor elucidative of the peculiar insights of a lived experience. To understand the latter challenges us to stretch the boundaries of identity in the context of understanding how it impacts learning and lawyering.

This stretching captures experiences with state violence. When we stretch identity in this direction, we commit to “the most critical resistance strategy for disempowered groups [which] is to occupy and defend a politics of social location rather than to vacate and destroy it.”<sup>88</sup> At the same time we have to be cognizant of the risk of identifying too heavily with these experiences, giving them an authority they don’t deserve.<sup>89</sup> But we have to confront them, especially in the context of choosing the work we do as lawyers or as we study to become lawyers. This confrontation first arose for me during an internship at a public defense office in New York City. The interns were encouraged to submit applications for post-graduation jobs, but I wasn’t sure I wanted to be a public defender. Direct service attorneys provide crucial services to individuals in the throes of state oppression, but through the mechanisms of the Non-Profit Industrial Complex,<sup>90</sup> their energies are diverted—in fact they are forbidden by law—from advocating for substantial political and social change.<sup>91</sup> Although I felt politically conflicted about the role of public defenders, and in particular about occupying that role myself given my experiences, I nonetheless ended up becoming a public defender, a tension I explore deeper in the next section.

A common belief amongst the progressive bar is that representation is enhanced when lawyers and their clients share identity characteristics.<sup>92</sup> To be sure, “[a] lawyer’s ability to decipher the meaning of

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<sup>88</sup> Crenshaw, *supra* note 21, at 1297.

<sup>89</sup> Cognizant of the critique that “identity myopically focuses on the subject while ignoring the larger social structures in which subjects are embedded,” our task is to mine both for useful information and illuminate the dialectical relationship between them. BRIDGES, *supra* note 28, at 241.

<sup>90</sup> Dylan Rodriguez defined the nonprofit industrial complex as a “set of symbiotic relationships that link together political and financial technologies of state and owning-class proctorship and surveillance over public political intercourse, including and especially emergent progressive and leftist social movements, since about the mid-1970s.” Dylan Rodriguez, *The Political Logic of the Non-Profit Industrial Complex*, in *THE REVOLUTION WILL NOT BE FUNDED*, *supra* note 76, at 21.

<sup>91</sup> 26 U.S.C §501(c)(3); 45 C.F.R. §§ 1600-44 (2018) (prohibiting Legal Services Corporations from engaging in lobbying, legislative advocacy, organizing, class action litigation, collecting attorney’s fees and restricting services to certain immigrants, criminal defendants and incarcerated people). See also Scott L. Cummings & Deborah L. Rhode, *Public Interest Litigation: Insights from Theory and Practice*, 36 FORDHAM URB. L.J. 603, 607 (2009).

<sup>92</sup> On language, see Jayesh M. Rathod, *The Transformative Potential of Attorney Bilingualism*, 46 U. MICH. J.L. REFORM 863, 883 (2013) (“The ability to speak in a shared lan-

a client's acts is contingent on the epistemic, interpretive, and linguistic stance of both participants in and observers of those acts.”<sup>93</sup> However, at the time, as a student or new attorney, it was at least as plausible that my experiences would make me a *worse* public defender.<sup>94</sup>

I don't think my problems came from a general failure to discuss or reflect on our roles as lawyers in the context of America's racial and capitalistic landscape. My professors<sup>95</sup> typically encouraged conversations on race and the law, but were often flattened into fairly apolitical explorations about “cross-cultural lawyering” and “emotional intelligence,” which would help us develop our “professional identity.”<sup>96</sup> The problem, as I understood it at the time, was that people like me—whose upbringings were punctuated by crises created and exploited by the state—were not welcome in the kinds of spaces in which law schools are situated, so dissonance and traumatic learning were taxes I paid for entry. The problem, as I see it now, is that law schools are generally not responsive to these students' realities and needs,<sup>97</sup> beginning with the very notion that one must forge a “professional identity,” a bewildering concept for people for whom

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guage allows the lawyer to convey certain values about the relationship and also permits a potentially deeper connection to be forged. Moreover, as a corollary to these dignity-related client concerns, thoughtful bilingualism also enables attorneys to more fully realize the ethical standards that guide the profession”); on shared experience and ethnicity, *see, e.g.*, Jill L. Cruz & Melinda S. Molina, *Hispanic National Bar Association National Study on the Status of Latinas in the Legal Profession- Few and Far Between: The Reality of Latina Lawyers*, 7 PEPP. L. REV. 971, 1018 (2010) (noting that Latinas' unique bilingual and bicultural skills allow them to develop relationships with Hispanic clientele).

<sup>93</sup> Anthony V. Alfieri, *Practicing Community* (Book Review), 107 HARV. L. REV. 1747, 1748 (1994).

<sup>94</sup> The potential for attorneys with personal experience in a particular practice area to struggle in their practices to the point that it negatively impacts their clients is a subject I address in Section III. One example of this problem is an inability to assess a client's “... credibility as perceived through the eyes of a fact finder, rather than through the eyes of a fellow survivor, advocate, and legal representative.” Kelly Jo Popkin, *Survivors Representing Survivors: Shared Experience and Identity in Direct Service Lawyering*, 5 LMU L. REV. 1, 18 (2018).

<sup>95</sup> I count myself in this category of professors who—despite true efforts and progress—have not to date provided adequate training and guidance to students from politically marginalized communities.

<sup>96</sup> The concept of a lawyers' professional identity is ubiquitous and is intertwined with theories of emotional intelligence and anti-bias practices. *See, e.g.* Marjorie A. Silver, *Emotional Competence and the Lawyer's Journey*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* 5 (Marjorie A. Silver, ed., 2007); Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLIN. L. REV. 259, 264-65, 306-08 (1999).

<sup>97</sup> Of course, this problem is complex and not singular, and I do not presume to know the realities and needs of, or to be speaking on behalf of a wildly heterogenous group of students and lawyers. My analysis is based on my own experience as a student, and more recently, as a law professor and conversations with students and other colleagues.

social justice lawyering is, first and foremost, about one's survival, not about a career or profession, although this aspect of the work usually does emerge later.<sup>98</sup>

We study the law as if the law happens to others for whom lawyers—who do not experience the same problems—provide services.<sup>99</sup> We are taught to distance ourselves from our clients—that we need “boundaries” and that we can never know what it is like to walk in our client’s shoes.<sup>100</sup> But there are different ways of knowing.<sup>101</sup> What if we do know, through our experiences and relationships with the people closest to us, what the law means on the ground, to those subject to it? What if some of us learn the law through our own experiences *as well as* those of our clients?<sup>102</sup> This is surely the case, but it is not

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<sup>98</sup> Native activist Madonna Thunder Hawk notes that with the rise of non-profits in the late 1970s and early 1980s, “people start seeing organizing as a career rather than as involvement in a social movement that requires sacrifice. . . . Activism is tough. It is not for people interested in building a career.” Madonna Thunder Hawk, *Native Organizing Before the Non-Profit Industrial Complex*, in *THE REVOLUTION WILL NOT BE FUNDED*, *supra* note 76, at 105-6.

<sup>99</sup> See Sameer Ashar, *Law Clinics and Collective Mobilization*, 355 CLIN. L. REV. 355, 375 (2008) (“The predominant mode of representation taught in law school clinics alienates clients from their progressive political and racial identifications. Further, it reduces potential political solidarity between law students and their clients to mutual therapeutic validation.”).

<sup>100</sup> There is an expansive body of literature on the importance of boundaries in the lawyer-client relationship. In the legal academic literature, *see, e.g.*, Alexis Anderson, Lynn Barenberg & Carwina Weng, *Challenges of “Sameness”: Pitfalls and Benefits to Assumed Connections in Lawyering*, 18 CLIN. L. REV. 339 (2012); Susan L. Brooks, *Practicing (and Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education*, 17 ST. THOMAS L. REV. 513, 525-27 (2005). In social work, *see, e.g.*, Jennifer C. Davidson, *Professional Relationship Boundaries: A Social Work Teaching Module*, 24 SOC. WORK. EDUC. 511, 517 (2005) (offering a conceptual framework for understanding professional boundaries along a continuum from the extremes of “entangled” boundaries and “rigid” boundaries, with the mid-range on the continuum representing the range of more “balanced” boundary relationships). In human services generally, *see* FREDERIC G. REAMER, *TANGLED RELATIONSHIPS: MANAGING BOUNDARY ISSUES IN THE HUMAN SERVICES* 8-17 (2001) (outlining a six-pronged risk management protocol for dealing effectively with boundary issues). In the medical field, *see e.g.*, Elizabeth Gaufberg, *Alarm and Altruism: Professional Boundaries and the Medical Student*, 3 CLINICAL TCHR. 206 (2006) (arguing that boundaries keep medical students from being overwhelmed, allowing them to retain and channel empathy and elevated altruism). Notably, ethnographers take a nearly opposite approach: “If they [the ethnographer] do their job well, they also find themselves bound to these agents by affective ties that encourage identification and transference.” Wacquant, *supra* note 69, at 113.

<sup>101</sup> There are many ways that we come to know phenomena. Each source of information “may supply insights that the others failed to tap and when they coincide, they create a stronger impression- the pieces of a puzzle falling together.” Kathryn Abram, *Hearing the Call of Stories*, 79 CALIF. L. REV. 971, 995 (1991); *see also supra* notes 29-31 and accompanying text.

<sup>102</sup> The seeds of these questions were planted over a decade ago when I first read Renato Rosaldo’s ground-shifting *Grief and a Headhunter’s Rage*, where he describes how until he experienced the rage in grief resulting from his wife’s sudden, accidental death, he

openly discussed. It should be. We learn as we refine advocacy skills putting together Fair Chance Act<sup>103</sup> responses for our brothers who are fired from their jobs after their employers run background checks. At night, after dinner and homework and putting our kids to sleep, we research how to challenge grotesque orders drafted by government lawyers and rubber-stamped by judges. For many of us, our law practices are linked to our collective survival in immediate and tangible ways.

As professors we also have identities that are similarly suppressed. We are taught to be neutral educators, and that it is beyond our duties to deliver a morally and politically robust curriculum. However, my colleague Eduardo Capulong and others argue that to practice anti-racist law teaching requires “sustained self-disclosure”:

It is impossible to talk about race and racism without disclosing where each of us is coming from—how we self-identified, how our views on race were shaped, what we believed politically, and how we felt. Self-disclosure showed the depth of the problem—none of us are immune from racism—and modeled the struggles we personally go through in addressing it. In so doing, we found ourselves straddling the line between “objectivity” and political agenda. By dispensing with what Michael Pollan referred to recently as the professional “mask of detachment,” said to be key to rigorous academic pursuit, we invariably became simultaneously interlocutor and subject. This pedagogical divide is of course less a line than a gradation, but we found that teaching race and racism—particularly at this moment—posed unique challenges.<sup>104</sup>

The practice of separating lawyers from personal connections to the law, our clients and each other, is, of course, scaffolded by disciplinary norms and practices rationalizing these paradigms. Academic protocols dictate that the hallmarks of intellectual inquiry are “objectivity, detachment, and rational discourse,”<sup>105</sup> while professional protocols hold that lawyers should minimize their personal identities in client representation. Academic protocols are deeply rooted in white Euro-American educational models and world views. Similarly, pro-

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had failed to grasp the meaning and weight of Ilongot headhunting that he studied as an anthropologist. RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* (1993).

<sup>103</sup> The Fair Chance Act makes it illegal for employees to inquire about or consider the criminal history of job applicants until after extending conditional offers of employment. N.Y.C. ADMIN. CODE § 807-11(a) (2020).

<sup>104</sup> Monte Mills, Eduardo R.C. Capulong & Andrew King-Ries, *Race, Racism, and American Law from the Indigenous, Black, and Immigrant Perspectives* 21 SCHOLAR ST. MARY'S L. REV. RACE SOC. JUST. 1, 32 (2019).

<sup>105</sup> Derald W. Sue, *Race Talk: The Psychology of Racial Dialogues*, AM. PSYCHOLOGIST 666 (Nov. 2013) (citing BELL HOOKS, *TEACHING TO TRANSGRESS: EDUCATION AS THE PRACTICE OF FREEDOM* (1994)).

fessional protocols articulate the prerogatives of largely white, upper-class lawyering culture. Together, these protocols elevate empirical over experiential reality, delegitimizing subjective sources of knowledge.<sup>106</sup> They significantly stifle (if not entirely foreclose) the possibility of locating authoritative interpretive communities within the law school classroom.

To be clear, authoritative interpretive communities in law schools—consisting of people who deeply know the application of the law on the ground—are not situated on any one “side” of these paradigms. Rather, the danger of wholesale adoption of a single paradigm—say, empirical evidence—to the exclusion of other methods normalizes the relative absence of experiential data that might come from race-class marginalized students. This is because the tenets of the academic protocol require that legal academic discourse and law school pedagogy maintain a comfortable distance from the exquisitely painful details of the violence the state inflicts on marginalized people. In the context of academic research on prisons, Loïc Wacquant notes a similar problem: “. . . the distant and mechanical analyses of criminology . . . neglect the texture of day-to-day carceral relationships: imprisonment is first and foremost about restraining bodies, and everything that is thereby stamped onto them in terms of categories, desires, the sense of self, and ties with others.”<sup>107</sup>

Academic protocols flow from a larger set of doctrines and ideologies that underpin the entire American legal system in which students are especially immersed during law school. For example, secular pluralism rules domestic policymaking, privileging Western European understandings of science, economics, and technology as the only appropriate constructs for domestic public policy.<sup>108</sup> Similarly, the “Doctrine of Discovery” is incorporated into American law, and has “historically treated Western knowledge as a privileged form of knowledge, discounting the ability of indigenous peoples to generate knowledge or convey it in the process of public policy discourse.”<sup>109</sup>

The professional protocol dictates that lawyers should minimize their personal identities in client representation. Most law school cur-

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<sup>106</sup> It should come as no surprise that these educational protocols are widely adhered to in legal education in particular. They align well with the jurisprudential theory of classical legal thought, which proposes that law and politics are separate, and that deciding cases is “scientific, apolitical, principled, objective, logical and rational.” *See, e.g.*, Joseph William Singer, *Legal Realism Now*, 76 CAL. L. REV. 465 (1988) (reviewing Laura Kalman, *Legal Realism at Yale: 1927-1960* (1986)).

<sup>107</sup> Wacquant, *supra* note 69, at 111.

<sup>108</sup> *See* Tsosie, *supra* note 31, at 1133.

<sup>109</sup> *Id.* at 1142-1147.

riculums teach “client-centered lawyering”<sup>110</sup> as the lodestar of clinical pedagogy, despite wide-spread criticism of its professional through-and-through, anti-ideological and neutral approach.<sup>111</sup> Client-centered lawyering seeks to minimize lawyer influence, centering the client as primary decision-maker while attorneys maintain neutral roles, providing objective legal counsel. It positions lawyers as technocrats skilled at breaking down problems into parts and solving them piecemeal, rather than as joint political actors, resulting in the management of social inequality.<sup>112</sup>

In 1992 Professor Sanford Levinson famously argued for this brand of identity-free, “bleached out professional[ism]” lawyering:

“The triumph of what might be termed the standard version of the professional project would, I believe, be the creation, by virtue of professional education, of almost fungible members of the respective professional community. Such apparent aspects of the self as one’s race, gender, religion, or ethnic background would become irrelevant to defining one’s capacities as a lawyer.”<sup>113</sup>

The professional protocol is particularly insidious in the social justice context, where movements have become highly professionalized by lawyers, social workers, philanthropists, and others who carry water for corporate non-profits, often undermining work that for years had been led by nonprofessional activists.<sup>114</sup> These norms form the entire culture of many non-profits,<sup>115</sup> emerge in lawyer-client rela-

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<sup>110</sup> DAVID A. BINDER, ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (3d ed. 2011).

<sup>111</sup> For an entry into critiques of the client-centered approach, see Piomelli, *supra* note 14; Ann Shalleck, *Constructions of the Client in Legal Education*, 45 STAN. L. REV. 1731, 1742-52 (1993); Ashar, *supra* note 99.

<sup>112</sup> See Piomelli, *supra* note 14. See also PAUL FARMER, *PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS AND THE NEW WAR ON THE POOR* 140 (2004) (describing, in the context of medicine’s mandate to devote itself to populations struggling against poverty, how the actions of technocrats in solving health disparities often amount to “tinkering”).

<sup>113</sup> Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDODOZ L. REV. 1577, 1578-79 (1992-93). Compare with David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502 (1998) (arguing that Black attorneys can adopt moral obligations to the Black community that they may consider in the course of representation without undermining the client’s goals or the attorney’s professional opportunities).

<sup>114</sup> See e.g., Ruth Wilson Gilmore, *In the Shadow of the Shadow State*, in *THE REVOLUTION WILL NOT BE FUNDED*, *supra* note 76, at 41; Amara H. Perez, *Between Radical Theory and Community Praxis: Reflections on Organizing and the Non-Profit Industrial Complex*, in *THE REVOLUTION WILL NOT BE FUNDED*, *supra* note 76, at 91 (“It is very difficult, if not impossible, to maintain political integrity in circumstances that demand a professionalized, businesslike practice. And perhaps that is the point.”).

<sup>115</sup> Martha L. Gómez, *The Culture of Non-Profit Impact Litigation*, 23 CLIN. L. REV. 635 (2017) (describing the “self-glorifying culture” of nonprofit impact litigation outfits); see also Gerald López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebel*

tionships and stall efforts to build power in marginalized communities. I suggest broad remedies for these problems—the academic and professional norms that constrain us—along with methods for centering authoritative interpretive communities, in Section IV.

### III. LAWYERING CLOSE TO HOME

Despite my hesitation about becoming a public defender, that is what I became. In one of my first jobs after law school I represented parents against the state in family regulation cases. Family defense is a high-volume, unpredictable, crisis-based practice where families—who are almost exclusively poor, Black, Latinx and other people of color—face debilitating government oppression that subjugates them to an apparatus of governmental masters that include the courts, municipal agencies and not-for-profit contractors.<sup>116</sup> At its core, family defense is a fight for freedom amidst the backdrop of historical state strategies punishing and terrorizing families of color by taking their children.<sup>117</sup> As historian Laura Briggs argues, “[i]t is the legacy of the fight to desegregate schools and the demand for tribal sovereignty over land and water that states took the children of rebellious people and put them in foster care.”<sup>118</sup>

It is also important to understand the family regulation system as central to poverty governance,<sup>119</sup> the state’s efforts to discipline and

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*lious Collaboration*, 77 GEO. L.J. 1603, 1609-1610 (1989) (describing “regnant” lawyering as well-intentioned work by liberals or progressives on behalf of marginalized individuals or groups but disconnected from grassroots community mobilization); *see also*, Janet Moore, Marla Sandys & Raj Jayadev, *Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform*, 78 ALBANY L. REV. 1281, 1296 (2015) (arguing in the criminal defense context that participatory defense models counter reform models which are described as client-centered, holistic and community-based, which actually improve regnant norms through “pro forma greasing of the carceral state’s machinery”).

<sup>116</sup> See Cloud et al., *supra* note 1, at 84; DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 8-10 (2002) (describing the disproportionate representation of Black children in the foster system); Amy Mulzer & Tara Urs, *However Kindly Intentioned: Structural Racism and Volunteer CASA Programs*, 20 CUNY L. REV. 23, 26-30 (2016) (examining the impact of race and privilege of volunteer child advocates in the child welfare system); Martin Guggenheim, *How Children’s Lawyers Serve State Interests*, 6 NEV. L.J. 805, 806 (2006) (“. . . state officials are enamored of a children’s bar because it advances state’s interests at the expense of the well-being of children and their families who are exposed to child welfare practice.”).

<sup>117</sup> See LAURA BRIGGS, *TAKING CHILDREN: A HISTORY OF AMERICAN TERROR* (2020) for a historical account of how the U.S. has used the taking of children to repress activism in rebellious communities resisting the status quo of settler colonialism, slavery and imperialism.

<sup>118</sup> *Id.* at 73.

<sup>119</sup> See, e.g., JOE SOSS, RICHARD C. FORDING & SANFORD F. SCHRAM, *DISCIPLINING THE POOR: NEOLIBERAL PATERNALISM AND THE PERSISTENT POWER OF RACE* (2011) (arguing that the convergence of neoliberalism and paternalism have shaped poverty governance).

surveil marginalized families. Like other poverty-based practice areas, family defense is an intersectional practice because many parents face government intervention on multiple fronts; for example, confronting criminal and civil charges in separate courts but stemming from the same incident, immigration status concerns, housing insecurity or homelessness, and other socio-legal challenges. It is often these ancillary issues that keep families separated—for instance, lack of housing, or criminal court orders that conflict with family court orders—rather than actual abuse or neglect, requiring family defense attorneys and their clients to work outside of the family regulation system to solve underlying problems. In this way, the family regulation system particularly exposes how “social policy and penal policy have converged and fused: the same behaviorist philosophy, the same notions of contract and personal responsibility, the same mechanisms of surveillance and record-keeping, the same techniques of supervision and “rituals of degradation” . . . and the same sanction for deviation of conduct inform the action of the social assistance bureaucracy. . .”<sup>120</sup>

Cognizant of my own participation in the family regulation system as an attorney, I was proud to stand beside my clients in Family Court; I knew *who* I was defending and *what* I was defending against. Every day at work I confronted the terrorizing system that had brutally targeted my own family. I felt that I shared with my clients a common experience of state violence at the hands of “death dealing institutions.”<sup>121</sup> This common experience, however—unlike race or other more obvious identity characteristics like language or ethnicity—was not apparent to my clients. Sometimes my clients referred to me as part of the system and it was clear from the outset that many distrusted me. Even understanding the legal cynicism<sup>122</sup> in race-class marginalized communities myself, I had naively assumed that building relationships with clients would be relatively easy because of my own experiences and identity. I saw myself as separate from the system by virtue of my role as a defense attorney, and as someone who was subjected to the child-welfare system myself. I wanted my clients to see me as a “comrade in a common struggle.”<sup>123</sup> But my clients were right.

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<sup>120</sup> Wacquant, *supra* note 69, at 113.

<sup>121</sup> Wilson Gilmore, *supra* note 69, at 41.

<sup>122</sup> A robust and growing body of scholarship explains legal cynicism in disadvantaged communities. See, e.g., David Kirk & Mauri Matsuda, *Legal Cynicism, Collective Efficacy, and the Ecology of Arrest*, 49 CRIMINOLOGY 443 (2011) David Kirk & Andrew Papachristos, *Cultural Mechanisms and the Persistence of Neighborhood Violence*, 116 AM. J. SOCIO. 1190 (2011); see also Monica Bell, *Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism*, 50 LAW & SOC’Y REVIEW 314 (2016) (advancing the concept of ‘situational trust’ whereby disadvantaged mothers, while cynical of legal systems, occasionally rely on police using several strategies to produce moments of trust).

<sup>123</sup> Nancy D. Polikoff, *Am I My Client? The Role Confusion of a Lawyer Activist*, 31

There were boundaries between us, no matter my experiences or the politics I brought to my practice. I have never actually been in their shoes; my knowing is different. I have never faced the violent separation of my own child, an unspeakable—and yet unfelt—pain I only began to understand once I became a mother myself. I was part of the system.

The family regulation system depends on illusions of race-neutral fairness and due process under the guise of protecting children, and while advocates have achieved real victories and progress,<sup>124</sup> a mainstay of the practice is extended negotiations with the state. Through norms of practice and lawyer culture, I was taught to develop relationships with judges and other attorneys, people who embody the system I—and my clients—opposed. I saw these people as hostile to my clients, and by extension, to me. I found it difficult, and at times impossible, to form working relationships with government officials, something I saw my colleagues do successfully, often to their client's benefit.<sup>125</sup> But again, the representatives of the family regulation sys-

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HARV. C.R.-C.L. L. REV. 443, 448 (1996).

<sup>124</sup> These victories are too numerous to recount here. They range from countless victories, both in and out of court, of New York families, orders in class action lawsuits that impact families state-wide, *see, e.g.*, *Nicholson v. Scopetta*, 3 N.Y.3d 357 (2004) (holding that the government must show objectively reasonable evidence of imminent harm to justify removing a child on an emergency basis and that the sole fact that a parent is subjected to intimate partner violence in front of children does not, on its own, meet that standard), to trial-court decisions, *see e.g.*, *Matter of Kittridge*, 714 N.Y.S.2d 653 (Fam. Ct. 2000) (holding that a parent's immigration status could not relieve the Department of Social Services of its obligation to provide services to her), to U.S. Supreme Court decisions. *See, e.g.*, *Santosky v. Kramer*, 455 U.S. 745 (1982) (finding that due process required a higher standard of proof than "fair preponderance of the evidence" to terminate parental rights, raising the standard to "clear and convincing evidence"). The rise of institutional family defense practices has also changed the landscape of the practice. *See, e.g.*, Lucas A. Gerber, et al., *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, 102 CHILD & YOUTH SERVS. REV. 42, 52 (2019) ("Interdisciplinary family defense offices in New York City have facilitated the safe return of children to their families 43% more often in their first year than solo practitioners.").

<sup>125</sup> Professor Vivek Sankaran notes that "[g]ood family defense work must include an additional element – the development and nurturing of relationships between the parent and other players in the system, including the agency caseworker and the children's lawyer." Vivek Sankaran, *More Than Law: Family Defense Attorneys as Relationship Builders*, CHRONICLE OF SOCIAL CHANGE, (July 7, 2019 9:00PM), <https://chronicleofsocialchange.org/child-welfare-2/more-than-law-family-defense-attorneys-as-relationship-builders/36160>. In 2000, the American Bar Association published a guide to representing parents in family regulation cases, urging cooperation and non-confrontation: "Although you must zealously represent the parent, experience shows that confrontational and obstructionist tactics often tend to be counterproductive to the parent's interests. Since the agency and the court wield enormous and continuing power over the life of the child, and, therefore, the parent, it benefits your client when you are selective in deciding which issues to contest. You should seek a productive working relationship with the agency whenever possible, especially at the early stages of the juvenile court process. . .With the tightened timeframes under [the Adoption and Safe Families Act of 1997], in most cases, you should

tem, like my clients, were unaware of my personal experiences, and viewed me merely as my clients' lawyer, erasing a central aspect of my identity as someone with experiences on the other side and creating distance between my clients and me. This top-down ascription of identity hemmed in my sense of self. As Nancy Polikoff describes, “[the] rational, professional, “I’m doing my job” conversation covers up the rage and pain that motivate me, as well as my clients, to work against injustice.”<sup>126</sup> The illusion that as a lawyer for parents I was somehow separate from the system was further undercut by the fact that my salary was largely funded by the City of New York—the same entity I was fighting.<sup>127</sup>

Of course, I am not the first attorney to struggle with my role in this context.<sup>128</sup> In 2016, Julie Lawton examined how race and disparate socio-economic status interact in intra-race representation.<sup>129</sup> Lawton observed that while she and her clients shared a racial identity, they had divergent socio-economic backgrounds which created assumptions, distance, and uncertainty in the lawyer-client relationship. Lawton concludes, “[d]espite the truth of our differences, I still see glimpses of myself in my clients. Ultimately, neither racial commonalities, nor shared histories, nor years of working in the same community can bridge the gaps between me, as the lawyer, and my

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advise your client to cooperate and accept services immediately.” DIANE BOYD RAUBER & LISA A. GRANIK, AM. BAR ASS’N, *REPRESENTING PARENTS IN CHILD WELFARE CASES: A BASIC INTRODUCTION FOR ATTORNEYS* 4-5 (2000). *See also* Jennifer Sykes, *Negotiating Stigma: Understanding Mothers’ Responses to Accusations of Child Neglect*, 33 CHILD & YOUTH SERV. REV. 448 (2011) (finding that mothers felt forced to “play nice” with caseworkers in order to keep their families together).

<sup>126</sup> Polikoff, *supra* note 123, at 452.

<sup>127</sup> In New York City, four legal services organizations represent parents or guardians who cannot afford a lawyer in family regulation proceedings (known locally as “Article Ten” cases, after the section of the Family Court Act under which they are filed). These organizations are funded by city, state and federal government. In fiscal year 2021, New York City is slated to contribute \$23.4 million to these organizations. *Report of the Finance Division on the Fiscal 2021 Preliminary Financial Plan, The Legal Aid Society and Indigent Defense*, COUNCIL OF THE CITY OF NEW YORK, (March 19, 2020), <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/04/LAS-and-Indigent-Defense.pdf>.

<sup>128</sup> The literature on racial, cultural and other identities and lawyering is large and diverse. *See, e.g.*, Melissa Harrison & Margaret E. Montoya, *Voices! Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387, 410 (1996); Wilkins, *supra* note 113; Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219, 232 (2002); JEAN KOH PETERS, *REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS* 241-327 (2001); Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807 (1993); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLIN. L. REV. 373 (2002).

<sup>129</sup> See Lawton, *supra* note 87, at 13.

clients.”<sup>130</sup> Similarly, twenty years earlier, writing about the conflicts she experienced as a lesbian lawyer representing lesbian activist clients, Nancy Polikoff remarked: “Am I my client? The answer is a resounding, and sometimes agonizing, ‘No.’”<sup>131</sup>

Family defense practitioners work within the not-for-profit industrial complex and are constrained by the system from multiple directions. Parents mired in the family regulation system often raise racial and class inequities, yet lawyers are highly discouraged from addressing systematic oppression or unfairness in individual cases,<sup>132</sup> even when specific examples exist.<sup>133</sup> Attorneys are advised by supervisors, and indoctrinated through the culture of family court practice, to encourage clients to participate in the government’s services in order to “speed up” the case, and to develop and maintain a good relationship with the caseworkers. Because parents face the forced separation of their children and the surveillance and scope of inquiry into a family’s life is so broad,<sup>134</sup> this practice area, possibly more so than any other practice area, depends on the formation of close, trusting attorney-client relationships, in which attorneys wield considerable power.<sup>135</sup>

These realities call on us to look closely at the interaction between a lawyer and their client: to what extent do family defense attorneys—even those with rebellious visions—silence clients and reject their attempts to cultivate legal knowledge and subvert power in the legal process?<sup>136</sup> Parents in the family regulation system often possess

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<sup>130</sup> *Id.* at 51.

<sup>131</sup> Polikoff, *supra* note 123, at 470.

<sup>132</sup> See, e.g., Cloud et al., *supra* note 1, at 68 (“[t]he top priority of parent clients is, of course, almost always to get their children back as quickly as possible. When pursuing that goal, advocates often cannot press tough questions about race and class because that risks alienating the decision-maker.”).

<sup>133</sup> For instance, I represented an indigenous mother from Central America in a case where the white attorney representing my client’s infant repeatedly made racist comments about the mother. She argued that the mother lacked appropriate parenting skills because she fed her six-month-old cooked and pureed chicken and rice rather than commercial baby food or mashed banana. In the same case, a white psychologist contracted by the agency referred to the mother as ‘primitive’.

<sup>134</sup> The scope of inquiry is often far broader than the allegations that brought the family to the state’s attention. For example, Kelley Fong describes an investigator spending over an hour at the kitchen table of a mother accused of hitting her 15-year-old two or three times with a belt on the legs for having left home without permission late at night. The investigator asked questions about personal topics like the mother’s experiences with domestic violence and her immigration history. Fong, *supra* note 72, at 619-20.

<sup>135</sup> Kara R. Finck, *A Robust Defense: The Critical Components for a Reimagined Family Defense Practice*, 20 CUNY L. REV. F. 96, 96 (2017) (“At its core, family defense protects the legal relationship between a parent and their child, one of the most intimate, complicated, and nuanced relationships in practice and under the law.”).

<sup>136</sup> In the criminal legal context, Matthew Clair shows that disadvantaged defendants’ attempts at self-advocacy are often silenced by attorneys and judges. Matthew Clair, *Being a Disadvantaged Criminal Defendant: Mistrust and Resistance in Attorney-Client Interac-*

expertise and experiential knowledge that is different from the professional expertise lawyers bring to the table, regardless of our own personal experiences. In community and personal interactions parents and guardians share stories and information. Many attend Know Your Rights presentations offered by legal groups, and opportunities for gaining expertise are also found in courthouse observations. So how can lawyers emphasize this knowledge while discerning and animating a client's goals?

Experimenting with new practice models might move us closer towards a truly rebellious practice. Our stance as lawyers in systems in which we have personal experiences allows us to make credible demands for more radical and democratic approaches to lawyering in the family regulation system. Family defense representation is generally delivered under highly individualized practice models, which, although critical to preserving family bonds and mitigating harms, tend to isolate clients from other parents in similar circumstances, foreclosing opportunities for building solidarity, mutual aid, shared political analysis and other movement building strategies. When divorced from grassroots efforts—or even systemic litigation efforts—to dismantle this system, legal representation is depoliticizing and demoralizing. And while grassroots organizing around the family regulation system is underway,<sup>137</sup> it has not been as robust as organizing around other oppressive systems like the criminal legal or immigration systems.

It is time to reckon with the stunting impact of this approach to lawyering on movements for family power. But what other lawyering models might embrace parents' agency and expertise and simultaneously serve as an on-ramp to the long struggle to abolish the family regulation system? Participatory defense models that shift the expertise and control away from lawyers and other professionals to the client, their family and other loved ones, appear promising and translatable to this context.<sup>138</sup> Given adequate guidance, training and opportunities to explore diverse legal roles, impacted students (who later become attorneys) would be particularly well situated to help push for practice models that engage families through collective medi-

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tions, soaa82 SOC. FORCES 1, 6 (2020), <https://doi.org/10.1093/sf/soaa082>.

<sup>137</sup> See, e.g., Movement for Family Power, <https://www.movementforfamilypower.org/> (last visited Sept. 14, 2020); Rise Magazine, <https://www.risemagazine.org/> (last visited Sept. 14, 2020); Elize Manoukian, et al., *Black Parents March to Demand Racial Justice in NYC Child-Welfare System*, NY DAILY News (June 20, 2020 6:52 PM), <https://www.nydailynews.com/news/politics/ny-protest-black-lives-matter-20200620-sqiyn27g45fn7jyuynwrmvd7la-story.html>; Center for the Study of Social Policy, UpEND, <https://cssp.org/our-work/project/upend/> (last visited Sept. 19, 2020).

<sup>138</sup> See generally Moore, Sandys & Jayadev, *supra* note 115, at 1296; Cynthia Godsoe, *Participatory Defense: Humanizing the Accused and Ceding Control to the Client*, 69 MERCER L. REV. 715 (2018).

ums while collaborating with movements to abolish the family regulation system. In the next section I explore several disruptive innovations in legal education that would position lawyers to engage in this kind of work.

#### IV. TOWARDS EDUCATION AND PRAXIS WITH RESONANCE

Social justice lawyers have a proximity to the law and the people to whom it is applied. Lawyers with personal experience in their fields may have even deeper understandings of their client's lived experiences, although this fact alone does not necessarily enhance representation, as demonstrated above. With these premises in mind, I now turn to potential changes in legal education that might better support radical education and praxis. As professors we support and guide students as they develop rigorous skills, hopefully teaching and modeling in our own practices that those skills are much broader than traditionally limited conceptions of what it means to practice law.<sup>139</sup> On a larger scale, we ask: how do we teach law and its practice to elucidate and fulfill an agenda for self-determination and life-affirming social change? How do we go from a rejection of the state as it is, towards a vision of the state we dream of? These tasks might appear to be situated at differing degrees of abstraction, but an essential part of our work is to draw connections between them; to evaporate the distinctions between theory and practice in a field flooded with decontextualized, disembodied praxis.

Increasingly, students are uniquely situated and motivated to engage in rebellious law practice.<sup>140</sup> Many of them are deeply rooted in the communities they serve. But practicing law as a lawyer embedded in one's own community may be slightly different from the self-effacing lawyer customary in rebellious lawyering, and our pedagogical models have not adequately adapted. We remain constrained by regnant pedagogy and lawyering approaches. In the classroom, we ignore the fact that our students have been deeply impacted by the doctrine we teach. We silo practice areas, organizing them around issues rather than social and political locations, further severing race-class marginalized students' connections to their homes. We use anonymous polls rather than inviting narratives because, as one professor

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<sup>139</sup> See Alexi Freeman, *Teaching for Change: How the Legal Academy Can Prepare the Next Generation of Social Justice Movement Lawyers*, 59 How. L. J. 99, 135 (2015) ("Sometimes the most pressing and most beneficial service that a movement lawyer can provide often requires diverse skills that law schools do not commonly teach.").

<sup>140</sup> See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992) [hereinafter REBELLIOUS LAWYERING]; see also *infra* note 168.

warned, we don't want students to embarrass themselves. We assume particular public identities for students which are either confirmed or disturbed by scripted acts and dialects commonly associated with identity markers like race, gender and class, because, “[i]t is frighteningly unpopular to talk about how top-down identity ascription operates, or even that it is meaningful.”<sup>141</sup> This silencing must stop. We cannot tout diverse student bodies and then neglect to help students understand how their experiences might impact their lawyering—in both challenging and uniquely positive ways. So far, our efforts are paltry: we repeat the tired refrain that sameness enhances representation, lead students in cross-cultural exercises and teach a class on self-care.<sup>142</sup>

Unsurprisingly, lawyering in service of true social change feels elusive and overwhelming to many new lawyers,<sup>143</sup> especially those most impacted by state violence. To help students think broadly and deeply about how to lawyer under conditions that foster real change, we might borrow from geographer and prison abolitionist Ruth Wilson Gilmore, who teaches us to expand the reach of our questions. She describes that when a question has resonance, “it is able to support and model nonhierarchical collective action by producing a hum that elicits responses that don't necessarily adhere to already existing architectures of sense-making.”<sup>144</sup> It's what Adam Liptak refers to as “the music rather than the logic of law,”<sup>145</sup> what Kiese Laymon calls “echo”<sup>146</sup> and what Ken Chen describes as the “praxis of counterculture.”<sup>147</sup> And so if the goal is to move towards a concretization of legal education and practice “as anything but isolation,”<sup>148</sup> what transformations are called for? Below I offer several suggestions.

### *Apply an Anti-disciplinary Lens to Law School Curriculum*

Antidisciplinarity “critically reflects on the way disciplines form

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<sup>141</sup> Wilson Gilmore, *supra* note 69, at 39.

<sup>142</sup> I am not suggesting a “trauma-informed” pedagogy, although this may be desired by some students and if carefully implemented, may be beneficial. My fear is that it marks students from marginalized communities as exceptional, needing “special attention” and will further distract from students’ goals to develop rigorous skills that will position them well to agitate for durable social change, while white students focus exclusively on these skills.

<sup>143</sup> See, e.g., Archer, *supra* note 1, at 400.

<sup>144</sup> Wilson Gilmore, *supra* note 69, at 38.

<sup>145</sup> Adam Liptak, *Brown v. Board of Education, Second Round*, N.Y. TIMES (Dec. 10, 2006), <http://www.nytimes.com/2006/12/10/weekinreview/10liptak.html>.

<sup>146</sup> KIESE LAYMON, *HOW TO SLOWLY KILL YOURSELF AND OTHERS IN AMERICA* 20 (2013).

<sup>147</sup> Ken Chen, *Ethnicity as Counterculture*, n+1 (Oct. 17, 2019), <https://nplusonemag.com/online-only/paper-monument/ethnicity-as-counterculture/>.

<sup>148</sup> LÓPEZ, *supra* note 140, at 36.

in relation to their objects.”<sup>149</sup> It is a practice that “. . . go[es] beyond debates within disciplines to consider the ways in which academic disciplines and their objects of study are tightly intertwined with the general structures of disciplinary power in society.”<sup>150</sup> Here, disciplinary power refers to the “. . . modern form of power that constitutes us as subjects through techniques of surveillance, normalization, examination, segmentation, and so on.”<sup>151</sup> Antidisciplinarity applied in the context of transforming legal education and praxis asks law professors to question the extent to which our siloed focus on the discipline and sub-disciplines of law and reigning academic protocols have stalled meaningful change and innovation within law schools, with consequences for all students, but especially multiply marginalized students. Exploring these questions makes clear that several interventions are warranted. Here I argue that studying the political origins of law and de-centering judicial opinions, decolonizing syllabi, and teaching history stand to transform legal education to meet the demands of rebellious law praxis for racial and economic justice.

In teaching, law professors primarily rely on judicial decisions that interpret the law, rather than on the “. . . intensely political processes by which the law is made in state and federal legislatures.”<sup>152</sup> As such, law professors teach a small fraction of the process through which the law is ultimately applied on the ground. This focus obscures other pressure points that lawyers and activists might successfully exploit, such as federal, state, city and local electoral processes or legislative forums, contributing to the problematic notion that litigation is a primary driver of social change and a lawyer’s most important skill. Finally, the primacy of judicial decisions in the classroom also significantly dampens creativity and motivation to engage in rebellious lawyering projects.

To expand student’s understandings of the realm of venues in which lawyering might be useful, professors should focus less on judicial opinions and more on the political processes that made them. Politically marginalized people already know that they cannot simply rely on judicial decisions as solutions to entrenched inequality.<sup>153</sup>

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<sup>149</sup> Barkan & Pulido, *supra* note 45, at 38.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> ROBIN WEST, TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM 27 (2013).

<sup>153</sup> See Guinier & Torres, *supra* note 83, at 2749; see also Derrick Bell, *Racial Equality: Progressives’ Passion for the Unattainable*, 94 VA. L. REV. 495, 499 (2008) (arguing that some civil rights litigation victories had little immediate benefit for Black people); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE (1991) (arguing that lasting social change is not achieved or made durable through litigation).

Landmark judicial decisions come about through the waves of social movements creating cultural change and building political will. We tend to ignore this foundation—the political moment and social landscape—reifying the role of courts, lawyers and litigation as drivers of social change. Indeed, Professor Robin West argues that “[l]aw schools have outright ignored, or at best, slighted, both in scholarship and pedagogy, the legislated, political process by which law, the purported object of the academy’s study and pedagogy, is made in a functioning democracy, and to a lesser extent, the executive and administrative processes by which it is enforced as well.”<sup>154</sup> Law professors should broaden the material they teach to include legislative materials and histories, commentary by impacted people and groups and they should contextualize the law and its development through social, political, economic and historical lenses.<sup>155</sup>

Accordingly, law schools should explicitly teach history. Many students arrive at law school without a grasp of radical history, an intentional consequence of American public education.<sup>156</sup> This disadvantage impacts lawyering globally, on every level, from the lawyer-client relationship, to a lawyer’s ability to collaboratively strategize and execute plans. For example, in the context of deploying anti-bias techniques in the lawyer-client relationship, Professors Sue Bryant and Jean Koh Peters argue that “[s]tudents, however, are often missing historical perspectives and facts as well as the necessary experience to deepen their reflections and take action.”<sup>157</sup> Working towards transformative justice therefore requires an understanding of history from the perspective of marginalized people, which could be infused

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<sup>154</sup> WEST, *supra* note 152, at 27.

<sup>155</sup> For example, in examining structural violence, Paul Farmer argues that it is “best analyzed using the complementary frameworks of history and political economy.” PAUL FARMER, “*Landmine Boy*” and *Stupid Deaths*, in PARTNER TO THE POOR: A PAUL FARMER READER 409, 411 (Haun Saussy, ed., 2010).

<sup>156</sup> See e.g., SOUTHERN POVERTY LAW CENTER, TEACHING HARD HISTORY: AMERICAN SLAVERY (2018); Jordanna Matlon, *The Art of Domination: On Decolonizing the Curriculum*, BLACK PERSPECTIVES (May 16, 2017), <https://www.aaihs.org/the-art-of-domination-on-decolonizing-the-curriculum/> (“Those professors among us who teach from the perspective of the oppressed are often tasked with un-teaching what our students learned prior to entering our classrooms. As we know, the education system is a crucial site of social (re)production, fully complicit in the art of domination”). For a recent example of censorship in the federal government of Critical Race Theory, which offers, *inter alia*, radical histories, see Memorandum from Russell Vought, Director, Office of Management and Budget, Office of the President, to Heads of Executive Departments and Agencies (Sept. 4, 2020), available at <https://www.whitehouse.gov/omb/information-for-agencies/memoranda/>; see also Laura E. Gómez, *Trump’s White House Says Critical Race Theory is Anti-American. Here’s the Truth.*, NBC NEWS.COM (Sept. 11, 2020 1:35 PM), <https://www.nbcnews.com/think/opinion/trump-s-white-house-says-critical-race-theory-anti-american-ncna1239825>.

<sup>157</sup> Koh Peters & Bryant, *supra* note 84, at 391.

into existing courses or in standalone courses.

Last, law school curriculum should mirror our commitments to centering race-class marginalized people and histories in the classroom.<sup>158</sup> Professors should consider curating their own materials for classes rather than relying on casebooks in order to teach from sources created by race-class marginalized people. Similarly, academic writing should be more accessible to non-lawyers, and more useful to organizing efforts. In this vein, Professor Monica Bell writes that to achieve fundamental reform of the basic structures of society, we “. . . must explore new audiences for legal scholarship” while writer Kiese Laymon calls on us to “broaden the audience to whom we write. . . hoping that broadened audience writes back with brutal imagination, magic and brilliance.”<sup>159</sup>

#### *Center and Build Out Authoritative Interpretive Communities*

In Part II I argued that authoritative interpretive communities of impacted people should be developed and centered in legal education to counter regnant education models and generate interpretations of the law rooted in its application on the ground. It is clear that most law professors and lawyers have little to no meaningful experience in the communities where many race-class marginalized students and clients spend formative years and may still be deeply embedded.<sup>160</sup> One method that might illuminate these communities in legal education involves a kind of reverse ethnography.

Professor Alexi Nunn Freeman argues that “[l]aw schools should work with communities to build programs and courses that help the students learn about the communities’ goals, history, and obstacles.”<sup>161</sup> Similarly, advocating for a sort of ethnography<sup>162</sup> of communities, Professor Anthony Alfieri notes that “[t]he ethnographic

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<sup>158</sup> For example, the Truth and Reconciliation Commission of Canada identified law schools as sites of ongoing colonization, noting that legal education has been “in large part . . . an imperial project of the legal profession,” calling on law schools to “indigenize” the curriculum and decolonize the institutional framework of law schools. Jeffery G. Hewitt, *Decolonizing and Indigenizing: Some Considerations for Law Schools*, 33 WINDSOR Y.B. ACCESS JUST. 65 (2016).

<sup>159</sup> Laymon, *supra* note 146, at 20.

<sup>160</sup> See *supra* notes 42 - 43 and accompanying text.

<sup>161</sup> Freeman, *supra* note 139, at 131.

<sup>162</sup> Ethnography, and its related discipline, anthropology, have long been critiqued for their problematic relationship between professionals and the communities they study. See generally Michel-Rolph Trouillot, *Anthropology and the Savage Slot: The Poetics and Politics of Otherness*, in GLOBAL TRANSFORMATIONS IN ANTHROPOLOGY 7-28 (2003) (tracing efforts to reassess ethnography after postmodern critique of increasingly suspect claims in ethnographic narrative); see, e.g., Vine Deloria, Jr., *CUSTER DIED FOR YOUR SINS: AN INDIAN MANIFESTO* (Univ. Okla. Press 1988) (1969) (describing how anthropologists have negatively impacted Indigenous people in the U.S.).

method offers lawyers, law professors, graduate and undergraduate students, and lay activists an alternative ‘way of seeing’ minority groups and interpreting ‘what you see’ in inner city neighborhoods as ‘transitory and tenuous’ rather than as an immutable ‘culture of poverty’.”<sup>163</sup> Rather than deploying students to perform ethnography in communities that they may be a part of, perhaps law needs an ethnography of its own students, as they are situated in their communities. Surely, “[m]any great advocacy ideas bubble up from the community, but equally valid ideas can come from advocates who have been working with and for those communities (*or are members of the community themselves*).”<sup>164</sup> The space in which potential synergies or disconnections between students, lawyers and their communities arise deserves more study, potentially through ethnographic projects.

However, studying race-class students and their communities from a traditional ethnographic standpoint runs the risk of replicating the polarizing paradigm of “native” and “non-native” ethnographers.<sup>165</sup> Consistent with recognizing that culture is neither homogeneous nor fixed, and that students do not necessarily represent any particular identity or set of identities, a more nuanced approach to studying students and communities is called for. Law schools should undertake systematic efforts to understand how race-class marginalized students are situated in their communities, which would inform pedagogical choices and help guide students to meaningful law practices.

#### *Un-level Aspirations*

Social scientists note that “[y]oung people who grow up in disadvantaged, isolated contexts may start out with big dreams but, over time, those aspirations may shift to match more closely their social position of origin.”<sup>166</sup> This is the problem of “leveled aspirations.”<sup>167</sup> Because “[i]nstitutions and institutional actors . . . play a central role in this leveling process,”<sup>168</sup> we must ask ourselves, to what extent are we leveling our own students’ aspirations? In law schools with significant social justice strains, we must ensure that race-class marginalized students interested in social justice work are not only funneled into

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<sup>163</sup> Anthony Alfieri, *Rebellious Pedagogy and Practice*, 23 CLIN. L. REV. 5, 16-17 (2016).

<sup>164</sup> Archer, *supra* note 1, at 422 (emphasis added).

<sup>165</sup> Kirin Nayaran, *How Native is a “Native” Anthropologist?*, 95 AM. ANTHROPOLOGIST 671, 671-72, 678 (1993).

<sup>166</sup> Bell, *supra* note 43, at 732 (citing JAY MACLEOD, AIN’T NO MAKIN’ IT: LEVELED ASPIRATIONS IN A LOW-INCOME NEIGHBORHOOD (3D ED. 2008); PAUL WILLIS, LEARNING TO LABOUR: HOW WORKING-CLASS KIDS GET WORKING-CLASS JOBS (1977)).

<sup>167</sup> *Id.*

<sup>168</sup> Bell, *supra* note 43, at 703.

direct service jobs but are given opportunities to work in a range of lawyering outfits and support to start their own.

Lamentably, access to jobs in the legal profession is largely determined by the prestige of a student's law school.<sup>169</sup> This is often compounded by a lack of experience in varied kinds of lawyering, which can set multiply marginalized and first-generation students on ossified employment trajectories. Implicated in this process are institutional norms and prerogatives around the kinds of work law school clinics should do.<sup>170</sup> Many law school clinics engage in direct representation of individual clients. But entire clinical programs that primarily practice direct representation further obscure the political processes that create and maintain the law, a process that begins early in the law school curriculum. Clinics should broaden the kind of work they engage in, consistent with radical approaches to lawyering,<sup>171</sup> to include coalition building, engagement with organizing efforts, systematic litigation, and other legal and non-legal needs that arise in connection with community-based collaborations. Students who are only or mainly exposed to direct services lawyering, will likely not have the experience or knowledge to access employment in other kinds of lawyering outfits that embrace more experimental or radical approaches to using the law for social change.

Apart from diversifying clinical approaches and dockets, students can be exposed to different kinds of lawyering through opportunities to participate in clinical experiences earlier in their law school career.

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<sup>169</sup> See, e.g., Gómez, *supra* note 115, at 653 n.32 (noting that even the distribution of "grunt work" within law offices is sometimes assigned according to gender, class and the law school one attended); Ilana Kowarski, *Why Big Law Firms Care About Which Law School You Attend*, U.S. NEWS & WORLD REPORT, (Aug. 1, 2018 10:39 A.M.), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2018-08-01/why-big-law-firms-care-about-which-law-school-you-attend>.

<sup>170</sup> See, e.g., Heather Gerken, *Resisting the Theory/Practice Divide: Why the "Theory School" is Ambitious About Practice*, 132 HARV. L. REV. F. 134 (2019); Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 CLIN. L. REV. 775 (2017).

<sup>171</sup> There is a deep literature that develops the rebellious vision initially articulated by Gerald López in *REBELLIOUS LAWYERING*, *supra* note 140. See, e.g., Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355 (2008); Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297 (1996); Bill Ong Hing, *Coolies, James Yen, and Rebellious Advocacy*, 14 ASIAN AM. L.J. 1 (2007); Bill Ong Hing, *supra* note 128; Shin Iinai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195 (2002); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147 (2000); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLIN. L. REV. 427 (2000); Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLIN. L. REV. 541 (2006) Ascanio Piomelli, *Foucault's Approach to Power: Its Allure and Limits from Collaborative Lawyering*, 2004 UTAH L. REV. 395. Angelo N. Ancheta, *Community Lawyering*, 81 CAL. L. REV. 1365 (1993); Christine Zuni Cruz, *[On The] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLIN. L. REV. 557 (1999).

It is widely recognized and lamented that law school does not adequately prepare students for practicing law.<sup>172</sup> Increasing experiential options is critical, although many law schools only allow live-client practice in the third year. Allowing first- and second-year students to participate in clinics would give students more insight into different approaches to lawyering and would also help students understand doctrinal concepts as they relate to the practice of law.<sup>173</sup>

### CONCLUSION

In this essay I have incorporated ethnographic insights and narrative technique with tenets of Critical Race Theory and critical geography to ground conversations about transformative pedagogy and praxis in the lived experiences of many of our students who fight for radical social change, and who enter law school hoping to gain new tools for that journey. We learn that nothing about this process is predictable, and that indeterminacy pervades even our most cemented identities and plans. But as more students from historically marginalized communities enter law school and become lawyers, our responsibilities to them become clearer. Law school pedagogy must adapt and evolve to center such students, their communities, histories, goals and challenges, just as our law practices must similarly adapt. Here I offer several admittedly ambitious suggestions for legal education and law practice that better serves our students, ourselves, and our projects for justice. Toni Morrison reminds us that “. . . [i]magination fosters real possibilities: if you can’t imagine it, you can’t have it.”<sup>174</sup> The goal of this essay is to invite imaginative conversation and experimentation with radical models of legal education and practice that will move us closer to visions of a world we actually want to live in.

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<sup>172</sup> WEST, *supra* note 152, at 7-8.

<sup>173</sup> Law professors have long advocated for and experimented with offering clinical experiences in the first and second years. See, e.g., Stephen Wizner & Dennis Curtis, *Here's What We Do: Some Notes about Clinical Legal Education*, 29 CLEV. ST. L. REV. 673 (1980); Michael Milleman & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year*, 12 CLIN. L. REV. 441 (2006); THE NEW 1L: FIRST YEAR LAWYERING WITH CLIENTS (Eduardo R.C. Capulong, et al., eds., 2015).

<sup>174</sup> TONI MORRISON, *The Source of Self-Regard*, in THE SOURCE OF SELF-REGARD 304, 320 (2019).