WEAVING THREADS OF CLINICAL LEGAL SCHOLARSHIP INTO THE FIRST-YEAR CURRICULUM: HOW THE CLINICAL LAW MOVEMENT IS STRENGTHENING THE FABRIC OF LEGAL EDUCATION

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I. INTRODUCTION

In the inaugural volume of the *Clinical Law Review* (CLR), the editors began with an essay inviting clinicians to "practice what we preach . . . by engaging in the processes of reflection, critique, and future planning."[1] In this, the 25th Anniversary edition of the CLR, the current editors invite us to engage in these processes again. In this essay, I pick up seven "threads" of clinical legal scholarship, and assert that the time has come to weave those threads into the very fabric of first-year, "doctrinal" courses in law school. This argument is not a new one: Margaret M. Russell, writing in the first volume of the CLR, made a compelling case to broaden the first-year curriculum to include perspectives from clinicians and other law school academics.[2] Addressing her essay to "fellow law teachers, especially other non-clinicians," she described methods she used to break away from the traditional doctrinal approach.[3] Russell described an environment ripe for such cross-fertilization: increased attention to issues of diversity in legal analysis and practice, the weakening of search for a cohesive "canon" of how to approach the law, and the availability of experiential methodologies and clinical collaborators.[4] I want to expand her idea to embrace a different way of approaching first-year

* Professor of Law, WMU-Cooley Law School. This essay is dedicated to Associate Dean Christine Church, who urged me to contribute my clinical teaching skills in an integrated way in the first-year curriculum, and who encouraged me to begin sincere conversations with faculty colleagues about how to improve student learning. The author thanks Professor Jeanette Buttrey, who accomplishes more in a week than most of us accomplish in a semester; Professor Mable Martin-Scott and Professor David Finnegan, for willingly engaging, teaching, and learning; and Joni Larson, for encouraging a deep dive into learning theory and reminding me that student learning is the main focus of a law school. Thank you all for always helping me get it right.

[1] Stephen Ellmann, Isabelle R. Gunning & Randy Hertz, *Why Not a Clinical Lawyer-Journal?*, 1 CLIN. L REV. 1 (1994).

[2] Margaret M. Russell, *Beginner's Resolve: An Essay on Collaboration, Clinical Innovation, and the First-Year Core Curriculum,* 1 CLIN. L. REV. 135 (1994).

[3] *Id.* at 138.

[4] *Supra* note 2.

doctrinal courses, using these clinical scholarship threads as a foundation.[5]

We are now experiencing an even greater need to synthesize clinical methods and mind-sets into the first-year curriculum. Forces within the academy and the profession combine to create the perfect opportunity to fully incorporate threads woven by clinical scholars. These threads include:

A. Active and experiential teaching methods
B. Assessment, self-reflection, and feedback – the importance of students understanding process and teachers understanding students (metacognition)
C. The centrality of client experiences in understanding the law and what it means to be a lawyer
D. The importance of social justice education in forming and reforming the law
E. The centrality of diversity and inclusion in forming the public experience of the law and the student experience of legal education
F. The opportunities for collaborating with students in the enterprise of legal education from the very beginning, and
G. The centrality of digital technology in law practice and legal education

Legal education in 1994 was at a crossroads, and today we are at another one. In 1994, law schools were buzzing over the then-recent (1992) publication of the *MacCrate Report*,[6] which took on the daunting task of defining lawyering skills and how they should be taught in the law school curriculum. Beginning with a challenge about whether it was important for law schools to teach students how to engage in specific lawyering skills such as interviewing, counseling, negotiation, alternative problem-solving, and legal writing, the MacCrate Report paved the way for a much deeper conversation about professional identity and how students learn. The MacCrate Commission's decision to include lawyering values added to a rich discussion about how lawyers think, work, and learn. Clinical educators were involved in the drafting of MacCrate, and took an even greater lead in the follow-up conversation about best practices in teaching. In 2007, *Best Prac-*

[5] My ideas are, perhaps, modestly transformative of first-year doctrinal curriculum. For a more expansive look at imagining radical transformation, *see* Gerald Lopez, *Transform—Don't Just Tinker With—Legal Education,* 23 CLIN. L. REV. 471 (2017), and Gerald Lopez, *Transform—Don't Just Tinker With—Legal Education Part II),* 24 CLIN. L. REV. 247 (2018).

[6] JOAN S. HOWLAND & WILLIAM H. LINDBERG, THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM: CONFERENCE PROCEEDINGS, MINNEAPOLIS-ST. PAUL, MINNESOTA, SEPTEMBER 30-OCTOBER 2, 1993 (1994).

tices in Legal Education[7] fully and unapologetically addressed the topic of how to teach students, making the bold claim that some techniques are more effective than others. That same year, the Carnegie Foundation produced a report, *Educating Lawyers*,[8] that supported many of the premises of both MacCrate and Best Practices, including a call to improve the formation of professional identity in addition to teaching legal knowledge and skills, and a call to broaden law school teaching methods to more than Socratic questioning and lecture.

During the intervening 25 years, social, political and economic events created a context for these ideas to marinate. In 2014, the American Bar Association added the requirement that law schools give students both formative and summative assessments and meaningful feedback.[9] The 2014 changes in ABA Standards synchronized legal education with research-based learning theories – thus adding value to skills honed by clinical legal educators. Law school enrollments dramatically decreased between about 2010 and 2016, allowing for some lab-like environments in smaller doctrinal classrooms.[10] And, classroom technology and digital learning platforms came of age. Historic declines in bar passage rates across the country have raised the currency of teaching methods that demonstrably improve student learning.[11] The new ABA Standard 316 requires those law school graduates who sit for the bar exam, to pass within two years of graduation, or a school can lose its accreditation. Never have law school

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[7] ROY STUCKEY ET AL., BEST PRACTICES IN LEGAL EDUCATION (2007); an updated version was published in 2015: BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (Deborah Maranville et al., eds., 2015).

[8] WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

[9] American Bar Association Section of Legal Education and Admission to the Bar, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, see especially Chapter 3, Program of Legal Education, Standard 314, *Assessment of Student Learning*, which reads: "A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students." Other Standards adopted or amended that year reflected the adoption of more modern learning approaches consistent with clinical education, notably Standards 301 & 302 (learning outcomes), Standards 303 & 304 (required 6 credits in experiential courses, full definition of experiential courses).

[10] There were many reports on this dramatic decrease in law school enrollments. *See, e.g.,* Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut,* N.Y. Times, Jan. 31, 2013 (law schools saw a 38% decline in enrollments between 2010 and 2014).

[11] There have been many reports in the news. *See, e.g.,* Stephanie Francis Ward, *Lowest bar pass rate for California in 67 years; other states see drop too,* ABA Journal online, (November 19, 2018), accessed at http://www.abajournal.com/news/article/lowest_bar_pass_rate_for_california_in_67_years_other_states_see_drop_too; Karen Sloan, *The Big Fail: Why Bar Pass Rates Have Plummeted in NY and the Rest of the Country,* N.Y. L.J., (April 14, 2019), *located at* https://www.law.com/newyorklawjournal/2019/04/14/the-big-fail-why-bar-pass-rates-have-sunk-to-record-lows-389-65504/.

faculties been more focused on methods to help students learn.

Thus, I will argue, the perfect environment has been forged to take the insights and techniques from the past 25 years of clinical legal scholarship outside of the exclusive domain of upper-level skills and clinical courses and place them front and center into the first-year curriculum. Clinical scholarship has tackled the topic of "integration" into the curriculum for some time. Until recently, such proposals have generally involved placing the doctrine and skills components side-by-side, rather than together, or expanding upper-level skills curriculum.[12] It has been difficult to bridge the very different types of teaching and learning in first-year "doctrinal" courses and clinical courses, which are typically in the upper-level curriculum. But increasingly I hear professors of "doctrine" talk about ways to teach many of the flexible skills clinicians have always known students need to practice. These conversations have been moved forward not just by clinical legal educators, but also by colleagues who have labored in academic support and legal writing skills instruction.[13] This has been supported by members of the Society of American Law Teachers (SALT), The Institute for Law Teaching & Learning,[14] and others. The clinical movement has worked alongside these fellow travelers over the past 25 years.

In 2016, after 28 years teaching only in clinics and skills courses, I set out to prove, at least to myself, that doctrine could be taught using active learning techniques. I quickly came to realize that my experience as a clinical legal educator led me to weave much more than

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[12] For a history lesson on schools that provided integrated skills curriculum alongside doctrine, see Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert F. Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J. L. & POL'Y 11 (2013), describing schools such as Case Western Reserve School of Law's CaseArc Lawyering Skills Program and schools that require large numbers of clinical credits, *Id.* at 50-1. In that article, the authors also describe two law schools that created genuine clinical-practice-doctrine integrated curriculum from their inceptions, CUNY Law School and the University of the District of Columbia, *Id.* at 48-9. The authors advocate for a great expansion of clinic and skills curriculum in law schools, creating a practice-based apprenticeship. They appear to assume that the first-year will continue to be traditional, doctrinal instruction. *Id.* at 13.

[13] *See, e.g.,* Elizabeth Adamo Usman, *Making Legal Education Stick: Using Cognitive Science to Foster Long-Term Learning in the Legal Writing Classroom*, 29 GEO. J. LEGAL ETHICS 355 (2016) (arguing that teaching methods often used in upper-level clinic and skills courses should be incorporated into the first-year curriculum via legal writing classes.)

[14] *See, e.g.,* MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD F. HESS, TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM (2009); Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347 (2001); Michael Hunter Schwartz, *Teaching Law Students to be Self-Regulated Learners,* 2003 MICH. ST. DCL L. Rev. 447 (2003).

those techniques into the very first days of legal education. Two years earlier, I had developed my first "doctrinal" course, Equity & Remedies, incorporating some ideas I had gathered as a clinical educator. But the students in that course were upper-level students, and I wanted to teach a skills-based core course for entering law students.

In late 2017, I set out to learn how to teach Contracts and Property. I wanted to take up threads from clinical legal scholarship and practice, using them to weave instruction that would help to form holistic, ethical lawyers from their first days in law school. As a sort of "control," I decided to use the same textbook and syllabus as the other Contracts and Property professors at my school, to obtain the same "coverage" of the subject matter.

II. Seven Threads of Clinical Legal Scholarship

A. Active and experiential teaching methods

The backbone of clinical legal education and scholarship has been active and experiential teaching methods. Clinical scholars have written numerous articles describing how active and experiential learning succeed in engaging adult learners.[15] To prepare to teach in the early curriculum, I had the opportunity to sit in on law school classes taught in traditional styles. I saw some terrific teaching. But a concern that stood out most clearly to me was that students were not required to DO enough. Often one or two students were reciting or analyzing a problem, and the other students were passive. After decades of clinical teaching, I set out to create materials for active and experiential learning environments in first-year courses that would require the engagement of the entire class.

Teaching techniques such as crafting simulations, organizing small groups, and organizing student work with giant flip charts along the walls came naturally to me, because of my training as a clinical teacher. Holding students accountable is what clinical teachers do: we do it in the classroom by requiring everyone to participate, and we do it outside of the classroom by requiring a work product. How to engage students in meaningful discussion, conversation, and applied legal work, is part of the clinical legal scholarship agenda.

Modern research-backed learning theory continues to support use of active and experiential techniques to enhance student learning. In the 2014 book, *Make it Stick*,[16] the authors discuss the results of cognitive psychology research that explored how people learn. In the

[15] There are too many articles to fully cite; *see, e.g.,* Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 Vand. L. Rev. 321 (1982).

[16] Peter C. Brown et al., Make it Stick (2014).

book, the authors suggest seven techniques to help students improve learning.[17] Most of those techniques can be built into active and experiential learning exercises.

In my Contracts and Property courses (both part of the first-year curriculum), I teach three-hour blocks of class once a week. At least a full hour of class each week consists of one or more of the following: small-groups working through short problems or longer simulations; active outlining and categorizing material on flip chart pages on the wall; identifying facts from appellate cases that support each side of the case; matching facts with definitions; engaging in "polling." Outside of class, I require additional active learning tasks. Before each class, students respond to discussion questions in a threaded forum, based on that week's reading assignment. They take graded multiple-choice exams 2-3 times during the semester, with opportunities to practice and re-take the exams. They may choose to take short-answer quizzes. They submit outlines at key times during the semester. In my Property class, students draft an opinion letter based on their viewing of a simulated client video. All of these are activities where 100% of the students are involved-before, during, and after each class.

In the first volume of the CLR, Peter Toll Hoffman urged clinical scholars to write about lawyering skills.[18] He urged clinical teachers to define underlying theory that describes the processes of lawyering skills. When a clinical law teacher enters into a "doctrinal" course, what she sees are all of the component skills that make up the concepts, sequence, terminology and analysis of doctrine, and how to apply and express that analysis.[19] The big take-away from these activities is that the skill dimension of legal analysis and reasoning can be taught. Teachers in academic support programs have been doing it

[17] *Id.* at 200-11. The seven techniques are: 1. Practice retrieval from memory (self-testing) to strengthen learning and figure out your weak areas; 2. Space your retrieval practice: study more than once, but leave time in between 3. Interleave different but related concepts when you study; 4. Elaboration: relate the material to what you already know, explain it to somebody else, find more layers of meaning, explain how it relates to your life outside of class. Create visual flow-charts, pictures, etc.; 5. Generation: try to solve the problem before you know the solution (experiential exercises can achieve this); 6. Reflection: what have I learned? What have I missed? What went well? What did not? What strategies do I have to improve? 7. Calibration: test yourself, fix what's off.

[18] Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 CLIN. L. REV. 93 (1994).

[19] One example that presented itself early in my first semester teaching Contracts, was the way doctrinal professors throw around the word "rule" when it actually can describe really different kinds of concepts. IRAC is taught early and often, but entering students are confused by the difference between elements, factors, standards, tests — all of which can be used to describe a "rule." As a skills teacher, I naturally make these distinctions very clear to the students.

for years, but as a supplement to the "regular" classroom.[20] Traditional doctrinal law professors have tended to believe those skills are learned inferentially, rather than explicitly. Teaming with the academic support faculty at my school, I am teaching those skills directly and transparently, just as I would do in the clinic.

B. Assessment, self-reflection, and feedback – the importance of students understanding process and teachers understanding students (metacognition)

Clinical scholarship has described, refined, and explored assessment, self-reflection and feedback as a primary method for becoming a lawyer. In addition to describing the educational techniques and importance of feedback in learning, clinical scholarship has explored philosophical and ethical dimensions to faculty-student reflection. The centrality of supervision meetings between clinical faculty and students has been in many ways the signature pedagogy of clinical legal education.[21] Clinical faculty help students set learning goals, and help them self-assess attainment of those goals. Who, then, is better equipped to develop robust assessment, self-reflection and feedback mechanisms for the early law school curriculum? Clinicians have developed instincts for targeting what students are getting wrong and how to help them fix it.

In modern learning theory, this process is labeled "metacognition," and it is thought to be a key ingredient in long-term learning.[22] Metacognition asks the students to think about how they are learning. Given opportunities to test their understanding, they learn to ask what they are getting right, and what they are getting wrong. Then, they are given tools to improve.

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[20] At my law school, first-year students are required to enroll in a required, no credit course titled *Introduction to Law*. This course is taught by faculty who are Academic Support professionals and is vitally important to student success. But, students get all kinds of implicit message (from other faculty, from other students) that the course is "less than" the doctrinal courses. For this reason, I think it is important that doctrinal courses-at least some of them – are taught from a skills point of view, and that doctrinal professors explicitly reference the skills taught by Academic Support faculty. I meet regularly with our Academic Support faculty member, Jeanette Buttrey, to compare notes and synchronize what we are teaching students.

[21] There are far too many articles on supervision to cite comprehensively. Two excellent articles are Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision,* 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1993-1994) and Nina W. Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967 (1990).

[22] *See, e.g.,* Cheryl B. Preston, Penée Wood Stewart, & Louise R. Moulding, *Teaching "Thinking Like a Lawyer": Metacognition and Law Students*, 2014 BYU L. REV. 1053 (2014); *see also,* Brown, et al, supra note 16, at 208-9 (discussing the importance of reflection and calibration); E. Scott Fruehwald, *How to Help Students from Disadvantaged Backgrounds Succeed in Law School,* 1 TEX. A&M L. REV. 83, 105-22 (2013).

Working alongside academic support and legal writing professionals, who have also developed robust tools, clinicians can infuse early curriculum with multiple avenues for students and faculty to understand how students approach problems and how to correct navigational errors. When I first developed rubrics for analyzing first-year essays, I broke them into multiple components. My students are evaluated separately on issue-spotting, analysis, organization, terminology, and absence of extraneous issues. The clinical eye naturally looks to a multiplicity of ways students can approach the task, and thus can help students diagnose their own learning issues. As I tell my students, the path to an "A" or an "F" is pretty much the same, but there are many to a "B", "C", or "D." Improvement usually depends on understanding where the student is veering onto the wrong path.

Assessments occur constantly in my classes. When I review the threaded discussion before each class, I quickly assess what the students are getting right and what they are missing about the week's material – before I go into class. I can then let the class know what I saw, and place greater emphasis on the concepts they had trouble with. When students analyze problems in class, or participate in a simulated problem, how they approach the problem tells me where they need attention. That information can then be transmitted back to them. When they write essay exams, one level of feedback is the written comments tied to the rubric. A second layer of feedback is given to the entire class, discussing common errors. Yet another layer frequently occurs when the students come in to see me with a copy of their feedback. This conversation most often leads to an agreement that the student write a practice essay, which leads to another meeting and more feedback. Another layer of feedback happens when I teach the course again, correcting my own emphasis on certain ideas.

Not all feedback comes from me. I give students opportunities to test their knowledge of concepts and self-assess. This can happen quickly with in-class polling of key concepts from the week before. This also happens in one-on-one student meetings. During student meetings, I ask guided questions – not unlike questions I would ask a clinical student – designed to help them figure out what they are missing, why they are missing it, and how to course correct. For example, if they are missing "rule statements," we discuss how they might enhance their understanding of those. I might suggest that they go back and study the short-answer quizzes on the course page, or review the answers to the multiple-choice exams once they are released, because these are good sources of rule statements.

One-on-one interactions are especially helpful to students who

possess stereotype threat.[23] I teach at an access school, and many of our students question their legitimacy in law school. Whether it is because of race, gender, ethnicity, learning disability or another trait, our students worry that they cannot succeed. When law school analysis and reasoning are taught as skills that can be learned, students are sent the message that success is attainable. When they can measure their performance against rubrics and standards, they begin to build confidence. The ABA and other accrediting organizations are encouraging assessment as a way of helping students learn, and all of our clinical scholarship on that topic provides many tools for the first-year curriculum.

C. The centrality of client experiences in understanding the law and what it means to be a lawyer

The Carnegie report revealed a failure in most law school courses to help students understand and create professional identity. Clinical legal scholarship has focused a strong lens on the centrality of client experiences to what it means to be a lawyer. Doctrine, traditionally taught through appellate cases, has suppressed the experiences of clients. By focusing on appellate judicial opinions, students might fail to see how lawyers work with and for clients to help them achieve goals. The clinical law professor brings that thread into the first-year classroom.

The client perspective in a doctrinal course begins by asking students to think about the clients in the appellate cases they read: who were these people, why were they disagreeing, what was their dispute about? This is a challenge to the typical instructions to students about how to "brief" a case – and should be explicit. The client perspective comes in by asking students to identify the social context of the cases and problems they are reading. It comes from using examples in class that view the legal problem from the perspective of the client. It is shown by pointing out that problems that appear in the book assume that client only wants to "win" the legal theory and this lacks the richness of real life (and perhaps it comes from selecting a different book). When the book lacks such perspective, the clinical teacher can

[23] *See, e.g.,* Joshua Aronson, Carrie B. Fried & Catherine Good, *Reducing the Effects of Stereotype Threat on African American College Students by Shaping Theories of Intelligence,* 38 J. EXPERIMENTAL SOC. PSYCHOL. 113 (2002) (students perform better on tests when they are taught that their intellectual abilities are expandable rather than fixed); *see also* CLAUDE M. STEELE, WHISTLING VIVALDI AND OTHER CLUES TO HOW STEREOTYPES AFFECT US 152-90 (2010), (describing and defining the phenomenon of stereotype threat, and explaining strategies for reducing the effects of it through mentoring that explicitly references high standards for performance and a message that the student is capable of fulfilling those standards, with proper feedback).

easily create simulations that offer up clients who have a race, a gender, a job, a religion, a point of view – all of which inform client goals, which can be brought into the analysis in first-year courses. It comes by pointing out ethical concerns that might be present in cases but not discussed in the case notes. It comes from creating characters in exam essays from a diverse set of experiences. It might come from assigning fiction or movie clips that express the perspective of a client.[24]

I have developed several simulations that intentionally present nuance in client needs and goals when asking students to work through problems. Students need to understand that law is primarily to assist others, not a set of ideas that exist in a vacuum. Most of the problems I encounter in texts for first-year courses offer little in the way of texture to the idea of clients. There are not clients from different backgrounds, with different needs and interests. I have introduced some of that into the first-year classes.

D. The Importance of Social Justice Education in Forming and Reforming the Law

Law students believe their job is to figure out the rules and apply them. They find contradictory cases and the twists and turns of the law frustrating because they think the law is a linear explication. But legal doctrine is all about normative legal principles. Clinical legal scholarship has a well-developed thread related to helping students learn about justice. What is just? How do we figure that out? What role do race, gender, class, religion, and other factors play in obtaining justice? How can we help students ask these questions and see these connections?[25]

Students enrolled in clinics see legal principles affecting real people every day. First-year law students should be taught to see how legal principles affect real people through the lens of the doctrine they study. First-year cases are full of wonderful examples: why did the Courts in the late 19th century find conjuring spirits to lack legal sufficiency in contracts? Maybe because there were so many 19th century scam artists who took advantage of grieving widows or dying people.

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[24] In the first volume of the Clinical Law Review, Nancy Cook presents "legal fictions" as a way to imagine a window into the world of the clients in the cases we read about. Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories"*, 1 CLIN. L. REV. 41 (1994). Research in the field of cognitive science are linking powerful learning to story-telling. *See* Brown et al supra note 16, at 109-13.

[25] *See, e.g.,* Jane Aiken, *Provocateurs for Justice*, 7 CLIN. L. REV. 287 (2001); Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37 (1995); Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLIN. L. REV. 1 (1997); Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J. L. & SOC. JUST. 231 (2012).

Why did a court carve out an exception to find moral consideration enforceable for a "material benefit"? Perhaps because the person who saved the life of another realized, as did the Court, that the good Samaritan would not have had access to public benefits or disability programs. My Property class spent almost three hours discussing the failure of representative democracy, including problems with gerrymandering, lobbyists, and big money, when we discussed why there might be so much backlash to the doctrine of eminent domain when studying the *Kelo* case.[26]

I heard someone tell a first-year law student that it didn't matter if something was fair, it only mattered what the rules were. My clinical legal brain was appalled. I teach my first-year students that to combat unfair laws, they must first master why the people who created those laws thought they were fair. Whose interests did those laws serve? Only then can they begin to craft arguments to reform the law. I teach them that common law is an organic beast that feeds on growth and change, and they need to look for opportunities to argue for justice. Clinical scholarship has contributed, along with our colleagues in SALT, critical race scholars, and others in developing ways of teaching social justice. The cases, problems, statutes, and rules in first-year courses are replete with normative values. These values affect who the law helps, and who the law ignores.

When my students answer discussion questions each week before class, one of the questions is generally a "policy" question – do you agree with this rule or that decision? Why or why not? Invariably, a student in the first couple of weeks will send me an e-mail, or come up during a class break, with the same query:

"You seem to be asking for my opinion. Is that what you want?"

After I assure the student that yes, in fact, I want their opinion, I try to explain to the entire class why they need to wrestle with normative questions.

Every legal doctrine is a product of its own culture, time, and population characteristics. Students should understand the history and context of legal doctrine, both to understand what the law was when it was formed, what the law is today, and what the law could be in the future. One of my favorite themes in Contracts is asking students to analyze whether ordinary people would understand a particular doctrine and, if not, how it might be made more accessible. These questions are closely related to the issues raised by the next thread.

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[26] *Kelo v. City of New London,* 545 U.S. 465 (2009) (affirming that "public purpose" in eminent domain can include economic development of a city, but in a close decision (prior decisions on this doctrine had been unanimous) and in a way that sparked public backlash).

E. The centrality of diversity and inclusion in forming the public experience of the law and the student experience of legal education

Understanding how the law and the academy privilege certain cultural experiences over others is an important aspect of legal education, and a thread raised by many clinical scholars. In U.S. law schools, critical examination of the role of race, gender, sexual orientation and other similar characteristic of historically oppressed groups is key to understanding how law is formed and applied. Similarly such dynamics exist in law school hierarchy itself. In the first CLR volume, Michelle Jacobs discussed the complex tangle of power, hierarchy, and perception in clinical legal work.[27] In her essay, she referenced similar hierarchies in the law schools generally.[28] Jacobs and others went on to write about these dynamics in the practice of law,[29] and in law schools.[30]

Building on the themes from the previous section, students must learn to view law and legal cases based, in part, on whose cultural experiences are valued in legal decisions. Some topics literally cannot be covered without critical examination of race and gender policy: anti-discrimination laws in housing, for example, in a Property class. Basic understanding of the doctrine requires students to become aware that honest and in-depth examination of race, gender and so on are necessary.

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[27] Michelle S. Jacobs, *Legitimacy and the Power Game*, 1 CLIN. L. REV. 187 (1994).

[28] *Id.* at 188-9.

[29] *See, e.g.,* Michelle S. Jacobs, *People from the Footnotes: the Missing Element from Client-Centered Counseling,* 27 GOLDEN GATE U. L. REV. 345 (1997); Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33, 38-48 (2001); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases,* 9 CLIN. L. REV. 373, 379-84 (2002); Christine Zuni Cruz, *[On The] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLIN. L. REV. 557, 565-70 (1999); Carwina Weng, Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness, 11 CLIN. L. REV. 369, AT 378-9 (2005). *See also* GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992), which was first published two years before the first issue of the *Clinical Law Review*, but cited extensively by clinical scholars throughout the past 25 years. The book was so influential it inspired a student-run conference that has convened annually since 1994 (*see* https://reblaw.yale.edu/ (last accessed July 28, 2019), and a symposium sponsored by the CLR in 2016, celebrating 25 years since its publication. The CLR published a two-volume symposium issue dedicated to essays on the book.) *Symposium: Rebellious Lawyering at 25*, 23 CLIN. L. REV., issues No. 1 & 2 (Fall 2016 & Spring 2017).

[30] *See, e.g.,* Jon C. Dubin, *Faculty Diversity as a Clinical Legal Education Imperative*, 51 HASTINGS L. J. 445 (2000); Angela Mae Kupenda, *As Easy as "1,2, buckle my shoe" 10 Steps for Addressing Race Intentionally in Doctrinal Classes,* Institute for Law Teaching and Learning Teaching Ideas, *located at* http://lawteaching.org/2019/05/16/addressing-race-intentionally-in-doctrinal-classes/ (last accessed July 8, 2019); Stephanie M. Wildman, *Revisiting Privilege Revealed and Reflecting on Teaching and Learning Together*, 42 WASH. U. J. L. & POL'Y 1 (2013).

Even in seemingly unrelated topics, however, these issues arise. In the first day of Contracts, students in my class negotiate short contracts in a classroom exercise. We use that exercise – and the words they use to talk to each other – to define the elements of "offer" and "acceptance." There are always examples of phrases that students have used that might be ambiguous in meaning. This allows me a chance to engage students in why the same words might mean different things to people from different cultural backgrounds. We discuss the concept of "mutual assent," but allow that a judge or jury from a dominant culture might get the meaning "wrong." It helps that I teach at one of the most diverse law schools in the country, because my students are adept at discussing race, gender, and culture. The students in my classes have been very open to examining culture and context – a well-developed theme in clinical legal scholarship – because they have not yet been indoctrinated into thinking it doesn't matter. This exercise during the first class sets a tone that cultural experience matters in analysis of something as "black letter" as the elements of "offer." As Angela Mae Kupenda writes in her blog piece, *As easy as "1,2, buckle my shoe" 10 Steps for Addressing Race Intentionally in Doctrinal Classes,* "Open the door of your mind to consider the presence of race in the courses you teach and to consider the consequences of your failing to address race." The same can be said of gender, ethnicity, sexual orientation, and related identity issues.[31]

As Jacobs, Kupenda, Dubin, Bryant, Weng, Zuni-Cruz, Tremblay and Lopez all stress in their work, professors tackling these topics must be aware of their own identities, biases, privileges and positions, as well as sensitive to the same in the students in their classes.[32] But, legal doctrine cannot be taught in a vacuum from the racial and gendered nature of that doctrine, and now is the time to fully integrate such approaches into first-year courses.

F. Opportunities for Collaborating with Students in the Enterprise of Legal Education from the Beginning of their Legal Education

In the first issue of the CLR, Gary Palm argued that clinical scholarship "should provide a forum for accounts of students and teachers collaborating on actually improving the law and societal institutions through their case work in law school clinics."[33] As he pointed

[31] *Id.*

[32] Jacobs, *supra* note 27; Dubin, Bryant & Tremblay, *supra* note 29; Kupenda, *supra* note 30.

[33] Gary Palm, *Reconceptualizing Clinical Scholarship as Clinical Instruction",* 1 CLIN.

out in the piece, student-teacher collaboration experiences form some of the most powerful opportunities for learning, by faculty as well as students. Experiencing the way first-year law students think about professors was frankly one of the more jarring aspects of my early experience teaching in the first-year curriculum. New students want faculty to be experts and show no lack of confidence on any topic. It has been tricky for me to explore law as a collaborative process without causing the students undue anxiety.

I have developed some terrific student-faculty collaborations in the early curriculum. My students all participate in discussion threads prior to each class. There, I ask for their opinion about "big picture" questions. I ask whether they think the doctrine they are studying that week is correct or not. I try to model open inquiry and critical exploration without judgement. By the middle of the term, and definitely when they come back after their first semester break, they feel free to discuss with me their thoughts about law and policy, but also their thoughts about my teaching. I solicit their suggestions. I have trained several TAs to help me write interesting questions and quizzes, and it is a joy to see them relish the conversation of engagement with a faculty member. I routinely ask advisees, or students who come to see me about class materials, what is working and what is not working in the course. I am an experienced teacher, but they are experienced students. Their contributions have been extremely valuable.

Students need to know early, as they learn later in the clinic, that they are partners in the intellectual enterprise and their opinions matter. Over the past 25 years, I always kept Gary Palm's suggestion in mind. I have looked for opportunities for students to publish, even if the publication was the local legal newspaper. I looked for ways to mentor students as they prepared to enter practice – as most clinical law teachers do. As I get my footing in first-year teaching, I am seeing more ways to mentor students from the first days of law school. This kind of mentoring is especially important for students at an access institution, such as mine, where stereotype threat is a powerful force against them.[34]

Another message I want students to receive is that learning is fun. I realized that in my clinics, students and faculty were often on their feet, talking in groups, writing on the board, etc. There is something very inhibiting about having students sit for hours. I'm coming to think that moving around is an important part of the learning process. When students stand up, mill around, talk in small groups and move to

L. REV. 127 (1994).

[34] CLAUDE M. STEELE, *supra* note 23, 152-90.

the wall with markers to write, learning is generated. And, it's fun, collaborative, and engaging. These are the associations I want students to have with law school – not endless drudgery and struggles to stay awake. These are ideas I have borrowed from the clinic.

G. The Centrality of Digital Technologies in Law Practice and Legal Education

The final thread I have been weaving is a digital one. Clinical teachers understood much earlier than many of our colleagues about the importance of technology use in law practice and education. Some of them - Marjorie McDiarmid and Conrad Johnson come to mind – have given presentations and organized committees urging clinicians to incorporate digital technologies into their teaching and clinical law offices. Clinical teachers were early adopters of the use of video in teaching and training. In the mid-1990s, clinicians were discussing use of client data-bases where students could record case notes, testing commercial software and comparing notes. Some of us were talking about paperless client files. These clinicians were laying the groundwork for the digital tools we use today, in lawyering and in legal education.[35] In the late 1990s, the AALS Section on Clinical Legal Education began tracking data about clinical law professors, in an effort to understand demographic data about clinical teachers. In 2007, CSALE, the Center for Applied Legal Education, a non-profit corporation was founded to expand that work into a searchable database.[36]

Today, digital learning management systems finally offer the tools to implement many of the types of learning these early adopters proposed 25 years ago, in core classrooms. We can create a whole host of teaching tools, see what our students understand, how many times it takes them to figure things out, and what mistakes they are making. Clinicians such as Michelle Pistone have been at the forefront of using technology in legal education. Pistone founded LegalEd, a web-based platform to share videos about law featuring law professors from around the world.[37] Pistone and co-author Michael B. Horn advocate

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[35] Mary Helen McNeal discussed how digital technologies began to affect delivery of legal services for low-income clients in her piece, *Unbundling and Law School Clinics: Where's the Pedagogy?,* 7 CLIN. L. REV. 341, 343-47 (2001). Robert Bastress and Joseph D. Harbaugh have a comprehensive discussion of the variety of digital technologies used by lawyers in their 2003 article, *Taking the Lawyer's Craft into Virtual Space: Computer-Mediated Interviewing, Counseling, and Negotiation,* 10 CLIN. L. REV. 115 (2003).

[36] Center for Applied Legal Education, located at http://www.csale.org/index.html (last accessed July 9, 2019).

[37] Danielle Padula, *Flipping the Law Classroom: An Interview with Michele Pistone, Founder of LegalEd,* located at https://blog.scholasticahq.com/post/flipping-the-law-class

taking advantage of disruptive innovation in legal education to better assist under-served populations in the legal arena.[38] They argue that technological advances in legal practice have led to formerly expensive services that are easier to reproduce in standardized ways; that technological efficiencies have reduced the number of lawyers needed; and that non-lawyer software challenges the traditional assumption that public protection requires that lawyers have a monopoly on provision of legal services. These disruptions can lead to less expensive services and, therefore, more lower-income clients obtaining service. They argue that legal education must adapt to these changes, suggesting they will add more practice-based components; more competency-based online education; and different types of degree offerings other than JD programs. Technology clearly is changing law practice and legal education at an astonishing pace. At my school, I have been involved in the creation of blended learning environments for our weekend students, where four of fourteen class sessions are online only. Whether these class sessions are excellent learning environments is the product of how intentional faculty are in the design of these sessions into their courses. Digital technology use is expanding and we faculty must learn to adapt.

Students are digitally savvy, and increasingly want learning environments that take advantage of digital tools; they continue, also, to value face-to-face mentoring.[39] Students look for both types of experiences. My Canvas page offers an opportunity to have a central hub for my learning activities. Other digital applications such as Plickers or Adaptibar offer spaces where we can provide students structured learning environments both inside and outside of class. This apprecia-

room-interview-with-michele-pistone-founder-of-legaled/, (2014) (last accessed July 9, 2019); *see also* http://legaledweb.com/.

[38] Michael B. Horn & Michele R. Pistone, *Disrupting Law School: How Disruptive Innovation will Change the Legal World, located at* https://www.christenseninstitute.org/publications/disrupting-law-school/ (last accessed July 9, 2019).

[39] Clinical educators began discussing the generational changes in teaching students with Gen X students. *See, e.g.,* Alistair E. Newbern and Emily F. Suski, *Translating the Values of Clinical Pedagogy Across Generations*, 20 CLIN. L. REV. 181 (2013): "Unlike any generation before them, Millennials can communicate entirely through the ether. Moreover, they have the world at their fingertips, all the information that the internet can contain only a Google search away. They are "digital natives," a new breed of thinker and learner coming into the professional world." *Id.* at 192. It is addressed in discussions of how to teach Millennial generation students in Emily A. Benfer & Colleen A. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 10 CLIN. L. REV. 1, 23-24 (2013), and Generation Z students in an article by legal research, analysis and writing teacher Laura P. Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation,* 41 U. ARK. LITTLE ROCK L. REV. 29 (2018) [arguing that Generation Z students are so saturated with use of technology that it may hinder their learning].

tion of technology also helps us prepare new lawyers who will be able to address the needs of society in the near future. Far more scholarship needs to be undertaken to explore how lawyers can help build ethical, fair, just systems in light of technological developments that are occurring at breakneck speeds and which, for the most part, we don't fully understand.

III. Conclusion

In 1994, legal educators were seizing opportunities to meet industry and societal demands for practice-ready lawyers upon graduation. Upper-level clinics and skills courses were developed and expanded. Over the past 25 years, clinical teachers have discussed and written about many facets of lawyering in the modern world. Today, legal education is changing at breakneck speed, in spite of tendencies for law professors to try to slow it down and keep to older styles of teaching. Clinical scholarship offers important tools for helping law students learn what it will mean to be a lawyer in this time. Specifically, active and experiential learning methods lead to explicit teaching of skills; modern learning theory's focus on assessment, self-reflection, and feedback allow students to learn how to learn; educating students about the centrality of client experiences in understanding the law and what it means to be a lawyer teaches students to value the responsibility of the profession they have chosen; educating students that law is formed and reformed by striving for social justice helps create a better world; an increasingly diverse population demands teaching students to see the centrality of diversity and inclusion in forming the public experience of the law and the student experience; collaborations with students builds leadership for the next generation; and embracing digital technology in law practice and legal education recognizes that the world is fundamentally altered by a digital revolution. These are all threads woven by clinical scholars that can be embedded into first-year core courses. If law professors embed these concepts they can formulate a different way of educating lawyers, strengthening legal education and society.