

# THE EMERGENCE AND INFLUENCE OF TRANSACTIONAL PRACTICE WITHIN CLINICAL SCHOLARSHIP

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## INTRODUCTION

This essay, in honor of the twenty-fifth anniversary of the founding of the *Clinical Law Review*, reflects on the gradual emergence, and the limited influence, of transactional practice within clinical scholarship as evidenced by writing in the *Clinical Law Review* since 1994. I use the term “transactional practice” to refer, in an admittedly imprecise way, to the lawyering activity that addresses the development of organizations, businesses, and structures for clients to own and use, as compared to resolving disputes with another actor.<sup>1</sup> Because the *Clinical Law Review* is so centrally a part of clinical legal education in United States law schools, the essay will infer that the lessons from the scholarly output serve also as important messages about the understanding and teaching of transactional practice within the clinical community writ large. As we shall see, the importance of transactional practice within that community is relatively modest. We continue to teach and practice in a universe of dispute resolution. By and large we imagine practice much like popular culture imagines practice—with impassioned advocates winning (and occasionally losing) good fights in court, and sometimes on the streets, or in the legislatures.

This essay will offer three observations, one pretty obvious and the other two perhaps more interesting. First, a review of the fifty or so published issues of the journal demonstrates that writing about

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<sup>1</sup> In the law firm and law school worlds the distinction between litigation and transactional work is quite common, but articulating the precise difference is not self-evident. For examples of the distinction, see, e.g., Lynnise E. Pantin, *Deals or No Deals: Integrating Transactional Skills in the First Year Curriculum*, 41 OHIO N.U. L. REV. 61, 65 (2014) (observing the dominance of litigation in the first-year law school curriculum); Barbara Wagner, *Defining Key Competencies for Business Lawyers*, 72 BUS. L. 101, 114 (2017) (noting that the American Bar Association’s MacCrate Report needs “reordering” when applied to business lawyers, as opposed to litigators (referring to SECTION OF LEGAL EDUC., AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) (1992))).

transactional practice has increased demonstrably between 1994 and 2019. Second, that development notwithstanding, it appears that when writers, even in recent years, write about *lawyering* in some generalizable fashion, the examples that appear in those works tend to understand the lawyering process as advocacy, negotiation, and resolution of disputes. The more prevalent transactional scholarship tends, by and large, to be focused on the development or the understanding of the substance of that type of work. Generic law practice seems to be understood primarily as litigating. And third, this review highlights the reality that the litigation *stories* are richer than those from the business world. Writers writing for litigators or about litigation offer accounts of pain, struggle, and injustice, evocative narratives that teach us a great deal about some of the more beguiling challenges of practicing for others. Even the ethical tensions there are more exquisite. The business-focused prose—not so much. That reality—and it does seem to be a reality—connects to the often-recognized relative challenge to engage in social justice commitments when representing business clients.

I offer two caveats before I proceed to develop those three ideas. First, this short essay will be chock full with generalizations, as the above paragraph already displays. I intend the themes I observe to be reliable and grounded, but this is necessarily an anecdotal enterprise, not an analytic or empirical one.<sup>2</sup> And that relates to my second caveat. I am quite aware of the bounded rationality heuristic known as confirmation bias, described by two of our colleagues as “the most entrenched human cognitive habit.”<sup>3</sup> I hope to succumb as little as possible to that powerful cognitive illusion in this search for themes and patterns, but, of course, all of us do, and often with less success than we wish for.

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<sup>2</sup> I need to confess that in preparing this Essay I have not read, page by page, all the works in the fifty-plus issues of the *Clinical Law Review*. Instead, proceeding in a fashion discussed by Jay Mitchell in his article on the importance of clinical instruction in reading skill, I have perused the landscape looking for evidence about the patterns I describe here. See Jay A. Mitchell, *Reading (in the Clinic) Is Fundamental*, 19 CLIN. L. REV. 297, 312–13 (2012) (summarizing the processes used by experienced practitioners in navigating through text). I likely have missed some important examples, but I believe the themes I offer are sound.

<sup>3</sup> Richard K. Neumann, Jr. & Stefan H. Krieger, *Empirical Inquiry Twenty-Five Years After The Lawyering Process*, 10 CLIN. L. REV. 349, 394 (2003). See also Joseph W. Rand, *Understanding Why Good Lawyers Go Bad: Using Case Studies in Teaching Cognitive Bias in Legal Decisionmaking*, 9 CLIN. L. REV. 731, 747–49 (2003) (discussing confirmation bias).

## I. THE GROWTH IN TRANSACTIONAL SCHOLARSHIP OVER TWENTY-FIVE YEARS

In the beginning there were litigators.

The introduction of the *Clinical Law Review* in 1994 was a remarkable and inspiring phenomenon. Those faculty members (or, more accurately in some cases, law school employees<sup>4</sup>) who taught students outside of classroom settings and inside law offices or clinics were writing about their work more and more,<sup>5</sup> but the constraints of conventional law review publication standards limited the available sharing of ideas. The *Clinical Law Review* aimed to provide an innovative, less-traditional forum for the collective efforts of clinicians.<sup>6</sup> This celebratory symposium issue highlights the risks taken and the rewards achieved by this venture.

A perusal of the collection of articles, essays, and works-in-progress from the first several years of the journal shows just how focused we<sup>7</sup> were on lawyering as dispute resolution. Some of the contributions were expressly about advocacy, litigation, and trial practice.<sup>8</sup> Others were about lawyering more generally, or about clinical teaching and professional role development, and in those articles and essays

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<sup>4</sup> The progress of achieving appropriate status for clinical law teachers within the academy has been a slow one. For a discussion of the history, see, e.g., *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508 (1992); Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183 (2008).

<sup>5</sup> There are, of course, far too many examples to catalogue here, but three collections in particular warrant mention. One of the earliest efforts appeared in a symposium issue of *Cleveland State Law Review*. See Symposium, *Clinical Legal Education and the Legal Profession*, 29 CLEV. ST. L. REV. 345 (1980). In 1987, after the first UCLA-Warwick International Clinical Conference at Lake Arrowhead, California, UCLA Law Review published a symposium issue with several articles from that gathering, each written by authors connected to clinical legal education. See Symposium, *Clinical Education*, 34 UCLA L. REV. 577 (1987). And in 1992, *Hastings Law Journal* published a pathbreaking symposium issue on what it labeled “the theoretics of practice,” mostly contributed by clinicians. See Symposium, *Theoretics of Practice: The Integration of Progressive Thought and Action*, 43 HASTINGS L. J. 717 (1992).

<sup>6</sup> See Stephen Ellmann, Isabelle R. Gunning & Randy Hertz, *Foreword: Why Not a Clinical Lawyer-Journal?*, 1 CLIN. L. REV. 1, 4–5 (1994) (“[W]e invite our readers to assist us in finding a diverse range of formats to accommodate the clinical intellectual community’s diverse group of scholars.”).

<sup>7</sup> A quick aside about my participation in this universe: In 1994, I was a full-time litigator. I served as a supervising clinical professor in the civil litigation-based clinic at the Boston College Legal Assistance Bureau. I published pieces in Volumes 1 and 5 of the journal, and the observations in the text apply equally to my work.

<sup>8</sup> See, e.g., Abbe Smith, *Commentary: Carrying on in Criminal Court: When Criminal Defense Is Not So Sexy and Other Grievances* 1 CLIN. L. REV. 723 (1995); Paul D. Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLIN. L. REV. 545 (1996) (on controversial litigation matters); Marcus Soanes, *Flexible Paradigms and Slim Course Design: Initiating a Professional Approach to Learning Advocacy Skills*, 5 CLIN. L. REV. 179 (1998).

the examples and context were inevitably about lawyers representing clients in distress, and in need of advocacy.<sup>9</sup>

During the first five years of the *Clinical Law Review*'s publication, one lone article focused directly on transactional practice. Susan Jones, director (then and now) of the Small Business Clinic at The George Washington University Law School, published a pioneering piece, well-cited within the transactional community,<sup>10</sup> on the relationship between small business representation and social justice goals.<sup>11</sup> By contrast, in the most recent six years of the *Clinical Law Review*, no fewer than thirteen articles have directly addressed transactional, small business, and community economic development (CED) topics.<sup>12</sup> This progress comes as no surprise. We write about what we know, and what we do. In 1994, few schools offered small business or other transactional clinics,<sup>13</sup> although the trend in favor of adding such clinics was becoming evident.<sup>14</sup> Law schools gradually

<sup>9</sup> See, e.g., Jennifer P. Lyman, *Getting Personal in Supervision: Looking for That Fine Line*, 2 CLIN. L. REV. 211 (1995); J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLIN. L. REV. 55 (1996); David F. Chavkin, *Fuzzy Thinking: A Borrowed Paradigm for Crisper Lawyering*, 4 CLIN. L. REV. 163 (1997); Peter Margulies, *Reframing Empathy in Clinical Legal Education*, 5 CLIN. L. REV. 605 (1999).

<sup>10</sup> This piece has been cited more than 85 times, according to Westlaw and HeinOnline searches performed in July, 2019.

<sup>11</sup> Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLIN. L. REV. 195 (1997).

<sup>12</sup> Alicia E. Plerhoples, *Representing Social Enterprise*, 20 CLIN. L. REV. 215 (2013); Alicia E. Plerhoples & Amanda M. Spratley, *Engaging Outside Counsel in Transactional Law Clinics*, 20 CLIN. L. REV. 379 (2014); Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLIN. L. REV. 1 (2015); Jennifer S. Fan, *Coming of Age: Innovation Districts and the Role of Law Schools*, 22 CLIN. L. REV. 91 (2015); Julie D. Lawton, *Who Is My Client?: Client-Centered Lawyering with Multiple Clients*, 22 CLIN. L. REV. 145 (2015); Carmen Huertas-Noble, *Worker-Owned and Unionized Worker-Owned Cooperatives: Two Tools to Address Income Inequality*, 22 CLIN. L. REV. 325 (2016); Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLIN. L. REV. 5 (2016); Patience A. Crowder, *What's Art Got to Do with It: A Rebellious Lawyer Mindset in Transactional Practice*, 23 CLIN. L. REV. 53 (2016); Paul R. Tremblay, *Rebellious Strains in Transactional Lawyering for Underserved Entrepreneurs and Community Groups*, 23 CLIN. L. REV. 311 (2016); Alicia Alvarez, Susan Bennett, Louise Howells & Hannah Lieberman, *Teaching and Practicing Community Development Poverty Law: Lawyers and Clients as Trusted Neighborhood Problem Solvers*, 23 CLIN. L. REV. 577 (2017); Brian Glick, *Two, Three, Many Rosas! Rebellious Lawyers and Progressive Activist Organizations*, 23 CLIN. L. REV. 611 (2017); Alina Ball & Manoj Viswanathan, *From Business Tax Theory to Practice*, 24 CLIN. L. REV. 27 (2017); Cynthia L. Dahl & Victoria F. Phillips, *Innovation and Tradition: A Survey of Intellectual Property and Technology Legal Clinics*, 25 CLIN. L. REV. 95 (2018).

<sup>13</sup> See Alicia Alvarez, *Community Development Clinics: What Does Poverty Law Have to Do with Them?*, 34 FORDHAM URB. L.J. 1269, 1270 n. 3 (2007) (noting that few law schools offered CED clinics in 1994 and 1995, but that their presence has "grown exponentially" between then and 2007).

<sup>14</sup> Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinic in U.S. Law Schools*, 43 WASH U. J.L. & POL'Y 85 (2014).

recognized that preparing law students for their careers required greater exposure to business and other transactional competencies.<sup>15</sup> By 2014, virtually every law school in the country offered at least one, and often more than one, clinic focusing on for-profit business enterprises, nonprofits, CED, or similar transactional practice.<sup>16</sup> With more transactional clinical teachers on board, the *Clinical Law Review* of course encountered more submissions addressing the topics of interest to those teachers and their students.

There exists, though, an interesting middle ground, between the publication of Susan Jones's first article and the more frequent transactional endeavors of recent years. While the early years tended to address lawyering as litigation, and the more recent writing explores a breadth of small business and corporate practices, the connecting link between those two seems to be a growing attention over the years to what might broadly be considered "community lawyering." After the Jones article, the *Clinical Law Review* published many articles within the next decade about the importance of understanding client issues in the context of their communities, including the challenges of group representation.<sup>17</sup> There is considerable overlap between community lawyering and transactional practice as understood in this Essay, but important differences as well. The central insight of the community lawyering scholarship is its recognition that the legal challenges faced by members of marginalized communities may not always, or even often, be met through conventional advocacy and dispute resolution avenues.<sup>18</sup> Frequently riffing off the powerful work of Gerald Ló-

<sup>15</sup> See Ball & Viswanathan, *supra* note 12, at 51; Pantin, *supra* note 1, at 65.

<sup>16</sup> Jones & Lainez, *supra* note 14, at 92–93. See also Jennifer Fan, *Institutionalizing the USPTO Law School Clinic Certification Program for Transactional Law Clinics*, 19 LEWIS & CLARK L. REV. 327, 332 n.14 (2015) (identifying 188 transactional law clinics as of August 1, 2014).

<sup>17</sup> See Alexi Freeman & Katie Steefel, *Uniting the Head, Hands, and Heart: How Specialty Externships Can Combat Public Interest Drift*, 25 CLIN. L. REV. 325, 339 (2019) ("New types of lawyering emerged—community lawyering, rebellious lawyering, critical lawyering—that were all centered on the idea that rights-based efforts alone would not achieve the radical transformation those groups sought. These efforts took a more critical eye to the traditional rights-based lawyering and the marginalizing effects that lawyer-led efforts can have on their clients."). For examples of this attention, see, e.g., Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLIN. L. REV. 557 (1999); Daniel S. Shah, *Lawyer for Empowerment: Community Development and Social Change*, 6 CLIN. L. REV. 217 (1999); Shauna I. Marshall, *Mission Impossible: Ethical Community Lawyering*, 7 CLIN. L. REV. 147 (2000); Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLIN. L. REV. 445 (2002); Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLIN. L. REV. 333 (2009); Paul R. Tremblay, *Counseling Community Groups*, 17 CLIN. L. REV. 389 (2010).

<sup>18</sup> See Cruz, *supra* note 17; Scott L. Cummings, *Community Economic Development as*

pez,<sup>19</sup> the architects of community lawyering explore strategies including the creation of opportunities for financial and social capital, and for deeper commitment to ensuring that the lawyers' clients achieve some greater power over the circumstances of their lives.<sup>20</sup>

The community lawyering literature, therefore, intentionally joins the universe of transactional practice, including the importance of lawyers participating in establishment of structures through which collectives might operate productively and lawfully. It is a coherent progression from those lawyering activities to consideration of more conventional business structures, including corporations, limited liability companies, and tax-exempt nonprofit organizations—the fodder of most modern transactional clinic work.<sup>21</sup>

That elegant connection notwithstanding, community lawyering is but a small segment of the transactional practice universe. The constant underlying premise of community lawyering is a notion of the neighborhood, the group, or the collective, as the lawyer's client. Sometimes that will be true for small business lawyers, but usually not. More commonly, the clients of a small business practice are founders or owners of beginning enterprises, and the lawyer's commitment is to the success, and indeed the private success, of those enterprises. That aim is seldom a notable priority within the community lawyering literature.

If one separates out the transactional themes of the community lawyering literature, the contrast between the early years of the *Clinical Law Review* and the more recent publication record is more stark. The early years evidenced very little attention to small businesses, startups, entrepreneurship, and intellectual property, while the more recent issues offer greater coverage of those subjects.

## II. PREPARING STUDENTS FOR PRACTICE CAREERS

[F]oremost among the learning objectives that are best achievable

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*Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399 (2001).

<sup>19</sup> See *Symposium: Rebellious Lawyering at 25*, 23 CLIN. L. REV. 1 (2016) (reflecting on the twenty-fifth anniversary of the publication of GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992)).

<sup>20</sup> See, e.g., Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative" Lawyering?*, 1 CLIN. L. REV. 639 (1995); Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLIN. L. REV. 433 (1998); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLIN. L. REV. 427 (2000); Sameer Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355 (2008).

<sup>21</sup> For a resource addressing the typical topics for transactional law school clinics, see ALICIA ALVAREZ & PAUL R. TREMBLAY, *INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE* (2013).

through the clinical methodology of role assumption is the development of proficiency in those skills necessary to effective lawyering. There is no other methodology that will better assist students in acquiring the abilities to apply, analyze and synthesize knowledge about those skills essential to the task of lawyering.<sup>22</sup>

Clinical legal education emerged in response to the widespread criticism that traditional law school teaching failed to prepare students for actual practice representing clients.<sup>23</sup> Classroom and seminar teaching might be valuable for development of certain analytical reasoning skills, but, the worry was, it was remarkably poor at educating students about the experience of representing clients in the shambolic world of ambiguous and contested facts, performance anxiety, interpersonal dynamics, and intense emotional interactions.<sup>24</sup> Most clinical teachers, especially in the earlier years, came to the academy from the world of public interest or poverty law practice,<sup>25</sup> but the mission of clinical legal education was not to train students only for careers representing those who could not afford to hire lawyers, or who presented a public interest mission.<sup>26</sup> Consistently professing a commitment to instill an ethic of social justice in law students,<sup>27</sup> the vision of clinical work has also aimed to serve the needs of disadvantaged clients while preparing law students, far more effectively than they

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<sup>22</sup> Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 CLIN. L. REV. 93, 98–99 (1994).

<sup>23</sup> E.g., Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLIN. L. REV. 1, 2–6 (2002); Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLIN. L. REV. 489, 494 (2013).

<sup>24</sup> E.g., Louise Howells & Laurie Morin, *The Reflective Judgment Project*, 9 CLIN. L. REV. 623, 625 (2002); Richard K. Neumann Jr., *Donald Schön, the Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 CLIN. L. REV. 401, 405–06 (2000).

<sup>25</sup> See Susan Bryant & Elliott S. Milstein, *Reflections upon the 25th Anniversary of The Lawyering Process: An Introduction to the Symposium*, 10 CLIN. L. REV. 1, 6–7 (2003) (“Our backgrounds are similar to those of many clinical teachers of our generation. Like nearly everyone else, we had experience in representing poor people . . .”); Minna Kotkin & Dean Rivkin, *Clinical Legal Education at a Generational Crossroads: Reflections from Two Boomers*, 17 CLIN. L. REV. 197, 199 (2010) (“Most of us who formed the vanguard of clinical education in the 1970s and 1980s came to law school teaching from public interest/legal services/public defender backgrounds.”).

<sup>26</sup> See Praveen Kosuri, *Clinical Legal Education at a Generational Crossroads: X Marks the Spot*, 17 CLIN. L. REV. 205, 208 (2010) (law students “want someone to show them what it means to be a lawyer, not just a public interest lawyer”); Stephen F. Reed, *Clinical Legal Education at a Generational Crossroads: A Self-Focused Self-Study of Self*, 17 CLIN. L. REV. 243, 250 (2010) (the “larger constituency [of law students] wants to learn practical skills that will help them to become Great BigLaw Lawyers, not Great Public Interest Lawyers”).

<sup>27</sup> See Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461 (1998); Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37, 50 (1995); Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 1001 (2004–05).

would ever be trained in the other parts of law school, for their paid jobs in private practice, including, for many law students, in BigLaw.<sup>28</sup>

Given that central goal of clinical legal education, it is noteworthy and a little bit of a surprise that, even in recent years, the explication within the *Clinical Law Review* of lawyering generally, as a mélange of skills, role expectations, and professional identity development, continues to understand the default lawyering posture as that of an advocate. While, as noted in the previous Part, many more articles now appear in the journal addressing transactional and small business practice, those works focus, by and large, on substantive issues of particular interest to the transactional practice world. The articles that purport to offer insights about the lawyering process more generically continue the pattern that was evident in the mid-1990s—to see preparation for practice as developing lawyer-advocates, often in dispute-resolution settings. This tendency remains in place notwithstanding the reality that corporate and other transaction practice is as prominent, if not more prominent, than litigation among lawyers practicing in the United States.<sup>29</sup>

A few examples will serve to highlight this pretty consistent phenomenon. One *Clinical Law Review* article describes the clinical experience as follows: “Course work accompanying the live-client experience is typically organized by tasks, including interviewing, developing a theory of the case, investigation, counseling, negotiating, and preparing for litigation.”<sup>30</sup> Another prominent clinician describes her goals in this way: “We want our students to come away from the clinic with a more varied understanding of what it means to be a lawyer serving a client, with strong lawyering skills including negotiation, counseling, interviewing, and fact investigation. We hope to give them opportunities to develop their trial preparation and presentation of evidence skills and to gain an understanding of effective legal writing.”<sup>31</sup> Another writer, in a thoughtful and systematic critique of traditional legal education’s narrow focus, demonstrates the limita-

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<sup>28</sup> Margaret E. Reuter & Joanne Ingham, *The Practice Value of Experiential Legal Education: An Examination of Enrollment Patterns, Course Intensity, and Career Relevance*, 22 CLIN. L. REV. 181, 229 (2015); Meredith J. Ross, *A “Systems” Approach to Clinical Legal Education*, 13 CLIN. L. REV. 779, 779–80 (2007).

<sup>29</sup> Litigation “has been in a slow, steady decline . . . Transactional practices have outpaced litigation in nearly every quarter over the last two years.” Thomson Reuters, *Rise of the Transactional*, PEER MONITOR SPECIAL REPORT, [https://peermonitor.thomsonreuters.com/wp-content/uploads/2015/06/Transaction-Practices-Spotlight\\_2015.pdf](https://peermonitor.thomsonreuters.com/wp-content/uploads/2015/06/Transaction-Practices-Spotlight_2015.pdf) (2015) (last visited July 9, 2019). See also Ball & Viswanathan, *supra* note 12, at 51 (“a much smaller percentage of law school graduates enter litigation-based careers” than business or similar transactional settings).

<sup>30</sup> Ross, *supra* note 28, at 780.

<sup>31</sup> Jane H. Aiken, *Provocateurs for Justice*, 7 CLIN. L. REV. 287, 288–89 (2001).



tions of Socratic teaching in classrooms in this way: “The use of Socratic questioning conventionally focuses on legal and policy developments. Scarce attention is paid to the impact on the actual litigants or other immediately affected individuals. As a consequence, the factual complexity and emotionality of different situations are de-emphasized. . . . For example, additional attention might be given to how particular disputes might have been resolved outside of litigation.”<sup>32</sup>

Perhaps one of the better examples of the tendencies identified here is a symposium issue of the *Clinical Law Review* commemorating the twenty-fifth anniversary of the publication of the best book I have ever encountered on what it means to be an effective lawyer—Bellow & Moulton’s *The Lawyering Process*.<sup>33</sup> The subtitle of the Bellow & Moulton text itself communicates an important message from 1978: “Materials for Clinical Instruction in Advocacy.” The “lawyering process,” generally speaking, meant advocacy at that time. The *Clinical Law Review* invited authors of “highly influential” clinical textbooks to examine the influence of the Bellow & Moulton book in the years since its publication.<sup>34</sup> The result is a richly engaging reflection on the goals, methods, successes, and failures of the clinical enterprise as envisioned by Gary Bellow and Bea Moulton (with a great deal of assistance from their colleagues and students) in the late 1970s. It is evident from the wide-ranging discussion and references to *The Lawyering Process* that the work’s aim was to craft “a coherent vision about *how to lawyer*.”<sup>35</sup> As the text itself declared, “This is a book about the experience of being a lawyer. . . . [It] asks that lawyers make lawyering a subject of inquiry.”<sup>36</sup>

Tellingly, in 1978, within clinical (and perhaps legal) education, being a lawyer seemed to mean being an advocate, at least as the book’s teachings would indicate.<sup>37</sup> Throughout the thirteen articles and essays in the collection appearing twenty-five years later, transactional practice receives virtually no mention. The role responsibilities, the lawyering skills, the teaching challenges, the clinic designs, the

<sup>32</sup> Aaronson, *supra* note 23, at 39.

<sup>33</sup> GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY* (1978). The symposium served as the entire Issue Number 1 of Volume 10 of the *Clinical Law Review* in 2003, with thirteen articles provided by twenty-six authors.

<sup>34</sup> Bryant & Milstein, *supra* note 25, at 2.

<sup>35</sup> *Id.* at 28 (emphasis added).

<sup>36</sup> BELLOW & MOULTON, *supra* note 33, at xix.

<sup>37</sup> As Tony Alfieri reminds me, Gary Bellow undoubtedly viewed the lawyering process more broadly, to include transactional work, including business formation. Email from Anthony V. Alfieri, Dean’s Distinguished Scholar, University of Miami School of Law to Paul R. Tremblay, Boston College Law School, July 24, 2019 (on file with author).

comparisons to conventional law school curriculum, each of which garnered deeply thoughtful treatment—all are implicitly or explicitly grounded in the lawyer as litigator, and very often as trial lawyer.<sup>38</sup> References to lawyers acting outside of that role appear in a very few limited spaces, and a couple of them are interesting for our purposes here.

In her moving reflection on the process of the development of the materials through Harvard Law School's embryonic clinical program in the 1970s, Jeanne Charn aptly wonders about the transferability of the skills taught to students who participate in clinic and then join private practice after graduation. She asks the following critical questions:

[W]e know little about the transferability of lawyering skills learned in one setting to another. When a student represents clients purchasing homes, how much, if any, relevance will this have to, for example, commercial real estate practice? When students take depositions or draft and answer interrogatories for tenants in disputes with their landlords, to what extent do skills learned transfer to, for example, corporate litigation? Put differently, to what extent is the development of professional expertise context specific?<sup>39</sup>

In the two examples Professor Charn offers, she compares transactional clinic work to private transactional work, and litigation work in the clinic to litigation in a firm setting. As just noted, these are important questions, but the framing elides a different question, central to the theme here: Does *litigation* work in the clinic transfer to *transactional* work in private practice?

A second limited reference to something approaching transactional practice in the discussion of “lawyering” writ large is a passing note by Michael Meltsner on the impact of the *Planning by Lawyers* book by Louis Brown and Edward Dauer, published in the same year as *The Lawyering Process*.<sup>40</sup> Professor Meltsner writes that this inno-

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<sup>38</sup> Consider one example: One impressive co-authored reflection examines the influence of Bellow & Moulton on the progressive development of a more insightful approach to the skill and ethical dimensions of client interviewing and counseling. Robert Dinerstein, Stephen Ellmann, Isabelle Gunning & Ann Shalleck, *Legal Interviewing and Counseling: An Introduction*, 10 CLIN. L. REV. 281 (2003). In their thoughtful review of how clinical teachers have refined the political, interpersonal, and critical understandings of the attorney-client interaction since 1978, the authors use as examples typical poverty-law stories of clients needing legal guidance about resolving disputes. The article, while noting the importance of clinics' preparing students for their careers as practicing lawyers, leaves the arena of transactional practice unmentioned.

<sup>39</sup> Jeanne Charn, *Service and Learning: Reflections on Three Decades of The Lawyering Process at Harvard Law School*, 10 CLIN. L. REV. 75, 111 (2003) (footnote omitted).

<sup>40</sup> Michael Meltsner, *Celebrating The Lawyering Process*, 10 CLIN. L. REV. 327, 328–29 (2003) (discussing LOUIS M. BROWN & EDWARD A. DAUER, *PLANNING BY LAWYERS: MATERIALS ON A NONADVERSARIAL LEGAL PROCESS* (1978)).

vative treatment on “‘preventive law’ (non-litigative means to protect clients from legal harm)”<sup>41</sup> likely served as an important influence on Gary Bellow’s thinking as he developed his own book at the same time. Meltsner reminds us that *Planning by Lawyers* might be an important complement within the clinical teaching and scholarly enterprise to *The Lawyering Process*, in its articulation of a lawyering role different from the well-accepted and seemingly default advocate role. But a search through the archives of the *Clinical Law Review* shows but two references, over its twenty-five years, to the Brown & Dauer book, both found in the Bellow & Moulton symposium issue.<sup>42</sup>

Of course, the symposium issue on *The Lawyering Process* appeared in 2003, still relatively early in the life of the *Clinical Law Review*. But seemingly little has changed since 2003. A perusal of articles published in the past five years of the *Clinical Law Review* demonstrate the pattern evident in the discussion of the Bellow & Moulton text. As noted above, many more articles during that time frame address transactional topics, although (to no surprise, perhaps) still fewer than the number addressing directly litigation and advocacy topics.<sup>43</sup> But when the topic is about a cross-practice theme about *lawyering*, or about effective clinical pedagogy, the stories and examples still tend to emerge from the landscape of disputes, and struggles for justice against oppressive conditions. Indeed, when writers who direct transactional and small business clinics write, they write about transactional and small business topics.<sup>44</sup> When writers who direct advocacy clinics write, they write about their substantive or pedagogical topics, but they also write about generic lawyering or clinic design matters.

I will offer two brief examples. Mary Nicol Bowman and Lisa Brodoff recently published an engaging, thoughtful article on a subject of considerable relevance to my inquiry here—the effectiveness of what they call “transference” of student learning from one setting (first-year legal writing courses) to another setting (clinics).<sup>45</sup> The ex-

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<sup>41</sup> Meltsner, *supra* note 40, at 328.

<sup>42</sup> Besides Meltsner’s discussion, a citation reference to the Brown & Dauer book appears in Leah Wortham, *The Lawyering Process: Thanks for the Book and the Movie*, 10 *CLIN. L. REV.* 399, 454 n.186 (2003).

<sup>43</sup> By my very rough and unscientific tally, Volumes 21 through 25, the five most recent collections of the *Clinical Law Review*, include twenty articles whose topic relates to a form of advocacy practice, and eleven articles addressing transactional legal practice in some form.

<sup>44</sup> See, e.g., Alvarez et al., *supra* note 13; Ball & Viswanathan, *supra* note 12; Dahl & Phillips, *supra* note 12. There is one exception to this pattern. See Mitchell, *supra* note 2 (a small business clinic director discussing a topic—the skill of careful reading—applicable across disciplines).

<sup>45</sup> Mary Nicol Bowman & Lisa Brodoff, *Cracking Student Silos: Linking Legal Writing*

amples that appear in the article are consistently about the lawyering involved in litigation planning, advocacy, negotiation, and mediation.<sup>46</sup> In the previous volume, Edgar Cahn and Christine Gray published a provocative article about clinical legal education and its need to reconceptualize its mission and its pedagogy to advance the idea of client “powers.”<sup>47</sup> Cahn and Gray call “for a new set of competencies that would place powers side by side with rights as essential components of effective legal practice.”<sup>48</sup> Their arguments, aimed to clinicians generally, are elegant and well-crafted, and include several lawyering stories. Those stories are about litigation and advocacy efforts.<sup>49</sup>

These two articles, and others like it, are not at all deficient because of their use of the more commonly-encountered advocacy examples to support their reasoning and arguments. As a transactional teacher, I take away a great deal from them, and their insights resonate. But a review of the patterns within the *Clinical Law Review* (which, I can only assume based on some anecdotal observations, are no different from those within the scholarship appearing in other journals<sup>50</sup>) imply the following asymmetry: Litigation-based stories and insights are easily transferable to practice on behalf of small businesses and startups, but the reverse may not be as deeply or universally true.<sup>51</sup> This short Essay is not the place to examine that hypothesis, but it warrants a sustained examination at some point. Consider a brief thought experiment: If the litigators encountered only scholarship emerging from the small business and entrepreneurship arena,

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and *Clinical Learning Through Transference*, 25 *CLIN. L. REV.* 269 (2019).

<sup>46</sup> The authors mention “transactional” work in one place, listing wills and advance directives. *Id.* at 287.

<sup>47</sup> Edgar S. Cahn & Christine Gray, *Clinical Legal Education: Where Next? Clients as Co-Producers of System Change*, 24 *CLIN. L. REV.* 171 (2018).

<sup>48</sup> *Id.* at 171.

<sup>49</sup> For example, Cahn and Gray explain that “[a] fictional scenario, using an all-too-common situation of a client facing eviction, will usefully illustrate how this difference might manifest in a clinical setting.” *Id.* at 175.

<sup>50</sup> The connection between “movement” or “cause” lawyering and traditional poverty lawyering is an example of the phenomenon described here. At the same time that connection helps to explain the centrality of advocacy. *See, e.g.*, Scott Cummings, *Law and Social Movements: Reimagining the Progressive Canon*, 2018 *WIS. L. REV.* 441. The writers who are imagining and crafting new paradigms for the use of legal expertise to respond to massive injustices inevitably work within the context of advocacy for social change. *See e.g.*, Anthony V. Alfieri, *Inner-City Anti-Poverty Campaigns*, 64 *UCLA L. REV.* 1374 (2017); Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 *CLIN. L. REV.* 5 (2016). The challenges to racism, patriarchy, and oppression cannot avoid resembling advocacy, much more than they would evoke the work of small business lawyers.

<sup>51</sup> As noted earlier, the community lawyering writing, which is as rich as anything produced by clinical and similar progressive scholars, tends to offer insights useful to both litigation and transactional clinics.

would they miss much?

### III. THE ROLE OF NARRATIVE AND STORIES

The third observation emerging from the survey of the past years of the *Clinical Law Review* scholarship relates to stories and narrative. Clinical scholars have been pioneers in recognizing and mining the insight that client representation, and the lawyering enterprise generally, are inherently connected to storytelling.<sup>52</sup> Narrative matters in how lawyers understand their clients and their client communities,<sup>53</sup> craft case theory,<sup>54</sup> make persuasive and ethical arguments,<sup>55</sup> and make sense of their lives as attorneys.<sup>56</sup> The salience of storytelling to effective lawyering influences how we introduce our students to the challenges of meaningful client representation. Narrative therefore plays an essential role in clinical teaching.<sup>57</sup>

Clinical writers share stories in their published works. They often employ stories of their client experiences to develop their themes and arguments.<sup>58</sup> But transactional clinical writers, and especially those

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<sup>52</sup> A search of the *Clinical Law Review* collection shows 200 articles employing the term “narrative.” (Westlaw search, July 10, 2019.) For a sampling of some of the pioneering pieces on this topic by clinical scholars, see, e.g., Anthony V. Alfieri, *Speaking out of Turn: The Story of Josephine V.*, 4 *GEO. J. LEGAL ETHICS* 619 (1990-1991); Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories*, 1 *CLIN. L. REV.* 41 (1994); Clark D. Cunningham, *A Tale of Two Clients: Thinking about Law as Language*, 87 *MICH. L. REV.* 2459 (1988-1989); Carolyn Grose, *A Field Trip to Benetton . . . and Beyond: Some Thoughts on “Outsider Narrative” in a Law School Clinic*, 4 *CLIN. L. REV.* 109 (1997); Gerald P. López, *Lay Lawyering*, 32 *UCLA L. REV.* 1 (1984); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 *MICH. L. REV.* 485 (1994-1995) [hereinafter, Miller, *Give Them Back Their Lives*]; Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 *GEO. J. LEGAL ETHICS* 1 (2000).

<sup>53</sup> LÓPEZ, *supra* note 19; Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 *YALE L. J.* 2107 (1991).

<sup>54</sup> Miller, *Give Them Back Their Lives*, *supra* note 52; Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories*, 1 *CLIN. L. REV.* 41, 60 (1994) (“[t]heories of the case are stories”).

<sup>55</sup> Philip Meyer, “*Desperate for Love*” III: *Rethinking Closing Arguments as Stories*, 50 *S.C. L. REV.* 715 (1999); Jonathan K. Van Patten, *Storytelling for Lawyers*, 57 *S.D. L. REV.* 239 (2012).

<sup>56</sup> Phyllis Goldfarb, *A Clinic Runs Through It*, 1 *CLIN. L. REV.* 65 (1994) (sharing the author’s own story to demonstrate clinical insights); Abbe Smith, *Rosie O’Neill Goes to Law School: The Clinical Education of the Sensitive New Age Public Defender*, 28 *HARV. C.R.-C.L. L. REV.* 1 (1993) (using stories to understand the life of a public defender); Joyce S. Sterling & Nancy J. Reichman, *So, You Want to Be a Lawyer? The Quest for Professional Status in a Changing Legal World*, 78 *FORDHAM L. REV.* 2289 (2010) (employing career narrative to assess attorney status and satisfaction).

<sup>57</sup> See, e.g., Susan Bryant & Elliott S. Milstein, *Rounds: A “Signature Pedagogy” for Clinical Education?*, 14 *CLIN. L. REV.* 195 (2007); Quigley, *supra* note 27.

<sup>58</sup> The examples of this rhetorical device are innumerable. For a trenchant assessment of that practice, see Miller, *Taking Back Our Lives*, *supra* note 52. One of the most well-

working more in the small business and startup worlds than those who understand themselves as community lawyers, seem to tell stories less often within their clinical scholarship. That stories are less central to (or at least less apparent within) transactional clinical writing may not surprise many, but that reality might connect to the uneasy relationship between teaching small business law in a clinical setting and the social justice mission of clinical teaching generally.<sup>59</sup>

There is good reason why transactional lawyering is known colloquially as “happy law.”<sup>60</sup> While transactional lawyers may not always achieve their clients’ goals, their mindset and their experience are different from those of litigators. Business lawyers create value, and generally speaking avoid disputes, with the accompanying rancor. Litigation and dispute-related advocacy can be enormously satisfying (especially when one succeeds, or “wins”), but its stress level can be overpowering for the participants, including the lawyers.<sup>61</sup> Corporate and transactional practice, especially of the kind seen by most clinical programs,<sup>62</sup> is less rancorous, less painful, and more easily managed.

The stories we read from the clinical litigators are most often stories of pain, injustice, and deep worry.<sup>63</sup> Their clients are inevitably under-resourced and very often from oppressed communities. The

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known (and most powerful) uses of a client narrative is Lucie White’s “Sunday Shoes” story. Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990). Scholars have cited that article nearly 500 times. (HeinOnline search, July 10, 2019, showing 486 citations.)

<sup>59</sup> See *infra* notes 68–73 and accompanying text.

<sup>60</sup> See Rebecca B. Rosenfeld, *The Examined Externship Is Worth Doing: Critical Self-Reflection and Externship Pedagogy*, 21 CLIN. L. REV. 127, 153 (2014) (an externship student reports, “Makes me feel like I’m working in happy law helping incorporate a non-profit arts project”).

<sup>61</sup> See, e.g., J. Steven Picou, *When the Solution Becomes the Problem: The Impacts of Adversarial Litigation on Survivors of the Exxon Valdez Oil Spill*, 7 U. ST. THOMAS L.J. 68 (2009) (describing the psychological effect known as the “litigation response syndrome,” citing Paul R. Lees-Haley, *Litigation Response Syndrome*, 6 AM. J. FORENSIC PSYCHOL. 3 (1988)).

<sup>62</sup> The assertion in the text assumes that for most, and perhaps nearly all, transactional clinics the majority of its work consists of developing small business structures and advising those businesses, whether for-profit or nonprofit, on compliance, regulatory, and employment requirements. Firm evidence of that proposition may be hard to locate, but the most recent survey from the Center for the Study of Applied Legal Education (CSALE) offers some inferential support. See ROBERT R. KUEHN & DAVID A. SANTACROCE, THE 2016-17 SURVEY OF APPLIED LEGAL EDUCATION, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION (CSALE) 9 (2017) (more clinics define as entrepreneur/startup/small business (29) plus transactional (22) than community economic development (23)). See also Jones & Lainez, *supra* note 14, at 87 (reporting on the work of transactional clinics).

<sup>63</sup> As of this writing, forty-seven articles in the *Clinical Law Review* refer to the term “trauma.” (Westlaw search, July 11, 2019.) Two address that phenomenon directly. See Sarah E. Gold, *Trauma: What Lurks Beneath the Surface*, 24 CLIN. L. REV. 201 (2018); Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLIN. L. REV. 359 (2016).

clinic students' goals are to achieve some measure of justice for these individuals or groups. The struggle is the "good fight."<sup>64</sup> Winning through court sometimes is the answer, and sometimes not, but achieving the struggled-for goal is most often the mission. The stories about those struggles are powerful and evocative, and we hear them.

Transactional lawyering in the business and nonprofit arenas is remarkably enjoyable and satisfying, but it triggers fewer compelling stories about the client work. Even the ethical tensions are often less dramatic in that work. In litigation, with feelings and emotions high and the need to win very strong, clients are often tempted to cheat, or stretch the facts, or play a little dirty. Students learn in meaningful ways the challenges of ethical practice with so much at stake.<sup>65</sup> Ethics issues are prominent in transactional practice as well, but in more subtle ways. For instance, perhaps the most common ethical pitfall for transactional lawyers is recognizing who ought to count as a "client" when working with business organizations, and especially loosely-structured entities or with groups of founders.<sup>66</sup> The vividness of issues like that only becomes most apparent when things have turned sour, and then the litigators are involved.<sup>67</sup>

The relative dearth of dramatic or emotional stories emerging from small business and startup practice has a likely connection to the not-infrequent curiosity about whether that practice has any, or any significant, social justice value.<sup>68</sup> The centrality of the social justice mission to clinical teaching is effectively a given within the clinical

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<sup>64</sup> See Alistair E. Newbern & Emily F. Suski, *Translating the Value of Clinical Pedagogy Across Generations*, 20 CLIN. L. REV. 181, 198 (2013) (A clinical teacher described in the article "looked forward to . . . sharing [with her student] in the experience of preparing to fight the good fight. Such meetings were among [her] favorite aspects of being a clinical teacher."); Ascanio Piomelli, *Sensibilities for Social Justice Lawyers*, 10 HASTINGS RACE & POVERTY L.J. 177, 190 (2013) ("As social justice lawyers, we are at our best when we fully internalize that our lawyering is not primarily about our own self-expression. It is about the vital end we seek: the survival, advancement, and flourishing of our clients and our communities. Our aim is not simply to 'fight the good fight,' but to win it.").

<sup>65</sup> See Deborah J. Cantrell, *Teaching Practical Wisdom*, 55 S.C. L. REV. 391 (2004) (noting the power of clinics in teaching legal ethics); David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31, 31 (1995) (same).

<sup>66</sup> See, e.g., Lawton, *supra* note 12; Lawrence E. Mitchell, *Professional Responsibility and the Close Corporation: Toward a Realistic Ethic*, 74 CORNELL L. REV. 466 (1989); Paul R. Tremblay, *The Ethics of Representing Founders*, 8 WM. & MARY BUS. L. REV. 267 (2017); Note, *An Expectations Approach to Client Identity*, 106 HARV. L. REV. 687 (1993).

<sup>67</sup> See, e.g., *Griva v. Davison*, 637 A.2d 830, 838 (D.C. 1994) (finding the partnership lawyer had developed an attorney-client relationship with one of the partners).

<sup>68</sup> See Dahl & Phillips, *supra* note 12, at 98; Kosuri, *supra* note 26, at 214; Reed, *supra* note 26, at 250.

community.<sup>69</sup> With litigation clinics, representing low-income clients facing serious loss of rights, liberty, and essential benefits, the social justice value is not hard to discern, even if important questions remain about how clinical teachers ought to address those questions with students who enroll in clinics in order to prepare for conventional private practice.<sup>70</sup> The justice mission of community lawyering is equally self-evident.<sup>71</sup> But transactional practice for small businesses and startups, lacking the visceral human interest pull of the litigation struggles, fits less elegantly into that conception.

To be sure, transactional clinicians have made a persuasive case that much of transactional lawyering, and especially that type of work chosen for clinic student learning, does contribute importantly to social justice.<sup>72</sup> But those arguments, missing some of the richness of the narratives we read from litigation clinic directors, are more analytical and, in a sense, speculative and perhaps contested. Because the justice mission of representing small business clients, and especially for-profit enterprises, is not as straightforwardly self-evident as, say, representing a low-income tenant facing the prospect of homelessness, its proponents need to defend the hypothesis in a careful and methodical way. The reasoning is that supportive assistance to low-wealth entrepreneurs, particularly those from disadvantaged communities and entrepreneurs of color, will have a meaningful effect on the development of financial and social capital within those communities and among those participants.<sup>73</sup> The different kinds of stories be-

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<sup>69</sup> See Aiken, *supra* note 31; Margaret M. Barry, *Clinical Supervision: Walking that Fine Line*, 2 CLIN. L. REV. 137 (1995); Dubin, *supra* note 27; Wizner & Aiken, *supra* note 27.

<sup>70</sup> Deborah N. Archer, *Open to Justice: The Importance of Student Selection Decisions in Law School Clinics*, 24 CLIN. L. REV. 1 (2017); Deborah N. Archer, *There Is No Santa Claus: The Challenge of Teaching the Next Generation of Civil Rights Lawyers in a "Post-Racial" Society*, 4 COLUM. J. RACE & L. 55 (2013).

<sup>71</sup> Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355 (2008); Glick, *supra* note 12.

<sup>72</sup> See, e.g., Ball & Viswanathan, *supra* note 12, at 59–60; Susan R. Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 WASH. U. J.L. & POL'Y 249, 259 (2004); Praveen Kosuri, "Impact" in 3D—Maximizing Impact Through Transactional Clinics, 18 CLIN. L. REV. 1 (2011); Lynnise E. Pantin, *The Economic Justice Imperative for Transactional Law Clinics*, 62 VILL. L. REV. 175 (2017).

<sup>73</sup> The description in the text is an over-simplification of considerably more nuanced arguments, but should capture the essence of the scholars' arguments. See works cited in the previous note. Several writers contend, however, that entrepreneurship and startup business formation is not an effective means of combating entrenched poverty. See, e.g., Alicia Alvarez, *Lawyers, Organizers, and Workers: Collaboration and Conflict in Worker Cooperative Development*, 24 GEO. J. ON POVERTY L. & POL'Y 353, 363 (2017) ("Entrepreneurs from under-resourced communities face greater challenges in starting new businesses."); Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 HOFSTRA L. REV. 839 (2014); Louise A. Howells, *Dimension of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty*, 9 J. AFFORDABLE HOUSING & CMTY. DEV.



tween the two areas of practice helps account for the difference in the immediacy of the social justice commitments.

#### CONCLUSION

Twenty-five years of innovative clinical scholarship has enriched the lives of clinical faculty, their students, and their clients. The *Clinical Law Review*'s influence on legal education has been profound, and we owe its founders and its contributors a huge debt of gratitude. But a review of those twenty-five years shows that, while the prominence of writing about entrepreneurship, startup, and small business practice within the journal has increased at a healthy pace, most of the collective thinking about lawyer work continues to begin with the assumption that lawyering means contested advocacy, usually to resolve disputes and to resist injustice. To the extent that learning about lawyering in one setting is freely transferable to other settings, there is little worry. But if learning turns out to be more context-specific,<sup>74</sup> the understandings about practice may need to become more ecumenical. Much more work needs to be done to make sense of this puzzle.

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L. 161 (2000).

<sup>74</sup> See Bowman & Brodoff, *supra* note 45, at 280–81 (discussing the relationship between effective learning and context).

