

THE CLINIC AS A SITE OF GROUNDED PEDAGOGY

MADALYN K. WASILCZUK*

Legal education tends to focus on teaching students federal law from hefty casebooks, inculcating the ability to “think like lawyers.” In a sea of Socratic lectures and hypotheticals, students often take refuge in clinics as an island of practical skills-building, client centeredness, and individual fulfillment. Yet even clinics sometimes fail to highlight for students how the place where they practice, with its particular political context and history, shapes their clients’ lives and legal problems. This Article describes the law school clinic as a site of grounded pedagogy: a teaching method that centers the connection between local history and the present to help students understand their individual clients’ situations and the wider struggle for justice.

Grounded pedagogy locates learning in the clinic’s built environment, links past and present, and is supported with data. Among other benefits, grounded pedagogy guides students to understand the social context of their clients’ communities, reduces ideological barriers to analyses of structural injustice, and deconstructs substantive silos in legal education. This Article demonstrates the utility of grounded pedagogy through the example of its implementation in a Juvenile Defense Clinic in Baton Rouge, Louisiana. Envisioning clinics as a site of grounded pedagogy situates wider struggles in local context and models for non-clinical legal education a method to localize law school curricula.

INTRODUCTION

“When you are on trial for conspiracy to overthrow the government for teaching the deconstruction of law, your lawyer will want

* Assistant Professor of Law, University of South Carolina School of Law, Director, Juvenile Justice Clinic. Deep gratitude to Professors Sherley Cruz, Shaina Destine, and Carla Laroche, whose thoughts on engaging in antiracist education at universities in the South have shaped my own thinking. To my LSU clinical program colleagues Lauren Aronson, Jeff Brooks, Pedro Gerson, Jack Harrison, Bob Lancaster, Lakita Leonard, and Annie Scardulla, thanks for making Baton Rouge my first academic home. Thank you also to the American University Washington College of Law Fifty and Forward Symposium and the students of the Journal of Gender, Social Policy & the Law for inviting me to present an earlier iteration of this work. I am also indebted the University of South Carolina’s Center for Teaching Excellence for the opportunity to share this work across disciplines in the university.

black people on your jury.”¹ Or at least that’s what Mari Matsuda writes to open a law review Article describing the need to look to the bottom—to the margins, to those left out of the conversation, to the dispossessed—in critiquing law and the justice it so often fails to provide.² It’s a dramatic line. Of course, she wasn’t imagining this scenario. Her tableau draws from the persecution of McCarthy-era left academics and later pushback against critical scholars who took a counterhegemonic stance on legal education.³ For some of us teaching in 2023, controversies over critical race theory and bans on instruction related to “divisive concepts” make the prospect of picking twelve sound less fantastical than it once might have. For educators like me, who have begun teaching within the last decade and hold relatively privileged identities, the heat feels closer than it ever has.

In the South, where I teach, the intellectual climate is particularly hot, raising fears that entire courses might be stricken from curricula.⁴ At the same time, students need no less practical experience, no less understanding of the complexity of their clients’ lives and needs, and no less critical exposure to the law’s role in the places we work. The core curriculum, by and large focused on national law and oriented toward bar passage, has not guided students to understand and analyze the forces at work right outside their front doors. Methods for teaching students to see and understand structural inequality in our society are central to law clinics’ educational role, even if our programs do not always live up to that ideal.⁵ Students must be taught to study, understand, and even center historical and present racial hierarchy and other forms of oppression because their clients already know and understand how those same histories and structures bring them through our doors.⁶

¹ Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323, 323 (1987).

² See generally *id.*

³ *Id.*

⁴ In some places, classes have already been canceled. See Daniel Golden, ‘It’s Making Us More Ignorant’, THE ATLANTIC (Jan. 3, 2023)(describing sociology classes about race being pulled from the curriculum at University of Central Florida because of the Stop W.O.K.E. Act).

⁵ Anne D. Gordon, *Cleaning Up Our Own Houses: Creating Anti-Racist Clinical Programs*, 29 CLIN. L. REV. 49, 50-51 (2022).

⁶ Norrinda Brown Hayat, *Freedom Pedagogy*, 28 CLIN. L. REV. 149, 157 (2021)(citing Devah Pager & Hana Shepherd, *The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets*, 34 ANN. REV. SOCIO. 181 (2008); Deborah 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); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (189); Dorothy E. Roberts, *The Future of Reproductive Choice for Poor*

This Article offers a model of grounded pedagogy to help guide clinicians and students alike toward structural analyses applicable to their local context. Part I begins with an argument for locating clinical teaching and practice in the client's built environment, eschewing the generic, stateless federal law and national history approach for a focus on a specific neighborhood, city, or state. Part II begins by describing how clinical teaching can respond to the need for local knowledge and engagement through the three components of grounded pedagogy: (1) locating learning in the built environment; (2) linking the past and present of that built environment; and (3) supporting that analysis with data. Part II goes on to enumerate some of the benefits of grounded pedagogy, which include benefits central to the clinical mission. Part III traces the development and implementation of grounded pedagogy in my Juvenile Defense Clinic in Baton Rouge and responds to objections that some clinical professors may have to implementing grounded pedagogy in their own clinics. I conclude by suggesting that grounded pedagogy, once adopted in clinics, may have contributions to offer across the law school curriculum.

I. RE-PLACING CLINICAL PEDAGOGY

Sit in many law school classrooms today, and you will see a version of the Socratic case method, developed in the Nineteenth Century and still dominant.⁷ Legal education has changed less, perhaps, than many think it should have during that time. Nevertheless, the proliferation of clinical legal education in the mid- to late-Twentieth Century shifted some expectations of law schools. No longer were students simply to learn to think like lawyers. Instead, they would learn to practice like lawyers. Today, clinics serve as the most hands-on experiences most students have in law school and are often perceived as plugging the holes in legal education.

Clinical teachers, at times on the periphery of law faculties,⁸ aim to train students in lawyering skills so that they can be practice ready while providing important legal services to those who cannot afford or

Women and Women of Color, 14 WOMEN'S RTS. L. REP. 305 (1992); Dorothy E. Roberts, *Crime, Race, and Reproduction*, 67 TUL. L. REV. 1945 (1993)).

⁷ Gerald López, *Transform—Don't Just Tinker With—Legal Education*, 23 CLIN. L. REV. 471, 493, 509 (2017). Most often, this development is attributed to Langdell at Harvard in the 1870s, though López's survey complicates the conventional origin story of Harvard as the center of the birth of modern legal education. *Id.* at 515-43.

⁸ See generally, Rachel López, *Unentitled: The Power of Designation in the Legal Academy*, 73 RUTGERS L. REV. 923 (2021); Bryan L. Adamson, Bradford Colbert, Kathy Hessler, Katherine R. Kruse & Robert R. Kuehn, *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353 (2012).

access them.⁹ Some, perhaps most, clinicians also see the inculcation of public interest lawyering values as central to clinical teaching's objectives.¹⁰ For instance, Jane Aiken has argued that law school faculty, who credential elite professionals, must also prepare students to be "justice ready," that is, able to recognize lawyers' role in creating justice and injustice and able—even committed—to intervene on the side of justice.¹¹ Reflection is central.¹² Clinicians coach students to plan, do, and reflect as a matter of course.¹³ Therein lies the most transferable skill imparted through clinical pedagogy, applicable to every legal and non-legal career path on which a law student might later embark—how to learn from experience.¹⁴

Clinics tend to emphasize learning from experience in domains such as litigation practices, client communications, or professional habits. Clinicians expect students to learn substantive law, to untangle complex procedure, and to problem solve using legal and non-legal alternatives. Yet so much of this learning—perhaps because we envisage learning for transfer¹⁵—emphasizes clients at the expense of their context. When the culture and context of clients are presented, they are offered as a way of understanding clients, of centering them, and of making sure the lawyer communicates with and represents the client effectively. The culture or context of a community, then, is rarely

⁹ Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLIN. L. REV. 489, 496 (2013); Marc Feldman, *On the Margins of Legal Education*, 13 N.Y.U. REV. L. & SOC. CHANGE 607, 638 (1985); Stephen Wizner & Dennis Curtis, "Here's What We Do": *Some Notes About Clinical Legal Education*, 29 CLEV. ST. L. REV. 1929, 1937 (2002). *But see* Gary Bellow & Earl Johnson, *Reflections on the University of Southern California Clinical Semester*, 44 S. CAL. L. REV. 664, 670-71 (1971) (arguing that a focus on service provision can devolve clinical educational programs into vocational instruction).

¹⁰ Some argue in favor of social justice as a key component of clinical education. *See* Carolyn Grose, *supra* note 9 at 495 (arguing that the social justice mission of clinics is "to expose students to the underbelly of the legal system, and its place and role in society; and . . . to challenge them to think critically about that system and their place in it."). Others assert that social justice values alienate some (usually conservative) students and should not be central to clinical legal education. *See* Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J. OF L. & SOC. JUST. 331 (2012); Praveen Kosuri, *Clinical Legal Education at a Generational Crossroads: X Marks the Spot*, 17 CLIN. L. REV. 205, 208, 221 (2010).

¹¹ Jane Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J. L. & SOC. JUST. 231, 233-334 (2012).

¹² In this, clinical legal education bucks some of the dominant practice in higher education. *See* KEVIN M. GANNON, *RADICAL HOPE: A TEACHING MANIFESTO* 20 (2020) (describing what Laura Rendón refers to as "the agreement to avoid self-examination" in academia). *See also* Grose, *supra* note 9 at 500.

¹³ DEBORAH EPSTEIN, JANE H. AIKEN & WALLACE J. MLYNIEC, *THE CLINIC SEMINAR* 5 (2014).

¹⁴ Anthony Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. OF LEGAL ED. 612, 615-16 (1984).

¹⁵ Carolyn Grose, *supra* note 9 at 494 (suggesting that learning for transfer is the heart of clinical pedagogy).

R

R

R

presented as something the lawyer must learn to do legal work well.

Legal education, even clinical legal education, often seems to operate with an unstated assumption that because lawyers are a type of expert, a lawyer can slot into any state, city, or country and operate as effectively, at least as long as one is willing to embrace a justice orientation toward one's client or, in movement lawyering, community. What this misses is that each client, and our advocacy, are shaped by the history and context in which they live, and that history and context shape advocacy, possibilities, and our own effectiveness.¹⁶

Gerald López, in his iconic *Rebellious Lawyering: One Chicano's Vision of a Progressive Law Practice*, gestured at this problem as he surveyed the practices of progressive lawyers in East Los Angeles in the 1960s. He described searching for anyone “who at some level understood that East L.A. was not just another community in need, that Chicanos were not just another oppressed people, and that lawyering itself had to be remade as part of any effort to transform the world.”¹⁷ In describing the problem, he implicated law schools like Harvard, his alma mater, which he accused of having “no idea about, and apparently little interest in, how to design its curriculum to systematically expose students to the complex lives of people like those with whom [he] had grown up.”¹⁸ As López later revisited in a pair of Articles commemorating the twenty-fifth anniversary of *Rebellious Lawyering*,¹⁹ these are largely critiques that could be leveled at progressive lawyering and law schools today.²⁰ What then, can we do, to be

¹⁶ Recent legal scholarship has centered history in tracing the roots of oppression and resistance. See, e.g., Dorothy E. Roberts, *The Supreme Court, 2018 Term—Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 5-9 (2019); Khiara M. Bridges, *The Supreme Court, 2021 Term—Forward: Race in the Roberts Court* 136 HARV. L. REV. 24, 34 (2022); Dorothy E. Roberts, *Racism, Abolition, and Historical Resemblance*, 136 HARV. L. REV. 37, 39-46 (2022); K-Sue Park, *Self-Deportation Nation*, 132 HARV. L. REV. 1878, 1880-87 (2019); Jennifer M. Chacón, *Unsettling History*, 131 HARV. L. REV. 1078, 1078-84 (2018); Katie R. Eyer, *The New Jim Crow is the Old Jim Crow*, 128 YALE L. J. 1002, 1005-06 (2019); Jedidiah Britton-Purdy, David Singh Grewel, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L. J. 1784, 1786-94 (2020); Madalyn K. Wasilczuk, *The Racialized Violence of Police Canine Force*, 111 GEO. L. J. (forthcoming 2023)(draft on file with author). The U.S. Supreme Court has also championed “history and tradition” as a guidepost for law. *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2128; 597 U.S. ___ at *12 (2022); *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2244; 597 U.S. ___ at *9 (2022). Yet too little teaching legal teaching focuses on the micro histories of the communities our clinics serve.

¹⁷ GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* 3 (1992).

¹⁸ *Id.*

¹⁹ López, *supra* note 7; Gerald P. López, *Transform—Don't Just Tinker With—Legal Education (Part II)*, 24 CLIN. L. REV. 247 (2018).

²⁰ Of course, as López noted in 1992 and in 2017, there are plenty of lawyers who break the mold—my critique is not that these lawyers and law clinics do not exist, but rather than

“anchored in the world we’re trying to help change?”²¹

II. ENVISIONING GROUNDED PEDAGOGY

Though perhaps López’s critique and vision for legal education and lawyering should have been more familiar to me at the beginning of my academic career, my development of grounded pedagogy started not in theory but in the practice of teaching. A newcomer to Louisiana State University’s Paul M. Hebert Law Center, I was tasked with directing the Juvenile Defense Clinic. The program was well established. Hector Linares, now at Loyola University School of Law in New Orleans, had planned and executed the clinic based on models from across the country. I was also lucky to have the support of two adjunct faculty, Jack Harrison, the current clinic director, and Lakita Leonard, current adjunct faculty, both of whom had years of concurrent experience representing children in East Baton Rouge Parish as public defenders. Leonard was also an alumna of the clinic.

Arriving on the ground two years after Alton Sterling’s death at the hands of the police,²² I had assumed that students enrolling in the clinic would be familiar with the political context of Baton Rouge. After all, many of my students, if not from the city, were at least from Louisiana, and most had spent two years there already as law students. In that first year, while my syllabus spent time introducing the students to the history and present of the juvenile legal system in Louisiana and the gross racial disparities within it, it did little more to discuss the overall history and present of the city, parish, or state. It was not until students began visiting their clients’ homes and neighborhoods to interview the children and their families and investigate their cases that I realized how little most students knew about the city. Predictably, some, though not all, of the surprise about some neighborhoods’ conditions fell along racial lines. Less predictably, Louisiana students seemed no more likely than out-of-state students to be familiar with histories of protest, residential and school segregation, highway building, and disinvestment from communities.²³

we need more of them, and even those of us who are committed to finding new ways to lawyer can use new tools for refining and reshaping our practice (as well as the same introspection we expect of our students to keep us honest about where we inevitably fall short).

²¹ LÓPEZ, *REBELLIOUS LAWYERING* *supra* note 17 at 7.

²² Jarvis DeBerry, *Before Killing Alton Sterling, Baton Rouge Police Had a History of Brutality Complaints*, NOLA.COM (Jul. 7, 2016) https://www.nola.com/news/crime_police/before-killing-alton-sterling-baton-rouge-police-had-a-history-of-brutality-complaints/article_06a6bb1e-014c-5e8a-9b02-9f7485705d7e.html.

²³ I, myself, owe a debt to people like Lori Martin, a professor in African American studies at LSU, who made public presentations on the history of protest in Baton Rouge that educated me and the public about the city’s history. Lori Martin, *The History and Impact of Protest in Baton Rouge and Louisiana*, FORUM 225 (Jul. 8, 2020), <https://>

I shouldn't have been surprised. I, after all, could not have told you that much about neighborhoods in New York City other than those my friends and I frequented when I was a law student, and it was not until my experience in the Global Justice Clinic going to stop and frisk organizing meetings and Occupy Wall Street protests as part of a project analyzing the policing of protest that I could have identified even a sliver of the systemic issues facing low-income New Yorkers. Having just completed a fellowship with the Cornell Center on the Death Penalty Worldwide in which I taught alongside Sandra Babcock in the International Human Rights Clinic, however, it struck me how differently my domestic defense-focused clinic and our international human rights clinic thought about preparing students for field work.

Human rights clinics and international internships often explicitly integrate the history of the places and cultures in which they work in the materials taught to students.²⁴ Sometimes, this material is introduced clumsily and leads to essentializing narratives that do not meet the aims of intercultural education—yet in every instance, there is a recognition that it needs to be done. International public defense experience has shown me that defense work is no less culturally and historically contingent. Though every country in which I've worked perpetuates some level of human rights abuse through its criminal punishment system, how that abuse takes shape and who is most vulnerable to it depend on history and culture. Those contingencies do not just show up when crossing national borders from Tunisia to Malawi to Myanmar to Kenya to Tanzania. They also show up when crossing state and city boundaries: criminal legal system abuses look both similar and different in Nashville, Philadelphia, Baton Rouge, New York, and Columbia. It is not enough to recognize the histories of the particular, siloed system in which we work, however. The context of the community must go deeper, to what shaped the material conditions that exist today, and how our lawyering might have a role in influencing what takes form tomorrow.

I am not the first to recognize that serving a community requires curiosity and dedicated learning about that community—preferably from a place of relationship. López called upon lawyers to recognize that decades ago. Likewise, William Quigley began his Article *Revolutionary Lawyering* with a social justice quiz to highlight knowledge

www.youtube.com/watch?v=JE3S8djmsds.

²⁴ See, e.g., Kathleen Kelly Janus & Dee Smythe, *Navigating Culture in the Field: Cultural Competency Training Lessons from the International Human Rights Clinic*, 56 N.Y. L. SCH. L. REV. 445, 456-58 (2011).

central to poverty lawyering.²⁵ Quigley's quiz did not just make the point that U.S. economic inequality was widening and racialized—it also served as a starting point for the argument that lawyers needed to be aware of these basic facts to do justice rather than do law.²⁶ Michael Pinard, in his call for Justice-Connectivity across the law school curriculum, has argued professors must teach students to identify the wide-ranging issues, both legal and non-legal, that affect their clients' lives.²⁷ Pinard admonishes, "Contemporary understandings of these issues are not enough."²⁸ Instead, he appeals to his colleagues to commit to historically-rooted teaching that conveys "how these various systems and conditions have developed and warped over time."²⁹

Grounded pedagogy is my attempt to distill concrete steps that center the particular, local communities a clinic serves so that students can see that patterns of oppression and resistance that occur nationally also manifest outside their front doors. Grounded pedagogy does not mean to supplant, or critique as inferior, the many deliberate and thoughtful methods clinical teachers have used to achieve many of the same goals that grounded pedagogy seeks to accomplish. Instead, grounded pedagogy is intended to serve as a method for intentionality around developing clinical professors' and students' knowledge and sensitivity to their communities while engaging in a robust reflective lawyering practice.

A. *What is Grounded Pedagogy?*

Grounded pedagogy calls on its practitioners to take three steps to guide their students' learning: (1) explicitly locating that learning in the clinic's built environment; (2) linking the past and present of that built environment; and (3) supporting that inquiry with data. I will describe each component in turn. In so doing, grounded pedagogy resists assumptions about what students and professors may already know about their communities and encourages continual learning and relearning throughout one's life.

The lawyering that grows out of grounded pedagogy may be movement lawyering or community lawyering, but it need not be. Some programs are not (yet) equipped to take on those styles of lawyering. At the same time, being willing to learn and listen outside of one's expertise and comfort zone, come as a person first and lawyer

²⁵ William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J. L. & POL'Y 101, 105-07 (2006).

²⁶ *Id.*

²⁷ Michael Pinard, *Teaching Justice-Connectivity*, 80 LA. L. REV. 95, 104 (2019).

²⁸ *Id.*

²⁹ *Id.* at 105.

second, and recognize community knowledge and power rooted in non-legal ways of knowing and being are lessons drawn from community and movement lawyering that are central to the practice of grounded pedagogy.³⁰ Likewise, while community and movement lawyering models often make implicit a familiarity with histories of oppression and resistance, as a model for teaching, grounded pedagogy seeks to bring these histories to the fore in a way that honors the knowledge of those who are intimately familiar with how the past has shaped the present without leaving behind those who are still catching up.³¹ Grounded pedagogy also offers clinical professors an opportunity to make their pedagogy transparent, thereby helping students learn how to learn about new lawyering contexts in which they might find themselves.

1. *Located in the Clinic's Built Environment*

Each clinic functions within a particular built environment. The built environment “includes all the physical parts of where we live and work.”³² Thinking of clinics and clinical programs as situated in built environments rather than using another geographic or relational term, like city or community, allows us to denaturalize the present form of the place or environment in which we work. The term built environment also centers the human agency that forms the places that we live and work.

Many, perhaps most, law school clinics work in the same built environment as the law school itself. For example, the Juvenile Justice Clinic that I teach at the University of South Carolina primarily practices in Columbia, where the law school building sits. Sometimes, however, clinics work in multiple built environments or ones that are far from where the law school is situated. For instance, the Juvenile Jus-

³⁰ See, e.g., Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355, 373-74 (2008); Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 CLIN. L. REV. 775 (2017); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1994); Angelo N. Ancheta, *Community Lawyering*, 81 CALIF. L. REV. 1363 (1993); Jocelyn Simonson, Amna A. Akbar, Sameer M. Ashar, *Movement Law*, 73 STAN. L. REV. 821 (2021); LÓPEZ, REBELLIOUS LAWYERING, *supra* note 17, Amanda Alexander, *Nurturing Freedom Dreams: An Approach to Movement Lawyering in the Black Lives Matter Era*, 5 HOWARD HUM. & C. R. L. REV. 101 (2021); Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645 (2017).

³¹ Given the vociferous resistance to teaching forthright histories in many of our nation's schools, it is not surprising when students lack education about facets of history that have played key roles in shaping our laws and communities. Adam Harris, *The GOP's 'Critical Race Theory' Obsession*, THE ATLANTIC (May 7, 2021). See also *infra* Part II.B.3.

³² Center for Disease Control, *The Impact of the Built Environment on Health* <https://www.cdc.gov/nceh/publications/factsheets/impactofthebuiltenvironmentonhealth.pdf> (June 2011).

tice Clinic has represented children in other counties in the state. Community lawyering clinics, in particular, locate themselves not in the university setting but in the communities they serve.³³ In putting down roots among their clients, community lawyering models center “a sense of place (or ‘home’) in their practice.”³⁴

Of course, one could define a built environment more narrowly (one neighborhood) or more broadly (an entire state) depending on the type of work a clinic does. It may make more sense to think of a narrowly defined built environment, like a neighborhood or city, when representing an individual client,³⁵ while engaging with the state as a built environment when it comes to statewide legislation or policymaking. It may even help to compare the built environments of different constituencies when doing law reform projects, noting how a policy looks different on the ground for members of one community or another. Identifying the built environments most relevant to the clinic’s work gives the clinician a point of departure for helping guide the students’ introduction to grounded lawyering.

Amanda Alexander, founder of Detroit Justice Center, surveys the struggles of the city to explain why her organization’s work takes the shape it does:

“Nearly fifty-five percent of Detroit children live in poverty. The city has shut off water to 141,000 homes since 2014; people live without running water in this city. We are one of the unhealthiest cities in the country, with sky-high asthma rates in many neighborhoods. Forty percent of Detroiters do not have access to the Internet. Large telecom companies did not think it was worth investing in the infrastructure. Detroiters lived through the largest tax foreclosure crisis since the Great Depression – between 2011 and 2015, Wayne County foreclosed on one quarter of Detroit properties for nonpayment of property taxes.”³⁶

The specificity of Alexander’s built environment and the ways it influences every facet of her clients’ lives provides a vantage point from which to look back and discover how this Detroit, historically contingent but not inevitable, came to be.

³³ Catherine Siyue Chen, Fernando P. Cosio, Deja Ostrowski & Dina Shek, *Developing a Pedagogy of Community Partnership Amidst COVID-19: Medical-Legal Partnership for Children in Hawai’i*, 28 CLIN. L. REV. 107, 122 (2021).

³⁴ *Id.* at 117.

³⁵ For example, a client in Columbia, SC and a client in Greenville, SC grew up in places that were affected differently by state history, politics, economics, culture, demographics, and other factors. Even within Columbia, a client might be shaped considerably by the zip code or neighborhood from which they come.

³⁶ Alexander, *supra* note 30 at 110.

2. *Links Past and Present*

The next step in engaging in grounded pedagogy is to begin to understand the histories of the built environment in which the clinic works. Those of us working in the American South might do well to remember that “the Deep South was made at a crossroads between the lust for cotton and the theft of indigenous land. It was a tandem movement. The aftermath is a ghost-like presence.”³⁷

That specter emerges in different ways in different places, yet “the prisons, the persistence of poverty, are constant reminders of how the past made the present.”³⁸ To notice these reminders, we must have a sense of what came before. It’s hard to be haunted if you believe all whispers are wind. Instead, we must acknowledge that the presence or lack within our built environments was not inevitable. To serve a neighborhood means to know its boundaries and how they came to be, whether through redlining, highway construction,³⁹ or a flood or fire that made previous homes unlivable.⁴⁰ What businesses serve the place, and are they local? Who owns them? Where are the nearest grocery stores,⁴¹ banks,⁴² and hospitals,⁴³ and have some

³⁷ IMANI PERRY, *SOUTH TO AMERICA: A JOURNEY BELOW THE MASON DIXON TO UNDERSTAND THE SOUL OF A NATION* xviii (2022). Perry rightly points out that racism, though often associated with the South, does not belong to it alone. *Id.* at xvii.

³⁸ *Id.* at 221.

³⁹ See, e.g., Deborah N. Archer, “White Men’s Roads Through Black Men’s Homes”: *Advancing Racial Equity Through Highway Reconstruction*, 73 *VANDERBILT L. REV.* 1259 (2020). See also *infra* text accompanying note 91.

⁴⁰ Studies show that marginalized communities face higher risks of natural disasters like flooding, including risks from industrial contaminants that have historically been located near low-income and racialized communities. See e.g., Thomas Marlow, James R. Elliott, and Scott Frickel, *Future Flooding Increases Unequal Exposure Risks to Relic Industrial Pollution*, 17 *ENVIRON. RES. LETT.* (2022); Kevin T. Smiley, *Social Inequalities In Flooding Inside and Outside Floodplains During Hurricane Harvey*, 15 *ENVIRON. RES. LETT.* 1 (2020); Yuqi Lu, *Hurricane Flooding and Environmental Inequality: Do Disadvantaged Neighborhoods Have Lower Elevations?*, 3 *SOCIUS* 1 (2017); Qingmin Meng, *A New Simple Method to Test and Map Environmental Inequality: Urban Hazards Disproportionately Affect Minorities*, 122 *LAND USE POL’Y* 1 (2022). Government programs intended to improve disaster resilience have also had disparate effects. See James R. Elliott, Phylcia Lee Brown & Kevin Loughran, *Racial Inequities in the Federal Buyout of Flood-Prone Homes: A Nationwide Assessment of Environmental Adaptation*, 6 *SOCIUS* 1 (2020).

⁴¹ Amanda Alexander has written about the effects of the state’s “organized abandonment” of Detroit, including the closure of grocery stores and the innovative ways residents have responded to provide for themselves and their neighbors. Alexander, *supra* note 30 at 119.

⁴² Banks similarly have abandoned many low-income areas, leaving many people with only predatory options to serve their financial needs. See Cassandra Jones Havard, *Banking On Those Who Don’t*, *BALTIMORE SUN* (Mar. 13, 2014) <https://www.baltimoresun.com/opinion/bs-xpm-2014-03-13-bs-ed-post-office-banking-20140313-story.html>. See also Drew Dahl & Michelle Franke, *Banking Deserts Become a Concern As Branches Dry Up*, *REGIONAL ECONOMIST* (Jul. 25, 2017) <https://www.stlouisfed.org/publications/regional-economist/second-quarter-2017/banking-deserts-become-a-concern-as-branches-dry-up>.

R

R

closed? When was that, and why? How have infrastructure projects benefitted or passed over these residents?⁴⁴ At what cost? How has the state invested in punitive practices as it has withdrawn from providing for the public welfare?⁴⁵

Importantly, clinical teachers cannot confine our excavation of the past only to the issue areas that the clinic directly touches. Yes, it is useful to trace the mix of beneficence and eugenic, racist, and classist assumptions undergirding the Progressive Era's creation of juvenile courts when introducing the courts' origins to students.⁴⁶ Other practice areas similarly have histories that bind up race and class, politics and power. But no client lives in juvenile court. Each child's life is bound up in generational fortunes: the confluence that formed their homes, schools, and neighborhoods. The illnesses and disabilities, psychiatric and physical, of their caregivers. The people lost to them, whether by age, distance, drugs, incarceration, sickness, or violence. It can be easy for those who grew up differently to attribute the seemingly innumerable struggles of their clients to poverty. Poverty, as if it were not created but simply exists without a tangle of roots underneath.

It can also be far too easy to focus on a list of negative things that make a client's life—after all, they are often coming to us for relief, either from the legal system or from something they hope the legal system will solve. And that, devoid of history, also can tempt a lawyer to view a client as without agency and their community as without

⁴³ Health care services, especially for acute care needs, are less available in marginalized communities, and those that do exist are often inaccessible for financial and structural reasons. See, e.g., Ruqaiyah Yearby, *Racial Disparities in Health Status and Access to Healthcare: The Continuation of Inequality in the United States Due to Structural Racism*, 77 J. ECON. & SOC. 1113 (2018); Jenny S. Guadamuz, Jocelyn R. Wilder, Morgane C. Mouslim, Shannon N. Zenk, G. Caleb Alexander, & Dima Mazen Qato, *Fewer Pharmacies in Black and Hispanic/Latino Neighborhoods Compared With White or Diverse Neighborhoods, 2007-15*, 40 HEALTH AFFAIRS 802 (2021); Arrianna Marie Planey, Sandy Wong, Donald A. Planey & Michelle J. Ko, *(Applied) Geography, Policy, & Time: Whither Health and Medical Geography?*, 26 SPACE & POLITY 115 (2022); Tarun Ramesh & Thomas C. Tsai, *Hospital Closures in Rural Communities of Color: A Double Dose of Inequality*, 39 J. RURAL HEALTH 88 (2023). Campaigns to gain better access to healthcare have succeeded in some instances. Alexander describes how Fearless Leading by the Youth (FLY), a Chicago youth community organization, led a campaign to get the University of Chicago to open a trauma center that could treat gunshot wounds on Chicago's South Side, recognizing that the lack of healthcare infrastructure was leading to needless death. Alexander, *supra* note 30 at 117.

⁴⁴ See, e.g., Sarah Heck, *Greening the Color Line: Historicizing Water Infrastructure Redevelopment and Environmental Justice in the St. Louis Metropolitan Region*, 23 J. OF ENVIRON. POL'Y & PLANNING 565 (2021).

⁴⁵ Alexander, *supra* note 30 at 111-12.

⁴⁶ See, e.g., Madalyn K. Wasilczuk, *For Their Own Good: Girls, Sexuality, and State Violence in the Name of Safety*, 59 CAL. W. L. REV. (forthcoming 2023)(draft on file with author).

R

R

resources, strengths, or power.⁴⁷ The Power of Place exhibit at the National Museum of African American History and Culture in Washington, D.C. showcases examples of community histories of organizing, excellence, creativity, and resilience.⁴⁸ As we build our knowledge of a community's history, it is important to recognize a fulsome view, rather than one that centers only hardship and suffering.

To develop this knowledge takes a significant investment, and I do not propose that a clinician resolve to be responsible for a block-by-block historical account of the city in which they work, nor that they should learn everything about a city in one fell swoop. The built environment on which a clinic focuses and the amount of time one spends on filling in those gaps will depend on factors such as the instructor's familiarity with the environment, the dispersion or concentration of clinic clients, and the credit hours students can devote to class and field work. Students can also be collaborators in the development of this knowledge through research and class presentations.⁴⁹ One might also defer exploration of particular environments until the need arises based on case work. In that instance, it can be helpful to assemble a trove of historical resources from local historical societies, community organizations, educational institutions, and archives.

3. *Supported with Data*

Data provides a powerful way to link the past and present. In the wake of Summer 2020, Richard Rothstein's *Color of Law* appeared on innumerable reading lists, educating Americans about redlining and how it produced patterns of residential segregation.⁵⁰ But sometimes,

⁴⁷ See Dean Spade, *For Those Considering Law School*, 6 UNBOUND 111, 113 (2010)(discussing the paternalistic role that service providers play and noting that legal services often reproduce dynamics of subordination).

⁴⁸ National Museum of African American History & Culture, *Community: Power of Place* <https://nmaahc.si.edu/explore/exhibitions/power-place>.

⁴⁹ Lucie White describes working together with students to map social justice initiatives in Los Angeles as part of a clinic project. Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLIN. L. REV. 157, 161-62 (1994). Similarly, when my own clinic took on representation of a child in another part of the state, students wrote memos about gang dynamics, violence and segregation in schools, and other topics to familiarize the representation team with the history of the city, possible sources of generational trauma, and the community's potential effects on the client's life before his arrest.

⁵⁰ See, e.g., Stanford Graduate School of Business, *Recommended Read, Watch, Listen List (Summer 2020)*, (May 17, 2020) <https://gsbi.stanford.edu/news/recommended-read-watch-listen-list-summer-2020>; Pete Bailey, *PopEd's List of the Best Books for the Surreal Summer of 2020*, POPED (Jul. 1, 2020), <https://populationeducation.org/popeds-list-of-the-best-books-for-the-surreal-summer-of-2020/>; Harvard Kennedy School, *Racial Justice, Racial Equity, and Anti-Racism Reading List*, <https://www.hks.harvard.edu/faculty-research/library-knowledge-services/collections/diversity-inclusion-belonging/anti-racist>; all recommending RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW*

people are inclined to describe history as in the past and as exerting little or no influence on the present. For some, it is comforting to assert that we have emerged from the terrible and oppressive practices of the past. To engage those people, it can be helpful to call upon studies that demonstrate the ongoing gravity of past subordination and resistance.

A few examples may demonstrate the types of data that can illuminate historical path dependencies and help students understand the forces that shape their clients' lives well outside the sphere of legal help they're seeking. Reporting provides one contemporary source. For instance, an investigation by The Markup found that AT&T, Verizon, EarthLink, and CenturyLink disproportionately offered slower internet connections to lower-income and less-White neighborhoods.⁵¹ Slower internet speeds and higher prices for high-speed internet made it more difficult for people in the least-White parts of cities to obtain and maintain remote work and attend remote school or complete computer-based school assignments.⁵² Likewise, The State, a Columbia, South Carolina, newspaper, identified North Columbia's 29203 zip code as one of the most medically dangerous in the Deep South and home to a startling rate of diabetic amputations.⁵³ The reporting highlighted the overlapping disinvestment and lack of access to important services, like grocery stores and preventive health care, that made the people in 29203 more vulnerable to amputation and, as a result, shorter lifespans.⁵⁴

Academic studies also demonstrate the long-term persistence of cultural forces. One example is Avidit Acharya, Matthew Blackwell, and Maya Sen's study *The Political Legacy of American Slavery* that found that places in the South with a higher prevalence of slavery in 1860 continued to have lower than average rates of Black voter turnout, more race-related elections lawsuits, and more racial voting polarization in 2015.⁵⁵ Concrete studies like this one help connect the histories of a place to the present, forming the third prong of grounded pedagogy.

At the same time that data can be a powerful pedagogical and

OUR GOVERNMENT SEGREGATED AMERICA (2017).

⁵¹ Leon Yin & Aaron Sankin, *Dollars to Megabits, You May Be Paying 400 Times as Much as Your Neighbor for Internet Service*, THE MARKUP (Oct. 19, 2022) <https://themarkup.org/still-loading/2022/10/19/dollars-to-megabits-you-may-be-paying-400-times-as-much-as-your-neighbor-for-internet-service>.

⁵² *Id.*

⁵³ Andrew Caplan & Gina Smith, *Cut Off*, THE STATE <https://www.thestate.com/news/state/south-carolina/article258302413.html>.

⁵⁴ *Id.*

⁵⁵ Avidit Acharya, Matthew Blackwell & Maya Sen, *The Political Legacy of American Slavery*, 78 J. OF POLITICS 621, 621 (2016).

rhetorical tool, it can be useful to acknowledge that it can amount to, as Ruha Benjamin writes, “the datafication of injustice” that is, “the hunt for more and more data about things we already know much about.”⁵⁶ In our quest to make sure our students have a firm footing in the community in which we work, we need not explain each and every crack in the sidewalk or flower fighting its way up from below. Instead, we can focus on what is most significant or responsive to our cases and supervision, while leaving space in the mosaic for when we stumble upon a new piece of the picture.

B. *Why Grounded Pedagogy?*

Grounded pedagogy gives lawyer-practitioners a method for approaching the integration of place and history despite the strong present orientation of much lawyering. Grounded pedagogy also fits in well with the broader goals of clinical teaching, which Carolyn Grose identifies as “providing learning for transfer; exposing students to issues of social justice; and offering opportunities to practice lawyering skills.”⁵⁷ In particular grounded pedagogy offers another domain—local history and context—in which students must learn how to learn, expanding, along the way, their exposure to social justice issues. In my own application of grounded pedagogy, I have observed the broad benefits: it contextualizes the law and clients’ lives; it fosters empathy and understanding; it lowers ideological barriers to social justice learning; it diminishes the need for self-disclosure from minoritized or racialized students; it promotes the public citizenship role of lawyers; and it deconstructs silos. This section will describe how grounded pedagogy benefits student attorneys.

1. *Contextualizes the Law and Clients’ Lives*

Critiques of law schools are abundant. Among the common ones is that law school, through the case method, holds law out as neutral while stripping it of its context. This occurs through truncated facts, absence of trial records that illuminate factual disputes, and flattening of litigants’ personhood by omitting race, class, and other information. Alongside the case method, law schools, because of their faculty’s training, the pressure to compete nationally, or other reasons, focus on federal law to the exclusion of state law much of the time, and local laws are rarely discussed at all. This continues even though far more

⁵⁶ RUHA BENJAMIN, *VIRAL INJUSTICE: HOW WE GROW THE WORLD WE WANT* 35 (2022). Indeed, Benjamin invokes a variation of Toni Cade Bambara’s question, asking “What are we pretending not to know today?” as an indictment of endless studies of the effects of racism without concomitant efforts at redress. *Id.* at 34.

⁵⁷ Carolyn Grose, *supra* note 9 at 493.

lawyers and litigants find themselves in state and local courts. Even the way law schools teach federal law can sometimes cause students to focus on what the law *is* in a way that reifies the law and narrows students' imaginations for what the law could be.⁵⁸

By grounding student attorneys in the context of a particular built environment and orienting them to its history, people, and systems through data, it places the law in its context. Baring the law's development through place and time de-essentializes it and gives breathing room to students' conceptions of more just ways to order the world. In creating greater context for the history and interconnectedness of law, the clinic can also deconstruct the silos, or appearance of them, that often exist across subject matter.⁵⁹ This can be particularly important for clinics that focus on one area of substantive law, even as those clinics may take interdisciplinary or holistic approaches.

Grounded pedagogy takes a different, but complementary, approach than community lawyering to situating the law in the messy reality of daily life. Grounded pedagogy explicitly reaches back into the past, which may not be as strongly centered in a community lawyering model. In addition, grounded pedagogy can be used as a teaching tool regardless of whether the clinic implements a community lawyering model. For clinics, like mine, whose services are primarily limited to representation in delinquency and parole proceedings, grounded pedagogy helps explain where clients and their families come from, the barriers that stand in the way of justice, and why, to some students, the law appears to fail so profoundly in delivering equality and repair.⁶⁰

It is also important to help students understand that this context is not peripheral to being a good lawyer. If a person refuses to understand the community in which their client lives, they cannot serve a client as effectively as one who understands the structures both of the law and of the client's life. This is particularly so for students who desire to dismantle White supremacy and other forms of oppression. Norrinda Brown Hayat describes this necessity in her formulation of freedom pedagogy.⁶¹ Brown Hayat argues that to be client-centered with respect to Black clients, we must center Blackness, that is, "to see

⁵⁸ Aiken at 235.

⁵⁹ Deborah N. Archer & Kele Stewart, *Lawyering Across Silos*, CLEA Teaching Justice Webinar Series, (Feb. 25, 2021) YOUTUBE <https://www.youtube.com/watch?v=sfzjqm8fYwg>.

⁶⁰ Grounded pedagogy also reveals the substrates of the law, providing local, particularized illustrations of why people like Paul Butler assert that the law is not broken but working as intended. Paul Butler, *The System is Working the Way It is Supposed To: The Limits of Criminal Justice Reform*, 1 FREEDOM CENTER J. 75, 107 (2019).

⁶¹ Brown Hayat, *supra* note 6 at 156.

and to understand the world through the Black experience.”⁶² Without seeing and understanding the history our Black clients live within, we simply cannot begin to move toward centering Black experiences in our clinics.

Even clinical professors who do not subscribe to social justice as a central tenet of clinical pedagogy acknowledge the centrality of sensitivity to the nuances of clients’ lives and experience. As Praveen Kosuri acknowledges in his argument for keeping social justice missions in the background of clinical pedagogy, “If a student represents her client well, she will have learned, understood, and embraced all of the intricacies of his situation” including “the economic realities of the inner-city” and “the barriers to accessible resources.”⁶³ Like bell hooks encountering teachers who did not believe “that to educate black children rightly would require a political commitment,” clients too often encounter lawyers who have not made the political commitments necessary to serve them rightly.⁶⁴

2. *Fosters Empathy and Understanding*

Though client work can expose students to injustice and difference,⁶⁵ left to apply their own established lenses, exposure to difference can entrench, rather than challenge, students’ preconceived notions of their clients. One of the most important contributions of clinical pedagogy is the idea that students must “gain the ability to identify and challenge assumptions, and imagine and explore alternatives.”⁶⁶ This mandate is familiar to clinical professors through Susan Bryant and Jean Koh Peters’s canonical work *The Five Habits: Building Cross-Cultural Competence in Lawyers*.⁶⁷

While cross-cultural competence or cross-cultural humility may be an important skill within clinical teaching, it can also be quite difficult to achieve sufficient facility with these skills depending on students’ own starting points. At times, students struggle to identify assumptions as assumptions at all, since they lack experience outside of their own social contexts that gives them a framework to take a more objective or disinterested view. Other students may recognize that they have made an assumption but may lack the perspective to

⁶² *Id.*

⁶³ Kosuri, *supra* note 10 at 219.

⁶⁴ bell hooks, *TEACHING TO TRANSGRESS: EDUCATION AS THE PRACTICE OF FREEDOM* 3 (1994).

⁶⁵ Amanda Levendowski, *Teaching Doctrine for Justice Readiness*, 29 *CLIN. L. REV.* 111, 112 (2022).

⁶⁶ Aiken, *supra* note 11 at 236.

⁶⁷ Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *CLIN. L. REV.* 33 (2001).

R

R

challenge that assumption or explore alternatives to it. In these situations, asked to reconsider or interrogate the assumption, they are often left with a shallow well from which to draw—and their alternatives, as a result, may not be compelling. Worse still, they may view the exercise as purely ideological and go through the motions of perspective-taking while harboring resentment or believing that their views are being discriminated against.

Working with others can be a stress-inducing or difficult experience, especially as students feel pressure to perform their new attorney role well. When confronted with difficulty reaching a client, scheduling an appointment, or communicating clearly, it can be easy for students (and lawyers) to reach for negative stereotypes. This becomes even more likely when a person is rushed, stressed, or unused to working across cultures.⁶⁸ Familiarity with the structural and historical influences on the built environment and how that might shape a client's time, resources, or stressors can assist a student in better engaging in perspective-taking and give them more background from which to draw alternative explanations for clients' behavior or situations.

3. *Lowers Ideological Barriers to Social Justice Learning*

In the last several years, place has become particularly salient when speaking about teaching strategies. After a brief moment many called a “racial reckoning,” right-wing political operatives moved to censor discussion and teaching about how the law and social structures create and maintain racial subordination.⁶⁹ In much of the United States, professors fear the employment consequences they might face for acknowledging racial histories or teaching “divisive” concepts.⁷⁰ Speaking at the American Association of Law Schools Conference in 2022, Kimberlé Crenshaw warned of an “erosion of our hard-won literacy” in racial history and a challenge to all legal educators about “how to teach, think, and act in the face of [a] profound breach of our professed norms.”⁷¹

The politicization of accurate history and racial awareness strikes

⁶⁸ Jeff Adachi, *Public Defenders Can Be Biased, Too, And It Hurts Their Non-White Clients*, WASHINGTON POST (Jun. 7, 2016) <https://www.washingtonpost.com/posteverything/wp/2016/06/07/public-defenders-can-be-biased-too-and-it-hurts-their-non-white-clients/>.

⁶⁹ Kimberlé Williams Crenshaw, *This is Not a Drill: The War Against Antiracist Teaching in America*, 68 UCLA L. REV. 1702, 1714, 1725 (2022).

⁷⁰ See Eesha Pendharkar, *Legal Challenges to ‘Divisive Concepts’ Laws: An Update*, EDWEEK (Oct. 17, 2022) <https://www.edweek.org/policy-politics/legal-challenges-to-divisive-concepts-laws-an-update/2022/10>, (summarizing states’ “divisive concepts” laws and legal challenges to them).

⁷¹ Crenshaw, *supra* note 69 at 1702, 1721, 1725.

at the heart of clinical teaching, especially in clinics that primarily serve Black clients. Student attorneys, as adult learners, come to spaces with established values and preconceived ideas about the way the world works. Where anti-CRT or “divisive concepts” laws have passed, students may be particularly primed to see attempts to educate them about structural racism, class differences, and the law’s role in subordination as their professors’ political projects—inappropriate for the classroom and a sideshow to the “real skills” they came to clinic to learn. This may be especially true in clinics where enrollment is by lottery, rather than by application, leading to the occasional admission of a student who is philosophically opposed to the clinic’s social justice goals.⁷² When students are resistant to messages about structural issues, the concreteness of grounded pedagogy can help lower ideological barriers and help students “discover” the interconnectedness of injustice themselves.⁷³ Here, the goal is not to reform a student’s political leanings—that is neither realistic nor an appropriate goal of the clinic—but instead to allow the student to engage in sufficient perspective-taking and the willingness to learn, understand, and embrace the intricacies of a client’s situation, as described by Kosuri, and thereby learn to be an effective advocate.

4. *Shifts the Burden of Learning to Everyone and Decreases Pressure on Students with Racialized or Minoritized Identities to Self-Disclose*

Another goal of grounded pedagogy is to give students concrete, historically accurate examples of structural oppression and resistance within their locality so as not to assume that students come to the clinic with this knowledge. Depending on the students’ own backgrounds, they may be intimately familiar with the built environment of the law school, or they may be near strangers to it. Even those who grew up in the same city may find themselves disoriented by sojourns outside their comfort zone.

When disorientation occurs, students may be inclined to lean on other students—often those from racialized or minoritized backgrounds—who they identify as more socially proximate to clients’ experiences. This occurrence often happens unconsciously and without critical reflection for the disoriented students, who are accustomed to the law school as a White space.⁷⁴ Leaning on racialized and minori-

⁷² Deborah Archer tackles the issue of student selection decisions in clinic with nuance and insight in *Open to Justice: The Importance of Student Selection Decisions in Law School Clinics*, 24 CLIN. L. REV. 1 (2017).

⁷³ Aiken, *supra* note 11 at 237.

⁷⁴ Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 1, 17 (2021).

tized students as local guides for White students recreates that experience in the clinical environment.⁷⁵ By foregrounding the connection between history and the current built environment through data, we concretize clients' context in a way that doesn't require students with life experiences similar to those of our clients, whether due to race, class, disability, or any other reason, to expose details of their lives to help other students develop more nuanced perspectives.

5. *Promotes the Public Citizenship Role of Lawyers*

The Model Rules of Professional Responsibility state, "A lawyer, as a member of the legal profession, is . . . a public citizen having special responsibility for the quality of justice."⁷⁶ The Preamble goes on to state,

"As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest."⁷⁷

The Model Rules do not, however, address the background civic engagement, historical, social, and community knowledge necessary to have expertise in these public citizen roles. Nor do analyses of the role of the lawyer as public citizen tend to consider this aspect of lawyer as public citizen, instead focusing on duties to benefit the public good without asking about competency to fulfill that role.⁷⁸ Law school as currently constituted does not do enough to foreground the necessary

⁷⁵ Gordon, *supra* note 5 at 63-64.

⁷⁶ ABA Model Rules of Professional Responsibility, Preamble Section 1, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/.

⁷⁷ ABA Model Rules of Professional Responsibility, Preamble Section 6.

⁷⁸ Robert E. Scott, *The Lawyer as Public Citizen*, 31 U. TOL. L. REV. 733, 736-37 (2000)(advocating that lawyers practice by educating clients on competing social interests);

knowledge and skills, instead assuming that students have the knowledge or presuming it is outside of the capacity or duty of law schools to teach. In failing to develop knowledge about the communities in which lawyers have tremendous power as social architects, lawyers can frustrate the goals toward which they attest to work.

A recent Twitter thread by lawyer Tifanei Ressler-Moyer bemoaning the tendency of prison conditions litigation to further expand the reach of the carceral state and, in her estimation, to betray the very people for whom the lawyers ostensibly fight, reflects that potential.⁷⁹ A canonic example in legal scholarship comes from Derrick Bell, who critiqued those who pursued school desegregation, eventually concluding that the litigation had largely failed Black children.⁸⁰ Bell and Ressler-Moyer are, of course, pointing out this problem in the context of litigation—where living clients with opinions and priorities stand before the lawyers and direct the goals of the process. The danger of ill-informed social architecting may be even more profound when outside the corners of litigation where lawyers are accountable to no one but their self-regulated profession.

This is especially important because the legal profession fails to reflect the populace. The profession remains 62% male and 81% White.⁸¹ Black lawyers make up only 5% of the active bar, Asian lawyers 5%, Hispanic lawyers 6% and Native lawyers are so rare as to register at 0% in the ABA National Lawyer Population survey.⁸² This has been so for a long time.⁸³ Therefore, the bar often lacks perspectives relevant to policy decisions that affect non-White non-male people.

Finally, while lawyers have important skills and training relevant to improving the law and ensuring access to justice, legal training also has weaknesses. For one, some lawyers lack the numeracy necessary for policymaking.⁸⁴ Exposure to studies and statistics and instruction

⁷⁹ Tifanei (@Tifanei), Twitter (Dec. 8, 2022, 4:03 PM), <https://twitter.com/Tifanei/status/1600959271599976449>.

⁸⁰ Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE L. J.* 470, 512-16 (1976).

⁸¹ AMERICAN BAR ASSOCIATION, *ABA NATIONAL LAWYER POPULATION SURVEY: 10-YEAR TREND IN LAWYER DEMOGRAPHICS (2022)* https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2012-2022.pdf.

⁸² *Id.*

⁸³ As Cruz Reynoso noted in his own exploration of lawyers' public citizenship in 2002, Alexis de Tocqueville wrote in the 1830s, "It is at the bar or the bench that the American aristocracy is found." Cruz Reynoso, *Lawyer as Public Citizen*, 55 *ME. L. REV.* 336, 338 (2003) (citing ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA*).

⁸⁴ One study of law students' numeracy found law students had higher numeracy than expected given the common trope that lawyers are bad at math, but also found that numeracy affected students' legal decision making. Arden Rowell & Jessica Bregant, *Numeracy*

in how to read them may improve lawyers' competencies at these skills. Likewise, reading interdisciplinary literature related to their communities may make law students more adept at marshalling non-legal problem solving when necessary. If nothing else, lawyers who must face what they do not know about their own backyards may be humbler about their role as experts in their communities.

6. *Deconstructing Silos*

As a corollary to their acculturation to the legal profession in law school, students are sometimes encouraged to sort themselves into practice area specializations. Our own clinics—mine included—can be guilty of encouraging this, whether implicitly or explicitly, leaning into our subject-matter silos and resisting work that falls outside our practice specialty.⁸⁵ At the same time, most of us recognize that the problem that leads our client to seek our help—or in the case of most criminal punishment system clinics, be assigned our help—is connected to other issues in that person's life and in the life of their community.⁸⁶

Student attorneys can be encouraged to step out of silos through the lawyering and advocacy models adopted within the clinic, but they can also be encouraged to see the world through a wider frame by teaching them about substantive systems that affect how racial inequality and other forms of structural oppression manifest in their clients' lives.⁸⁷ Like Pinard's Justice-Connectivity model, grounded pedagogy offers a way forward for professors seeking to highlight not just how our nation and world, but own our communities, have been shaped and reshaped by pervasive and systemic injustices over generations.

When students have an understanding of the interconnected harms their clients face and the structures that inflict and reinforce those harms, it opens up space for discussions of more complex and

and Legal Decision Making, 46 ARIZ. ST. L.J. 191, 228 (2014). The study also notes that law has taken an "empirical turn," and that the level of numeracy needed to evaluate this work is much higher than that for which they were testing in the study. *Id.*

⁸⁵ Archer & Stewart, *supra* note 59 at 6:36, 7:20.

⁸⁶ See, e.g., Pinard, *supra* note 27 at 99-101 (discussing holistic lawyering in criminal defense practice); Sameer M. Ashar, *Deep Critique and Democratic Lawyering*, 104 CALIF. L. REV. 201, 230 (2016)(calling for multimodal lawyering practice across complex problems and subject matters); Joan S. Meier & Vivek Sankaran, *Breaking down the Silos That Harm Children: A Call to Child Welfare, Domestic Violence and Family Court Professionals*, 28 VA. J. SOC. POL'Y & L. 275, 276-77 (2021)(critiquing the harms of treating domestic violence and child maltreatment as separate, rather than interlocking, problems); Marisol Orihuela, *Crim-Imm Lawyering*, 34 GEO. IMMIGR. L.J. 613, 615 (2020)(advocating for an integrated model of criminal and immigration lawyering).

⁸⁷ Archer & Stewart, *supra* note 59 at 10:35.

impactful strategies to meet clients' needs and, along the way, advance justice for others. With a deep well of knowledge from which to draw, students can begin to see not just *that* their clients have overlapping problems that lie across different institutions but *why* they do—and how meeting the most apparent and immediate legal need may do little to empower the client in those other spheres. Grounded pedagogy hands students a tool to link clients' challenges together and search out justice rather than resolution.

III. THE PRAXIS OF GROUNDED PEDAGOGY

Having demonstrated the benefits of grounded pedagogy, I hope to provide an example of how the model can be put into practice and allay concerns that such a model asks too much of clinicians. This Part first illustrates how grounded pedagogy was implemented in the Juvenile Defense Clinic I directed at Louisiana State University Paul M. Hebert Law Center (LSU), where I first began to see the need for this type of teaching. I will then attempt to respond to potential objections to grounded pedagogy in a clinical setting.

A. *Grounding Pedagogy in Baton Rouge*

Grounded pedagogy offers clinical professors an interdisciplinary and interdependent method for linking past and present but does not require a complete redesign of a clinical curriculum overnight. My approach has been to start small and build my and my students' knowledge base as I go. To set the scene for my initial ventures into teaching with grounded pedagogy, I will describe the clinical program and student population that prompted me to adopt this approach. The classroom dynamics of the LSU Juvenile Defense Clinic were, of course, shaped by who enrolled. LSU clinics have an application process, though the number of applications and the number of students were often relatively close. The course had an eight-student maximum, which meant the demographics of a class could shift dramatically from one semester to another. The students who decided to take the clinic were often not representative of the student body at large in some important respects. In most semesters, the clinic enrolled more female-identifying students and slightly more students from out of state than their representation in the total student body. In addition, the clinic tended to have slightly more representation from students of color than the student body at large. The students all enrolled in the course for one semester and met weekly with me for their supervision meetings, in addition to meeting for three hours of seminar time focused on a combination of substantive law, professional responsibility, skills-building, simulation, and other related subjects.

For clinicians who work in cities in which they have lived for a long time or where they grew up, getting up to speed on the history of interconnected oppressions and resilience may not require much work—though I would caution that even in places where we have deep familiarity, our own positionality influences what we do and do not know. For others, like me, who have more recently moved to a place to work as a clinical professor, this may be a heavier lift. One key component to successfully navigating these histories is to reach out to others—whether law professors, colleagues across campus, or local community groups and historical societies—to determine what local knowledge has already been gathered. Another useful tool is simply exploring your own city—going to the parts of town that you don’t frequent, looking for historical markers that might exist, and observing what community resources are available across the landscape of your built environment. In any case, I suggest that experiments in grounded pedagogy can happen in small pieces, little by little. Beginning with areas tangential to but implicated by case work is one way to start—and one that is likely familiar to most lawyers.

East Baton Rouge, Louisiana is home to the state capital, Baton Rouge, the Southern University Human Jukebox, the LSU Tigers, and NBA YoungBoy. When I arrived in 2018, the city-parish was still recovering from the 2016 flood⁸⁸ and the shooting of Alton Sterling by Baton Rouge police.⁸⁹ When I began teaching in the Juvenile Defense Clinic, I knew the racial disparities in the juvenile legal system in which I’d be working were extreme because the city makes its detention statistics public,⁹⁰ but I didn’t know much more about how the city had come to be as it was.

Some of the first forays into what I now, but didn’t then, think of as the clinic’s grounded pedagogy were by one of my teaching partners, Jack Harrison. He explained to the students that they had an opportunity to serve the Baton Rouge community, but in doing so, he also explained why the families we served might not have especially warm feelings toward the university. Old South Baton Rouge, a his-

⁸⁸ WAFB Staff, *Five Years Later: Remembering Historic 2016 Flood in Baton Rouge*, WAFB (Aug. 12, 2021) <https://www.wafb.com/2021/08/12/five-years-later-remembering-historic-2016-flood-baton-rouge/>. The effects of the flood were racialized because of decades-long housing and tax policies that meant Black families were more likely to live in flood-prone areas. William Horne, *How Racial Segregation Exacerbates Flooding in Baton Rouge*, WASHINGTON POST (Nov. 12, 2019) <https://www.washingtonpost.com/outlook/2019/11/12/how-racial-segregation-exacerbates-flooding-baton-rouge/>.

⁸⁹ Associated Press, *Family of Alton Sterling Has Accepted \$4.5 Million for his Killing by Police*, NPR (Jun. 14, 2021) <https://www.npr.org/2021/06/14/1006216612/family-of-alton-sterling-has-accepted-4-5-million-for-his-killing-by-police>.

⁹⁰ City of Baton Rouge, *Juvenile Detention Center*, <https://www.brla.gov/411/Juvenile-Detention-Center>.

torically Black community that borders the LSU campus, had long been disinvested before being divided by the construction of I-10.⁹¹ Later, residents felt that the university used its people as a laboratory, rather than as a community with whom it might have a relationship.⁹²

As more strategic, intentional use of history and data became part of our curriculum, we integrated discussions of how the history of the city continued to influence our clients' lives. To deepen students' learning, I was lucky to be able to draw on the knowledge and work of my colleague, Christopher Tyson, who had grown up in Baton Rouge and was, at the time, leading Build Baton Rouge. He generously came and spoke in my classroom about the structural issues that underlay our clinic's work. In particular, he spoke about systemic disinvestment from North Baton Rouge, how highways had fractured Black communities and undermined Black businesses and generational wealth, and how basic utilities were often inaccessible for families like our clients'.

We also relied on data from the Office of Civil Rights to discuss how Baton Rouge's history of school segregation, interrupted by a 1981 busing order and overseen by federal court monitors until the early 2000s,⁹³ continued to influence the criminalization of children in school. Since public schools, disproportionately Black as compared to the overall Baton Rouge population, tended to rely more heavily on School Resource Officers and Zero Tolerance policies, Black children, particularly those with disabilities, were more likely to end up in court over school discipline issues. The data we presented helped students make connections they might not otherwise have seen and complicated the story of the school-to-prison pipeline, even as many of them were already familiar with the critique. It also resulted in students reflecting on their own experiences as high school students, the ways they converged or diverged with the experiences of the children they

⁹¹ Andrea Gallo, *Poverty Lives in LSU's Culturally and Historically Rich Neighbor*, REVILLE (Apr. 2, 2014) https://www.lsureville.com/poverty/poverty-lives-in-lsu-s-culturally-and-historically-rich-neighbor/article_94c05a46-bac9-11e3-a0e2-001a4bcf6878.html. Deborah N. Archer writes about the far-reaching effects of highway construction in previously thriving Black communities. Archer, *supra* note 39.

⁹² Gallo, *supra* note 91.

⁹³ Charles Lussier, *50 Years After Desegregation Order, Baton Rouge Schools Look Nothing Like What Was Intended*, *The Advocate* (Nov. 28, 2020) https://www.theadvocate.com/baton_rouge/news/education/50-years-after-desegregation-order-baton-rouge-schools-look-nothing-like-what-was-intended/article_1819e600-f902-11ea-997c-9b66b06467b5.html; WAFB, *East Baton Rouge Parish School Desegregation Timeline*, (Jun. 18, 2003) <https://www.wafb.com/story/1326535/east-baton-rouge-parish-school-desegregation-timeline/>. For an important oral history of Baton Rouge school desegregation from the perspective of school personnel, see Douglas Raymond Davis, *Crossing Over: An Oral History of the Desegregation Experience of Public School Personnel in East Baton Rouge Parish, Louisiana*, (1999)(Ph.D. dissertation)(on file with LSU Historical Dissertations and Theses).

represented, and how race, class, and other statuses collided to create those experiences.

In addition to the examples cited here, there are innumerable studies across disciplines that document the structural challenges that crop up in our clients' everyday lives. From long commutes to fewer pharmacies to closed public hospitals to racial discrimination in housing, education, and policing, understanding not just the most proximate issues that bring youth into the criminal legal system but also the things that leave them socially and economically precarious, helped students better understand the lived realities of their clients and gave them ideas about where to look when they wanted to better understand a different dimension of the problems their clients were facing. Grounded pedagogy provides an important tool to clinical legal educators that, when made explicit, can become a powerful tool for lawyers serving historically disadvantaged or low-income clients.

B. Time, Trade-Offs, and Expertise

Some clinicians may agree wholeheartedly that systemic and structural analyses are key to clinical lawyering but believe they lack the time, resources, or expertise to implement yet another goal in their curriculum, especially as they are often asked to carry much of the weight of schools skills training, diversity, equity, inclusion, and belonging (DEIB) initiatives, and antiracism commitments. Many of us have also watched in horror as history has been distorted in courts to our clients' detriment, and recognizing our own lack of training as historians, have no desire to make similar mistakes.⁹⁴

Likewise, disproportionate burdens of implementing curricular changes fall on those of us with the fewest resources and least institutional support. It may be more difficult to identify relationships with people who know local histories in smaller places or in law schools not connected to large research universities. For clinicians who must teach clinic or manage their cases on their own year-round, any extra time prepping means time spent away from other obligations. Historical and statistical research takes time away from activities that are more institutionally rewarded as well, like writing law review articles. Others, still, must fundraise to keep their clinics afloat, and grant-writing time is precious. Clinicians of color, particularly, may be vulnerable to the charge that this is just another way that they "make

⁹⁴ See American Historical Association, *History, The Supreme Court, and Dobbs v. Jackson: Joint Statement from the American Historical Association and the Organization of American Historians*, (Jul. 2022) [https://www.historians.org/news-and-advocacy/aha-advocacy/history-the-supreme-court-and-dobbs-v-jackson-joint-statement-from-the-aha-and-the-oah-\(july-2022\)](https://www.historians.org/news-and-advocacy/aha-advocacy/history-the-supreme-court-and-dobbs-v-jackson-joint-statement-from-the-aha-and-the-oah-(july-2022)).

everything about race.”

While seminar and supervision time always involves trade-offs, especially for those of us in one-semester clinics, grounded pedagogy can be tailored to any clinical setting. It can be implemented as part of orientation, giving a brief history of oppression and resistance in our cities as a way of locating students in the work they will do over the course of the semester. If students’ attention is called to structural problems in orientation, it can become easier to revisit those issues as they come up through case work and seminar study later in the semester.

In an impressive collaborative project, the University of Maryland – Baltimore (UMB) School of Social Work implemented a prerequisite course for all Master of Social Work students called “A Brief History of Oppression and Resistance,” which integrated lessons in how social work’s professional ethics required knowledge of their community’s history.⁹⁵ While UMB’s model is far more expansive than what most of us can hope to do in our individual clinics, it also suggests that one mechanism for integrating these histories into clinical teaching is by linking them to students’ professional ethics and values formation.

Student supervision is also ripe for forays into grounded pedagogy. When students offer surface-level analyses of systems affecting their clients’ lives or remark that a particular problem falls outside our professional role, we can offer information about how pervasive those problems are, ask about the implications of and reasons why we don’t think of those problems as within lawyers’ purview, and explore whether there are opportunities to expand our advocacy. Likewise, case work itself sometimes calls for the lessons of grounded pedagogy. In doing capital case work, I became accustomed to mining personal intergenerational histories of trauma, illness, and racism to help portray a client’s complete circumstances to decision makers. In those cases, we also turn to data about histories of racial oppression, industrial pollution, lead poisoning, and economic circumstances to bring a client’s struggles to life. This research can be assigned to students in individual cases as appropriate and opens the door to how the client’s circumstances are unique but also related to problems beyond his individual experience.

If the clinician feels unable to collect and retell these histories herself, guest speakers or trips to local museums or historical sites can serve as on-ramps into discussions about the continuities of history.

⁹⁵ Charles Schelle, *DEI Advancements Top School of Social Work Address*, UMB News (Oct. 4, 2021) <https://www.umaryland.edu/news/archived-news/october-2021/dei-advancements-top-school-of-social-work-address.php>.

Relationships with other academics, especially those focused on local history or histories of particular communities the clinic serves are tremendously enriching, both to the clinic's teaching and work but also, as I have found, on an individual level. For me, grounded pedagogy has been a gift and has enriched my scholarship, teaching, and advocacy. While I am sure I have not answered every objection, I hope I have conveyed the richness that grounded pedagogy can offer, even in the work of conceptualizing how it may contribute to a clinic's theory of change.

CONCLUSION

Grounded pedagogy encourages a greater understanding of the law and lawyers' place in the community and is of particular benefit to student attorneys who are trying to serve a client community for the first time. This type of deep work requires investment from the instructor, including work to build relationships and find ways to contribute back to those who invest so much in preserving local histories and organizing. By no means must grounded pedagogy remain in clinical classrooms, however. Perhaps with the development of these techniques in clinics and expansion of them to clinical program orientations or cross-clinic collaborations, we can encourage colleagues outside the clinical classroom to develop more nuanced stories of linkages between the doctrinal law they teach and the social structures and built environments where that law applies. For now, grounded pedagogy grants clinical professors an opportunity to intentionally and explicitly demonstrate to students that law practice without a commitment to deep learning about one's community lacks something fundamental.