POLITICAL LAWYERING FOR THE 21ST CENTURY

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ABSTRACT

Legal education purports to prepare the next generation of lawyers capable of tackling the urgent and complex social justice challenges of our time. But law schools are failing in that public promise. Clinical education offers the best opportunity to overcome those failings by teaching the skills lawyers need to tackle systemic and interlocking legal and social problems. But too often even clinical education falls short: it adheres to conventional pedagogical methodologies that are overly narrow and, in the end, limit students’ abilities to manage today’s complex racial and social justice issues. This Article contends that clinical education needs to embrace and reimagine political lawyering for the twenty-first century to prepare aspiring lawyers to tackle both new and chronic issues of injustice through a broad array of advocacy strategies.

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INTRODUCTION

Many law students are overwhelmed by injustice. When faced with the reality of systemic inequities, even the most committed students may surrender to hopelessness, despair, and inaction. This is not because they have stopped caring about injustice, but because they cannot envision a path from injustice to justice. Many do not have the tools to navigate systemic injustice or respond to interwoven legal and social ills. This Article contends that although clinical legal education provides an excellent opportunity to offer students the skills, experience, perspective, and confidence to grapple with today’s complex social justice issues, it has not sufficiently responded to the changing educational needs of our students by teaching law students how to most effectively utilize litigation alongside other tools of systemic reform advocacy.

How can clinical education prepare law students to navigate issues of systemic discrimination and injustice? Clinical teaching’s signature pedagogical vehicle involves students providing direct representation of individual clients in straightforward, manageable cases in which students focus on discrete legal issues, take full ownership of the case, and see it through from beginning to end.\(^1\) These cases train students to be creative problem solvers for individual clients. However, this model does not effectively prepare students to address and combat structural or chronic inequality. The individualized model also provides relatively limited opportunities for students to address the intellectual and skills-based challenges of lawyering on a larger scale.\(^2\) Complex cases allow students to explore the complicated relationship between justice, law, and politics.\(^3\) They introduce students to many of the skills needed to integrate rebellious or po-

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3. See Ashar, supra note 2, at 356–57.
political lawyering into their practice including working with others to brainstorm, design, and execute an advocacy strategy; helping to build and participate in a coalition; engaging in integrated advocacy; and analyzing the outside forces that help shape outcomes, including organizational capacity, challenges of enforcement, and potential political backlash.4

There is a longstanding and ongoing debate within the clinical legal education community about the relative merits of small individual cases versus larger impact advocacy matters.5 The parameters of this debate, coupled with an influential body of clinical scholarship criticizing impact litigation and the lawyers who bring it,6 have led members of the clinical teaching community to overreact to these critiques. Their overreactions include moving farther away from impact advocacy and strategic litigation rather than working to reconcile the legitimate concerns with the critical importance of impact advocacy as a tool for both systemic social change and legal education.7 Law schools also face internal and external pressures that affect their willingness to engage students in strategic litigation.8 The result is that important benefits of impact advocacy and strategic litigation have gotten lost or minimized.

Twenty years ago, social justice advocates rallied around political lawyering as a tool for more effective advocacy on behalf of marginalized communities.9 Political lawyering employs a systemic reform lens in case selection, advocacy strategy, and lawyering process, with a focus on legal

4. See Scott L. Cummings & Deborah L. Rhode, Public Interest Litigation: Insights from Theory and Practice, 36 Fordham Urb. L.J. 603, 615 (2009) (discussing the capacity of litigation to create social change, especially when coupled with other advocacy tools such as organizing and media strategies); Brian Glick, Two, Three, Many Rosas! Rebellious Lawyers and Progressive Activist Organizations, 23 Clinical L. Rev. 611, 611–12 (2017) (discussing the way a particular lawyer brings rebellious lawyering to her work).


7. See Gómez, supra note 6, at 644–46.

8. Maurer, supra note 5, at 893–94 (discussing pressures such as faculty burnout, client demand, and limited resources).

9. See Cummings & Rhode, supra note 4, at 606–09 (describing lawyering as a political tool as a then-recent development in social change legal practice and scholarship).
work done in service to both individual and collective goals. While litigation is central to political lawyering, political lawyers recognize that litigation, interdisciplinary collaboration, policy reform, and community organization must proceed together. Litigation is just one piece of a complex advocacy puzzle. However, clinical law professors have never fully grappled with how to employ this model.

Law professors today seeking to train the next generation of social justice advocates should expose students to the transformational potential of integrated advocacy—strategic litigation, community organizing, direct action, media strategies, and interdisciplinary collaboration proceeding together—in the fight for social change. Political lawyering can serve as a model. The National Association for the Advancement of Colored People’s (NAACP) strategy of building comprehensive advocacy campaigns to challenge racial and economic injustice helped launch the political lawyering movement in the last century. But political lawyering in the twenty-first century needs to do more. It needs to re-embrace and update the concept of integrated advocacy to help lawyers leverage a broad range of tools and perspectives to generate effective approaches to issues of injustice, both nascent and chronic. Charles Hamilton Houston, the architect of the strategy to challenge the racialized policy of “separate but equal,”


11. Despite modern confusion with the term “political” and the hyper-partisan nature of public debate, social justice advocates should not turn away from the phrase “political lawyering” or the values and vision it defines. Political lawyering acknowledges the truth that political, along with social and economic, forces are critical parts of legal analysis and challenging social injustice. The choice of which clients an attorney represents, or what types of cases an attorney handles on behalf of his clients, are political choices. The decision to represent oppressed and marginalized people and communities against entrenched interests is political work. Empowering individuals or community groups to stand up to the powerful forces of government and industry is political work. See generally Stephen Wisner & Robert Solomon, Law as Politics: A Response to Adam Babich, 11 CLINICAL L. REV. 473, 473–74, 477 (2005) (discussing how law school clinics make “political” choices by deciding which cases to take). A commitment to redress historic inadequacies in the enforcement of the legal rights of poor and marginalized people is political work. Attorneys working for systemic justice cannot run away from those political choices. In this sense, political lawyering is analogous to critical legal studies, both recognizing the link between law, politics, and justice, and challenging the purported neutrality of law. Political lawyering and critical legal studies both recognize that the law derives from a series of political interactions—law is not apolitical. See id. at 476–77. Furthermore, critical legal theorists believed that advocates must utilize this knowledge in service to social movements. See Ed Sparer, Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement, 36 STAN. L. REV. 509, 573 (1984) (advocating for a legal practice that is “located ‘out there,’ in the world outside the law school, where injustice, legal procedures and programs, incipient protest, and social movement constantly intermingle”). In this sense, political lawyering is arguably an extension of critical legal studies, implementing the promise of advocacy rooted in political reality and human experience.

whose life work challenged racial injustice in novel ways, famously explained that “a lawyer’s either a social engineer or he’s a parasite on society.”\(^\text{13}\) He defined social engineer as a “highly skilled, perceptive, sensitive lawyer who understood the Constitution of the United States and knew how to explore its uses in the solving of ‘problems of . . . local communities’ and in ‘bettering conditions of the underprivileged citizens.’”\(^\text{14}\) Law schools should set as an ambition teaching students to push boundaries in diagnosing and tackling the most pressing problems facing society.

The Article proceeds in four parts. Part I describes the journey many law students have taken, from believing that America was post-racial and colorblind to believing that racism is persistent and pervasive. I describe their struggle to see how the law can protect people who are marginalized and describe their feelings of being overwhelmed by the depth of injustice, the failure of our institutions, and the difficulty of achieving true equality. Part II discusses political lawyering and explores its potential to serve as a framework to teach students the legal and extra-legal advocacy skills necessary to tackle the complex challenges of systemic injustice and inequity. Part II also discusses the institutional barriers that limit the ability and willingness of legal educators to use the pedagogical potential of a political lawyering framework, including the idea that litigation is often harmful to the cause of justice because it puts the lawyer ahead of the community being served. Part II then examines whether the choice that clinical legal education makes to teach through small single-issue cases rather than through more complex vehicles offers students sufficient opportunities to develop the array of skills needed for integrated advocacy. Part III describes the ways that clinical legal education can reframe political lawyering to adapt to the current environment—complicated by the current partisan political climate—and the contemporary challenges of social justice advocacy. It also explores pedagogic strategies that clinical legal educators can employ to train effective twenty-first century social justice lawyers. Finally, Part IV presents a case study from my own teaching to elucidate the opportunities and challenges inherent in this approach to clinical teaching.

I. THE SWING OF A GIANT PENDULUM: FROM POST-RACIAL TO OVERWHELMED BY INJUSTICE

Several years ago, I was struggling to teach students who maintained that they were personally race blind and living in a post-racial\(^\text{15}\) world as


\(^{14}\) Id. at 84.

\(^{15}\) Post-racial philosophy asserts that race-conscious thinking is no longer necessary because we have finally “transcended [the] racial divisions of past generations.” Sumi Cho, Post-Racialism, 94 IOWA L. REV. 1589, 1601 (2009). In part, post-racialism is the belief that we have achieved colorblindness—indeed, America has twice elected a Black president—and we should not notice or act upon racial differences. Mario L. Barnes et al., A Post-Race Equal Protection?, 98 GEO. L.J. 967, 977
we worked together in a clinic with a docket that focused on civil rights cases directly involving allegations of racial discrimination. Many of my students looked to our substantial racial progress as evidence that racism was a problem of the past. They were attuned to the classic narrative of racial discrimination: the openly racist individual who calls a Black person a racial slur, or the employer who categorically refuses to hire Latinos, or the housing covenant that prohibits a homeowner from selling to a Black family. At that time, the racial discrimination they saw less often adhered to these classic narratives. It was often less explicit: there were fewer Bull Connors unleashing dogs or George Wallaces standing at the schoolhouse doors. As a result, the post-racial narrative seemed a reasonable way for my students to view the world.

During that time, many of my students suggested to me that racial discrimination exists only at the margins; that our society is fundamentally fair when it comes to issues of race. They appeared to believe that merely acknowledging the continued importance of race or the impact of racial discrimination violated the principle of colorblindness they were taught to embrace.

A lot has happened between my students’ post-racial days and today that has impacted the nation’s discourse around racial justice, swinging many law students and the nation to a decidedly “post-post-racial” outlook. While the election of President Barack Obama intensified claims that America was finally post-racial, the response and resistance to his

(2010); Trina Jones, Response, Anti-Discrimination Law in Peril?, 75 MO. L. REV. 423, 427–33 (2010); see also EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES 1 (2d ed. 2006). Post-racial norms also discourage ascribing social problems to racial discrimination; assert that the statute of limitations has expired on referencing the lingering impact that historical racial animus, slavery, Jim Crow, and de jure racial discrimination has on communities of color; and insist that America cannot finally move forward unless our ancestors are forgiven for their sins and America is absolved of its racist “past.” BONILLA-SILVA, supra; Cho, supra, at 1594–95.


20. Roy L. Brooks, Making the Case for Atonement in “Post-Racial America,” 14 J. GENDER RACE & JUST. 665, 665 (2011) (stating that commentators have characterized America as post-racial
presidency started to pull my students and many others out of their post-racial reverie. People began to recognize that the election of a Black president alone would not erase the cumulative impact of centuries of discrimination and inequality. After the past several years we were given vivid reminders that racial violence and discrimination were not in our past, contributing to a national awakening around the realities of racism. Most Americans have abandoned the post-racial slogan, recognizing the reality that race is still relevant and racial discrimination is alive and well.

A positive byproduct of these vivid incidents of racial injustice was a reawakening for many students who were lulled into believing that America had finally become “America.” These incidents have crystalized the role individual bias, systemic racism, implicit bias, and racial privilege play in all of our lives. Many of my students see these issues debated in the media and continue those debates in their own social and family circles. Rather than running against their understanding of social norms, engaging in conversations about bias, discrimination, and inequality is the new social norm. Students have also moved beyond conversations to action, engaging in protests and organizing against police brutality, economic inequality, and merciless enforcement of immigration laws.

This change in outlook has not only impacted their personal engagement but also their work on clinic cases. More students are open to exploring the role of race and acknowledge subtler manifestations of racism. They are willing to push the boundaries of the law and highlight the narrative of racial injustice. They no longer worry that raising racial justice issues in their cases violates legal norms, nor fear agitating the judge or opposing counsel by doing so.

after the election of the first African American president); Ian F. Haney López, Is the “Post” in Post-Racial the “Blind” in Colorblind?, 32 CARDOZO L. REV. 807, 807 (2011) (noting that after Obama’s election, commentators “marvel that we now live in a ‘post-racial’ America”).


23. See id.

24. In his poem, “Let America Be America Again,” Langston Hughes writes:
The land that never has been yet—
And yet must be—the land where every man is free.
The land that’s mine—the poor man’s, Indian’s, Negro’s, ME—

O, yes,
I say it plain,
America never was America to me,
And yet I swear this oath—
America will be!
Langston Hughes, Let America Be America Again, in LET AMERICA BE AMERICA AGAIN AND OTHER POEMS BY LANGSTON HUGHES 3, 6–7 (noting that the original version of the poem was published in the July 1936 Esquire).
In many ways, this impact on many law students is analogous to the impact Bloody Sunday had on the nation’s reaction to the Civil Rights Movement. During the Civil Rights Movement, protestors and lawyers were often branded “outside agitators” and “angry extremists” who needed to be dealt with so that “good people”—both Black and white—could go about their lives. Their demands were dismissed as those of Communist sympathizers who sought to challenge the American way of life, to disrupt American society, and to cause a revolution. Civil rights advocates were chastised for protesting against the country that had given them every opportunity for happiness and equality. On March 7, 1965, a day that would come to be known as Bloody Sunday, television cameras captured state troopers brutally assaulting peaceful civil rights marchers, directly challenging the narrative Americans had been fed of civil rights advocates as violent agitators with the brutal reality of white supremacy and Jim Crow. The events of Bloody Sunday, like other documented instances of brutality against civil rights protestors during that time, shocked millions of viewers and galvanized Congress to pass the Voting Rights Act of 1965.

Like a boil that can never be cured so long as it is covered up but must be opened with all its pus-flowing ugliness to the natural medicines of air and light, injustice must likewise be exposed, with all of the tension its exposing creates, to the light of human conscience and the air of national opinion before it can be cured.

26. Id. at 554.
27. See Jeanne Theoharis, Don’t Forget That Martin Luther King Jr. Was Once Denounced as an Extremist, TIME (Jan. 12, 2018, 12:29 PM), http://time.com/5099513/martin-luther-king-day-myths/ (“Activists like Martin Luther King, Rosa Parks and scores of their comrades were criticized by fellow citizens and targeted as ‘un-American’ . . . ”).
29. See Kenneth T. Andrews et al., The Legitimacy of Protest: Explaining White Southerners’ Attitudes Toward the Civil Rights Movement, 94 SOC. FORCE 1021, 1023–24 (2016); see also MARK ENGEL & PAUL ENGEL, THIS IS AN UPRISING: HOW NONVIOLENT REVOLT IS SHAPING THE TWENTY-FIRST CENTURY, at xi (2016) (“[T]he scenes of police dogs snapping at unarmed demonstrators and water cannons being opened on student marchers ‘convinced a plurality of whites, for the first time, to support the cause of black freedom.’”). After civil rights protestors first attempted to march over the Edmund Pettus Bridge and were beaten, Dr. Martin Luther King, Jr. had scolded Life magazine photographer Flip Schulke for trying to assist protestors knocked to the ground by authorities instead of snapping away. GENE ROBERTS & HANK KLIBANOFF, THE RACE BEAT: THE PRESS, THE CIVIL RIGHTS STRUGGLE, AND THE AWAKENING OF A NATION 383 (2006). “The world doesn’t know this happened, because you didn’t photograph it,” King told Schulke.” Id. Indeed, producing “a major media event that would tap the conscience of the country” was often a key consideration in campaigns during the Civil Rights Movement. ENGEL & ENGEL, supra, at ix; see also Martin Luther King, Jr., Letter from Birmingham City Jail, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING JR. 289, 295 (James M. Washington ed., 1986).
30. Martin Luther King, Jr., supra note 29.
Today, cell phone videos and social media have impacted society’s views of race relations in the way that photographers and television cameras did during the Civil Rights Movement. Rather than just hear about injustice filtered through the narrative of reporters and politicians, and then refiltered through their own beliefs about the nature of America, people witnessed the injustice and brutality themselves—unedited and unfiltered.31

Despite my students’ renewed passion for fighting for racial justice, my job as a clinical professor has not gotten easier. While the regular reminders of why they went to law school galvanize most of my students,32 many are simultaneously overwhelmed. They feel like they are drowning in a sea of injustice. For law students, this phenomenon is particularly troubling because they are losing faith in government and the systems designed to fight discrimination, questioning whether they can do anything to effect meaningful change, and losing faith that meaningful change through the law is even possible. To many, the problems seem too big, too complex, and too entrenched. They are exhausted by injustice and unable to see how law can protect communities who are victimized or marginalized.

Citizens losing faith in their government is not a new phenomenon. Indeed, for many decades, public trust in political leaders and institutions in nearly all advanced industrial democracies has been eroding.33 Social forces, including changing citizen values and political expectations, are contributing to the loss of trust and confidence.34 In July 1979, President Jimmy Carter diagnosed America with a crisis of confidence.35 At the time, the nation was anxious about soaring energy costs and rising interest rates, and many Americans had a pessimistic view of the country’s future.36 In a speech he delivered on July 15, 1979, President Carter reflected on what he believed brought America to this point of crisis:

I want to speak to you first tonight about a subject even more serious than energy or inflation. I want to talk to you right now about a fundamental threat to American democracy. I do not mean our political and

31. See Debusmann, supra note 19.
32. I, too, appreciate the impact that the current attacks on civil rights and racial justice have had on helping public interest students remain committed to a career in public interest law. In Letter to a Law Student Interested in Social Justice, Professor William Quigley recounts the time one of his students says to him, “[T]he first thing I lost in law school was the reason that I came.” William P. Quigley, Letter to a Law Student Interested in Social Justice, 1 DEPaul J. FOR SOC. JUST. 7, 8 (2007). Professor Quigley calls this statement, which expresses a sentiment shared by many public interest law students, “a simple and powerful indictment of legal education and of our legal profession” and “a caution to those of us who want to practice social justice lawyering.” Id. at 9.
34. Id. at 134.
36. Id.
Civil liberties. They will endure. And I do not refer to the outward strength of America, a nation that is at peace tonight everywhere in the world, with unmatched economic power and military might. The threat is nearly invisible in ordinary ways. It is a crisis of confidence. It is a crisis that strikes at the very heart and soul and spirit of our national will. We can see this crisis in the growing doubt about the meaning of our own lives and in the loss of a unity of purpose for our nation.

....

We were sure that ours was a nation of the ballot, not the bullet, until the murders of John Kennedy and Robert Kennedy and Martin Luther King, Jr. We were taught that our armies were always invincible and our causes were always just, only to suffer the agony of Vietnam. We respected the Presidency as a place of honor until the shock of Watergate.37

Today, many of my students are experiencing a similar crisis of confidence. Our conversations reveal students who question their own ability to fight for social justice in these changing times. They often feel overwhelmed and powerless in the face of the problems they are seeing, and believe they are ill-equipped to act. They participate in protests and direct action campaigns but recognize that those efforts alone are not enough to change problems that are systemic, widespread, and entrenched. They question their role as advocates. For many, they are seeing firsthand, for the first time, the pivotal role that the courts are playing to protect the rights of individuals in the face of a hostile or unwilling Administration. But they simultaneously feel hesitant about turning to the courts because of many of the conflicting things they have learned to believe about litigation. Finally, many question their training to creatively use the law to enforce fundamental rights and to challenge injustice. The students are overwhelmed in part because they are focused on the individual acts and individual actors. They do not know how to analyze and challenge the systemic, complex nature of these problems.

II. POLITICAL LAWYERING AS A FRAMEWORK FOR LEGAL EDUCATION

Social vision is part of the operating ethos of self-conscious law practice. The fact that most law practice is not done self-consciously is simply a function of the degree to which most law practice serves the status quo. Self-conscious practice appears to be less important, and is always less destabilizing, when it serves what is, rather than what ought to be.

- Gary Bellow38

37. Id.
38. Bellow, supra note 10, at 301.
In 1996, the Harvard Civil Rights–Civil Liberties Law Review published a symposium on “political lawyering”: a model of social justice advocacy that integrates legal advocacy and political mobilization by linking courtroom advocacy to community education, mobilization, and organizing. The symposium, honoring Gary Bellow, a leading political lawyer of the time and one of the architects of clinical legal education, explored the potential for political lawyering to respond to the social justice challenges of the moment. At the time of the symposium, progressive scholars and activists believed that America was in a period of retrenchment on civil rights and were in search of sources of hope. In the face of waning public support for the poor and disenfranchised, both financially and philosophically, one of the biggest dangers social justice advocates faced was despair about the possibility of progress. Bellow contended that the nation’s ideological reconfiguration created a potentially debilitating doubt among lawyer—activists who, faced with declining avenues for change, had “embraced a far too constricted definition of both the possible and desirable in law-oriented interventions than is, in fact, dictated by the rightward turn of national and local politics.” With victory harder to achieve, he insisted that lawyers who embraced and reimagined political lawyering would advance the fight for equality more effectively.

The purpose of political lawyering is not to advance a particular partisan agenda: it is to represent disenfranchised communities against the forces of oppression. While difficult to define precisely, political lawyers take a politicized and value-oriented approach to legal work done in service to both individual and collective goals, embracing politics in the classical sense as a concern “with what it means to be a human being; what is the best life for a human being; and . . . the ways in which we can order our living together so that good human lives will emerge.” Practically, political lawyers use a systemic reform lens in decisions about case selection, advocacy strategy, and the lawyering process. Political lawyers think about the relationship between law, politics, and justice; use the

41. Id. at 291–92; see also Peter H. Schuck, Public Law Litigation and Social Reform, 102 Yale L.J. 1763, 1763 (1993) (book review) (arguing that the 1992 election raised central issues in the “relationship between law, courts, and lawyering, on the one hand, and politics and policymaking, on the other”).
42. Minow, Political Lawyering, supra note 40, at 292–93.
43. Bellow, supra note 10, at 306.
44. Id.
45. See supra note 39 and accompanying text.
46. Bellow, supra note 10, at 300.
48. See Ashar, supra note 2, at 406–07.
49. See id. at 357.
law to animate fundamental change in society and to alter the allocation of power and opportunity; and enable those individuals and communities with little power to claim and enjoy their rights. Political lawyers also take advantage of opportunities to influence the perceptions and behaviors of those in power. Finally, political lawyers empower individuals and communities by providing them with competent legal advocacy but do not confine themselves to one mode of advocacy in their quest for structural change. Instead, political lawyers use integrated advocacy strategies, including litigation, legislative advocacy, public education, media, and social-science research, assessing the efficacy and impact of each tool in service to a long-term vision of equality and solidarity.

A. A Role for Political Lawyering in Clinical Legal Education

In his essay, Gary Bellow described several examples of his experience as a political lawyer. He reflected that:

Certainly, if one focuses on the strategies employed in these examples, few uniformities emerge. In some of the efforts, we sought rule changes or injunctive relief against a particular practice on behalf of an identified class. In other situations, we pursued aggregate results by filing large numbers of individual cases. Some strategies were carried out in the courts. At other times we ignored litigation entirely in favor of bureaucratic maneuvering and community and union organizing. Even when pursuing litigation, we often placed far greater emphasis on mobilizing and educating clients, or strengthening the entities and organizations that represented them, than on judicial outcomes. And always, we employed the lawsuit, whether pushed to conclusion or not, as a vehicle for gathering information, positioning adversaries, asserting bargaining leverage, and adding to the continuing process of definition and designation that occurs in any conflict.

50. See Minow, Political Lawyering, supra note 40, at 288; Wizner & Solomon, supra note 11, at 473–77.
51. See Bellow, supra note 10, at 297; Minow, Political Lawyering, supra note 40, at 289–90.
52. See Wizner & Solomon, supra note 11, at 473.
54. Bellow, supra note 10, at 297–99 (noting examples of political lawyering in housing, children’s rights, benefit and entitlement reforms, over-policing, and employment).
55. Id. at 300.
The parallels between the challenges social justice lawyers faced in the 1980s and 1990s and those that law students committed to social justice face today are evident. As discussed earlier, law students’ own despair about the enormity of the fight for justice can compromise their ability to recognize and tackle chronic injustice. Like the earlier generation of political lawyers Bellow described, many law students today find it difficult to believe in the possibility of change let alone its likelihood. Inexperience challenging systemic legal problems exacerbates their skepticism. They recognize that the advocacy tools they have learned are insufficient to solve today’s problems, which fuels their sense of doubt.

To help expand their understanding of what may be possible, law students, particularly those interested in continuing the fight for racial justice, should be taught to understand and embrace the goals, strategies, and tools of political lawyering—reimagined for current times. Clinical professors need not adopt political lawyering wholesale as the only or primary approach to teaching lawyering skills and legal advocacy. Indeed, one of the challenges social justice advocates face is unnecessarily limiting the understanding of what it means to be a good lawyer. Rather, clinical professors should explore political lawyering as one framework they can use to help struggling law students find direction and inspiration, as well as to create a sense of connection to the work of the social justice lawyers who preceded them. As Bellow wrote:

Doubt and defeatism, in the sense of overly pessimistic assessments of action possibilities, are recurrent experiences in oppositional politics, whomever the political actors may be. They require hard-headed assessments of what works and why; a willingness to relinquish strategies and goals born of different possibilities and particularities . . . . Doubt and defeatism produce powerful spirals that can only be broken by acts of will and leaps of faith. 57

To be an effective political lawyer, an advocate must have a “profound willingness and ability to learn about and respond to the complexity

56. There is, of course, long-standing tension accompanying the use of the term “social justice.” In using the term in this article, I recognize that both lawyers on the left and on the right of the ideological spectrum believe they are engaged in social justice advocacy. If one defines social justice lawyering as advocacy tied to a vision of a substantially different social order, see Sarat, supra note 53, at 364–66, or advocacy that challenges prevailing distributions of power or resources, see Wizner & Solomon, supra note 11, at 473, both conservative and progressive advocates alike are arguably engaged in social justice advocacy. Accordingly, law school clinics with social vision may be guided by a diverse set of values, for example the Religious Liberty Clinic at Stanford Law School. Religious Liberty Clinic, STAN. L. SCH., https://law.stanford.edu/religious-liberty-clinic (last visited Mar. 10, 2019). Moreover, models of social justice advocacy, like political lawyering, may have been pioneered on the left, but are not exclusive to progressive advocates. See DAVID COLE, ENGINES OF LIBERTY: THE POWER OF CITIZEN ACTIVISTS TO MAKE CONSTITUTIONAL LAW 99–100 (2016) (discussing the work of advocates to advance Second Amendment rights); AUSTIN SARAT & STUART A. SCHEINGOLD, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING 3 (2004) (discussing the many facets of cause lawyering).
57. Bellow, supra note 10, at 306.
of real human beings in ever-shifting legal, economic, and social worlds.

So, while political lawyering is certainly grounded in effective legal advocacy, it demands more than conventional legal skills. The political lawyer values deep personal involvement as a necessary component in addressing and tackling legal issues. That personal engagement can take many forms, but, at a minimum, involves countless conversations, collaborative brainstorming, comparing shared experiences, and adding empathy and commonality to enhance legal analysis and political judgment. It also requires lawyers to advocate with a clear vision of what justice looks like because effective political lawyering “reach[es] not only across large numbers of people, but from the present into some altered version of the future.”

Learning to combine savvy legal analysis with broad engagement, a deeper understanding of the complexity of the problems faced by impacted communities, and a vision of an altered and more just future can help lead to real solutions and overcome passivity and paralysis.

The Civil Rights Movement, with its blended advocacy strategies, pulling a variety of levers to enable immediate or systemic change, offers one example of political lawyering. Visionary leaders helped give voice to the frustrations and demands of the community, while other leaders acted as tacticians to devise, plan, and coordinate the strategy. There were sustained and strategic protests to draw public attention to injustices, demand change, and apply political pressure. The strategic use of litigation led gradually to the establishment of the building blocks for systemic change. Finally, civil rights lawyers worked to enshrine litigation victories in legislation.

While the goal of political lawyering is to empower and advance the rights of disadvantaged communities, the lawyers who engage in it also reap significant benefits. One scholar effectively articulated some of these benefits utilizing religious terms, asserting that political lawyering can provide hope and direction to advocates by providing a faith—“[a] story, an account of a rational hope that provides people with an image and principles for realizing the sort of lives they ought to live.” Political lawyering can also provide what Christians refer to as a gospel—a story that explains and inspires. The faith and gospel of political lawyering can help

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58. Minow, Political Lawyering, supra note 40, at 290.
59. See id.
60. Bellow, supra note 10, at 304.
61. See Minow, Political Lawyering, supra note 40, at 290.
62. ENGEL & ENGEL, supra note 29, at ix–xi.
63. See id. at ix–x.
66. Cicchino, supra note 47, at 313.
67. Id.
lead law students who are overwhelmed by injustice to a place of deeper understanding and more effective advocacy. But law students must learn how to understand, articulate, and deploy that faith and gospel in service of others.

B. Institutional Constraints on Political Lawyering

Complex social justice problems offer robust opportunities to teach students about the law and lawyering, and legal clinics serve as an important vehicle to bring these complex lawyering experiences into the classroom. As law schools reevaluate the nature and function of legal education in light of market forces, they should also give attention to the role of justice in the curriculum and the potential for law school clinics to be centers for incubation of new and evolving models of lawyering. By embracing political lawyering and encouraging engagement with complex and novel social justice issues, clinical legal education can operate as a “generator of new visions for legal practice” on behalf of poor and marginalized communities. Of course, the choice to embrace political lawyering is not without hurdles or concern.

1. Ideological, Financial, and Pedagogical Pressures

When clinical and experiential learning programs have moved away from an access to justice model—with a focus on the immediate challenges facing individual clients—to a broader social justice model focused on systemic reform and community empowerment, they have often encountered criticism from inside and outside of the legal academy. First, critics have raised concerns that integrated advocacy in support of systemic reform may elevate the profile of faculty and law schools but detract from an appropriate focus on the educational goals of individual students. Other...
ers have identified the potential for violating the separation between pedagogy and partisan politics by engaging students in political struggles.\textsuperscript{73} And still other critics have identified a risk that faculty will impose their personal political perspectives on their students.\textsuperscript{74} As discussed in more detail below, integrated advocacy strategies can, in fact, serve as valuable clinical teaching tools that promote broader student learning and support important pedagogical goals. By contrast, exclusive reliance on individual representation offers limited opportunities to teach essential lawyering skills, including the skills critical to identifying and challenging systemic injustice.\textsuperscript{75}

Every clinical program makes a political decision in deciding which cases to take or not to take, as each decision has political implications.\textsuperscript{76} Accepting cases in criminal justice, immigration, environmental justice, and international human rights, for example, involves political choices, regardless of whether the issues are addressed through individual representation or systemic reform efforts.\textsuperscript{77} Clinics will continue to represent individual clients who are the victims of poverty, discrimination, and disenfranchisement. These cases do not suddenly become inappropriate teaching tools because the lawyer aggregates those claims and utilizes complementary strategies to seek systemic, community-wide redress. Lawyers must be free to use all available means to challenge the marginalization of their clients, including strategic litigation, legislative advocacy, and other advocacy strategies designed to achieve systemic reform. If law schools intend to fulfill their promise to prepare law students to tackle urgent and pressing challenges, then they must teach students to identify and address interlocking legal and social problems.

Still, while law schools have educational ambitions, they also face financial demands that might affect their educational choices. In fact, those financial realities may motivate schools to avoid disputes that expose them to financial risk and to a potential loss of good will that a clinic’s involvement in controversial cases might occasion.\textsuperscript{78} While that institutional concern certainly has merit, it is not unique to political lawyering on behalf of clients. Whenever a law school chooses to represent clients, there is the potential for someone to take issue with the school’s choice of side or client. Similarly, law schools may experience external pressures from government, private entities, donors, and alumni to prevent the use of law

\textsuperscript{73} See Ashar, supra note 68, at 208–09.
\textsuperscript{74} See Valdez Carey, supra note 71.
\textsuperscript{75} See Reingold, supra note 5, at 556–57 (discussing the merits of “hard,” complex cases).
\textsuperscript{76} See, e.g., Ashar, supra note 68, at 208–09 (noting decisions in taking a case are value-oriented and can invite backlash and other consequences).
\textsuperscript{77} Wizner & Solomon, supra note 11, at 477.
school resources to challenge powerful corporate or government interests. These critiques evoke the successful challenges to prevent the Legal Services Corporation from engaging in class action litigation on behalf of their clients and the long history of efforts to limit the means through which clinics can represent their clients. History is replete with examples of external attacks on law schools’ clinical efforts. From the 1968 attack by state legislators on the clinical program at the University of Mississippi School of Law over its involvement in a school desegregation suit, to the early 1980s threats to limit the activities of the University of Connecticut’s criminal defense clinic after the clinic successfully challenged a provision of the state’s death penalty statute, to the 2017 decision of the University of North Carolina Board of Governors to defund the law school’s Center for Civil Rights’ work to challenge systemic and racialized barriers to equality, law schools have experienced public scrutiny and scorn for their client and case selection decisions.

A clinical faculty member’s case-selection decisions should not be without limits or guidelines. For example, limited resources and specific pedagogical objectives will necessarily dictate which cases will be considered appropriate. However, making case-selection decisions on the basis of pedagogical choices differs fundamentally from decisions based on ideological pressure from outside forces. The latter raises fundamental questions of academic freedom and other professional responsibilities. Clinical faculty members must maintain some independence to choose cases and clients that meet that clinic’s educational and public service goals.

2. The Anti-Litigation Bias

Political lawyers have long embraced litigation’s potential to achieve “radical extensions of democracy, equality, and racial justice” in addition to structural and cultural change. Law reform and structural change are important aspects of political lawyering. Accordingly, impact litigation

79. See id. at 1989; Kuehn & McCormack, supra note 71, at 59–60.
80. Margulies, supra note 12, at 493.
81. See Kuehn & Joy, supra note 78, at 1974 (looking at the historical trends of critiques against law school clinics for representing certain clients); see also Valdez Carey, supra note 71, at 532 (recounting several challenges to the work of specific clinical programs engaged in systemic reform efforts).
83. Id. at 1977.
86. See id. at 1975.
87. Bellow, supra note 10, at 300.
on behalf of marginalized people and communities has long been an important tool for political lawyers. Indeed, the NAACP’s fight against racial segregation and inequality in the 1940s and 1950s represents an early example of political lawyering that strategically deployed litigation as part of a comprehensive effort to resist oppression and advance equality. Political lawyering never embraced an exaggerated belief that litigation should be the centerpiece of the fight for equality. Instead, like the advocates at the heart of the NAACP’s desegregation strategy, political lawyers “recognized that litigation, interdisciplinary collaboration, and community organization had to proceed together.”

In the late 1990s and early 2000s, political and cultural shifts affected the strategies many political lawyers employed. New federal restrictions on the use of impact litigation and legislative advocacy by legal services lawyers were a cause of significant concern. Where impact litigation remained a possibility, many political lawyers worried that litigation offered a dangerous path. Although federal courts had proved supportive in the fight for racial justice in the 1960s, progressive lawyers in later years worried that a more conservative judiciary was just as likely—if not more inclined—to set back progressive movements. This concern proved correct, particularly in the area of racial justice. Decades of conservative appointments to the federal bench led to a series of legal setbacks that

89. See Margulies, supra note 12, at 493.
90. Minow, Political Lawyering, supra note 40, at 289; see also Jack Greenberg, Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution 510–11 (1994); Yeazell, supra note 64, at 1976 (“Brown and the civil rights litigation movement helped create a renewed belief, not just in the law, but more specifically in litigation as a noble calling and as an avenue for social change.”).
91. See Margulies, supra note 12.
92. Id.
93. See Cummings & Rhode, supra note 4, at 607 (“Congress prevented federally-funded legal services lawyers from bringing class actions, lobbying, collecting attorney’s fees, and engaging in political advocacy; the Supreme Court limited attorney’s fee awards in civil rights and environmental cases; and some states capped attorney’s fees and damages awards, restricted the ability of law school clinics to undertake controversial cases.”); Martha Minow, Lawyering at the Margins: Lawyering for Human Dignity, 11 Am. U. J. Gender Soc. Pol’y & L. 143, 148–49 (2003) [hereinafter Minow, Lawyering for Human Dignity] (discussing increased barriers to accessing the courts due to budget cuts in the Legal Services corporation as well as the privatization of government programs); Minow, Political Lawyering, supra note 40, at 291 (noting that courts are now “more likely to set back progressive causes”).
94. See Minow, Political Lawyering, supra note 40, at 290–91.
95. Id. at 291.
96. Id.; see also Herman Schwartz, Packing the Courts: The Conservative Campaign to Rewrite the Constitution 150 (1988).
97. Minow, Lawyering for Human Dignity, supra note 93, at 146–47; see, e.g., Alexander v. Sandoval, 532 U.S. 275, 293 (2001) (holding no private right of action exists to enforce regulations under Title VI of the Civil Rights Act of 1964); Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995) (holding that strict scrutiny must apply to all racial classifications); Missouri v. Jenkins, 515 U.S. 70, 88–89 (1995) (limiting power of federal district court to remedy school segregation); Shaw v. Reno, 509 U.S. 630, 657–58 (1993) (restricting the ability of legislatures to create majority-minority election districts that provide minority voters with an opportunity to elect their candidate of choice); Wards Cove Packing Co. v. Antonio, 490 U.S. 642, 657 (1989) (dramatically limiting the circumstances under which victims of an alleged job discrimination could bring and win cases); Wessmann v. Gittens, 160 F.3d 790, 808–09 (1st Cir. 1998) (striking down the limited use of race in admissions
effectively limited the federal courts as a venue for the redress of illegal discrimination. Many advocates also believed that while progressive lawyers were toiling away in the courtroom and achieving only minor success, conservative advocacy groups had mastered the more efficacious strategy of building powerful grassroots constituencies.

As courts increased their hostility toward civil rights and racial justice, making victory and progress more difficult, political lawyers turned away from litigation and began focusing on alternative methods to fight for social change. While the labels attached to models of social justice advocacy have changed, the fundamental purpose of the work remained the same. Political lawyering gave way to rebellious lawyering, community lawyering, and movement lawyering. These models embrace different visions of advocacy that may vary in the emphasis placed on the law’s comparative advantage relative to other strategic methodologies and tools. But, they all acknowledge the bond that joins client, community, and lawyer together in a common enterprise: empowering those without power and fighting for justice and equality. The deemphasis on strategic litigation brought real benefits. It encouraged lawyers to work as a team and challenged lawyers to ensure that those marginalized by injustice played a central role both as the focus of the advocacy and as participants in the advocacy, all positive turns regardless of the motivation.

This evolution came at a cost. What began as a tactical deemphasis on litigation evolved into a philosophical bias against litigation as a social to elite public high school); Hopwood v. Texas, 78 F.3d 932, 934 (5th Cir. 1996) (successful challenge to University’s affirmative action program).

98. See, e.g., Sylvia A. Law, Some Reflections on Goldberg v. Kelly at Twenty Years, 56 Brook. L. Rev. 805, 829 (1990) ("An important lesson of the Kelly litigation is that social change depends upon social movement. With such movement, change is possible, in the streets and welfare offices, in the legislatures, or in the state courts, even if federal judges remain committed to the parochial, elitist values for which they were selected.").

99. See Minow, Political Lawyering, supra note 40, at 291.

100. While progressive lawyers turned away from litigation, conservative advocates and groups effectively and successfully embraced the role of the courts, spearheading many of the cases that halted civil rights initiatives and reforms, taking a long-term approach and drawing into question earlier established equality frameworks. See, e.g., Fisher v. Univ. of Tex. at Austin, 570 U.S. 297, 301–03 (2013) (vacating the Court of Appeals decision of upholding the University’s admission plan designed to increase racial minority enrollment); Shelby Cty. v. Holder, 570 U.S. 529, 556–57 (2013) (striking down a key provision of the Voting Rights Act of 1965); Ricci v. DeStefano, 557 U.S. 557, 563 (2009) (striking race-conscious actions taken to avoid potential racially disparate impact); District of Columbia v. Heller, 554 U.S. 570, 595 (2008) (holding that the Second Amendment protects an individual’s right to own a firearm); Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 747–48 (2007) (limiting use of race in school integration plan).

101. See Minow, Lawyering for Human Dignity, supra note 93, at 155, 157–58, 169.

102. See, e.g., GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE 29 (1992) (Rebellious lawyers “draw on marginalized experiences, neglected intuitions and dormant imagination to redefine what clients, lawyers, and others can do to change their lives.”). With each evolution, lawyering models moved farther away from litigation and embraced a more constrained role for lawyers.

103. Minow, Lawyering for Human Dignity, supra note 93, at 153 (advocating that those who are marginalized should be central actors).
justice advocacy tool. Initially, social justice lawyers turned away from impact litigation because they feared that an increasingly conservative judiciary would use these cases as an opportunity to further roll back prior gains. However, with time, the reluctance to pursue litigation became less a reaction to circumstance and more a matter of principle. Some writers argued that litigation is a tool through which lawyers usurp the authority of already marginalized clients by setting their priorities for them. And, they claimed that litigation disempowers communities because of the unbalanced power dynamics between social justice lawyers and marginalized clients. An example of this critical conversation is the dialogue around rebellious lawyering, one of the most prominent models for social change advocacy. Gerald López theorized rebellious lawyering as an advocacy model that would empower “poor clients through grassroots, community-based advocacy [that was] facilitated by lawyers.” Rebellious lawyering emphasizes concepts of community organization, mobilization, and “deprofessionalization.” It calls on lawyers to reflect on critical elements of the attorney–client relationship, such as the power dynamics, that may further oppress members of marginalized communities.

Through rebellious lawyering, Professor López advances the belief that although lawyers should help solve problems facing the poor, lawyers are

104. See Scott L. Cummings, Rethinking the Foundational Critiques of Lawyers in Social Movements, 85 FORDHAM L. REV. 1987, 1987 (2017) (arguing that “foundational critiques of progressive lawyering” that began during the Civil Rights Movement have persisted, “fostering profound skepticism about what lawyers can do ‘for and to’ social movements”); see generally Lani Guinier & Gerald Torres, Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements, 123 YALE L.J. 2740, 2756 (2014) (explaining the role of litigation in social justice movements). Concerns with the role of litigation did not exclusively begin as a part of the political lawyering discussion, nor do they focus exclusively on the potential impact on the lawyer–client dynamic. See MICHAEL A. REBELL & ARTHUR R. BLOCK, EDUCATIONAL POLICY MAKING AND THE COURTS: AN EMPIRICAL STUDY OF JUDICIAL ACTIVISM 14–15 (1982) (analyzing the role of courts in making educational policy); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (2d ed. 2008) (exploring whether courts can affect widespread social change); Derrick Bell, Racial Equality: Progressives’ Passion for the Unattainable, 94 VA. L. REV. 495, 503 (2008) (book review) (arguing that some civil rights litigation victories held little immediate value for many Black people); see also Schack, supra note 41, at 1764 (discussing the role of courts and litigation in law reform);

105. See supra notes 95–98 and accompanying text. Arguably, progressive advocates will soon face the difficult choices they faced in the 1990s as the federal judiciary is poised to become increasingly conservative. Still, progressive advocates cannot cede the federal judiciary to advocates who seek to advance ideologically conservative causes. The ability to weigh the risks, challenges, and benefits of advocacy in the court versus those of other advocacy tools is a skill that law students should develop. Moreover, concerns about the ideological direction of the federal judiciary should not foreclose advocacy in state courts, which presumably will continue to reflect the ideological diversity of the state.

106. See, e.g., López, supra note 102, at 37; Ashar, supra note 2, at 357–58; Calmore, supra note 6, at 1956; Wizner & Solomon, supra note 11, at 477.

107. López, supra note 102, at 5 (arguing that lawyers often reconstruct the power dynamics they are supposed to be fighting).


110. Id. at 951.
not the preeminent problem solvers in that relationship and should defer to clients and communities.111 Professor López prefers that lawyers focus on “teaching self-help and lay lawyering” to empower communities to help themselves.112

Professor López espoused his positive vision of rebellious lawyering as an alternative to what he calls regnant lawyering.113 Professor López asserts that regnant lawyers are convinced that they need to be the primary and active leaders in their representation of poor people.114 Regnant lawyers find community education and empowerment to be of only marginal importance.115 The result is that the regnant lawyer dominates the attorney–client relationship, giving little voice to the needs or concerns of the client. Finally, Professor López believes that regnant lawyers have little practical understanding of legal, political, and social structures.116

Rebellious lawyering raised important questions about the role litigation should play in social justice movements. Professor López was certainly skeptical that “legal technicians” could make a meaningful contribution117 and questioned whether lawyers turned to litigation because it was best for the client or because the lawyer wanted to play “hero.”118 All political lawyers should ask themselves these questions when considering impact litigation as part of integrated advocacy on behalf of marginalized communities.119 Over time, commentators began to equate regnant lawyering with impact litigation.120 Some social justice advocates argued that impact litigation perpetuated racism because white lawyers used it as a tool to impose their views on communities of color.121 Others advanced images of litigators as outsiders who used poor communities as guinea pigs in their social justice experiments, warning that “[p]racticing law in the community is not a tourist adventure and, therefore, we must eschew the routine of the autonomous, interloping advocate who dreams up cases in the home office and then tests them on the community.”122 Litigation, and systemic reform litigation in particular, became synonymous with regnant lawyering: an “enemy” of social justice and not a tool fit for people committed to fighting for enduring social change.123

111. López, supra note 102, at 70.
112. Id. at 70.
113. Id. at 23–24.
114. Id. at 24.
115. Id.
116. Id.
117. Id. at 46–47.
118. Id. at 24.
119. See id. at 23–24.
120. See supra notes 1, 5, 104 and accompanying text (offering critiques of impact litigation and non-individual cases in failing to represent the voices of individual clients).
121. See generally Lee & Lee, supra note 6.
122. Calmore, supra note 6, at 1955–56.
123. See Cummings, supra note 104 (arguing that “foundational critiques of progressive lawyering” that began during the Civil Rights Movement have persisted, “fostering profound skepticism
Derrick Bell advanced one of the most prominent and influential critiques of litigation.\textsuperscript{124} Although he acknowledged the success of the first decade of school desegregation litigation, Professor Bell questioned the lack of lawyer accountability to marginalized communities.\textsuperscript{125} According to Professor Bell, NAACP lawyers continued to employ an advocacy strategy that focused on structural school desegregation, even while many members of the Black community preferred a strategy that would have focused on building quality, though segregated, neighborhood schools.\textsuperscript{126} He cautioned that social justice advocates failed to acknowledge growing conflicts between what they believed were the long-range goals for their clients and the client’s evolving interests and needs.\textsuperscript{127} In the end, many members of the impacted community were left feeling marginalized.\textsuperscript{128} Professor Bell also suggested that “civil rights lawyers, like their more candid poverty law colleagues, are making decisions, setting priorities, and undertaking responsibilities that should be determined by their clients and shaped by the community.”\textsuperscript{129}

Certainly, many lawyers who use litigation as a tool for social change are regnant and paternalistic, but these qualities are not inherent in litigators working with marginalized communities.\textsuperscript{130} Social justice advocates should have a healthy skepticism about the ability of the law, standing alone, to achieve lasting social change.\textsuperscript{131} They should always engage in advocacy that moves the client from the margins to the center.\textsuperscript{132} But, advocates should also resist pressure to narrow the definition of what it means to be a great lawyer. The discussion of social justice advocacy far


\textsuperscript{125} Bell, supra note 124, at 471, 477.

\textsuperscript{126} Id. at 482–85.

\textsuperscript{127} Id. at 492.

\textsuperscript{128} See id. at 485–87.

\textsuperscript{129} Id. at 512.

\textsuperscript{130} See Cummings, supra note 104, at 1994; Tremblay, supra note 109, at 949–50 (arguing that many of rebellious lawyering’s critiques should be directed at structures and institutions rather than individual poverty lawyers).

\textsuperscript{131} See Cummings & Rhode, supra note 4, at 609 (arguing that discussions of the efficacy of litigation should start from the premise “that litigation has limits”). For example, David Cole argues that as we examine developments in constitutional law, “to focus on federal judges and courtroom lawyers is to miss much of the story—and probably the most important part.” COLE, supra note 56, at 9.

\textsuperscript{132} See Minow, Lawyer for Human Dignity, supra note 93, at 154, 157 (encouraging social justice lawyers to “center” the client in their work by bridging any distance between themselves and the client and aligning themselves with the “client’s hopes and dreams”); see also Michelle S. Jacobs, People from the Footnotes: The Missing Element in Client-Centered Counseling, 27 GOLDEN GATE U. L. REV. 345, 353–61 (1997) (identifying competencies around race and culture necessary to center the client in one’s work).
too often collapses the framework not only of political lawyering but also of all advocacy on behalf of poor and marginalized individuals and communities into one that largely rejects the important role that strategic litigation has played and can continue to play in the fight for social justice. The ubiquity of the anti-litigation narrative encourages progressive law students—and many clinical law professors—to dismiss litigation and its potential for challenging bias and discrimination. Many progressive law students are afraid to become the professionals they envisioned they would be. They do not want to become the discrimination tourist derided in the literature.

In response to the critique of social justice litigation, there is a growing body of scholarship supporting the conclusion that litigation is a key strategy for protecting and expanding the rights of marginalized communities. This body of scholarship acknowledges that litigation has played a critical role in the struggle for justice and equality, and that it continues to be “an imperfect but indispensable strategy of social change.” Finally, these scholars examine social justice litigation in the context of the tradeoffs of different forms of activism, evaluating its potential in relation to available alternatives and revealing a new understanding of the link between law and social justice reform.

The demonization of strategic litigation that persists in many progressive lawyering circles not only contributes to student paralysis but also gives students a false sense of what it means to engage in systemic reform litigation on behalf of clients and the community. Many critiques of impact litigation neither provide an accurate depiction of the potential of that litigation nor educate students on how to apply principles of political lawyering to that litigation. Indeed, while Professor Bell prominently critiqued the role of strategic litigation in social justice movements, he also believed that litigation:

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133. In conversations with law students, many have shared with me that before coming to law school they thought they would be litigators, but now understand that litigation will be counterproductive to their ultimate social justice goals and are not sure what to do with their careers or how to feel about the work of civil rights organizations. Indeed, while they celebrated litigation victories against Donald Trump’s Executive Order banning travel from seven Muslim countries, Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017), many simultaneously questioned whether litigation was the best option to lead the response to growing anti-immigration sentiment.

134. See Cummings, supra note 104, at 1987, 2015; Cummings & Rhode, supra note 4, at 609.

135. Cummings & Rhode, supra note 4, at 604; see also Austin Sarat & Stuart Scheingold, Cause Lawyering and the Reproduction of Professional Authority: An Introduction, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 3, 24–25 (Austin Sarat & Stuart Scheingold eds., 1998); SARAT & SCHEINGOLD, supra note 56, at 1–2; Austin Sarat & Stuart Scheingold, What Cause Lawyers Do for, and to, Social Movements: An Introduction, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 1, 1 (Austin Sarat & Stuart A. Scheingold eds., 2006).

136. See Cummings & Rhode, supra note 4, at 612 (asserting that “evaluations of litigation always need to consider the risks and feasibility of alternatives”); Austin Sarat & Stuart Scheingold, Introduction: The Dynamics of Cause Lawyering—Constraints and Opportunities, in THE WORLDS CAUSE LAWYERS MAKE 1, 4–5 (Austin Sarat & Stuart Scheingold eds., 2005) [hereinafter Sarat & Scheingold, The Dynamics of Cause Lawyering].
can be an important means of calling attention to perceived injustice; more important... litigation presents opportunities for improving the weak economic and political position which renders the black community vulnerable to the specific injustices the litigation is intended to correct. Litigation can and should serve lawyer and client, as a community-organizing tool, an educational forum, a means of obtaining data, a method of exercising political leverage, and a rallying point for public support.\textsuperscript{137}

Law students should be taught that lawyers who engage in systemic reform litigation, just like any other lawyer, can and should work with and on behalf of those victimized by discrimination. Indeed, despite the one-dimensional picture often painted for law students, not all progressive lawyers believe that “self-help” should be the focus of lawyering on behalf of poor or marginalized communities.\textsuperscript{138} Moreover, despite some advocates’ image of the “interloping advocate who dreams up cases in the home office and then tests them on the community,”\textsuperscript{139} not all progressive lawyers believe that it is inappropriate for lawyers to independently analyze social justice issues and develop ideas about ways to use the law to bring society closer to justice. Indeed,

it is artificially constricting to conceive of lawyers as exclusively or primarily problem-solvers. [Lawyers] are not only social mechanics who wait in [their] shops for people to come to [them] with problems to be fixed. [Lawyers] should sometimes create problems. [Lawyers] should sometimes deliver problems by translating people’s anger and hurt and insistence on justice into political as well as legal action.\textsuperscript{140}

Many great advocacy ideas bubble up from the community, but equally valid ideas can come from advocates who have been working with and for those communities (or are members of the community themselves). Progressive advocates must be prepared to provide legal assistance to clients even when those clients do not wish to be active participants in the advocacy. That is embracing the core meaning of client-centered lawyering. Rather than being taught to avoid litigation at all costs, progressive

\textsuperscript{137} Bell, supra note 124, at 513.
\textsuperscript{138} Minow, Lawyering for Human Dignity, supra note 93, at 155 (“Sometimes, the best way to honor the dignity of disempowered persons is not to expect them to advocate for themselves, but instead to ensure their representation by the toughest, most high-powered lawyer available—just as a wealthy corporate client can expect.”); Cicchino, supra note 47, at 312 (“[E]ffective political lawyering demands that we be realistic about the limits of our clients’ self-understanding and about client autonomy.”).
\textsuperscript{139} Calmore, supra note 6, at 1956.
\textsuperscript{140} Milner S. Ball, Power from the People, 92 MICH. L. REV. 1725, 1729 (1994); see also Clark D. Cunningham, The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse, 77 CORNELL L. REV. 1298, 1299–1300 (1992).
law students need to learn how they can partner with victims of discrimination and be accountable to those victims in the context of litigation. They need to learn the skills of collaborative leadership in law.\textsuperscript{141}

Advocates should also be careful about advancing a one-size-fits-all model of advocacy,\textsuperscript{142} lumping everything together under the “social justice advocacy” moniker or work on behalf of the “poor and disadvantaged,” and assuming that one advocacy approach will work to solve all problems. Sometimes using social justice to refer to all of the work being done on behalf of poor and marginalized communities is the right thing to do—it unifies all of those who are fighting injustice on varying fronts. But, using the general phrase can be harmful when discussing what advocacy tools will be most effective. Given the many forms that discrimination takes and the many communities subject to discrimination, law professors should caution students to be suspicious about broad generalizations about what clients always need or do not need and what lawyers always should or should not do. There is no universal theory about how to represent disadvantaged or marginalized people. What works in the fight for economic justice may not be the best strategy for achieving racial justice.\textsuperscript{143} And what may be appropriate to help one victim of racial discrimination may not work for another. There is room for all types of advocates and advocacy.\textsuperscript{144} All advocates can be a part of the circle of human concern.\textsuperscript{145}

\begin{thebibliography}{99}
\bibitem{141} As Deborah Rhode writes, “It is ironic that the occupation most responsible for producing America’s leaders has focused so little attention on that role. . . . Even when they do not occupy top positions in their workplaces, lawyers lead teams, committees, task forces, and charitable initiatives,” yet the topic of leadership is largely missing in legal education. \textsc{Deborah L. Rhode, Lawyers as Leaders 1} (2013). \textit{But see} Paula A. Monopoli & Susan G. McCarty, \textit{Introduction, in Law and Leadership: Integrating Leadership Studies into the Law School Curriculum} 1–2 (Paula Monopoli & Susan McCarty eds., 2013).

\bibitem{142} \textit{See} Cummings & Rhode, \textit{supra} note 4, at 606 (rejecting the idea that there is a single “right” answer about what does or does not advance social justice).

\bibitem{143} Indeed, some scholars have described rebellious lawyering as belonging to poverty lawyers. \textit{See, e.g.}, López, \textit{supra} note 102, at 20 (describing these practitioners as “poverty lawyers”); Anthony V. Alfieri, \textit{Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative}, 100 \textit{Yale L.J.} 2107, 2119 (1991). While the fights for economic justice and racial justice are closely linked, they are distinct and not all people who seek racial justice are poor. Unlike advocacy for economic equality, much of racial justice advocacy is creatively enforcing the existing legal structure passed to protect against racial discrimination. Voting rights litigation is a modern example of the relentless enforcement of that legal right through litigation in partnership with community organizing.

\bibitem{144} As Brian Glick points out, lawyers are often “needed in our traditional roles—to defend criminal prosecutions and civil suits, mount affirmative litigation, draft legislation, set up legal entities and ensure their regulatory compliance.” Glick, \textit{supra} note 4, at 614. And, given impact litigation’s potential to “make law,” some social justice advocates believe it is “the most rational, efficient way to address inequality.” Margulies, \textit{supra} note 12, at 497. However, changing the laws on the books is only a first step in the fight for justice; the underlying ideologies must be challenges as well. \textit{Id.} at 511. This is a fact recognized and practiced by many organizations dedicated to systemic reform. For example, the NAACP Legal Defense and Educational Fund or Center for Constitutional Rights work to engage deeply with communities, including through community organizing and public education campaigns. \textit{See} \textit{id.} at 509–10.

\end{thebibliography}
3. The Preferred Model: Individual Representation

Representing individual clients in small, manageable cases where students retain primary control has long been the preferred vehicle for teaching students to effectively address their clients’ legal problems.\footnote{146} But many clinical programs focused on representing individual clients are not providing opportunities for students to learn how to utilize the law effectively to challenge systemic discrimination. In addition to teaching foundational lawyering skills like client interviewing, counseling, and fact investigation, clinics should also provide opportunities to teach complex and multidimensional lawyering skills.\footnote{147} As this Section demonstrates, the clinical community’s disproportionate focus on micro-lawyering skills may be hampering the ability of students to focus on the political and social functions of the law and the structural dimensions of the problems facing client communities.\footnote{148}

The founding goals of clinical legal education were to provide law students the opportunity to learn the skills necessary to practice law and provide quality legal services to the poor.\footnote{149} These origins closely shaped the development of clinical pedagogy and its current emphasis on individual representation.\footnote{150} Small cases allow law students to have the primary relationship with the client, manage the case from beginning to end, and analyze relatively straightforward legal issues—all core principles of clinical pedagogy.\footnote{151} The reliance on small cases also provides students with the invaluable opportunity to reflect deeply on the choices advocates make in creating and maintaining lawyer–client relationships.\footnote{152}

In the early years of the clinical legal education movement, most clinical law professors came from legal services organizations and brought with them a preference for the individual client representation that dominated legal services practice.\footnote{153} Clinical professors embody their learning...
objectives in their case selection and must prioritize some lawyering skills over others because there are limits to what can be learned in a single clinical course. In focusing on small cases, early clinicians understandably prioritized the skills they knew to be critical to their own work on behalf of poor individuals.

Today, clinical professors come to teaching from a broader array of professional backgrounds and unsurprisingly want to bring their experiences into the classroom. They should be encouraged to make clinic design choices and set educational goals for their students based on the skills and knowledge they know to be necessary for success in their own practice areas. To many, the approaches clinical professors adopted at the beginning of the clinical legal education movement are not the answers to the questions and challenges our students face today. An exclusive reliance on small cases, though they are extremely valuable teaching tools, fails many students because small cases offer limited opportunities to teach a broad array of lawyering skills, including the skills critical to challenging systemic injustice. Of course, small cases have value—for the client and student both. But, in the new normal, they are often not enough to carry the weight of change.

“Social justice work is rarely easy, clean, or pretty . . . .” It can be downright messy and clinics should not shield students from its messiness. Working on larger, more complex cases exposes students to more of the skills necessary to fight for structural change. They can learn to exercise intellectual autonomy and to integrate conceptual thinking in their advocacy. They teach students how to achieve client objectives while also advancing broader social justice goals. Finally, in complex cases where litigation is a viable option, students are exposed to fundamental questions such as what claims to assert, where to file, who to represent, and who to sue. Students cannot be practice ready without some exposure to these skills.

Some clinical legal educators have questioned the traditional model of clinical education, arguing instead for engaging in work with a broader social justice impact. One basis for this argument is that “case-centered

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155. Chavkin, supra note 1, at 253.
156. See Frank Askin, A Law School Where Students Don’t Just Learn the Law: They Help Make the Law, 51 Rutgers L. Rev. 855, 856 (1999) (arguing that clinical legal education should offer students an opportunity “to have real social impact and create new and better law”).
158. See Kruse, supra note 1, at 410.
159. See Reingold, supra note 5, at 568–69.
160. See, e.g., Ashar, supra note 2, at 357; Askin, supra note 156; Reingold, supra note 5, at 546, 556.
clinics are primarily accountable to students and law school administrators, rather than clients, and fail to serve political collectives.”  

In this conception, clinics prioritize student interests over community interests by accepting only those cases over which students will have full responsibility and rejecting more complex cases where the students’ limited skills would make that impossible. This is done even when the communities’ interests—and thus the cause of social justice—would be better served by the more complex cases.  

While this critique is framed in terms of benefits to students versus losses to social justice, there is indeed a loss to students as well.

Clinical legal educators who are teaching the next generation of social and racial justice advocates should help them understand the current legal framework for equality and develop the ability to utilize that framework creatively on behalf of their clients. But, students also have to learn to transcend and reimagine current institutional frames, conceptualize avenues for relief, create new narratives, and pull together the building blocks of a new legal framework to establish rights that did not exist before. Indeed, many of the challenges facing America today require reimagining justice from the ground up. Future social justice advocates must have social vision—“vision-making work is fundamental to the activist strategies political lawyering inevitably embodies.”

Charles Hamilton Houston not only taught his law students to conceive that separate can never be equal, he taught them how to develop a legal theory in support of that idea. He then taught them to develop an integrated advocacy strategy, including complex litigation, to give that theory legal effect. “The process of linking strategy to political vision always requires adaptation and a detailed understanding of particular contexts for its effectiveness.” Moreover, as students move from theory to legal reality, they have to understand the skills required to genuinely engage the community. Indeed, “[i]t is no simple matter to reconcile commitment to both clients and a larger social vision or to navigate the boundary between the insider and outsider communities in which political lawyers work.

There are, of course, trade-offs involved in engaging clinical students in impact advocacy, both for the student and the teacher. Clinical faculty

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161. See, e.g., Ashar, supra note 2, at 387.
162. Id. at 368–69.
163. Bellow, supra note 10, at 302.
164. Mكنيل, supra note 13, at 84–85.
165. Id.
166. Bellow, supra note 10, at 306.
167. Id. at 305.
168. See infra notes 206–13 and accompanying text for discussion of some of my own challenges in integrating impact work into my clinic; see also Kruse, supra note 1, at 405, 411.
have expressed concerns that systemic reform work and complex advocacy matters require too high a cost to core pedagogical goals.\textsuperscript{169} There is a sense that “big cases” may achieve important social justice goals but use student tuition to finance political goals without attendant benefits to the students’ education.\textsuperscript{170} According to this line of critique, if the fundamental goal of clinical legal education is the education of students, clinical education needs to continue to focus on small cases that allow for complete student ownership, with a student seeing the case through from beginning to end.\textsuperscript{171} Many clinicians believe that complete student ownership from beginning to end is critical to an effective clinical experience and that this level of student ownership is not possible in big cases.\textsuperscript{172}

The problem with this argument is that giving clinic students sole control of a case from beginning to end is not the only way to maximize student learning. Close collaboration with clinical educators, fellow students, clients, and others offers rich opportunities for student learning. Working with those collaborators to evaluate a complex problem, consider whether a litigation strategy is appropriate, and implement that strategy is precisely the kind of experience students will need to master in political lawyering practice. If clinical programs want to ensure that social justice students develop the skills and values necessary to be responsible and effective lawyers before they graduate, students should have the opportunity to be exposed to advocacy models beyond, or in addition to,\textsuperscript{173} individual client representation. Otherwise, clinics are missing an opportunity to teach students to embrace and engage in social justice work broadly.

\textsuperscript{169} Michael Meltsner & Philip G. Schrag, \textit{Report from a CLEPR Colony}, 76 \textit{Columbia L. Rev.} 581, 623–24 (1976) (concluding that impact litigation requires pedagogical compromises that makes it undesirable for clinical legal education); Valdez Carey, \textit{supra} note 71, at 521–22 (expressing the belief that law reform matters does not allow students to take a primary role and clients may be “guinea pigs”).

\textsuperscript{170} Chavkin, \textit{supra} note 1, at 262–63, 265.

\textsuperscript{171} Id. at 265; see also Reingold, \textit{supra} note 5, at 549 (“Most members of the bar and most educators would probably agree with the proposition that law students are likely to learn the most if they can handle a case from start to finish . . . .”).

\textsuperscript{172} See, e.g., Carpenter, \textit{supra} note 147, at 64 (“Where the supervisor serves as client, expert, or collaborator, a risk is that students lose the full benefit of experiential learning through ownership and role assumption.”); Chavkin, \textit{supra} note 1, at 262. While some view a clinic student collaborating with clinical professors as a hindrance and detriment to clinical learning, it actually can be a benefit and teach new skills.

\textsuperscript{173} A clinic could also diversify learning opportunities by taking on a mix of individual and impact advocacy cases, scaffolding the exposure to important advocacy skills. Indeed, litigation and advocacy on behalf of individuals is an important part of political lawyering. Smaller cases and impact litigation go hand in hand; while law reform is crucial, it is only a first step. Individual cases are necessary to vindicate an established legal right. Ultimately, political lawyers impact structural change not just by overcoming or creating precedent, but through the myriad of every day interactions which determine whether subordinated people have more power to affect their futures. See Margulies, \textit{supra} note 12, at 497–98. Moreover, individual cases can also reveal patterns in need of a systemic response.
III. REFRAMING POLITICAL LAWYERING FOR THE TWENTY-FIRST CENTURY

Modern social problems present new challenges for law students hoping to engage in political lawyering. As such, they must be given the foundation that will enable them to evaluate the tools an earlier generation of political lawyers used to determine how to employ them in light of changed conditions. Social justice advocates have destabilized the dominant understanding of lawyering. Modern political lawyering must continue that process of destabilization, explore alternatives to the way lawyers marshal social and economic capital, make strategic decisions, and transgress current structures and constraints. Law students learning to advocate in the political lawyering model should question attempts to constrict the understanding of what lawyering tools can be employed in service to communities and in furtherance of justice.

A. Expanding the Advocacy Perspective

At the core of Professor Bell’s critique of the latter stages of the campaign to desegregate public education is the divergence he saw between the interests of NAACP lawyers and those of certain segments of the Black community that evolved after the launch of the school desegregation campaign. In many ways, this divergence was the result of a failure to communicate. To effectively engage in the integrated advocacy central to political lawyering, those engaged in individual representation, strategic litigation, legislative advocacy, community organizing, public education, direct action, and other forms of advocacy must remain in constant conversation. They must also use their work to facilitate a constant dialogue between the community, courts, government agencies, and legislatures at the local, state, and national levels.

As part of this ongoing conversation, twenty-first century political justice lawyers must endeavor to expand the perspectives of the public, judges, politicians, and government administrators beyond dated conceptions of justice. Powerful narratives can break through opposition and resistance, shaping the way society views equality and justice. In Goldberg v. Kelly, advocates disrupted the stock story of greedy welfare recipients trying to take advantage of a fair and responsive bureaucracy by telling human stories that introduced the Court “to the day-to-day realities of the lives of poor people—struggling to provide a bare minimum of basic necessities for themselves and their children, while confronting an inefficient, unpredictable, and often hostile welfare bureaucracy.”

174. Sarat & Scheingold, The Dynamics of Cause Lawyering, supra note 136, at 3.
175. See id. at 4.
176. Bell, supra note 124, at 488.
178. Stephen Wizner, Passion in Legal Argument and Judicial Decisionmaking: A Comment on Goldberg v. Kelly, 10 CARDozo L. REV. 179, 180 (1988); see also William J. Brennan, Jr., Reason,
political justice lawyers must focus not only on changing legal rules but also on inspiring political action, educating the public, publicizing injustice, and shaping public debate. Developing the ability to craft legal and factual narratives that are not only respectful and true to the client’s or community’s experiences and demands for justice but that can also persuade and influence others in a variety of contexts is a critically important skill. 179

Modern political justice lawyering must account for the changing economic dynamics within otherwise marginalized communities. Growing income inequality within communities of color mirrors the growing wealth gap within American society as a whole. 180 Not only may the experience of race or gender discrimination, for example, differ for people of varying wealth, the advocacy strategies needed to engage those communities may be different as well, depending on the structural barriers to engagement created or exacerbated by economic inequality. Political justice lawyers must wrestle with the complicated economic dynamics within communities of color, remain mindful that widening economic inequality can impact collectivity, and authentically engage with the full breadth of those communities if their advocacy is to be effective.

Modern political justice lawyering must also include strategies to support and harness the “disruptive power” 181 of widespread youth-led movements, collective action, and protest. Many justice movements seek to harness disruption or provoke unrest to redistribute power or force reforms. 182 While disruption through protest has been essential in bringing light and voice to modern social justice issues such as police brutality (through, for example, the Black Lives Matter movement) 183 and economic inequality (through, for example, Occupy Wall Street), 184 protests standing alone may not be enough to lead to structural reform or transformational change. Without a viable replacement to fill the void left by a disrupted system—a clear demand for meaningful change and a plan for

Passion, and “The Progress of the Law,” 42 Rec. Ass’n B. City N.Y. 948, 971–72 (1987); Law, supra note 98, at 815–16, 829 (discussing the strategy of putting together an advocacy campaign to create rights for poor people and change the narrative around individual liberty and social inequality).

179. Certainly, clients have a right to control their own stories and how those stories are told and used. However, advocates can work with clients and communities to retell the experiences of those who have been victimized and marginalized by discrimination.


182. See id. at ix–xii.


implementing that change—the disruptive power may never translate to justice.

Finally, modern political justice lawyers must be able to integrate both positive and negative conceptions of equality into their advocacy. Many modern social justice problems are difficult or impossible to fully resolve through court orders.\textsuperscript{185} Moreover, courts have shown a growing reluctance to issue sweeping injunctive relief that leaves school systems or police departments under the management of courts or court-appointed special masters.\textsuperscript{186} While utilizing courts to prohibit or limit actions that infringe on individual rights, advocates should be able to articulate a positive vision of what stakeholders can or should do to better promote, protect, and respect those rights. In the context of police reform, victory may take the form of a judicial finding that a police officer used excessive force or an award of money damages.\textsuperscript{187} However, even the broadest injunctive relief may struggle to translate into systemic reform—a positive conception of just and effective policing.

\textbf{B. Expanding the Lawyer’s Toolbox}

To effect systemic change, law students must learn what levers are available to achieve that change, and when, where, and how to pull each lever. Political lawyers must be skilled at integrated advocacy, using individual and strategic litigation to establish and protect rights, traditional and social media engagement to shape and promote the narrative, community organizing to mobilize effected communities and their allies, and interdisciplinary collaborations to bring the work of other disciplines to bear on creating policies and practices to replace illegal and repressive practices. An effective political lawyer has many tools in her toolbox and knows when and how to use each one. In addition to these tools, social justice law students should learn to break systemic problems into their smaller components, identify advocacy alternatives and evaluate the costs and benefits of each approach, and resolve instances in which an attorney’s own social justice values and vision collide.

\textbf{1. Breaking Apart Systemic Issues}

Political justice lawyers must be able to break apart a systemic problem into manageable components. The complexity of social problems can

\textsuperscript{185} See \textit{supra} notes 87–99 and accompanying text (discussing the difficulty of social justice reforms through the courts).

\textsuperscript{186} See \textit{supra} note 95 and accompanying text.

cause law students and even experienced political lawyers to become overwhelmed. In describing his work challenging U.S. military and economic interventions abroad, civil rights advocate and law professor Jules Lobel wrote of this process: “Our foreign-policy litigation became a sort of Sisyphean quest as we maneuvered through a hazy maze cluttered with gates. Each gate we unlocked led to yet another that blocked our path, with the elusive goal of judicial relief always shrouded in the twilight mist of the never-ending maze.”

Pulling apart a larger, systemic problem into its smaller components can help elucidate options for advocacy. An instructive example is the use of excessive force by police officers against people of color. Every week seems to bring a new video featuring graphic police violence against Black men and women. Law students are frequently outraged by these incidents. But the sheer frequency of these videos and lack of repercussions for perpetrators overwhelm those students just as often. What can be done about a problem so big and so pervasive?

To move toward justice, advocates must be able to break apart the forces that came together to lead to that moment of violence: intentional discrimination, implicit bias, ineffective training, racial segregation, lack of economic opportunity, the over policing of minority communities, and the failure to invest in noncriminal justice interventions that adequately respond to homelessness, mental illness, and drug addiction. None of these component problems are easily addressed, but breaking them apart is more manageable—and more realistic—than acting as though there is a single lever that will solve the problem. After identifying the component problems, advocates can select one and repeat the process of breaking down that problem until they get to a point of entry for their advocacy.

2. Identifying Advocacy Alternatives

As discussed earlier, political justice lawyering embraces litigation, community organizing, interdisciplinary collaboration, legislative reform, public education, direct action, and other forms of advocacy to achieve social change. After parsing the underlying issues, lawyers need to identify what a lawyer can and should do on behalf of impacted communities and individuals, and this includes determining the most effective advocacy approach. Advocates must also strategize about what can be achieved in the short term versus the long term. The fight for justice is a marathon, not a sprint. Many law students experience frustration with advocacy because they expect immediate justice now. They have read the opinion in Brown v. Board of Education but forget that the decision was the result of a

188. JULES LOBEL, SUCCESS WITHOUT VICTORY: LOST LEGAL BATTLES AND THE LONG ROAD TO JUSTICE IN AMERICA 2–3 (2003).
189. See, e.g., Devon Carbado, Blue-on-Black Violence: A Provisional Model of Some of the Causes, 104 GEO. L.J. 1479, 1483–84 (2016).
decades-long advocacy strategy. Indeed, the decision itself was no magic wand, as the country continues to work to give full effect to the decision seventy years hence.

Advocates cannot only fight for change they will see in their lifetime, they must also fight for the future. Change did not happen overnight in Brown and lasting change cannot happen overnight today. Small victories can be building blocks for systemic reform, and advocates must learn to see the benefit of short-term responsiveness as a component of long-term advocacy.

Many lawyers subscribe to the American culture of success, with its uncompromising focus on immediate accomplishments and victories. However, those interested in social justice must adjust their expectations. Many pivotal civil rights victories were made possible by the seemingly hopeless cases that were brought, and lost, before them. In the fight for justice, “[s]uccess inheres in the creation of a tradition, of a commitment to struggle, of a narrative of resistance that can inspire others similarly to resist.”

Again, Professor Lobel’s words are instructive:

[T]he current commitment of civil rights groups, women’s groups, and gay and lesbian groups to a legal discourse and to legal activism to protect their rights stems in part from the willingness of activists in political and social movements in the nineteenth century to fight for rights, even when they realized the courts would be unsympathetic.

Professor Lobel also wrote about Helmuth James Von Moltke, who served as legal advisor to the German Armed Services until he was executed in 1945 by Nazis: “In battle after losing legal battle to protect the rights of Poles, to save Jews, and to oppose German troops’ war crimes, he made it clear that he struggled not just to win in the moment but to build a future.”


193. See Richard M. Huber, The American Idea of Success 16 (1971) (describing Benjamin Franklin and his numerous accomplishments as the American ideal of success); Lobel, supra note 188, at 7 (explaining that American society’s focus on present successes alienates us from concerns of past and future generations).

194. See Lobel, supra note 188, at 6 (citing examples like the abolitionists mounting legal challenges to slavery in the 1840s, women’s rights advocates fighting for a broad interpretation of the Fourteenth Amendment, and Plessy v. Ferguson, 163 U.S. 537 (1896)).

195. Id. at 7.

196. Id. at 6.

197. Id. at 8.
3. Creating a Hierarchy of Values

Advocates challenging complex social justice problems can find it difficult to identify the correct solution when one of their social justice values is in conflict with another. A simple example: a social justice lawyer’s demands for swift justice for the victim of police brutality may conflict with the lawyer’s belief in the officer’s fundamental right to due process and a fair trial. While social justice lawyers regularly face these dilemmas, law students are not often forced to struggle through them to resolution in real-world scenarios. Law students do not regularly have to make difficult advocacy decisions and manage the fallout from the choices they make in resolving the conflict. Engaging in complex cases can force students to work through conflicts, helping them to articulate and sharpen their beliefs and goals, and forcing them to clearly define what justice means broadly and in the specific context presented.

Lawyers advocating in the tradition of political lawyering anticipate the inevitable conflict between rights, and must seek to resolve these conflicts through a “hierarchy of values.” Moreover, in creating the hierarchy, the perspectives of those directly impacted and marginalized should be elevated “[b]ecause it is in listening to and standing with the victims of injustice that the need for critical thinking and action become clear.”

One articulation of a hierarchy of values asserts,

[P]eople must be valued more than property. Human rights must be valued more than property rights. Minimum standards of living must be valued more than the privileges that come from being well-off. Basic freedom for all must be valued more than the privileged liberty of accumulated political, social and economic power. Finally, the goal of increasing the political, social, and economic power of those who are left out of the current arrangements must be valued more than the preservation of the existing order that created and maintains unjust privilege.

C. Rethinking the Role of the Clinical Law Professor: Moving from Expert to Colleague

Law students can learn a new dimension of lawyering by watching their clinical law professor work through innovative social justice challenges alongside them as colleagues. This is an opportunity not often presented in work on small cases where the clinical professor is so deeply steeped in the doctrine and process, that the case is largely routine to her and she can predict what is to come and adjust supervision strategies accordingly. However, when engaged in political lawyering on complex...
and novel legal issues, both the student and the teacher may be on new ground that transforms the nature of the student–teacher relationship.

A colleague often speaks about acknowledging the persona professors take on when they teach and how that persona embodies who they want to be in the classroom—essentially, whenever law professors teach they establish a character. The persona that a clinical professor adopts can have a profound effect on the students because the character is the means by which the teacher subtly models for the student—without necessarily ever saying so—the professional the teacher holds herself to be and the student may yet become. In working on complex matters where the advocacy strategy is unclear, the clinical professor makes himself vulnerable by inviting students to witness his struggles as they work together to develop the most effective strategy. By making clear that he does not have all of the answers, partnering with his students to discover the answers, and sharing his own missteps along the way, a clinical law professor can reclaim opportunities to model how an experienced attorney acquires new knowledge and takes on new challenges that may be lost in smaller case representation.202

Clinical law faculty who wholeheartedly subscribe to the belief that professors fail to optimize student learning if students do not have primary control of a matter from beginning to end may view a decision to work in true partnership with students on a matter as a failure of clinical legal education. Indeed, this partnership model will inevitably impact student autonomy and ownership of the case.203 But, there is a unique value to a professor working with her student as a colleague and partner to navigate subject matter new to both student and professor.204 In this relationship, the professor can model how to exercise judgment and how to learn from practice: to independently learn new areas of law; to consult with outside colleagues, experts in the field, and community members without divulging confidential information; and to advise a client in the midst of one’s own learning process.205

IV. A PEDAGOGICAL COURSE CORRECTION

“If it offends your sense of justice, there’s a cause of action.”
- Florence Roisman, Professor, Indiana University School of Law206

In response to the shifts in my students’ perspectives on racism and systemic discrimination, their reluctance to tackle systemic problems, their conditioned belief that strategic litigation should be a tool of last resort, the benefits of a model of clinical education where the professor also encounters non-routine challenges alongside the student).

202. Id. at 363–64.
203. Id. at 364.
204. Id. at 363–64.
205. Id.
and my own discomfort with reliance on small cases in my clinical teaching, I took a step back in my own practice. How could I better teach my students to be champions for justice even when they are overwhelmed by society’s injustice, to challenge the complex and systemic discrimination strangling minority communities, and to approach their work in the tradition of political lawyering. I reflected not only on my teaching but also on my experiences as a civil rights litigator to focus on what has helped me to continue doing the work despite the frustrations and difficulties. I realized I was spending too much time teaching my students foundational lawyering skills and too little time focused on the broader array of skills I knew to be critical in the fight for racial justice.

We regularly discussed systemic racism during my clinic seminars to place the students’ work on behalf of their clients within a larger context. But by relying on carefully curated small cases I was inadvertently desensitizing my students to a lawyer’s responsibility to challenge systemic problems and sending the message that the law operates independently from this background and context. I have an obligation to move beyond teaching my students to be “good soldiers for the status quo” to ensuring that the next generation is truly prepared to fight for justice. And, if my teaching methods are encouraging the reproduction of the status quo it is my obligation to develop new interventions.

Jane Aiken’s work on “justice readiness” is instructive on this point. To graduate lawyers who better understand their role in advancing justice, Jane Aiken believes clinics should move beyond providing opportunities for students to have a social justice experience to promoting a desire and ability to do justice. She suggests creating disorienting moments by selecting cases where students have no outside authority on which to rely, requiring that they draw from their own knowledge base and values to develop a legal theory. Disorienting moments give students:

[E]xperiences that surprise them because they did not expect to experience what they experienced. This can be as simple as learning that the maximum monthly welfare benefit for a family of four is about $350. Or they can read a Supreme Court case that upheld Charles Carlisle’s conviction because a lawyer missed a deadline by one day even though the district court found there was insufficient evidence to prove his guilt. These facts are often disorienting. They require the student to step back and examine why they thought that the benefit amount would be so much more, or that innocence would always result in release. That is an amazing teaching moment. It is at this moment...

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208. Id.
209. Id. at 290.
that we can ask students to examine their own privilege, how it has
made them assume that the world operated differently, allowing them
to be oblivious to the indignities and injustices that occur every day.\footnote{\textit{Id.}}

Giving students an opportunity to “face the fact that they cannot rely
on ‘the way things are’ and meet the needs of their clients” is a powerful
approach to teaching and engaging students.\footnote{\textit{Aiken, Provocateurs for Justice, supra note 210, at 294.}} But, complex problems call
for larger and more sustained disorienting moments. Working with stu-
dents on impact advocacy in the model of political lawyering provides a
range of opportunities to immerse students in disorienting moments.

\textit{A. Immersing Students in “Disorienting Moments”: Race, Poverty, and
Pregnancy}

Today, I try to immerse my students in disorienting moments to make
them justice ready and move them in the direction of political lawyering.
My clinic docket has always included a small number of impact litigation
matters. However, in the past these cases were carefully screened to ensure
that they involved discrete legal issues and client groups. In addition, our
representation always began after our outside co-counsel had already con-
ducted an initial factual investigation, identified the core legal issues, and
developed an overall advocacy strategy, freeing my students from these
responsibilities.

Now, my clinic takes on impact matters at earlier stages where the
strategies are less clear and the legal questions are multifaceted and ill-
defined. This mirrors the experiences of practicing social justice lawyers
who, faced with an injustice, must discover the facts, identify the legal
claims, develop strategy, cultivate allies, and ultimately determine what
can be done—with the knowledge that “nothing” is not an option. This
approach provides students with the space to wrestle with larger, systemic
issues in a structured and supportive educational environment. They are
also gaining experience in many of the fundamentals of political lawyering
advocacy.

Recently, my students began work on a new case. Several public and
private hospitals in low-income New York City neighborhoods are drug
testing pregnant women or new mothers without their knowledge or in-
fomed consent.\footnote{\textit{Oren Yaniv, Weed Out: More Than a Dozen Maternity Wards Regularly Test New Moms
racial and economic disparities, and can have a profound impact on the
lives of the poor women of color being tested at precisely the time when
they are most in need of support.
We began our work when a community organization reached out to the clinic and spoke to us about complaints that hospitals around New York City are regularly testing pregnant women—almost exclusively women of color—for drug use during prenatal checkups, during the chaos and stress of labor and delivery, or during postdelivery. The hospitals report positive test results to the City’s Administration for Children’s Services (ACS), which is responsible for protecting children from abuse and neglect, for further action. Most of the positive tests are for marijuana use. After a report is made, ACS commences an investigation to determine whether child abuse or neglect has taken place, and these investigations trigger inquiries into every aspect of a family’s life. They can lead to child-neglect proceedings and potentially to the temporary or permanent removal of children from the household. Even where that extreme result is avoided, an ACS investigation can open the door to the City’s continued, and potentially unwelcome, involvement in the lives of these families.

These policies reflect deeply inequitable practices. Investigating a family after a positive drug test is not necessarily a bad thing. After all, ACS offers a number of supportive services that can help stabilize and strengthen vulnerable families. And of course, where children’s safety is at risk, removal may sometimes be the appropriate result. However, hospitals do not conduct regular drug tests of mothers in all New York City communities. Private hospitals in wealthy areas rarely test pregnant women or new mothers for drug misuse. In contrast, at hospitals serving poor women, drug testing is routine.

Race and class should not determine whether such testing, and the consequences that result, take place.

Investigating the New York City drug-testing program immersed the students in disorienting moments at every stage of their work. During our conversations, the students regularly expressed surprise and discomfort with the hospitals’ practices. They were disturbed that public hospitals—institutions on which poor women and women of color rely for something as essential as healthcare—would use these women’s pregnancy as a point of entry to control their lives.

They struggled to explain how the simple act of seeking medical care from a hospital serving predominantly poor

215. See id.
216. Interview memos (on file with author).
217. Id.
communities could deprive patients of the respect, privacy, and legal protections enjoyed by pregnant women in other parts of the City. They were shocked by the way institutions conditioned poor women to unquestioningly submit to authority. Many of the women did not know that they were drug tested until the hospital told them about the positive result and referred them to ACS. Still, these women were not surprised: that kind of disregard, marginalization, and lack of consent were a regular aspect of their lives as poor women of color. These women were more concerned about not upsetting ACS than they were about the drug testing. That so many of these women could be resigned to such a gross violation of their rights was entirely foreign to most of my students.

B. Advocacy in the Face of Systemic Injustice

Although the students are still in the early stages of their work, they have already engaged in many aspects of political justice lawyering. They approached their advocacy focused on the essence of political lawyering—enabling poor, pregnant women of color who enjoy little power or respect to claim and enjoy their rights, and altering the allocation of power from government agencies and institutions back into the hands of these women. They questioned whose interests these policies and practices were designed to serve, and have grounded their work in a vision of an alternative societal construct in which their clients and the community are respected and supported. The clinic students were given an opportunity to learn about social, legal, and administrative systems as they simultaneously explored opportunities to change those systems. The students worked to identify the short- and long-term goals of the impacted women as well the goals of the larger community, and thought strategically about the means best suited to accomplish these goals. And, importantly, while collaborating with partners from the community and legal advocacy organizations, the students always tried to keep these women centered in their advocacy.

In breaking down the problem of drug testing poor women of color, the students worked through an issue that lives at the intersection of reproductive freedom, family law, racial justice, economic inequality, access to healthcare, and the war on drugs. Through their factual investigation, which included interviews of impacted women, advocates, and hospital personnel, and their review of records obtained through Freedom of Information Law requests, the students began to break down this complex problem. They explored the disparate treatment of poor women and women of color by healthcare providers and government entities; implicit and explicit bias in healthcare; the disproportionate referral of women of color to

219. See Bach, supra note 218, at 318–19, 324; Bridges, Privacy Rights, supra note 218, at 121–22; see also Lucie E. White, Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G., 38 BUFF. L. REV. 1, 5 (1990) (finding that when “socially subordinated groups gain formal access to legal rituals, they are often perceived—and indeed may feel compelled—to speak in ways that invite dominant speakers to dismiss or devalue what they say”).
ACS; the challenges of providing medical services to underserved communities; the meaning of informed consent; the diminished rights of people who rely on public services; and the criminalization of poverty. The students found that list almost as overwhelming as the initial problem itself, but identifying the components allowed the students to dig deeper and focus on possible avenues of challenge and advocacy. It was also critically important to make the invisible forces of structural inequality visible, even if the law currently does not provide a remedy.

Working on this case also gave the students and I the opportunity to work through more nuanced applications of some of the lawyering concepts that were introduced in their smaller cases, including client-centered lawyering when working on behalf of the community; large-scale fact investigation; transferring their social justice knowledge to different contexts; crafting legal and factual narratives that are not only true to the communities’ experience, but can persuade and influence others; and how to develop an integrated advocacy plan. The students frequently asked whether we should even pursue the matter, questioning whether this work was client centered when it was no longer the most pressing concern for many of the women we met. These doubts opened the door to many rich discussions: can we achieve meaningful social change if we only address immediate crises; can we progress on larger social justice issues without challenging their root causes; how do we recognize and address assumptions advocates may have about what is best for a client; and how can we keep past, present, and future victims centered in our advocacy?

The work on the case also forced the clinic students to work through their own understanding of a hierarchy of values. They struggled with their desire to support these community hospitals and the public servants who work there under difficult circumstances on the one hand, and their desire to protect women, potentially through litigation, from discriminatory practices. They also struggled to reconcile their belief that hospitals should take all reasonable steps to protect the health and safety of children and their emotional reaction to pregnant mothers putting their unborn children in harm’s way by using illegal drugs with the privacy rights of poor and marginalized women. They were forced to pause and think deeply about what justice would look like for those mothers, children, and communities.

CONCLUSION

America continues to grapple with systemic injustice. Political justice lawyering offers powerful strategies to advance the cause of justice—through integrated advocacy comprising the full array of tools available to social justice advocates, including strategic systemic reform litigation. It is the job of legal education to prepare law students to become effective lawyers. For those aspiring to social justice, that should include training students to utilize the tools of political justice lawyers. Clinical legal edu-
cation offers a tremendous opportunity to teach the next generation of racial and social justice advocates how to advance equality in the face of structural inequality, if only it will embrace the full array of available tools to do so. In doing so, clinical legal education will not only prepare lawyers to enact social change, it will inspire lawyers overwhelmed by the challenges of change. To provide transformative learning experiences, clinical education must supplement traditional pedagogical tools with opportunities to engage in complex, systemic social justice advocacy and should consider political lawyering’s potential to empower law students and communities.