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# Teaching Law Reform in the 1990s

by Jane E. Schukoske\*

Advocates for social change,<sup>1</sup> including lawyers and law professors,<sup>2</sup>

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1. Efforts to bring about social change or social reform, as discussed in this article, are responses to a "social problem," which may be defined as

"a situation affecting a significant number of people that is believed by them and/or by a significant number of others in the society to be a source of difficulty or unhappiness, and one that is capable of amelioration . . . . [A] social problem consists of both an objective situation and a subjective social interpretation. The social problems of long standing in most Western societies include juvenile delinquency, crime, chronic alcoholism, suicide, . . . divorce, desertion, intergroup prejudice and discrimination, industrial conflict, inadequate housing and slum neighbourhoods, unemployment, chronic dependency, corruption in government." (A.M. ROSE, *SOCIOLOGY: THE STUDY OF HUMAN RELATIONS* 542 (1956)).

A *DICTIONARY OF THE SOCIAL SCIENCES* 662 (Julius Gould & William L. Kolb eds., 1967). This listing, while instructive in reminding the reader of the long-standing nature of some social problems, is outdated at least in the United States by omission of these topics: inadequate diversity of people in positions of leadership, gender and sexual orientation prejudice and discrimination, poverty, drug abuse, mental illness, inadequate health care, inadequate public benefits, ineffectiveness in public education, and pollution of the environment, among others. In view of changing notions of family, divorce and desertion may be viewed less as social problems themselves than as events that leave problems in their wake. The statement of examples, of course, itself conveys subjective values.

2. Martha Minow, *Breaking the Law: Lawyers and Clients in Struggles for Social Change*, 52 U. PITT. L. REV. 723 (1991)(discussing lawyer's role in defending people who break the law for political reasons); authors in the symposium issues on the "Theoretics of Practice", 43 HASTINGS L.J. (1992) and 3 HASTINGS WOMEN'S L.J. (1992); authors in The Interuniversity Poverty Law Consortium, 42 J. URB. & CONTEMP. L. (1992)(exploring how legal education can become more responsive to social needs); see also Jerold S. Auerbach, *Scientific Expertise: The Triumph of the New Professoriat*, in *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* (1976).

explicitly inquire into the relationship<sup>3</sup> between theory<sup>4</sup> and practice<sup>5</sup> in law reform efforts. Theory is intentionally used to develop novel legal principles and procedures in an attempt to produce just results.<sup>6</sup> The study of lawyering for social change offers law students an angle other

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3. The words "theory" and "practice" each have multiple meanings and shades of meanings, depending on context. I note that they are often paired as a dichotomy, but I reject that idea. My sense of the discussion of theory and practice at the conference entitled "Theoretics of Practice," sponsored by this law journal and the Hastings Law Journal, January 31 to February 1, 1992, is that educators and students are interested in discerning the many layers of theory underlying legal education and legal practice and in using theoretical insights from movements such as feminist jurisprudence, critical race theory, and critical legal studies to improve legal education and legal practice.

See Lucinda M. Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886, 890-91 (1989): "I regard this critical inquiry into the nature of legal reasoning and language as a connecting bridge between the supposedly dichotomous worlds of theory and practice." *Id.* at 890.

4. Multi-faceted uses of the word "theory" in some "Theoretics of Practice" discussions, *supra* note 3, include: (1) ways of viewing the legal system, such as critical legal studies, feminist jurisprudence, law and economics, or critical race theory, to name a few; (2) ways of approaching lawyering, such as empowerment theory (lawyer's role is to empower client to make her own decisions and take actions on her own, rather than acting for her); (3) ways of approaching legal education, such as clinical theory; (4) legal doctrine; (5) social, moral, and political theory; and (7) case theory, as in strategy in a case. "By 'theory,' we commonly mean a set of general propositions used as an explanation. Theory has to be sufficiently abstract to be relevant to more than just particularized situations." Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 580 (1987)(asserting that theory-practice dichotomy is false; theory may be taught in clinical courses; law school curricula would benefit from a broader understanding of theory and practice and their coexistence in legal education).

5. "By 'practice' we commonly mean the doing of something. Practice is also associated with the idea of repetition; therefore, practice sometimes is equated with the gaining of skills because one gains skills by repetition." *Id.* Law practice includes representation of clients in a variety of forums including court, agencies, and the legislature; in transactions; and in other negotiations. Law practice connotes handling at least some legal matters for other people or entities for compensation, either from client payment, awarded attorneys fees, or from government funding for legal services.

6. Results, rather than the mere articulation of novel, just principles, are the focus. Practitioners and scholars differentiate between law reform efforts that are "symbolic" and those that are "instrumental." Derrick Bell, *Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4, 22 n.46 (1985)(Lewis M. Steel, an NAACP lawyer, was fired, according to the NAACP, for criticizing that organization for court victories that were "merely symbolic and not substantive" in bringing about racial equality); Martha Fineman, *Implementing Equality: Ideology, Contradiction and Social Change — A Study of Rhetoric and Results in the Regulation of the Consequences of Divorce*, 1983 WIS. L. REV. 789, 790 (symbolic divorce reform, based on rule equality under which women are treated the same as men, is less desirable than instrumental reform that would lead to equity in results, such as favoring custodial parents in the division of assets).

than that of traditional legal education<sup>7</sup> on what they are learning in law school and on lawyering choices. How lawyers design strategies to attempt to bring about social change,<sup>8</sup> how they determine what is good policy,<sup>9</sup> how they develop theories about the appropriate relationship between lawyers and their communities,<sup>10</sup> and how the legal system resists effective social change<sup>11</sup> are important and intriguing inquiries.

In current times of relative conservatism in the United States,<sup>12</sup> studying the role of law in social reform is important for three main reasons. First, this study provides a framework for analysis of recent social and legal changes effected indirectly through budget-cutting,<sup>13</sup>

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7. "Traditional legal education" is used in this article to refer to curricula that include large, required first-year classes in contracts, torts, and property, and other required courses on topics covered on bar examinations, elective substantive courses, and a mixture of required and elective basic skills courses.

8. See *infra* notes 51 and 53 and accompanying text.

9. See, e.g., Judith Winston, *Mirror, Mirror on the Wall: Title VII, Section 1981, and the Intersection of Race and Gender in the Civil Rights Act of 1990*, 79 CAL. L. REV. 775 (1991)(advocating enactment of Title VII damages remedy to redress multiple discrimination against women of color); see generally Harold D. Lasswell & Myres S. McDougal, *Legal Education And Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943)(curriculum should focus on trends and policy-making, skills in thinking, observation, and management).

10. See sources *infra* notes 53-54.

11. See *infra* notes 40-48.

12. Instances of political conservatism in the executive branch and in the judiciary abound. In the past ten years the executive branch has filed six *amicus curiae* briefs in support of overruling *Roe v. Wade*, 410 U.S. 113 (1973), which held that the United States Constitution protects a woman's right to terminate her pregnancy in its early stages. *Planned Parenthood of Southeastern Pa. v. Robert Casey*, 60 U.S.L.W. 4795, 4798 (1992). The President has vetoed bills including the Civil Rights Act of 1990, the Family Leave Act, and a bill to raise the minimum wage. Ruth Teitel, *Bush, The Veto President*, N.Y. TIMES, Dec. 9, 1990, at § 4, 17. He also exercised his thirty-first veto on the National Voter Registration Act (allowing voter registration through motor vehicle departments). Bill McAllister, *President Vetoes "Motor-Voter" Legislation*, WASH. POST, July 3, 1992, at A4.

President Bush has nominated conservatives to the judiciary. Neil A. Lewis, *Selection of Conservative Judges Guards Part of Bush's Legacy*, N.Y. TIMES, July 1, 1992, at A13. Also, the United States Supreme Court is scheduling fewer cases for review than in previous years. From an average of 140 cases per year in the 1970s and 151 cases per year in the 1980s, the Court handed down 120 opinions in 1990-91 and is expected to hand down about 100 in 1991-92. Editorial, *The Supreme Court Cuts Back*, THE BALTIMORE SUN, Mar. 17, 1992, at 6A. One hypothesis about the reduction in caseload is that conservative ideas about law are being imposed across the board by the federal circuit courts, with the result that there are fewer disagreements between the circuits for the Supreme Court to resolve. *Id.* See also DAVID G. SAVAGE, TURNING RIGHT: THE MAKING OF THE REHNQUIST SUPREME COURT (1991)(anecdotal history of the trend to the political right and the workings of the United States Supreme Court during the era of Chief Justice Rehnquist).

13. See John Dooley and Alan Houseman, *Legal Services in the 1980's and Challenges Facing the Poor*, 15 CLEARINGHOUSE REV. 704 (1982)(budget-cutting of social programs as conservative strategy); see also JOHN I. GILDERBLOOM AND RICHARD P.

consistent judicial appointment of conservatives,<sup>14</sup> and retreat of the federal government from certain domestic policy commitments, such as civil rights enforcement.<sup>15</sup> Second, emphasis on the role of law in social reform entails examination of explicit progressive law reform efforts in the United States. Inquiry into these efforts to construct a new order (e.g., desegregation of institutions, reallocation of rights and responsibilities between landlords and tenants) suggests how social reform has been and can be achieved, how reform can fail, and what lawyers' roles can be in social change. Third, study of the role of law in social reform leads to exploring ways to achieve equality for historically excluded people.<sup>16</sup> The study of social reform by its nature invites perspectives of people historically underrepresented throughout the legal profession, whether in academia, among members of the bar, or in government service.

This article discusses a seminar<sup>17</sup> entitled "Law and Social Re-

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APPELBAUM, RETHINKING RENTAL HOUSING 77 (1988)(the federal government withdrew over seventy-five percent of the federal budget for rental housing programs during the fiscal years 1981 to 1988).

14. Judges nominated by Presidents Reagan and Bush hold sixty-four percent of the federal appellate bench with majorities on eleven of thirteen circuit courts and pluralities on the remaining two. More than half of the 837 federal judgeships are held by people appointed by Presidents Reagan and Bush. George Kassouf, *Bush Judges Out Of Touch*, 23 PIPELINE 3 (Winter 1992); see also Lewis, *supra* note 12; Linda Greenhouse, *Moderates on Court Defy Predictions*, N.Y. TIMES, July 5, 1992, at § 4, 1.

15. The Department of Justice retreated from civil rights enforcement in school desegregation cases from 1980 to 1987, during which period it filed only three cases, one tenth of the number filed in 1966 alone. Larry Tye, *US Sounds Retreat in School Integration; America's Schools: The New Segregation*, BOSTON GLOBE, Jan. 5, 1992, at 1. The department also switched sides from protection of plaintiff-employees to defendant-employers in job discrimination cases. Barry Bearak & David Lauter, *Affirmative Action: The Paradox of Equality*, L.A. TIMES, Nov. 5, 1992, at A1.

Deregulation is another example of federal retreat; the savings and loan crisis has been said to flow from this action. Carl Felsenfeld, *The Savings and Loan Crisis*, 59 FORDHAM L. REV. S7, S23 n.102 (1991). Related is interference with the federal regulatory process through a presidentially imposed ninety-day moratorium on the issuance of all federal regulations. *Highlights of Bush's Economic Rescue Plan*, UPI, Jan. 28, 1992, available in LEXIS, Nexis Library, UPI file.

16. "Historically excluded people" is used here to refer to groups including low-income adults and children, people of color, women, disabled or ill people, elderly people, gay men, and lesbians.

17. The structure of the seminar is modelled on a seminar on state and local tax and finance taught by David J. McCarthy, Jr., with whom I studied. In McCarthy's class, the professor teaches the first six weeks of class, while students outline and begin drafting papers on topics selected by them from a list prepared by the professor. For the balance of the semester, the primary actors in class are the students, who deliver their papers and respond to questions from the class and from an assigned questioner. The student presentations are integrated into the whole subject-matter objectives of the professor.

Law and Social Reform differs from this model not only in subject matter but also in student (as opposed to professorial) development of topics, in the advocacy posture of the papers and presentations, and in roleplaying that occurs in class.

form.”<sup>18</sup> This seminar gives students a forum in which to consider the types of change that they think are desirable, to propose change and strategies for securing it, and to evaluate the effectiveness of a reform effort. After studying law reform efforts from an historical perspective, participants focus on and present their own proposals for law reform.<sup>19</sup> While collaborating with advocates in the community working on the chosen topic, each student writes a paper on a reform idea and the strategy necessary for its attainment. Each participant's paper is carefully supervised in preparation for classroom presentation.

A basic assumption of this course is that law reform efforts occasion public debate that can increase awareness of inequities in society and change public attitudes. That is, there is educational value in the process of reforming the law as well as practical value in enacting laws to serve

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In preparing to teach this course, I consulted with Leonard S. Rubinowitz, who has taught Law and Social Change as an elective for first-, second-, and third-year students, emphasizing the ways courts interact with society. Rubinowitz's course focuses on litigation as a means of bringing about changes in areas such as race and economic equality. Letter and syllabus from Leonard S. Rubinowitz to Jane Schukoske, April 2, 1990 (on file with author).

I also consulted with Eric M. Freedman, who has taught The Constitution and Social Reform. His seminar has focused on the history of reform movements, such as the ones to end slavery, obtain suffrage for women, desegregate institutions, secure legal abortion, and abolish the death penalty, with attention to procedural issues such as class actions, injunctions, abstention, and practical issues such as implementation of reform, legislative reform, and use of the media. Letter and syllabus from Eric M. Freedman to Jane Schukoske, March 20, 1990 (on file with author).

18. This course is taught as an elective without prerequisites at the University of Baltimore School of Law. This seminar is one of numerous independent efforts, through clinics, seminars, simulation courses, and some core courses, to offer public interest perspectives at the school.

I support both the ideas of a concentration tailored for students committed to work for social change, such as the one at Stanford Law School, and a curriculum that cultivates in all students a sense of responsibility and capacity to provide legal services to the poor and marginalized, such as the Legal Theory and Practice courses at the University of Maryland. See Gerald P. Lopez, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-generic Legal Education*, 91 W. VA. L. REV. 305 (1989)(article on Stanford's "radically reconceived training regimen"); Gerald P. Lopez, Tape of Mini-Workshop on Theory and Practice: Finding Bridges for the Classroom, held by the American Ass'n. of Law Schools (Jan. 4, 1992)(describing Stanford's Lawyering for Social Change Concentration); Barbara L. Bezdek, "Legal Theory and Practice" Development at the University of Maryland: One Teacher's Experience in Programmatic Context, 42 J. URB. & CONTEMP. LAW 127 (1992)(describing first- and second-year required courses at Maryland that feature practice responsibilities to poor and marginalized people); Richard Boldt, Marc Feldman, Homer C. La Rue, Barbara Bezdek, and Theresa Glennon, *Students and Lawyers, Doctrine and Responsibility: A Pedagogical Colloquy*, 43 HASTINGS L. J. 1107 (1992)(descriptions and explanations of Maryland's Legal Theory and Practice program). An attractive feature of such programs is the degree to which faculty collaborate on a coherent flow of courses.

19. See *infra* notes 75 and 77 and accompanying text.

as tools for making decisions and establishing order.<sup>20</sup> The seminar prompts a participant to address through law a social problem she or he has observed, to interact with community activists and affected parties, to examine issues that arise in law reform practice, and to use her or his imagination in advocating for a reform.

This article begins with an exploration of five messages underemphasized in much of law school education<sup>21</sup> but focal in this seminar. The article then discusses the format and content of this evolving course,<sup>22</sup> theory inherent in its design, student reactions to it, and challenges in teaching it. Ideas explored here may be useful to a professor's own courses and research and to faculty and students planning curricular reform. Student reactions to the course shed light on some gaps between teaching and student learning in law schools.

The seminar format comes from example,<sup>23</sup> hunches about what I am best able to teach based on my experience, and listening to students. Approaches from critical race theory,<sup>24</sup> insights from feminist writ-

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20. For a discussion of the interaction between law and other institutions in America, see GERALD L. FETNER, *ORDERED LIBERTY: LEGAL REFORM IN THE TWENTIETH CENTURY* (1983) and sources cited in bibliographic essay, *id.* at 199-213.

21. Most law schools carry forward a tradition of required courses and elective doctrinal courses without considered curricular theories. There are exceptions, of course, such as Stanford, see Lopez, *supra* note 18; City University of New York, Queens campus, see Howard Lesnick, *Infinity In A Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 37 UCLA L. REV. 1157 (1990); and Antioch Law School, now reorganized as District of Columbia School of Law, see Edgar S. Cahn & Jean Camper Cahn, *Power to the People or the Profession? — The Public Interest in Public Interest Law*, 79 YALE L.J. 1005, 1024-31 (1970) (law school training could, but has not, led to the restructuring of the legal system).

Many colleagues innovate in individual courses or programs as they teach in law schools. It is my sense that, despite our efforts, the ideas discussed in this article do not emerge as major themes in the messages students receive in law school.

Gerald P. Lopez levels a compelling critique of the aimlessness of "the general approach to legal education": there are too few models of teaching and learning, too few skills taught, too little theory taught, too little of everyday life getting serious attention, too little conversation and coordination, and too generic a vision of people, traditions, and experience. Lopez, *supra* note 18, at 308-42.

22. The seminar has been taught twice as described here. The course was added to the University of Baltimore School of Law curriculum in 1974.

23. See *supra* note 17. In performing research for this essay, I discovered the seminar designed by Kimberle Crenshaw entitled *Minority Voting Rights and Majoritarian Domination* discussed in Kimberle Crenshaw, *Foreword: Towards a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L. BLACK L. J. 1, 8 (1989), and the Gender and the Law course designed by Beverly Balos and Mary Louise Fellows, discussed in Beverly Balos, *Learning to Teach Gender, Race, Class, and Heterosexism: Challenge in the Classroom and Clinic*, 3 HASTINGS WOMEN'S L. J. 161 (1992).

24. Critical race theory has been defined as "the work of progressive scholars of color who are attempting to develop a jurisprudence that accounts for the role of

ings,<sup>25</sup> and descriptions from critical legal studies<sup>26</sup> add to my tools for fostering discussion of law reform among students and colleagues.

## I. STUDY OF LAWYERING FOR SOCIAL JUSTICE OFFERS A CONTEXT FOR CRITICAL ANALYSIS OF LAW AND ITS LIMITS

Law school education sends<sup>27</sup> many implied messages<sup>28</sup> to students

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racism in American law and that works toward the elimination of racism as part of the larger goal of eliminating all forms of oppression." Mari J. Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 63 S. CAL. L. REV. 1763 n.3 and sources cited therein (1990). See also definition and sources cited in Kimberle Crenshaw, *A Black Feminist Critique of Antidiscrimination Law and Politics*, in THE POLITICS OF LAW 195, 214 n.7 (David Kairys ed., 1990).

25. By feminist writings, I refer to work by scholars who are exploring the role of gender and sexism in American law and working to reconceive of law and laws in forms that are more just to women and other traditionally excluded groups. See, e.g., Katherine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 837 (1990) (feminist method asks whether and how women have been left out of consideration in making rules and decisions); Martha Minow, *The Supreme Court 1986 Term: Foreword: Justice Engendered*, 101 HARV. L. REV. 10 (1987) (rules and laws inadequately serve women and other groups whose perspectives were not considered in the law-making process).

26. Critical legal studies takes issue with the characterization of the law as an idealized decision-making process in which fair and competent judges routinely apply clear law to fairly ascertained facts. Critical legal studies views the law as random and indeterminate and legal decisions as biased by the views of the law-makers and decision-makers. See, e.g., David Kairys, *Introduction*, in THE POLITICS OF LAW (David Kairys ed., 1990) 3-4.

27. Karl Klare asserts that the law school curriculum not only sends these messages, but through them disables students intellectually. Karl E. Klare, *The Law-School Curriculum in the 1980s: What's Left?*, 32 J. LEGAL EDUC. 336 (1982). Klare identifies three significant messages: (1) The fact that most of the core courses of the curriculum are market-centered, private law sends students the message that private law is "rational, structured, and central to the lawyering identity." *Id.* at 339. (2) The emphasis on doctrinal analysis contains a hidden message that the method of legal reasoning leads to answers autonomous from political and ethical choice. *Id.* at 340. (3) The emotional messages, "the intensity, confusion, and scariness of the first year," lead students to distrust their own values and blindly to respect hierarchy. *Id.* at 341.

Gerald P. Lopez asserts that law school ill-equips students not only for work for the subordinated but even for business law. Lopez, *supra* note 18. See also Crenshaw, *supra* note 23.

28. Howard Lesnick identifies six tacit and inaccurate messages in law school education: (1) legal "fields" develop separately and coherently; (2) private law is and should be central to law, while governmental regulation is peripheral; (3) law is rationally applied by judges, who apply the value judgments made by the legislature in enacting a statute; (4) the paramount dispute-resolution process is litigation; (5) the lawyer's role is to accomplish what the client wants; and (6) life experience in general — and before law school in particular — is irrelevant to learning to be a good lawyer. Lesnick, *supra* note 21, at 1162-80. See also Duncan Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW 38 (David Kairys ed., 1990).



about the law. Some messages reinforce the status quo and existing power structures in society, the primacy of legal reasoning, and the exclusion of certain groups from full societal and professional participation. Appellate cases, which often are powerful stories about how corporations and/or governments operate, legitimate in the minds of readers the existing power structures in society. Messages about respect for hierarchy are also present in earlier education and in society at large. Legal educators, however, have an obligation to examine assumptions and to select our messages to students thoughtfully, with a pedagogical purpose.

In law school, primarily through use of the Socratic method, professors may appear to present legal analysis as a rational skill, objective and neutral in nature. The role of the conscious and unconscious viewpoints<sup>29</sup> of decision-makers, including professors, often goes unexplored.

Laws reflect the reality that American society has, consciously and unconsciously, excluded people on the basis of class, race, gender, and sexual orientation, among other categories.<sup>30</sup> While exclusion of members of these groups from full participation in society is not an explicit goal for most people now, the exclusion still occurs. The vast majority of legislators, judges, lawyers, and law professors, and a simple majority of law students, share many common vantage points — as able-bodied, heterosexual, white, educated, middle-class men from a Judeo-Christian tradition. Given this continuing relative homogeneity, legal educators and students should consider how the profession and laws can be changed to promote full participation by all people in society.

Karl Klare summarizes additional deficiencies in the typical law school curriculum:

Omitted is systematic training in how to learn from others; in how to criticize one's own work and the work of others; in how

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29. Kimberle Crenshaw insightfully criticizes the notion that law can be taught from a neutral perspective:

While it seems relatively straightforward that objects, issues, and other phenomena are interpreted from the vantage point of the observer, many law classes are conducted as though it is possible to create, weigh, and evaluate rules and arguments in ways that neither reflect nor privilege any particular perspective or world view. Thus, law school discourse proceeds with the expectation that students will learn to perform the standard mode of legal reasoning and embrace its presumption of perspectivelessness. When this expectation is combined with the fact that what is understood as objective or neutral is often the embodiment of a white middle-class world view, minority students are placed in a difficult situation.

Crenshaw, *supra* note 23, at 2-3 ("perspectivelessness" of legal education results in objectification of people of color); Ann C. Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 YALE L. J. 1373 (1986)(the legal system objectifies women).

30. See HOWARD ZINN, A PEOPLE'S HISTORY OF THE UNITED STATES (1980).

to learn about lawyering *from* practice, that is, in how to acquire the capacity for continuing self-development over the span of a career; and in how one might act in central relationships that constitute the lawyering process: adversary, client, co-worker relationships and so on. Omitted also is systematic training in how to work closely and cooperatively with others in situations of high vulnerability and high risk, and, finally, in how to think critically about morals and politics based on the best learning available from the social sciences and from ethical discourse.<sup>31</sup>

Klare's criticisms may be addressed in simulation and clinical courses that feature collaboration, reflection on practice, and critical thinking. These courses are often available to relatively few students because of the high cost of small classes. Other parts of the curriculum should also reinforce collaboration, reflective practice, and critical thinking. What follows are messages that I believe warrant greater emphasis in law schools and that underlie the seminar discussed here.

#### A. LAWYERS HAVE A RESPONSIBILITY TO PURSUE SOCIAL JUSTICE

Much of traditional law school education, with its emphasis on mastery of concepts and analysis of private law, has the effect of supporting the status quo.<sup>32</sup> That is, many courses required by a law school or covered on a bar examination explore adjudication of private disputes (contracts, torts, property, wills and trusts, Uniform Commercial Code, products liability, corporations, agency and partnership) and corporate disputes with government (securities regulation, banking, tax). Conflicts over liability, transactions related to business, property, estates, and processes for resolving them are central to the curriculum.

Law reform to protect historically excluded people can, of course, be sought in these areas. People who are unable to gain access to legal representation could be better protected under tort law, for example, by expansion of strict liability or replacement of tort with a social insurance program providing coverage for medical expenses and a substantial portion of lost income.<sup>33</sup> Under contract law, unrepresented people could benefit from a rebuttable presumption that a standard form contract has not been read.<sup>34</sup> Corporate disputes with government have had tremen-

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31. Klare, *supra* note 27, at 341.

32. See Klare, *supra* note 27, and Lesnick, *supra* note 28.

33. See Robert L. Rabin, *The Politics of Tort Reform*, 26 VAL. U. L. REV. 709 (1992); see generally, Richard Abel, *Torts*, in *THE POLITICS OF LAW* 326 (David Kairys ed., 1990).

34. See Michael I. Meyerson, *The Reunification of Contract Law: The Objective Theory of Consumer Form Contracts* (1992)(unpublished manuscript on file with the author); see generally Jay Feinmen & Peter Gabel, *Contract Law As Ideology*, in *THE*

dous effects on federal taxpayers.<sup>35</sup> An example is the cost to the federal treasury of hundreds of billions of dollars due to lax regulation of the savings and loan industry.<sup>36</sup> Connections between law and its impact on people, and between present impact and reform ideas, are obvious issues to be analyzed, studied, and utilized in developing legal skills and a comprehensive knowledge of the law in both theory and practice.

But in light of time pressures and law school teaching customs, a primary goal in teaching most substantive law courses is mastery of traditional doctrinal analysis. The contexts are usually those of private corporate or individual wealth and government.

By contrast, law schools should more systematically invite students to consider using the legal system to attempt to effect social justice. Students should be encouraged to view the law-making process as a tool to respond to present-day legal controversies about society's role in protecting and in providing opportunity to historically excluded people. Doctrine should be proposed, for example, to address inadequacies in public education, health care, public benefits, and social services systems, to increase availability of affordable housing, to make higher education available to all regardless of financial status, to buttress affirmative action in employment, to strengthen child-support enforcement, and to increase protections for battered people.

#### B. REFORMERS ASSESS THE CONTEXT OF LAW AND DECISION-MAKERS IN DEVISING STRATEGIES

Students of the law may be led to believe that judges apply clear rules neutrally.<sup>37</sup> That is, they may deduce from their study of legal analysis in law school that legal decisions are predictable based on precedent and statute.

History makes clear that government and laws are not neutral.<sup>38</sup> An

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POLITICS OF LAW 373 (David Kairys ed., 1990).

35. See generally William Simon, *Contract Versus Politics in Corporation Doctrine*, in THE POLITICS OF LAW 387 (David Kairys ed., 1990).

36. Susan Schmidt, *Regulators Seize Big Calif. Thrift; HomeFed Becomes Largest S&L Failure Yet*, WASH. POST, July 7, 1992, at D1. See also Felsenfeld, *supra* note 15.

37. "[T]he main constituent of the judicial process is precisely that it must be genuinely principled, resting with respect to every step that is involved in reaching judgment on analysis and reasons quite transcending the immediate result that is achieved." Herbert Wechsler, *Towards Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 15 (1959).

38. See generally THE POLITICS OF LAW (David Kairys ed., 1990). Professor Peter Edelman has discussed it in this way:

Our entire system of legal rules shapes wealth and poverty in the United States . . . . [A] whole series of specific governmental policies have contributed to the intensification of poverty. Governmental deci-

example that has struck my students is the role of the government in fostering the creation of suburbs through transportation and housing policy. Actions that might have seemed neutral on the surface had the effect of emptying the cities of middle-class people just as schools were being racially integrated. The policy generally served the interests of suburban developers, bankers, and investors and harmed the interests of urban dwellers, who were left with declining municipal revenue and deteriorating infrastructure, and many of whom were people in need unable to move out of the city. The policies had racial implications; they facilitated "white flight" to the suburbs.

The purpose of seeking neutrality is to avoid unfair application of rules insofar as it is possible. Of course, no one can be neutral, and rules, even if as clear as language permits, cannot be neutral. The language of a rule reflects the viewpoints of the people who formulated the rule.<sup>39</sup>

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sions that have shaped the location of jobs and the location of people in relation to those jobs are a good example . . . . [G]overnment has shaped the ability of people to participate in the labor market by the schooling it has provided. Many of the poor cannot find jobs because they are so badly undereducated and underskilled.

Peter Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1, 45 (1987)(finding bases for a constitutional right to "survival" income in the substantive due process and equal protection clauses).

39. "Language, and the thoughts that it expresses, is socially constructed and socially constituting. Rather than being neutral or neutrally ordained, it reflects the world views and chosen meanings of those who have had the power to affect definitions and create terms." Finley, *supra* note 3, at 886.

Feminist jurisprudential theory can inform lawyers concerned with using law to achieve equality and autonomy for women - and with infusing law with more of women's (and more women's) understanding(s) of these contested terms . . . . Those of us who practice and think law primarily by writing and teaching about it, as well as those who practice and think law primarily by litigating, lobbying, counseling, and negotiating about it, must reflect about what it is that we are buying into when we use the existing terms of law and wholly accept the existing constructs of its reasoning.

*Id.* at 890-91.

One example is "objective standards." "Powerful actors, such as tobacco companies and male dates, want objective standards applied to them because these standards always, and already, reflect them and their culture. These actors have been in power; their subjectivity long ago was deemed 'objective' and imposed on the world." Richard Delgado, *Shadowboxing*, 77 CORNELL L. REV. 813, 818 (1992).

Another example is the use of terms that are racially neutral but carry with them values that subordinate based on race. For example, the goal of "equality" for people of color has been interpreted in a way that would bring education for people of color up to a minimum standard rather than leading to an equivalent educational result. Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 369 (1992).

People tend to disagree about the meaning of the word "racism" itself. See Lynne Duke, *You See Color-Blindness, I See Discrimination*, WASH. POST, June 15, 1992, at 33 (reporting that generally whites think of racism as a matter of individual intent, or "racism-in-the-head," while blacks see it as an ongoing, pervasive condition

This understanding of language is key to the notion of fairness in legal rules. For example, American law defines the marriage of a heterosexual couple as legal even without ceremonial commitment (common law marriage) but does not recognize as legal any form of marriage of a lesbian or gay male couple.

Law reform efforts highlight the subjective nature of law, what critical legal theorists call its randomness and indeterminacy.<sup>40</sup> That is, many forces besides legal doctrine affect the decision of cases. The ability or reputation of counsel, of the parties, and of witnesses; the ability,<sup>41</sup> biases, race, gender, and views of the jurors or individual decision-makers;<sup>42</sup> equal resources; or the procedural posture<sup>43</sup> of the case may affect the decision.

Lawyers draw on their knowledge of the context<sup>44</sup> of a case in designing case theory and practice tactics. That context includes myriad aspects of the forum and decision-maker. It matters to an advocate's handling of a legislative proposal, among other factors, whether local powers have a direct interest in the outcome of a case, whether the patron of the proposal is powerful or junior, whether the proposal has been

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in American society, or "racism-in-the-world").

40. Harold A. McDougall, *Social Movements, Law and Implementation: A Clinical Dimension for the New Legal Process*, 75 CORNELL L. REV. 83, 93 (1989).

41. A student at the University of Baltimore Housing Law clinic handled a case in which the judge decided that he did not believe that our client had given advance notice to the landlord of the conditions she alleged warranted establishment of a rent escrow. He then ruled that the action had been brought in bad faith and allowed the landlord to evict the tenant without risking a claim of retaliatory eviction. In a situation like this, it is difficult to discern whether the decision was a result of the judge's lack of ability (confusing witness credibility about notice during her testimony with bad faith in bringing the habitability claim in the first place) or views (readily attributing bad faith to tenants).

42. Minow, *supra* note 25 (decision-making of judges is not objective but reflects their individual points of view; when judges examine other points of view, they see that the status quo is not inevitable or ideal); Sharon Rush, *Feminist Judging*, 1 U.S.C. REV. L. & WOMEN'S STUDIES (1992)(forthcoming)(judges are biased; feminist judges admit bias in favor of promoting equality for subordinated groups and exercising compassion; traditional judges are often blind to their biases but act on them).

43. See, e.g., *James v. Valtierra*, 402 U.S. 137 (1970)(article of the California Constitution mandating approval by referendum of low-cost housing proposals did not deny equal protection to people desiring such housing), decided on motion for summary judgment for which facts were presented in affidavits that permitted the court to avoid evidence of racial discrimination that would have been salient at trial. CHARLES E. DAYE, *HOUSING AND COMMUNITY DEVELOPMENT* 40 (1989).

44. For discussion of teaching about context, see Bezdek, *supra* note 18, at 137-41 (field investigation in a Legal Theory and Practice course in property at University of Maryland); and Lucie White, *Students As Participant Observers: Case Studies, Audiotape of Presentation at Ass'n. of American Law Schools Mini-Workshop on Theory and Practice: Building Bridges For The Future*, January 4, 1991 (discussion of participant-observer method, in which student performs fieldwork and reflects on the experience and the limits of her vantage point).

made in the recent past and rejected, and whether the proposal is likely to affect many jurisdictions or a small area. As for a particular legislator, it matters, among other things, whether she has personal experience, positive or negative, relating to the proposal, what her past voting alliances have been, whether she has lived in the jurisdiction all her life, and whether she has a proposal pending with which she needs the leadership's help. That context also includes subtleties about the state of the law. It matters whether, for example, there have been recent disputes on the point, whether a comprehensive revision of the topic is planned, and whether the judiciary has spoken on the issue. Similarly, aspects of context matter in litigation and administrative agency rule-making.

Law reform campaigns provide many examples of the gap between change in a broad legal concept and actual application of a new concept.<sup>45</sup> Even when a legal change is secured by court opinion or statute its implementation and impact can be derailed in many ways. Those in power may directly resist the change.<sup>46</sup> Or, public interest litigants may represent only some interests affected by a lawsuit and therefore fail to attend to certain aspects of implementation of a decision.<sup>47</sup> The failure of an agency for political or other reasons to issue implementing regula-

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45. "[Minority scholars and lawyers] know, from frequent and sad experience, that the mere announcement of a legal right means little. We live in the gap between law on the books and law in action." Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301, 304 (1987)(critique of failure of critical legal theory to offer formal societal protection to minorities).

"Narrow interpretation, foot dragging, delay and outright obstruction" impede enforcement. Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2429 (1989)(recognizing the powerful role storytelling plays in unseating rigid views about social reality and offering alternative explanations and interpretations); see also Fineman, *supra* note 6 (arguing for instrumental rather than symbolic law reform of the economics of divorce).

In the seminar, we studied the evolution of the implied breach of warranty of habitability and noted the gap between law and reality in Baltimore City, which has a large amount of slum housing despite relatively strong laws on habitability and rent escrow that have been in effect for nearly twenty years. See Code of Public Local Laws of Baltimore City, Art. 4, Chapter 9 (1979 & 1990 Supp.)(landlord-tenant laws including rent escrow and warranty of habitability).

46. Massive resistance to school desegregation in the South in the 1960s and 1970s is a clear example. See DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* 371-97 (1980)(tactics for diluting compliance with school desegregation orders); Paul Gewirtz, *Remedies and Resistance*, 92 YALE L. J. 585 (gradualism in remedies to implement school desegregation due to resistance by white communities).

47. Abram Chayes, *Foreword: Public Interest Litigation and the Burger Court*, 96 HARV. L. REV. 4, 60 (1982)(public interest litigation, presenting courts with role of agency oversight, does not adequately bring before the courts the interests of all affected); Timothy Wilton, *Legitimacy in Social Reform Litigation: An Empirical Study*, 15 J.L. REFORM 189 (1982)(exploring ways to reduce bureaucratic resistance to judicially mandated relief in school reform case).

tions in response to a statutory or judicial mandate is yet another example.<sup>48</sup> This gap between a judicial decision or legislation and reality, so familiar to practitioners, may strike a law student as surprising. Because of the heavy emphasis on doctrine and appellate judicial opinions in law school, students are unaccustomed to contrasting a decision in a case with its effects in the real world.

In response to this gap, social movement lawyers regularly use multifaceted strategies to achieve a goal.<sup>49</sup> Advocates coordinate strategies seeking legislative reform, regulations to guide implementation of the reform, and litigation to attempt to secure helpful precedent under the new law.<sup>50</sup> For example, Florence Roisman has mapped comprehensive strategies for establishing a right to housing on national, state, and local levels:

Several different institutions have the power to establish a right to housing. The United States Congress or a state legislature or a city council can enact a law that gives certain groups of people a right to housing. Voters can establish a right by initiative. Administrative agencies at the federal, state or local level can create a right to housing by issuing regulations, establishing programs, or administering programs so as to enforce such a right. The federal and state constitutions can be amended. Federal and state courts can interpret constitutions, statutes or regulations so as to hold that they create a right to housing.

Each of these ways of establishing a right to housing has been used with some success in some places. In deciding how to proceed in any particular place, advocates should consider which is the most favorable forum, who are the best claimants, and what are the best claims. Advocates also should be alert to what clients and client groups are doing; a community group or a situation may present an issue that merits immediate attention even though no one has anticipated it. Advocates need to be flexible, to be ready to seize opportunities when they arise.<sup>51</sup>

The passage suggests how open and imaginative and yet methodical law-

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48. See, e.g., Marilyn Rose, *Federal Regulation of Services to the Poor Under the Hill-Burton Act: Realities and Pitfalls*, 70 NW. U. L. REV. 168 (1975) (federal agency failed to enforce regulations imposed on hospitals that had received federal funds under the Hill-Burton Act due to identification with the industry it was to regulate); Wilton, *supra* note 47; see also *Highlights*, *supra* note 15 (moratorium on federal regulations).

49. McDougall, *supra* note 40, at 93.

50. *Id.*

51. Florence Roisman, *Establishing a Right to Housing: A General Guide*, 25 CLEARINGHOUSE REV. 203, 204 (1991).

yers pursuing change need be.

C. REFORMERS COLLABORATE WITH CLIENT GROUPS, OTHER LAWYERS, AND PEOPLE IN OTHER DISCIPLINES

A law student's experience in the first year suggests that work is to be done in isolation. The ability to respond, alone, to surprise questions in class is viewed a key part of the learning experience. First-year writing courses reinforce a sense of isolation<sup>52</sup> in that students work alone on their writing projects, at pain of violation of a student honor code. After the first year, clinical courses and simulation courses encourage collaboration, but most substantive courses do not.

Law reform research, in contrast, includes networking with people from many disciplines and backgrounds who use law to affect policy, from grass-roots advocates to policy experts and public interest lawyers. From this contact, students confront the roles lawyers<sup>53</sup> and advocacy groups<sup>54</sup> have in social change and the criticisms of those roles. As counsel to an advocacy group that chooses to stage public demonstrations, a lawyer may play a very limited role in advising about First Amendment rights, defending group members arrested during civil disobedience, and handling corporate and tax matters for the organization.<sup>55</sup> Interest-group attorneys, on the other hand, view their roles more broadly and collaborate on litigation design, legislative and administrative advocacy, and media campaigns.<sup>56</sup>

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52. Study groups and moot court partners decrease the first-year isolation somewhat.

53. Steve Bachmann, *Lawyers, Law, and Social Change*, 13 N.Y.U. REV. L. & SOC. CHANGE 1, 22 (1984-85)(in exploring role of lawyers in social change, author illustrates how practice can follow theory); McDougall, *supra* note 40 (examining civil rights movement as interpretive community that began networking and coalition-building at policy-making level); Minow, *supra* note 2; Nancy Polikoff, *Am I My Client? A Lesbian Activist Lawyer Represents Gay and Lesbian Activists*, speech at conference on "Theoretics of Practice" at University of California, Hastings School of Law, January 31, 1992; Roisman, *supra* note 51; Steven Wasby, *The Multi-Faceted Elephant: Litigator Perspectives on Planned Litigation for Social Change*, 15 CAP. U. L. REV. 143 (1986)(examining the process of choice of areas of law and choice of cases by race relations interest group litigators from the late 1960s to the early 1980s); Wilton, *supra* note 47 (concluding from case study that failure to include low-level agency employees in reform efforts leads to bureaucratic resistance to judicially mandated relief).

54. See, e.g., Leroy Clark, *The Future Civil Rights Agenda: Speculation on Litigation, Legislation, and Organization*, 38 CATH. U. L. REV. 795, 803, 823 (1989)(lawyer's role in counseling parents' groups to seek improvement in local schools; economic boycott by private advocacy groups of employers who discriminate).

55. Bachmann, Minow, and Polikoff, *supra* note 53.

56. McDougall, *supra* note 31; Wilton, *supra* note 47; Roisman, *supra* note 51; Wasby, *supra* note 53; cf. Anthony Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L. J. 2107 (1991)(claiming poverty lawyers silence clients and substitute their goals for the clients' goals as the lawyers



Besides working with other people, reform topics stimulate creative information-retrieval techniques that all good lawyers use but few law students are pressed to explore thoroughly. Electronic research liberates the researcher from traditional categories<sup>57</sup> used to index legal materials.<sup>58</sup>

#### D. RESPONSIBLE LAWYERS ACKNOWLEDGE AND ACT ON THEIR VALUES

Students readily accept the approach articulated by the profession to put the client's interests first. This principle, clearly central to an adversary system, privileges those with lawyers and with legally recognized rights. A student can confuse the skill of arguing both sides of an issue with abnegation of the need to act on her own values.<sup>59</sup>

While the traditional law school curriculum often requires a student to argue both sides of an issue so that, as a lawyer, she could represent anyone, advocating law reform invites the student to take a stance. Looking at a problem from the point of view of law reform, the student may realize which clients she prefers to represent based on her values. Advocacy of law reform requires the student to decide what she cares about in the law, to assess the actual impact the law is having, and to suggest how the impact of the law should be adjusted to achieve a just result. A student is confronted with the responsibility for deciding how to apply her

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interpret the legal system for clients).

57. Using the NEXIS database within LEXIS, which contains the full text of articles in major newspapers in the United States, one can easily locate proposals and recent policy changes around the country by searches using plain language. Specialized publications, such as CLEARINGHOUSE REVIEW, which contains articles relevant to legal services practitioners and summarizes cases handled by that national community, offer topic indices using contemporary terminology.

58. Robert Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 CAL. L. REV. 15 (1987)(suggests gradual change in thinking about law may evolve as use of traditional research system by practitioners is affected by views of the legal system born of free-text searching by academics); cf. Jean Stephancic and Richard Delgado, *Outsider Jurisprudence and the Electronic Revolution: Will Technology Help or Hinder the Cause of Law Reform*, 52 OHIO ST. L. J. 847 (1991)(difficulties and techniques for people performing computer research on law reform).

59. A main justification for a lawyer to abnegate her own values is to be a loyal and zealous advocate for a client. Loyalty to a client is clearly a professional duty, one which should be considered in agreeing to represent a client and in considering withdrawal from a case if significant differences in values arise. See William Simon, *Ethical Discretion in Lawyering*, 101 HARV. L. REV. 1083 (1988). There are multiple values at stake in cases; a lawyer must decide what tips the scales one way or the other for her. For example, lawyers have to decide whether to act, and if so, on what side to act, when disputes arise over parade permits for groups that advocate genocide. See, e.g., *Village of Skokie v. National Socialist Party of America*, 373 N.E.2d 21 (1978)(denial of injunction against issuance of parade permit to National Socialist Party in town with 5,000 Holocaust survivors upheld under the First Amendment).

professional training to help historically excluded people.

E. PEOPLE LEARN FROM, AND ARE MOTIVATED BY, THEIR EXPERIENCE

Traditional legal education gives students the impression that their experiences and previous education are secondary to the legal reasoning skills they are acquiring in law school.<sup>60</sup> But a student's genuine interests in problems in society are great motivators to study and involvement. A student with background knowledge of an issue, such as a student who is a hospital administrator studying health care finance reform, sees complexities that other students and professors may miss.

Students need to hear their own voices as they learn to think about and use the law. To the extent that a student can apply the law to issues she cares about, it takes on a clearer purpose and meaning. Writing about what she cares about doing with law can tie her experience to her studies.<sup>61</sup>

II. SENDING THESE MESSAGES:  
COUNTERING SOME SHORTCOMINGS  
OF TRADITIONAL LEGAL EDUCATION  
THROUGH STUDY OF LAW REFORM

Integrating the five messages discussed above into the fabric of the law school curriculum, the profession, and institutional structures is a worthy goal but beyond the scope of this article. Within a course, however, a professor can transmit these ideas by course format, course material, manner of proposal, selection of paper topics, and the roles of professor and students in both class and individual or small-group student conferences. Next, this article discusses a seminar on Law and Social Reform as a vehicle for conveying these values.

A. SEMINAR DESIGN ATTEMPTS TO CONVEY THE FIVE MESSAGES  
THROUGH CONTENT AND PROCESS

1. *Context of the seminar: curriculum, student body,  
and participants*

The catalog of the University of Baltimore School of Law lists Law and Social Reform as a course of interest to students who intend to prac-

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60. See, e.g., Karl Johnson and Ann C. Scales, *An Absolutely, Positively True Story: Seven Reasons Why We Sing*, 16 N.M. L. REV. 433 (1986). "There is nothing mysterious about learning. Legal education makes it mysterious — if not impossible — by calling big pictures and experience (that is, both theory and life, amazingly enough) irrelevant." *Id.* at 446 (emphasis added).

61. See Crenshaw, *supra* note 23.

tice in the area of civil rights and public and government law. A three-credit, limited-enrollment seminar that fulfills the upper-level research and writing requirement, Law and Social Reform has in the past two years been offered in the evening division of the school. It is one of thirteen seminars periodically offered; others that relate to social reform include Gender and the Law, Civil Liberties, Recent Supreme Court Decisions, and Law and the Handicapped. Other limited enrollment electives include Race and the Law I and II, Legal Rights of the Elderly, and Jurisprudence. Day students are permitted to enroll in the course; an average of fifty-eight percent of the students have been evening students during the last two years.

Students' reasons for taking the course vary widely. While some students enroll because of the course content, most enroll in the course to fulfill their writing requirement or because of scheduling convenience or knowledge of the professor.<sup>62</sup> During the two semesters I have taught the course, a few students have displayed strong liberal leanings and a few moderate conservative leanings; most seem largely apolitical.

Students bring a rich set of experiences to the seminar. Among others, nurses, mid-level managers from state and local agencies, social workers, a journalist, a realtor, a banker, mothers working at home, paralegals, and full-time students have participated. The class composition has varied from thirty-six percent to sixty-two percent women, and students of color have comprised thirteen percent to seventeen percent of the participants. The students have ranged in age from mid-20s to early 40s; the majority were under 35.

During the semesters I have taught the seminar, I have also taught in the Housing Law clinic. The clinic and previous practice experience with housing and consumer issues in legal services provided concrete examples of legislative proposals and of gaps between the law and reality that I used to create hypotheticals and problems. In orchestrating the seminar, I drew on clinical teaching techniques of pre-performance planning and supervision and classroom activities such as roleplaying. I suggested several housing topics among other sample reform proposals; a few students pursued those. Most students preferred to choose their topics from a wide range of other substantive areas.<sup>63</sup>

2. *Content: examples of the pursuit of social justice  
and framework for analysis of reform efforts*

Groundwork for thinking about reform proposals comes from study of

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62. Students indicated their reasons for enrolling in the course at the first class session.

63. See *infra* notes 75 and 77.

selected twentieth century law reform efforts<sup>64</sup> and features of different advocacy strategies (litigation, legislative advocacy, executive order or administrative change, use of the media, use of budget-cutting to subvert statutorily mandated programs,<sup>65</sup> or a combination of these strategies). The class studies instances in which some measure of law reform has been achieved and in which it has stalled.<sup>66</sup> In addition, the students brainstorm about reform alternatives, using the method of "inventing options for mutual gain."<sup>67</sup> These activities consume the first seven weeks of the seminar.

One historical example we study<sup>68</sup> is the development of the warranty of habitability, which places a duty on landlords to provide safe and sanitary rental units. Students explore the articulated reasons why the District of Columbia Court of Appeals was willing to make a break from property law upheld since feudal times,<sup>69</sup> the cases and trends cited to

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64. The NAACP strategy leading to *Brown v. Board of Education*, 347 U.S. 483 (1954), the effort to broaden welfare rights through litigation, the development of the warranty of habitability, the development of rent control in some jurisdictions and the failure to enact it in Baltimore City, Florence Roisman's proposals for developing a right to housing (Roisman, *supra* note 51) and theories supporting a right to housing proposed by Peter Edelman and Frank Michelman (DAYE, *supra* note 43, at 33-49), are some of the historical efforts examined.

The students then map out in class a strategy for broadening the definition of "family" to include lesbian and gay couples in response to a hypothetical request from a group client.

65. See Dooley & Houseman, *supra* note 13.

66. Partially achieved: e.g., *Brown v. Board of Education*, discussed in Jack Greenberg, *Litigation for Social Change: Methods, Limits and Role in Democracy*, 29 THE RECORD 320, 328-34 (Bar Ass'n. N.Y. City, 1974); stalled: e.g., welfare rights cases discussed *id.* at 335-42.

67. See ROGER FISHER, WILLIAM URY & BRUCE PATTON, GETTING TO YES 56-80 (1991)(describing a method of problem-solving in the context of negotiation in which the parties (1) separate the act of inventing options from the act of judging them; (2) broaden options rather than looking for a single answer; (3) seek gain for all interested parties; and (4) present options in ways that make decisions as easy as possible).

68. The course has been taught with a housing focus using as the required text DAYE, *supra* note 43, and FISHER, *supra* note 67, supplemented by excerpts of the following materials, among others: *Litigation Strategies* from SUSAN LAWRENCE, THE POOR IN COURT (1990); *Litigation as Political Action* from KAREN O'CONNOR, WOMEN'S ORGANIZATIONS' USE OF THE COURTS (1989); *Litigation and Other Social Change Strategies* from NAN ARON, LIBERTY AND JUSTICE FOR ALL (1989); Greenberg, *supra* note 66; Dooley and Houseman, *supra* note 13; Roisman, *supra* note 51; Stephen E. Ronfeldt and Russell W. Galloway, Jr., *Beneficiary-Based Enforcement of Federal Regulatory Programs*, 26 HOWARD L. J. 1365 (1983); *What is Law Reform?* from WILLIAM HURLBURT, LAW REFORM COMMISSIONS IN THE UNITED KINGDOM, AUSTRALIA AND CANADA (1986).

69. The District of Columbia Court of Appeals, in *Ethel Javins v. First National Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970), decided that the existence of a housing code and recent precedent applying contract law to real property leases implies that a warranty of habitability must be read into residential leases. The court noted it was time for (long-overdue) change:

support the conceptual leap, the availability of visionary counsel, the District of Columbia as a forum and the slums it contained, and the timing of the case on the heels of civil rights activity.<sup>70</sup> Students then explore the vehicles — the Uniform Residential Landlord and Tenant Act and legal services advocacy networks<sup>71</sup> — used to spread the newly evolved concept and the local statutory version of the warranty of habitability and recent changes proposed to it. They then consider whether the warranty has been enforced to meet its purpose. The slum rental market in Baltimore, which has had a statutory warranty of habitability since 1975,<sup>72</sup> makes it apparent that some landlords often breach the warranty of habitability for low-income people and that existing avenues of recourse are inadequate.<sup>73</sup> The class explores the reasons why the effect of the warranty seems so different from its promise.

Looking at law reform analytically, we identify factors<sup>74</sup> that appear to affect the outcome of reform efforts. We discuss aspects of planning law reform litigation: the forum (judge, jurisdiction, local conditions), selection of a sympathetic plaintiff, degree of control of case selection and strategy, timing and sequence of lawsuits, procedural posture, opportunity to develop a record, talent and vision of counsel, structuring of general or specific relief, social climate, personal force of an individual or organization pressing for change, nature of the issue (individual rights or econom-

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[T]he assumption of landlord-tenant law, derived from feudal property law, that a lease primarily conveyed to the tenant an interest in land, may have been reasonable in a rural, agrarian society . . . . But in the case of the modern apartment dweller, the value of the lease is that it gives him a place to live . . . . When American city dwellers, both rich and poor, seek "shelter" today, they seek a well known package of goods and services — a package which includes not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance.

*Id.* at 1074.

70. See DAYE, *supra* note 43, at 197.

71. See Mary Ann Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C. L. REV. 503, 521-28 (1982).

72. Code of Public Local Laws of Baltimore City, art. 4, §§ 9-9 (rent escrow) and 9-14.1 and 9-14.2 (warranty of habitability)(1979 & 1990 Supp).

73. See Barbara L. Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. J. — (1992)(forthcoming)(reflecting on ways in which Rent Court in Baltimore City silences tenant-litigants).

Baltimore City has been reporting over the past twenty years that there are 70,000 dwelling units with housing code violations; that is, the number has not declined during the existence of the warranty of habitability. Telephone conversation between Jane Schukoske and Ray Bird, city planner, Baltimore City, Md., Planning Department, July 8, 1992.

74. See *supra* notes 46-51 and accompanying text.

ic rights, for example), and perspective on the length of time that is required for change. In exploring legislative advocacy, primarily on the state level, we discuss the mechanics of the legislative process and factors affecting success (timing, knowledge of legislative procedure, selection of the patron, support of committee chair and other influential people, setting the discussion before the committee, marshalling of information and influence by lobbyists, coalition support, trade-offs, use of the press), and the students roleplay a hearing on a proposed controversial bill. We discuss planning multi-faceted strategies that address an issue in several forums.

The students' reform projects, addressing a policy that each student feels should be changed, form the substantive topics for the rest of the course. So far the reforms proposed have ranged from achievable, modest reforms within the existing legal structure to reforms that challenge the existing system more directly.<sup>75</sup> Most proposals focus directly on helping the historically excluded.<sup>76</sup> Other proposals have addressed public

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75. What is achievable is, of course, usually speculation. Some degree of reform has occurred on several topics since the papers were begun. Topics have included strategies to:

[counter racial discrimination] strengthen minority contractor set-asides in Maryland after *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1988); abolish peremptory challenges in jury selection because of their racially discriminatory use; establish statutory guidelines for approval of transracial adoption; establish African American academies with public funds to remedy deficient urban education;

[counter discrimination based on sexual orientation] expand the Maryland Human Relations Act to protect against discrimination based on sexual orientation;

[protect accused and institutionalized persons] abolish the death penalty in Maryland; change the rules of professional conduct to permit criminal defense counsel to speak more freely to the press; recognize rights for smokers in Maryland state institutions; fund "supportive housing," including services to permit the mentally ill to live in group homes in the community; enact alternative sentencing proposal for first-time felony offenders; admit expert testimony of Battered Spouse Syndrome into evidence for criminal accused;

[assist low-income women] achieve passage of the Family and Medical Leave Act of 1991; overturn the gag rule on abortion counseling, 42 C.F.R. § 59.8(a)(1)(1989), upheld in *Irving Rust v. Sullivan*, 111 S. Ct. 1759 (1991); provide statutory remedy for sexual harassment of tenants by landlords in Maryland;

[protect children] strengthen child support enforcement; require domestic violence to be considered in child custody determinations; increase resources for the child in child abuse cases through the Court Appointed Special Advocates (CASA) program; increase the "standard of need" and "payment standard" for the Aid to Families with Dependent Children program in Maryland;

[provide safe, affordable housing] establish a right to shelter in Baltimore; establish a right to housing in Maryland; require Maryland suburbs to provide a "fair share" of affordable housing through executive order; enact a housing linkage ordinance in Charles County, Maryland, to require commercial developers to provide funds for affordable housing; tighten criteria for drug evictions from public housing; stimulate low-income residential cooperative development.

76. *See id.*

health and environmental protection.<sup>77</sup> I group the presentations so that each class has a substantive (e.g., protection of children) or strategic (e.g., legislative advocacy) theme.

3. *Process: student-centered, collaborative, closely supervised*

The seminar actively engages students with the professor, with classmates, and with advocacy groups as they develop their position papers and classroom presentations. To prepare to lay groundwork in traditional professor-led classes during the first seven weeks, I gather student impressions to focus the classes by meeting each week with two different students who have read the materials ahead of time. These meetings allow me to learn their perspective, ideas, and interests in the materials.<sup>78</sup> During this time, students also meet with me to discuss their outlines describing the need for change and the gist of their proposals before submitting first and final drafts of their papers.

For the balance of the semester, student presentations and discussions drive the class. In the presentations, students articulate the need for their proposed reforms, strategies they recommend for achieving them, likely opposition, and their response to it. They practice the art of making a problem real to an audience through use of a story of an individual affected by the policy addressed,<sup>79</sup> small group discussions,<sup>80</sup> or

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77. Students selected these topics:

[protect health] revise Maryland Occupational Safety and Health Act in light of *International Union v. Johnson Controls, Inc.*, 111 S. Ct. 1196 (1991); test for lead paint in high-risk Baltimore residential areas; provide state-funded health care to families in Maryland with incomes under 250 percent of poverty level; require school testing of children for the presence of HIV; repeal Maryland law automatically repealing professional licenses upon conviction of controlled dangerous substance offense.

[environmental] alter solid waste collection practices in Baltimore City to promote recycling; litigate against owners of vacant houses for nuisance to stem neighborhood deterioration.

78. I am grateful to Sharon E. Rush for the suggestion of meeting with students before class to see what they have gleaned from the reading. I have found these meetings particularly helpful in spotting generational differences in perspective on current issues and historical events.

79. One student illustrated her story of a homeless man by putting on a slide show of buildings in the Baltimore area that he had lived in or frequented. They included his middle-class home, the shelter he had first gone to after losing the home, the shelters he went to after his allotted time was up at the first shelter, a partially constructed building where he lived until he was chased away, and the soup kitchens he frequented.

On telling the story of a litigant, see Lynne Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987) (describing how the litigant's story was or was not argued to the Supreme Court in four key cases and the perceived effect that that aspect had on the outcomes).

80. For example, a student presented a proposal to increase the "standard of need" in the Maryland Aid to Families with Dependent Children program as a step in a strategy to secure higher benefit payment levels for welfare recipients so that they

roleplay<sup>81</sup> and the art of making a complicated solution accessible to an audience in a brief time.

Collaboration among students occurs in preparing for presentations and in critiquing proposals. The whole class is required to read an outline of each paper and key cases ahead of time. One student has the heightened role of "questionner" for each paper. The questionner becomes especially familiar with the paper, meets with the presenting student and professor before the presentation to raise questions and comments, and plans the class with the presenter. If the presenter uses a roleplay to give the class a vivid sense of the problem to be rectified, the questionner frequently participates in designing and performing it with the presenter.

Evaluation of the students' work is based on the refinement of the final proposal, the factual, legal, and policy support marshalled for it, the effectiveness of the presentation in class and in writing, and the quality of the student's performance as questionner and participant in class debate. Thoughtful design of the proposal, thoroughness in research, perceptiveness in relating the proposal to both the legal world and the real world of one's colleagues, and persuasive writing are key skills evaluated.

Four key features in the design of this student-centered class result in students' action on personal values and connection with the community and with each other as colleagues. First, students select, by and large, law

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might meet their living expenses. She asked the class to plan a shopping list for a family of four using a budget a participant family would have for food.

Another student, who proposed amending the Maryland Human Relations Act to include protection against discrimination based on sexual orientation, distributed a short exercise of sex-role stereotyping from Elizabeth Schneider, Mary Dunlap, Michael Lavery, John DeWitt Gregory, *Lesbians, Gays and Feminists at the Bar: Translating Personal Experience into Effective Legal Argument — A Symposium*, 10 WOMEN'S RTS. L. REP. 107, 109 (1988).

81. For example, students roleplayed an employment interview derived from the dispute in then-pending *International Union v. Johnson Controls*, 111 S. Ct. 196 (1991). In the role play, the presenter played the role of the employer. The questionner played the role of a female applicant desiring a position on an assembly line in a battery factory. The position was restricted to men or certifiably sterile women. The employer denied discriminatory intent while explaining the hazards of the job and steered the applicant to a position that paid less and offered less opportunity for advancement.

In another exercise, students roleplayed a press conference held by a defense lawyer to respond to statements made by the police and prosecutors in announcing an indictment. The exercise illustrated the need for reform of Maryland's Rule of Professional Conduct 3.6 barring attorneys from out-of-court statements to the press that have a "substantial likelihood of materially prejudicing" an impartial trial, a rule substantially the same as the one struck in *Dominic Gentile v. State Bar of Nevada*, 111 S. Ct. 2720 (1991). The students used the transcript of the press conference at issue in *Gentile*.

A student proposing to amend a state law requiring domestic violence to be considered in child custody determinations asked the class to respond to the proposal as a legislative committee.



reform proposals that they personally support. As a result, students take a stance and are eager about their work. Second, students have the bulk of in-class responsibility for discussion after the first seven weeks in their roles as presenters, as roleplayers, and as assigned and spontaneous questioners. In class, students relate to each other as colleagues. The professor supports student presentations by setting the sequence of the papers and by raising issues and analytical themes that have not emerged in the student discussion. Third, students are urged to seek out advocates affiliated with advocacy groups<sup>82</sup> to quickly assess activity in their specialty areas, to test their ideas, and to learn from them as role models. Collaboration is encouraged. Fourth, the students interact significantly with the professor out of class by meeting to discuss outlines and first drafts and by meeting with the professor and the assigned questioner to discuss the plan for the class presentation. The professor nurtures and challenges the student outside of class to prepare for the rigors she or he may face in persuading legislators, courts, executive branch officials, and the public.

This course might be termed a law reform simulation<sup>83</sup> course in which the students choose most of the topics. As in other simulation courses, the student learns from acting in a role, in this context in the role of advocate for reform. The course offers features of a clinic: collaboration, attention to context, and in-depth study of a subject.<sup>84</sup> It also

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82. Students contacted, among others, the Women's Legal Defense Fund; National Womens Law Center; NAACP Legal Defense Fund; Center on Social Welfare Policy and Law; Children's Defense Fund; ABA Child Support Project; National Gay and Lesbian Task Force; Alliance Against Childhood Lead Poisoning; the Homeless Person's Representation Project; the Baltimore Justice Campaign (seeking gay rights); Court-Appointed Special Advocates (CASA) programs; legal services lawyers and national support centers; public defenders; faculty members; city, county, state, and federal agencies; judges; lobbyists; and counsel for the Attorney Grievance Commission.

83. Through simulation, students develop skills in articulating and defending their proposals in the relative safety of the classroom. Their classmates play the roles of legislators or co-counsel in a firm meeting. On the benefits of simulation, see Peter Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L. J. 277, 290-91.

84. Clinics can be excellent vehicles for teaching law reform. See ASS'N. OF AMERICAN LAW SCHOOLS, FINAL REPORT OF THE COMMITTEE ON THE FUTURE OF THE IN-HOUSE CLINIC (1990). The report discusses nine pedagogical goals of in-house, live-client clinics:

1. Developing modes of planning and analysis for dealing with unstructured situations.
2. Providing professional skills instruction.
3. Teaching means of learning from experience.
4. Instructing students in professional responsibility.
5. Exposing students to the demands and methods of acting in role.
6. Providing opportunities for collaborative learning.

resembles a seminar on legislation in that many students choose to advocate legislative reform<sup>85</sup> at the state or local level, although some students advocate for other methods of reform.<sup>86</sup> Some students observe the conditions that give rise to their proposals,<sup>87</sup> as in experiential or participant-observer courses.<sup>88</sup>

## B. STUDENT REACTIONS TO THE COURSE

Students observed that they liked having an active role in setting the direction of the seminar, an occurrence sufficiently unusual in law school

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7. Imparting the obligation for service to indigent clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people.

8. Providing the opportunity for examining the impact of doctrine on real life and providing a laboratory in which students and faculty study particular areas of the law.

9. Critiquing the capacities and limitations of lawyers and the legal system.

*Id.* at 1. See, e.g., Stephen Wizner, *Homelessness: Advocacy and Social Policy*, 45 U. MIAMI L. REV. 387 (1990-91) (describing advocacy for the homeless done by the Yale Law School Clinical).

The seminar can provide students who have taken a clinic with reinforcement of the critiques they began in the clinic and an opportunity to reflect on their clinic work in formulating proposals. For students who cannot take a clinic due to their own time commitments or the unavailability of clinic openings and for students who would otherwise not take a clinic, the seminar offers an alternative forum.

85. Individual students researched, among others, the federal lobbying efforts to pass Title I of the Family Support Act, 42 U.S.C. § 666 (1988), regarding child support and to pass legislation to reverse the *Rust* case, 111 S. Ct. 1759 (1991). Students proposed state legislation to strengthen and combine the Maryland Small Business Preference Act, MD. STATE FIN. & PROC. CODE ANN. § 14-201 (1991), and the Minority Business Participation Act, MD. STATE FIN. & PROC. CODE ANN. § 14-301 (1991), to satisfy the test in *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1988); to address lead paint hazards, including requiring notification of tenants and homebuyers, testing of children, providing tax incentives for paint abatement, designating high risk area for priority abatement; and to amend the Maryland Human Relations Act, MD. ANN. CODE art. 49B (1991), to include sexual orientation as a protected class, for example.

86. For example, one student used as a model for her proposal in Maryland the strategy used in Massachusetts to obtain Executive Order No. 215, signed by Gov. Edward King, March, 1982, to condition disbursement of state development assistance to cities and towns on provision of affordable housing.

87. For example, a student who proposed litigation to reform an aspect of administration of the welfare program in Maryland called Emergency Aid to Families with Children, which can be obtained to prevent eviction or to help with relocation, visited homeless shelters to see the conditions in which people stay when they lose their housing.

88. In participant-observer courses, students perform fieldwork (observation of conditions of poverty and interviews with parties affected by a system), write reflections on the experience, and identify the limits of the vantage point as a temporary observer. White, *supra* note 44; see also Bezdek, *supra* note 18; Boldt, *supra* note 18.

to be noteworthy. Initially, I attempted to steer the students to housing reforms, since that is an area in which I have studied and practiced. However, it quickly became apparent that the students wanted to choose from a broader range of topics, that they were hungry for the chance to set the discussion agenda with issues that concerned them. They spoke much more with one another in structured class settings (roleplays, paper presentations) and in structured out-of-class settings (meetings with the professor and with their questioners) than they were accustomed to doing in professor-centered courses. They seemed much more invested in their reform proposals because of their interaction with their peers, as opposed to, for example, students independently preparing advanced writing projects.

Students responded enthusiastically to the opportunity to address current social issues. The course lent legitimacy to the students' own interests in social justice work. Many students were working full-time and were not required, outside the seminar, to concentrate on social justice issues. Students seemed demoralized about the difficulty of bringing about change in the present legal and social climate but energized to learn how much effort is being put into reform work by advocacy organizations. I felt the seminar helped to fill a gap in their education by revealing strategies for change that are presently employed by both conservative and progressive coalitions.

A predominant response was surprise at how much work and planning was involved in law reform activities and in this course. It proved difficult to manage the synthesis of what students had been learning during their law school education. A reform proposal seemed mammoth compared to the controlled analysis of a given case or problem with a fixed reading assignment, which was the students' usual unit of work. Collaboration with advocacy groups put students in the position of picking and choosing from voluminous materials. Legislative proposals proved difficult to word and to locate appropriately in the state code. Litigation proposals posed a particular challenge: students got bogged down in reviewing relevant cases and had difficulty charting out the aspects of the litigation (parties, jurisdiction, forum, claims, relief) and how to use case precedent.

Many students were excited that their academic work might be useful to advocacy organizations. There was particular exhilaration when there was an advance on a reform measure while a student worked on it or when students were asked for a copy of their final papers. Students who tried to collaborate with outside organizations had uniformly good experiences in obtaining background materials and more mixed experiences in getting through to speak with high-profile lawyers.

Students took each other's work seriously. Collaboration among stu-

dent questionnaires and presenters worked smoothly in almost all cases. It was particularly interesting to observe the students' response to proposals that appeared to have little foundation. For example, a student initially proposed requiring all children in public schools to be tested annually for AIDS. The presenter significantly revamped his proposal in light of the probing of the policy, his strategy, and existing law on physical testing of children in the schools.

Students brought extraordinary insight to their work as they drew on their experiences. A law student in her forties, who had volunteered for years at homeless shelters and who was married and living in a suburb, noticed a homeless man was often on a sidewalk bench near the law school. She began speaking with him as she walked by each day. On a particularly cold day she invited him home to stay with her family. He resided with her family for fifteen months. During part of that time, she participated in the seminar on Law and Social Reform and wrote on the establishment of a right to housing. From her vantage point, she could see the fallacy in stereotyping the homeless and the paucity of options that this man faced. She became very sensitive to the emotions of this person as he experienced his homelessness. While she did not reveal to the class that she had taken the man in, she shared some of the human dimension of homelessness during class discussion.

Another student, by contrast, started with a general interest in homelessness and approached the real-life context of a problem and its effect on individuals<sup>89</sup> as he studied it. The student decided to learn more about homelessness by visiting several shelters. He realized how stark the conditions are and began to consider ways to provide a homeless person with alternatives. He talked to advocates for the homeless about the Emergency Assistance program, which provides cash benefits, and looked into problems in its administration that adversely affect homeless people. He then proposed to accompany an applicant through the process of applying for benefits. His experience with the agencies serving the homeless, although only as an observer, gave him insight about and investment in his research.

Occupational knowledge, the starting point for several student proposals, lent particular depth to policy proposals and strategies. A respiratory therapist proposed a state-funded health care system for people under 250 percent of the poverty level. A realtor proposed a linkage fee for his home county. A married mother of two children, knowing what it costs to

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89. This student effort is an example of what Mari Matsuda advocates as multiple consciousness. "The multiple consciousness I urge lawyers to attain is not a random ability to see all points of view, but a deliberate choice to see the world from the standpoint of the oppressed." Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7, 9 (1989).

raise children, proposed an increase in the "Standard of Need," a figure related to minimum living costs in the Federal Aid to Families with Dependent Children program.<sup>90</sup> A state agency administrator, familiar with state politics and the governor's staff, proposed an executive order as a device for giving incentives to suburban counties to provide a "fair share" of affordable housing.

Students came to realize that their proposals may have personal meaning to some of their peers. Several revealed pertinent personal information to explain how they developed particular perspectives. For example, one student proposed limiting the consideration of victim impact statements on the issue of the death penalty. Another student whose father had been murdered spoke of the importance of hearing the victim's and the survivors' points of view. The student making the proposal better understood the human dimension of his proposal and had to form a sympathetic and intellectual response.

The reform proposals caused students to confront their views about poor people. Many students readily saw a historically excluded individual as someone contributing to her own plight and less readily as someone affected by larger systems, such as those permitting inadequate availability of daycare, at-will employment that offers no security, minimum-wage levels set below poverty level, ineffective public education, and welfare bureaucracy. For example, the student who proposed raising the AFDC "standard of need" supported her position by comparing the Maryland "standard of need" figures with other measures of minimum monthly costs for healthy living. In response, another student expressed the opinion that the payment levels were adequate if one were a clever grocery shopper. A third student, who had received public assistance during childhood, pointed out the contextual error of assuming that low-income people had cars and were thus able to shop for the best prices.

Some students were challenged in their idealistic views about how law affects people's lives.<sup>91</sup> For example, some students seem to think that because *Brown v. Board of Education*<sup>92</sup> is the law of the land, the law on public education is now adequate despite the fact that *Brown* has not led to high-quality public education for many African Americans.<sup>93</sup>

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90. 42 U.S.C. §§ 601-610 (1989).

91. This was my perception of their attitudes. I am grateful to Karen Czapanskiy for suggesting that in the future I survey the seminar participants at the beginning and at the end of the semester to capture data on change in attitudes over the course of the semester.

92. 347 U.S. 483 (1954).

93. See Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L. J. 470 (1976) ("equal" public education fails to meet the needs of minority students); Gary Peller, *Race Consciousness*, 1990 DUKE L. J. 758, 801 (contrasting goal of public school integration with view

A proposal that Baltimore establish a public school for black male teenagers, modeled on the Detroit school system, provoked hot debate. Students struggled with ways to close the implementation gap between laws "on the books" and the reality of public education.

Students recognized societal attitudes as significant barriers to legal reform, much less actual reform. Students often said there was no point to proposing a particular change because the mood of the country was too conservative.

Some students struggled in class discussions with ingrained notions of property rights, that people who have something in the society have earned it (or their forebears earned it, and they have a right to inherit it). Law students may have a particular need to believe that hard work leads to success, given the law school environment. Efforts to redistribute resources or opportunity are often viewed as taking vested rights unfairly. One example arose in a discussion about existing laws in Baltimore that hold landlords responsible for removing lead paint in residential rental premises. Some students felt it was unfair to impose the cost of removing lead paint on landlords despite the economics of the situation,<sup>94</sup> the landlords' cheap acquisition and often minimal maintenance of properties, and the risk of grave health damage to children when deteriorating lead paint is present in their homes.

Some students craved black-letter law — a sound, reliable structure — and resisted a sense that laws are in flux and sometimes inconsistent. Our study of the legislative process caused one student to express shock and disappointment that law is often made in a piecemeal fashion, without a comprehensive plan. Limited use of statutory materials in much of the law school curriculum may hide this plain fact.

#### C. REACTIONS TO TEACHING THE COURSE

I was surprised that some students seem unaware not only of concerted efforts to effect change but also of the weight of the machinery to maintain the status quo. Some have a sense that law protecting vested interests stays in place because it is right, not because of steady advocacy (legislative, administrative, and through litigation) to maintain the status quo. Some of the more idealistic students were unaware of the many pitfalls for the unwary and well-intentioned engaging in law reform work.

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that educational reform must be examined in terms of how schools serve the needs of communities sharing a racial culture and history) and sources cited therein.

94. See Michele Gilligan and Deborah Ford, *Investor Response to Lead-Based Paint Abatement Laws: Legal and Economic Considerations*, 12 COLUM. J. ENVTL. L. 243 (1987)(using a valuation model, authors contend that investors in jurisdictions with lead-based paint abatement laws discount the future cost of abatement from the price they are willing to pay for real estate).

The dynamics of the class sessions were often challenging. Students were unaccustomed to shouldering so much of the class performance, and my in-class role and control as teacher was necessarily altered. Each proposal sparked considerable policy and strategy debate, and I found my role was to tie in the legal aspects of proposals and lawyering issues. As in clinical teaching, the pre-performance meetings with a student about her outline and draft, and with the presenter and questioner before the proposal presentation, were key to structuring the classes effectively.

Collaboration with colleagues made it possible to field the diverse interests of my students in their proposals. Several colleagues met with students to give them pointers about reform work going on and about structuring litigation. Reading law review articles helped me realize common bonds between this seminar and, among others, courses on race and the law,<sup>95</sup> gender and the law,<sup>96</sup> jurisprudence, law and economics, and civil rights. Explicit collaboration among faculty teaching these courses may result in greater acceptance and mainstreaming of the underemphasized messages discussed above and lead to curricular reform.

Guiding the students' work struck me as a sensitive task. I challenged all students on their proposals but did not veto proposals. I found it difficult to guide the proposals that I heartily disagreed with. It was frustrating to work with the few students making these proposals because they typically did not connect with advocacy organizations to seek data or theories supporting their positions. The most controversial proposals, such as the proposal to test all school children for AIDS, enriched the class by provoking valuable policy debate and legal analysis.

I have guided students' proposals towards incremental change in the law for several reasons. First, even a proposal for incremental change, such as adding sexual orientation as a protected category under the state Human Relations Act, poses a project of considerable complexity for a student in one semester. Second, public interest lawyers generally do seek incremental changes because courts and legislatures are more apt to accept change that extends or modifies existing law rather than redesigns an area of the law all at once. Third, I am familiar with the processes and strategies used to seek incremental change and am able to coach students effectively.

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95. See, e.g., DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* (1980)(textbook analyzing reform efforts to bring about racial equality). In his review of the book, Alan Freeman comments, "[Bell] focuses . . . on the relationships between doctrine and concrete change, and the extent to which doctrine can be manipulated to produce more change." Alan Freeman, *Race and Class: The Dilemma of Liberal Reform*, 90 *YALE L. J.* 1880, 1881 (1981).

96. See, e.g., MARY JO FRUG, *WOMEN AND THE LAW* (1992)(textbook integrating feminist theory into study of laws affecting women and reform limitations due to sex-role stereotyping).

Writing this article, though, has caused me to recognize that this seminar has focused on law reform as a process, with its social justice direction supplied by the choice of sample reform efforts we study, the vision of the lawyer-authors we read, the nature of the problems we discuss, and the paper topics most students select. While the social justice theme is clear from the overall course design, I will try to draw the theme out much more directly in future class discussions. My emphasis on law reform process, rather than on social justice, derives in part from a desire to meet students where I think they are<sup>97</sup> and from my greater familiarity in teaching legal process than in exploring social justice issues effectively in the classroom.

In response to these reflections, I plan to rechannel some of the time and energy spent on law reform techniques into three areas: (1) more pointed reflection on the social realities to which student proposals respond, (2) a greater attention to lawyers' roles and ethics in social justice work, and (3) capacity to envision significant reform. First, I plan to require, rather than merely suggest, that students conduct a field observation related to the topic on which they are writing at an early stage in their proposal. Student presentations showed that students learned a great deal from interaction with advocates, organizers, and low-income community members. The interaction helped students refine their understanding of particular social problems and of the complexities of bringing about change. Those students who did not actively engage in this way tended to develop their work more abstractly and superficially than those who did. Requiring a field observation should help the students to ground their proposals to see the effect of present law and the legal system on people's lives. This attention to the social reality could be a featured part of a student's presentation, which the class can then critique.

Second, the class can explore several roles for lawyers in social justice work. I have realized that the substantive topics covered in class — lawyering for social justice, critique of policy proposals that advance the interests of the historically excluded, and law reform process — draw primarily from poverty law and public interest models of reform. Public interest lawyers, well-versed in poverty and/or civil rights law, offer their expertise for the benefit of people traditionally underrepresented in the legal process.<sup>98</sup> Additional role models can be considered, including law-

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97. To gear the course to a more sophisticated level, prerequisites could include a critical perspective course to insure that students had begun to think critically about the legal system and uses of law before arriving in this seminar. I am grateful to Sharon E. Rush for this suggestion. Requiring prerequisites would lead to a self-selected and probably more politically homogeneous group.

98. See ARON, *supra* note 68; Dooley and Houseman, *supra* note 13; Roisman, *supra* note 51; and discussion of Edward Sparer's work in Greenberg, *supra* note 66.



yers who represent grass-roots community activists<sup>99</sup> and theoreticians who seek new societal models<sup>100</sup> rather than incremental change building on existing legal structures.

Third, future classes can examine the ways that language and culture limit our views and efforts to envision possibilities for change. Theoretical readings can be used to spark discussion of limitations inherent in the use of legal language, which carries connotations that reformers may wish to shed.<sup>101</sup> To think creatively about options for reform, the class can challenge familiar dichotomies that narrow our thinking.<sup>102</sup> Cultural limits might best be explored by using a comparative law example.<sup>103</sup>

Reflecting on the proposals that flowed from student experience and values, I realize that students who propose their own reforms, rather than select a suggested topic, seem to engage in their work in a more significant way. In the future, I plan to offer examples from past paper topics and demand that each student develop his or her own proposal in consultation with others interested in the problem.

### CONCLUSION

Traditional legal education offers limited views of the law, lawyers, and opportunity for progress. Law schools should at a minimum<sup>104</sup> send

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99. See Bachmann, Minow, and Polikoff, *supra* note 54.

100. E.g., critical race theorists, *see supra* note 24, and feminist theorists, *see supra* note 25.

101. *See supra* notes 23-26 and note 39 and accompanying text.

102. Martha Minow points out one such dichotomy in the approach that courts and parties take to special education cases. They consider either mainstreaming a deaf student in a regular class or placing the deaf student in a special class. Minow suggests that another alternative would be to teach the entire class sign language, recognizing that that would be necessary for both the hearing and deaf students to interact fully. MARTHA MINOW, MAKING ALL THE DIFFERENCE 84 (1990).

103. For example, one could compare the rights of the homeless in the United States, where localities generally have no duty to provide temporary (much less permanent) accommodations, with the rights of the homeless in the United Kingdom, where local housing authorities are obligated by national legislation, the Housing (Homeless Persons) Act of 1977, to provide permanent accommodations in some circumstances. Compare ROBERT S. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT § 13:2 (1980 & 1992 Supp.)(selection of tenants for public housing) with PAUL Q. WATCHMAN & PETER ROBSON, HOMELESSNESS AND THE LAW IN BRITAIN 36-37 (1989)(duties of local housing authorities to homeless people).

104. I say "at a minimum" because that is within the control of individual professors as we design our courses. I agree whole-heartedly with the critique adroitly leveled by Gerald Lopez that law school professors coordinate too little among ourselves (as skills professors, as professors with common substantive interests) in looking at the curriculum as the students experience it. Lopez, *supra* note 18, at 340-42. Some would invoke academic freedom as a reason to avoid collaboration. Politically, the tensions of the tenure system may steer us away from collaboration. Inertia, egotism, and the press of time are other practical deterrents.

students more messages that reflect the vast range of thoughtful views on lawyering. Law schools should expose students to alternative theories,<sup>105</sup> as well as standard ones, about law and lawyering and offer students a broader range of role models<sup>106</sup> from the many competent practitioners, scholars, and practitioner-scholars we have in our midst. This variety will better stimulate students to consider and choose their approaches to law, learning, and lawyering.

Study of the history and the practices of law reform is fertile ground for including perspectives from often-excluded groups whose members speak about inequities they see in the legal system and for considering possible solutions. Study of law reform taps the experience of some of the faculty in most schools and explicitly recognizes reform work as a contribution to the school, profession, and society. It is an appropriate context for using the critical theories discussed by legal scholars.

The proposal of law reform permits students to try the role of lawyer and use legal skills to try to improve their own communities. Students can take their work and each other's work seriously as they address problems that matter to them. The chance for a student to make practical use of her law reform proposal — to share it with an advocacy organization, publish it,<sup>107</sup> or convert it into a letter to a newspaper editor — builds student self-esteem tremendously. Law reform is relevant to career interests whether or not students seek employment designated as "public interest"; socially responsible reform work exists in some work in government, on pro bono matters, and in for-profit practice.

A law reform seminar is but one vehicle for conveying the importance and theories of lawyers' roles in working towards social equity. Other courses<sup>108</sup> devote significant attention to recent law reform (or lack thereof) and lend themselves to like critiques and inquiry into action

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105. Law schools can effectively present alternative theories to students outside the classroom in addition to in the classroom. See, e.g., Jay M. Feinman, Ann C. Shalleck, Robert H. Lande, Tauyna Lovell Banks & Richard W. Bourne, Symposium, *Five Approaches to Legal Reasoning in the Classroom: Contrasting Perspectives on O'Brien v. Cunard S.S.Co.*, 57 MO. L. REV. 347 (1992)(featuring the teaching of a torts case from the perspectives of critical legal studies, feminist jurisprudence, law and economics, critical race theory, and traditional legal education).

106. A greater sense of pluralism in the law school occurs as law schools diversify their faculties by perspective, ethnicity, and legal practice background. See Bruce Comly French, *A Road Map to Achieve Enhanced Cultural Diversity in Legal Education Employment Decisions*, 19 N.C. CENT. L.J. 219 (1991)(advocates making cultural diversity a basic qualification for a position in law teaching).

107. See Crenshaw, *supra* note 23.

108. These include elective courses on gender and the law, feminist jurisprudence, race and the law, critical race theory, child and the family, legal rights of the elderly, jurisprudence, civil liberties, law and the handicapped, legal history, recent Supreme Court decisions, and alternate dispute resolution.

Faculty can, and some do, teach required courses from a critical perspective.

on personal values. Innovative, collaborative efforts afoot at some schools<sup>109</sup> entail restructuring the first-year curriculum to emphasize lawyers' responsibility to serve poor people and other subordinated groups. My experience in the seminar makes me desire further collaboration with my colleagues to better integrate social justice values into the curriculum to meet the intellectual and practical needs of students and to harness the energies, expertise, and talents of faculty. By reconceiving the curriculum to respond to needs of historically excluded people and to vital concerns of students and faculty, law schools can better equip their graduates to address pressing social problems.

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109. See Lesnick, *supra* note 21 (description of theory behind curriculum at City University of New York Law School); Lopez, Tape of Mini-Workshop, *supra* note 18 (description of Stanford University Law School program); Boldt, *supra* note 18 (description of University of Maryland Program).