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Barbara L. Bezdek

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"LEGAL THEORY AND PRACTICE" DEVELOPMENT AT THE UNIVERSITY OF MARYLAND: ONE TEACHER'S EXPERIENCE IN PROGRAMMATIC CONTEXT

*BARBARA L. BEZDEK**

The University of Maryland has undertaken an extraordinary commitment of its institutional resources to cultivate students' sense of obligation and capacity to provide effective legal service to poor and marginalized people and communities. The law school has established required courses at the formative stages of the curriculum that unite the study of the substance and operation of law and legal systems, with the provision of legal assistance to real people in need.[1] These Legal

* Assistant Professor, University of Maryland School of Law: B.A. 1975, South Carolina; J.D. 1978, Columbia University School of Law; LL.M. 1986, Georgetown University. This paper was prepared as a case study for the Interuniversity Poverty Law Consortium. I am grateful to the Consortium for its support, and to the members of its Project Group for their attendance and participation in a particularly useful discussion at the meeting held in November 1991. I owe special thanks to my colleagues Richard Boldt, Marc Feldman, and Homer La Rue for helpful comments on an earlier draft.

1. This is in sharp distinction from two other approaches, either to append a pro bono requirement to the end of a law student's education, or to impose a mandatory clinical requirement. A number of law schools have started to require their students to perform a prescribed hourly amount of pro bono legal work as a condition of graduation. For examples of law schools having pro bono requirements, compare the pro bono programs of Florida State (as a condition of graduation, students must perform 20 hours of unpaid civil legal work on behalf of indigents, victims of discrimination, or

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Theory and Practice courses are integrated throughout one of the required subjects in the second or third semester. They are conceived and implemented as a bridge between Maryland's traditional "stand-up" curriculum and its longstanding, elective clinical program.

The primary focus of this case study is to share a preliminary evaluative report of one Legal Theory and Practice course developed by the author as part of Maryland's pioneering program. The course discussed herein is titled "Legal Theory and Practice/Property." For background purposes, this study offers a short explanatory history of the Legal Theory and Practice program's political origins and the institutional choices made by Maryland's law faculty in conceptualizing and supporting the program. This article suggests ways that linkages between legal "theory" and "practice" may be forged within the context of the courses. The study then examines key decisions made in organizing Legal Theory and Practice/Property.

I. THE ORIGINS OF THE "LEGAL THEORY AND PRACTICE PROGRAM" AT THE UNIVERSITY OF MARYLAND

A. *Foundations and Objectives*

The Legal Theory and Practice (LTP) program in the law school began as a curricular response to political developments in Maryland in the late 1980's. In 1987, the Advisory Council to the Maryland Legal Services Corporation released its Action Plan for Legal Services to Maryland's Poor. Like similar legal needs surveys in other jurisdictions, the published findings indicated that four out of five poor persons in Maryland lacked necessary civil legal assistance.[2] Among the Advi-

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government agencies); Valparaiso University (same); Tulane University (same, except that government work is not permitted in lieu of legal assistance to indigents); University of Pennsylvania (70 hours required, at least half of which must occur in the second year of law school). The University of South Carolina has a voluntary pro bono program. Pam Herzig, National Association for Public Interest Law, Comparison of Pro Bono Programs (on file with the *Washington University Journal of Urban & Contemporary Law*). The District of Columbia School of Law and the University of New Mexico both have mandatory clinical requirements.

2. One comprehensive national sample of households at or below 125% of the government poverty line reported the same level of need. SPANGENBERG GROUP, AMERICAN BAR ASSOCIATION NATIONAL CIVIL LEGAL STUDY (1989). Legal needs studies of this kind have been criticized for focusing only on individual grievances, which obscure collective problems and structural forces (such as environmental hazards, product safety, or racial bias in school financing and districting) that may interfere with the recognition and remedy of legal needs. *See generally* Richard E. Miller & Austin Sarat, *Grievances, Claims and Disputes: Assessing the Adversary Culture*, 15 L. & SOC'Y REV.

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sory Council's several dozen proposals were two recommendations to the state's two law schools: (1) to require law school clinical experience in providing direct legal service to the poor as a condition of graduation; and (2) to develop educational approaches which inculcate the professional value of responsibility to serve the poor and underrepresented of the state.[3] In 1988, the Maryland General Assembly appropriated funding to implement the recommendations and in the academic years 1988-90 the law school appointed five new faculty members whose duties included designing and teaching LTP courses during the first and second year curriculum.[4] The political climate and professional consciousness which led to this remarkable opportunity provides a counterpoint to the essential enterprise of the LTP courses: to engage law students constructively and compassionately on behalf of poor people in the United States.

Although the express purpose of the law school's new appropriation was to enhance our law graduates' felt obligation to provide legal assistance to the poor, there were no conclusions about the manner in which Maryland's law faculty would modify its curriculum. The Cur-

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525 (1980-81) (exploring the origins of disputes in grievances and claims); David M. Trubek, *The Construction and Deconstruction of a Disputes-Focused Approach: An Afterword*, 15 L. & SOC'Y REV. 727 (1980-81) (discussing disputes, conflicts, and court resolution).

3. MARYLAND LEGAL SERVICES CORPORATION, ACTION PLAN FOR LEGAL SERVICES TO MARYLAND'S POOR 35 (Jan. 1988) (on file with the *Washington University Journal of Urban & Contemporary Law)*.

4. There would not be any curricular innovation to chronicle if it were not for the political advance-work performed by a group of Maryland bar members that were committed to advocacy on behalf of the poor. For a brief account of the strategy which gave rise to Maryland's LTP Program, see generally Dean H. Rivkin, *The University of Maryland School of Law: Progressive Ideals In Action*, 1991 SALT EQUALIZER 1. Rivkin explains that the program:

> originated in the energetic efforts of Maryland faculty working in conjunction with the Maryland Legal Services Corporation (MLSC), a state-chartered funding source for legal services for the poor. In the course of a major study on the legal needs of the state's poor, conducted by a blue ribbon commission (chaired by now-member of Congress, Benjamin Cardin) under the auspices of the MLSC, Maryland faculty saw an opportunity to develop an innovative pedagogical and public service program, combining the best of the school's extensive clinical program and drawing on the resources of a faculty and administration with strong interests in explicating and realizing the public responsibilities of the legal profession. The final MLSC report recommended, among other initiatives, that the state's two law schools develop programs to ensure that all law students work with poor clients during law school. The united lobbying effort among MLSC, the law schools, and the Bar generated the funding necessary to launch the [LTP] Program.

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riculum Committee considered a variety of proposals.[5] The proposals reflected a variety of opinions about the degree to which the law school could or should strive to encourage professional service values and practices.

Extended deliberation by a pedagogically diverse special committee led the faculty to adopt the legislature's principal purpose: to encourage students to represent disadvantaged people after they join the bar. This purpose has since developed into an intention to acquaint and sensitize law students to the legal problems of disadvantaged people and to introduce students to the skills and institutional understanding needed to represent disadvantaged clients.[6]

B. *Essential Features*

The faculty decided that certain features were essential for a course to satisfy the LTP requirement.[7] First, each student must be given significant experience providing legal assistance to the poor. This requirement is neither driven by a narrow concern to teach skills nor by an effort to involve students in recognizable lawyer roles. Rather, this re-

5. The faculty rejected several proposals, including mandatory clinic and a pro bono practicum, in favor of the concept described here. The faculty considered an alternative form of mandatory clinics establishing a one-semester, five credit clinic. This failed because of skepticism that the existing clinical teaching could effectively accomplish this in one semester.

The faculty also considered implementing a pro bono practicum requiring 55 hours of legal work for poor clients in students' second or third years of law school, but rejected this approach because of its lack of an educational component. The initial recommendation, prior to hiring new faculty who would implement the program, was for the development of "sidebars" to first year courses which would entail client experience and focus on the lawyering process and professional values.

6. In response to the question of whether the fuller objective is to foster student behavior that would not otherwise take place in the program's absence, a team of external evaluators offered the following advice:

> A meaningful, systematic effort to assess the program's concrete effects on student behavior could not be undertaken until some graduates of the program had been in practice for several years; would be complicated and expensive; and would encounter difficult, and possibly intractable, methodological problems.
>
> . . . The proposition that better sensitivity and understanding leads to better behavior is rarely demonstrable but is typically taken as a premise of most academic effort.

Howard Lesnick et al., Report to the Dean and Faculty Council of the University of Maryland Law School 2-3 (Sept. 1990) (on file with *The Washington University Journal of Urban and Contemporary Law*).

7. *See* Barbara L. Bezdek et al., Report of the Special Committee on the Cardin Project 21 (Nov. 1990) (copy on file with the author).

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quirement is significant because it forces students to assist individual poor people in the context of the clients' lives. The student's role is to assist a client in securing some law-related objective. Practical experiences must be designed, however, to allow the student to perceive her work as participation with the client, not merely as action through an insulated legal system.[8]

Second, the legal work must be integrated with issues of professional responsibility, choice, and identity. The Legal Theory and Practice courses' actual legal work is selected so that abstract bodies of legal regulation mix with the concrete personal, social, and political contexts of clients' lives. As a result of this mixture, the students' work with the poor gives students an opportunity to explore central issues about the meanings of professionalism, the nature and goals of the client-lawyer relationship, notions and experiences of lawyer roles, and the effects of differences in class, race, and gender.

Third, the representational work must be integrated with the study of some substantive area of legal regulation. This promotes the learning of doctrine and legal institutions in a context that aids the development of a critical understanding of the law and its processes. One of the hallmarks of the LTP courses is the decision to integrate LTP goals and methods into existing courses. LTP has been taught in conjunction with both first- and second-year required courses, and with second- and third-year elective courses.

There is considerable value in incorporating so much of the program in the first year of law school. A major rationale underlying the LTP program is its role in socializing students concerning the value of devoting a portion of one's practice to the representation of poor and disadvantaged people. Several commentators share the view that students tend to form their perceptions of what is important in the practice of law during their first year.[9] LTP endeavors to minimize the common errors in legal education resulting from extreme marginaliza-

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8. For example, one trend in the legal work across the LTP courses has been to back away from advocacy in adjudicatory settings. This is because the combination of unfamiliar cognitive and performative demands in trying a case tends to direct students' attention almost exclusively to their own performance concerns. This is understandable, and not surprising, but it interferes with the focus of the LTP courses on the interaction between the law and the client's situation.

9. *See, e.g.*, ROBERT V. STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL (1989). *See also* Duncan Kennedy, *Legal Education as Training for Hierarchy, in* THE POLITICS OF LAW 40, 41-44 (D. Kairys ed., 1982) (discussing the impact of the first year of law school on students); Jay M. Feinman, *The Failure of Legal Education and the Promise of Critical*

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tion and actualized values of issues of lawyers' work.[10]

Finally, students' learning must be promoted through combinations of multiple teaching methods and materials. Each LTP course involves students in the learning and application of doctrines and concepts from some field of legal regulation. Students must also experience the relationships between the law and the poor and must develop the practical skill necessary to work as a legal practitioner. Each of these considerations creates differing demands for teaching materials, formats, and functions. The concept upon which this course is based depends upon the relationship of all three dimensions: legal regulation, social experience, and professional competence. This reflects the presumption of connections among these different types of thought and experience. Having said this, it should be noted that these connections, and methods for accomplishing them with our students, have advanced little beyond a preliminary stage.

C. *Operations*

The LTP program was inaugurated in the spring of 1989. During the next two years, the new faculty that were hired to give life to the project developed and experimented with the course.[11] In January 1991, the faculty approved the program's contours as developed by the faculty members assigned to the task. LTP is a required part of the curriculum for day-division law students. All day students take one of the LTP courses in either their second or third semester of law school.

Legal Studies, 6 CARDOZO L. REV. 739, 745-56 (1985) (arguing that law schools do not train capable lawyers).

10. *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 LAW. REV. 1157 (1990) (arguing that law teachers portray the world of law and lawyering in ways that distort student's understanding); *see also* Richard Boldt & Marc Feldman, *The Faces of Law in Theory & Practice: Doctrine, Rhetoric and Ideology*, 43 HASTINGS L.J. (forthcoming 1992).

11. Five tenure-track faculty members have been hired whose principal teaching responsibilities involve the LTP courses. At this time, a sixth position remains to be permanently filled.

Obviously, coverage of the day-division class would not be feasible if only "LTP" faculty taught in LTP courses. The faculty council acknowledges the collective obligation of the faculty to assure coverage for this as for any required course. Nevertheless, the manner in which LTP courses differ from most teachers' methods is a cause for periodic discussion. Even so, a number of faculty members who are accustomed to thinking that their principal teaching responsibilities lie elsewhere in the curriculum have taught or co-taught in LTP.

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Because the courses are meant to bridge the preexisting spheres of Maryland's curriculum, "LTP" is not a free-standing course, and it appears as a prefix to other courses recognizable in the law school curriculum.[12]

Each LTP course is one semester long, and carries three credits in addition to those otherwise assigned to the base course. LTP has been integrated with most first-year subjects. Regardless of the subject or area of legal regulation in which students gain field experience, each LTP course commonly involves: (1) instruction in a doctrinal subject; (2) poverty and the relationship of the legal system to it; (3) instruction in the practice area of the course; (4) attention to professional roles and responsibilities; and (5) promotion of students' autonomous learning. This has led LTP faculty to devise unusually detailed instructional plans to plot suitable convergences between the cognitive, affective, and performative experiences of the course.[13]

D. *Variations in Operational Detail*

Although sharing this essential core, the specific LTP courses have varied in their operational detail as well as their substantive and pedagogical focus. Faculty members face a recurring set of structural and organizational decisions. Faculty members must decide how best to assemble the students' required learning activities to sequence the topics and experiences over the semester, and how to define and make arrangements for the anticipated client work.[14] A satisfying LTP

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12. To illustrate, the school has offered the following courses to date: LTP/Civil Procedure, LTP/Torts, LTP/Property, LTP/Legal Profession, LTP/Advanced Criminal Law, LTP/Advanced Torts, LTP/Constitutional Law, and LTP/Clinic.

13. The plans detail day-to-day to week-to-week schedules. A thorough level of articulation has valuable collateral effects because it exposes the teacher's premises as to learning objectives and effective methods to serve identified objectives. For teachers planning and implementing an LTP course, either singly or collaboratively, such detailed prefiguring of the course's complementary currents enhances one's attention to the opportunities to fit teaching format to student task, and to select among learning modes to draw on a fuller range of student aptitudes. This clarity of purpose and action is likewise a useful aid to effective co-teaching.

14. Planning an LTP course entails decision-making about several interdependent sets of variables. First is the organization of a broadened array of learning activities in which students are expected to engage. Given the broad ambit of the LTP concept, no single learning structure or instructional device will serve all of its aspects. Thus each LTP course necessitates a mix of instructional modes familiar to classroom and clinic teachers generally, including lectures, socratic dialogues, peer teaching, problem meth-

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course can be made from varied answers to these questions.[15]

The LTP courses have had a number of course configurations. The following are some examples: sections of fifteen students taught by a single faculty member; sections of twenty-five students taught by a teaching team of three or four (combining LTP and non-LTP faculty); coordinated sections of twenty-five students, each led by a single LTP teacher involving separate practice areas which meet once a week as a merged section of fifty students, team-taught by the collaborating LTP faculty. These differences in size reflect varied faculty decisions in the use of upper-year teaching assistants, involvement of cooperating attorneys, and the focus of legal work on litigative, remedial, or preventative efforts to help clients.

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ods, open research, self-tests, clinical practice and supervision, journal-keeping, and so on.

The sequencing of particular activities through the semester can be arranged to facilitate students forging links between theory and practice. Several LTP courses have operated in three sequential units. These courses have begun with a preparatory orientation to the doctrinal material, legal operations, and context surrounding the student's legal work. Following orientation, there is a several-week period of more intense student responsibility for legal work, accompanied by an ongoing study of theoretical frameworks used to examine the legal subject and to compare students' field experience. A final unit, occupying the last two or three weeks of the term, reverses the focus by stepping back from the intense legal work and bringing the examination of legal theory and field experiences to the foreground.

There is necessarily an interdependence between such elements of course design and the client work selected as a context for the LTP course. The nature and demands of the legal work may be chosen for their fit with the theoretical, doctrinal, and process dimensions of the subject under study, or for the nature of the lawyer-client relationship or the lawyer roles that students undertake. Also significant are the number of students that are accommodated in a given LTP course, and whether supervision of students' work will be wholly done by LTP faculty, by cooperating attorneys, or by some combination thereof.

15. During the autumn of 1989, a Special Committee on the Cardin Program evaluated and reviewed the developing curricular initiative. The Committee urged modifications of the start-up year's collective planning and execution of the initial courses. The Committee concluded that: (1) the benefits of faculty collaboration had nonetheless intruded upon traditions of faculty autonomy for the pursuit of areas of scholarly and practice interest and expertise; and (2) the extent and intensity of legal work undertaken in the first two semesters tended to overwhelm both faculty and students.

Since then, the LTP offerings from the spring of 1990 to the present have reflected notably diversified subject matter and legal work. *See supra* note 12 for examples of the different LTP courses that have been offered. The courses also began to involve the representation of children seeking special education services, pro se counseling in the local eviction court, counseling drug treatment centers concerning confidentiality of patient records, investigation of lead paint poisoning personal injury claims, representation of battered women charged in homicide cases, and investigation of police brutality claims.

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Finally, as expected, the courses differ in the degree of explicit attention to the relationships between law and poverty, and the emphasis on, and manner of, forging links between the theoretical and practice elements of each course.[16]

II. THEORY: FORGING LINKS BETWEEN "THEORY" AND "PRACTICE"

The central premises of the endeavor are that it is possible, useful, and preferable to engage students early in their legal education with the connections that exist between legal regulation, lawyer operations, and social knowledge. Because the LTP courses are intended to integrate these elements, a fair question is whether putting them all in the LTP pot makes them stew.

This approach embraces the notion that affective experiences can have a powerful impact on students. However, the LTP course concept does not turn principally on client experience. Very often the students who return from crumbling rowhouses in disintegrating neighborhoods containing tired and cheerless people are shaken beyond their expectations. The students find it difficult to believe the degree of deprivation and unrequited perseverance which mark their clients' lives. This shocks many of the students, whose lives have been comparatively comfortable, safe, and orderly. Yet experiences of this kind do not necessarily help individuals to express what they have learned. Nor does the shock bring the experience into conscious criticism for later application.[17]

The focus on linking theory and practice[18] is evidenced in the course

16. For a sense of the extent to which these differences devolve from the philosophical, political, or pedagogical orientations of particular faculty members, see the following works in a forthcoming symposium. Barbara L. Bezdek et al., *Students and Lawyers, Doctrine and Responsibility: A Pedagogical Colloquy*, 43 HASTINGS L.J. (1992); Boldt & Feldman, *supra* note 10; La Rue, *Developing an Identity of Responsible Lawyering Through Experiential Learning*, 43 HASTINGS L.J. (1992); Bezdek, *Reconstructing a Pedagogy of Responsibility*, 43 HASTINGS L.J. (1992); Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43 HASTINGS L.J. (1992).

17. Such experiences (of personal connection, or empathic breach of the bounds of race, class, and circumstance) have educational significance. It is common among law teachers in clinical settings to report the deeply motivating effect of experience of this kind. However, observations of this kind drawn from self-selected students enrolling in elective clinical courses do not necessarily apply in the context of LTP courses. The LTP courses are required of all students and thus include some who would not have chosen to provide legal services to poor people, much less visit them in their homes.

18. This is an effort occupying several important currents within legal education

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title. I am using the term "theory" to denote a set of general propositions used as an explanation sufficiently abstract to usefully generalize beyond particular situations. "Practice" denotes the doing of some action.[19]

In operation, several avenues are available for linking "theory" and "practice" within the basic LTP concept. I describe the principal avenues attempted in varying combinations and degrees of emphasis: (1) enlarging comprehension of the traditional elements of legal education — rule, doctrine, policy, and procedure — by reassembling these in real contexts;[20] (2) disarming the myths of formal, determinant

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today. For works by feminist legal theorists linking theory and practice, see, e.g., Marjorie Schultz, *Room to Maneuver (f)or a Room of One's Own? Practice Theory and Feminist Practice*, 1989 LAW & SOC. INQUIRY 123; and Robin West, *Feminism, Critical Social Theory and Law*, 1989 U. CHI. LEGAL F. 59. For critical race theorists' work on this point, see, e.g., Mari Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed Ground*, 11 HARV. WOMEN'S L.J. 1 (1988); Judith Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights*, 24 HARV. C.R.-C.L. L. REV. 9 (1989). A useful effort from a critical legal studies perspective may be found in Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and The Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369 (1982-83). For such works by theorists within the clinical legal education movement, see, e.g., Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991); Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555 (1980). For a perspective from professional education, see, e.g., CHRIS ARGYRIS & DONALD SCHON, THEORY IN PRACTICE: INCREASING PROFESSIONAL EFFECTIVENESS (1977).

In operation, LTP courses have not attempted to steep students in the study of these or other theoretical movements.

19. *See* Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 580 (1987) (defining "theory" and "practice"). Phyllis Goldfarb's recent work demonstrates linkages between the responses to the relationships between theory and practice in feminist jurisprudence and clinical legal education. Goldfarb, *supra* note 18, at 1601. Goldfarb observes that both movements' principal methodologies move from experience to theory, and thus express the idea that experience is the powerful germinator of theory. *Id.* at 1667.

The viewpoint that theory can direct practice is presumably the premise of avowed theorists. *See supra* note 18 for examples of authors that discuss theory and practice.

Some argue that theory has no consequences. This argument is grounded in the view that the degree of self-consciousness presumed by the proposition that theory may guide practice is not possible because of the situated, subjective nature of all human knowledge. *See* Stanley Fish, *Dennis Martinez and the Uses of Theory*, 96 YALE L.J. 1773 (1987). For a reply, see Steven L. Winter, *Bull Durham and the Uses of Theory*, 42 STAN. L. REV. 639 (1990) (countering that, without arguing that there is some objective standpoint outside of the practices under study, we can still find a critical self-consciousness worthwhile and worth striving for).

20. *See* Eric S. Janus, *Clinics and "Contextual Integration": Helping Law Students*

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"law" governing the resolution of legal disputes;[21] (3) use of objective empirical data, to both aid understanding and identify needs for reform;[22] (4) immersion in facts as critical to understanding a lawyer's work;[23] and (5) the use of student performance of roles within the legal system as the focal point for intellectual inquiry.[24]

III. ONE INCARNATION: LTP/PROPERTY

Over time the original objective of the program to impress upon stu-

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Put the Pieces Back Together Again, 16 WM. MITCHELL L. REV. 463 (1990) (arguing for an integration of law school curriculum).

21. This may be viewed as a self-conscious effort to engage students with the insights of legal realism. Under this theory, the outcomes of judicial decisions are virtually never determined by the legal rules themselves. Instead, decision-making depends on the resources of the parties, the competence and preparation of their lawyers, the conduct of litigants and witnesses in court, the ideological perspectives of the judge, the admissibility and interpretation of facts, and the persuasiveness of argument. Although law school faculties have accepted legal realism for a long time, these insights are scarcely delivered through first year curricula. *See* Boldt & Feldman, *supra* note 10.

22. For a legal realist approach to this avenue, see John H. Schlegel, *American Legal Realism and Empirical Social Science: From the Yale Experience*, 28 BUFF. L. REV. 459, 579-84 (1979).

23. This follows from the insights first purveyed by the legal realists that case outcomes are not determined by legal rules. *See, e.g.*, Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); Jerome Frank, *What Constitutes a Good Legal Education*, 19 A.B.A. J. 723 (1933).

24. This is the hallmark of what Gary Bellow described as the methodology of clinical education in his bellwether article published in the early 1970's. Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, *in* CLINICAL EDUCATION FOR THE LAW STUDENT 374 (CLEPR-Council on Legal Education for Professional Responsibility, Working Papers).

This conception of clinical education method is useful, because it clarifies the notion that the active stance of a lawyer on behalf of someone poor and in legal trouble, may be utilized to address quite different elements of learning. On the one hand, it may be applied to topics within the "content" ambit of a course. For example, this stance often exposes some conflict between the student's own personal morality and some prescription of law or practice. Focusing on the students' choices can initiate an exploration of the connections and dissonances between law and morality. *See, e.g.*, Robert J. Condlin, *"Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 66-67 (1986); Goldfarb, *supra* note 18, at 1673-74. The same method is available for additional points which might be described either as content or as self-actualizing "methods." For example:

(1) "learning to learn from experience," a practice of self-assessment entailing careful review throughout the planning and evaluation of one's work, and analysis of the results of one's actions to test their effectiveness and improve one's theory. Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284, 288 (1981); *see also* Anthony Amsterdam, *Clinical Legal Education—A 21st Century Per-*

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dents each lawyer's responsibility to assist the poor and under-represented has been restated. Various LTP courses stray from the classic liberalism of its first expression in two directions. The first departure features as a teaching objective student recognition of the ways in which poor people are systematically disadvantaged by law and legal institutions. A second elaboration has been to develop affirmatively students' sense of capacity to use law to assist poor people and communities. Each modulation magnifies different concerns within the admittedly wide expanse of a given LTP course. The LTP/Property course described here illustrates the first departure. I am critical of the course because of its relative inattention to the second departure.

A. *Structure of the Course*

Twenty-two first year students were assigned to LTP/Property. One third-year student, who had taken an LTP course the previous term, assisted. Three faculty members co-taught the course, two whose principal teaching was in LTP, and one sympathetic "stand-up" teacher.[25]

A substantial portion of the LTP/Property course revolved around a single (albeit complex) integrative task: to identify the problems of access to law that poor tenants experienced as participants in Baltimore's rent court, and to propose means to redress the problem. For students well into the deeply socializing first-year of law school, the stories of people drawn into rent court offered a prism by which to examine their nascent notions of law and procedure, claim and right, in a particularized setting of poverty and property.

Classroom. The course began with a strong effort to redefine the subjects and methods for classroom learning. It was important to students' subsequent fieldwork that they promptly master the legal rules governing landlords and tenants, as well as a basic sense of how prop-

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spective, 34 J. LEG. ED. 612 (1984); CHRIS ARGYRIS & DONALD A. SCHON, THEORY AND PRACTICE; INCREASING PROFESSIONAL EFFECTIVENESS 4 (1977).

(2) learning to reassemble that which law school compartmentalizes. *See* Goldfarb, *supra* note 18, at 1654.

(3) learning critical reflection, that is, to attend to traditional lawyering practices and the theories on which they are premised, to draw on experience and knowledge of the larger context for these practices, to develop normative views about the relationships of these theories and practices to standards of justice, and to strive to improve these where possible. *See* Goldfarb, *supra* note 18, at 1657-58.

25. The course was developed and conducted as a three-person collaboration. My colleagues were Richard Boldt, who was an experienced LTP teacher and knew what the enterprise would entail; and Everett Goldberg, who participating enthusiastically, revamped his customary property course in particularly demanding ways.

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erty rules work in the real world. The three faculty members chose to deliver a body of material through a series of counseling exercises conducted and analyzed in class.

One decision made early in planning for the course was to give the "stand-up" teaching team member primary responsibility for decisions as to doctrinal coverage. As a result, the classroom was not fully utilized as an arena for uncovering the value premises of either the legal materials studied or the law-practice data that the students generated. Although this conversation did not occur in the classroom, it did occur in "rounds." One result was the re-creation of a perceptual split between the work of "learning property" and the value-discovering, operational, and theoretical aspects of the course.

Legal work. The faculty chose the students' legal work to serve the integrative project. In the early weeks of the course, students participated in the representation of tenants by presenting warranty of habitability cases in the rent court. This facilitated intensive training in the local rules and practices. This experience-based learning was supplemented in classroom sessions. In the second phase, students conducted a highly structured court observation study, provided counseling to pro se tenants in the court house, and conducted detailed exit interviews with over 100 tenants. In the final weeks of the course, students wrote proposals to modify the institutional barriers to effective tenant participation in the legal system.

Rounds. Students met once a week in smaller work groups that have been termed "rounds." These meetings focused on the intersections between students' practical experiences and the other forms of data and analysis presented by the course. This effort was supported by a study on three fronts. First, it was essential that students notice and investigate the real-world effects of the poverty that constrained their clients. The class approached this priority from two directions: through the assignment of multi-disciplinary readings concerning poverty, low-income housing, and their links to law and legal institutions; and by considering the data cumulating through exit interviews and court observations. Second, rounds presented an opportunity for student discussion of the attitudes and values that were roused by students' conversations with tenants, and by the contours of tenants' lives. Finally, we hoped that conversations in rounds would aid students in the translation of this (usually) positive and empathic experience with individuals, to see beyond their own clients, and to loosen negative stereotypes about "the poor."

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B. *What Happened*

The students made the following observations from their three-month experience in court:

- Representation of tenants is exceedingly rare. Neither observation of several hundred cases nor the students' own representation offered a basis for concluding that tenants' access to lawyers greatly affects either individual case outcomes or the cumulative fairness of the forum;
- Landlords routinely win without having to prove any element of their cases. The multitude of tenants lose whether they have a defense, or attempt to assert that defense;
- Crowds of tenant defendants spend hours waiting in court, only to accept judgment silently or to have it thrust upon them over objection;
- The tenant defendants are almost universally poor.[26] The great majority are black, women, and often have small children in tow.

I had imagined that accumulating experience in what is palpably a poor people's court would enable students to see beyond solely formalist accounts of the court's dysfunction.[27] Issues raised during the semester's conversation in rounds repeatedly asked students to examine poverty accounts in the materials and experiences of the course. Students analyzed the claim that at many points in the law and process of this particular legal institution, poor tenants were systematically disadvantaged.

At the end of the term, students proposed ways to enhance more meaningful access for Baltimore's indigent tenants to the protection formally accorded them. Some proposals tended to proceed from a theory that tenants were denied access because of the unavailability of legal or paralegal help, or because of tenants' lack of knowledge of their formal legal rights. A number of papers suggested expanded conceptions of the law's operation, showed some effort to discern lawyers'

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26. Students could see this from the monthly rent sought in court and from household incomes voluntarily reported in exit interviews. The court study is preserved in Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process,* 20 HOFSTRA L. REV. (forthcoming 1992).

27. "Formalism" is used to express the notion that the analysis of legal rules leads to discernment of their internal coherence, and thus to the use of the rules to constrain the discretion of judges. This conception treats legal analysis as separate and distinct from the sociological, political, ideological, and philosophical dimensions of social life and related forms of argumentation. *See generally* Duncan Kennedy, *Legal Formality,* 2 J. LEGAL STUD. 351 (1973).

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capacities to facilitate change, and expressed some empathic or justice-based regard for excluded tenants.

IV. FUEL FOR COURSE MODIFICATIONS

In hindsight, the following aspects of the LTP/Property course have occupied my critical attention.

A. *Decisions About the Place of Doctrine in the Course*

The LTP/Property course made relatively little effort to revamp doctrinal selection and presentation in light of the objective to promote the integration of legal doctrine, legal theory, and clinical work. Theory did not drive this inaction. Instead, it resulted because of the limitations of faculty stamina in light of several institutional factors.[28] Although the course made modest forays into the purpose and methods of doctrinal presentation in the classroom, it devoted primary concern to making effective use of rounds and fieldwork.[29]

B. *Exploring Links Between Poverty and Law*

One significant purpose of rounds was to scrutinize the conditions and burdens of poverty as presented by students' experience with clients, tenants in the court, and assigned readings. The course required students to recognize a variety of definitions of poverty. In addition, students were asked to express their own working definitions of poverty and to consider whether, or how, characteristics of gender and race entered into their own understandings of poverty . Students also considered whether, or to what extent, their perceptions, awareness, and definitions of poverty were significant to their work as lawyers. The course asked students to identify the features of poverty which seemed most significant when they thought about the appropriate roles for lawyers representing the poor. Similarly, students explored what roles the

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28. This was the third semester in which any LTP courses were offered, and at that time, all LTP courses were taught by teams made of LTP and non-LTP faculty members. While team teaching can be energy-intensive in any event, merging such different experiences and expectations for the teaching enterprise can be even more intense.

29. One programmatic development in subsequent semesters has been a (temporary) retreat from co-teaching with non-LTP faculty members. Several courses are now being taught by single LTP teachers, and by LTP-only teams. Some of these LTP courses take place in first-year private law subjects, permitting lively experimentation with the opportunities for addressing the LTP objectives through doctrinal presentation.

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courts can or should play when one or both litigants are poor, or when poverty is an issue in the case.

The resulting conversation was discomforting. In hindsight, one could not have expected it to be otherwise because students had not elected to take the course or chosen the field work, nor did they freely choose to engage in this inquiry.[30]

At this point, it is hard to determine the later effects of student discomfort. Assessing the contemporaneous effects of this discomfort is a more plausible task, although it is quite difficult. Did this course produce a more realistic account of the operation of law and legal institutions, a revised account of the extent and distribution of impoverishment, or heightened empathic or justice-based concerns on behalf of poor tenants?

In hindsight, I would extend and formalize the questions that students would be urged to ask, as well as formalize the use of their field experiences to help them answer. Moving through four levels of inquiry would enable more students to use the data they gathered to scrutinize theory and allow them to use the theories they learn to analyze and reconceive practice.

At a first level, students' field work and study merge, seeking to answer questions such as: What is "poverty?" When we use the term "poverty," what do we convey? Socially, where does poverty come from? How do our clients become poor? These questions allow the grounding of key concepts in social facts.

A second level of inquiry situates legal rules and operations in concretized contexts. Here, proper questions would include: What is the law for my client? Is it like the law for people in other circumstances or situations?

A third level of inquiry is necessary to uncover the social practices harnessed by legal concepts. Examples of these questions would include the following: How does the law work to legitimize the landlord's property interests over the tenant's interests? Can law do anything for poor tenants in this situation? Can it do anything about the status of poor tenants? Asking these questions produces new meanings for notions like "defective condition," "habitability," "claim," and "neutral decision-maker."

Finally, a fourth level of inquiry present in this mode of learning is

30. For a further exploration of this conversation, see generally Bezdek, *supra* note 10.

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to unmask what might be called "deep theory." Others have called this "world view" or consciousness, to indicate that set of implicit premises through which one sees and interprets the world, and which are the basic presuppositions and assumptions of what is natural, just, necessary, and desirable.[31] These are held deeply, out of reach of ordinary impulses to question what one "knows." This dimension of the life of the mind is a sort of nether state between conscious thought and premise-based practice. Awareness of world views is central in understanding one's surroundings, including the legal order. It is invoked by seriously asking: Does it matter here how the law is used?

The students' process of striving to bring the concrete data of their experiences (in interviewing and advising poor tenants) to bear on such a sequence of questions connects some of the realities of poverty to their understanding of the particular law of tenancies and its operation in the local eviction court. The next step is to use that knowledge and understanding to construct explanatory accounts or theories of how law works as a form of state power that is expressive of a social context, in which power is moneyed, gendered, and raced.

In light of the data that the students generated, one surprise was the strength with which students rejected any analysis of the court as reflective of social structures. This suggests that the course did not deeply affect people's socially situated world view, or "deep theory." Although this may be a failure at the fourth level, final papers show successes at each of the first three.[32]

C. *Balancing Learning Modes to Facilitate Forging Links Between Theory and Practice*

The students' task at the end of the term was to re-evaluate features of the rent court in light of field experiences and other studies. This was the students' most formal effort to draw links between their data

31. *See* Howard Lesnick, *The Wellsprings of Legal Responses to Inequality: A Perspective on Perspectives*, 1991 DUKE L.J. 413, 413 n.3 for a useful introduction to definitions and discussions of variations on this idea.

32. I believe that it is possible and important for law teachers to invite students to examine the legal order at all four levels of intersection between theoretical description and prescription, on the one hand, and experience and an intentional practice on the other. However, I do not mean to suggest that faculty must direct primary energy to the fourth level, to promote the development of lawyers' values for working on behalf of poor and disadvantaged people. One can foster significant capacity to comprehend and act in law from such values without adopting that criterion as a measure of one's teaching.

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and theory-building. In retrospect, this aspect of students' work could have been positioned earlier in the course, although at the cost of some field work. It is difficult to select optimal sets of learning experiences within the bounds of credit hours and the semester's length. This LTP course struck a balance among students' first-hand field experiences, their study of materials (which present foreign ideas in apparently difficult and unfamiliar disciplines and formats), and their assigned analytic tasks. It was essential for students to accumulate first-hand information about the court's operations. The non-legal materials were important to lend analytic structure and to convey aggregates of data beyond that accessible through students' own experiences.

D. *Forms of Practice.*

Each LTP course places students in some law practice context on behalf of poor or under-represented people. A recurring issue in LTP course design is the selection of lawyering activities that allow students to derive positive pictures of the effective means for using law to help poor people.

The LTP/Property course represented a departure from prior and contemporaneous LTP courses. In the course, the faculty minimized student representation of clients in litigation to provide an operational perspective of the court. The decrease in direct involvement in litigation diminished students' concern with their own performance as litigators, which was the faculty's intent. Instead of litigation, most of students' "lawyering" work included counseling or participant-observation. This mix of in-the-world activity reflected the effort to afford students: (1) opportunities to provide real world service to people in need of it; (2) personally intense performative responsibilities that pressed the effects of law and poverty into one's own consciousness by virtue of the necessity for students to make decisions regarding their actions; and (3) many more instances of observation and responsibility for action than would occur in one semester in a representation posture. Rather than assisting only two or three tenant families in a semester, each student interviewed and counseled dozens of tenants, and observed hundreds of eviction hearings.

These experiences did not offer the type of clinical training that imparts a sense of mastery of readily identifiable lawyering skills to students. However, this is not troubling. No course which first introduces practical skills in a few credit, one semester exposure can compete with more extensive, intensive training offered in traditional

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clinical programs. I am troubled, however, by the prospect that LTP/Property neither presented, nor suggested, inspiring or transferable pictures of imaginative, aggressive, effective practice on behalf of people who are poor.

V. CONCLUSION

In subsequent semesters, I have considered the relationship of law practice settings in optimizing student capacity to link theory and practice. The LTP/Property course engaged students with the legal needs of poor urban tenants attempting to forestall eviction. In theory, the class provides a sharp context for grappling with the intersections of legal concepts with poverty, its causes and effects, and the social theories of entitlement. Yet for several semesters, I have observed that for many students, this combination actually obstructs the forging of links between legal theory and social practice at each of the four levels described above. In the current term, LTP students are representing disabled children who are entitled to special education under federal and state law. Ironically, these clients are essentially the children of the class of tenants represented by LTP students in past semesters. Nevertheless, the new constellation of "client" and "dispute" appears to promote a much greater willingness among students to reconsider their knowledge of the formal elements of law in light of social facts of poverty and opportunity. This appears to generate a greater and more autonomous exploration of the links between poverty and law, theory and practice, and students' own professional choices to represent people who are poor.

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