1-1-1994

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Recommended Citation
1 Clinical L. Rev. 135

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BEGINNER’S RESOLVE: AN ESSAY ON COLLABORATION, CLINICAL INNOVATION, AND THE FIRST-YEAR CORE CURRICULUM

MARGARET M. RUSSELL*

... [T]ry to love the questions themselves like locked rooms and like books that are written in a very foreign tongue. ... Live the questions now. ... Resolve to be always beginning — to be a beginner.

— Rainer Maria Rilke

I. INTRODUCTION

This is both an exciting and daunting time to begin a career in the legal academy. As one who started teaching law in the fall of 1990, I still view the profession very much through a beginner’s critical eyes. I trust that this confession comes as no surprise, since my more seasoned colleagues have informed me that they felt like greenhorns well into their first half-dozen or so years of teaching, and more than a few have confided that they experience the neophyte’s exhilaration and dread whenever they teach a course for the first time. Accordingly, beginners of all ages and levels of experience might find wisdom as well as solace in Rilke’s admonition; learning to live (if not always love) “the questions themselves” is certainly the best way that I have found to temper the apprentice’s angst with a necessary measure of enjoyment while riding the steep and occasionally heady professorial learning curve.

But even aside from the conventional “beginner’s syndrome,” the novice law teacher of today has special cause for intellectual vertigo in embarking upon a profession which is itself undergoing a period of intensive scrutiny and dissection from both without and within.² In

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2 The inauguration of the journal in which this essay appears is but one manifestation of this phenomenon. Another is the widespread debate elicited by such recent provocative critiques of the efficacy of legal education in the training of lawyers as the so-called “MacCrate Report” [formally known as the ABA Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development — An Educational Continuum (1992)], and the Honorable Harry T. Edwards’ companion essays, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34 (1992), and The Growing Disjunction Between Legal Educa-
numerous contexts, the "center" no longer holds when we scrutinize previously sacrosanct jurisprudential norms and pedagogical assumptions. In a recent essay, Professor Gary Minda describes this dislocation as part of the broader "canon wars" throughout academia:

The canon debate has revealed that there is no longer a consensus on the possibility of a comprehensive theory for explaining the nature of law. The existence of an ultimate method for yielding correct answers has been put in question, and multiculturalism in legal studies has shaken the once dominant hold of large-scale, totalizing explanations of law.³

To the extent that law is still a "traditional discipline" at all, it is increasingly rich with interdisciplinary cross-currents and open to untraditional possibilities.⁴ Even if he or she wished, a new law professor could scarcely manage to remain ignorant of the vigorous disputation in academic journals and conferences concerning the influence on legal thought of clinical theory, feminism, law and economics, critical race theory, and other burgeoning fields of scholarship. No less mainstream an organization than the Association of American Law Schools (AALS) has weighed in with its contribution; in 1993, its annual conference focused on the question, "Multiculturalism and the Law: Do We Have a Legal Canon?", noting: "The time has come for the law teaching profession to begin consideration of the opportunities for exploring the relationship between culture and law."⁵ Against the basically conservative backdrop of legal educational traditions, even such a cautiously-stated proposition may seem radical indeed in its implications for future directions in legal theory, doctrine, scholarship, pedagogy, practice, and, in fact, the notion of "law" itself. While there are still ample grounds to believe that change in legal education

⁴ As an illustration of the former development, note the growing number of both interdisciplinary law reviews (e.g., the Yale Journal of Law and Humanities) and interdisciplinary symposia [e.g., Reweaving the Seamless Web: Interdisciplinary Perspectives on the Law, 27 LOY. L. REV. 1 (1993)]. Moreover, law schools are increasingly recognizing the merits of interdisciplinary specialization through the addition of cross-listed courses to their curricula, and even through the appointment of non-lawyers to their faculties.
⁵ AALS Annual Meeting Program, Multiculturalism and the Law: Do We Have a Legal Canon? 71 (San Francisco, Jan. 5-9, 1993). Four of the five papers presented at this session were later reprinted under the title "Do We Have A Legal Canon?" in 43 J. LEGAL EDUC. 1-26 (1993). See Derrick A. Bell, Introduction, id. at 1-3; Patricia Nelson Limerick, The Canon Debate from a Historian's Perspective, id. at 4-10; Stanley Fish, Not of an Age, But for All Time: Canons and Postmodernism, id. at 11-21; Cass R. Sunstein, In Defense of Liberal Education, id. at 22-26.
occurs at a glacial pace, it is also true that never before has the Ameri-
can law school been so strongly and seriously poised for true diversi-
fication and transformation.

Yet, for the rookie law teacher, all this boundless “newness” can
often seem more of a bane than a boon. Innovation, for all its shiny
potential, holds a certain amount of peril as well, particularly in light
of the law professor’s ethical obligations to prepare students for the
legal world beyond the rarefied atmosphere of the classroom, the
casebook, and the pages of law reviews. Quite simply, how does one
begin to train students in a discipline without rigid boundaries? How
does one thoughtfully, rigorously, and conscientiously prepare them
for a profession which is both yoked to convention and beckoned to
metamorphosis? Perhaps the greatest challenge facing the beginning
law teacher in this regard is the lack of consensus among one’s own
colleagues about how best to achieve these objectives. If the legal sys-
tem indeed suffers from and needs to ameliorate what Judge Edwards
has persuasively described as the “growing disjunction between legal
education and the legal profession,”6 we as law teachers might pro-
ductively begin to question and to attempt to bridge the underlying
disjunctions in the legal academy itself. Judge Edwards broadly iden-
tifies one such sundering as that between “traditional,” doctrinal
scholars and “impractical,” theory-oriented scholars. As a non-
clinical, doctrinally-oriented teacher with a more than abiding interest
in clinical, feminist, and critical race theory, I view the underlying
philosophical and political disunities as even thornier than those de-
cried in Edwards’ article.

In my view, the nature of “The Divide” — or “Divides” — in the
academy concerning the path to truly effective pedagogy is not (or
need not be) bipolar, nor need solutions necessarily be viewed as
wholly contradictory. Perhaps, as the MacCrate Report suggests in
defining a “continuum” rather than a “gap” between legal education
and professional development, many bridges remain unbuilt between

6 See generally Edwards, supra note 2. Edwards’ article has served as the catalyst for
much of the current debate; he notes:

I fear that our law schools and law firms are moving in opposite directions. The
schools should be training ethical practitioners and producing scholarship that
judges, legislators, and practitioners can use. The firms should be ensuring that asso-
ciates and partners practice law in an ethical manner. But many law schools — espe-
cially the so-called “elite” ones — have abandoned their proper place, by
emphasizing abstract theory at the expense of practical scholarship and pedagogy.
Many law firms have also abandoned their place, by pursuing profit above all else.
While the schools are moving toward pure theory, the firms are moving toward pure
commerce, and the middle ground — ethical practice — has been deserted by both.
Edwards, The Growing Disjunction Between Legal Education and the Legal Profession,
supra note 2, at 34.
the so-called "practical" domains of doctrine and skills-training, and the so-called "impractical" world of "pure theory." Without such bridges — between clinicians and non-clinicians, theorists and practitioners, doctrinalists and anti-foundationalists — law teachers rapidly become pigeonholed "specialists" of the worst kind. Their "specialization" relies not on the intellectual strength and promise of what they do know, but rather on their inability or unwillingness to connect that expertise to substantive areas and methodologies with which they are unfamiliar. The ultimate losers in such a scenario are, of course, our students, who are left to piece together an already fragmented and imperfect course of study with the disconsolate thought that, in the end, their teachers neither grasp nor even particularly care about attempting to make the fragments approach a coherent, complementary whole.

In this essay, I urge my fellow law teachers, especially other non-clinicians, to resist the seductive elitism of such self-segregation and to consider ways in which our classroom teaching might derive enormous benefit from cross-fertilization with theories and methodologies from across the various "Divides" of our legal educational landscapes. As a primary example of such productive synthesis, I discuss several ways in which clinical teaching and scholarship have contributed to the diversification of the first-year core curriculum with issues pertaining to race, gender, class, sexual orientation, disability, age and other forms of systemic discrimination. As a beginning law teacher of heavily doctrinal core courses (a first-year course in civil procedure and two upper-class courses in constitutional law), I perceive the positive influence of clinicians in much of what goes on in many so-called "traditional" doctrinal classrooms. Moreover, I see the potential for further concrete innovations through the work of clinical scholars who are beginning to probe the insights which feminist, critical race, and other theories might bring to the practice of law.

Accordingly, this essay is divided into three parts. In the next section, I briefly outline the major practical deficiencies of a wholly "traditional" doctrinal approach, as well as the benefits to be gained from the examination of diversity issues in first-year required subjects. In this section, I also identify several key contributions of clinical work to the diversification of first-year classroom teaching. In part III, I describe a structural curricular innovation from my own teaching experience which has proven to be especially conducive to the introduction of diversity concerns: a two-year experimental "coordinated curriculum" which involves the instructors of all first-year required courses (for one of three sections of the entering class) in collaborative efforts to integrate issues of cultural diversity into substantive,
doctrinal course coverage. In addition to pointing out several "clinic-influenced" aspects of this curriculum, I recommend additional links which might be forged between clinical and non-clinical approaches to first-year education, and suggest ways to address the potential pitfalls of such integration. Finally, I encourage both non-clinicians and clinicians to consider their teaching efforts as a joint enterprise, one which can productively draw from theory, doctrine, and skills-training in the first-year education of reflective and effective lawyers.

II. Teaching Within And Beyond The Casebook: The Contributions Of Clinical Approaches To The Diversification Of The Traditional First-Year Curriculum

A. Cultural Diversity, The Limits Of Doctrine, And "Learning To Think Like A Lawyer"

The question of what it means to raise issues of "difference" and "diversity" in the classroom is still, after at least a half-dozen years of the so-called "multiculturalism" debate, both plaintive in its simplicity and boundless in perplexity. On an abstract level, it is of course impossible to identify with precision exactly what "difference" means in our legal culture;7 pragmatically speaking, recent scholarship in lawyering theory helps focus attention in this regard by identifying class, race, ethnicity, gender, sexual orientation, disability, and age as salient factors for analysis.8 In first-year doctrinal courses as well as in the clinical curriculum, these analytic categories are hardly random choices, but rather represent significant historical and political axes along which power has been and continues to be allocated in our legal system. As such, they are neither marginal, "boutique-ish," nor provisional concerns in the law school curriculum of the 1990s and beyond. Quite simply, they serve as vitally important explanatory factors in helping students to comprehend legal structures rooted in prejudice as well as reason, and to draw upon lived experience as well as doctrinal analysis.

7 For thoughtful explorations of this theme, see Kenneth Karst, Belonging to America: The Constitution and Cultural Identity (1989); Martha Minow, Making All the Difference: Inclusion, Exclusion, and American Law (1990); Iris Young, Justice and the Politics of Difference (1990).

8 See, e.g., Bill Ong Hing, Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses, 45 Stan. L. Rev. 1807 (1993). One might also add "religion" to this list, both in recognition of the history of invidious discrimination against religious minorities, the unreligious, and the anti-religious, and because of mainstream society's ambivalent stance toward devout religious belief itself. On the latter phenomenon, see Stephen Carter, The Culture of Disbelief (1993).
At this point, the “traditional” first-year doctrinal teacher might very well dubiously inquire: even if issues of diversity “belong” generally in the law school curriculum, how can they be incorporated into an already densely-packed required course such as contracts, torts, civil procedure, property, or criminal law? After all, one might argue, the purpose of first-year courses is to convey to students not political science or sociology, but rather a rigorous structure for “learning to think like a lawyer.” How does sustained attention to issues of diversity contribute to that pedagogical objective?

I offer three observations in partial rejoinder. First, although the definition of what it means to “think like a lawyer” is itself multifaceted and subject to divergent interpretations, it certainly involves at the very least a finely-honed ability to discern omissions as well as inclusions, and the implicit as well as the obvious. The expert legal thinker learns almost reflexively to ask about and consider all aspects of a problem before accepting the limitations of precedent, form, and procedure. Yet, unfortunately, most of us do not encourage students to develop these skills in the context of critiquing the narrowness of perspectives reflected in many first-year casebooks and other course materials. As a result, students who think and feel, sometimes desperately, that their first-year courses are sorely lacking in depth and context wind up feeling estranged from rather than competent at the task of “thinking like a lawyer,” when in fact they may be doing so in pertinent, fertile, and innovative ways.

Consider, for example, the following reflections of a group of ten students who enrolled as first-year students at Stanford Law School during the 1989-90 academic year. Committed to a serious intellectual pursuit of the study of law yet extremely disenchanted with the typical content and format of required first-year courses, these students formed a reading and discussion group in the second semester of their first year to assess the deficiencies of an education bound exclusively “within the casebook.” The result of their efforts, Beyond the Casebook, was a supplementary reader of critical (including clinical) scholarship on topics related to first-year required courses.9 In its preface, the students describe the stifling experience of learning doctrine without reference to broader social, political, and theoretical contexts:

Most law professors will tell you that the principal objective of the first semester curriculum is to teach you something called “legal reasoning.” Many of them will probably also acknowledge that this

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9 Stanford First-Year Curriculum Project, Beyond the Casebook (1990) (draft copy on file with the author).
can be a disorienting and alienating experience. They will suggest that you should struggle to hang on to your principles and hang on to what you think you know about the world. Notwithstanding this advice, your classes and casebooks are not likely to support you in this effort. When you read a case, don't bother to think broadly about what might explain the outcome; concentrate on the logic of the reasoning presented by the judge. Doctrine is what matters. . . .

Many of us found it degrading to suspend our knowledge about the world. We think legal doctrine is much easier to understand if you acknowledge and understand the limits of doctrine in explaining the legal world and the outcomes of cases.¹⁰

I raise the student-inspired example of the Beyond the Casebook project not only as a critique of the shortcomings of a solely doctrinal approach to first-year courses, but also as an illustration of a kind of interdisciplinary, "big picture" type of thinking which is a critical part of "learning to think like a lawyer."¹¹ Through their candid diagnosis of what they perceived to be a woefully deficient presentation of "The Law," and their creative construction of a workable remedy,¹² these students provided a striking demonstration of why the incorporation of diversity issues into first-year core courses is not only a feasible but also an integrally important part of an effective legal education.¹³

A second and related reason why cultural diversity should be of central importance in today's law school curriculum lies in the effect which the increasingly prevalent influence of diverse perspectives outside the academy is likely to have on future directions in legal doctrine, analysis, and policy. Regardless of ideological predisposition,¹⁴

¹⁰ "Introduction: What Is This Book and Where Did It Come From?", in id. at 4.
¹¹ For a discussion of the value of interdisciplinary, contextualized thinking and the "big picture" or "meta" perspective, see generally Peggy C. Davis, Law and Lawyering: Legal Studies with an Interactive Focus, 37 N.Y. Law Sch. L. Rev. 185 (1992).
¹² In fact, the Curriculum Project members were persuasive enough in their critique to convince their law school to distribute copies of their reader, in the 1990-91 academic year, to all members of the first-year class as part of orientation materials.
¹³ More recently, a growing number of law professors have recognized and acted upon this insight as well. The Society of American Law Teachers (SALT), for example, held two teaching conferences in 1993 on the subject of "Re-Imagining the Traditional Law School Curriculum: Integrating Race, Gender, Sexual Orientation, Class, Disability and Other Issues of Social Concern Into Our Core Courses." Both conferences — one held at the New York University Law School, the other at the Santa Clara University School of Law — were very successful, each drawing over two hundred attendees. (Conference materials on file with the author.) Other organizations, such as the Interuniversity Consortium on Poverty Law and the Poverty Law Section of the Association of American Law Schools (AALS), have also devoted significant attention to this topic.
¹⁴ Of course, thanks to the strident generalities invoked by the derisive appellation of "P.C." (or "Political Correctness") in recent popular discourse, many efforts at innovation in this regard have been distilled into one nasty specter — that of the tyrannical left-wing teacher who substitutes radical ideology for "The Law" and brooks no resistance in the classroom. Robert Bork, for example, describes the nation's law schools as controlled by a
the teacher of even the most "mainstream" of first-year courses in the 1990s faces a growing body of jurisprudence which, in my view, simply cannot be taught thoughtfully and analytically without reference to the impact of "outsider" perspectives, experiences and scholarship on the formulation of its underlying concerns. Examples of such areas of jurisprudence include: the development of sexual and racial harassment law (which is or could be readily made a part of a standard course in torts);\textsuperscript{15} the meaning and enforceability of surrogacy or other untraditional parenting agreements (contracts);\textsuperscript{16} the efficacy of an implied warranty of habitability in ensuring an adequate supply of standard housing (property);\textsuperscript{17} the evolving definitions of "consent" in rape cases (criminal law);\textsuperscript{18} and the proposed expansion of federal subject matter jurisdiction to include cases in which certain gender-based offenses are alleged (civil procedure).\textsuperscript{19} Surely, if "learning to think like a lawyer" connotes acquiring basic literacy of and facility with significant and sophisticated modes of legal analysis, law schools should endeavor to provide students with the fundamental "skills" knowledge necessary to think critically about the function of subordination on the basis of race, gender, sexual orientation, class, age, and disability.\textsuperscript{20}


\textsuperscript{20} On the need for multicultural legal literacy, see Toni Massaro, \textit{Constitutional Literacy: A Core Curriculum for a Multicultural Nation} (1993).
Finally, teaching students that they are supposed to be “learning to think like a lawyer” is little more than a mindless incantation unless one further specifies exactly what kind of lawyer students are being encouraged to emulate. In this regard, the concept of context is again essential, for students can scarcely be expected to match their cognitive habits with those of a “Lawyer in the Abstract.” Rather, they must be challenged to consider both the role of the legal profession in alleviating the problems of human beings, and the fallibility of the profession and of lawyers themselves in achieving such an elusive and noble goal. Far too infrequently, in the first year or indeed throughout their schooling, are law students invited to engage in sustained discussion of what kind of professional they and their instructors think a lawyer should be. Such inquiries need to be addressed regularly, in first-year doctrinal courses as well as in professional responsibility/ethics offerings and public service internships.21

B. First-Year Core Courses And The Influence Of Clinical Methodologies

The foregoing discussion addressed, in the context of the first-year core curriculum, several reasons why complex issues of diversity should be addressed in classroom teaching. Such considerations, while far from settled among non-clinicians, perhaps seem obvious to clinical teachers. To the latter community, the question is not whether but how best to accomplish these goals given the myriad objectives of clinical education. As a teacher solely of non-clinical courses and primarily of courses regarded as “traditional” and doctrinal, I have discerned positive influences of clinical teaching and scholarship in my own work in the classroom. In my view, the use of clinical tenets and methodologies in core courses can enable students to synthesize the abstract and the concrete in ways which reinforce their understanding of the applicability of “blackletter law” to everyday legal practice.22

21 For an illustration of the first-year curricular possibilities for such discussion, see Richard Boldt, Marc Feldman, Homer C. La Rue, Barbara Bezdek & Theresa Glennon, Students and Lawyers, Doctrine and Responsibility: A Pedagogical Colloquy, 43 Hastings L.J. 1107-86 (1992).

22 Of course, concerns about the ineffectiveness of mainstream legal education are hardly unique to the 1990s. The Legal Realists of a half-century ago, for example, offered critiques of similar urgency and depth. See, e.g., Jerome Frank, A Plea for Lawyer-Schools, 56 Yale L.J. 1303 (1947); Jerome Frank, Why Not a Clinical Lawyer-School?, 81 U. Pa. L. Rev. 907 (1933); Karl N. Llewellyn, The Current Crisis in Legal Education, 1 J. Legal Educ. 211 (1948); Karl N. Llewellyn, On What is Wrong With So-Called Legal Education, 35 Colum. L. Rev. 651 (1935). Rather, I believe that the current debate represents the next major paradigmatic shift in legal education and in the process could bring to fruition many of the ideas originally proffered in Legal Realism criticism. On the contemporary significance of the Legal Realist movement, see Joseph William Singer, Legal Realism
Such synthesis is especially vital to the success of education in the first-year, when even the most gung-ho of 1L “true believers” are chagrined to discover the extent to which discussions of lawyering are devalued in — if not wholly omitted from — classroom discussion. In the hope that other teachers of core courses will be encouraged to experiment with the application of clinical concepts to their own work, I identify several which I have found to be illuminating, particularly in helping to introduce issues of diversity into classroom discussion.

One promising possibility for hybridization is the considerable body of clinical scholarship on the importance of attention to client narrative, voice, and autonomy in both the identification of legal issues and the formulation of legal strategies. To a great degree, the traditional doctrinal first-year course reflects a “top-down” approach to the examination of lawsuits and judicial opinions. The voluminous compendium of cases known as the typical first-year casebook focuses nearly exclusively upon judicial outcomes, often at the appellate level. In relentless and occasionally numbing fashion, students plow through case after case in their first year, learning to adopt as their primary locus of analysis the reported judicial opinion. From such a vantage point, students tend to forget (sometimes, with the teacher’s acquiescence if not approval) the human problems which originally gave rise to the legal dispute described in the text. Certainly, especially at the beginning of their formal legal training, students need to steep themselves as much as possible in modes of analytical thought and argumentation which are often counterintuitive to previously learned methods of interpersonal problem-solving. However, first-year courses would do well also to expose students to the layers of complex motivations, biases, and values involved in the practice of law. These areas, too, involve “learning to think like a lawyer” and cannot be divorced from the study of decisions.

I do not advocate the rejection of doctrine, casebooks, and “blackletter law” as a solution to this pedagogical narrowing of students’ perceptions and abilities. In a core first-year course, the need to develop doctrinal literacy and analytical competence is of paramount importance and should not be eclipsed by other objectives. Yet, surely there are compatibilities among these disparate approaches.

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which might be developed so as to reduce the sterility of classroom discussion about hypothetical postulates and litigants, while at the same time demonstrating to students the relevance of such concepts to the lawyer-client relationship.

Recent clinical literature about client narratives may assist in this enterprise by identifying a "bottom-up" approach to the construction of cases, the study of which can fill in the analytical gaps of a wholly "top-down" analysis of reported decisions. This clinical method can be used to remind students of the centrality of concrete, context-specific, individual human stories to the eruption of a legal dispute. Thus, Phyllis Goldfarb urges teachers to "examine how shifting the focus to the multidimensional world of law-in-operation might affect one's insights and explanations of legal phenomena."24 Clinical literature offers a number of ways to accomplish this goal in the context of a traditional course. For example, in civil procedure, more time might productively be spent examining the pre-pleading and pleading stages of a lawsuit from a client's perspective in order to explore the extent to which lawyers can intentionally or unwittingly filter client prerogatives and needs through their own professional objectives.25 Quasi-clinical materials chronicling the progress of one lawsuit from initial client interview through trial can afford the opportunity to teach students "blackletter" concepts such as discovery and summary judgment in the context of a rich factual record of lawyer-client interactions, drafting exercises, and mock oral arguments. Even old traditional chestnuts such as Pennoyer v. Neff and Erie Railroad v. Tompkins might be rendered more comprehensible as doctrinal benchmarks if taught not only in the context of judicial philosophy, but also with reference to a pragmatic, client-centered consideration of the vagaries of personal jurisdiction and forum selection. The potential for infusion of clinical methodologies in this regard is not simply the lump-sum addition of practitioner "war stories" to otherwise doctrinal courses; rather, the subtlety and variety of clinical scholarship on client narrative reveals an abiding concern with developing a more reflective framework for the discussion of the political, moral, and ethical dimensions of client representation. First-year students in civil procedure (or any other core course, for that matter) stand to benefit

24 Phyllis Goldfarb, Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory, 43 HASTINGS L.J. 717, 731 (1992) (expanding upon Jerome Frank's observation that teaching the law predominantly through the study of appellate cases is analogous to teaching horticulture through the study of cut flowers).

25 On the pitfalls of inattention to client autonomy, see generally GERALD R. LOPEZ, REBELLIOUS LAWYERING (1992); Alfieri, supra note 23; White, supra note 23.
greatly from early and regular exposure to such practice-oriented issues.

Once sensitized to the problematic nature of the lawyer-client relationship and "the law-in-operation," students in doctrinal courses have a much more pragmatic — and perhaps therefore less "loaded" — applied context for the examination of issues of race, gender, class, sexual orientation, disability, and age diversity. Just as the attempt to teach doctrine in the abstract often fails to reach and inspire students, so too does the effort to teach "diversity" as an abstract concept. In fact, I have discovered (not particularly to my surprise) that raising diversity issues in the absence of clinical method often strikes students as awkward, preachy, and even treacly; students may rightly perceive it as yet another example of a hollow, "top-down" approach to pedagogy. Instead, when students are asked not to "Consider Diversity," but to live it by bringing their personal identities to an engaged discussion or role-play of a lawyer-client relationship, they are reminded that judicial opinions are not themselves "cases," but rather lenses through which vast human complexities are filtered and at least temporarily reconciled. In my view, the supplementation of doctrinal literacy with the critical analysis of diversity issues neither breeds cynicism about "blackletter" law nor insufficiently respects its influence. On the contrary, the most dispirited comments I hear about the traditional first-year curriculum come from students who are given few opportunities to discuss such "real-world" concerns.

A second area of potential clinical contribution to traditional classroom teaching lies in ongoing clinical efforts to examine the interrelationship of theory and practice in the teaching of law students. In this endeavor, clinicians have reached beyond the notion of the mere "application" of theory to practice toward an organic, integrative ideal in which connections between theory and practice are viewed as more closely intertwined and symbiotic. Examples of such work may be found in the writings of scholar-practitioners who identify and explore unifying themes between their own tested notions of lawyering and critical legal studies, critical race theory, and feminist theory.26 These writings explicitly advance a critical project in which the academy is urged not to compartmentalize legal thought into "doing theory" or "doing practice," and in which students are taught the importance of both in formulating a framework for analyzing their professional development. In addition, clinicians have been increasingly outspoken in challenging and critiquing the work of both non-clinical critical the-

orists and clinical scholars in light of the core clinical commitment to train practitioners effectively and realistically.\textsuperscript{27} In my view, one of the most promising directions for future growth in the area of feminist and critical race legal scholarship lies in clinical work which insistently aims to probe the practical everyday significance of such theory by asking: How can these ideas assist in bettering the situation of real clients? How can they be used to teach effective lawyering skills to students, particularly aspiring practitioners who may be justifiably wary and weary of abstractions with no apparent relevance to concrete legal problems? How do they explain the underpinnings of legal doctrine in a way which could enlighten, engage, and persuade the decisionmakers (judges, legislators, administrators) whose acts profoundly affect the lives of clients?

Through the use of clinical scholarship which raises these theory/practice "dilemmas,"\textsuperscript{28} teachers of first-year doctrinal courses have rich opportunities for the ready introduction of diversity issues into the mainstream curriculum. Moreover, conscious attention to and explicit identification of the conflicts raised by clinicians in such articles provide an early context for first-year students to articulate their own responses to the possible ethical, political and moral contradictions of client representation. Law students, especially in their first year of studies, may wonder (quite understandably) about the pertinence of both doctrine and anti-doctrinal grand theory if these concepts are introduced in a context devoid of experiential reflection. Clinical work can explain much in this regard about the relevance of both to the practice of law.

\textbf{III. Further Possibilities For Integration: A "Coordinated" First-Year Curriculum}

In the past several years, a growing number of law teachers and law schools have implemented innovative strategies for reforming the first-year curriculum in ways similar to those described above.\textsuperscript{29}

\textsuperscript{27} See, e.g., Richard A. Boswell, \textit{Keeping the Practice in Clinical Education and Scholarship}, 43 Hastings L.J. 1187, 1194 (1992) ("A more morally emphatic, living scholarship is needed to fill the gap between theory and practice.").

\textsuperscript{28} For a compelling story of one such "dilemma," see Ruth Colker, \textit{The Practice/Theory Dilemma: Personal Reflections on the Louisiana Abortion Case}, 43 Hastings L.J. 1195 (1992), which literally illustrates the potential convergence of theoretical and practice-oriented perspectives by appending the author's amicus brief in an abortion case to an expository essay about the difficulties in ensuring authenticity of client participation in that brief.

\textsuperscript{29} At the January 1993 conference of the Association of American Law Schools, the Poverty Law Section sponsored a session on "Teaching About Poverty and Class in Traditional Courses" which drew a large and enthusiastic audience. A similarly successful session on the same theme was held at the January 1994 AALS convention. \textit{See Consorting:}
These efforts owe a tremendous debt to the insights and skills of clinicians who have persistently tried to bridge the "Divide" between their own work and those of "mainstream" teachers, even in the face of the fairly pervasive marginalization of clinics and clinical methodologies from the core curriculum of many American law schools. As a result of such experiments, teachers of non-clinical courses now stand in a position to explore possibilities for cross-fertilization not only within one particular first-year course, but across courses as well. This section addresses one such experiment from my own experience, the first-year "Coordinated Curriculum" at the Santa Clara University School of Law.

Santa Clara University School of Law is in the second year of a "Coordinated Curriculum" project which was approved by the faculty in the spring of 1992 for a two-year preliminary experimentation period. Two first-year small sections (approximately seventy students, or one-third of the entering class) participate in a year-long sequence of courses which consists of the following first-year subjects: civil procedure; torts; property; contracts; criminal law (one semester); and legal research and writing. This group is taught by core first-year faculty who meet on a weekly basis to coordinate substantive course coverage, research and writing problems, outside reading assignments, small group exercises, team teaching possibilities, and guest speakers. In form and basic coverage, each "traditional" course still exists as it does in the remainder of the first-year sections — that is, as a discrete and coherent whole taught by a single faculty member in that discipline. The major difference, as the curriculum's name suggests, lies in the faculty members' shared goal of illuminating for students the doctrinal and other interconnections among subjects which first-year students are usually told are separate and disconnected domains of knowledge. The "Coordinated Curriculum" model offers myriad possibilities for innovation in and improvement on the traditional first-year model, while avoiding some of the pitfalls inherent in a complete reconstruction. A few such options are mentioned below.

Among the law schools which presently feature experimental first-year programs are the City University of New York School of Law at Queens College (CUNY), the University of Maryland Law School, and New York University School of Law.

Like many another critic of the standard first-year curriculum, I confess to considerable doubts about the possible merits of its complete discontinuance and replacement, especially on a school-by-school experimental basis. In addition to the fact that the traditional curriculum has a number of attributes which should be preserved, wholesale restructuring itself may present problems. On a practical level, especially at non-elite law schools, such fundamental revamping on a piecemeal basis may further exacerbate the very real and legitimate anxieties of students already concerned about their prospects for pass-
One benefit of such an approach is perhaps best expressed by the adage that a whole actually can be greater than the sum of its parts. Especially in the context of the strong (and to some extent inevitable) stress and pressure of the first year, students seem genuinely to appreciate the faculty team effort and ingenuity involved in identifying cross-cutting issues, themes, and cases in a diverse array of materials. The curriculum demands a considerable amount of intellectual energy and collaboration from students as well — a learning process from which students can reap as much as they sow.

A second attribute lies in the curriculum's illustration-in-microcosm of the complexity of any given case. By cross-referencing both our substantive materials and our pedagogical approaches to a particular problem, we hope to teach students that doctrine and practice are not self-contained but intertwined, and that each client consultation has the potential to present aspects of both for analysis. For example, any given "legal problem" of a client may present them with property and contract issues, or tort and criminal implications, as well as the procedural questions which must be answered for the problem to move toward resolution.

A third contribution of a "coordinated" curriculum — one of particular pertinence to the concerns of this essay — is the enhanced opportunity presented for the introduction of diversity issues across a range of courses sequentially or even simultaneously. Raising difficult issues of race, gender, sexual orientation, age, disability, and other cultural differences is often a thorny and tense enterprise, particularly for the beginning teacher working in isolation from her colleagues. Law students are frequently less than receptive to the new teacher (and teaching style) perceived as radically different from their institution's "norm," and the experimental teacher herself may be rendered less effective and less self-confident by a lack of collegial support for and feedback on her ideas. Extensive and honest collaboration across the curriculum is a partial antidote for such pitfalls. It serves as both reality-check and morale-booster. Moreover, a primary lesson of diversity in education in itself is the greater collective wisdom to be derived from the interaction of multiple perspectives, backgrounds, and experiences. One effective way of conveying this lesson subtly yet directly to students is to construct an educational environment in which learn-
ing occurs through communication with teachers of diverse strengths and skills.

In our case, such diversity was incorporated into both individual courses and "cross-cutting" exercises which involved various possible intersections of torts, civil procedure, contracts, property, criminal law, and legal research and writing. As an instructor of a first-year course, I have found it particularly beneficial to teach students "the politics of procedure" in a multidimensional context which draws upon both the substantive implications of procedure in litigation and the dynamics of lawyer-client and lawyer-community interaction so frequently ignored in first-year (and indeed, most non-clinical) courses. Numerous students have reported as well the sense of satisfaction they experience when they learn to approach complex cross-cutting issues and exercises not as abstract and arcane law school hypotheticals about The Black Letter Law of One Subject, but rather as examples of the kinds of cases they are likely to encounter in legal practice. Students benefit further when they have the usually all-too-rare opportunity to engage in discussion of such issues with a cluster of teachers from different subject areas rather than just one professor.

Finally, the "coordinated" arrangement frees up numerous possibilities for more effective and flexible time allocation. Often, an instructor working alone may feel severe time constraints in making sure that adequate doctrinal coverage is accomplished in the three units typically allotted to each semester of a first-year course. Given such pressures, it is often difficult for any individual teacher to conceive of departing too far from a prepared course syllabus and "script," thus compounding with fear and inertia the deficiencies of an already too convention-bound approach to first-year education. By devising team-teaching exercises, sharing class hours, and interweaving selected readings across several courses, the teachers in our curriculum have maximized opportunities for "expanding" the boundaries of each course without unduly burdening any one in particular.

I briefly describe below three coordinated curriculum exercises with which we experimented over the period of one academic year, and evaluate the overall usefulness of each with respect to our long-term curricular goals and strategies. As the particulars of these examples illustrate, each was tailored to address a specific point on the (more or less) typical first-year "learning curve"; moreover, each was designed to convey to the students not only (and even not primarily) the substantive law in the areas from which we drew, but also a set of lawyering processes for them to carry throughout their educational and professional careers.
A. Constructing A Case: An Analysis Of Deshaney v. Winnebago County And the Affirmative Duty to Act (Civil Procedure, Torts, Criminal Law)

Approximately three weeks into the first semester, the entire coordinated curriculum met for two class sessions to discuss a set of materials focusing on the tort concept of the “affirmative duty to act” in the context of the U.S. Supreme Court’s decision in DeShaney v. Winnebago County Dep’t of Social Services, in which the Court rejected a Due Process challenge brought by a severely abused child and his mother against a state agency which had failed to take action against the child’s violent father even though it had had some knowledge of the father’s previous abuse of the child. At this early point in the school year, we designed the DeShaney exercise with the following major objectives: (1) to begin to “unpack” the often overwhelmingly dense thicket of appellate cases in first-year courses by showing how one particular Supreme Court case originated from a very painful human dispute involving child abuse, family dissolution, and administrative neglect; (2) to examine and question the choices among civil and criminal law alternatives from which such lawsuits arise; and (3) to encourage students to view substantive doctrinal concepts such as the “affirmative duty to act” in the broader context of public policy, education, and constitutional law. Accordingly, the exercise proceeded as follows.

Before the first class session, we distributed a handout containing only a bare recitation of the “facts” in DeShaney, and a few unrelated cases on the “affirmative duty to act” concept in other contexts. Students were asked to think about what strategies (civil and criminal, litigative and otherwise) they would recommend to address and ameliorate young Joshua DeShaney’s situation if they were representing his legal interests. Students were given no indication that these facts constituted a “case” which had reached the U.S. Supreme Court, but rather were asked to think broadly and freely about the rights of children in predicaments similar to Joshua’s, as well as about the usefulness of the legal system in assisting such individuals.

Three teachers led discussion at the first class session. First, the criminal law professor discussed the role of the criminal law in deterring and/or punishing abusive parents; although the case of DeShaney did not focus on such issues, the original facts of Joshua DeShaney’s mistreatment necessarily turned on an analysis and consideration of parental criminal conduct. Second, I (as the civil procedure instructor) invited students to craft a complaint on Joshua and his mother’s

behalf from the facts which they had been given and to consider how such a pleading might be written to withstand a motion to dismiss for failure to state a claim; this led to a brief discussion of the discovery process as well. Finally, the torts instructor provided a transition from the more "technical" and procedural aspects of the discussion to the substantive legal issues raised by the argument that under some circumstances a state may have an affirmative duty to intervene in cases such as Joshua's. At the end of the class, students were given the U.S. Supreme Court opinion in *DeShaney* and asked to read it for the next session.

In session two, several of the instructors led a discussion of the *DeShaney* decision itself, followed by the playing of a tape-recording of the oral argument before the Court. A final component of the exercise again moved the facts of *DeShaney* away from the litigation context and into a discussion of the public policy implications of finding an "affirmative duty to act" on the part of social services agencies as a strategy for addressing child abuse. Would such a result increase or decrease the likelihood that agencies would investigate and document complaints? Is litigation the best or even an appropriate vehicle for the resolution of such tragedies as Joshua's?

In retrospect, a mere two sessions seemed barely adequate to address these complex questions; certainly, even more clinically-oriented strategies (e.g., structuring an opportunity for the class to interview or critique a simulated interview of Joshua’s mother) might be added to this exercise to enhance further its pedagogical effectiveness. Still, judging from the enthusiasm and sophistication of much of the student participation in this exercise, students were effectively learning quite early in their law school careers that the seemingly two-dimensional cases over which they labored so intensively in fact sprang from multifaceted underpinnings.

### B. Small Group Work: The Problem Of Racial Harassment In Rental Housing (Property, Contracts, Torts, Civil Procedure)

Shortly before the end of the first semester, we conducted a lengthier and more complex exercise which required students to work in small groups before meeting with their instructors for core group discussions of the assigned problems. The basic fact pattern (based on a local case which one of the professors had litigated) involved tort, contract, civil procedure, and property issues arising from a white landlord's failure to respond adequately to complaints of racial harassment lodged by her two African-American tenants against a family of white tenants. To resolve these problems, students were asked to
meet several times on their own with their small group; each group was then assigned to meet with an individual instructor to discuss their results. The primary benefit envisioned through this exercise was to illustrate the collective nature of lawyering and legal problem-solving. Fortunately, by the end of the first semester, many students were already working together in small groups; the coordinated curriculum's "official" recognition of the value of such collective activity seemed to encourage students further in this regard.

C. A Cross-Over "Live Final Exam" Exercise: Sexual Harassment Grievance Alternatives (Torts [Statutory Analysis], Civil Procedure And Contracts)

At the very end of the school year, we designed a kind of "live final exam" exercise (ungraded) intended both to improve students' test-taking skills in analyzing hypotheticals and to underscore to them the importance in legal practice of a creative, cross-cutting approach to problem-solving.

In advance of the "live exam session" featuring all of the first-year instructors in the coordinated curriculum, students were given the following facts:

In 1991, Congress amended the Civil Rights Act to provide that in cases of sexual harassment, plaintiffs can recover (1) punitive damages if the employer acted with "malice or reckless indifference" to the plaintiff's rights; and (2) compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other pecuniary losses, subject to varying caps of $50,000 to $300,000, depending upon the number of workers employed by the defendant. In cases in which plaintiffs seek compensatory or punitive damages, trial by jury is available.

Shortly after the Act became effective, the XYZ Corporation of California required all of its employees to sign employment agreements setting forth the terms and conditions of employment. One of the provisions required all employee disputes, claims, and grievances to be subject to binding arbitration.

Sally Forth, an XYZ employee who had recently been selected for a special project, signed the arbitration agreement as part of the contract committing her to the two-year project. Sally did not consider objecting to the provision because she did not believe that XYZ would change it. When Sally reported for training, she was assigned to Larry, a senior employee in the division. During the training, Larry commented on the neckline of Sally's blouses, her attractive legs, and "how much better she looked in dresses than slacks." Larry also repeatedly asked Sally to lunch, suggesting with a wink
that "just the two of them" drive to a restaurant at a local motel. Sally refused. After the first few incidents, Sally complained to her supervisor. He suggested that Larry was just like that, and that Sally was making a big deal out of nothing.

Sally became very upset about what she considered to be clear sexual harassment by Larry. However, she did not know what to do. She noticed an ad in the local town newspaper which asked any female employees who were having problems with sexual harassment to join a proposed organization to combat sexual harassment in the workplace. The ad led to a fair amount of discussion in the community and a series of letters to the editor both pro and con. Sally joined the organization and became one of its principal spokespersons.

Larry became quite irritated both because Sally had rebuffed his advances and because she had become involved in the sexual harassment organization. He decided as a joke to embarrass her by writing on the men's room wall, "She lousy at work but for a good time call Sally at 777-7777" (this was Sally's telephone number). For several weeks, Sally received calls at home at all hours of the night. Many of the calls were quite obscene. Finally, Sally discovered that the calls had originated from the message on the bathroom wall and she demanded that her employer remove the writing (which he did). Larry admitted that he had written the message but asserted that it was just a joke and she ought to "get a sense of humor."

Sally's next evaluation was substantially lower than her previous ones and when she inquired, Sally found out that Larry had reported that her progress in the training was substantially below par. Sally admits that Larry's behavior made it difficult for her to perform up to her previously high standards. Sally has come to your law firm for advice. Her first preference would be to quit, but she is worried about breaching her two-year commitment to XYZ. She informs you that a number of other employees have complained about Larry's behavior as well, and that she, Larry, and the supervisor are all residents of California. The senior partner in the firm has divided up the work and asked you to address the following questions:

COORDINATED DISCUSSION: Consider Sally's options. If she wants to pursue a sexual harassment claim, what are the different ways in which she can bring such charges? What are the advantages and disadvantages of the different forums?

CONTRACTS: (1) Leaving aside any issues that arise under the Civil Rights Act of 1991, is the employment agreement that Sally signed an enforceable contract? (2) If Sally quits before the two-
year project is completed, will XYZ have a cause of action for breach of contract?

TORTS / STATUTORY ANALYSIS: Discuss any rights and remedies you believe that Sally may have against the company and her chances of prevailing on each. In particular, you should consider: (1) Whether the 1991 amendments to the Civil Rights Act might affect the arbitration agreement. What additional information might you need to address this issue? (2) If the arbitration agreement is invalid, what rights does Sally have against Larry and/or the company?

CIVIL PROCEDURE: (1) Assume that Sally files suit in federal court under the Civil Rights Act of 1991, and that controlling authority holds that, under the Civil Rights Act, Sally may sue only the company, and may not sue Larry and the supervisor individually. Devise a strategy to bring Larry and the supervisor into the litigation. (2) Would you advise Sally to seek class certification to challenge the enforceability of the binding arbitration clause?

Although our group of "coordinated" instructors decided to test in a "non-coordinated" way — that is, with each final exam focusing only on material covered in that substantive course — we also felt that our final exercise with the students should reflect the goals of coordination, clinical emphasis, and diversity with which we had begun the year's efforts. Accordingly, our strategy for this final session was two-fold: first, to address students' quite understandable concerns with enhancing their test-taking skills by giving them some general advice about legal analysis in the context of a three-hour examination; and second, to elicit their discussion of the significant legal, ethical, and pragmatic issues involved in representing a client who had been sexually harassed. Thus, it was and is our hope that as students leave the coordinated curriculum and progress through their remaining years of law school, they will remember the eclectic process through which they were initially exposed to so-called Black Letter Law.

IV. Conclusion

Now that our first few years of experimentation have worked through a number of minor drawbacks and flaws, there is much more that can be done to explore even further the applicability of clinical theory and practice to our classroom work. Critical to this next step,
in my view, is the active collaboration of both non-clinicians and clinicians. As “beginners,” in a sense, teachers of core curriculum doctrinal courses have only now started to ask and to live “the questions themselves” about the need for serious reform in the first-year mainstream curriculum. Without the ideas, criticism, and help of colleagues only superficially across the “Divide,” we will founder seriously in our shared attempts to bridge the gaps among doctrine, theory, and practice.