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Experiential Education as Critical Pedagogy

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EXPERIENTIAL EDUCATION AS CRITICAL PEDAGOGY: ENHANCING THE LAW SCHOOL EXPERIENCE

SPEARIT* AND STEPHANIE SMITH LEDESMA**

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PROLOGUE

The sting of recession that grips the American economy is even more dramatic in the realm of legal education.¹ Law schools, in addition to producing too many graduates for an already too full legal economy, also face a barrage of bad press,² dwindling LSAT takers,³ and sharp declines in student applications,⁴ not to mention sharp criticism about high costs of tuition and spiraling student debt.⁵ Due to this *perfect storm* of troubles, law schools are now being forced to plan more strategically than in decades of

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1. Stanley Fish, *The Bad News Law Schools*, N.Y. TIMES (Feb. 20, 2012, 9:00 PM), <http://opinionator.blogs.nytimes.com/2012/02/20/the-bad-news-law-schools/>.

2. See, e.g., *id.* (summarizing much of the negative press).

3. See, e.g., John Schwartz, *Drop in LSAT Takers Shows Legal Field's Slump*, N.Y. TIMES, Nov. 1, 2013, at A.20.

4. *Three-Year ABA Volume Comparison*, LSAC, <http://www.lsac.org/lisacresources/data/three-year-volume> (last updated March 7, 2014).

5. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* ix (John M. Conley & Lynn Mather eds., 2012).

prosperity.⁶ Among the implicit critiques of legal education are the more direct critiques coming from the corporate world.⁷ In particular, large law firms are demanding in growing unison that J.D. graduates be more *practice ready* for the rigors of corporate practice.⁸ Although big firms employ only a small percentage of all J.D. graduates, they are influencing the discussion with support from members of the academy, bench, and bar, all of whom support increasing practical skills training, albeit under different rationales.⁹

This article examines this transformation in legal education through the lens of critical pedagogy. At its base, critical pedagogy is about “devis[ing] more equitable methods of teaching, help[ing] students develop consciousness of freedom, and [helping them] connect knowledge to power.”¹⁰ The insights of critical pedagogy are valuable for a fuller understanding of experiential education and its potential to affect students in profound ways, particularly as a means of empowerment.¹¹ Although this is an understudied area of pedagogical scholarship, as one scholar notes,

[p]ower relations pervade the regime of practices that constitute legal education, operating in subtle but nevertheless concrete ways to shape the actions of students, teachers, professionals, and administrators. Yet, despite their pervasiveness, legal education scholarship does not effectively grasp or explore power relations—they do not feature as objects of research in an explicit manner, and when they are considered, they are understood in problematic ways.¹²

6. THE N.Y.C. BAR ASS’N TASK FORCE ON NEW LAWYERS IN A CHANGING PROFESSION, N.Y.C. BAR, DEVELOPING LEGAL CAREERS AND DELIVERING JUSTICE IN THE 21ST CENTURY 45–47 (2013), available at <http://www2.nycbar.org/pdf/developing-legal-careers-and-delivering-justice-in-the-21st-century.pdf>.

7. See *id.* at 23.

8. See *id.* at 22–23.

9. See *id.* at 26–27 (citing that firms of 501 or more employees employed “nearly [twenty percent] of 2010 graduates from law schools in New York State”); Press Release, N.Y.C. Bar Ass’n, New York City Bar Association Task Force Calls for Changes in Education and Career Focus for New Lawyers—Report Announces Pilot Programs and Urges Focus on Unmet Middle Class Legal Needs (Nov. 14, 2013), <http://www.nycbar.org/media-aamp-publications/press-releases/press-archives-2013/1885-new-york-city-bar-association-task-force-calls-for-changes-in-education-and-career-focus-for-new-lawyers-report-announces-pilot-programs-and-urges-focus-on-unmet-middle-class-legal-needs/>.

10. SpearIt, *Priorities of Pedagogy: Classroom Justice in the Law School Setting*, 48 CAL. W. L. REV. 467, 469 (2012) [hereinafter SpearIt, *Priorities of Pedagogy: Classroom Justice in the Law School Setting*].

11. See *id.* at 472.

12. Matthew Ball, *Power in Legal Education: A (New) Critical and Analytical Approach*, 12 QUEENSL. U. TECH. L. & JUST., Apr. 12, 2012, at 157, 157.

Critical pedagogy is a frame for considering how experiential education empowers students and leads to other positive outcomes.¹³ Although advocates of experiential education typically emphasize the needs of the profession and student marketability, critical pedagogy reveals more at stake for students—including experiencing greater agency, autonomy, and hopefully, greater justice.¹⁴

The article outlines a student-centered set of rationales for adopting experiential principles. As such it seeks to engage law professors of all persuasions to consider what experiential education means for students personally. More pointedly, this article attempts to break down some of the great divide between teaching doctrine and experiential education.¹⁵ Infusing doctrinal courses with opportunities for experiential learning will be imperative for law schools; and so it will be imperative to engage doctrinal faculty.¹⁶ The pages that follow are an attempt.

Among the most compelling rationales for enhancing experiential education is its potential to engage students in justice directly, and not simply as a lesson from a book.¹⁷ For example, students who experience the law through direct interaction with indigent clients learn valuable lessons in justice and the unmet legal needs that affect the most vulnerable and marginalized segments of society.¹⁸ Students learn through their experience that *justice* is complex and multilayered, and indeed unstable. Yet, by assisting such clients, students experience the law as stewards of justice, rather than floundering law students. Students get the opportunity to learn justice inside and outside of the classroom setting, and are assessed in abilities other than typical law school test-taking.¹⁹ A more variegated approach to assessments promises more student evaluation of the skills and values that lawyers need for successful and meaningful practice.²⁰

13. SpearIt, *Priorities of Pedagogy: Classroom Justice in the Law School Setting*, *supra* note 10, at 469.

14. *See id.* at 469–70, 479.

15. Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 N.E. U. L.J. 87, 87 (2013) (describing doctrine faculty and skills faculty as “composed of two separate worlds”).

16. *Id.* at 87–88.

17. SpearIt, *Priorities of Pedagogy: Classroom Justice in the Law School Setting*, *supra* note 10, at 470.

18. *See, e.g.*, VULNERABLE POPULATIONS AND TRANSFORMATIVE LAW TEACHING: A CRITICAL READER 62–63, 399 (Soc’y of Am. Law Teachers & Golden Gate Univ. Sch. of Law eds., 2011).

19. Deborah Maranville et al., *Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517, 527, 530–32 (2011–2012).

20. *See id.* at 531–32.

The potential benefit of experiential education hardly means there is not a potential for pitfalls in implementing and maintaining experiential curricula.²¹ For example, as one commentator notes:

[D]eveloping a conceptual framework for articulating options may provoke controversy because of its potential to be misunderstood as suggesting that all experiences have equal value. Such an interpretation would permit law schools to ignore the consequences of the choices that they explicitly and implicitly make, as long as they provide *some* kind of experiential opportunity.²²

Accordingly, one might easily imagine courses consisting of little more than a mundane, semester-long task, or students unable to match their practical interests with the available curriculum.²³ Educators must avoid these pitfalls through praxis in pedagogy, and further develop ways to exploit experiential education as a means to enhance the *law school experience*.²⁴

I. REFORMING LAW SCHOOL CURRICULA: MORE EXPERIENTIAL EDUCATION

With the employment market for attorneys currently in a subpar state,²⁵ legal employers have the attention of both the American Bar Association (“ABA”) and law schools, and these employers are demanding practice-ready graduates.²⁶ Historically, the legal academy has been generally content with a model of education that focuses on legal theory and case law doctrine, with schools typically leaving most of the practical

21. *E.g.*, Martin J. Katz, *Facilitating Better Law Teaching—Now*, 62 EMORY L.J. 823, 833 (2013) (describing the pitfalls of simulation training and the “vast difference between good simulations and bad ones”).

22. Maranville et al., *supra* note 19, at 519–20.

23. *See* David F. Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 3, 5 (2009) (describing apprentice-lawyers who spent hours “photocopying or delivering documents for their host law practices”); Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public-Interest Partnership*, 8 LEGAL COMM. & RHETORIC: JALWD 191, 194 (2011) (advocating “the public-interest-partnership . . . as an approach that best integrates the experiential learning of simulated and live client interactions, while lessening the impact of the negative aspects of both traditional approaches”).

24. Ruan, *supra* note 23, at 191–93.

25. *See, e.g.*, William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: Federal Loans Inflate College Budgets, but How Long Will that Last if Law Grads Can’t Pay their Bills?*, A.B.A. J., Jan. 2012, at 30, 32.

26. *See, e.g.*, David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1.

training of new attorneys to the auspices of employers.²⁷ However, in the most recent response to the call for more practice-ready graduates, law schools are increasingly turning to experiential models of various types.²⁸ Notwithstanding the push towards more experiential education, there is great uncertainty as to how to implement experiential curricula within law school, where not even field trips are a regular feature of the law school syllabus.²⁹

Experiential education offers a very different model, one that concentrates on teaching through real-life work experience.³⁰ Broadly speaking, experiential education may be viewed as a form of active learning that has conceptual overlap with European models of *work-based* learning, which attempt to formalize the workplace as an authentic learning environment.³¹ It is broad in scope and “incorporates a continuum of learning opportunities.”³²

The animating theory of experiential education draws on a distinguished history and lineage, including the works of John Dewey, David Kolb, and Paulo Freire, among others.³³ It involves “[l]earning from an

27. *Id.* But see David M. Siegel, *The Ambivalent Role of Experiential Learning in American Legal Education and the Problem of Legal Culture*, 10 GERMAN L.J. 815, 815–16, 818 (2009) (noting that despite criticism of theory-driven rather than practice-driven education, American law schools expressly draw on experiential learning through the use of legal clinics and by bringing in adjunct instructors who are engaged in full time practice).

28. See Ed Finkel, *Schools Respond to Shifts in Legal Landscape*, STUDENT LAW., Jan. 2012, at 20, 21–22 (examining various programs developed in law schools to make students more ready for practice); Robert A. Parker & Sue Schechter, *The Ugly Duckling Comes of Age: The Promise of Full-Time Field Placements 2* (Soc. Sci. Research Network, Working Paper No. I20, K19, 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1886509.

29. Noelle Higgins et al., *Field Trips as Teaching Tools in the Law Curriculum*, 88 RES. EDUCATION 102, 105 (2012) (stating that even when field trips are undertaken in the law school setting, “they are generally included in an *ad hoc* manner, often with no real context and/or without learning outcomes attached, or no post-trip analysis undertaken.”).

30. See Katz, *supra* note 21, at 830.

31. See C.U. Chisholm et al., *The Characterisation of Work-Based Learning by Consideration of the Theories of Experiential Learning*, 44 EUR. J. EDUCATION 319, 319 (2009) (discussing “how experiential learning theories can contribute to the development of a common theoretical framework which draws together lifelong learning practice to support the conceptualization of work-based learning”).

32. Chavkin, *supra* note 23, at 11.

33. Robert Dinerstein, *Experiential Legal Education: New Wine and New Bottles*, SYLLABUS, Winter 2012-2013, at 2, 2; see generally JOHN DEWEY, *HOW WE THINK: A RESTATEMENT OF THE RELATION OF REFLECTIVE THINKING TO THE EDUCATIVE PROCESS* (1933); PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (Myra Bergman Ramos trans., 30th Anniversary ed. 2005); DAVID A. KOLB, *EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT* (1984).

individual's own experiences"³⁴ or a type "of learning undertaken by students who are given a chance to acquire and apply knowledge, skills, and feelings in an immediate and relevant setting."³⁵ This definition is partially based on the model developed by David Kolb and Roger Fry, which outlines four primary elements: 1) concrete experience, 2) observation and reflection, 3) formation of abstract concepts, and 4) testing the abstract concepts in new situations.³⁶ Conceptually, these elements overlap with Patrick Brayer's definition of social practice theory of learning as one that emphasizes the importance of the social content of learning; "the student learns laterally through collaborat[ion] . . . with an . . . array of workers and peers and vertically through the central, fluid dyad involving the supervisor/expert and the student/novice."³⁷ In all regards, then, experiential learning is a "pedagogy of systemic interaction."³⁸

In legal education, there is no unanimous theory on the content of experiential education, but there has been headway.³⁹ For example, the Clinical Legal Education Association's ("CLEA") Best Practices for Legal Education report has reiterated how *experiential learning* is distinct from *experiential education*.⁴⁰ According to this report, "[e]xperiential education integrates theory and practice by combining academic inquiry with actual experience"; it is focused on academic inquiry and in the way teachers design and structure the student's experience.⁴¹ Whereas experiential education focuses on the intentional design to teach by experience, *experiential learning* corresponds to student learning, and thus can occur in informal settings—even though the learning is not experiential by design.⁴²

34. Patrick C. Brayer, *A Law Clinic Systems Theory and the Pedagogy of Interaction: Creating a Legal Learning System*, 12 CONN. PUB. INT. L. J. 49, 49 (2012).

35. Mark K. Smith, *David A. Kolb on Experiential Learning*, INFED (2010), <http://infed.org/mobi/david-a-kolb-on-experiential-learning/>.

36. *Id.*; see also ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 122 (1st ed. 2007).

37. Brook K. Baker, *Practice-Based Learning: Emphasizing Practice and Offering Critical Perspectives on the Dangers of "Co-Op"tation*, 56 N.Y.L. SCH. L. REV. 619, 624 (2011–2012); see also Brayer, *supra* note 34, at 50.

38. Brayer, *supra* note 34, at 50.

39. See STUCKEY ET AL., *supra* note 36, at 121–22.

40. *Id.* at 121; see also Lewis Jackson & Doug MacIsaac, *Introduction to a New Approach to Experiential Learning*, 62 N. DIRECTIONS FOR ADULT & CONTINUING EDUC. 17, 22 (1994); James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 78 (1996) (emphasizing that "[l]earning is not education, and experiential learning differs from experiential education. Learning happens with or without teachers and institutions").

41. STUCKEY ET AL., *supra* note 36, at 121, 123.

42. *Id.* at 121.

Under these terms, what law schools are attempting to attain is experiential education that leads to experiential learning.⁴³

Historically, law schools have been teaching by experience through clinics, externships, or course simulations, although only a minority of law students are typically afforded the chance to do clinical work.⁴⁴ At present, the ABA does not mandate any specific experiential education or experiential learning opportunity for member schools. The winds of change have been blowing, however.⁴⁵ For example, at its 2011 Annual Meeting, the ABA House of Delegates adopted a resolution “urg[ing] legal education providers to implement curricular programs intended to develop practice-ready lawyers.”⁴⁶ More concretely, the ABA Standards Review Committee recently voted to put forth a proposal for a mandatory six-unit practical skills requirement for all graduates of accredited law schools.⁴⁷ If implemented, this would be a mandatory requirement, whereas now the standards say that law schools must provide “substantial opportunities for live-client or other real-life practice experiences,”⁴⁸ and that students should receive “substantial instruction in . . . other professional skills generally regarded as necessary for effective and responsible participation in the legal profession.”⁴⁹

43. *See id.* at 122. Although some law school professors would limit experiential education to real-life experiences, Best Practices include simulation courses, as well as in-house clinics and externships. *Id.* Recently, Susan Brooks has included simulation-based courses in her definition of experiential education. Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education Through a Relationship-Centered Experiential Curriculum*, 41 U. BALT. L. REV. 395, 403 (2012).

44. *See* Katz, *supra* note 21, at 829.

45. *See* AM. BAR ASS'N, RESOLUTION 10B 1 (Aug. 8–9, 2011).

46. *Id.*

47. Memorandum from Solomon Oliver, Jr., Council Chairperson, Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, & Barry A. Currier, Managing Dir. of Accreditation & Legal Educ., Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar to Interested Persons & Entities (Dec. 13, 2013), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201312_notice_comment_stds_205_207_303a3_603a_c.authcheckdam.pdf; Karen Sloan, *ABA Reconsiders Practical Skills Mandate for Law Schools*, NAT'L L.J., (Dec. 09, 2013, 3:49 PM) <http://www.ctlawtribune.com/id=1202631585383/ABA-Reconsiders-Practical-Skills-Mandate-for-Law-Schools>.

48. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 22 (2013) [hereinafter ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS], available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_body.authcheckdam.pdf (noting in interpretation 302-5 that these can be *clinics* or *field placements*).

49. *Id.* at 21.

The ABA does not define *experiential*, but states:

To qualify as experiential, a course must be primarily experiential in nature and:

- (a) integrate doctrine, theory, skills and legal ethics, and engage students in performance of one or more professional skills identified in Standard 302;
- (b) develop the concepts underlying the professional skills being taught;
- (c) provide multiple opportunities for performance; and
- (d) provide opportunities for self-evaluation.⁵⁰

Although the ABA's attempt to require more experiential learning for law students is a step in the right direction, the California State Bar Task Force has adopted a model that would require "all new Bar admittees [to] demonstrate . . . at least [fifteen hours] of practice based, experiential coursework."⁵¹ This figure is also the minimum recommendation endorsed by the CLEA.⁵² More recently, the ABA has revisited the six unit proposal and has invited comment on whether the ABA should make fifteen hours of experiential learning a requirement for all graduates of accredited law schools.⁵³ The Society of American Law Teachers has been among the voices in support of the proposal.⁵⁴

50. Draft for November Meeting, Am. Bar Ass'n, Section of Legal Educ. & Admission to the Bar, Standards Review Comm. (Nov. 16–17, 2012), http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/July2012/2012_nov_src_meeting_materials.authcheckdam.pdf.

51. TASK FORCE ON ADMISSIONS REGULATION REFORM, STATE BAR OF CAL., PHASE I FINAL REPORT 10 (2013), *available at* [http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_\(FINAL_AS_APPROVED_6_11_13\)_062413.pdf](http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_(FINAL_AS_APPROVED_6_11_13)_062413.pdf).

52. Michele Pistone, *CLEA Calls on ABA to Require 15 Credits of Experiential Learning*, BEST PRAC. FOR LEGAL EDUC. (July 1, 2013), <http://bestpracticeslegaled.albanylawblogs.org/2013/07/01/clea-calls-on-aba-to-require-15-credits-of-experiential-learning/>.

53. Karen Sloan, *ABA Reconsiders Practical Skills Mandate for Law Schools*, NAT'L L.J. (Dec. 09, 2013, 3:49 PM), <http://www.ctlawtribune.com/id=1202631585383/ABA-Reconsiders-Practical-Skills-Mandate-for-Law-Schools>.

54. Letter from Jackie Gardina, Co-President, Soc'y of Am. Law Teachers & Ngai Pindell, Co-President, Soc'y of Am. Law Teachers, to Dean Jeffrey E. Lewis, Chair, Am. Bar Ass'n Standards Review Comm. (Apr. 13, 2012), *available at* http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/20120416_comment_outcome_measures_salt.authcheckdam.pdf.

While the actions of the ABA convey a sense of urgency, the call to make law students more practice ready is not new.⁵⁵ Publications like *Best Practices for Legal Education: A Vision and a Roadmap*,⁵⁶ *Educating Lawyers: Preparation for the Profession of Law* (“Carnegie Report”) in 2007,⁵⁷ and *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* in 1992⁵⁸ have inspired subsequent revisions of Curriculum Standards 302 (b)(1) and 305 of the ABA Standards and Rules of Procedure for Approval of Law Schools⁵⁹—all of which stress the importance of applied legal training in the modern law school curriculum.

One of the most prominent voices among these is the Carnegie Report and its advocacy of *apprenticeships* in legal education—particularly, *third apprenticeships*, which allow for “knowledge, skills, and the social-ethical dimensions of lawyering [to] come together [and] help students bridge the gap from law school to practice.”⁶⁰ The report’s recommendations have been recently criticized for teaching students “what experts are doing [rather than] what they are thinking as they deal with a lawyering problem.”⁶¹

Despite such criticism, the report is correct to note that few students are afforded the chance to mimic lawyers by doing *what experts do*, let alone to delve into conceptual competences. Instead, law schools have strongly

55. See Keith A. Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 WIS. INT’L L.J. 295, 305–07 (2006).

56. See STUCKEY ET AL., *supra* note 36, at 123.

57. WILLIAM M. SULLIVAN ET AL., THE CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 8 (2007), available at http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf.

58. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* 331 (1992), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_macrate_report\).auth_checkdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_macrate_report).auth_checkdam.pdf).

59. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, *supra* note 48, at 21–22 (requiring that approved law schools “offer substantial opportunities for . . . real-life practice experiences, appropriately supervised”).

60. Laurie Morin & Susan Waysdorf, *The Service-Learning Model in the Law School Curriculum*, 56 N.Y.L. SCH. L. REV. 561, 562 (2011–2012); SULLIVAN ET AL., *supra* note 57, at 8.

61. Stefan H. Krieger & Serge A. Martinez, *Performance Isn’t Everything: The Importance of Conceptual Competence in Outcome Assessment of Experiential Learning*, 19 CLINICAL L. REV. 251, 251, 256 (2012) (admonishing that the ABA or a law school following the lead of the Carnegie Report “will unreflectively define ‘competency of an entry-level practitioner’ primarily in terms of the ability to perform certain lawyering tasks rather than the capacity to reason in practice”).

emphasized legal reasoning, black letter law, and standardized testing, with some schools adhering to mandatory course schedules that leave students little opportunity for the sort of courses that would provide personal interaction with lawyers or other legal professionals.⁶²

How a non-client model became the dominant model of legal education is a curious development.⁶³ One researcher suggests that law schools followed flawed assumptions about learning.⁶⁴ For example, one was to understand learning as primarily theoretical rather than contextual, and more precisely, that cognitive attainment was synonymous with the “ability to assimilate abstract knowledge and . . . apply that knowledge.”⁶⁵ Research shows, however, that human cognition is situational more than abstract; “[h]umans do not confront a particular place and time, a local field of action, with a predetermined set of responses.”⁶⁶ “Instead, the primary resources humans bring to bear are exemplars of past practice—memories of comparable dilemmas . . . [which] are typically derived from practice [and] only secondarily [derived] from classroom investigations”⁶⁷

Another errant assumption was “that learning should be controlled and relatively selfless or disinterested rather than self-directed, identity-focused, and self-actualizing.”⁶⁸ From this perspective, students held little agency and autonomy.⁶⁹ Related was the assumption that legal education was primarily a solitary rather than a social endeavor.⁷⁰ Under this premise, students were expected to “read, research, and write largely on their own,” producing a solitary model that made the student dependent on what was in one’s own head.⁷¹

Experiential education represents the antithesis to these misunderstandings about education. The approach provides students the opportunity to practice as they learn, and practice what they learn. The apprenticeship-like experiences of experiential learning have been likened to “a cornerstone for effective learning”⁷² that contributes to a process of acculturating students to legal practice by interaction with clients, attorneys, and judges, which provides tools necessary to succeed in the legal

62. See SULLIVAN ET AL., *supra* note 57, at 5–6.

63. For a historical perspective, see A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH & LEE L. REV. 1949, 1949 (2012).

64. Baker, *supra* note 37, at 621.

65. *Id.* at 621–22.

66. *Id.* at 622.

67. *Id.*

68. *Id.* at 621.

69. See Baker, *supra* note 37, at 621.

70. *Id.*

71. *Id.* at 624.

72. *Id.* at 620.

profession.⁷³ Learning in practice encourages students to enter a participatory and cognitive apprenticeship with senior practitioners where they can collaborate to resolve authentic dilemmas while conceptualizing the workplace as an organic place of learning.⁷⁴

Experiential education is thus the means to practice-based competence, by which students develop “[r]elational skills, situation skills, [and] gap-closing skills.”⁷⁵ The skills are learned best through repeated collaborative experiences—through increasing social practice, or as one commentator put it, “[q]uite simply, if learning is about increased access to performance, then the way to maximize learning is to perform, not to talk about it,” but to do it.⁷⁶ “[P]edagogy that empowers . . . students to develop genuine understandings must [thus] be primarily contextual rather than didactic and prescriptive.”⁷⁷ “[L]earning in the workplace also permits the development of relational skills and situation assessment skills that thereafter permit the adaptation, transfer, and deployment of performance competencies to new and unfamiliar tasks.”⁷⁸ The end result of repeat experience in the field of practice is a full repertoire of collaborative skills that are impossible to achieve in the classroom alone.

From the student’s perspective, perhaps the most significant aspect of experiential learning is the opportunity for reflection. The ability to look to the past as a means of making a better decision in the present is the pathway for students to become self-learners. It is also a chance to reflect on the force of law, as well as one’s duty to the legal profession, and more importantly, to society at large, all of which are detailed in the following section.

II. UNDERSTANDING THE SHIFT WITHIN A CRITICAL FRAMEWORK

The growing emphasis on practical skills in law schools may be properly understood as a critique of a teaching model that has dominated law schools for the last century.⁷⁹ Critical pedagogy is a power-full analytic for

73. *Id.* at 629 n.27.

74. See John Seely Brown et al., *Situated Cognition and the Culture of Learning*, EDUC. RESEARCHER, Jan.–Feb. 1989, at 32, 37.

75. Baker, *supra* note 37, at 627.

76. William F. Hanks, *Foreword* to JEAN LAVE & ETIENNE WENGER, SITUATED LEARNING: LEGITIMATE PERIPHERAL PARTICIPATION 13, 22 (1991).

77. Baker, *supra* note 37, at 628.

78. *Id.* at 626.

79. Erickson, *supra* note 15, at 110 (arguing “that the push for experiential education in law schools is really a push for better teaching”); Moliterno, *supra* note 40, at 94 (describing how the basic model of legal education has not changed since the time of Christopher Columbus Langdell, “except for a modest and separatist move toward the

assessing this revolution in legal education. As an interpretive lens, it reveals experiential education as a boon not for the legal profession alone, but also for the soon-to-be-lawyer; it provides insight to the practical and professional outcomes associated with experience-based learning, including those that bear directly on students. The reformation thus represents not only more opportunity for students to gain *hands on* or *on the job* experience, but an opportunity for teachers to create a more meaningful experience for students.

A. *Theoretical Overview*

A central tenet of the critical theory of legal education has been to focus on power relations within law schools. The dominant theme of theorists, however, has been largely evaluative, as one scholar notes:

[T]he exercise of power was a bad thing. It was understood as a possession that was held by some—primarily the legal profession—and exercised *over* others—namely law students—in order to achieve the ends of those wielding it. The exercise of power was positioned as negative and repressive, as stifling or denying the *real* interests of law students and leading to ideological indoctrination. It was implied that good could only come from . . . total removal of power relations. . . . [P]ower was assumed to operate upon an inert and passive material, with ideologies being *deposited* into the empty receptacle that is the student, and teaching and assessment practices working to *determine* the shape of the legal graduate.⁸⁰

Of course removing all power relations from education rings impossible, so rather than try to eliminate power, the idea has been to try to recalibrate the balance of power.⁸¹ Critical pedagogy provides a theoretical basis for achieving a better balance by its commitment to a dialectical understanding of the student and teacher relationship.⁸² Conceptually, this understanding renders the identity of each party dependent upon the existence of the other; that is, the teacher cannot exist without the student, and vice-versa.⁸³ This

experiential model resulting from the clinical education movement. All of the changes in legal education, aside from the clinical education movement, have been about what is taught, not how it is taught. The mainstream of legal education remains almost as alien from the apprentice system as at the time of Langdell's revolution . . .").

80. Ball, *supra* note 12, at 159–60 (emphasis in original).

81. *See id.* at 161–62, 166.

82. *See id.* at 161.

83. *See id.*

base proposition situates the student and teacher on equal conceptual terrain and proclaims their interdependence.⁸⁴

Experiential education may be properly viewed as a species of critical pedagogy, particularly in its advocacy of the apprenticeship model—the “apprenticeship of identity and purpose”⁸⁵—which “introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible.”⁸⁶

As such, experiential education in law school provides students unique opportunities to immerse themselves within the trenches of the profession, alongside other professionals, thereby encouraging students to form professional relationships. “In forming professional relationships, the student is provided with multiple experiences from the other members of the [legal] system”⁸⁷ Students who participate in experiential education programming enter a learning system that has a multitude of subsystem relationships: student-attorney, student-support staff, student-investigator, student-student, student-court clerk, student-judge and student-client.⁸⁸ The student is then empowered through “learning [that] occurs when the student utilizes interpersonal skills to achieve a desired outcome, while [developing and] maintaining a differentiated professional identity.”⁸⁹ The learning continues on several different levels, horizontally and vertically. “[F]or instance, [externships] provide students with the opportunity to develop relationships with judges, clerks, opposing counsel, support staff, investigators, social workers, supervising attorneys, fellow students and most importantly, clients and their support systems.”⁹⁰ If the learning system environment is properly designed with sufficient interaction, this cycle of student learning will continue to advance the student toward higher levels of individual complexity.⁹¹

“Students learn how to develop and change by interacting with their environment while learning the importance of maintaining a personal style and philosophy that brings value and power to their interactions with

84. *See id.* at 161–62.

85. SULLIVAN ET AL., *supra* note 57, at 8, 28 (proposing that professional schools must expose students to three *apprenticeships* to prepare them for professional practice: The first apprenticeship (cognitive) focuses on knowledge and ways of thinking; the second apprenticeship is to the shared forms of expert practice through experience; and the third apprenticeship of identity and purpose).

86. *Id.* at 28.

87. Brayer, *supra* note 34, at 55.

88. *Id.*

89. *Id.* at 56.

90. *Id.* at 55.

91. *Id.* at 57.

others.”⁹² When students are able to learn from the legal system directly to maximize both institutional and individual practice goals, “they achieve equilibrium with the new social learning system.”⁹³ When students reach this state, they become “better prepared to learn and grow in future work environments.”⁹⁴

Another critical aspect of experiential education is its emphasis on reflective learning. Reflective learning is founded on the premise that

intelligent individuals continually attempt to restructure their environment to maximize individual purposes and goals [and ultimately,] “the maintenance and enhancement of one’s self.” The individual accomplishes this task by way of experiential experimentation, attempting various courses of action, and adopting the one that proves the most effective. A person’s understanding grows when this form of experimentation is used to learn from experience.⁹⁵

In order to engage law students and provide opportunities for them to become what the market is now demanding—more *practice ready* law school graduates—some schools have chosen to use more formal models such as the service learning model or the systems theory model to implement experiential learning.⁹⁶ Externship programs, pro bono programs, and clinical programs are common in law schools, and they correspond with both service-learning and systems theory models of education.

“Service-learning is a [domain] of experiential [education in which] students and faculty collaborate with communities to address problems and issues, simultaneously gaining knowledge and skills and advancing personal development. . . .” [A] critical aspect of the [service-learning] experience, in order to differentiate it from other volunteer activities, is making certain there is a means for critical reflection by students. [It has been stated that] in any discussion of service-learning “it is particularly important to distinguish between two levels of learning . . .—learning to give service and learning how to learn . . . from the giving of service. . . .” [S]ervice-learning is beneficial to students because . . . it

92. Brayer, *supra* note 34, at 58–59.

93. *Id.* at 55.

94. *Id.*

95. *Id.* at 59.

96. This term *practice ready* was criticized by Dean Gilbert Holmes—during a work in progress session of the Mid-Atlantic People of Color Legal Scholarship—as somewhat impossible to achieve, and that instead, law schools should be teaching students how to become a proficient practitioner. Gilbert Holmes, Dean, Univ. La Verne, Training the Lawyer in the 21st century (Jan. 24, 2013).

“increases [cognitive] retention; . . . increases the relevancy of education to students [by involving them in real world situations]; . . . enhances personalized education for students; teaches positive values, leadership, citizenship and personal responsibility; empowers students as learners, teachers, achievers, and leaders; [and] invites students to become members of their own community; [and] teaches job skills.”⁹⁷

Distinct from service learning, a systems theory model is a clinical

refram[ing] [of] professional experience as an interaction with a professional environment. . . . [The] theory operates on the premise that students should reframe how they look at their [environment] so that the challenges that make up their professional system are not seen as problems but as means to a solution. Reframing by the student is realized in a clinical system as educators maximize professional interactions and teach from emerging interactive patterns.⁹⁸

This reframing necessarily guides students in the “creation of a professional learning environment that enhances the practice of reflective learning, teaching, and thinking.”⁹⁹ Under this system, learning “from experience is impossible if numerous, complex, and diverse interactions do not exist.”¹⁰⁰

B. *Critical Shifts at a Historically Black University*

The critical underpinnings of experiential education are easy to outline, but determining how to create such learning environments on the ground is a greater challenge. The experiential learning program at Thurgood Marshall School of Law (“TMSL”) is a model that is striving for a synthesis of these complex and diverse interactions. However, as a historically black university (“HBCU”), the institution faces unique challenges in incorporating its rendition of the Carnegie approach to legal education.

The mission of TMSL is to prepare a diverse group of students for leadership roles in the legal profession, business, and government. In

97. Katryna Johnson, *Creating Experiential Learning in the Graduate Classroom Through Community Engagement*, 6 AM. J. BUS. EDUC. 149, 149 (2013) (discussing how business school educators can create “[e]xperiential learning opportunities through client-based projects”); Mary Pat Treuthart, *Weaving a Tapestry: Providing Context Through Service-Learning*, 38 GONZ. L. REV. 215, 220–21 (2002) (last alteration in original).

98. Brayer, *supra* note 34, at 50.

99. *Id.* at 59.

100. *Id.* at 52.

keeping with its rich tradition as an HBCU, TMSL is recognized as one of the most diverse Law Schools in the country.¹⁰¹ Guided by this mission, the experiential learning program's focus is to create a vibrant learning environment grounded in a legal educational program that immerses each student in multi-level learning opportunities. This experiential education is designed by forging stronger connections among the cognitive, practical and professional identity aspects of becoming a lawyer. This model engages legal education from the perspective of the student; and thus, the program is oriented around student-centered teaching and seeks to increase student opportunity to learn-by-doing; learn-by-experiencing; learn-by-observing; learn-by-evaluating, assessing, and incorporating these experiences; learn-by-self transformation; and learn-by-developing a professional identity.

A host of animating questions guide the model of experiential education at TMSL: What do students value in legal education? How best do students believe they should be trained and about what do they feel they should be trained? What do students expect to receive from their legal education? What transformation do law students expect to experience in law school as a direct result of their legal education and how does this transformation translate to being better practitioners? How do students measure the worth and value of their legal education?

These questions are foundational for creating and incorporating the experiential program. The program takes a holistic approach to the process of experiential education, which involves a number of distinct, yet interrelated programs: Lawyer Processing; Appellate Litigation-Bridge to Practice Skills Program; Trial Simulation; Classroom Simulations; Live-client Clinical Programs; Externship Programs; Client Counseling Programs; Mediation Certification Courses; Mock Trial; Moot Court; and a Texas Legislative Internship Program.

Lawyer Processing ("LP") is a two-semester course and is required of all first-year students.¹⁰² LP is the first-year students' foundational clinical course and focuses on practice-oriented legal analysis and writing.¹⁰³ LP introduces students to fundamentals of legal reasoning, basic forms of legal writing, including objective memoranda of law, client opinion letters and trial court motion practice briefs, and the basic sources and processes of legal research.¹⁰⁴ These skills are taught using the clinical method, with the client's perspective firmly in mind and with the students learning by acting

101. *Mission and History*, TEX. S. U., <http://www.tsulaw.edu/history.html> (last visited Aug. 22, 2014).

102. Thurgood Marshall School of Law, American Bar Association Report, *Lawyering Process Program Description and Assessment* (last updated January 2011).

103. *Id.*

104. *Id.*

as lawyers.¹⁰⁵ The LP professors have voluntarily adopted a uniform syllabus with agreed to student learning outcomes that are assessed at the end of each semester.¹⁰⁶

The Appellate Litigation-Bridge to Practice Program is a one-semester course that is required for all 2L students. The Appellate Litigation professors with the assistance of the Director of Assessments have collectively identified minimum Student Learning Outcomes that all students should achieve while enrolled in Appellate Litigation. Students are required in each section of the class, taught by different professors, to attend a minimum number of live appellate court oral arguments, conduct legal research and write an appellate brief based on an adopted case book or based on an actual case that was pending before an appellate tribunal, and present an oral argument, based on the written brief, before a panel of practicing attorneys or sitting judges. At least one section videotapes the student's oral argument presentations for later individual evaluation and critique. By requiring the students to read like lawyers, research as lawyers, observe practicing attorneys and sitting judges, write as lawyers, present oral arguments as lawyers and accept critique as lawyers receive, the model aims to utilize multi-level learning and equip students with resources needed to develop and refine their professional identities. The model also prepares students to participate in internal and external Moot Court competitions, giving students enhanced opportunities to develop their legal writing and oral advocacy skills.

Trial Simulation at TMSL is a one-semester course that is required of all 3L students. Students are immersed in a courtroom setting as a means of learning strategies for courtroom litigation under the instruction of leading jurists and lawyers. Utilizing a "learn by doing" approach, students in the Trial Simulation program practice direct and cross examinations of witnesses, learn how to make memorable opening statements, craft powerful closing arguments, as well as interview and prepare witnesses. The course concludes with students conducting a full trial before a presiding judicial officer.

Classroom Simulations are another way that students encounter experiential learning at TMSL. Through classroom simulations, professors incorporate opportunities for students to acquire doctrinal knowledge through traditional and non-traditional modalities, alike.¹⁰⁷ For instance, one

105. *Id.*

106. Interview with Casandra Hill, Director of Lawyer Processing at Thurgood Marshall School of Law.

107. For further ideas on how to incorporate experiential education in doctrinal courses, see Margaret B. Kwoka, *Intersecting Experiential Education and Social Justice*

Evidence course requires students to draft trial pleadings based on fact patterns, statutes, and other materials distributed and studied over the course of the semester.¹⁰⁸ In addition to the drafting of pleadings, students in the course are given the opportunity to observe evidentiary hearings and are given directed, reflective journal writing assignments that examine, analyze, and evaluate the adherence to or the violation of evidentiary practices. In addition, one of the Property courses has adopted a “Bridge to Practice” course book that contains simulations covering varying issues, which allows and encourages students to take on the role of attorney, oral advocate, or legal writer. These simulations encourage students to take information from a case book and a rule book, analyze it, evaluate it, and then apply it to a given context that has meaning in the benefit of a client. In another course, Criminal Procedure, students are similarly required to draft trial pleadings and are given the opportunity to present mock trial arguments in support of the drafted motions to a panel of professors serving as the presiding bench.

For TMSL and other schools committed to serving the community, a learning experience that also offers service to disenfranchised and underserved communities is paramount to the law school’s existence. The school’s live-client clinical program is designed to give students an opportunity to serve the community in the role of attorney, putting into practice what they have learned in their substantial courses, while developing their professional identity. As attorneys, students are supervised by licensed attorneys who direct the individual legal clinics. Students are responsible for every aspect of an attorney-client relationship, including client interviewing, file maintenance, maintaining client confidentiality, trial preparation, and direct client representation. Students have the opportunity to put into practice what they have learned from their doctrinal classes and the opportunity to see how the application of the law affects clients. Students are able to work in several *legal environments* where they learn vertically from their clients, their supervising attorneys, managing attorneys, and judges, and where they learn horizontally from their fellow student attorneys, new associates, paralegal professionals, and other support faculty. In the process of serving clients, students have the opportunity to find and hear their voice as an advocate for others, as well as uphold justice on behalf of their clients. They experience study as a legal professional and develop their professional identity in accepting the call to represent another human being in the pursuit of justice. Live-client clinics give students the opportunity to

Teaching, 6 NORTHEASTERN U. L.J. 111, 115 (2013) (describing ways that doctrinal professors “can incorporate experiential components into the curriculum”).

108. Pedro A. Malavet, *Evidence: Law 6330*, U. FLORIDA (2013), <http://nersp.osg.ufl.edu/~malavet/evidence/evmain.htm>. Some courses, such as Professor Pedro Malavet’s Evidence course, have been incorporating such assignments for years. *See id.*

learn through directed service and gives them the chance to become agents of positive change while directing the transformation that they—as students—expect from their legal education.

The Externship Program is designed to give students an opportunity for immersion into a legal environment outside the law school setting with simultaneous study in the classroom.¹⁰⁹ The program is a bifurcated experience that requires students to participate in the off-campus practicum and in the classroom. The structure of the off-campus practicum is such that the supervising attorney at the placement is the primary contact for the student, similar to that of a new associate answering to a junior or senior partner. Student work schedules are submitted by the student and approved by the supervising attorney. Students engage in basic professional practices and are responsible for documenting their time, calendaring, and for completing their assignments timely. They must also maintain professional decorum in the legal office and in the courtroom, and communicate effectively with their superiors, colleagues, and clients. Students are evaluated by their placement supervisor that holds them accountable for matters involving legal advocacy, professionalism, ethical responsibility, and client and office management. The classroom component of the externship program is designed as a reflective group class, whose goal is two-fold: 1) to meet the identified student learning outcomes and the educational mission of the law school and 2) to develop an environment for reflective personal and professional growth. The classroom component seeks to enhance legal writing skills by requiring reflective journals, as well as improve legal analysis by engaging students in thoughtful and critical guided reflection about live legal scenarios occurring in their placements.

The Client Counseling program is an example of how TMSL has identified a necessary skill set and provided it with a platform to be explored with greater focus and clarity. This program takes the form of a competition team, conceived and developed as a legal teaching technique, intended to promote greater knowledge and interest among law students in the preventive law and counseling functions of practice. It also encourages students to develop interviewing, planning, and analytical skills in the lawyer-client relationship in the law office.

Recognizing that resolution of legal matters is the reason clients seek legal representation, TMSL offers a mediation certificate that allows students

109. Various outside offices include the offices of District Attorneys, County Attorneys, City Attorneys, the Attorney General, the United States Department of the Treasury, non-profit organizations, such as Legal Aid organizations, immigrant rights organizations, public policy organizations, and legislative organizations, Federal Courts, State Courts, Appellate Courts, the United States Attorney's office, and other governmental, non-profit, and judicial offices.

to serve as bona fide mediators in actual, live legal disputes. As TMSL is committed to providing budding attorneys the skill of resolution, this certification is a requirement for enrollment in the mediation live-client clinic. This mediation training, coupled with the experience that students receive in the live-client mediation clinic, allows them to graduate well-able to enter the legal community credentialed and experienced in the area of legal dispute resolution.

The aim of the TMSL Mock Trial Advocacy Program is to create competent trial lawyers. Student knowledge of substantive law is integrated in an intensive course study of trial skills that prepares students for national competition. The program provides all students an opportunity to experience the vigor of trial preparation in a controlled classroom environment, coupled with the opportunity to compete against top ranked law schools in a state and national arena. The classroom component of the program surpasses the skills taught in Trial Simulation and introduces the students to advanced learning in the art of questioning technique, evidence, jury profiling and selection, theory, and platform skills.

The Moot Court program is designed to be a comprehensive experience, with a goal of giving each participant opportunity to handle an appellate case from beginning to end. Under the guidance of faculty and subject matter experts from the legal community, students are trained for the challenge of competing in intramural, intermural and national moot court competitions while learning legal professionalism. This opportunity to take doctrinal knowledge and use that knowledge in the context of advocating for a client enhances the educational experiences of each student. Through this program, students participate in multi-level learning that encourages them to excel in the art of persuasive oral advocacy while solidifying their legal research and writing skills.

The Texas Legislative Internship Program (“TLIP”) is an educational internship program sponsored by Senator Rodney Ellis and administered by Texas Southern University.¹¹⁰ TLIP provides opportunities for graduate students to serve as interns in the Texas Legislature, in various state agencies, and in local government.¹¹¹ A TLIP internship lasts one academic semester and affords students the experience public service.¹¹² During legislative sessions, TLIP interns are placed as legislative assistants in the offices of ranking members of the Legislature, including the offices of the Governor, Lieutenant Governor and the Chief Justice of the Supreme

110. *Texas Legislative Internship Program*, SENATE TEX., <http://www.senate.state.tx.us/75r/senate/members/dist13/tlip/about.htm> (last visited Aug. 24, 2014).

111. *Id.*

112. *Id.*

Court.¹¹³ The experience offered to students often initiates or focuses a career in public service, with several TLIP participants having continued in public service at the federal, state and local levels of government.¹¹⁴

Although the vision of experiential education at TMSL is easy to outline, life on the ground is a work-in-progress, and there is still a lot of work ahead. Implementation of experiential learning at TMSL, perhaps like other HBCUs, comes with high trade-off costs. For example, bar passage has been a perpetual nemesis of the school. Yet in the most recent Texas Bar Examination, nearly eighty percent of the school's students passed on the first attempt, which is among the school's highest scores ever.¹¹⁵ Part of the success in passage may be the product of a concerted effort at creating a curricular regime based on bar subjects, enhancing academic support, and developing assessment tools. The mandatory course regime alone leaves students little say for the first two years in the name of concentrating on bar subjects and bar-style multiple choice and essay questions. Needless to say, greater emphasis on skills training sits in tension with the need to teach students how to pass the bar; time and resources spent on practice training leaves less time for practicing the exam.

The program plans to continue researching and developing ways to maintain its bar passage rate at the same time it graduates law students with skills to compete in the legal market. It will continue exploring ways to incorporate student-centered teaching, with identified student learning outcomes, in all aspects of the law school curriculum, as well as explore how greater cultural competency training can be implemented in professionalism training.¹¹⁶ One of the tangible goals of the program is to create opportunities for every student to take at least thirty credits of recognized, upper level experiential learning courses that would include non-traditional business association and appellate litigation courses, traditional clinical offerings, trial advocacy and externship courses, and newly designed pro-bono externship opportunities. Additional aspirations include developing affiliations with associations, such as the Alliance for Experiential Learning

113. *Id.*

114. *Id.*

115. See *TSU's Thurgood Marshall School of Law Improves Performance on Texas Bar Examination*, TSU E-NEWS NOW (Tex. S. Univ.), Nov. 11–17, 2013, at 1, 1–2, http://www.tsu.edu/About/Administration/University_Advancement/Communications/Publications/enews/TSU%20E-News%20NOW%20Nov%2011-17%202013a.pdf.

116. *E.g.*, Brooks, *supra* note 43, at 408 (“Effective interactions with clients and other individuals encountered in our daily work require attention to four key dimensions to build positive professional relationships: (1) culture, (2) empowerment . . .”).

in the Law,¹¹⁷ and establishing new affiliations with other experiential alliances such as *Educating Tomorrow's Lawyers*.¹¹⁸

III. UNINTENDED OUTCOMES: STUDENT SATISFACTION

As described above, the call for more experiential education conceives of skills development largely in terms of the benefits to the profession, however there is more to experiential education than the competencies and skills students acquire. Indeed, the shift to a more skills-based approach promises more than simply greater practical and professional development for law students. There are collateral benefits that impact the students personally as well. This section considers how pedagogy can catalyze student transformation and lead to greater personal satisfaction.¹¹⁹ This account of experiential education sets the stage for this article's finale, which stresses critical pedagogy as essential to the praxis of exploiting experiential education and maximizing the benefits for students.

117. *Alliance for Experiential Learning in Law*, NORTHEASTERN U. SCH. LAW, <http://www.northeastern.edu/law/experience/leadership/alliance.html> (last visited Mar. 16, 2014).

The Alliance for Experiential Learning in Law was convened by Northeastern University School of Law in 2011 when a small group of legal educators met to discuss how best to improve legal education in response to significant disruptions in the profession and changes in our society. The Alliance has grown to include legal educators and practitioners affiliated with almost [one hundred] law schools and legal service organizations who have joined together to develop a new approach to legal education and promote transformative approaches and programs for curriculum reform. The Alliance's ultimate goal is to ensure that law graduates are ready to practice with a full complement of skills and ethical and social values necessary to serve clients and the public interest, now and in the future.

Id.

118. Inst. for the Advancement of the Am. Legal Sys., Univ. of Fla., *About ETL*, EDUCATING TOMORROW'S LAWYERS, <http://educatingtomorrowlawyers.du.edu/about-etl/> (last visited Mar. 16, 2014).

[Educating Tomorrow's Lawyers] is an initiative of IAALS, the Institute for the Advancement of the American Legal System. We work to align legal education with the needs of an evolving profession by facilitating, evaluating, and promoting law teaching methods designed to produce graduates who are employable and practice-ready; able to meet the needs of their employers, their clients, and society; and prepared to lead and respond to changes in the legal profession throughout their careers.

Id.

119. *E.g.*, Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLINICAL L. REV. 489, 510–11 (2013) (describing reflections made by students in an Estates and Trusts course, including one student who writes, “[c]lient work is rewarding because it matters—helping people who depend on us”).

A. *Greater Autonomy and Agency*

Experiential learning promises greater autonomy and agency for students, both of which are largely suppressed in dominant models of legal education. As used here, autonomy and agency are not synonymous; they indicate different capacities. Whereas autonomy indicates the ability to choose or decide a course of action, agency refers to the ability to act. Experiential education contributes to both.

Students have greater autonomy in multiple ways. Most basically, experiential opportunities in the curriculum allow for more diverse course options for students. The options increase when schools mandate fewer core courses to afford space for mandatory experiential courses. Simultaneously, students have more variety as to how they will be evaluated, which ultimately affects a student's transcript and grade point average. Although the traditional model constricts student learning to perform and be evaluated in a singular analytical dimension, experiential learning opens up a world of assessment focused on various skills, including the competence to produce legal products, interact with clients, or effectively manage a law practice. The ability to choose more experiential programming also enhances autonomy by allowing students to work in clinics and other settings and represent clients. For some, the experience is the pathway to the sort of justice-oriented work that drove some to law school in the first place.¹²⁰ As one commentator noted some decades ago, clinical education furthers professional responsibility because students are implicated in *real decision-making*.¹²¹

Students wield greater agency through enhanced experiential curricula and acquire skills that are not possible through classroom instruction. Although students indeed practice writing briefs, memos, and motions, doing so on behalf of a real-life client takes on a different meaning

120. See Sarah Valentine, *Leveraging Legal Research, in VULNERABLE POPULATIONS AND TRANSFORMATIVE LAW TEACHING: A CRITICAL READER* 145 (Soc'y of Am. Law Teachers & Golden Gate Univ. Sch. of Law eds., 2011) (describing that despite the observation that many "law students . . . cite working with underserved communities as a goal, less than three percent of . . . graduates [actually] pursue public interest work"); William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. FOR SOC. JUST. 7, 9 (2007); Tan N. Nguyen, *An Affair to Forget: Law School's Deleterious Effect on Student's Public Interest Aspirations*, CONN. PUB. INT. L.J., Spring 2008, at 95, 95.

121. GARY BELLOW, ON TEACHING THE TEACHERS: SOME PRELIMINARY REFLECTIONS ON CLINICAL EDUCATION AS METHODOLOGY IN CLINICAL EDUCATION FOR THE LAW STUDENT 391 (1973).

for students.¹²² It is a shift from focusing on one's grade to focusing on the needs of the client, which has real-life consequences beyond the student. Accordingly as one clinician has noted,

[s]cholars and teachers and our own human instinct tell us that responsibility for another human being, coupled with appropriate supervision and the opportunity for reflection lead to a deeper and richer educational experience. Students make choices more intentionally and thoughtfully because something other than their personal academic success is at stake. They are motivated to learn more thoroughly because whether they get the answer right matters beyond a particular test or grade.

One of the reasons that client-centered clinical representation works is that students are more motivated to learn by being given responsibility over a case, and that this responsibility in turn leads to greater identification with clients and others who are similarly situated.¹²³

Under this type of learning model, students get a sense of both their power to influence the world and their ethical responsibilities to the profession. Moreover, students get the chance to cultivate compassion and judgment.

B. *Greater Justice*

Time spent in experiential settings provides students opportunity to confront justice issues face-to-face, while enabling students to help others access justice.¹²⁴ It provides opportunity for instruction in the "MacCrate Report's . . . core professional value of '[f]airness, [j]ustice, and [m]orality.'"¹²⁵ In addition to learning about and helping to fill the justice gap, experiential learning leads to more just academic outcomes for students. Both in terms of teaching and evaluation, enhancement of experiential education helps to level the academic terrain, and give practical and professional competencies a more prominent place in the law school repertoire.

122. See, e.g., Grose, *supra* note 119, at 510 (noting one clinical student's teaching evaluation: "Real problems [sic] better than hypos; matters to me more to have an answer—more personal, seeing their faces.").

123. *Id.* at 511.

124. See Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1462, 1475–77 (1998) (exploring "the social justice dimensions of clinical design features in the deeply underserved communities").

125. Jane H. Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLINICAL L. REV. 1, 4 (1997); Dubin, *supra* note 124, at 1478.

1. Filling the Justice Gap and Fulfilling Missions

Justice, however defined, “is about the exercise of power.”¹²⁶ “In order to promote justice, one must be explicit about how power operates, particularly in its subtle and invisible manifestations.”¹²⁷ Teaching students about deconstructing power, identifying privilege, and taking “responsibility for the ways in which the law confers dominance,” is a means of using “power and privilege in socially productive ways.”¹²⁸

Experiential education advances justice by supporting discrete types of service learning as a means to apprenticeship.¹²⁹ As an approach, service learning integrates hands-on social action, volunteerism, and learning objectives into an apprenticeship model that can be likened to clinical legal education.¹³⁰ It affords opportunities for students to serve communities in experiential settings, allows students to fulfill their professional responsibilities,¹³¹ and, for some, their school’s stated mission. As one Associate Dean for Experiential Education has put it, it is not enough to teach students to be *practice ready*; educators must teach students how to be *justice ready*.¹³² This is especially so for those students who come to law school as an advocate of justice.¹³³

126. Aiken, *supra* note 125, at 10.

127. *Id.*

128. *Id.* at 11.

129. See Morin & Waysdorf, *supra* note 60, at 568–72.

130. *Id.* at 590.

A set of service-learning principles, first drafted in 1979 by educator Robert Sigmon and generally accepted across the discipline, highlight three fundamental principles that may or may not intersect with principles of clinical legal education. The Sigmon principles are: “1. [t]hose being served control the service(s) provided; 2. [t]hose being served become better able to serve and be served by their own actions; and 3. [t]hose who serve also are learners and have significant control over what is expected to be learned.”

Id. at 565 n.16.

131. See Grose, *supra* note 119, at 495 (describing one of the broad goals of traditional clinical pedagogy as “teach[ing], or at least expos[ing] students to, concepts of social justice”).

132. Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J. L. & Soc. JUST. 231, 231 (2012); *Our Faculty: Jane H. Aiken*, GEORGETOWN L., <http://www.law.georgetown.edu/faculty/aiken-jane-h.cfm> (last visited Mar. 16, 2014). But see Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J. L. & Soc. JUST. 331, 331 (2012).

133. See, e.g., Angela P. Harris, *Teaching the Tensions*, 54 ST. LOUIS U. L.J. 739, 743 (2010) (“Justice is the reason why many of my students have come to law school. But justice is not what the law provides.”).

Service learning furthers student development by allowing representation of clients who cannot afford legal representation,¹³⁴ which “contribute[s] to the student’s development as a critically thinking, socially responsible practitioner.”¹³⁵ Through experience, students grapple with the real world of need, where “less than one in ten of those involved in the justice system have legal representation”¹³⁶ and few legal problems of low-income individuals are dealt with by legal professionals.¹³⁷

As a general rule, law professors fail to integrate any sort of access to justice commitment into the curriculum and law schools have ignored their role in helping students appreciate that lawyers have unique social obligations to the public. “The Society of American Law Teachers’ Committee on Access to Justice attributes this failure to law schools and their curricula, . . . assert[ing] that schools fail to cultivate a service mentality among law students, graduating few with any understanding of the crisis.”¹³⁸ However, too often the *justice* element of the law is relegated to those few who identify strongly with a public interest track.

Nonetheless, providing service to the community is also a means for students to fulfill one’s professional responsibility. According to ABA Model Rule of Professional Responsibility 6.1, a lawyer has a duty to provide pro bono legal services for others with *limited means*, charities, and the government, among others.¹³⁹ Despite this noble aspiration of the bar, Rule 6.1 stands as a minority rule among bar members, as indicated by “the ABA Standing Committee on Pro Bono and Public Service, [which] reported that only one-fourth of all respondents met the minimum

134. See THE N.Y.C. BAR ASS’N TASK FORCE ON NEW LAWYERS IN A CHANGING PROFESSION, *supra* note 6, at 90.

135. Grose, *supra* note 119, at 511; Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 328–30 (2001) (asserting that “[s]erving as an advocate on behalf of a low-income client under good supervision can deepen the student’s understanding and compassion, and cause her to affirm the common humanity she shares with her client and with others in her client’s position”).

136. SpearIt, *Model Rule 6.1: A Lawyer’s Duty to Increase Access to Justice*, A.B.A. (Nov. 2012), http://www.americanbar.org/publications/young_lawyer/2012-13/november_2012_vol_17_no_2/model_rule_6_1.html [hereinafter SpearIt, *Model Rule 6.1: A Lawyer’s Duty to Increase Access to Justice*].

137. See LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 19–20 (2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

138. SpearIt, *Model Rule 6.1: A Lawyer’s Duty to Increase Access to Justice*, *supra* note 136.

139. MODEL RULES OF PROF’L CONDUCT R. 6.1 (2013); see also SpearIt, *Model Rule 6.1: A Lawyer’s Duty to Increase Access to Justice*, *supra* note 136.

recommendation.”¹⁴⁰ Representing needy clients thus advances justice for students and fulfills a lawyer’s ethical responsibility.

Whether experiential learning, when fully embraced, will produce law students who indeed pursue justice and service upon graduation is uncertain. Determining this with precision is constrained by the need to sift such students from those who came into law school determined to advance social justice, from those influenced by a faculty member, from those targeted by a specific strategic planning goal. Despite these uncertainties, experiential education promises a greater commitment to measuring effectiveness in terms of student outcomes over faculty performance, which effectively changes the power dynamic of a law school’s learning culture.

Finally, for other students, helping individuals with their legal problems advances the school’s mission. For many law schools, religious and secular alike, being of service to the community is integral to the school’s identity. Experiential learning is a means to connect students to the community for the benefit of both, which abides by institutional ideals of *service of humanity*¹⁴¹ and *social justice*,¹⁴² among other humanistic goals.

2. More Variety in Learning and Fairness in Grading

Experiential education leads to greater classroom justice by offering more variety in coursework, which concomitantly requires greater variety in the way students are evaluated and graded. Teaching students in practical settings also recalibrates the heavy reliance on casebook study and doctrine. There would be less emphasis on Socratic regimes and the *suffocating environments*¹⁴³ they create, and more involvement with actual lawyering practices, including interviewing clients, drafting and filing documents, and meeting work deadlines. The opportunity for more on-the-job learning means more justice for those who learn best by doing.

140. SpearIt, *Model Rule 6.1: A Lawyer’s Duty to Increase Access to Justice*, *supra* note 136; *see also* ABA STANDING COMM. ON PRO BONO AND PUB. SERV., SUPPORTING JUSTICE II: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS vii (2009).

141. *E.g.*, *Mission Statement*, SAINT LOUIS U., <http://www.slu.edu/x5021.xml> (last visited Mar. 16, 2014).

142. *E.g.*, *Mission Statement*, GONZAGA U., <http://issuu.com/gonzaga/docs/mission-statement?mode=embed&layout=http://skin.issuu.com/v/light/layout.xml&showFlipBtn=true&viewMode=presentation> (last visited Mar. 16, 2014).

143. *See* Andrew J. McClurg, *Poetry in Commotion: Katko v. Briney and the Bards of First-Year Torts*, L. TCHR., Fall 1996, at 1, 1; Kenneth L. Schneyer, *Bully Pulpit: Effective Teachers Face Their Power over Students Honestly*, L. TCHR., Spring 1996, at 1, 1 (describing the Socratic method as “where systematic humiliation of the student is only a hair’s breadth away from the formal structure and purpose of the pedagogical method”).

More curricula based on experiential learning potentially levels the field in evaluating and grading students as well. With more courses being evaluated by different metrics, experiential learning provides greater opportunity to be graded by options other than the typical multiple-choice exam. More experience-based learning frees students from typical pen-and-paper-type examinations and doles out more grades for specific legal tasks such as writing briefs, arguing cases, or mediating cases, thereby rewarding professional and practical competencies in addition to knowledge of black-letter law.

IV. PRAXIS IN LAW TEACHING

The thrust of this article highlights the student benefits of experiential education and the transformative potential for students. Experience-based teaching is more than training students in particular legal competencies but also, a means of empowering students professionally and helping them achieve greater justice. When students provide legal assistance to the community, they not only gain practical experience of the law, but also ensure that law schools do more than just teach about justice—they advance it. Teachers who are cognizant of these effects on students can work to facilitate not only student acquisition of practical skills, but also the acquisition of a more meaningful investment in law school.

Successful implementation of experiential education in law school depends on maximizing positive outcomes and minimizing the negatives. Toward this end, critical pedagogy provides a theoretical frame for exploiting experiential education in order to maximize outcomes for both students and the legal profession. This article offers a candid look at a program that is engaged in the process, including adding more skills training on the syllabus of doctrinal courses. Although such courses have not been the traditional locus of experiential education in law school, there are compelling reasons for rethinking this tradition and reimagining the possibilities.

Ultimately, this work is about experiential education's personal impact on students. As much of the clamor for more practical skills training has been voiced in terms of benefit to the legal profession, there has been little inquiry into what it means for students or the law school experience. This article has attempted to fill in some of the void.