January 1989

Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education

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TRAINING FUTURE LAWYERS TO WORK WITH THE POLITICALLY AND SOCIALLY SUBORDINATED: ANTI-GENERIC LEGAL EDUCATION

Gerald P. López*

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I. INTRODUCTION

Like most progressive and radical projects in this country, the education of those future lawyers who plan to work for social change has met historically with formidable indifference. We just don't seem to care much and certainly do almost nothing about specially preparing those whose vocation is to work with the subordinated: the poor, women, people of color, the disabled, the elderly, gays and lesbians. We presume that students get what they need at law school about conceptions of practice, about the people with whom they aspire to work, and about the know-how that unites vocation to daily routine, or we presume that they somehow later make do.

* Kenneth and Harle Montgomery Professor of Public Interest Law, Stanford University. This essay was delivered as the Edward G. Donley Memorial Lectures at West Virginia University's College of Law in the spring of 1988. Thanks go to Cathy Bonnar, Ellen Borgersen, Bill Hing, Bill Klein, Shelley Levine, Jeanne Merino, Larry Ottinger, Cathy Ruchelshaus, Lewis Segall, Steve Shiffrin, Blanca Silvestrini, and Bob Weisberg, who read and commented on an earlier draft; to participants at the faculty workshop at the University of Arizona College of Law where, as a Rosentiel Scholar-in-Residence, I presented certain related ideas in the fall of 1987; and to lay community activists, students, faculty and alumni who have contributed to the efforts to initiate the new Curriculum in Lawyering for Social Change here at Stanford Law School. Special thanks to Michael Adams for his thoughtful help and to the people at the West Virginia College of Law who received me with such warmth and graciousness.

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This indifference, I think, reflects in part a reluctance or refusal by many in the mainstream to acknowledge subordination as a pervasive phenomena. Certainly you know the basic rap: "We may have our 'disadvantaged' and certainly the 'unfortunate' among us, and perhaps we shouldn't forget them. But you can't call them (much less believe them to be) subordinated by social and political life without saying something altogether uglier and more potent about each of us and the world we all help to create—something I'm unwilling to accept. So, as a rather artful preemptive strike, I've just learned to ignore—and when necessary even to be offended by—this talk about subordination and aspirations to combat it."

This indifference to the training provided those lawyers who ultimately will work with the subordinated reflects, too, a great deal about legal education in the United States. Though millions in this country live in social and political subordination and though lawyers have worked to help challenge these conditions, law schools only rarely have understood their job to include designing a training regimen responsive to this situation and this task. No doubt law schools, like many other mainstream institutions and people, assiduously avoid the political connotations and the considerable work such a commitment would imply. They prefer the comforting belief that "good training is good training"—for all future lawyers, for all future clients and for all those who find themselves enmeshed in the work of clients and lawyers.

But, in all honesty, legal education regularly resists change—change of any sort. Calls for transformation of what now goes on in this country's law schools somehow get deftly deflected, delayed or diluted. Inertia no doubt plays its role as does flat-out laziness. But it has also been my experience that calls for change upset many in the legal profession. Practitioners of all sorts, for example, often balk at the implication that they themselves may not have been well-trained or may not now practice in imaginative, self-reflective, and wisely efficient ways. And, on their part, academics of every ilk not only much prefer thinking that they already do a good job but would rather dodge the possibility that they themselves may not be equipped to participate meaningfully in a newly conceived training program.

In these lectures I'd like to outline a fundamentally different curriculum for those future lawyers who will work with the polit-
ically and socially subordinated. To do this, I first will set out what we all should realize about what we do and how we do it in law schools today. I’ll describe legal education’s largely unchallenged general approach, its restricted models of teaching and learning, its disdain for lawyering and for training in all but a relatively small number of skills, its neglect of interdisciplinary theoretical ideas, its disregard of everyday life, and its lack of coordination. And I’ll unearth what I think amounts to a parallel training regimen that law students have constructed in response to the limits and failures of the conventional law school curriculum—a regimen that merits law teachers’ appreciation, not scorn. In short, I’ll report to you that, despite some real and unappreciated successes, legal education remains a stubborn underachiever.

As if all that weren’t sobering enough, I’ll then describe and detail the consequences of the insistently generic vision of the world that pervades law school curricula. Legal education conceives of and treats people, their traditions, their experiences, and their institutions as essentially fungible. It declares, at least tacitly, that who people are, how they live, how they struggle, how they suffer, how they interact with others, how others interact with them, and how they relate to conventional governmental and corporate power need not be taken into account in any sustained and serious way in training lawyers. Generic legal education teaches law students to approach practice as if all people and all social life were homogeneous.

Grounded in this understanding of current legal education, I will then propose a vision of legal education that dynamically connects how lawyers are trained both to an appreciation of the actual people and institutions with whom they work and to an understanding of the demands of practice aimed at elemental social change, whether in West Virginia, in California or anyplace in this union. Not surprisingly, much of what I call anti-generic legal education will be foreshadowed by my observations about generic legal education—about both what teachers do and how students and the legal community respond. What I think we all should realize about what we do and how we do it in law schools today implies a great deal about what we all might do to improve it. And every aspect of the training regimen I propose will be informed by an idea of progressive or radical lawyering different from that which now dominates both
legal education and the practice of law. It is an idea originating in the experiences and aspirations of subordinated people and the allies (including lawyers) with whom they work.

In outlining anti-generic legal education, my principal focus will concern how this country’s law schools might approach the education of those lawyers who plan to work with the socially and politically subordinated. I am not at all interested in some more well-intentioned tinkering—a little more theory here, another clinical course there. I am urging, and think legal education is desperately in need of, a radically reconceived training regimen. Though my proposal will be specifically tailored to Stanford Law School’s current efforts to design and implement a curriculum for lawyers committed to working for social change, I hope that it might permit other law schools to imagine their own curricular reform in the training of progressive and radical lawyers—reform that attends to the particular world in which each law school is situated and to which I think each should respond.

Along the way, I’ll suggest briefly how corporate lawyers might be trained—not because I spend much time concentrating on the training of corporate lawyers as such but because some changes seem so obvious that even a relative outsider like myself can’t resist commenting on them. And in the course of my observations you might well become convinced not only that anti-generic legal education makes for better lawyers helping to challenge subordination, but that it even makes for better “generalists,” precisely the sort of lawyers that law schools have always claimed to train and to train well. Still my principal aim is to convince you that those who will lawyer with different groups in this heterogeneous world must be trained differently if they are to be effective, and that current legal education is least suited to addressing the importantly different needs of the politically and socially subordinated. Perhaps not surprisingly, those who can least afford to bear the consequences of ineffective legal education find themselves most burdened by them.

II. WHAT WE SHOULD ALL REALIZE ABOUT LEGAL EDUCATION

Whether or not you’re a lawyer, whether or not you are in the business of teaching and writing about law, you should pay attention
to the debate about legal education in this country. You should pay attention if you care about the people and institutions whom lawyers serve and affect. You should pay attention if you recognize the link between how lawyers work and how others work with lawyers. You should pay attention if you appreciate the connection between how lawyers are trained and how lawyers and others conceive of what it is that lawyers actually do in this world.

But I’m not unrealistic. Most people don’t ever pay much attention to law, much less legal education; they’re happy experiencing it as “in the background,” something to avoid as much as to engage. Perhaps this shouldn’t be surprising. Even law students and law teachers don’t spend much of their day-to-day time talking about legal education—at least not in any serious and publicly shared way. And how often are formal talks like the Donley Lectures devoted to what we do and how we do it in law schools? For most people legal education somehow seems not quite intellectual enough to be taken seriously and not quite interesting enough to inspire anything provocative.

Yet a fair amount has been written and even more has been said in this debate about what we teach and how we teach in the law schools of this country. Most of what has been written and said is, however, not readily accessible outside of the hallways and the journals of law schools. We all still tend to treat these issues as matters of only professional concern, rather than as matters of general political significance. Even for those who do have access, lots of what has been written and said is, frankly, not very illuminating. It manages to be at once fairly general and fairly superficial—just this sort of weak medicine that almost inevitably strengthens the condition it’s meant to improve.

Yet some ideas in what has been written and said do matter. They matter not so much because they’re new (many I think are quite old), not so much because they are universally acknowledged as correct (though I think some of them are), and certainly not

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because they have successfully penetrated legal education (though I think some of them should). Instead, these ideas matter principally as a sort of intellectual legacy; they symbolize the efforts of lots of people to rethink what we do in legal education—to rethink it in both small, seemingly mundane ways, and in large, apparently fantastic ways. Because rethinking what we do is so very difficult in any realm of life, it helps to realize that there have been any number of others before us asking related questions about legal education and pushing things along, not so quickly perhaps, but with a commitment extraordinary in its tenacity.²

I’ll begin with what academics might call a critique of legal education, but what I prefer to think of as a description of what we all should realize about what we do and how we do it in law schools. Some ideas in this description undoubtedly find their roots in the work of many earlier “rethinkers”: people whose work I have read, people whose ideas never made it into print but nevertheless make the rounds in the circles I’ve run in, and people whose ideas never got to me at all (so far as I know) but who I’m sure thought things not so very different from what I am about to tell you. And other ideas in this description certainly reflect many hours of conversation I’ve had about legal education with students, with staff, with faculty, with lawyers and with lay people. But, ultimately, this description tells a great deal more about my own experiences with law schools than anything else, experiences formally beginning in 1970 and encompassing a range of quite different institutions and people.

Too few general approaches—some think only one—dominate legal education.

If you looked at the course offerings of the great majority of law schools in this country you would be overwhelmed by what seems to be the homogeneity of general approach: A required first year curriculum, focusing almost exclusively on certain core (and not coincidentally bar) courses, is followed by an eclectic set of

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second and third year offerings that itself reflects, again, the content of bar examinations, the idiosyncratic preferences of law faculty, and some attention to what is often described as practical skills.

This homogeneity may simply mean that law schools have "got their act together"—they’ve all agreed (if only tacitly) about what it is they’re doing and how to do it best. However comforting this view, few people I know in legal education actually buy it. Moreover, few other self-conscious disciplines train their future practitioners in so peculiarly uniform fashion. Elsewhere, in acting, ballet, basketball, carpentry, and social work, vying conceptions of competence and excellence make for often radically different approaches to learning and to training. Law schools simply seem unwilling or unable to imagine and to implement serious alternatives to what nearly all of them now find themselves doing.

Too few models of teaching and learning—some think only one—shape the structure and routines of the general approach to legal education.

You know in advance what most courses will look like at the great majority of law schools: they will meet always as a (typically large) group in a classroom for three or four hours a week, for fifteen to sixteen weeks a semester, and will focus primarily on parsing appellate cases through a question and answer format. The "big classroom," as I call this model of teaching and learning, dominates the law school scene, in part no doubt because it flexibly accommodates virtually any size enrollment likely to be found in a U.S. law school class from as large as 200 to as small as five or six.

Yes, you’re right, at these same schools you can also find different models of teaching and learning, the majority of which are at work in certain workshops and clinical courses. You may also be right if you’re thinking that many people—faculty, students, staff and employers—think these workshops and clinical courses both more ambitious and more stimulating than the big classroom. But don’t be fooled. Whatever individuals actually think of other models of teaching and learning, it is the "big classroom" that sets a law school’s rhythm, serves as the source of its folkloric myths, and fulfills its claim to educational legitimacy.
It's not just that in the big classroom model the group always meets as a group in a classroom for three or four hours a week for fifteen to sixteen weeks a semester come hell or highwater. It's also true that in the big classroom there's just too much of the same kind of teaching and too much of the same kind of learning. Think about it. You almost always know who's who: the person at the front of the room (probably talking) is the "teacher," and those people facing the teacher (possibly listening) are the "students." You also almost always know how people might describe what you are watching: the teacher is employing a question and answer format— the Socratic method—that aspires to generate informed discussion about the assigned cases. But you almost always know that what will be going on in the big classroom looks very different from what people describe: in the big classroom the Socratic method looks suspiciously like a set of mini-lectures by the teacher interrupted by questions that by now no one really expects to precipitate the kind of critical conversation among students and teacher that many imagine to be the defining strength of legal education.³

Worse still, it's not exactly clear how teachers and students reconcile these mini-lectures with the mythic image of the big classroom. Quite frequently the teacher's mini-lectures simply repeat information covered in the reading materials—the same materials the big classroom model presupposes that students have read and assimilated before coming to class. At other times, to be sure, the teacher's mini-lectures do present ideas not found in the reading materials—say critiques of cases or even alternative visions to certain doctrinal development. But if you'd look you'd probably find most of the teacher's ideas in the student notes from previous year's classes. Unless a teacher only quite recently formulated these critiques or visions, why aren't they always written up and distributed to the

³. One critic has observed, perhaps with only slight exaggeration, that "instead of a partnership in the learning process and a method by which teacher and student discuss a problem in order to further the understanding of each, the Socratic style in law schools is merely a means to direct the student to a position predetermined by the teacher." Bratt, Beyond the Law School Classroom and Clinic - A Multidisciplinary Approach To Legal Education, 13 NEW ENGL. L. REV. 199, 203 (1977). See also Cramton, The Current State of the Law Curriculum, 32 J. LEGAL EDUC. 321, 328 (1982); Dallmore, The Socratic Method - More Harm Than Good, 3 J. CONTEMP. L. 177 (1976).
students in advance of the group meeting? After all, if the students are genuinely expected to respond to these ideas in the big classroom wouldn’t reading them in advance of the conversation make obvious sense?

Genealogically, the current state of teaching and learning in the big classroom may well reflect that the much mythologized Socratic method has always been something of a fake. It presumed (and publicly glamorized) that students had prepared well for class discussion, but it never even contemplated systematically providing them all that was necessary to think through in advance the ideas to be discussed. It hoped for a lively discussion, but what it envisioned was talk that was largely scripted, ideally with students filling in the blanks left open by the teacher. It claimed to respect students, but never really wanted to engage their actual experiences and ideas. In truth, the idealized Socratic method so intimately associated with the big classroom presupposed that students never teach and that teachers never learn, that teachers exercise but almost never share power with students, and that teachers are the ones ultimately who act and that students are the ones ultimately acted upon.4 Today’s version of the big classroom Socratic method (the interrupted mini-lecture format)—for all its weaknesses—may only appear less ambitious than its idealized forefather and may well be less hypocritical.

Now perhaps you’re thinking “so what?” Maybe teaching in the big classroom really isn’t now about—if in fact it ever was about—having an informed, critical conversation between students and teacher. Perhaps it currently underscores the importance of simple repetition to transmitting information—a notion of the big classroom as cognitive reinforcer. Or perhaps it reveals the importance of learning to improvise responses to ideas that others have had a long time to think through but spring on you unannounced—a notion of the big classroom as training for ambush. But, if you fancy either of these explanations, you should realize that most law teachers I know don’t agree and with good reason. After all, mini-lectures

4. Of course, this view is hardly unique to law school’s big classroom Socratic method. See generally P. Freire, Pedagogy of the Oppressed (1970); A. Swidler, Organization Without Authority (1979).
through a question and answer format in the big classroom seem both an incredibly inefficient means of information transmittal and a very crude method of developing the ability to handle the intellectual equivalent of an ambush (a skill, by the way, almost surely overrated in its importance to most lawyers).

Or perhaps you’re saying to yourself that at least some big classroom teachers must have purposeful and refined reasons for sticking by familiar practices. And you’re right. For example, some big classroom legal history teachers defend their lectures—formal and mini—as well-suited to their task. Though these lectures may appear principally to rehearse and paraphrase the content of readings, they actually serve to bring to life and specially emphasize what students otherwise too often find dull and undifferentiated in the written text—a notion of the big classroom where the teacher serves as a galvanizing, aural, intellectual force.

There’s sense, to be sure, in these more purposeful pedagogic explanations. In challenging the big classroom model of instruction, no one should want to convert learning into a non-aural, atomistic enterprise. Nor should anyone underappreciate the importance of reinforcement and reemphasis, nor underestimate the role of a teacher’s influence on the students’ learning spirit. Still, why not convert previous lecture notes into written commentary on the principal text? And why not aspire to an aural community of learning by employing a set of pedagogic vehicles that demands more of students than simply taking yet another set of lecture notes? Instead of having so much pass through the teacher, why not help students galvanize one another?

Now a handful of quite self-conscious big classroom legal history teachers have responses to at least some of my challenges. For instance, they would argue that if you convert oral commentary into written form students will bypass the principal text—if not because it is hard going, then because students are deeply socialized to limit their intake to what the teacher declares important. Why work through Langdell, Pound or Llewellyn when you can turn to the instructor’s written commentary on these historical texts? If you think, as I do, that students should learn to read original historical (as well as interdisciplinary and theoretical) literature, in part be-
cause it directly informs and often can directly assist resourceful lawyering, then it is worrisome that these teachers may be right in thinking that a written commentary would have an undesirable effect.

But even such pinpointed concerns are themselves often founded on quite contestable pedagogical assumptions—in this instance, that accompanying commentary necessarily discourages students from reading difficult original texts. It has been my experience that, for most students, certain kinds of written commentary encourage both more confident reading and more confident criticism of the original texts. Well-crafted written commentary lets students in on the teacher’s “take” and frees them to ask whether or not they have a different angle on things—for example, what should they themselves (not the teacher) make of Langdell’s classical/positivist views and Pound’s vision of law as policy science.5 My experience hardly ends the debate, I realize, but it certainly would seem to present an empirical challenge of considerable force. More to the point, my experience is among a family of experiences that call into question continued reliance on the conventional big classroom format and that should especially compel self-conscious big classroom teachers radically to rethink not only the relationship of readings to admirable pedagogical aspirations but their own roles as instructors.

But the truth is that most teachers who practice their teaching in the big classroom don’t have a very self-conscious idea of why it is they do what they do. They simply find themselves—like their students—trapped in a largely unexamined set of structures and routines. Indeed some teachers and students in law schools seem to have cut something of a deal. The students permit themselves to be bored, boring, and infantilized, so long as no one challenges too openly their disengagement. The teachers permit themselves to be bored, boring and thoroughly unambitious so long as no one examines too closely their teaching. These students and teachers now bear roughly the same relationship to each other in the big classroom as do the viewers and the creators of television sitcoms. They pass

5. These concepts are discussed in Grey, Langdell’s Orthodoxy, 45 U. Pitt. L. Rev. 1 (1983).
precious hours doing their best to make the banal entertaining enough to dull their critical sensibilities. Neither demands too much of the other and neither openly exposes the considerable fatuousness of their time spent together.

There are those few, of course, whose teaching in the big classroom stands in stark contrast both to the mythologized Socratic method and to the actual teaching practices found in most big classrooms today. These teachers actually depend upon precisely what most other law teachers seem to fear most—they expect, no, they need to find themselves in the big classroom with really well-prepared students, students who, going into the conversation, have assimilated both what the materials say and what the teachers think. For these teachers see the classroom—yes, even the big classroom—not principally as a place for the instructor’s restatement (even the lively restatement) of ideas in the readings but as a setting primarily geared for the task of apprehending and commanding a practice. In this setting, students learn by doing—by putting to use, challenging, and improvising their own fledgling alternatives to the conventions, stocks of knowledge, and patterns of know-how central to the work of lawyers. And teachers teach by a sort of coaching—by designing, by getting students ready for, through, and reflecting on a set of (broadly defined) practice simulations. In this conception of the big classroom, well-prepared students trigger the very possibility of a reciprocally reflective relationship with the teacher. It is a relationship where it becomes apparent that teachers do learn and students do teach, where the aspiration is to share and exercise power responsibly, and where everyone’s engaged risks change along the way.6

Yet even if these extraordinary teachers were everywhere in legal education, a curriculum dominated by the conventional big class-

6. Such relationships are difficult to establish and to sustain in the “clinical” as well as the big classroom setting. One commentator argues that students are not good critics of their teachers’ work because of the disparity in experience, status, perspective and authority. Condlin, “Tastes Great, Less Filling:” The Law School Clinic and Political Critique, 36 J. Legal Educ. 45 (1986). There’s much to this claim that deserves special and extended attention, and I hope in time to express my own views. But, in passing, it seems important to note that currently perceived disparities may well be produced by what legal education now defines as relevant conversation and valuable knowledge—about both lawyering and law.
room model of teaching and learning would still badly undereducate its future lawyers. Big classrooms focus attention on learning to read cases, on learning to identify and replicate stock stories and arguments that define a body of legal doctrine, on learning to bring a body of legal doctrine to bear on a social situation, and on picking up along the way some information about and some appreciation for how the legal culture operates. These are important ideas and skills and the big classroom can provide some productive angles for focusing attention on them: it can give you some appreciation for how others respond to the same cultural practices and artifacts, it can permit you to try out (at least to yourself) and hear others try out standard lines of analyses and persuasion, and it can provide you some opportunity to note in yourself and others the very transition from outsider to cultural insider about which many students feel genuine ambivalence.  

The big classroom introduces, exposes, and illustrates certain dimensions of the legal culture. And it can permit students to “try on for size” certain problem-solving and conceptual speculation. But if there’s lots we can do in the conventional big classroom, there’s also lots we can’t do. Even in a well-managed big classroom, introductions are at best partial, exposures are sometimes serious but almost never sustained, and illustrations are often clever but rarely deep. Think honestly about even more ambitious contracts, corporations, criminal procedure and constitutional law classes you know and I think you will find my descriptions accurate. Moreover, in the big classroom most problem-solving and conceptual speculation is fitful, haphazard, and almost always artificially bounded by the class’ doctrinal focus. You know the routine: students think of problems in contracts only as contracts problems, and in constitutional law only as constitutional law problems. While all this is not made necessary by the big classroom format itself, it occurs in a way that regularly ignores what we know about how problems spill over across doctrinal boundaries and in a way that frequently initiates bad practice habits. Worse still, only infrequently are students made re-

7. See Anderson, Lawyering in the Classroom: An Address to First Year Students, 10 NOVA L. J. 271, 278-88 (1986).
sponsible for assessing an entire problem, both comprehensively and deeply. They can come to believe that having something glib to say is the equivalent of careful problem solving and provocative thinking.

To be sure, big classrooms need not be treated as frozen pedagogical vehicles. They can be reimagined and retooled. You can introduce a wiser mix of both richly detailed and purposely skeletal social situations for students systematically to work their way through; you can regularly demand more written work on small and large projects and provide more feedback throughout the semester; you can utilize more serious and sustained simulated activities; you can purposefully break down the big classroom into smaller work units. In short, you can transform the conventional big classroom into a set of experiences that feel like well-conceived, intellectually rigorous and sensible practice sessions that take advantage of big classroom opportunities without accepting this conventional wisdom about productive activities. But as much as I favor and indeed as much as I have spent a great deal of my career trying productively to break out of big classroom conventions, these breakthroughs tell us at least as much about the ultimate limits as the untried possibilities of the big classroom model of teaching and learning. We should reimagine and retool the big classroom but we shouldn't think we can make it into anything we please. It is destined, after all, for quite limited and specific roles in any wise future curriculum.

At a deeper level still, experimenting with the big classroom makes plain just how much we all mindlessly buy into the present structure and routines of legal education. Even at (or perhaps precisely at) those very moments when those of us in legal education like to think ourselves quite imaginative and innovative, I fear we almost never fundamentally rethink what it is we’re doing and how it is we’re doing it. How often do we note and examine choices we regularly make about the uses of space, time, what students already know, what law teachers know, what others know about clients, lawyers and the legal culture? Why have we come to certain conclusions about what students can learn on their own and what they must

8. Id.
learn from a teacher in a classroom? Why do we treat some activities and not others as teaching and some activities and not others as learning? I could go on, but the point is that the big classroom’s current dominance of the structure and routines of legal education may only be symptomatic of a more profound problem: we only rarely take stock of and examine how we use, how we develop, and how we reward the use and development of basic resources.

Too few skills make their way into and get serious attention in the general approach to legal education.

You needn’t look much further than the dominance of the big classroom model of teaching and learning to conclude that legal education focuses on too few skills—on too few of the wide range of evolving competences (understanding and know-how) that at any point in time constitute and remake the practice of law. Unless a student makes a concerted effort to avoid big classes, three years in law school may well end up feeling like a relentless regimen that focuses on a tiny family of related skills—reading, dissecting and deploying appellate cases (and a statute here and there). A former colleague of mine once told a group of entering first year students that law school might not get them ready to hang out their own shingle but it sure would prepare them marvelously if, upon graduation, any of them happened to get appointed to the appellate bench.

People have long speculated about why, apart from the dominance of the conventional big classroom, legal education seemed so resolutely against offering anything like adequate training in the range of skills demanded of various lawyers. Or as the question is more euphemistically (and I think misleadingly) put, “Why don’t law schools do ‘skills training?’ ” Some claim “skills training” is beneath law schools—the elitism hypothesis. Still others claim that “skills training” is beyond those who teach in law schools—the incompetence hypothesis. Still others claim that “skills training” is too expensive—the fiscal constraints hypothesis. Finally, others still claim that “skills training” is best done after law school—the wise division of responsibility hypothesis. 9

9. For still more explanations as to why law schools do not provide adequate “skills training” to their students, see Keeton, Teaching & Testing for Competence in Law Schools, 40 Md. L. Rev. 203, 212-14 (1981).
There's continuing truth of one sort or another in each of these hypotheses. If "skills training" isn't in fact beneath, beyond, too expensive, or too unwise for law schools to provide, then certainly there are many who perceive the truth in one or more of these self-absolutions. And no doubt the very availability of this "litany of pardons," as I call it, provides a certain comfort for everyone involved. Whether you count yourself as foe or ally of expanded skills training in law schools, you can more readily convince yourself that moving glacially on this front makes good institutional sense when change appears to implicate so many fundamental questions, concerns, expectations, and feelings. After all, how radically and quickly can you responsibly transform a culture?

Yet reality stands somewhat at odds with the image of legal education depicted in the litany of pardons. After all, law schools have always taught skills—not many, to be sure, and probably not nearly as well as they might. Still, skills are, in part, precisely what's being passed on in the curricular preoccupation with learning to read and use cases. Many teachers and institutions may not have cared much about—may even detest—the notion of skills training. But at some point it seems inevitable that they will come to realize that narrow and repetitive skills training, coupled with a certain sort of initiation into the legal culture, comes closest to describing what they've been doing with their students for all these decades. To the extent these same teachers and institutions still oppose extended skills training, they may in part simply want to avoid the embarrassment they perceive in this appraisal.

And you can't ignore that, over the last fifteen years or so, legal education has moved modestly in the direction of expanded skills training. In almost any of today's law school catalogs you're likely to find several course titles like "Interviewing and Counseling," "Trial Advocacy," and "Estate Planning and Will Drafting." These courses fall within what most people in law schools have come to call "clinical education"—a name loosely signifying (among other things) that these courses focus student attention on the development of a range of previously neglected skills usually through role simulations or through actual supervised work as student practition-
The very presence of these "clinical" offerings would seem to imply some appreciation for, some fundamental integration of, the need to devote more law school time and resources to a wider range of skill development. Some might even surmise that these course offerings reveal that law teachers may well have undergone a sort of collective consciousness-raising about both their work and legal education generally.

Yet you should pause before concluding that this relatively recent expansion of course offerings signals any profound shift in faculty or institutional consciousness. If you did take that careful look at today's law school catalogs, you'd find that those courses specifically offering skills training are usually meager in number, somewhat irregularly available and often tactfully set off to the side from the "regular" curriculum. You'd also find that, with greater frequency than other courses, these offerings are taught by adjuncts, visitors, clinical instructors, or teachers with some other "specialized" titles. Whatever else these distinctions may suggest, they do decree how peripheral the very idea of extended skills training remains to basic legal education. In fact, these new courses probably betray minor concessions to noisy constituencies more than they imply some deeper institutional appreciation for the central place of skills training in legal education.11

That the very idea of skills training remains, even today, off to the side of the basic law school curriculum reflects, I think, a largely unappreciated fact that is more basic even than the litany of pardons: legal education has been and is still almost entirely about law

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10. Regarding the increased number of clinical education courses, see Condlin, The Moral Failure of Clinical Legal Education, in The Good Lawyer: Lawyers' Roles & Lawyers' Ethics, 317, 319 (D. Luban, ed. 1983); Gee & Jackson, Bridging the Gap, supra note 2 at 881. For a review of some of the literature on clinical education see Michelman Report, supra note 1, Ch. 6.

11. Viewing the concerns of clinical education (people, unstructured situations and feelings) as stereotypically feminine in our culture, some claim that the marginalization of clinical education must be understood in the context of existing gender hierarchy. See, e.g., Tushnet, Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education, 52 G. WASH. L. REV. 272, 274-75 (1984). See also Redmount & Shaffer, Learning the Law - Thoughts Toward a Human Perspective, 51 NOTRE DAME LAW L. REV. 956, 962 (1976); Oliphant, When Will Clinicians be Allowed to Join the Club, LEARNING & THE L. 34 (June-Sept. 1976) (regarding the marginalization of clinicians from law school faculties).
and is only incidentally and superficially about lawyering.\textsuperscript{12} Law teachers think, teach, and write a great deal about the law of contracts or the law of toxic waste, and only barely about what lawyers do for and with people in situations partly defined by contract law or toxic waste law. Law teachers almost obsessively study the results of formal legal disputes but pay almost no attention to how disputes emerge and transform and to how professional lawyering affects these emergencies and transformations. Law teachers spend enormous energy tinkering with the doctrinal formulations of discrimination law but devote almost no resources discovering whether and in what ways discrimination law and the work of discrimination lawyers penetrate the lives of millions upon millions of people for whom they are ostensibly designed.

Lawyering simply never has been where it’s at for law schools, in large part, because of the exceedingly narrow and impoverished conceptions of practice that dominate legal education. When practice is not crudely portrayed as simple mechanics, it is understood as the application of existing categories of legal knowledge (rules) to the case at hand (facts) in a world where there’s presumed to be a right answer and where “thinking like a lawyer” means learning the ways in which a competent practitioner would finally connect category to case. As a result, law school training largely ignores what ought to be both the challenge and the artistry of the practice of law: the dynamics of inevitably working \textit{with} other people in framing and responding to conflicting, uncertain and unique situations; the interaction of lay and professional understanding and know-how; the influence of cultural and cognitive forces on problem-solving; and the impact of income and other power disparities on perceptions and strategies. In short, law school teachers have long acquiesced

\textsuperscript{12} The first criticisms of legal education for its neglect of lawyering were aired more than seventy years ago. \textit{See} Stone, \textit{The Importance of Actual Experience at the Bar as a Preparation for Law Teaching}, 37 REP. A.B.A. 747 (1912); Kales, \textit{Should the Law Teacher Practice Law?}, 25 HARV. L. REV. 253 (1912); Frank, \textit{supra} note 1; Keyserling, \textit{Social Objectives in Legal Education}, 33 COLUM. L. REV. 437 (1933). Relatively recent surveys of practitioners reveal that “the skills rated by lawyers as most important to the practice of law were learned outside law school - that is, through the lawyers’ own experiences.” \textit{Special Committee for a Study of Legal Education, A.B.A., Law Schools & Professional Education} 48 (1980). \textit{See also} Baird, \textit{A Survey of the Relevance of Legal Training to Law School Graduates}, 29 J. LEGAL EDUC. 264, 272-77 (1978).
in visions of lawyering that suit, most of all, their pedagogical comfort.

The advent of modern clinical education in the early 1970's posed a significant challenge to law school culture not simply because it aimed to expand the amount of skills training but because it aspired to teach skills as part of a self-conscious appreciation of practice. Some even saw it as threatening potentially to subvert legal education's romance with formal law and with the technocratic role of lawyers (a strange romance that somehow has outlived the late 19th century world in which it first blossomed). So long as law teachers continuously focused on law they could rather regularly and comfortably abstract away from life, supporting the self-serving illusions that we can get law right and that we can get life ordered once and for all. Insofar as clinical education seemed likely to focus significantly more law school attention on practice, some thought it would introduce the messiness of living and lawyering upon thought and action, making it perfectly obvious that the romance with final technocratic solutions was nonsense (an admittedly odd point to feel the need to make if we are truly all "realists" now).

Much today appears to suggest, however, that the subversive promise of clinical education was largely exaggerated. Clinical education in the minds of many now amounts to several additional course offerings focusing on certain lawyering skills otherwise neglected in the basic curriculum. There has been some sporadic introduction of clinical teaching methodology—principally simulations—into the basic curriculum, but there has been very little in the way of an intellectual, political, and emotional shift from law to lawyering. Insofar as teaching and scholarship are reliable indicators, most law teachers continue to treat formal law as endlessly intriguing and complex; at the same time, they persist in treating

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13. This aspiration was, I think, part of an effort to appreciate and elaborate "practice" more generally defined. See, e.g., P. Bourdieu, Outline of a Theory of Practice (R. Nice trans. 1977).
15. Some see clinical education itself as failing to live up to its own promises, in part because "clinics" frequently replicate many of the unproductive methods of instruction utilized in the traditional big classroom. See e.g., Condlin, supra nn. 6 & 10; and Condlin, Socrates New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction, 40 Md. L. Rev. 223 (1981).
lawyering as transparently vapid and obvious. The life of lawyering in law schools in the late 1980s seems in many ways like the life of lawyering in law schools in the early 1970s—demeaned when not neglected.

Still you should know that there are signs of a kind of savvy unrest. If clinical education seems now to amount to only several peripheral skills courses in most curricula, many today appreciate that this marginal status seems almost profoundly at odds with the relatively high regard in which these courses are held by students. If most law teachers continue to treat formal law as endlessly intriguing and complex, many today sense that this treatment may ironically reveal only that law teachers find law soothingly tangible, knowable, and criticizable. If most law teachers persist in treating lawyering as transparently vapid and obvious, many today sense that this treatment may ironically reveal only that law teachers find lawyering profoundly intangible, mysterious, and elusive. Indeed, many may be beginning to appreciate that legal institutions and law teachers may be scared of not just what attention to practice will do to their classes but what it will do to their professional and everyday identities.

The fate of skills training then influences as much as it reflects the underlying battle between legal education’s traditional focus and the upstart effort to introduce practice (richly conceived) into the

16. This devaluation of lawyering by law teachers may reflect, at least in part, self-doubt as to whether they have any real understanding of practice. "One way to justify the fact that one does not know something is to keep repeating over and over again that it is not important to know it," Redlich, Clinical Education: Stranger in an Elitist Club, 31 J. LEGAL EDUC. 201, 207 (1981).

17. One indication of this high regard is, of course, student enrollment. At Stanford Law School, the Registrar’s Office reports that clinical courses historically have been oversubscribed—sometimes dramatically oversubscribed. For example, during the academic years 1987-88 and 1988-89, every one of the total number of 18 clinical courses offered (10 offered in 87-88, 8 offered in 88-89) drew more applicants than it had slots. Indeed, 10 of these 18 courses attracted at least twice as many applicants as available slots, and two courses pulled in over four times more applicants than slots.

law school culture. You can’t be entirely confident of what’s happening, not just because the signs appear so frequently contradictory, but because shifts of sentiment seem so often temporary, unstable and even ungrounded. What you see is not always what you get. All you can know is that, while the subversive promise of clinical education remains largely unrealized, the story is still unfolding.

Too little theory, of any sort, makes its way into and gets serious attention in the general approach to legal education.

Whenever a law school (or any school) doesn’t teach skills, it usually claims to be devoted to, and preoccupied with, teaching theory. When skills and theory are juxtaposed in this way, skills are usually meant to signify and be about the practical world—the nitty-gritty, the how to, the mundane. By contrast, theory is meant to symbolize and be about the world of intellectual thought—the unessential, the non-instrumental, the deadly serious/playfully speculative abstract. I am among those who find the terms of this juxtaposition exaggerated and highly problematic. They strongly imply that skills and theory deal with (and should deal with) not just different but distinct domains; they fail to acknowledge how the two link, interact, work as one. Worse still, from my perspective, devotees of each domain animate this dichotomy with their tendency to belittle the other: theorists often will describe those who teach skills as involved with “mechanics,” while those who teach skills will describe theorists as having their heads in the clouds, as being out of touch and probably useless to the “real world.”

Whatever you think of this dichotomy, legal education generally buys into it. So, since law schools focus on too few skills in their training, you might presume that they at least pay serious attention to theoretical questions. But you’d be wrong. Law school courses generally spend a great deal of time and effort transmitting the law of property, tort, corporations, and federal jurisdiction—what the legal culture calls doctrine. Doctrine, you should realize, is anything but self-defining—however much people throw around the term. For some teachers and schools, it can mean nothing much more than the fairly uninspired and uncritical statement of rules or principles of law—what some like to call “black letter law.” For more am-
bitious teachers and schools, it encompasses the identification and deconstruction of law's currently available stock of stories and arguments into which parties and problems regularly get typecast. Doctrine also encompasses the self-conscious exploration of characteristic policy concerns that bear both on the choices of stories and arguments from within the stock and on evolution of the stock itself. But the real point to appreciate is that, however formulated, doctrine is the stuff of legal education.

By contrast to the attention doctrine receives, law school courses generally invest very little time and effort explicitly identifying and elaborating underlying theoretical conceptions—conceptions of human interaction, of conflict, of the capital market, of problem-solving, and of the state. At the end of three years of education, law students probably are no better equipped to describe and critique the political and economic theories underlying various legal arrangements than they are ready immediately to hang out their own shingle. That's right, they're neither very theoretical nor very skillful. They are consumed by doctrine, much as they have been made to consume it.

If you would spend as much time as I do trying to figure out exactly why legal education so religiously avoids theory you would probably discover more along the way than you would care to learn about those in legal academic jobs. You would discover that a surprising number of people simply don't read very widely—not just across disciplines but even in their own field. You would also discover a certain mix of fear and disdain for theoretical enterprises—a sort of "that fancy stuff's not law" attitude. You would even discover, somewhat ironically, that most of those interested in and many of those producing theoretical scholarship only infrequently introduce this work into their own teaching. Scholarly attention to theoretical matters may well help establish the pecking order between


20. While law students are consumed by doctrine, it seems questionable whether they can be said truly to comprehend it if they do not have an understanding of its social and political history and how it concretely affects everyday problems. See Keeton, supra note 9, at 205-06.
law schools and between faculty at any particular law school, but
time (like skills training) at nearly every institution plays only a
peripheral role in the education of our future lawyers.

In many ways, none of these discoveries should come as a great
surprise. Law schools have never paid much attention to theory;
most current law faculty come to teaching equipped with many things
but have only whatever formal theoretical training they received as
law students or as undergraduates. And legal education continues
to reflect, as much as anything, what faculty feel both equipped to
put into their teaching and rewarded for doing with their teaching.
Perhaps what we're seeing, then, is simply a story of "law schools
do now what they have always done and teachers train now much
as they themselves were trained." Maybe law school education and
law teachers simply reproduce one another.

But if you push law teachers for specific answers to why they
don't integrate theory into their teaching, you're likely to find some-
thing approaching a self-conscious, substantive defense of the cur-
rent approach. One line of defense seems highly self-interested, hardly
what you would call ambitious and at times even borders on shame-
lessness. "Teaching theory doesn't get you high teaching ratings,"
and "Teaching hard theory is hard work." You should know that
answers of this kind are hardly an irrational response to the reward
system in most law schools. By and large, teaching theory doesn't
pay in legal education today, and we all should wonder why (too
hard to study for? to test? upsets expectations?). Still, most people
do expect more from this country's educators, so that even those
law teachers who buy this line of defense don't frequently expose
it to public scrutiny.

Another line of defense for keeping theory out of, or at the
fringes of, legal education clusters around two themes. The first
theme, more tacit than explicit in what I hear law teachers saying,
pushes the notion that doctrine is the pertinent "theory" of law—
at least the sort of ambitious doctrinal learning that includes both
stocks of relevant stories and arguments and stocks of underlying
policy concerns. From this vantage point, the virtue of legal knowl-
edge is that it does not blindly follow trends—either theoretical trends
in academic life or social trends in workaday life. Because legal
knowledge must serve well and develop in this midst of conflict, it is necessarily synthetic, reflective, and reactive. To understand law theoretically, law students therefore must be exposed to and must develop a sense of how legal knowledge operates and evolves. They must be, in sum, exposed to doctrine.

The second theme in this line of defense, less substantive yet more explicit than the first, is that there's just no time to teach theory. Teaching doctrine fills up a huge number of the allotted class hours: there's lots of information, some of it tough to assimilate; there are themes in the doctrinal stories to play out and arguments to identify, experiment with and critique; and there are policies to elaborate, to call into question and to put into conflict. In fact, as some law teachers see it, people shouldn't be worrying about theory but should instead worry about how to get in all the doctrinal law that the students should learn. Law schools not only shouldn't, but can't be graduate departments in economic theory, psychological theory, political theory or anything else. Law schools teach law and there's too much of that for anything else to play an integral role.

This defense of legal education's preoccupation with teaching doctrine—by contrast to the "teaching theory doesn't pay" line—seems anything but shameless. And I think it captures certain conceptual and practical insights about what goes into and what's going on in legal education. Law is, in many ways, a derivative discipline, and there's certainly not enough time to teach either all of legal doctrine in three years or even all of many discrete areas of legal doctrine in a three or four or even a five-unit class. But not only have you missed the mark if you think that these insights necessarily support keeping theory on the fringes of law school curricula, you also may well be simultaneously ignoring the more radical upheaval of conventional legal education that these insights might well imply.

Let me explain. If you believe legal knowledge is derivative you should care all the more about exposing future lawyers to its origins and its influences. To be sure, some of these origins and influences can be found in the legal doctrine itself. For example, if in 1983 you were examining National Steel's threatened shutdown of its op-
eration in Weirton, West Virginia,\textsuperscript{21} case law on plant closings might reveal both complex argument strategies deployed by labor and by management, and the ways in which the legal culture responds to these interactive strategies in its efforts to make sense of and bring some justice to these traumatic disputes.\textsuperscript{22} Parsing this case law with students, at least when done well, helps them develop a sense of the legal positions in issue, of the supportive argumentation, and of the customary policy concerns that variously bear on the resolutions of these disputes.

But legal doctrine can ignore and obscure as much as it apparently reveals. The same case law on plant closings rarely makes available to its readers the interdisciplinary conceptual thought helping to shape both the social dispute and the legal strategies deployed. If you really wanted law students to understand what was going on in Weirton in 1983 or, more generally, to understand plant closings as phenomena with which the law deals, you could not be comfortable simply with having them read the cases, having them assimilate story and argument conventions, and having them engage in some perhaps heartfelt but necessarily cursory conversation about what underlies the conflict. You also would have to equip them, at least in some modest way and at some point in time before or while they study plant closings, with explicit knowledge about those theories meeting at the "busy intersection" of these disputes—say with competing conceptions of property, competing conceptions of community, competing conceptions of political economy and with competing conceptions of institutional governance. In short, to get to the very origins and influences of the law of plant closings you have

\textsuperscript{21} For the story of how employees purchased Weirton Steel to avoid National Steel's shutdown and now successfully operate it as the largest wholly employee-owned industrial corporation in this country, see METAL CENTER NEWS, May, 1985 at 70; The Wall Street Journal, Aug. 24, 1984, § 1, at 6; Chicago Tribune, May 15, 1988, § 7, at 2; WEIRTON STEEL CORP., 1987 ANNUAL REPORT (1988).

\textsuperscript{22} For example, in Loc\textsuperscript{al} 1330, \textit{United Steel Workers v. United States Steel Corp.}, 631 F.2d 1264, 1265 (6th Cir. 1980), the United States Steel Workers' Union challenged U.S. Steel's right to close two steel plants in Youngstown, Ohio, initially arguing that local managers had promised employees that the plants would remain open as long as they were profitable and that the employees had relied on these promises to their detriment. When the company subsequently refused to sell the plants to the union, the union added two additional legal claims: that the company's refusal to sell the plants to the union was a violation of federal antitrust law, \textit{id.} at 1282-83, and that the refusal to sell violated the union's community property right. \textit{id.} at 1279-82.
to reach beyond legal doctrine to interdisciplinary theoretical thought. 23

And if you really wanted the same law students to understand how lawyers in Weirton work with people and with institutions confronting the reality of a plant closing, you could not be satisfied with what case law on plant closing happens to reveal about what clients, lawyers and their professional and lay allies do together. You also would have to make available to students the interdisciplinary work that attempts both to account for and, at least indirectly, to guide the practice of law. You would have to equip them, again at least in some modest way and at some point in time before or while they study plant closings, with explicit knowledge of those conceptual formulations relevant to conflicting (if still largely underarticulated) ideas of lawyering—say to competing conceptions of cognitive psychology, to competing conceptions of public choice dynamics, to competing conceptions of dispute resolution, and to competing conceptions of work itself. In short, to get to the very origins and influences of the lawyering implicated in plant closings you would have to reach beyond legal doctrine to interdisciplinary theoretical thought.

But, now more than ever, you may be thinking that those law teachers who claim that there’s just not enough time to teach theory must be right. After all, if serious attention to the origins and influences of legal knowledge—that is, the knowledge of both lawyering and law—demands student exposure to such diverse theoretical thought as well as to doctrinal learning, how are law schools responsibly to do it all? The answer lies, in part, in penetrating the practices that constitute the current training regime in legal education—in making out generally what law teachers think they’re doing in relying so exclusively on legal doctrine as the source of well-conceived training and in discerning what law students seem to be doing in response to this regimen. What I think you find in pen-

23. For a thoughtful invocation of certain interdisciplinary theoretical thought relevant to plant shutdowns such as those which occurred in Youngstown, Ohio, and which almost occurred in Weirton, West Virginia, see the discussion of social vision, political economy, and the free market model in Singer, The Reliance Interest in Property, 40 Stan. L. Rev. 614 (1988).
etrating these practices, however, may not be what you would expect in undertaking the examination.

You can be certain that, in providing a training regime focused almost exclusively on legal doctrine, law teachers are not now proclaiming, if they ever did, that their educational mission is to make certain that their students know all or even a substantial amount of all legal doctrine. No law school’s course offerings cover anything approaching all conceivable legal doctrine. And, in order to graduate, each law student must take only a percentage of those courses actually offered in the curriculum. Moreover, at nearly all law schools, students are free after their first year to elect the majority of courses they will take during their second and third years.

Instead, through the current training regime, law teachers collectively seem to be saying something quite different—something roughly like “we train law students principally to learn how to learn and how to use legal doctrine.” To learn corporations law or administrative law or environmental law or constitutional law is, in the minds of most teachers, at least generally to learn how to learn and how to use legal doctrine as well as to learn the particular legal doctrine governing corporations, the administrative state, the environment or the federal government. Of course, most law teachers do think some legal doctrine matters more to a lawyer’s training than other legal doctrine—that’s why they require it of or recommend it to students. Yet law students get to choose a substantial number of their courses principally because law teachers think that most any course will do in providing students yet another opportunity to master doctrinal acquisition and deployment while learning some information.24

At some level, all students get their teachers’ messages—that learning how to learn and how to use legal doctrine is the principal aspiration of law school training. And most students acquiesce in, even if they don’t come to believe in, the wisdom of this training

24. Learning how to learn and how to use legal doctrine—roughly the equivalent of what most mean when talking about learning how to “think like a lawyer”—is viewed by both teachers and students as an extremely important aspect of legal education. See, e.g., Bratt, supra note 3, at 201; Redlich, supra note 16, at 204-05.
regime. Law students frequently adjust their own aims to match this curricular aspiration and certainly tailor their own work habits to meet the demands made of them. They pay close attention to what it means to do well in the classroom, to what it means to do well on exams and to precisely how law school doctrinal learning relates both to their own part-time or summer jobs and to what lawyers actually do at work. In fact, in many ways law students seem to have made a real art of attending carefully to the cues that law teachers build into the three years of training.25

By contrast, law teachers either have not paid very careful attention or (more likely) have not responded well to the ways in which students actually manage to learn how to learn and how to use legal doctrine over the course of their law school careers. During the first year, students seem generally to accept the need for and may respond well to the slow, swirling unfolding of method through content that so characterizes law school teaching. But, certainly beginning in the second year, and perhaps earlier, many students come to understand that they actually can pick up the patterns of stories, arguments, and policy concerns that constitute a particular body of doctrine without engaging at all actively in the regimen that the teacher pursues in and around the classroom. Students appreciate that they need only read cases cursorily (if at all), need only become happy listeners in the classroom (if they attend at all), and still learn and use the legal doctrine in just the ways demanded by the teacher. All they need do is diligently gather the appropriate commercial outlines and hornbooks, get hold of the notes from or better still an outline of the particular teacher’s course, and spend a short intense period of time making the information their own, in part by putting it to use on old exam questions. That’s right, they’ve transformed the big classroom into something much resembling a correspondence course.26

25. In addition to paying attention to the cues provided by law teachers, law students can avail themselves of numerous publications designed to explain to them in a straightforward and concise manner precisely how to act in class, how to process doctrine and how to succeed on law school exams. For example, see K. Hegl and, Introduction to the Study & Practice of Law in a Nutshell (1983).

26. Among the most common commercial materials used by law students are outlines and materials published by Emmanuel’s, Gilbert’s, and Sum and Substance. These outlines at times serve
Sadly, most teachers condemn, rather than try to take advantage of, what student practices might well teach everyone about the current training regimen. Some teachers see these student practices as the vulgarization of what once was an enviable learning spirit in students of law; others see these practices as a sensible response to emotional needs though the response is in many other ways unfortunate or unnecessary. And nearly all teachers like believing that students miss out on something indispensable whenever they disengage from the conventional training regimen—even if those indispensable qualities are neither measured by the very exams those same teachers write nor made explicit in any way that students or teachers find intellectually coherent and convincing.

Yet, teachers aren’t alone in failing to see the possibilities in student practices. Students often don’t like confronting the full consequences of their own behavior either. Even while in many ways appreciating that over the years they have designed their own quite successful parallel regimen for learning how to learn and how to use legal doctrine, many students can’t imagine launching a broadside attack on the traditional classroom regimen. Instead, they either ignore it or cleverly work to convert it into a learning aid that more or less complements their own practices. If the teacher is willing to cooperate (and by now most are), then students in large numbers remain all too happy to treat a traditional doctrinally-focused course, especially in the second and third year, as a slow-moving, relatively painless aural and video device that repeats and reinforces the very same information that students basically get through their own potpourri of materials and drills. In fact, you sometimes wonder whether today’s teachers haven’t themselves become the very emotional crutch that they still consider outlines, notes, and hornbooks to be for law students trying to master how to learn and how to use legal doctrine.

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as the seasoned student’s only study material. Students are sometimes especially lucky to discover that the very law teacher who taught that course they ignored throughout the semester is also the author of one of the popular commercial outlines, thus making successful dependence on such materials even more assured. A group of enterprising former law students has even reduced the various courses typical of a legal education to collections of flashcards. See “Law In A Flash” flashcards.

27. And still others seem to hold both views. See, e.g., D’Amato, The Decline and Fall of Law Teaching in the Age of Student Consumerism, 37 J. LEGAL EDUC. 461 (1987).
If we pay close enough attention to student practices, I think we can discern more than just a telling critique of the current doctrinally-preoccupied training regime. What students actually do in learning how to learn and how to use legal doctrine suggests a partial outline of a new curricular training regimen that would not only make room for much neglected theory (and practice) but would also do a better job of teaching the very legal doctrine so dear to current pedagogical aspirations. Students apparently learn much of what they have to know about how to learn and how to use doctrine much earlier than law teachers acknowledge.28 From that point forward, what they most need in commanding doctrine are sophisticated information transfer mechanisms. That’s why they do their best to gather and create relevant outlines and practice problems, and that’s why they do their best to reward those teachers who accommodate the classroom to this ambition.

Nothing’s wrong with information transfer, and nothing’s wrong with law teachers playing a central role in making information transfer work and work well. Information transfer can be a centerpiece of a good legal training regime—particularly when it makes available patterns of doctrinal thought, skepticism about intellectual coherence, and connections to interdisciplinary thought and practical concerns. And, after all, part of a teacher’s job is to make ideas accessible, and to design formats to reinforce, confirm, and refine what students begin to pick up as part of their own working knowledge. But, if you’re going to do a good job of transferring information, you’ve got to accept it as part of your job and you have

28. Surveys of students at Harvard Law School seem to support my conclusion. Third year students there view the second and third years of legal education as little more than “marking time” because “by the second year the students have learned the law school process.” That legal education becomes a rote exercise for students early on seems evident in the Harvard students’ responses to numerous questions. Asked whether they found first year law school “interesting” or “boring”, 13% of first year students responded boring or generally boring with some periods of interest; for second years this figure rises to 33.4% and for third years, 42.6%. How quickly law students learn “how to learn law” can be measured, perhaps to some degree, by their approach to course work. When asked whether they agreed or disagreed with the proposition that one can get as good a grade by cramming as by consistent study, 26.4% of first years agreed, as compared to 54.2% of second years and 77.6% of third years. These figures support both how rapidly students learn how to master doctrine and how much legal education has failed in its attempts to challenge students to make productive use of their academic time. See Michelman Report, supra note 1, at 5-12.
to pay close attention both to the nature of the information and to the evolving needs of your students.

Law teachers have a ways to go on both counts. If they really understood how much they now transfer information about doctrine, would they really insist that so much had to happen orally in the classroom? Isn’t it clear, and aren’t students telling them, that in many ways they might accomplish even more by efficiently putting all they have to say in writing? Isn’t it imaginable that the proper kind of written materials (including certain central cases themselves; text that identifies, historically situates, and deconstructs stocks of storylines; arguments and policy concerns; written exercises that require students both to practice using what they’ve studied and then to compare their work against practitioner-competent (“model”) responses) could get in all the repetition and reinforcement and confirmation and nuances and jokes, so that all that would be missing would be the elusive aural aspect of the transmission? And couldn’t teachers take care of that anyway by supplementing the reading and the exercises with some very limited number of class sessions, class sessions focused specifically on the irreducible functions that written material can’t perform?

In any event, student practices strongly imply just how much time now devoted to teaching legal doctrine might well be redirected to other matters. There’s plenty of room for paying serious attention to diverse theoretical thought in the curricular effort to make available to students both the origins and influence of legal knowledge that they are attempting to make their own. And, for that matter, there’s plenty of room for paying serious attention to more diverse skills training as a way of examining the mundane and majestic aspects of practice. Accepting and taking advantage of these possibilities would seem a self-evidently mature and sensible reaction to what doctrinal learning is now all about in this country’s law schools. Not to respond to what students for the last fifteen years have been trying to tell us about legal education is, in many ways, what seems most inexplicable and even irresponsible.

Too little of everyday life makes its way into and gets serious attention in the general approach to legal education.
Theory and skills are not the only aspects of thought and practice sacrificed to doctrine. So too is everyday life. Too little of what people do and think and feel and too little of how institutions work and change and get reinvented makes its way into the curriculum. On the whole, law school materials, exercises, projects, and conversations tend to abstract away from both daily routine and rich description and to position students (and faculty for that matter) at a considerable distance from the very human events with which law and lawyers regularly deal. Too much of legal education seems, in short, schematic, ungrounded, and bloodless. 29

Many not only share my conclusion but find it thoroughly unsurprising. Does anyone really expect legal education to seem any different, they ask, when the very appellate cases that it so regularly attends to are themselves so schematic, ungrounded, and bloodless? Think about it, they say. In the legal culture the appellate court’s distance from the heat of conflict and from the pathology of failed ventures is hailed as a distinctive virtue—indeed as a principal source of a judge’s authority and the legal system’s legitimacy. Qualities obviously so highly valued in appellate legal decision-making tend to rub off on both those who teach through and those who learn from appellate cases—not just because teachers and students tend to see themselves more as judges than as practitioners (though they do), but because curiosity about the messy, insoluble byproducts of relationships seems only to get in the way of the studied effort to replicate what those in law prize as the highest form of legal reasoning. Make anyone read, talk about, and deploy too many appellate cases, they say, and you’ll see them inevitably move away from everyday life—away from detail, away from context, and away from passion.

This account, though perhaps exaggerated at least in focus, does resonate with my own experience over the last eighteen years. Legal

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29. Abstracting law both from human events and from the emotional responses which those events should spark implicates serious political concerns. See Tushnet, supra note 11 at 276. For a more general discussion of distancing of law from human realities and events, see Himmelstein, Reassessing Law Schooling: An Inquiry into the Application of Humanistic Educational Psychology to the Teaching of Law, N.Y.U. L. REV. 514, 520 (1978); BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM 33-46 (E. Dworkin, J. Hammelstein, eds. 1981).
education's fetishization of appellate cases has tended, so far as I can tell, to reproduce in both students and teachers a discernable (if sub-articulated) disdain for everyday life. Too many students and too many teachers can't imagine needing or even wanting to know more factual detail about a situation than formal law itself finds plausibly relevant. Too many students and too many teachers can't imagine needing or even wanting to understand how traditions of thought and experience shape personal and institutional behavior. And too many students and too many teachers can't imagine needing or even wanting to learn how particular legal decisions penetrate community arrangements and routines.\(^{30}\)

Still, over the years I've come to believe that these consequences result almost as much from a failure to apprehend what appellate cases can tell you as from the failure to appreciate what they can't. Appellate cases—the published opinions of courts rendering a decision in connection with a particular litigated dispute—can serve as one rich account of institutional and social life. Perhaps they are a skewed sample of failed relationships and failed ventures. Still, appellate cases help make available to students versions of how the legal culture operates, how it transforms and responds to human stories of conflict and failed ventures, how it legitimates and gives prominence to certain arguments and not others, how it interacts with other available remedial audiences (formal and informal), and how it perceives itself by contrast to other regimes of political power.\(^{31}\)

But appellate cases are often not understood or used in this way. Teachers often severely edit them in casebooks and in reading materials; they convert potentially rich ethnographic finds into crude reductions. Even when appellate cases are not heavily edited, teachers and students tend all too frequently to treat them essentially as the stick figures of doctrinal explication—as illustrations of legal nuances rather than as instances of everyday life being shaped by and influencing law in all its full political entanglements. In so do-

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30. For a discussion of how the case-law method of teaching instills in law students a tendency to abstract the cases studied from the social context in which they occurred, see Halpern, On the Politics and Pathology of Legal Education, 32 J. LEGAL EDUC. 383, 384-88 (1982).

31. See Anderson, supra note 7, at 280-86.
ing, teachers regularly miss opportunities to encourage and students miss the chance to practice the imaginative speculation so central to good problem-solving. And, ironically, teachers also may well encourage in students a bad version of the very case reading and deployment skills they themselves so highly prize. Through habits of heart and mind, teachers and students too often destroy or deny what appellate cases might teach about life in and even out of the legal culture.

Though there is unrealized potential in teaching about everyday life through appellate cases, there are also real limits. Appellate cases can undertell a story. For example, if you read Hitchman Coal and Coke Co. v. Mitchell, you will learn from that 1917 Supreme Court decision that the United Mine Workers were enjoined from interfering with individual ("yellow dog") contracts by which coal operators in West Virginia prohibited employees from joining unions. But you won’t learn from reading the case itself that this injunction was only part of a well-orchestrated "law and order" campaign—a campaign instigated by coal operators and aided by the state police and United States troops, a campaign designed generally to defeat the coal miners’ efforts to gain some measure of control over and safety in their workplace, and a campaign specifically calculated to drive the United Mine Workers out of West Virginia.

Appellate cases not only can undertell a story, they can even mislead, however unintentionally. Hitchman, for example, tells you almost nothing about the workaday lives of the miners themselves—the very workaday lives that made control over and safety in the mines a matter of such passionate political concern, really a matter of life and death. For example, you certainly won’t learn from the case how coal was mined in 1917—how, in that age before the advent of mechanized strip mining, miners descended into tunnels to drill and blast the coal from the face and load it in cars to be shipped to the mine entrance, all the while with coal dust covering their

33. For a better understanding of the social context in which Hitchman Coal And Coke Co. v. Mitchell was decided, see R. Lunt, Law & Order v. The Miners: West Virginia, 1907-1933 (1979).
skin, sifting into their clothes, and finally, into their lungs. And you certainly won’t learn from the case that mine accidents killed on average more than 100 miners per month. And of course you won’t learn about how “black lung” disease slowly killed uncounted thousands of others, since in 1917 and for decades later, the official line of the operators (and their doctors) was that coal dust was a healthy influence, an antidote to silicosis.34

In response to these limits, some have tried to integrate into legal education versions of everyday life beyond those found in appellate cases. Certain casebooks in traditional courses try in some genuine (though typically quite limited ways) to reach beyond appellate decisions to expose students to certain background information—to surrounding political events, social circumstances, and economic forces. And, obviously, those “clinical courses” that provide the opportunity to do either supervised work with actual clients or simulated work with fictional clients have done much, if only for a limited number of students, to bring detail, context, and passion to law school training. But, as I’ve said, “clinical courses” remain peripheral to the basic curriculum, and insofar as I’ve been able to determine, the more a casebook reaches systematically beyond appellate cases, either to accounts of actual events and behavior or to richly detailed hypothetical problem sets, the greater its chances are of failing in the casebook market. Courses and casebooks that attend at all carefully to everyday life may be admired, but they aren’t much rewarded—at least not by those who run law schools and law publishing companies.

Ultimately, this aversion to everyday life in law school training is both less defensible and more costly than it might first appear. With any sort of ingenuity and industry, teachers find a wide range of materials and people on which to draw and to develop in bringing to legal education the experiential dynamics of institutional and social life. They can begin with the rich ethnographies, the provocative histories, the detailed studies and the telling biographies they have so long neglected. What they can’t find in these materials they might

34. See Lunt, supra note 33, at 13-14.
well find in less traditional sources—in recorded oral accounts, in plays, in documentaries. And what existing materials can’t provide is to be discovered in people themselves—in students, in staff, in the diverse groups that make up the surrounding local communities, in lawyers of every sort, and even in faculty members.

What we pay for neglecting to use and develop these resources goes far beyond the repetition, the flatness, the boredom, and the ennui that many now associate with legal education, particularly in the second and third year. As long as far too little of everyday life makes its way into and gets serious attention in the general approach to legal education, we can expect that too many of our future lawyers will continue to believe that they do their best work only and always at a distance from and without a deep appreciation for those with whom they work. Maybe that’s all we ever expected from lawyers and legal education, but maybe it’s what we’ve had to settle for.

*Too little conversation and too little coordination, simultaneous and sequential, mark the general approach to legal education.*

Even if many law teachers don’t pay close attention to practice, to theoretical literature, or to everyday life, you might at least expect that most do know a great deal about and talk a great deal about what’s going on in their own curriculum. But I think you’d be disappointed and more than a little befuddled by what goes on behind the scenes. Law teachers know how to grouse to one another about grading examination bluebooks, how to complain to one another about secretarial help, how to moan to one another about certain pushy students, and, of course, how to gossip about Harvard (and maybe even about one another). But by and large, law teachers don’t appear to think much about and certainly don’t talk to each other much about precisely what’s going on in their own courses and their own teaching. And as a group they seem never to have figured out how to learn about and how together to do something about the training they provide and the collective impact they have on their own students and on the communities their students ultimately serve.

More is at stake here than some simple desire to see law teachers be chummier with one another. When teachers don’t talk, the pos-
sibilities for sensible coordination—simultaneous or sequential—are severely limited. How can teachers who teach the same first year students sensibly coordinate when they don’t even know exactly what and exactly how they variously teach? How can teachers who teach courses that students perceive as related and sequential—say Business Organizations and Business Planning or Constitutional Law and Constitutional Rights Litigation—coordinate, except in the crudest sense, if they don’t learn about and discuss what each does and might do with their respective materials and in their respective classrooms? You can’t lay groundwork for, you can’t build on, you can’t reinforce, you can’t refine, and you can’t enrich as teachers unless you know what others around you are doing.

Moreover, when teachers don’t talk regularly about how and what they teach it becomes increasingly difficult for them even to see themselves as a team with a collective impact on students and on clients and on the practice of law. If there are many law teachers in many law schools who would welcome “a strengthening of collaboration, of vocational bonds, of a sense of joint venture and shared enterprise,”35 there are at least as many who know that working in a group can be hard and time-consuming. Who in their right mind wants to do hard and time-consuming group work when one can no longer even imagine why working together is a necessity or an obvious benefit? Perhaps, as some surmise, law teachers don’t “talk teaching” because they are difficult, unusually solitary, and fearful of intrusions on academic freedom. But they also may not talk teaching because over the decades they’ve collectively forgotten, culturally and constitutionally forgotten, that talking to one another might make a big difference to how they conceive of and feel about their jobs and themselves.

Too many law teachers, I’m afraid, have largely abandoned collective responsibility both for the curriculum as a whole and for the experience of students who progress through their own law schools. They’re content just to cruise along, mastering over time how to fit into the curriculum, how to get what they want out of it, and how

not to draw too much attention to themselves, except of course
where flattery is a distinct possibility. On some days it even feels
like the only time some teachers don’t acquiesce in the general ap-
proach to legal education is when they rise up to oppose change.
In any event, too little talk about and too little coordination of
curricular matters together makes much of what law teachers do
cooperatively about teaching seem like so many empty-headed pro-
fessional courtesies.

Were I to tell you nothing more I’d still think it appropriate for
you to conclude with me that legal education is a stubborn under-
achiever. Perhaps this perception explains why legal education is
attacked today as being both too long and too short. Three years
is way too long for students to put up with a faculty (and hence a
curriculum) that focuses efforts again and again on the same ideas
and skills through the same limited teaching methods. And, at the
same time, three years is way too short for students to get what
they need out of a faculty (and hence a curriculum) that doesn’t
accommodate the efficient enhancement of knowledge or the cul-
tivation of relevant competencies. The whole of legal education, as
one wise critic has observed, comes to something less than the sum
of its parts.36 And, I might add, it amounts to something less than
an exquisite lesson for law students on how professionals might learn
to criticize and reimagine their own work as they progress through
their careers.

But I do plan to tell you more about what we do and how we
do it in legal education and I do hope that what I have to say moves
you beyond just a passing “academic” concern and closer still to
a commitment to action. We’re now ready to talk about the criticism
of legal education that, in part, inspired these lectures: the insistently
generic vision of the world that pervades law school curricula. Though

36. Id. at 354.
I feel strongly about all that I already have reported, you may sense that I feel even more passionately about what I now have to say. Perhaps this simply reflects that these observations illuminate much of what I've already said—give it more bite, deeper roots, greater cognitive and political coherence. But there's no doubt that, when I think back on what bothered me the most as a law student and what saddens me most about my own teaching over the past ten years, what I have to say today feels both especially galvanizing and especially chastening.

Too Generic a Vision of People, Traditions, and Experiences Per- vades the General Approach to Legal Education.

You may never have noticed it. Or you may have noticed it and never given it a name. Or you may have noticed it, named it, and nevertheless acquiesced in it. In any event, I think it undeniable that legal education conceives of and treats people—their traditions, their experiences, their institutions—as essentially generic. It declares, at least tacitly, that who particular people are—how they live, how they struggle, how they suffer, how they interact with others, how others interact with them, and how they relate to conventional governmental and corporate power—either need not be taken into account or may be treated as a fungible matter in training lawyers. And legal education declares this, I think, over and over again through its largely unchallenged general approach, through its limited models of teaching and learning, through its disdain for all but a small number of skills, through its neglect of interdisciplinary theoretical ideas, through its disregard of everyday life, and especially through its lack of coordination. Legal education teaches law students to approach practice as if all people and all social life were homogeneous.37

37. This is true despite the fact that, by virtue of the type of legal work they choose, different lawyers will serve different types of people with considerably different life experiences and needs. For example, a study of Chicago lawyers conducted in the late 1970's indicated that for practitioners engaged in "personal plight" work (civil rights, criminal defense, divorce, general family practice and plaintiff-side personal injury), 34% of the client group could be classified as "blue collar." By contrast, in practices engaged in general corporate work, only 6% of clients were blue collar. And practices engaging in general corporate work received 43% of their business income from major corporate clients (those with over $10,000,000 in annual sales), while those involved in "personal plight" work
Maybe you find this hard to swallow. Perhaps you’re thinking that the very existence of certain course offerings challenges my claim. A Law and Mental Health course and a Civil Rights course, to take two obvious examples, almost by necessity would seem to introduce human diversity into the study of and conversations about law and lawyering. So too, one imagines, would courses like Family Law and International Human Rights. But, at most schools, these courses are not only preoccupied with doctrinal structure and detail but are also preoccupied in a way that diminishes the relevance of the particular identity and nature of the people and institutions involved. The differences that account, in large part, for who we are and what we do are seldom pursued in a deep or particularly detailed way either in these or in any other courses, let alone in the curriculum as a whole.

You might nonetheless be thinking that the mere range of appellate cases covered in any particular course itself insures that at the very least some attention will be paid to particular people and particular institutions. And, of course, you’d be right. In a typical first year Contracts course, for example, you will most likely run into both a case about the “conscionability” of a poor woman on welfare buying an expensive stereo set on very exacting credit terms from a regional retailer and a case about the fairness of holding multinational corporations to agreements vulnerable to the 1973 OPEC actions. But though students sometimes are asked to imagine themselves in the position of either a poor woman (of color) in 1962 in the District of Columbia or in the position of the Chair of the Board committing the corporation to a long-term supply ar-

earned only 10% of their income from this source. See J. Heinz & E. Laumann, Chicago Lawyers: The Social Structure of the Bar 70, Table 3.2 (1982). Lawyers who choose to work in legal services encounter a clientele markedly different from the clients encountered by those working in other settings. For starters, 68% of legal service clients are women. And, at least in a sample program funded by the Legal Services Corporation, only 21.7% of the clients served listed employment as a major source of income. See Legal Services Corporation, 1979 Annual Report 14 (1979). See also Abel, Law Without Politics: Legal Aid Under Advanced Capitalism, 32 UCLA L. Rev. 474, 550-56 (1985).

rangement, they will almost never be equipped—given the information and the time—to think either in a sustained or serious way about what life for either that poor woman (of color) or that Board Chair is actually like and how that bears on contractual obligation. Even when diverse cases do turn attention deliberately toward the “parties,” the assessment too often has the feel of very thinly informed psycho-babble. Far too regularly law school training makes observations about specific people and institutions that might well be about any person and any institution—which is to say, about no real person or real institution that exists anywhere in the world.

All future lawyers and all future clients suffer as a result. In a profession already dominated by concepts like “reasonable man” and “economic man,” this generic vision of the world makes it easier for law students to know little and to care less about the institutions and the people with whom they’ll work as lawyers. Though law students may never come to believe that people and institutions are in fact interchangeable, they may come to accept that the very same differences that seem to matter a great deal to a client matter little to the law and to the good lawyer. More perversely, even if law students thought differences should matter to their own lawyering and to the legal culture, they may find themselves as lawyers ill-equipped to give life to their own ideas of practice. After all, a curriculum pervaded by a generic vision of the world is hardly a likely place for future lawyers to identify and develop the intellectual sensibilities and skills necessary to a practice that values and responds to social diversity. And the unacknowledged consequence of such a curriculum may well be the exasperation that a client feels when he or she contemplates challenging a lawyer’s perception of his own work.

Not many of today’s business lawyers and not many of their clients, for example, would claim that law school prepared these lawyers for most of what they do in the practice of law. If pressed

40. For a discussion of legal education’s failure adequately to train students for the practice of business law, see Gilson, Value Creation by Business Lawyers: Legal Skills and Asset Pricing, 94 YALE L. J. 239, 303-06 (1984). See also generally Klayman & Nesser, Eliminating the Disparity Between the Business Person’s Needs and What is Taught in the Basic Business Law Course, 22 AM. BUS. L.
about what is lacking in recent graduates that makes them unprepared for real lawyering, most would agree that it is an understanding or even curiosity about the very diverse economic relationships they must now help their clients arrange—a condition that can be traced directly to the curriculum’s generic vision of the world, which serves to dull rather than sharpen lawyers’ instincts for diversity of any kind. But remarkably few lawyers, much less clients, have laid this systematic failure of professional training at the door of the law schools. To an extent perhaps unmatched in any other profession, they have come to rely instead on formal and informal on-the-job training to fill the void.

For lawyers who plan to work with subordinated people in the fight for social change, the situation is far more desperate. These lawyers and clients not only lack the elaborate structures for post-law school training that fill the needs of business clients, but also find far less within the generic curriculum that even remotely approaches their interests and concerns. A closer look at what the generic curriculum does and does not offer for lawyers planning to work in these settings—with business clients and with subordinated people—reveals that while all future lawyers and all future clients suffer under this generic legal education, they don’t suffer equally. The experience of generic legal education, however much it lacks in vision, focus, and coordination, is far better suited to the world of business and business lawyers than to the world of subordinated people and the lawyers with whom they work. Indeed, in this sense, its failure for the very people for whom it is most clearly intended to work underscores the essential blindness of the generic vision.

Two of my Stanford colleagues have concluded that the training of business lawyers can be fairly described as the “stepchild of legal education.”41 Even if the rhetoric is hyperbolic, there’s real bite to this criticism, particularly if you assume that legal training should

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be designed to produce "superbly qualified business lawyers, capable of analyzing business problems and thus anticipating the need for legal advice." The training afforded future business lawyers in generic legal education has traditionally focused on appellate court decisions and on government regulations of business transactions. In Business Organizations, Securities, and Tax law courses students learn doctrine and, to varying degrees, about the "pathologies of failed ventures" that appellate caselaw represents. Then in the other business courses available in most curricula students learn more of the same—they study regulations, doctrine, and failed ventures—only this time in other (somewhat random) substantive areas like Oil and Gas or Bankruptcy.

Now, there's much to be learned from studying failed ventures, but not if your only source is (usually highly edited) appellate case law and not if you tend to focus principally on the doctrinal implications of this caselaw rather than on lessons about both the business world and the practice of law. There is also much to be gained from examining both regulatory schemes and forms of business organizations, but not if you fail systematically to examine the interaction between the two and the effects of this interaction on what those in business may be trying to accomplish. But legal education's failure to do a good job teaching either about the pathologies of failed ventures or about the interaction between regulatory schemes and business forms is only symptomatic of its real problem in training future business lawyers.

Legal education fails because it never really pays close attention to what those in business and to what business lawyers actually do in this world. It fails because it insists on treating people and institutions generically. It is no new revelation that business people and firms try to plan and execute their own business relationships in the midst of conflict over resources and goals and with the help of imperfect information. And people should know that business lawyers, at least the better ones, try to help their clients achieve effective solutions under these other-than-ideal conditions. Knowl-

42. Id. at 1.
43. Id.
edge of legal doctrine, knowledge of regulatory schemes, knowledge of business forms, and knowledge of past failed ventures all matter both to those in business and to their lawyers. But what legal education fails systematically to acknowledge and integrate into its training is that all this knowledge matters in ways highly specific to the industry, to the parties and to the deal. And it matters only insofar as it variously affects the effort by those in business and their lawyers to arrange relationships in life’s imperfect circumstances. For legal education of future business lawyers to make sense, it would have to make the arrangements, the activities, the practices, and the risks of particular business worlds focal points around which to build and coordinate a training regimen. That’s right—it would have to treat those in business and business lawyers anti-generically.

Now there is something curious about this, particularly if you know anything about the funding structure of most law schools. If legal education is systematically failing to meet the needs of its most powerful clientele, why isn’t someone raising a ruckus? Why are lawyers, clients, and law schools conspiring or at least acquiescing in this debacle? The answer lies deep in the very nature of law school and professional legal culture in this country. What you’ll find, if you’re at all honest, is that the experience of generic legal education, for all its failure to prepare students for work in the world of business and business lawyers, is very much of that world. It is part and parcel of a still largely closed system in which lawyers are not trained for their work so much as socialized and selected for membership in a pretty exclusive club.

Let me explain. Law schools may not do a very good job of training future business lawyers, but they do a perfectly sound job of socializing a great many law students to the role of neophyte business attorney. Indeed, in terms of what counts as knowledge, in terms of what’s valued as success, in terms of how to behave and advance, and in terms of what’s comfortable and familiar along the dimensions of race, gender and class, one could hardly find a better socializing experience for future business lawyers than law schools in this country.44 Whom business lawyers deal with and what

44. Perhaps this is more obviously true of “elite” schools (whose graduates go to work pre-
business lawyers deal with bear a real kinship with whom and what law students deal with in legal education (and for that matter in almost all higher level education) in this country.45

And what future business lawyers don’t learn through generic legal education by and large rarely hurts those in business, at least not those in big business and at least not immediately and in any direct way. Those in big business are quite well defended against the not-terribly-well-trained (though very-well-socialized) young lawyer. They have developed systems of elaborate, almost ecclesiastical, mechanisms that drastically limit a young lawyer’s responsibility, autonomy, and contact with clients. These systems just so happen to serve the bottom line of most law firms (though not always most clients) so that they are embraced, if perhaps for somewhat different reasons, by both those experienced in business and those experienced in business lawyering.

Somewhere along the line those in business and business lawyer began to promote these defense systems as well-conceived training regimens for the young business lawyer. In fact, at some point it also became rather commonplace for law teachers to trumpet this entire arrangement as wonderful—indeed as indispensable—post-law school education for all lawyers, not just those who want to be business lawyers.46 Now, to be sure, there are indications that at least some business law firms have in recent years worked harder at establishing solid training programs for the young lawyers they hire. Whether or not they’ve done this in order to get better reviews in the American Lawyer, they’re obviously beginning to pay some notice both to their own experience with associates and to what young lawyers are telling them they need. And it is not hard to figure out why many in law teaching, who themselves spent a few


46. See Campbell & Gilson, supra note 41; Cramton, The Current State of the Law Curriculum, 32 J. Legal Educ. 321, 326 (1982) for illustrations of this notion that large law firms successfully compensate for the drawbacks of legal education by providing skills training for young associates.
years at these firms before joining faculties, would praise the nice fit between what law schools do in generic legal education and what business law firms do later. Perhaps with good reason, those who teach law see themselves as able and see their own career paths as wise.

But if there are reasons to value the education some receive at business firms, there are also good reasons to be skeptical of the conventional wisdom about the unparalleled quality of training to be found there. You don’t have to be a pedagogical whiz to conclude that a system designed both to protect business clients from the perceived ignorance of young lawyers and to make money for law firm partners is not likely to be a well-conceived training program. And you don’t have to be very perceptive to pick up from former students that one memo-writing assignment after another—unconnected to the overall transaction, out of touch with the client, and severed from the related brainstorming and decision making—hardly makes for increased sophistication and judgment. And you don’t have to be a deeply anti-capitalist cynic to wonder why so many associates for some reason or another just so happen never to make partner—whether or not they’re any good.47

47. If anything, the training and reward system for associates at these firms appear to operate counter-productively in terms of what the firms themselves believe it takes to be a “strong partner.” The system, for example, rewards convention instead of innovation, following instead of leading, servicing partner needs instead of client needs. For observation about some of the limitations of law firm training of associates, see Henning, Training Your Firm’s Lawyers: The Future Is Here, 1 J. PROF. LEGAL ED. 39, 39-41 (December 1983). Even assuming that large law firms do provide adequate supplemental training, this would hardly be a persuasive defense of generic legal education given the low number and make up of law school graduates who actually work in these institutions. Because national and regional law schools provide the great bulk of lawyers working in large business law firms, and because most working class and minority students attend local law schools, few of these students benefit from whatever training large law firms do provide. See Cramton, supra note 46, at 325; HEINZ & LAUMANN, supra note 37, at 192-93. This is especially important since minority law graduates form a substantial part of the core of lawyers who will work with the subordinated. This, of course, is simply part of a bigger picture that casts some doubt on the likelihood of big firm know-how ever being put to use for, and reaching, subordinated groups. At least in Heinz and Laumann’s study of Chicago lawyers, only 3% of those lawyers engaged in legal work typically of service to the politically and socially subordinated (civil rights, criminal defense, divorce family law and plaintiff-side personal injury) were employed in large firms with more than 30 lawyers; 42% engaged in such work were solo practitioners. See HEINZ & LAUMANN, supra note 37, at 70. And there’s reason to be skeptical about the familiar claim that those who will ultimately work with the subordinated might begin their careers in large law firms. Heinz and Laumann’s study indicates that
And business clients and firms feel little concern about this state of affairs for the same reason they feel relatively indifferent about the failures of formal legal education, even in the absence of sophisticated adaptations to its limitations. They have long since learned that enough young lawyers somehow will manage to get themselves ready (at one firm or another) first to take on greater responsibility and ultimately to replace the experienced lawyers and rainmakers. In this sense, making it as a partner in certain business law firms bears an uncanny resemblance to making it as an academic at most law schools. Those better prepared by the accidents and perquisites of life and status—those for whom adaptation to the standards for entrance into the clubs is not really much of a “stretch”—will ascend in disproportionate numbers into these positions. 48 No wonder at all, really, why the upper reaches of large firms remain disproportionately white, male, and socially homogeneous.

The real point for our purposes, however, is that the world of business has very sophisticated systems for adapting to the limits of generic legal education. When they work well, the systems limit exposure to the risks associated with giving too much responsibility to novices presumed to be untrained along certain dimensions; they exploit over and over again what new lawyers know how to do best as a result of their law school training; and they market the professional experience in which they’re set as not just a good but a

only 2.6% of solo practitioners (who constitute 42% of those serving the subordinated) begin their careers as attorneys in large law firms and that 6.5% of all attorneys working at firms with less than 10 practitioners started out at large firms. Finally, the study finds that 0% of practicing government lawyers (which includes legal services and public defender offices) began in a large firm. Id. at 195, Table 6.5.

48. For a survey of problems confronting women in male-dominated business and professional settings, see Rhode, Perspectives on Professional Women, 40 STAN. L. REV. 1163 (1988). For a relatively extensive discussion of the effect of socioeconomic factors on a lawyer’s career path, see HENZ & LAUMANN, supra note 37, 167-208. The underrepresentation of women and minorities in large law firms is striking. The National Law Journal’s most recent survey of the nation’s “top” (i.e. largest) 250 law firms indicates that, among the 52 largest law firms in the state of New York, women and minorities comprise 8% of the partners. Nationally, women and minorities comprise 10% of large law firm partners. The numbers for individual law firms are often particularly jarring. For example, of the 157 partners of Skadden, Arps, Slate, Meagher and Flom, New York’s largest law firm, 12 are women, one is Black, one is Latino and none are Asian or Native American. Of the firm’s total of 661 attorneys, 198 are women, 12 are Black, five are Latino and 17 are Asian or Native American. See 199 N.Y.L.J. 1 (February 29, 1988).
necessary step for anybody serious about becoming a business lawyer. And, when they work well, the systems even draw praise and support from many law teachers, if not because they actually believe that law firms have a comparative advantage over law schools in teaching about practice, then because they realize that these systems permit them to continue doing exactly what they’ve always done in this country’s law schools.

But in contrast to future business lawyers and business clients, subordinated people and those lawyers who plan to work with them aren’t nearly as well-served by generic legal education—by either the curriculum or the socialization process—and aren’t nearly so well-defended against its failures. In their efforts to change the world, they find themselves and their work linked to an educational system pervaded by a conception of practice fundamentally hostile to their shared vocation, a conception of practice I call the “regnant idea of lawyering for the subordinated.” Moreover, at some level both subordinated people and those lawyers who plan to work with them sense that trying to escape this regnant idea, much less challenge it with an alternative, is made all the more difficult because its largely underarticulated characteristics have come to embody “what lawyers do,” both in the legal and popular culture.49

The curricular lapses are glaring. Consider the obvious. Law schools offer fewer courses (sometimes far fewer courses) for those training to work with the subordinated than they offer for future business lawyers. And whereas business courses are permanent fixtures in the legal curricula, courses offered about subordinated people often appear only spasmodically and often survive only for a short time.50 For example, you’ll often hear a law school faculty announce that it is in desperate need of new or lateral hires to fill

49. For a description and critique of this conception of lawyering—what I call the regnant idea of lawyering for the subordinated, see G. Lopez, Everyone Here Lawyers: The Rebellious Idea of Lawyering Against Subordination, Chapter One, (forthcoming 1989).

50. And while business law courses are portrayed and perceived as rigorous, lawyer-like and precise, the temporary and transient nature of those courses offered for those who plan to work with the subordinated “conveys the message that they are neither central to the definition of lawyers’ skills . . . nor are they coherent. Rather, they are interstitial, mushy, political, ad hoc.” Klare, The Law School Curriculum In The 1980’s: What’s Left, 32 J. LEGAL EDUC. 336, 338 (1982).
gaps in the business curriculum. But when is the last time you heard a law school faculty proclaim itself in need (forget about desperate need) of permanent tenure-track people to fill gaps in its curriculum for training those who will work with the poor, and working poor, people of color, women, the elderly, gays and lesbians?

The socialization process, too, runs diametrically opposed to the needs of these future lawyers and clients. While lawyers who help fight social and political subordination can undoubtedly learn things from interacting with those who run and go to law schools—they must, for example, know how to work in and deal with mainstream culture, how to understand, how to interpret and influence what those with conventional power think and do—the very same qualities of law school life that serve effectively to socialize students to life in the mainstream serve horribly as a means of teaching students about life in subordinated communities.

Whatever else law schools may be, they remain intensely mainstream in terms of race, gender, and class; in terms of how authority is exercised; and in terms of what counts as wisdom and insight. Whatever else law schools may be, they are not where you go to learn about how the poor live, about how the elderly cope, about how the disabled struggle, and about how single women of color raise their children in the midst of mediocre schools and inadequate social support. Most of those people never get near making it into law schools, let alone on to faculties. They may work on law school staffs, and they certainly do fill jobs on the janitorial crews. But whatever their presence on campus and whether they be janitors, secretaries, students or faculty, it has not been my experience that law school cultures or law students themselves value what subordinated people may have to teach about the world from which they came or in which they now live. If anything, subordinated people feel pressures in and around law schools to act white, straight, upper-class, and male.

This socialization unfortunately helps reinforce in those planning to work with the subordinated the very same debilitating idea of lawyering promoted by formal law school training. Generic legal education methodically disciplines students not to immerse themselves in their clients’ lives—to extract and attend to only that which
is "legally" relevant in a situation, to disregard what other professional and lay people may be doing in response to problems, to underappreciate what clients themselves may have done and may be capable of doing. And generic legal education effectively persuades students to think of themselves as the preeminent problem-solvers in any situation, with little to learn from those around them—about the worlds in which lawyers intervene, about constellations of strategies from which lawyers should be helping people to choose a course of action, about the lasting practical effects, if any, of the lawsuits lawyers so frequently file, about ways of reconceiving what lawyers do in the fight for social change. In short, law school training inculcates patterns of professional practice that neatly correspond to and embrace the forms of human association endorsed in law school culture.

Inspiring in students a strong tendency regularly to ignore those with whom they work is bad training for any lawyer. But somehow it seems peculiarly troublesome for those future lawyers who plan to work with subordinated communities. What kind of collaboration with subordinated people can you reasonably expect from lawyers systematically socialized away from subordinated communities and methodically trained to pay as little attention to their clients as possible? And what kind of world can you fairly hope to bring into existence through fights that almost "naturally" privilege the narrowest sort of lawyer know-how and that regularly dismiss what subordinated people (and their other allies) know about life, about problem-solving, and about change itself?

In a nutshell, then, both the curriculum and socialization process of generic legal education are not just unproductive, but actually counterproductive for lawyers who plan to work with those subordinated by social and political life. Moreover, unlike the business world, there are no systems of elaborate defenses to shield subordinated people and their allies from the inadequacies of those young lawyers with whom they work. Those upon graduation who will work with the subordinated have to be ready actually to practice, not just to take the bar and serve a long cloistered apprenticeship. And people in the fight against subordination take what they can get in the way of lawyers, if not in terms of raw smarts then certainly
both in terms of numbers and in terms of trained and socialized sensibilities.\textsuperscript{51} They immediately put each of these new lawyers to work, sometimes on the most important tasks and in the most direct and responsible ways, and sometimes in circumstances where they are immensely vulnerable. They hope that a young lawyer will pick up what she doesn’t know and that she will pick it up quickly and well. And then in many ways people in the fight against subordination simply roll the dice, trusting that a new lawyer’s enthusiasm and good intentions at least sometimes will outdistance thoroughly inadequate preparation.

The failure to deal with real training needs is most visibly evident in the continuing neglect of a range of knowledges and skills typically associated with dispute resolution and litigation. Whether we like it or not, lawyers who work with the subordinated often find themselves immediately enmeshed in disputes and more particularly in formal remedial ceremonies, from relatively straightforward administrative hearings to relatively complicated trials.\textsuperscript{52} Unless legal education systematically helps students to demystify these rituals, to develop related skills and to ready themselves for the continuing need to refine and extend those skills throughout their careers, then you can be certain that subordinated people will suffer disproportionately.

Yet, if law teachers operating within generic legal education seem relatively unresponsive to getting students ready to function in certain conventional settings, they seem blissfully unaware that even solid training in traditional administrative and trial litigation badly

\textsuperscript{51} Recent experience here at Stanford Law School indicates that relatively few law graduates are employed in work considered to be public interest. Of the 505 students who graduated between 1985 and 1987, only 21 began their careers working in positions potentially dedicated to lawyering with the subordinated (legal services, public interest agencies, public defenders offices, and certain progressive firms with fewer than 10 attorneys). While a significant percentage of Stanford students accept judicial clerkships (28\% in the class of 1987) and a fair share of these express and fulfill a commitment later to work on behalf of the subordinated, the numbers are still disquieting. For an internal report indicating similar percentages at the University of Michigan Law School, see Chambers, Eklund & Krieger, A Changing Pattern of Placement After Law School (Sept. 8, 1987) (internal memorandum to Lee Bolinger).

\textsuperscript{52} Most of us are all too familiar with the “baptism by fire” stories of those lawyering with the subordinated in legal services and public defender office.
misapprehends in many ways the needs and aspirations of subordinated people and the lawyers with whom they will work. Anticipating and responding to the problems of the politically and socially subordinated demands a range of practical know-how and intellectual sophistication that extends beyond litigation competence. It demands knowing how to work with clients and not just on their behalf; it demands knowing how to collaborate with allies rather than ignoring their actual or potential role in the situation; it demands knowing how to take advantage of and how to teach self-help and lay lawyering and not just how to be a good formal representative; and it demands knowing how to be part of, as well as knowing how to build, coalitions, and not just for purposes of filing a lawsuit. In sum, anticipating and responding to the problems of the politically and socially subordinated requires training that reflects (and, in turn, helps produce) an idea of lawyering compatible with a collective fight for social change—a "rebellious idea of lawyering" at odds with the conception of practice that now reigns over legal education and the work of lawyers.53

Perhaps the range of practical know-how and intellectual sophistication entailed in this rebellious idea of lawyering so escapes law teachers precisely because it draws too heavily on what subordinated people themselves sometimes do in struggling to get by. After all, the closer you get to identifying explicitly what lay people might teach lawyers about practice, the closer you get to admitting that thinking like a lawyer is in no sense discontinuous from everyday problem solving. Or, perhaps lawteachers pay so little attention to this range of practical know-how and intellectual sophistication specifically because it smacks so much of the work of other less-privileged professions. After all, the more you champion an idea of lawyering that entails conceptual and practical dimensions more typically associated with social workers or organizers, the more you

53. For an account of a young lawyer in a small private firm whose work with clients and allies in a civil rights context reflects and aspires to this rebellious idea of lawyering, see Lopez, Reconceiving Civil Rights Practice: Seven Weeks In The Life Of A Rebellious Collaboration (forthcoming in the 1989 Geo. Law J.) and for an extensive elaboration of this conception of practice as it might inform the vocation of radical and progressive lawyers and the lay and professional activists with whom they labor, see Lopez, supra note 49.
demystify and deprivilege what it is lawyers actually do. In any event, training and socialization interact in generic legal education in such a perverse way that it becomes an experience that those allied in the fight against subordination (lawyers, clients, and everyone else) must learn largely to overcome rather than to take advantage of in their efforts to change the world.

Of course, those in the fight against subordination have developed some post-law school education in order to respond to perceived inadequacies in recent law school graduates. There are some relevant continuing education courses for the bar; there are some relevant how-to-manuals; and there are some simulated training courses. But altogether it is too little and too uneven in quality, even when young lawyers can afford to pay for it or have someone else pay for it for them. Post-law school education earnestly aspires to defend subordinated communities and their allies against inadequate training and socialization but with too few resources to inspire genuine confidence.

Worse still, post-law school education even when done well almost never extends outside the boundaries of litigation. Like the three years of law school, it basically shuns entire dimensions of practice integral to the needs of subordinated people and the lawyers with whom they work. In fact, few law teachers can match the dismissive rancor certain “public interest” and “legal services” attorneys evince at the mere mention of aspects of the rebellious idea of lawyering against subordination—at the mere mention of collaboration with clients and allies, or of grassroots mobilization, or of teaching self-help and lay lawyering. Maybe this antipathy reflects an overwhelming workload or the lack of conventional resources, or, more likely, the rigid structures and expectations that often envelop progressive practitioners. Whatever the reasons, too many of these lawyers have internalized the very same idea of lawyering that generic legal education teaches and that serves so inadequately for

54. For examples of publications designed to respond to inadequate legal education, see M. Schoenfield & B. Schoenfield, Interviewing and Counseling (1981); National Institute for Trial Advocacy (NITA), Master Advocates' Handbook and other NITA publications.
all those in the fight against subordination.\textsuperscript{55} Worse still, they seem all too willing to protect their own "achievements" by refusing to extend the boundaries of both post-law school education and their own conception of practice. In short, they have become, along with law schools, part of the problem for the subordinated rather than part of the solution.

III. So Where Do We Go From Here? Anti-Generic Legal Education

All future lawyers and all future clients not only suffer under the influence of the generic vision of the world, but suffer unnecessarily. There's ample space to be made in current law school curricula for paying attention to diverse traditions and experiences. And there's a wealth of resources, conventional and unconventional, on which to draw in bringing differences systematically to bear on legal education. There's no good reason, in other words, for people to remain colorless, genderless, classless; there's no good reason for traditions and experiences to remain in the shadows or out of the picture altogether; and there's no good reason for institutions to remain unconnected to certain other institutions, to certain people, to certain market forces, to certain histories and to certain political impulses and pressures.

If what I've told you about legal education has been at all convincing, you shouldn't find it hard to agree with me on what generally we ought to shoot for in our efforts to improve legal education. Our aim certainly would include that:

— earlier learning should provide "core literacy" material upon which later learning can and should draw;

— later learning should explicitly reinforce, extend and refine earlier learning in ways students can identify and appreciate;

\textsuperscript{55} Though there are remarkably few studies of how progressive lawyers practice, those that exist suggest that attorneys who work with the subordinated are, despite their generally left politics, most likely to be autocratic decisionmakers—paradoxically collaborating far less with clients and allies than business lawyers, a group perhaps least inclined to voice egalitarian and communitarian politics. \textit{See}, e.g., E. SPANGLER, \textit{LAWYERS FOR HIRE}, 144-74 (1986).
— earlier and later learning should be self-consciously coordinated so that teachers and students can respond to and shape how courses fit together, one after another, side by side, and as a package;

— earlier and later learning, both about law and about lawyering, should be grounded in the situated lives and work of particular people, lay and professional, and of particular institutions, small and large; and

— earlier and later learning should regularly include both interdisciplinary theoretical ideas and attention to a range of practical knowledge.

While I could go on, you're probably already thinking about the limits of general prescriptions. To understand why I think law schools ought to move in the direction of anti-generic legal education is to grasp how much each law school ultimately must attend to its own affairs. Each law school must take stock of its own past and, along with others, decide its own future. The school must ask itself who it serves and feels responsible to, who it has trained in the past, who it wishes to commit itself to training in the future, where its former students have worked immediately following graduation and over the course of the their careers, where it would like to prepare students to go, and how it might respond to its evolving sense of self in light of current and foreseeable resources and constraints.

Apart from the force of convention, there's little reason to think that most law schools willing to think hard about these questions would come up with identical answers. In fact, there are good reasons to hope that they wouldn't. I think different approaches to training future lawyers will likely be more responsive to the needs of different constituencies. Law schools, like the universities of which they are usually a part, often have a ways to go when it comes to making themselves responsible to what's going on around them. Discernible differences in the training offered by different law schools will also likely be more conducive to continuing experimentation by every institution, and today's institutions for legal education are not often associated with subjecting their own operations to scrutiny and challenge.
Yet if the idea of anti-generic legal education makes sense, it seems helpful, even now, for each law school to take a glimpse at what every other school trying to rethink its curriculum is up to. That glimpse is worthwhile, again, not so much because you can expect another institution's specific ideas and actions to make perfect sense for your own school but because detailed efforts themselves, however ill-suited to easy adoption, often provoke discussion and a healthy unrest. With that in mind, I'd like to draw on what's going on at Stanford Law School, my home institution, as a way of outlining for you what one version of anti-generic legal education might look like.

In doing so I don't mean to claim that Stanford's current curriculum holds up very well in my own eyes; in fact, its weaknesses obviously have prompted much of what I've tried to describe to you. But I know our curriculum better than I do most others, and it feels a little more comfortable talking specifically about necessary changes in something that, along with my colleagues, I should be held responsible for rather than speaking of something out of my control. Anyway, there's some action at Stanford and maybe there's something to be learned from it.

IV. WHAT'S HAPPENING AT STANFORD

Two separate groups of Stanford Law School faculty, working voluntarily and on an ad hoc basis, have focused, each in its own way, on our past performance and on our future commitments. As a result of this self-scrutiny and apparently as a result of consensus around certain tentative answers, both groups are now trying to reimagine and retool big chunks of the curriculum. One group is working on a program to train business lawyers—at Stanford this translates into lawyers who typically will work in (big) corporate firms serving (big) corporate clients. Another group, of which I am a part, is trying to design and implement a curriculum for those who plan to work with subordinated people—which at Stanford means lawyers who will work in a range of institutions (public interest firms, legal services offices, small progressive private firms, government agencies, organizing projects) with a range of people subordinated by social and political life (the poor and working poor,
women, people of color, the elderly, gays and lesbians, the disabled, abused and neglected children). Each group of faculty is undoubtedly responding to its own interests and concerns as well as to its reading of our current situation. But I think there’s some underarticulated sense among a wider group of people, particularly those students dedicated to each vocation, that these enterprises are long overdue.

Though both groups have done some work and though parts of future curricula are already in place, in many ways there’s still a long way to go. Each group of individuals must work its way through to some common understanding of what to do; and each group of individuals must come to share not only a view of how to do it but a commitment that they will persevere to put it in place. There’s some reason to believe each group will succeed; there’s a fair amount of good will at this point in time, and Stanford has some history of faculty working together to institute curricular change. Still, I think the enterprises are fragile, if not perilous, partly because faculty don’t regularly talk about and coordinate their teaching and partly because the ideas now on the table, if pursued vigorously, would alter much of what faculty (and everybody else) have come to think of as ordinary.

While it would no doubt make for both interesting gossip, and more importantly, fascinating anthropology, I am not going to talk about our individual and collective insecurities and disagreements—though I will certainly not deny them. And I’m not going to speculate about what those faculty members not involved in either group’s work think at this point in time about what’s happening—though no doubt there’s both some interest and some anxiety. Instead, I plan to outline my own vision of what each group should try to design and implement—a vision produced in part by what colleagues have taught me and a vision (at least in all its detail) shared, at this point, by perhaps only a few others. Given my own involvement and expertise, my outline of the curriculum for those planning to work with the subordinated will be both more complete and more

56. For a brief description of a course created as part of such a collaborative effort, see Brest, *A First-Year Course in the “Lawyering Process,”* 32 J. LEGAL EDUC. 344 (1982).
detailed than my description of the business curriculum. But in both instances I hope you’ll get the picture of where I think we should head in the effort to deliver an anti-generic education.

A. The First Year

Each specialized curriculum should plan, I think, to offer an initial package of mandatory “core literacy courses” in the spring semester of the first year. In some ways, this is a matter of convenience. Because Stanford’s curriculum currently requires spring semester first year students to elect two or three courses from a group of “perspective courses,” there’s a tradition of beginning upper-level courses, as it were, in the first year. And more than a few people (myself included) don’t want to mess right now with most of the first semester curriculum—thinking that if you try to change it too you’ll end up either changing nothing or pouring all your energy into these first semester courses. But I’ve come to believe that, at least for us at Stanford, beginning specialized curricula in the spring semester serves more than political convenience. It acknowledges an underlying sentiment that something about our first semester, for all its current weaknesses, makes enough intellectual sense not to abandon cavalierly, particularly now that it might be followed by the two proposed curricula.

To understand this sentiment, you should know that, apart from the somewhat unusual spring semester electives, there’s nothing special about Stanford’s first semester course offerings. You probably could parachute some students down into any of thirty or forty (or two hundred) first-year curricula around the country, and they wouldn’t be able to tell whether they were actually at Stanford. In the first semester, students must take Research and Writing, Contracts, Torts, Civil Procedure and Criminal Law. In the second semester, students must take Research and Writing, Property and Constitutional Law, but (as I’ve said) they also must choose two or three electives from among a range of perspective courses, including courses like History of American Law, Jurisprudence and Lawyering Process. Though our student-faculty ratio is smaller than most other schools, teachers do not in any valuable way coordinate, and the “big classroom” method almost entirely dominates.
1. Fall Semester

Still, for purposes of both specialized curricula, I think that for now we should stick with—though work at dramatically improving—the first semester’s line-up. Whatever each teacher actually aspires to, each first semester course currently serves to help train students to learn how to learn and how to use legal doctrine and to help expose students to how some things work for those enmeshed in the law. This knowledge and these skills, in mature form, matter to both business lawyers and to lawyers who plan to work with the subordinated, and the fact that they are perhaps already adequately transmitted through the current version of the first semester itself suggests a modest defense of its serviceability as part of anti-generic curricula. But, more importantly, current achievements provide the partial outlines of a vision of the first semester that, contrasted with what’s now done, makes the courses better cohere both internally and as a bridge to the proposed specialized curricula.

In this new vision, these first semester courses eventually might serve as a richly coordinated introduction to law, lawyering and the legal culture—an introduction that inevitably serves as an initiation of sorts for future lawyers and as an experience through which they might begin learning to be critical observers of what they find and find themselves doing. Though much time would be spent exploring the law of Contracts, Torts, Civil Procedure and Crimes and working at basic research and writing skills, equal time would be spent exploring the legal culture of which each “substantive area” of law is only a part and an illustration. Though students would still be expected to get the knack of learning how to learn and how to use legal doctrine, the central concern would not be “What is the law of contract” but rather “What is it that lawyers do with people in situations that might be characterized as a contract matter?”

For this vision to have a chance, those who teach these first semester courses, particularly to the same students, would have to work far more closely together—in fact, they would have to learn how to operate as a team. They would have to emphasize the dynamics of lawyering as much as the intricacies of law; they would have to integrate ideas wisely from other disciplines and from situated everyday life; they would have to reinvigorate the enterprise
with a wiser mix of pedagogical methods; they would have to pay explicit attention to how stories ("factual information") get gathered, refined and interpreted; they would have to redefine, perhaps radically, the relationship between written materials, written exercises, and oral activities; and they would have to decide quite self-consciously what constituted information transfer, what constituted the "practice" of skills, and what constituted speculative criticisms and vision.

And for this vision to become reality, students who take these first semester courses would have to learn, even more than they do today, to unlearn their expectations about what learning to be a lawyer and what learning at law school should be about. They would have to learn to reach beyond so called black letter law to interdisciplinary origins and influences; they would have to assume responsibility for taking full advantage of information-transfer mechanisms; they would have to grow comfortable with and even begin appreciating the exact and uncertain problem-solving that lawyering entails; and they would have to apprehend how much they might learn not just from the teacher but, more importantly, from one another and from their own past experiences and insights.

The changes this new vision of the first semester requires of students and teachers would feel both exciting and difficult. Teachers, among other things, would at first no doubt have to spend considerable time supplementing existing course casebooks with certain collectively designed materials and exercises. And students, among other things, would have to refocus their energy in order to do a decent job of integrating interdisciplinary ideas into their mastery of certain unfamiliar local doctrine. But, if my own experience is at all indicative, both would feel rewarded not just by the excitement of it all but by the sense of coherence their joint efforts would bring to the enterprise. Ultimately, though, the success of this vision of the first semester would have to turn on more than the rush that comes from the mere involvement in change—the Hawthorne effect has its limits.57 It would depend upon the willingness

57. The existence of the Hawthorne effect was established by experiment at the Hawthorne
of both teachers and students to follow through on what I believe they would come to appreciate as necessary changes. Teachers, for instance, would have to be willing at some point to abandon casebooks as we now know them—designed for one course with little appreciation for what's going on in the other courses—and to design (and market) fully integrated materials that simultaneously serve the role of each course in the overall scheme. And students, at least many of them, would have to be willing to shed the relatively passive and academically nurtured "I learn what you tell me in the classroom" self-image that, in many ways, now defines their work at law school, particularly during the first year. Though I am not entirely confident all this will happen, the possibilities that inhere in this newly envisioned first semester make the effort worthwhile.

2. Spring Semester

First year students in the spring semester at Stanford currently must take Property and Constitutional Law and choose two or three perspective courses from a select list of second and third year electives. Although the history of these requirements implies the existence of sophisticated (while perhaps somewhat inchoate and not entirely compatible) rationales, most people today defend the system in very straightforward terms. Property and Constitutional Law are, they say, two more doctrinal courses students simply must take in the first year. And, after so much doctrine parsing in the first semester, they add, students need some perspective in the second semester of the first year that can be provided through any of a small number of mandatory electives.

By the normal standards of curricular justification, this explanation seems plausible enough. Can't you imagine the reasons for thinking that Property and Constitutional Law are elemental to the study of other areas of law? And who would argue against the idea that perspective is a good thing in lawyers? Moreover, if you accept the ambitions of generic legal education, the current spring semester

Works of the Western Electric Company in Indiana in 1962. The effect occurs when the subjects of a study are aware of being under concerned observation and are thus stimulated "to output or accomplishment." WEBSTERS NINTH NEW COLLEGIATE DICTIONARY 557 (1988).
even possesses some real attractions: it aspires to finish off the list of perceived "must" doctrinal courses without at the same time killing off in the first year's short nine months whatever intellectual ambitiousness students began with in September. But if anti-generic legal education at Stanford is to hang together, both in the business curriculum and in the curriculum for those who plan to work with the subordinated, then it must not only inform but build on what takes place in the first semester. After experiencing the sort of first-semester education I envision, or for that matter even after going through what we now do, first-year students are plenty ready—and in many ways need—to move on to the situated study of law and lawyering that both specialized curricula envisage. All that we know suggests that they've got a basic handle on how to learn and how to use legal doctrine—at least I think they've learned pretty much what they can of these skills through the typical "big classroom" model of teaching and learning. And they've been exposed to variations of a certain sort of initiation into how the legal culture operates—again, at least I think they've been through those initiations that the "big classroom" model easily can accommodate.

So what should we do? Carry on in the spring semester through the vestiges of generic legal education? Or move more boldly into what anti-generic legal education would seem to suggest? Unfortunately I fear that, in the short run, we may simply add certain "basic literacy" courses for each of the specialized curricula to the list of spring semester electives. First years will then pick what they want to "major in" by taking these mandatory literacy courses, in addition to the mandatory courses on Property and Constitutional law. In effect, we will have then grafted anti-generic legal education onto the remnants of the existing generic scheme and will just have to go about the business of adjusting to it all. The resulting hybrid would likely feel no worse—and my guess is would even feel much better—than the hodge-podge students now experience. Still there are good reasons for faculty ultimately to abandon—better still, to avoid—this compromise. There's nothing magical about having to learn either Constitutional Law or Property in the first year. They may well be elemental to certain other courses, but surely in legal education that proves too much. Law teachers are notorious for secretly thinking that everything should be taught in the first year;
everything, after all, is elemental to everything else. Moreover, we do have evidence that it wouldn’t be a tragedy to move these two courses out of the first year. Most other schools teach Constitutional Law after the first year and several other schools have had a long tradition of teaching Property as an upper-level course.

In fact, in an anti-generic curriculum I’m not at all certain Property should remain an intact course. It has always been, depending on how you count, an odd combination of five to seven little mini-courses. Why not just disaggregate it and move the pieces around into more sensible places in the new curricula? You might, for example, transform certain historical and idiosyncratic parts—the Rule against Perpetuities and the like—into self-teaching materials and exercises. And you might shove landlord tenant doctrine into courses that focus more fully on housing. You get the picture. It’s not at all obvious that, as a result of these changes, students would lose any special coherence that the current Property course now offers, and it seems likely that some materials lodged in the traditional course would find a more comfortable home surrounded by related ideas.

Anyway, with the introduction of the specialized curricula, there’s a real practical price to pay for maintaining Property and Constitutional Law as mandatory courses in the first year. If the new curricula are going to work, they must make their spring semester literacy courses mandatory; you’ve got to establish a basic language and expertise on which to draw and build over the next two years. That probably means that at the end of the first semester of the first year students will be forced to elect between the two curricula—they already have to take Property and Constitutional Law, so they’ll have to choose for their so-called “electives” one or another set of the core literacy courses. Now, by the end of the first semester, a certain number of students will be ready to choose; indeed, over time I suspect Stanford will begin to attract students precisely because they plan all along to take either the curriculum for those planning to work for the subordinated or the curriculum for business lawyers.

But it is also true that a certain number of students (perhaps a large number at the outset, but decreasing in size over the years)
won't feel comfortable closing off one track of learning so early in their careers. Some of them will simply be on the fence about their own futures. Others might simply want to partake extensively of both curricula during their second and third years, even if they are entirely committed to one or the other kind of work. Others still might want to combine courses from each curricula in order to prepare themselves for particular future work. And still others might want to devote their attention to one track but also be allowed to choose from one of the existing spring semester electives rather than being made to take both Property and Constitutional Law.

Nothing is inherently wrong with making students choose and making those choices have consequences. To some degree, that's an inevitable feature in specialized curricula that demand that students take responsibility for past knowledge in order to extend and elaborate their expertise over the three years of law school. In fact, having to make curricular choices with consequences might even prove to be a healthy lesson for some of our students—those who, in order "not to foreclose any future possibilities," seem never to commit themselves to, or to get better at anything. But anti-generic legal education isn't out to punish students and, unless there are very good reasons, it doesn't wish to deprive them of opportunities to participate in a richly sequential track of learning.

Unless I'm missing something, the reasons most people offer for why Property and Constitutional Law should remain mandatory spring semester courses just don't seem good enough to justify entirely cutting off students from one or the other of the specialized curricula's core literacy courses. Nor do they convince me that first year students should have to abandon perspective courses in their spring semester (the inevitable consequence of making mandatory both Property and Constitutional Law and core literacy courses). It may be that the philosophy behind making perspective courses elective requirements, whatever its roots, seems now as blurry as it is unobjectionable. Perhaps that's why, as one colleague of mine observed, these courses have few strong friends and no strong enemies among the faculty. Yet it's not hard to imagine quite sensible, even forceful explanations for continuing to expose spring semester first year students to what perspective courses might provide—sustained
interdisciplinary exposure and markedly different initiations into the legal culture perhaps begin the list—whereas the defense of Constitutional Law and Property Law (at least as now taught in nearly every instance) simply rehearses the defense of the first semester curriculum. And for me that just doesn’t make it.

So in the spring semester I envision, students would elect their course load from the core literacy courses provided by each curricula and from certain other perspective courses. In general, all these courses—both the perspective courses and the core literacy courses—should take advantage of and extend what the first semester already has accomplished. Rather than simply repeating the same lessons in how to learn and how to use legal doctrine or the same initiations into the legal culture, the perspective courses should dig deeper into origins and influences of law and lawyering, as might current courses on Jurisprudence or History of American Law, and they should expand the universe of possible concerns, as might current courses on Comparative Law and Law in Radically Different Cultures. Perspective courses should experiment, too, with provocative methods of making available the nature of professional work, as might a new course that imaginatively brings to life both what particular lawyers do (corporate, criminal, lobbyist lawyers) during the course of an “average” day and how law school education relates to categories of practice and knowledge—a course that might be entitled A Day In The Life Of A Lawyer.

At the same time, the package of core literacy courses for both specialized curricula should expose students, each package in its own way, to those ideas and skills fundamental to advancing along “an intelligible path of learning” that leads, by the second and certainly throughout the third year, to applied and creative work “plainly beyond the power of beginners.” For those choosing the business courses, that will probably mean (in light of our business faculty’s predilections) a literacy package that includes an introduction to finance theory, accounting and transaction cost economics—what some think of as the language of private ordering. It should also

58. See Michelman, supra note 35, at 355.
include, I think, a lawyering course that introduces students, through richly detailed simulated exercises, to the actual work of those in business, to business lawyers, and to certain practice skills necessary to do the job well.

This sort of core literacy package proceeds on the assumption that business lawyers work regularly with their clients to anticipate or respond to recurring problems of organization—problems that include monitoring, risk allocation, establishing proper incentives, and the proper scope of allocation constrained by a state that makes some options unavailable (regulations forbid certain practices) and others quite expensive (tax rules favor an organizational form otherwise not desirable). Finance theory and transaction cost economics provide a general theoretical framework for identifying certain basic issues in organization design; accounting provides the language by which the success of ventures is measured, and opportunities for gain identified and evaluated; and a situated lawyering course might illustrate practical difficulties and the importance of certain skills in putting these ideas to use in the midst of realistic private ordering problems.

My reservations about this package of core literacy courses for the aspiring business lawyer center around certain unfortunate pedagogical tendencies and their capacity to undermine the very purpose of anti-generic legal education. Those who teach in the business curriculum here (like their counterparts at most other institutions) generally have been even less interested over the years than other segments of the faculty both in the dynamics of lawyering (intellectual sensibilities and skills) and, relatedly, in innovative (particularly clinical) teaching methods. They appear particularly resistant to, or convinced that they somehow transcend, what everyday practice and pedagogical innovation may tell them and their students.

At the same time, some of the business law faculty seem inclined, perhaps now more than ever, to introduce seemingly every new speculative wrinkle in what they see as relevant interdisciplinary theory (almost always those disciplines like finance and accounting are strongly related to contemporary transaction cost economics). More to the point, they present these wrinkles without making any obvious effort (at least as students perceive it) to connect these ideas either
to what lawyers do or to how lawyers are trained. At times, this "rugged" approach to learning interdisciplinary ideas seems sufficiently obstinate in its insensitivity to students that it almost appears deliberately designed to disassociate the business law curriculum (and certainly some teachers) once and for all from the familiar (and, to the minds of some, embarrassingly "lightweight") tradition in law schools of teaching hugely watered down "for lawyers" versions of related concepts.

These two pedagogical tendencies—avoiding the dynamics of lawyering and innovative (particularly clinical) teaching methods and embracing without at all helping students to appreciate the romance with speculative interdisciplinary ideas about private ordering—are not, at least in this instance, unrelated. They originate in the same narrow, technocratic view of the world—a view apparently no less seductive for all its well-documented limits and weaknesses. In this view, the only problems (at least the only "interesting" problems) confronting business and business lawyers concern finding a way to mutually beneficial optimization and getting the state out of the picture whenever it interferes. In this view, business lawyers (like other professional practitioners) help business select technical means most suited to particular purposes.

This technocratic view of the world, not coincidentally, is both reflected in and, in part, produced by the same academic literature (particularly the legal academic literature) that the business law faculty will no doubt use in teaching finance, accounting, and transaction cost economics as part of the core literacy package. Pedagogic habits thus dovetail neatly with high academic accounts of knowledge and practice. In a world view so tidy and so harmonious, rationalizations for ignoring imaginative teaching about lawyering ("just the mechanics for implementing the correct solution") and explanations for throwing new theoretical wrinkles at students with-

out adequately detailing their relevance ("a good lesson to be forced to figure out, integrate, and stay on top of every ‘technological’ innovation") both begin to seem almost plausible.

Yet business and business lawyers, no less that the rest of us, live in the midst of conflict. They experience and take positions in fights over resources, over authority, over responsibility, and over decency. And like the rest of us, they make all decisions under conditions of uncertainty with too little helpful information. Most businesses and business lawyers know this. In fact, they'd tell you they know it all too well and at least some of them frequently wonder out loud why law schools don’t do a much better job of linking curricular content and method to the world in which business and business lawyers actually operate.

Anti-generic legal education, beginning with the core literacy courses, aspires to expose students precisely to this challenge. The sort of introductory lawyering course I envision is, in part, meant to help bring home the pervasiveness of conflict and uncertainty and the difficulty of working with others in this environment. It can play its role in the training regimen, however, only if students are realistically situated in the lives of businesses and their lawyers. That prospect depends almost entirely on the willingness of the business law teachers to turn their attention, their collective attention, to the dynamics of lawyering and to the innovative pedagogical methods best suited to its exploration.

Still, even a well-conceived and well-executed introductory lawyering course cannot alone introduce students to the world in which business and business lawyers work. If anti-generic legal education is to meet the challenge of training future business lawyers, the other parts of the core literacy package themselves must provide both the opportunities for situated learning and the reinforcement of the lessons of that learning.

Finance theory, accounting, and transaction cost economics may well be the language of private ordering in business, and some new speculative theoretical wrinkles may well matter to training the future business lawyer. Yet, the relevance of new theories in these related disciplines at the very least should be made explicit in terms...
of what does and might happen in the actual business world—a self-disciplining exercise at least as valuable to teachers as it is to students. After all, rejecting hugely watered-down "for lawyers" versions of interdisciplinary ideas hardly warrants disavowing a teacher's obligation to help students make connections.

To avoid misimpression, the core literacy package must at the very least demonstrate the limits of, as well as the possibilities in, theoretical finance, accounting, and transaction cost economics. After all, preferences are not actually fixed but are mutable; power is not fixed in some "pre-social" way but socially constructed again and again; behavior is hardly always rational but often irrational and non-maximizing. I could go on but the obvious point is that we should be training business lawyers who can operate sensibly in the world they will find, not just in the abstracted world some theoretically-inclined academics find manageable. For this to happen through the package of core literacy courses, business law faculty will have to nurture an active intellectual and pedagogical curiosity about the very world they claim most to know and care about, a curiosity ironically at odds with tendencies that have dominated their teaching (and their related scholarly) projects in the recent past.

If the package of core literacy courses for those who plan to work with the subordinated is to expose spring semester first year students to those ideas and skills fundamental to advancing in second and third year to more difficult and demanding challenges, then it should include a lawyering course. This course should introduce students, through richly detailed simulated exercises and related readings, both to the actual collaboration between certain subordinated groups and those lawyers (and other allies) with whom they work and to certain of those skills necessary in the fight for social change. The package of core literacy courses should also include a course that, by focusing on class, race/ethnicity, and gender, explores the sources and nature of social and political subordination in this country. The course might be entitled Subordination: Traditions of Thought and Experience.

The Traditions of Thought and Experience Course will draw on three kinds of literature in its exploration of the source and nature of subordination. It will tap into theoretical descriptions of sub-
ordination drawing on a range of traditions (e.g., liberal, Marxist, neo-conservative, feminist, of color). It will also take advantage of certain "ethnographic" accounts, some conventional and by academics and others quite unconventional and by subordinated people themselves, describing various subordinated communities and experiences. And it will explore literature (from both lay and professional perspectives) examining the experience of those allies (most centrally lawyers but including social activists, organizers, social workers) who regularly intervene in the lives of subordinated people and collaborate in the fight for social change.

The lawyering course is meant to emphasize what's special, what's perhaps unrecognized, and what's certainly not systematically underlined about working with subordinated people. This emphasis is meant to focus attention on 1) the lives of subordinated people (how they get by day-to-day, how they anticipate and respond to problems, what kinds of conflicts they find themselves in, what lay and professional help they get in these conflicts), and on 2) the knowledge and related skills that lawyers who work with subordinated people must develop and draw on in order to do their work well (street know-how as well as academic and professional knowledge, coalition building and ally collaboration as well as hearing and trial skills).

The two courses in the package are obviously meant to overlap and reinforce one another. The Traditions and Thought and Experience Course is meant, in part, to introduce ideas about the origins of and ideas about subordination (in terms particularly of class, race/ethnicity and gender), while the lawyering course is meant, in part, to expose students to vying conceptions of practice dedicated to working as a lawyer with people so subordinated by political and social life. The Traditions of Thought and Experience Course is meant, in part, to provide some understanding of the actual experience of subordination, while the lawyering course is meant, in part, to begin training students by having them experience what subordinated people and their lawyers actually do (and might do) in response to their own understanding of situations. The Traditions of Thought and Experience Course is meant, in part, to extend students' ability to find, to read, and to make use of both relevant

https://researchrepository.wvu.edu/wvlr/vol91/iss2/5
interdisciplinary literature (a skill already introduced, in my vision of things, in the fall semester) and less conventional sources of insight about the world of the subordinated, while the lawyering course is meant, in part, to introduce students to a small but illustrative range of central (if sometimes relatively unacknowledged) skills in the fight against subordination.

The success of these core literacy courses depends, no less than their counterparts in the business curriculum, on the ability and willingness of participating faculty to abandon certain pedagogical tendenies. In the past, most courses concerned with lawyering (here as at nearly all law schools) have paid entirely too much attention to the lawyer and not enough to clients and allies. And, in the past, most courses concerned with the politically and socially subordinated (again here as at nearly all law schools) have treated forms of subordination either as self-evident experiences requiring little in the way of extended critical observation or as social phenomena to be intellectualized (if not academicized) almost entirely without taking into account the views of subordinated people themselves.

These tendencies issue, at least in part, from the debilitating idea of lawyering for the subordinated that reigns over law practice and legal education. And they suggest how much over the years even well-intentioned faculty have perhaps unwittingly helped reproduce this regnant idea both in the lawyers they helped to train and in the people with whom these lawyers work. For all the raging about community, about hierarchy, about collaboration, and about voice that for years now has saturated left-legal academic talk, we all may have to admit our implication in a zanily self-defeating educational regimen. The core literacy courses, and the anti-generic ambitions they are meant to kick-off in the training of those future lawyers who will work with the subordinated, demand at least as much self-scrutiny by participating faculty as anything else.

B. Second and Third Years

If both specialized curricula are to build sensibly on what’s gone on in this newly envisioned first year, they must take account at the beginning of the second year of where students will be and what
they will need. At that point students will have picked up, if not mastered, the basics of how to learn and how to use legal doctrine, and they will have become passably literate, not just in the ways of the legal culture, but in the ways of the people with whom they plan to work. You may not yet want one of these student working alone as your lawyer, but you certainly wouldn’t mind having the student on your team. Still, if there are good reasons to believe that beginning second-year students will need reinforcement of what they’ve already learned, there are also good reasons to be confident that they can find whatever reinforcement they need (and then some) through second and third year courses that demand that they reach beyond what they already know in part by putting it to use.

A New Training Regimen to Substitute For The One Now Dominated By the “Big Classroom” Model of Teaching and Learning

In order to do this, I think we at Stanford must essentially call an end to and perhaps even entirely abandon the domination of the “big classroom” model of doctrinal teaching and learning for second and third year students. While that model of teaching, reimagined and reinvigorated, can still play an important role in legal education, it seems best suited to the aims of the first year, more particularly to the twin aims of the fall semester of the first year, cultural initiation and doctrinal acquisition. Once students pick up generally how to learn and how to use legal doctrine, then the big classroom as now constituted seems not only terribly wasteful when compared to well-designed self-teaching mechanisms but it also seems ill-designed to help individual students focus on their particular weaknesses. Perhaps someone can make a convincing case (though I doubt it) that a certain course will still need to be slowly unfolded through the big classroom model, but for purposes of anti-generic education at Stanford we should generally presume that other approaches better handle what traditionally we’ve done for second and third year students through the big classroom.

In place of a second and third year curriculum dominated by this “big classroom” model of teaching and learning, I would train both future business lawyers and those who plan to work with the
subordinated through a newly structured regimen. In this regimen, each specialized curricula would offer, probably in the fall of the second year, any additional mandatory literacy courses. Each specialized curricula also would offer an overarching "doctrinal information transfer" course, a course comprised of a series of three or four week "mini-courses" that probably would extend over both semesters of the second year and that would be taught by a team of faculty members. Each of these information-transfer courses would make available to students a general command of the structure (more than the forgettable detail) of certain areas of law central to their future work. The course would rely extensively on specially designed self-teaching mechanisms (central cases and statutes, outlines, workbook and computer and interactive video exercises). And instead of traditional big classroom interaction, a very limited number of class hours would be reserved for specially focused group activity—most obviously, for review of particularly difficult applied problems and for the oral exposition of any newly evolved ideas (critiques and alternative visions) that an instructor had not yet had the time to integrate into the written self-teaching materials.

In addition to any remaining literacy courses and to the overarching doctrinal information transfer course, the newly envisioned second and third year training regimen would have each of the specialized curricula offer a set of highly intensive workshops. These workshops would be at the heart of the second and third year education, and much of upper-level intellectual and political life would focus around their activities and attempt to take advantage of what they bring to campus and offer to the outside world. The workshops would be designed and coordinated by each curricula’s faculty and would examine in depth and in detail particularly important areas

60. A starting point for preparing these self-teaching mechanisms would be student-authored outlines and teacher’s manuals and notes. During the past year I’ve collected the best current outlines floating around the law school and the best teacher’s manuals. See, e.g., R. Weisberg & J. Kaplan, Teacher’s Manual, Criminal Law (1985). Moreover, with relatively little effort you can find other creative teaching devices. For example, see the interactive ideas of Tim Hallahan, including You Be The Judge, Trial Skills Illustrated I & II, and Motion Skills Illustrated produced by Harvard Law School, and distributed by Lawyers’ Cooperative Publishing Co. Also see the discussion of interactive videos in Harabling, ABA Consortium Introduces Video-Audio Interaction to Seminars, 67 A.B.A. J. 736 (1981).
of situated life and legal policy, particularly important dimensions of situated lawyering, or both. And, like any well-conceived practice (including the most extraordinary teaching now going on in the big classroom), these workshops would be outfitted for the task of apprehending and commanding a practice with students learning by doing, teachers teaching by a sort of coaching, and each challenging the other as together they work through, critique and imagine alternatives to available bodies of knowledge.

Some of these workshops would require students to work through well-developed literatures and data; others would require students to work as practitioners in richly simulated situations; others still would require students to work as practitioners in actual supervised field situations; still others would require students to undertake new conceptual work or serious empirical studies on concerns long-neglected or newly emerging. These workshops would no doubt vary in size (though all would be small), in unit allocation, and to some degree, in intensity. But as a whole the workshops would be organized by faculty participating in each specialized curriculum to make available to students, insofar as resources permitted, a range of training in those areas of life and legal policy and those dimensions of lawyering critical to their future vocations.

The final feature of the second and third year regimen I imagine would entail a set of courses that "straddle" both specialized curricula. These courses might include a range of international courses—from International Economic Law and Organization to International Environmental Law—that affect specifically those in business and those subordinated in both this country and abroad. And they might include, too, certain self-consciously "academic" courses—like Empirical Methods or Legal Studies—that are designed in part to train future academics for the production of scholarship. And they might well include certain courses—like Legal Ethics, Constitutional Law and Mass Media Law—either designed deliberately to invoke or inevitably reflecting contrasts between those enabled by social and political life and those subordinated by it. Yet even in these straddle courses, every effort would be made both to transfer information through specially designed written materials and exercises and to situate students either within certain discrete traditions or within the actual experiences of certain people.
A Very Brief Elaboration of the New Regimen: the Second and Third Year For Business Lawyers and For Those Planning to Work with the Subordinated

What would this new second and third year training regimen actually look like with flesh on its bones? I won’t offer much detail, but the general outlines of both specialized curricula would seem apparent. The business curriculum might want to make other theoretical concepts, besides those previously covered in the spring semester, prerequisites to advanced study in the available workshops. For all participating students this might mean becoming familiar with ways of conceiving, implementing, and challenging conceptions of corporate social responsibility. And for those students interested in regulatory issues—treating the questions of whether regulations are sensible rather than simply optimizing for a party given a particular regulatory scheme—this might mean becoming literate, too, in the branches of economics most relevant to standard regulatory topics—say industrial organization to deal with antitrust and regulated industries, public finance to deal with tax policy, and perhaps some combination of information economics and advanced finance to deal with “investor-protective” legislation.

The business curriculum would also have to decide both what areas of law most affect business and how those areas might be transformed into effective self-teaching information-transfer mechanisms. Obvious candidates would include business associations; the capital market; banking; bankruptcy; copyright, trademark, and patent law; land use regulations; real estate regulations; antitrust; and private international law. Obvious sources of help in converting traditional materials into self-teaching mechanisms would include teacher’s manuals, instructor notes and (often more importantly) specially student-prepared outlines. Finally, though the possibilities for intensive business workshops are many, some areas of business life and some dimensions of lawyering would seem inevitably central: tax policy, tax planning, business reorganization, business enterprise counseling, land use planning, and “buyouts” and “deals.”

In the second and third year of training for those planning to work with the subordinated, there would be a year-long information transfer course that might be entitled The Core Areas of Law Af-
fecting the Subordinated. The course would cover law ranging across certain obvious areas of importance (immigration, housing, employment, gender, race/ethnicity, sexual orientation, family, juveniles, criminal procedure and evidence) and across certain other areas often neglected in their importance to subordinated people (income transfer policy, debt/bankruptcy, consumer protection, family financial planning, business organizations, land use/economic development). Though this information transfer course would focus on the general structure (rather than forgettable detail) of legal doctrine and rely heavily upon self-teaching mechanisms, many areas of law covered likely would serve as points of departure for one (or more) advanced workshops. In this way, student knowledge of most core areas of law affecting the subordinated would be extended (reinforced and elaborated) during the course of the second and third years.

The curriculum for those planning to work with the subordinated would also offer a mandatory literacy course in the fall of the second year to complement the two literacy courses offered in the spring semester of the first year. We might call this course Core Ideas in Economic Thought Central to Working with Subordinated People. The general purpose of this course would be to make available to those who will practice with the subordinated ideas that, in my experience, are often neglected in their importance, except to the extent that they are feared and in many ways avoided by many progressive and radical lawyers. It would be specifically designed to draw on and explicate economic ideas both broader in range than those pre-occupying the Law and Economics movement in this country and more responsive to the life and the problem-solving of subordinated people and their lawyers than the ideas found in most conventional economics courses. It would aim not only to expose the limits and assumptions of the neoclassical model of individual and aggregated (market) decision making, but also to prepare students to work through issues (rent control, dual labor markets, worker and consumer safety, for example) that will be the focus of certain intensive workshops and of their future practice.

Finally, the curriculum for those planning to work with the subordinated would center second and third year training around a set
of small workshops. These workshops would focus on specific dimensions of lawyering, on specific social circumstances and related strategies for change, and perhaps most often on both. They would draw their inspiration, in all that they cover and in their pedagogic design, from the emerging rebellious idea of lawyering. In so doing, the workshops’ collective aim would be to challenge the regnant idea of lawyering in a double sense: each workshop would not only train lawyers differently than before, but together they would (in fairly short time) achieve the same cross-fertilization, reciprocal enlightenment, and cumulative reinforcement that the workshops hope to help encourage in the constellation of allies fighting for radical social change.61

Guided by the rebellious idea of lawyering, these workshops would train students in dimensions of lawyering both familiar and unfamiliar to traditional training. These dimensions would evolve over the years, but presently would include the following: being a collaborator; being involved in informal remedial ceremonies; being involved in economic development; being involved in financial planning; being involved in efforts to teach self-help and lay lawyering; being involved in litigation; being involved in a trial and an administrative hearing; being involved in efforts to improve the health and safety of a workplace; being involved in an effort to begin or to restructure a law office to accommodate practice with the subordinated. The general ambitions would be to integrate into workshops meaningful changes in everyday lawyering and to foreshadow and, when necessary, to provoke necessary transformations in everyday practice.

While perhaps appearing more “fixed” than the dimensions of lawyering, the social circumstances and related strategies for social change explored in these workshops would provide a formidable challenge to students and teachers. The circumstances and strategies would include matters of inevitable complexity: the situated study of community development, of housing, of benefits, of education, of mental health, of the workplace and labor markets, of economic

61. See Michelman, supra note 35, at 355.
democracy, of the life of undocumented and recently documented workers, of gays and lesbians, of various peoples of color, of various groups of women, of abused and neglected children, of the family, of the elderly, and of those enmeshed in crime. The workshops would thus demand both interdisciplinary perspectives on, and perhaps an ever-changing historical assessment of, current conditions and their relationship to past and on-going efforts. The general ambition, again, would be both to weave into workshops new and ignored knowledge of daily life and to reconceive and implement through workshops concrete approaches to fundamental social change.

What might you generally expect of this new anti-generic training regimen? My own experience with, and my knowledge of, those current second and third year courses structured compatibly with this new regimen provide considerable optimism about what to look forward to from these changes. Second and third year training in each specialized curricula will both engage and prepare students in ways vastly superior to our present efforts. Students will know, along with teachers, how their education hangs together, how it builds on itself, how it demands of them a command of what they’ve already learned and a desire to push ahead to harder problems and ideas. They will also know, along with their teachers, how their education links up with practice and, more importantly, how it connects to the people with whom they’ll be working. As a result, over the course of their three years at law school, they will become increasingly able to contribute to individual courses, to intellectual and practical projects, and to the design and execution of the training regimen itself. At graduation they will be ready to assume the obligations of practice and a commitment to scrutinize and improve their own work and the work of those around them as they pursue particular career paths.

All this will be true not just of those students who will work with the subordinated or who will work with those in business. It will be true, too, of those who choose other or many careers during their lifetimes. Conventional wisdom notwithstanding, “generalists” do better work when they’re trained to know (and, therefore, trained to grasp what it means to know) something deeply and well. They’re
then more likely to bring to their jobs and to discrete tasks a modesty that regularly serves them well—a modesty that impels a profound curiosity about any social situation in which they're asked to intervene, and a modesty that appreciates the immense importance of both "indigenous lay" and "outside expert" knowledge at the same time that it understands the important continuities between problem-solving intelligences. In short, this new anti-generic second and third year regimen will best generic legal education, I think, at just that job law schools have always claimed to do so well.

To be sure, I have my shopping list of concerns about the second and third year regimen taking shape—concerns that in most instances apply to both specialized curricula, if often in importantly distinguishable ways. For now, however, several seem worth identifying in the context of the proposed curriculum for working with the subordinated. And, along with these concerns, it matters, I think, to note currently planned efforts (both fuzzily general and quite specific) in an effort to respond partially to each.

Anti-generic legal education presupposes the necessity for considerable interaction between those of us who most regularly work within the law school and those subordinated groups and their allies who most regularly work outside formal legal education. Without sounding unduly pollyannaish, we might someday even move toward healthy collaboration. As any honest social activist will tell you, there's no magical formula for making this happen. Platitudeuous sounding advice (like it'll take time and a lot of hard work) actually does make good sense. And a willingness to put yourself out there in uncertain circumstances often may help move things along.

Still, in the effort to nurture productive interaction, there's no doubt that everyone involved will have to confront—again and again and in ourselves as well as in each other—patterns of association antithetical both to our vocations and to the vision of anti-generic legal education. Identifying these patterns generally helps, as does an effort to understand accompanying frustrations and suspicions. It remains a fragile undertaking, though, and experience suggests that things may sometimes break apart. Still, it may provide some hope to realize that (through friendships, previous or current practices, field placement courses, externships and the like) some people
who most regularly work within the law school already have relatively thriving working relationships with certain subordinated people and their allies, relationships that might be extended into new territory and that might serve over time to instruct us all.

If anti-generic legal education presupposes the general necessity for considerable interaction between those currently inside and outside legal education, the curriculum for those who plan to work with the subordinated aspires specifically to build ways of communicating regularly with progressive and radical lawyers about law practice. In so doing, it aims both to invite continuing feedback on its intellectual and pedagogical conceptions and to provide ways for worthy ideas in the new training regime to influence the fight for fundamental social change. Toward this end, informal meetings and conversations matter as much as, perhaps more than, formal seminars, conferences, and symposia—though obviously each might enrich the other. And the wise involvement of practitioners in courses, particularly the planned array of workshops, provides possibilities for frank and penetrating exchanges that, by and large, have been neglected and mishandled in the past.

But, at least for now, I am concerned less with creating modestly effective ways to converse and more with creating significantly improved, indeed reconceived, conversation about practice. Whenever progressive lawyers and those in legal education talk or imagine talking to one another “seriously” about lawyering, far too often it concerns developing an ingenious doctrinal angle on a particular problem. Occasionally, they may move on to what both probably consider more “academic” (though not necessarily impractical or irrelevant) topics—say the continuing debate between the relative political significance of service and impact cases or the ethics of particular tactics or the need to develop new (but traditionally structured and delivered) doctrinal or clinical courses about certain areas of law. But nothing else much happens. Worse still, you sometimes get the sense that neither group thinks the other has much to say about what matters most.

Nothing is inherently wrong with these conversations. Doctrine and new courses and ethical questions matter. So, too, does the political significance of certain trade-offs of time and commitment.
(Though I think the largely tired debate about the wisdom of service and impact cases unduly circumscribes what is at issue, in part by continuing to dichotomize these particular strategies—but that’s a topic for another day.) Still, in my experience, talk about these topics has become entirely a substitute for—maybe even an excuse for—not actually thinking and talking hard about the extraordinary dynamics of engaging as lawyers in the fight for radical social change. What about conversations concerning the structures and routines of law offices and their effect on clients and allies? What about conversations concerning the relationship between certain obviously “legal” strategies and those that historically have been treated as falling outside (or beneath) a lawyer’s expertise? What about conversation concerning the collaboration between subordinated people and those with whom they (are often forced to) work?

My point should be all too obvious by now. The curriculum for those who plan to work with the subordinated does aspire specifically to build ways of communicating regularly with progressive and radical lawyers about law practice—but not simply to reproduce the same old partial, impoverished (and, I think, often self-deceptive) talk. Refocusing conversation will not be a simple task, either among practitioners or among faculties. It will demand of all of us, to one degree or another, the uncomfortable disclosure of obvious omissions and nagging doubts. And it undoubtedly will require a network of old and new devices, in part to give everyone an idea of what we now have in mind and what we might in time imagine ourselves doing.

In fact, in part to help provide a “sample” of what this newly enriched talk about practice might look and sound and feel like, the new training regimen already has planned a new biannual newsletter. The newsletter will invite particularly resourceful progressive practitioners (at the beginning mainly, but not exclusively, lawyers and both alumni and friends) to describe, say in ten to twenty pages, the relationships, ambitions, strategies, conflicts, contradictions, confusions, uncertainties, disappointments, and achievements of particular fights and projects. It will read, we hope, like the best ethnographies—detailed without being at all anti-theoretical, honest without being unduly self-indulgent, self-critical without being un-
duly self-deprecating. And it will serve, we trust, not only to bring
to life certain curricular ambitions but to help those allied in the
fight against subordination (particularly lawyers) to stay in touch
with what others are thinking and experiencing.

V. So What About All The Unanswered and Unanswerable
Questions?

For all that I've said in this essay, there's plenty more that I
might have said. I might have talked, and at length, about the nec-
essary relationship between anti-generic legal education and admis-
sions. I might have talked, and at length, about the necessary
relationship between anti-generic legal education and career services.
I might have talked, and at length, about the necessary relationship
between anti-generic legal education and faculty recruitment. I might
have talked, and at length, about the necessary relationship of anti-
generic legal education and alumni fundraising.

More surprisingly perhaps, there's plenty more that some others
would insist that I talk about before any institution should take
seriously, much less move on, the changes that I urge. Insisting that
there's still more to talk about and that there are still too many
unanswered and unanswerable questions raised by an alternative
pedagogical regime has always been a stalling tactic employed by
those who feel either most comfortable with what we now do in
law schools or most threatened by what we might do to change our
ambitions and routines. They are the same ones who always seem
to call (and to convince almost everyone else to call) even modest
curricular innovations "experimental," by which they mean to con-
note, of course, premature, untested, quirky and probably unsound.
Yet that rhetorical move, for all its ubiquity, has always struck me
as peculiarly unpersuasive. After all, what could be more experi-
mental, in the sense of having very little idea of the particular con-
sequences of particular practices on particular people, than the
uncoordinated array of courses and teachers most law schools sub-
ject their students to through generic legal education?

At the same time, I'm entirely aware that much of what I've
asked you to entertain has not been cheery or flattering. Some of
what I've said may strike those of you not directly involved in legal
education as surprising and maybe even implausible, while at the same time it perhaps gives you cause for concern about how law school training affects your own lives. And some of what I’ve said may strike those of you directly involved in legal education as too serious, too negative, and too self-flagellating, although perhaps it also gives you pause about certain of your own routines and arrangements.

You owe it to the institutions and people with whom you work not to let yourself escape too facilely from my account or proposal, however strong the impulse either to disbelieve or to dismiss. What I have said may be insufficiently empirical, too polemical, or just plain wrong. And perhaps you should strongly disagree with me. But make sure to mull it over, in part because we’re all a little too good at evading—even outbrazening—exposure to what we do and what we put up with.

And what about all those unanswered and unanswerable questions? We all know way more than enough to take action right now.