

# EDUCATING LAWYERS FOR COMMUNITY

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This Essay is part of an ongoing classroom study and clinical service project addressing the mindful education of law students and the civic training of lawyers. Its purpose is to build a pedagogy of community and public citizenship within an outcome-based, rotation curricular model of legal education sketched out by commonly allied scholars in prior work here in the *Wisconsin Law Review* and elsewhere. The Essay seeks to advance this earlier curricular work by integrating ethics, education and psychology, and law and religion into a cohesive pedagogical approach to civic professionalism and community engagement. From the springboard of integration next follows a discussion of how normatively compatible a pedagogy of public citizenship and community is with traditional notions of the lawyering process and the adversary system. Additionally, the Essay explores the functional compatibility of public citizenship and community values with the current model of legal education. The issue of functional compatibility gains particular importance in light of recent and widening calls for institutional reform in legal education. The hope is to transform conventional notions of lawyer role and function in the adversary system and then, with those transformed notions in mind, restructure the curricular form and content of contemporary legal education to better serve communities in need through mindfulness and spirituality.

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#### INTRODUCTION

*The word “attorney” means “someone who goes to town for you”—which in context means “someone who goes to law with you,” because the town where lawyers work is where the law is and, although your attorney goes to town for you, you can’t send him alone. You have to go together.*

—Thomas L. Shaffer<sup>1</sup>

This Essay addresses the education of lawyers for community. For twenty-five years I have taught within an academic and practice community of lawyers, clients, judges, scholars, and more recently church ministers and their congregations in the impoverished, inner-city neighborhoods of Miami. Throughout these years, the form and substance of community have changed. For most, the form of a community is discernible despite variation in the demographic status and identity of its membership, or the geography and physical space of its assembly. For others, the substance of a community is elusive, its experience of belonging complex, and its intrinsic meaning multifaceted.

To many lawyers and legal scholars, the substantive meaning of an engaged community, a community where *you have to go together*, derives in part from individual and collective efforts to fulfill a core normative responsibility of the legal profession, namely to stand as “a public citizen having special responsibility for the quality of justice.”<sup>2</sup> Under American Bar Association (ABA) and state ethics rules, that special civic responsibility should guide lawyer performance of the professional functions of representation in advocacy, counseling, and negotiation.<sup>3</sup> The purpose of this Essay is to explore the teaching or

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1. THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER: LAW FOR THE INNOCENT 217 (1981).

2. MODEL RULES OF PROF’L CONDUCT, PREAMBLE ¶ 1 (2008).

3. The preamble to the *Model Rules of Professional Conduct* adds: “As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.” *Id.* ¶ 6.

pedagogy of community and public citizenship in legal education and professional training.<sup>4</sup>

Part of an ongoing classroom study and clinical service project encompassing the education of law students and the continuing training of lawyers, the Essay seeks to integrate several fields of scholarship, notably ethics, education and psychology, law and religion, and the lawyering process. Bracketed by these overlapping fields, the Essay proceeds in four parts. Part I constructs the pedagogy of community and public citizenship from legal and theological materials on mindfulness and spirituality. Part II locates the pedagogy of community and public citizenship in an outcome-based, rotation curricular model of legal education. Part III assesses the pedagogy of community and public citizenship in terms of conventional notions of lawyer role and function in the adversary system. Part IV evaluates the functional compatibility of the pedagogy of community and public citizenship with the curricular form and content of contemporary legal education.

Infusing the pedagogy of community and public citizenship with the psychological and theological force of mindfulness and spirituality, and integrating that pedagogy into the core substance of an outcome-based, rotation curricular model of legal education challenges conventional notions of lawyer role and function in the adversary system and, by extension, the curricular form and content of contemporary legal education and professional training. These rising

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4. Elaboration of the pedagogy of community and public citizenship in legal education and professional training sounds themes of civic professionalism heard in both classical and reformist visions of the modern lawyer. See WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 4 (2007) (“That is the challenge of professional preparation for the law: linking the interests of educators with the needs of practitioners and the members of the public the profession is pledged to serve—in other words, participating in civic professionalism.”); see also Ann Duntuono, *A Citizen Lawyer’s Moral, Religious and Professional Responsibility for the Administration of Justice to the Poor*, 66 *FORDHAM L. REV.* 1383 (1998); Ben W. Heineman, Jr., *Law and Leadership*, 56 *J. LEGAL EDUC.* 596 (2006); Donald J. Polden, *Educating Law Students for Leadership Roles and Responsibilities*, 39 *U. TOL. L. REV.* 353 (2008); Steven K. Berenson, *Institutional Professionalism for Lawyers: Realizing the Virtues of Civic Professionalism*, 109 *W. VA. L. REV.* 67 (2006) (book review). The same themes echo in the mission of an increasing number of ethics and professionalism institutes housed at law schools, including the Stanford Center on the Legal Profession at Stanford Law School and the Center for Ethics and Public Service at the University of Miami School of Law. See UNIV. OF MIAMI SCH. OF LAW, CENTER FOR ETHICS & PUBLIC SERVICE 2 (2012); *Stanford Center on the Legal Profession: Overview*, STAN. L. SCH., <http://www.law.stanford.edu/program/centers/clp/overview> (last visited Feb. 5, 2012) (“Building on the legacy of its predecessor, the Keck Center on Legal Ethics and the Legal Profession, the Center focuses on issues of professional responsibility and the structure of legal practice. Central concerns include how to enhance access to justice, sustain ethical values, improve bar regulatory structures, and effectively respond to the changing dynamics of legal workplaces.”).

challenges call upon lawyers, clients, judges, and scholars to renew their faith in the wider community of law in American culture and society, and to regain a broader vision of public citizenship. This ethic of renewal begins in teaching.

#### I. THE PEDAGOGY OF COMMUNITY AND PUBLIC CITIZENSHIP

*The mission of a prophet is moral witness to (and usually within) an institution.*<sup>5</sup>

The pedagogy of community and public citizenship calls for a more normative vision of law school curricular reform, a renewed lawyer responsibility toward economic justice, and a greater promotion of democratic community. The other-regarding, legal-political enterprise of democracy promotion involves building and recovering community in the contexts of underserved client populations segregated by concentrated poverty and differences of class, ethnicity, and race.<sup>6</sup> Both community building and community recovery demand creative strategies of legal rights education, organization, and mobilization common to liberal legalism and interest-group pluralism.<sup>7</sup> The strategies seek to connect lawyers, clients, and communities through practices of mindfulness and spirituality. Consider first the relationship between mindfulness and community.

##### A. *Mindfulness and Community*

The interconnections among law, mindfulness, and community development are often overlooked in the work of therapeutic jurisprudence<sup>8</sup> and social psychology.<sup>9</sup> Yet, grounded in liberal

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5. SHAFFER, *supra* note 1, at 177.

6. For recent discussion of legal-political advocacy on behalf of underserved, inner-city populations, see Anthony V. Alfieri, *Post-Racialism in the Inner-City: Structure and Culture in Lawyering*, 98 GEO. L.J. 921 (2010); Anthony V. Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805 (2008).

7. The resonance of democratic community in claims of liberal legalism and interest group pluralism derives from the work of the late John Hart Ely. See Anthony V. Alfieri, Gideon in *White/Gideon in Black: Race and Identity in Lawyering*, 114 YALE L.J. 1459, 1481–88 (2005).

8. See, e.g., Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients and Communities*, 13 CLINICAL L. REV. 213 (2006); Keri K. Gould & Michael L. Perlin, “Johnny’s in the Basement/Mixing up his Medicine”: *Therapeutic Jurisprudence and Clinical Teaching*, 24 SEATTLE U. L. REV. 339 (2000); Bernard P. Perlmutter, *George’s Story: Voice and Transformation through the Teaching and Practice of Therapeutic Jurisprudence in a Law School Child*

experimentalism,<sup>10</sup> the growing literature of community development<sup>11</sup> weaves disparate strands of grassroots organizing,<sup>12</sup> legal-political integration,<sup>13</sup> empowerment,<sup>14</sup> and mindfulness<sup>15</sup> into a broad framework of lawyering, policymaking, and lay advocacy. Within this literature, the work of the East Bay Community Law Center (EBCLC), founded in 1988 by U.C. Berkeley's Boalt Hall School of Law students, stands out for its commitment to community engagement, personal and professional role reconciliation, and mindfulness.<sup>16</sup>

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*Advocacy Clinic*, 17 ST. THOMAS L. REV. 561 (2005); Bruce Winick, *Therapeutic Jurisprudence and the Role of Counsel in Litigation*, 37 CAL. W. L. REV. 105 (2000); Bruce J. Winick, *Using Therapeutic Jurisprudence in Teaching Lawyering Skills: Meeting the Challenge of the New ABA Standards*, 17 ST. THOMAS L. REV. 429 (2005).

9. See, e.g., Clark Freshman, *Yes, and: Core Concerns, Internal Mindfulness, and External Mindfulness for Emotional Balance, Lie Detection, and Successful Negotiation*, 10 NEV. L.J. 365 (2010); Van M. Pounds, *Promoting Truthfulness in Negotiation: A Mindful Approach*, 40 WILLAMETTE L. REV. 181 (2004); Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002); see also Jean R. Sternlight & Jennifer Robbennolt, *Good Lawyers Should Be Good Psychologists: Insights for Interviewing and Counseling Clients*, 23 OHIO ST. J. ON DISP. RESOL. 437 (2008).

10. On experimentalism in the liberal state, see Charles F. Sabel & William H. Simon, *Minimalism and Experimentalism in the Administrative State*, 100 GEO. L.J. 53 (2011); see also Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267 (1998); Kathleen G. Noonan, Charles F. Sabel & William H. Simon, *Legal Accountability in the Service-Based Welfare State: Lessons from Child Welfare Reform*, 34 LAW & SOC. INQUIRY 523, 545 (2009); David A. Super, *Laboratories of Destitution: Democratic Experimentalism and the Failure of Antipoverty Law*, 157 U. PA. L. REV. 541 (2008).

11. See generally WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY* (2001) (examining community economic-development models and practices); Ann Southworth, *Representing Agents of Community Economic Development: A Comment on Recent Trends*, 8 J. SMALL & EMERGING BUS. L. 261, 270-71 (2004).

12. See Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001); Supriya Routh, *Experiential Learning through Community Lawyering: A Proposal for Indian Legal Education*, 24 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 115 (2011).

13. See Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CALIF. L. REV. 1999, 2004-05 (2007).

14. See Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 249-51 (1999).

15. See Angela Harris, Margareta Lin & Jeff Selbin, *From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CALIF. L. REV. 2073 (2007).

16. *Id.* at 2075-77.

For EBCLC lawyers and student advocates, mindfulness dictates neither “a particular set of projects” nor “a particular model of lawyering.”<sup>17</sup> Rather, in the practice of both law and politics, “mindfulness provides a framework for thinking about how individual action is tied to group process,” and moreover, “how group process connects to institutionalized relations of power, and thus how transformational change at the interpersonal level is linked to transformational change at the regional, national and global levels.”<sup>18</sup> Mindful lawyering, EBCLC lawyers insist, “can connect the individual practice of paying attention with the collective work of peacemaking.”<sup>19</sup> In doing so, mindful lawyering enables lawyers at EBCLC and other law school clinics and advocacy organizations to “stand aside from—and abandon when necessary—the adversarial stance that so often characterizes not only lawyering, but also organizing and even progressive politics as a whole.”<sup>20</sup> This elastic stance, mindfulness proponents explain, “helps lawyers take on very different roles with respect to the people they work alongside, depending on personal, political, and cultural necessities.”<sup>21</sup> Contingent on the circumstances of clients and communities, the roles may tilt toward adversarial contest in zero-sum situations or, alternatively, toward transformative change in more democratic, participatory situations.

Contemporary studies of economic development and inner-city poverty in Miami and elsewhere illustrate the central elements of mindful lawyering that animate the pedagogy of community and public citizenship. By definition, that pedagogy seeks to inculcate a transformative vision of spiritual community.<sup>22</sup> Assembled at Berkeley from the teachings of engaged Buddhism, a mindfulness-guided spiritual community should, according to EBCLC lawyers, “take a clear stand against oppression and injustice and should strive to change

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17. *Id.* at 2076.

18. *Id.*

19. *Id.* at 2077.

20. *Id.*

21. *Id.*

22. See Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 HARV. L. REV. 985 (1990); Anthony E. Cook, *King and the Beloved Community: A Communitarian Defense of Black Reparations*, 68 GEO. WASH. L. REV. 959 (2000); Anthony E. Cook, *Toward a Normative Framework of a Love-Based Community*, in LAW AND RELIGION: A CRITICAL ANTHOLOGY 373, 373–82 (Stephen M. Feldman ed., 2000); Martha Minow, *After Brown: What Would Martin Luther King Say?*, 12 LEWIS & CLARK L. REV. 599 (2008).

the situation without engaging in partisan conflicts.’’<sup>23</sup> Applied to situations of individual and structural injustice familiar to Miami and other impoverished, race-segregated cities, engaged Buddhism encourages lawyers to work collectively in relationships at three levels or scales of practice: the first level involves the relationships of the lawyer to the self and the lawyer to the client, the second implicates the relationship between the lawyer and community stakeholders, and the third entails the relationship between law and social justice movements.<sup>24</sup>

Careful focus on the first-level relationships of the lawyer-to-self and the lawyer-to-client, EBCLC lawyers contend, enables the community lawyer “to see and identify her emotional reactions in the moment, as well as to think through her situation intellectually and in the abstract.”<sup>25</sup> Instead of heroic gestures,<sup>26</sup> mindful lawyers “learn how to listen to and communicate with their clients” across difference, power, and privilege.<sup>27</sup> Listening across boundaries demands “attention to the client’s thoughts, feelings, and behavior” and an awareness of how the lawyer herself may be perceived by other stakeholders not only in interviewing and counseling, but also in negotiation and in coalition building, where recognizing “the strengths, weaknesses, and attachments of others” remains crucial.<sup>28</sup> The practices of mindfulness, EBCLC lawyers emphasize, “bring a level of sensitivity to emotional needs” frequently expressed in the community-based processes of stakeholder meditation and arbitration as well as neighborhood restorative justice.<sup>29</sup> The practices also provide a means of “understanding how structural relations of privilege and oppression affect group dynamics” in negotiated transactions and adversarial

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23. See Harris, Lin & Selbin, *supra* note 15, at 2125 (emphasis removed) (quoting THICH NHAT HANH, *INTERBEING: FOURTEEN GUIDELINES FOR ENGAGED BUDDHISM* 43 (Fred Eppsteiner ed., 3d ed. 1997)).

24. *Id.* at 2126.

25. *Id.* (“Anger, sadness, disappointment, fear and anxiety—whether the source is the client or the lawyer herself—are common emotions for those who work for social change, and they can lead to burnout, cynicism, constant rage, or despair.”).

26. *Id.* (“The mindful lawyer is also able to recognize that the desire to be the hero often motivates social justice lawyering and is aware of the mischief that can follow if this desire is at the center of one’s lawyering practice.”). For criticism of the heroic lawyer tradition in civil rights and poverty law practice, see GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

27. Harris, Lin & Selbin, *supra* note 15, at 2126–27 (“The mindful lawyer can learn to be aware of these matrices of power without being defeated by them, and even can learn to employ them in transformative ways.”).

28. *Id.* at 2127.

29. *Id.*

proceedings, thereby allowing lawyers “to shift between different models of representation.”<sup>30</sup>

Alertness to second-level relationships between the lawyer and community stakeholders, EBCLC advocates note, highlights the risk of overreliance on adversarial approaches to litigation and negotiation, and the resulting tendency to “produce rigidity, blindness, and un-mindfulness,” dominant traits “that leave both lawyers and their community partners disempowered and disengaged.”<sup>31</sup> That risk is exacerbated by emotionally charged personal and professional conflict. By evaluating and managing adversarial risk, mindfulness mitigates the divisive effects of conflict, and at the same time “serves as a practice of attention to social relations of privilege and subordination.”<sup>32</sup> Reference to the structures of group privilege and subordination in communities, EBCLC lawyers point out, encourages a more expansive legal-political strategy that “goes beyond representing individual clients to articulating longer-term and larger-scale community interests.”<sup>33</sup> This comprehensive strategy dictates multiple lawyer roles and services ranging from technical assistance to collaborative partnership.<sup>34</sup>

Attentiveness to third-level relationships between law and social justice movements, EBCLC activists add, “assists lawyers in understanding the place of their work” in local, national, and international struggles for democratic participation and economic justice.<sup>35</sup> Fundamental to that relationship are efforts “facilitating the development and exercise of cooperative power.”<sup>36</sup> Mindfulness embraces “cooperative power . . . built from below, beginning with the interactions of persons and small-scale groups,” assorted groups “whose actions are shaped by clear-sightedness, cooperation, and respect.”<sup>37</sup> On this view, building from below helps lawyers, clients,

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30. *Id.* (“The mindful lawyer can recognize where the desire to ‘win,’ to be right, or to stand on principle, can lead both lawyer and client astray, and where what looks like compromise can serve the greater good of the client and the community.”).

31. *Id.* at 2128.

32. *Id.* (“Buddhism urges its followers to recognize suffering as part of the human condition; to work to reduce needless suffering; and to bear witness to the suffering that cannot be avoided.”).

33. *Id.* at 2128–29.

34. *Id.* at 2129 (urging that a lawyer “be transparent and explicit about the role she will play from the beginning of a relationship”).

35. *Id.*; see also PROGRESSIVE LAWYERING, GLOBALIZATION AND MARKETS: RETHINKING IDEOLOGY AND STRATEGY (Clare Dalton ed., 2007); Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891 (2008).

36. Harris, Lin & Selbin, *supra* note 15, at 2130.

37. *Id.*

and communities “connect small-scale and large-scale transformation”<sup>38</sup> and “practice responsibility as citizens and consumers.”<sup>39</sup>

Facilitating the small- and large-scale transformation of communities through cooperative, grassroots partnerships requires “enabling strategies” for citizen advocacy.<sup>40</sup> Such advocacy strategies break from traditional routines in order to experiment with alternative lawyer-client roles and relationships. Alternative practice roles and relationships reorganize traditional divisions of advocacy labor and reinvigorate historical narratives of citizenship. Vital to community-based movements, these variable roles and relationships overturn notions of lawyer moral nonaccountability, political neutrality, and natural or necessary movement leadership.<sup>41</sup>

Historical narratives of inner-city citizenship, particularly poor black citizenship, accentuate elements of individual deviance, family dysfunction, and neighborhood disorganization.<sup>42</sup> These generalized narratives depict a deep-seated, widespread state of dependency and helplessness.<sup>43</sup> Citizenship narratives, in contrast, emphasize the qualities of competence, independence, self-sufficiency, and solidarity.<sup>44</sup> Those qualities form the basis for a powerful “alternative vision” of client community, even when conceding its economic vulnerability.<sup>45</sup> To be sure, the narratives present only a partial description of a fuller, more complex, and often contradictory social reality. Yet, however contingent and indeterminate, they provide a

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38. *Id.* EBCLC lawyers remark:

Right action and right interaction with others are paths of mindful lawyering: seeking neither victory nor defeat; getting caught up in neither wild optimism that the revolution is just around the corner nor the despair that all is hopeless; caring for others without attempting to make everything about us; doing the day-to-day work of lessening needless suffering; and witnessing the suffering that is an inherent part of being alive.

*Id.* at 2130–31.

39. *Id.* at 2131 (“Community lawyers must work in the here and now, but the ultimate direction of change must be toward economic analyses that value both greater efficiency *and* equity; economic practices and institutions that foster trust and good faith rather than greed and selfishness; and measures of well-being that take health and happiness, not just wealth, seriously.”).

40. Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769, 828 (1992).

41. *See id.* at 836–37.

42. *Id.* at 778–79, 794 n.114.

43. *Id.* at 835.

44. *Id.* at 828–32.

45. *Id.* at 829–32.

useful counterpoint from which to organize and mobilize legal-political community campaigns for self-help and neighborhood improvement.<sup>46</sup>

The citizenship narratives of neighborhood self-help and improvement help rediscover and recover the suppressed productive capabilities of poor communities. Displayed in the work of church ministries, street-level nonprofit organizations, and small entrepreneurial businesses, the productive capabilities of communities rework standard divisions of advocacy labor for lawyers and clients. That labor includes interviewing, counseling, and negotiation as well as fact investigation, policy research, and financial planning.<sup>47</sup> Redefining and reorganizing the labor of advocacy to affirm and strengthen independent client and community capabilities denaturalizes the role of lawyer leadership<sup>48</sup> and personalizes the client's power to make legal-political judgments.<sup>49</sup> Redivisions of labor extend to both task definition and execution in the tactics of citizen advocacy, even when such reorganization limits the role of the lawyer "to more confined, technical functions where specialized knowledge is indispensable."<sup>50</sup> Tied to private and public networks of social power, for example among ministers, tenants, and homeowners, advocacy tactics oftentimes grow increasingly collaborative.<sup>51</sup> The interwoven relationships of the lawyer to these three levels—to her own self and her clients, to community stakeholders, and to social justice movements—create opportunities for the cultivation of spirituality inside and outside the secular community of law and politics.

### *B. Spirituality and Community*

Spirituality informs the pedagogy of community and public citizenship.<sup>52</sup> Tom Shaffer finds spirituality embodied in the practice of

46. *See id.* at 832–35.

47. *Id.* at 840–44.

48. *Id.* at 839 (“Denaturalization tactics call for the lawyer to renounce her professional claims of insight concerning client capabilities and, to a lesser extent, juridical—legislative, administrative, and judicial—conduct.”).

49. *Id.* at 837–40 (“Personalization tactics . . . return the power of making judgments and predictions to the client.”).

50. *Id.* at 846 (“Functional lawyer confinement offers clients greater room to exercise independence and competence.”).

51. *See id.* at 844–48.

52. On spirituality in legal education and legal advocacy, see Deborah J. Cantrell, *What's Love Got to Do with It?: Contemporary Lessons on Lawyerly Advocacy from the Preacher Martin Luther King, Jr.*, 22 ST. THOMAS L. REV. 296 (2010); Calvin G.C. Pang, *Eyeing the Circle: Finding a Place for Spirituality in a Law School Clinic*, 35 WILLAMETTE L. REV. 241 (1999); Mary C. Scarlato & Lynne Marie Kohm, *Integrating Religion, Faith, and Morality in Traditional Law School Courses*, 11

reconciliation.<sup>53</sup> In contrast to the adversary tradition of the lawyer as the instrument or “champion” of a client and the accompanying functional notion of “advocacy as a form of private warfare—a crusade for rights,” the practice of reconciliation offers an alternative vision of moral community and legal discourse.<sup>54</sup>

Shaffer concedes that reconciliation occupies an important place in the adversary tradition. From the “top down” standpoint of that tradition, he explains, the “courtroom battle” serves as the model for advocacy both in avoiding and initiating litigation.<sup>55</sup> From the “bottom up,” by comparison, Shaffer’s conception of a “peaceful life in groups” supplies a competing model for advocacy, a model that operates outside the courtroom as a form of reconciliation among individuals and groups.<sup>56</sup> This kind of conciliatory advocacy reconciles the advocate not only “with those whose champion he proposes to be” but also “with his hearers.”<sup>57</sup> Put differently, it is a form of advocacy that “reconciles the person whose cause is advocated with the persons who hear advocacy.”<sup>58</sup> Further, “it reconciles people who are, seen from the top down, at war with one another.”<sup>59</sup>

To Shaffer, advocacy from the “bottom up,” coupled with the practice of reconciliation, “brings to communities a new sense of those the community neglects.”<sup>60</sup> Advocacy waged on behalf of the neglected, Shaffer contends, “seeks to make things better” through “moral discourse.”<sup>61</sup> Typical of local or institutionally specific reform campaigns, advocacy-as-reconciliation functions “as a form of moral witness,” pursued at times in the broad “name of justice” and at other

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REGENT U. L. REV. 49 (1998); Lucia Ann Silecchia, *Integrating Spiritual Perspectives with the Law School Experience: An Essay and an Invitation*, 37 SAN DIEGO L. REV. 167 (2000); Melanie D. Acevedo, Note, *Client Choices, Community Values: Why Faith-Based Legal Services Providers Are Good for Poverty Law*, 70 FORDHAM L. REV. 1491 (2002).

53. SHAFFER, *supra* note 1, at 111–12; *see also* THOMAS L. SHAFFER WITH MARY M. SHAFFER, AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION 196–217 (1991) [hereinafter SHAFFER, AMERICAN LAWYERS] (discussing the community of the faithful); THOMAS L. SHAFFER, FAITH AND THE PROFESSIONS 28–38 (1987) (discussing lawyer character in community, moral theology, and professional virtue).

54. SHAFFER, *supra* note 1, at 111–12 (“Advocacy is largely, in fact, the practice of reconciliation.”).

55. *Id.*

56. *Id.* at 111.

57. *Id.* at 112.

58. *Id.* at 111–12.

59. *Id.*

60. *Id.* at 112.

61. *Id.*

times in the narrower interests of some segment of the community.<sup>62</sup> Shaffer links reconciliation-directed advocacy to the values of “goodness” and “interpersonal harmony,” rather than to the general interests of the public or to a single, universal cause.<sup>63</sup>

Shaffer’s concept of goodness extends to both the privileged and the subordinated, that is to both power brokers and powerless clients. Goodness in this inclusive sense permits advocates to appeal “not to power but to conscience,” and in doing so “to reconcile people rather than defeat them.”<sup>64</sup> The appeal to conscience is fundamental to Shaffer’s analysis. He notes that appeals “to authority, to profit, and to secondary values such as order,” or simply to power, “are effective or not without regard to the conscience of the decision maker.”<sup>65</sup> Contrasting appeals to conscience, however, “are concerned with primary values,” for example, “the conversion of the decision maker— with his goodness,”<sup>66</sup> a reconciliation of intrinsic value and the self.

For Shaffer, lawyer practitioners of reconciliation espouse a sense of moral advocacy, a sensibility that gives rise to the instant pedagogy of community and public citizenship.<sup>67</sup> Shaffer observes that such advocacy, by its very nature, makes moral claims deduced from moral principles.<sup>68</sup> Although the claims and principles contain legal as well as moral content, he maintains that “their force in law is consequential to their moral force.”<sup>69</sup> In this way, they carry “prophetic” significance.<sup>70</sup> Advocates of moral claims, Shaffer remarks, “also seem to be prophetic in that they do not mind being irritators.”<sup>71</sup> The very decision “to take the risk of irritation,” he adds, is “characteristic of the prophet.”<sup>72</sup>

To the extent that the moral discourse of reconciliation “binds together the hearer, the advocated, and the advocate,” Shaffer argues, it “tends more to the development of a compassionate community” in terms of “the things that make for peace and build up the common life.”<sup>73</sup> This community orientation encourages advocates “to look beyond the group, and even beyond the state” in addressing various

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62. *Id.*

63. *Id.*

64. *Id.* at 113.

65. *Id.*

66. *Id.*

67. *See id.* at 113–14.

68. *Id.* at 114.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 131 (quoting *Romans* 14:19).

“decision makers and wielders of power.”<sup>74</sup> Likewise directed toward decision makers and power brokers, the adversary discourse of traditional litigation and negotiation, for Shaffer, involves competing “ideals of dignity, image, influence, and survival in the professional group, the legal profession.”<sup>75</sup> That professional focal point “emphasizes uprightness, respectability, and moral independence in individual practitioners,” elevating client “loyalty” to the level of a “governing ethical principle” and diminishing “faithfulness as a virtue.”<sup>76</sup> Differentiated by role and self-image, the moral advocate “identifies” with the “goodness” and intrinsic “moral claims” of the client.<sup>77</sup>

Shaffer reasons that an advocacy stance of “moral discourse reconciles advocate to client, advocate to those who listen to advocacy, and those who hear advocacy to the client.”<sup>78</sup> Discourse-driven reconciliation emerges “by exalting care over professionalism, through arguing to the consciences of those it addresses, and through arguing from the persons of those whose cause is advocated.”<sup>79</sup> The discourse of reconciliation, Shaffer asserts, “also radiates into the community,” in fact “into consideration of social justice” itself.<sup>80</sup> This extension, he continues, stems from the distinctive features of moral discourse.<sup>81</sup> From the outset, the moral discourse of reconciliation speaks to “interpersonal” relationships.<sup>82</sup> Furthermore, the discourse of reconciliation advances “from the person of the client”<sup>83</sup> and addresses “the conscience of those who hear it.”<sup>84</sup> Finally, reconciliation discourse “binds the community together” in moral terms.<sup>85</sup>

For Shaffer, the starting point of an advocacy stance cast as “moral discourse” is “the person of the client.”<sup>86</sup> Shaffer ties the mission of advocacy to “the unique personality of the client.”<sup>87</sup> In effect, advocacy offers “that unique personality up as its strongest

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74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 127 (“It reconciles those otherwise seen to be at war.”).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 128.

argument.”<sup>88</sup> Led by this logic, a practitioner of reconciliation “advocates a person more than a cause.”<sup>89</sup> Shaffer distinguishes this purposive starting point from the preliminary task of self-examination for the moral advocate. As a threshold matter, he urges advocates “to cultivate an examination of conscience,” a form of self-scrutiny that contemplates the codes and consensus of professional community yet reserves the moral discretion to overstep the “bounds” of professional regulation, even when such rule-breaking serves to “annoy” community “governors.”<sup>90</sup>

Concentration on “service to the person” in moral discourse “radiates into the community,” according to Shaffer, “because it is interpersonal, because it argues from the person of the client, because it is addressed to the conscience, and because it seeks reconciliation rather than victory.”<sup>91</sup> Service by means of “moral discourse” and reconciliation, Shaffer cautions, neither acquiesces to power nor works “to justify itself in terms of power.”<sup>92</sup> Fairly seen, his “ideals” of moral discourse and service “share a tendency to reconciliation and disdain a tendency to support for power, professional honor, and protected membership in a protected group.”<sup>93</sup> Discourse on this view is “an interpersonal thing—a thing grounded in the person of the client, a plea to conscience, and a form of reconciliation” applicable to communities as a whole.<sup>94</sup>

To Shaffer, “the lawyer is an expert on communities, and an expert particularly in his coming to understand the fact that the community is sinful and tragic.”<sup>95</sup> Both sin and tragedy arise out of “what is inevitable about communities: They kick people out.”<sup>96</sup> Communities in this sense “are exclusive and cruel.”<sup>97</sup> Shaffer envisions “a lawyer as the representative of those who bear the burden of the community’s sin and tragedy.”<sup>98</sup> Still, he acknowledges,

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88. *Id.*

89. *Id.*

90. *Id.* at 127–28 (“When the community says we are overstepping our bounds . . . we are probably doing something right.”).

91. *Id.* at 132.

92. *Id.*

93. *Id.* at 133.

94. *Id.*

95. *Id.* at 217.

96. *Id.* at 223 (“In this sense the Christian community, the church—and, by metaphor, the benign communities we lawyers have and sustain—are contradictions.”).

97. *Id.* at 218 (“A benign community—‘community of believers,’ say, or ‘Christian community’—is a contradiction; it is, in the most radical sense, impossible.”).

98. *Id.* at 217.

communities “are entitled to hope.”<sup>99</sup> Community-based hope comes from “two or three” lawyers, clients, or ordinary citizens “acting together” to form a makeshift church, whatever the size of the congregation.<sup>100</sup> The task for practitioners of reconciliation is to act “in some collective way, to reach out and rescue the necessary, tragic victims of community.”<sup>101</sup>

Shaffer notes the contradiction confronting advocates in seeking to build or recover moral community “and at the same time practice rescue operations that undermine the community’s ability to stand for something.”<sup>102</sup> This contradiction posits the tragedy of impoverished inner-city communities undergoing commercial and residential gentrification and displacement.<sup>103</sup> When “it is not possible for a community to proclaim its values and at the same time to minister to those whose rejection is the language the community uses to proclaim the values,” Shaffer observes, “then the community has come upon its tragedy.”<sup>104</sup> The “policies and structures, sound administration, correct teaching, and ethical thoroughness” lawyers contribute to communities, here in the form of economic development and urban preservation, he laments, “won’t relieve the tragedy of communities” or “solve the tragedy of exclusion.”<sup>105</sup> Only hope, Shaffer mentions, embodied in optimism<sup>106</sup> and truth,<sup>107</sup> can give meaning to the pain of tragedy sufficient to oppose and sometimes to triumph over power and privilege.<sup>108</sup>

From Shaffer’s standpoint, the signs of hope in a community arise from local acts of witness and legal-political defiance. To bear witness, Shaffer explains, is to “remind[] the world of its relative

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99. *Id.* at 218.

100. *Id.* (“[T]he church is a metaphor for communities such as law firms, civil communities controlled (as most of them are) by lawyers, and even voluntary associations in which lawyers work, as they think, for the public good.”).

101. *Id.* at 223.

102. *Id.*

103. *Id.* For a discussion of resistance to gentrification and displacement in inner-city communities, see Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008); John A. Powell & Marguerite L. Spencer, *Giving Them the Old “One-Two”: Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 HOW. L.J. 433 (2003).

104. SHAFER, *supra* note 1, at 224.

105. *Id.*

106. *Id.* (“[O]ptimism, in Christian communities of all kinds, is the promise of Jesus that he is with every two or three of us.”).

107. *Id.* (“[T]ruth is our understanding that the church, defined in this whenever-two-or-three-gather way, and so even the church including groups of lawyers, has to accept the fact that it is not possible to stand for something without causing pain.”).

108. *Id.*

powerlessness,”<sup>109</sup> and to engage in defiance is to “stand against worldly power.”<sup>110</sup> Both witness and defiance constitute acts of belief. In struggles over community economic development and preservation, the “primary witness” a faithful “believer” in any church or congregation may “give in the world of power is a witness of limitation.”<sup>111</sup> A believer will “stand against worldly power” as a “witness” to its own “limitation.”<sup>112</sup> This stance carves out an “operative theology for those who look at the law, and go into it, from the community of the faithful,” a legal-political “theology of hope and of faithful witness.”<sup>113</sup> The next Part seeks to meld EBCLC’s vision of mindfulness in advocacy and Shaffer’s theology of hope and faithful witness with the larger pedagogy of community and public citizenship into an outcome-based, rotation curricular model of legal education.

## II. CURRICULAR EXPERIMENTATION

To combine mindfulness in advocacy, the theology of hope, and the pedagogy of community and public citizenship into an outcome-based, rotation model of legal education requires the evaluation of innovative prescriptions for institution-wide, curricular reform. In recent work here in the *Wisconsin Law Review*, Drew Coursin announces a prescriptive call for curricular reform in a contemporary analysis of the legal services industry and legal education more generally.<sup>114</sup> This call emanates in part from widespread reports of a growing crisis inside the legal academy<sup>115</sup> and the profession,<sup>116</sup> and outside in regulatory bodies at state<sup>117</sup> and national<sup>118</sup> levels. The crisis

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109. *Id.* at 225.

110. *Id.*

111. *Id.*

112. *Id.*

113. SHAFFER, *AMERICAN LAWYERS*, *supra* note 53, at 217.

114. *See generally* Drew Coursin, Comment, *Acting Like Lawyers*, 2010 WIS. L. REV. 1461.

115. *See* Michael A. Olivas, *Ask Not for Whom the Law School Bell Tolls*, 2011-3 AALS NEWS (Ass’n of Am. Law Schools, Wash., D.C.), Fall 2011, at 1; *see also* Julie Margetta Morgan, *What Can We Learn from Law School? Legal Education Reflects Issues Found in All of Higher Education*, CENTER FOR AM. PROGRESS (Dec. 2011), [http://www.americanprogress.org/issues/2011/12/pdf/legal\\_education.pdf](http://www.americanprogress.org/issues/2011/12/pdf/legal_education.pdf).

116. *See* Richard A. Matasar, *Does the Current Model of Legal Education Work for Law Schools, Law Firms (or Anyone Else)?*, N.Y. ST. B. J., Oct. 2010, at 20; Richard A. Matasar, *The Viability of the Law Degree: Cost, Value, and Intrinsic Worth*, 96 IOWA L. REV. 1579 (2011).

117. *See* David Segal, *The Price to Play Its Way*, N.Y. TIMES, Dec. 18, 2011, at BU1.

118. *See* David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1; David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, July 17,

embroils legal education<sup>119</sup> and the legal services industry<sup>120</sup> in issues of short-term sustainability and long-term viability.

Changes in the culture and economics of the legal services industry, Coursin makes plain, have rendered a “monumental shift”<sup>121</sup> in the practice of law illustrated, for example, by the growth in lateral lawyer migration,<sup>122</sup> the emergence of multi-tier partnerships,<sup>123</sup> the increase in partner de-equitization and expulsion,<sup>124</sup> and the transformation of the structure of large law firms.<sup>125</sup> Despite industry efforts to “minimize” the effects of such changes,<sup>126</sup> he points out that marketplace trends have adversely impacted law students through the dissolution of national law firms, the deferment of first-year associates,

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2011, BU1; Eric Kelderman, *American Bar Association Takes Heat from Advisory Panel on Accreditation*, CHRON. HIGHER EDUC. (June 9, 2011) <http://chronicle.com/article/American-Bar-Association-Takes/127869/?key=SWgIlgU5ZXVKZnlqZj0UYD0AbH1tNxb2YnhNPnotblxREw%3D%3D>; see also Laurel S. Terry, *From GATS to APEC: The Impact of Trade Agreements on Legal Services*, 43 AKRON L. REV. 875 (2010); Laurel S. Terry, *The European Commission Project Regarding Competition in Professional Services*, 28 NW. J. INT'L L. & BUS. 1 (2009); Laurel S. Terry, *The Future Regulation of the Legal Profession: The Impact of Treating the Legal Profession as “Service Providers”*, 2008 J. PROF. LAW. 189.

119. See BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (forthcoming 2012); David Barnhizer, *Redesigning the American Law School*, 2010 MICH. ST. L. REV. 249; Michael A. Olivas, *Paying for a Law Degree: Trends in Student Borrowing and the Ability to Repay Debt*, 49 J. LEGAL EDUC. 333 (1999); Press Release, NALP, *Class of 2010 Graduates Faced Worst Job Market Since Mid-1990s: Longstanding Employment Patterns Interrupted* (June 1, 2011), available at <http://www.nalp.org/uploads/PressReleases/11SelectedFindings.pdf>; see also Philip G. Schrag & Charles W. Pruett, *Coordinating Loan Repayment Assistance Programs with New Federal Legislation*, 60 J. LEGAL EDUC. 583 (2011); Philip G. Schrag, *The Federal Income-Contingent Repayment Option for Law Student Loans*, 29 HOFSTRA L. REV. 733 (2001).

120. See John Markoff, *Armies of Expensive Lawyers, Replaced by Cheaper Software*, N.Y. TIMES, Mar. 4, 2011, at A1 (reporting on technology-driven restructuring of legal work); Catherine Rampell, *At Well-Paying Law Firms, a Low-Paid Corner*, N.Y. TIMES, May 23, 2011, at A1 (reporting on rise in domestic outsourcing).

121. Coursin, *supra* note 114, at 1467.

122. See generally William D. Henderson & Leonard Bierman, *An Empirical Analysis of Lateral Lawyer Trends from 2000 to 2007: The Emerging Equilibrium for Corporate Law Firms*, 22 GEO. J. LEGAL ETHICS 1395 (2009).

123. See William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. 1691, 1706 (2006).

124. See Anthony V. Alfieri, *Big Law and Risk Management: Case Studies of Litigation, Deals, and Diversity*, 24 GEO. J. LEGAL ETHICS 991, 1011–12 (2011).

125. See Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1882–85 (2008).

126. Coursin, *supra* note 114, at 1468–69 (“[Law firms have their] hands full managing their business and adjusting to difficult economic times.”).

the reduction in on-campus recruitment, the contraction of summer associate programs, and the decline in law firm compensation.<sup>127</sup> In the current economic environment, Coursin argues, “employers must focus on serving clients, and cannot waste resources on remedial education for new associates.”<sup>128</sup> Law schools, he insists, “must adapt” to this client-tailored focus, and law students in turn must learn “to make themselves useful and competitive as new practitioners.”<sup>129</sup> Professional adaptation—individual and institutional—hinges on the curricular history of legal education.

### A. The Curricular History of Legal Education

For Coursin, both law schools and law students confront barriers to market adaptation,<sup>130</sup> including the escalating cost of legal education,<sup>131</sup> the upsurge in outcome measures,<sup>132</sup> and the globalization of the legal profession.<sup>133</sup> Surprisingly, the highest barriers may rise out of the structure of legal education itself. Coursin describes the evolution of modern legal education from the English apprenticeship model of the eighteenth century to the university-based Langdellian case-dialogue model of the late-nineteenth century and, more recently, to the post-Carnegie Report experimentation of the late-twentieth century.<sup>134</sup> In the

127. *Id.* at 1468.

128. *Id.*

129. *Id.* at 1467–68; see Katherine Mangan, *Law Schools Are Urged to Focus More on Practical Skills and Less on Research*, CHRON. HIGHER EDUC. (Jan. 9, 2011), <http://chronicle.com/article/Law-Schools-Are-Urged-to-Focus/125902/>; Katherine Mangan, *Law Schools Revamp Their Curricula to Teach Practical Skills*, CHRON. HIGHER EDUC. (Feb. 27, 2011), <http://law.wlu.edu/deptimages/news/thirdyearchronicle.pdf>; Karen Sloan, *Reality’s Knocking: Down Economy Pushes Law Schools to Focus More on Practical Training*, NAT’L L.J. (Sept. 14, 2009), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202433723740&slreturn=1&hbxllogin=1>; Rachel M. Zahorsky, *Law School Rank and Class Year Take Back Seat to Practical Skills in 2010*, A.B.A. J. (Jan. 7, 2010, 11:01 AM), [http://www.abajournal.com/news/article/law\\_school\\_rank\\_and\\_class\\_year\\_take\\_back\\_seat\\_to\\_practical\\_skills\\_in\\_2010](http://www.abajournal.com/news/article/law_school_rank_and_class_year_take_back_seat_to_practical_skills_in_2010).

130. Coursin, *supra* note 114, at 1468–69.

131. See Andrew P. Morriss & William D. Henderson, *The New Math of Legal Education*, YOUNG LAW., July 2008, at 1.

132. See Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S.* News & World Report *Law School Rankings*, 83 IND. L.J. 791, 794–95 (2008).

133. See William D. Henderson, *The Globalization of the Legal Profession*, 14 IND. J. GLOBAL LEGAL STUD. 1, 2 (2007).

134. Coursin, *supra* note 114, at 1470–75. For a more detailed historical survey, see Anthony V. Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1076–78 (2009).

Langdellian pedagogy still dominant within modern legal education, he discerns a “mostly theoretical model” rooted in scientific realism and doctrinal formalism, a model that discounts experiential learning and the development of practical professional skills in classroom and clinical environments.<sup>135</sup>

Coursin seeks to cure this curricular omission and mitigate the adverse impact of persistent turmoil in the legal services industry by integrating more experiential skills training into the three-year regimen of legal education.<sup>136</sup> He traces the origins of this integrative effort to the ABA’s 1979 Cramton Report<sup>137</sup> and the 1992 MacCrate Report.<sup>138</sup> The Cramton Report emphasized the cultivation of critical thinking and problem-solving skills.<sup>139</sup> Likewise, the MacCrate Report stressed the development of problem-solving abilities and the improvement of legal research,<sup>140</sup> communication, and negotiation skills.<sup>141</sup> More comprehensive, the 2007 Carnegie Report urged the integration of practical skills and professionalism training throughout the law school curriculum, especially the encouragement of ethical judgment, interpersonal communication, and civic commitment.<sup>142</sup>

Coursin traces post-Carnegie innovations in legal education across the curriculum, for instance at the U.C. Irvine School of Law where first-year students learn early lessons about the history of the legal profession,<sup>143</sup> and at Washington & Lee School of Law, where third-year students receive intensive, practical skill instruction through clinical simulations and small-group practicums.<sup>144</sup> Coursin views traditional ABA accreditation standards as “roadblocks to change” in the movement toward more experiential education, noting that current

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135. Coursin, *supra* note 114, at 1470. *See generally* STEPHEN M. FELDMAN, *AMERICAN LEGAL THOUGHT FROM PREMODERNISM TO POSTMODERNISM: AN INTELLECTUAL VOYAGE* (2000); BRUCE A. KIMBALL, *THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C. C. LANGDELL, 1826–1906* (2009); ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983).

136. Coursin, *supra* note 114, at 1463 (“Law students spend too much time learning how to think like lawyers, and not enough time learning how to apply that thinking.”).

137. *Id.* at 1471.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 1471–72.

142. SULLIVAN, *supra* note 4, at 126–28; James R. Maxeiner, *Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method*, 35 INT’L J. LEGAL INFO. 1, 3 (2007).

143. Christopher Tomlins, *What Would Langdell Have Thought? UC Irvine’s New Law School and the Question of History*, 1 U.C. IRVINE L. REV. 185–86 (2011).

144. Coursin, *supra* note 114, at 1472–73.

ABA accreditation requirements fail to require mandatory clinical legal education.<sup>145</sup> At the same time, he acknowledges progress in the measurement of “Learning Outcomes” and the incorporation of “skills-based learning into existing curricula.”<sup>146</sup> In this respect, consider his outcome-based, rotation model of curricular reform.

*B. An Outcome-based, Rotation Model of Legal Education*

Coursin’s account of curricular reform offers an outcome-based, rotation model of adaptable, practical-skills training in legal education. His account posits both “the necessity and feasibility of reform,” endorsing medical education as an alternative teaching framework and experiential learning model.<sup>147</sup> Coursin observes: “Medical education, unlike legal education, incorporates extensive experiential learning techniques into its teaching methods,” adding that “students learn in classroom and lab settings their first two years, then move into clinical environments their third and fourth years.”<sup>148</sup> He mentions in particular the opportunities for students to “rotate through various specialties, including pediatrics, obstetrics and gynecology, internal medicine, and surgery,” and to “participate in hands-on learning experiences, which hone their practical skills and expose them to possible career choices.”<sup>149</sup>

Expanding upon that framework, the legal rotation model teaches students not only *how* to “think like lawyers” but also *how* to “act like lawyers.”<sup>150</sup> Broadly applicable, the model interlaces the assessment, preparation, and training of first-, second-, and third-year law students. Assessment includes ongoing feedback, skill-component grading, and outcome measures of practical skill mastery. Preparation entails initial and continuing semester-long and summer orientation. Training encompasses the case-dialogue method, classroom and clinical rotations, and advanced, residency-like apprenticeships. The initial work of assessment, preparation, and training begins in the curricular infrastructure of the first year of law school.

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145. *Id.* at 1474.

146. *Id.* at 1475–76.

147. *Id.* at 1461.

148. *Id.* at 1466 (footnotes omitted).

149. *Id.* (footnotes omitted).

150. *Id.* at 1462–63 (footnotes omitted).

*C. Curricular Infrastructure and the First Year*

Coursin comments that the curricular form and feasibility of a legal rotation model rests on law school institutional adaptability to infrastructure change in scheduling, assessment, and communication.<sup>151</sup> Derivative of the now-standard medical school paradigm, the legal rotation model combines traditional doctrinal instruction, classroom-based skills training, and tripartite (faculty, student, and placement supervisor) mentoring in accordance with block scheduling and variable-length class modules.<sup>152</sup> Coursin gleans outcome-based objectives from the practices of modern medical education as a means of assessing student curricular progress.

In the field of medical education, he notes, “students learn essential skills as early as the first two years of school.”<sup>153</sup> When students reach the third and fourth years, they “embark on a series of specialized rotations designed to instill practical proficiency through hands-on learning.”<sup>154</sup> For Coursin, outcome-based reporting across the curriculum “benefits medical education by reinforcing the importance of hands-on learning.”<sup>155</sup> He points, for example, to the practical benefits of student “rotations through residency” in building on the classroom “fundamentals” of years one and two and in facilitating the transition to practice in years three and four.<sup>156</sup> Rotations, he remarks, enable students to “observe and work alongside more experienced physicians in various specialties,” and moreover, to “receive feedback from supervisors and take written and hands-on exams to gauge their ability to demonstrate the skills they acquire during rotations.”<sup>157</sup> Under this common apprenticeship model of clinical rotations, grades rest “on medical knowledge, communication skills and professionalism, and ability to perform essential techniques.”<sup>158</sup> Under this engrafted model, first-year law students would acquire a basic knowledge of the profession and essential practice skills, second-year students engage in clinical and simulation-based rotations, and third-year students participate in advanced clinical rotations or residency apprenticeships.<sup>159</sup>

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151. *Id.* at 1470.

152. *Id.* at 1479–85.

153. *Id.* at 1476.

154. *Id.*

155. *Id.* at 1478.

156. *Id.* at 1478–79.

157. *Id.* at 1479–80 (footnotes omitted).

158. *Id.* at 1480 (footnote omitted).

159. *Id.* at 1478–80.

To enhance student understanding of the practice of law in live-client and simulated settings, Coursin urges the adoption of a three-mentor, tripartite system. Introduced during first-year orientation, the three-mentor system assigns each incoming student a faculty member, an upper-level student, and a practicing attorney.<sup>160</sup> Faculty mentors advise on matters of “curriculum, the educational process, and expectations for performance.”<sup>161</sup> Upper-level student mentors connect first-year students “to like-minded peers and experienced law students who can help minimize the difficulty of the transition to law school.”<sup>162</sup> Practitioner mentors supply “students with some sense of the legal profession” at large.<sup>163</sup> Coursin speculates that “introducing mentors to students early in law school may inspire those students to seek out similar relationships after they graduate”<sup>164</sup> and thereby strengthen the bonds of law firm ethical culture.

In addition to multilayered mentoring systems, Coursin recommends the implementation of curricular block scheduling and variable-length class modules. The flexibility of block scheduling and class modules, he contends, “allows schools to teach courses in appropriate time frames” and “mimics the real world experience of overlapping tasks and staggered deadlines.”<sup>165</sup> Elasticity in first-year scheduling, he maintains, “prepares students for the pace and timetable of the upper-class rotations,” including winter-intercession periods.<sup>166</sup> Class modules, he continues, make the first year a “dynamic” experience, effectively “changing the pace of law school and reinforcing the importance of adaptation to diverse schedules.”<sup>167</sup> To further enrich the first-year and upper-level experiences, Coursin mentions the availability of extracurricular learning opportunities and new educational techniques outside the classroom via “workshops, listening sessions, and presentations that expand on the goals, techniques for success, and desired outcomes of the law school process.”<sup>168</sup>

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160. *Id.* at 1482.

161. *Id.* at 1483.

162. *Id.* (footnote omitted).

163. *Id.* (footnote omitted).

164. *Id.* Coursin remarks: “Institutions implementing the legal rotations model work closely with their local ABA Young Lawyers Division to set up the mentoring relationships.” *Id.* (footnote omitted).

165. *Id.* at 1484–85.

166. *Id.* at 1485.

167. *Id.* at 1484.

168. *Id.* at 1485 (citing *Workshops*, U. WIS. L. SCH., <http://www.law.wisc.edu/academicenhancement/workshops.html> (last visited Oct. 31, 2010)).

Coursin puts forward an elaborate process of assessment to evaluate student performance inside and outside the classroom. The assessment process involves ongoing feedback and component grading that together appraise “students’ work on numerous skills-based assignments” across a range of litigation and transactional exercises.<sup>169</sup> Coursin comments that “professors hesitate to deviate from the single-exam system, in part because large class sizes prevent them from grading more than one exam per student, and the general lack of teaching assistants who are qualified to assess students’ work.”<sup>170</sup> He attributes such hesitation to the fact that “professors’ career advancement depends on their publication output, sometimes at the expense of their teaching”; hence, he urges law schools adopting the legal rotations model “to encourage deeper focus on instruction by relaxing institutional publication requirements.”<sup>171</sup>

That process of dialogue, he asserts, affords students “more detailed feedback on [their] skills progression” and enables “students to make necessary improvements and adapt to the rigors of law school.”<sup>172</sup> Consistent with the upper-level sequence of skills-based assignments, Coursin intersperses longitudinal feedback throughout every rotation that gauges professional growth and acquisition of skills like empathy, interpersonal communication, client counseling, and overall professionalism.<sup>173</sup> Additional, simulation-specific skill sets include legal writing, problem solving, and oral communication.<sup>174</sup>

Experiential, skill-related dialogue pervasively informs the outcome-based, rotation model of learning. For Coursin, the nature of in-house and simulation-oriented learning in legal rotations necessarily varies in focus and scope depending on their reliance on “real client interaction and clinical field experience.”<sup>175</sup> He envisions such legal rotations continuing through summer programs designed to help first year students “maintain their intellectual momentum . . . and prepare to enter their rotations.”<sup>176</sup> Summer programs may be “freestanding” (internal to the law school) or “cooperative” (external to the law school) in institutional affiliation and structure.<sup>177</sup> He next turns to the

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169. *Id.* at 1486. Coursin notes that “[t]he failure of a single exam lies in its unreliability and inability to gauge students’ skills in practical situations.” *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* at 1494.

174. *Id.*

175. *Id.* at 1488.

176. *Id.* at 1487.

177. *Id.*

process of curricular transition and the implementation of upper-level rotations.

#### *D. Curricular Transition and Upper-Level Rotations*

Coursin highlights the importance of facilitating law student transition from first-year summer programs to upper-level rotations. To plan for this transition, he proposes “an intensive orientation” period organized prior to the second year.<sup>178</sup> Tailored to “hands-on” preparation, the orientation combines group meetings, consultation with administrators and faculty mentors, and student-to-student “check-in sessions” to affirm learning goals and continuity of commitment.<sup>179</sup>

Upper-level rotations channel students into clinical and simulation-based pathways. Both “incorporate practical skills training, legal scholarship, and exposure to various career paths.”<sup>180</sup> Coursin fashions his dual rotations to be variable in length, narrow in scope, and intensive in skill content.<sup>181</sup> Moreover, he situates the rotations in a “strong mentoring relationship between students and practitioners” that expands out to link students and faculty to the local bar and bench, including for-profit and nonprofit law firms, courts, and government entities.<sup>182</sup> Linkages of this sort, he reasons, draw social capital from existing relationships with clinical placement supervisors to create a “network” of partnerships.<sup>183</sup>

The partnership network Coursin imagines enables practicing lawyers to serve as “instructors and chief points of contact for each rotation.”<sup>184</sup> The diversity of this placement network, according to Coursin, also permits students to deliver “legal services to clients with specific needs” and thus “acquire a more mature perspective on empathy, professional responsibility, and the role of lawyers in society.”<sup>185</sup> Although he concedes that alternate, simulation-based rotations lack live-client interaction, Coursin comments that faculty in

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178. *Id.* at 1488.

179. *Id.* at 1488. Coursin also recommends that “students in rotations also attend two or three full-day in-services at the law school, which allow administrators and students to discuss their experiences as they happen.” *Id.* at 1489.

180. *Id.*

181. *Id.*

182. *Id.* at 1490.

183. *Id.*

184. *Id.* at 1491 (“A supervising attorney oversees each rotation, along with various junior attorney instructors and a faculty advisor to act as a liaison between the institution, students, and practitioners.” (footnote omitted)).

185. *Id.* at 1491–92. Coursin concludes that “[t]he legal rotations model depends on unifying the interests of students, educators, administrators, and practitioners alike.” *Id.* at 1492.

fact “play a more active role in course planning and instruction,” effectively controlling the learning process “to hone students’ skills in standardized ways.”<sup>186</sup>

To his credit, Coursin enlarges his projected outcome-based, legal rotation model to engage third-year law students during their “critical” summer experience and final two-semester academic experience.<sup>187</sup> Infused with “a practical mindset,” the model offers third-year students both residency and two-semester advanced rotations.<sup>188</sup> Residency rotations place students “directly with legal employers in firms and other entities,” where they serve as full-time “apprentice associates under the supervision of local practicing attorneys” while retaining their law school affiliation for purposes of orientation, in-service days, and course credit.<sup>189</sup> Once hired,<sup>190</sup> supervising residency attorneys function as “the primary assessors of student progress,” providing constant feedback and skill assessment.<sup>191</sup>

By comparison, Coursin remarks, advanced rotations place students in “law school or in clinical externship settings” where they may pursue complex “practical skills mastery.”<sup>192</sup> In this way, he observes, students enjoy “a significant increase in their opportunities to apply lawyering skills in real world situations.”<sup>193</sup> Skill assessment in advanced rotations involves “thorough, individualized feedback” on the “strengths, weakness, and personal skills development” of individual students.<sup>194</sup> Basic to such character and skills development, the pedagogy of community and public citizenship—including the components of mindfulness in advocacy and the theology of hope and faithful witness discussed in Part I—challenges conventional notions of lawyer role and function in the adversary system. The next Part assesses the normative compatibility of the pedagogy of community and public citizenship with the standard advocacy of adversarial contest within liberal democratic systems.

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186. *Id.* at 1493.

187. *Id.* at 1495.

188. *Id.*

189. *Id.* at 1495–96 (“The practitioners invest time and money training the students, and receive the equivalent of first-year associate work product at a steeply discounted rate, given that students in the legal rotations model do not receive a salary for their work.”).

190. *Id.* at 1496 (“Applicants go through a hiring process that includes submitting credentials to various legal employers, interviewing with prospective supervisors, and possibly matching with a firm, judge, or other legal practitioner.” (footnote omitted)).

191. *Id.* at 1496–97.

192. *Id.* at 1495, 1498.

193. *Id.* at 1498.

194. *Id.*

## III. NORMATIVE COMPATIBILITY

*Lawyers who come into the courthouse (and law office) from the community of the faithful do not, finally, depend on the law to encourage them to do what they can in and with the law.*<sup>195</sup>

Evaluation of the pedagogy of community and public citizenship in terms of its compatibility with the conventional notions of lawyer role and function, and by extension the historical traditions of legal education and the current organization and economics of the legal services industry, requires grounding in the jurisprudence of the lawyering process and the adversary system. Brad Wendel's well-developed account of the lawyer role and function provides such a foundation for the elaboration of a broader jurisprudence of advocacy and ethics.<sup>196</sup> Widely known for his work on law and morality in liberal democratic societies,<sup>197</sup> Wendel advances a theory of legal advocacy and ethics rooted in a "fidelity to law" conception of lawyer obligation.<sup>198</sup>

A. *Fidelity to Law in Advocacy and Ethics*

The "fidelity to law" conception of advocacy relies on a positive-law claim of political legitimacy defined by the arrangements—respect and allegiance—of citizenship.<sup>199</sup> For Wendel, political legitimacy mediates "state power" through "democratic law-making and the rule of law."<sup>200</sup> Mediation safeguards citizens under a politics of law independent "of ordinary morality and substantive justice."<sup>201</sup> On this

195. SHAFFER, AMERICAN LAWYERS, *supra* note 53, at 217.

196. W. BRADLEY WENDEL, LAWYERS AND FIDELITY TO LAW (2010).

197. See W. Bradley Wendel, *Legal Ethics as "Political Moralism" or the Morality of Politics*, 93 CORNELL L. REV. 1413 (2008); W. Bradley Wendel, *Legal Ethics and the Separation of Law and Morals*, 91 CORNELL L. REV. 67 (2005); Alice Woolley & W. Bradley Wendel, *Legal Ethics and Moral Character*, 23 GEO. J. LEGAL ETHICS 1065 (2010).

198. For a more comprehensive treatment of the "fidelity to law" conception written earlier this year, see Anthony V. Alfieri, *Fidelity to Community: A Defense of Community Lawyering*, 90 TEX. L. REV. 635 (2012) (reviewing WENDEL, *supra* note 196); see also William H. Simon, *Authoritarian Legal Ethics: Bradley Wendel and the Positivist Turn*, 90 TEX. L. REV. 709 (2012) (reviewing WENDEL, *supra* note 196).

199. WENDEL, *supra* note 196, at 2, 7, 11, 47; see also Alfieri, *supra* note 198, at 640.

200. WENDEL, *supra* note 196, at 2; see also Alfieri, *supra* note 198, at 640.

201. WENDEL, *supra* note 196, at 2, 7, 11, 47; see also Alfieri, *supra* note 198, at 640.

analysis, “fidelity to [the] law” is the highest value in advocacy and ethics.<sup>202</sup>

To Wendel, law demarcates the force of “raw power” from the “reason-giving” judgment of legality in public deliberations of rights and entitlements.<sup>203</sup> When “conferred by society” and “political community,” these ordered judgments elevate process over preferences and desires.<sup>204</sup> Procedural fairness gives “political legitimacy” to such judgments, he contends, without necessary reference to “ordinary morality.”<sup>205</sup> Legitimacy erodes, however, when outcomes fail to satisfy widely held, instrumental norms of justice. In such circumstances, he adds, lawyer-counseled moral dissent and political protest may ensue in spite of the ethical duty to respect the law.<sup>206</sup>

Obedience to law in a “democratic political order,” Wendel asserts, fosters civic “peace and stability” through public and private dispute-resolution procedures.<sup>207</sup> Accessible, settlement-promoting procedures for cooperative action, he proclaims, reinforce the legitimacy of positive law systems separate and apart from considerations of ordinary morality and “substantive justice.”<sup>208</sup> By discounting “considerations of morality and justice,” Wendel seeks to insulate good-faith claims of right or “entitlement, political legitimacy, and procedural legality” from “normative criticism.”<sup>209</sup>

Wendel’s normative defense of legal systems under liberal democratic regimes extends to a battery of institutions, procedures, and professional roles.<sup>210</sup> These constituent forms and structures of law and legal relationships, he argues, encourage a diverse pluralism of interest and tolerate disagreement over value commitments in politics and society.<sup>211</sup> Pluralism and tolerance embody the coexistence and

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202. WENDEL, *supra* note 196, at 2, 26, 44, 49–50, 67, 71, 87, 89, 122–23, 168, 175, 178, 184, 191, 210; *see also* Alfieri, *supra* note 198, at 640.

203. WENDEL, *supra* note 196, at 2, 3, 119, 202; *see also* Alfieri, *supra* note 198, at 640–41.

204. WENDEL, *supra* note 196, at 2, 6, 14, 61, 123, 130, 160–61, 197, 265; *see also* Alfieri, *supra* note 198, at 641.

205. WENDEL, *supra* note 196, at 2, 9–10, 29, 56, 62, 120, 210; *see also* Alfieri, *supra* note 198, at 641.

206. WENDEL, *supra* note 196, at 2–3, 82, 107, 114–16; *see also* Alfieri, *supra* note 198, at 641–42.

207. WENDEL, *supra* note 196, at 4, 89, 91, 96–98; *see also* Alfieri, *supra* note 198, at 642.

208. WENDEL, *supra* note 196, at 4, 10, 26, 54, 87–89, 99; *see also* Alfieri, *supra* note 198, at 642.

209. WENDEL, *supra* note 196, at 4, 86, 122, 177; *see also* Alfieri, *supra* note 198, at 643.

210. *See generally* WENDEL, *supra* note 196.

211. *Id.*

cooperative fairness of citizenship typical of liberal governance and lawmaking.<sup>212</sup>

For Wendel, “abusers of the law” in advocacy and ethics depart from the norms of democratic governance, fair procedure, and political legitimacy.<sup>213</sup> They also split from the Standard Conception of legal advocacy and ethics manifested in the channeling principles of partisanship, neutrality, and moral nonaccountability.<sup>214</sup> Partisanship, Wendel explains, compels the lawyer to press his client’s interests “within the bounds of the law.”<sup>215</sup> Neutrality disassociates the lawyer from “the morality of the client’s cause” and any conduct undertaken in support of that cause.<sup>216</sup> Nonaccountability permits the lawyer to escape third-party censure as a defender of law breaking or wrongdoing.<sup>217</sup>

Wendel endorses the instrumental logic of the Standard Conception and its guiding principles for lawyers engaged to protect the legal entitlements, rather than the individual interests or preferences, of clients.<sup>218</sup> In this way, the attorney–client relationship simultaneously justifies and limits the lawyer’s role and power in society.<sup>219</sup> This notion of role-differentiated morality, and its implied institutional excuse for professional conduct that deviates from ordinary morality, narrows Wendel’s normative framework for the evaluation of lawyer roles and practices specifically in case-by-case situations (and systematically across institutions and fields).<sup>220</sup> That framework concentrates on the public or political role and function of the lawyer in maintaining and preserving the institutions of law and society, particularly judicial and legislative bodies.<sup>221</sup>

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212. WENDEL, *supra* note 196, at 5–6, 55, 92, 99, 101–02, 115; *see also* Alfieri, *supra* note 198, at 644.

213. WENDEL, *supra* note 196, at 5, 86–87; *see also* Alfieri, *supra* note 198, at 643.

214. *See* WENDEL, *supra* note 196, at 28–30; *see also* Alfieri, *supra* note 198, at 645.

215. WENDEL, *supra* note 196, at 6, 29; *see also* Alfieri, *supra* note 198, at 645.

216. WENDEL, *supra* note 196, at 6; *see also* Alfieri, *supra* note 198, at 645.

217. *See* WENDEL, *supra* note 196, at 6, 29–31; *see also* Alfieri, *supra* note 198, at 645.

218. *See* WENDEL, *supra* note 196, at 6, 31; *see also* Alfieri, *supra* note 198, at 645.

219. *See* WENDEL, *supra* note 196, at 6–7; *see also* Alfieri, *supra* note 198, at 645.

220. Alfieri, *supra* note 198, at 645–46; *see* WENDEL, *supra* note 196, at 7, 20, 23, 27, 122.

221. *See* WENDEL, *supra* note 196, at 7–8, 10, 18, 23, 26, 33–36, 48–49, 64, 84–85, 87, 90–92, 116–17, 131, 156–57; *see also* Alfieri, *supra* note 198, at 646–47.

Wendel attaches moral weight to the public role and function of lawyers.<sup>222</sup> This functional construction both animates and restricts the lawyer's agency role as an advocate of client legal rights and entitlements.<sup>223</sup> The centrality of rights and entitlements to Wendel's interpretation of the Standard Conception of legal advocacy and ethics demands genuine, lawyer good faith in litigation and transactional representation.

Faith in the legitimacy and seriousness of law shifts Wendel's analysis from an external evaluative stance of ordinary morality or injustice to an internal appraisal of infidelity to law.<sup>224</sup> Delineated by Wendel as a jurisprudential breach of faith, infidelity signals a lack of "respect" not only for the law, but also for the legal system as a whole.<sup>225</sup> That breach, he maintains, diminishes the "social achievement" of the law in liberal democratic societies, an achievement that renders the law "worthy" of citizen "loyalty" and lawyer devotion.<sup>226</sup>

Wendel links civic loyalty to the law to its social function in resolving empirical and normative controversy through processes of "reasoned settlement."<sup>227</sup> Settlement processes, he points out, involve cooperative action steered by a negotiation politics of tolerance, open debate, equal participation, and mutual respect.<sup>228</sup> To command legitimacy and garner authority, this politics, and its attendant procedures, must meet basic standards of fairness and respond to fundamental social needs.<sup>229</sup>

Systemic fairness and responsiveness, Wendel argues, give law and the legal system the capacity to mediate cultural and social disputes in a public domain governed by relative institutional autonomy and reason.<sup>230</sup> However artificial, for Wendel, the reason of law accrues

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222. See WENDEL, *supra* note 196, at 7; see Alfieri, *supra* note 198, at 646–47.

223. See WENDEL, *supra* note 196, at 8, 52–54, 115–17, 123–55; Alfieri, *supra* note 198, at 647–48.

224. Alfieri, *supra* note 198, at 648; see WENDEL, *supra* note 196, at 7–8, 115, 123, 128, 167–68.

225. WENDEL, *supra* note 196, at 9, 123, 132; see Alfieri, *supra* note 198, at 648.

226. WENDEL, *supra* note 196, at 9, 158; see also Alfieri, *supra* note 198, at 648.

227. WENDEL, *supra* note 196, at 9, 210; see also Alfieri, *supra* note 198, at 649.

228. See WENDEL, *supra* note 196, at 9–10, 18–19, 36, 54, 93, 98, 116, 129; see also Alfieri, *supra* note 198, at 649.

229. See WENDEL, *supra* note 196, at 9, 88, 92–96, 98–113; see also Alfieri, *supra* note 198, at 649–50.

230. See WENDEL, *supra* note 196, at 9–10, 96, 112; see also Alfieri, *supra* note 198, at 650.

“moral worth” in terms of social solidarity and cultural respect.<sup>231</sup> That accrued worth obviates the need for additional consideration of ordinary morality or substantive justice. Reason, he contends, instructs lawyer agents, shapes their institutional roles, and molds their system-wide practices, thus rendering their conduct morally respectable.<sup>232</sup>

To Wendel, the moral respectability and social utility of the lawyer within liberal democratic institutions contributes to political stability and the coexistence of interest groups in society.<sup>233</sup> Their reason-giving contribution comes in a professional capacity independent of “ordinary moral considerations.”<sup>234</sup> That independence, Wendel admits, in no way curbs the freedom of lawyers to oppose “unjust” laws through the well-settled procedures of litigation and law reform.<sup>235</sup> Yet, he cautions, in challenging unjust laws, lawyers must be careful to avoid “subverting” the law, its procedures, and its institutions.<sup>236</sup> In this respect, the obligation of fidelity to law restrains lawyers in advocacy, confining their claims to the legal rights and entitlements of clients.<sup>237</sup> Based on a commitment to politically prescribed roles and institutionally scripted functions, such a self-regulating constraint binds lawyers to the internal norms of law and legality without outside considerations of ordinary morality or substantive justice.<sup>238</sup> This fidelity-to-law imperative clashes with EBCLC’s competing commitment to mindfulness in advocacy and Shaffer’s theology of hope and faithful witness in the overall lawyering process.

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231. See WENDEL, *supra* note 196, at 10; see also Alfieri, *supra* note 198, at 650.

232. See WENDEL, *supra* note 196, at 10, 49–50, 85, 101; Alfieri, *supra* note 198, at 650.

233. See WENDEL, *supra* note 196, at 10, 98; Alfieri, *supra* note 198, at 650–51.

234. WENDEL, *supra* note 196, at 10, 158, 167–68; see also Alfieri, *supra* note 198, at 651.

235. WENDEL, *supra* note 196, at 11, 84, 123, 129; see also Alfieri, *supra* note 198, at 651.

236. WENDEL, *supra* note 196, at 11, 118, 132; see also Alfieri, *supra* note 198, at 651.

237. WENDEL, *supra* note 196, at 11–12; see also Alfieri, *supra* note 198, at 651 (“Narrowing the space available for the exercise of ordinary moral discretion in advocacy or counseling, he admits, deprives lawyers of the freedom to serve clients as ‘friends or wise counselors.’” (quoting WENDEL, *supra* note 196, at 11)).

238. See WENDEL, *supra* note 196, at 11, 34–37; Alfieri, *supra* note 198, at 652.

*B. Infidelity to Law in Advocacy and Ethics*

Contrary to Wendel, the pedagogy of community and public citizenship daily contemplates infidelity to law in ethics and advocacy. Fundamentally, the pedagogy demands a more normative vision of law school curricular reform. Moreover, it pleads for a renewed lawyer responsibility to enlarge economic justice. Further, it seeks to enhance participation in democratic community. In sum, it urges lawyers and their clients to collaborate in a wider legal-political enterprise of democracy promotion specific to underserved, inner-city neighborhoods segregated by concentrated poverty and differences of class, ethnicity, and race.

On its face, the “fidelity to law” conception of advocacy seems supportive, or at least not inconsistent, with the legal-political enterprise of democracy promotion. In fact, Wendel’s positive-law claim of political legitimacy, bolstered by public respect and allegiance, affirms the norm of citizenship. His notion that political legitimacy mediates state power through representative law making and the rule of law also seems amendable to the legal-political enterprise of upholding democracy. Here as elsewhere, the mediating force of legitimacy safeguards citizens under a politics of law, though ordinary morality and substantive justice may prove integral to that politics. For this reason, fidelity to the law may fall as the highest value in advocacy and ethics.

The legal-political enterprise of democracy promotion involves building and often recovering community through strategies of legal rights education, organization, and mobilization. Those strategies are familiar to liberal legalism and interest group pluralism. When collectively undertaken, they connect lawyers, clients, and communities in joint partnerships. The practices of mindfulness and spirituality facilitate lawyer-client and lawyer-community partnerships.

Wendel’s view that law demarcates the force of raw power from the reason-giving judgment of legality in public deliberations of rights and entitlements may work to favor community partnerships. Rising out of society and political community, those partnerships also rely on the ordered judgments of process and procedure over preferences and desires. For both Wendel and advocates of mindful reconciliation, procedural fairness gives political legitimacy to such judgments, albeit not without necessary reference to ordinary morality. On the moral logic of reconciliation, legitimacy will erode when outcomes fail to satisfy widely held, instrumental norms of social justice. In such circumstances, even advocates of reconciliation may counsel moral dissent and political protest, notwithstanding the ethical duty to respect the law.

Although mindfulness and spirituality find common ground in therapeutic jurisprudence, social psychology, and theology, each harbors deep links to liberal experimentalism, political organizing, and rights-based empowerment. Profound moral and emotional forces—each casts an innovative frame for lawyering, policymaking, and lay advocacy tied to community engagement and personal-professional role reconciliation. Mindfulness, for example, eschews particular projects or models of lawyering in favor of a legal-political framework of analysis for individual action in the context of a group or community-wide process. Establishing a strong individual-group dynamic among clients and communities engenders personal, interpersonal, and institutional change. Equally important, the individual-collective dynamic of mindful lawyering encourages peacemaking rather than adversarial conflict.

Peacemaking may flow from obedience to law in a democratic political order. Obedience, as Wendel asserts, may actively foster civic peace and stability through public and private dispute resolution procedures. And, furthermore, accessible, settlement-promoting procedures for cooperative action may actually reinforce the legitimacy of positive-law systems separate and apart from considerations of ordinary morality and substantive justice. Yet, discounting considerations of morality and justice will not insulate good-faith claims of right or entitlement, political legitimacy, and procedural legality from normative criticism.

To an important extent, peacemaking allows for greater lawyer role experimentation in litigation and negotiation consistent with the personal, political, and cultural circumstances of clients and communities. Essential to the pedagogy of community and public citizenship, and to broader democratic participation in inner-city neighborhoods, peacemaking builds spiritual kinship from the lawyer's interlocking relationships to the self, to the client, to community stakeholders, and to social justice movements. Those relationships permit lawyers to reflect emotionally and intellectually in situations of partisan conflict. They also enable lawyers to listen and communicate across boundaries of difference, power, and privilege where behavior may be misread and perception may be distorted. Difference-induced misunderstanding may occur in the lawyering process of interviewing, counseling, and negotiation, or in the political process of group and neighborhood meditation. In this regard, mindfulness affects the dynamics of lawyering and political practices in both adversarial litigation and settlement negotiation.

The interpersonal and intergroup dynamics of lawyering and political practices are alive in the legal systems Wendel locates under liberal democratic regimes. The dynamics extend to the institutions, procedures, and professional roles of lawyering. Because these

constituent forms and structures of law and legal relationships operate to encourage a diverse pluralism of interest and tolerate disagreement over value commitments in politics and society, they crisscross the boundaries of difference, power, and privilege. Wendel's concepts of pluralism and tolerance embody the coexistence and cooperative fairness of citizenship in situations of mindful reconciliation typical of liberal governance and lawmaking.

The peacemaking locus of mindfulness allows lawyers to shift between litigation and negotiation models of representation in response to community needs. The press of needs varies with the levels of partisan conflict, privilege, and subordination within communities. To the extent measurable, the accurate assessment of such levels of conflict and differentiation is crucial to long-term and large-scale strategic planning for service delivery. Strategic planning of this sort locates the legal-political work of lawyers in local, national, and international campaigns for democratic participation and economic justice. Democratic campaigns depend on the cooperative power of individual clients, client groups, and client communities.

Dependence on the norms of democratic governance, fair procedure, and political legitimacy in such campaigns conforms to the goals of peacemaking. When democratic campaigns depart from the conventions of political legitimacy or the accepted standards of advocacy and ethics, however, they do not necessarily condemn advocates as "abusers of the law." The wide latitude granted by the Standard Conception of legal advocacy and ethics countenances creative forms of partisanship. For mindful-reconciliation advocates, that partisanship comes without the protections afforded by neutrality and moral nonaccountability. Instead, it is a political-legal partisanship that may compel the lawyer to press his client's interests beyond the bounds of the law. From this posture, the lawyer stands inextricably linked to the morality of his client's cause and any other affiliated conduct undertaken in support of that cause. Accountability of this sort exposes the lawyer to potential third-party censure for his defense of law breaking or wrongdoing.

Cooperative lawyer-client roles and relationships forge alternative divisions of labor in advocacy and restore abandoned narratives of citizenship. Such roles and relationships renew lawyer moral accountability and political participation without conferring movement leadership. Citizenship narratives highlight the competence, independence, self-sufficiency, and solidarity of community-centered individuals and groups. While acknowledging economic vulnerability, the narratives help organize and mobilize neighborhood improvement and self-help campaigns by appealing to the productive capabilities of poor communities manifested in the work of churches, nonprofits, and

small businesses. Harnessing those capabilities redefines and reorganizes the labor of advocacy independent of lawyer leadership and in deference to client legal-political judgment. An expression of personal and social power, client legal-political judgment draws strength from spirituality.

Spirituality may blunt the instrumental logic of the Standard Conception. Under its guiding principles, Wendel suggests, lawyers engaged to protect the legal entitlements, rather than the individual interests or preferences, of clients function within the constraints of the attorney–client relationship.<sup>239</sup> That relationship, he points out, simultaneously justifies and limits the lawyer’s role and power in society.<sup>240</sup> Further, spirituality may stymie the notion of role-differentiated morality and its associated institutional excuse for professional conduct that deviates from ordinary morality. Unlike the Standard Conception, mindfulness and spirituality expand Wendel’s normative framework for the evaluation of lawyer roles and practices in case-by-case situations and in institutional settings. Together mindfulness and spirituality enlarge the public and political role and function of the lawyer in maintaining and reforming the institutions of law and society, whether judicial or legislative bodies.

At bottom, spirituality acts as a summons to reconciliation. Like the peacemaking of mindfulness, the practice of reconciliation turns away from the adversary tradition of lawyer-client instrumentalism and the corresponding imagery of battle. Reconciliation, however, posits a broader model of peacemaking among individuals and groups allied with the person of the client and the persons who hear advocacy in order to inculcate a sense of the neglected in community. In this sense, reconciliation offers a moral discourse and a moral witness to injustice predicated on an appeal to goodness and interpersonal harmony.

The public role and function of lawyers practicing an advocacy of reconciliation carries moral weight. That moral underpinning broadens Wendel’s functional construction of the lawyer’s agency role as an advocate of client legal rights and entitlements. It also confirms the moral import of genuine, lawyer good faith in litigation and transactional representation under Wendel’s interpretation of the Standard Conception and the moral burden of legal advocacy and ethics in defense of client rights and entitlements. His faith in the legitimacy and seriousness of law errantly shifts the relevant analysis away from external evaluative measures of ordinary morality or injustice to internal appraisals of infidelity to law. By shifting to internal benchmarks, and denouncing such infidelities as a jurisprudential

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239. WENDEL, *supra* note 196, at 3.

240. *Id.* at 6.

breach of faith signifying a lack of “respect” not only for the law, but also for the legal system as a whole, Wendel unnecessarily diminishes the “social achievement” of the law in liberal democratic societies and discounts its social worth to citizens.<sup>241</sup>

Significantly, advocacy reconciliation directs the appeal of goodness to the powerful *and* the powerless. The crux of that appeal is to conscience, not to authority or power. The subject of the appeal is the decision maker. The object is his conversion to goodness. Plainly, the conversion to goodness attaches moral content. Advocates of conversion through the moral force of reconciliation seek to bind both clients and decision makers together in a compassionate community of peace apart from groups and the state. Often prophetic, the advocates embrace caring, faith, and conscience over simple loyalty. When practiced in common, these virtues encourage a moral discourse and a sense of social justice clasped to interpersonal advocacy relationships among lawyers, clients, and decision makers.

Both moral discourse and social justice build civic loyalty. When law, in its social function, resolves empirical and normative controversy through processes of “reasoned settlement,” civic loyalty increases. As Wendel observes, settlement processes augment loyalty through cooperative action guided by a negotiation politics of tolerance, open debate, equal participation, and mutual respect.<sup>242</sup> He points to the legitimacy and authority of a politics of negotiation, and its procedures, insofar as they meet shared standards of fairness and respond to critical social needs.<sup>243</sup> Additionally, he notes that the systemic fairness and the responsiveness that mindful reconciliation advocates here seek in law and the legal system is made possible by the capacity of positive law to mediate cultural and social disputes in a public domain.<sup>244</sup> Both Wendel and reconciliation advocates see that domain governed by relative institutional autonomy and reason. Reconciliation advocates do not gainsay that the reason of law accrues “moral worth” in terms of social solidarity and cultural respect. Rather, they invoke the need for additional consideration of ordinary morality or substantive justice to supplement legal reasoning.<sup>245</sup> Absent moral direction, the institutional roles and system-wide practices of lawyers risk illegitimacy.

Because they engage in moral discourse, advocates of reconciliation begin with an examination of personal conscience and professional community, particularly the codes and rules regulating

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241. *See id.* at 6.

242. *Id.* at 4, 24, 98.

243. *Id.* at 81.

244. *Id.* at 41, 112.

245. *Id.* at 25.

community. Next they assess the person of the client as he or she is situated in community. For advocates of prophetic reconciliation, a community is inevitably sinful and tragic in excluding citizens from both inside and outside its borders. Nonetheless, prophetic advocates hope that in acting together they may be able to rescue the tragic victims of exclusion. Paradoxically, acts of rescue in advocacy undermine the integrity of the community norms and values employed to justify exclusion from within and without, that is the very community norms and values that produced the tragedy of exclusion. Confronted by tragedy, prophetic advocates express hope in acts of faithful witness and defiance. Faithful witness to tragedy in law and community expresses the limits of worldly power. Defiance against the tragedy of exclusion conveys opposition to the incursions of worldly power.

Wendel's argument for the moral respectability and social utility of the lawyer within liberal democratic institutions omits hopeful acts of faithful witness and defiance. It is unlikely that such acts contribute to political stability and to the coexistence of interest groups in society. In contrast to the reason-giving contribution of legal advocacy that comes independent of ordinary moral considerations, the contribution of prophetic advocates comes in the form of opposition to "unjust" laws. To Wendel, prophetic advocates are incautious in their legal-political advocacy, challenging unjust laws in ways that threaten to subvert the law itself.<sup>246</sup> His obligation of fidelity to law restrains such reckless advocacy but sacrifices acts of faithful witness and defiance in support of client claims to legal rights and entitlements. The commitment to politically prescribed roles and institutionally scripted functions, coupled with the self-regulating limitation imposed by the internal norms of law and legality, leave prophetic advocates of reconciliation without recourse to ordinary morality and substantive justice in their defense of community. The next Part explores the functional compatibility of the pedagogy of community and public citizenship with the curricular form and content of contemporary legal education.

#### IV. FUNCTIONAL COMPATIBILITY

Inquiry into the functional compatibility of the pedagogy of community and public citizenship with the curricular form and content of contemporary legal education comes amid a longstanding and now widening call for institutional reform.<sup>247</sup> The summons to reform

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246. See *id.* at 26, 150.

247. See Erwin Chemerinsky, *Rethinking Legal Education*, 43 HARV. C.R.-C.L. L. REV. 595 (2008); Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303, 1303-06 (1947).

addresses professional skills<sup>248</sup> and values<sup>249</sup> and integrates the study of other professional disciplines.<sup>250</sup> It also encompasses the assessment<sup>251</sup> of emotional intelligence,<sup>252</sup> problem solving,<sup>253</sup> and pro bono commitment.<sup>254</sup>

The recent curricular study put forward by Coursin incorporates the essential skills of practice and professionalism into a multilevel framework for hands-on experiential education. The framework assimilates medical school pedagogy in an effort to adopt a legal rotation model of professional training. The model contemplates a progression through first-year doctrinal instruction, second-year clinical and simulation-based coursework, and a concluding third-year residency. This sequential rotation model, coupled with the adoption of outcome-based assessment measures, offers a promising medium for the teaching of community and public citizenship. Turn once more to the curricular form of that evolving pedagogy.

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248. See generally Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 110–11 (2001); Russell G. Pearce, *MacCrate's Missed Opportunity: The MacCrate Report's Failure to Advance Professional Values*, 23 PACE L. REV. 575 (2003).

249. See generally Charlotte S. Alexander, *Learning to Be Lawyers: Professional Identity and the Law School Curriculum*, 70 MD. L. REV. 465 (2011); Neil Hamilton & Verna Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law*, 24 GEO. J. LEGAL ETHICS 137 (2011).

250. See generally Beryl Blaustone, *Improving Clinical Judgment in Lawyering with Multidisciplinary Knowledge about Brain Function and Human Behavior: What Should Law Students Learn about Human Behavior for Effective Lawyering?*, 40 U. BALT. L. REV. 607 (2011); David Stern, *Outside the Classroom: Teaching and Evaluating Future Physicians*, 20 GA. ST. U. L. REV. 877 (2004).

251. See generally Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73 (2010); Katherine Mangan, *Law Schools Resist Proposal to Assess Them Based on What Students Learn*, CHRON. HIGHER EDUC. (Jan. 10, 2010), <http://chronicle.com/article/Law-Schools-Resist-Proposal/63494/>.

252. See generally Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEB. L. REV. 1 (2008).

253. See generally Beryl Blaustone & Carmen Huertas-Noble, *Lawyering at the Intersection of Mediation and Community Economic Development: Interweaving Inclusive Legal Problem Solving Skills in the Training of Effective Lawyers*, 34 WASH. U. J.L. & POL'Y 157 (2010); Lisa A. Kloppenberg, *"Lawyer as Problem Solver: Curricular Innovation at Dayton"*, 38 U. TOL. L. REV. 547 (2007).

254. See generally Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57 (2009).

*A. Curricular Form*

The pedagogy of community and public citizenship is adaptable to multiple curricular forms and contexts. It may be intertwined with doctrinal, empirical, and interdisciplinary forms of study. Likewise, it may be deployed across classroom, clinical, and external field placement contexts. Coursin's outcome-based, rotation model of legal education presents a particularly promising vehicle for institution-wide, curricular reform tailored to the traditions of legal education and the needs of the legal services industry. Part of that promise involves the capacity to rediscover and renew the normative underpinnings of practice and professional traditions. Part also entails the willingness to reconsider and redefine the nature of industry economic needs, particularly insofar as they shape notions of lawyer role and function, conceptions of adversarial justice, and visions of legal-political community.

Responsive to current marketplace trends in both education and industry, the model focuses on preparing students to serve clients usefully as new practitioners from the outset of their professional careers. Preparation of this kind requires experiential learning and practical skill development in classroom and clinical settings. In addition to the standard battery of lawyering process skills (e.g., interviewing, counseling, fact investigation, and negotiation), as well as legal research and writing, skill development includes critical thinking, problem solving, interpersonal communication, and professionalism, especially ethical judgment and civic engagement, two of the foundation stones for community and public citizenship.

Coursin derives his outcome-based, rotation model of practical skills-training from the experiential learning methodologies of medical education employed in classrooms, laboratories, and clinical environments. The methodologies combine training and assessment into a continuing process of skill mastery and professional development. That learning process applies to both ethical judgment and civic engagement. Borrowing from and expanding upon these methodologies, Coursin installs not only common case-dialogue methods and classroom and clinical rotations, but also advanced, residency-like apprenticeships.

Under this hybrid apprenticeship model, medical and law students acquire basic professional knowledge as well as essential practice-oriented skill training. Central to apprenticeship-based knowledge, skill acquisition, and clinical practice performance, is a comprehensive mentoring system composed of faculty members, upper-level students, and field-placement supervising attorneys. This three-tiered mentoring system operates in classrooms and in field placements. Each context

entails performance evaluation and longitudinal feedback to gauge professional development and assess learning outcomes. The resulting skill-related dialogue, occurring throughout the semester or summer session, reinforces student learning goals and the continuity of student service commitment. Standing alone, however, neither mentoring feedback nor skill-related dialogue will overcome the self-regarding weight of practice tradition and the profit-maximizing economics of industry need.

Similarly, clinical and simulation-based pathways afford students valuable opportunities for intensive skill development and mentoring relationships within a network of bar and bench practicing partners, a network deeply influenced by self-regarding traditions and profit-maximizing imperatives. This professional network expands under Coursin's apprenticeship model to include residency and two-semester advanced rotations that foster maturity and professionalism. The pedagogy of community and public citizenship gives alternative meaning to professionalism drawn from the notion of mindfulness in advocacy and the theology of hope and faithful witness. Turn again to the curricular content of the pedagogy of community and public citizenship.

### *B. Curricular Content*

The pedagogy of community and public citizenship is predicated on client and community diversity.<sup>255</sup> Relevant to both client<sup>256</sup> and student identity,<sup>257</sup> diversity norms guide the development of cross-cultural competence<sup>258</sup> across languages<sup>259</sup> and geographic

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255. See Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61 RUTGERS L. REV. 1011, 1016–19 (2009); Liwen Mah, *The Legal Profession Faces New Faces: How Lawyers' Professional Norms Should Change to Serve a Changing American Population*, 93 CALIF. L. REV. 1721, 1721–24 (2005).

256. See generally Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807 (1993); Anthony V. Alfieri, *Color/Identity/Justice: Chicano Trials*, 53 DUKE L.J. 1569 (2004) (book review).

257. See generally Chris K. Iijima, *Separating Support from Betrayal: Examining the Intersections of Racialized Legal Pedagogy, Academic Support, and Subordination*, 33 IND. L. REV. 737 (2000); Antoinette Sedillo López, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J.L. & POL'Y 37 (2008).

258. See Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001); Beverly I. Moran, *Disappearing Act: The Lack of Values Training in Legal Education—A Case for Cultural Competency*, 38 S.U. L. REV. 1 (2010); Ascanio Piomelli, *Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda*, 4 HASTINGS RACE & POVERTY

communities.<sup>260</sup> The norms underline the need for inclusion<sup>261</sup> in pursuing a social justice mission.<sup>262</sup> That mission includes the practice of poverty and public interest law.<sup>263</sup> The goal is to elevate this ongoing practice through experiential learning<sup>264</sup> in order to expand access to justice,<sup>265</sup> refine skills training,<sup>266</sup> and formulate useful service protocols and metrics to track outcomes.<sup>267</sup>

Instilling the values of community and public citizenship in law students through classroom and clinical pedagogy requires by turns

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L.J. 131 (2006); *see also* Deleso Alford Washington, *Critical Race Feminist Bioethics: Telling Stories in Law School and Medical School in Pursuit of “Cultural Competency”*, 72 ALB. L. REV. 961 (2009).

259. *See generally* Muneer I. Ahmad, *Interpreting Communities: Lawyering across Language Difference*, 54 UCLA L. REV. 999 (2007).

260. *See generally* Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333 (2009); Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000); Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLINICAL L. REV. 445 (2002); Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359 (2008).

261. *See* Peggy Cooper Davis, *Desegregating Legal Education*, 26 GA. ST. U. L. REV. 1271, 1272 (2010); Nancy E. Dowd, *Diversity Matters: Race, Gender, and Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL’Y 11, 12–17 (2003); Margaret M. Russell, *McLaurin’s Seat: The Need for Racial Inclusion in Legal Education*, 70 FORDHAM L. REV. 1825 (2002).

262. *See generally* Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic’s Ability to Harmonize Teaching Practical Skills, Ethics, and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23 (2006); Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195 (2002).

263. *See* Juliet M. Brodie, *Post-Welfare Lawyering: Clinical Legal Education and a New Poverty Law Agenda*, 20 WASH. U. J.L. & POL’Y 201 (2006); Louise G. Trubek, *Crossing Boundaries: Legal Education and the Challenge of the “New Public Interest Law”*, 2005 WIS. L. REV. 455.

264. *See generally* Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum through Experiential Learning*, 51 J. LEGAL EDUC. 51 (2001).

265. *See generally* Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997 (2004).

266. *See* Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327 (2001).

267. *See generally* ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007); Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807 (2007).

fidelity and infidelity to law. Applicable to advocacy and ethics, both conceptions offer a normative vision of law school curricular reform. They also carve out space for lawyer responsibility to advance economic justice. And they confirm the importance of, and the value of participation in, democratic citizenship. Together, in these general ways, they allow lawyers and clients collaborative room to maneuver in local, national, and international democracy-promoting campaigns targeting underserved, inner-city neighborhoods.

The support of the “fidelity to law” conception of advocacy for legal-political democracy campaigns lies in the public respect and allegiance norms of citizenship. Embedded in the political legitimacy of representative democracy and the rule of law, the norms betray ordinary morality and substantive justice in aiding impoverished communities through legal rights education, organization, and mobilization. Nothing in the tenets of liberal legalism or interest group pluralism requires this betrayal of morality- or justice-based community partnerships.

The practices of mindfulness and spirituality seek to rescue lawyer-client and lawyer-community partnerships. Those partnerships emerge despite the raw power of privilege. Moreover, they sometimes benefit from the reason-giving judgments of legality in public deliberations of rights and entitlements. Too often, however, the ordered judgments of process and procedure fail community partnerships. Legal process grants those judgments political legitimacy even when they contravene ordinary morality and social justice.

The “fidelity to law” conception gives advocates the discretion to express moral dissent and political protest toward wrongful process-based judgments. Protest may include individual, group, or community-wide action. Yet, that conception fails to link protest to the development of an individual-group dynamic among clients and communities to foster personal, interpersonal, and institutional peacemaking.

Peacemaking and the obedience at the core of the “fidelity to law” conception may operate concurrently, for example when public and private dispute resolution procedures offer accessible, settlement-promoting opportunities for cooperative action. Severed from considerations of ordinary morality and substantive justice, however, simple obedience will do little to build spiritual kinship between lawyers, clients, community stakeholders, and social justice movements. Admittedly, obedience may permit emotional and intellectual reflection by lawyers. And it may permit lawyer-client communication across difference, power, and privilege. But the interpersonal and intergroup dynamics of lawyering under liberal democratic regimes require more than obedience to law. Liberal

democratic systems demand a diverse pluralism of interest and a deep tolerance of disagreement over value commitments in politics and society. Obedience neither encourages nor preserves these primary citizenship values.

Mindful advocacy treats obedience as one of many factors relevant to long-term and large-scale strategic planning in the delivery of legal services and in the politics of democratic participation. Local participatory democracy hinges on cooperative power not obedience to power, legal or otherwise. To be sure, norms of democratic governance and fair procedure command a degree of obedience to safeguard the political legitimacy of peacemaking. Under the Standard Conception of advocacy and ethics, failure to render such obedience does not constitute an abuse of law. Instead, it signals legal-political partisanship, partially restrained by the bounds of law and justice, for which advocates must morally account. In this way, the lawyer embraces the morality of, and accountability for, his client's cause.

The accountability of lawyer-client roles and relationships also extends to the narratives of citizenship. The citizenship narratives of community competence, independence, self-sufficiency, and solidarity spur neighborhood organization and mobilization. Entrenched in the productive capabilities of poor communities, the narratives renew the spirituality of lawyer roles, relationships, and practices by focusing advocacy on peacemaking. The reconciliation of peacemaking stems from the defense of the neglected in a community.

A form of moral witness, reconciliation appeals to goodness and interpersonal harmony in litigation and in negotiation. That appeal springs from a good faith belief in ordinary morality and the social worth of citizenship. In effect, it is an appeal to the conscience of the powerful, commonly a decision maker in law and politics. The appeal seeks the conversion of the decision maker to goodness and his entry into a compassionate community of peace. Mindful reconciliation encourages conversion and compassionate community as a means to comply with ordinary morality and to achieve substantive justice.

Advocates of reconciliation balance the dictates of personal conscience and professional community in dealing with the tragedy of client exclusion from his own community. When community norms justify exclusion, mindful advocates are left to exercise limited acts of faithful witness and defiance. Coursin's hybrid apprenticeship model of curricular reform offers scant sense of how to teach hopeful acts of faithful witness and defiance. Although unlikely to contribute to political order and stability in a liberal democratic society, the acts present a reason-giving form of advocacy and ethics tied to ordinary moral considerations of tragedy. In communities that neglect and exclude the powerless among them, those considerations give rise to

opposition against “unjust” laws. To Wendel and others, that opposition may threaten to subvert the law. To Coursin, the pedagogy of community and public citizenship depends on the willingness of advocates to teach the law, politics, and ethics of reconciliation and subversion in defense of community.

#### CONCLUSION

Prophetic ideals of leadership,<sup>268</sup> whether adopted by lawyer-first responders<sup>269</sup> or lawyer-social engineers,<sup>270</sup> envision faith-based lawyer, client, and community collaborations motivated by individual and institutional moral obligations.<sup>271</sup> The obligations may borrow their substance from spirituality and theology,<sup>272</sup> or the norms of liberal democratic systems.<sup>273</sup> This Essay searches out such obligations in law and legal institutions in order to better educate lawyers for community. My own community of twenty-five years, a community of lawyers, clients, judges, scholars, and more recently church congregations, no longer provides the form or substance of obligations suitable for wide ranging advocacy across a diverse demographic landscape of identity, geography, and space. The experience of community simply may be too

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268. See Thomas L. Shaffer, *Lawyers as Prophets*, 15 ST. THOMAS L. REV. 469 (2003); Thomas L. Shaffer, *The Biblical Prophets as Lawyers for the Poor*, 31 FORDHAM URB. L.J. 15 (2003); see also DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 207–13 (2000); Deborah L. Rhode, *Lawyers as Leaders*, 2010 MICH. ST. L. REV. 413; Deborah L. Rhode, *Lawyers and Leadership*, 20 PROF. LAW., no. 3, 2010, at 1.

269. See, e.g., Melissa Gibson Swain & JoNel Newman, *Helping Haiti in the Wake of Disaster: Law Students as First Responders*, 6 INTERCULTURAL HUM. RTS. L. REV. 133 (2011).

270. See, e.g., Kemit A. Mawakana, *Historically Black College and University Law Schools: Generating Multitudes of Effective Social Engineers*, 14 J. GENDER RACE & JUST. 679 (2011).

271. See generally Ysmael D. Fonseca, *The Catholic Church’s Obligation to Serve the Stranger in Defiance of State Immigration Laws*, 23 NOTRE DAME J.L. ETHICS & PUB. POL’Y 291 (2009); Kara L. Wild, *The New Sanctuary Movement: When Moral Mission Means Breaking the Law, and the Consequences for Churches and Illegal Immigrants*, 50 SANTA CLARA L. REV. 981 (2010).

272. See Thomas L. Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181 (1981); Thomas L. Shaffer, *On Religious Legal Ethics*, 35 CATH. LAW. 393 (1994); Thomas Shaffer, *The Profession as a Moral Teacher*, 18 ST. MARY’S L.J. 195 (1986); Thomas L. Shaffer, *A Search for Balance in the Whirlwind of Law School: Spirituality from Law Teachers*, 51 ST. LOUIS U. L.J. 1191 (2007).

273. See Thomas L. Shaffer, *The Democratic Virtues, Our Common Life and the Common School: Trust in Democracy: Anabaptists, Italian Americans, and Solidarity*, 21 J.L. & RELIGION 413 (2005–06); Thomas L. Shaffer, *The Legal Ethics of Belonging*, 49 OHIO ST. L.J. 703 (1988).

complex and multifaceted for a single set of moral, legal, or political obligations.

Whatever the source of the obligation, to meet and to teach the higher calling of mindfulness and spirituality, its professional performance in litigation and in negotiation must express “the affection citizens have for each other.”<sup>274</sup> Part of that affection arises between the lawyer and client when engaged in the practice of community. In that practice, as Tom Shaffer reminds us, *you have to go together* in pursuit of public citizenship and social justice.<sup>275</sup> Echoed thinly in ABA and state ethics rules, that special civic responsibility warrants the development of an explicit pedagogy of community and public citizenship in legal education and professional training, a pedagogy that may evolve from Coursin’s hybrid apprenticeship model of experiential learning.

This Essay, an emerging part of an ongoing classroom study and clinical service project, seeks to continue that development, building on a half century of scholarship from diverse fields. Aimed at law students and lawyers, the Essay integrates considerations of ethics, education and psychology, law and religion, and the lawyering process. Starting from legal and theological materials on mindfulness and spirituality, it attempts to situate the pedagogy of community and public citizenship in an outcome-based, rotation curricular model of legal education, to appraise that pedagogy against conventional notions of lawyer role and function in the adversary system, and to evaluate its compatibility with the curricular form and content of contemporary legal education. From these efforts the only true point of clarity that arises here relates to the role of affection in law, community, and public citizenship. To be realized in law and lawyering, that affection, the late Professor Milner Ball explains, must show neither “desire of injury or revenge” nor “asperity or hatred.”<sup>276</sup> In searching for traces of affection in law and lawyering, for Ball and for us the question remains: “how does it come about that citizens can love each other?”<sup>277</sup>

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274. D. Robert Lohn & Milner S. Ball, *Legal Advocacy, Performance, and Affection*, 16 GA. L. REV. 853, 860 (1982).

275. See SHAFER, *supra* note 1, at 217.

276. Lohn & Ball, *supra* note 274, at 860.

277. *Id.*