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SYMPOSIUM: COMMUNITY POVERTY AND THE UNIVERSITY

The Miseducation of Public Citizens

Etienne C. Toussaint*

Abstract

The American Bar Association Model Rules of Professional Conduct calls upon lawyers, as public citizens, to embrace a special responsibility for the quality of justice in the legal profession and in society. Yet, some law professors have historically adopted a formalistic and doctrinally neutral approach to law teaching that elides critical perspectives of law, avoids the intersection of law and politics, and tends to overlook the way law can construct the very social injustices that it seeks to contain. The objective, apolitical, and so-called "colorblind" jurisprudential stance in many law classrooms inflicts intellectual violence upon law students who discover a legal doctrine in conflict with their own lived experiences, yet who feel silenced and unprepared to reckon with the moral legitimacy of unjust laws. Perhaps as a result, in recent years, law schools have begun to rethink legal education altogether, devising anti-racist curricula, professional identity trainings, and novel experiential learning programs to produce a new generation of critically conscious lawyers for the crises of our modern age.

Building upon such efforts, alongside recent scholarship in legal education and philosophical legal ethics, this Essay proposes foundational pedagogical principles to teach public citizenship lawyering. This Essay defines public citizenship lawyering as a democratic conception of professional responsibility whereby lawyers engage in routine critique of their lawyering practice through the lens of justice as a moral virtue. This pedagogy finds normative grounding in the ABA Model Rules based upon the contention that a skewed vision of professional lawyering identity has hindered a justice-oriented interpretation of the lawyer's public citizen charge. Specifically, this Essay articulates four pedagogical principles:

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(1) deconstructive framing, which guides the law professor in teaching the lawyer's ethical duty of candor; (2) ethical reposturing, which guides the law professor in teaching the lawyer's ethical duty of competence and professional judgment; (3) reconstructive ordering, which guides the law professor in teaching the lawyer's ethical duty to improve the law; and (4) liberatory lawyering, which guides the law professor in teaching the lawyer's ethical duty to assist the client and others in gaining competence. Collectively, these principles assert a counter-cultural vision of practice readiness that empowers law students to affirmatively challenge social and economic injustice in the legal profession and the rule of law. More than exalting a democratic conception of professional lawyering identity, these principles affirm the legal academy as law's laboratory for progressive social change.

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Miscommunication leads to complication
My emancipation don't fit your equation

— Lauryn Hill, *Lost Ones*[1]

[T]he first thing I had to do was to eliminate the white gaze.

— Toni Morrison[2]

Introduction

They say trauma can make one forget painful experiences. I don't know if that is the reason why I cannot remember all the details of our class discussion, the back and forth, the whispers, the murmurs, the heavy silence. When I asked one of my classmates about the experience—one of the handful of Black men who was sitting in the room with me that day[3]—he told me that he could not remember much either. "I've repressed memories of law school," he concluded with an awkward chuckle. Sadly, I've repressed a few myself. But I will never forget the discomfort that descended upon my body like wet soil upon the open grave as I exited Pound Hall that morning. *How will you bear the weight of this moral tension without snapping?* I whispered to my future self. *What does it mean to be a public citizen lawyer if my personal moral views of the law conflict with my professional ethical duties?*

The night before, as I opened my criminal law book to the case of *People v. Goetz*,[4] which would teach me about subjective and objective standards of reasonableness, I thought about how far I had come—a son of the hip-hop generation; a native of the South Bronx; a child of Black immigrants; the friend of Black and Hispanic working-class folks who celebrated my pursuit of a career in law, even as they did the very opposite, often avoiding a rule of law that policed and surveilled their daily lives.[5] And yet, there I stood in the hallowed halls of the ivy league—Harvard Law School—preparing to become an advocate for the people. Of course, I would eventually discover that my journey toward purpose would be filled with unexpected twists and turns. But in that moment, in that place of

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1. Lauryn Hill, *Lost Ones*, *on* The Miseducation of Lauryn Hill, at 00:13 (Ruffhouse Records & Columbia Records 1998).

2. Toni Morrison: The Pieces I Am, at 12:37 (Magnolia Studios 2019).

3. While race as a tool for human categorization is a social construction that too often essentializes and oversimplifies, racial categorizations are employed with tangible effect in the United States to exploit, suppress, and dehumanize subordinated populations. *See* Michael Omi & Howard Winant, Racial Formation in the United States 13 (3d ed. 2014). Thus, I use the racial term "Black" to describe individuals of African American identification and members of other African diaspora cultures. I also often use the term "minoritized" rather than "minority" to describe how some cultural groups are pushed to the margins of society based upon racial, cultural, or other social categorizations, such as Hispanic Americans, certain immigrant, and religious groups.

4. People v. Goetz, 497 N.E.2d 41 (N.Y. 1986).

5. *See generally* Etienne C. Toussaint, *Tragedies of the Cultural Commons*, 110 Calif. L. Rev. (forthcoming 2022) (describing the way law and law enforcement impacted the lives of Bronx residents during in the 1970s and 1980s).

exploration, I was excited about the case sitting before me because the judgment had been rendered in my home state only one year after my birth. Even more, from the looks of it, the story I held in my hands could very well have been about me.

I grew up a stone's throw away from the elevated train tracks that usher passengers on New York City's winding subway into the boisterous borough of the Bronx. Uptown, we called it. One could feel the train's rumble from my bedroom window at all hours of the day and hear the echo of restless tracks whine sporadically throughout the night. When I entered the sixth grade, I was granted permission by my protective parents to ride the train unaccompanied by adults with my classmate (who lived on our avenue) or with my younger brother. Together, we journeyed to little league baseball games at my Catholic elementary school, only two stops away. By the ninth grade, I had become a daily commuter, boarding the train alone at the elevated station up the block and venturing downtown to the underground station in the Upper East Side of Manhattan, which would become my second home during my teenage years. It was there, a world away from the rhythm and blues of the South Bronx, where I first tasted the concept of privilege; our Jesuit high school's building, towering in its classic monumentality on the corner of East 84th Street and Park Avenue, was adorned with long rows of columns along its main facade.

I quickly adjusted to the routine and learned the rules of riding the subway train. Don't talk to strangers. Don't stare at anyone for too long. Don't hold up the flow of foot traffic. Don't crowd the seating area with your bookbag during rush hour. Don't keep your bookbag on your back during rush hour. Don't take your wallet or your keys out of your pocket, especially during rush hour. Don't stand near anyone who appears to be intoxicated. Don't sit near anyone who appears to be high on drugs. Don't appear too comfortable. Don't appear too afraid. Don't respond to empty threats. Be smart. Street smart.

Perhaps this explains why I was curious, as I began to read *People v. Goetz*, how the New York Court of Appeals would define "reasonableness" in the usage of deadly force for self-defense on a New York City subway train.[6] My curiosity quickly melted into anger when I discovered that Bernard Goetz, a White man,[7] had shot and wounded four unarmed Black teenagers on a subway train in December

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6. *See Goetz*, 497 N.E.2d at 44–45.

7. I use the term "White" to describe non-Black individuals of European ancestry. Contrary to current trends, I choose to capitalize the term because it carries with it significant cultural connotations and sociopolitical implications that are inescapable and must be reckoned with, not neutralized. As LaToya Baldwin Clark eloquently puts it, "the proper noun usage of the word [White] forces an understanding of 'White' as a social and political construct." *See* LaToya Baldwin Clark, *Stealing Education*, 68 UCLA L. REV. 566, 566 n.1 (2021); *see also* Eve L. Ewing, *I'm a Black Scholar Who Studies Race. Here's Why I Capitalize 'White,'* MEDIUM: ZORA (July 2, 2020), https://zora.medium.com/im-a-black-scholar-who-studiesrace-here-s-why-i-capitalize-white-f94883aa2dd3 ("Whiteness is not only an absence. It's not a hole in the map of America's racial landscape. Rather, it is a specific social category that confers identifiable and measurable social benefits . . . . When we ignore the specificity and significance of Whiteness—the things that it is, the things that it does—we contribute to its seeming neutrality and thereby grant it power to maintain its invisibility.").

1984. Goetz would later tell police investigators, I learned, that he could tell the young men wanted to "play with [him]" when they asked him for five dollars, but he feared that he would be "maimed."[8] My anger finally turned into frustration when I read the legal holding of Chief Judge Sol Wachtler of the New York Court of Appeals.

Writing for the court, Judge Wachtler explained that self-defense was not a purely subjective standard. Rather, "deadly force could be justified . . . even if the actor's beliefs as to the intentions of another turned out to be wrong," so long as there was "a reasonable basis, viewed objectively, for the beliefs."[9] Who decides, I wondered, whether deadly force is objectively reasonable? Would the social, political, and economic dynamics of 1980s New York City—a metropolis riddled with low-income Black communities facing unemployment, inadequate governmental services, and supervisory policing[10]—frame the court's analysis of criminality and the so-called "objective" fears of White men like Goetz? As I eagerly awaited our classroom discussion, I contemplated how my law professor would situate and contextualize the lawyer's role in this dilemma. What I experienced the next day in Pound Hall inside a classroom of eighty or so eager law students, the majority of whom were White, might appropriately be described, as Shaun Ossei-Owusu puts it, as "intellectually violent."[11]

This Essay does not seek to resolve the troubling questions of reasonableness and culpability in United States criminal law exposed by cases like *People v. Goetz*. Instead, it explores how such questions of criminal law, and other areas of law more generally, have been met in the law school classroom by a legal pedagogy that often unleashes intellectual violence upon law students—both non-White and White students alike—by subjecting them to micro- and explicit-aggressions, or by exposing them to unresolved racial anxieties, that can hinder their learning process and negatively impact their academic performance.[12] Importantly, this Essay does not seek to indict my criminal law professor, nor is it an indictment of Harvard Law School. Indeed, many of my law professors at Harvard approached the study of law through a critical lens and designed a classroom experience focused on investigating law's complexities through multiple and competing analytical frames.[13] Rather, this Essay offers a retrospective on the

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8. *Goetz*, 497 N.E.2d at 43.

9. *Id.* at 48.

10. *See* Toussaint, *supra* note 5; *see also Race Relations*, WHOSE STREETS? OUR STREETS!, http://www.whosestreets.photo/race.html [https://perma.cc/G8LU-QLSF] (last visited June 2, 2022).

11. Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can Be Intellectually Violent*, ABAJOURNAL.COM (Oct. 15, 2020, 11:23 AM), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent.

12. *Id.*

13. For example, Professor Joseph W. Singer routinely promoted critical legal discourse and debate on the moral dimensions of lawyering practice in my first-year property law class by introducing his students to land-based challenges facing indigenous populations and the shortcomings of property law for disabled individuals. *See, e.g.*, Joseph William Singer, *Property as the Law of Democracy*, 63 DUKE L.J. 1287, 1299 (2014) (describing the way property law presents not only a coordination problem

way law teaching can harm law students when it fails to adequately prepare future attorneys for the demands of "public citizenship."[14] Such a failure can have real-world consequences. For example, consider the uncertainty exhibited by members of President Donald Trump's legal team who appeared to be divided on whether to litigate his false claims of voter fraud in the 2020 presidential election.[15]

The American Bar Association Model Rules of Professional Conduct (the "Model Rules") call upon lawyers, as public citizens, to embrace a special responsibility for the quality of justice in the legal profession and in society. This charge includes seeking "improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession."[16] Yet, some law professors have historically adopted a formalistic and doctrinally neutral approach to law teaching rooted in a "fidelity to law"[17] framing of professional lawyering identity. Not only does this framing too often elide critical perspectives of law, it also avoids the intersection of law and politics, and tends to overlook the way law can construct the very social conditions that it seeks to contain, such as poverty in low-income communities.[18] The traditional emphasis on teaching legal rules through appellate court opinions can undermine the importance of social and political context to legal analysis. Perhaps more importantly, the objective, apolitical, and so-called "colorblind" jurisprudential stance can harm law students who discover a legal doctrine in conflict with their own lived

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but also a constitutional problem, requiring lawyers and political leaders to attend to the norms, values, and ways of life that a society embraces).

14. MODEL RULES OF PRO. CONDUCT pmbl. ¶ 6 (AM. BAR ASS'N 2020) [hereinafter MODEL RULES].

15. *See* Ari Berman, *Trump's Lawyers Won't Renounce the Big Lie- and Neither Will the GOP*, MOJO WIRE (Feb. 13, 2021), https://www.motherjones.com/mojo-wire/2021/02/trumps-lawyers-wont-renounce-the-big-lie-and-neither-will-the-gop/; Josh Dawsey, *The Republican Party's Top Lawyer Called Election Fraud Arguments by Trump's Lawyers a 'Joke' that Could Mislead Millions*, WASH. POST (July 12, 2021, 8:18 PM), https://www.washingtonpost.com/politics/rnc-trump-stop-the-steal/2021/07/12/79e58a02-e320-11eb-934f-7e6c1927f261_story.html; Rick Klein et al., *'Big Lie' Takes New Twists for GOP: The Note*, ABCNEWS (Mar. 25, 2022, 6:02 AM), https://abcnews.go.com/Politics/big-lie-takes-twists-gop-note/story?id=83652270.

16. MODEL RULES*, supra* note 14.

17. *See* W. BRADLEY WENDEL, LAWYERS AND FIDELITY TO LAW 118 (2010) (arguing that fidelity to law neutralizes the rule of law from "ordinary morality and substantive justice"); *but see* Anthony V. Alfieri, *Educating Lawyers for Community*, 2012 WIS. L. REV. 115, 146 [hereinafter Alfieri, *Educating Lawyers*] (arguing that fidelity to community "builds spiritual kinship . . .[,] permits lawyers to reflect emotionally and intellectually in situations of partisan conflict . . .[, and] enables lawyers to listen and communicate across boundaries of difference, power, and privilege").

18. *See* David B. Wilkins, Essay, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502, 1593 (1998) (articulating an obligation thesis, which frames professional responsibility in the context of "the black women and men who continue to suffer in poverty and degradation in the midst of this land of plenty . . . and desperately needs the support and commitment of those of us who have managed to stake out a tenuous, but nevertheless important, toehold on the American dream"); Benjamin V. Madison, III, *The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students*, 85 U. DET. MERCY L. REV. 293, 316 (2008) (arguing that "legal education would be more effective if law teachers used context-based education throughout their curriculum to teach theory, doctrine and analytical skills").

experiences, yet often feel silenced in the classroom and unprepared to ask the most urgent question for any rule of law: why?[19]

This Essay argues that legal education demands more than training in black letter law and practical lawyering skills taught through the dominant cultural framings of legal theory, legal ethics, and moral and political philosophy that govern the modern research university. Specifically, law schools must engage the moral tensions between the lawyer's professional role morality and the lawyer's individual moral compass,[20] a rivalry perhaps best mediated by the notion of the lawyer as a public citizen. Scholars have long debated the meaning of public citizenship in the Model Rules and its charge for lawyers.[21] Further, for several decades, legal scholars have actively wrestled with the legal academy's role in "the production of hierarchy," while also amplifying the need for law schools to engage local community concerns.[22] Even more, scholars have explored law school's responsibility, as a legal institution, to its local community.[23] Now, in recent years, law schools are beginning to rethink legal education altogether, devising anti-racist curricula, anti-bias trainings, and novel experiential learning programs to produce critically conscious lawyers for the crises of our modern age.[24] Building upon this voluminous body of scholarship

19. *See* Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 33 U. MICH. J.L. REFORM 263, 300 (2000); Dorothy E. Roberts, *The Paradox of Silence: Some Questions About Silence as Resistance*, 33 U. MICH. J.L. REFORM 343, 354 (2000).

20. *See* David Luban & W. Bradley Wendel, *Philosophical Legal Ethics: An Affectionate History*, 30 GEO. J. LEGAL ETHICS 337, 338 n.2 (2017) ("By 'role morality' we mean the moral obligations and permissions associated with social roles—for example, the lawyer's moral duties of confidentiality and zeal, as well as the lawyer's moral permission to promote client interests even at the expense of worthier ones.").

21. *See, e.g.*, KARL N. LLEWELLYN, THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY 23 (1951) ("[Lawyer's work] is impossible unless the lawyer who attempts it knows not only the rules of the law . . . but knows, in addition, the life of the community, the needs and practices of his client.").

22. *See, e.g.*, Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 608 (1982); Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 921–22 (1933); Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, *in* CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 374, 383 (Council on Legal Educ. for Prof. Resp. ed., 1973). *See generally* Luna Martinez G., *An Identity Problem: Can Law School Be a Tool for Social Change?*, 29 LA RAZA L.J. 31 (2019) (arguing that there is a contradiction between the perceived and the actual identity and purpose of law schools).

23. *See, e.g.*, Kristin Booth Glen, *The Law School* In *and* As *Community*, 35 U. TOLEDO L. REV. 63, 64 (2003); ANDREW CUOMO, SEC'Y OF HOUS. & URB. DEV., LAW SCHOOL INVOLVEMENT IN COMMUNITY DEVELOPMENT (2005), https://www.huduser.gov/portal/publications/pdf/LawSchoolInvolvement.pdf; Erika J. Rickard, *The Role of Law Schools in the 100% Access to Justice Movement*, 6 IND. J.L. & SOC. EQUAL. 240, 254 (2018); Amy H. Soled & Barbara Hoffman, *Building Bridges: How Law Schools Can Better Prepare Students from Historically Underserved Communities to Excel in Law School*, 69 J. LEGAL EDUC. 268, 277, 293 (2019–2020); Mark Childress, *Programs of Change: Law Schools Explain Their Commitment to Public Service*, OBAMA WHITE HOUSE BLOG (Oct. 25, 2011), https://obamawhitehouse.archives.gov/blog/2011/10/25/programs-change-law-schools-explain-their-commitment-public-service.

24. *See, e.g.*, Dermot Groome, *Educating Antiracist Lawyers: The Race and the Equal Protection of the Laws Program at Dickinson Law*, RUTGERS RACE & L. REV. (forthcoming 2022); Amy C. Gaudion,

and activism,[25] this Essay proposes foundational pedagogical principles of public citizenship lawyering. These principles of law teaching serve to empower law professors as they teach their students how to navigate both the moral tensions induced by law practice and the individual traumas inspired by traditional doctrinal analysis.[26]

In so doing, this Essay pursues two objectives. First, it asserts a countercultural vision of practice-readiness grounded by the normative responsibilities enshrined in the Model Rules. To be sure, some scholars argue that the problem is the Model Rules themselves, which emphasize "a particular conception of neutral partisanship that is based on white, propertied interests."[27] While I am sympathetic to this view, this Essay takes a different approach toward resolving that dilemma by suggesting that the problem is fundamentally a matter of interpretation. As Section II.B. terms it, the problem might be the cultural gaze that lawyer's use to consider the philosophical principles that undergird the Model Rules. Thus, rather than throw the rules out altogether, this project suggests that we reinterpret the meaning of the Model Rules by using a more democratic vision of collective well-being. By rearticulating professional responsibility while engaging in deep critique of justice as a moral virtue, this democratic conception of professional lawyering identity will "illuminate the assumptions, biases, values, and norms embedded in law's workings in order to heighten awareness of the political and moral choices made by lawyers and the legal system."[28]

Exploring Race and Racism in the Law School Curriculum: An Administrator's View on Adopting an Antiracist Curriculum, RUTGERS RACE & L. REV. (forthcoming 2022); Jonathan Greenblatt, Legal Innovators, *Diversity of Law School Deans Is Changing the Approach to Legal Education* (June 17, 2021), https://www.legal-innovators.com/events/webinar-diversity-of-law-school-deans-is-changing-the-approach-to-legal-education/ (discussing efforts of various law schools to increase diversity, equity, and inclusion); Norrinda Brown Hayat, *Freedom Pedagogy: Toward Teaching Antiracist Clinics*, 28 CLINICAL L. REV. 149 (2021).

25. This pedagogy builds upon the voluminous work of critical legal scholars who have explored the moral dimensions of law and lawyering practice. *See, e.g.*, David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 71–72 (1979); David A. J. Richards, *Moral Theory, the Developmental Psychology of Ethical Autonomy and Professionalism*, 31 J. LEGAL EDUC. 359, 374 (1981); Robert J. Condlin, *"Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 48–49 (1986); Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLINICAL L. REV. 505, 529–30 (1995); Robert Dinerstein, Stephen Ellman, Isabelle Gunning & Ann Shalleck, *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755, 763 (2004); Laila L. Hlass & Lindsay M. Harris, *Critical Interviewing*, 3 UTAH L. REV. 683, 683 (2021).

26. *DisOrientation: A Call for Self-Preservation*, HARV. L. REC. (Oct. 7, 2019), http://hlrecord.org/disorientation-a-call-for-self-preservation/ (advertising City-Wide Disorientation Events in Chicago, Philadelphia, Michigan, San Francisco, Washington, D.C., Los Angeles, and New York City).

27. *See, e.g.*, Kathryn A. Sabbeth, *Market-Based Law Development*, COURTS & CAPITALISM, LPE BLOG (July 21, 2021), https://lpeproject.org/blog/market-based-law-development/.

28. Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717, 722 (1992) [hereinafter Goldfarb, *Beyond Cut Flowers*]. *See generally* Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989) (considering the way minorities are perceived within the legal system in relation to the view that the legal system is an agent of bias).

Still others may retort that the Model Rules are primarily about governing lawyering practice and legal advocacy, which is different than the act of law teaching. Why should the Model Rules guide how law professors structure their legal pedagogy? First, law schools are unique as educational institutions because they prepare their students for professional practice. Further, the American Bar Association Council of the Section of Legal Education and Admission to the Bar has already offered guidance on the objectives of legal education programs, noting in Standard 301(a): "A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession." Further still, Standards 302(c) and (d) require law schools to establish student competency in the following: "(c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession." Even more, the American Bar Association House of Delegates adopted several changes in February 2022 to the ABA Standards and Rules of Procedure for Approval of Law Schools, including new requirements under revised Standard 303 that law schools provide "education on bias, cross-cultural competency and racism" to law students.[29] Thus, law schools have a clear responsibility under the ABA guidelines to teach their law students not only how to properly exercise their professional and ethical responsibilities as lawyers, but also how to do so with special attention to broader societal concerns of cultural and racial bias embedded in law and law practice.[30] Attending to these broader concerns reflects, this Essay argues, the general charge to lawyers as public citizens described in the preamble to the Model Rules.

Secondly, in response to the charge of the ABA, this Essay proposes pedagogical principles of public citizenship to begin a conversation on the appropriate theories of law, lawyering, and law teaching that should guide modern legal education.[31] Even as the professional bar reinforces market-driven notions of practice-readiness that link law school success to bar exam passage rates,[32] and even

29. American Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, Revised Standards for Approval of Law Schools February 2022 (Feb. 14, 2022), https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2022/300-midyear-2022.pdf.

30. Indeed, in June 2020, at least 150 law school deans endorsed a letter to the ABA's Council of the Section of Legal Education and Admissions to the Bar urging a mandate for law schools to provide their students with anti-bias training. *See* Letter from Alicia Ouellette, President & Dean, Albany Law Sch., to Members of the Council of the ABA Section of Legal Educ. & Admissions to the Bar (July 30, 2020), https://taxprof.typepad.com/files/aba-bias-cultural-awareness-and-anti-racist-practices-education-and-training-letter-7.30.20-final.pdf.

31. Robin L. West, Teaching Law: Justice, Politics, and the Demands of Professionalism 22–30 (2014); Pete Davis, *Our Bicentennial Crisis: A Call to Action for Harvard Law School's Public Interest Mission*, Harv. L. Rec. (Oct. 26, 2017), http://hlrecord.org/our-bicentennial-crisis-a-call-to-action-for-harvard-law-schools-public-interest-mission/ ("A first year curriculum that incorporates the history, philosophy and sociology of the law—paired with real-world clinical experiences—would better orient students to be change agents.").

32. Stephanie Francis Ward, *ABA Legal Ed Section's Council Adopts Tighter Bar Passage Standard; Clock for Compliance Starts Now*, ABAJournal.com (May 17, 2019), https://www.

as political leaders propose bills to ban the teaching of "Critical Race Theory" in public schools across the country,[33] law schools must decide whether they have a duty to engage both critical perspectives of law and social movements in the law classroom to answer the charge of ABA Standard 301(a), Standards 302(c) & (d), and revised Standard 303, or whether they will hew to neoliberal market forces.[34] To be sure, many scholars remain doubtful that law schools are truly committed to investigating whether the rule of law perpetuates structural racism or systemic oppression, especially when most of them treat public interest lawyering the way many law professors treat law school charity auctions: optional.[35] Nevertheless, law schools must consider whether teaching law students how to become public citizen lawyers demands holding law schools accountable for their impact on, or apathy toward, their students' lived experiences and their local communities.

This Essay explores these issues as follows. Part I offers a brief retrospective on my experience learning the case of *People v. Goetz* in law school, which left an indelible mark on my law school experience. Then, Part II explores various ways that lawyers have sought to define public citizenship as an ethical dimension of United States lawyering practice. Beyond noting how a lack of clarity on the meaning of public citizenship in the Model Rules has led to moral tensions in lawyering practice, this part argues that the governing norms that guide public citizenship lawyering suffers from a limited cultural gaze that narrows the meaning of foundational constitutional principles, such as liberty, and neglects the unique lived experiences of marginalized populations.

Finally, Part III theorizes the foundational principles of a legal pedagogy of public citizenship. Weaving in examples from the case of *People v. Goetz*, it articulates four essential principles: (1) deconstructive framing, which guides the law professor in teaching the lawyer's ethical duty of candor; (2) ethical reposturing, which guides the law professor in teaching the lawyer's ethical duty of competence and professional judgment; (3) reconstructive ordering, which guides the

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abajournal.com/news/article/council-of-legal-ed-adopts-tighter-bar-pass-standard-and-clock-for-compliance-starts-now.

33. Aziz Huq, *The Conservative Case Against Banning Critical Race Theory*, TIME (July 13, 2021), https://time.com/6079716/conservative-case-against-banning-critical-race-theory/.

34. *See* Anthony V. Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1074 (2009) (reviewing WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007)) ("Absent a meaningful commitment to professional development and social justice in the law school curriculum, institutional mission succumbs to the reigning orthodoxies of the adversary system and the ethics of the legal marketplace."); *see also* Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 547 (2007). *See generally* LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE (1997) (concluding from the interviews of hundreds of women lawyers that legal education promotes a narrow vision of lawyering that marginalizes female perspectives on social justice).

35. Kathryn A. Sabbeth, *What's Money Got to Do with It?: Public Interest Lawyering and Profit*, 91 DENVER U. L. REV. 441, 447 (2014) ("Law graduates regularly take this conception of pro bono with them into the profession. They develop an impression of their profession distinct from public interest lawyering, which they view as an act of charity for when they have the time and inclination.").

law professor in teaching the lawyer's ethical duty to improve the law; and (4) liberatory lawyering, which guides the law professor in teaching the lawyer's ethical duty to assist the client and others in gaining competence. Collectively, these principles assert a counter-cultural vision of practice readiness that empowers law students to affirmatively challenge social and economic injustice in the United States legal system. Further, these principles exalt a democratic conception of professional lawyering identity and a progressive notion of the legal academy as law's laboratory for social change. Most important, this philosophy of law teaching responds to student disorientation with guideposts for the discovery of critical legal consciousness with a goal of transforming legal education, in the words of bell hooks, into a "practice of freedom."[36]

I. On Intellectual Violence: A Retrospective

A. How It Started

I began with a study of the relevant facts. Four Black teenagers, I learned, had boarded the train in the Bronx on a Saturday afternoon in late December 1984.[37] Two of the young men had concealed screwdrivers in their coat pockets, which seemed irrelevant; not the kind of fact that Goetz could have known and, therefore, unrelated to his fears. The young men would later confess that they planned to use the screwdrivers to mischievously pry open arcade game coin boxes, which also seemed irrelevant to the case.[38] The teenagers rode the train downtown into lower Manhattan, much like I rode the train to high school each day, where a White man named Bernhard Goetz, age 37, got on board. Goetz sat near the young men, also with something concealed in his pocket: "an unlicensed .38 caliber pistol loaded with five rounds of ammunition in a waistband holster."[39]

Two of the Black teenagers approached Goetz and one of them, Troy Canty, declared, perhaps with the fervor of an overly confident youth, "Give me five dollars."[40] Although none of the young men had brandished a weapon, Goetz stood up, unholstered his gun, and fired four shots in rapid succession at the young men, establishing "a pattern of fire . . . from left to right."[41] It seemed to me, at first, that perhaps Goetz was merely shooting in self-defense, caught up in the heat of the moment. According to the court's summary of the facts, "The first shot hit Canty in the chest; the second struck Allen in the back; the third went through Ramseur's arm and into his left side."[42] During this era, crime in New York City had been skyrocketing, with thousands of murders occurring each year

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36. bell hooks, Teaching to Transgress—Education as the Practice of Freedom 4 (1994).
37. People v. Goetz, 497 N.E.2d 41, 43 (N.Y. 1986).
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.* at 44.
42. *Id.* at 43.

and dozens of crimes in the subway system being reported every day.[43] Perhaps this explained, I pondered, why Goetz would later admit to the police that he had been carrying an illegal handgun for three years due to a prior mugging. He would claim that he shot his gun because he was afraid that he would be "maimed" by the teenagers.[44]

However, as I read further, the case became more complex. Goetz fled out of state, hid for nine days, and then turned himself in to the police in Concord, New Hampshire, identifying himself as the "subway vigilante" whom the media had begun to both praise and vilify.[45] Perhaps Goetz had been motivated by other factors, such as the notion that citizens have a right to take matters into their own hands if law enforcement are not present at the scene of a potential crime. During his confession, Goetz told the police, "If I was a little more under self-control . . . I would have put the barrel against his forehead and fired . . . if I had had more [bullets], I would have shot them again, and again, and again."[46] Perhaps Goetz had been the aggressor and not the victim, after all. Indeed, after the train had stopped and the conductor had begun to administer aid to the youths who were lying on the floor and slumped across the seat in the subway car, all injured, "Goetz went between two of the cars, jumped onto the tracks and fled," disappearing into the tunnel.[47] Why did Goetz leave the scene if he had merely acted in self-defense?

What I read next was even more disturbing. As the court summarized the facts from trial testimony, Goetz "knew from the smile on Canty's face that they wanted to 'play with [him]' but still determined to 'murder [the four youths], to hurt them, to make them suffer as much as possible.'"[48] As the court further explained, after Goetz noticed that the two youths who initially had asked him for five dollars had fled after his initial round of shots, and after he noticed that a third youth, Cabey, was simply standing still, "holding on to one of the subway hand straps, and not looking at Goetz," he proceeded to shoot Cabey in the back and then chase the first two teenagers to make sure they had been "'taken care of.'"[49] After confirming the young men had been shot and injured, Goetz "spun back to check on the latter two," observed Cabey now sitting on the end bench of

43. Bruce D. Johnson et al., *The Rise and Decline of Hard Drugs, Drug Markets, and Violence in Inner-City New York*, *in* THE CRIME DROP IN AMERICA 196 (Alfred Blumstein & Joel Wallman eds., 2006).

44. *Goetz*, 497 N.E.2d at 44.

45. *Justice for Bernhard Goetz*, N.Y. TIMES, Oct. 20, 1987, at A34 [hereinafter *Justice for Goetz*], https://www.nytimes.com/1987/10/20/opinion/topics-of-the-times-justice-for-bernhard-goetz.html?searchResultPosition=6; John Leo, *Behavior: Low Profile for a Legend Bernard Goetz*, TIME (Jan. 21, 1985), https://content.time.com/time/subscriber/article/0,33009,956277-1,00.html.

46. *Goetz*, 497 N.E.2d at 44.

47. *Id.*

48. *Id.*

49. *Id.*

the car, and declared, "'You seem to be all right, here's another,'" before firing at Cabey and ultimately severing the teenager's spinal cord.[50]

An initial grand jury declined to indict Goetz for attempted murder, assault, or reckless endangerment, and instead only indicted him on charges related to criminal possession of a weapon.[51] A second grand jury brought forward more serious charges, including attempted murder, after additional evidence was uncovered by law enforcement investigations. The reasonableness of Goetz's claim that he used deadly force as self-defense based upon his belief that he was in imminent danger of death or serious bodily harm at the hands of the teenagers became a point of contentious debate. The more serious charges against Goetz were eventually dismissed when the court held that "the prosecutor, in a supplemental charge elaborating upon the justification defense, had erroneously introduced an objective element into this defense by instructing the grand jurors to consider whether Goetz's conduct was that of a 'reasonable man in [Goetz's] situation.'"[52] On appeal, the case of *People v. Goetz* asked the New York Court of Appeals to determine whether the grand jury in the lower court was properly instructed on what "reasonably believes" means under New York's self-defense statute.

As I finished the case that evening and prepared for the next day's discussion, the unspoken racialized dimensions of the case haunted me. Would a reasonable person in New York City in 1984 believe that Goetz, a White man, faced the imminent danger of death or serious bodily harm from four unarmed Black teenagers on a subway train in the middle of the day? Would a reasonable person believe that Goetz—the only person strapped with a gun in the crowded subway car—was the victim in this case? Or would they believe, as the media suggested, that Goetz was acting as a vigilante in the absence of law enforcement?[53] Perhaps most haunting of all, as I reflected on my own experiences riding the New York City subway train, did the reasonable person in United States criminal law, objectively speaking, include me?

B. How It's Going

The next day, my criminal law class discussed the facts of *People v. Goetz*. We reviewed the judge's opinion, clarified the court's holding,[54] opened the floor for discussion, and eventually moved on to other course content. I recall a student declaring that it was more than reasonable, objectively speaking, for anyone to

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50. *Id.*

51. *Id.*

52. *Id.* at 46.

53. Lloyd R. Cohen, *The Legitimacy of Vigilantism*, 1989 BYU L. REV. 1261, 1267 (reviewing GEORGE P. FLETCHER, A CRIME OF SELF-DEFENSE: BERNHARD GOETZ AND THE LAW ON TRIAL (1988)).

54. *Goetz*, 497 N.E.2d at 48 (explaining the role of both subjective and objective standards of reasonableness by noting that "deadly force could be justified under the statute even if the actor's beliefs as to the intentions of another turned out to be wrong, but noted there had to be a reasonable basis, viewed objectively, for the beliefs").

believe that four Black teenagers might harm them given the climate of youth violence in New York City at the time. I think someone else said, "I don't see it that way," after a stretch of silence. I think my law professor said, "This is a tough issue with clear racial dimensions. Let's move on and see if another case will help us make sense of it," after some more back and forth. To be honest, I do not trust my memory of the discussion. Maybe I heard everything that I feared my White colleagues would say about Black criminality.[55] Maybe I heard nothing but the sound of a gun exploding in the cavern of my mind where I hid, in silence, as the class questioned the reasonableness of a White man attempting to kill four unarmed Black male teenagers in America based on unsubstantiated fears.[56] Why I chose to invoke my right to remain silent in that moment, I still do not know. I do know that I was not alone in my silence. Perhaps, as Margaret Montoya suggests, I and a few others were merely trying to survive our intellectual trauma, "Presenting an acceptable face . . . masking our inner selves . . . defenses against racism passed on to us by our parents to help us get along in school and in society."[57] Perhaps I had simply grown tired of defending the dignity of Black life that was all too often forgotten, or at best underexplored, in the legal opinions that filled our casebooks.

I do remember swallowing my questions about reasonableness until breathing became difficult, studying the rules of objectivity diligently for my final exam until passing the course became inevitable, and moving on to subject after subject in my law school curriculum until the smiles of family members at graduation became a special kind of solace.[58] To be sure, I learned a tremendous amount of legal theory in my criminal law class. We discussed various philosophical arguments about the purpose of punishment, the goal of criminal law, and the meaning of justice in the United States criminal adjudicatory system. But we did not spend much time talking about those four Black teenagers—Canty, Ramseur, Allen, and Cabey—or their communities in the Bronx. We did not discuss the implications of poverty or racially biased policing or racism for the claims of self-defense that Goetz raised in the case. We did not discuss the aftermath of the case, including the civil suit that Cabey filed against Goetz with race as the dominant theme.[59] Interestingly, I would later discover, the jury in the civil suit found Goetz guilty of acting recklessly and deliberately inflicting emotional distress on Cabey, rendering

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55. David L. Brunsma et al., *Graduate Students of Color: Race, Racism, and Mentoring in the White Waters of Academia*, 3 SOCIO. RACE & ETHNICITY 1, 5 (2017).

56. AMY LOUISE WOOD, LYNCHING AND SPECTACLE: WITNESSING RACIAL VIOLENCE IN AMERICA, 1890–1940 69 (2009).

57. Margaret E. Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 15 CHICANO-LATINO L. REV. 1, 6–7 (1994).

58. *Id.* at 8 ("Academic success traditionally has required that one exhibit the linguistic and cognitive characteristics of the dominant culture.").

59. Adam Nossiter, *Bronx Jury Orders Goetz to Pay Man He Paralyzed $43 Million*, N.Y. TIMES (Apr. 24, 1996), https://www.nytimes.com/1996/04/24/nyregion/bronx-jury-orders-goetz-to-pay-man-he-paralyzed-43-million.html.

a $43 million judgment.[60] Goetz subsequently filed for bankruptcy to avoid paying the fine and declared in 2004 on Larry King Live, "[T]hat judgement was meaningless . . . I don't think I've paid a penny on that."[61]

We did not discuss the ethics of the defense lawyers' opening arguments, which attempted to shield Goetz from criminal liability by using racial stereotypes—e.g., hoodlums, criminals, savages, punks, low-lifes, and thugs[62]—to describe Goetz's shooting victims. We did not discuss the ethics of the defense lawyers' decision to reenact the subway shooting by bringing four large Black men from the volunteer patrol group Guardian Angels into the courtroom to play Goetz's victims, perhaps as an attempt to demonstrate why his fears were objectively reasonable.[63] We did not discuss what lawyers or judges should make of empirical evidence that demonstrates that Black people are often associated with "dangerousness, violence, and criminality," especially when it comes to the implicit biases of shooters.[64] We did not discuss the unspoken racial subtext in the doctrine of self-defense, including how such laws can reinforce racial subordination, perpetuate racial segregation, and legitimate racial violence against minoritized populations.[65]

Perhaps as a result, when the unarmed Black teenager, Trayvon Martin, was killed by a White vigilante, George Zimmerman, during my third year of law school, I was unprepared to think critically about the moral implications of the doctrine of self-defense against the backdrop of anti-Black racism and the perceived reasonableness of White vigilantism on display in that case. I did not have a good answer for what my duty as a public citizen should be as I headed to work at an international law firm in Washington, D.C. as Black Lives Matter protests erupted around the country. I could not wrap my mind around the complexities of objective and subjective standards of reasonableness buried in criminal law because my legal education, up to that point, had failed to meaningfully wrestle with the vestiges of White supremacy buried in the rule of law. Instead, I avoided thinking about Goetz altogether until he reappeared in my newsfeed in 2020 when Kyle Rittenhouse, a 17-year-old White male, killed two men and wounded another with a semi-automatic, AR-15 style rifle while attending a protest against

60. John J. Goldman, *Jury Orders Goetz to Pay $43 Million for Shooting*, L.A. TIMES (Apr. 24, 1996, 12:00 AM), https://www.latimes.com/archives/la-xpm-1996-04-24-mn-62154-story.html.

61. Larry King Live, *Interview with "Subway Vigilante" Bernhard Goetz*, CNN TRANSCRIPTS (Dec. 17, 2004), https://transcripts.cnn.com/show/lkl/date/2004-12-17/segment/01.

62. FLETCHER, *supra* note 53, at 206.

63. *See* Cynthia Lee, *Race and the Criminal Law Curriculum*, *in* THE OXFORD HANDBOOK OF RACE AND LAW IN THE UNITED STATES 1, 9 (Devon Carbado et al. eds., 2022), https://scholarship.law.gwu.edu/faculty_publications/1535/; FLETCHER, *supra* note 53, at 206–07.

64. Lee, *supra* note 63, at 10; Cynthia Lee, *Race, Policing, and Lethal Force: Remedying Shooter Bias with Martial Arts Training*, 79 LAW & CONTEMP. PROBS. 145, 162–70 (2016) (examining various shooter bias studies).

65. *See* Lee, *supra* note 63, at 10; Addie C. Rolnick, *Defending White Space*, 40 CARDOZO L. REV. 1639, 1690 (2019) (noting expanded self-defense laws "carve out the possibility for legalized lethal violence against people who appear 'out of place' and also create space for White residents to enact lesser forms of violence on their Black neighbors under cover of the same fear").

police violence in Kenosha, Wisconsin.[66] When Rittenhouse was acquitted in November 2021 on charges of homicide after pleading not guilty by reason of self-defense,[67] news outlets began to draw parallels between Rittenhouse and Goetz.[68]

Notwithstanding significant differences between the two cases, there were notable similarities. Both men were deemed "vigilantes" by the media for taking the law into their own hands. Both men fired their weapons and harmed innocent bystanders. Both men pleaded not guilty by reason of self-defense. Both men are racialized as White. And, both men were acquitted by their respective juries. Goetz was acquitted of four attempted murder charges,[69] and Rittenhouse was acquitted of intentional homicide, among other charges.[70] As I listened to news pundits discuss why Rittenhouse was acquitted, navigating the complexities of Wisconsin's self-defense law, the notion of "reasonableness", and the question of whether one must "retreat" before using deadly force, I was transported back to my criminal law class. Once again, under a veil of objectivity and neutrality, lawyers were trying to make sense of United States criminal law through the gaze of a White male without considering the unspoken racial tensions that lingered out of view.

The questions that I had buried in the pit of my stomach in Pound Hall resurfaced. What does it mean to be a lawyer committed to justice when the law seemingly facilitates injustice? Do lawyers have a responsibility to change the law when they believe that it harms certain communities or ignores certain lived experiences? Does the lawyer have an ethical responsibility to avoid using racial stereotypes in court, even if they will increase the chances of their client winning the case? When the law fails to wrestle with the racial tensions embedded in United States legal doctrine—from criminal law to contract law to property law—what is the lawyer's responsibility as a public citizen?

II. On the Idea of Lawyers as Public Citizens

Lawyers tend to view the concept of public citizenship through idealistic eyes, envisioning noble individuals who "devote time and effort to public ends

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66. Claudia Dominguez, *Kenosha Shooting Suspect Kyle Rittenhouse's Bail Set at $2 Million*, CNN (Nov. 3, 2020, 1:22 PM), https://www.cnn.com/2020/11/03/us/kyle-rittenhouse-kenosha-shooting-bail-set/index.html.

67. Julie Bosman, *Kyle Rittenhouse Acquitted on All Counts*, N.Y. TIMES (Jan. 27, 2022), https://www.nytimes.com/live/2021/11/19/us/kyle-rittenhouse-trial#kyle-rittenhouse-verdict.

68. *See* Michael Goodwin, *Kyle Rittenhouse, Bernie Goetz Cases Share Similarities*, N.Y. POST (Nov. 20, 2021, 9:17 AM), https://nypost.com/2021/11/20/kyle-rittenhouse-bernie-goetz-cases-share-similarities-goodwin/; Charles M. Blow, *Rittenhouse and the Right's White Vigilante Heroes*, N.Y. TIMES (Nov. 19, 2021), https://www.nytimes.com/2021/11/19/opinion/kyle-rittenhouse-not-guilty-vigilantes.html.

69. Goetz was convicted of carrying an unlicensed gun and served eight months in prison for that offense. *Justice for Goetz*, *supra* note 45.

70. Andrew Leonatti, *Why Was Kyle Rittenhouse Acquitted?*, FINDLAW.COM (Nov. 23, 2021, 11:36 AM), https://www.findlaw.com/legalblogs/courtside/why-was-kyle-rittenhouse-acquitted/ ("Rittenhouse faced charges of first-degree reckless homicide, first-degree intentional homicide, first-degree reckless endangerment, attempted first-degree intentional homicide, and possession of a dangerous weapon by a person under 18.").

and values: the service of the Republic, their communities, the ideal of the rule of law, and reform's to enhance the law's efficiency, fairness, and accessibility."[71] As Robert Gordon explains, "the paradigmatic public benefit of private practice" is often portrayed as "the defense of individual client's rights of liberty and property against the dangers of an overbearing state," or "the vindication of rights and the defeat of unjust claims."[72] But who protects the state, and more specifically, the law, from the special interests of the overbearing citizen? That is, when does the protection of individual rights undermine the public benefits of law? Even more, when does the lawyer become accountable for such harms?

Part of the answer requires clarifying what the term "public citizenship" means in the context of the lawyer's professional role, a question taken up in Section II.A. below. Then, Section II.B. considers what such tensions mean for the law professor intent on preparing their student for law practice.

A. The Definitional Dilemma

James Fleming describes the moral tensions between the lawyer's professional ethical obligations and their personal morality as a "moral schizophrenia of the lawyer-person" that is "at once alienating and anesthetizing," a type of cognitive dissonance, so to speak, in law practice.[73] By calling upon lawyers to separate their personal moral views from their professional ethical obligations to their clients,[74] yet simultaneously imbuing them with a "special responsibility for the quality of justice" as public citizens,[75] the ABA Model Rules of Professional Conduct tends to numb moral accountability and constrict social justice advocacy, while simultaneously creating the impression of moral accountability within the legal system. Fleming identifies four theoretical pathways to resolve the tension between the lawyer's personal and professional life.

First, the lawyer can de-personalize the practice of law, rendering the lawyer fully as a professional who embodies what William H. Simon has called "the Ideology of Advocacy" or "the Dominant View." In this context, zealous advocacy embodies the lawyer's "basic precept" or "governing norm."[76] The lawyer reconciles the moral tension by leading two separate lives—a lawyer governed by professional ethical rules in public and a moral person governed by social norms

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71. Robert W. Gordon, *The Citizen Lawyer—A Brief Informal History of a Myth with some Basis in Reality*, 50 WM. & MARY L. REV. 1169, 1169 (2009).

72. *Id.* at 1170.

73. James E. Fleming, *The Lawyer as Citizen*, 70 FORDHAM L. REV. 1699, 1699 (2002).

74. MODEL RULES, *supra* note 14, at pmbl. ¶ 2 ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.").

75. *Id.* at ¶ 1.

76. William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 30, 30; WILLIAM H. SIMON, THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS 8 (1998) [hereinafter SIMON, THE PRACTICE OF JUSTICE] ("The basic precept is nearly always qualified by some norms intended to protect third-party and public interests. But the basic precept remains the governing norm. It influences and structures discussions. It functions as both starting point and presumptive fallback position.").

and values in private. Adhering to the basic precept of zealous advocacy, the legal profession's celebration of pro bono lawyering as the mechanism by which lawyers enact public citizenship as a "qualifying norm" reflects this dual role. Here, lawyers are not morally accountable for the deficiencies of the legal system. Rather, since lawyering under this formulation is purely a professional activity, pro bono law practice remains optional, but highly recommended. As a result, public citizenship lawyering becomes merely a distinct pathway of law practice, commonly associated with the work of judges, government lawyers, "cause" lawyers, and public interest lawyers.[77] Further, it legitimizes the notion that the law is working for everyone, including those who cannot afford legal counsel, even as private lawyers continue to privilege paying clients over those who cannot pay their high fees.

Second, the lawyer can de-professionalize the practice of law, thereby taking seriously the critique of Kantian philosopher John Ladd who argued that professional ethics is absurd and role morality is a mechanism for avoiding the personal moral responsibility of human agents.[78] Here, all members of the legal profession embrace personal accountability for protecting the public benefits of law. However, this pathway doesn't necessarily mean that lawyers alter their approach to law practice. Rather, the lawyer in this formulation selects the modes of law practice that comport with their personal moral views. Additionally, the lawyer may be inclined to perform public duties outside of their professional role, such as pro bono lawyering or bar service, to counterbalance inequities furthered by their everyday professional activities. Thus, this formulation supports the notion that all members of the legal profession should engage in pro bono lawyering activities, whether within their normal professional roles or outside of it.[79]

Third, the lawyer can presume that the practice of law under the Model Rules conforms to the moral standards of citizenship, defined for such purposes as the individual pursuit of well-being guided by a respect for and deference to the common good and the rule of law.[80] In other words, under this formulation, "a good lawyer" is "*ipso facto* a good person."[81] Whereas Oliver Wendell Holmes called the lawyer "who only cares for the material consequences" of their client's case the prototypical "bad man,"[82] according to Charles Fried, a good lawyer is a

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77. Sabbeth, *supra* note 35, at 492; Gordon, *supra* note 71, at 1172, 1181.

78. GEOFFREY C. HAZARD, JR. & DEBORAH L. RHODE, THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION 122 (3d ed. 1994) (excerpting John Ladd, *The Quest for a Code of Professional Ethics: An Intellectual and Moral Confusion*, *in* PROFESSIONAL ETHICS ACTIVITIES IN THE SCIENTIFIC AND ENGINEERING SOCIETIES (R. Chalk et al. eds., 1980)); John Ladd, *Morality and the Ideal of Rationality in Formal Organizations*, 54 MONIST 488, 513–14 (1970).

79. *See* Reed Elizabeth Loder, *Tending the Generous Heart: Mandatory Pro Bono and Moral Development*, 14 GEO. J. LEGAL ETHICS 459, 460 (2001).

80. MODEL RULES, *supra* note 14, at pmbl. ¶ 8 (declaring, "[a] lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done").

81. Fleming, *supra* note 73, at 1700 (emphasis in original).

82. *See* Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 459 (1897).

friend.[83] By furthering their client's individual rights of liberty and property, and by vindicating their client's rights-based claims, the lawyer upholds the rule of law while enabling citizens to exploit the instrumentalities of law. As Bradley Wendel argues, the legal system's ability to resolve disputes in a public forum governed by reason imbues it with moral worth that makes it unnecessary for lawyers to consider "ordinary morality" or substantive justice, thereby "shifting the evaluative frame . . . to considerations of political legitimacy."[84] This restraint binds the lawyer to their prescribed roles and functions within the legal system, enabling an "institutional settlement" that preserves pluralism and "the positive legal obligations in the code of ethics."[85]

To be sure, the lawyer in the third formulation must still adhere to the Model Rules, which call for lawyers, as "public citizen[s]," to "seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession."[86] Yet, such efforts typically aim toward improving systemic deficiencies that prevent citizens from equally accessing the law,[87] such as the inability of some citizens to afford adequate legal counsel. These efforts rarely focus on reforming the structure of law itself when it advances the interests of some individuals (such as the wealthy) at the expense of others (such as the poor) since the dispute resolution system is deemed to be fair. Further, even when reform efforts seek to address structural inequities, scholars have argued that such campaigns tend to serve the interests of parties with economic power, which "results in the distorted development of law."[88]

Finally, if the lawyer presumes that the practice of law does not always accord with the moral standards of upstanding citizenship, then the lawyer must strike a middle ground. Here, the lawyer embraces not only responsibility to the client as a professional but also to themselves as an individual moral agent, commitments to both professional integrity and personal integrity. Even more, the lawyer embraces responsibility to the rule of law itself. However, such responsibility must not be merely a fidelity to a positivist notion of "the rule of law as a law of

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83. Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060, 1071–76 (1976). *But see* ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 18–19 (1993) (arguing that a good lawyer "must also be a public-spirited reformer who monitors this framework itself and leads others in campaigning for those repairs that are required to keep it responsive and fair . . . . [T]he appropriate object of the law reformer's concerns is the structural arrangement of the legal order as a whole and not the resolution of particular disputes of the sort that lawsuits and other concrete controversies typically involve").

84. *See* WENDEL, *supra* note 17, at 4.

85. Luban & Wendel, *supra* note 20, at 353–54. *But see* Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 373 (2006) [hereinafter Kruse, *Fortress in the Sand*]; Katherine R. Kruse, *Beyond Cardboard Clients in Legal Ethics*, 23 GEO. J. LEGAL ETHICS 103, 105–06 (2010).

86. MODEL RULES, *supra* note 14.

87. Gordon, *supra* note 71, at 1173 (describing the "officer of the court" role described in the Model Rules as the lawyer serving as "a trustee for the integrity and fair operation of the basic procedures of the adversary system, the rules of the game, and their underlying purposes").

88. Sabbeth, *supra* note 27.

rules."[89] Rather, the lawyer in this fourth formulation must commit themself to a constructivist notion of the rule of law, a sense that law is constantly evolving through social, cultural, and political discourse. The lawyer embraces a role as a 'wise counselor' who guides the client in complying with "the underlying spirit or purpose as well as the letter of laws."[90] In so doing, the lawyer welcomes the discursive construction of law mediated by cultural debate. Yet, they also acknowledge that democratic debates on law must ultimately produce a cohesive political system governed by universal moral and philosophical ideals.

Accordingly, aside from a fidelity to professional integrity and personal integrity, the lawyer seeking to overcome their so-called moral schizophrenia, or cognitive dissonance in law practice, maintains a fidelity to *legal integrity* through practical judgment in furtherance of the collective public good.[91] The lawyer pursues this conception of legal integrity—the work of preserving the cohesiveness of law in relation to its underlying and foundational principles, such as liberty, equality, and justice—notwithstanding "the fragmentation of value" in sociopolitical discourse on the meaning of law's ethical commitments and their implications for law reform.[92] More than a notion of public citizenship promoting access to legal services as a "public good,"[93] public citizenship also demands advocating for marginalized conceptions of the public good to be integrated into democratic discourse and political debate.

This fourth pathway—the pursuit of legal integrity—has been deemed the work of the lawyer as a public citizen by many progressive scholars.[94] However, this claim remains in dispute, in part due to a lack of clarity on the definition of public citizenship in the Model Rules,[95] alongside the dominant view that public

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89. *See* Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175, 1178 (1989) (arguing, "The common-law, discretion-conferring approach is ill suited . . . to a legal system in which the supreme court can review only an insignificant proportion of the decided cases").

90. Gordon, *supra* note 71, at 1174.

91. *See* RONALD DWORKIN, LAW'S EMPIRE 176–224 (1986); Ronald Dworkin, *Law as Interpretation*, 60 TEX. L. REV. 527, 532, 543 (1982).

92. THOMAS NAGEL, *The Fragmentation of Value*, *in* MORTAL QUESTIONS 128, 128 (1979).

93. Gordon, *supra* note 71, at 1175 ("[L]egal services are themselves public goods and the legal profession is a public utility charged with supplying these services to poor and unpopular clients-through mandatory pro bono services or support of legal services programs.").

94. *See generally* MORTIMER R. KADISH & SANFORD H. KADISH, DISCRETION TO DISOBEY: A STUDY OF LAWFUL DEPARTURES FROM LEGAL RULES (1973) (exploring the idea that departing from the strict letter of the law can in certain instances comport with both law and morality); Gerald J. Postema, *Moral Responsibility in Professional Ethics*, 55 N.Y.U. L. REV. 63 (1980) (arguing for a new conception of professional ethics in which lawyers must acknowledge personal responsibility for the consequences of their professional conduct); DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION (2000) (calling the legal profession to embrace ethical standards that put public service above economic self-interest); DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY (1988) (examining the conflict between common morality and the lawyer's "role morality" under the adversary system); Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1 (1988) (cataloguing how lawyers have conceptualized the notion of professional independence in lawyering practice).

95. MODEL RULES, *supra* note 14, at pmbl. ¶ 6 ("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.").

citizenship can be fulfilled through voluntary pro bono lawyering outside of one's professional role. Further, there is a widely celebrated notion that public citizenship is a lawyering role that has been lost and must be reclaimed.[96] To the contrary, Robert Gordan argues, "the general ethical standards of practice, one practical measure of civic virtue, are probably higher today than they have been for most of our history simply because bar associations, courts, regulators, and law firms have put in place some disciplinary machinery to enforce them."[97] Further, Gordan asserts, since the 1970s, bar associations nationwide have taken more seriously the importance of citizen access to legal counsel, which was not the case at the turn of the twentieth century.[98] Perhaps, then, public citizenship is less a matter of reclamation, and more a matter of reconstruction.

Amidst these differing views, identifying to whom the lawyer must be accountable, and when, remains urgent. Not only, as Fleming notes, because "how one conceives law and the legal system . . . bears upon how one conceives the lawyer's role and responsibility as well as to whom these responsibilities are owed."[99] But even more, how one conceives the lawyer's role in relation to the rule of law bears upon the responsibilities of law professors to law students. How must legal education respond to the cognitive dissonance of the lawyer-person who must balance personal moral views and professional obligations? This complicated question cuts to the core of law school's fundamental purpose and is beyond the scope of this Essay's limited intervention.[100] Here, we will merely focus on law school's responsibility to prepare law students for professional practice in line with the ABA's guidelines on the objectives of legal education programs under Standard 301(a), Standards 302(c) & (d), and revised Standard 303. Given this framing of law school's mandate, albeit partial, must law professors be attentive to the various pathways identified by Fleming—de-personalization; de-professionalization; lawyer as friend; and lawyer as public citizen—as they prepare their students for law practice?

B. The Problem of the Gaze

Most legal scholars would agree that lawyers must strive to be public citizens, as recommended by the Model Rules. Yet, the claim that public citizenship demands a fidelity to legal integrity alongside a lawyer's fidelity to the legal profession and fidelity to the lawyer's self, each operating in concert, is still up for debate. To be sure, there is already broad international consensus based on the

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96. *See, e.g.*, Robert E. Scott, *The Lawyer as Public Citizen*, 31 U. TOL. L. REV. 733, 733–37 (2000) (arguing that the role of lawyers as public citizens "has been largely ignored in the current debate about the decline in professionalism"); RHODE, *supra* note 94, at 1 (noting that the legal profession has been decrying the loss of honor since the early nineteenth century).

97. Gordon, *supra* note 71, at 1179.

98. *Id.* at 1180.

99. Fleming, *supra* note 73, at 1701.

100. See Etienne Toussaint, *The Purpose of Legal Education*, 111 CALIF. L. REV. (forthcoming 2023), for a deeper examination of legal education and its objectives.

United Nations Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders at Havana, Cuba in 1990, that lawyers must not only protect "fundamental freedoms," but also assist "the poor and other disadvantaged persons so as to enable them to assert their rights."[101] Yet, when lawyers must do so is less clear. As a result, how law professors conceptualize the relationship between the law, lawyering, and public citizenship is varied. In some ways, such pedagogical diversity is a byproduct of academic freedom. Yet, it also reflects, more fundamentally, a lack of consensus on the demands of public citizenship *upon legal education* due to the lack of consensus on the more general implications of public citizenship for the legal profession.

Consider the law professor who develops a legal pedagogy geared toward advancing the dominant ideology of advocacy described by Simon. According to Simon, this view asserts that the ethical demands of the legal profession that govern the lawyer's pursuit of being a "good" lawyer are separate and distinct from the moral demands of a liberal democratic society that govern a citizen's individual pursuit of being a "good" citizen.[102] Here, the law professor does not meaningfully engage with the law's role in perpetuating hierarchy and subordination. Instead, the law professor frames their classroom instruction around the fundamental premise that lawyers, first and foremost, must be "zealous advocate[s]" for their clients.[103] Indeed, the Model Rules tell us so, noting that the lawyer must prove facts, provide legal support to further their clients' interests,[104] and prioritize their clients' objectives and desired means of pursuing those goals over their own self-interests.[105] Such deference to client values and objectives reflects a longstanding view of the meaning of zealous partisanship as protecting subjects from a sovereign's misrule that dates back to at least the nineteenth century. In the trial of Queen Caroline, Lord Broughman declared:

> [A]n advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and, among them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from

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101. *See* U.N. Secretariat, *Basic Principles on the Role of Lawyers*, at 120–21, ¶ 4 & ¶ 14, U.N. Doc. A/CONF.144/28/Rev.1, annex (Sept. 7, 1990).

102. Simon, *supra* note 76, at 30 ("The purpose of the Ideology of Advocacy is to rationalize the most salient aspect of the lawyer's peculiar ethical orientation: his explicit refusal to be bound by personal and social norms which he considers binding on others.").

103. MODEL RULES, *supra* note 14, at ¶ 8.

104. *Id.* at r. 3.1 & cmt. 1.

105. *Id.* at r. 1.2(a).

> that of an advocate, he must go on reckless of consequences, though it should be his unhappy fate to involve his country in confusion.[106]

To reconcile the moral tension of a lawyer who advocates for their client while ignoring "the destruction which he may bring upon others,"[107] Charles Fried suggests that perhaps being a good lawyer makes one a good person. Fried offers a definition of friendship—"that like a friend [the lawyer] adopts your interest as his own"[108]—that suggests that the lawyer's fidelity to the client furthers the client's "personality, identity, and liberty," thereby benefiting "the [client's] need to maintain . . . integrity as a person."[109] However, Fried's formulation suffers from a limited conception of liberty that privileges individualism yet elides the prospect of domination between citizens.[110] When one's moral universe is comprised entirely of what scholars have called "negative liberty rights,"[111] law becomes merely a tool to preserve individual autonomy from unjustified interference by others.[112] But who stands accountable when the individual autonomy of a client produces human suffering: the client, the lawyer, or both?

One's answer to the question of accountability depends upon one's perspective of the lawyer's role. Viewing the lawyer's role solely through the lens of the empowered client presents a dilemma akin to what American novelist Toni Morrison called "the problem of the White gaze."[113] To Morrison, narrating society primarily through the perspective of White citizens obscures the unique lived experiences of racially and ethnically minoritized populations and overlooks the challenges that such communities face when White cultural experiences are normalized as the status quo. Similarly, when lawyers perceive the law only through the lens of wealthy corporations or upper-class citizens who can afford legal counsel—thereby prioritizing the need to "foster the client's autonomy within the

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106. Fried, *supra* note 83, at 1060 n.1 (quoting 2 TRIAL OF QUEEN CAROLINE 8 (J. Nightingale ed., 1821)).

107. *Id.*

108. *Id.* at 1071.

109. *Id.* at 1073.

110. Many scholars have demonstrated the shortcomings of this account of zealous client advocacy. *See, e.g.*, Kathryn A. Sabbeth, *The Prioritization of Criminal Over Civil Counsel and the Discounted Danger of Private Power*, 42 FLA. ST. U. L. REV. 889, 891 (2017) (arguing that the "prioritization of criminal [defense counsel] over civil counsel reflects a mistaken view of lawyers' primary role as a shield against government power").

111. Steven J. Heyman, *Positive and Negative Liberty*, 68 CHI.-KENT L. REV. 81, 81 (1992) ("In broad terms, negative liberty means freedom *from*—[] interference, coercion, or restraint—while positive liberty means freedom *to*, or self-determination—freedom to act or to be as one wills.").

112. Deborah M. Weissman, *Law as Largess: Shifting Paradigms of Law for the Poor*, 44 WM. & MARY L. REV. 737, 740 (2002) ("Notions of initiative and autonomy are subsumed into concepts of liberty—people acting as free individuals in pursuit of their own self-interest without outside intervention, and especially without interference, from the state. In this view, initiative and independence serve as the minimum requirements for liberty, and success is attained through discipline, determination, and, most of all, hard work. All that liberty asks of us is that we make use of opportunities offered, assume individual responsibility, and exercise self-discipline.").

113. MORRISON, *supra* note 2.

law" in relation to a sovereign[114]—they risk undermining their broader responsibility as public citizens to ensure that the rule of law is fundamentally fair, especially for those who cannot afford legal representation. The Model Rules emphasize "zealous" advocacy—a sense that the lawyer must, according to Matthew Meany, "employ any means necessary to achieve stated ends and . . . reject a thorough inquiry into the legitimacy or various costs of those means"—suggesting that there is already an answer to this tension.[115] However, this Essay contends that applying a new gaze to the Model Rules reveals lawyering responsibilities that serve the goals of public citizenship.

Applying a new gaze to professional lawyering identity also reveals a critical insight regarding the transformation of the lawyer's role in public life across United States history. As Robert Gordon explains, lawyers played a central role in public affairs immediately after the American Revolution because there was "not an excess of law but a shortage of law."[116] As a result, many lawyers filled leadership roles in public life to articulate the body of statutory and common law necessary to shape the contours of the evolving rule of law in a budding United States. During that era, the United States' political economy was, in many ways, reliant upon slave labor and molded by White supremacist cultural views.[117] Gordon further notes, "[b]y the 1830s, Tocqueville was calling lawyers the American 'aristocracy . . . .'"[118] In many instances, lawyers who claimed to be advocating for the public interest—e.g., encouraging the conservation of individual property rights and contractual rights by the rule of law—appeared to be more interested in protecting the racialized social hierarchy that the law had come to legitimate. For example, the efforts of many business lawyers in the nineteenth century to attain favors from the government for their clients—which included insurance companies, banks, merchants, manufacturers, railroads, etc.—were shaped as much by their own economic self-interests as by the self-interests of the economic elite.[119] Thus, the notion of the long-lost public citizen depends upon who one defines as

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114. Fried, *supra* note 83, at 1073.

115. Matthew E. Meany, *"Lawyer as Public Citizen"—A Futile Attempt to Close Pandora's Box*, 35 CAMPBELL L. REV. 119, 126 (2012); *see also* Allen K. Harris, *The Professionalism Crisis—The 'Z' Words and Other Rambo Tactics: The Conference of Chief Justices' Solution*, 53 S.C. L. REV. 549, 569–70 (2002); RUDOLPH JOSEPH GERBER, LAWYERS, COURTS, AND PROFESSIONALISM: THE AGENDA FOR REFORM 117 (1989) ("[T]he [legal] system and its participants seek victory, not truth.").

116. Gordon, *supra* note 71, at 1182 (citing MAX M. EDLING, A REVOLUTION IN FAVOR OF GOVERNMENT 45–46 (2003)).

117. *See* JAMES WILLARD HURST, LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH-CENTURY UNITED STATES 13–15 (2d ed. 1964); *see also* LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 120–39 (3d ed. 2005).

118. Gordon, *supra* note 71, at 1184 (citing ALEXIS DE TOCQUEVILLE, 1 DEMOCRACY IN AMERICA 276 (Henry Reeve trans., Arlington House Press 1966) (1835)).

119. *See* JAMES C. FOSTER, THE IDEOLOGY OF APOLITICAL POLITICS: THE ELITE LAWYERS' RESPONSE TO THE LEGITIMATION CRISIS IN AMERICAN CAPITALISM: 1870–1920 136–41 (1986).

the *public*, who one chooses to affirm as a *citizen*, and what one considers the public's interest to be.[120]

To be sure, there have always been public-minded lawyers who advocate on behalf of marginalized populations. For example, throughout history there have been legal campaigns "for universal rights and civic inclusion, from antislavery to civil liberties, civil rights, and public interest 'cause' lawyering."[121] Nevertheless, the first ABA code of ethics was drafted in 1908 in response to the disreputable practices of the business bar.[122] It seems that true public citizenship remains a lofty goal, not a prior destination. Much like the skewed vision of public good promoted by many of America's earliest lawyers, perhaps it is the problem of the gaze that enables some law professors to teach law as an abstraction, focusing primarily on legal rules drawn from legal opinions without substantive exploration of the social context surrounding the dispute. Much in the way the lawyer who ignores systemic inequities takes comfort in "the refuge of role," as Deborah Rhode argued,[123] the law professor who shies away from politics takes comfort in the refuge of rules.

As Meany further explains, "the typical law school experience fails to provide meaningful instruction regarding a lawyer's 'public citizen' duties and the skills needed to work through the moral and ethical conflicts they will inevitably face at some point in their careers."[124] The Carnegie Foundation for the Advancement of Teaching came to a similar conclusion after an extensive study of sixteen representative law schools during the 1999–2000 academic year:

> Issues such as the social needs or matters of justice involved in cases do get attention in some case-dialogue classrooms, but these issues are almost always treated as addenda . . . . In their all-consuming first year, students are told to set aside their desire for justice. They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses.[125]

When law professors condition law students—both White and non-White students alike—to set aside their personal moral views in their legal analysis, classroom habits eventually become standard practice after graduation.

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120. *See, e.g.*, K-Sue Park, *The History Wars and Property Law: Conquest and Slavery as Foundational to the Field*, 131 YALE L.J. 1062, 1125–42 (2022) (arguing that histories of conquest and enslavement were foundational to the development of property law).

121. Gordon, *supra* note 71, at 1188.

122. *See* Susan D. Carle, *Lawyers' Duty to Do Justice: A New Look at the History of the 1908 Canons*, 24 L. & SOC. INQUIRY 1, 7–8 (1999).

123. Deborah L. Rhode, *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589, 617 (1985).

124. Meany, *supra* note 115, at 134.

125. SULLIVAN ET AL., *supra* note 34, at 187.

Not only can this habit formation process be intellectually violent to students differentiated by class, race, gender, and sexuality who find their lived experiences in contradiction to case law, but the habits themselves can become intellectually violent to *all* law students because they convey lawyering as merely a pathway toward meeting client objectives. Meany highlights the danger of this outcome, noting that "a lawyer's focus on winning at all costs could have Pyrrhic implications for her own moral integrity."[126] Further still, although Model Rule 1.2(b) states that "[a] lawyer's representation of a client . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities," a widespread culture of lawyering governed by a spirit of moral detachment and nonaccountability can frustrate broader societal goals to promote justice in the legal system.[127] Put simply, when certain populations find themselves routinely underrepresented and politically disempowered in law practice, it is the byproduct of the legal profession's endorsement of the sociolegal status quo. As a result, many lawyers (and law professors) are satisfied with being distant *allies* rather than staunch advocates.

Legal scholars have long called for a "contextual view" of legal ethics whereby lawyers "see themselves less as subject to role-differentiated behavior and more as subject to the demands of the moral point of view."[128] A contextual, moral framework that demands lawyers take personal moral responsibility for their professional activities recognizes at least two shortcomings of a fidelity to law simply as a law of rules.[129] First, procedural justice is imperfect, requiring lawyers to frequently resort to "background morality" to interpret law in relation to guiding constitutional principles, such as liberty and equality.[130] In other words, as Fleming explains, "legal materials are not self-interpreting"[131] like the rules of a game of chess or baseball. Instead, legal rules are interpreted in relation to the wide-ranging and diverse insights that lawyers bring to the analytical process, whether such insights stem from prior case law, the context-specific details of the lawyer's client, or from the lawyer's own personal history and cultural biases.

Second, the lawyer's role is ill-defined in the Model Rules and, as a result, is commonly recognized as fluid.[132] Lawyers must constantly exercise professional

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126. Meany, *supra* note 115, at 137 ("[A] Pyrrhic Victory is not a victory at all. It is a victory accompanied by enormous losses and costs which leaves the victor in as desperate shape as if he had lost.").

127. *See* MODEL RULES*, supra* note 14, at r. 1.2(b).

128. SIMON, THE PRACTICE OF JUSTICE, *supra* note 76, at 138 (calling for the contextual view); Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1, 12 (1975) (noting that lawyers see themselves subject to the demands of moral imperatives).

129. *See* RHODE, *supra* note 94, at 66–67; *see generally* Russell G. Pearce, *Model Rule 1.0: Lawyers Are Morally Accountable*, 70 FORDHAM L. REV. 1805 (2002) (exploring whether the legal profession should address the refusal of lawyers to accept moral accountability for their actions by adding a new model rule that directs lawyers to do so) .

130. Fleming, *supra* note 73, at 1710; JOHN RAWLS, A THEORY OF JUSTICE 85 (1971).

131. Fleming, *supra* note 73, at 1710.

132. *See generally* MODEL RULES, *supra* note 14, at pmbl. (providing an overview of the various duties and roles of attorneys).

judgment as they seek to remain "mindful of deficiencies in the administration of justice . . . to ensure equal access to our system of justice."[133] Rather than their role being fixed, the lawyer's role has been described by scholars as "recourse,"[134] or referring back to "background and institutional ends to discharge professional responsibilities and personal responsibilities."[135] As lawyers exercise improvisation, creativity, and practical judgment in their role as legal advocates, the line between the personal and professional becomes blurred.[136] To be sure, lawyers are not faced with a neutral decision as they balance the competing demands of zealous advocacy and public citizenship. As Meany clarifies, "a perceived dereliction of advocacy duties could become a nonfrivolous professional malpractice suit for performance below the standard of care expected in the field" or a "colorable grievance for failure of the lawyer's duties of diligence and competence in handling the client's business."[137] Thus, there can be a severe backlash when lawyers resist certain client goals because they want to uphold the dictates of public citizenship.

Some law professors embrace the more progressive, contextual view of legal ethics, whereby the lawyer's zealous advocacy in service toward client objectives remains morally accountable to the harms it imposes on the integrity of the legal system. In such cases, legal pedagogy is geared more toward training public citizen lawyers than mere mastery of legal rules. Of course, this is not a new idea. For example, in the post-World War II era, legal scholars such as Henry Hart and Albert Sacks, and lawyers such as Beryl Harold Levy, advocated for the corporate attorney to serve as a "statesman-advisor" with "an eye to securing not only the client's immediate benefit but his long-range social benefit."[138] Yet, while this vision helped to inspire the model of corporate law firms heading into the 1970s, Robert Nelson contends that by the 1980s, the notion of the lawyer as "wise counselor" helping their clients straddle the public-private divide had largely vanished.[139]

The myriad reasons why law firm practice evolved in this way are beyond this Essay's scope.[140] The more urgent question to this study is what such transformation in law practice has meant for law teaching. This is a complex question on both normative and pragmatic grounds. From a normative standpoint, it urges law professors to query whether, and how, discrete theories of law have shaped

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133. *Id.* at pmbl. ¶ 6.

134. Postema, *supra* note 94, at 81–83.

135. Fleming, *supra* note 73, at 1712.

136. *Id.* ("Whatever shelter a fixed role may offer its occupant, however, a recourse role does not provide complete refuge from personal responsibility or at any rate it undermines the radical distinction between professional and personal responsibility that the Ideology of Advocacy is at paints to maintain.").

137. Meany, *supra* note 115, at 133.

138. Beryl Harold Levy, Corporation Lawyer: Saint or Sinner? 149–50 (1961).

139. *See* Robert L. Nelson, Partners with Power: The Social Transformation of the Large Law Firm 247–59 (1988).

140. Gordon, *supra* note 71, at 1195–203 (clarifying political-economic changes, intraprofessional, and general cultural changes that led to a decline in the citizen lawyer ideal).

legal analysis in the law school classroom. For example, as Robert Gordon insists, "the growth of economism as an academic mode of thinking about law devalues any conception of law as expressing norms or public purposes."[141] Have critical legal studies or feminist legal theory, for example, also influenced how law professors approach the teaching of professional responsibility? What about movement lawyering as a non-traditional approach toward building community power through organizing and protest?[142] Should law professors strive to model critical thinking for students in their own lawyering activities, such as testifying with law students before local legislatures on proposed bills?[143] What dominant theories of law should drive legal education, and why?

From a pragmatic standpoint, the question urges law professors to consider what modes of legal practice are typically used in the law school classroom to both demonstrate and articulate the responsibilities of practicing attorneys. For example, whereas most doctrinal analysis in the 1L law classroom focuses on the role of the lawyer as a litigator, what should be the responsibility of lawyers as public citizens who represent powerful corporations as in-house counsel advising their client on business transactions and regulatory compliance?[144] Does the progressive prosecutor movement provide insights for understanding the concept of public citizenship?[145] Can a conventional mergers and acquisitions lawyer be a public citizen? Can a labor and employment lawyer who focuses on management-side issues be a public citizen? What are the public citizenship duties of lawyers who take on "big" civil rights and international human rights cases "to respond to broad issues affecting entire communities, as opposed to direct service lawyers who use legal tactics to respond to issues affecting individual persons or groups"?[146] Further still, how should law professors prepare law students for such roles given their unique ethical challenges and diverse moral concerns?

While a comprehensive answer to these normative and pragmatic concerns are beyond the scope of this brief Essay, the next Part strives to begin that

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141. *Id.* at 1201.

142. *See* Amanda Alexander, *Nurturing Freedom Dreams: An Approach to Movement Lawyering in the Black Lives Matter Era*, 5 HOW. HUM. & CIV. RTS. L. REV. 101, 114 (2021) (discussing the need for Black people to gain power for self-determination).

143. For example, I submitted written testimony to the South Carolina House Education and Public Works Committee alongside law students from the Black Law Students Association at the University of South Carolina School of Law to jointly protest various proposed education bills—H. 4325, H. 4343, H. 4392, H. 4605, and H. 4799—that sought to ban the teaching of critical race theory in public schools within the state (on file with author).

144. *See generally* Paul R. Tremblay, *Rebellious Strains in Transactional Lawyering for Underserved Entrepreneurs and Community Groups*, 23 CLINICAL L. REV. 311 (2016) (arguing that providing transactional legal services for subordinated clients achieves many of the aims of Gerald López's Rebellious Lawyering project).

145. *See* Angela J. Davis, *The Progressive Prosecutor: An Imperative for Criminal Justice Reform*, 87 FORDHAM L. REV. ONLINE 8, 10 (2018), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1018&context=flro (discussing the need for "good, progressive people" to be prosecutors).

146. *See* Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 CLINICAL L. REV. 775, 793 (2017) (discussing how critiques of big case lawyering can be addressed through the incorporation of rebellious lawyering principles).

conversation with a few foundational pedagogical principles that arguably apply to all law school classrooms. All law professors must teach their students to be "mindful of deficiencies in the administration of justice." If they desire such administration to extend beyond the narrow gaze of individual client autonomy and consider broader questions of injustice in the rule of law, what teaching methods should they consider? More specifically, as Part III discusses next, what are the pedagogical principles of public citizenship lawyering that should guide modern law teaching?

III. Toward a Legal Pedagogy of Public Citizenship

Throughout the history of the American law school, legal scholars have called for "a radical imagination of law" that might dismantle systems of oppression and subordination built into the foundation of American democracy.[147] They have also called for law schools to reimagine legal pedagogy, recognizing the intimate role that law schools play in shaping the character and virtue of the rule of law and the legal profession. For example, as Bennett Capers argues, law schools frequently function "as a White space."[148] Students typically learn how to think like a lawyer in libraries surrounded by portraits of White men, classrooms adorned with the names of White men, and with books filled with antiquated legal opinions drafted by White men. This cultural framing of law school can significantly influence the culture of legal education, often forcing non-White law students to perform 'whiteness' to fit in with their majority peers by silencing their countercultural views and alternative lived experiences.[149]

In observation of these bold, yet unreconciled strivings, and with deep empathy for the growing sense of disorientation pervading law classrooms nationwide, this Part theorizes the foundational principles of a legal pedagogy of public citizenship. As described below, the pedagogical framing finds normative ground in the ABA Model Rules of Professional Conduct. Notwithstanding the importance of academic freedom to the modern research university, legal education demands a spirit of moral activism in law teaching that celebrates the calling of public citizenship upon the lawyering vocation.

The spirit of moral activism in law teaching is developed, this Essay argues, through four foundational pedagogical principles. First, Section III.A. below describes the principle of *deconstructive framing*, which guides the law professor

147. *See, e.g.*, Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. Rev. 405, 479 (2018) (suggesting that law reform be geared towards building a new state rather than towards how to improve the current system).

148. Bennett Capers, Essay, *The Law School as a White Space*, 106 Minn. L. Rev. 7, 22 n.88 (2021) (describing whiteness, by quoting Willie James Jennings, as "a way of being in the world and seeing the world that forms cognitive and affective structures able to seduce people into its habituation and its meaning making").

149. Elijah Anderson, *"The White Space,"* 1 Socio. Race & Ethnicity 10, 14 (2015) ("[A]s long as the black person is present in the white space, he or she is likely to be 'on,' performing before a highly judgmental but socially distant audience.").

in teaching the lawyer's ethical duty of candor. Next, Section III.B. discusses the principle of *ethical reposturing*, which guides the law professor in teaching the lawyer's ethical duty of competence and professional judgement. Section III.C. follows, exploring the principle of *reconstructive ordering*, which guides the law professor in teaching the lawyer's ethical duty to improve the law. Finally, Section III.D. reveals the principle of *liberatory lawyering*, which guides the law professor in teaching the lawyer's ethical duty to assist the client and others in gaining competence.

When these principles are interwoven into teaching in complementary ways, they aid law professors in combatting the moral angst that often plagues the law classroom. Moreover, applied across the curriculum, these principles help to ensure that law faculty not only prepare their students to uphold the moral demands of public citizenship embedded in the Model Rules, but also teach their students how to affirmatively challenge systems of social, racial, and economic injustice rooted in law.

A. Deconstructive Framing

The first proposed principle of the legal pedagogy of public citizenship, *deconstructive framing*, finds normative ground in the lawyer's ethical duty of candor. Rule 3.3(a) of the Model Rules provides, in relevant part, "A lawyer shall not knowingly: (1) make a false statement of material fact or law previously made to the tribunal by the lawyer" and "(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel."[150] Further, Rule 3.3 (d) provides, "In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse."[151] Similarly, the Model Code of Professional Responsibility Disciplinary Rule 7-102 provides, in relevant part, "(A) In his representation of a client, a lawyer shall not . . . (5) [k]nowingly make a false statement of law or fact."[152] Model Code Disciplinary Rule 7-106 (B)(1) provides, in relevant part, "In presenting a matter to a tribunal, a lawyer shall disclose: (1) [l]egal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel."[153]

These ethical duties provide important guidelines for law teachers seeking to prepare their students for public citizenship. In the same way that lawyers are compelled to disclose "legal authority" and "material facts" that will shape the court's consideration of evidence, so too should the law professor disclose to their law students the full scope of legal theories that purport to clarify the meaning of

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150. MODEL RULES, *supra* note 14, at r. 3.3(a)(1)–(2).
151. *Id.* at r. 3.3(d).
152. MODEL CODE OF PRO. RESP. DR 7-102(A)(5) (AM. BAR ASS'N 2002).
153. *Id.* at DR 7-106(B)(1).

a case's material facts. Importantly, lawyering does not only occur within courtrooms. Therefore, the duty of candor should be framed as governing the lawyer's representation of a client, more generally. Viewing lawyering in this way, the professor who seeks to prepare students must deconstruct the "indeterminacy" of legal theory and the materiality of ideology in legal reasoning to deepen the law student's understanding of legal judgments, both past and present. By contextualizing the materiality of legal facts and doctrine with competing theories of law, law faculty guide their students toward critical consciousness of the intersectionality of law and politics.

Deconstructive framing is especially important in law courses taught by one law professor, which brings a greater risk of conveying a singular political narrative about the rule of law. Rule 3.3(d) of the Model Rules governing ex parte proceedings suggests that law faculty—due to their role in preparing students for law practice—are obligated to advance all known material facts necessary for future lawyers to make an informed assessment of legal doctrine. In other words, law professors should disclose the limits of "liberal legalism" as the guiding pedagogical frame in legal education.[154] Failing to do so deprives law students of the knowledge necessary to advance law reform and ensure that the law's moral arc bends toward justice.[155]

Deconstructive framing guides law students toward an "experiential deconstruction" of the hidden assumptions and biases embedded in liberal legalism. Beyond learning how to distill, organize, and connect relevant facts from appellate opinions to doctrinal rules, students begin to explore how law can perpetuate systems of subordination and frustrate democratic citizenship. As Todd Rakoff and Martha Minow explain, "factual statements do little to equip students to navigate overlapping and diverging witness accounts, gaps in forensic material, disputes over significance levels in statistical studies, or the influence of a narrative frame."[156]

Law students must also explore the lawyer's role in perpetuating injustice in society. As law students explore how legal theory informs law practice, the development of critical consciousness provides the foundation for deep critique of law

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154. Robin West defines liberal legalism in the United States—which she terms, "American legalism"—not as a jurisprudential articulation of the nature of law, but rather as "a particular set of values both reflected in and grounding a complex set of practices, articulated in a large, even vast, collection of texts, and yielded by a swath of shared history . . . that defines a way of being in the world." *See* WEST, *supra* note 31, at 55. In other words, the modern practice of using analogical reasoning and precedential authority to guide legal analysis means legal conclusions will often reflect both United States legal history and the historic moral commitments of those trained in United States law. These moral commitments—e.g., a concern for basic fairness, a respect for horizontal equity, a regard for precedent, and a deference toward individual rights—reflect a distinct perspective on human dignity, human equality, human liberty, and human moral striving. *See generally* Toussaint, *supra* note 100.

155. Model Rule 4.1 provides, in relevant part, "In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person . . . ." MODEL RULES, *supra* note 14, at r. 4.1(a).

156. *See* Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 601 (2019).

and, ultimately, positions students to brainstorm law reforms that further justice.[157] As Anthony Alfieri argues, "Bridging the gap between analytical and practical knowledge and revitalizing professional integrity hinge on (1) extending the field of legal knowledge and (2) honing the moral capacity for good judgment."[158] To accomplish these goals, law faculty should integrate competing analytical frameworks into classroom discourse to expose law students to the complexities of public citizenship that underscore their feelings of disorientation and moral anxiety. At least four analytical frameworks are worth considering in the law classroom, depending on the subject matter: cultural studies, critical outsider jurisprudence, pragmatism, and democratic theory.[159]

First, the infusion of cultural studies into the study of law can aid students in developing a critical theoretical perspective of law. As Austin Sarat and Jonathan Simon explain the cultural turn in legal studies, "scholars have employed research strategies that emphasize listening to the way ordinary people construct the law in their narratives about themselves, listening to the way judges and law professors construct law in their narratives, and reading the implicit norms that govern personal choices and behavior."[160] In this way, cultural legal studies empowers law students to situate clients of difference-based identity (i.e., differentiated by race, sex, class, etc.) into the cultural construction of law and society.[161] As students learn to bridge the gap between the experiences of marginalized populations and systems of subordination embedded in the rule of law, they also discern the lawyer's unique position, and perhaps even calling, to advocate for systems change.[162] The process of cultural engagement[163] in doctrinal and clinical discourse encourages students to reconsider claims of unbiased legal construction and neutral or objective legal advocacy, facilitating a textured view of law's engagement with various social issues, such as race, gender, sexuality, and religion.[164] In this way, legal reasoning

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157. Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599, 1657–60 (1991).

158. *See* Alfieri, *Against Practice*, *supra* note 34, at 1080.

159. *See* Anthony V. Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805, 835–36 (2008).

160. Austin Sarat & Jonathan Simon, *Beyond Legal Realism?: Cultural Analysis, Cultural Studies, and the Situation of Legal Scholarship*, 13 YALE J.L. & HUMAN. 3, 8 (2001).

161. *See* 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, 1810–11 (1993); Imani Perry, *Cultural Studies, Critical Race Theory and Some Reflections on Methods*, 50 VILL. L. REV. 915, 916–17 (2005).

162. *See generally* Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL'Y & L. 161 (2005) (exploring the way critical theories of law "serve as useful frameworks to enable students to deconstruct assumptions they, persons within institutions, and broader society make about the students' clients and their lives").

163. Carolyn Grose, *A Field Trip to Benetton and Beyond: Some Thoughts on "Outsider Narrative" in a Law School Clinic*, 4 CLINICAL L. REV. 109, 110 (1997).

164. *See* Ian F. Haney Lopez, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CALIF. L. REV. 1143, 1152 (1997); Perry, *supra* note 161, at 917; Gerald Torres & Katie Pace, *Understanding Patriarchy as an Expression of Whiteness: Insights from the Chicana Movement*, 18 WASH. U. J.L. & POL'Y 129, 130 (2005).

becomes situational, and the impulse of pragmatism[165] is tempered by a real-world need to validate lawyering decisions against the client's unique cultural context.[166] Students thereby discover that when clients become a lawyer's trusted partner in a collaborative process that honors multicultural narratives, clients are empowered individually[167] and mobilized collectively to generate solutions to the problems that impact their community.[168]

Second, critical theoretical perspective can be developed by introducing critical outsider jurisprudence into doctrinal and clinical courses. Critical theories of law help to spark dialogue about the legitimacy of law in relation to the lived experiences of difference-based clients who are often subjected to collateral consequences associated with their status.[169] From critical race theory to feminist legal theory and queer legal theory, critical framings of legal theory "proffer identity as a shifting aggregation of multiple categories beyond stock accounts of race, gender, sexuality, or religious faith."[170] The law student's developing cognitive skills are not solely based on logic and rationality, but also on how client problems intersect with various social, political, and economic contexts. This duality reveals to students the broader scope of lawyering activities that are necessary to embody public citizenship beyond mere zealous advocacy for the client.

Critical outsider jurisprudence couples with a third analytical framework that fosters critical theoretical perspective—pragmatism.[171] As Thomas Grey

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165. *See* Thomas C. Grey, *Holmes and Legal Pragmatism*, 41 STAN. L. REV. 787, 789 (1989) (explaining, "the new philosophical interpretation of pragmatism stresses certain ways in which it departs from and indeed undermines orthodox scientific empiricism, particularly in its focus on human inquiry as a culturally situated form of activity").

166. *See generally* Martha Minow & Elizabeth V. Spelman, *In Context*, 63 S. CAL. L. REV. 1597, 1600 (1990) (arguing that "context" is not merely "a focus upon the particularity of persons, places, and problems," but also "a readiness, indeed an eagerness, to recognize patterns of differences that have been used historically to distinguish among people, among places, and among problems"); Margaret Jane Radin & Frank Michelman, Commentary, *Pragmatist and Poststructuralist Critical Legal Practice*, 139 U. PA. L. REV. 1019, 1034 (1991) (explaining, by way of example, "The pragmatically minded critic will harp on characteristic ways in which economic analysts of legal rules tend toward incompletion in their practice . . . . She may show the analysts ignoring costs, like disruption of community, that powerwielders–judges, administrators, consulting experts to lawmakers–cannot handle according to rule").

167. *See* Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 250–54 (1999).

168. *See* Scott Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, *in* CAUSE LAWYERS AND SOCIAL MOVEMENTS 309 (Austin Sarat & Stuart Scheingold eds., 2006) ("Whereas other depictions of collaboration involve lawyers who are, at bottom, asking the state to redress a legal wrong, CED involves collaboration between community-based clients and state and market funders as a means to generate solutions to the problems of poverty and urban disinvestment.").

169. *See, e.g.*, Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education*, 10 ASIAN L.J. 65, 66–67 (2003) (discussing LatCrit theory as one strand of critical outsider jurisprudence).

170. Alfieri, *Against Practice*, *supra* note 34, at 1088–89.

171. *See generally* Hilary Putnam, *Pragmatism and Realism*, 18 CARDOZO L. REV. 153 (1996) (discussion the relationship between realism and pragmatism); Minow & Spelman, *supra* note 166 (noting that pragmatists must not only be attuned to individual context, but must also be attentive to the

explained, pragmatists such as C.S. Peirce, William James, and John Dewey conveyed the problem-solving process as both contextual and situated in the particularities of people, places, and problems.[172] Martha Minow and Elizabeth Spelman argue that in the context of analyzing legal rules, pragmatism requires also specifying "the historical and cultural identities of the people, places, and problems" in question "to expose how apparently neutral and universal rules in effect burden or exclude anyone who does not share the characteristics of privileged, white, Christian, able-bodied, heterosexual, adult men for whom those rules were actually written."[173] When this method of analysis is woven into the law school classroom, urging students to explore the range of cultural and sociopolitical dynamics that render their future clients' challenges as situational and contingent, law students learn the value of developing legal and non-legal solutions to their client's problems. In other words, in the real world, problems don't come in neat hypothetical packages to be solved with legal analysis and reasoning alone, and every legal problem is not a nail to be hammered into submission by the law.

Fourth, democratic theory offers opportunities for students to develop critical theoretical perspective by clarifying how different articulations of political economy (e.g., a conservative, Laissez faire economy versus a more progressive, welfare-state economy) have shaped America's social movements and political debates. By surfacing the ideological narratives that use law to forge systems of oppression, subordination, and hierarchy, law students learn the importance of client education, client empowerment, and client engagement in the lawyering process.[174] Even more, students learn how to orient their role as lawyers within the broader context of democratic citizenship. As a result, law students become empowered to pioneer legal reforms that advance a more progressive vision of

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way an emphasis on individual context can sometimes obscure systemic privilege and undermine the capacity for political, moral and legal judgements); Radin & Michelman, *supra* note 166 (describing the hidden dangers of abstract normative legal thought); Daria Roithmayr, *"Easy for You to Say": An Essay on Outsiders, the Usefulness of Reason, and Radical Pragmatism*, 57 U. MIA. L. REV. 939 (2003) (explaining how the critique of rights from critical legal studies scholars can fail to consider the pragmatic concerns of critical feminists and critical race theorists).

172. *See* Grey, *supra*, note 165, at 790–91.

173. Minow & Spelman, *supra* note 166, at 1600–01.

174. *See* Alfieri, *Against Practice*, *supra* note 34, at 1090 ("Civic engagement in fostering grassroots, democratic initiatives among clients and client groups helps transform the standard conception of the 'lawyering' process as lawyer driven and professional identity as lawyer dominant."); *see generally* LANI GUINIER & GERALD TORRES, THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY (2002) (arguing that engaging issues of race through grass-roots and cross-racial coalitions is necessary to remake structures of power and foster public participation in politics); Susan D. Bennett, *Little Engines That Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 WIS. L. REV. 469 (2002) (exploring how lawyers can promote democratic community building); Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399 (2001) (noting deficiencies of CED's traditional market-based approach to business development and local revitalization that emphasizes neoliberal norms).

America's democratic project.[175] Even more, they are positioned to think critically about professional lawyering identity as an embodiment of public citizenship. As Phyllis Goldfarb contends, "the examination of one's own law practice—a practice that can contribute to the furtherance or frustration of substantive justice—provides a firm experiential ground from which to consider philosophical conceptions of justice, fairness, and equality."[176]

By engaging alternative analytical frameworks in doctrinal and clinical courses, law students are positioned to brainstorm a comprehensive map of collateral consequences for every lawyering strategy they consider. Examining the nuances of culture while seeking to develop a critical theoretical perspective of lawyering enables students to also develop a critical perspective of the rule of law itself. This kind of law practice training is vital if law schools take seriously their historic public mission and civic responsibility to reform law where it facilitates injustice, inequality, and suffering.[177] In this way, deconstructive framing challenges the conventional notion of practice readiness—a study of law focused on building practice-oriented legal skills in demand at top law firms.[178] Instead, this framing of the study and practice of law promotes the development of critical legal consciousness, enabling students to examine and promote foundational democratic principles through various contextual lenses.[179] The practice of law becomes, as Gerald López articulated, "a culture composed of storytellers, audiences, remedial ceremonies [and] a set of standard stories and arguments" that govern human relation, with students positioned to serve as agents of positive change and speak truth to power when certain cultures undermine the public good.[180]

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175. *See* Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 38 (1995) ("[L]earning is not only essential for an accurate portrayal of the adoption and application of the law, it is also necessary preparation for law school graduates' likely roles in shaping public policy and anticipated roles in providing *pro bono* representation of members of oppressed groups.") (emphasis in original).

176. Goldfarb, *Beyond Cut Flowers*, *supra* note 28, at 720.

177. *See generally* Toussaint, *supra* note 100 (arguing that all law schools have a public mission to further the common good and public interest of society by critiquing law and public policy through contextual law teaching, justice-oriented legal scholarship, and pro bono law practice).

178. For example, William Henderson has proposed a market-oriented approach to legal education whereby law faculty work hand-in-hand with legal employers to train students to meet market-based needs. *See* William Henderson, *The Hard Business Problems Facing U.S. Law Faculty*, NAT'L L.J. LAW SCH. REV. (Oct. 31, 2011), https://legaltimes.typepad.com/lawschoolreview/2011/10/the-hard-business-problems-facing-us-law-faculty.html. *See also* Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. 193, 203 (2016) (noting "the legal education reform discourse since the 2008 recession is composed almost exclusively of proposals undergirded by neoliberal assumptions and constructs").

179. *See* Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.L. & SOC. JUST. 231, 241 (2012) (discussing the clinical mission of "justice readiness," which builds upon Paulo Freire's emancipatory theory of learning that "expressed desire for social transformation and the development of critical consciousness so that people can learn to perceive social, political, and economic contradictions and act to transform the world").

180. GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 43 (1992) [hereinafter LÓPEZ, REBELLIOUS LAWYERING].

How might a law professor apply the principle of deconstructive framing to the teaching of *People v. Goetz*? First, one should be attentive to the strategies that law professors already employ to clarify the meaning of challenging legal cases in the context of their prevailing cultural norms and ideologies. For example, some law professors have questioned whether the case *Dred Scott v. Sandford* —part of the "anticanon" of constitutional law[181]—should be discussed in law classrooms, noting that it may cause students "to relive the humiliation of Taney's language as evidence of his doctrine of white supremacy."[182] Others disagree, such as Jeannie Suk Gersen of Harvard Law School, who assigns *Dred Scott* on the first day of classes to foreground "the centrality of slavery and white supremacy to the country's origin, as a frame for understanding constitutional law."[183] Carolyn Shapiro, professor of law and co-director of the Institute on the Supreme Court of the United States at Chicago-Kent College of Law, teaches *Dred Scott* by incorporating historical materials into the syllabus, from photographs to documentary footage, to help students better contextualize the legal arguments through the lens of marginalized populations, whose voices are absent from the page.[184] Prior to such class sessions, Professor Shapiro also provides students with advance warnings about the nature of the content and highlights broader issues that are relevant to consider, such as racism. Shapiro does not cold call students about case facts and avoids traumatic images during these classes. Instead, she chooses to encourage critical, yet open, dialogue about the intersections of law, culture, and politics to deconstruct the indeterminacy of law while highlighting the role of ideology in shaping law's evolution.

One could similarly use historical documents that describe the challenges of poverty, crime, and racially biased policing in New York City during the 1980s to add nuance to classroom discussion about *People v. Goetz*. Even more, one could expose law students to alternative analytical frameworks of law, such as critical race theory or democratic theory, to invite debate on the determinacy of the law itself. These resources can foster dialogue about the way legal analysis can be influenced by racial ideologies and, in some cases, can even impact the citizenship of individuals who experience racial discrimination because of biases embedded in law. To be sure, a law professor is unlikely to have sufficient time in the semester to deconstruct every single case in this way. But engaging this process with a few cases can go a long way toward teaching students how to critically challenge assumptions embedded in law and public policy.

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181. *See* Jamal Greene, *The Anticanon*, 125 HARV. L. REV. 379, 380–82 (2011); 60 U.S. (19 How.) 393 (1857).

182. Jeannie Suk Gersen, *The Importance of Teaching Dred Scott*, NEW YORKER (June 8, 2021), https://www.newyorker.com/news/our-columnists/the-importance-of-teaching-dred-scott.

183. *Id.*

184. *See id.*

B. Ethical Reposturing

The second proposed principle of the legal pedagogy of public citizenship, *ethical reposturing*, finds normative ground in the lawyer's ethical duty of competence within the lawyer-client relationship, and the lawyer's ethical duty of professional judgment as their client's counselor. Rule 1.1 of the Model Rules provides that the lawyer must obtain "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[185] Further, Rule 2.1 requires the lawyer to "exercise independent professional judgment" in reference "not only to the law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."[186]

Taken together, competence calls for the lawyer to understand the moral, economic, social, and political factors applicable to the laws and policies impacting their client's goals. Applied to the law teaching context, this ethic suggests that law professors have an obligation to engage the moral, economic, social, and political dimensions of legal doctrine as they prepare their students for competence in lawyering practice. Competence requires an understanding of the limitations of dominant normative framings of law and a recognition of the normative assumptions that have shaped law's evolution.

Ethical reposturing means teaching law students to reflect upon their ethical posture during legal analysis, and to reposition that moral stance, if necessary, to pursue broader public citizenship goals. This framing of professional responsibility suggests that zealous advocacy should be viewed as a starting point, not an end goal.[187] Compliance with the baseline standards of professionalism in the Model Rules will not always rise to the ethical demands of public citizenship. As students learn this insight, they become critically aware of the dangers of mimicking the ethical posture of professional lawyering identities that are shaped by market needs and not broader societal values.[188] As Anthony Alfieri contends, "When ethical-social values pervade the apprenticeship process, professional identity and purpose gain a greater sense of responsibility."[189]

For example, when law professors introduce students to the challenges faced by marginalized populations as a pedagogical tool to explore the ethical demands of public citizenship, law students learn to think beyond Model Rules and

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185. MODEL RULES, *supra* note 14, at r. 1.1.

186. *Id.* at r. 2.1.

187. *See* A.B.A., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 138–41 (1992) (discussing the importance of teaching law students values that enable competent representation and inspire a dedication toward justice, fairness, morality, and the improvement of the legal profession).

188. JACK L. SAMMONS, LAWYER PROFESSIONALISM 64 (1988) ("For attorneys it is easy to confuse compliance with the rules with being moral and it is easy to confuse minimally acceptable conduct with acting as a professional.").

189. *See* Alfieri, *Against Practice*, *supra* note 34, at 1082.

consider whether their lawyering identity coincides with political-economic systems of subordination, marginalization, and oppression in society.[190] As Theresa Glennon describes it, students are guided to embrace an "ethic of care" that "provides both motivation and an intellectual guide for moral decisionmaking."[191] Even more, students are exposed to a progressive, client-centered, and empowerment-focused lawyering lens, teaching them to resist the common temptation to become the voice of reason or hero in their client's dilemma.[192] When legal professionalism is viewed as a vocation—a means by which legal advocates provide the public service of justice to society—the consideration of societal moral values will pervade the lawyer-client relationship.[193] Further, when law students discover a sense of ethical and moral responsibility in their professional lawyering identity, they will view empowering their client's individual autonomy as equally important as counseling their client toward being a good citizen.[194]

Law faculty have engaged the concept of ethical reposturing by integrating discussion of cross-cultural lawyering into their pedagogy and praxis.[195] By infusing difference-based identity narratives into the classroom,[196] and by expanding legal problem solving beyond legal issue analysis toward the development of participatory and democracy-enhancing strategies, law faculty cast the development of client power within the context of community development as a key goal of progressive lawyering.[197] To put it simply, this type of law teaching requires the

190. *See* Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081, 2093–99 (2005).

191. Theresa Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43 HASTINGS L.J. 1175, 1179 (1992); *see also* Paul J. Zwier & Dr. Ann B. Hamric, *The Ethics of Care and Reimagining the Lawyer/Client Relationship*, 22 J. CONTEMP. L. 383, 386 (1996).

192. *See* Kruse, *Fortress in the Sand*, *supra* note 85, at 371–72 (noting that some proponents of client-centered representation "focus on the notion of client empowerment, and favor approaches that facilitate a client's ability to make decisions by creating a more equal relationship between the client and the lawyer."). *See generally* DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977) (introducing the client-centered approach to lawyering to clinical legal education).

193. *See* Alfieri, *Against Practice*, *supra* note 34, at 1082.

194. *See* Russell G. Pearce, *Teaching Legal Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L.J. 719, 735–39 (1998); Deborah L. Rhode, *Teaching Legal Ethics*, 51 ST. LOUIS U. L.J. 1043, 1051–57 (2007). *See also* Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31, 50–56 (1992); Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 CAL. W. L. REV. 219, 248–55 (2007); Deborah L. Rhode, *Legal Education: Professional Interests and Public Values*, 34 IND. L. REV. 23, 38–45 (2000).

195. *See* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 64–67 (2001); *see generally* Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373 (2002) (exploring how cultural diversity can impact lawyering practices and models for interviewing and counseling).

196. *See* Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 401–11 (1997).

197. *See* Ascanio Piomelli, *The Lawyer's Role in a Contemporary Democracy, Promoting Access to Justice and Government Institutions, The Challenge of Democratic Lawyering*, 77 Fordham L. Rev. 1383, 1388 (2009) (arguing that "democratic lawyers envision-and with others act upon-an inclusive, participatory, and egalitarian understanding of democracy as a transformative approach to social change

infusion of lawyering principles from "movement law," which is "an approach to legal scholarship grounded in solidarity, accountability, and engagement with grassroots organizing and left social movements" such as the Movement for Black Lives.[198] By integrating movement law into the classroom, law professors will broaden discourse on the lawyer's role in combatting community-level hierarchy and subordination facilitated by the law. Such efforts enhance the student's vision of "civic professionalism," which many scholars argue is a necessary component of lawyering in today's polarized political climate.[199]

This approach to law teaching—framing professional ethics as a process of constantly modifying one's posture toward a higher moral ground—embodies what Ascanio Piomelli has called "democratic lawyering," a commitment to "regularly work[ing] with people and groups involved in struggles for dignity, survival, self-determination, and other basic human needs," and a desire "to foster and join collective efforts of low-income and working-class people and people of color to reshape their own lives and communities."[200] As law students consider the demands of democratic lawyering, they become poised to support grassroots organizations and marginalized communities in their future work as public citizens.[201] Further, they learn to prioritize client goals within a broader community context, and not merely the usage of lawyering tactics to achieve small wins,[202] thereby developing a "tactical pluralism"[203] equipped to help reallocate power in marginalized communities and dismantle structural injustices in the legal system.

Even more, as law students become co-facilitators of justice through critical engagement with unjust laws and public policies, they also come to recognize the moral imperative for lawyers to help advance social movements, especially those that foster equity in marginalized communities to enhance democracy.[204] While a

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and relationships, one that enhances the power of ordinary people and their groups to meet their needs by actively participating in self-government and collective public action").

198. Amna A. Akbar et al., *Movement Law*, 73 STAN. L. REV. 821, 821 (2021).

199. *See* Steven K. Berenson, *Institutional Professionalism for Lawyers: Realizing the Virtues of Civic Professionalism*, 109 W. VA. L. REV. 67, 69 (2006) (reviewing WILLIAM M. SULLIVAN, WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN AMERICA (2d ed. 2005)); Mary Ann Dantuono, *A Citizen Lawyer's Moral, Religious, and Professional Responsibility for the Administration of Justice for the Poor*, 66 FORDHAM L. REV. 1383, 1389 (1998) (arguing that "[t]he person with religious values, civic values, and professional legal training can develop many creative approaches to the legal needs of persons who are poor").

200. Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383, 1394 (2009).

201. *Id.* at 1391.

202. Scott L. Cummings, *Critical Legal Consciousness in Action*, 120 HARV. L. REV. F. 62, 67–71 (2007) (replying to Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937 (2007)).

203. Scott L. Cummings, *Law in the Labor Movement's Challenge to Wal-Mart: A Case Study of the Inglewood Site Fight*, 95 CALIF. L. REV. 1927, 1932 (2007) (providing an example of tactical pluralism, whereby "lawyers helped to advance a coordinated labor campaign using traditional litigation alongside nontraditional skills such as drafting legislation and conducting public relations").

204. Lauren B. Edelman et al., *On Law, Organizations, and Social Movements*, 6 ANN. REV. L. SOC. SCI. 653, 666 (2010).

movement lawyering approach to the teaching of professional responsibility may appear to inject politics into the law classroom, such insights helps students fuse legal intuition with imaginative thinking about democracy, a process Gary Bellow called "the logic of experience."[205] Thus, whereas deconstructive framing provides a platform for students to engage in experiential critique of law's justice, ethical reposturing reveals the demands of public citizenship necessary for lawyers to respond to pressing social and economic challenges.[206]

A growing number of law school clinical programs demonstrate that selecting clients from traditionally underrepresented and marginalized groups, coupled with reflective lawyering exercises (either done individually or in group settings) that consider the intersection of professional ethics and personal morality, can guide students toward considering broader questions of justice in their future law practice.[207] Law professors can incorporate reflection into the doctrinal classroom too, inviting students to share how the experience of learning about certain cases changed their world view or perception of law and lawyering. These classroom experiences enable law students to consider how their law practice will converge with social, political, and economic systems, positioning them to exercise the competence and professional judgment necessary for public citizenship.[208]

How might a law professor apply the principle of ethical reposturing to the teaching of *People v. Goetz*? First, the law professor could spark a conversation about the ethical duties of zealous advocacy in relation to the moral imperatives of anti-racism by discussing the tactics used by Goetz's defense counsel to establish his self-defense claim. Does public citizenship demand that lawyers avoid using racial stereotypes as a litigation tactic? Should lawyers and judges use empirical evidence to interpret the concept of reasonableness in criminal law, and what might be the shortcomings of such an approach? There are no definitive answers to these questions. The point is to expose students to the need to

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205. *See* GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY 295, 303 (1978).

206. *See* Condlin, *supra* note 25, at 48–49 (arguing that law schools, through legal education, can guide students to engage the "nature of a fair and just legal system and the role of lawyer practices in operating and improving it").

207. *See* Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284, 284–85 (1981); Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612, 617 (1984) (describing important questions that students are taught to ask, including: "What were my objectives in that performance? How did I define them? Might I have defined them differently? Why did I define them as I did? What were the means available to me to achieve my objectives? Did I consider the full range of them? If not, why not? What modes of thinking would have broadened my options?").

208. *See* Harold McDougall, *The Rebellious Law Professor: Combining Cause and Reflective Lawyering*, 65 J. LEGAL EDUC. 326, 334 (2015) (noting "this departs from traditional 'regnant' law school teaching, which does not train students how to build and sustain coalitions or to understand the political and economic frameworks that they must challenge when they pursue social justice and struggle against neoliberalism"); *see also* Artika R. Tyner, *Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering*, 10 HASTINGS RACE & POVERTY L.J. 219, 239 (2013).

reposition their ethical stance on a case-by-case basis after considering broader societal considerations.

Secondly, the law professor can provide students with information about social movements and movement lawyering efforts that coincided with the case. In the case of *People v. Goetz*, the law professor can discuss efforts taken by lawyers to reform criminal law and policing during the 1980s. Further, the law professor can highlight the role that lawyers played in shifting the legal standard for the self-defense justification for the use of deadly force in New York. By exposing law students to the varied way lawyers engage with laws and public policies that are susceptible to racial biases, law professors help their students develop a deeper appreciation for the call of public citizenship outside of their client representation.

C. Reconstructive Ordering

The third proposed principle of the legal pedagogy of public citizenship, *reconstructive ordering*, finds normative ground in the lawyer's ethical duty to improve the law. Paragraph six of the preamble of the Model Rules provides, in relevant part, "As a public citizen, a lawyer should seek improvement of the law . . . cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law . . . further the public's understanding of and confidence in the rule of law and the justice system . . . ."[209] Further, Rule 6.1(b)(3) of the Model Rules provides that lawyers should seek "participation in activities for improving the law, the legal system or the legal profession."[210] The lawyer's duty to improve the law is not only for their client's benefit, but equally important, for the benefit of the public interest. This ethic not only affirms law school's historic public mission, but also highlights the important role that law faculty play in combatting institutional barriers in the United States rule of law that prevent equality, degrade liberty, and demand law reform. Institutional barriers manifest not only in the rule of law, but also in law practice and inside of the law classroom.

Reconstructive ordering addresses these needs by incorporating the discussion of common lawyering tropes into the law classroom to help students better identify how to construct a public citizenship lawyering identity. As noted above, the integration of critical pedagogies into the law classroom through deconstructive framing enables law faculty to unearth and problematize the norms of neutrality and liberal legalism in legal education that often elide the role of race, class, gender, sexuality, and social status in the construction and operation of law. By highlighting how the complexities of difference-based identity influence the rule of law, legal educators teach their students not only how to reject stereotypes

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209. Model Rules, *supra* note 14, at pmbl. ¶ 6.
210. *Id.* at r. 6.1(b)(3).

and stigmas associated with racial and ethnic minorities,[211] but also how to confront the hierarchies that pervade lawyering practice too.[212]

In this way, law professors guide law students toward reconstructing conventional notions of professional lawyering identity. Historically, law students begin developing their professional lawyering identity by internalizing the assumptions about lawyering embedded in case law studied during the first year of law school.[213] Thus, law schools may be to blame for developing some of our lawyering tropes. For example, after navigating the first year of law school, many law students classify the lawyer's role as primarily using deductive reasoning to anticipate legal conclusions based upon applicable legal doctrine, not engaging broader principles of justice. Further, law students come to see the practice of law as structured by elitism and hierarchy due to law school's emphasis on law school rankings and on-campus interviewing by elite law firms. Even for students that want to be public citizen lawyers, the high cost of law school tuition and consequent high debt that students must assume can pressure students to pursue high-paying corporate jobs over public interest careers. In some instances, it is not until law students enroll in law school clinics that they learn how legal facts are contested, constructed, and deconstructed through the lawyering process.

The goal of reconstructive ordering is to help students develop a critical posture toward legal doctrine and consider alternative framings of law that might introduce new legal arguments to frame their client's worldview in the language of the court. Put simply, students begin to reconsider what it means to be a lawyer. Further, by reconstructing traditional notions of professional lawyering identity, the moral and ethical dimensions of lawyering practice begin to take precedent over the legitimacy and operation of the rule of law. Guiding law students toward embracing the demands of public citizenship requires "a fuller description of the role of identity and community in 'lawyering' and a bolder prescription for their pedagogical and practical integration."[214]

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211. *See* Alfieri, *Against Practice*, *supra* note 34, at 1084 ("Without cross-cultural and difference-based identity analysis, client-centered methods perpetuate stigma-induced marginalization in law and society.").

212. *See* Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 374 (2005); *see also* David Dominguez, *Beyond Zero-Sum Games: Multiculturalism as Enriched Law Training for* All *Students*, 44 J. LEGAL EDUC. 175, 178 (1994).

213. Barbara Bezdek, *Reconstructing a Pedagogy of Responsibility*, 43 HASTINGS L.J. 1159, 1164–68 (1992); Joseph William Singer & Todd D. Rakoff, *Problem Solving for First-Year Law Students*, 7 ELON L. REV. 413, 414 (2015) (describing Harvard Law School's required Problem Solving Workshop for first-year students, which is designed "to further the 'learning to think like a lawyer' process of the first-year program by giving students a practical learning experience that requires them to put themselves in the position of a lawyer giving advice to a client, so as to help the client solve her problem ethically and within the bounds of the law").

214. *See* Alfieri, *Against Practice*, *supra* note 34, at 1083.

Many law students enter the law classroom with pre-conceived assumptions and biases about the ways that citizens interact with the law, and by extension, with lawyers.[215] Empowered with a contextual understanding of law and society from deconstructive framing, law students will identify how lawyering practices can facilitate and perpetuate hierarchy for certain populations. By observing how hierarchy in the conventional lawyer-client relationship can reinforce stereotypes about marginalized communities, students are positioned to theorize and embrace alternative law practice modes that confer dignity upon their clients and advance democracy.[216] For example, to avoid perpetuating a heroic posture in the lawyer-client relationship, law students are taught to begin their representation with engaged listening that centers their clients lived experience and "denaturalizes the role of lawyer leadership."[217] To test student retention of these concepts, law professors can include context-specific facts (such as the gender or class status of the parties) on an exam hypothetical and ask students to consider how such facts could alter their legal analysis. In this way, law students develop empathy by observing how the context-specific nuances of law's operation influences the lived experiences of diverse populations.[218] Yet, client-centered lawyering is not enough to satisfy public citizenship. The classical liberalist approach to client-centered lawyering does not avoid toxic stereotypes and harmful narratives of subordinated communities that risk framing the lawyer's approach to client demands. Accordingly, students must be exposed to cross-cultural techniques to avoid perpetuating stigmas that disempower and silence subordinated populations.[219]

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215. *See* Gary Blasi, *Advocacy Against the Stereotype: Lessons from Cognitive Social Psychology*, 49 UCLA L. REV. 1241, 1266–81 (2002); Ian Weinstein, *Don't Believe Everything You Think: Cognitive Bias in Legal Decision Making*, 9 CLINICAL L. REV. 783, 803 (2003); Lorraine Bannai & Anne Enquist, *(Un)Examined Assumptions and (Un)Intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U. L. REV. 1, 3 (2003).

216. *See* Goldfarb, *Beyond Cut Flowers*, *supra* note 28, at 733–35 (noting that "criminal clinical participants, after extended interactions with a variety of defendants, may come to see the misleading reductionism in summing up their clients—people with a range of personalities, abilities, and identities who are often living in challenging circumstances—as 'criminals'"); Julie D. Lawton, *Am I My Client? Revisited: The Role of Race in Intra-Race Legal Representation*, 22 MICH. J. RACE & L. 13, 13 (2016) (examining the challenges of intra-race legal representation for lawyers of color, law students of color, and those teaching law students of color by analyzing how the dynamics of the lawyer's and client's racial sameness impact legal representation).

217. *See* Alfieri, *Educating Lawyers*, *supra* note 17, at 124.

218. *See* McDougall, *supra* note 208, at 335 ("But there's much more to this listening than therapy for our community-based clients. It's also about what they can teach us, things we miss about the whole social construct we occupy with them, things we miss because we are occupants of a different location within it."); *see also* Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 2 (1989); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 159–60 (2000).

219. *See* Alfieri, *Against Practice*, *supra* note 34, at 1084; *see generally* Kruse, *Fortress in the Sand*, *supra* note 85 (exploring how a purely client-centered approach to lawyering can conflict with other lawyering duties, such as their role as agents of justice); Laurie Shanks, *Whose Story Is It, Anyway?—Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLINICAL L. REV. 509 (2008) (discussing critical challenges of client-centered lawyering).

By encouraging the routine reconstructing of professional lawyering identity to attend to unique client contexts, law professors also signal the importance of social movements that critique the way law can perpetuate stereotypes about marginalized populations. Students learn that lawyers do far more than identify laws, policies, and procedures that facilitate client goals. Rather than "bend[] community processes to the lawyer's 'own skill set'"[220]—a characteristic of regnant lawyering that Gerald López criticizes—law students come to see their lawyering role as finding solutions from the voices of their clients and communities they serve. In some instances, students may even determine that the law is not best suited to solve certain legal problems.[221] To be sure, law students are not taught to operate outside of the boundaries of the law, even though such resistance or dissent may at times be necessary. Rather, students learn to embrace alternative advocacy strategies and practice roles that break from tradition to "overturn notions of lawyer moral nonaccountability, political neutrality, and natural or necessary movement leadership."[222]

How might a law professor apply the principle of reconstructive ordering to the teaching of *People v. Goetz*? To reconstruct conventional notions of professional lawyering identity that are steeped in historical assumptions about lawyering practice, the law professor can introduce students to a conversation about how the facts of the case were constructed. Whose voice is dominant in the court's narrative of the case? In the legal opinion drafted by the court, does the reader have a clear sense of the experiences of Goetz's shooting victims? Is this intentional? How were the statements of the Black teenage boys used by the court to assess Goetz's claims? How were the victims' racial identity and class status used by the defense attorneys to advocate their case? What arguments were raised in the civil lawsuit that did not appear in the criminal lawsuit, and how do such disparities highlight shortcomings in criminal law?

Again, preparing students for such a conversation will take additional preparation by the professor and will require more class time for the case. Thus, the law professor will not be able to engage every case on the syllabus in this way. However, merely introducing students to this type of analysis on a few occasions

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220. McDougall, *supra* note 208, at 343; William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N. U. L. REV. 455, 462–63, 467–68 (1995).

221. *See* Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 939 (2007) (explaining the concept of "legal cooptation" whereby "the law often brings more harm than good to social movements that rely on legal strategies to advance their goals. The law entices groups to choose legal strategies to advance their social goals but ultimately proves to be a detrimental path"); *but see* Scott L. Cummings, *Critical Legal Consciousness in Action*, 120 HARV. L. REV. 62 (2009) (responding to Professor Orly Lobel by noting, "while cooptation continues to be a salient concern, it appears less relevant to the current generation of public interest lawyers (at least those on the political left), whose experience is defined not by their strong position to influence policy at the cost of deradicalizing movements, but rather by their weak position to resist the policy agenda of a conservative central state").

222. *See* Alfieri, *Educating Lawyers*, *supra* note 17, at 123.

across the semester can highlight the need for lawyers to consider alternative framings of law that might introduce new legal arguments to articulate their future clients' worldview in the language of the court.

D. Liberatory Lawyering

The fourth proposed principle of the legal pedagogy of public citizenship, *liberatory lawyering*, finds normative ground in the lawyer's ethical duty to assist their clients and others to gain an informed understanding of the matters related to their case to make informed decisions. Rule 1.4(b) of the Model Rules provides, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."[223] Where an issue transcends strictly legal questions and enters the domain of other professions, Rule 2.1 comment 4 of the Model Rules provides, in relevant part, "Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation."[224]

Liberatory lawyering enables the attorney to not only serve their client's legal needs with a contextualized understanding of the material facts. It also liberates their client's sometimes limited understanding of the legal system and thereby bolsters the client's ability to engage in democratic processes as an informed citizen. Such political participation is crucial to individual autonomy and human dignity, each recognized as key aspects of fundamental human rights. Applied to the law teaching context, this principle calls for law professors to not only teach their students the fundamentals of legal doctrine, but also educate law students on the complexities of law practice that transcend strictly legal questions. In so doing, this principle builds upon the concepts discussed earlier by aligning such efforts toward the broader goal of liberation, both for the lawyer and for the client, to enhance democracy.

Liberatory lawyering begins with guiding the law classroom toward a notion of "education as a practice of freedom."[225] Transforming the classroom in this way requires the "infusion of multiple identity narratives, layered contextual descriptions, and silenced community histories" that emerge from deconstructive framing, ethical reposturing, and reconstructive ordering. Even more, it demands "a mixture of classical liberal and critical-outsider jurisprudence coupled with interdisciplinary investigation"[226] in an environment stripped of conventional power imbalances that are common to legal education. Students must come to see themselves not merely as students, but as co-educators willing to bring their authentic personal narratives into the law classroom. Not only does liberating

223. MODEL RULES, *supra* note 14, at r. 1.4(b).
224. *Id.* at r. 2.1 cmt. 4.
225. HOOKS, *supra* note 36.
226. Alfieri, *Against Practice*, *supra* note 34, at 1085.

the law student seize the disorienting moment,[227] but it also generates empathy,[228] emotional intelligence,[229] and moral judgement[230] *among* lawyers, each important virtues for the public citizen lawyer. Exposing students to the complexities of lawyering in communities subordinated by race, class, religion, and similar categories of difference-based identity "opens dimensions for learning" about democracy in law practice.[231] Further, exposing students to the complexities of learning the law in classrooms where some students are subordinated by difference-based identities invites opportunities for students to learn about democracy in legal education itself.

As law students come to observe part of their professional lawyering identity as being an advocate for systems change when the rule of law infringes upon the liberty of disempowered citizens, fidelity to the rule of law is supplanted by a "fidelity to community,"[232] which might require protesting law's injustice when it harms the public interest.[233] Law students learn to prioritize collaborative thinking and creative problem solving with their clients to unearth new solutions to longstanding problems. Further, students are encouraged to explore creative ways to leverage the social capital of their clients through interdisciplinary legal and non-legal strategies. As Anthony Alfieri explains, "Confronting stereotypes through cross-cultural collaboration involves the identification of segregating differences, the exploration of multiple explanations for client behavior, and the elimination or mitigation of lawyer bias."[234] Unlike the regnant patterns of lawyering that dominate discourse in the traditional Socratic case-dialogue classroom, liberatory lawyering encourages a discourse where the client or client

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227. Quigley, *supra* note 175.

228. *See* Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 CLINICAL L. REV. 135, 139–41 (2002); Peter Margulies, *Re-Framing Empathy in Clinical Legal Education*, 5 CLINICAL L. REV. 605, 608–12 (1999).

229. *See* Ann Juergens, *Practicing What We Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching*, 11 CLINICAL L. REV. 413, 902–903 (2005); John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 325–326 (2008).

230. *See* Deborah L. Rhode, *Moral Counseling*, 75 FORDHAM L. REV. 1317, 1320–33 (2006). *See also* Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLINICAL L. REV. 1, 1320–25 (1997); Thomas Shaffer, Legal Essay, *The Profession as a Moral Teacher*, 18 ST. MARY'S L.J. 195, 213–22 (1986).

231. *See* Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 279, 304 (2012) ("These dimensions may include fostering greater awareness of lawyers' participation in a public service profession, developing understanding of what subordination means in people's lives and how it operates on a regular basis, and gaining perspective on the role that law can play both in addressing problems or exacerbating them.").

232. Alfieri, *Educating Lawyers*, *supra* note 17, at 146 (pointing toward a "fidelity to community" and social justice movements that "builds spiritual kinship . . .[,] permits lawyers to reflect emotionally and intellectually in situations of partisan conflict . . .[, and] enables lawyers to listen and communicate across boundaries of difference, power, and privilege").

233. *See* Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 FORDHAM L. REV. 2415, 2419 (1999); Rachel Moran, *Bring Back Citizen-Lawyers*, NAT'L L.J. (Jan. 19, 2009), https://www.law.com/nationallawjournal/almID/1202427453356/bring-back-citizenlawyers/.

234. Alfieri, *Against Practice*, *supra* note 34, at 1084.

community becomes an integral stakeholder in the lawyering process. Thus, the law is not heralded merely as a sword to redress past wrongs, but also as a shield to manage future outcomes. Equally important, law students learn to see the value of community organizing campaigns and coalition building efforts to further a participatory and democratic lawyer-community relationship.[235]

Viewing education as a practice of freedom requires law schools to take a more progressive view of practice readiness. For example, law students interested in corporate lawyering (in contrast to litigation practice) need more than training on discrete transactional lawyering skills in demand at elite law firms. They also should understand how to map community assets, facilitate community development legal education programs, and advance economic justice campaigns.[236] Conventional approaches to business lawyering often facilitates lawyer domination while discounting the value of collaboration.[237] The scale and complexity of many transactional legal services—e.g., drafting complex contracts and negotiating business deals—often requires clients to yield control to their lawyer with little role for the client to engage in collaborative problem solving. As a result, transactional legal services may disempower or silence the voices of some clients during the representation. By teaching students to work within the cultural context of their clients lived experiences and place control of the enterprise strategy in their client's hands, law faculty can demonstrate how lawyers develop power in marginalized communities and further community empowerment goals.[238] Technical, narrow, and expert-driven transactional legal services can still advance the rebellious goals of subordinated communities, so long as community members are treated as trusted partners throughout the representation.

A liberation framing of lawyering yields law students who can assess legal and non-legal solutions through a critical lens and eliminate solutions that pose unfavorable outcomes for their clients, or that threaten their ethical and moral obligations as public citizens. As law students are guided to use professional judgment informed by non-legal cultural and social considerations, they learn to employ subsidiary skills that are valuable to professional identity formation, such as ends-means thinking, planning, risk evaluation, hypothesis formulation, and information acquisition.[239] Students also develop important leadership skills

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235. *See* Piomelli, *supra* note 200, at 1391 ("Democratic lawyers collaborate with and nurture grassroots groups in which everyday people participate in multiple realms of self-rule or self-government, including tactical and strategic deliberation, public and behind-the-scenes leadership, joint public action, and joint assessment of that action.").

236. *See* LÓPEZ, REBELLIOUS LAWYERING, *supra* note 180, at 341.

237. *See* Mark Sophir, *Enhancing Your Legal Practice Through Conscious Collaboration*, 72 J. MO. B. 304, 305–07 (2016).

238. *See* Sebastian Amar & Guy Johnson, *Here Comes the Neighborhood: Attorneys, Organizers, and Immigrant Advancing a Collaborative Vision of Justice*, 13 CUNY L. REV. 173, 190–93 (2009).

239. *See* McDougall, *supra* note 208, at 333.

along the way, which scholars such as Susan R. Jones have convincingly argued is crucial to professional lawyering identity development.[240] In this way, students come to see lawyering also as assessing forward-looking solutions and brainstorming preventative measures that can address vulnerabilities before they occur. In other words, if law is indeed a social process, then the individual problems of one client become a warning sign about the broader vulnerabilities facing certain communities that can be addressed by legal interventions akin to those taken in the field of public health.

Such partnerships also enable clients to experience liberation within their community as they too develop critical consciousness of the legal system and dismantle biased community narratives shaped by race and class.[241] In some cases, historic community narratives are constructed and perpetuated by regnant lawyering tactics that rely upon racist tropes that portray certain citizens "as culturally inferior, morally stunted, and socially deviant."[242] These social constructions harm the dignity of subordinated populations, infringing on their liberty. The collaborative approach to lawyering builds bridges between the law and the social contexts of marginalized communities, allowing students to traverse unfamiliar grounds and witness the "cultural collective efficacy" of spaces where ordinary citizens harbor the internal resources and necessary ingenuity to solve their own challenges with targeted support.[243] In this way, a liberated law practice "expands client and community problem solving beyond case-specific needs to encompass issue-focused, neighborhood-wide campaigns, thereby motivating broader affinity groups to participate in democracy-enforcing legal-political advocacy about commonly shared grievances."[244]

How might a law professor apply the principle of liberatory lawyering to the teaching of *People v. Goetz*? First, law professors can invite students to share their own personal lived experiences that might add further nuance to the holding of the case. Such insights will reveal to law students the way lawyers bring diverse personal histories to their professional role. Not only does liberating the law

240. *See* Susan R. Jones, *The Case for Leadership Coaching in Law Schools: A New Way to Support Professional Identity Formation*, 48 HOFSTRA L. REV. 659, 661 (2020).

241. *See* Alfieri, *Educating Lawyers*, *supra* note 17, at 123 ("Historical narratives of inner-city citizenship, particularly poor black citizenship, accentuate elements of individual deviance, family dysfunction, and neighborhood disorganization.").

242. Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5, 19 (2016).

243. Lisa T. Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power, and Law*, 63 HASTINGS L.J. 803, 829 (2011) (defining "cultural collective efficacy" as "an important type of positive social capital that exists in some low-income, segregated urban neighborhoods" and describes "the "ability of neighborhoods to realize the common values of residents and maintain effective social controls"); McDougall, *supra* note 208, at 340 (explaining that "the management-of-effort process begins with 'mapping'" that "helps us note, assess, and appreciate a community's social and civic capital—the levels of time, energy, resources, and networks available to each person in the community as well as in the community at large").

244. Alfieri, *Against Practice*, *supra* note 34, at 1085.

student seize the disorienting moment of challenging classroom conversations,[245] but it also generates empathy,[246] emotional intelligence,[247] and moral judgment[248] *among* lawyers, each important virtues for the public citizen lawyer. Second, law professors can include additional resources in the syllabus to inform students about the communities in New York City where Goetz's shooting victims resided. By learning about community assets, such as community-based organizations working to combat challenges like poverty and crime, students gain an appreciation for the way creative problem solving can unearth new solutions to longstanding problems. Such discourse can provide students with a greater understanding of the role lawyers as public citizens can play in helping to reform law through democratic lawyering.

Conclusion

It took me almost a decade to revisit *People v. Goetz* and attempt to come to terms with the intellectual trauma that I experienced during my first year of law school. To be sure, I also had many positive, enriching, and uplifting experiences during law school that prepared me to think critically about law and law reform. For example, the Problem Solving Workshop during the winter term of my 1L year helped me to begin bridging the gap between legal theory and lawyering practice. Yet, most of my critical insights about law were developed during my enrollment in upper-level electives, such as Professor Charles Ogletree's seminar, *Race and The Wire*, which was limited in enrollment and self-selective. Or, during my participation in the *Harvard Defenders* representing low-income people for free in criminal show-cause hearings in Boston Municipal Court. Or, while traveling to Accra, Ghana with Professor Lucie White and other law students in the Ghana Human Rights Clinic.

In many ways, the first year of my law school experience set me on a trajectory to perceive public citizenship as an extracurricular or elective activity that seeks to reform shortcomings in the law from the outside looking in. During my second and third year of law school, I sought to disabuse myself of that notion and discover whether public citizenship lawyering could pursue justice in a more engaged and sustained way. Yet, I too eventually succumbed to the pressures of paying off law school debt and accepted an offer to work at a large international private law firm after graduation. It would take me several years to break away from those handcuffs and pursue a vision of public citizenship lawyering that felt most true to my passions and moral commitments.

I believe that all law students must be taught from their very first day of law school that lawyering requires an ongoing and deep critique of justice as a moral virtue in both the practice and rule of law. The mission of all law student during

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245. *See* Quigley, *supra* note 175.
246. *See* Fletcher & Weinstein, *supra* note 228; Margulies, *supra* note 228.
247. *See* Juergens, *supra* note 229; Montgomery, *supra* note 229.
248. *See* Rhode, *supra* note 230, at 1320–33.

law school should be to develop critical legal consciousness to identify when law upholds the principles of liberty and equality enshrined in the Constitution, and when the law does not and must be transformed. Law professors must be held accountable for the role they play in helping students make that discovery, or the harms they impose by inflicting students with intellectual trauma.