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Incorporating Social Justice into the Law School Curriculum with a Hybrid Doctrinal/Writing Course

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INCORPORATING SOCIAL JUSTICE INTO THE LAW SCHOOL CURRICULUM WITH A HYBRID DOCTRINAL/WRITING COURSE

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I. INTRODUCTION

Educating future lawyers is about more than just teaching them substantive law. We are preparing professionals who will go out into our world and shape and affect it in deep and impacting ways. They will make law, enforce law, determine policy, defend people, advocate, and influence lives and businesses. Therefore, any thorough law school education should teach social justice and encourage students to become more engaged in activism.

One way to incorporate social justice into the law school curriculum is to offer specific courses focused on social justice. However, administrators may be concerned about demand for such classes or ability to fit them into tight schedules that already are packed with required courses. They may also be concerned that this type of course would not fulfill the objectives of teaching “best practices,” which include providing more skills courses to make students “practice ready.” We have addressed these concerns and been able to offer such a course. The course is required for those students accepted to the journal we supervise, the *Journal of Civil Rights and Economic Development*. The course gets a set number of students each year, and we use the course for students to fulfill a scholarly writing requirement.

The course, *Perspectives on Justice*, is a hybrid doctrinal and writing course. Through the power of narrative and scholarly writing, we teach students about various social justice issues, such as race, gender, sexual orientation and identity, poverty, immigration, voting, and more. We explore historical injustices and the way they were addressed through law, policy, and social movement. We tie this history into current issues to carry forward those movements and help students realize that injustices are not a “thing of the past” already addressed by the Civil Rights Movement and resulting laws. We explore historical injustices and current ones, and we ask students to explore any injustices they may have

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faced in their own lives. We challenge the notion that the law is “neutral” as written and applied.

We then have the students pick a social justice topic of their own interest and write a scholarly note on it, a blog or op-ed, and a reflection piece on another scholarly social justice piece they have read. Scholarship on social justice is essential to activism because it brings deeper knowledge and understanding to the issues. Through the use of narrative and scholarship, the students are affected by the social injustices we discuss and empathize with those impacted and are motivated to effectuate change in their communities. Narrative is a powerful way to impact people; it can change attitudes, plant seeds, and spur behaviors that will address these justice issues. This paper briefly discusses the importance of teaching social justice to law students and then explores more the ways to teach it, particularly the use of narrative and writing. It draws upon the ideas and scholarship of others to support our use of narrative and writing as a tool to educate and motivate and discusses some examples of how we use these techniques in our course.

II. DISCUSSION

A. *The Importance of Teaching Social Justice to Law Students*

Given the current social and political climate in this country, it is imperative we teach law students social justice and motivate them to be activists. Attorneys play a unique and vital role in the democratic citizenship¹ of this country. That citizenship is diverse in many ways and to play an effective role, attorneys must understand diversity to relate empathetically to those they serve. Teaching social justice is a way to increase opportunities for conceptual thinking, which teaches and hones the non-analytical skills necessary to be a lawyer, like empathy.² Additionally, Best Practices recommends that we as legal educators teach not only substantive law but skills that would allow students to relate to clients and advocate for them effectively given each situation.³ Best Practices also recommends that we increase the diversity of the

1. See Kathy Hytten, *Philosophy and the Art of Teaching for Social Justice*, PHILOSOPHY OF EDUC. 441 (2006) (arguing that one of the most important roles for education is attitudes and behaviors necessary for democratic citizenship, including tolerance, respect, and concern for the common good and the dignity and rights of minorities).

2. Paula A. Franzese, *Law Teaching for the Conceptual Age*, 44 SETON HALL L. REV. 967, 973–74 (2014).

3. See Antoinette Sedillo Lopez, *Leading Change in Legal Education—Educating Lawyers and Best Practices: Good News for Diversity*, 31 SEATTLE U. L. REV. 775, 779–80 (2008) (discussing the implications of Best Practices for students of color).

legal profession.⁴ Finally, “teaching about social justice is a way to connect the academic discussion of the law school classroom with some of the actual problems confronting society.”⁵

The course we teach, *Perspectives on Justice*, aims to achieve these goals.⁶ The course is a requirement for those students who are staff members of the *Journal of Civil Rights and Economic Development* (JCRED). Students who apply to be on the Journal and are chosen must take this course in their second year of law school. We begin the course with an intensive one-week schedule where we introduce students to concepts like critical race theory and discuss selected social justice topics based on current events and issues. For example, there is typically a unit on race and incarceration, poverty and employment, gender and sex, and others we add based on events that have happened in the months prior to the class. We meet every day for several hours a day to introduce students to these issues and concepts and we ask them to critically think about them. Students then choose a topic and write a scholarly note explaining their social justice issue, critically analyzing it, and proposing a solution to the issue. The remainder of the course is spent teaching them about scholarly writing and research and working with them to reach a final product.

A course of this nature has several benefits. First, it qualifies as a scholarly writing course and satisfies a requirement students need to graduate. In that regard, it is easy to add the course to the curriculum as a skills course with a civil rights angle and avoid some of the concern of limited resources and over-packed schedules. Second, though the course is mandatory, students are not forced to accept any particular social justice views or the importance of social justice because the students choose to be on JCRED, a journal geared toward civil rights.⁷ Finally, students get tremendous value from the design of the course because students are introduced to important social justice concepts and issues; students learn valuable skills like advanced research, scholarly writing, and oral presentation; and students meet and interact with attorneys who

4. *Id.*

5. Dwight Aarons, *A Nuts and Bolts Approach to Teaching for Social Change: A Blueprint and a Plan of Action*, 76 TENN. L. REV. 405, 406 (2009).

6. This paper does not address the extracurricular programming, volunteer programs, and clinical experiences that are also essential to motivating and educating students in social justice and activism. See generally Stephanie M. Wildman & Deborah Moss-West, *A Social Justice Lens Turned on Legal Education: Next Steps in Representing the Vulnerable and Inspiring Law Students*, 37 J. LEGAL PROF. 179 (2013) (discussing the approach at Santa Clara Law for training law students who are committed to serving others and closing the “justice gap”).

7. See Julie D. Lawton, *The Imposition of Social Justice Morality in Legal Education*, 4 IND. J. L. & SOC. EQUALITY 57, 58 (2016) (arguing that legal education should expose students to competing ideas without requiring students to adhere to the social justice morality of faculty).

practice in these important areas, learning that one can make a career of being a “civil rights attorney.”⁸

For our purposes, we define social justice as laws and policies that create an equitable society and recognition for those that are historically underserved and underrepresented. We ask our students to think critically about assumptions in society and law, particularly the assumption that law is neutral and unbiased as written and applied.⁹

To help students understand the ways in which laws and society work injustices against certain groups, we need to disrupt their assumptions that law is neutral as enacted and applied and investigate the implications of that concept. We also explore alternatives and changes that have already occurred and that can occur to create an equitable society. One way we achieve these goals is with the use of narrative.

B. Using Narrative to Teach Social Justice

Using narrative¹⁰ to educate is not a new concept.¹¹ Narrative is familiar to all of us, both personal narrative and social narrative.¹² The reason many educators use narrative is not just because it is familiar; it is effective to elicit emotion, and an emotional connection to material creates empathy and deeper learning.¹³ Science is recently confirming what many writers and

8. In the time we’ve taught this course, we have typically had about two or three civil rights attorneys as guest lecturers per year.

9. This assumption is often reinforced in the approach many law schools take in teaching students during their first year of law school.

10. Our use of narrative here is in the traditional sense—a spoken or written account of events; a story.

11. For example, “the law and literature movement focuses on narrative literature as a means of improving the moral character of the law and the lives of lawyers. Narrative criticism of the law is predicated on the capacity of narrative to reveal voices that would otherwise be suppressed or ignored under the supposed impartiality of the law and to elicit feelings of empathy for those voices.” Note, *Being Atticus Finch: The Professional Role of Empathy in To Kill a Mockingbird*, 117 HARV. L. REV. 1682, 1682 (2004). See generally Michelle Page & Mary Curran, *Challenging Our Stories as Teacher Educators for Social Justice: Narrative as Professional Development*, 16 IN EDUCATION, <http://ineducation.ca/i-neducation/-article/view/102> (discussing using narrative as pedagogical tools in teacher education) and Hytten, *supra* note 1, at 446 (discussing using narrative specifically in educating for social justice because students are most moved to think more critically after stories and videos).

12. M. Carolyn Clark & Marsha Rossiter, *Narrative Learning in Adulthood*, 119 NEW DIRECTIONS FOR ADULT AND CONTINUING EDUCATION 61, 62 (2008) (explaining how humans construct narratives every day to create “sense out of chaos by establishing connections between and among experiences” and how constructing personal life narratives is central to adult development).

13. “The goal of telling stories is to ‘uncover what is universal, what is accessible to others in a way that allows them to walk around in our shoes.’” Christine Metteer Lorillard, *Stories that Make the Law Free: Literature as a Bridge Between the Law*

many of us have known for some time—narrative educates and inspires.¹⁴

Subject matter acuity is deepened whenever empathic pathways to learning are activated because the brain’s neurological receptors (known now as ‘mirror neurons’) work to anchor not only the learning that is achieved by both participant and observer, but the experience of that learning achieved The cognitive science makes plain that when the pot of empathic neural receptors is stirred, we become more committed to the task of problem-solving.¹⁵

Narrative also challenges assumptions¹⁶ and unconscious or ingrained patterns and beliefs. It exposes students to the lives of others, recognizing that those lives are diverse and the diversity is complex. In a class like *Perspectives on Justice*, we share images and stories about social injustices that stay with students as we critically think about the law and its implications. Narrative allows students to question cultural norms and power arrangements in a critical way, which is essential to disrupting assumptions about the neutrality of law and understanding the history of oppression of certain populations.¹⁷

and the Culture in Which It Must Exist, 12 TEX. WESLEYAN L. REV. 251, 253–54 (2005) (discussing using literature to “bring the law down to life” and challenge the “law is law” approach); *See also* Franzese, *supra* note 2, at 998. Ian Gallacher argues that empathy is an essential skill for lawyers because a lawyer who can project him or herself into the thoughts of another and understand how that person is feeling is better able to persuade. Additionally, literature that arouses empathy allows for better judgment, including legal judgment. And writing itself is an exercise in applied empathy, placing oneself in the mind of the reader to try to imagine the reader’s response to the material. *See* Ian Gallacher, *Thinking Like Non-Lawyers: Why Empathy is a Core Lawyering Skill and Why Legal Education Should Change to Reflect its Importance* 2, 4, 40, 44 (2012), <http://surface.syr.edu/lawpub/6>.

14. *See* Paul J. Zak, *Why Your Brain Loves Good Storytelling*, HARVARD BUSINESS REVIEW (Oct. 28, 2014) <https://hbr.org/2014/10/why-your-brain-loves-good-storytelling> (discussing experiments revealing that stories with emotional content result in better understanding and recall of important points).

15. Franzese, *supra* note 2, at 982–83. Franzese explains that observing another in an experience allows the observer to conceptualize and process that experience as if it was the observer’s own. She goes on to discuss a number of pedagogical devices that can trigger empathic and more holistic neural pathways to learning, including “story-telling, whether based on the teacher or student’s own experiences or depicted in a clip from a movie or documentary”; video narratives; news footage; client stories; and exercises to solve a given problem or contextual challenge; among others. *Id.* *See also* Karen E. Gerdes, Elizabeth A. Segal, Kelly F. Jackson & Jennifer L. Mullins, *Teaching Empathy: A Framework Rooted in Social Cognitive Neuroscience and Social Justice*, 47 J. SOCIAL WORK EDUC. 109, 117–18 (2011) (discussing the importance of cultivating empathy in teaching social workers because of the imperative to promote social justice and explaining that narrative is an effective tool to cultivate empathy).

16. *See* Hytten, *supra* note 1, at 442 (arguing that disrupting assumptions is among the most important tools for thinking differently about social injustices).

17. Clark & Rossiter, *supra* note 12 (explaining that narrative links learning to prior experience and enables learners to question and critique social norms and power arrangements). *See also* Lee Anne Bell, Rosemarie A. Roberts, Kayhan Irani

For example, early in the course we ask students to read excerpts from the majority opinion in *Walker v. City of Birmingham*¹⁸ and excerpts from the dissent. We challenge students to explore the narrative in each and expose underlying assumptions at work in the facts of the case and in the way the majority and dissent opinions are written and the law is applied. The dissent in particular discusses the history of discrimination in Birmingham and connects it to the events and the government's legal decision. Seeing Supreme Court justices question the law and expose how it can be applied in a discriminatory and non-neutral way helps students begin to feel comfortable with doing so themselves. In a sense, they are given "permission" to probe and delve deeper, considering historical discrimination and injustices, because they see the highest court in the land doing just that.

Additionally, using narrative to share stories of other people often prompts students to share personal stories,¹⁹ which further broadens perspectives and provokes a connection between students' personal experiences and their wider socio-political framework. Thus, hearing stories that prompt students to share stories creates a connection between the two, and that is where learning occurs.²⁰ Sharing also connects students to the material in a more visceral way, which can make students invested in the issue and motivated to act.

Reading law and the purposes behind those laws in conjunction with stories about people impacted by those laws helps students

& Brett Murphy, *The Storytelling Project: Learning About Race and Racism Through Storytelling and the Arts*, 7-11 (Storytelling Project, Barnard College) (2008) www.racialequitytools.org/re-sourcefiles/stp_curriculum.pdf (explaining how they create a story telling curriculum, using stock stories, concealed stories, resistance stories, and counter stories, to teach about race because stories help build bridges between the abstract and the personal dimensions of racism).

18. In *Walker v. City of Birmingham*, 388 U.S. 307 (1967), civil rights activists, including Martin Luther King Jr., requested permits from the city of Birmingham to march on Good Friday and Easter. The city denied the request and obtained an injunction to stop the march. The activists were arrested for violating the injunction, and the Court upheld the arrests. The majority noted that the activists did not use proper judicial procedures to challenge the injunction and therefore they violated the law by disobeying the injunction, even if it may have been illegitimate. The dissent discusses the history of oppression and discrimination in Birmingham and connects the activists' willingness to violate the injunction to the inflexibility of the government and the activists' futile attempts to comply with the law in getting a permit. The dissent presumes that citizens should be able to disobey a blatantly unconstitutional order.

19. See Judith G. Greenberg & Robert V. Ward, *Teaching Race and the Law Through Narrative*, 30 WAKE FOREST L. REV. 323, 341-42 (1995) (discussing how in using stories about discrimination in their law and race class students connected the stories to real life and were prompted to share personal stories about discrimination and their experiences). Using narrative also eliminates the burden on minority students to always provide a different perspective. See Pamela Edwards & Sheila Vance, *Teaching Social Justice Through Legal Writing*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 63, 64 (2001).

20. Clark & Rossiter, *supra* note 12, at 62, 65.

explore whether laws accomplish social justice objectives and what the real underlying purpose for some laws might be. It also helps them see how activism can change laws and conditions for people and correct injustices. Challenging assumptions can create discomfort, and in discomfort we learn and grow, which can lead to activism for many.²¹

To connect law and narrative, we ask students to read statutes and cases relevant for each social justice issue we plan to cover and we assign stories, news clips and videos, interviews, and books relevant to the issue.²² For example, in discussing gender, students were assigned a chapter discussing the history of women's role in society and the women's movement and were shown a short video discussing the role of women from the 1950s through the 1980s, including images and interviews with women. They were also assigned statutes that were passed guaranteeing equal rights (based on historical roles in society that oppress); more recent stories of inequities, including a video of Lily Ledbetter's personal story; and *Ledbetter v. Goodyear Tire & Rubber Co., Inc.* and the Lily Ledbetter Fair Pay Act.

We ask students to think critically about whether the laws effectuate social justice and what other causes there might be for continued injustices and how we can address them. We engage the students in critical thinking about gender roles and norms and assumptions and examine whether laws alone can effectuate change. We put a "face" to the law by sharing the personal story of Lily Ledbetter and the events leading up to the Fair Pay Act. Making the law personal in this way helps students understand that real people are affected in real ways and change is possible.

Another social justice issue we address with students is economic inequality. We ask students to read about the structure of a capitalist economy, we assign readings of selected labor and wage laws, we provide statistics about poverty and demographics, and we include personal narratives of "the working poor" in readings and video clips. Students are impacted by the stories of real people and

21. See Sarah M. Stitzlein, *Performing Life Stories: Getting By in Teaching for Social Justice*, *PHILOSOPHY OF EDUCATION* 450, 451–52 (2006) (discussing how students may need to feel discomfort with their position in the world in order to create a more genuine sense of activism); See also Bell, Roberts, Irani & Murphy, *supra* note 17, at 12–13 (explaining how one goal in their curriculum for learning about race and racism is to bring students to the "learning edge," which is the edge of an individual's comfort zone and is the best place to expand understanding, awareness, and perspective).

22. Other possible material to assign includes "articles that challenge the shape and scope of legal doctrine." Aarons, *supra* note 5, at 410–14 (suggesting this as one of three recommendations for teaching about social justice and social change). See also Greenberg & Ward, *supra* note 19, at 327–28 (discussing how the authors used narrative, including technical readings about the legal issues, trial transcripts, legal commentaries, news stories and videos, and stories about racism, in their law and race class to confront the Rodney King controversy).

engage in critical thinking about capitalism, labor laws, and poverty as social structure. One guest lecturer we had during the course was an attorney who handled Fair Housing law cases. He talked about Fair Housing and showed a video of actual testing,²³ and the students saw the difference in the way black and white applicants interested in an apartment were treated.

We also engage the class in an exercise to get them thinking at a different level and in a different way about what it is like to be economically disadvantaged.²⁴ Students are given personal profiles of different individuals in different economic situations and of different demographics. Students are asked to assume the role of that person and plan a budget for how to live and look for resources that they could use if they could not make ends meet given their individual circumstances. Students work in teams and collaborate to think through the life of this person and find survival strategies, through legal means and other means. Students are often impacted by who the working poor are, how difficult it is to live on a limited income and how easily a sudden event can make someone homeless or bankrupt.

We have also assigned literature for students to read before classes begin that weaves the social justice issues we discuss and the law into a narrative that we discuss throughout the intensive first week and dissect more thoroughly after that week. Recently we have assigned *The Other Wes Moore*.²⁵ The novel is a true story of two people with the same name, who lived in the same city, but who end up having very different futures. One is serving a life sentence in prison for felony murder. The other is a published author and combat veteran. The book uses narrative to take the reader through key stages of each of their childhoods and shows how their paths were parallel and their experiences similar, until they drastically diverged. Students had very powerful reactions to the novel. We talked about it at length, delving into several different social justice

23. "Testing refers to the use of individuals who, without any bona fide intent to rent or purchase a home, apartment, or other dwelling, pose as prospective buyers or renters of real estate for the purpose of gathering information." *Fair Housing Testing Program*, THE UNITED STATES DEPARTMENT OF JUSTICE: CIVIL RIGHTS DIVISION, www.justice.gov/crt/fair-housing-testing-program-1 (last visited June 25, 2017).

24. See Hytten, *supra* note 1, at 446 (discussing using performance as a tool for educating for social justice and discussing examples where students assume various roles and play them out, forcing them to confront the inherent issues).

25. WES MOORE, *THE OTHER WES MOORE: ONE NAME TWO FATES* (Spiegel & Grau Trade Paperbacks 2011). This novel was written by Wes Moore, Rhodes Scholar, combat veteran, White House fellow, and author.

themes the book touched on,²⁶ and the students did group work and short presentations.

In these ways, we use narrative to connect the law to the students' real life experiences and challenge possible assumptions they may have about the law, race, gender, poverty, and other issues.

C. Using Scholarly Writing to Motivate

The other way we use narrative in the course is to have our students write a scholarly note on a social justice issue, and we encourage them to use narrative to explain the social justice issue and then propose a solution. We let our students choose a topic so they will be inspired and feel passionate enough to work diligently on it for a long time; but we do give them some guidance in the way we structure the class.

Many law schools, including ours, have scholarly writing requirements for students to graduate.²⁷ Some question the value of these requirements, but “constructing a coherent narrative is how, in fact, we learn.”²⁸ What students learn from a scholarly writing project translates directly to skills they will need as an attorney—advanced writing skills, in-depth research and knowledge of a subject, time management of a lengthy project, and ability to orally discuss and defend a position with supervisors.²⁹ Additionally, this type of writing asks students to argue a position and propose a solution; they are involved in critical analytical thinking and persuasive argument, problem-solving, and relating to a particular population or group of people.

Having the chance to inspire and educate in writing is often transformative for the students. Because they can choose a topic they are interested in and they get an opportunity to do in-depth research, they develop a deep expertise in an area quickly.³⁰ The narratives and critical thinking from the intensive first week and

26. Some themes that run throughout the book are growing up in a single-parent household, particularly a female headed household without a father; life as a working poor American, the Cycle of Poverty; growing up in a poor, under-served neighborhood; being a minority, particularly a black male; the impact of inferior and overcrowded schools on education and the importance of having a sponsor on the inside; exposure to criminal activity/role models; the War on Drugs, the criminal justice system, and police-community relations; the meaning of violence; and the lack of birth control and healthcare in poor neighborhoods.

27. Jessica Wherry Clark & Kristen E. Murray, *The Theoretical and Practical Underpinnings of Teaching Scholarly Legal Writing*, 1 TEX. A&M L. REV. 523, 524 (2014).

28. Clark & Rossiter, *supra* note 12, at 66.

29. *See e.g.*, Clark & Murray, *supra* note 27, at 525 (explaining that scholarly writing instruction will lead to development of important high-level skills).

30. *See* Clark & Rossiter, *supra* note 12, at 67 (discussing how writing is a way of making thinking visible—thinking on paper—and is critical to the learning process).

from their own research help them ponder how to “solve” social injustices. They start to see that these problems can be solved and they are empowered by their own ability to work through the problem and develop a solution.³¹ We have seen that this creates passion and motivates action.³² The power of thinking and drafting a “solution” inspires confidence and action.

Using narrative to connect students to social justice issues and empathize with those impacted by injustices makes the issues more “real” for the students. Understanding this reality can often motivate action. For example, social workers teach empathy as critical to social work/social justice and use empathy to spur action and enhance civic involvement.³³

By using narrative to teach and having our students use narrative to explore a social justice issue more deeply, our aim is to educate and motivate, and we have seen some of the fruits of these labors bear out.

31. See e.g., Franzese, *supra* note 2, at 1007–08 (discussing the importance of “meaning” in teaching, i.e. “the quest to find purpose in the process of learning and then practicing the law,” and explaining that meaning is enhanced when students have opportunities to see how theory can be put into practice).

32. Though we have no hard statistical data to confirm that the course does spur activism, we do have anecdotes of student experiences each year. For example, we had a student last year who wrote about a particular immigration issue. This year she is working in the immigration clinic at St. John’s and is applying for a fellowship in immigration after law school. By choosing a topic and doing this intensive work, students can also become more marketable. Some find future employment in the areas they write about and many discuss their notes during job interviews. “Teaching about social change lawyering may induce students to expand the career paths and employment situations they will pursue.” Aarons, *supra* note 5, at 409.

33. See Gerdes, Segal, Jackson & Mullins, *supra* note 15, at 123.