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## Tired of Talking: A Call for Clear Strategies for Legal Education Reform: Moving Beyond the Discussion of Good Ideas to the Real Transformation of Law Schools

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## **Tired of Talking: A Call for Clear Strategies for Legal Education Reform: Moving Beyond the Discussion of Good Ideas to the Real Transformation of Law Schools**

### **Cover Page Footnote**

The author wishes to thank her research assistants Cyrah Khan, Elizabeth Leonard, and Kathleen Fergus. Thanks also to Professors John Mitchell, Elizabeth Porter, Paul Miller, and Paula Lustbader for their patient feedback. She also wishes to thank the Seattle Journal for Social Justice Editorial Board and staff for their work on this article.

**Tired of Talking: A Call for Clear Strategies for  
Legal Education Reform:  
Moving Beyond the Discussion of Good Ideas to  
the Real Transformation of Law Schools**

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Sara K. Rankin\*

*Legal education reform efforts have persisted for over one hundred years, supported by substantive expertise, empirical data, cutting-edge curricula, and effective pedagogy. But today, the normative face of legal education remains essentially unchanged. If the substance behind legal education reform is valid, then what is the problem?*

*This article examines the stasis of legal education through the lens of historical reform efforts, political science, and contemporary organizational change theory. The author argues that legal education*

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*reform efforts are marginalized and have limited normative impact because reformers underestimate the strategic demands of systemic change. As a result, reformers have yet to build a coherent, collective strategy for the transformation of legal education. The author contends that reformers must shift from an exclusive focus on the substance of legal education reform to adopt a new focus on strategy. Finally, the author offers some starting points on how to begin a new strategic discussion on the transformation of legal education.*

## I. INTRODUCTION

*School reformers often reinvent the wheel with little or no knowledge that many of their practices have rich historical precedents.<sup>1</sup>*

*[H]istory could provide direct solutions of sorts to present-day problems. At the least, it could keep us from repeating old mistakes.<sup>2</sup>*

The law is a creature of language.<sup>3</sup> Legislators debate definitions and codify specific terms into law; lawyers search for nuances in statutes and contracts; judges construe precedential language and write new opinions that may be binding on future disputes. While most other professions are

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<sup>1</sup> SCHOOLS OF TOMORROW, SCHOOLS OF TODAY: WHAT HAPPENED TO PROGRESSIVE EDUCATION (HISTORY OF SCHOOLS AND SCHOOLING V. 8) xvi (Susan F. Semel & Alan R. Sadovnik eds., 1999) [hereinafter SCHOOLS OF TOMORROW].

<sup>2</sup> HERBERT M. KLIEBARD, THE STRUGGLE FOR THE AMERICAN CURRICULUM, 1893–1958, at 272 (3d ed. 2004).

<sup>3</sup> For further reading on the connection between law and language, consult LAWRENCE M. SOLAN, THE LANGUAGE OF JUDGES (1993) (survey of the impact of linguistics on judicial decision-making); PETER M. TIERSMA, LEGAL LANGUAGE (1999) (descriptive history of the development of legal language); STEVEN D. SMITH, LAW'S QUANDARY (2007) (pointing out the disconnect between context, legal language, and legal reasoning).

defined by products or services, the legal profession is uniquely defined by definition: the law is obsessed with words and their specific meaning.

And yet, when it comes to legal pedagogy—how law students are taught to read, write, and communicate like a lawyer—law schools operate in a sort of rhetorical fog. Faculty can skillfully debate the specific meaning of a legal term or write lengthy analyses of a single case; but for most faculty, it remains a challenge to have a substantive discussion<sup>4</sup> about transforming legal education. How do students learn? What should they learn? What are the best means to assess student progress? What are the implications for how we teach law? What are the implications for evaluating law faculty and law schools? For many law school faculty and administrators, these questions simply raise more questions. And so the rhetorical fog descends, ensuring stasis.

The collective inability to define and refine effective legal pedagogy continues to impact the legal profession. A 2007 Carnegie Foundation Report underscored this failing when it announced that graduating lawyers are not practice-ready, that the legal community has become divorced from the communities it serves as the social and human dimension of the legal profession atrophies, and that this crisis affects us not only as individuals, but also as a larger society.<sup>5</sup> The Carnegie Report's sobering diagnosis

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<sup>4</sup> Substantive discussion is distinct from rhetoric. *See infra* Part IV(A)(2). *See also* MICHAEL FULLAN, *THE NEW MEANING OF EDUCATIONAL CHANGE* 354 (4th ed. 2007) [hereinafter FULLAN, *EDUCATIONAL CHANGE*] (observing the “need to replace . . . Pollyanna-ish rhetoric with informed action.”).

<sup>5</sup> WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007) [hereinafter *CARNEGIE REPORT*]; for extensive coverage of the Carnegie Report and other contemporary critiques of legal education, see ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (1st ed. 2007) [hereinafter *BEST PRACTICES*]; AM. BAR ASS'N., *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (West 1992) (commonly referred to as the “MacCrate Report”); AM. BAR ASS'N., *SECTION ON LEGAL EDUCATION AND ADMISSION TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS* (1979)

sparked an explosion of legal scholarship, adding to a compelling case for the need to reform legal education.

Spurred by the Carnegie Report and the increasing economic pressure to produce “practice-ready” graduates,<sup>6</sup> several law schools are hosting conferences on education reform, some are adopting terms such as “student-centered” and “active listening” into their strategic plans, and still others are announcing more intensive reform measures.<sup>7</sup> Various websites and blogs are now specifically devoted to innovation in legal education.<sup>8</sup> Not to be

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(commonly referred to as the “Cramton Report”). For summaries of these critiques, see Toni M. Fine, *Reflections on U.S. Law Curricular Reform*, 10 GERMAN L. J. 717, 718–28 (2009); see also John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 DUKE F. FOR L. AND SOC. CHANGE 101, 107–13 (2009).

<sup>6</sup> See, e.g., Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735 (2011); Daniel Theis, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598 (2010).

<sup>7</sup> See, e.g., Garvey & Zinkin, *supra* note 5 (discussing the Daniel Webster Scholar Honors Program at Franklin Pierce Law Center); *Message from the Dean: How we’re raising the bar*, EARLE MACK SCH. OF LAW, DREXEL UNIV., <http://earlemacklaw.drexel.edu/about> (last visited Dec. 14, 2011); Justin Myers, *Golden Gate University’s New 1L Curriculum*, A PLACE TO DISCUSS BEST PRACTICES FOR LEGAL EDUCATION, ALBANY L. BLOGS (Dec. 18, 2009), <http://bestpracticeslegaled.albanylawblogs.org/2009/12/18/golden-gate-universitys-new-1l-curriculum>; *Washington and Lee School of Law Announces Dramatic Third Year Reform*, WASH. AND LEE SCH. OF LAW (Mar. 10, 2008), <http://www.law.wlu.edu/news/storydetail.asp?id=376>. For a survey of other reform efforts, see Fine, *supra* note 5, at 732–49.

<sup>8</sup> See generally A PLACE TO DISCUSS BEST PRACTICES FOR LEGAL EDUC., ALBANY LAW BLOGS, <http://bestpracticeslegaled.albanylawblogs.org/about/> (last visited Dec. 14, 2011) (“This site was created with two goals in mind: 1) to create a useful web-based source of information on current reforms in legal education . . . [and] 2) to create a place where those interested in the future of legal education can freely exchange ideas, concerns, and opinions.”); *Center for Engaged Learning in the Law (CELL)*, ELON UNIV. LAW SCH., <http://www.elon.edu/e-web/law/cell> (last visited Mar. 26, 2011) (“This site is intended to serve as a nexus for law teachers, students, administrators and practitioners to share different perspectives on how learning can be improved in law schools.”); *Center for Legal Pedagogy*, TEX. S. UNIV. SCH. OF LAW, [http://www.tsulaw.edu/centers/legal\\_pedagogy.html](http://www.tsulaw.edu/centers/legal_pedagogy.html) (last visited Oct. 6, 2011) (“[T]he

outdone, the American Bar Association's (ABA) law school accrediting body, the Council of the Section of Legal Education and Admissions to the Bar, began a comprehensive review of the ABA Standards and Rules of Procedure for the Approval of Law Schools in September of 2008.<sup>9</sup> The section's Standards Review Committee has been at the center of a maelstrom around reforms to accreditation that some predict could cause "a sea change" in legal education.<sup>10</sup> Other examples of contemporary reform efforts are too numerous to survey in detail.<sup>11</sup>

Given the Carnegie Report's dire prognosis, the revived discussion about legal education reform is not surprising.<sup>12</sup> What is surprising, or at the very

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Center for Legal Pedagogy uses principles from the cognitive sciences about learning and discourse theory to study, implement, and evaluate law school teaching methodologies.").

<sup>9</sup> The scope of the Standards Review Committee's work is detailed at *Standards Review Committee*, A.B.A.,

[http://www.americanbar.org/groups/legal\\_education/committees/standards\\_review.html](http://www.americanbar.org/groups/legal_education/committees/standards_review.html) (last visited Oct. 6, 2011). Comments on the Standards Review Committee proposals are available on the ABA website, and also on SALT's website at *Liaison to the ABA Council and Standards Review*, SALT, <http://www.saltlaw.org/contents/view/319> (last visited Oct. 6, 2011).

<sup>10</sup> James Rodgers, *Sweeping Accreditation Review May Prompt 'Sea Change' in Law School Evals*, A.B.A. J. (Jun. 3, 2009),

[http://www.abajournal.com/news/article/review\\_of\\_accreditation\\_standards\\_likely\\_to\\_bring\\_sea\\_change\\_to\\_how\\_law\\_sch](http://www.abajournal.com/news/article/review_of_accreditation_standards_likely_to_bring_sea_change_to_how_law_sch).

<sup>11</sup> For example, the MacCrate Report pushed clinics from the margins closer to the mainstream of legal education. See, e.g., Russell Engler, *The MacCrate Report Turns 10: Assessing its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001). Other resources, such as the AALS Sections on Teaching Methods, the AALS New Law Teachers Conference, and the Institute for Law School Teaching continue to impact pedagogical reform and to produce scholarship based upon sound learning theories. For more information on these programs, see *Section on Teaching Methods*, AALS,

[https://memberaccess.aals.org/eweb/dynamicpage.aspx?webcode=ChpDetail&chp\\_cst\\_key=7f6a02b7-e5a2-4d18-bfed-d464ad64e42b](https://memberaccess.aals.org/eweb/dynamicpage.aspx?webcode=ChpDetail&chp_cst_key=7f6a02b7-e5a2-4d18-bfed-d464ad64e42b) (last visited Dec. 14, 2011); *2009 Workshops*, AALS, [http://www.aals.org/events\\_2009nltprogram.php](http://www.aals.org/events_2009nltprogram.php) (last visited Mar. 26, 2011); INSTITUTE FOR LAW SCHOOL TEACHING, <http://lawteaching.org> (last visited Mar. 2, 2011). Despite their impact, none of these efforts constitute systemic change. See *infra* notes 21–22.

<sup>12</sup> See, e.g., Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 59 (2009) ("Recent critiques [of legal education] have sharpened the current focus on

least, disappointing, is that the discussion is still mired in rhetoric<sup>13</sup> and is woefully short on specifics.<sup>14</sup>

This article contends that legal education reform efforts have limited normative impact because advocates tend to adopt a myopic focus on the *substance* of reform and underestimate the *strategic* demands of systemic change. As a result, reformers have yet to build a coherent, collective strategy to transform legal education. This deficit calls for a revision of focus: to invite systemic and lasting change, advocates must move beyond discussions of the substance of reform and adopt a new focus on strategy.

This article also examines the persistent stasis of legal education through the lens of historical reform efforts, political science, and organizational change theory. Part II challenges the one-dimensional construction of reform as a change in product, content, or substance. Instead, for any substantive change to succeed, reformers must appreciate their task as a subversive, political, and strategic process. Part III compares contemporary legal education reform efforts to the progressive education movement, which began in the late nineteenth century. Part IV analyzes the reasons

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legal education's curricular deficits, and law schools have begun to respond with individual and collective reform efforts."); THE INFILAW SYSTEM, <http://infilaw.com> (last visited Dec. 14, 2011) (a consortium of independent, community-based law schools, including Florida Coastal School of Law, Phoenix School of Law, and Charlotte School of Law) ("Its mission is to establish student-centered, ABA accredited law schools in underserved markets.").

<sup>13</sup> See FULLAN, EDUCATIONAL CHANGE, *supra* note 4, at 354 (observing the "need to replace . . . Pollyanna-ish rhetoric with informed action.").

<sup>14</sup> Sandefur & Selbin, *supra* note 12, at 59–60 ("Legal education may be at a crossroads, but diagnoses of its inadequacies far outpace our understanding of potential solutions."); Andrea A. Curcio, *Assessing Differently and Using Empirical Studies to See if it Makes a Difference: Can Law Schools Do it Better?*, 27 QUINNIPIAC L. REV. 899, 902 (2009) ("[T]he lack of a coherent structure and plan to teach and assess many of these practical skills and professionalism qualities is a central critique of the recent Carnegie Report on the Future of Legal Education and the Best Practices book."); Ira P. Robbins, *Best Practices on "Best Practices": Legal Education and Beyond*, 16 CLINICAL L. REV. 269, 276 (2009) (criticizing *Best Practices* as "...suggesting mostly general, unmeasurable platitudes . . . appear[ing] to employ [best practices] to be all things to all people.").

why progressive education reform efforts failed, highlighting a botched experiment at Columbia Law School in the 1920s. This section observes that progressive education reform failed in large part because reformers underestimated the strategic demands of change. Part V grafts this lesson onto contemporary reform efforts. The article concludes that in order to transform legal education on a normative level, reformers must become educated about the strategic and systemic challenges of effecting change; they must define clear, shared terms for the reform, and they must organize for collective action at the institutional, regional, and national level. The core thesis of this article is simple: like any epic battle, the transformation of legal education cannot be won on the basis of a righteous cause alone.

## II. LEGAL EDUCATION REFORM IS ABOUT PROCESS AND POWER (AS MUCH AS IT IS ABOUT SUBSTANCE)

*A reform is a correction of abuses; a revolution is a transfer of power.*<sup>15</sup>

Efforts to reform legal education are nothing new.<sup>16</sup> Although reformers have been wrestling with the form of legal education for more than 140

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<sup>15</sup> Quote attributed to English statesman, Robert Bulwer-Lytton (1803–1873). SAMUEL ARTHUR BENT, *SHORT SAYINGS OF GREAT MEN WITH HISTORICAL AND EXPLANATORY NOTES* 363 (James R. Osgoode & Co. 1882).

<sup>16</sup> See generally LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, *supra* note 5 (identifying areas for reform); REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS, *supra* note 5 (identifying areas for reform); BEST PRACTICES, *supra* note 5 (discussing contemporary pedagogical and curricular reform); CARNEGIE REPORT, *supra* note 5 (identifying areas for reform); Fine, *supra* note 5 (summarizing various reform efforts); Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About it*, 60 VAND. L. REV. 609 (2007) (reviewing the advent of the Langdellian method and alternative views of legal education). See also *infra* Part IV (discussing the Columbia reform experiment in the 1920s).

years, it essentially remains unchanged.<sup>17</sup> Many factors contribute to the remarkable persistence of the traditional law school model, ranging from apathy, to inertia, to the common resolved belief that legal pedagogy does not need to change.<sup>18</sup> But far more significant reasons for the stasis of legal education are often overlooked.

One fundamental reason underlying the stasis is that reform is often narrowly understood as an effort to change content; in terms of education reform, this understanding translates into a myopic focus on changing curriculum or pedagogy. But this singular focus on content ignores the most

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<sup>17</sup> See generally Sandefur & Selbin, *supra* note 12, at 60; see also Rubin, *supra* note 16, at 612 (“We are trapped inside a pedagogical fossil, marvelously preserved from a vanished era by the adamantine rock of a licensed monopoly.”).

<sup>18</sup> See, e.g., CATHERINE L. CARPENTER ET AL., AM. BAR ASS’N., REPORT OF THE OUTCOME MEASURES COMM. 61–72 (July 27, 2008), available at <http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>; Erwin Chemerinsky, *Rethinking Legal Education*, 43 HARV. C.R.-C.L. L. REV. 595, 597 (2008); Fine, *supra* note 5, at 729–32; Rubin, *supra* note 16, at 611–14; PAUL MAHARG, TRANSFORMING LEGAL EDUCATION 86 (2007) [hereinafter MAHARG, LEGAL EDUCATION]; Judith Welch Wegner, *Symposium 2009: A Legal Education Prospectus: Law Schools & Emerging Frontiers, Reframing Legal Education’s “Wicked Problems,”* 61 RUTGERS L. REV. 867, 867 (2009). For more on the dynamic of change (and the resistance to change) in the K–12 context, see DIANE RAVICH, THE DEATH AND LIFE OF THE GREAT AMERICAN SCHOOL SYSTEM (2010); THE FOURTH WAY: THE INSPIRING FUTURE FOR EDUCATIONAL CHANGE (Andy Hargreaves & Dennis L. Shirley eds., 2009); TERRENCE E. DEAL & KENT D. PETERSON, SHAPING SCHOOL CULTURE: THE HEART OF LEADERSHIP (1999); ROBERT G. OWENS & THOMAS C. VALESKY, ORGANIZATIONAL BEHAVIOR IN EDUCATION: LEADERSHIP AND SCHOOL REFORM (10th ed. 2010); PHILLIP C. SCHLECHTY, INVENTING BETTER SCHOOLS: AN ACTION PLAN FOR EDUCATIONAL REFORM (2001) [hereinafter SCHLECHTY, INVENTING BETTER SCHOOLS]; FULLAN, EDUCATIONAL CHANGE, *supra* note 4, at 47–50; W. WARNER BURKE, ORGANIZATION DEVELOPMENT, A PROCESS OF LEARNING AND CHANGING 145 (2d ed. 1994) (discussing individual concerns when faced with change) [hereinafter BURKE, ORGANIZATION DEVELOPMENT]. Indeed, the ABA Outcome Measure Committee’s recommendations for reform have been met with resistance. See Katherine Mangan, *Law Schools Resist Proposal to Assess Them Based on What Students Learn*, CHRON. OF HIGHER EDUC. (Jan. 10, 2010), <http://chronicle.com/article/Law-Schools-Resist-Proposal-to/63494>.

challenging task of education reform: systemic change also requires a subversion of power.

Schools are “norming” institutions; they express and perpetuate the status quo.<sup>19</sup> Dominant ideologies determine what schools teach and how they teach it. Education, in turn, shapes the ideologies of the future.<sup>20</sup> Reform is an epic intervention in this cycle.

As such, efforts to reform education are “inherently subversive.”<sup>21</sup> Reform is a struggle because it is an ideological battle, a contest to define and assert the dominant social ideology. Reformers cannot afford to envision their goal as simply one of content or substance. For any substantive change to succeed, reformers must also appreciate their task as a political process—a revolutionary undertaking. And no revolution, no matter how valid and compelling its basis, can succeed without a tactical plan.

To advance legal education reform, advocates must prepare a strategy—a campaign—to ensure the acceptance and long-term viability of the reform. Reformers must try to articulate a coherent movement and create the necessary environment to secure a meaningful, enduring impact. Any other result is not true reform. That is not to say there is no cause for celebration in isolated or localized instances of success.<sup>22</sup> But in terms of a normative

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<sup>19</sup> KLIEBARD, *supra* note 2, at 288.

<sup>20</sup> *Id.* at 274–75; Rubin, *supra* note 16, at 649.

<sup>21</sup> Alfie Kohn, *Progressive Education: Why It's Hard to Beat, But Also Hard to Find*, INDEP. SCHOOL (Spring 2008), <http://www.alfiekohn.org/teaching/progressive.htm> [hereinafter Kohn, *Progressive Education*].

<sup>22</sup> If we care about issues of access, we cannot be complacent with localized reform. *See, e.g.*, SCHOOLS OF TOMORROW, *supra* note 1, at 11 (noting that although progressive education schools had social-reconstructionist goals, they ironically “served a primarily affluent population.”). Moreover, marginalized reform will never impact how law schools are evaluated on a national or comparative level. In other words, isolated reforms will continue to be undervalued because they will be evaluated by a metric that is biased toward traditional schooling. Education reform requires systemic change. *See* FULLAN, EDUCATIONAL CHANGE, *supra* note 4, at xiii; BURKE, ORGANIZATION DEVELOPMENT,

discourse, such efforts will appear piecemeal and marginalized.<sup>23</sup> Well-intended efforts may be viewed in hindsight as a fad. For those who support reform, this would be a tragic result.

### III. LEARNING FROM THE PAST: PROGRESSIVE EDUCATION AS PRECEDENT FOR CONTEMPORARY LEGAL EDUCATION REFORM EFFORTS

The fate of the progressive education movement, dating back to the late nineteenth century, illustrates the toxic combination of a singular focus on substance and a failure to prepare for the political demands of change. The progressive education movement is a compelling case study of such a fatality because its theories and techniques are a primary instructional source for the development of contemporary legal education reform.<sup>24</sup>

The discussion warrants a preface on the definition of “progressive education.” While historians continue to debate the definition of progressive education,<sup>25</sup> “a common core of progressive education emerges, however hazily.”<sup>26</sup> These common elements are largely associated with the influential American philosopher, John Dewey (1859–1952). Dewey’s

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*supra* note 18, at 14; SCHLECHTY, *INVENTING BETTER SCHOOLS*, *supra* note 18, at xvii, 16.

<sup>23</sup> CARNEGIE REPORT, *supra* note 5, at 190 (“[E]fforts to reform legal education have been more piecemeal than comprehensive.”).

<sup>24</sup> Rubin, *supra* note 16, at 648.

<sup>25</sup> KLIEBARD, *supra* note 2, at 273; SCHOOLS OF TOMORROW, *supra* note 1, at 11 (citations omitted) (internal quotation marks omitted) (“[Progressive education’s] many often contradictory strands make it difficult to provide a capsule definition of progressive education.”). Daniel T. Rodgers referred to the elusive definition of the progressive era as “definitional wrangling.” Daniel T. Rodgers, *In Search of Progressivism*, *REVIEWS IN AMERICAN HISTORY* 113, 114 (Stanley I. Kutler ed., 1982). Indeed, this “definitional wrangling” illustrates a key underlying premise of this article: to succeed on a normative level, reform efforts must establish shared definitions of key terms. *See infra* Part IV(A)(2).

<sup>26</sup> Kohn, *Progressive Education*, *supra* note 21, at 1.

philosophy is covered in detail in numerous other works,<sup>27</sup> including his own.<sup>28</sup> This article attempts to summarize some of the elements of progressive education below, although such efforts to define progressive education are subject to an inherent tension.<sup>29</sup>

One faces a similar challenge in locating a common phrase to describe our contemporary legal education reform efforts. Some refer to a “legal education renaissance,”<sup>30</sup> while others invoke the rubric of “comprehensive law.”<sup>31</sup> But these phrases are not clearly defined and it is difficult to discern their boundaries.

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<sup>27</sup> For further reading on John Dewey and progressive education, see LAWRENCE CREMIN, *THE TRANSFORMATION OF THE SCHOOL* (1961); *THE ESSENTIAL DEWEY: VOLUMES 1 AND 2*, (Larry Hickman & Thomas Alexander eds., 1998); KLIEBARD, *supra* note 2; ALFIE KOHN, *THE SCHOOLS OUR CHILDREN DESERVE: MOVING BEYOND TRADITIONAL CLASSROOMS AND “TOUGHER STANDARDS,”* (1999) [hereinafter KOHN, *THE SCHOOLS OUR CHILDREN DESERVE*]; *PROGRESSIVE EDUCATION FOR THE 1990S: TRANSFORMING PRACTICE* (Kathe Jervis & Carol Montag eds., 1991); *SCHOOLS OF TOMORROW*, *supra* note 1; ROBERT B. WESTBROOK, *JOHN DEWEY AND THE AMERICAN DEMOCRACY* (1991); Lynn Olson, *Dewey: The Progressive Era’s Misunderstood Giant*, *EDUC. WK.*, Apr. 1999, at 29. For detailed considerations of Deweyan theory and its potential application to the law school context, see Rubin, *supra* note 16, at 646–48; MAHARG, *LEGAL EDUCATION*, *supra* note 18.

<sup>28</sup> For a sampling of John Dewey’s own writings, see JOHN DEWEY, *DEMOCRACY AND EDUCATION* (1916) [hereinafter DEWEY, *DEMOCRACY AND EDUCATION*]; JOHN DEWEY, *DEWEY ON EDUCATION* (Martin Dworkin ed., 1959); JOHN DEWEY, *EXPERIENCE AND EDUCATION* (1938) [hereinafter DEWEY, *EXPERIENCE AND EDUCATION*].

<sup>29</sup> See KLIEBARD, *supra* note 2, at 273; *SCHOOLS OF TOMORROW*, *supra* note 1, at 11; see also *infra* Part IV(A)(1) (discussing the debate about whether a coherent progressive era can or should be defined, especially Rodgers’s and Filene’s critique).

<sup>30</sup> John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 *WM. MITCHELL L. REV.* 303, 437–72 (2007).

<sup>31</sup> See Jess M. Krannich, James R. Holbrook, & Julie J. McAdams, *Beyond “Thinking Like A Lawyer” and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education*, 86 *DEN. U. L. REV.* 381, 400 (2009) (internal citations omitted) (citing Susan Daicoff, *Law as Healing Profession: The Comprehensive Law Movement*, 6 *PEPP. DISP. RESOL. L. J.* 1, 3 (2006)) (“These common threads [of reform efforts] have led some commentators to refer to the changes cumulatively as the comprehensive law movement.”).

Although progressive education shares much in common with current reform efforts, it would be inappropriate to adopt “progressive” as a moniker for contemporary efforts. As explained below, progressive education reform suffered from many missteps, and the term carries its own baggage. Thus, articulated references to historical antecedents can easily become liabilities. Reformers must learn from the past but adapt for the future, so any reference for contemporary reform efforts should reflect its own unique visage. Perhaps as a not-so-subtle message of the need to clarify the terms of reform, this article occasionally uses the acronym “CLEAR” as shorthand for “contemporary legal education reform.”

*A. Progressive Education as “CLEAR” Precedent*

If one were to brainstorm key hallmarks of CLEAR, the resulting list would read like an executive summary of the hallmarks of progressive education from over one hundred years ago. Many of these theories are recursive and overlapping. These hallmarks include experiential learning, active learning, situated learning, differentiation, service learning, transformative education, collaborative learning, and interdisciplinary teaching.

**Experiential learning.** Experiential philosophies hold that all theory derives from some concrete human experience or practice,<sup>32</sup> so education needs the context of practical experience to restore a sense of purpose and the intrinsic motivation provided by a sense of purpose.<sup>33</sup> Experiential learning is the centerpiece of progressive education. Indeed, Dewey’s seminal text, *Experience and Education*, provided the template for

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<sup>32</sup> DEWEY, *DEMOCRACY AND EDUCATION*, *supra* note 28, at 169 (“An ounce of experience is better than a ton of theory simply because it is only in experience that any theory has vital and verifiable significance. . . . [A] theory apart from an experience cannot be definitely grasped even as a theory.”).

<sup>33</sup> Kohn, *Progressive Education*, *supra* note 21, at 2; KOHN, *THE SCHOOLS OUR CHILDREN DESERVE*, *supra* note 27, at 132–33.

contemporary understanding of situated learning, constructivism, and active learning.<sup>34</sup> In legal education, we have approximated experiential learning to clinical teaching,<sup>35</sup> apprenticeships,<sup>36</sup> externships,<sup>37</sup> class simulations, and role-plays.

**Active learning** derives from constructivist theories that “knowledge is constructed rather than absorbed.”<sup>38</sup> As the old proverb states, “Tell me and I forget, show me and I remember, involve me and I understand.” In contrast to passive learning in a straight lecture format, active learning often involves collaborative groups, student-generated classroom materials, and student-led presentations or discussions to develop higher-order thinking skills of analysis, synthesis, and evaluation.<sup>39</sup> Students may be involved in curriculum design, class strategy, and peer or self-assessments.<sup>40</sup> Instructional emphasis is placed on students’ interaction with the

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<sup>34</sup> DEWEY, *EXPERIENCE AND EDUCATION*, *supra* note 28. *See also* MAHARG, *LEGAL EDUCATION*, *supra* note 18, at 2–13 (reviewing Deweyan theories); *SCHOOLS OF TOMORROW*, *supra* note 1, at 5–9.

<sup>35</sup> *See* Stephen Ellman, *The Clinical Year*, 53 N.Y. L. SCH. L. REV. 877 (2008–2009).

<sup>36</sup> *CARNEGIE REPORT*, *supra* note 5, at 27–29.

<sup>37</sup> For example, Northeastern University School of Law’s Co-op Legal Education Program integrates “four quarters of full-time employment” into the curriculum. *Co-operative Legal Education Program*, NORTHEASTERN UNIVERSITY SCHOOL OF LAW, <http://www.northeastern.edu/law/co-op/index.html> (last visited Mar. 26, 2011).

<sup>38</sup> KOHN, *THE SCHOOLS OUR CHILDREN DESERVE*, *supra* note 27, at 132. Constructivism, situated learning, and other forms of social learning theories can be traced to the work of cognitive scientists Lev Vygotsky and Jean Piaget. *See, e.g.*, LEV VYGOTSKY, *MIND AND SOCIETY: THE DEVELOPMENT OF HIGHER MENTAL PROCESSES* (1978); JEAN PIAGET, *THE ORIGINS OF INTELLIGENCE IN CHILDREN* (1952).

<sup>39</sup> *E.g.*, CHARLES C. BONWELL & JAMES A. EISON, *ACTIVE LEARNING: CREATING EXCITEMENT IN THE CLASSROOM* (1991) (discussing a variety of strategies to support active learning).

<sup>40</sup> Kohn, *Progressive Education*, *supra* note 21, at 2–3 (“Naturally, teachers will have broadly conceived themes and objectives in mind but they don’t just design a course of study *for* their students; they design it *with* them, and they welcome unexpected detours.”) (emphasis in original). Accordingly, teachers must be “comfortable with uncertainty” and be willing to “give up some control and let students take some ownership, which requires guts as well as talent.” *Id.* at 5. *See also* SCHLECHTY, *INVENTING BETTER SCHOOLS*, *supra* note 18, at 42–60.

environment, reflection, and the engagement of student attitudes and values. Educational theorists and cognitive scientists report that active learning results in higher student motivation, satisfaction, and performance.<sup>41</sup>

**Situated or “real world” learning.** Situated learning techniques seek to create an educational context that is as close as possible to the real world environment in which the learned skills are applied.<sup>42</sup> In other words, education should happen in a context that reflects the messiness and complexity of actual practice.<sup>43</sup> The objective of situated learning is the development of sophisticated analytical ability and judgment that cannot be replicated in a theoretical context.<sup>44</sup> Situated learning is often referred to as problem-solving or problem-based learning.<sup>45</sup> Such experiences are “not separated from the noise, confusion, and group interactions prevalent in real work environments.”<sup>46</sup> In legal education, clinical programs typically rely on a combination of experiential, active, and situated learning.<sup>47</sup>

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<sup>41</sup> See, e.g., LINDA DARLING-HAMMOND ET AL., *POWERFUL LEARNING: WHAT WE KNOW ABOUT TEACHING FOR UNDERSTANDING* (2008); Kohn, *Progressive Education*, *supra* note 21, at 2.

<sup>42</sup> JEAN LAVE & ETIENNE WENGER, *SITUATED LEARNING: LEGITIMATE PERIPHERAL PARTICIPATION* (1991). See also CARNEGIE REPORT, *supra* note 5, at 173 (“The interdependence of knowledge, skill, and sense of purpose . . . is difficult to teach or assess through the usual academic techniques, which focus on procedures and techniques out of context. . . . Practical judgment depends on complex traditions of living, which can only come alive through apprenticeship experiences.”).

<sup>43</sup> CARNEGIE REPORT, *supra* note 5, at 188 (criticizing law schools as paying “casual attention . . . to teaching students how to use legal thinking in the complexity of actual legal practice.”).

<sup>44</sup> See Deborah Rhode, *Legal Ethics in Legal Education*, 16 *CLINICAL L. REV.* 43, 43, 51 (2009) (describing the role of experience and clinical education in the development of “reflective judgment”); Rubin, *supra* note 16, at 639 (“[S]tudents of politics learned . . . that the real world, and not a library, is the true laboratory of the human sciences. Legal academics needed another seventy years or so to learn this, and they have not yet applied those lessons to the law school curriculum.”).

<sup>45</sup> MAHARG, *LEGAL EDUCATION*, *supra* note 18, at 38–42; *SCHOOLS OF TOMORROW*, *supra* note 1, at 8.

<sup>46</sup> David Stein, *Situated Learning in Adult Education*, ERIC DIGEST NO. 195, at 2, available at <http://www.eric.ed.gov/PDFS/ED418250.pdf> (last visited Sept. 17, 2011).

<sup>47</sup> See, e.g., Ellman, *supra* note 35, at 884–90.

**Interdisciplinary teaching.** Interdisciplinary teaching has been described as “an implementation of transactional realism.”<sup>48</sup> The concept is a sort of “curriculum integration”<sup>49</sup> across several disciplines.<sup>50</sup> A team of teachers (each specializing in a different content area) might teach a single group of students, who are then asked to correlate or draw thematic connections. Or a single teacher might teach a unit across various disciplines with some organizing theme. Many law schools offer an array of interdisciplinary courses, such as law and business school combinations, law and social science classes, and jurisprudence courses.<sup>51</sup> Interdisciplinary legal ethics classes are increasingly common in law schools and universities.<sup>52</sup> Other interdisciplinary efforts, such as *Writing Across the Curriculum*,<sup>53</sup> are also gaining popularity in legal education.

**Collaborative, cooperative, or group learning.** In contrast to traditional schooling, which requires the student to operate primarily or exclusively as an individual, collaborative learning requires students to work

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<sup>48</sup> MAHARG, LEGAL EDUCATION, *supra* note 18, at 14. Maharg’s text is an ambitious examination of interdisciplinarity and other progressive methods in the law school context.

<sup>49</sup> The phrase “curriculum integration” was coined by education scholar Dr. James A. Beane. JAMES A. BEANE, CURRICULUM INTEGRATION: DESIGNING THE CORE OF DEMOCRATIC EDUCATION (1997).

<sup>50</sup> See generally INTERDISCIPLINARY CURRICULUM: DESIGN AND IMPLEMENTATION (Heidi Hayes Jacobs ed., 1989).

<sup>51</sup> Chemerinsky, *supra* note 18, at 597 (“[L]aw is inherently interdisciplinary and must be shaped by understanding fields such as economics, philosophy, and psychology.”).

<sup>52</sup> E.g., Center for Ethics & Public Service, UNIV. OF MIAMI SCH. OF L., <http://www.law.miami.edu/ceps> (last visited Mar. 26, 2011); Theresa Johnston, *Transforming Legal Education*, STANFORD LAWYER, Fall 2008, at 14, available at [http://stanfordlawyer.law.stanford.edu/issues/75/sl75\\_articles.pdf](http://stanfordlawyer.law.stanford.edu/issues/75/sl75_articles.pdf) (discussing reform interest and activity at Stanford, including interdisciplinary study programs).

<sup>53</sup> Pamela Lysaght & Cristina D. Lockwood, *Writing Across the Curriculum, Theoretical Justifications, Curricular Implications*, 2 J. ASS’N LEGAL WRITING DIRECTORS 73 (2004).

interdependently towards both personal and team goals.<sup>54</sup> The learning environment stresses an interactive dynamic among multiple learners.<sup>55</sup> Students must learn to work as a team, enduring the various stages of group formation and growth<sup>56</sup> in order to work effectively. Cooperative learning techniques appeal to the social reality of legal practice, which involves clients, opposing counsel, teamwork, and other complex social dynamics.<sup>57</sup>

**Differentiation.** Differentiation involves curricular and pedagogical adaptations for students' different learning styles and experiences.<sup>58</sup> Differentiation is a natural outgrowth of constructivist theories,<sup>59</sup> which

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<sup>54</sup> Clifford S. Zimmerman, "Thinking Beyond my own Interpretation:" Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum, 31 ARIZ. ST. L. J. 957, 995, 1000 (1999).

<sup>55</sup> *Id.* at 1008.

<sup>56</sup> Many contemporary articulations of group formation dynamics are attributed to Bruce Tuckman. See Bruce Tuckman, *Developmental Sequence in Small Groups*, GROUP FACILITATION, Spring 2001, available at <http://openvce.net/sites/default/files/Tuckman1965DevelopmentalSequence.pdf>.

<sup>57</sup> BEST PRACTICES, *supra* note 5, at 199–221 (discussing the benefits of collaborative learning). See also MAHARG, LEGAL EDUCATION, *supra* note 18, at 83 (internal quotations omitted) (citing JOHN DEWEY, THE LATER WORKS, 1925–1953 (J.A. Boydston ed., 1981)) ("[L]aw is through and through a social phenomenon; social in origin, in purpose or end [and an] inter-activity[, . . . which] can be discussed only in terms of the social conditions in which it arises and of what it concretely does there.").

<sup>58</sup> HOWARD GARDNER, INTELLIGENCE REFRAMED: MULTIPLE INTELLIGENCES FOR THE 21ST CENTURY 91, 150–55 (2000). See generally Robin Boyle & Lynn Dolle, *Providing Structure to Law Students: Introducing the Programmed Learning Sequence as an Instructional Tool*, 8 LEGAL WRITING: J. LEGAL WRITING INST. 59 (2002); Paula Lustbader, *Walk the Talk: Creating Learning Communities to Promote a Pedagogy of Justice*, 4 SEATTLE J. FOR SOC. JUST. 613 (2006).

<sup>59</sup> Constructivism is a very broad conceptual framework in cognitive science and is generally attributed to Jean Piaget, Lev Vygotsky, and Jerome Bruner. See, e.g., JEROME BRUNER, THE PROCESS OF EDUCATION (1977); JEAN PIAGET, TO UNDERSTAND IS TO INVENT: THE FUTURE OF EDUCATION (1973); VYGOTSKY, *supra* note 38. However, the roots of constructivist theory incorporated Dewey's philosophies, including those articulated in *Democracy and Education*, published in 1916. DEWEY, DEMOCRACY AND EDUCATION, *supra* note 28. See also Jong Suk Kim, *The Effects of a Constructivist Teaching Approach on Student Academic Achievement, Self-Concept, and Learning Strategies*, 6 ASIA PAC. EDUC. REV. 7 (2005) (reviewing Deweyan and constructivist theories).

hold that the learner brings a unique background and perspective to any learning environment, creating a unique dialectic.<sup>60</sup> In legal education, differentiation remains a controversial topic but has gained popularity in contemporary reform efforts. Some educators cast differentiation as a means to achieve “inclusive” education, reaching diverse populations and learning styles.<sup>61</sup>

**Transformative goals.** Dewey believed that a primary function of school was to prepare students for meaningful participation in society.<sup>62</sup> Education influences the development of our individual and collective values, ethics, and identity.<sup>63</sup> Therefore, progressive schools openly sought to facilitate individual and social change through student development.<sup>64</sup> The Carnegie Report stressed a similar “transformative” potential for legal education.<sup>65</sup> Transformative values are sometimes expressed in law school curricula or institutional messaging: commitments to difference and diversity, social justice, international law specialties, and pro bono clinics are a few examples.<sup>66</sup> The transformative potential of legal ethics programming—and the impact on students’ ethical identities—is at the core of current debate.<sup>67</sup>

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<sup>60</sup> GARDNER, *supra* note 58, at 150–55; *see also* Paul Maharg, *Rogers, Constructivism and Jurisprudence: Educational Critique and the Legal Curriculum*, 7 INT’L J. L. PROF. 189, 194–96 (2008). *See generally* Kristen Dauphinais, *Valuing and Nurturing Multiple Intelligences in Legal Education: A Paradigm Shift*, 11 WASH. & LEE RACE & ETHNIC ANC. L.J. 1 (2005).

<sup>61</sup> *See, e.g.*, Lustbader, *supra* note 58.

<sup>62</sup> *See generally* DEWEY, *DEMOCRACY AND EDUCATION*, *supra* note 28; JOHN DEWEY, *THE SCHOOL AND SOCIETY & THE CHILD AND THE CURRICULUM* (2001). *See also* SCHOOLS OF TOMORROW, *supra* note 1, at 5–7.

<sup>63</sup> CARNEGIE REPORT, *supra* note 5, at 28; BEST PRACTICES, *supra* note 5, at 51–53.

<sup>64</sup> SCHOOLS OF TOMORROW, *supra* note 1, at 5–8, 367.

<sup>65</sup> CARNEGIE REPORT, *supra* note 5, at 138–40.

<sup>66</sup> For more on the transformative potential of law school, *see* Krannich, Holbrook & McAdams, *supra* note 31; Anthony Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1083–86 (2009) (discussing the Carnegie Report and “pedagogical transformation”).

<sup>67</sup> *See generally* Rhode, *supra* note 44; Michael Robertson, *Providing Ethics Learning Opportunities throughout the Legal Curriculum*, 12 LEGAL ETHICS 59 (2009).

**Community service.** One means of transformative education is public or community service. Dewey envisioned an integration of the school, the individual, and the individual's surrounding community.<sup>68</sup> For Dewey, the individual's participation in a democratic society placed civic engagement at the core of progressive pedagogy.<sup>69</sup> Today, community service has an increasing role in higher education,<sup>70</sup> including law schools.<sup>71</sup> The rationale for community service in legal education includes the value to society, as well as the ethical and moral development of the student.<sup>72</sup> In law school, community service often entails clinical work, marrying the value of experiential learning with the fulfillment of ethical obligations to society.

**Alternative methods of assessment.** Alternative student assessments reflect the progressive philosophy that true knowledge is not amenable to quantitative measurement; instead, the focus should be on qualitative reflections of student understanding and experience.<sup>73</sup> Progressive schools resist summative, grade-based student evaluations in favor of formative,

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<sup>68</sup> SCHOOLS OF TOMORROW, *supra* note 1, at 5–7.

<sup>69</sup> *Id.* at 375–76.

<sup>70</sup> See generally ANNE COLBY ET AL., EDUCATING CITIZENS: PREPARING AMERICA'S UNDERGRADUATES FOR LIVES OF MORAL AND CIVIC RESPONSIBILITY (1st ed. 2003). For an interesting read on the role community service could play in faculty promotion and tenure, see Julie Ellison & Timothy K. Eatman, *Scholarship in Public: Knowledge Creation and Tenure Policy in the Engaged University, A Resource on Promotion and Tenure in the Arts, Humanities, and Design*, in IMAGINING AMERICA: ARTISTS AND SCHOLARS IN PUBLIC LIFE TENURE TEAM INITIATIVE ON PUBLIC SCHOLARSHIP (2008), available at <http://ase.tufts.edu/macc/documents/ScholarshipPublic.pdf>.

<sup>71</sup> Today, at least thirty-six law schools require noncredit hours of pro bono, community service, or public service as a graduation requirement. *Standing Committee on Pro Bono and Public Service and the Center for Pro Bono*, AM. BAR ASS'N. (June 24, 2011), [http://www.abanet.org/legalservices/probono/lawschools/pb\\_programs\\_chart.html#graduation\\_requirement](http://www.abanet.org/legalservices/probono/lawschools/pb_programs_chart.html#graduation_requirement).

<sup>72</sup> CARNEGIE REPORT, *supra* note 5, at 21–22, 138–39, 176–80, 183–84 (discussing the importance of teaching and supporting the development of ethical, moral, and social responsibility in legal education).

<sup>73</sup> *Id.* at 32–33, 41–42, 194–95; HOLDING VALUES: WHAT WE MEAN BY PROGRESSIVE EDUCATION 176–81 (Brenda S. Engel and Anne C. Martin eds., Heinman 2005); KOHN, THE SCHOOLS OUR CHILDREN DESERVE, *supra* note 27, at 21, 25–40, 196–97.

portfolio evaluations.<sup>74</sup> Emphasis is placed on student self-evaluation.<sup>75</sup> Alternative assessments also remove motivational barriers that compel students to focus on “how well they’re doing” instead of “what they’re doing.”<sup>76</sup> Alternative methods of assessment can relate to student evaluation (summative or formative),<sup>77</sup> teacher evaluation,<sup>78</sup> as well as the evaluation and ranking of the educational institution itself.<sup>79</sup> The redefinition of outcomes and assessments is an increasingly active topic in the law school context.<sup>80</sup>

But law schools cannot measure what they do not teach.<sup>81</sup> Therefore, any efforts to reform outcomes or assessment must contend with the strong iterative relationship between current teaching methods and current

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<sup>74</sup> KOHN, *THE SCHOOLS OUR CHILDREN DESERVE*, *supra* note 27, at 191–97.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 28.

<sup>77</sup> *See id.* at 164–66, 171–73, 182–83, 188–89; BEST PRACTICES, *supra* note 5, at 206.

<sup>78</sup> CARPENTER ET AL., *supra* note 18.

<sup>79</sup> *See, e.g.*, John Valery White, *The Pull of Rankings*, NEVADA LAW., June 2009; Fine, *supra* note 5, at 730 nn. 66–67.

<sup>80</sup> *See supra* notes 6–7 and accompanying text. For further reading on reforming outcome measurements in legal education, see BEST PRACTICES, *supra* note 5, at 42–91; GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* (2000). The Carnegie Report renewed debate over whether current assessments adequately measure necessary lawyering skills. CARPENTER ET AL., *supra* note 18; Andrea A. Curcio, *Assessing Differently and Using Empirical Studies to See if it Makes a Difference: Can Law Schools Do It Better?*, 27 QUINNIPIAC L. REV. 899, 902 (2009). Fueling the debate are considerations of student diversity and access, motivation and achievement, and the cache attached to *U.S. News and World Report* rankings, as well as logistical and financial resources. CARPENTER ET AL., *supra* note 18, at 62–64 (discussing potential costs of establishing an “outcome-oriented accreditation process”); Fine, *supra* note 5, at 730–31 (discussing how rankings and costs have a negative effect on law school reform); Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps all Students Learn*, 48 J. LEGAL EDUC. 402, 402–04 (discussing issues of student diversity and access).

<sup>81</sup> Curcio, *supra* note 80, at 904 (“[I]n order to assess different skills, one must first teach those skills”). *See also* CARPENTER ET AL., *supra* note 18, at 8 (“Law schools assess what they value.”).

assessment methods: the inadequacies of one perpetuate the inadequacies of the other.<sup>82</sup>

Hence, the call for reform. Again.

#### IV. AVOIDING THE FATE OF PROGRESSIVE EDUCATION

*One cannot understand the history of education in the United States in the twentieth century unless one realizes that . . . John Dewey lost.*<sup>83</sup>

Each of the CLEAR reform concepts—experiential learning, active learning, situated learning, differentiation, service learning, transformative education, collaborative learning, and interdisciplinary teaching—has important philosophical roots in progressive education. And yet, despite its compelling substance, progressive education failed to make a normative, long-term impact. Progressive education is currently marginalized and has never been mainstream.<sup>84</sup> This result can be attributed to another failure: the failure to openly discuss and analyze a coherent strategy for the reform. In other words, progressive education failed because of an almost exclusive focus on substance, and no clear focus on strategy.

To believers in progressive education, this is a disheartening result: something of tremendous value in extremely limited application. For supporters of legal education reform, we must consider whether we are nearing the same precipice.

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<sup>82</sup> Curcio, *supra* note 80, at 933.

<sup>83</sup> Ellen Condliffe Lagemann, *The Plural Worlds of Educational Research*, 29 HIST. OF EDUC. Q. 185, 185 (1989).

<sup>84</sup> *Id.*; SCHOOLS OF TOMORROW, *supra* note 1, at 20.

*A. Challenges in Building a CLEAR Strategy: The Columbia Law School Experiment*

*[T]he more complex the reform[,] . . . the greater the problem of clarity. In short, lack of clarity—diffuse goals and unspecified means of implementation—represents a major problem. . . . [T]eachers and others find that the change is simply not very clear as to what it means in practice.<sup>85</sup>*

Not only does the progressive education movement have much in common with contemporary legal education reform, but it was also admired by legal education reformers long ago. Indeed, today's legal education could look very different but for a failed attempt to facilitate progressive education reform at Columbia Law School in the 1920s. In his book, *Transforming Legal Education*, Paul Maharg refers to Dewey's influence on Columbia Law School as the "road not taken."<sup>86</sup> Columbia's Dean, Harlan Fiske Stone, was a legal realist dissatisfied with common law tradition.<sup>87</sup> Part of the problem, Stone believed, was that "[c]larity, as well as systematization, was a problem for lawyers—what he termed a lack of realistic understanding and of an accurate definition of many of its most fundamental concepts."<sup>88</sup> Stone was attracted to disciplinary reform, complaining that under the common law tradition legal "terms . . . constantly fall from our lips, but always with varying and elusive significance and application."<sup>89</sup> As a legal realist, Stone sought a new form of inquiry: one that rejected the legal formalism associated with the Langdellian case-based method of instruction and instead spotlighted the

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<sup>85</sup> FULLAN, EDUCATIONAL CHANGE, *supra* note 4, at 71.

<sup>86</sup> MAHARG, LEGAL EDUCATION, *supra* note 18, at 77–98.

<sup>87</sup> *Id.* at 80.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* (quoting Harlan F. Stone, COLUMBIA UNIVERSITY BULLETIN OF INFORMATION, ANNUAL REPORT OF THE DEAN OF THE SCHOOL OF LAW 327 (1923)).

connections between the law, social science, and human experience.<sup>90</sup> But disciplinary reform would require curricular and pedagogical reform too, and Stone knew it.<sup>91</sup>

In 1922, Stone invited Dewey to teach a course on Logical and Ethical Problems of Law at Columbia.<sup>92</sup> Just a few months earlier, Professor Herman Oliphant, also a legal realist, joined Columbia's faculty.<sup>93</sup> The combination of these three scholars—Dewey, Stone, and Oliphant—was an unprecedented opportunity for systemic legal education reform.<sup>94</sup>

Maharg details how the trio shared many views on legal realism, the role of education, and the need for education reform.<sup>95</sup> Deweyan theory and legal realism expressed similar political, philosophical, and social ideologies: Dewey's "language [was] pragmatist—[it emphasized] new forms of enquiry, the language of progressive, evolutionary reform, the social ameliorism and underlying optimism; [and] an insistence upon the uncertainty of legal rules and their artificiality."<sup>96</sup> Legal realism generally resonated with Dewey's beliefs. Legal realism also emphasized a pragmatic view of legal education and attacked "the generalist tendencies of individualistic, socialist and organic social philosophies."<sup>97</sup>

The political, philosophical, and social synergies between Dewey's theories and legal realism extended to education reform as well. When Dewey arrived at Columbia, he was already well known for his critiques of traditional schooling methods as artificial, fragmented, and lacking a

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<sup>90</sup> *Id.* at 77–83. The Langdellian case-based method of instruction was developed by Harvard Law Dean Christopher Columbus Langdell in the waning years of the nineteenth century.

<sup>91</sup> *Id.* at 80.

<sup>92</sup> *Id.* at 81.

<sup>93</sup> *Herman Oliphant of Treasury Dies*, N.Y. TIMES, Jan. 12, 1939, at 25 (noting that Oliphant joined Columbia in 1921).

<sup>94</sup> MAHARG, LEGAL EDUCATION, *supra* note 18, at 77–96.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 82–83.

<sup>97</sup> *Id.* at 83 n.14.

meaningful relationship with society, experience, and the real world.<sup>98</sup> This sentiment is echoed in Stone's call for legal education reform:

The curriculum of the American law school is in some respects a makeshift, the resultant of forces many of which bear little logical relation to each other. The exigencies of the personnel of the teaching staff, the form and scope of particular text or case books, the constant tendency manifest in most educational enterprises to multiply courses, the undue overlapping of courses and the failure of any school in recent years to make a systematic revision of its curriculum are some of the elements contributing to the failure of law school curricula to realize to the fullest extent the needs and tendencies of present day legal education.<sup>99</sup>

Oliphant made similar observations, stressing the social, human, and holistic weaknesses of the traditional legal curriculum:

[T]he feeling grows that students are going out only partly trained[,] for numerous specialized bodies of law are developing and we have not caught up by our tantalus-like addition of new courses. This suggests that in some of our so-called basic courses we have not got hold of some of those things which are really basic in the functioning of law with the result that this now hidden matter is constantly cropping out here and there as specialized and apparently unrelated problems. . . . It is believed that, if we are really to get at the fundamentals, the organization of the curriculum must be more in terms of the human relations dealt with and less, as largely now, in terms of the logical concepts of the conventionally trained mind.<sup>100</sup>

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<sup>98</sup> See *supra* Part IV(A).

<sup>99</sup> MAHARG, LEGAL EDUCATION, *supra* note 18, at 78 n.3 (quoting Harlan F. Stone, COLUMBIA UNIVERSITY BULLETIN OF INFORMATION, ANNUAL REPORT OF THE DEAN OF THE SCHOOL OF LAW (1922)).

<sup>100</sup> *Id.* at 88 (quoting Herman Oliphant, *The Revision of the Law School Curriculum* (1923), at 6).

Maharg establishes various other synergies between Stone, Oliphant, and Dewey that sparked Columbia's reform effort.<sup>101</sup> But the spark never caught flame. Instead, Oliphant and Stone devoted significant time and energy to a reform effort that amounted to the implementation of a few temporary, inconsistent "reformed courses."<sup>102</sup> Many reasons contributed to the failure,<sup>103</sup> but chief among these was the lack of appreciation for strategy—both in terms of teaching methodology and the coordination of the implementation of reform. Oliphant created careful plans to "outline the problems and the solutions to curricular reform, grouping them as 'whom shall we teach, how shall we teach, and what shall we teach?'"<sup>104</sup> But in practice, the effort "had the effect of shifting the attention of faculty reformers from functionalist and pragmatic methodology (how they were going to achieve their goal) and led to a concern with empiricism (what they would teach to achieve their goal)."<sup>105</sup> In other words, the question of what should be taught eclipsed the question of how these new courses should be taught. In his exhaustive review of the Columbia experiment, Maharg notes that "nowhere do we find at Columbia a detailed discussion of educational method."<sup>106</sup> He concludes the faculty and administration needed to "give much more thought to classroom practice and to the definition and implementation of realist educational principles."<sup>107</sup> Although Stone's writings reveal "deep thought [about] the redesign of the curriculum,"<sup>108</sup> they also reveal a lack of clarity about how to implement these changes.<sup>109</sup>

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<sup>101</sup> *Id.* at 77–96.

<sup>102</sup> *Id.* at 89.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 87 (quoting Herman Oliphant, *The Revision of the Law School Curriculum* (1923), at 1).

<sup>105</sup> *Id.* at 90.

<sup>106</sup> *Id.* at 89.

<sup>107</sup> *Id.* at 92.

<sup>108</sup> *Id.* at 80.

<sup>109</sup> *Id.* at 90–91.

Even if one assumes complete faculty buy-in for the content of the reformed curriculum, Maharg's review shows the Columbia reformers did not have a clear, shared understanding of how to translate the substantive concepts into practice.

Legal realism was a philosophy that needed grounding in established pedagogical theories and practice. Without a clear, shared definition of the substantive terms of reform, and without a clear strategy and consistent guidance for implementing these terms, Dewey's theories were too challenging to translate into practice. Indeed, "Dewey's approach allowed others to flourish by giving them the space to flesh out the Deweyan structure; but it was a weakness for a general strategy of legal education which is what the realist endeavor desperately needed."<sup>110</sup>

Like many education reform efforts, Columbia's effort stalled in large part from a failure to ensure clear, common understanding of the terms or strategy for reform. Today, Columbia, like the vast majority of American law schools over the last 140 years, primarily relies upon traditional methods of teaching law.

The Columbia experiment illustrates the consequences of underestimating the process of transforming legal education. It exposes a lacuna between solid theories and successful, systematic implementation: a black hole that devours the best intentions. To avoid a similar outcome, advocates must add a new dimension to the discussion about legal education reform by focusing on building a coherent strategy. As explained below, this focus requires advocates to become metacognitive about the reform process and covers at least three ideas:

1. Consider whether current reform efforts can form the basis of a feasible movement. Is there, or could there be, sufficient coherence of interest among potential advocates for reform?

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<sup>110</sup> *Id.* at 95.

What opportunities exist, or could exist, for potential members to identify each other and coalesce around a shared vision for reform? What opportunities exist, or could exist, for recruitment and education of members? Real change is a systemic process<sup>111</sup> that requires deliberate organization and collective action, so these considerations have important strategic implications.

2. Determine what language best defines the reform. If a critical mass of membership can be identified, do these members share a vocabulary? If so, what are the key terms and how are these terms communicated? Does this shared language center around loose abstractions or does it engage terms with common and concrete meaning? Defining a shared language is a prerequisite to reform.<sup>112</sup>
3. Articulate an action plan. What is the agenda for the reform? Are there plans that incorporate strategies at the individual level? The institutional level? Regional or national levels? The scope of the action plan necessarily limits the potential scope of implementation. Without a coherent plan for implementation, good ideas generally stay good ideas. Action plans increase the likelihood that good ideas evolve into actual practices; systemic action plans increase the likelihood of realizing systemic transformation.

### **1. The Challenge of Discerning a CLEAR Movement**

How can one tell if CLEAR provides the basis for a movement? Common characteristics distinguish a movement from coincidental or

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<sup>111</sup> See, e.g., BURKE, ORGANIZATION DEVELOPMENT, *supra* note 18, at 14; FULLAN, EDUCATIONAL CHANGE, *supra* note 4, at xiii; SCHLECHTY, INVENTING BETTER SCHOOLS, *supra* note 18, at xvii, 16.

<sup>112</sup> See generally, FULLAN, EDUCATIONAL CHANGE, *supra* note 4.

sympiotic activities.<sup>113</sup> Generally, a movement entails: (1) a broad category of people who share certain fundamental beliefs of reform;<sup>114</sup> (2) sufficient coherence<sup>115</sup> that members can identify one another as members of an ideological family;<sup>116</sup> (3) deliberate, self-conscious combination and action among members<sup>117</sup> (4) that results in an advantage of organization, enabling a movement to lobby and build its constituency;<sup>118</sup> and (5) direction of this collective effort to ensure the long-term impact of the reform.<sup>119</sup> Illustrative examples include the women's suffrage movement and the civil rights movement.<sup>120</sup>

Not every group interest or activity qualifies as a movement. Although various individuals may come together to support a certain reform, they may be prompted by "opportunistic" moments or "improvisation," as opposed to a shared, "consistent social vision or political program."<sup>121</sup> Peter Filene, a twentieth century historian, refers to these collective but sporadic or fragmented efforts as "shifting coalitions."<sup>122</sup>

Educational policy scholar Herbert Kliebard offers vocational training as an example of a shifting coalition.<sup>123</sup> He notes that various reformers joined forces to support the institution of vocational training, but that they came together for different reasons.<sup>124</sup> Some came because they believed in

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<sup>113</sup> See Peter G. Filene, *An Obituary for 'The Progressive Movement,'* 22 AM. Q. 20, 32–34 (1970); KLIEBARD, *supra* note 2, at 280–83.

<sup>114</sup> KLIEBARD, *supra* note 2, at 283.

<sup>115</sup> Filene, *supra* note 113, at 27.

<sup>116</sup> KLIEBARD, *supra* note 2, at 284.

<sup>117</sup> Filene, *supra* note 113, at 21.

<sup>118</sup> Rodgers, *supra* note 25, at 121.

<sup>119</sup> KLIEBARD, *supra* note 2, at 280.

<sup>120</sup> *Id.* at 284.

<sup>121</sup> *Id.* at 280–81 (citing Peter G. Filene, *An Obituary for 'The Progressive Movement,'* 22 AM. Q. 20, 33–34 (1970)).

<sup>122</sup> Filene, *supra* note 113, at 33–34.

<sup>123</sup> KLIEBARD, *supra* note 2, at 282.

<sup>124</sup> *Id.*

“preserving the dignity of work in school programs.”<sup>125</sup> Some came because they “despair[ed]” there was no other way to handle a new, diverse student body than to provide “a highly differentiated curriculum.”<sup>126</sup> Others supported vocational training because they believed it “dissolve[d] artificial barriers” between school and the real world.<sup>127</sup> Although different reformers coalesced on this one issue, they were completely opposed on other fundamental matters of education reform.<sup>128</sup>

One can debate whether the institution of vocational training was a success. But Dewey’s theories required a more ambitious transformation of American education, which could only be realized by organizational support on the scale of a movement. Instead, a lack of structure and strategy brought progressive education to its knees.<sup>129</sup>

Historians Daniel Rodgers and Peter Filene have examined the progressive era and reject the notion of a coherent progressive identity. Rodgers reflects on the “Procrustean exercise of trying to stretch those who called themselves progressives over a single ideological frame. . . . [This exercise produces] a list of ideas so general as to be held by practically everyone or so ambiguous, and even contradictory, as to foreclose the possibility that members of the same movement could hold them simultaneously.”<sup>130</sup> Filene similarly rejects singular definitions of progressivism as “hover[ing] between paradox and meaninglessness . . . struggling desperately to fit [a] concept onto data that stubbornly spill over the edges of that concept.”<sup>131</sup> He observes that such definitional “logic [is] elliptical, slurring over the intermediate question of whether the reformers

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<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 271–91.

<sup>129</sup> *Id.* See also Filene, *supra* note 113, at 33–34; Kohn, *Progressive Education*, *supra* note 21, at 4; Rodgers, *supra* note 25, at 115–16.

<sup>130</sup> Rodgers, *supra* note 25, at 114.

<sup>131</sup> Filene, *supra* note 113, at 32.

themselves felt a common identity and acted as a collective body.”<sup>132</sup> As a result, Rodgers and Filene conclude that whatever one might call “the progressive era” did not amount to a coherent, lasting identity.

Do contemporary legal education reform efforts resemble a “shifting coalition” doomed to a limited or diffuse impact? Arguably, those of us who support the transformation of legal education are too disorganized to secure systemic progress.<sup>133</sup> Many of us resort to innovation in the privacy of our own classrooms and accept the institutional consequences of operating on the fringes of academia.<sup>134</sup> We must better educate ourselves about the process of change and take seriously the task of deliberate combination, organization, and strategic action. To be sure, this is no easy task. But to have any realistic shot at strategic progress, we must also speak the same language.

## 2. The Challenge of CLEAR Communication and Action

*[I]f ideas are to move action, they must be made accessible to those who will be called on to use them.*<sup>135</sup>

*Acting on change is an exercise in pursuing meaning.*<sup>136</sup>

Clear, shared terms are necessary for the development of group identity, goals, strategic plans, and ultimately, collective action.<sup>137</sup> Consistent use of specific language permits members of an ideological group to identify each other, to communicate, and “to secure political allegiances . . . on behalf of

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<sup>132</sup> *Id.*

<sup>133</sup> See *supra* notes 20–21 and accompanying text.

<sup>134</sup> See, e.g., Fred R. Shapiro, *They Published, Not Perished, But Were They Good Teachers?*, 73 CHL-KENT L. REV. 835 (1998) (discussing how current criteria for promotion and tenure marginalize good teachers).

<sup>135</sup> SCHLECHTY, *INVENTING BETTER SCHOOLS*, *supra* note 18, at xiv.

<sup>136</sup> FULLAN, *EDUCATIONAL CHANGE*, *supra* note 4, at 351.

<sup>137</sup> *Id.* at 62; SCHLECHTY, *INVENTING BETTER SCHOOLS*, *supra* note 18, at 100–17.

a specific reform.”<sup>138</sup> In this sense, language is branded and serves as a sort of “ideational glue”<sup>139</sup> or slogan system.<sup>140</sup>

But if language is to create meaningful coherence, it needs to be defined beyond the abstraction of slogans and catch phrases. Consider the popular term “student-centered.” As a law professor, I use this term all the time and I have my own conception of what “student-centered” means. It is used in a wide range of legal education materials, journals, law school mission statements, and publicity materials. But I have used the phrase enough to discover that “student-centered” means such a wide range of things to others that I have become concerned that this phrase has no concrete definition at all.<sup>141</sup>

Like slogans, reform rhetoric often has an elusive or elastic quality. Popular reform phrases, like “democracy,” are virtually impossible to reject but even harder to define. Rodgers makes this observation of progressivist terminology, tackling one popular phrase as an example: social justice. “‘Social justice’ is a case in point—a powerful Rooseveltian slogan in 1912 which, in the absence of anyone willing to defend ‘social injustice,’ worked its magic in large part through its half-buried innuendoes and its expansive indistinctiveness.”<sup>142</sup> Slippery and ephemeral, reform rhetoric sounds great, but lack real content that can be translated into action.

A fundamental problem with reform rhetoric is that it often becomes a distraction from action—a sort of academic narcotic. Educators talk about change, and talking makes us feel good—like we are actually doing something. To some extent, this is true: it is necessary to discuss goals,

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<sup>138</sup> KLIEBARD, *supra* note 2, at 286. *See also* Rodgers, *supra* note 25.

<sup>139</sup> Rodgers, *supra* note 25, at 121.

<sup>140</sup> BURKE, ORGANIZATION DEVELOPMENT, *supra* note 18, at 153–54.

<sup>141</sup> *Cf.* Rodgers, *supra* note 25, at 113–15 (describing historians’ efforts to define “progressivism”) (“[T]he conflicting interpretations of progressivism could not be made to add up.”).

<sup>142</sup> *Id.* at 122.

missions, and plans.<sup>143</sup> Discussion can open the door to strategic solutions. But unless we forge a clear bridge from discussion to action, then discussion is not a means to a solution. To the contrary, the attempted solution becomes the problem.<sup>144</sup> Rhetoric instills a sense of “false clarity [that] occurs when change is interpreted in an oversimplified way.”<sup>145</sup> As a result, “people think that they have changed but have only assimilated the superficial trappings of the new practice.”<sup>146</sup>

At this point, rhetoric masquerades as progress but instead inhibits it. Organizational change expert Michael Fullan refers to a similar phenomenon as the “pacifier effect.”<sup>147</sup> He describes most reform efforts as having “a pacifier effect because they give the appearance that something substantial is happening when it is not.”<sup>148</sup> Rhetoric is such a pacifier, giving the illusion of action. Even at its best, rhetoric prescribes general and abstract goals, resulting in “nonchange.”<sup>149</sup>

Reform rhetoric is distinct from substantive discussion about reform. Substantive discussion is based on data, information, and education; it involves collective and sustained effort; it develops commonly understood goals and strategies; it offers meaningful guidance on implementation and

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<sup>143</sup> SCHLECHTY, *INVENTING BETTER SCHOOLS*, *supra* note 18, at 60–76; FULLAN, *EDUCATIONAL CHANGE*, *supra* note 4, at 71.

<sup>144</sup> PAUL WATZLAWICK, JOHN WEAKLAND & RICHARD FISCH, *CHANGE: PRINCIPLES OF PROBLEM FORMATION AND PROBLEM RESOLUTION* 57 (W.W. Norton & Co., Inc. 1974). This phenomenon calls to mind the proverb, “The greatest talkers are always the least doers” (John Ray, *English Proverbs*, 1670).

<sup>145</sup> FULLAN, *EDUCATIONAL CHANGE*, *supra* note 4, at 70.

<sup>146</sup> *Id.* at 35.

<sup>147</sup> *Id.* at 352.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 34–35.

practice; and it provides ongoing assessment and support.<sup>150</sup> Ultimately, substantive discussion spurs action.<sup>151</sup>

Of course, substantive discussion is far more difficult than rhetoric. That is why so many of us opt for rhetoric, settling for “the quick fix and . . . ad hoc, small-scale, piecemeal innovations.”<sup>152</sup> In the context of education reform, this posture is not a compromise; it is a total surrender. If we continue to pay “more lip service than mind service”<sup>153</sup> to the transformation of legal education, we cannot expect real change.

Advocates must critically examine the language we use for contemporary legal education reform. We must move beyond platitudes and articulate specific and comprehensible terms. We must define clear and replicable strategies. At this relatively early stage in the evolution of legal education reform, advocates should not promote elusive concepts that are neither coherently defined by those who support them, nor comprehensible to those who remain to be convinced. We must articulate a clear campaign for the transformation of legal education.

## V. SHIFTING THE FOCUS FROM SUBSTANCE TO STRATEGY

*If we are not careful we can easily witness a series of non-events and other superficial changes that leave the core of the problem untouched.*<sup>154</sup>

So where can legal education reform advocates start? How can we begin to adopt a more strategic perspective for changing legal education? A

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<sup>150</sup> *Id.* at 80–90. See also BURKE, ORGANIZATION DEVELOPMENT, *supra* note 18, at 55–65; SCHLECHTY, INVENTING BETTER SCHOOLS, *supra* note 18, at 134–38, 164–66.

<sup>151</sup> SCHLECHTY, INVENTING BETTER SCHOOLS, *supra* note 18, at 76 (“The important thing is . . . to cause the conversation to occur and to act upon what emerges.”).

<sup>152</sup> FULLAN, EDUCATIONAL CHANGE, *supra* note 4, at 6.

<sup>153</sup> *Id.* at 11.

<sup>154</sup> *Id.* at xiii.

comprehensive answer is beyond the scope of this article, but a few starting points are suggested below.

*A. Challenge Ourselves and Our Colleagues*

Advocates can start with some honest self-assessment. Consider the following questions:

- How much do I and my colleagues really understand about current efforts to reform legal education?
- What do I/we know about the arguments for reforming legal education?
- What are the bases for these arguments?
- What specific terms of reform have been or should be embraced by my institution?
- Do my colleagues and my administration share a common understanding of these terms? If not, what institutional support exists to facilitate a common understanding?
- Is my administration committed to providing ongoing training or education to support innovation?
- What specific pedagogical and curricular modifications can I/we make to reflect contemporary knowledge about teaching and learning?
- How will I/we measure progress in meeting these reform objectives?

After reflecting on these questions, ask yourself: Do I feel like I could facilitate a substantive discussion about the transformation of legal education? Could many of my colleagues do so? Most of us cannot honestly answer either question in the affirmative. To those of you who can, ask yourself what you are doing to facilitate and maintain substantive discussion at your law school. Whatever you are doing, do more. Advocates must press our colleagues to consider these questions and join us in the quest to find substantive answers.

*B. Become Educated About the Process of Change*

Legal education reform promises to be a complex journey. If we educate ourselves about the process of change, we will be better prepared to plan, implement, and evaluate reform. A bevy of expertise in organizational change already exists, particularly in the public education context.<sup>155</sup> While

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<sup>155</sup> See *supra*, Part IV(A)(2). See also FULLAN, EDUCATIONAL CHANGE, *supra* note 4, at 354 (observing the “need to replace . . . Pollyanna-ish rhetoric with informed action.”). For further resources, consider TERRY A. ASTUTO ET AL., ROOTS OF REFORM: CHALLENGING THE ASSUMPTIONS THAT CONTROL EDUCATION REFORM (1994); MARK BERANDS ET AL., CHALLENGES OF CONFLICTING SCHOOL REFORMS: EFFECTS OF NEW AMERICAN SCHOOLS IN A HIGH POVERTY DISTRICT (2002); JOHN BRIGGS, TURBULENT MIRROR: AN ILLUSTRATED GUIDE TO CHAOS THEORY AND THE SCIENCE OF WHOLENESS (1990); W. WARNER BURKE, ORGANIZATION CHANGE: THEORY AND PRACTICE (FOUNDATIONS FOR ORGANIZATIONAL SCIENCE) (2nd ed. 2007); ROBERT EVANS, THE HUMAN SIDE OF SCHOOL CHANGE: REFORM, RESISTANCE AND THE REAL-LIFE PROBLEMS OF INNOVATION (2001); MICHAEL FULLAN, ALL SYSTEMS GO: THE CHANGE IMPERATIVE FOR WHOLE SYSTEM REFORM (2010); MICHAEL FULLAN, CHANGE FORCES: PROBING THE DEPTHS OF EDUCATIONAL REFORM (1993); MICHAEL FULLAN, CHANGE FORCES—THE SEQUEL (EDUCATIONAL CHANGE AND DEVELOPMENT SERIES) (1999); THOMAS GREENFIELD & PETER RIBBINS, GREENFIELD ON EDUCATIONAL ADMINISTRATION: TOWARD A HUMANE CRAFT (1993); MARGARET E. GOERTZ ET AL., U.S. DEP’T. OF EDUCATION, SYSTEMIC REFORM (1996); GUIDING SCHOOL CHANGE: THE ROLE AND WORK OF CHANGE AGENTS (Frances O’Connell Rust & Helen Friedus eds., 2001); KENNETH A. LIETHWOOD ET AL., CHANGING LEADERSHIP FOR CHANGING TIMES (1999); GARETH MORGAN, IMAGES OF ORGANIZATION (2006); FRED M. NEWMAN & ASSOCS. AUTHENTIC ACHIEVEMENT: RESTRUCTURING SCHOOLS FOR INTELLECTUAL QUALITY (1996); JEFFREY PFEFFER, NEW DIRECTIONS FOR ORGANIZATION THEORY: PROBLEMS AND PROSPECTS (1997); TAHER A RAZIK & AUSTIN D SWANSON, FUNDAMENTAL CONCEPTS OF EDUCATIONAL LEADERSHIP AND MANAGEMENT (3d ed. 2010); RETHINKING EDUCATIONAL CHANGE WITH HEART AND MIND (Andy Hargreaves ed., 1997); SEYMOUR BERNARD SARASON, THE PREDICTABLE FAILURE OF EDUCATIONAL REFORM: CAN WE CHANGE COURSE BEFORE IT’S TOO LATE (1990); PHILLIP C. SCHLECHTY, SCHOOLS FOR THE 21ST CENTURY: LEADERSHIP IMPERATIVES FOR EDUCATIONAL REFORM (1991); RICHARD W. SCOTT, ORGANIZATIONS: RATIONAL, NATURAL, AND OPEN SYSTEMS (5th ed. 2003); SHLOMO SHARAN ET AL., THE INNOVATION SCHOOL: ORGANIZATION AND INSTRUCTION (2010); Kenyon B. De Greene, *Field-Theoretic Framework for the Interpretation of the Evolution, Instability, Structural Change and Management of Complex Systems*, in CHAOS THEORY IN THE SOCIAL SCIENCES: FOUNDATIONS AND APPLICATIONS (L. Douglas Kiel & Euel W. Elliott eds., 1997); Dean Fink, *The Law of Unintended Consequences: The “Real” Cost of Top-Down Reform*, 4 J. OF EDUC. CHANGE 105

law schools differ from these contexts, many principles of organizational change theory are applicable to reform efforts in legal education. Therefore, law schools interested in education reform should secure a means for the administration and faculty to receive substantive (and, ideally, coordinated) training in organizational change theory.

The unique challenges of change in the law school context call for the development of new organizational change studies focused on legal academia. Some legal scholars already possess experience in organizational change theory and should redouble their focus on developing specific primers, training programs, and other resources to assist law schools in becoming educated about the process of change.

### *C. Organize at Institutional, Regional, and National Levels*

Current reform efforts are piecemeal and fragmented.<sup>156</sup> To facilitate systemic change, we must strive to build functioning coalitions at the institutional, regional, and national levels. This requires a shift from insular thinking about the substance of education reform to strategic thinking about coordinated, collective discussion and action.

There are several ways to coordinate our efforts. For example, law schools interested in reform could appoint one or more individuals as delegates to coordinate change efforts at institutional and national levels.<sup>157</sup> The formal designation of delegates streamlines responsibility and creates accountability. Current leaders in legal education reform could facilitate the assembly of regional and national teams of delegates, who are tasked with

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(2003); Andy Hargreaves, *Representing Educational Change*, 1 J. OF EDUC. CHANGE 3 (2000); William J. Hunter & Garth D. Benson, *Arrows in Time: The Misapplication of Chaos Theory to Education*, 29 J. OF CURRICULUM STUD. 87 (1997); Kathryn Riley, *Leadership, Learning, and Systemic Reform*, 1 J. OF EDUC. CHANGE 29 (2004).

<sup>156</sup> See *supra* notes 21–22 and accompanying text.

<sup>157</sup> My colleague, Paula Lustbader, has observed that law schools commonly charge an Associate Dean with facilitating faculty scholarship, but currently, no corollary exists for an administrator to facilitate innovation in curriculum and pedagogy.

creating and coordinating substantive discussion about legal education reform. In the spirit of representation, these delegates could be responsible not only for developing expertise in substantive and strategic considerations for legal education reform, but also for making recommendations and facilitating implementation of reform plans.

National organizations and associations, such as the Society for American Law Teachers (SALT) and the American Association of Law Schools (AALS), can also employ their resources to facilitate the collective organization of reform efforts—from the individual to the national level. SALT’s recent conference, “Teaching in a Transformative Era: The Law School of the Future,” is just one example of the coordinated venues that could advance discussion and planning around the strategic and systemic challenges of effecting change.<sup>158</sup>

#### VI. CLEARING THE WAY FOR THE TRANSFORMATION OF LEGAL EDUCATION

*Armed with knowledge of the change process, and a commitment to action, we should accept nothing less than positive results on a massive scale—at both the individual and organizational levels.*<sup>159</sup>

Education reform experts routinely identify the definition of shared goals, commonly understood strategies, and measurable outcomes as predictors of successful education reform.<sup>160</sup> Despite the support of cognitive science and learning theory, progressive education never successfully incorporated these predictors into a coherent, collective structure or strategy. As a result,

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<sup>158</sup> See *Updated-Biannual Teaching Conference “Teaching in a Transformative Age: The Law School of the Future,”* Society of American Law Teachers (SALT), [http://www.saltlaw.org/contents/view/092010\\_HIConference](http://www.saltlaw.org/contents/view/092010_HIConference) (last visited Dec. 20, 2011).

<sup>159</sup> FULLAN, EDUCATIONAL CHANGE, *supra* note 4, at 354.

<sup>160</sup> DEAL & PETERSON, *supra* note 18, at 10, 26–27 (education reform requires institutions to develop a shared culture, reinforced by consistent values, beliefs, assumptions, and norms). See also SCHLECHTY, INVENTING BETTER SCHOOLS, *supra* note 18, at 120–21; FULLAN, EDUCATIONAL CHANGE, *supra* note 4, at 94–98, 100–02.

progressive education still lingers on the fringes of the academic world, enjoying only occasional (but fleeting and limited) revivals. The Carnegie Report has temporarily revived interest in many progressive theories and practices in legal education—but so far, legal education reform efforts exhibit the same symptoms that have quashed precedential efforts.

While some of us are trying our hand at the transformation of legal education, we collectively continue to underestimate the task.<sup>161</sup> The status quo is a relentless adversary that enjoys almost every strategic advantage. It will refuse to go down easily. We cannot arm ourselves simply by writing more articles or attending more conferences. We must become more metacognitive about the process of reform.<sup>162</sup> We must organize, define concrete terms, articulate clear strategies, develop and implement plans to validate the impact of these strategies, lobby at the highest levels, and continue to build our constituency until we prevail. The transformation of legal education is an epic battle. We must be prepared to fight—or to lose.

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<sup>161</sup> FULLAN, EDUCATIONAL CHANGE, *supra* note 4, at 29 (“We have our work cut out for us. . . . [E]ducational reforms we value do not stand much of a chance.”); *Id.* at 93 (“The odds against successful planned educational change are not small. Increasing our understanding of implementation may alter them.”).

<sup>162</sup> *Id.* at 354.