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# Negotiating Social Mobility and Critical Citizenship: Institutions at a Crossroads

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# ARTICLES

## NEGOTIATING SOCIAL MOBILITY AND CRITICAL CITIZENSHIP: INSTITUTIONS AT A CROSSROADS

*Michelle D. Deardorff\* & Angela Mae Kupenda#*

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INTRODUCTION .....	336
I. SOCIAL MOBILITY AND HIGHER EDUCATION .....	342
II. CRITICAL CITIZENSHIP AND HIGHER EDUCATION .....	343
III. THE TENSION BETWEEN SOCIAL MOBILITY AND CRITICAL CITIZENSHIP .....	348
IV. INSTITUTIONAL CONTEXTS .....	355
A. <i>The Historically Black University</i> .....	355
B. <i>The Law School</i> .....	359
1. Opportunities.....	361
2. Barriers.....	362
V. ADDRESSING THE CONFLICTS .....	366
A. <i>Institutionally</i> .....	368
B. <i>Professorially</i> .....	373

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# Professor of Law, Mississippi College School of Law, Jackson, Mississippi. I also appreciate my home institution and the pre- and post-publication grants that encourage my scholarship and all faculty scholarship.

CONCLUSION.....	376
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## INTRODUCTION

The similarities of the two co-authors and their institutions bring them to write this Article. Dr. Michelle D. Deardorff is a White woman from a working class community,<sup>1</sup> who grew up in the Midwest. Professor Angela Mae Kupenda is a Black woman born in the Jim Crow era in the Deep South, having experienced racial,<sup>2</sup> class,<sup>3</sup> and gender<sup>4</sup> struggles. When Dr. Deardorff teaches her constitutional law, race and the law, and political science courses, she is often the only White person in the classroom. When Professor Kupenda teaches her law classes at Predominantly White Institutions (PWIs), she has often been one of the few Black people in the room.<sup>5</sup> Deardorff teaches at a Historically Black College and University (HBCU), the only urban university in

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1. See generally Michelle D. Deardorff, *The Professor, Pluralism, and Pedagogy: A Reflection* (currently under peer-review consideration for publication in the J. POL. SCI. EDUC.; on file with author).

2. See generally Angela Mae Kupenda, *Loss of Innocence*, in LAW TOUCHED OUR HEARTS: A GENERATION REMEMBERS *BROWN V. BOARD OF EDUCATION* 36 (Mildred Wigfall Robinson & Richard J. Bonnie eds., 2009) (discussing her public school experiences during segregation and after); Angela Mae Kupenda, *To Whom It May Concern: Re: Brown III*, 27 N.C. CENT. L.J. 216 (2005) (addressing the benefits of *Brown* but suggesting the additional race work needed in educational institutions).

3. See generally Angela Mae Kupenda, *The Struggling Class: Replacing an Insider White Female Middle Class Dream with a Struggling Black Female Reality*, 18 AM. U. J. GENDER SOC. POL'Y & L. 725 (2010) (describing her awakening from her dream of wanting to be a middle-class White woman); Elvia R. Arriola, *Shaking out the Welcome Mat for an Enduring LatCrit Social Movement*, 18 AM. U. GENDER SOC. POL'Y & L. 711, 713-15 (2010) (summarizing articles written by several outsiders).

4. See generally Angela Mae Kupenda, *Law, Life, and Literature: A Critical Reflection of Life and Literature to Illuminate how Laws of Domestic Violence, Race, and Class Bind Black Women Based on Walker's Book The Third Life of Grange Copeland*, 41 HOWARD L.J. (1998), reprinted in NANCY K. D. LEMON, DOMESTIC VIOLENCE CASEBOOK 150 (2005) (addressing particular issues faced by Black women who are victims of domestic abuse and oppression); Angela Mae Kupenda, *The State as Batterer: Learning from Family Law to Address America's Family-Like Racial Dysfunction*, 20 U. FLA. J.L. & PUB. POL'Y 33 (2009) (analogizing the plight of battered women to that of Blacks battered by racism in America).

5. See generally Angela Mae Kupenda, *Making Traditional Courses more Inclusive: Confessions of an African American Female Professor Who Attempted to Crash All the Barriers at Once*, 31 U.S.F. L. REV. 975 (1997) (sharing successes and failures of addressing race, gender and class in law school classes); Angela Mae Kupenda, *On Teaching Constitutional Law When my Race is in Their Face*, 21 LAW & INEQ. 215 (2003) (similar); Angela Mae Kupenda, *Moving from Fear to Courage, and Replacing Preaching with Reaching*, Center for the Study of Race and Race Relations, University of Florida Levin College of Law (2006), <http://www.law.ufl.edu/centers/csrrr/pdf/racelawconf/kupenda.pdf> (last visited July 31, 2011) (similar).

Mississippi.<sup>6</sup> Kupenda teaches at a private, church-supported law school, which is also located in the capital city of Mississippi.

So although Deardorff and Kupenda obviously experience much dissimilarity at their institutions, their similarities are what brought them to this project. Several years ago they met at a work-related event. Since then, they meet monthly to encourage each other's scholarship and teaching. Their friendship and concern for each other's institutional challenges lead them to encourage one another in their service and justice-oriented efforts. Their concerns for justice, coupled with their economic upbringings, lead them to challenge their pedagogies and their institutional missions to more critically engage in the preparation of students equipped to forge a more just society.

Although they teach at institutions within three geographical miles of each other, at times the cultures of their institutions seem worlds apart. At other times, their institutions seem to be the same place: institutions with a primary focus of social mobility, equipping young people to assimilate into present societal and economic systems, even systems that oppressed those from working class backgrounds like Deardorff and from families of color like Kupenda. Social mobility becomes the primary focus rather than equipping young people to forge more just systems for themselves and for their families and communities at home.

Hence, a Black law professor who teaches at a predominantly White law school and a White public law professor who teaches at a historically Black university in the same southern, urban community are co-authors of this Article. Here, in this piece, we explore the tension between the goals of our institutions<sup>7</sup> and many other institutions to

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6. "As the Urban University of Mississippi, Jackson State emphasizes public service programs designed to enhance quality of life and seek solutions to urban problems in the physical, social, intellectual, and economic environments." See *About JSU*, Jackson State University, [http://promotions.jsums.edu/show\\_aboutjsu.asp?durki=450](http://promotions.jsums.edu/show_aboutjsu.asp?durki=450) (last visited July 30, 2011).

7. The mission statement of co-author Kupenda's school provides:

Mississippi College School of Law seeks to provide a superior legal education within the context of a Christian institution. Our aim is to create an institutional environment that promotes intellectual and practical learning. Our student body and faculty reflect a wide variety of backgrounds and interests. Out of this diversity, we seek to create a scholarly community in which students and faculty discuss issues freely in a variety of settings, both formal and informal.

Our curriculum is designed to train students to become skilled and ethical lawyers capable of adapting their practice to a changing legal world. To accomplish this goal, we have looked to a liberal arts model in shaping the law school's curriculum. Our courses emphasize individual responsibility for learning, while providing every student instruction in the substantive and

improve the socioeconomic status of our students<sup>8</sup> with our personal

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analytical skills necessary for successful practice.

We provide grounding in the common law and statutory foundations of our legal system, but also explore emerging doctrine, employing in each context the traditional methods of legal analysis, enriched by the insights of related disciplines. To assure that our curriculum incorporates the most current scholarship, our faculty is actively engaged in research in their respective areas of expertise.

In addition to courses in legal doctrine, we offer a wide range of instruction in the skills of modern practice. Because we view writing as the most fundamental of these skills, we emphasize teaching of writing at every stage of legal training. In addition, we offer courses in oral advocacy, counseling, negotiation, and the many skills of pretrial and trial advocacy. Because of our location in a major legal center, we are able to draw on leading practitioners and judges as adjunct professors and as supervisors of externship programs.

We recognize the law school's responsibility to the legal community and the larger society. Consequently, the law school and its faculty are involved in a variety of activities to improve the legal system, including research and advocacy in law reform projects, service on bar association committees, and teaching in continuing legal education programs.

All of these goals reflect the commitment of the law school and the founding institution to the belief that human beings are God's creations, equally entitled to dignity and respect. In every setting, we seek to train lawyers of high intellectual and practical ability, who are committed to ethical practice; to assisting the disadvantaged; and to free and open discussion of issues of law, policy, and values.

Mississippi College School of Law, 2010-11 Course Catalog, <http://law.mc.edu/academics/course-catalog/> (last visited July 17, 2011) [hereinafter MC Law Mission Statement]. Co-author Deardorff's school has both a vision statement and a mission statement as follows:

#### VISION STATEMENT

Building on its historic mission of empowering diverse students to become leaders, Jackson State University will become recognized as a challenging, yet nurturing, state-of-the-art technologically-infused intellectual community. Students and faculty will engage in creative research, participate in interdisciplinary and multi-instructional/organizational collaborative learning teams and serve the global community.

#### MISSION STATEMENT

The University produces technologically-advanced, diverse, ethical, global leaders who think critically, address societal problems, and compete effectively.

Jackson State University, 2010-11 Undergraduate Catalog, <http://www.jsums.edu/catalogs/undergraduates.catalog20102011.Final.pdf> (last visited July 17, 2011) [hereinafter JSU Vision and Mission Statements].

8. Some professors urge that educational institutions should, as part of their mission, afford an opportunity for students to challenge the norms and ideas they brought with them from their prior experiences and to resist "the former order." See Stephanie Y. Brown, *Law Teaching*

goals of preparing students to challenge societal injustice and to be critical citizens who are willing to challenge a government that engages in abusive actions or is exploitative of its citizenry.<sup>9</sup>

Preparing students to prosper in the present structure, while it may help them to individually succeed, is in a way teaching them to become participants in structures of continued oppression of others.<sup>10</sup> Choosing to do otherwise though, while it may place us at odds with the immediate goals of social mobility of the institutions, places us more consistently in line with long-term goals of creating a more just society. How do we prepare students to be active, engaged students able to challenge systemic forms of oppression while simultaneously equipping them to negotiate and challenge a political process that had initially impoverished their families?<sup>11</sup> This Article will examine this tension

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*and Social Justice: Teaching Until the Change Comes*, 25 J. CIV. RTS. & ECON. DEV. 195, 206 (2011). “The University of Wisconsin Law School has identified as one of its key strategic missions the strengthening of its commitment to public service, including the concept of *citizenship*, which emerged as critical in the university’s self study.” Michael Traynor, *Citizenship in a Time of Repression*, 2005 WIS. L. REV. 1, 1-2 (emphasis added). While many law schools include in their mission statements some commitment to justice education, a record of commitment to pedagogy to accomplish these goals has been “seriously questioned.” Margaret Martin Barry et al., *Justice Education and the Evaluation Process: Crossing Borders*, 28 WASH. U. J.L. & POL’Y 195, 205-09 nn.29-36 (2008). Others have argued that educational institutions focus on the social mobility of economically disadvantaged students. See John L. Lahey & Janice C. Griffith, *Recent Trends in Higher Education: Accountability, Efficiency, Technology, and Governance*, 52 J. LEGAL EDUC. 528, 537 (2002) (“It should also be noted that higher education’s mission and society’s expectation for colleges and universities have never been simply to provide education in the most cost-efficient manner possible. Instead, higher education has been asked to perform many of society’s less efficient but important social goals—social mobility for the economically and educationally disadvantaged, basic research, racial and gender equity, and the social and personal development of traditional-age college students.”).

9. STEPHEN NATHANSON, *SHOULD WE CONSENT TO BE GOVERNED? A SHORT INTRODUCTION TO POLITICAL PHILOSOPHY* 6, 82 (2d ed. Belmont, CA: Wadsworth/Thompson Learning 2001).

10. Even after the election of a Black President, racial and other oppressions continue in the United States. See, e.g., Michael Selmi, *Understanding Discrimination in a “Post-Racial” World*, 32 CARDOZO L. REV. 833 (2011); Mildred Wigfall Robinson, *The Current Economic Situation and its Impact on Gender, Race, and Class: The Legacy of Raced (and Gendered) Employment*, 14 J. GENDER RACE & JUST. 431 (2011) (discussing and documenting how recession has had a greater negative effect on Blacks); Bill Ong Hing, *Reason over Hysteria—Keynote Essay*, 12 LOY. J. PUB. INT. L. 275, 290-91 (2011) (continuing “racial inequities in, for example, the educational or criminal justice systems . . . generally goes unrecognized by those who are not negatively impacted”).

11. “[A]n impoverished and less-educated parent from previous generations has led to a less-educated African-American child presently.” Ronald Clifford, *The African American Family v. The United States: A Template for the Lawsuit for Just Compensation*, 5 WHITTIER J. CHILD & FAM. ADVOC. 603, 614 (2006); see also *id.* at 613-14 (as a result of obstacles to education, “only eight percent of African-Americans attended college at the end of the 1970s.”). Thus, even today, many Black college students are first-generation college students. See, e.g.,

and explore pedagogical strategies that may help the professor negotiate a conflict that may be invisible to many at the institution.<sup>12</sup>

This tension will be explored in the five parts of this Article. In Part I, we will begin to build a framework to explore this tension. On one side is the influence of the important higher education goals of social mobility. Admittedly, higher education has been a path for social mobility, especially for those from underrepresented groups.<sup>13</sup> So while social mobility as a higher education goal is important, focusing completely on this goal to the exclusion of other critically important societal goals is dangerous to the development of a pluralistic<sup>14</sup> and more equal American society.<sup>15</sup> Moreover, focusing exclusively on this

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Anthony V. Baker, *After the Gold Rush? Grutter, Sander, and 'Affirmative Action' "On the Run" in the Twenty-First Century*, 36 J.C. & U.L. 249, 285 n.115 (2009); Theodore M. Shaw, NAACP Legal Defense Fund, Inc., *Closing the Gap: Moving from Rhetoric to Reality in Opening Doors to Higher Education for African American Students*, 1586 PLI/CORP 9, 16-17 (2006). HBCUs educate many of these students who are scarce on the campuses at "elite" colleges. See Rachel F. Moran, *Symposium: Meeting the Challenge of Grutter—Affirmative Action in Twenty-Five Years*, 67 OHIO ST. L.J. 201, 241-42 (2006) (discussing "relative invisibility of disadvantaged youth of all races on elite campuses"). "In fact, [at Harvard College] the absence of Black American students with long-term generational roots in the United States on both sides of their families was so noticeable that such Black students began to refer to themselves as the descendants . . ." See Angela Onwuachi-Willig, *The Admission of Legacy Blacks*, 60 VAND. L. REV. 1141, 1148-49 (2007) (footnotes and internal quotation marks omitted). Moreover, law schools still experience issues related to access and the experiences of those who "have traditionally been excluded from legal education." See Lee E. Teitelbaum, *First Generation Issues: Access to Law School*, in Special Reports, PERSPECTIVES ON DIVERSITY: AALS SPECIAL COMMISSION ON MEETING THE CHALLENGES OF DIVERSITY IN AN ACADEMIC DEMOCRACY, Association of American Law Schools 1997, <http://www.aals.org/diversity/teitelba.html> (last visited July 5, 2011).

12. As stated by one scholar,

While it is unlikely that an educational institution would perceive itself as a willing co-conspirator in an endless cycle of repressing people of color, the failure of an educational system to provide access to education sufficient to stimulate the economic and social advancement of previously oppressed citizen groups, demands closer examination.

Stephanie Y. Brown, *Land-Grant Universities and Access in the Millennium: A Mandate to Recapture Service Opportunities in Under-Represented Communities*, 13 UDC/DCSL L. REV. 219, 240 (2010).

13. See Mikyong Minsun Kim & Clifton F. Conrad, *The Impact of Historically Black Colleges and Universities on the Academic Success of African-American Students*, 47 RES. IN HIGHER EDUC. 399, 400 (June 2006).

14. See, e.g., Robert A. Garda, Jr., *The White Interest in School Integration*, 63 FLA. L. REV. 599, 601-02 (2011) (discussing statistics indicating Whites will be the minority in coming years and thus Whites must learn to work and live in multi-cultural environments).

15. Some scholars argue that with present systems, the rich get richer and the poor get poorer. See, e.g., Alice Gresham Bullock, *The Tax Code, the Tax Gap, and Income Inequality: The Middle Class Squeeze*, 53 HOW. L.J. 249, 255-56 (2010). Even people of color who achieve

goal of social mobility may make the goal even more unattainable, given current research illustrating that in spite of the availability of higher education today, economic class reproduction seems to be the frequent occurrence.<sup>16</sup>

Part II of this Article then will focus on the importance of promoting critical citizenship as an educational goal. Students who are critical citizens will be capable of evaluating the legitimacy of a governmental action by examining how well the government is protecting the interests of the people. This approach to governance places moral autonomy in the hands of the citizens to determine what is the interest of the citizens and how to best challenge the government legitimately.<sup>17</sup> Therefore, the pedagogical goal is not political indoctrination to any particular political movement or philosophy,<sup>18</sup> but to encourage students to understand the ways in which power and knowledge interact resulting in the maintenance of oppression.<sup>19</sup>

Part III will examine then the tension between pedagogical goals of promoting social mobility and pedagogical goals of promoting critical citizenship. As will be discussed here, this tension is a fairly new tension. Although the tension is new, gradualism is quite inappropriate

some social mobility to the middle class continue to engage in a struggle, though they may be employed within current economic or political structures. *See, e.g.,* Angela Mae Kupenda, *The Struggling Class: Replacing an Insider White Female Middle Class Dream with a Struggling Black Female Reality*, 18 AM. U. J. GENDER SOC. POL'Y & L. 725 (2010); Elvia R. Arriola, *Shaking out the Welcome Mat for an Enduring LatCrit Social Movement*, 18 AM. U. J. GENDER SOC. POL'Y & L. 711, 713-15 (2010).

16. Michael B. Paulsen & Edward P. St. John, *Social Class and College Costs: Examining the Financial Nexus Between College Choice and Persistence*, 73 THE JOURNAL OF HIGHER EDUCATION 189, 230 (Mar.-Apr. 2002).

17. NATHANSON, *supra* note 9, at 82, 87.

18. *Cf.* Adam Babich, *Controversy, Conflicts, and Law School Clinics*, 17 CLINICAL L. REV. 469, 508-09 (2011) (giving example of lawyers with both conservative and liberal viewpoints in encouraging dialogue of differing viewpoints); Angela Mae Kupenda & Tiffany R. Paige, *Why Punished for Speaking President Obama's Name Within the Schoolhouse Gates? And can Educators Constitutionally Truth-en Marketplace of Ideas About Blacks*, 35 T. MARSHALL L. REV. 57 (2009) (discussing efforts by some educators to remove from discourse any mention that newly elected President was Black); April Kelly-Woessner & Matthew C. Woessner, *My Professor is a Partisan Hack: How Perceptions of a Professor's Political Views Affect Student Course Evaluations*, 39 PS: POL. SCI. & POL. 495, 499-500 (July 2006) (experimental design finding little impact of faculty bias on student ideology, but a stronger relationship to student evaluations of professors); April Kelly-Woessner & Matthew C. Woessner, *Conflict in the Classroom: Considering the Effects of Partisan Difference on Political Education*, 4 J. POL. SCI. EDUC. 265 (2008) (similar).

19. As stated by one professor, "[w]e would be far better off if our students learned how to reflect on their experience, place it in a social justice context, glimpse the strong relationship between knowledge, culture and power, and recognize the role they play in either unearthing hierarchical and oppressive systems of power or challenging such structures." Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 289 (2001).



in addressing the tension, for the consequences of failing to negotiate this tension are dramatic. This tension is particularly experienced in HBCUs and in legal education. Therefore, Part IV will focus on each type of institution and the particular challenges and opportunities within each. Finally, Part V will address this conflict in the classroom and will propose initial strategies for both institutions and professors.

## I. SOCIAL MOBILITY AND HIGHER EDUCATION

The ability of citizens to move from one social class to a higher socioeconomic system has been one of the foundational myths of the U.S. democratic system and for many democracies throughout the world.<sup>20</sup> Scholars have documented the importance of social mobility to both participatory democracy and to economic stability.<sup>21</sup> In order for people to invest in and support these political and economic systems, there must be a belief in the efficacy of hard work and political engagement. Historically, education, and particularly higher education, has been perceived to be the simplest and most popular means of achieving social mobility;<sup>22</sup> however, this investment in higher education does not ensure that social mobility occurs.<sup>23</sup>

It is not only in the United States that education is perceived to be key to such social status transitions. A review of the literature demonstrates that in developing countries, similar to industrialized countries, community attributes such as the economic and social environment of the school and surrounding neighborhood are related to student achievement and other educational outcomes.<sup>24</sup> Research on first-generation college students finds that most children inherit their parents' socioeconomic status.<sup>25</sup> Thus, educational mobility can lead to social mobility,<sup>26</sup> especially for members of lower socioeconomic

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20. See David E. Pozen, *We are all Entrepreneurs Now*, 43 WAKE FOREST L. REV. 283, 324 (2008) (discussing advantages of democracies over authoritarian governments); William H. Sewell, *Inequality of Opportunity for Higher Education*, 36 AM. SOC. REV. 793, 793-809 (1971) (noting the increasing significance of higher education for social mobility in modern societies).

21. See, e.g., Richard M. Merelman, *Social Mobility and Equal Opportunity*, 17 AM. J. POL. SCI. 213, 215-16 (1973).

22. Richard A. Mulligan, *Social Mobility and Higher Education*, 25 J. EDUC. SOC. 476, 476-87 (1952).

23. *Id.* at 479.

24. Claudia Buchmann & Emily Hannum, *Education and Stratification in Developing Countries: A Review of Theories and Research*, 27 ANN. REV. SOC. 77, 93 (2001).

25. Anat Gofen, *Family Capital: How First-Generation Higher-Education Students Break the Intergenerational Cycle*, INTERDISC. J. APPLIED FAM. SCI. 104 (Feb. 2009).

26. Richard Breen & Jan O. Jonsson, *Inequality of Opportunity in Comparative Perspective: Recent Research on Educational Attainment and Social Mobility*, 31 ANN. REV. SOC. 223, 233 (2005).

groups.<sup>27</sup>

However, income-related gaps in both college graduation rates and in access to higher education are large and increasing.<sup>28</sup> As Nidiffer has noted, “[w]hen the persistent and pernicious interrelationship of poverty and minority status within the United States is acknowledged, socioeconomic background emerges as perhaps the most salient determinate of college attendance.”<sup>29</sup> In our current higher education environment, where the costs of higher education has out-paced the cost-of-living and students are graduating with larger debt loads,<sup>30</sup> poorer and working class students have been disproportionately impacted.<sup>31</sup> Consequently, while one of the more recent claimed functions of higher education has been social mobility, “[i]t appears that our postsecondary system may continue to serve as an instrument of class reproduction until these challenges are directly and effectively addressed.”<sup>32</sup>

## II. CRITICAL CITIZENSHIP AND HIGHER EDUCATION

Simultaneous to the goal of social mobility, one of higher education’s explicit purposes has been to prepare students to be critical citizens and to participate in the democratic system.<sup>33</sup> While institutions,

27. Sewell, *supra* note 20, at 795; T.G. Mortenson, *Educational Attainment and State Economic Welfare*, 100 POST-SECONDARY EDUCATIONAL OPPORTUNITY 9 (2000); Mulligan, *supra* note 22, at 479.

28. Robert Haveman & Timothy Smeeding, *The Role of Education in Social Mobility*, 16 THE FUTURE OF CHILDREN 2, 2 (Fall 2006).

29. Jana Nidiffer, *Poor Historiography: The ‘Poorest’ in American Higher Education*, 39 HIST. EDUC. Q. 321, 322 (Autumn 1999); *see also* Sewell, *supra* note 20, at 797 (discussing the significant impact of social economic status on social mobility because of access to higher education); William H. Sewell & Robert M. Hauser, *Causes and Consequences of Higher Education: Models of the Status Attainment Process*, 54 AM. J. AGRIC. ECON. 5, 7 (Working Paper 72-8, 1972); Gofen, *supra* note 25, at 1.

30. Jonathan D. Glater, *The Other Big Test: Why Congress Should Allow College Students to Borrow More through Federal Aid Programs*, 14 N.Y.U. J. LEGIS. & PUB. POL’Y 11, 12, 48 (2011); Jonathan D. Glater, *Fewer Options Open to Pay for Costs of College*, N.Y. TIMES, Apr. 12, 2008, [http://www.nytimes.com/2008/04/12/business/12loan.html?ref=student\\_loanxpress](http://www.nytimes.com/2008/04/12/business/12loan.html?ref=student_loanxpress) (last visited July 5, 2011); Ron Lieber, *Placing the Blame as Students are Buried in Debt*, N.Y. TIMES, May 28, 2010, <http://www.nytimes.com/2010/05/29/your-money/student-loans/29money.html> (last visited July 5, 2011).

31. Michael B. Paulsen & Edward P. St. John, *Social Class and College Costs: Examining the Financial Nexus Between College Choice and Persistence*, 73 J. HIGHER EDUC. 189, 203 (Mar.-Apr. 2002).

32. *See id.* at 230.

33. Consider the language of the Supreme Court in *Brown v. Board of Education*, 347 U.S. 483, 493 (1954),

dependent on their missions, may have divergent understandings of what this objective might look like,<sup>34</sup> higher education frequently sees itself as change agents.<sup>35</sup> For instance, as Haveman and Smeeding indicate, “post-secondary education will be among the most important determinants of labor market success, and therefore one of the nation’s most crucial means of reducing persistent economic inequalities.”<sup>36</sup> Many institutions argue that service learning and community engagement programs not only allow students to practice the skills they are training to use but also allow these institutions to impact their local and global communities in meaningful ways.<sup>37</sup>

One of the primary attributes of representational democracy is the

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Look also at Justice O’Connor’s majority opinion in *Grutter v. Bollinger*, 539 U.S. 306, 331 (2003) (upholding value of diversity in legal education), stating: “We have repeatedly acknowledged the overriding importance of preparing students for work and citizenship, describing education as pivotal to ‘sustaining our political and cultural heritage’ with a fundamental role in maintaining the fabric of society.” (quoting *Plyer v. Doe*, 457 U.S. 202, 221 (1982)).

34. Consider aspects of the diverse missions of such universities as: a single-sex institution such as Mount Holyoke—“the conviction that women can and should make a difference in the world,” <http://www.mtholyoke.edu/about/index.html> (last visited July 17, 2011); a religious institution such as Taylor University—“The mission of Taylor University is to develop servant leaders marked with a passion to minister Christ’s redemptive love and truth to a world in need.” <http://17.taylor.edu/about/mission.shtml> (last visited July 17, 2011); and, an historically Black institution such as Howard University—“provides an educational experience of exceptional quality . . . with particular emphasis upon educational opportunities for Black students,” <http://www.howard.edu/president/vision.htm> (last visited July 17, 2011).

35. Michelle D. Deardorff & Augustus Jones, *Implementing Affirmative Action in Higher Education: University Responses to Gratz and Grutter*, 44 SOC. SCI. J., 525, 531-32 (2007).

36. Haveman & Smeeding, *supra* note 28, at 2.

37. See Mary Kirlin, *Civic Skill Building: The Missing Component in Service Programs*, 35 PS: POL. SCI. & POL. 571, 571 (2002) (noting the extensive use of community and service learning projects and programs by high schools and institutions of higher education as part of their curriculum); see also William J. Ball, *From Community Engagement to Political Engagement*, 38 PS: POL. SCI. & POL., 287, 287-88 (2005) (noting that these programs have now become institutionalized as part of both curriculum and missions).

notion of popular sovereignty, the belief that the citizenry retains the governing authority and simply delegates that power to its representatives.<sup>38</sup> John Locke, in his *Two Treatises of Government* (1690), notes:

[E]very man who has entered into civil society, and is become a member of any commonwealth, has thereby quitted his power to punish offences, against the law of nature, in prosecution of his own private judgment, yet with the judgment of offences, which he has given up to the legislative in all cases, where he can appeal to the magistrate, he has given a right to the common-wealth to employ his force, for the execution of the judgments of the commonwealth, whenever he shall be called to it; which indeed are his own judgments, they being made by himself, or his representative.<sup>39</sup>

In order for a representative democracy such as the United States to be successful, the citizens must not be subject to exploitation and must be empowered enough to engage in self-government.<sup>40</sup> Citizens who are passive and accepting of the status quo are vulnerable to demagogues and tyrants. As the franchise extended,<sup>41</sup> concerns arose as to the sense of efficacy of citizens towards their own government. Political efficacy is the personal belief that an individual can impact policy or that the government is responsive to his or her concerns.<sup>42</sup> When citizens feel efficacious they are more engaged in government and more likely to hold their elected officials accountable; a disengaged citizenry, on the other hand, mindlessly accepts policies as inevitable and is less likely to hold their officials to account.<sup>43</sup> This notion of engaged citizens is one

38. BRIGID HARRISON & JEAN WAHL HARRIS, WITH MICHELLE D. DEARDORFF, *AMERICAN DEMOCRACY NOW* 14 (2d ed. 2011).

39. JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* bk. 2, ch. 7 (1690).

40. Consider for instance, the following quote from Martin Diamond, *Democracy and The Federalist: A Reconsideration of the Framers' Intent*, 53 *THE AMERICAN POLITICAL SCIENCE REVIEW* 52, 55 (Mar. 1959), "The Declaration of Independence formulates two criteria for judging whether any government is good, or indeed legitimate. Good government must rest, procedurally, upon consent of the governed. Good government, substantively, must do only certain things, e.g., secure certain rights."

41. See generally ALEXANDER KEYSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* (2000) (relating the evolution of the provision of suffrage throughout American history); CHRISTOPHER MALONE, *BETWEEN FREEDOM AND BONDAGE: RACE, PARTY, AND VOTING RIGHTS IN THE ANTEBELLUM SOUTH* (2008) (analyzing the extension and retraction of the right to vote to African Americans between the Founding of the United States and the Civil War).

42. HARRISON & HARRIS, WITH DEARDORFF, *supra* note 38, at 298.

43. See such work as: Steven E. Finkel, *Reciprocal Effects of Participation and Political Efficacy: A Panel Analysis*, 29 *AM. J. POL. SCI.* 891, 891 (Nov. 1985) (finds that "engaging in

that must be deliberately cultivated through civic education and nurtured societally; engaged citizens do not emerge without a conscious effort to motivate them.

Helping develop students into engaged citizens has not only influenced institutional missions, but departmental and disciplinary curricula as well as pedagogical approaches.<sup>44</sup> Critical pedagogy is an attempt to use these values for deliberate social change in higher education as a focus of the pedagogical endeavor. One of the most significant educational theorists of the twentieth century and a founder of the critical pedagogy movement, Paulo Freire's work emerged from his literacy work among impoverished adults in Brazil.<sup>45</sup> Heavily influenced by the anti-colonialist revolutions that exploded throughout Latin America and the Caribbean, Freire combined a Marxist perspective with the Liberation Theology taught within the local Catholic Church.<sup>46</sup> Freire explicitly rejected the legitimacy of the class-based society; this influenced his perception of education as a political act through which the teacher either maintains the status quo by acting on behalf of the oppressor, or explicitly uses the inherent authority of the classroom to encourage students toward personal and societal liberation.<sup>47</sup>

Freire's famous book, *Pedagogy of the Oppressed* (1970),<sup>48</sup> is considered one of the basic texts of the critical pedagogy movement.<sup>49</sup> In this book, Freire interprets the traditional means of educating—the banking system—as one in which the teacher is perceived to be the sole expert whose job is to deposit knowledge into the student.<sup>50</sup> This system

political action does influence certain political attitudes, a fact which should be taken into account through reciprocal effects models of political attitudes and behaviors;" also, the study notes there are consequences of efficacy on system-level activities and for governmental support).

44. Michelle D. Deardorff & Brian D. Posler, *The Mission-Driven Department: Benefits of Departmental Assessment*, 38 PS: POL. SCI. & POL. 273, 273-74 (Apr. 2005); Michelle D. Deardorff, *Assessment Through the Grassroots: Assessing the Department via Student Peer Evaluations*, 1 J. POL. SCI. EDUC. 109, 111-12 (Jan.-Apr. 2005).

45. Henry A. Giroux, *Lessons from Paulo Freire*, CHRON. HIGHER EDUC., Oct. 22, 2010, at B15.

46. Lesley Bartlett, *Paulo Freire and Peace Education*, ENCYCLOPEDIA OF PEACE EDUCATION (2008), <http://www.tc.edu/centers/epe/entries.html> (last visited Sept. 22, 2011); Paula Allman et al., . . . *The Creation of a World in Which it Will be Easier to Love*, 31 CONVERGENCE 9 (Issue 1) (1998).

47. PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED*, 54 (1970); see also Bartlett, *supra* note 46.

48. FREIRE, *supra* note 47.

49. Ronald David Glass, *On Paulo Freire's Philosophy of Praxis and the Foundations of Liberation Education*, 30 EDUCATIONAL RESEARCHER, 15, 16 (2001); see also Giroux, *supra* note 45, at B15-B16.

50. FREIRE, *supra* note 47, at 72-74; Bartlett, *supra* note 46. Justice Clarence Thomas

equips students to assume their economic and political functions, one of perpetuating the status quo—inequities and all.<sup>51</sup> As an alternative, Freire advocates a problem-solving education system in which teachers and students collectively learn with the goal of greater social justice.<sup>52</sup> Students, in this model, are not perceived to be blank slates on which the teacher is to write; instead, students are encouraged to relate their personal experiences and culture to the subject.<sup>53</sup> The pedagogical goal is not political indoctrination, as many critics perceive,<sup>54</sup> but to reveal the ways in which power and knowledge interact resulting in the maintenance of oppression.<sup>55</sup>

A common theme throughout his work is the need to balance theory and praxis, defined as the interrelationship between action and reflection.<sup>56</sup> He was afraid that any imbalance between the two resulted in the illusion of social change only.<sup>57</sup> His work did not focus upon specific teaching methodologies or provide a single formula of success for the critical pedagogue. Instead, he strongly believed that the unique context of each classroom, institution, and community determined the most appropriate pedagogical approaches.<sup>58</sup> The critical pedagogy movement, which emerged in large part from the work of Paulo Friere, has impacted education and pedagogy.<sup>59</sup> Despite these efforts toward

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seems to support a version of the banking system of education.

I see no constitutional imperative requiring public schools to allow all student speech. Parents decide whether to send their children to public schools. If parents do not like the rules imposed by those schools, they can seek redress in school boards or legislatures; they can send their children to private schools or home school them; or they can simply move. Whatever rules apply to student speech in public schools, those rules can be challenged by parents in the political process.

Morse v. Frederick, 551 U.S. 393, 419-20 (2007) (Thomas, J., concurring) (citation omitted).

51. FREIRE, *supra* note 47, at 73, 78.

52. *Id.* at 79-80; Glass, *supra* note 49, at 15, 17, 18.

53. FREIRE, *supra* note 47, at 81-86.

54. Donaldo Macedo, *Introduction to the 30th Anniversary Edition*, in PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 11, 17-18 (2000); Giroux, *supra* 45 note, at B15. As an example of such critics, consider Sol Stern, *Pedagogy of the Oppressor*, 19 CITY J. 75, 75-81 (Spring 2009).

55. FREIRE, *supra* note 47, at 73, 76; *see also* Giroux, *supra* note 45, at B15.

56. FREIRE, *supra* note 47, at 65; *see also* Glass, *supra* note 49, at 16.

57. FREIRE, *supra* note 47, at 66.

58. Macedo, *supra* note 54, at 17-18, 24-25.

59. Giroux, *supra* note 45, at B15; Glass, *supra* note 49, at 15. For examples of the impact of Paulo Freire's impact on education, Freire's inclusion in the Wikipedia entry for "Philosophy of Education" as the sole entry under "critical theory" subheading, [http://en.wikipedia.org/wiki/Philosophy\\_of\\_education](http://en.wikipedia.org/wiki/Philosophy_of_education) (last visited July 28, 2011). *See also* D.A. KOLB, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND

the construction of the critical citizen and student engagement, “higher education does not promote social equality as effectively as it often claims to do and as it is popularly perceived to do.”<sup>60</sup>

The notion of critical pedagogy is one of empowerment of the individual to make societal change through engagement both in the theory of governance and its actual practice. Higher education has moved away from fostering civic education, in part because in the past it was used to maintain the power structure (e.g., consider Cold War civic education) as opposed to training citizens to act as sovereigns. If higher education wants to live up to its promise of social change and equality, a more vigorous notion of civic education that fosters a critical citizen is needed. This citizen is not designed to be a super patriot who supports the government regardless of its fallacies or illegitimacies,<sup>61</sup> but a sovereign who thoughtfully challenges the government whenever that citizen believes the government behaves illegitimately, partisanship and ideology is irrelevant.<sup>62</sup> It is this kind of dynamic democracy that fulfills the Lockean notion of popular sovereignty.

### III. THE TENSION BETWEEN SOCIAL MOBILITY AND CRITICAL CITIZENSHIP

While there is great evidence of higher education’s commitment to and impact upon both social mobility and critical citizenship,<sup>63</sup> there have been consistent limitations to higher education’s impact upon both goals simultaneously. Educators in higher education, especially those who teach the socially disadvantaged, have focused so much on access

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DEVELOPMENT 26-31 (1984) (impact of Freire on the development of active learning pedagogy). His theories have been applied explicitly to such diverse fields as health education, see N. Wallerstein, *Empowerment Education: Freire’s Ideas Adapted to Health Education*, 15 HEALTH EDUC. & BEHAV. 379-94 (Dec. 1988), and mathematics education, see Marilyn Frankenstein, *Critical Mathematics Education: An Application of Paulo Freire’s Epistemology*, 65 J. EDUC. 315-39 (1983).

60. Haveman & Smeeding, *supra* note 28, at 4.

61. NATHANSON, *supra* note 9, at 24-25 (discussing the notion of the super patriot as a type of citizen).

62. *Id.* at 99-100 (discussing the scope of the critical citizen as a type of citizen).

63. Anthea Lipsett, *Universities Urged to Promote Social Mobility*, GUARDIAN (Mar. 30, 2009), <http://www.guardian.co.uk/education/2009/mar/30/access-to-university-social-mobility> (last visited July 8, 2011); Daniel Little, *Higher Education and Social Mobility*, CHANGING SOCIETY: NEW THINKING ABOUT JUSTICE IN A GLOBAL WORLD (Apr. 30, 2008), <http://changingsociety.wordpress.com/2008/04/30/higher-education-and-social-mobility/>. Other literature has demonstrated that the university support for student engagement on campus increases student civic engagement. See, e.g., J. Cherie Strachan, *Using the Classroom to Cultivate Student Support for Participation in Campus Life: The Call for Civic Education Interventions*, 4 J. POL. SCI. EDUC., 21, 22-23 (2008).

to higher education<sup>64</sup> that we have not equipped our students with the skills to challenge the very system that had kept their family impoverished. As Clark has noted, in our democratic society we are inconsistent in our encouragement of people to focus on individual success and achievement while we ignore the realities of narrowed opportunity in society.<sup>65</sup> “Democracy asks individuals to act as if social mobility were universally possible; status is to be won by individual effort, and rewards are to accrue to those who try.”<sup>66</sup>

The institutional tendency seems to be to work for social mobility by emphasizing career-readiness<sup>67</sup> and to foster critical citizenship through engaging in community projects and service learning activities<sup>68</sup> without considering how the two might simultaneously intersect or contradict one another. According to one scholar,

This unusual combination of higher educational opportunities and constraints leads to a situation in which the United States appears to hold open the possibility of some kind of post-secondary education for all, while it generally makes it less likely that those from low-[socioeconomic status] (SES) backgrounds (and other subordinate groups) will take advantage of it and more likely that those from high-SES backgrounds will do so. Coupled with the highly stratified nature of the system of higher education characterized by a diffuse but unmistakable set of connections between high-prestige institutions and high-prestige careers; it becomes possible for a set of institutions that are ostensibly

64. David Karen, *Changes in Access to Higher Education in the United States: 1980-1992*, 75 SOC. EDUC. 191-210 (2002). Consider also the work done by such public policy think tanks as the Institute for Higher Education Policy, which cites as its mission “to increase access and success in postsecondary education around the world through unique research and innovative programs that inform key decision makers who shape public policy and support economic and social development.” <http://www.ihep.org> (last visited July 8, 2011).

65. Burton R. Clark, *The ‘Cooling-Out’ Function in Higher Education*, 65 AM. J. SOC. 569, 571 (1960).

66. *Id.* at 569.

67. Rob Jenkins, *The Liberal Arts Are Work-Force Development*, CHRON. HIGHER EDUC. (July 6, 2011), [http://chronicle.com/article/The-Liberal-Arts-I-Are-I-/128149/#disqus\\_thread](http://chronicle.com/article/The-Liberal-Arts-I-Are-I-/128149/#disqus_thread); Kate Moser, *Reports Urge Improvement of Work-Force Training*, CHRON. HIGHER EDUC. (July 11, 2008), <http://chronicle.com/article/Reports-Urge-Improvement-of/111929/>; Kate Moser, *Americans Favor Career and Technical Colleges Over Community Colleges, Report Says*, CHRON. HIGHER EDUCATION (June 4, 2008), <http://chronicle.com/article/Americans-Favor-Career-and/860/>.

68. Peter Schmidt, *Many at Colleges Feel Students Get Too Little Civic Education, Survey Finds*, CHRON. HIGHER EDUC. (Sept. 30, 2009), <http://chronicle.com/article/Many-at-Colleges-Feel-Students/48639/>; David Glenn, *Students are Poor Citizens, and a Former U.S. Senator Pushes Colleges to Turn That Around*, CHRON. HIGHER EDUC. (Aug. 5, 2009), <http://chronicle.com/article/Former-US-Senator-Pushes/47944/>.



geared toward providing equality of opportunity actually to reproduce inequality.<sup>69</sup>

In current circumstances of increased budgetary cutbacks,<sup>70</sup> faculty and staff furloughs,<sup>71</sup> heightened student debt load,<sup>72</sup> decreased state funding of higher education,<sup>73</sup> and increased length to graduation,<sup>74</sup> according to McPherson, “How can the commitments of higher education to fairness and equality best be reconciled with requirements for efficiency, quality, and the making of judgments of relative value?”<sup>75</sup>

We are concerned that institutions focus on both of these goals, without carefully considering not only the limitations of each but also not caring about the contradictions between the two goals. As we equip

69. David Karen, *Changes in Access to Higher Education in the United States: 1980-1992*, 75 SOC. EDUC. 191, 192 (2002).

70. Eric Kelderman, *More Cuts for Colleges are Likely Even After States Pass Budgets*, CHRON. HIGHER EDUC. (July 27, 2009), <http://chronicle.com/article/Further-State-Budget-Cuts-Loom/47448/>; Josh Keller, *California's Public Colleges Face \$1.4-Billion in Budget Cuts*, CHRON. HIGHER EDUC. (Jan. 10, 2011), <http://chronicle.com/article/Californias-Public-Colleges/125910/>; Goldie Blumenstyk, *Public Colleges Turn to Tuition Increases to Offset Budget Squeezes*, CHRON. HIGHER EDUC. (Aug. 31, 2010), <http://chronicle.com/article/Public-Colleges-Turn-to/124214/>.

71. Stephanie Tavares, *Regents Approve Tuition Hikes, Faculty Furloughs*, LAS VEGAS SUN (June 19, 2009), <http://www.lasvegassun.com/news/2009/jun/19/regents-approve-tuition-hikes-faculty-furloughs/>; Josh Keller, *Cal State Faculty Approves Furlough but Votes No Confidence in Chancellor*, CHRON. HIGHER EDUC. (July 24, 2009), <http://chronicle.com/article/Cal-State-Faculty-Approves/47458/>; *Faculty Furloughs Detrimental to All*, GOLDEN GATE [X]PRESS (Sept. 16, 2009), <http://xpress.sfsu.edu/archives/editorials/013525.html>.

72. Anne Marie Chaker, *Students Borrow More Than Ever for College*, WALL ST. J. (Sept. 4, 2009), <http://online.wsj.com/article/SB10001424052970204731804574388682129316614.html>; Brad Bumsted, *Students Crushed by Heavy Debt Load*, PITTSBURGH TRIB.-REV. (Mar. 19, 2011), [http://www.pittsburghlive.com/x/pittsburghtrib/news/pittsburgh/s\\_728147.html](http://www.pittsburghlive.com/x/pittsburghtrib/news/pittsburgh/s_728147.html); Mindy Fetterman & Barbara Hansen, *Young People Struggle to Deal with Kiss of Debt*, USA TODAY (Nov. 22, 2006), [http://www.usatoday.com/money/perfi/credit/2006-11-19-young-and-in-debt-cover\\_x.htm#](http://www.usatoday.com/money/perfi/credit/2006-11-19-young-and-in-debt-cover_x.htm#).

73. National Conference of State Legislature, *State Funding for Higher Education in FY 2009 and FY 2010*, NCSL FISCAL AFFAIRS PROGRAM (June 22, 2010), <http://www.ncsl.org/default.aspx?tabid=20637>; Julie Davis Bell, *Taking the "State" Out of State Universities: Tight Budgets have Lawmakers Considering Options that Could Change the Face of Public Universities*, NATIONAL CONFERENCE OF STATE LEGISLATURES (June 2011), <http://www.ncsl.org/default.aspx?tabid=23006>.

74. Jennifer Gonzalez, *Governors Face Challenges in Improving College-Completion Rates: Lack of Money, Turnover in Ranks are Obstacles for Ambitious Goals*, CHRON. HIGHER EDUC. (Feb. 27, 2011), <http://chronicle.com/article/Governors-Face-Challenges-in/126517/>; Jennifer Gonzalez, *Helping Students Complete Degrees on Time*, CHRON. HIGHER EDUC. (Oct. 6, 2010), <http://chronicle.com/article/Helping-Students-Complete/124839/>.

75. Michael S. McPherson, *Value Conflicts in American Higher Education: A Survey*, 54 J. HIGHER EDUC. 243, 246 (May-June 1983).

students to negotiate the work, political, and economic world with the skills and credentials necessary for social mobility are we simultaneously teaching them how to challenge the structural barriers to their social mobility or to ignore them? If we raise up a generation of students capable of challenging the current political and economic norms from any philosophical vantage point are we shortchanging them with the skills needed to be successful in our current environment and bring their families into the working or middle class?

There is good reason that this tension has not been explicitly addressed elsewhere in the literature, it is a relatively new one. It has only been in the later half of the twentieth century that higher education has been opened up to the general public—women, working class, and people of color.<sup>76</sup> It is understandable and wonderful that social groups who have newly acquired access to education in critical numbers would wish to translate those opportunities to improved standard of living for their families. The opportunity for inclusion in the middle class for demographic groups previously denied entry should be valued and acclaimed; our own families have directly benefited from the societal change and we are grateful. But with this new entry into economic competitiveness has come new challenges. Prior to this new mobilization, higher education was the bastion of the elite.<sup>77</sup> With these changes in the demographics of the accessibility of academia, student and public attitudes have changed drastically.<sup>78</sup> A college education is no longer seen as being the finishing touch to a citizen, but is now providing merely the credentials necessary for a career.<sup>79</sup> Professional and

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76. Extensive scholarship on the democratization of higher education and its impact has been conducted by David Karen. See David Karen, *The Politics of Class, Race, and Gender: Access to Higher Education in the United States, 1960-1986*, 99 AM. J. EDUC. 208 (1991).

77. See, e.g., Clark Kerr, *Higher Education: Paradise Lost?* 7 HIGHER EDUCATION 261 (1978) (considering the negative impact on society and the university culture from the broadening of admission pools and student bodies). These changes have continued, according to the U.S. Department of Education's Institute of Education Sciences' National Center for Education Statistics, "Enrollment Rates of 18- to 24-year olds in degree-granting institutions, by type of institution and sex and race/ethnicity of student: 1967 through 2009," (July 29, 2011), [http://nces.ed.gov/programs/digest/d10/tables/dt10\\_212.asp](http://nces.ed.gov/programs/digest/d10/tables/dt10_212.asp). In 1967, only 25.5% of 18-24 year olds were in post-secondary institutions; in 2009, 41.3% were enrolled.

78. In the 2010 surveys, incoming college freshmen by the Higher Education Research Institute at UCLA, the authors have reported an increase between 2007 (66.2%) and 2010 (72.7%) in the number of students who agreed with the statement, "The chief benefit of college is that it increases one's earning power." The study notes, "This is the highest percentage ever reported by entering students since we started tracking this belief in 1971." Higher Education Research Institute at UCLA, THE AMERICAN FRESHMAN: NATIONAL NORMS FALL 2010, Jan. 2011, [http://www.heri.ucla.edu/PDFs/pubs/briefs/HERI\\_ResearchBrief\\_Norms2010.pdf](http://www.heri.ucla.edu/PDFs/pubs/briefs/HERI_ResearchBrief_Norms2010.pdf) (last visited July 29, 2011).

79. Jenkins, *supra* note 67; Moser, *Reports Urge Improvement of Work-Force Training*, *supra* note 67; Moser, *Americans Favor Career and Technical Colleges Over Community*

graduate education are perceived as necessary steps for achieving a particular standard of living, and the liberal arts education is understood at times as a luxury belonging only to the rich.<sup>80</sup>

It is not surprising in this new environment that the historic goal of preparing citizens would be lost. It is also comprehensible that with the expansion of such economic opportunities to peoples previously precluded from partaking, many might fear to simultaneously train them to be active and engaged citizens. With such access to higher education, the internal institutional power structures have likewise become more diverse,<sup>81</sup> but this tension between democratizing higher education and its concomitant increased social mobility and the explicit preparation of critical citizens is still ignored. One possible explanation might be found in the studies revealing that, frequently, newly diverse power structures replicate prior administrative patterns because affirmative action does not inherently alter cultural norms.<sup>82</sup>

This tension between the desire for increased social mobility and the desire for a more engaged citizenry composed of critical citizens is therefore a relatively new one. We acknowledge that the development of this tension is a healthy evolution for a democracy. It is good that opportunity for economic advancement is less limited by one's gender,

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*Colleges, Report Says, supra* note 67.

80. Pressure is on law schools to revamp their degrees to a two-year program, see Katherine Mangan, *Northwestern U. Law School is Latest to Introduce 2-Year Degree*, CHRON. HIGHER EDUC. (July 4, 2008), <http://chronicle.com/article/Northwestern-U-Law-School-Is/14340>. They are also being encouraged to emphasize practical skills over theory, see Katherine Mangan, *Law Schools Revamp Their Curriculum to Teach Practical Skills*, CHRON. HIGHER EDUC. (Feb. 27, 2011), <http://chronicle.com/article/Law-Schools-Revamp-Their/126512> (demonstrating these trends and values). As for the frequent debate over the validity of a Liberal Arts degree in the current economy, consider the following essays: Andrew Blast, *The Case for a Worthless Degree*, NEWSWEEK (Apr. 6, 2010), <http://www.newsweek.com/2010/04/05/the-case-for-a-useless-degree.html>; Daniel Devise, *An Education Debate for the Books*, WASH. POST (Aug. 27, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/26/AR200908260308.html> (decreased enrollment at liberal arts colleges).

81. For evidence of increased diversity in higher education, consider Kit Lively, *Diversity Increases Among Presidents*, CHRON. HIGHER EDUC. (Sept. 15, 2000), <http://chronicle.com/article/Diversity-Increases-Among/13046>. Recent statistics of this diversity as well as continued challenges are summarized in: Kristen Betts et al., *Higher Education and Shifting U.S. Demographics: Need for Visible Administrative Career Paths, Professional Development, Succession Planning & Commitment to Diversity* 7 ACAD. LEADERSHIP LIVE: ONLINE J. (2009), <http://www.academicleadership.org/article/higher-education-and-shifting-us-demographics-need-for-visible-administrative-career-paths-professional-development>.

82. See RICHARD ZWEIGENHAFT & G. WILLIAM DOMHOFF, *DIVERSITY IN THE POWER ELITE: HOW IT HAPPENED AND WHY IT MATTERS* (2006) (examining how new diverse (race, class, religion, ethnicity, gender, and sexuality) voices in the power structures of key educational, political, and economic institutions have been included and socialized to maintain the values of the status quo of their institutions).

working class or impoverished roots, or race/ethnicity.<sup>83</sup> This change is one to be celebrated, especially at institutions whose missions embrace the inclusion of these students. This new tension cannot be ignored, however, because the stakes are too high.

If we ignore these pressures and allow one countervailing force to overtake the other, there are dire consequences for a pluralistic democracy. A complete focus on developing critical citizens, however unlikely this scenario might be, would return us to an era in which education provided a minimal return on economic advancement. The only families who will typically pursue this investment would be those in the financial elite and any class porousness might solidify.

The more likely scenario, though ignoring the tension between social mobility emphasis and educating critical citizens, is the continued emphasis on social mobility to the detriment of the critical citizen. The impact of this may well be assimilation. If individuals see the goal of higher education as improving one's own economic opportunities without the balance of societal improvement or governmental accountability (one's responsibility as a citizen), what is to prevent that individual from doing whatever is necessary to gain personal achievement, even at the cost of one's own identity. Such assimilation could be devastating not only on an individual level,<sup>84</sup> as we believe that each person has unique worth, or to the identities of underrepresented groups, who have struggled to have their characteristic color or other characteristics embraced<sup>85</sup> as being as worthy as that of being White and male has been embraced as normative for America.<sup>86</sup> This assimilation could also be devastating to the very fabric of America.

Even the U.S. Supreme Court has stressed the benefits of a truly diverse America to the survival of the country. In *Grutter v. Bollinger*, the Court ruled that diversity is a compelling governmental interest and that a critical mass of underrepresented groups is needed for others to develop cross racial and cultural understanding.<sup>87</sup> The Court addressed

83. According to the U.S. Census, median income in constant (2008) dollars by race and Hispanic origin increased between 1990 and 2008 across all identified groups. However, the gap between White and Asian/Pacific Islander families and Black/Hispanic families also increased during this time period. While greater engagement in the economy has become possible for most groups, there are clear divisions as to the potential for achievement among groups. See, e.g., MICHAEL K. BROWN ET AL., *WHITEWASHING RACE: THE MYTH OF A COLORBLIND SOCIETY* (2005).

84. See, e.g., George A. Martinez, *Philosophical Considerations and the Use of Narrative in Law*, 30 RUTGERS L.J. 683, 687-88 (1999).

85. See, e.g., Gowri Ramachandran, *Intersectionality as "Catch-22": Why Identity Performance Demands are Neither Harmless nor Reasonable*, 60 ALB. L. REV. 299, 303 (2005).

86. See, e.g., Beverly I. Moran, *Disappearing Act: The Lack of Values Training in Legal Education—A Case for Cultural Competency*, 38 S. U. L. REV. 1, 46 (2010).

87. *Grutter v. Bollinger*, 539 U.S. 306 (2003).

the benefits of diversity and pluralism to our great American democracy.<sup>88</sup> With assimilation, America, a country which is a tapestry of cultures, colors, beliefs, skills, backgrounds and talents would be in danger of losing much. Given our increasingly global economy,<sup>89</sup> if assimilation is the norm within America, this would lead to further lack in America's ability to engage globally and could therefore weaken our democracy. In *Grutter*, the Court also ruled that learning about diverse viewpoints is critical for the development of the country's informed citizenry<sup>90</sup> and for even the country's defense.<sup>91</sup> Further, assimilation of all backgrounds into one view that embraces the status quo, will hinder any further development of our democracy. While our constitution is a great document, those who did not assimilate and who challenged the status quo brought us to a "better" democracy that ended enslavement of human beings, brought voting and fuller participation rights for the poor, women and other underrepresented groups.

Moreover, with a sole goal of educating students for social mobility to assimilate into current structures, another dire consequence could be that the goal of social mobility is not even achieved. If educators focus only on social mobility, this will lead to the inability of education to achieve social mobility, especially for students from underrepresented groups. Our recession today illustrates this potential consequence. When students from underrepresented groups are educated solely for social mobility, some may initially enter the middle class based on their income. Their footing in the middle class, based on a particular job and not property ownership or inherited wealth, will be precariously unstable. Many examples are found during the present recession.<sup>92</sup>

Therefore, solely focusing on social mobility may actually lead to less social mobility for underrepresented groups. A singular focus on critical citizenship could lead to those educated students critiquing and challenging structures that even cause their social mobility to be precariously shaky. Addressing this tension then is critical for underrepresented groups and for those in the middle class based on

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88. *Id.* at 328-33.

89. *See, e.g.*, Robert A. Garda, Jr., *The White Interest in School Integration*, 63 FLA. L. REV. 599, 631-32, 640 (2011).

90. *Grutter*, 539 U.S. at 331.

91. *Id.* at 330-31.

92. *See, e.g.*, *How Cuts Will Change the Black Middle Class*, Room for Debate: A Running Commentary on the News (July 26, 2011), <http://www.nytimes.com/roomfordebate/2011/07/25/how-budget-cuts-will-change-the-black-middle-class/within-the-black-middle-class-severe-hardship-dashed-hopes> (noting debates by Ellis Cose, Mary Patillo, Walter Russell Mead, and Michael C. Dawson); Sabrina Tavernise, *Recession Study Finds Hispanics Hit the Hardest*, N.Y. TIMES (July 26, 2011), [http://www.nytimes.com/2011/07/26/us/26hispanics.html?\\_r=1&emc=etal](http://www.nytimes.com/2011/07/26/us/26hispanics.html?_r=1&emc=etal).

education and employment positions.<sup>93</sup> But, it is also critical for the fabric of the country, the continued ability of the country to prosper globally, and the further development of America's democracy.

#### IV. INSTITUTIONAL CONTEXTS

While we contend that this tension exists in virtually all institutions of higher education, our types of institutions—the historic Black university and the law school, because of their mission and focus, more clearly manifest these tensions and concerns.

##### A. *The Historically Black University*

The tension between social mobility and impetus toward social change may be more clearly seen in HBCUs (as well as Tribal-Serving Institutions and members of the Hispanic Association of College and Universities<sup>94</sup>) than other institutions because of their unique student body and missions. These institutions were founded, particularly in the South, where states were unwilling to fund education beyond the primary school level for African-Americans.<sup>95</sup> During Reconstruction, a number of these institutions were founded in order to provide educational opportunity for the children of the newly freed peoples.<sup>96</sup> Eventually, states supported some of these schools to protect themselves from lawsuits under the Fourteenth Amendment's guarantee of equal protection of the laws. So in many southern states a dual system of higher education emerged, parallel to the dual primary and secondary school systems, in response to Jim Crow. As an example, many years after the demise of Jim Crow segregation, Mississippi was found still in violation of the Fourteenth Amendment for maintaining a separate system of higher education that was significantly under-funded compared to the White public educational institutions.<sup>97</sup>

The past denial of and persistent underfunding of education for Black citizens were problematic for the entire Black community. The

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93. Boris E. Ricks et al., *APSA Teaching and Learning Conference Tracks Summaries: Diversity, Inclusiveness, and Equality*, 44 PS: POL. SCI. & POL. 657-58 (2011).

94. See, e.g., Jamie L. Wershba, *Collaborative Accreditation: The Future of Historically Black Colleges*, 12 BERKELEY J. AFR.-AM. L. & POL'Y 67, 69 n.4 (2010) (commenting on other minority-serving institutions).

95. See, e.g., *Cumming v. Bd. of Educ.*, 175 U.S. 528, 530 (1899) (sanctioning race based funding inequities).

96. See, e.g., Reverend Jesse L. Jackson, *Speech, 1995 Symposium*, 38 HOW. L.J. 449, 450 (1995) (discussing founding of Howard University and Shaw University in the First Reconstruction).

97. See *United States v. Fordice*, 505 U.S. 717 (1992).

role of education in developing citizens who are informed, able to participate in and challenge democratic processes, attain economic prosperity, and participate in the global economy has been regarded as the function of educations in American society.<sup>98</sup> According to one article,

The Reconstruction governments made education a priority. Early on, African Americans generated their own educational opportunities. In Mississippi, for example, African Americans “built schools, and collected and spent their own funds for specific educational purposes and their overall improvement.” These efforts began before the end of the Civil War, and inspired northerners to go south to teach.

African American zeal was fueled by multiple concerns including the connection between education and effective political participation. Denied both under slavery, African Americans understood their relationship. “Acquiring literacy in conjunction with freedom had the potential to open access to democratic political activity, and that in turn held a promise of enabling them to help shape the civil society in which they had hitherto been considered chattel.”<sup>99</sup>

Thus, education, social mobility, and citizenship should work well together, especially for underrepresented groups. “[The] dual mission [of HBCUs] is the same now as it was in the beginning: ‘[t]o prepare students to pursue various careers and to function as effective, humane leaders and advocates for the great disadvantaged, disesteemed, and relatively powerless black masses.’”<sup>100</sup> As a practical matter, though, the goals of education for social mobility and the goals of education to develop critical citizens—for “overall improvement”<sup>101</sup> for the underrepresented, “to open access to democratic political activity”<sup>102</sup> and to “help shape the civil society”<sup>103</sup> seem to be in conflict in the education of those formally underrepresented groups.

For example, research has demonstrated that minority students

98. See Wershale, *supra* note 94, at 69-70.

99. Gabriel J. Chin & Randy Wagner, *The Tyranny of the Minority: Jim Crow and the Counter-Majoritarian Difficulty*, 43 HARV. C.R.-C.L. L. REV. 65, 101-02 (2008) (footnotes omitted).

100. Sean B. Seymore, *I'm Confused: How Can the Federal Government Promote Diversity in Higher Education Yet Continue to Strengthen Historically Black Colleges?*, 12 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 287, 294 (2006) (quoting DANIEL C. THOMPSON, *A BLACK ELITE: A PROFILE OF GRADUATES OF UNCF COLLEGES* 5 (1986)).

101. *Id.* at 294.

102. *Id.*

103. *Id.*

particularly value the completion of a college degree because the degree is frequently perceived to be the primary hope and means for social mobility.<sup>104</sup> This perception is not flawed. HBCUs provide this mobility, having educated the majority of the nation's Black Ph.D.s, elected officials, lawyers, and doctors.<sup>105</sup> As a result, HBCUs typically place a higher value on both their social mission of improving the quality of life in the Black community as a whole and on the ability of students to improve their own and their families' standard of living. *Washington Monthly* includes as one of their primary measurements of institutions of higher education, "social mobility"; in their most recent study, three of the top fifteen institutions in the category of increasing the social mobility of students are HBCUs.<sup>106</sup> Only one of the institutions ranked in the top fifteen of national universities for Research, Service, and Social Mobility was an HBCU.<sup>107</sup> Considering the financial and other challenges of HBCUs,<sup>108</sup> it is understandable that they place the social mobility desires of the students over critical citizenship goals and over missions of "supplying substantial social, political, and economic benefits to the nation as a whole"<sup>109</sup> by educating students more bent on dismantling of the structures that perpetuate inequality.

The concern regarding this conflict may be particularly apropos for HBCUs because of the academic and economic profiles of its student body relative to Black students attending PWIs. Black students attending HBCUs tend to have lower high school GPAs and SAT scores than Black students attending PWIs.<sup>110</sup> These HBCU students generally emerge from families that are poorer than their racial peers at PWIs.<sup>111</sup> Typically, Black students attending HBCUs have performed more poorly in high school than their PWI colleagues; however, they do graduate at similar rates.<sup>112</sup> Overall, research is demonstrating that

104. Kim & Conrad, *supra* note 13, at 400.

105. Frank Adams, Jr., *Why Brown v. Board of Education and Affirmative Action Can Save Historically Black Colleges and Universities*, 47 ALA. L. REV. 481, 482 (1996); *see also* Seymore, *supra* note 100, at 302 (commenting on the success of HBCUs and their graduates especially considering the smaller size of the institutions, the limited resources, and the large number of disadvantaged students enrolled in those institutions).

106. *National University Rankings 2010*, WASH. MONTHLY (2010), [http://www.washingtonmonthly.com/college\\_guide/rankings\\_2010/national\\_university\\_rank.php](http://www.washingtonmonthly.com/college_guide/rankings_2010/national_university_rank.php).

107. *Id.*

108. *See, e.g.*, Wershale, *supra* note 94, at 68, 106.

109. *Id.* at 106.

110. Mikyong Minsun Kim, *Historically Black vs. White Institutions: Academic Development Among Black Students*, 25 REV. HIGHER EDUC. 385, 387 (2002); Kim & Conrad, *supra* note 104, at 401.

111. Kim & Conrad, *supra* note 104, at 401.

112. *Id.* at 414.



“HBCUs may be providing higher levels of graduation for less academically prepared African-American students.”<sup>113</sup>

Many Black students are attending college with the sole goal of bettering their material circumstances as they truly hope to experience the material prosperity of the United States as perceived in the popular media.<sup>114</sup> The desire to become rich and powerful often eclipses both a rational recognition of reality<sup>115</sup> and an understanding of how this personal goal might conflict with their political inclinations or societal visions. Students often do not perceive the contradiction between their personal goals and governmental priorities. Because of these factors, it seems as if HBCUs are particularly pushed towards the social mobility issue and, while their missions speak to service,<sup>116</sup> it is often difficult to balance the desire to graduate students satisfied that they are prepared for the professional world with the need to prepare students to make social change.<sup>117</sup> HBCUs struggle just to achieve the goal of social mobility. While graduating many Black professionals, HBCUs struggled both historically and today with lesser funding.<sup>118</sup>

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113. *Id.* at 421.

114. For example, “[m]inority youths spend more than half their day consuming media content . . . .” David Aguilar, Associated Press, *Study: Minority Youths Have Big Media Appetites*, TIMES & DEMOCRAT (June 11, 2011), [http://www.thetandd.com/lifestyles/orangesburgers/article\\_c7442f5c-93ca-11e0-b904-001cc4c002e0.html](http://www.thetandd.com/lifestyles/orangesburgers/article_c7442f5c-93ca-11e0-b904-001cc4c002e0.html).

115. Many years ago scholar E. Franklin Frazier criticized the Black middle class for being “immobilized in a dream land.” See Angela Mae Kupenda, *The Struggling Class: Replacing an Insider White Female Middle Class Dream with a Struggling Black Female Reality*, 18 J. GENDER SOC. POL’Y & L. 725, 728 n.9, 731-32 (2010); see also Elvira Arriola, *Shaking Out the Welcome Mat for an Enduring Latcrit Social Movement*, 18 AM. U. J. GENDER SOC. POL’Y & L. 711, 711-15 (2010) (discussing ongoing struggle of underrepresented groups).

116. For example, “Jackson State University has been named to the 2010 President’s Higher Education Community Service Honor Roll . . .” as one of 11 institutions to receive “the highest federal recognition a college or university can receive for its commitment to volunteering, service-learning, and civic engagement.” Tommiea King, *Jackson State University Receives Presidential Recognition for Community Service*, <http://www.jacksonstate.wordpress.com/2011/05/18/jackson-state-university-receives-presidential-recognition-for-community-service> (last visited July 17, 2011).

117. Howard University School of Law explicitly states as part of its mission, “to contribute to the quest for solutions to human and social problems in the U.S. and throughout the . . . world.” Lisa A. Crooms, *Remembering the Days of Slavery: Plantations, Contracts and Reparations*, 26 U. HAW. L. REV. 405, 405 n.3 (2004); see also Wendy Brown-Scott, *Race Consciousness in Higher Education: Does “Sound Education Policy” Support the Continued Existence of Historically Black Colleges?*, 43 EMORY L.J. 1 (1994) (discussing important role of Black colleges).

118. John A. Moore, *Are State-Supported Historically Black Colleges and Universities Justifiable after Fordice?—A Higher Education Dilemma*, 27 FLA. ST. U. L. REV. 547, 550 (2000); Leland Ware, *The Most Visible Vestige: Black Colleges After Fordice*, 35 B.C. L. REV. 633, 677 (1994).

## B. The Law School

In legal education the tension becomes quite obvious between the goals of our institution and many other institutions of improving the socioeconomic status of our students with our personal goals of preparing students to challenge societal injustice and to be critical citizens. Many years ago, “Law School became an avenue not merely for those wishing enhanced education, but for those wishing social and economic mobility.”<sup>119</sup> In addition, as legal education began to include through its part-time evening programs, “immigrants, people of color, individuals affiliated with minority religious affiliation, and other individuals of lower social class backgrounds . . . [They] saw the law and legal education as an opportunity for social mobility.”<sup>120</sup> Actually incorporating these historically underrepresented groups in this momentum for social mobility proved to be difficult. Some feared that the makeup of the bar, with its inherent privileged status, would change as “these schools would provide previously unavailable avenues of social mobility for the working classes and foreign born . . . [and] open[] . . . the avenues of American legal and political institutions” to these groups that had been shut out.<sup>121</sup> Thus this threat to the guarded gates of social mobility was, at that time, a pathway for critical change and broadening of the notions of citizenship and political participation.

In our institutions today, however, a focus on social mobility as a primary means of political participation is ineffective in the educating of critical citizens. As students look forward to social mobility, the conformity and assimilation into present structures seem to become the goal instead. As stated by one scholar:

Many students from lower socio-economic backgrounds look forward to the upward mobility and membership in a high-prestige profession when they obtain their degree. Of course, in order to reach this point, we must teach our students to be “gentlemen” who can conform to the rules, speak the language of the law, and display all of the correct mannerisms required for entry to the profession. Whether we accept the view that this

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119. Harold J. Krent, *Foreword: The Legacy of Chancellor Kent*, 74 CHL.-KENT L. REV. 3, 3 (1998).

120. Joyce Sterling, *The Evolution of J.D. Programs—Is Non-Traditional Becoming More Traditional?: Closing Remarks*, 38 SW. L. REV. 653, 653-54 (2009); see also Richard A. Matasar, *Does the Current Economic Model of Legal Education Work for Law Schools, Law Firms (or anyone else)?*, 82 N.Y. ST. B.A. J. 20, 20 (2010) (“legal education is a vehicle for social mobility, status”).

121. Laura I. Appleman, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped our System of Legal Education*, 39 NEW ENG. L. REV. 251, 268 (2005).

conformity is subordination or not, obtaining the degree and passing the bar leads to a very real personal and family happiness and sense of empowerment.

Thus, when we speak about law school as a negative mechanism that subordinates and reproduces class hierarchies, we risk maligning the self-esteem of our students. Some might argue that it is best to tell all law students, elite and non-elite, to be proud in their accomplishments and not to question the inequalities within the legal profession or how those inequalities have come to be. However, greater risk inures when students never see beyond the myths that hide the arbitrary location of the chutes that determine status within the profession.<sup>122</sup>

So if we see the institutions' major mission as being to prepare students for social mobility, legal education becomes merely a trade school for those who will be employed in higher paid trades, for as one scholar recently stated, though, "Law school is not a trade school. . . . [L]aw school should emphasize educated citizenship."<sup>123</sup>

Hence, our institutions and other institutions are at a crossroads. One direction is a choice to focus only or primarily on social mobility, and graduating citizens who are not educated to forge better structures and policies to benefit themselves and their communities. The other is a choice to place due emphasis on educating critical citizens, that is citizens who are more fully educated. The tension, then, is real, and the conflict can become visible.

Law school provides tremendous opportunities for a concerned educator to prepare students to be active, engaged citizen students, able to challenge systemic forms of oppression and to negotiate and challenge a political process that maintains, often, a status quo of inequality. At the same time, law school presents many barriers to this process, as institutions and students easily focus instead, on the personal economic advancement that a legal education can bring. Opportunities for this advancement seem more readily available to those who conform and assimilate into structures historically built on inequities.

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122. Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 *BUFF. L. REV.* 1155, 1212 (2008) (citing LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL AND INSTITUTIONAL CHANGE* (1997)) (footnotes omitted).

123. Kevin Noble Mailard, *It's Not a Trade School*, in *Room for Debate: A Running Commentary on the News*, *N.Y. TIMES* (July 21, 2011), <http://www.nytimes.com/roomfordebate/2011/07/21/the-case-against-law-school/the-right-preparation-for-lawyer-citizens>.

## 1. Opportunities

It is not surprising that racial desegregation effort in the 1950s, and recently, was directed toward education generally, and specifically legal education. In *Sweatt v. Painter*,<sup>124</sup> the Court recognized law schools as a training ground for future leaders of the country.<sup>125</sup> The Court has consistently hinted at the classroom as a proper place to instill values of critical citizenship. In *Brown v. Board of Education*,<sup>126</sup> rejecting racially separate and equal public school education as unconstitutional, the Court held that, “education . . . is the very foundation of good citizenship.”<sup>127</sup> In *Grutter v. Bollinger*,<sup>128</sup> the Court upheld diversity as a compelling governmental interest and “acknowledged the overriding importance of preparing students for work and citizenship.”<sup>129</sup>

As stated by the Court, then, education, especially legal education, is important to prepare students to be citizens.<sup>130</sup> Moreover, the Court has commented on the type of citizenship that should be urged. In *Grutter*, the Court emphasized that this legal training must train students to be citizens who understand the relationship of the law to social structures and institutions.<sup>131</sup> The Court stated, “Law schools ‘cannot be effective in isolation from the individuals and institutions with which the law interacts.’”<sup>132</sup> In *Grutter*, the Court recognized the importance of a diverse student body, not just for the purpose of being non-discriminatory, but because of the immense impact a critical mass of students with various backgrounds and life experiences could have on the learning and development of the future attorneys.<sup>133</sup> Therefore, legal education is expected to be a place where future lawyers gather an understanding of other people and other perspectives. But, legal education is more than that.

Legal education also trains lawyers to practice, interpret, legislate or execute the law. Law has a special role in facilitating societal change. Larger society can be encouraged by the law to move toward justice. So, lack of development of critical citizenship in law students further

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124. *Sweatt v. Painter*, 339 U.S. 629 (1950).

125. *Id.* at 634.

126. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

127. *Id.* at 493.

128. *Grutter v. Bollinger*, 539 U.S. 306 (2003).

129. *Id.* at 331.

130. *Id.* at 333.

131. *Id.* at 332.

132. *Id.* (citing *Sweatt v. Painter*, 339 U.S. 629 (1950)).

133. Michelle D. Deardorff & Augustus Jones, *Implementing Affirmative Action in Higher Education: University Responses to Gratz and Grutter*, 44 Soc. Sci. J. 525, 526, 531 (2007); Augustus Jones et al., *Splitting the Baby: Media Constructions of Grutter v. Bollinger and Gratz v. Bollinger*, 34 J. Pol. Sci. 118, 138-39 (2006).

injures this possibility of societal change. The law as we know it has not changed on its own, but by those critical citizens of the legal community who embraced their citizenship and the responsibility to advance the progress of our society in a forward direction. “Ironically, it has often been the outsiders and the weak who have been the champions in Supreme Court cases that now stand as beacons of liberty for all of us. . . .”<sup>134</sup> With all of these opportunities to nurture critical citizenship lawyers, the barriers at times still seem insurmountable.

## 2. Barriers

A huge barrier rests in the law school professor herself. This is surprising, especially considering the very desire to educate, challenge and reform was what led many successful lawyers to accept often lower paying positions in the academy. As stated by one professor, “[m]ost academics pursue academia, despite the lure of higher remuneration in legal practice, by a passion to analy[z]e, expound, and improve the law and the legal system.”<sup>135</sup> He argues while these critical aspirations are evident in law professors’ scholarship and service, “the overwhelming concern of most academics with the improvement of the law and the operation of the legal system has not penetrated [in to] the curriculum, at least in any thoroughgoing way.”<sup>136</sup>

The Socratic presiding over a law school class often calls professors to instruct students to “think like a lawyer.” That task in and of itself is not faulty. What is faulty is the interpretation given to that task, and how generations after generation of professors seek to mimic the ones before, which lead to a continued perpetuation of the status quo. Does thinking like a lawyer mean having a myopic focus on the rule, and discounting the factual circumstances, the social systems, and the embedded legal dysfunction of societies past that lead to a continuation of the same legal problems, and the same disempowering of certain groups? Or, does thinking like a lawyer mean being critically aware?

Even if a professor courageously encourages students to hold themselves and the law responsible for societal injuries, the professor will still find herself at a crossroads. Law school as it is, then, further creates a barrier for changes in American society with law students generally being equipped to participate in the construction of these barriers as lawyers who maintain the status quo. Students are encouraged to outfit themselves with various legal practice skills that will increase their chances of acquiring employment. Students seem

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134. Michael Traynor, *Citizenship in a Time of Repression*, 2005 WIS. L. REV. 1, 25.

135. Michael Coper, *Law Reform and Legal Education Symposium VIII*, 39 U. TOL. L. REV. 233, 241 (2008).

136. *Id.*

reluctant to understand that the injustices, detriment, ills, etc. that they, their families, or those in their communities face will not be removed with just billable hours or a track to partnership or being able to consistently maintain the status quo. A larger paycheck will not rid society of its institutionalized oppression, but a check on institutionalized oppression could lead to greater economic advancement for a people, including the law student. Students, though, find themselves focused on the short-term grade or competition that will help them obtain an interview, for a higher paying job, to continue the manufacture of the status quo.

Legal education then is caught between having an immediate short-term focus on social mobility of its students, and a longer-term mission of critical citizenship and a quest for justice. One of the authors of this Article is a professor at a law school with a mission statement similar to that of many law schools, especially religiously affiliated schools. The mission statement states, in part, that the school seeks to “provide a superior legal education within the context of a Christian institution”;<sup>137</sup> “create an institutional environment that promotes intellectual and practical learning”;<sup>138</sup> “train students to become skilled and ethical lawyers capable of adapting their practice to a changing legal world”;<sup>139</sup> provide grounding in the law of our system<sup>140</sup> and “explore emerging doctrine”;<sup>141</sup> “improve the legal system [through] law reform projects”;<sup>142</sup> exercise a “commitment . . . to the belief that [all] human beings are God’s creations”;<sup>143</sup> train future lawyers “committed to ethical practice; to assisting the disadvantaged; and to free and open discussion of issues of law, policy, and values.”<sup>144</sup>

The school struggles, however, with striving for its students to fit as mainstream attorneys. This becomes evident in speakers supported, scholarly journals allowed, faculty hired, and courses taught. The text of the school’s Mission statement implies a greater emphasis of students fitting within present system; the present system prepares lawyers to adapt after society changes, not to facilitate change; emphasis on free and open discussions. But, how do these discussions occur or matter when emphasis is on the law as is with little notice to continued perpetuation of class, gender, race, boundaries of the system?

In addition to mission statements, legal education is affected by the

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137. MC Law Mission Statement, *supra* note 7.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

unstated mission of legal education. One author recently had a related discussion with some of her students. She was dismayed when many of her students told her that their overriding goal of their legal education is to become “money makers” and that to become money makers they must conform and keep silent about inequities.<sup>145</sup> Students said that to become moneymakers they must accept the principles of Christian conservatism and the Republican Party that they see most represented in the legal profession.<sup>146</sup> They said that daring to take this professor’s class was already a radical move and that participating in social justice groups would be viewed as too radical by their peers, professors, and the law firms with whom they hope to get jobs paying large salaries after their graduation.<sup>147</sup> They thought that one class on their transcript about race, gender or class was already taking a chance.<sup>148</sup>

This tension then is real in legal education, yet generally unacknowledged. If it continues to be unacknowledged in legal education, it might not be acknowledged throughout a lawyer’s career. The law student hardly receives any further direction from the law school after graduation. So, the critical professor must press upon her students while they are in law school the importance of critical citizenship. These law students will have important work as future officers of the court, and agents of the law, to do more than to uphold and protect the legal system as it is. Their purpose will also include holding the legal system accountable for change and being proactive in achieving that correction when necessary.

Lawyers are officers of the court in the ethical rules.<sup>149</sup> What this means as to responsibility for a critical citizen, future lawyer, is definitely unresolved, and is often unexplored. It is often expressed that being a member of the legal profession is a noble calling.<sup>150</sup> This is because there is a great responsibility attached.

One writer, arguing for a critical study of history in legal education, aptly described the crossroads where many legal professionals may find themselves post-law school if they dismiss the “law as a noble calling” perspective:

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145. Angela Mae Kupenda, *(Re)Sculpting a Movement in the Classroom: Post-Obama Inauguration Challenges for Educators for Change*, J. RACE, GENDER & POVERTY (forthcoming 2011) [hereinafter Kupenda, *(Re)Sculpting a Movement*].

146. *Id.*

147. *Id.*

148. *Id.*

149. See, e.g., L. Scott Smith, *The Secularization of America’s Public Culture: Jews and the Establishment Clause*, 32 U. LA VERNE L. REV. 257, 284 n.188 (2011).

150. See, e.g., Melissa J. Marlow, *It Takes a Village to Solve the Problems in Legal Education: Every Faculty Member’s Role in Academic Support*, 30 U. ARK. LITTLE ROCK L. REV. 489, 503 (2008).

Whether the knowledge gained from a study of history will make any difference in the career paths that law graduates choose for themselves is impossible to say. But it at least can create an awareness of choice; and it has the added benefit of being interesting, which is more than one can say for a standard casebook on corporations. As legal education is presently structured, the larger issues I have tried to raise—issues dealing with human motivations, what this nation has done, and what it is doing today—hardly seem germane and are easily deferred to another day. Law students will soon enough discover that today's legal profession is a business, rather than a noble calling devoted to helping those in need. They will discover that they are serving clients whose main concern, in one way or another, boils down to the pursuit of power, money, or sex, and who are willing to pay handsomely to get what they want. They will discover that it is difficult to advocate for such clients, day in and day out, without feeling the pressure to adopt their values as their own. Effective advocacy, after all, usually comes from honesty—from identifying with and believing in a client's cause. In theory it may be possible to keep one's personal beliefs and moral values separate from those of clients, but in practice it's not so easy. *The day may come when they will sense they have reached a crossroads.* They can continue in the service of the wealthy and privileged, or they can take the less traveled road of helping those who cannot help themselves. Perhaps images will return of what drew them to the law in the first place—images of justice and injustice, stemming perhaps from bitter personal experience, or lingering from movies or television, or from a book like To Kill a Mockingbird. *Many students come to law school in hopes of making a difference, of contributing something to society rather than forever taking from it. But today's legal education soon dissipates these aspirations with its relentless concentration on doctrine and rules.* The pressure to conform is intense, driven in no small part by the awareness of staggering debt which must sooner or later be repaid.<sup>151</sup>

While the authors here believe this tension, at the crossroads for our institutions, to be a relatively new one, glimpses of the necessity for this contradiction can be seen in the ideological tension between Charles Hamilton Houston and Justice Clarence Thomas. Former Dean of Howard University School of Law Charles Hamilton Houston once

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151. Harold P. Southerland, *The Case for American History in the Law-School Curriculum*, 29 W. NEW ENG. L. REV. 661, 724-25 (2007) (emphasis added) (footnotes omitted).



stated, “[a] lawyer’s either a social engineer or . . . a parasite on society . . . A social engineer [is] a highly skilled, perceptive, sensitive lawyer who [understands] the Constitution of the United States and [knows] how to explore its uses in the solving of problems of local communities in bettering conditions of the underprivileged citizens.”<sup>152</sup> On the other hand, sadly, legal professionals do not always answer the call to be that social engineer, even in the face of mounting racial tensions. In a case where a school district attempted to address racial segregation in public education, even Justice Clarence Thomas, the only Black Justice presently on the U.S. Supreme Court, thought that the district’s steps to integrate were unconstitutional and suggested that legal professionals have little, if any, role in reengineering society. More specifically, Justice Thomas stated, “[T]his Court does not sit to ‘create a society that includes all Americans’ or to solve the problems of ‘troubled inner city schooling.’ We are not social engineers.”<sup>153</sup>

## V. ADDRESSING THE CONFLICTS

How do we connect our understanding of the two competing goals, focusing on social mobility and encouraging critical citizenship, within the pedagogical context of our institutions? As lawyers and political scientists operating within a representative democracy, we desire to create an engaged citizenry who possess a realized sense of political efficacy. Both disciplines have slowly moved to a more engaged pedagogy that models more active learning principles than the traditional lecture model. Still, we wrestle with the question of how we prepare students to be engaged, patriotic sovereigns (in the best sense of the term), and prepared to be dissidents when required. What does this mean when we teach, especially those of us teaching first- and second-generation college students?

The literature on critical pedagogy notes the importance of engaging oppressed people in their own education so that they are able to participate in their own governance and policy making. While political science often gives verbal praise to this, its understanding of this concept is much less focused.<sup>154</sup>

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152. Crooms, *supra* note 117, at 406 n.4 (quoting Howard).

153. See *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 766 n.14 (2007) (Thomas, J., concurring) (quoting *id.* at 862 (Breyer, J., dissenting)). See generally Angela Mae Kupenda, *The Obama Election and a Blacker America: Lawfully Creating Tension for Change*, 1 FAULKNER L. REV. 187, 200-01 (2010); Angela Mae Kupenda, *The State as Batterer, Learning from Family Law to Address America’s Family-Like Racial Dysfunction*, 20 U. FLA. J.L. & PUB. POL’Y 33, 41 n.27 (2009).

154. For example, in 2003, the New Political Science section of the American Political Science hosted a roundtable at the American Political Science Association meeting entitled

Law school classes fare no better. As professors who both work closely in the professional development of lawyers, a portion of our job is to prepare them to enforce the present system, the current political, legal and economic status quo. If we are training them to challenge systemic oppression, which is our wont, are we not ill-equipping them to survive the political and economic structure that surrounds them? Thus, we confront our tension. We freely acknowledge that an institutional focus on preparing students to try to assimilate within current social, legal and economic structures is understandable, especially given the country's difficult economic times. However, such a major and obvious focus does little to equip our students as citizens who can bring critical change to continued structures of oppression.

While our goal of fostering critical citizenship may be in conflict with our institutions' primary focus on social mobility, actually we are not contradicting our institutions' long-term missions of social justice. These long-term institutional missions and our commitment to our students drive our devoted work at our institutions. However, as teachers we acutely experience a tension with our university's immediate, visible, primary goals of promoting student economic and social mobility in presently constructed economic and social systems.

Rather than continuing to experience this tension with our institutions, we would much rather effectuate institutional change and help our institutions realize their long-term goals of social change.<sup>155</sup>

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"Roundtable on Teaching from the Left: Pedagogy as Praxis for Political Scientists in a Right-Leaning Age" that ostensibly talked about critical pedagogy and the possibility of engaging students in the teaching of power and politics. All of the members of the roundtable represented elite Ivy League schools and they all lamented the difficulties of being politically left during a more conservative period of the nation's politics. The political scientist of the authors was a faculty member newly relocated to a Southern HBCU in a very poor state and was excited to discuss the conflicts discussed in this Article, but the conversation was very self-aggrandizing for the panel and focused on the travails of these privileged professors at their elite institutions. A recent graduate of one of these panelists' Ph.D. program was in the audience and she was a new hire at a large western land-grant institution with students who were first generation and questioning the wisdom of a major in a field (political science) that does not explicitly lead to a job. She was wrestling with the very question of this Article: how do we equip our students with social mobility opportunities and the skills necessary to advocate for social change as a critical citizen? The response of a panel of political scientists who were members of the "radical" New Political Science section was an admonition to instill in your students a love of life-long learning. As a discipline, political science has not been very sophisticated in wrestling with these questions.

155. One of us teaches at a public, historically Black university with a stated mission of social change, aspiring to produce "leaders, who think critically, address societal problems and compete effectively." See JSU Vision and Mission Statements, *supra* note 7. The other author teaches at a private, religiously affiliated, predominantly White law school, which by its mission statement holds "to the belief that [all] human beings are God's creations" and seeks to reform the law and promote justice in our society. See MC Law Mission Statement, *supra* note 7. Therefore, we are not actually in conflict with our institutions' long term missions, but we find

Social mobility is, we concede, important, certainly for those students from disadvantaged, or differently advantaged, backgrounds. However, preparing students to prosper in the present structure, while it may help them to individually succeed, is in a way teaching them to become participants in structures of continued oppression of others. Some of those oppressed in these structures, especially for our first generation university students and first generation law students, will include their family members who may not experience the educational privilege our students will experience based on their becoming university or law school graduates. As many of our students are first generation higher education students, dismantling oppressive structures would, in the long term, benefit our students' families and communities, and benefit our students too, for they will then get to live, raise families, and work in less structurally oppressive environments.

Therefore, this part of the Article will first briefly summarize means of institutional change that could dissolve our tension with our institutions, by focusing more on their stated long-term goals of forging a more just society. Second, assuming that the institutional change may be slow to occur, this Article will then briefly summarize pedagogical strategies for other professors like us who seek to prepare students to be active, engaged student citizens ready to challenge systemic forms of oppression while simultaneously equipping them to negotiate and challenge a political process that initially impoverished their families. We will seek to present pedagogical strategies that may help the professor negotiate a conflict that may be invisible to many at the institution, but is likely very visible to a professor who urges, if only to herself, the necessity for a pedagogical mission of promoting critical citizenship.

### A. Institutionally

An institutional environment that promotes critical citizenship as a way of belonging, and promoting the belonging of others, in our society is crucial. Citizenship, unfortunately though, has been landscaped in this country based on exclusionary perceptions and economic interests, rather than inclusionary perceptions and justice concerns.<sup>156</sup>

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ourselves in tension with our institutions', and many institutions', shorter term and more evident, major focus on improving the economic and social status of our students through directing their assimilation into and conformity with present structures.

156. For example, in *Dred Scott v. Sandford*, 60 U.S. 393 (1856), the U.S. Supreme Court held that Blacks in America, whether slave or free, were not citizens of the United States and were thus not entitled to rights of citizenship. This exclusionary definition of citizenship was based on promoting the economic interests of the slave holding citizens who sought to maintain their status quo economically. See Dorothy E. Roberts, *Welfare and the Problem of Black Citizenship*, 105 YALE L.J. 1563, 1573-74 (1996). To rule otherwise, the Court would have

Our goal here is to encourage our institutions to dare to question these persistent structures, more often than to participate in them. We desire for our institutions to promote, instead, critical citizenship based on inclusionary notions. This section examines several steps of what can be done institutionally then, to further an institution's long-term mission of fostering social injustice and an informed and critical citizenry.

First, for an institution to promote critical inquiry and social deconstruction in its classrooms, institutional leaders must be willing to risk structural change to create an environment that encourages professors to pursue such teaching goals. These leaders of the academy, then, must be open to being comfortable with being uncomfortable. Willing, unquestioned alliance with the status quo can be quite, artificially, comfortable. Urging a shift requires leadership courage as this shift will make many in and outside of the academy feel uncomfortable.<sup>157</sup> A leader seeking to implement strategies to encourage critical citizenship, or at least questioning of present systems of supremacy and norms of oppression, will likely face some opposition from those who do not want attention drawn to how present systems rest on unmerited advantage. The courageous leader must be willing to demand from contemporaries a renewed commitment to the establishment of equality in practice and ready to face challenges from those who incorrectly perceive themselves to be deserving beneficiaries of institutional, societal, and legal inequity.<sup>158</sup>

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disrupted the economic structures built on slave labor and societal and legal notions of White racial supremacy, and hence would have started the dismantling of societal racial and other oppressions. Though the holding of *Dred Scott* was somewhat displaced with the additions of the 13th, 14th and 15th amendments to the Constitution, the roots of the holding remain, as economic assimilation requires a commitment to structures still resting on various forms of oppression. Cf. Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597, 668 (1993) ("This nation also has some realities to accept. Americans need to face the reality that racism does exist in America, even today, and that slavery and systematic discrimination have contributed greatly to the failure of the African American community to assimilate and prosper in this country. . . . Even though it may be uncomfortable, Americans must admit that there is more than one correct way to perceive an issue, and having accepted that, proceed to work out a solution that will encourage prosperity and better the lives of all the citizens of the United States.").

157. As explained by one scholar,

While a diverse experience and academic training may qualify a variety of people for participation in the enterprise, leadership requires a level of service, integrity and courage uncommon in most people. The leader who would actively pursue access must be prepared to hold faculty, administrative staff, students, community constituents and university co-laborers to a standard of business that will not always be comfortable.

Brown, *supra* note 12, at 239-40.

158. Those who benefit most economically and socially from the status quo have enjoyed

To their credit, many institutional leaders do strike at obvious oppressions publicly. Yet, an institutional leader who aspires to model critical citizenship may often be alone tugging at the many dispersed and hard to recognize roots of subtle oppressions. The critical citizen will pay attention to every detail of injustice in the quest for social justice. Institutions, then, should select leaders with the fortitude and courage to question and lead the institution in pursuit of its long term mission of social justice.

Oppression, based perhaps on privilege, is subtler than the overt *de jure* oppression obviously observed in the past. Institutions seeking to meet long-term goals of greater justice should select leaders who are willing to proactively challenge oppressions. As stated by one scholar,

While it is unlikely that an educational institution would perceive itself as a willing co-conspirator in an endless cycle of repressing people of color, the failure of an educational system to provide access to education sufficient to stimulate the economic and social advancement of previously oppressed citizen groups, demands closer examination.<sup>159</sup>

Second, the institution should exhibit a willingness to coequally connect with “the other” located right next door. Both of the authors’ institutions are located in urban neighborhoods, not middle-class neighborhoods. If an institution is located in close proximity to an economically disadvantaged community, it is possible the institution

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power and advantage for so long that they may actually believe the benefits to be merited. *See id.* at 240. Encouraging a critical examination of these premises and a quest for equality dismantles this imbalance of power and advantage. *See id.* “It is this change in advantage that tests both the leader’s resolve and that of people who have routinely enjoyed advantage.” *Id.* at 240. As an example, some law school administrators may assert that their desires to move up in the rankings and tiers force them to decline admission to many diverse students, bypass exceptional faculty candidates of color even if they do have both a Ph.D. and J.D. from top tier schools, focus their students more on bar examination courses than encouraging them to take courses with a critical justice orientation, and prefer campus speakers that fit traditional norms of what corporate defense lawyers look like and advocate rather than those accomplished speakers who look differently and engage in cutting-edge reform projects. The authors here wonder, though, whether the desire to move up the ranks could be subterfuge as an excuse to perpetuate the same system in education that has endured, in one form or the other, for generations—from outright racial and gender exclusion, to separate and unequal institutions, to legally condoned legacy admission policies affording affirmative action to continued generations of those with the same racial and economic backgrounds, and to much continued subtle discrimination against those who are not White, not male, and economically not privileged. Leaders at public HBCUs, and other minority-serving institutions, must recognize that state support is still controlled by White-dominated Boards of Regents and legislatures; however, a new environment of less state support may allow greater political independence for these institutions.

159. *Id.*

then will engage in a means of separating or segregating itself from the “other” and therefore resist commonalities of mission or purpose.

For example, as Blacks began to achieve middle-class-like status, southern Whites in power actually enacted more laws mandating racial segregation.<sup>160</sup> These laws attempted to prohibit critical engagement or connection among people who lived and worked in the same community. Today, schools located in close proximity to other communities that need the engagement of educational institutions may actually seek to segregate themselves from the other communities rather than encourage critical citizenship, because the schools see those nearby communities as economically or socially inferior. Even predominantly Black schools may subtly focus on developing on its campus Blacks who are “different” from those other blacks surrounding the neighborhood. Predominantly White schools may similarly seek to separate itself from the people of the neighborhood and “their” issues. Thus as the community surrounding a predominantly White law school becomes Blacker, the law school may find itself deliberately and unconsciously becoming Whiter.<sup>161</sup>

“The interdisciplinary character of structural inequality has attracted attention from researchers in many different disciplines and policy makers in many different domains . . . . Unlikely alliances between insiders and outsiders have emerged in areas such as education, policing, and housing, and these alliances have sometimes propelled ongoing institutional reform.”<sup>162</sup> The institution has the means to encourage this, and to promote an environment with the necessary incentives and resources to encourage faculty to do so. “Institutional intermediaries are in a position to work at multiple levels of the

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160. Charles W. McKinney, Jr., *Democratic Intent? The Perils and Promise of Constitutional Reform in the New South*, 3 CHARLESTON L. REV. 555, 566-67 (2009).

161. On the contrary, scholars have urged that for such situated colleges and law schools to be sustainable in the long term, they must be more closely aligned to their missions of justice and actively create a greater attachment to the surrounding local community.

Sustainability demands that institutions of higher learning consider certain types of social benefits to local communities. At the least, the choices of the sustainable academic institution will reflect on both the investments that the institution makes in the community and the partnerships that can be formed between schools and communities to advance educational, economic, and environmental goals.

Keith H. Hirokawa & Patricia Salkin, *Can Urban University Expansion and Sustainable Development Co-Exist?: A Case Study in Progress on Columbia*, 37 FORDHAM URB. L.J. 637, 653 (2010).

162. Susan Sturm, *Activating Systemic Change Toward Full Participation: The Pivotal Role of Boundary Spanning Institutional Intermediaries*, 54 ST. LOUIS U. L.J. 1117, 1119 (2007).

organization and with the parties that fit the contours of the conflict or problem. They bring together people who do not ordinarily work together and do not otherwise have easy access to each other. They also enable initiatives to adopt a more long-term approach to entrenched problems.”<sup>163</sup>

Third, institutions should implement initiatives to encourage faculty and student interest in social justice. Many institutions have professor of the year awards, voted on by the students or faculty based on popularity, merit, or some combination. The administration of an institution should also employ faculty and citizenship awards, which recognize those professors working in furtherance of critical citizenship, or social justice.<sup>164</sup> Also, some administrations give faculty release time to work on scholarship. Alternatively, because revenues from grants are generated, institutions could award sabbaticals for public interest, citizenship, or social justice projects that allow professors to contribute to the institutions’ long-term missions of social justice.

The institution should also develop strategies to promote critical citizenship in the student body. As discussed above, creating a better environment for faculty to address these concerns pedagogically in their classrooms is good, but more measures could come directly from the administration to the students to encourage them to engage and to pursue societal structural change.<sup>165</sup>

In legal education, often opportunities to engage with the surrounding community or to employ critical inquiry or citizenship are

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163. *Id.* at 1128-129.

164. “Those few women and minorities who make it past these enormous social hurdles [to positions of power] are on the ‘hot seat.’” Yet, they are a token with power that “reduces the problem of stereotyping and increases the chances of mobility” for minority and women associates in large predominantly White male law firms. Carroll Seron, *The Status of Legal Professionalism at the Close of the Twentieth Century: Chicago Lawyers and Urban Lawyers*, 32 LAW & SOC. INQUIRY 581, 601 (2007).

165. For example, a study conducted at Harvard Law School (HLS) suggests “many black [law] students graduate from HLS with precisely the same [social justice] commitments with which they arrive.” Jenée Desmond-Harris, “Public Interest Drift” Revisited: Tracing the Sources of Social Change Commitment Among Black Harvard Law Students, 4 HASTINGS RACE & POVERTY L.J. 335, 372 (2007). Students who are very interested in social justice pursue those opportunities after graduation. Students who are definitely not interested do not. But, the large group of students who are somewhat open to social justice careers predominantly and reluctantly pursue jobs with large salaries at big firms. That group “unenthusiastically” settles for economic mobility rather than public interest positions they were somewhat interested in when they matriculated. This makes one wonder if the institution offered this group the tools for critical citizenship that they were once somewhat interested in. *Id.* Institutions could include social justice or citizenship experiences in the core educational requirements. They could include volunteering in various communities as a requirement for graduation. As urban education centers, the authors’ schools could provide student aid, financial assistance for opportunities with surrounding community involvement or through social justice initiatives for students.

relegated to special classes, or left to the work of legal clinics. Notions of justice should be institutionally incorporated into the entire curriculum, not just in legal clinics. While clinics should be maintained, clinics should be critically considered as to whether they perpetuate present structures. Adjustments can be made institutionally in clinics to further critical citizenship.<sup>166</sup> To further critical citizenship and the pursuit of social justice, the artificial lower status assigned to clinical legal education must also be institutionally considered. Presently, the status of clinics is subordinate<sup>167</sup> although clinical legal education is often the only exposure students have to social justice engagement. Elevating the status of clinical legal education exhibits institutional commitment to the social justice goals and the clients of the clinic. Developing clinics (and other forms of practical experiences) and locating them in lower-income neighborhoods provides students an opportunity to start learning to “have sustained relationships ‘on the other side of the tracks’ and spur creativity in envisioning modes of involvement with poor communities.”<sup>168</sup> Although some schools restrict the types of cases clinics can accept and faculty tend to not challenge these restrictions,<sup>169</sup> an institution could make a point to establish clinics that challenge present societal norms and the status quo.

Institutional change may not occur rapidly. One problem is that for many the tension, that professors like us experience, is invisible. So, if individual professors implement pedagogical strategies and start a movement in their own classes, institutional focus on its long-term mission of social justice change may occur faster, as the tension is made more visible.

### B. Professorially

What follows are pedagogical strategies for other professors like us

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166. As stated by a student, “[C]linics should promote visions of justice, which students are free to accept or reject.” Jeffrey Ward, *One Student's Thoughts on Law School Clinics*, 16 CLINICAL L. REV. 489, 490 (2010). One way to achieve this is by using a “student collaborator model . . . to advance the social justice mission of a clinic.” Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic*, 16 CLINICAL L. REV. 451, 488 (2010). Institutions could also employ joint initiatives to enrich the school’s mission, by encouraging “innovative theory/practice pedagogies” in the surrounding communities and by participating in the community’s enduring institutions to further critical citizenship. Anthony V. Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1092 (2009).

167. Alfieri, *supra* note 166, at 1074.

168. Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333, 379-80 (2009).

169. Robert R. Kuehn & Peter A. Joy, *Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility*, 59 J. LEGAL EDUC. 97, 114-15 (2009).



who seek to prepare students to be active, engaged student citizens ready to challenge systemic forms of oppression while simultaneously equipping them to negotiate and challenge a political process. Many of these strategies are based on techniques we have used in our own classes.

First, structure the classroom to encourage intellectual risk-taking. One of the barriers to critical citizenship is the notion that one must be perfect in the first instance, or that systems are perfect and therefore not open to challenge, or reform. In her classes, one of this Article's authors addresses the conflict between a focus on social mobility and a focus on the other hand of critical citizenship, by structuring her classroom around the notion of redemptive teaching. Redemptive teaching precedes from four premises: (1) students are allowed to fail; (2) in every course and in every class session, students after failing in a task or endeavor must be allowed to redeem themselves in the professor's eyes, in the eyes of their peers, and in their own view; (3) the only unforgivable sin is not being prepared; (4) the professor must model what she values and what she wants her students to achieve. This approach allows students to take the intellectual risks necessary to wrestle consistently with the tensions inherent in engaged citizenry.

Second, structure the classroom around critical analysis. Students should be strongly encouraged to critically question even the law and legal systems as they are, and to suggest modifications to norms to effectuate more social justice. In one author's classes, students learn "the Black letter law" as interpreted by the courts, but then she asks, was the court's holding correct? Honest? Do you agree with the court? What societal factors influenced the court? What would be a better holding? What factors, realities, did the court ignore or did the court give deference to? How could the socioeconomic backgrounds of the judges or other political actors have affected their decisions?<sup>170</sup>

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170. One author of this Article became greatly concerned when after the historic election of President Obama, some celebrated and considered all justice work done in him being elected. Others seemed to quickly blame him and liberal politics for the present condition of the country without offering alternatives. Few offered suggestions for the role of critical citizens to address the crises the country was facing. Her school environment seemingly became less tolerant, as many in the state did not vote for the new President, and many were likely in fear of structural change in the country. See generally Angela Mae Kupenda & Tiffany R. Paige, *Why Punished for Speaking President Obama's Name Within the Schoolhouse Gates? And Can Educators Constitutionally Truth-en Marketplace of Ideas About Blacks*, 35 T. MARSHALL L. REV. 57 (2009) (discussing reactions in many schools to election of Black president); Angela Mae Kupenda, *The Obama Election and a Blacker America: Lawfully Creating Tension for Change*, 1 FAULKNER L. REV. 187, 200 (2010). As a contribution for a more critical inquiry, she obtained administration's approval to teach a seminar on The Constitution, Presidential Powers and the Obama Presidency, studying case law regarding other presidencies and the Obama presidency. In their seminar papers, students must identify a problem facing the country, discuss the

Third, a professor must risk student disfavor to motivate critical thought. One author here, who is a Black female teaching at a very White school, frequently has students tell her that they have never had Black teachers, and they are “afraid” of her and her face when she is serious. This, unfortunately, has led her to try to soften her approach in class far too much. Some days, though, she forgets, and she brings more fully who she is to press her students to critically question their views, the law, and their participation in the present systems.<sup>171</sup>

Fourth, consider goals in structuring courses. Professors can promote critical citizenship in the way the course is structured, by: basing the evaluation of the student more on the student’s critique and disagreements with readings; at the beginning of the course and at the beginning of the curriculum seek to instill a critical and connected mindset; assign readings that give more than one position on an issue or that reflect a critical view of the subject; willingly sharing power with students in the classroom, to promote a more collaborative based relationship between student and teacher; for assigned readings, also assign readings with the underlying social stories to accompany the readings, and fostering a classroom environment that makes room for dissent.<sup>172</sup> Professors should encourage students to engage one another

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importance of resolving the problem, propose a solution within the president’s constitutional powers, address the constitutionality of the proposed solution, and examine the workability and acceptability of their solutions. This course is in response also to a failing of legal education that students are afraid to own, and to later change, their own positions. The professor helps students to assert their own legal, societal, and economic positions, but the students must also address the weaknesses of their positions. Sometimes in this process, students see that there is far more to an issue than they previously thought, or previously were exposed to throughout their upbringings or prior experiences. In teaching this course, the professor saw students critically engage one another and critically consider their own views. Many of the presentations of the final papers were surprising to the class, as they saw their classmates reconsider and critique their own political, societal, economic and legal conceptions.

171. Last spring, she did this in her small, predominantly Black, *Race and the Law Seminar* when she could not ignore anymore the students’ insistence that Supreme Court Justice Clarence Thomas had faltered on his responsibility for social justice, but they (as students with critical insights) have not when they sit silently in class and do not raise the issues of race, gender, and class that scream from the cases. Her students said they do not critically raise these issues at the law school out of fear: fear that their mask of assimilation will be shed, fear the professor will get angry, fear they will not be liked at the predominantly White school. After she pushed them, hard, to critically consider any inconsistencies of the agenda for structural change they were placing on Justice Thomas with how they excuse themselves from this same agenda to focus, instead, on their personal agendas for economic mobility, she feared she went too far. However, in the next class, the students said that although the discussion inflicted pain, they needed that, and, by their accounts, that class session was the best of the semester and gave them much to think about. Kupenda, *(Re)sculpting a Movement*, *supra* note 145.

172. For instance, the White professor at the historically Black institution offers a graduate course entitled, *Civil Rights Law and Affirmative Action*, in which students are required to specifically address problems in issues surrounding affirmative action, voting rights, or

as critical citizens with common goals. Professors could use collaborative work and student group led sessions especially for larger classes. This gives students opportunities to engage each other critically, and not to see the professor as the sole authority or not to see her as pushing her own views on them.

## CONCLUSION

We are fortunate that social mobility has now become flexible enough that we now have the intellectual luxury of worrying about the consequences of focusing on this goal to the exclusion of developing critical citizens. If we hope to continue our expansion of democracy and have a meaningful rule by popular sovereigns we must concern ourselves as professors and as institutions with finding approaches to balancing this tension. Once it becomes part of our discourse, negotiating this tension will help us frame our understanding of the academy.

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employment discrimination. Students identify and demonstrate a specific problem in one of the above areas, suggest a change in statutory or constitutional language or interpretation to address the problem, demonstrate the potential amelioration of the problem due to the provided revision, and respond to potential critiques to their proposal found in the literature. The assignment is designed to equip students with the analytical research, writing, and presentation skills necessary for future success in graduate school and in employment, while simultaneously encouraging students to think beyond current social structures.