

NEW DIRECTIONS IN DISPUTE RESOLUTION
AND CLINICAL EDUCATION IN
RESPONSE TO THE COVID-19 PANDEMIC

INTRODUCTION: REENVISIONING COMMUNITY LAWYERING

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In early March of 2020, the World Health Organization (WHO) declared the novel coronavirus outbreak a global pandemic.¹ Perhaps not surprisingly, “the COVID-19 pandemic laid bare not only the social and racial inequities in society, but also the pedagogical and access to justice inequities embedded in the traditional legal curriculum.”² The pandemic highlighted the need to re-envision legal education, requiring innovation and perseverance from clinicians and dispute resolution faculty around the world to address both the societal and law school impacts of the pandemic with vision, fearlessness, and fortitude.

The authors in this volume document and explore innovative responses to the pandemic in domestic and international dispute resolution and clinical education; re-envision the tradition of community lawyering; and, hopefully, portend increased social justice awareness and transformation in legal education and practice in the future. These authors are at the forefront of innovative teaching, practice, and scholarship in these realms.

This volume, *New Directions in Dispute Resolution and Clinical Education in Response to the COVID-19 Pandemic*, continues a growing tradition of cutting-edge scholarship in the fields of clinical education and dispute resolution, published by the *Washington University Journal of Law and Policy*, in collaboration with the Washington University School of Law

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1. WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19, WORLD HEALTH ORG. (Mar. 11, 2020), [<https://perma.cc/RN3A-PZZR>].

2. Christian Sundquist, *The Future of Law Schools: Covid-19, Technology, and Social Justice*, 53 CONN. L. REV. 1 (2020).

Negotiation & Dispute Resolution Program and Clinical Education Program. During the past fifteen years, the *Journal* has become a leading publisher of scholarship on dispute resolution and clinical education and has published many important articles by top dispute resolution experts, clinicians, legal educators, and practitioners in these fields.³

This volume is the ninth in the *Journal's* series focused on new directions in dispute resolution and clinical education, which includes the following prior groundbreaking volumes: *New Directions in Clinical Education*;⁴ *New Directions in Dispute Resolution and Clinical Education*;⁵ *New Directions in Restorative Justice*;⁶ *New Directions in Negotiation and Dispute Resolution*;⁷ *New Directions in Global Dispute Resolution*;⁸ *New*

3. Practitioners and academics whose work addresses dispute resolution and/or clinical education previously published in the Journal (with apologies for unintended omissions) include Jane Aiken, Jess Alberts, Marilyn Peterson Amour, Jim Anaya, Margaret Martin Barry, Gordon Bazemore, Todd Berger, Warren Binford, Tamara Birkhead, Kristen Blankley, Beryl Blaustone, Frank Block, Brenda Bratton Blom, Juliet Brodie, Susan Brooks, Jennifer Gerarda Brown, Martha Brown, Deborah Burand, Bridgette Carr, James Cavallaro, Luke Cole, Kim Connolly, Nancy Cook, Charles Craver, Scott Cummings, Michael Diamond, Noam Ebner, Yael Efron, Kimberly Emery, Kenneth Feinberg, Sarah Jane Forman, Kenneth Fox, Lynda Frost, Diane Galatowitsch, Martin Geer, Michael Geigerman, Jeff Giddings, Toby Golick, Leigh Goodmark, Danny Greenberg, Elayne Greenberg, Martin Guggenheim, Maureen Hackett, John Haley, Carol Harding, Carolyn Copps Harding, Norrinda Brown Hayat, Kristin Henning, Randy Hertz, Bill Ong Hing, Art Hinshaw, Paul Holland, Carmen Heurtas-Noble, Elizabeth Hubertz, Carolyn Huertes-Noble, Emily Hughes, Jonathan Hyman, Carol Izumi, Eric James, Mike Jenuwine, Susan Jones, Peter Joy, Ann Juergens, Helen Kang, Catherine Klein, Amanda Kool, Kate Kruse, Robert Kuehn, Heather Kulp, Ved Kumari, Jacqueline Lainez, John Lande, Julie Lawton, Michelle, LeBaron, Janet Lessem, Wilma Liebmann, Leslie Levitas, Antoinette Sedillo Lopez, Rachel Lopez, Bobbi McAdoo, Angela McCaffrey, Kim McLaurin, Peggy Maisel, Mary Medcalf, Carrie Menkel-Meadow, Deborah Jones Merrit, Mary Anne Noone, Kimberly Jade Norwood, Charles Ogletree, Lola Akin Ojelabi, Michael Perlin, Jean Koh Peters, Carrie Petrucci, Alicia Plerhoples, Jeffrey Pokorak, Sharon Press, Bill Quigley, Mae Quinn, Asha Ramgobin, Spencer Rand, Jennifer Reynolds, Kathryn Rimpfel, Geetha Sant, Daniel Schaffzin, Mara Schiff, Dina Schlossberg, Maged Senbel, Sandra Simkins, Samuel Stragand, Paul Tremblay, Dina Schlossberg, Andrea Kupfer Schneider, Zachary Schmook, Sunny Schwartz, Robert Seibel, Ilene Seidman, Sandra Simkins, Abbe Smith, Brenda Smith, Stephen Sonnenberg, Jane Spinak, S.I. Strong, Nina Tarr, Tony Thompson, Karen Tokarz, Paul Trembley, Jeffrey Trueman, Mark Umbreit, Rose Voyvodic, Lode Walgrave, Mohammed Wattad, Ian Weinstein, Erika K. Wilson, Steve Wizner, and Brenda Waugh. All volumes of the Journal are freely available at <https://journals.library.wustl.edu/lawpolicy/>

4. Symposium, *New Directions in Clinical Education*, 28 WASH. U. J.L. & POL'Y 1 (2008).

5. Symposium, *New Directions in Dispute Resolution and Clinical Education*, 34 WASH. U. J.L. & POL'Y 1 (2010).

6. Symposium, *New Directions in Restorative Justice*, 36 WASH. U. J.L. & POL'Y 1 (2011).

7. Symposium, *New Directions in Negotiation and Dispute Resolution*, 39 WASH. U. J.L. & POL'Y 1 (2012).

8. Symposium, *New Directions in Global Dispute Resolution*, 45 WASH. U. J.L. & POL'Y 1 (2014).

Directions in Community Lawyering, Social Entrepreneurship, and Dispute Resolution;⁹ *New Directions in Public Policy, Clinical Education, and Dispute Resolution*,¹⁰ and *New Directions in Domestic and International Dispute Resolution*.¹¹ The *Journal* also has published a series of volumes entitled *Access to Justice*, several of which address dispute resolution, clinical education, and community lawyering.¹²

Prompted in part by the pandemic, but also increased social awareness and technological disruptions, the practice of law and legal education are changing in unexpected ways in the United States and around the world. New professional roles for lawyers and dispute resolution practitioners are evolving. Public interest lawyers, clinical faculty, and dispute resolution advocates like those featured in this volume, are increasingly engaged in diverse approaches to social change and public policy development through new and creative forms of advocacy and dispute resolution that bolster and sometimes replace traditional litigation.

Lawyers, clinicians, dispute resolution practitioners, and other advocates now rely upon a growing array of dispute resolution and lawyering processes, such as dialogue facilitation, situational assessment, conflict management, multi-party dispute resolution, and consensus building in governmental, non-governmental, and private organizations, and in legislative, regulatory, court, and enforcement arenas. Dispute resolution mechanisms that occur largely outside the courts (but, increasingly within the courts) that include negotiation, conciliation, ombuds, mediation, and arbitration have become the principal modes of legal dispute resolution in virtually every legal field and in virtually every country in the world.¹³

9. Symposium, *New Directions in Community Lawyering, Social Entrepreneurship, and Dispute Resolution*, 48 WASH. U. J.L. & POL'Y 1 (2015).

10. Symposium, *New Directions in Public Policy, Clinical Education, and Dispute Resolution*, 51 WASH. U. J.L. & POL'Y 1 (2016).

11. Symposium, *New Directions in Domestic and International Dispute Resolution*, 63 WASH. U. J.L. & POL'Y 1 (2020).

12. See generally 1, 4, 7, 10, 11, 12, 14, 16, 19, 20, 22, 25, 31, 37, 38 WASH. U. J.L. & POL'Y 1 (1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2011, 2012). All of these volumes can be accessed at <https://journals.library.wustl.edu/lawpolicy/>.

13. See, e.g., Karen Tokarz & V. Nagaraj, *Advancing Social Justice through ADR and Clinical Legal Education in India, South Africa, and the United States*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATION LAWYERS FOR SOCIAL JUSTICE* 253 (Frank Bloch ed., 2010).

Most law schools in the United States and elsewhere now offer multiple courses in dispute resolution and public policy, as well as increased clinical education offerings. Some law schools now require first-year students to take a problem-solving, negotiation, or dispute resolution course, such as Washington University (which requires Negotiation).¹⁴ Many law schools offer upper-level courses and clinics involving negotiation, mediation, community lawyering, and other forms of non-litigation advocacy. An increasing number of schools offer advanced domestic and international dispute resolution and clinical courses. Several law schools in both the domestic and international spheres have gone a step further—developing and requiring dispute resolution and public policy clinics and externships.

Not surprisingly, as you can see from each of the articles in this volume, the pandemic has prompted a resurgence of interest in community lawyering and community lawyering clinics, sometimes referred to as rebellious lawyering, collaborative lawyering, or movement lawyering. For some law schools, it has prompted a structural reversion to community-based clinics, like the legal services programs from which a host of early clinical law teachers came. At that time, law school clinics were often located on urban streets in client communities. Like those featured in this volume, community lawyers engage in multi-pronged and diverse forms of advocacy, collaborating regularly with other professionals from other disciplines and partnering holistically with client communities, increasingly relying on dispute resolution approaches to problem solving.¹⁵

Community lawyering scholarship is a broad umbrella, rooted in the pioneering work of Gary Bellow and the later writing on progressive lawyering of Gerald López and Lucie White. Bellow spoke of “political lawyering.”¹⁶ López termed it “rebellious lawyering.”¹⁷ White called it

14. *JD Requirements*, WASH. U. IN ST. LOUIS SCH. L., <https://law.wustl.edu/academics/jd-requirements/#first-year-courses> [https://perma.cc/Y6BS-XKH8].

15. Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on “Community Lawyering”*: *The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359, 401 (2008).

16. Gary Bellow, *Steady Work: A Practitioner’s Reflection on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 297 (1996); Gary Bellow, *Legal Aid in the United States*, 14 CLEARINGHOUSE REV. 337 (1980); Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in *CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING* (1973).

17. GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Symposium, *Rebellious Lawyering*, 23 CLINICAL L. REV. 25 (2016-17).

“collaborative lawyering,”¹⁸ a term also embraced by others.¹⁹ Community lawyering goes by different names and takes different forms. Some call it “movement lawyering” or “poverty lawyering” and emphasize its goal of addressing ongoing and pervasive economic marginalization. Some call it “facilitative lawyering” and note the importance of the authenticity of the engagement with the community, while others highlight its “holistic” or “multi-disciplinary” lawyering aspects. Others call it “law in the service of organizing,” while others refer to it as “campaign-based lawyering” or “integrative lawyering.”²⁰

In sum, community lawyering is “an approach to the practice of law and advocacy that centers on building and sustaining relationships with clients, over time, in context, as a part of and in conjunction with communities. It incorporates a respect for clients that empowers them and assists them in the larger economic, political, and social contexts of their lives, beyond their immediate legal problems.”²¹ This approach, like others emerging post-pandemic around the world, contemplates significantly new and different roles for lawyers, clinical faculty, and dispute resolution advocates and for those teaching about law and lawyering.

Many legal educators believe dramatic curricular reforms are essential if we are to prepare graduates to practice in a legal world in which lawyers are equipped to resolve disputes more fairly and efficiently, to influence law and public policy inside and outside the courtroom, and to cope with social justice crises like the pandemic. Both new and experienced law faculty, including those whose work is featured in this volume, are committed to a better understanding of conflict and conflict resolution in all sectors of legal practice; the teaching and practice of dispute resolution, social change, and public policy development; and the preparation of creative, competent, ethical lawyers. Like others across the country and the world, dispute resolution and clinical faculty are reexamining what has been taught for

18. Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths From Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994).

19. Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 441 (2000) (highlighting the parallels among “critical lawyering theory,” “new poverty law scholarship,” “representational narrative scholarship,” “reconstructive poverty law,” “the theoretics of practice movement,” “political lawyering,” “community lawyering,” and “collaborative lawyering,” the term he prefers because of its emphasis on a problem-solving partnership with clients).

20. *Id.*

21. Tokarz et al., *supra* note 15, at 364.

many years, and rethinking what is and is not, what can and cannot be, and what should or should not be taught about law, justice, dispute resolution, advocacy, and public policy.

This volume contains essays and articles addressing pressing public policy and process concerns, directly or indirectly connected to the pandemic, authored by prominent faculty and practitioners engaged in domestic and international dispute resolution and clinical education. Each piece draws upon the authors' experiences with individuals, communities, and the public at large in advocating for increased social justice and public policy reforms. In our view, the scholarship in this volume is a superb example of why dispute resolution and clinical scholarship is important to improvements in law and justice; why faculty in these areas should and must publish; and how this work significantly and uniquely benefits the academy, the legal profession, and societies all over the world.

Of the eight articles in this volume, the first four focus primarily on COVID-19 precipitated transformations in the world of dispute resolution and the latter four highlight new innovations in the world of clinical education, with various overlaps as to philosophy and values among the articles. We extend thanks and appreciation to all who contributed to this important, groundbreaking volume—*New Directions in Dispute Resolution and Clinical Education in Response to the COVID-19 Pandemic*.

The first dispute resolution article in the volume, *Mediating Parenting Solutions in the Age of Technology*, is authored by Anna deDufour, Karlee M. Naylor, and Karen A. Lash. To assess the role of increased virtual mediation alongside in-person and phone mediation options in the world of parenting disputes, a research team including the authors conducted a case study of M.A.R.C.H. Inc. (Mediation Achieving Results for Children), a Missouri mediation program run in collaboration with the Missouri Division of Social Services, that helps parents resolve disputes around custody, access and visitation, and child support. The study findings illustrate the benefits of providing parties and mediators with a range of options for communication to improve accessibility, outcomes, and levels of satisfaction. The authors assert that continued program evaluation and evidence-informed practices will enable administrators and practitioners to

maximize the benefits of online dispute resolution; identify and manage obstacles; and ensure the equitable, ethical application of technology in the family court system.

In the second dispute resolution piece, *Justice for All in Mediation: What the Pandemic, Racial Justice Movement, and the Recognition of Structural Racism Call Us to Do as Mediators*, Isabelle R. Gunning takes a deep look at the disparate impact of the pandemic on poor and Black communities, including higher rates of infection and serious health complications, including death, and the disproportionately negative impacts on the financial and mental health of these communities. Focusing on mediation and mediation-related processes, specifically dialogue, which are led by a third-party neutral without any power to impose a solution on the parties, she concludes that those in the dispute resolution field are not untouched by systemic racism and need to be cognizant of the negative impacts embedded in the structures of the mediation processes. She argues that the dispute resolution community should take a special role in this time of “racial reckoning” and advocates a commitment to the transformation of dispute resolution processes by using a robust and contemporary view of “restorative justice,” looking at justice at both the individual and societal levels.

The next dispute resolution article in the volume, *Just Diversion: Designing Eviction Mediation to Address Incentives and Inequities*, is authored by Deanna Pantín Parrish. The ideas for the article grew from a collaborative project between the Harvard Dispute Systems Design Clinic and the American Bar Association, in which the author was involved, which assessed model eviction prevention programs for low-income renters and produced recommendations for best practices and replicable models. She notes that while federal intervention during the earlier mortgage foreclosure crisis incentivized parties to participate in foreclosure mediation programs, eviction mediation programs have not benefited from equivalent federal intervention during the current crisis. Using a dispute system design approach, she suggests options for how eviction mediation programs can “deliver justice” and enhance housing stability with programs tailored to increase incentives for landlords, lower stakes for tenants, calibrate power inequities between the parties, and safeguard mediation and mediators from miscarrying justice.

In the fourth piece focused on dispute resolution, *In the Shadow of the Pandemic: Unearthing Unequal Justice Vis-à-vis Dispute Resolution*, Sukhsimranjit Singh explores how the COVID-19 pandemic has unearthed unequal access to dispute resolution opportunities for racial and cultural minorities. The author connects his own research with a larger question: how has the pandemic unearthed deep structural imbalances in access to privilege due to economic inequalities for racial and cultural minorities? Among other suggestions, he concludes with an endorsement of legislation that would incentivize mediators to provide pro bono or reduced rate mediation services.

The first of the four clinical articles, *From Pandemic to Pedagogy: Teaching the Technology of Lawyering in Law Clinics*, is authored by Sarah R. Boonin and Luz E. Herrera. The authors note that law school clinical programs, straddling the worlds of legal education and legal practice, almost universally deployed technology to transform their pedagogy and practices in the middle of the current pandemic, adopting both online instruction and remote legal service delivery. Through a survey of over one hundred law schools, they document and assess the impact of increased technology on teaching and practice. In their piece, they highlight ways to thoughtfully integrate law practice technology into existing clinical pedagogy and practice. They conclude with a call for clinicians to build on the momentum and embrace “the technology of lawyering” as an indispensable component of progressive clinical education in the future.

The next of the clinical articles is *Teaching About Justice by Teaching with Justice: Global Perspectives on Clinical Education and Rebellious Lawyering*, co-authored by cadre of clinicians from around the world: Catherine F. Klein, Richard Roe, Mizanur Rahman, Dipika Jain, Abhayraj Naik, Natalia Martinuzzi Castilho, Taysa Schiocchet, Sunday Kenechukwu Agwu, Olinda Moyd, Bianca Sukrow, and Christoph König. The piece captures and reflects the content of five presentations at the 2021 Global Alliance for Justice Education (GAJE) biannual gathering, conducted virtually due to the pandemic, with over 450 participants from 45 countries.

The piece illuminates many themes and issues in the teaching and practice of transformational justice and community lawyering as observed and lived by a number of law school faculty and their students around the world. The article includes faculty who are involved in an ongoing critique of legal education and the theories that drive it. The authors share

illustrations of some experiments and articulate some of the important and fundamental questions about how best to teach about justice by teaching with justice and the legal impact this teaching can engender. The authors emphasize the dynamic, ongoing reflection and experimentation needed to truly embrace being a rebellious, transformative lawyer (or rebellious, transformative law teacher) and challenge clinicians and legal educators to embrace systemic—even radical—change in their lawyering and in the methodology to teach and achieve justice.

The third clinical piece, *A Holistic Approach to Eviction Prevention During the COVID-19 Pandemic: Challenges and Opportunities for the Future*, is authored by Sara Gold, Toby Treem Guerin, and Kerri McGowan Lowrey. The authors note that many people have suffered a loss of income during the COVID-19 pandemic, and many low-income renters are unable to pay rent to their landlords. Tenants without the ability to pay rent feared and faced eviction, and many lacked representation and were unaware of the law available to them. Anticipating a greater need for legal and social services, four clinics within the University of Maryland (UMB) Carey School of Law’s Clinical Law Program joined forces in collaboration with the UMB School of Social Work to launch the Eviction Prevention Project (EPP), a holistic, interdisciplinary, trauma-informed intervention through which clinical law students and social work students, working under faculty supervision, educated, advised, counseled, and represented low-income clients in two of Maryland’s largest jurisdictions. The article describes the EPP model within the context of clinical legal education and shares insights about lessons learned after the EPP’s inaugural year for other programs seeking to do similar work.

The fourth clinical piece and final piece in the volume is *Transactional Clinical Support for Mutual Aid Groups: Toward a Theory of Transactional Movement Lawyering*, by Michael Haber. According to the author, in response to the global spread of the COVID-19 pandemic in the spring and summer of 2020, thousands of grassroots, participatory, and often social movement-connected community efforts to help feed and care for one another through the crisis were launched, many of which identified their projects as “mutual aid.” In the vein of community lawyering, mutual aid is generally assumed to: (1) work to meet people’s basic needs while simultaneously building shared political understandings about why people do not already have those basic needs met; (2) mobilize people, encourage

community solidarity, and help build and expand social movements; and (3) incentivize collective and participatory community leadership, not reliant on managers or “saviors” for direction. The article highlights the work the Hofstra Law School Community Economic Development Clinic has done to provide legal support and information to hundreds of COVID-19 mutual aid projects as a form of “movement lawyering,” exploring some potential affinities between community economic development practice and movement lawyering.