

NEW DIRECTIONS IN DISPUTE RESOLUTION AND CLINICAL EDUCATION IN THE POST-PANDEMIC WORLD

INTRODUCTION

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The post-pandemic world portends significantly new and different roles for lawyers, dispute resolution advocates, and those teaching about law and lawyering. This also is a unique moment in time to re-envision legal education and legal practice. “The COVID-19 pandemic has 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.”¹ Along these lines, after two years of consideration, the American Bar Association (“ABA”) House of Delegates in spring 2022 responded with the adoption of a package of revisions to the ABA law school accreditation standards, requiring that law schools “shall provide substantial opportunities for . . . the development of a professional identity”² and “shall provide education to law students on bias, cross-cultural competency, and racism at the start of the program of legal education, and at least once again before graduation.”³ Law schools are required to have plans to comply with the revised standards for incoming first-year students by fall of 2023. And, set to debut in July 2026, the NextGen bar exam will test a broad range of foundational lawyering concepts and skills, incorporating new focuses on

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

2. STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCHS., STANDARD 303(B) (AM. BAR. ASS’N 2022).

3. STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCHS., STANDARD 303(C) (AM. BAR. ASS’N 2022).

client counseling and advising, negotiation, and dispute resolution theory and practice.⁴

Addressing the impacts of the pandemic, incorporating the new ABA standards, and preparing for the new bar exam demand attention and perseverance from law school faculty, including clinicians and dispute resolution academics, to address these issues with vision, fearlessness, and fortitude. The authors in this volume document and explore recent innovative developments in dispute resolution and clinical education and potential transformations in legal education and legal practice for the future. These authors are at the forefront of innovative teaching, practice, and scholarship in the post-pandemic world.

Published by the *Washington University Journal of Law and Policy* (“Journal”), in collaboration with the Washington University School of Law Negotiation & Dispute Resolution Program, this volume, *New Directions in Dispute Resolution and Clinical Education in the Post-Pandemic World*, continues a growing tradition of cutting-edge scholarship in the fields of clinical education, dispute resolution, and access to justice. Over the past fifteen years, the *Journal* has become a leading publisher of scholarship on dispute resolution, clinical education, and access to justice, and has published many important articles by over 150 top dispute resolution experts, clinicians, legal educators, and practitioners.⁵

4. NextGen Bar Exam of the Future, National Bar Examiners, nextgenbarexam.ncbex.org

5. Academics and practitioners whose work addresses dispute resolution and/or clinical education previously published in the *Journal* (with apologies for unintended omissions) include Sunday Keneechukwu Agwu, 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, Sarah Boonin, Juliet Brodie, Susan Brooks, Jennifer Gerarda Brown, Martha Brown, Deborah Burand, Catherine Greene Bumett, Bridgette Carr, Natalia Martinuzz Castilho, James Cavallaro, Luke Cole, Kim Diana Connolly, Nancy Cook, Charles Craver, Scott Cummings, Michael Diamond, Anna deDufour, Noam Ebner, Yael Efron, Kimberly Emery, Kenneth Feinberg, Sarah Jane Forman, Kenneth Fox, Lynda Frost, Diane Galatowitsch, Martin Geer, Michael Geigerman, Jeff Giddings, Sara Gold, Toby Golick, Leigh Goodmark, Danny Greenberg, Elayne Greenberg, Toby Treem Guerin, Martin Guggenheim, Isabelle Gunning, Michael Haber, Maureen Hackett, John Haley, Carol Harding, Carolyn Copps Harding, Norrinda Brown Hayat, Kristin Henning, Luz. E. Herrera, Randy Hertz, Bill Ong Hing, Art Hinshaw, Paul Holland, Carmen Heurtas-Noble, Elizabeth Hubertz, Carolyn Huertes-Noble, Emily Hughes, Jonathan Hyman, Carol Izumi, Dipika Jain, Eric James, Mike Jenuwine, Susan Jones, Peter Joy, Ann Juergens, Helen Kang, Catherine F. Klein, Christoph Konig, Amanda Kool, Kate Kruse, Robert Kuehn, Heather Kulp, Ved Kumari, Jacqueline Lainez, John Lande, Karen A. Lash, Julie Lawton, Michelle, LeBaron, Janet Lessem, Wilma Liebmann, Leslie Levitas, Antoinette Sedillo Lopez, Rachel Lopez, Kerri McGowan Lowrey, Bobbi McAdoo, Angela McCaffrey, Kim McLaurin, Peggy Maisel, Mary Medcalf, Carrie Menkel-Meadow, Deborah Jones Merrit, Olinda Moyd, Abhayraj Naik, Karlee M.

This volume is the tenth in this series, which includes the following prior groundbreaking volumes: *New Directions in Clinical Education*;⁶ *New Directions in Dispute Resolution and Clinical Education*;⁷ *New Directions in Restorative Justice*;⁸ *New Directions in Negotiation and Dispute Resolution*;⁹ *New Directions in Global Dispute Resolution*;¹⁰ *New Directions in Community Lawyering, Social Entrepreneurship, and Dispute Resolution*;¹¹ *New Directions in Public Policy, Clinical Education, and Dispute Resolution*;¹² *New Directions in Domestic and International Dispute Resolution*;¹³ and *New Directions in Dispute Resolution and Clinical Education in Response to the COVID-19 Pandemic*.¹⁴ The *Journal* also has published a series of volumes entitled *Access to Justice*, several of which address dispute resolution, clinical education, and community lawyering.¹⁵

Naylon, Mary Anne Noone, Kimberly Jade Norwood, Charles Ogletree, Lola Akin Ojelabi, Deanna Pantin Parrish, Michael Perlin, Jean Koh Peters, Carrie Petrucci, Alicia Plerhoples, Jeffrey Pokorak, Sharon Press, Bill Quigley, Mae Quinn, Mizanur Rahman, Asha Ramgobin, Spencer Rand, Jennifer Reynolds, Kathryn Rimpfel, Richard Roe, Geetha Sant, Daniel Schaffzin, Mara Schiff, Taysa Schiocchet, 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, Sukhsimranjii Singh, Abbe Smith, Brenda Smith, Stephen Sonnenberg, Jane Spinak, S.I. Strong, Bianca Sukrow, 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/>

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

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

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

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

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

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

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

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

14. Symposium, *New Directions in Dispute Resolution and Clinical Education in Response to the COVID-19 Pandemic*, 63 WASH. U. J.L. & POL'Y 1 (2022).

15. 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/>.

New professional identities and responsibilities for lawyers and dispute resolution practitioners are evolving, requiring enhancements in legal education. Public interest lawyers, clinical faculty, and dispute resolution advocates like those featured in this volume, are increasingly engaged in diverse approaches to legal education and practice, in large part 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, 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.¹⁶

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.¹⁷ Many law schools offer upper-level courses and clinics involving negotiation, mediation, community lawyering, and other forms of non-litigation advocacy. Several law schools in both the domestic and international spheres have gone a step further by developing and requiring dispute resolution and public policy clinics and externships.

Not surprisingly, as you can see from the articles in this volume, the pandemic and accompanying impacts on legal education have prompted a revisioning of experiential pedagogy and curriculum, an increase in the number of mediation and other dispute resolution clinics and courses, and an increase in interdisciplinary clinics and courses. Many of the new dispute resolution clinics are community-based and/or partnered with community-

16. 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).

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

based legal providers, such as the legal services programs from which a host of early clinical law teachers came.¹⁸ And, many of these new clinics are interdisciplinary in which faculty and students collaborate regularly with other professionals from other disciplines and partner holistically with client communities.

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 both domestically and internationally, dispute resolution and clinical faculty are reexamining what has been taught for 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 both pressing curricular and pressing public policy and process concerns, directly or indirectly connected to the pandemic, authored by prominent faculty and practitioners engaged in 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 curricula 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.

The eight articles in this volume focus on transformations and highlight new innovations in the world of dispute resolution and clinical education, with various overlaps as to philosophy and values among the articles. We

18. See, e.g., Karen Tokarz, *Introduction: Revisioning Community Lawyering*, 68 WASH. U. J.L. & POL'Y I, (2022); Karen Tokarz, Antoinette Sedillo-Lopez, Peggy Maisel, Robert Seibel, *Legal Education at a Crossroads*, 43 WASH. U. J.L. & POL'Y 11 (2014); 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 (2008).

extend thanks and appreciation to all who contributed to this important, groundbreaking volume—*New Directions in Dispute Resolution and Clinical Education in the Post-Pandemic World*.
