

FOLLOWING TRANSFORMATION'S THREAD: REFLECTIONS ON THE CITIZEN-LAWYER AS TRANSFORMATIVE AGENT

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INTRODUCTION

In 2009, Association of American Law Schools (AALS) President Rachel Moran selected “Transformative Law” as the theme for her year in office. That theme defined three Presidential Programs¹ conducted at the annual meeting in New Orleans and influenced the content of many section programs, including the section proceedings this symposium volume reflects.² President Moran developed her theme in a Presidential Address and in three President’s Messages that she authored throughout the year. In her Address, Professor Moran conveyed her vision of transformative law and identified the citizen lawyer as its architect.³ In the subsequent Messages, she explored three domains within the legal academy in which transformative law can be expressed—experiential learning,⁴ scholarship,⁵ and classroom teaching.⁶

The principal goal of this Essay is to take up Professor Moran’s concepts of

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1. The Presidential Programs were entitled “Transformative Scholarship,” “Transformative Teaching and Institution-Building,” and “Transformative Advocacy.” Information about the topics, speakers, and goals of each Program can be found in many places in the AALS archives, including August 2009 AALS Newsletter, AALSNEWS (Association of American Law Schools, Washington, D.C.), Aug. 2009, at 8, available at <http://www.aals.org/documents/newsletter/august2009.pdf>.

2. At the 2010 annual meeting, the Section on Real Estate Transactions and the Section on Property Law took up Professor Moran’s theme in a co-sponsored program entitled “Law as Transformative Agent: Thinking and Doing Property in New Categories.” Program speakers and their topics are detailed in the *Introduction* to this symposium volume. I had the privileged of chairing the Section on Real Estate Transactions from early 2009 through the 2010 meeting.

3. Rachel Moran, *The President’s Message*, AALSNEWS (Association of American Law Schools, Washington, D.C.), Mar. 2009, at 1-2, available at <http://www.aals.org/documents/newsletter/march2009newsletter.pdf> [hereinafter Moran, *The President’s Message*].

4. Rachel Moran, *Transformation and Training in the Law: Serving Clinical Legal Education’s Two Masters*, AALSNEWS (Association of American Law Schools, Washington, D.C.), May 2009, at 1, available at <http://www.aals.org/documents/newsletter/april2009newsletter.pdf>.

5. Rachel Moran, *Transformative Scholarship: Legal Academic Knowledge for What?*, AALSNEWS (Association of American Law Schools, Washington, D.C.), Aug. 2009, at 1, available at <http://www.aals.org/documents/newsletter/august2009.pdf> [hereinafter Moran, *Transformative Scholarship*].

6. Rachel Moran, *Transformative Teaching: From the Classroom to the Culture*, AALSNEWS (Association of American Law Schools, Washington, D.C.), Nov. 2009, available at <http://www.aals.org/documents/newsletter/novembernewsletter09.pdf> [hereinafter Moran, *Transformative Teaching*].

transformative law and citizen-lawyer and follow the thread that leads out from them.⁷ The point of departure for this Essay is the premise that “transformative law” is not self-actualizing; instead, transformation is a process accomplished via an agency. This is the reason that, in addition to identifying *what* transformative law is (law that fulfills social monitoring and reformation functions), Professor Moran also identifies *who* fills the agency role (the citizen-lawyer). Furthermore, Professor Moran explains *why* law professors should participate in transformative law (preserve cherished civic values) and nurture citizen-lawyers (promote moral agency).

Those are laudable accomplishments, especially given the brevity imposed by the media of address and newsletter. Still, two topics prompt further elaboration. The first is *how* does the desired transformation occur; what is the process by which “people who happen to be lawyers” become citizen-lawyers and agents for transformative law? The second topic is *how* might transformation affect the way we identify and respond to legal issues and the way we teach. Following those threads is the task of the four Parts of this Essay.

I propose in Part I that, although the intended object of transformative law may be the reformation of civic and legal structures, the process of social transformation involves and depends on a preceding transformation of personal ethic. Stated less formally, the *how* of citizen-lawyer formation involves a transformation of the way one defines those acts that are appropriately taken in the world. Furthermore, the transformation of ethic involves a transformation of epistemology. Again stated less formally, the *how* of citizen-lawyer formation involves a transformation in the way one acquires knowledge about the world and orients oneself to it. This two-stage transformation is necessary because an ethic that promotes “the common good,” which Professor Moran invokes as a guiding principle of transformative law, requires a relational understanding of the world. An epistemology based on individualism will not support the same ethic as one that acknowledges social and historical connectedness.

In Part II, I first propose that the ethical and epistemological grounding characteristic of the citizen-lawyer significantly impacts the way we understand social issues and seek reform, which is to say our process of inquiry. Specifically, the locus of investigation and ideas for reform may be found to lie much more with non-lawyers—including the poor, uneducated, and marginalized persons in our society—than many are accustomed to believe. To the extent this is true, the process of detached analysis and therapeutic-model response will, at a minimum, come to be complemented by an experientially informed analysis and an accompaniment-model response.⁸ Subsequently, I consider the impact

7. Additional goals include lending support for Professor Moran’s vision and providing sources that like-minded persons might find useful or that skeptics might choose to consult. Professor Moran’s ideas obviously stand on their own; I am responsible for all extrapolations.

8. The terms “therapeutic model” and “accompaniment model” come from the field of urban revitalization and are often used to differentiate social services and economic development initiatives from community organizing and community development. The former two approaches are called therapeutic because they frequently involve a professional-client relationship and reflect

that a relational understanding of the world can have on the way we promote—or hinder—our students' moral agency

In Part III, I introduce the ideas that civic participation has the potential to awaken a sense of shared responsibility for social ills and to promote reconciliation. The Essay concludes in Part IV by linking civic participation to social progress and to democratic governance.

Following Professor Moran's endorsement of "insights from cognate disciplines,"⁹ the reflections in this Essay draw from authors in the fields of sociology, theology, and community organizing. Despite the cited authors' widely varying perspectives, their writings are mutually reinforcing and have explanatory power.¹⁰

I. CIVIC PARTICIPATION: A FIRST PRINCIPLE OF TRANSFORMATIVE LAW

A. *The Transformation Process: Recovering a Social Ethic*

At the heart of Professor Moran's vision of the citizen-lawyer is participation in civic affairs, which means active engagement in matters that focus on the common good. The contemporary professional ethos she seeks to displace is one where individual concerns dominate and where lawyers become "passive tools" and "mere captives of [their] clients' interests."¹¹ The ethos she seeks to resurrect is one in which citizen-lawyers "take responsibility for the integrity of our society's legal framework"¹² and understand that their professional role includes "building the nation."¹³ In a prior era, she asserts, such citizen-lawyers conducted "campaigns for change" in which the law "became a powerful tool to challenge and reconfigure social institutions."¹⁴ In short, active participation in civic affairs was once the means by which transformative law was realized, and it needs to serve that function again.

If the ethos of civic participation is in danger of being lost, understanding the cause may both help us reverse the trend and appreciate what it is about participation that makes it transformative. Alexis de Tocqueville noted that an important part of the American civic and personal character in the nineteenth century was our ancestors' propensity to "constantly form associations."¹⁵ He

an orientation in which solutions are developed outside of the community and transported into it. The latter two approaches are called accompaniment because they seek a partnering relationship in which neighborhood resources are built up and directed outward at the causes of social ills.

9. Moran, *Transformative Scholarship*, *supra* note 5, at 2.

10. One need not agree with the political or theological views of any of the cited authors to acknowledge the validity of his or her sociological conclusions.

11. Moran, *Transformative Teaching*, *supra* note 6, at 1.

12. *Id.*

13. Moran, *The President's Message*, *supra* note 3, at 10.

14. *Id.*

15. 2 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 106 (Alfred A. Knopf, Inc. 1972) (1835, 1840).

observed that “Americans of all ages, all conditions, and all dispositions” formed “not only commercial and manufacturing [associations]” but also “associations of a thousand other kinds, religious, moral, serious, futile, general or restrictive, enormous or diminutive.”¹⁶ He concluded that participation in civic associations had the benefit of “unit[ing] into one channel the efforts of divergent minds and urg[ing] them vigorously towards the one end to which it clearly points out.”⁷¹ Tocqueville so admired nineteenth century Americans’ participation in associations that he claimed “[t]here is no end which the human will despairs of attaining through the combined power of individuals united into a society.”¹⁸

Assuming the truth of these observations, the question becomes what happened to that propensity to participate. One explanation points to the emergence of our bureaucratic society. Sociologists describe a shared experience of many Americans in which decisions that most directly affect their lives are controlled by impersonal organizations and by invisible or unapproachable people. Tocqueville, ever aware of threats to liberty, concluded that civic participation “limit[s] the despotic proclivities of government.”¹⁹ Given the breadth of the regulatory and bureaucratic network that dominates life in contemporary America, this proclivity may now be most potently expressed in “tendency toward administrative despotism.”²⁰ Such feelings of powerlessness take a heavy toll on civic participation.

A second explanation offered for the decline in civic participation is the ascendancy of a culture of individualism. Although individualism is a multifaceted topic with multiple sources and expressions, one way to understand it is as a response to “the scale and complexity of modern society.”²¹ Robert Bellah and his colleagues note that individualism “disposes each citizen to isolate himself from the mass of his fellows and withdraw into the circle of family and friends; with this little society formed to his taste, he gladly leaves the greater society to look after itself.”²² As a result, “the associational life of the modern metropolis does not generate the kinds of second languages of social responsibility and practices of commitment to the public good”²³ that Tocqueville found in such abundance.

One response offered to counteract the sense of powerlessness produced by

16. *Id.*

17. 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 192 (Alfred A. Knopf, Inc. 1972) (1835, 1840).

18. *Id.*

19. ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 212 (1996) [hereinafter BELLAH ET AL., *HABITS OF THE HEART*].

20. *Id.*

21. ROBERT N. BELLAH ET AL., *THE GOOD SOCIETY* 135 (1992) [hereinafter BELLAH ET AL., *THE GOOD SOCIETY*].

22. BELLAH ET AL., *HABITS OF THE HEART*, *supra* note 19, at 37 (quoting ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 506 (George Lawrence trans., J.P. Mayer ed. 1969) (1835, 1840)).

23. *Id.* at 177.

dominating and unapproachable social structures is to promote the formation of mediating structures. Mediating structures are “those institutions standing between the individual . . . and the large institutions of public life.”²⁴ These structures reinsert a human scale to social life and return some degree of control to individuals. In addition, because mediating structures must be populated with participating citizens, they implicate a second response to social passivity—subsidiarity. According to the principle of subsidiarity, “power should devolve on the lowest, most local level at which decisions can reasonably be made”²⁵ and be made by those persons who are most directly affected.

It is in this re-assumption of responsibility and this re-assertion of power through civic involvement that the process personal transformation begins. People who participate in civic endeavors necessarily assume responsibility for social issues. According to Bellah, “involvement in public affairs is the best antidote to the pernicious effects of individualistic isolation: ‘Citizens who are bound to take part in public affairs must turn from the private interests and occasionally take a look at something other than themselves.’”²⁶ These “habits and practices” of democratic participation “educate the citizen to a larger view than his purely private world would allow.”²⁷

Even if “[i]t was, in the first place, individual self-interest that led residents . . . to get involved”—sometimes for transparently selfish motives—Bellah observes that “the experience of local self-government transformed them [and] gave them an understanding of public responsibility that transcended individual interest.”²⁸ Tocqueville drew a similar conclusion about civic participation in the form of jury service when he wrote that “[b]y obligating [people] to turn their attention to other affairs than their own, [jury service] rubs off that private selfishness which is the rust of society.”²⁹ Civic participation thus leads to a redefinition of the actions one deems appropriate in the world.

The process of transformation can be explained in large part, but not completely, by the displacement of an individualistic ethic in favor of a broader social ethic. There remains an additional and important feature—civic participation is self-reinforcing. Based on field interviews of Americans who had become involved in civic organizations in one form or another, Bellah concludes that “[t]hrough active involvement in common concerns,” citizens become

24. William H. Droel, *Foreword to* GREGORY F. AUGUSTINE PIERCE, *ACTIVISM THAT MAKES SENSE: CONGREGATIONS AND COMMUNITY ORGANIZATION* 1 (1984).

25. BELLAH ET AL., *THE GOOD SOCIETY*, *supra* note 21, at 135. Subsidiarity does recognize a role for larger public institutions, with “the function of the larger unit being to support and assist the local body in carrying out its tasks.” *Id.* Specifically, subsidiarity includes the obligation of “higher-level associations such as the state . . . to help when the lower-level associations lack resources to do the job alone.” *Id.* at 262.

26. BELLAH ET AL., *HABITS OF THE HEART*, *supra* note 19, at 38 (quoting DE TOCQUEVILLE, *supra* note 22, at 508).

27. *Id.*

28. *Id.* at 168.

29. 1 DE TOCQUEVILLE, *supra* note 17, at 285.

engaged in “forums in which opinion can be publically and intelligently shaped and *the subtle habits of public initiative and responsibility learned and passed on.*”³⁰ Furthermore, “the experience of getting involved in local voluntary civic associations *is itself directly capable of generating a sense of responsibility for the public good.*”³¹ This finding is good news for the recovery and preservation of the “second-languages of social responsibility and practices of commitment to the public good”³² that are starved by “the associational life of the modern metropolis.”

B. The Transformation Process: Uncovering A Social Epistemology

The transformation that results from civic participation goes even deeper than a recovery of a social ethic; a transformation in epistemology also occurs. Parker Palmer lays out the relationship between ethic and epistemology with refreshing clarity. Palmer’s definition of epistemology—the “inquiry into the dynamics of knowing”³³—makes the topic one of interest for all in the legal profession and of special importance to members of the legal academy. Palmer describes the relationship between ethic and epistemology as follows: “The way we interact with the world in knowing it becomes the way we interact with the world as we live in it. . . . To put it in somewhat different terms, our epistemology is quietly transformed into our ethic.”³⁴ Said more fully:

[T]he patterns of epistemology can help us decipher the patterns of our lives. Its images of the knower, the known, and their relationship are formative in the way an educated person not only thinks but acts. The shape of our knowledge becomes the shape of our living; the relation of the knower to the known becomes the relation of the living self to the larger world.⁵³

The converse is, I submit, also true. Our ethic, once stretched by civic participation can quietly transform our epistemology.

According to Bellah, “[individualists] form the habit of thinking of themselves in isolation and imagine that their whole destiny is in their hands.’ Finally, such people come to ‘forget [not only] their ancestors,’ but also their descendants, as well as isolating themselves from their contemporaries.”³⁶ Based on an atomized view of the world, individualists do not consider themselves “a part of a larger social and historical whole.”³⁷ However, the transformation in

30. BELLAH ET AL., *HABITS OF THE HEART*, *supra* note 19, at 38 (emphasis added).

31. *Id.* at 168 (emphasis added).

32. *See supra* note 23.

33. PARKER J. PALMER, *TO KNOW AS WE ARE KNOWN: A SPIRITUALITY OF EDUCATION* 21 (1983).

34. *Id.*

35. *Id.*

36. BELLAH ET AL., *HABITS OF THE HEART*, *supra* note 19, at 37.

37. *Id.* at 194.

ethic that accompanies one's civic participation effects a corresponding transformation in the way one views the world and knows truths about the world. Atomization gives way to interconnectedness, as we come to see ourselves as impacted by—and impacting—others. Further, this process involves our associations. Just as “in our [interpersonal] life with other people we are engaged continuously . . . in creating and re-creating the institutions that make life possible,”³⁸ so too is our relationship with associations mutually creative as “while we in concert with others create institutions, they also create us.”³⁹

The ramifications of this transformation are sweeping, for when we come to know the world as an interconnected whole we come to see ourselves as *a part of* society rather than *apart from* it. Furthermore, when we come to know the world as temporally connected we must then acknowledge our dependence on the decisions made by those who came before us as well as the stewardship responsibility we have for those who will come after us. Professor Moran points to this epistemology of social interconnectedness when she asserts that a true legal professional “puts disputes in context by acknowledging the multiple interests at stake” and “takes the long view in advising clients.”⁴⁰

This two-stage development—where an ethic of social awareness formed in civic participation in turn forms an epistemology of connectedness—explains much about the formation of citizen-lawyers.

II. CIVIC PARTICIPATION: INSIGHTS FOR INQUIRY & TEACHING

A. Relational-Based Inquiry

Even though the ethical and epistemological shifts that result from civic participation are important for all legal professionals, the implications are especially important to legal scholars, for whom “knowing” is a defining characteristic and endeavor. It is perhaps worth noting at the outset that the intent of this section is not to claim exclusive validity for one form of inquiry or one form of knowing. The intent, however, is to call attention to the advantages of “relational knowing,” to assert its validity, and to encourage its use. This discussion begins with Palmer's idea that the “images of the knower, the known, and their relationship are formative in the way an educated person not only thinks but acts.”⁴¹ The key to this important phrase lies in the word “relationship.” How do, or should, the knower and the known relate to each other?

For Palmer, the error in contemporary scholarship is the “estrangement and alienation”⁴² of the knower and the known, which he labels “objectivism.”⁴³

38. BELLAH ET AL., *THE GOOD SOCIETY*, *supra* note 21, at 11.

39. *Id.* at 12.

40. Moran, *The President's Message*, *supra* note 3, at 12.

41. PALMER, *supra* note 33, at 21 (emphasis added).

42. *Id.* at 26.

43. *Id.* at 25-32. Palmer treats objectivism as the defining characteristic of “modern

Objectivist knowing, he contends, involves holding a subject at a distance and taking a proprietary approach to facts, considering them things to be constructed under the knower's direction and in furtherance of the knower's goals. In contrast with the objectivism's "sharp distinction between the knower and the objects to be known,"⁴⁴ Palmer posits an understanding of knowing based on a mutually informing and mutually impacting relationship between them. He writes, "Truth requires the knower to become interdependent with the known. Both . . . have their own integrity and otherness, and one . . . cannot be collapsed into the other. . . . [T]ruth demands acknowledgment of and response to the fact that the knower and the known are implicated in each other's lives."⁴⁵

A sense of the relationship of knower and known can be detected, I believe, in Professor Moran's description of "transformative scholarship," which she says is "neither arcane nor disinterested" and "engages real-world problems in ways that those charged with solving such problems can understand."⁴⁶ In one sense, Professor Moran's statements could be taken to mean merely that transformative scholarship should be capable of effecting reforms that positively impact real lives in the real world. But her reference to the idealization in the academy of research undertaken from a "studied distance"⁴⁷ reveals that transformative scholarship reaches to the process of scholarly inquiry itself. This idea can be explained in the literature of urban revitalization. There one finds support for the conclusion that distancing the knower from known results in knowledge that is incomplete and possibly even harmful.

Tony Campolo, a sociologist who also works to revitalize deteriorating urban areas, concludes from his work in the field that "only those who live in [poor] communities day in and day out are capable of providing the *kind of analysis* that tells what is really going on, why it is happening, who is responsible, and what can be done about it."⁴⁸ Community organizing pioneer, Saul Alinsky, drew the

knowing." In his sketch of objectivism, Palmer acknowledges that "[t]here is much about modern knowing we must honor," especially its "capacity to turn upon itself and open itself to correction." *Id.* at 26. An interesting component of Palmer's exposition of objectivism's shortcomings is his analysis of the linguistic roots of the words "fact," "theory," "objective," and "reality." *See id.* at 21-25. Given the insights of post-modern thought, Palmer also acknowledges that his sketch of objectivism could be attacked as caricature. He rebuts this charge by asserting that even though "the separation of knower and the known is no longer convincing" as a matter of science or philosophy, in higher education "that separation is *institutionalized* in our habits of thought, our ideals, and our organization of life." *Id.* at 29 (quoting RICHARD GELWICK, *THE WAY OF DISCOVERY* 77-78 (1977)).

44. *Id.* at 27.

45. *Id.* at 32. Palmer sometimes uses language that seems to identify relational knowing with situations where the known is a human subject. As the phrase "person or thing to be known" indicates (found above in the text that between notes 41 and 42, the "known" includes inanimate subjects as well as animate).

46. Moran, *Transformative Scholarship*, *supra* note 5, at 2.

47. *Id.* at 17.

48. TONY CAMPOLO, *REVOLUTION AND RENEWAL: HOW CHURCHES ARE SAVING OUR CITIES*

same conclusion: "In the last analysis of our democratic faith, *the answer to all issues* facing us will be found in the masses of the people themselves, and *nowhere else*."⁴⁹ Similarly, community developer John M. Perkins has observed that "[t]he most creative long-term solutions to the problems of the poor are coming from grassroots . . . efforts."⁵⁰ Robert Linthicum, former director of World Vision's Urban Advance, states the foundation of these conclusions: "[A]ll human beings, however uneducated, exploited, or beaten down by life, have a greater capacity to understand and act upon their situation than the most highly informed or sympathetic outsider."⁵¹ Obviously, if both analysis and answers are found in others, the process of knowing cannot proceed from a "studied distance." Instead, the knower and the known must enter into a mutually informing relationship. Linthicum describes the process by which knowledge results as the "action-reflection cycle." In the "dynamic of action and reflection," Linthicum says, "[e]ach action will lead to a reflection that is more profound than [prior thoughts] . . . and [e]ach reflection will lead into an action that is more substantive than the one before it."⁵²

For community organizers and community developers, the primary goal of the action-reflection cycle is neighborhood empowerment. Empowerment begins with getting people to think about the issues that impact their lives. Alinsky noted that "[t]he issue . . . is simply that if people don't have the power to change a bad situation, they do not think about it."⁵³ But when they "are organized so that they have the power to make changes, then, when confronted with questions of change, they begin to think and ask questions about how to make changes."⁵⁴

Pierce uses the term "conscientization" to describe this process, which he says involves "enlighten[ing] [people] about the locus of power in their communities and [about] issues"⁵⁵ and then using the insights of that enlightenment to guide civic engagement. Pierce contends that the conscientization process is self-expanding, because once an association of citizens "gets into action, there is nothing that must stop it from seeing its interest in larger and larger arenas and from seeing the connection between issues on a local level and those on a national or even international scale."⁵⁶ From the

107-08 (2000).

49. SAUL D. ALINSKY, *REVEILLE FOR RADICALS* 40 (Random House Vintage Books 1989) (1946) (first emphasis supplied).

50. *RESTORING AT-RISK COMMUNITIES: DOING IT TOGETHER AND DOING IT RIGHT* 17 (John M. Perkins ed., 1995) [hereinafter *RESTORING AT-RISK COMMUNITIES*].

51. ROBERT C. LINTHICUM, *BUILDING A PEOPLE OF POWER: EQUIPPING CHURCHES TO TRANSFORM THEIR COMMUNITIES* 125 (2005).

52. *Id.* at 201.

53. SAUL D. ALINSKY, *RULES FOR RADICALS: A PRAGMATIC PRIMER FOR REALISTIC RADICALS* (Random House Vintage Books 1989) (1971) (emphasis excluded).

54. *Id.*

55. PIERCE, *supra* note 24, at 30 (quoting JOHN COLEMAN, *AN AMERICAN STRATEGIC THEOLOGY* 269-70 (1982)).

56. *Id.* at 30-31. I think "can stop" is the intended meaning of "must stop."

action-reflection cycle and intentional conscientization, “a cycle of learning will develop that progressively deepens the people’s empowerment.”⁵⁷ People who are usually thought to be powerless are transformed as they come to understand the world in a new way and to act in it in a new way.

The point not to be missed, however, is that there is a double transformation at work here. If knowing, as Palmer asserts, implicates the knower in the known, then an experience that changes the known must also change the knower. In community organizing and development, it is not just the neighborhood resident (the known) who engages in the action-reflection cycle; the organizer or developer (the knower) also participates. Although residents begin by reflecting on conditions in their neighborhood and then proceed to action, the organizer or developer enters the cycle in the action of engaging the residents and their neighborhood. The cyclical progression is the same regardless of starting point. This progressive process of knowing has the potential to provide researchers with an analysis that is more complete and more insightful than could be obtained from a studied distance.

In terms of the civic reform, there is one further advantage of relational knowing—changes in the knower and the known cause both to change the organizations and structures they encounter. Linthicum puts it succinctly: “As we act our way into new ways of thinking and think our ways into new ways of acting, we become changed people and change our institutions.”⁸⁵

In addition to these positive contributions, relational knowing can also avoid some negative outcomes that can be unintended consequences of detached inquiry. Detached scholarship, what Professor Moran calls disinterested scholarship,⁵⁹ can be unwelcomed by those persons we intend to benefit. For example, social service and economic development initiatives that fail to take into account the experiences and ideas of local residents have been called “neighborhood unfriendly” and even “a form of injustice.”⁶⁰ Obviously, no scholar would want to have such caustic labels attached to his or her analysis.

B. Relational-Based Teaching

In her essay on transformative teaching, Professor Moran writes of the contributions of diversity, empathy, and compassion to the classroom and to the decision-making process. “Part of the benefit of diversity,” she says, “is that it forces confrontation with and understanding of different perspectives and assumptions.”⁶¹ She also asserts that empathy and compassion “are critical tools to help decision-makers appreciate how others see the world from distinct

57. LINTHICUM, *supra* note 51, at 201.

58. *Id.* at 220.

59. Moran, *Transformative Scholarship*, *supra* note 5, at 2-3.

60. Bob Lupton et al., *Relocation: Living in Community*, in *RESTORING AT-RISK COMMUNITIES*, *supra* note 50, at 82, 84.

61. Moran, *Transformative Teaching*, *supra* note 6, at 3.

perspectives.”⁶² These points can be expanded and brought within the epistemological focus of this Essay by contrasting Professor Moran’s vision of transformative teaching with objectivist teaching.

Palmer notes the irony involved in the survival of objectivism-based teaching in higher education. In the face of the insights from contemporary science and philosophy, which establish that “the sharp Cartesian split between mind and matter, between I and the world, is no longer valid,”³

objectivism is institutionalized in our educational practices, in the way we teach and learn. There, through the power of the “hidden curriculum,” objectivism is conveyed to our students; our conventional methods of teaching form students in the objectivist world-view. If you want to understand our controlling conception of knowledge, do not ask for our best epistemological theories. Instead, observe the way we teach and look for the theory of knowledge implicit in those practices. That is the epistemology our students learn—no matter what our best contemporary theorists say.⁴

The problem posed by “conventional methods of teaching,” which put a premium on professional control and status and which can be used as a medium for “self-indulgent and preening” pedagogy,⁶⁵ is that they shape the worldview and actions of our students. Palmer continues:

The teacher is a mediator between the knower and the known, between the learner and the subject to be learned The way a teacher plays the mediator role conveys both an epistemology and an ethic to the student, both an approach to knowing and an approach to living. I may teach the rhetoric of freedom, but if I teach it *ex cathedra*, asking my students to rely solely on the authority of “the facts” and demanding that they imitate authority on their papers and exams, I am teaching a slave ethic. I am forming students who know neither how to learn in freedom nor how to live freely, guided by an inner sense of truth.⁶

Such an approach to teaching contradicts the goal of creating students who “remain their own moral agents.”⁶⁷ As Professor Moran reminds us, cultivating moral agency is central to our role as teachers, “for teaching is the primary means by which we will—or will not—shape the ethos of new generations of practitioners, who may or may not consider themselves ‘citizen-lawyers.’”⁶⁸

Although the importance of moral agency may be self-evident, a specific

62. *Id.*

63. PALMER, *supra* note 33, at 28 (quoting philosopher Fritjof Capra, *Buddhist Physics*, in THE SCHUMACHER LECTURES 132 (Satish Kumar ed., 1980)).

64. *Id.* at 29.

65. Moran, *Transformative Teaching*, *supra* note 6, at 5.

66. PALMER, *supra* note 33, at 29-30.

67. Moran, *Transformative Teaching*, *supra* note 6, at 6.

68. *Id.* at 2.

example connected to civic engagement may be instructive. In a commencement address entitled “The Convenient Reverse Logic of Our Time,” John Kenneth Galbraith noted a disturbing characteristic of policy-making in the America: Rather than moving “from diagnosis to remedy” in social policy, we have witnessed with greater frequency the rise of reverse logic, moving from a preferred remedy to an appropriate diagnosis.⁶⁹ In other words,

we have come to first identify the remedy that is most agreeable, most convenient, most in accord with major pecuniary or political interest, the one that represents our available faculty for action; then we move from the remedy so available or desired back to a cause to which that remedy is relevant.⁷⁰

Galbraith pointed to poverty alleviation policy as a prime example of reverse logic at work. Mark Robert Rank develops this observation at length in his “paradigm shift” analysis of poverty’s causes.⁷¹ Rank demonstrates that when we move the focus of poverty analysis from the unit of the individual to the unit of society, previously accepted causes of poverty—primarily individual failings—lose their force. Furthermore, because “solutions are caught up in causes,” locating new explanations of poverty in structural forces leads to new structurally focused solutions.

Galbraith’s thesis and Rank’s study are offered here to make the point that “[t]here is an eternal dispute between those who imagine the world to suit their policy and those who correct their policy to suit the realities of the world.”⁷² If we fail to employ educational methods that encourage the development and exercise of moral agency, we render our students susceptible to the use of reverse logic by those seeking to protect vested interests.

III. CIVIC PARTICIPATION: PATHWAY TO RESPONSIBILITY & RECONCILIATION

Following transformation’s thread has brought us a long distance, but there remains an additional potential that should at least be raised—the role of civic participation in promoting social responsibility and reconciliation. These goals are not specifically identified in Professor Moran’s Messages, but they may be extrapolated from her references to empathy as a component of transformative law teaching. Speaking specifically of judicial decision-making, Professor Moran asserts that empathy is an important qualification because people caught up in our legal system seek not only justice but also understanding.⁷³ One

69. JOHN KENNETH GALBRAITH, *A VIEW FROM THE STANDS: OF PEOPLE, POLITICS, MILITARY POWER AND THE ARTS* 35 (1986). This collection of writings contains the commencement address, which Galbraith delivered in 1984 at American University.

70. *Id.*

71. MARK ROBERT RANK, *ONE NATION, UNDERPRIVILEGED: WHY AMERICAN POVERTY AFFECTS US ALL* 169-79 (2005).

72. *Id.* at 170. Rank attributes this quote to French historian, Albert Sorel.

73. Moran, *Transformative Teaching*, *supra* note 6, at 4.

example that illustrates her point is a study of proceedings in Chicago's Eviction Court. That study documented a consistent disregard of substantive and procedural protections afforded to tenants;⁷⁴ among the many resulting harms, the study's authors included dignitary harm experienced by tenants. The authors assert that when our legal system exhibits equality, impartiality, and transparency, it "not only inspires confidence in those who do not prevail; more importantly, it conveys to the parties that their autonomy and dignity as persons is respected."⁷⁵

Human dignity is also affirmed when we acknowledge our responsibility to others and when we reconcile with them concerning our failures to honor that responsibility. An epistemology and ethic grounded in individualism frustrates both acceptance of responsibility and reconciliation as it promotes insularity from our fellow citizens. As Mark Robert Rank points out, "[o]ne of the unspoken advantages" of individualism is that it "lets us off the hook" for social injustices endured by others.⁷⁶ In contrast, civic participation involves us in "communities larger than ourselves" and helps us realize that "we carry a civic responsibility to alleviate serious harms that befall community members."⁷⁷

Our responsibility certainly encompasses acts of individual culpability, but it is larger than that. We have shared responsibility for others, grounded in the concept of "reciprocity," simply by virtue of our membership in society.⁷⁸ In isolation, we have little trouble absolving ourselves from individual culpability, and shared responsibility does not even occur to us. On the other hand, as noted earlier, if people get involved in civic issues, "they will begin to see the connections between their situations and that of others."⁷⁹ Once we are able to see connections, we can begin to acquire a wider view of causation that binds us socially to others. As an expanded view of causation leads to an expanded view of responsibility, we should also expect an expanded inclination to address the root causes of others' distress.

Participating in civic associations has a further impact, as associations often bring together a wide array of people, which presents an occasion to work within and across social divides.⁸⁰ Participation thus involves "barrier-crossing," and

74. LAWYERS' COMMITTEE FOR BETTER HOUSING, NO TIME FOR JUSTICE: A STUDY OF CHICAGO'S EVICTION COURT (Dec. 2003), available at <http://www.lcbh.org/images/2008/10/Chicago-eviction-study.pdf> [hereinafter LAWYERS' COMMITTEE FOR BETTER HOUSING]. This 2004 study was conducted by Chicago-based Lawyers' Committee for Better Housing (LCBH) in conjunction with Chicago-Kent College of Law and is a successor to a 1996 study on the same topic. For a more complete description of the two reports, see Lloyd T. Wilson, Jr., *The Beloved Community: The Influence and Legacy of Personalism in the Quest for Housing and Tenants' Rights*, 40 J. MARSHALL L. REV. 513 (2007).

75. LAWYERS' COMMITTEE FOR BETTER HOUSING, *supra* note 74, at 20.

76. RANK, *supra* note 71, at 19-20.

77. *Id.* at 146.

78. *Id.* at 149.

79. PIERCE, *supra* note 24, at 76.

80. Phil Reed, *Toward a Theology of Christian Community Development*, in RESTORING AT-

can help bring down “the most stubborn ethnic and racial [walls], indeed all man-made, barriers.”⁸¹ In the best scenario, one product of civic participation with others is the development of respect, trust, and relationships between persons and groups who previously viewed each other with suspicion and antagonism.

IV. CIVIC PARTICIPATION: A CONCLUDING CALL

At the beginning of this Essay, I asserted that transformative law is not self-executing but instead depends on the actions of individual transformative agents. Opposing the call to participation is the “danger of futility,” which is the “belief that there is nothing one man or woman can do against the enormous array of the world’s ills.”⁸² Contemporary society and the ethos of individualism can cause us to question whether one person’s civic participation will have any meaningful impact. Countering this danger, however, there is the “simple but powerful idea that each of us can make a difference”⁸³ in the world. Indeed, we are encouraged “[n]ever to doubt that a small group of committed citizens can change the world” for “it is the only thing that ever has.”⁸⁴

We should heed the call to civic participation because it is an essential component of democracy. In free and self-governing society, “the real democratic program is a democratically minded people—a healthy, active, participating, interested, self-confident people who, through their participation and interest, become informed, educated, and above all develop a faith in themselves, their fellow [humans], and the future.”⁸⁵ Such citizens, as agents of personal and civic transformation, “*are* the future.”⁸⁶ A good start toward realizing that future is found in cultivating citizen-lawyers who fulfill the transformational vocation of our profession.

RISK COMMUNITIES, *supra* note 50, at 27, 33.

81. RESTORING AT-RISK COMMUNITIES, *supra* note 50, at 33.

82. RANK, *supra* note 71, at 243-44 (quoting Robert F. Kennedy’s 1966 “Day of Affirmation” address to students and faculty at the University of Cape Town in South Africa).

83. *Id.* at 244.

84. *Id.* at 243 (quoting Margaret Mead from an unspecified source).

85. ALINSKY, *supra* note 49, at 55 (emphasis removed).

86. *Id.* (emphasis supplied).