Author: Ascanio Piomelli
Source: Hastings Race & Poverty Law Journal
Citation: 4 HASTINGS RACE & POVERTY L.J. 131 (2006).
Title: Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda

Originally published in HASTINGS RACE & POVERTY LAW JOURNAL. This article is reprinted with permission from HASTINGS RACE & POVERTY LAW JOURNAL and University of California, Hastings College of the Law.
CROSS-CULTURAL LAWYERING
BY THE BOOK:
THE LATEST CLINICAL TEXTS AND A
SKETCH OF A FUTURE AGENDA

ASCANIO PIOMELLI*

Introduction

In 1997, Michelle Jacobs forcefully argued that the leading clinical textbooks of the era, despite advocating a client-centered approach to law practice, failed to address the potential impact of cultural differences on the interactions between attorneys and clients - a failing that impaired the representation of clients of color and lower-income clients.1 She urged lawyers (and clinical teachers)

---

* Associate Clinical Professor of Law, University of California Hastings College of the Law, Civil Justice Clinic. I thank Annie Miyazaki, Donna Ryu, Eumi Lee, Mark Aaronson, Michelle Fei, Miye Goishi, Muneer Ahmad, Patti Chang, Shauna Marshall, and Stacey Strongarone for reading earlier drafts and sharing wise suggestions.

1. See Michelle S. Jacobs, People from the Footnotes: The Missing Element in Client-Centered Counseling, 27 Golden Gate U.L. Rev. 345 (1997). The texts she critiqued were ROBERT M. BASTRESS & JOSEPH D. HARBOUGH, INTERVIEWING, COUNSELING
and NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION (1990); DAVID A. BINDER, PAUL BERGMAN & SUSAN PRICE, LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (1991) [hereinafter BINDER ET AL., LAWYERS AS COUNSELORS I]. Jacobs exposed these texts' failure to mention, let alone attend to, the challenges inherent in cross-racial and/or cross-class interactions between attorneys and clients. See Jacobs, supra, at 346-47. She discussed how Binder and his colleagues acknowledged that the client-centered approach might not work with "atypical or difficult client[s]," i.e., those who are reluctant to participate in discussions, hostile, and/or inappropriately lacking in concern for the gravity of the issues they face. See id. at 353-61 (discussing BINDER ET AL., LAWYERS AS COUNSELORS I, supra, at 237-56). Jacobs warned that the ranks of such "difficult" clients were likely to be disproportionately populated by people of color and lower-income and working-class clients, because lawyers' unconscious racism and/or classism - if left unexamined and unchecked by explicit training - might predispose them to see such clients as embodying the characteristics the texts defined as "atypical or difficult." See id. Her critique revealed the danger of failing to explicitly explore cross-cultural difference and to prepare student-lawyers to navigate it effectively.

For an important, earlier critique of the client-centered model's failure to address
to pursue cross-cultural training to explore the impact of their own race and class on their interactions with clients.\(^2\)

In the decade since Jacobs' article, many clinicians have written thoughtfully about how students and attorneys might best prepare to work effectively with clients across dimensions of cultural difference - such as race, ethnicity, nationality, class, gender, sexual orientation, etc.\(^3\) Sue Bryant and Jean Koh Peters, who outline five key habits for lawyers to develop to attain cross-cultural effectiveness, have been particularly insightful.\(^4\) Spurred in part by issues of difference, such as power, race, gender, class, and age, see Ann Shalleck, Constructions of the Client within Legal Education, 45 STAN. L. REV. 1731, 1742-48 (1993).

2. See Jacobs, supra note 1, at 361, 377-84, 395, 404-11. As she summarized her criticism of the client-centered model:

The student/lawyer is not trained to reflect inwardly when probing, empathizing and listening to the client. She is not alerted to the possibilities of her own culpability when the communication dynamic fails. The student/lawyer is set up to conclude, prematurely and frequently erroneously at the initial interview stage[,] that the clients have some pathology. Never is she attuned to engage in critical self-reflection to determine whether some deficiency within her own understanding prohibits her from establishing rapport from the client. So long as we have not trained the student/lawyer to engage in critical self-reflection of this nature, we continue to train lawyers to engage in privileged decision-making without reference to the bottom and by so doing subvert the goals of client-centered counseling.

Id. at 361 (footnote omitted).


4. Bryant and Koh Peters' "Five Habits" entail: (1) identifying areas of similarity and difference between lawyer and client (and reflecting on their potential significance for the relationship); (2) identifying areas of similarity and difference between the client and legal system and between the attorney and legal system; (3) brainstorming multiple alternative explanations for client conduct; (4) anticipating and planning for potentially problematic aspects of cross-cultural communication; and (5) becoming non-judgmentally aware of one's own biases and stereotypes and learning to detect and minimize their impact on interactions. See Bryant, supra note 3, at 64-78.
Jacobs and the burgeoning literature she prompted, a new generation of clinical textbooks on interviewing and counseling have recognized the importance of preparing student-lawyers to interact with clients from whom they culturally differ.\(^5\)

The importance of training lawyers to become cross-culturally adept is likely self-evident to readers of this journal, as it generally is now in the literature on progressive lawyering and clinical education. In the heterogeneous and stratified society in which we live, race, class, gender, national origin, language, immigration status, sexual orientation, religion, and a host of other differences between us continue to have real significance. Benefits and burdens are allocated in significant part - sometimes consciously, sometimes not - along many of these dimensions of difference. Groups often have (and remember) collective histories of difficult interactions with members of other groups. The experiences and identities that we share with some people and that distinguish us from others often - but not invariably or uniformly - shape us in important ways. They can dispose each of us to interact more easily with some people and to feel more distant toward or likely to be misunderstood, or even harmed, by others.

Given the central role our society assigns lawyers to help pursue and resolve disputes and to facilitate interactions, it is imperative that lawyers be able to work effectively with all clients - those who are (or seem) quite similar and those from whom they differ. Indeed, our success as a democratic society depends upon the ability of members of all groups to receive and deliver effective assistance. Failure to train lawyers in cross-cultural interaction threatens to perpetuate the exclusion or marginalization from the legal system and profession that many people of color, people from low-income and working-class backgrounds, and members of other subordinated groups sometimes experience - as clients or attorneys.

Part I of this essay discusses how the latest clinical textbooks prepare students for cross-cultural work. (This is the sole dimension along which it assesses the texts.) The essay highlights differences in

how broadly or narrowly the textbooks define culture, its sources, and the measure of cross-cultural success, how they describe the dimensions along which cultures differ, on which side(s) of the lawyer-client relationship they focus, and the behaviors they suggest. It argues these texts are at their best when they employ a broad definition of culture and its wellsprings, when they even-handedly describe the ways in which people and cultures can differ, and when they pay astute attention both to what we as lawyers should learn about others and to what we must learn about ourselves, our culture(s), and our reactions to and interactions with others.

These and other cross-cultural materials are at their best, in short, when they spark generous curiosity, nurture engaged, non-judgmental inquiry, and foster real connection with others. A central challenge is to encourage constructive attention to the influence that culture has, without implying that its influence is total, i.e., without reducing anyone to a simple cardboard cutout or generic product of her or his culture. The appropriate measure of success is the extent to which our attention and understanding are broadened to appreciate multiple facets of people, rather than narrowed to focus only on a few aspects or cultural "rules of thumb." Taken seriously, this is part of a lifetime's work of improving our ability to work with others (and to understand ourselves). Textbooks are but one resource, from among many upon which we can draw, to prepare ourselves for this work.

Part II sketches an agenda for further exploration of cross-cultural issues that neither the latest textbooks nor the broader clinical lawyering literature have fully addressed. It suggests that to better prepare student-lawyers to work with diverse clients — particularly those served by most law school clinics — we need to focus more specific attention on socioeconomic class and its cultural manifestations. It also proposes exploring in greater depth the latest studies on social cognition and subconscious social attitudes. Finally, it suggests attending to the potentially destructive interplay of lawyers' professional socialization and prevailing stereotypes of low-income and working-class people.

Culture is, of course, a notoriously difficult term to define. Several disciplines, such as cultural anthropology and sociology, are devoted in part to the task and deeply divided in the effort. Despite

7. Part I.D. infra, for example, describes many of the ways in which my colleagues and I at the Hastings Civil Justice Clinic attempt to infuse cross-cultural issues throughout the curriculum of our Individual Representation Clinic. See infra notes 152, 161-67 and accompanying text.
8. See, e.g., EAGLETON, supra note 6; A.L. KROEBER & CLYDE KLUCKHOHN, CULTURE:
the difficulty of the challenge, and the likely imperfection of the result, it nonetheless seems essential to try to define the term. As used in this essay, "culture" denotes those ways of approaching, understanding, and acting in the world that are widely (but not necessarily universally) shared by members of a social group – and are often hotly contested by some group members.\(^9\) Culture is consequently something we all have, not simply a marker of people whom we define as "other."\(^10\) Indeed, given the multiplicity of social groups to which we each belong, we belong as well (comfortably or not) to multiple cultures – some of which we choose, some to which others assign us. For those of us engaged in social-change efforts, much of what we do can be understood as an effort to contest and redefine what it means to be a member of our cultures (whether chosen or ascribed). One might thus analogize culture to a current that we and other members of our social group(s) move with, or against, and occasionally even redirect, as we strive to make sense of and act in the world.\(^11\)

9. These approaches to making sense of and acting in the world are typically passed on, some explicitly, some tacitly, to new members of the group.

10. Cf. Fredric Jameson, On "Cultural Studies," 34 SOCIAL TEXT 17, 34 (1993) (culture as "an idea of the Other") (quoted in Eagleton, supra note 6, at 26); Renato Rosaldo, Culture and Truth: The Remaking of Social Analysis 198 (1989) ("In 'our' own eyes, 'we' appear to be 'people without culture.' By courtesy, 'we' extend this noncultural status to people who ('we' think) resemble 'us.'") (quoted in Martha R. Mahoney, Segregation, Whiteness, and Transformation, 143 U. PA. L. REV. 1659, 1664 n.18 (1995)).

11. Without seeking to model the appropriate parameters of cultural description, nor to cast culture as entirely a matter of self-description, nor to imply that it is neatly encapsulable in a single paragraph, I nonetheless consider it important to acknowledge some of my cultural influences. I am a White, male, clinical law professor in my forties. I am the oldest of two children of Italian, leftist parents who immigrated to the U.S. and became professors of medicine and architecture. I attended prestigious schools: a private, all-male elementary and middle school; a public, magnet high school; and an elite university for college and law school. An ex-New Yorker, raised in Greenwich Village and SoHo, I am now a long-time San Franciscan. I am married to a Chinese-American woman from working-class origins, who has a graduate degree and manages a non-profit community development organization. We have a Chinese daughter. As a lawyer, I have worked primarily with low-income and working-class clients in Fresno, East Palo Alto, and the Bay Area. I identify as a progressive lawyer and teacher committed to working (and encouraging students to work) with, rather than for, clients and communities to make social change. See Ascanio Piomelli, Appreciating Collaborative Lawyering, 6 CLINICAL L. REV. 427 (2000); Ascanio Piomelli, Foucault's Approach to Power: Its Allure and Limits for Collaborative Lawyering, 2004 UTAH L. REV. 395, 417; Ascanio Piomelli, The Democratic Roots of Collaborative Lawyering, 12 CLINICAL L. REV. 541 (2006).
I. Approaches of Recent Clinical Textbooks

In the years since Jacobs' article, five new clinical textbooks (or revised editions of older ones) on interviewing and counseling have been published. Three of these texts directly address cross-cultural interactions between lawyers and clients. In so doing, these three texts have decisively rejected the culture-blind approach to teaching interviewing and counseling that previously prevailed. After critically analyzing the approach of the dominant text at some length, this essay explores the distinctive aspects of its two less-well-known competitors, omitting areas in which the texts are essentially similar.

A. The Dominant Text: Binder, Bergman, Price and Tremblay's *Lawyers as Counselors*

For the past three decades, David Binder and his collaborators have dominated the field of clinical textbooks on interviewing and counseling. In 1977, Binder and Susan Price, in *Legal Interviewing and Counseling: A Client-Centered Approach*, introduced the legal community to the notion of client-centered lawyering - with its emphasis on client autonomy and on ensuring that clients make key decisions based on their values and priorities. By 1991, when Binder and Price joined with Paul Bergman to publish *Lawyers as Counselors: A Client-Centered Approach*, client-centered lawyering had become the dominant paradigm taught in almost every clinical program in the United States. Binder and his co-authors' influence

12. In addition to the texts cited supra at note 5, see DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS (2002); THOMAS L. SHAFFER & JAMES R. ELKINS, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL (4th ed. 2005).

13. Neither CHAVKIN, supra note 12, nor SHAFFER & ELKINS, supra note 12, address the issue.

14. A LEXIS search of U.S. and Canadian law reviews conducted on Sep. 16, 2006, returned, for the years (since 1999) when editions of all three texts have been in print, 159 citations to editions of *Lawyers as Counselors*, compared with 33 references to editions of *Essential Lawyering Skills* and 39 citations to *The Counselor-at-Law.*


17. BINDER ET AL., LAWYERS AS COUNSELORS I, supra note 1.

cannot be overstated; they revolutionized the way lawyering is analyzed, taught, and assessed. As a fellow legal clinician noted, “we are all client-centered lawyers now” — even if we each aspire to our own version of that ideal.\(^{19}\)

In 2004, Binder, Bergman, and Price joined with Paul Tremblay to publish a second edition of *Lawyers as Counselors*.\(^{20}\) Tremblay’s own work on the need to modify aspects of the client-centered model to better fit clients from non-dominant cultures,\(^ {21}\) and Jacobs’ detailed critique of the previous edition,\(^ {22}\) augured well for how the new edition might address cross-cultural issues. The revised text does constitute an important step forward. But, as detailed below, it does not incorporate or acknowledge as many of Tremblay’s and Jacobs’ insights as it might have — in large part because it remains so intently focused on the client’s culture that it directs little or no attention to the lawyer and the potential impact of her\(^ {23}\) culture(s), assumptions, attitudes, or behavior.\(^ {24}\)

---

\(^{19}\) The comment was made by Professor Stephen Ellman at the ceremony bestowing on David Binder the 2006 William Pincus Award for outstanding contribution to clinical legal education. Given Binder’s formative and lasting imprint on the field, his recognition by the Clinical Section of the American Association of Law Schools was long overdue, as the Award has been given annually since 1981, see http://www.cleaweb.org/awards/pincus.html (last visited Sep. 16, 2006).

\(^{20}\) See Binder et al., Lawyers as Counselors II, supra note 5.

\(^{21}\) See Tremblay, supra note 3.

\(^{22}\) See Jacobs, supra note 1.

\(^{23}\) To reflect the gender diversity among lawyers and clients, the gender of pronouns shall alternate from paragraph to paragraph.

\(^{24}\) This failing is doubly disappointing. For one, Jacobs’ critique explicitly and repeatedly identified the need to broaden the scope of attention. She wrote: “We cannot move forward if we are examining only one-half, the client half, of the problem of the lawyer-client dynamic.” Jacobs, supra note 1, at 407. The text’s inattention to the lawyer side of the relation is further disappointing because Tremblay addressed it directly (and repeatedly) in his article too. He wrote, for example:

I note the importance for any lawyer of understanding his or her cultural identity, including biases, stereotypes, values, and comfort patterns. The sophisticated writers about cross-culture counseling help us understand that no lawyer enters into an attorney-client relationship without a complex package of learned behaviors, assumptions, and biases. Understanding your complex package and identifying its components explicitly is a critical step in becoming a better cross-cultural lawyer.

Tremblay, supra note 3, at 384. Unfortunately, his co-authors did not follow up on his insight.

At one point the textbook does note the importance of “understanding your own core values.” See Binder et al., Lawyers as Counselors II, supra note 5, at 36. But values are only one aspect of culture that warrants scrutiny; one can attend to one’s values and still miss key elements of one’s assumptions, attitudes, traditions, comfort zones, and behavior.
1. Initial Framing: An Issue of Motivation and Participation

*Lawyers as Counselors'* primary discussion of "inter-cultural difference" occurs in its chapter on motivation, in a nine-page subsection entitled "Motivation in Inter-Cultural Contexts". It describes itself as examining "common dimensions of inter-cultural difference that might inhibit active client participation in the interviewing and counseling process" and suggesting "how you might respond should you believe that such differences are inhibiting clients' participation."

The text does not explicitly define what it means by "culture" or "inter-cultural difference." But it is clear from its discussion of the United States as a "multi-ethnic society" and its presentation of common dimensions of intercultural difference, that the text primarily understands culture as a function or product of ethnicity—based primarily on national origin and perhaps race—and sometimes geographic region. It makes no reference to class or professional socialization as important sources of culture that might have significance for lawyering.

The initial framing of inter-cultural difference as an issue of motivation to participate is unfortunate for several reasons. For one, it presents the issue as essentially a volitional matter: Is a client motivated or not to participate in his case? Attention is focused primarily on the client and his culture. To the extent that motivation is understood as an inner drive or spark, its absence will be seen by many as an internal failing of the client. Such a framing will likely encourage some students and attorneys—particularly those already prone to perceiving low-income and working-class clients as uninterested, lackadaisical, or uncommitted to bettering their

---

25. See Binder et al., Lawyers as Counselors II, supra note 5, at 32-40.
26. Id. at 32.
27. Only two examples used in this subchapter of the text explicitly identify specific cultural backgrounds of the participants. One involves a New York lawyer and a client from North Carolina. Id. at 33. The other involves a client who grew up in China. Id. at 39-40. No additional cultural markers are provided. (It should be noted, however, that in each example, the text invites the reader to put herself in the position of the lawyer, so perhaps the expectation is that the reader will supply missing cultural markers).
28. As detailed infra in Parts II.A and II.C, the failure to attend to socioeconomic class and lawyers' professional socialization are significant omissions. Binder and his colleagues do at one point discuss gender, by raising the possibility that some women might be reluctant to discuss certain issues with male attorneys, see id. at 38, but the context of the discussion seems to paint the issue as particular to certain national or ethnic cultures.
situation\textsuperscript{29} - to understand the issue as a deliberate choice their clients make. Without disagreeing that clients may sometimes willfully disengage, perhaps as a form of resistance to their attorney, there is a cost to assuming this is always true. Framing the issue as one of client volition, in which clients decide whether to engage with the lawyer or to deliberately withhold their participation, is not likely to discourage students from putting the onus for a successful relationship on clients.

Even though previous sections of this chapter on motivation discussed a number of facilitators and inhibitors of communication,\textsuperscript{30} and placed some of the burden on lawyers to motivate their clients to participate fully,\textsuperscript{31} students who most need help in understanding and accepting this burden will likely require more explicit encouragement. Phrasing the lawyer's task as "facilitating," "encouraging," "inviting," or "enabling" client participation (rather than "motivating" it) might better convey the lawyer's at-least-co-equal responsibility - and would not connote that a lack of client participation indicates a failing on her client's part. Another way of conveying the attorney's important role and influence in this regard could be to list the attorney's culture - and especially her inability to see or get beyond it - as an additional possible inhibitor of client participation.\textsuperscript{32} Alternatively or additionally, "cross-cultural openness" could be included as an additional facilitator. Unfortunately, the text takes none of those routes.

Indeed, at times one gets the impression that the authors place

\textsuperscript{29} Indeed, a phenomenon that seems to pervade law school clinics throughout the U.S. (at least based on anecdotal reports by clinicians) is the frequently voiced complaint from students that "my client doesn't take her case nearly as seriously as I do." See, e.g., Jacobs, supra note 1, at 382; Tremblay, supra note 3, at 395. See also infra at notes 216-17 and accompanying text (on prevalent stereotypes of lower-income and working-class people).

\textsuperscript{30} Inhibitors include ego threat, case threat, role expectations, etiquette barriers, trauma, perceived irrelevancy, and greater need. See Binder et al., Lawyers As Counselors II, supra note 5, at 19-26. Facilitators include empathic understanding, fulfilling expectations, recognition, altruistic appeals, and extrinsic reward. See id. at 26-31.

\textsuperscript{31} The text states: "client-centered counseling suggests that you take reasonable steps to motivate all clients to participate actively in the problem-solving process." Id. at 39. The key issue, of course, is how broadly or narrowly students and attorneys interpret the term "reasonable."

\textsuperscript{32} Jacobs essentially suggested such an addition in her critique of the text's first edition. See Jacobs, supra note 1, at 356-357 (noting that "[t]he issue of student/lawyer based inhibitors is not raised," and that "if the inhibiting factor is the race of the lawyer, and/or the lawyer's expectations regarding the client and the client's culture, knowledge of the facilitators will not provide the lawyer with the tools to break through the barrier.").
almost exclusive attention on the client's culture and how it may lead him not to participate or engage with the attorney. The text also seems implicitly to presume that attorneys are from dominant social backgrounds—an assumption that is not only inaccurate, but also serves to compound the invisibility or marginalization that many students or lawyers of color or from low-income and working-class backgrounds feel from the legal profession. Although the text typically uses the term "cultural difference," it never explicitly describes difference as a relational concept—in which an attorney and client are equally different from each other. Instead, it seems to cast cultural difference as a feature or trait of the client or his culture, treating difference as deviation from an assumed, but unarticulated, mainstream norm.

"For example," the authors write, "clients' cultural traditions may inhibit participation by leaving them uncertain about how open they should be during counseling when they are asked to express their concerns." Implicit is the notion that the appropriate norm is to be completely open and that 'lack of openness to expressing concerns' is a quirk of certain cultures. If one were truly to treat difference as relational, one would likely urge the attorney in such a situation to push herself to attend to potential nonverbal or indirectly phrased signs of concern, rather than pressing clients to directly and explicitly express them.

Another example is the statement: "If you cannot assume that cultures are stable and that clients' values and practices are consistent with their cultural backgrounds, neither can you be oblivious to the potential for inter-cultural differences to affect

33. Perhaps the classic explication in the legal literature of difference as a relational concept is Martha Minow's. As she explained almost two decades ago:

"Difference" is only meaningful as a comparison. I am no more different from you than you are from me. A short person is different only in relation to a tall one. Legal treatment of difference tends to take for granted an assumed point of comparison: women are compared to the unstated norm of men, "minority" races to Whites, handicapped persons to the able-bodied . . . . Such assumptions work in part through the very structure of our language, which embeds the unstated points of comparison inside categories that bury their perspective and wrongly imply a natural fit with the world. The term "working mother," modifies the general category "mother," revealing that the general term carries some unstated common meanings (that is, a woman who cares for her children full-time without pay), which, even if unintended, must expressly be modified. Legal treatment of difference thus tends to treat as unproblematic the point of view from which difference is seen, assigned, or ignored, rather than acknowledging that the problem of difference can be described and understood from multiple points of view.


34. BINDER ET AL., LAWYERS AS COUNSELORS II, supra note 5, at 32.
clients’ thinking and behavior.” Again, the text focuses on how “inter-cultural differences . . . affect clients’ thinking and behavior,” without discussing how those differences affect attorneys’ thinking and behavior. The problem of inter-cultural difference, in such a framing, becomes an attribute of the client and his culture, rather than the gap between the client’s culture and the lawyer’s, or the way that the lawyer perceives and interacts with his client’s trait(s). This framing fails to portray inter-cultural problems as a two-way dynamic in which lawyer and client are equally different from each other and thus each must struggle to communicate (and work together) effectively.

Limiting attention to client participation ignores the attorney’s reaction to her client’s participation. The issue in a cross-cultural interaction is not just client participation (in sharing information and making decisions) but also accurate understanding by the lawyer of the client’s goals with regards to the outcomes sought and the methods used to pursue them. The success of an attorney-client relationship cannot adequately be assessed simply by looking at whether the client speaks and chooses from among the options her lawyer suggests. Assessment requires an examination of what the attorney actually hears (and perceives), what she conveys (both verbally and non-verbally) to her client, and how congruent her actions are with her client’s intentions, desires, values, and interests.

The text directs students’ and lawyers’ gaze outward toward their clients’ cultures, without also directing it inward toward their own culture, assumptions, and reactions. Its strategies for

35. Id. at 34.

36. Sue Bryant, making a similar point, characterizes the aim of cross-cultural training as to make “isomorphic attributions, i.e., to attribute to behavior and communication that which is intended by the actor or speaker.” Bryant, supra note 3, at 42-43, 56.

37. Binder and his colleagues’ exclusive focus on clients in this regard is puzzling given that Tremblay, who helped revise the text, clearly emphasized the importance of closely examining oneself and one’s own culture in his earlier article on heuristics and biases in cross-cultural lawyering. See Tremblay, supra note 3. In addition to the passage quoted supra at note 24, Tremblay explained that he introduced his second key concept of “bias” to turn[] the focus back on you, on your cultural presuppositions, and on the distortions and prejudices you bring to the client interaction. Not only do you need to know something about how different cultures might respect different values, customs and practices, but you also must “move[] from being culturally unaware to being aware and sensitive to [your] own cultural issues and to the ways that [your] own values and biases affect culturally diverse clients.” Id. at 386 (quoting Donald B. Pope-Davis & Jonathan G. Dins, The Assessment of Multicultural Counseling Competencies, in HANDBOOK OF MULTICULTURAL COUNSELING 287, 287-88 (Joseph G. Ponterotto et al. eds., 1995)). Indeed, Tremblay identified “the
addressing cross-cultural challenges depend upon the lawyer's recognition of a possible cross-cultural problem. In its own words, it "offers suggestions for how you might respond should you believe that such differences are inhibiting clients' participation." 38 But, as many have remarked, it is often difficult for people, especially those who fit comfortably within the dominant culture of a society, to even recognize the possibility of other legitimate ways of considering or structuring reality. 39

2. Stereotyping

*Lawyers as Counselors* opens its discussion of inter-cultural difference by warning of the dangers of stereotyping, which it defines as ascribing presumed attitudes and behaviors to members of other groups. 40 It cautions that efforts to bridge intercultural differences pose a danger of stereotyping, especially if one makes assumptions about "the values and practices associated with a particular cultural heritage" or assumes that a particular person with that heritage shares the traits ascribed to that culture. 41 Consequently, the text wisely urges that all assertions regarding "cultural differences" be understood as "tentative," for cultures reflect a "continuum of values," with core or mainstream values lying at the mean of a normal distribution (i.e., bell-shaped curve) of the population of that culture. 42

---

38. BINDER ET AL., LAWYERS AS COUNSELORS II, supra note 5, at 32.
39. See, e.g., Aiken, supra note 3, at 17-18 ("We do not experience the messages we receive culturally as explicit lessons. Instead we perceive them merely as the way things are. . . . [G]enerally, when privilege is exercised, the person is unaware of the role such privilege plays in perpetuating systematic oppression."); Minow, supra note 33, at 73-74 ("more powerful" people have difficulty recognizing that "the world coincides with [their] view precisely because [they] shaped it in accordance with those views," while "the more marginal" are "more likely . . . to glimpse a contrast between some people's perceptions of reality and . . . [their] own.").
40. BINDER ET AL., LAWYERS AS COUNSELORS II, supra note 5, at 32-33.
41. Id. at 33.
42. Id. at 33-34. This usage of "cultural differences" seems again to indicate that the authors view "differences," "heritages," and "traits" as synonyms, i.e., that they are not using "difference" as a relational concept to describe a gap or relationship between two parties, so much as they are describing a trait of just one of those parties, whom they treat as "other." See supra note 33 and accompanying text.

The presumption of a bell-shaped curve seems to assume that the dominance of certain traits or norms maps neatly with population size, i.e., that numerical majorities
All of these points are well taken. Stereotyping certainly is an evil to avoid and the struggle to refrain from ascribing presumed attitudes and traits to members of other groups and cultures is an essential one to wage. But it is not clear that the text offers much guidance in how to avoid stereotyping, other than 'just saying no' to non-tentative assumptions about others’ beliefs or behaviors. It does not, for example, urge us to verbalize our (and our culture’s) assumptions about members of the group(s) to which our client may belong, so that we can compare how closely our observations comport with those expectations. Nor does it suggest that we articulate how the cultures involved in a case (the legal culture and those of key players) are likely to perceive or label the client or her story – for lawyers are not the only actors who may stereotype the client.\footnote{Binder, Bergman, and their colleague Albert Moore do make a closely related suggestion in their text on trial advocacy, in which they urge lawyers to recognize and explicitly address “silent arguments” which may be influencing fact-finders, but are not voiced by them. See David A. Binder, Albert J. Moore & Paul B. Bergman, Trial Advocacy: Inferences, Arguments and Techniques 80-86 (1996).}

Moreover, framing the central danger as stereotyping – when stereotyping is understood as the conscious ascription of traits and predilections to groups – seems again to cast cross-cultural interactions as completely volitional, as a matter of what we choose to believe or assume about others. One certainly ought never downplay the degree of will it takes to consciously monitor and change one’s cross-cultural assumptions and skills. But, as Part II.B of this Essay discusses, attention to guarding simply against conscious stereotyping ignores the extensive body of research on social cognition that explores the significant unconscious dimensions of cross-cultural misunderstanding and antagonism.\footnote{See infra notes 190-214 and accompanying text. For one of the earliest discussions of social cognition research in the legal literature, see Linda Hamilton Krieger, The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity, 47 STAN. L. REV. 1161, 1186-1217 (1995). For an earlier argument, based in Freudian psychology, on the unconsciousness of much modern racism, see Charles R. Lawrence III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 STAN. L. REV. 317 (1987).}

3. Dimensions of Intercultural Difference

Drawing heavily from the work of Dutch sociologist Geert
Hofstede, Binder and his colleagues detail six key dimensions of intercultural difference. Hofstede, who defines culture as "the collective programming of the mind which distinguishes one human group from another," is a firm believer that national cultures exist and matter. Narrowly focused on nationality (or "national character") and its distinctive impact, he does not attend to differences within national cultures. His work, growing out of extensive surveys of employees of IBM in 72 countries, seeks to identify and quantify the dimensions along which national cultures persistently differ from each other.

Binder and his colleagues are to be commended for pursuing an interdisciplinary approach to cross-cultural interaction. Given its empirical roots in the study of IBM employees, Hofstede's work has not surprisingly been quite influential in the literature aimed at preparing international business people for cross-cultural communication. For clinical students, who tend to work primarily with low-income and working-class clients, the literature on cross-cultural business interaction may, however, be less helpful than the large body of works aimed at preparing psychologists and


46. See BINDER ET AL., LAWYERS AS COUNSELORS II, supra note 5, at 34-37.

47. See HOFSTEDÉ, CULTURE'S CONSEQUENCES II, supra note 45, at 25.

48. For a sharp critique of Hofstede's work, see Brendan McSweeney, Hofstede's Model of National Cultural Differences and Their Consequences: A Triumph of Faith - A Failure of Analysis, 55 HUM. REL'NS 89 (2002). For a forceful argument that culture is not - as Hofstede, among many others, implicitly casts it - a static, unchanging set of beliefs and practices uniformly re-inculcated from generation to generation, but rather is a dynamically contested realm in which elites and internal challengers struggle to define what it means to be a member of their culture, see Madhavi Sunder, Cultural Dissent, 54 STAN. L. REV. 495 (2001).

49. Those surveys were conducted twice, in 1967-69 and in 1971-73, generating 116,000 responses. See HOFSTEDÉ, CULTURE'S CONSEQUENCES II, supra note 45, at xix, 34. Hofstede contends that a multiplicity of studies in the intervening years confirm his generalizations of his findings. Id. at 36. Moreover, he predicts that countries' relative position on his indices of cultural difference are unlikely to change significantly over the next hundred years. Id. I have not found his response to the criticism that his sample is skewed to reflect primarily professional-middle-class beliefs, attitudes, and patterns.


HeinOnline -- 4 Hastings Race & Poverty L.J. 144 2006-2007
therapists for cross-cultural counseling. In addition to stemming from a possibly less-on-point genre, another weakness of Hofstede’s approach (of articulating timeless, universal truths about how national cultures differ) is its tendency to overstate the stability and homogeneity of cultures – exacerbating the danger of facilely typecasting members of other cultures and relying on a few rules of thumb to manage.

The first dimension of cultural difference that Binder and his colleagues discuss in their latest edition is “uncertainty avoidance,” or tolerance of unpredictability – with high-avoiders preferring formal rules and structured situations, while low-avoiders are “more flexible and comfortable” in the absence of bright-line rules.

A second dimension is “power distance,” the willingness to accept an unequal distribution of power. A third is “individualism/collectivism.” A fourth dimension of inter-cultural difference is “Masculinity/Femininity” – with masculine cultures, according to Lawyers as Counselors, preferring defined gender roles, valuing work outside of the home, and being task-oriented, competitive, and aggressive, while feminine cultures prefer interchangeable gender roles, resolve conflicts through compromise, and value teamwork and relationships. A fifth dimension is “Long Term/Short Term Orientation,” which refers to preferred time


52. See infra notes 64-65 and accompanying text.

53. See Binder et al., Lawyers as Counselors II, supra note 5, at 34-35. Hofstede summarizes the issue as “the extent to which a culture programs its members to feel either uncomfortable or comfortable in unstructured situations.” Hofstede, Culture’s Consequences II, supra note 45, at xix.

54. See Binder et al., Lawyers as Counselors II, supra note 5, at 35. Hofstede makes plain that he is discussing “the extent to which the less powerful members of organizations and institutions accept and expect that power is distributed unequally.” Hofstede, Culture’s Consequences II, supra note 45, at xix.

55. See Binder et al., Lawyers as Counselors II, supra note 5, at 35. Hofstede summarizes the issue as “the degree to which individuals are supposed to look after themselves or remain integrated into groups.” Hofstede, Culture’s Consequences II, supra note 45, at xix.

56. See Binder et al., Lawyers as Counselors II, supra note 5, at 35. Hofstede’s distinction focuses primarily on the relative valuing of “masculine” assertiveness, toughness, and focus on ego enhancement and material success versus “feminine” nurturance, tenderness, and focus on relationship enhancement and quality of life. See Hofstede, Culture’s Consequences II, supra note 45, at 279-97. He also explains that “Masculinity stands for a society in which social gender roles are clearly distinct” and “Femininity stands for a society in which gender roles overlap: both men and women are supposed to be modest, tender, and concerned with the quality of life.” Id. at 297.
The final cultural distinction *Lawyers as Counselors* highlights is “High Context/High Content Communication” - with high-content cultures attending primarily to the precise words actually spoken or written and high-context cultures drawing meaning from the larger context, indirect allusion, and unspoken cues.58

Although the text refers to these as “dimensions” of intercultural difference, it actually treats these distinctions more like dichotomies. It portrays cultures as belonging on one side or the other of each of these divides.59 Thus, after describing each of these ways in which cultures differ, it presents a table listing the national cultures that manifest one side or the other of each dimension.60 (The U.S., for example, is categorized as an individualistic, masculine, small-power-distance, short-term oriented society that relies on high-content communication.61) This assignment of cultures to sides of these divides is jarring - as both a matter of principle62 and application.63

57. See Binder et al., Lawyers as Counselors II, supra note 5, at 35. Short-term-oriented cultures strive toward punctuality, seek “to make every moment productive,” and tend to look for immediate consequences and returns; a long-term orientation, by contrast, emphasizes tradition, minimizes the significance of strict chronographic time, and focuses on long-term goals and consequences. Id. at 35. (Hofstede summarizes this dimension as “the extent to which a culture programs its members to accept delayed gratification of their material, social, and emotional needs.” Hofstede, Culture’s Consequences II, supra note 45, at xx.)

58. See Binder et al., Lawyers as Counselors II, supra note 5, at 35-36. Although the text makes no mention of it, this dimension of cultural difference is not from Hofstede, but from cultural anthropologist Edward Twitchell Hall, who identified a continuum between high-context and low-context cultures. See Edward T. Hall, Beyond Culture 74-101 (1976).

59. Lawyers as Counselors lists the last four of these dimensions as opposed pairs separated by slashes. See Binder et al., Lawyers as Counselors II, supra note 5, at 35-36. Hofstede, however, created indices scoring cultures along a continuum on each of the first five of these dimensions. See Hofstede, Culture’s Consequences II, supra note 45, at 28-29.

60. See Binder et al., Lawyers as Counselors II, supra note 5, at 37.

61. See id. The only dimension along which the U.S. is not identified is uncertainty avoidance. Japan is identified at the opposite pole as the U.S. on all five of the dimensions along which the U.S. is identified. See id. See also infra note 63 (identifying mistaken attribution of Japanese masculinity/femininity).

62. It took me several readings to understand how such an assignment was consistent with the statement, immediately preceding the exposition of these dimensions of intercultural difference, that “Hofstede’s dimensions provide you with a heuristic for thinking about culture differences without requiring that you attribute cultural attitudes or practices to people from specific ethnic, religious, or national origins.” Binder et al., Lawyers as Counselors II, supra note 5, at 34. Apparently, assigning traits to national cultures is not such an attribution, because it is understood that not all individuals will share the attitudes and practices of their national culture. See supra note 42. (In Tremblay’s article, which the text does not reference, he explicitly defines a heuristic as a
Placing cultures in a matrix seems likely to make it more difficult for readers to heed the text’s earlier call to take broad statements about cultures as tentative. It seems, as well, to neglect the dynamism of people and cultures – the continuous evolution in which we (individually and collectively) are always engaged, the ways in which what it means to be a member of a particular group is often contested by rival forces within the group. While the desire to guide student-lawyers and to provide answers is understandable, this approach seems likely to sate, rather than spur, the curious inquiry and mutual engagement essential for cross-cultural and interpersonal success. Identifying six dimensions of cultural difference and then placing them in a table seems, at least implicitly, to suggest that these are the important dimensions of cultural difference that lawyers need to worry about; it certainly does not explicitly encourage lawyers to explore for additional differences in the ways they and their clients interpret or act in the world.

Moreover, in describing dimensions of cultural difference, the authors occasionally betray more respect for some cultural approaches than for others. For example, high uncertainty avoiders are described as sometimes appearing anxious or compulsive, while low-avoiders are depicted as “flexible and comfortable” in situations without bright lines. The phrasing betrays a normative preference
for low-avoiders over high-avoiders. Similarly, rather than focusing on high-context communicators’ ability to recognize nuances and implications from unspoken cues, the text highlights instead the danger that members of such cultures will not understand the terms of written agreements – or may be unfamiliar with “common terms such as ‘corporation,’ ‘internet,’ ‘web page,’ or ‘SEC.’”

4. Suggested Strategies

Lawyers as Counselors suggests six principles that may aid in “overcoming inhibitions that may be due to” inter-cultural differences. The first four of these suggestions are relatively unproblematic. The text advises that “not all differences are appropriate for you to overcome . . . [for] at the end of the day the client’s values trump yours.” It encourages lawyers to take concerted steps to become familiar with different cultures with which they interact, both by studying their history and by attending events and meeting people from those cultures. The text urges lawyers to “conductor counseling sessions in a way that anticipates the preferences of clients from other cultures” – for example, by acceding to client preferences for greater formality or by having a male attorney ask a female client if she would prefer another woman to sit in on a discussion of uncomfortable topics. It also suggests it may be important for attorneys to explain the reasons behind aspects of the U.S. legal system and U.S. lawyers’ behavior that might otherwise puzzle clients.

Problematically, however, the text warns lawyers not to be too “afraid of trampling on a client’s cultural preferences” and urges lawyers to “[g]ive clients credit – if they have strong cultural preferences, they are likely to inform you about them.” Such an assertion ignores the likelihood that clients accustomed to large “power distance” will consider it inappropriate to challenge or

67. Id. at 36.
68. Id. at 38.
69. Id. While I share the text’s call for lawyers to respect client’s values and wishes, I do not agree that a client’s values or wishes necessarily always trump his lawyer’s values. There are some lawyer values – particularly those surrounding the sorts of conduct the lawyer is or is not willing to engage in or the sorts of consequences she is or is not willing to bring about – that should not necessarily always be trumped.
70. Id.
71. Id.
72. Id. at 38-39
73. Id. at 39. The example given is that if a female client is “strongly disinclined to discuss case-related sexual matters” with a male lawyer, the lawyer can “reasonably expect” the client to ask for another woman to be present for such a conversation.
confront an attorney’s default approach to practice. It seems too to assume that clients must (and will) engage in “high-content” communication – explicitly informing their attorney of their discomfort and preferences – rather than expressing reservations and preferences more subtly, through “high-context” communication. Such advice puts an untoward burden on clients to verbalize cultural preferences and to take initiative and responsibility for identifying and bridging cultural gaps.

The final principle the text offers lawyers also seems to undermine much of the earlier material in the subchapter. In urging lawyers not to “abandon... [the] need for pertinent information in an effort to avoid encroaching on a client’s cultural preferences,” the text asserts that in the end, a lawyer’s ability to help clients “will generally entail their understanding what you have to say about American laws and processes rather than your understanding their cultures’ alternatives.” Such advice seems to abandon the emphasis on contextualized problem-solving - based on thoroughly understanding clients’ values, preferences, expectations, and reactions to options - that I understand to be at the heart of client-centered lawyering. For only by pushing ourselves, with clients’ help, to understand how they look at things can we try to fully understand the context within which they frame their problem and react to possible solutions.

Taken together, these final suggestions seem likely to imply – at least to those most attracted to such a suggestion – that, when all is said and done, it is clients who must adjust themselves to lawyers’ cultural preferences and to dominant U.S. cultural norms. At the very least, these passages send a markedly mixed message about how hard lawyers should work to understand and adjust to clients’ cultural preferences and patterns. But exactly because it is so difficult to adapt one’s ways of thinking and acting to fit the patterns, views, and preferences of another, it is imperative that we not encourage ourselves (or our students) to give up when the going

74. Id. at 39 (emphasis added).
75. See Piomelli, Appreciating Collaborative Lawyering, supra note 11, at 488-90.
76. Following these suggestions, the text states: “Another strategy you can pursue is to look upon your clients as resources rather than guessing at the reasons for their seeming reluctance to participate actively or to seek outcomes that strike you as strange or perhaps even improper.” Binder et al., Lawyers as Counselors II, supra note 5, at 39. Treating clients (and their communities) as resourceful partners with whom a lawyer collaborates to solve problems is at the heart of the vision of law practice that I have discussed at length. See works cited supra note 11. Unfortunately, Lawyers as Counselors’ suggestion in this regard does not receive the saliency it deserves, because it is immediately preceded by the mixed messages just described, see supra notes 73-74 and accompanying text, and is phrased as optional: “[a]nother strategy” that a lawyer “can” pursue. Binder et al., Lawyers as Counselors II, supra note 5, at 39.
gets tough, to just wait for clients to traverse the cultural distance that separates them from us (and us from them). We owe ourselves and our clients more – especially those of us who aspire to making progressive social change through our lawyering.

B. A More Consistent Approach: Krieger and Neumann’s Essential Lawyering Skills

The latest edition of Stefan Krieger and Richard Neumann’s Essential Lawyering Skills,77 published in 2003, addresses cross-cultural lawyering skills in a nine-page chapter entitled “Multicultural Lawyering.”78 While not nearly as dominant in the market as Lawyers as Counselors,79 in several respects Krieger and Neumann’s text does a significantly better job of preparing students for cross-cultural lawyering - at least in terms of how lawyers should consider and respond to other cultures.

1. Unambivalent Insistence on Importance of Lawyers’ Recognizing and Adjusting to Clients’ Cultures

Essential Lawyering Skills opens its chapter by insisting: “A lawyer can be effective only if the lawyer understands cultural differences and knows how to recognize and deal with them.”80 It consistently reinforces the point that cross-cultural competency is a fundamental skill at the heart of client-centered representation, not just something a lawyer only uses occasionally - to deal with atypical, difficult clients.81 Krieger and Neumann’s text emphasizes that
to respect the cultural, racial, ethnic, and gender differences that exist between us and our clients . . . means that we recognize the differences and adapt to them rather than assume that the client will adapt to us . . . . And we adapt . . . sincerely because insincerity is condescension. 82

---

77. KRIEGER & NEUMANN, ESSENTIAL LAWYERING SKILLS II, supra note 5.
79. BINDER ET AL., LAWYERS AS COUNSELORS II, supra note 5.
80. See KRIEGER & NEUMANN, ESSENTIAL LAWYERING SKILLS II, supra note 5, at 49.
81. See id. at 52. Jacobs argued that the first edition of Lawyers as Counselors, BINDER ET AL., LAWYERS AS COUNSELORS I, supra note 1, was likely to deem clients of color and low-income clients as atypical and difficult. See Jacobs, supra note 1, at 353-61.
82. KRIEGER & NEUMANN, ESSENTIAL LAWYERING SKILLS II, supra note 5, at 52.
It also reinforces that ignoring difference is not a viable option, for it “alienate[s] clients, witnesses, other lawyers, and judges” and it “cuts . . . [one] off from a great deal of information.”

In all of these regards, the text forcefully presents a consistent message that cultural differences between a lawyer and client must be recognized, appreciated, respected, and traversed — and that a lawyer must learn to leave his cultural comfort zone to meet a client in hers.

2. Broad Definition of Culture

Krieger and Neumann define culture broadly as “a body of values, customs, and ways of looking at the world shared by a group of people.” They explicitly note that cultures are not just based on ethnicity, race, locality, or geography, but also upon gender, age, religion, immigration status, disability, sexual orientation, socioeconomic status (i.e., “income, education, or both”), occupation, and even “the organization in which one works.” Their text also repeatedly discusses the existence of multiple cultures within the U.S., a “majority culture” and numerous “minority cultures.” Excerpts from linguist Deborah Tannen’s works describing how women and men practice law, converse, and interact differently comprise the final four pages of their chapter.

A broad definition of culture (and its multiplicity of potential sources) is important for a several reasons. It alerts students and lawyers to a fuller range of background influences that can shape people and interactions. It thus encourages us to broaden our horizons and to attend to multiple layers of potential meaning. It also highlights that a lawyer cannot become complacent simply because she shares one or more cultural identities with her client.

83. Id. at 49-50.
84. Id. at 49.
85. Id.
86. See id. at 50-52. This terminology is potentially misleading in its emphasis on population size, rather than social dominance, as the relevant distinguishing feature of cultures within the U.S. See infra notes 120-21 and accompanying text.
87. See id. at 54-57. The excerpts are from DEBORAH TANNEN, TALKING FROM 9 TO 5: WOMEN AND MEN AT WORK 124-25 (1994); DEBORAH TANNEN, YOU JUST DON'T UNDERSTAND: WOMEN AND MEN IN CONVERSATION 14-17, 49-50, 297-98 (1990).
88. As Sue Bryant notes, a broad definition of culture “teach[es] students that no single characteristic will completely define the lawyer’s or client’s culture.” Bryant, supra note 3, at 41.
Although the text does not articulate the point, others have addressed the risks that such complacency can lead lawyers to presume, rather than to explore, clients' values and preferences, and to ignore dynamics—such as other dimensions of cultural difference—that lead clients to still perceive the lawyer as an outsider. A broad definition of culture, in short, makes cross-cultural competency relevant for all lawyers.

3. Non-Judgmental, Nuanced Presentation of Dimensions of Cultural Difference

Kreiger and Neumann non-judgmentally portray the many dimensions along which cultures can differ and explain how those differences can affect one's lawyering. Their text explicitly discusses cultural differences as a matter of placement along a spectrum, rather than simply assigning cultures to one side or another of a dichotomy. For example, it notes:

The world is not divided into conflict-tolerant cultures and conflict-intolerant cultures. Instead cultures have a broad range of attitudes toward conflict, from those that honor conflict (such as the majority U.S. culture) to those that dishonor it, with many cultures somewhere in between. And in some cultures some kinds of conflict are acceptable but others are not.

Kreiger and Neumann cover many of the same dimensions of cultural difference as Lawyers as Counselors—which came out a year later—but they do so more artfully and non-judgmentally. Their text routinely brings the issue back to the possible

89. Jerry López, for example, has explored both phenomena. He has described “Teresa,” a fictionalized Latina impact litigator who presumes to know what her low-income Latino clients want and need, and contrasted her with “Amos,” an African-American attorney who grew up in the community to which he has returned to practice, but recognizes that his law degree, and the very fact he was able to leave, may lead many in his community to view him as an outsider. See GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 13-17, 34-37 (1992). Christine Zuni Cruz too has described the challenge of successfully navigating the “road back in” to a community and culture one was born and raised in, but then left to pursue higher education. See Zuni Cruz, supra note 3.

90. The text notes, for example, that cultural norms and patterns impact not only what people say and do, but even what they remember about events. See KRIEGER & NEUMANN, ESSENTIAL LAWYERING SKILLS II, supra note 5, at 50.

91. Id. 1 thank Patti Chang for pointing out that the dominant U.S. culture does not always honor conflict, particularly in the areas of politics or religion, which are often treated as taboo subjects to avoid raising with acquaintances, friends, and even family.

92. BINDER ET AL., LAWYERS AS COUNSELORS II, supra note 5.
consequence of each potential cultural difference between lawyer and client. It poses each dimension of cultural difference as a question, without betraying a preference for one answer or another. Instead of framing the issue as "power distance," for example, it asks: "Is hierarchy valued?" It breaks up "masculinity/femininity" into two questions: "How is conflict viewed?" and "How acceptable is it to show emotion or talk about emotion?" Instead of categorizing levels of "uncertainty avoidance," it asks: "Is formality valued?" It also asks: "Which is more important, the individual or the group?" and "What does body language communicate?"

With each of these questions, the text discusses the mainstream U.S. answer and mentions that some other cultures come out differently. But it does not identify those other cultures—an approach that leaves more for lawyers to attend to and inquire about, rather than looking up an expert's categorization of the client's culture.

Refreshingly, the text heeds its own advice that one shows "respect for a culture by trying to understand it and all its complexities. Respect includes genuine curiosity and a willingness to accept the culture on its own terms rather than judging it." Kreiger and Neumann demonstrate this approach best in their discussion of "How much is typically said in words, and how much is left to implication or context?" After noting that "majority U.S. culture" communicates largely expressly by focusing on the precise words spoken or written, and that many other cultures consider such communication "unsubtle or rudely blunt," their text notes that in some other cultures, "words are carefully chosen to imply messages that are not spoken." It then describes, as a relational matter, the potential for misunderstanding when someone from such a culture interacts with someone who communicates as the mainstream U.S. culture does. Instead of focusing on what the more subtle (i.e., high-context) communicator will not understand, the text emphasizes that "the person from the majority U.S. culture might not hear the other person's implications and might become impatient, wrongly assuming that the other person is

93. NEUMANN, ESSENTIAL LAWYERING SKILLS II, supra note 5, at 51.
94. Id. at 50-51.
95. Id. at 51.
96. Id.
97. Id. at 52.
98. Id.
99. Id. at 53.
100. Id. at 51.
101. Id.
102. See supra note 67 and accompanying text.
uncommunicative.” And it goes further, noting that in the context of negotiation, “American lawyers, who otherwise may be among the wordiest and most blunt people on earth, communicate a great deal through implication and context” in order to send messages without having a blunt statement used against them. The text’s method helps students to appreciate the value of the approaches of other cultures and, by showing that lawyers may sometimes adopt such approaches, makes those cultures seem less exotically “Other.”

4. Suggested Strategies

Kreiger and Neumann’s text offers only a few broad suggestions. It counsels that rather than striving vainly to try to memorize the purported traits and customs of a vast array of other cultures, lawyers should seek to develop an instinctual feel for situations where another’s cultural assumptions differ from one’s own. The text encourages the lawyer: (1) to learn not only the customs and values of her clients’ cultures, but also the way those cultures view the world in general and the lawyer’s culture specifically; (2) to attempt to foresee potential trouble spots and plan adaptations to the client’s culture that will neither stereotype nor offend her client; and (3) to apologize promptly and succinctly for any cross-cultural mistakes she makes. Finally, and most importantly, it implores lawyers “to be open-minded and curious about how other people think and act and why they think and act that way. A generous frame of mind on your part and a genuine liking for other people – and their differences – go a long way in this respect.”

In emphasizing the lawyer’s need to adapt to other cultures and to remain open-minded, curious, and generous, the text begins to direct at least some attention to the lawyer side of the attorney-client relationship. Although largely focused on what

103. KRIEGER & NEUMANN, ESSENTIAL LAWYERING SKILLS II, supra note 5, at 51.
104. Id.
105. Id. at 53.
106. Id.
107. Id.
108. See supra note 82.
109. See supra note 107.
110. I share Carwina Weng’s conviction that it is essential to encourage lawyers to develop cultural self-awareness and her dismay that in Kreiger and Neumann’s text “awareness of the other, rather than of the self, takes precedence.” See Weng, supra note 3, at 383-84. Weng overstates the critique, however, in asserting that Kreiger and Neumann fail completely to “detail cultural differences.” Id. Their text certainly does detail the dimensions along
lawyers should know about diverse others, it takes this small, but important, step toward attending to the lawyer’s frame of mind and attitudinal stance toward her clients. Ultimately, however, larger strides are required in this direction of lawyer introspection.

C. The Attention to Clients and Lawyers of Cochran, DiPippa, and Peters’ The Counselor-at-Law

The clinical text on interviewing and counseling that first placed significant emphasis on the lawyer’s side of the cross-cultural relationship is Robert Cochran, John DiPippa, and Martha Peters’ The Counselor-at-Law. The text, initially published in 1999, frames the issue as “Dealing with Client-Lawyer Difference” and devotes a nineteen-page chapter to it. Instead of focusing on the culturally different client’s motivation to participate, or concentrating on understanding and adapting to the client’s culture, Cochran, DiPippa, and Peters emphasize that lawyers must develop both an understanding of clients’ cultures and a self-awareness of their own culture - and its impact on themselves and on their clients from different cultures. Their text argues that bridging difference requires both a commitment to familiarize oneself with “cultural patterns, world views, and life experiences of diverse populations” and “a personal commitment to increase self-awareness.”

1. A Broad Understanding of Relevant Difference

Sometimes the text frames the issue as achieving “cross-cultural

which cultures can differ, see supra notes 90-104, and in doing so it always identifies how mainstream U.S. culture values or handles various issues. What their text fails explicitly to highlight, however, is the importance of knowing oneself and monitoring one’s reactions to and interactions with others.

111. COCHRAN ET AL., THE COUNSELOR-AT-LAW I, supra note 5.
112. Id. at 203-21. A second edition of the text was published in 2006. See COCHRAN ET AL., THE COUNSELOR-AT-LAW II, supra note 5. The new edition’s chapter on “Dealing with Client-Lawyer Difference” is almost identical to that of the 1999 version, containing one additional footnote and a few word changes. See id. at 205-23. Citations will hereafter be to the 2006 edition. The page and font size of the two editions are slightly different, so page cites to the new edition are often, but not always, two pages higher than in the first edition.
113. As discussed above, see supra notes 26-39 and accompanying text, this is the central concern of BINDER ET AL., LAWYERS AS COUNSELORS II, supra note 5.
114. As discussed above, see supra notes 80-83 and accompanying text, this is the focus of KRIEGER & NEUMANN, ESSENTIAL LAWYERING SKILLS II, supra note 5.
understanding” and other times it discusses it in terms of dealing with, or bridging, difference.116 Regardless of the terminology employed, it makes plain that the issues are “not merely a matter of race and ethnicity,” but also involve the broad range of differences in “gender, sexual orientation, disability, religio[n], socioeconomic status, [and] age,” as well as “micro-cultural differences” (such as differentiations among “Hispanics” within the U.S. or between different socio-economic classes within a racial or ethnic group).117 The text underscores the importance of a broad understanding of the dimensions of difference, noting that “[p]articularly when client and lawyer are both from the United States, but from different regions, social classes, or cultural heritages, there may be false assumptions of similar perception.”118 The text casts these differences as “compos[ing] and focus[ing] the lenses through which clients and lawyers experience the world”; these lenses, “embedded in the identity of people,” constitute potential barriers to trust – both the client’s trust of the lawyer and the lawyer’s of the client – and to “congruent perceptions and interpretations.”119

The text makes explicit that the differences it discusses are linked to, and relevant in large part because of, disparities in power. It often speaks, for example, of “dominant” cultures and groups, rather than simply “majority” and “minority” ones.120 Such a framing highlights the importance of the unequal power of social groups – many of whom are numerical minorities – to set the cultural norms and standards to which others must adapt. Examples of such norm-setting numerical minorities include men, Whites in many cities and some metropolitan areas of the U.S., as well as the professional middle class.121

116. See, e.g., id. at 205-06.
117. Id. at 206, 210.
118. Id. at 213.
119. Id. at 206.
120. See, e.g., id. at 208, 216.
121. See, e.g., D’Vera Cohn, Area Soon to be Mostly Minority: Shift in 4-8 Years Will Reshape Politics, Priorities, Experts Say, WASHINGTON POST, Mar. 25, 2006, at A1 (Whites already minority in greater metropolitan areas of Miami, Houston, Los Angeles, and San Francisco, soon to be joined by New York and Washington, D.C. areas); Silver, supra note 3, at 229 (“Nearly half of the nation’s 100 largest cities are home to more minorities than Whites.”) (citing Eric Schmitt, Whites in Minority in Largest Cities, the Census Shows, N. Y. TIMES, Apr. 30, 2001, at A1); Jack Metzgar, Politics and the American Class Vernacular, in NEW WORKING-CLASS STUDIES 189, 201 (John Russo & Sherry Lee Linkon, eds. 2005) (professional/managerial occupations comprise 30 percent of workforce in U.S. and people with bachelor’s or higher degrees constitute 25 percent of population 25 years old or older); Michael Zweig, Introduction - The Challenge of Working Class Studies, in WHAT’S CLASS GOT TO DO WITH IT?: AMERICAN SOCIETY IN THE TWENTY-FIRST CENTURY 1, 7 (Michael Zweig ed. 2004) (middle class - of professionals, supervisors, and small business owners - comprises 36 percent of U.S. population).
2. The Importance of Self-Awareness and Escaping Cultural Encapsulation

In addition to fostering client participation, Cochran and his colleagues emphasize that a lawyer must develop sufficient cross-cultural skill to avoid misinterpreting her client’s information by failing to appreciate his cultural concerns and convictions.\(^{122}\) They note that a lawyer must monitor not only what her client says, but also how she feels about him and his culture.\(^{123}\) Their text urges the lawyer to develop a contextualized understanding not only of her client and his problem, but also of herself. This requires vigilant attention to “one’s own cultural perspectives and their impact on attitudes, communication patterns, interactional habits, and cultural assumptions.”\(^{124}\)

The text states that the “first and perhaps greatest challenge in legal interviewing and counseling is to become aware of and sensitive to personal biases and subjective attitudes that unknowingly affect one’s relationships with clients.”\(^{125}\) It urges lawyers to develop self-awareness of themselves and their culture so that they can break out of “cultural encapsulation.”\(^{126}\) By this Cochran and his colleagues mean lawyers must learn not to “unconsciously apply[] their own cultural methods and strategies as if they were universal,” but rather must “adapt their habits, patterns, behaviors, and attitudes when working with diverse clients.”\(^{127}\) To transcend cultural encapsulation, their text insists a lawyer must become aware “of the ways one’s own culture influences beliefs, values, experiences of the world, and interactions with others.”\(^{128}\) Once identified, the objective is then to be able “to step outside of our strong perceptual fields” to meaningfully engage with others.\(^{129}\)

This emphasis on truly understanding ourselves, and how our cultures help shape us, is a basic tenet of the literature on cross-

\(^{122}\) COCHRAN ET AL., THE COUNSELOR-AT-LAW II, supra note 5, at 205.
\(^{123}\) Id. at 213-14.
\(^{124}\) Id at 213.
\(^{125}\) Id. at 207.
\(^{126}\) Id. The text credits the concept of cultural encapsulation to C.G Wrenn. See C.G. Wrenn, The Culturally Encapsulated Counselor, 32 HARV. EDUC. REV. 444-49 (1962).
\(^{127}\) COCHRAN ET AL., THE COUNSELOR-AT-LAW II, supra note 5, at 207.
\(^{128}\) Id. at 222.
\(^{129}\) Id. at 207.
cultural lawyering and psychological counseling. It is therefore surprising that among the latest clinical textbooks, only Cochran, DiPippa, and Peters' book focuses explicitly and extensively on lawyer self-knowledge and cultural introspection as a necessary cross-cultural skill.

The text also emphasizes that a lawyer must pay attention to how his culturally conditioned perceptions of his clients can impact his expectations about their cases— as well as his own and his clients' behavior and performance. Noting that "[e]xpectations of success affect actual outcomes," it explains that penetrating introspection is essential because "[w]e can [only] modify our reactions once we are aware of our less conscious, culturally learned reactions." Again, the text is unique among its competitors in stressing (at least in the discussion of cross-cultural issues) the interactive nature of the attorney-client relationship, the ways in which the attitudes, expectations, and conduct of each actor shape the other—indeed the ways in which one's attitudes, expectations, and conduct reverberate (whether one recognizes them or not) through the relationship.

The text also notes that power impacts the ease with which people can recognize their cultural assumptions (and the frequency with which they must). It declares:

"Generally, the more characteristics a person has that are dominant within a society, the harder the person has to work to challenge his own assumptions. On the other hand, minority and subordinate groups must frequently confront the differences between their own cultural learning and the standards of majority and dominant cultures."

---

130. See, e.g., Bryant, supra note 3, at 49 ("knowing yourself as a cultural being is an on-going and necessary process for cross-cultural competence"); Jacobs, supra note 1, at 395 ("if we can help a student become self-aware, it may lead the student to reduce the level of cultural insensitivity displayed toward the client. Becoming self-aware may enable the student to display a heightened awareness of possible negative nonverbal cuing she may be transmitting to the client."); Silver, supra note 3, at 230 ("Learning about another culture's customs is only one component of multicultural competence. Acquiring such competence also requires a deliberate exploration of the deeply rooted cultural assumptions that claim us. This, in turn, requires an exploration of our own biases and stereotypes about individuals and groups different from ourselves."); Weng, supra note 3, at 389 ("key to developing multicultural competence is cultural self-awareness").

131. See, e.g., Weng, supra note 3, at 372 n.16, citing PEDERSEN, supra note 51, at 203; SUE & SUE, supra note 51, at 17.


133. Id. at 213-14.

134. See id. at 213-17. Jacobs identified and discussed the importance of "expectancies" and self-fulfilling prophecies. See Jacobs, supra note 1, at 377-84.

This notion of the dual consciousness of people from subordinated groups was, of course, explored over a century ago by W.E.B. DuBois.\textsuperscript{136}

3. Additional Dimensions of Difference, Including Some From Lawyer's Professional Socialization

Cochran, DiPippa, and Peters' text also attends to aspects of non-U.S. and non-White cultures. It suggests lawyers should "take the time to learn about different cultural patterns and expectations, because a lawyer's knowledge indicates to clients respect for their diversity, interest and concern for them and their identified group, and a commitment to learning about their culture."\textsuperscript{137} The text describes, for example, diversity in "cultural rapport-building rituals and patterns," such as different reactions to the use of first names, shaking hands, physical distance between lawyers and clients, and eye contact or aversion.\textsuperscript{138} In doing so, it ascribes patterns and positions to particular groups, such as Muslims, African Americans, and White Americans — sometimes clearly couching the ascriptions as tentative, other times not.\textsuperscript{139}

The text discusses ways in which some common assumptions of mainstream U.S. professionals may be out of step with other cultures. Like its competitors, The Counselor-at-Law notes that commitments to the individual as the basic unit of society and to independence over interdependence are not universal.\textsuperscript{140} But it also raises other important differences. It points out, for example, that mainstream U.S. lawyers may assume problems are effectively categorized (and resolved) by academic or professional discipline (i.e., that an issue is a legal problem, or a psychological one, or a social work one), an assumption that may prove problematic for clients who "operate from more holistic frameworks and


\textsuperscript{137} Cochran et al., The Counselor-at-Law II, supra note 5, at 210.

\textsuperscript{138} Id. at 209-10.

\textsuperscript{139} See id. The text, for example, states as a matter of "fact" that "it is a huge affront to offer the left hand or to give something with the left hand to a Moslem." Id. at 209. It uses adverbs such as "generally" and "likely" and verbs such as "tends" to discuss White American and African American preferences with regard to physical distance and eye contact. Id.

\textsuperscript{140} See id. at 211-12. See also supra notes 55, 97 and accompanying text (similar discussion in other texts).
traditions.”

The text also warns that a tendency to “value linear thinking over nonlinear thinking” can cause lawyers to tune out and write off some clients, destroying prospects for communication. Additionally, it suggests that a “critical assumption” of many mainstream U.S. lawyers that warrants questioning is the notion that “the ‘problem’ is with the individual and not with the system,” for “[t]he system is part of the cultural encapsulation of those who benefit from it.”

Each of the last three potential differences flows at least in part from, or is amplified by, U.S. lawyers’ professional socialization. As a vast literature explores in great detail, and as Part II.C of this essay discusses, lawyers interested in working to effect social change are well advised to pay close attention to our professional culture and the impact it can have on our relationships with low-income and working-class clients and communities.

142. Id.
143. Id.
4. Suggested Strategies

Cochran and his colleagues offer a long list of "Do's and Don'ts" for interacting across difference. Some of these suggestions for lawyer behavior reflect their text’s emphasis on the centrality of developing self-awareness and guarding against cultural encapsulation. For example, they urge the lawyer to "monitor yourself so that you do not fall into stereotyping clients" and to "be genuine." Their text also emphasizes the importance of attorney-client dialogue, urging lawyers “not [to] be afraid to [respectfully] ask” clients when something about their story, conduct, preferences, or beliefs is puzzling or unclear. Unlike its competitors, it also explicitly notes that “cultural diversity not only poses a challenge for building lawyer-client rapport, but also damages clients when differences are not understood and valued by legal decision makers.”

D. Assessing the Textbooks in the Context of the Broader Clinical Literature on Cross-Cultural Lawyering

As a group, the texts reviewed are a significant advance over their predecessors. The only one whose section on cross-cultural lawyering I would not recommend is Binder, Bergman, Price, and Tremblay’s Lawyers as Counselors. Krieger and Neumann’s Essential Lawyering Skills shares a problematically lopsided focus on the client’s side of the attorney-client cross-cultural relationship, but its presentation of that aspect is so strong, I would still assign it to students – with supplementing materials that pay greater attention to the attorney’s side. I would also endorse Cochran, DiPippa, and Peters’ The Counselor-at-Law, for its emphasis on the importance of lawyer self-awareness and of recognizing and escaping cultural encapsulation. Indeed a combination of the relevant chapters of

146. Id. at 220.
147. Id. at 221.
148. BINDER ET AL., LAWYERS AS COUNSELORS II, supra note 5. See supra notes 14-76 and accompanying text.
149. KRIEGER & NEUMANN, ESSENTIAL LAWYERING SKILLS II, supra note 5. See supra notes 77-110 and accompanying text.
150. COCHRAN ET AL., THE COUNSELOR-AT-LAW II, supra note 5. See supra notes 111-47 and accompanying text.
the latter two texts might be particularly effective.

Of course, a textbook is unlikely, on its own, to prepare students to lawyer effectively across cultural difference. Such preparation must occur on cognitive, affective, and behavioral levels—directing attention to what we know about others (and ourselves), how we feel about them (and ourselves), and how we act on our knowledge and feelings. Only immersing cultural issues pervasively throughout a clinical curriculum, with repeated opportunities to address, practice, and reflect upon them, is likely to maximize student-lawyers’ competence. But clinical texts can highlight the importance of such competence, provide cognitive tools for understanding the dynamics at play, and suggest areas for behavioral change.

Recognizing the space limitations and ensuing difficult choices of what to include in a textbook, there are several respects in which these texts could productively expand their horizons by incorporating insights from the existing clinical literature on cross-cultural lawyering. Without extensively lengthening their chapters, the texts could benefit by reconceptualizing their goal as imparting habits rather than just information, expanding their attention from the cognitive and behavioral realms to the affective domain as well, and also exploring the challenges that may flow from cultural sameness, not just cultural difference.

Framing the issue, as Sue Bryant and Jean Koh Peters do, as the acquisition of habits, rather than simply information, reinforces the insight that cross-cultural competence necessarily entails cognitive, emotional, and behavioral dimensions, each of which is most effectively developed and enhanced through repeated practice and use. Attention to fostering habits also potentially accentuates a different understanding of the central goal of cross-cultural

151. See Bryant, supra note 3, at 48.
152. In our core, semester-long offering in the Civil Justice Clinic at U.C. Hastings, my teaching colleagues (Shauna Marshall, Miye Goishi, Donna Ryu, Eumi Lee, and Gail Silverstein) and I devote six full class sessions spread across the semester, i.e., thirteen hours of seminar discussion, as well as three writing assignments, to exploring issues of cross-cultural difference. Mark Aaronson, who used to teach the course with us, has previously described some of these sessions. See Mark Neal Aaronson, We Ask You to Consider: Learning About Practical Judgment in Lawyering, 4 CLINICAL L. REV. 247, 311-18 (1998). See also infra notes 160-67 and accompanying text for additional description of our approach.
153. See works cited supra at notes 1, 3.
154. See Bryant, supra note 3. Bryant recognizes Koh Peters as an author of the “Five Habits” approach, even though she did not author the work cited. See id. at 33, 35. Koh Peters includes a chapter on “the Habits” in JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (2d ed. 2001).
155. See Bryant, supra note 3, at 48.
competence: The aim becomes not simply to learn a few techniques for how to understand or to manage people who differ from us, but instead to learn how best to change our orientations and ourselves to maximize our ability to interact with and learn from each other. Reformulating the goal as developing habits radically shifts the relevant timeframe: it connotes—more accurately—a concerted, long-term effort likely to last not just a class session or two, or a semester, but a lifetime.

As outlined above, the textbooks’ consideration of cross-cultural lawyering focuses primarily on what student-lawyers should know, with some suggestions on how they might act. But cross-cultural lawyering theorists, again led by Bryant and Koh Peters, direct important attention to the affective or emotional level too. They note, as the textbooks do not, that cross-cultural interactions and self-critical introspection can be stressful and anxiety-provoking, as can cross-cultural training itself.156 The stress stems in part from the change-oriented goal of the training and inquiry.157 Thus Bryant and Koh Peters underscore the importance of providing students the emotional support and motivation to grow and change.158 Consequently they emphasize the importance of remaining non-judgmental, not only of our clients, but also of ourselves.159 Indeed they deem non-judgmental thinking “a core

156. Describing those aspects of diversity trainings that they sought to avoid, Bryant discusses what Koh Peters labels the three “Ghosts of Diversity Past”: (1) designing training exclusively for White students; (2) placing “unfair burdens on students of color to educate White students;” and (3) “the ghost of judgment that often resulted in naming and blaming or the fear of such occurrences during a diversity training.” Id. at 57.

157. As Bryant explains:

We are training students to be non-judgmental and to develop new levels of tolerance, new modes of thinking and valuing as well as new behavior. Students may experience this as a threat to their cultural identity. In addition, some students may experience stress because classmates articulate world views that are painful. Other students may experience stress because they have done something that exposed biases that they are embarrassed to acknowledge.

Id. at 59-60 (footnotes omitted).

158. See id. at 57 (“teachers need to take into account the emotional needs of cross-cultural learners”).

159. As Bryant writes:

Refraining from judgments and being open to difference is an essential skill for effective cross-cultural lawyers…. To honestly unearth our own cultural assumptions, stereotypes and biases and examine them, we need to view them without shame or judgment or self-condemnation, but with an eye towards understanding them and, where necessary, rectifying or eradicating them. To understand our clients, we need to use the same kind of non-judgmental approach.

Id. at 49 n.54. See also id. at 58 (“We use a teaching approach that asks students to be non-judgmental towards themselves, as they inevitably will make mistakes, yet at the same time stresses the importance of lawyering in a way that addresses stereotypes and
cross-cultural skill," one that is particularly challenging given lawyers' professional socialization.\textsuperscript{160}

This attention to creating an emotional atmosphere that fosters students' willingness and ability to honestly look at and strive to change themselves is, of course, a central responsibility of the clinical faculty who teach the courses in which the textbooks are used. One of the ways my colleagues and I at the Civil Justice Clinic attempt to reach students on the affective level is by showing an extraordinary film, \textit{The Color of Fear}.\textsuperscript{161} The film explores the impact of race on the lives of nine men, as revealed through their discussion at a weekend retreat.\textsuperscript{162} We use the film – well into the semester, once the class has bonded as a community – because it grounds abstract principles about dealing with difference,\textsuperscript{163} triggers and explores intense emotional reactions,\textsuperscript{164} and models genuine biases.

\textsuperscript{160} See id. at 56 n.83. Regarding lawyers and law students, Bryant notes: "Our training includes being called upon in classroom discussion to judge a case based on limited, digested casebook facts.... Students are often taught that assessing client credibility is a critical piece of the lawyers' role that begins in the initial interview." \textit{Id.}


\textsuperscript{162} The gathering was convened by Lee Mun Wah, a community therapist, who invited two other men of Asian descent (David Lee and Yutaka Matsumato), two Black men (Victor Lewis and Loren Moye), two Latino men (Roberto Almanzan and Hugh Vazquez), and two White men (David Christensen and Gordon Clay). The men, from the greater San Francisco Bay Area, span a wide range of ages. They combine deeply insightful intellectual analyses of race and extraordinary abilities to recognize and discuss their emotions.

\textsuperscript{163} We use the film in conjunction with excerpts from Minow, \textit{supra} note 33; Martha Minow, \textit{Differences Among Difference}, 1 UCLA WOMEN'S L.J. 165 (1991); Stephanie M. Wildman with Adrienne D. Davis, \textit{Making Systems of Privilege Visible}, in \textit{PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA} (Stephanie M. Wildman ed. 1996). We also assign a powerful essay by Vietnamese-born anthropologist and law professor Maivn Clech L\textacute{a}m, describing and theorizing four interactions in which a series of White women presume to know better than, speak for, and instruct her and other people of color from formerly colonized nations. See Maivn Clech L\textacute{a}m, \textit{Feeling Foreign in Feminism}, 19 SIGNS 865 (1994).

We precede the showing of \textit{THE COLOR OF FEAR}, \textit{supra} note 161, with a 20-minute segment from a television magazine show, \textit{Primetime Live: True Colors} (ABC television broadcast Sept. 26, 1991), which uses hidden cameras to capture the experiences of two discrimination testers – one White, one Black – when they move to St. Louis. The segment documents blatantly different treatment the testers experience as they apply for jobs and rental housing, shop for shoes, music, and cars, and hail taxi cabs.

We devote three hours of discussion, over the course of two class sessions, to the films and readings, and ask students to write a paper as well. We urge students to consider how issues of race are similar to and different from other cross-cultural dynamics.

\textsuperscript{164} Well into the film, for example, Lee Mun Wah, the facilitator and director, reveals that his mother was murdered by an African-American man and that he is in part driven to make the film to repudiate his father's conviction that different races cannot live (or
compassion for and engagement with one’s own experience and with others’. A central theme of the film is that to talk honestly about race in the U.S. we must first explore the fear, pain, and hurt we each have experienced; only by becoming self-aware of how race shapes our own existence can we hope to tackle the issue constructively.

One of the key moments in the film occurs when a White man who has steadfastly denied the validity of the attitudes and experiences recounted by the men of color finally appears to understand enough about himself and his formative experience (as a child of an abusive and racist father) to be willing and able to hear and consider the experiences of the other men. Shortly after that moment, in a subsequently filmed narration, participant Roberto Almanez urges the audience: “Stretch out your arms and take hold of the cloth that covers you. The cure for the pain is in the pain. Good and bad are mixed. If you do not have both, you don’t belong with us.” His emphasis on searching not for unattainable purity, but for a commitment to recognize and work to change the utterly human imperfections in each of us, exemplifies the introspective but non-judgmental engagement that we, Bryant and Koh Peters, and other cross-cultural theorists seek to encourage and aspire to model.

A final way in which the textbooks examined could beneficially incorporate aspects of the cross-cultural lawyering literature would be to highlight that a lawyer must not only attend to cultural difference, but also to the dangers of cultural sameness. As Bryant and Koh Peters note, situations where lawyers perceive shared cultural backgrounds with their clients pose a risk that lawyers may “substitut[e] their own judgment for the client’s as a result of over-

even talk) together in harmony or understanding. See THE COLOR OF FEAR, supra note 161.

165. Cognizant of the emotional power of the film and the topic, we begin discussion by asking each student to focus on a particular man in the film (whom we assign in advance) and then to describe him (drawing on both empathy and detachment), to describe his general worldview and how he approaches issues of difference, and - if the student feels comfortable - to describe how that character’s views compare to the student’s view.

166. The film’s closing theme song, written by Peter Barclay in a didactic style completely different from that of the film itself, begins:

You think someone is going to destroy you,
If you don’t have the upper hand.
You are afraid of the differences of people.
You must destroy them.
Can’t you see it’s fear that’s driving you insane,
Eating you alive and causing you much pain?
You’ve got to walk right through your fear. . . .
THE COLOR OF FEAR, supra note 161.

167. Id.
identification or transference." Such situations may also lead lawyers to fail to explore issues in sufficient depth, because they assume the client's cultural similarity leads him to similar thinking and motivation. To avoid both possibilities, one must consistently encourage far-reaching discussion with clients to gather and confirm needed information, rather than relying on assumptions or projections.

A key insight embodied in such an approach is the recognition of the centrality of fostering an embracing curiosity about ourselves and others—a curiosity that engenders probing, genuine interest in how culture shapes each of us and in how each of us expresses our individuality, often in opposition to our culture(s). Such a deeply internalized, genuine, and generous curiosity about ourselves and others is essential. For at its best and its root, cross-cultural competence is a matter not simply of the mind to be learned from a book, but a matter of the heart and the spirit to be experienced in thoroughgoing (and mutual) connection and engagement with others.

II. A Sketch of a Future Agenda

Just as the textbooks omit some key insights of the larger cross-cultural lawyering literature, that literature itself has failed to cover several important topics that warrant more detailed exploration. As elaborated below, those of us interested in enhancing student-lawyers' cross-cultural skills would do well to focus more closely on the cultural aspects of socioeconomic class, on the latest studies of

168. Bryant, supra note 3, at 42. This possibility is one of the reasons behind the call for students to identify elements of cultural similarity and difference between them and their clients. López's description of his fictionalized impact litigator, "Teresa," is an example of this phenomenon. See supra note 89.

169. Bryant insightfully observes:

Lawyers usually ask questions based on differences that they perceive between themselves and their clients. Thus, lawyers tend to ask questions when clients make choices that the lawyers would not have made or when the lawyers perceive an inconsistency between what the clients are saying and doing. Lawyers tend not to ask questions about choices that clients have made when the lawyers would have made the same choices; in such a situation, the lawyer usually assumes that the clients' thought processes and reasoning are the same as his or her own.

Bryant, supra note 3, at 66 (footnote omitted).

170. Bryant, for example, shares the advice of cross-cultural trainers "to ask 'I wonder if there is another piece of information that, if I had it, would help me interpret what is going on?'' Id. at 72 (quoting RICHARD BRISLIN & TOMOKO YOSHIDA, INTERCULTURAL COMMUNICATION TRAINING: AN INTRODUCTION (1994)).
social cognition and subconscious social attitudes, and on the interaction of lawyers' professional socialization and prevailing stereotypes of low-income and working-class people.

A. More Explicit Focus on Socioeconomic Class

One realm of potential difference between lawyers and clients that has not yet received the concentrated attention it warrants is socio-economic class and its cultural impact. Such a failure is consistent, of course, with the widespread refusal in the U.S. to scrutinize class – a continuation of longstanding notions of "American exceptionalism" to the import and intractability of class. In the cross-cultural lawyering literature, while class is often listed with race and gender as one of the three central dimensions of difference in the U.S., it is rarely discussed directly; it tends instead to be tacitly subsumed under race. (Such an approach is prone to overlook people of color who are affluent or professional middle-class, Whites who are low-income or working-class, and the significance of class distinctions among people of the same race). Without discounting the importance of its intersectionality with race, and gender, class alone warrants greater attention.

Indeed, the lack of clearly established terminology to even identify the major classes in U.S. society is an indication of how much work remains to be done in this area. For purposes of this essay, I will use a taxonomy adapted from the work of Betsy Leondar-Wright. She describes a four-class hierarchy. At the bottom are the low-income working poor, who struggle, often unsuccessfully, to meet minimal subsistence needs and to maintain steady work. Above the working poor is the working class, whose

---


172. Krieger and Neumann list class as one of many potential sources of culture (which they define as a shared "body of values, customs, and ways of looking at the world"), but do not explore it further. See KRIEGER & NEUMANN, ESSENTIAL LAWYERING SKILLS II, supra note 5, at 49. Cochran, DiPippa, and Peters refer to class specifically twice. See COCHRAN ET AL., THE COUNSELOR-AT-LAW II, supra note 5, at 206, 210-11.

173. As Michael Zweig notes: "[N]o meaning of class is fully independent of race and gender, because a person's experience of class position depends on the person's race, ethnicity, and gender. At the same time, ... an appreciation of class can illuminate some of the complexities of racial and gender experience." Zweig, supra note 121, at 2-3.


175. See id. at 1-2. Leondar-Wright refers to this as the "poverty class," a term I prefer to avoid. Because of the unwieldiness of my alternative term, I will hereafter refer to this class interchangeably as either low-income or working-poor.
members perform physical labor and/or have little control of their workplace environment, have little or no college education, and low or negative net worth.\textsuperscript{176} Above the working class (and the lower middle class that she subsumes within it),\textsuperscript{177} is the professional middle class, populated by college- or graduate-school educated, salaried professionals or managers, who have autonomy over their work environment and often authority over subordinates, as well as the status and connections to help their children stay in this class.\textsuperscript{178} Above the professional middle class is the owning class, whose members need not work because of their investment income.\textsuperscript{179}

Given the class backgrounds of their clients – most of whom tend to be low-income or working-class – students in law school clinics and lawyers who aspire to effecting progressive social change can benefit from specific examination of class-linked cultural patterns and the dynamics of cross-class interaction. To be sure, many clinical programs use readings and exercises to try to ensure that students are aware of the circumstances in which working-poor and working-class clients live.\textsuperscript{180} Such devices are important to help foster empathy. But it is also important to explore the role that people’s economic circumstances and ensuing life experiences play in shaping their culture – i.e., their approaches to understanding and acting in the world.

In urging attention to class culture, I do not imply that anyone is completely shaped or described by such culture. We each are constantly evolving products of a multitude of experiences that need to be explored, not presumed. Nor do I assume that all lawyers come from professional-middle-class backgrounds. Indeed, it is in...
part because many students come from working-poor or working-class families, but are being socialized into the professional middle class, that direct attention to issues of class culture is so important.\(^\text{181}\)

I believe an examination of cultural differences between the working poor, working class, and professional middle class would benefit students and lawyers navigating cross-class interactions. Like the rest of the cross-cultural domain, such an exploration, to be fully effective, will entail not only learning about other class cultures, but also about how to recognize and reflect on one's own class-linked socialization. “Law and society” theorists have discussed some aspects of the class culture of low-income people, particularly with regard to their attitudes toward law and lawyers.\(^\text{182}\) “Working-class studies” is on the upswing.\(^\text{183}\) Analysts have studied the professional middle class.\(^\text{184}\) And a number of recent works have examined what they refer to as “the class divide” between professional-middle-class activists (and service providers) and the working poor and working class.\(^\text{185}\) It is time to identify and integrate the best of these works on class culture into our teaching and scholarship on cross-cultural lawyering.

I write to urge such an inquiry, not to report the results of having completed it; but I can posit a few of the beneficial explorations it might encourage. Attention to class cultures might, for example, prime students to explore whether U.S. culture (and particularly White U.S. culture) is as extremely and uniformly individualistic as it is often depicted. Is such a generalization more likely to be true of professional-middle-class people than of low-income or working-class people? Do we tend to differ in class-linked ways in the extent to which we are rooted in local community, value

---

\(^\text{181}\) For a powerful exploration of the challenges and pain of “crossing over” from the working class to the professional middle class, see Barbara Jensen, *Across the Class Divide: Crossing Classes and Clashng Cultures*, in ZWIEG, *supra* note 121, at 168. See also JOANNA KADI, *THINKING CLASS: SKETCHES FROM A CULTURAL WORKER* (1996).

\(^\text{182}\) See, e.g., Sarat, *supra* note 180.


close family ties, and/or prioritize connection and loyalty to those we consider our own?\textsuperscript{186} Do most of us in the U.S. share an expectation that our needs and desires can and should be met? That we can and should insist on it? Is this sense of "entitlement" less readily shared by low-income or working-class people?\textsuperscript{187} Is there a professional-middle-class tendency to view low-income and working-class people as unaware and in need of education and information about social issues or rights?\textsuperscript{188} Might what outsiders perceive as acquiescence to the status quo flow not from ignorance, but from a pragmatic calculation, grounded in part in one's economic circumstances, of the likelihood of defeat and/or the ability to withstand retaliation?\textsuperscript{189} To put these and other questions on lawyers' agendas for inquiry, the cross-cultural lawyering literature needs to focus more concentrated attention on socioeconomic class and the cultural differences it may engender.

B. Addressing the Latest Research on the Social Cognition of Bias

Each of the clinical textbooks on interviewing and counseling discussed above caution against the danger of stereotyping, which they implicitly treat as an issue of what we choose to believe about groups of "others."\textsuperscript{190} Neither these texts, nor the cross-cultural

\textsuperscript{186} For an argument that there is a class difference between the working-class and the professional middle class in this regard, see ROSE, supra note 185, at 67, 73 (contrasting middle class, which "teaches its children individualism and a focus on personal development to prepare them for professional work" and encourages internalization of a "striving to accomplish, so that personal self-worth depends on their ability to perform at work" with working class, for whom "[i]dentity comes from being accepted and known, so that stable friendships and work relationships are important. These relations with family members, peers in school and work, and neighbors tend to be inherited in working-class communities.").

\textsuperscript{187} For an argument that the sense of "entitlement" is a trait of the middle class that the working class and working poor typically do not share, see CROTEAU, supra note 185, at 140-42 (citing Robert Coles, Entitlement, ATLANTIC 52 (Sept 1977); MARK KANN, MIDDLE CLASS RADICALISM IN SANTA MONICA 279-80 (1986)).

\textsuperscript{188} David Croteau contends that professional middle class activists tend to assume - incorrectly - that working-class people lack not just education and information about social problems, but even awareness of such problems. CROTEAU, supra note 185, at 148-60.

\textsuperscript{189} See Piomelli, Foucault's Approach to Power, supra note 11, at 472-73.

\textsuperscript{190} For example, Lawyers as Counselors, in noting the risks of stereotyping in efforts to bridge cross-cultural differences, characterizes stereotypes as assumptions "that you may make" about others. See BINDER ET AL., LAWYERS AS COUNSELORS II, supra note 5, at 33. Essential Lawyering Skills discusses stereotyping as the application of oversimplified and exaggerated cultural characteristics to all members of a group; it casts "showing
lawyering literature generally, have, however, fully explored the
bargaining research of cognitive scientists on "the social cognition
of bias." That research has begun to document the extent and
influence of "implicit" (or "automatic") biases in how we think
about, feel toward, and treat members of other groups (as well as
our own groups) - biases which our minds deploy without our even
being conscious or aware.

Legal academics Jerry Kang and Gary Blasi have reported
extensively on the latest cognitive research on bias. This literature
often distinguishes between two forms of bias: stereotypes, which
are beliefs about or traits associated with a social category, and
prejudice, which is an attitude or feeling (negative or positive)
toward a group. Kang has largely directed his work at how one
might craft policy in light of the research; Blasi has focused more
respect for a culture" by trying to understand it in all its complexity as the opposite of
stereotyping. See KRIEGER & NEUMANN, ESSENTIAL LAWYERING SKILLS II, supra note 5, at
52-53. The Counselor-at-Law characterizes stereotyping as "attributing group preferences

191. Carwina Weng has advocated teaching basic cognitive psychology to students
(to reassure them that they need not feel defensive about having stereotypes) and
discussed the prevalence of mental schemas (or scripts) and their often unconscious
application. See Weng, supra note 3, at 391-96. However she has not extensively
discussed the experimental research described infra at notes 192-214 and accompanying
text.

192. For introductions to and summaries of the field, see ZIVA KUNDA, SOCIAL
COGNITION: MAKING SENSE OF PEOPLE (1999); GORDON B. MOSKOWITZ, SOCIAL
processes as those that occur outside awareness, without intention, are uncontrollable
once begun, and require few cognitive resources (so that people can be thinking about or
doing other things simultaneously). See KLINDA, supra, at 256. She notes that many
cognitive processes are "automatic in some regards but controllable in others." Id. at 257.

193. See Jerry Kang, Trojan Horses of Race, 118 HARV. L. REV. 1489 (2005). See also Jerry
Kang, Cyber-Race, 113 HARV. L. REV. 1130, 1138-46 (2000); Jerry Kang & Mahzarin R.
Banaji, Fair Measures: A Behavioral Realist Revision of "Affirmative Action", 94 CALIF. L.
REV. 1063 (2006). For one of the earliest discussions of social cognition research in the
legal literature, see Linda Hamilton Krieger, The Content of Our Categories: A Cognitive
Bias Approach to Discrimination and Equal Employment Opportunity, 47 STAN. L. REV. 1161,
1186-1217 (1995). For an earlier argument, based in Freudian psychology, on the
unconsciousness of much modern racism, see Charles R. Lawrence III, The Id, the Ego,
194. See Gary Blasi, Advocacy Against the Stereotype: Lessons From Cognitive Social
195. See also Anthony G. Greenwald & Linda Hamilton Krieger, Symposium on
196. See, e.g., MOSKOWITZ, supra note 192, at 444; Kang, Trojan Horses of Race, supra
note 193, at 1500.
197. Thus in Trojan Horses of Race, supra note 193, Kang argued that the FCC should
not use hours of local news coverage as an indicator of a broadcaster's operation in the
public interest, because local news' coverage of crime stories fuels implicit bias against
Blacks and Latinos. See also Kang, supra note 193, at 1536-37 (outlining areas of law that
on how one might best advocate against stereotypes that others hold. Neither have focused as intently as the cross-cultural lawyer must on what the research might tell us about how to renounce or work around the biases that we ourselves may hold so that we can interact effectively with clients across dimensions of difference.

The social cognition literature on bias warrants detailed exploration. Using a variety of experimental methods, cognitive scientists have exposed a significant divergence between our reports— to others and to ourselves— of our attitudes toward outsiders and the subconscious operations of our minds. Perhaps the best known of these experimental devices is the Implicit Association Test (IAT), which measures implicit attitudes toward or associations with a range of social categories. The IAT, which is available online, and highly worth the time to take, reveals widespread implicit bias against many social groups, including the elderly, Blacks, Latinos, Asians, Arab-Muslims, and gays and lesbians. Those findings of implicit or automatic bias often conflict with the self-reported attitudes and beliefs of the test-takers. Indeed, results sometimes reveal implicit bias against groups to which subjects themselves belong.

Experiments reveal powerful impacts of implicit bias on how we interpret or evaluate others, how we interact with others, and how we ourselves perform. I hope that sharing a few of the most
intriguing results will suffice to encourage lawyers and theorists interested in cross-cultural interactions to explore the literature in greater depth. For example: People who solve puzzles with a few words that subconsciously evoke concepts linked with the elderly actually walk more slowly after the testing. People subliminally shown Black faces before a computer crashes get angrier at the crash than those subliminally shown White faces. Asian women subconsciously primed to emphasize their Asian identity do better on a hard math test, and those primed to focus on their female identity do worse, than those who receive neither priming. African Americans told that a challenging test they are taking is ability diagnostic do significantly worse than equally talented White students, a performance drop that disappears when the test is described as a non-diagnostic, problem-solving exercise. Studies also seem to show that implicit bias (identified, for example, by the IAT) may often "leak out," particularly into non-verbal aspects of interactions. Kang likens the pervasive, subconscious operation of biases to a Trojan Horse computer virus that operates surreptitiously, without the user's knowledge, to alter operations in ways the user would reject if she were aware of them.

To be sure, studies do show that these automatic processes can potentially be overridden - if a person has the appropriate awareness, motivation, and ability to do so. But researchers stress how difficult it can be to achieve and maintain all three of these prerequisites. A number of experiments also indicate there is a


206. See Blasi, supra note 194, at 1248; Kang, Trojan Horses of Race, supra note 193, at 1491 (citing Bargh et al., supra note 205, at 238-39).

207. See Blasi, supra note 194, at 1249; Kang, Trojan Horses of Race, supra note 193, at 1492-93, each citing Margaret Shih et al., Stereotype Susceptibility: Identity Salience and Shifts in Quantitative Performance, 10 J. PSYCHOL. SCI. 80 (1999).


209. See, e.g., Kang, Trojan Horses of Race, supra note 193, at 1523-25; Kang & Banaji, supra note 193. See also MOSKOWITZ, supra note 192, at 450.

210. See Kang, Trojan Horses of Race, supra note 193, at 1554.

211. See, e.g., MOSKOWITZ, supra note 192, at 493; Blasi, supra note 194, at 1252-54; Kang, Trojan Horses of Race, supra note 193, at 1529-30.

212. See, e.g., Blasi, supra note 194, at 1253 (citing John A. Bargh, The Cognitive Monster: The Case Against the Controllability of Automatic Stereotype Effect, in DUAL PROCESS...
strong possibility of a rebound effect, in which a short-term suppression or rejection of stereotyping leads to more stereotyping later.\textsuperscript{213} Other research indicates that our emotional state and level of self-esteem plays a significant role in the likelihood of applying negative stereotypes.\textsuperscript{214}

The literature on cross-cultural lawyering would do well to address in depth this research on social cognition and implicit bias. Can cross-cultural theorists' emphasis on introspection and cultural self-awareness be reconciled with cognitive scientists' findings on the automatic nature of much stereotyping? Are lawyering theorists' suggestions for cross-cultural competency consistent with social cognitionists' findings on debiasing strategies? The answers to these questions deserve explicit, detailed attention.

\section*{C. Articulating Stereotypes of Low-Income and Working-Class Clients and Attending to Their Interplay with Lawyer Socialization}

A possible implication of social cognition research on implicit bias may be to suggest the importance of explicitly exploring prevalent stereotypes, even those we consciously disavow. There may be value to openly discussing the traits and associations often linked to cultural ingroups and outgroups, for those images may well be operating in our minds – or in the minds of clients, fact-finders, and others. (Of course, there may be costs too, in terms of mapping additional meanings that we may not have previously attached or of possibly reinforcing associations and heightening their accessibility in our minds.\textsuperscript{215}) The potential value of articulating stereotypes is another issue that the texts and/or general clinical literature on cross-cultural lawyering might beneficially address.

Linking this idea of discussing “the elephant in the room” – i.e., the specific content of stereotypes – with the suggestion above of the importance of class cultures,\textsuperscript{216} it might be helpful, for example, to articulate prevalent stereotypes of the working class. In the U.S., those stereotypes or associations might include notions that

\textsuperscript{213} See, e.g., KUNDA, supra note 192, at 343-46; MOSKOWITZ, supra note 192, at 499-501; Blasi, supra note 194, at 1253-54; Kang, Trojan Horses of Race, supra note 193, at 1530 n.213.

\textsuperscript{214} See, e.g., KUNDA, supra note 192, at 259-62; Blasi, supra note 194, at 1250-52.

\textsuperscript{215} See MOSKOWITZ, supra note 192, at 499-501.

\textsuperscript{216} See supra notes 171-89 and accompanying text.
working-class people tend to be:

- unintelligent;
- inarticulate;
- unable to recognize their real self-interest;
- lacking in judgment and decision-making skills;
- quick to anger, hostility, or violence;
- prone to bigotry (such as racism, sexism, and/or homophobia);
- attracted to and/or accepting of authoritarianism (especially in the family and political spheres);
- lacking in initiative and prone to fatalism; or
- inflexible and afraid of change.²¹⁷

As ugly as the task can feel, bringing the contents of stereotypes into the open may suggest a number of remedial measures. It could, for example, encourage lawyers to more carefully consider using controlled rather than implicit processes²¹⁸ – how closely our reactions to or assessments of a client dovetail with the stereotype. To the extent that elements of stereotypes revolve around imputed lack of intelligence, it might lead us to explicitly consider what we mean by intelligence – perhaps by introducing the concept of multiple intelligences²¹⁹ – and to directly address just how close to a meritocracy we actually consider our society.²²⁰ It might also suggest the value of exposing lawyers to counter-exemplars of stereotyped group members who clearly demonstrate intelligence.²²¹

²¹⁷. See, e.g., CROTEAU, supra note 185; EHRENREICH, supra note 184; KADI, supra note 181; LEONDAR-WRIGHT, supra note 174; ROSE, supra note 185. Many of these images can be traced back to mid-twentieth century U.S. sociologists’ purportedly objective assessments of the working-class. See, e.g., SEYMOUR MARTIN LIPSET, POLITICAL MAN: THE SOCIAL BASES OF POLITICS 87-126 (rev. ed. 1981) (1960) (chapter on “working-class authoritarianism).

²¹⁸. See supra note 192 and accompanying text.


²²¹. In the U.C. Hastings Civil Justice Clinic, my colleagues and I have long assigned Lucie White’s description of her representation of “Mrs. G.” in large part for its...
Similarly, it may be helpful to explore stereotypes of the professional middle class, particularly as seen by low-income and working-class people. Those stereotypes or associations might, for example, include images of professional-middle-class people as:

- "stuck up," condescending, and elitist;
- preachy, moralizing "know-it-alls";
- unrealistic and out of touch with the lives of ordinary people;
- emotionally cold;
- unreliable and unaccountable;
- fake — feigning "tolerance" or adherence to neutral rules or policy to mask an unwillingness to voice their true (negative) feelings;
- ruthless — unconcerned with the impacts of decisions or actions on others; or
- committed to process or form over substance.

Paying attention to stereotypes of the groups to which we belong can, of course, be painful. It can push us away from others whom we suspect — perhaps rightfully, perhaps incorrectly, but likely without certainty — of distorting or dismissing key aspects of our individuality and/or our culture. It can, at times, open wounds that lead us to despair, withdrawal, and/or anger. But awareness of how exactly others may pigeonhole us can also help us decide whether and how to engage with them. It can help us choose what to confront or educate about, what to avoid or to highlight.

In addition to helping us respond to those who might stereotype us, awareness of the content of stereotypes can also help us decide whether we wish to try to change aspects of ourselves or our socialization — to avoid embodying or confirming imputed traits or behaviors that we disavow. It is in this last vein that attending to pejorative stereotypes of the professional middle class can be particularly useful. For those stereotypes reflect, perhaps imperfectly, ways in which we as professionals may manifest our depiction — at least as many of us interpret the story — of a low-income, African-American, single mother on public assistance in North Carolina who proves to be a far more nimble strategist and tactician than her White, Harvard-educated, legal services attorney. See Lucie E. White, Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G., 38 BUFF. L. REV. 1 (1990).

Of course, as Blasi points out, cognitive scientists believe that rather than altering stereotypes, counter-exemplars are likely to lead us to retain the original stereotype, and simply to create exceptional subtypes. See Blasi, supra note 194, at 1268-69.

222. See, e.g., CROTEAU, supra note 185; KADI, supra note 181; LEON DAR-WRIGHT, supra note 174; Sarat, supra note 180.
class privilege; they may outline the view from the receiving end of our "leaked-out" biases.\textsuperscript{223}

Some of the cross-cultural lawyering literature, particularly Cochran, DiPippa, and Peters' work, has directed attention to lawyers' professional socialization.\textsuperscript{224} It has noted, for example, lawyers' discomfort with expressions or discussions of emotion, our extolling of and expectation for linear thinking, and our general avoidance of framing problems as systemic, rather than individual.\textsuperscript{225} But to date, the cross-cultural literature has not focused squarely on how attorneys' enculturation as lawyers overlaps and interacts with prevailing stereotypes of low-income and working-class clients.

Among the additional elements of potentially culturally-encapsulating professional socialization that Cochran and his colleagues fail to discuss are many lawyers' tendencies:

- to impose a narrow scope of relevance and to guard vigilantly (even obsessively) against client rambling;
- to harbor (and judge according to) unrealistic expectations for client precision and recall;
- to assume that clients are easily confused or mystified and that law is too complex for them to understand;
- to assume that clients come to lawyers at the end of their wits and want lawyers to completely take over their problem for them;
- to treat the legal system's remedies as the only ones - certainly the main ones - that clients desire and lawyers can deliver; or
- to see lawyering as completely distinct from lay efforts to solve problems - so clients have little or nothing to offer tactically or strategically and joint-problem-solving is unrealistic.

In short, many lawyers view themselves as technically expert

\textsuperscript{223} See supra note 209 and accompanying text (on "leaked out" bias). Comparing these two lists of stereotypes, see text supra at notes 217 and 222, reveals significant interconnections. To the extent, for example, that professionals hold (and betray) images of working-class people as unintelligent, inarticulate, unaware of their real self-interest, lacking in judgment or initiative, it is not surprising to see that the targets of such stereotypes might in turn view those professionals as condescending, preachy, moralizing, cold, and fake, know-it-alls.

\textsuperscript{224} See COCHRAN ET AL., THE COUNSELOR-AT-LAW I, supra note 5; COCHRAN ET AL., THE COUNSELOR-AT-LAW II, supra note 5. See also Bryant, supra note 3, at 40, 68-70, 84-85.

\textsuperscript{225} See COCHRAN ET AL., THE COUNSELOR-AT-LAW II, supra note 5, at 211-12, 215. See also supra notes 141-43 and accompanying text.
guardians or saviors of the interests of clients, whom they see or treat as unable to help themselves. Those familiar with Gerald López’s work will recognize many of these elements of professional socialization as aspects of what he labeled the “regnant” (or reigning) vision of lawyering.226

To professional-middle-class clients, being on the receiving end of these assumptions can be off-putting. But unless these clients are also members of other subordinated groups stereotyped as unintelligent, ineffective, or irrational, exposure to these attitudes is unlikely to feel like a repeatedly encountered experience. In fact, it is likely to rankle precisely because it is not the way such clients are generally treated in their lives.

For low-income and working-class clients (and members of other marginalized groups), many of these assumptions about clients - as rambling, imprecise, defeated, confused, mystified, and helpless, for example - likely echo elements of prevailing stereotypes they encounter daily.227 Encountering such stereotypes from their lawyers is likely to destroy the rapport, trust, and engagement essential to a successful relationship. Attorneys' betrayal, whether conscious or not, of such attitudes threatens, in turn, to trigger from working-class and working-poor clients disparaging counter-stereotypes of middle-class professionals. The clash of such stereotypes inevitably dashes the possibility of successful work together.

Although they have not previously been framed in this light, many of the recommendations of advocates of “rebellious” or “collaborative” lawyering can be understood, in significant part, as a call to progressive lawyers to recognize and break out of deeply ingrained but counterproductive cultural patterns likely to result from their class and their professional socialization.228 Only by recognizing and rejecting key aspects of class and professional socialization are lawyers likely to truly treat low-income, working-class, and other clients from marginalized social groups as partners in joint efforts to make social change.

Conclusion

The one-size-fits-all, culture-blind approach to teaching interviewing and counseling is thankfully now a relic of the past. Although I have criticized aspects of the new edition of Lawyers as

226. See LÓPEZ, supra note 89, at 23-29.
227. See supra note 217 and accompanying text.
228. See works cited supra at note 144.
Counselors'\textsuperscript{229} approach to the issue, I appreciate that it has tackled the subject and recognize the difficulty of the task. I have sought to highlight two less-frequently discussed texts, \textit{Essential Lawyering Skills}\textsuperscript{230} and \textit{The Counselor-at-Law},\textsuperscript{231} that have materially advanced the cause. These texts, and the larger clinical literature on cross-cultural lawyering, have in the past decade significantly improved the odds that new lawyers will be alert to such issues and better equipped to address them.

Of course, as this essay has sketched, there is more work to be done. I hope we will make comparable advances in the next decade in preparing lawyers to explore potentially class-linked cross-cultural issues, to understand the insights that social cognition research sheds on the operation and overcoming of bias, and to challenge tacit assumptions about lower-income and working-class clients inculcated by lawyers' class and professional socialization.

To make good on any of these cross-cultural aspirations, texts and articles cannot be read as recipes for how to understand and manage others adeptly. They must be read, and their suggestions internalized, as a fundamental commitment to learn with and from others about how we can connect effectively to change our world. Enhancing our cross-cultural competence is not about cataloguing what we think we already know about ourselves and others, so much as it is about emphasizing what we still and always must learn.

\begin{footnotes}
\item[229] BINDER ET AL., LAWYERS AS COUNSELORS II, supra note 5.
\item[230] KRIEGER & NEUMANN, ESSENTIAL LAWYERING SKILLS II, supra note 5.
\item[231] COCHRAN ET AL., THE COUNSELOR-AT-LAW II, supra note 5.
\end{footnotes}