

PREPARING STUDENTS FOR 21ST CENTURY PRACTICE: ENHANCING SOCIAL JUSTICE TEACHING IN CLINICAL LEGAL EDUCATION

Dr Jacqueline Weinberg, Monash University, Australia *

Abstract

Social justice has always played an important role in clinical legal education (CLE).¹ Clinicians are aware that students need to acquire the necessary legal skills and strategies related to client-centred lawyering, process choice and procedural justice. This paper shows that increasingly, despite clinicians' recognition of the value of teaching social justice in CLE, those who promote it face various challenges in instilling in students the notion that social justice is important. This paper discusses some of these challenges, including, that as experiential education expands, students are being offered clinical placements in the private sector where clients do not face the barriers in accessing justice similar to those in community settings. It therefore becomes imperative to encourage students to retain the notion that social justice is an important value. This paper makes suggestions for how these challenges can be

* Dr Jacqueline Weinberg is a Lecturer in the Faculty of Law, Monash University.

¹ Refer to Adrian Evans et al, *Best Practices: Australian Clinical Legal Education* (Report for Office of Teaching and Learning, 2013). See also Weinberg, Jacqueline, 'Keeping Up with Change: No Alternative to Teaching ADR in Clinic. An Australian Perspective' (2018) *International Journal of Clinical Legal Education* 1.

overcome to enhance students' awareness of the importance of social justice and ensure that it remains a value they retain as 21st century practitioners.

Introduction

Students undertake CLE to learn what lawyers do in practice.² Students engage with real-life clients and manage their matters, learning practical legal skills under the supervision of qualified legal practitioners ('clinical supervisors').³ Students learn about the various technical, ethical and procedural obligations with which lawyers must comply. Notably, the value of law clinics extends well beyond their pedagogical function; these clinics play a vital role in the advancement of access to justice, as they serve disadvantaged and marginalised members of the community who could not otherwise afford a lawyer. During their placements at law clinics, students are encouraged to reflect critically on the nature and meaning of access to justice, including how and why it is constrained and how it might be fostered. Students are guided to develop the skills and strategies that are fundamental to their ability to manage clients and establish trusting lawyer–client relationships, all of which are essential to their future careers as legal practitioners with a 'justice' focus.

² Adrian Evans et al (n 1).

³ Adrian Evans et al (n 1). See also Jeff Giddings, *Promoting Justice through Clinical Legal Education* (Justice Press, 2013).

This paper argues that retaining a social justice mission in CLE has become challenging for clinicians today. These challenges arise for various reasons, including that experiential learning in law schools has expanded into the private sector, where clients do not face barriers to accessing justice similar to community contexts. As such, it becomes more difficult to instill in students the notion that social justice is an important value to retain. Also, students' interests in employability has lead them to focus on seeking work in the private sector with the risk that they develop the notion that social justice is no longer a value they need to aspire to. This paper argues that despite these challenges, social justice teaching remains an important component of CLE. As such, clinicians need to focus consciously on this teaching. This paper discusses some of the best-practice protocols and methods that can be used to enhance social justice teaching in CLE so that students develop a deep understanding of social justice, which in turn will strengthen their ability to manage client matters and enhance their lawyer–client relationships in their future legal practice. This paper begins by providing context for social justice teaching in CLE. It then goes on to define the concept of social justice, which is essential to better teach students the notion of 'justice readiness'.

Social Justice Teaching in CLE

A longstanding relationship exists between CLE and social justice, both nationally and internationally.⁴ As McKeown and Hall state, 'CLE has a long and persistent tradition of seeing the formation of "social justice" clinicians as a principal educational goal'.⁵ Since its inception, CLE has established the dual foci of providing access to justice to disenfranchised members of the community and teaching law students practical legal skills.⁶ The primary aim of CLE is for students to engage in clinical work while being educated about the practical function of the law.⁷ CLE enables students to experience the practice of law and thus gain an appreciation of how it functions in a real-world setting.⁸ Students' involvement in the legal process is intended to help them develop practical legal skills, including critical and analytical thinking, ethical conduct, social values and responsibility.⁹ These skills encompass several aspects that are captured under the umbrella term 'social justice'.¹⁰

⁴ Paul McKeown and Elaine Hall, 'If We Could Instil Social Justice Values Through CL, Should We?' (2018) 5(1) *Journal of International and Comparative Law* 143. See also Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011).

⁵ Paul McKeown and Elaine Hall, 'If We Could Instil Social Justice Values Through CL, Should We?' (2018) 5(1) *Journal of International and Comparative Law* 143. See also Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011).

⁶ McKeown and Hall (n 4). See also Frank Bloch and MRK Prasad, 'Institutionalising a Social Justice Mission for Clinical Legal Education: Cross-national Currents from India and the United States' (2006) 13 *Clinical Law Review* 165.

⁷ *Ibid.*

⁸ Refer to Evans et al (n 1).

⁹ *Ibid.*

¹⁰ *Ibid.* See also Deborah Rhode, 'Pro Bono in Principle and in Practice' (2003) 53(3) *Journal of Legal Education* 413; Dakalo Singo and Alicia Raymond 'Clinical legal education and social justice — A perspective from the Wits Law Clinic' (2018) *Stellenbosch Law Review* Volume 29, Part 2 p. 295-313.; Chris Ashford and Paul McKeown (eds), *Social Justice and Legal Education* (Cambridge Scholars, 2018).

South African clinical academics, Dakalo Singo and Alicia Raymond, suggest that clinical aims and learning outcomes should be designed to accommodate this approach.¹¹ However, Singo and Raymond warn that although clinicians often argue that social justice, as a concept, cannot be divorced from the clinical teaching methodology and is an inherent by-product of CLE programs, it is not enough to make vague averments that clinics and CLE play a role in social justice.¹² Rather, social justice must be specifically and overtly incorporated into and made a learning outcome of CLE programs.¹³

Byron supports this notion, suggesting that clinics perpetuate a learning environment in which law students either acquire or fail to acquire essential social justice teaching.¹⁴ To prevent the latter circumstance, clinicians need to ensure that the CLE program involves social justice teaching.¹⁵ This must be done 'at curriculum planning level together with the formulation of educational objectives and learning outcomes of both the law school or faculty and the CLE program'.¹⁶ Before social justice teaching can be

¹¹ Dakalo Singo and Alicia Raymond 'Clinical legal education and social justice — A perspective from the Wits Law Clinic' (2018) *Stellenbosch Law Review* Volume 29, Part 2 p. 295-313.

¹² Singo and Raymond (n 11).

¹³ Ibid. See also Spencer Rand, 'Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work's Empowerment Approach' (2006) 13 *Clinical Law Review* 463.

¹⁴ IP Byron, 'The Relationship Between Social Justice and Clinical Legal Education: A Case Study of the Women's Law Clinic, Faculty of Law, University of Ibadan, Nigeria' (2014) 20 *International Journal of Clinical Legal Education* 568. See also YA Vawda, 'Learning from Experience: The Art and Science of Clinical Law' (2004) 29(1) *Journal of Juridical Science* 131.

¹⁵ Ibid. See also Stephen Wizner, 'Is Social Justice Still Relevant?' (2012) 32(2) *Boston College Journal of Law & Social Justice* 345.

¹⁶ Ibid 568.

included in the clinic curriculum, it is important to ensure that clinicians have a clear understanding of what social justice means.

Definitions of Social Justice

Given that the central aim of CLE is to instil social justice awareness in students, there is a need for clarity as to what social justice means.¹⁷ However, defining the term 'justice' and clarifying the concept 'social justice' with absolute authority may be an impossible task.¹⁸ Singo and Raymond argue that 'it is equally impossible for a clinician to teach law students meaningful lessons regarding social justice without clear understanding of what the term and concept entail'.¹⁹ It is thus necessary to identify distinguishable elements of social justice with as much clarity as possible to formulate a definition.²⁰

When reviewing definitions of social justice, it is clear that this term is a debated concept that is applied differently in different contexts.²¹ There are many perspectives of social justice. In the South African context, MacQuoid-Mason defines social justice as 'the fair distribution of health, housing, wealth, education, and legal resources on an affirmative action basis to disadvantaged members of the community'.²² Byron

¹⁷ Singo and Raymond (n 11) at 304.

¹⁸ *Ibid.*

¹⁹ *Ibid* 309.

²⁰ *Ibid.*

²¹ *Ibid.* Also refer to Evans et al (n 1) 98.

²² David McQuoid-Mason, 'Teaching Social Justice to Law Students Through Clinical Legal Education and Community Service: A South African Experience' in Mutaz Qafisheh and Stephen Rosenbaum (eds), *Experimental Legal Education in a Globalised World: The Middle East and Beyond* (Cambridge Scholars, 2016).

further suggests that social justice adheres to ‘the natural law that all persons, irrespective of ethnic origin, race or religion are to be treated equally and without prejudice’.²³ Singo and Raymond describe social justice as a ‘system of values and conscientiousness, predicated on an innate sense of justice and Ubuntu, which enjoin every socially responsible person to take positive action for the betterment of fellow human beings and society at large’.²⁴ Singo and Raymond stress that the ultimate aim is ‘to attain a basic set of entitlements for all people, which at the very least must include human dignity, freedom, equality, and justice for all members of society’.²⁵

In the US, Lawton posits that social justice is often viewed as a ‘code for socialism and as antithetical to classical liberal ideas of individual liberty’.²⁶ Social justice is viewed as ‘normative’, which suggests that ‘laws and policies should be designed so as to create a just and equitable society’.²⁷ Bellow and Kettleon hold the view that a public interest lawyer as ‘an attorney who provides subsidised legal services, on a full-or almost full-time basis, to those who would otherwise be under- or unrepresented’.²⁸ Similarly, Solorzano and Yosso believe that advocating for social justice means

²³ Byron (n 14) 567.

²⁴ Singo and Raymond (n 11) 302.

²⁵ *Ibid.*

²⁶ Julia Lawton, ‘The Imposition of Social Justice Morality in Legal Education’ (2016) 4 *Indiana Journal of Law and Social Equality* 57.

²⁷ *Ibid* 58.

²⁸ Gary Bellow and Jeanne Kettleon, ‘From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice in Lawyer’s Ethics and the Pursuit of Social Justice’ in Susan D Carle (ed), *Lawyers Ethics and The Pursuit of Social Justice* (New York University Press, 2005). See also Michelle S Jacobs, ‘Pro Bono Work and Access to Justice for the Poor: Real Change or Imagined Change?’ 48 *Florida Law Review* 509.

'transforming the system by changing the structures of the system, which disempower underrepresented minority groups'.²⁹

According to Evans et al., in Australia, the idea of social justice is 'comfortably accepted as a legitimate progressive social policy position'. There is a general, contemporary idea of social justice as:

The provision to all people of basic human needs including income, housing, education and health care; equal enjoyment of human rights, including non-discrimination, freedom of expression and movement, the right to liberty and the right to live free from violence; and some redistribution of resources to maximise the position of the worst-off.³⁰

Whatever definition of social justice one adopts, certain distinguishable elements are evident: equality, human dignity, freedom, basic education, healthcare and justice. The notion that society should redistribute wealth and accept some responsibility for the wellbeing of disadvantaged members of society is also fundamental to any such definition.³¹ Further, social justice means that able members of society should challenge political, economic, societal, legal and other structures that oppress the less

²⁹ Daniel Solorzano and Tara Yosso, 'Maintaining Social Justice Hopes within Academic Realities: A Freirean Approach to Critical Race/LatCrit Pedagogy' (2000) 78(4) *Denver University Law Review* 595.

³⁰ Evans et al (n 1) 98.

³¹ *Ibid.*

advantaged.³² As Singo and Raymond state, 'any definition of social justice would therefore need to incorporate at least the aforementioned elemental factors'.³³

CLE and Community Legal Centres

The longstanding association between CLE and community legal centres (CLCs) has contributed to the notion that social justice has its origins in the fight against poverty, injustice and the underrepresentation of minority interests in the legal process.³⁴ Clinics fit well within CLCs, as CLCs are 'committed to striving for equitable access to the legal system and justice, and the equal protection of human rights'.³⁵ Three essential aspects of CLC work are the provision of legal advice and the conduct of casework for disadvantaged clients and communities, the provision of community legal education, and the promotion of law and policy reform.³⁶ CLCs mostly provide legal assistance with tenancy, credit and debt, administrative law, social security, criminal law, family law and domestic violence matters.³⁷ Students practising in legal clinics associated with CLCs are exposed to the law as it affects disadvantaged clients. These clinics take a holistic and interdisciplinary approach to understanding clients'

³² Ibid.

³³ Singo and Raymond (n 11) 300.

³⁴ See Jeremy Cooper and Louise Trubek, 'Social Values from Law School to Practice: An Introductory Essay' in Jeremy Cooper and Louise Trubek (eds), *Educating for Justice: Social Values and Legal Education* (Ashgate, 1997) 5. See also Alicia Alvarez, 'Community Development Clinics: What Does Poverty Have to Do with Them?' (2007) 34 *Fordham Urban Law Journal* 1269.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid. See also National Association of Community Legal Centres Australia, *Annual Report 2012/13* (Web Page, 2016) <perma.cc/9W9H-76KL>.

legal problems, whereby several professionals (from social workers to business advisors) help clients to achieve their goals.³⁸ Teaching students within the community context encourages them to think critically about the role of law in society and how it can be used to further social justice.³⁹

Walsh adopts the view that CLE programs are one of the primary forums in which social awareness among students can be promoted.⁴⁰ Walsh notes that CLE exposes students to people facing challenges, and students come to learn of the 'multiple layers of disadvantage faced by these people, including non-legal ones'.⁴¹ By working with and taking responsibility for disadvantaged clients in CLE programs, students may begin to feel socially responsible for disadvantaged people in general.⁴² Walsh further notes that CLE introduces students to 'role model public interest lawyers and provides students with proof that they are able to use their knowledge to promote social justice, and to assist those in need'.⁴³

³⁸ See Anna Cody and Barbara Schatz, 'Community Law Clinics: Teaching Students, Working with Disadvantaged Communities' in Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011) 167.

³⁹ *Ibid* 168.

⁴⁰ Tamara Walsh, 'Putting Justice Back into Legal Education' (2007) 17(1-2) *Legal Education Review* 119.

⁴¹ *Ibid* 121. See also Irene Styles and Archie Zariski, 'Law Clinics and the Promotion of Public Interest Lawyering' (2001) 19 *Law in Context* 65.

⁴² Walsh (n 40). See also Stephen Wizner, 'Beyond Skills Training' (2001) 7 *Clinical Law Review* 327.

⁴³ Walsh (n 40). See also Irene Styles and Archie Zariski, 'Law Clinics and the Promotion of Public Interest Lawyering' (2001) 19 *Law in Context* 65.

Although the nature of the relationship between CLE and community settings has meant that social justice has commonly been viewed within the context of the economically disadvantaged members of society; it has become apparent this context might need to be broadened. Some students may practice in private settings, where clients do not face the obstacles to accessing legal service that are prevalent in community settings. It becomes a challenge then to ensure that such students are still aware of the value of applying a social justice approach to their practice.

Challenges of Social Justice Teaching

Historically, both in Australia and worldwide, CLE has required students to engage in live-client experiential learning by providing pro bono legal services to low-income clients.⁴⁴ In the US, law schools have invested heavily in instilling a ‘social justice morality’ in their students.⁴⁵ Lawton notes that they have done so in their ‘pro bono requirements’,⁴⁶ ‘experiential learning opportunities’⁴⁷ and by providing more funding to students working in the public interest than to those working in business

⁴⁴ Refer to Richard Grimes, ‘Legal Literacy, Community Empowerment and Law Schools—Some Lessons from a Working Model in the UK’ (2003) 37 *Law Teacher* 273; Paul Bergman, ‘Reflections on US Clinical Education’ (2003) 10(1) *International Journal of the Legal Profession* 109; Peggy Maisel, ‘Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa’ (2007) 30(2) *Fordham International Law Journal* 374; Frank Bloch and Mary-Anne Noone, ‘Legal Aid Origins of Clinical Legal Education’ in Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011); Jeff Giddings, *Promoting Justice through Clinical Legal Education* (Justice Press, 2013).

⁴⁵ Refer to Peter Joy, ‘Political Interference in Clinical Programs: Lessons from the US Experience’ (2005) 8 *International Journal of Clinical Legal Education* 83; Lawton (n 26) 67.

⁴⁶ Lawton (n 26) 67.

⁴⁷ *Ibid.*

disciplines.⁴⁸ Such investments appear to reflect law schools' attempts 'to convince law students of the validity of working in the public interest for social justice'.⁴⁹ More recently, US law schools have recognised that they may need to revise the focus of their education mission from developing 'legal thinkers' to producing 'job-ready' graduates.⁵⁰

Similarly, in Australia, a major review of higher education in 2008 and the government's response to this review acknowledged the need for universities to prepare graduates for the world of work.⁵¹ Experiential education in Australia has traditionally involved students engaging in live-client clinics with a poverty law focus; however, more recently, there has been a growth in offerings such as externship clinical placement programs⁵² and work-integrated learning (WIL),⁵³ mostly in the private sector. In both externship placements and WIL, students work in host

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Refer to David Rigg, 'Embedding Employability in Assessment: Searching for the Balance Between Academic Learning and Skills Development in Law: A Case Study' (2013) 47 *The Law Teacher* 404.

⁵¹ Refer to Denise Bradley et al, *Review of Australian Higher Education: Final Report* (Canberra, 2008); Giddings, J. & Weinberg, J. (2020). Experiential legal education: Stepping back to see the future. In C. Denvir (Ed.), *Modernising legal education* (pp. 38–56). Cambridge University Press.

⁵² Refer to Evans et al (n 1) ch 2. Evans et al refer to the term 'externships' to describe 'the form of clinical legal education where individual students are placed in an independent legal practice, community legal centre, government agency or not-for-profit organisation': at 56.

⁵³ Evans et al (n 1) refer to 'work-integrated learning' as 'a curriculum design, which combines formal learning with student exposure to real professional, work or other practice settings': at 43. For a broader discussion on the program risks of WIL, refer to Craig Cameron et al, 'The Program Risks of Work-Integrated Learning: A Study of Australian University Lawyers' (2018) 40(1) *Journal of Higher Education Policy and Management* 67. See also Janice Orrell, *Good Practice Report: Work-integrated Learning* (Australian Learning and Teaching Council, 2011); Stephen Billett, *Integrating Practice-based Experiences into Higher Education* (Springer, 2015).

organisations to gain the knowledge, understanding and skills considered essential to workplace practices.⁵⁴

Due to the expansion of experiential learning in law schools and new clinical externship opportunities both nationally and internationally, students are being offered a variety of clinical placements in community contexts and the private sector. Students can choose to participate in clinics at which they will perform pro bono legal services with a social justice focus or in the private sector. Notably, clients in the private sector do not generally face the same barriers to accessing justice as those in community settings. Students may choose externship placements in private settings for several reasons, including that they simply are not interested in engaging in social justice.⁵⁵ After all, students have their own legitimate interests for attending law school;⁵⁶ for example, they may wish to help the vulnerable and impoverished or to pursue careers in corporate law, providing legal services to the privileged.⁵⁷ According to Lawton, American law schools often accentuate this notion by creating a competitive environment in which the ‘best’ students are those who receive the ‘best’ grades and are offered the most coveted jobs in large private law firms.⁵⁸ As Lawton posits, ‘students cannot accept sole responsibility for these choices as law schools are

⁵⁴ Refer to Evans et al (n 1).

⁵⁵ Refer to Lawton (n 26) 70.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

subtly perpetuating this preference for working in the private industry by focusing courses on individual needs rather than the public good'.⁵⁹

It therefore appears that although clinical educators have long held the belief that the value of clinical experience for students is in the exposure they gain by interacting and engaging with social justice issues, the expansion of experiential education into the private setting has caused some academics to question whether a new perspective is needed.

Is a New Perspective Needed?

Lawton contends that clinicians should guard against 'indoctrinating students' or 'imposing [their] social justice moralities on law students'.⁶⁰ She cautions legal educators against 'pushing students into a particular practice area based on the educators' moralities'⁶¹ and notes that they should expand students' ideas and train them to see context and recognise the need for perspective.⁶² Similarly, McKeown and Hall warn clinicians 'not to impose [their] own moral perspective on [their] students but to provide students with the framework to critique the world in which they live and strive to develop their own moral position'.⁶³ Students should be offered opportunities for exposure to different areas of law 'to determine for themselves their

⁵⁹ Ibid 71.

⁶⁰ Lawton (n 26) 73.

⁶¹ Ibid.

⁶² Ibid.

⁶³ McKeown and Hall (n 4) 179.

morality and what role they want this morality to play in their professional lives'.⁶⁴ This is arguably even more crucial with respect to courses on private law and the expansion of experiential learning in the private sector.

Kosuri argues that if increased experiential learning opportunities for students are a real objective of law schools, and clinics are viewed as 'the pinnacle of those opportunities, then broadening the portfolio of clinical offerings to include those that are not focused on social justice should be a valid proposition'.⁶⁵ Kosuri stresses that law school clinics can no longer presume that a social justice mission (to represent the indigent and underrepresented about poverty law issues) is the only legitimate goal for clinic clients and matters;⁶⁶ rather, leaders of clinical programs should accommodate different models of clinics, thereby expanding clinical education to more students and 'unleashing the next phase of innovation and creativity in law school education'.⁶⁷ Clinical opportunities should be provided to every interested law student, and the notion that clinics are only for 'public interest' students or special factions of students should be abandoned.⁶⁸ Kosuri views the greatest contribution of CLE as not merely 'creating a haven for public interest-oriented law students or in promoting social justice causes, but rather in a methodology that teaches students how

⁶⁴ Ibid.

⁶⁵ Praveen Kosuri, 'Losing My Religion: The Place of Social Justice in Clinical Legal Education' (2012) *Boston College Journal of Law and Social Justice* 338.

⁶⁶ Ibid.

⁶⁷ Ibid 337.

⁶⁸ Ibid 338.

to learn from experience, whatever that experience may be'.⁶⁹ For example, in a 'finance clinic', students may represent businesses seeking to acquire early-stage investment from financial sponsors.⁷⁰ Kosuri acknowledges that this type of clinic is 'devoid of traditional social justice issues',⁷¹ but suggests that it could still be viewed as a 'legitimate clinical offering providing students with a rich experience learning what motivates people and how to align interests to achieve a desired outcome'.⁷² Kosuri is not advocating that social justice be removed from all clinics, but that there should be a more 'expansive and inclusive view of what clinics can do for law students'.⁷³ Finally, Kosuri adds that 'clinicians should strive to provide a portfolio of opportunities that appeal to a wide array of students as more students are driven to clinics looking for competitive advantages when they enter the workforce'.⁷⁴

Not all scholars agree with Kosuri's view that certain clinical settings (e.g., externships and those with a more corporate focus) are 'devoid' of social justice considerations. Clinical educators, like Cole, have suggested that these clinics can still support a social justice mission for the following three reasons:

⁶⁹ Ibid. See also Jeanne Charn, 'Service and Learning: Reflections on Three Decades of the Lawyering Process at Harvard Law School' (2003) 75 *Clinical Law Review* 77–8; Quintanilla et al, 'Experiential Education and Access-to-Justice within U.S. Law Schools: Designing and Evaluating an Access-to-Justice-Service Learning Program within the First-Year Curriculum' (2019) 7(1) *Indiana Journal of Law and Social Equality* 1.

⁷⁰ Kosuri (n 65) 338.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

First, many people experience the need for social justice on a daily basis. Second, most law students enter law school open to the idea that part of being a lawyer is serving the public good. Third, is the view held by most lawyers, law teachers, and law schools that a lawyer's role is defined, at least in part, by his or her obligation to serve the public and work towards social justice.⁷⁵

According to Cole, it is the role of the supervising lawyer to commit to social justice and persuade students of the value and practicality of social justice work.⁷⁶ Horrigan takes this point further, suggesting not only that social justice considerations are central to corporate work, but also that lawyers have an obligation to consider the relationship between big business and poverty; they may even have an obligation to fight poverty.⁷⁷ As Horrigan states:

⁷⁵ Liz Ryan Cole, 'A Special Focus to Help Understand and Advance Social Justice' in Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011) 327. See also JP Ogilvy, Leah Wortham and Lisa Lerman (eds), *Learning from Practice: A Professional Development Text for Legal Externs* (Thomson/ West, 2007)

⁷⁶ Cole (n 88).

⁷⁷ Bryan Horrigan, 'The Role of Lawyers in Steering Corporate Governance and Responsibility towards Addressing Social Injustice and Inequality' in PD Maynard and N Gold (eds), *Poverty, Justice and The Rule of Law: Report of the Second Phase of the IBA Presidential Task Force on the Financial Crisis* (International Bar Association, 2013) 139. See also Bryan Horrigan, *Corporate Social Responsibility in the 21st-century: Debates, Models and Practices Across Government, Law and Business* (Edward Elgar, 2012).

It is the role of the global legal profession to embrace action on poverty abroad and at home as an integral part of the profession's own socio-ethical, professional and even legal responsibilities.⁷⁸

Horrigan views it as the responsibility of lawyers 'to connect the threads between what lawyers and business enterprises do (or not do) and the endgame of alleviating and even eliminating poverty'.⁷⁹ According to Horrigan, there is no reason for private lawyers and other businesses not to care about 'what happens to people afflicted by poverty';⁸⁰ rather, their focus should provide a 'new lens' that allows lawyers and others to 'see some conventional aspects of their work in an unconventional perspective'.⁸¹ Horrigan encourages lawyers to reframe their lawyerly roles and responsibilities in fighting poverty and use their roles in the public, private and community sectors to make a difference to poverty.⁸² This may include connecting their work as lawyers in areas of corporate governance and finance to make a difference to poverty alleviation.⁸³ Arguably, Horrigan's focus on fighting poverty aligns with the social justice ethos of CLE. It follows that if lawyers in corporate and private legal settings adopt Horrigan's suggestions and reframe their roles, then students placed in these settings will benefit from exposure to the social justice

⁷⁸ Horrigan (n 77) 143.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid* 144.

mission. In such circumstances, clinicians with views similar to Kosuri will have to reconsider whether a 'finance clinic' should (or actually can) be completely 'devoid of traditional social justice issues'.⁸⁴

Having regard to these arguments and the challenges clinicians may face to the education of students about social justice, there are ways these obstacles can be overcome. While it may not be possible to expect all students to engage in clinical placements that are focused entirely on social justice nor that the lawyers with whom they engage will be attending to such issues, nonetheless, instilling in students the message that social justice is a system of values and a consciousness that is predicated on an innate sense of justice remains important.⁸⁵

Social Justice Teaching Remains Important

If social justice is to remain one of the central missions of CLE, students should be encouraged to be value-driven or possess a sense of social justice regardless of where they receive their clinical teaching.⁸⁶ The risk of not doing so is that students will fail to appreciate that social justice is important and assume that a social justice ethos is

⁸⁴ Kosuri (n 65) 331.

⁸⁵ Refer to Singo and Raymond (n 11) 302. See also Bryan Horrigan, 'Designing and Implementing an Enhanced Clinical Program in the Age of Disruption. Part One: The Environment for Clinic' (2019) 26(2) *International Journal of Clinical Legal Education* 75; Bryan Horrigan, 'Designing and Implementing an Enhanced Clinical Program in the Age of Disruption. Part Two: The Environment for Clinic' (2020) *International Journal of Clinical Legal Education* 204.

⁸⁶ Singo and Raymond (n 11). See also Supporting Social Justice Through Student Supervision Practices' in Chris Ashford & Paul McKeown (eds), *Social Justice and Legal Education*, 2018, Cambridge Scholars Publishing, 43-64.

essentially an optional attribute. In law schools in which the curriculum focuses on corporate units (and other units lacking in social justice orientation), Singo and Raymond warn that there is a 'tacit institutional discouragement for law students to pursue social justice ambitions'.⁸⁷ This ultimately leads students to believe that a successful law graduate is someone who gains a position in a corporate and/or commercial private law firm rather than a law firm focusing on social justice issues.⁸⁸ It follows that if social justice is to retain its prominence in clinical teaching, no matter whether students engage in poverty-focused live-client clinics or private law firms, they should be made aware that the values that underlie social justice are values that any legal practitioner (and responsible member of society) should possess.⁸⁹ These are values that are essential for every socially responsible person to hold for the betterment of fellow human beings and society at large.⁹⁰ Students engaging in clinical programs need to be provided with opportunities to develop a sense of social responsibility and to recognise injustice in society and the legal system.

Byron supports this notion, suggesting:

CLE inculcates in students a sense of professionalism, a spirit of community lawyering and social justice. Lawyers should see themselves as trustees of

⁸⁷ Ibid 310.

⁸⁸ Ibid. See also Lawton (n 26).

⁸⁹ Singo and Raymond (n 11).

⁹⁰ Ibid 302.

justice. On them lies the fiduciary responsibility to see to it that the legal system provides, as far as is practically possible, justice for all citizens, not only for the rich and powerful. On the other hand, law teachers should realise that the students they teach will be advocates, judges, political persons and so they have a responsibility through their teaching to ensure their students commit to social justice.⁹¹

In this way students become justice ready (i.e., able to provide options for their clients to access justice).⁹² Social justice teaching is aligned with preparing students for justice readiness. As Aiken explains:

Everything a lawyer does has to do with justice or injustice, sometimes on the surface and sometimes in the background. Justice is about doing, and clinicians are among the only faculty in law schools who teach students how to 'do' law. Therefore, clinical faculty ought to pull back the curtain and reveal the injustice; they ought to teach within a context of justice, showing the effect that all lawyers have on society.⁹³

⁹¹ Byron (n 14) 567.

⁹² Refer to Jeremy Cooper and Louise Trubek (eds), *Educating for Justice: Social Values and Legal Education* (Ashgate 1997); Stephen Wizner and Jane Aiken, 'Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice' (2004) 73 *Fordham Law Review* 997; Evans et al (n 3) 98.

⁹³ Jane Aiken, 'The Clinical Mission of Justice Readiness' (2012) 32 *Boston College Journal of Law & Social Justice* 233.

Aiken suggests that law schools need to do more than strive to teach students to be 'practice ready';⁹⁴ but rather students need to be 'justice ready'—to be aware of injustice and committed to fighting it in their legal careers.⁹⁵ Justice-ready graduates can recognise injustice and appropriately evaluate the consequences of their actions in a way that mere practice readiness does not teach.⁹⁶ Clinics must move students beyond being just practice ready and prepare them 'to identify injustice when they see it and develop the skills and strategic thinking to remedy it'.⁹⁷ Clinicians must determine which skills and knowledge will improve students' ability to identify injustice.⁹⁸ Further, they must develop and implement teaching interventions to ensure that students acquire these skills.⁹⁹ As Aiken concludes, 'clinicians can help their students make a commitment to justice in their lives as lawyers. The tools just need to be refined'.¹⁰⁰

Within the clinical context, structured methods and models can be implemented to develop and maintain a more uniform approach to focus on issues of social justice. As supervision plays a crucial role in clinical teaching, an effective way to implement these methods and models is to support supervisors to focus on issues relating to access to justice and social justice.

⁹⁴ Ibid.

⁹⁵ Ibid 234. See also Jane Aiken, 'Provocateurs for Justice' (2001) 7 *Clinical Law Review* 294.

⁹⁶ Aiken (n 93).

⁹⁷ Ibid 235.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid 236.

The Role of Supervision in Social Justice Teaching

Supervision is viewed as the cornerstone of best practice in CLE.¹⁰¹ Giddings posits that effective supervision is ‘integral to harnessing the rich learning potential of clinic experiences and as such plays a valuable role in providing students with a deeper understanding of social justice concepts and the complex nature of public policy debates’.¹⁰² Clinics are particularly well suited to generating discussions relating to concepts such as fairness, justice, due process and ethical awareness.¹⁰³ Supervisors have a critical role in guiding students to understand the implications of the “disorienting moments” they encounter where a social justice-oriented clinical experience challenges student understandings, particularly the impact of laws on marginalised people.¹⁰⁴ Davys and Beddoe identify the need to focus on supervision as a ‘reflective learning process rather than one of direction and audit’.¹⁰⁵ According to these writers, supervision should involve a process of ‘teaching a way of thinking rather than teaching a set of techniques’.¹⁰⁶ Supervisors can use frameworks that

¹⁰¹ Refer to Jeff Giddings, *Promoting Justice through Clinical Legal Education* (Justice Press, 2013). See also Jeff Giddings, ‘The Assumption of Responsibility: Supervision Practices in Experimental Legal Education’ in Mutaz Qafisheh and Stephen Rosenbaum (eds), *Global Legal Education Approaches: Special Reference to the Middle East* (Cambridge Scholars, 2012).

¹⁰² Jeff Giddings, ‘It’s More Than a Site: Supporting Social Justice Through Student Supervision Practices’ in Chris Ashford and Paul Mckeown (eds), *Social Justice and Legal Education* (Cambridge Scholars, 2018).

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.* See also Quigley, Fran, ‘Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law Clinics’ (1995) 2 *Clinical Law Review* 37, Susan Brooks, ‘Using a Communication Perspective to Teach Relational Lawyering’ (2015) 15 *Nevada Law Journal* 477.

¹⁰⁵ Allyson Davys and Liz Beddoe, ‘The Context of Professional Supervision’ in Allyson Davys and Liz Beddoe (eds), *Best Practice in Professional Supervision: A Guide for the Helping Professions* (Jessica Kingsley, 2010) 18.

¹⁰⁶ *Ibid* 20.

recognise and address the social justice dimensions of both their supervision role and the legal work in which they engage.¹⁰⁷

Within the clinical setting, students are given opportunities to learn legal skills to promote access to justice; however, if they are to explore larger issues of systemic injustice, deep exploration and learning is required.¹⁰⁸ Students need to engage in critical reflection and introspection to develop greater insight into, make a long-term commitment to and take responsibility for justice.¹⁰⁹ Reflection is a critical step in the transformative learning process.¹¹⁰ Aiken stresses that clinicians must teach 'reflective skepticism' in which students learn 'to understand that knowledge is constructed, and to gain the ability to challenge assumptions and explore alternatives'.¹¹¹ To provoke reflective thinking, clinicians identify cases that are likely to stimulate transformative learning and create opportunities for students to reflect on their experiences.¹¹² By

¹⁰⁷ Ibid.

¹⁰⁸ Refer to Liz Curran, Judith Dickson and Mary-Anne Noone, 'Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice' (2005) 8 *International Journal of Clinical Legal Education* 104; Barry, Margaret Martin, Jon C Dubin and Peter Joy, 'Clinical Education for This Millennium: The Third Wave' (2000) 7 *Clinical Law Review* 1.

¹⁰⁹ Aiken (n 93).

¹¹⁰ Ibid.

¹¹¹ Ibid 288. See also Kevin Kerrigan, 'How Do You Feel About This Client?' A Commentary on the Clinical Model as a Vehicle for Teaching Ethics to Law Students' (2007) *International Journal of Clinical Legal Education* 37; Anna Cody, 'What Does Legal Ethics Teaching Gain, if Anything, from Including a Clinical Component?' (2015) 22(1) *International Journal of Clinical Legal Education* 1.

¹¹² Aiken (n 93).

reflecting, students can critically analyse their current assumptions to determine if their world view is accurate.¹¹³

A structured approach to supervision ensures that clinical teaching focuses on social justice learning.¹¹⁴ Without clear guidance and support, students will struggle to appreciate the complexities and practicalities of the environment in which they are working.¹¹⁵ This may be accentuated when students are dealing with particularly challenging matters and adopt unsuitable practices as a result.¹¹⁶ Clients may suffer if students fail to gather key information and address all of the legal issues.¹¹⁷ Further, without clear and supportive supervision, students may receive insufficient feedback and are unlikely to develop reflective practices.¹¹⁸ As Evans et al. observe, 'the confidence that builds from being effectively supported and appropriately challenged is critical to clinic students'.¹¹⁹

¹¹³ Ibid, citing Michael Christie et al, 'Putting Transformative Learning Theory into Practice' (2015) 55(1) *Australian Journal of Adult Learning* 11.

¹¹⁴ Ibid 1255. See also Allyson Davys and Liz Beddoe, *Best Practice in Professional Supervision: A Guide for the Helping Professions* (Jessica Kingsley, 2010).

¹¹⁵ Giddings, Jeff and Michael McNamara, 'Preparing Future Generations of Lawyers for Legal Practice: What's Supervision Got To Do With It?' (2014) 37(3) *University of New South Wales Law Journal* 1226

See also Ross Hyams, Susan Campbell and Adrian Evans, *Practical Legal Skills* (Oxford University Press, 4th ed, 2014).

¹¹⁶ Giddings and McNamara (n 115).

¹¹⁷ Ibid. See also Barry, Margaret Martin, Jon C Dubin and Peter Joy, 'Clinical Education for This Millennium: The Third Wave' (2000) 7 *Clinical Law Review* 138.

¹¹⁸ Giddings and McNamara (n 115).

¹¹⁹ Evans et al (n 1).

Evans et al. stress that for supervisors to provide students with clear guidance, they need to be aware of the best methods for teaching those skills and strategies.¹²⁰ Clinical pedagogy encourages clinical educators to focus on promoting those learning opportunities that are particularly well suited to clinic contexts, including ethics and values, skills development and legal problem-solving.¹²¹ To promote structured learning, the clinical learning framework emphasises the importance of program design, particularly the articulation of clear objectives and assessment criteria and the effective provision of feedback.¹²²

Strategies for Social Justice Teaching

When interacting with students in the clinical setting, it is essential for supervisors to actively engage with students about social justice in order to ensure students are made aware of their clients' needs and interests and, in this way, understand their clients' circumstances more deeply.¹²³ Supervisors should discuss with their students social justice issues that could impact on clients' options for dispute resolution such as societal concerns, equity, self-determination and social responsibility.¹²⁴ These discussions might include the clients' socio-economic circumstances, whether the

¹²⁰ Ibid 124.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Refer to Cooper, Jeremy, 'Social Values from Law School to Practice: An Introductory Essay' in Jeremy Cooper and Louise Trubek (eds), *Educating for Justice: Social Values and Legal Education* (Ashgate, 1997) 5.

¹²⁴ Douglas, Susan, 'Humanising Legal Education: Lessons from ADR' (2012) 23(3) *Australasian Dispute Resolution Journal* 216.

clients are literate, can speak English as a first language or require special communication methods, all developing the students' awareness of the clients' lack of access to justice and social inequality. Supervisors engage with students on a level beyond skills training to involve them in discussions regarding inequality of resources, and encouraging a sense of responsibility for using the law to challenge injustice and to provide options for their clients to access justice.¹²⁵

For the purposes of providing an example of how social justice teaching can be enhanced within the clinical context, we can look at a common matter encountered in law clinics, where a client seeks advice regarding a traffic infringement.

Traffic Infringement Case Study

Factual scenario: A woman visits the CLC for advice about a parking infringement she has received. The client is a single mother with four children, all under 18. The client had received a fine of \$480 when she had collected her two youngest children (aged five and seven) from school and exceeded the 40km/hr speed limit outside the school (she was recorded travelling at 60km/hr). The client cannot afford to pay the fine and is seeking assistance in having the fine waived. The client is distressed during the interview and seeks advice on how to deal with this matter.

¹²⁵ Douglas, Kathy, 'Shaping the Future: The Discourses of ADR and Legal Education' (2008) 8(1) *Law and Justice Journal* 118.

In this instance, the supervisor guides the student to apply critical and analytical thinking, by encouraging the student to look closely at the client's needs and adopt a client-centred approach. The supervisor engages with the student about the client's social and financial circumstances that may have contributed to the infringement, and her consequent ability to pay the fine. Other factors to be considered include, her ability to understand the legislation and the legal process and her inability to speak fluent English, which impacts on her ability to write a letter to get a review of the fine and waiver. The supervisor encourages the student to consider whether the client requires any support from a financial counsellor, social worker or external agency during the process. Additionally, the supervisor might provide the student with strategies for communicating the advice to the client. This includes addressing any language-related constraints and whether the client might require an interpreter to better comprehend the advice.¹²⁶

The supervisor addresses the barriers to access to justice, such as the client's socio-economic circumstances, communication difficulties, and general inability to understand and navigate the legal system.¹²⁷ In this way, the supervisor engenders in the student an understanding of the hardships the client faces due to her

¹²⁶ Refer to Giddings, Jeff, 'The Assumption of Responsibility: Supervision Practices in Experimental Legal Education' in Mutaz Qafisheh and Stephen Rosenbaum (eds), *Global Legal Education Approaches: Special Reference to the Middle East* (Cambridge Scholars, 2012).

¹²⁷ Giddings, Jeff, 'It's More than a Site: Supporting Social Justice Through Student Supervision Practices' in Chris Ashford and Paul McKeown (eds), *Social Justice and Legal Education* (Cambridge Scholars, 2018)

circumstances and focuses on the client's interests or needs, in order to explore alternative options to litigation for resolving the client's matter. Stephen Wizner cautions:

It [is] not enough to simply provide students with the opportunity to experience the real world through the representation of low-income clients [it is important] to also sensitise the students as to what they were seeing, to guide them to a deeper understanding of their client's lives and to help students develop a critical consciousness imbued with a concern for social justice.¹²⁸

To improve supervisors' fostering of students' awareness of social justice, supervisors must first appreciate the central role they play in helping students learn in a clinic or placement environment¹²⁹ and in explaining the limitations of the law and legal processes.¹³⁰ Giddings suggests that training workshops 'that aim to place effective supervision at the forefront of experiential learning for supervisors are a valuable opportunity for building relationships between law schools and the supervisors involved in their clinical and placement programs'.¹³¹ Such workshops challenge

¹²⁸ Stephen Wizner, 'Beyond Skills Training' (2001) 7 *Clinical Law Review* 327. See also Stephen Wizner, 'The Law School Clinic: Legal Education in the Interests of Justice' (2001–2002) 70 *Fordham Law Review* 1929.

¹²⁹ Wizner (n 128).

¹³⁰ *Ibid* 63.

¹³¹ Giddings (n 102) 64.

assumptions around the quality of supervision and emphasise the importance of effective preparation of students for the supervision relationship.¹³²

It follows that if supervisors in clinical settings are going to be responsible for students' social justice learning, they may require more understanding of appropriate supervision techniques. Skills workshops have been held at various CLE conferences, focusing on training to support supervisors.¹³³ These workshops provide a guided and structured approach for supervisors to integrate social justice teaching into their practices.¹³⁴ Clinical educators are encouraged to adopt an integrative framework to support students to incrementally develop knowledge, values, skills and the capacity to learn from experience.

Integration of Methods

The Best Practices Report endorses an integrated approach, referring to the value of seeing experiential education 'as part of a connected whole'.¹³⁵ When the objective is

¹³² Ibid. See also Supporting Social Justice Through Student Supervision Practices' in Chris Ashford & Paul McKeown (eds), *Social Justice and Legal Education*, 2018, Cambridge Scholars Publishing, 43-64.

¹³³ Ibid. Skills workshops have been held at national and international clinical legal education conferences. Refer to <<https://www.monash.edu/law/home/cle/clinical-legal-education-conference>>.

¹³⁴ Giddings (n 102) 60. See also Jennifer Lyman, 'Getting Personal in Supervision: Looking for that Fine Line' (1995) 2 *Clinical Law Review* 211; Jenifer Gundlach, 'This is a Courtroom, Not a Classroom: So What Is the Role of the Clinical Supervisor?' (2006) 13 *Clinical Law Review* 279; Carolyn Grose, 'Flies on the Wall or in the Ointment—Some Thoughts on the Role of Clinic Supervisors at Initial Client Interviews' (2008) 14 *Clinical Law Review* 415. See also Liz Ryan Cole and Leah Wortham, 'Learning from Practice' in JP Ogilvy et al, *Learning from Practice: A Professional Development Text for Legal Externs* (Thomson/West, 2007).

¹³⁵ Refer to Evans et al (n 1) 97. See also Kenneth Kreiling, 'Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical

for students to develop proficiency in the application of professional skills, students should have 'repeated opportunities to perform the tasks to be learned or improved upon until they reach the desired level of proficiency'.¹³⁶ Before taking on substantial professional responsibility, students need to be prepared via supervision that directly emphasises the significant duties lawyers owe both to clients and the administration of justice.¹³⁷ As students develop their skills and become more confident, they can be allowed to take greater control over their future learning as they determine for themselves the best ways to approach issues and problems.¹³⁸ Role play is one method that can be effectively integrated into the clinical framework to prepare and support students' social justice learning.¹³⁹ Role play as a learning and teaching strategy can be described as the 'signature pedagogy' of CLE as it provides the opportunity for deep learning through active, authentic experiences that simulate real-world contexts.¹⁴⁰

Supervision' (1981) 40 *Maryland Law Review*; Malcolm M Combe, 'Selling Intra-curricular Clinical Legal Education' (2014) 48(3) *The Law Teacher* 281.

¹³⁶ Evans et al (n 1) 142. See also Jennifer Lyman, 'Getting Personal in Supervision: Looking for that Fine Line' (1995) 2 *Clinical Law Review* 211.

¹³⁷ Evans et al (n 1).

¹³⁸ Evans et al (n 1).

¹³⁹ Lee Shulman, 'Signature Pedagogies in the Professions' (2005) 134 *Daedalus* 52; Deborah Maranville et al, 'Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering' (2012) 56(2) *New York Law School Law Review* 517.

¹⁴⁰ Refer to Douglas (n 1); Hyams, Campbell and Evans (n 186); Paul S Ferber, 'Adult Learning Theory and Simulations—Designing Simulations to Educate Lawyers' (2002) 9 *Clinical Law Review* 417.

Role Play and Clinical Pedagogy

The Best Practices Report describes CLE as ‘a pedagogy that places students in real-life environments. It is a form of experiential learning where students learn by doing and then reflecting’.¹⁴¹ Similarly, simulation-based activities help students to understand and consolidate their learning experiences. When designed and implemented in a coherent and structured way, simulation can be used to complement and support other learning and teaching methodologies.¹⁴² As Grimes states, ‘[simulation] is not a “one-off act” that is then followed by problem solving learning and/or clinical activity, instead, it can be seen as a strategic part of an educational plan in which the student is required to assume part-responsibility for how he or she learns’.¹⁴³ In CLE, simulation can be used to develop learning opportunities for students and implemented in a pedagogic model that uses ‘problem’ analysis (and to an extent problem-solving) as the baseline for the delivery of clinical programs.¹⁴⁴

While ‘clinic’ is a generic term to describe the context in which students learn through

¹⁴¹ Refer to Evans et al (n 1). See also Hugh Brayne et al, *Clinical Legal Education: Active Learning in Your Law School* (Blackstone Press, 1998) 2; RA Bush, ‘Using Process Observation to Teach Alternative Dispute Resolution: Alternatives to Simulation’ (1987) 37 *Journal of Legal Education* 46; Elliot Milstein, ‘Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations’ (2001) 51(3) *Journal of Legal Education* 375.

¹⁴² Richard Grimes, ‘Faking it and Making it? Using Simulation with Problem-Based Learning’ in *Legal Education: Simulation in Theory and Practice*, edited by Caroline Stevens, et al., Taylor & Francis Group, 2014 ProQuest Ebook Central, <http://ebookcentral.proquest.com/lib/monash/detail.action?docID=1825708>. See also Barry, Margaret Martin, ‘Clinical Supervision: Walking That Fine Line’ (1995) 2(1) *Clinical Law Review* 137; Beddoe, Liz and Allyson Davys, ‘The Context of Professional Supervision’ in Allyson Davys and Liz Beddoe (eds), *Best Practice in Professional Supervision: A Guide for the Helping Profession* (Jessica Kingsley, 2010).

¹⁴³ Grimes (n 142).

¹⁴⁴ *Ibid* 182.

exposure to real or realistic casework, simulation can be considered a form of a clinic.

As Grimes states:

The learning comes from direct experience of working with clients (actual or fictional), but is used here in the specific context of real (or, as it is often described, 'live') clients. What renders the whole 'clinical' is the opportunity provided to the student to deconstruct that experience and to actively reflect, as an individual and as a team, on what has happened (or not) and why. Clinic is therefore learning by doing and learning through reflecting on that 'doing'.¹⁴⁵

Similarly, Mccoid-Mason states that simulation is a 'flexible tool that can enhance learning and teaching by engaging and motivating students through hands-on exercises that draw on real or realistic case studies'.¹⁴⁶ Simulation can be viewed as a strategic part of an educational plan in which a student assumes active responsibility for how they learn.¹⁴⁷ Role play might be used to give students a feel for the nature of an adversarial system, the complex nature of client/lawyer relations, the extent of police powers or the contractual and statutory responsibilities of landlords and their tenants.¹⁴⁸

¹⁴⁵ Ibid 172.

¹⁴⁶ Ibid 175.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid 172.

Employment case study

For the purposes of providing an example of how role play can be used to enhance social justice teaching, we can look at a role play scenario of an employment matter. Students are able to assume the roles of any of the parties in the dispute: the employee (client), the employer, or the lawyers advising the employee and employer.

Factual Scenario: A client visits the clinic seeking advice about a workplace incident. He was employed to clean an office building after working hours (usually from 12am). He was required to meet three other cleaners at the building at 11:45pm to be allocated floors to clean each night. On the night in question, the client reported to work late, arriving at 1:00am. The client informed the student that this was because he was responsible for his children until his wife returned from her job, and she had arrived late. The client explained his lateness to his manager the next morning. When he reported to work the following evening, the manager informed him that he would only receive pay for the hours he had worked and at a reduced rate. When the client asked why, he was told 'as you were late, you have no right to ask questions' and 'you will lose your job if you utter another word'. The client is distressed during the interview. Specifically, he wishes to know if he was able to claim full pay for the shift, how this could be done and whether he could lose his job.

The rationale for providing students with this type of scenario is to get students to work through the dispute, which involves a multitude of issues, both legal and non-

legal. The aim is not for students to attempt to resolve the problem, but rather to identify the issues, research the relevant law and endeavour to explain how the legal process might impact on the given scenario.¹⁴⁹ Through this analysis, students will assess outcomes and critically consider the law in relation to the dispute from the perspectives of all parties.¹⁵⁰

The student playing the role of the client is invited to consider how the client's circumstances may impact on the resolution of the dispute.¹⁵¹ This includes addressing any language-related constraints on the client's understanding of the advice.¹⁵² The client's ability to understand and speak English and whether a telephone interpreter is needed to convey advice to the client.¹⁵³ Also, whether the client requires any

¹⁴⁹ Refer to Evans (n 1). See also Hyams, Ross, 'On Teaching Students to 'Act Like a Lawyer': What Sort of Lawyer?' (2008) 13 *International Journal Clinical Legal Education* 25; Hyams, Ross, Susan Campbell and Adrian Evans, *Practical Legal Skills Developing Your Clinical Technique* (Oxford University Press, 4th ed, 2014).

¹⁵⁰ Refer to James, Colin, 'Seeing Things As We Are. Emotional Intelligence and Clinical Legal Education' (2005) 8 *International Journal of Clinical Legal Education* 123. See also Hyams, Ross and Fay Gertner, 'Multidisciplinary Clinics: Broadening the Outlook of Clinical Learning' (2012) 17 *International Journal of Clinical Legal Education* 25.

¹⁵¹ Refer to Field, Rachael and Roy Alpana, 'A Compulsory Dispute Resolution Capstone Subject: An Important Inclusion in a 21st Century Australian Law Curriculum' (2017) 27 *Legal Education Review* 73. See also Fisher, Tom, Judy Gutman and Erika Martens, 'Why Teach Alternative Dispute Resolution to Law Students? Part 2: An Empirical Survey' (2007) 17(1-2) *Legal Education Review* 67; Gutman, Judy and Matthew Riddle, 'ADR in Legal Education: Learning by Doing' (2012) 23(3) *Australasian Dispute Resolution Journal* 189.

¹⁵² Refer to Ojelabi, Lola Akin, 'Communication and Culture: Implications for Conflict Resolution Practitioners' (2008) 19(3) *Australasian Dispute Resolution Journal* 189. See also Rand, Spencer, 'Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help through Social Work's Empowerment Approach' (2006) 13 *Clinical Law Review* 459; Stevenson-Graf, Lindsey, 'Clinical Programs, Social Justice and Transformation through Student Learning' (2019) 44(3) *Alternative Law Journal* 232.

¹⁵³ Refer to Styles, Irene and Archie Zariski, 'Law Clinics and the Promotion of Public Interest Lawyering' (2001) 19 *Law in Context* 65.

support from social workers or external agencies during the process. Focusing on the parties' respective interests will focus the students' minds on the relative strengths and weaknesses of the matter from all perspectives and assist students to contemplate realistic outcomes for their clients.¹⁵⁴ Students are encouraged to reflect and consider external influencing factors such as the suitability of dispute resolution processes, the ability of clients to self-represent at these forums and therefore engage with wider issues, such as public policy concerns and access to justice.¹⁵⁵

One of the principal advantages of using simulation as a clinical teaching method is that it provides a safe environment in which students can learn.¹⁵⁶ No client confidentiality concerns need to be safeguarded; the use of simulated situations makes it easier to provide students with scaffolds to support them as they begin to engage with the issues and interests raised by particular legal situations; and students can be prepared for their later contact with real clients, particularly in relation to skills such as interviewing.¹⁵⁷ Simulation, therefore has the capacity to expose students to the

¹⁵⁴ Refer to Sullivan, William M et al, *Educating Lawyers: Preparation for the Profession of Law* (Report, 2007). See also Sylvester et al, 'Problem-Based Learning and Clinical Legal Education: What Can Clinical Educators Learn from PBL?' (2004) 4/6 *International Journal of Clinical Legal Education* 39.

¹⁵⁵ Refer to Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011) 253. See also Tokarz, Karen and V Nagaraj, 'Advancing Social Justice through ADR and Clinical Legal Education in India, South Africa and the United States' in Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011) 253; Liz Ryan Cole, 'A Special Focus to Help Understand and Advance Social Justice' in Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011) 324.

¹⁵⁶ Giddings (n 102) 85.

¹⁵⁷ *Ibid.* See also Paul S Ferber, 'Adult Learning Theory and Simulations—Designing Simulations to Educate Lawyers' (2002) 9 *Clinical Law Review* 417; Gregory Baker, 'Do You Hear the Knocking at the Door? A "Therapeutic Approach to Enriching Clinical Legal Education Comes Calling"' (2006) 28

complex intergroup and interpersonal dynamics of lawyering.¹⁵⁸ As Giddings further states:

[Simulation exercises] can assist students to better understand their own feelings: why they are likely to over-identify with their client's perspective, come into conflict with the representatives of the other party, forget ethical precepts and have their judgement clouded by strong feelings.¹⁵⁹

Overall, role play engages students in social justice learning, enhancing their understanding of it and increasing their appreciation of its importance.¹⁶⁰ By integrating methods such as role play into social justice teaching, students are encouraged to engage with their learning.¹⁶¹ Not only do clinics provide a rich source of potential material for simulation, they also provide opportunities for clinic students to observe real outcomes and reflect on what happened and why.¹⁶² Role play enables

Whittier Law Review 379; D Maranville, 'Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Client Experiences' (2007) 7 *Clinical Law Review* 123.

¹⁵⁸ Giddings (n 102). See also Schrag and Meltsner (n 8).

¹⁵⁹ Giddings (n 102) 36–7.

¹⁶⁰ Singo and Raymond (n 11) 299.

¹⁶¹ Singo and Raymond (n 11) 300. See also Ference Marton and Roger Saljo, 'On Qualitative Differences in Learning—2: Outcomes as a Function of the Learner's Conception of the Risk' (1976) 46 *British Journal of Educational Psychology* 115; Deborah Maranville, 'Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Client Experiences' (2000) 7(1) *Clinical Law Review* 123; Ferber (n 218).

¹⁶² For further reading in this area refer to Evans et al (n 1) ch 7; C Maughan and J Webb, 'Taking Reflection Seriously: How Was It For Us?' in C Maughan and J Webb (eds), *Teaching Lawyers' Skills* (Butterworths, 1996); Ross Hyams, 'Assessing Insight: Grading Reflective Journals in Clinical Legal Education' (2007) 17 *James Cook University Law Review* 25; Rachel Spencer, 'Holding up the Mirror: A Theoretical and Practical Analysis of the Role of Reflection in Clinical Legal Education' (2012) 17 *International Journal of Clinical Legal Education* 181; Michele Leering, 'Encouraging Reflective Practice:

students to understand and perform important lawyering tasks, such as questioning, listening, consolidating issues and problems and engaging in creative legal analyses.¹⁶³ In this way, students develop the essential legal practice skills to enable them to problem solve and think critically about their approach to advising clients.

A Classroom Component

The classroom component of clinics can further support student learning.¹⁶⁴ According to the Best Practices Report, each clinic should include classes that enable students as a group to examine the broader context of law and the legal system.¹⁶⁵ The goal of the classroom component is inextricably linked to the overall goals of the program.¹⁶⁶ In line with best practice, clinical programs often include seminars to support students' learning in practice areas, reflective practice and legal ethics. In designing a clinical curriculum that includes seminars focusing on social justice

Conceptualising Reflective Practice for Legal Professionals' (2014) 23 *Journal of Law and Social Policy* 83.

¹⁶³ Refer to Lee Shulman, 'Signature Pedagogies in the Professions' (2005) 134 *Daedalus* 52; Deborah Maranville et al, 'Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering' (2012) 56(2) *New York Law School Law Review* 517.

¹⁶⁴ Evans et al (n 1).

¹⁶⁵ Evans et al (n 1).

¹⁶⁶ Ibid, citing Mary Jo Ester, 'Designing and Teaching the Large Externship Clinic' (1998–1999) 3 *Clinical Law Review* 347, 348. See also Roy Stuckey, 'Ensuring Basic Quality in Clinical Courses' (2000) 1 *International Journal of Clinical Legal Education* 49; Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map (US Best Practices)* (Clinical Legal Education Association, 2007); Sally Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18(1–2) *Legal Education Review* 1; Jonny Hall and Kevin Kerrigan, 'Clinic and the Wider Law Curriculum' (2011) 16 *International Journal of Clinical Legal Education* 37.

teaching, students are provided with seminars that are devoted to particular skills or processes (interviewing) with simulation and/or real case experience.¹⁶⁷

By example, seminars on intercultural competency are important to enhance students' understanding and awareness of being a culturally competent lawyer.¹⁶⁸ This seminar can cover strategies that enable students to understand, communicate, collaborate and work effectively with clients and other stakeholders (court, social workers, health professionals) irrespective of the ethnicity of person, their religious beliefs, sexual orientation, disability, class and education. This seminar can include discussion and training on how to work with interpreters when providing legal assistance to clients, including strategies for students when working with interpreters.¹⁶⁹

Additionally, a seminar on legal ethics, encourage students to focus on ethical issues that may impact on their interaction with clients, such as confidentiality and conflict

¹⁶⁷ For further reading in this area refer to Refer to Liz Curran, Judith Dickson and Mary-Anne Noone, 'Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice' (2005) 8 *International Journal of Clinical Legal Education* 104; Barry, Dubin and Joy (n 9); C Menkel-Meadow and B Moulton, *Beyond the Adversarial Model: Materials on Negotiation and Mediation* (West Publishing, 2007); Kevin Kerrigan, 'How Do You Feel About This Client?' A Commentary on the Clinical Model as a Vehicle for Teaching Ethics to Law Students' (2007) *International Journal of Clinical Legal Education* 37; Anna Cody, 'What Does Legal Ethics Teaching Gain, if Anything, from Including a Clinical Component?' (2015) 22(1) *International Journal of Clinical Legal Education* 1.

¹⁶⁸ Olejabi (above n 152). See also Carrie Menkel-Meadow, 'Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-opted or "The Law of ADR"' (1991) 19(1) *Florida State University Law Review* 3.

¹⁶⁹ Refer to Gregory Baker, 'Do You Hear the Knocking at the Door? A "Therapeutic Approach to Enriching Clinical Legal Education Comes Calling"' (2006) 28 *Whittier Law Review* 379; D Maranville, 'Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Client Experiences' (2007) 7 *Clinical Law Review* 123.

of interest.¹⁷⁰ During this seminar, students can be provided with scenarios containing ethical dilemmas, which through discussion, they can consider alternative means to resolve.¹⁷¹ Students are encouraged to respond and they should not be fearful that their answers will be 'correct' or 'wrong', rather they are provided with supportive ethical frameworks within which they can work in future practice.¹⁷²

Similarly, a seminar on dispute resolution processes enhances students' understanding of the importance of seeking alternative options for resolving clients' disputes.¹⁷³ These seminars may include videos to enhance social justice teaching.¹⁷⁴ Douglas et al. suggest that an effective way to incorporate technology into teaching is to combine videos with an online discussion of practice skills and then ask the students to demonstrate these skills in role plays.¹⁷⁵ Students are provided with

¹⁷⁰ Liz Curran, Judith Dickson and Mary-Anne Noone, 'Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice' (2005) 8 *International Journal of Clinical Legal Education* 104.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ Refer broadly to Beryl Blaustone, 'Training the Modern Lawyer: Incorporating the Study of Mediation into Required Law School Courses' (1992) 21 *Southwestern University Law Review* 1317; Pauline Collins, 'Student Reflections on the Benefits of Studying ADR to Provide Experience of Non-adversarial Practice' (2012) 23 *Australian Dispute Resolution Journal* 209. See also James Nikolas, 'Logical, Critical and Creative: Teaching "Thinking Skills" to Law Students' (2012) 12(1) *QUT Law & Justice Journal* 66.

¹⁷⁴ Refer to Judy Gutman and M Riddle, 'ADR in Legal Education: Learning by Doing' (2012) 23 *Australasian Dispute Resolution Journal* 194; Kathy Douglas, Josephine Lang and Meg Colasante, 'The Challenges of Blended Learning Using a Media Annotation Tool' (2014) 11(2) *Journal of University Teaching and Learning Practice* 3–4.

¹⁷⁵ Kathy Douglas, Tina Popa and Christina Platz, 'Teaching Mediation Using Video and Peer Discussion: An Engaged Video Learning Model' (2019) 29(3) *Australasian Dispute Resolution Journal* 182. Also refer to Kathy Douglas and Belinda Johnson, 'Legal Education and E-Learning: Online Fishbowl Role-Play as a Learning and Teaching Strategy in Legal Skills Development' (2010) 17(1) *eLaw: Murdoch University Electronic Journal of Law* 28; Michele Ruyters, Kathy Douglas and Siew Fang

readings prior to the seminars to engage in advance preparation to ensure greater participation and cooperation in the seminars. Their feedback is encouraged, ensuring they gain a deeper understanding of the topics. This enhances students' social justice learning, as they 'become active rather than passive learners'.¹⁷⁶

Conclusion

Although CLE has long focused on preparing law students to enter practice with a deeper understanding of social justice issues and the skills necessary to assist persons in accessing justice, this well-established mission has been increasingly challenged. With the expansion of CLE and the growth of externships, clinical students are increasingly placed in corporate settings or private law firms in which social justice may not be the central ethos. Clinicians have differing views in this regard. Kosuri argues that while clinics offer a rich experience that cannot be replicated by other forms of experiential learning, not all clinical law programs need to include social justice teaching to be recognised as CLE.¹⁷⁷ Cole challenges these views and argues that these clinics can still support a social justice mission and reinforce lessons about social justice that will carry on into the rest of the students' professional life.¹⁷⁸ Clinical pedagogy incorporates a social justice mission that enables students to explore and

Law, 'Blender Learning Using Role-Plays, Wikis and Clogs' (2011) 4(4) *Journal of Learning and Design* 45.

¹⁷⁶ Douglas et al (n 176) 46.

¹⁷⁷ Kosuri (n 65).

¹⁷⁸ Cole (n 75).

reflect on the issues that affect access to justice. In doing so, these programs teach students skills in communication, problem-solving, critical thinking and conflict management.

Despite the challenges that exist, this paper has explored ways in which social justice can be retained as a key focus of CLE developing students' understanding of social justice and conflict management. This paper has highlighted the effective ways that social justice teaching can be included in the clinical curriculum.

Notably, supervisors play a critical role in this teaching with methods including role play, simulation-based exercises, seminars and skills teaching, all intended to introduce students to the knowledge and skills needed to become critical thinking client-centred practitioners.¹⁷⁹ The suitability of these methods will depend on the clinic type, the model of CLE and the resources available. To ensure a standardised approach to social justice teaching, clinicians need to be trained in the aspects and theories of social justice and its connection to clinics. A focus on client-centred lawyering and access to justice will enhance students' ability to manage conflict and establish trusting lawyer-client relationships in whichever context they practice. In this way, CLE can ensure that law students continue to develop a deep understanding

¹⁷⁹ Refer to Julie Macfarlane, 'The Evolution of the New Lawyer: How Lawyers are Reshaping the Practice of Law' (2008) 61 *Journal of Dispute Resolution* 61; Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (UBC Press, 2008).

of the importance of retaining social justice as a focus for their future as 21st-century legal practitioners.

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