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## Framing Supervisory Relationships in Clinical Law: The Role of Critical Pedagogy

GEMMA SMYTH & MARION OVERHOLT\*

Le travail clinique en droit offre d'importantes opportunités pour les d'étudiants d'apprendre d'une manière critique, réfléchiée et politisée la place du droit et la pratique. Une telle approche a encore plus de sens lorsqu'elle comprend une supervision par des avocats et des travailleurs sociaux au sein de la clinique. Les auteures de cet article sont Directrice académique et Directrice exécutive de deux cliniques juridiques de Windsor. Ces programmes académiques offrent un contexte, une perspective et des opportunités de comprendre comment la pédagogie critique (influencée par, mais distincte des études critiques en droit) fournit des outils pour les avocats superviseurs de programmes similaires à ceux dans lesquelles elles évoluent. L'article résume brièvement le contexte dans lequel les auteures enseignent et pratiquent. Par la suite, elles expliquent qui sont les acteurs dans les programmes cliniques comme les facultés de droit, les communautés, les étudiants et les clients. L'article se termine en concluant sur la manière dont les programmes cliniques peuvent renforcer la pédagogie critique dans une relation de supervision.

Clinical work in law offers important opportunities for students to learn critical, reflective and politicized approaches to legal identity and practice. Such an approach is most meaningful when it is engaged by supervising lawyers and social workers in a clinical placement. The authors of this article, the Academic Clinic Director and Executive Director of two Windsor-based clinic programs, offer context, perspective and examples of how critical pedagogy (influenced by, but distinct from, critical legal studies) provides a roadmap for supervising lawyers and the programs in which they work. The paper briefly sets the context of the authors' teaching and practice. The authors then set out some of the interested parties in clinical legal education, including law schools, communities, students and clients. The paper concludes with ideas on how a clinical program might set out to strengthen critical pedagogy in the supervisory relationship.

[B]ecause people learn hegemonic values, ideas, and practices, and because schools and other cultural institutions play a major role in presenting these ideas as the natural order of things, hegemony must always be understood as an educational phenomenon.<sup>1</sup>

LEGAL EDUCATION is an important site for teaching and learning hegemonic and, potentially,

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<sup>1</sup>Stephen D Brookfield, *The Power of Critical Theory: Liberating Adult Learning and Teaching* (San Francisco: John Wiley & Sons, 2005) at 13 (drawing on Antonio Gramsci and Jack Mezirow).

subversive rules and practices. Clinical legal education—the teaching and learning through direct client service, policy advocacy, community action, or a combination of these, generally in pursuit of social justice goals<sup>2</sup>—allows law students to use tools of both hegemony and subversion to support the goals of people who generally do not have access to for-profit legal advice or other forms of assistance requiring legal, and often social services related, knowledge. Crafting clinical legal education placements for students can be challenging, not least because the affected parties often have divergent needs and interests. For example, students may be concerned with learning opportunities, future job prospects, clients, finances, or other personal concerns.<sup>3</sup> Clinical staff, in addition to teaching and supervising students, may also be concerned with a number of issues related to clients, community and advocacy projects, uncertainty regarding ongoing funding or job status, and other administrative matters.<sup>4</sup> Funders may be concerned with budgets, public and political responsiveness, and quality assurance. The interests of law schools may include pedagogy and academic integrity of a program, public relations, community involvement and support, and meeting student demand. Ultimately, academics involved in clinical legal education may share the interests of their home institution, but they may also be committed to social justice and clinical and experiential approaches to learning, as well as their own research. Clients seeking legal advice are interested in high quality services that facilitate resolution of their disputes. Of course, the larger community also benefits from legal services offered through law schools, particularly through support of the most vulnerable citizens, as well as through public legal education and community advocacy. In the context of clinical legal education, accommodating these many interests can prove challenging in crafting a coherent, critical stance to teaching, learning, and practice; however, they can also provide the opportunity for authentic, deep, and critically reflective relationships between students, clinic lawyers, social workers and clients.

The authors of this article are the Academic Clinic Director and Executive Director of two Legal Aid Ontario-funded clinics associated with the University of Windsor. In this article, we document some of the interests and challenges integrating critical pedagogy in one of our community legal clinics—Legal Assistance of Windsor (LAW). This article is not intended to summarize the vast critical legal studies literature, but an exploration of the context in which critical theory, specifically critical pedagogy, can either be subverted or flourish in a clinical context. Hence, we focus upon a central site in the applied learning context: supervisory relationships.<sup>5</sup> We focus on the student-lawyer supervisory relationship because we believe

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<sup>2</sup> The Clinical Legal Education Association, *Handbook for New Clinical Teachers May 2009*, online: <[http://clea.memberlodge.org/Resources/Documents/new\\_clinicians\\_handbook\\_2009.pdf](http://clea.memberlodge.org/Resources/Documents/new_clinicians_handbook_2009.pdf)> at 10 (“a program that teaches through direct experience of lawyering, under the supervision of practicing attorneys/teachers, characteristically in work that advances social justice or the public interest”).

<sup>3</sup> Issues related to students’ increasing concern about the “value” of legal education is epitomized in the many Canadian and American news articles documenting high student debt, lower paying or non-existent jobs and questions about what law schools are and should teach its students. See e.g. Brian Tamanaha, *Failing Law Schools* (Chicago: University of Chicago Press, 2012); Jordan Furlong, “Law School and the Risk of Irrelevance,” *Law Weekly* (20 August 2010); and David Segal, “Is Law School a Losing Game?,” *New York Times* (8 January 2011) BU1.

<sup>4</sup> In the past several years, Legal Aid Ontario has closed, cut and/or amalgamated (or “modernized”) clinics and certificate programs in Ontario. See Tracey Tyler, “Legal Aid Facing ‘Troubling’ Cuts,” *Toronto Star* (28 February 2010) online: TORONTO STAR <<http://www.thestar.com>>; Legal Aid Ontario, *Civil Coverage and Clinic Services*, online: Legal Aid Ontario <<http://www.legalaid.on.ca/>>.

<sup>5</sup> The use of the term “supervisory” is problematic from a critical perspective. However, the term does recognize the inherently hierarchical relationship between student and lawyers, particularly for liability purposes. The paper

students best connect their academic and practice-based learning at this point. We have found that students are often more apt to take their clinic supervisor's advice as reflective of a valid construction of the meaning of legal practice. Therefore, these relationships can play a crucial role in the formation of students' professional identity. Further, supervisors generally have a great deal of discretion in choosing advocacy approaches and techniques. We have found a great deal of variance in how supervisors approach their teaching and learning roles. Because of the urgency and technical specificity of clinic practice, a critical approach can be lost. We conclude with recommendations on structuring student supervision in a pedagogically sound manner that maintains a commitment to critical and socially progressive advocacy in the clinical setting.

## I. THE CONTEXT

Founded in 1974, LAW is a multi-disciplinary community legal clinic located in downtown Windsor, Ontario. Legal and social work services are offered to clients with landlord-tenant, social assistance, and employment and immigration law disputes. The clinic also provides multidisciplinary assistance with the social impacts of poverty. LAW participates in many community campaigns on behalf of and with clients. Throughout the course of the academic year, law students and social work students receive academic credit for full time participation in the clinical program, which includes one seminar course. Some students are employed as caseworkers during the summer months.<sup>6</sup> As Rose Voyvodic and Mary Medcalf wrote in 2004, critical factors to LAW's success include:

- (1) a shared understanding of LAW's goals and values;
- (2) curriculum design that is reflective of these goals and values; and
- (3) institutional sanction and support for the goals and values".<sup>7</sup>

LAW partners with the University of Windsor Faculty of Law (Windsor Law), which holds "access to justice" as one of its foundational themes. Students are accepted to Windsor Law through an application process that considers the applicant's undergraduate program(s), work experience, community involvement, personal accomplishments, career objectives, personal factors, and LSAT score.<sup>8</sup> Hence, Windsor Law attracts students that have demonstrated commitment to using law and other forms of advocacy as mechanisms of social change, whether through support of their own communities or through issue-based law reform.

LAW is funded by Legal Aid Ontario, and is defined as a community legal clinic under the *Legal Aid Services Act* and operates under a governance Board.<sup>9</sup> Since its inception, LAW

explores the power dynamics inherent in this relationship later. For thoughtful examinations of power relationships in student supervision, particularly through the lens of class, race, and gender, see Margaret Barry, "Clinical Supervision: Walking that Fine Line" (1995) 2:1 *Clinical L Rev* 137.

<sup>6</sup> For a fuller description of the philosophy and organization of LAW, see Rose Voyvodic & Mary Medcalf, "Advancing Social Justice through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor" (2004) 14 *Wash UJL & Pol'y* 101. This paper does not address structural or administrative approaches in structuring law school clinics to promote social change.

<sup>7</sup> *Ibid* at 101.

<sup>8</sup> Dolores Blonde et al, "The Impact of Law School Admission Criteria: Evaluating the Broad-Based Admission Policy at the University of Windsor Faculty of Law" (1998) 61:2 *Sask L Rev* 529.

<sup>9</sup> *Legal Aid Services Act*, SO 1998, c 26, s 2. (It may be important to note that most Legal Aid clinics in Ontario do not accept regular student placements; however, Parkdale Community Legal Services, partnered with Osgoode Hall Law School in Toronto, LAW, and the Student Legal Aid Service Societies (SLASS) employ or accept for-credit placements as part of their mandates.)

has employed both lawyers and social workers, relying on a multi- (and sometimes) interdisciplinary approach to advocacy for clients and groups living in poverty. LAW is deeply engrained in the activist community in Windsor, working with many community partners on issues important to people living, or at risk of living, in poverty. These community partners include local homeless shelters, mental health support groups, employment advocacy groups, and others. For a wide variety of reasons, however, the supervisory and administrative relationships at the clinic did not always embody the “shared understanding of LAW’s goals and values.”<sup>10</sup> In other words, the learning experience was not always constructively aligned,<sup>11</sup> particularly when some understood clinical supervision as an inherently politicized, social justice project, and others understood it as purely a skills-training relationship. This was exacerbated by the fact that LAW consists of in-clinic and in-class training components, with tensions arising from what amount to stereotypical metaphors of the “ivory tower” versus the “pseudo corporate law firm.” Voyvodic and Medcalf therefore began collaborating to provide a more pedagogically<sup>12</sup> consistent approach to supervision, which, in our view, is at the heart of praxis in clinical legal education.<sup>13</sup> We have continued this work, spending significant time on politicizing and contextualizing student supervision.

In 1982, Peter Toll Hoffman noted that “[s]upervision may take many forms ranging from a spontaneous exchange between student and teacher as needs and opportunity dictate, to a planned and structured conference following a specified agenda.”<sup>14</sup> The spontaneous nature of clinic supervision yields benefits and challenges. To begin to address this complex task, we must explore how this relationship is different from traditional, classroom-based teacher-student relationships.<sup>15</sup> 1. FIGURE sets out some of the fundamental differences between clinical and doctrinal approaches to legal education.

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<sup>10</sup> Voyvodic & Medcalf, *supra* note 6.

<sup>11</sup> This term is borrowed from John Biggs & Catherine Tang, *Teaching for Quality Learning at University*, 3d ed (Berkshire: McGraw-Hill, 2007).

<sup>12</sup> The authors acknowledge that the proper term for teaching adults is “andragogy” rather than “pedagogy.” The authors use the term “pedagogy” throughout the article, however, because of its more common usage and because the students whom we teach do not universally demonstrate the characteristics of adulthood. For a full discussion of the characteristics of adult learning, or lack thereof, in a clinical setting, see Linda Morton, Janet Weinstein & Mark Weinstein, “Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs” (1999) 5:2 *Clinical L Rev* 469.

<sup>13</sup> Most readers will be familiar with this term, initially Aristotilean, identifying the place in which theory turns into action (practice). For Paulo Friere, praxis was “reflection and action upon the world in order to transform it.” See *Pedagogy of the Oppressed* (New York: Continuum Books, 2000) at 51 (originally published in 1970).

<sup>14</sup> Peter Toll Hoffmann, “Clinical Course Design and the Supervisory Process”(1982) 1982:2 *Ariz St LJ* 277 at 280.

<sup>15</sup> This is not to suggest that supervisory relationships in either are a monolith.

**Figure 1**

<b>Clinical Approaches to Legal Education</b>	<b>Doctrinal Approaches to Legal Education</b>
Generally, live clients, or current policy problems, are the focus of advocacy.	Generally, previously decided cases (judge-made law) are the focus of study.
Theory is tested in live situations, although theory often is secondary to the legal and social problems at hand.	Theory (both sociological and legal, including as interpreted by judges) is the focus of teaching and learning.
Teaching is generally conducted one-on-one or in small groups, and centred on problems facing individuals or groups. Teaching is rarely conducted through lecture.	Teaching is generally conducted in medium to large classes. Teaching is usually conducted through lecture.
Generally forces supervisors and students to confront the highly politicized nature of law and its use (or misuse) for people living in poverty.	Tends to depict law as a set of reasoned judgments made by unbiased and apolitical judges
The “teacher” or “sites of learning” can be the client, other students, social workers, community partners, staff lawyers, administrative staff, professors, and activist groups. Likewise, learning can occur amongst all these groups and individuals.	The “teacher” or “site of learning” is almost always the professor assigned to teach a course, supported by assigned readings materials and class. Learning is generally assumed to be done only by students.
Values are often social justice-focused.	Values may be subsumed by Langdellian-style case analysis; highly dependent upon the professor. Some left wing professors seen as outliers or “biased.”
Generally, collaborative	Generally, competitive
Psychomotor skills are emphasized. Students learn by doing.	Students rarely do what they learn, particularly in ways that mirror how they will might use knowledge in practice.
The personal and the affective are more often relevant; “... the clinical tradition of risky self disclosure for the sake of reflection.” <sup>16</sup>	The personal, emotional and affective is rarely explored; likely seen as irrelevant.
Facts change; client circumstances always in flux; “messy.”	Facts determined by judge; unchanging.
Law generally recognized as potential solution to part of clients’ difficulties, but usually is part of a larger, multidisciplinary approach that includes community partners and diverse strategies.	Law generally recognized as the only possible solution to clients’ difficulties.

<sup>16</sup> Jennifer Lyman, “Getting Personal in Supervision: Looking for that Fine Line” (1995) 2:1 Clinical L Rev 211 at 211.

For the purposes of this article, it is not necessary to outline the development of legal education from an apprenticeship model to a now university-based (and increasingly regulated) institution.<sup>17</sup> It remains today that clinical and doctrinal approaches to legal education in Canada are relative “silos,” with limited overlap in clinic seminars or when interested faculty members teach subject-related courses.<sup>18</sup>

Clinical teaching methodology is also distinct, having evolved significantly over the past several decades.<sup>19</sup> Kenneth R. Kreiling contrasts “traditional classroom legal education” and clinical learning, the former which is dominated by, as Kreiling writes, “information assimilation.” Inputs take the form of cases, legislation and, occasionally, journal articles. Informed by clinical methodology, LAW clinic practice relies primarily on cases, clients’ experiences, law reform, community campaigns, and other events for inputs. The seminar component includes case rounds and discussion on these themes, but also includes a range of journal articles, videos, and experiential learning exercises that result in discussion, reflection, and writing.<sup>20</sup> Because clinical education is a model focused on clients, both within and outside of the law, students often comment that must learn and understand the operation of law in very different ways. The primary contextual differences between clinics and doctrinal classes are, of course, that there are real and, generally, immediate consequences to a student’s clinical work. In clinical settings, efforts are focused on constructive actions that will offer significant value to clients, including increased social benefits, immigration status, and housing. Of course, these actions bring with them a sort of messiness to supervision and teaching. For example, learning that might be appropriate for a student engaged in the appeal of a factually difficult social benefits overpayment will be different from the needs of a student assisting with duty counsel at a housing tribunal.

Clinical legal education also leads supervisors and students to confront the highly political nature of law, legal institutions, and practice. At LAW, client experiences will inevitably be placed in the larger context of the hegemonic and constructed nature of law. For example, the

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<sup>17</sup> It is sufficient to note that the Langdellian casebook method that dominated American law schools also took root in Canada. See Carrie Menkel-Meadow, “Taking Law and . . . Really Seriously: Before, During and After ‘The Law’” (2007) 60:2 Vand L Rev 555 at 561; Julius Goebel, *A History of the School of Law* (New York: Columbia University Press, 1995); Bruce Kimball, *The Inception of Modern Professional Education: C. C. Langdell, 1826-1906* (Raleigh: University of North Carolina Press, 2009); and Brian J Moline, “Early American Legal Education” (2004) 42:4 Washburn LJ 775. Osgoode Hall Law School has a long history of resistance to regulation by law societies, which has historical roots. Professor Constance Backhouse documents the 1949 attempt of benchers of the Law Society of Upper Canada to assert control over legal education:

[T]he en masse public resignation of Dean Cecil Augustus Wright and the full-time law faculty [at Osgoode Hall] set in motion a highly-charged controversy over the philosophy and principles of legal education that ultimately resulted in the retirement of the profession from hands-on regulation of law school programs.

LSUC did set out seven required courses and twenty-five optional courses for law schools that have never been either accepted by law schools or other law societies, which were last reviewed in 1969. See Federation of Canadian Law Societies, *Task Force on the Canadian Law Degree*, online: <<http://www.flsc.ca/>> (October 2009) at 3.

<sup>18</sup> The “practice” portions of learning law are assumed to be completed through articling. The recent Articling Task Force Consultation Report proposes a range of options, some of which may impact how skills training operates in law schools. See Law Society of Upper Canada, *Articling Task Force Consultation Report* (9 December 2011), online: Law Society of Upper Canada <<http://www.lsuc.on.ca/>>.

<sup>19</sup> For a comprehensive review of the “waves” of clinical legal education from an American perspective (with many relevant Canadian comparators), see Margaret Martin Barry, Jon C Dubin & Peter A Joy, “Clinical Education for this Millennium: The Third Wave” (2000) 7:1 Clinical L Rev 1.

<sup>20</sup> Kenneth R Kreiling, “Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision” (1981) 40:2 Md L Rev 285 at 285.

erosion of the welfare state has meant that governments legislate citizens into poverty by setting income supports well below the poverty line (i.e. the “Low Income Cut-Off”). In a clinic setting, it is important that students develop an understanding of systemic oppression and the marginalizing role that law and legislation can play in keeping people poor. Students often comment how impactful it is to meet the people, families, and communities systematically affected by the law and legal systems. Meeting clients face-to-face often catapults students into understanding, or at least confronting, the human consequences of our legislative and judicial choices. We have met many students who self-identify as activists, but who are nonetheless shocked by how their clients are treated by landlords, government officials, decision-makers, the police and even other lawyers. Thus, clinical experiences place greater emphasis on the affective (emotional) portions of learning, as well as the psychomotor (the “doing”).<sup>21</sup> Doctrinal classes tend to emphasize cognitive skills, while largely ignoring the affective and psychomotor.

## II. CONTEXTUALIZING THE ACTORS IN CANADIAN LEGAL EDUCATION

Before embarking on a plan to introduce and strengthen a consistently critical approach to supervision in the clinical context of LAW, it is important to understand the opportunities, challenges, and needs of the various actors. This analysis allows us to craft an approach that minimizes negative impacts on affected parties and work around potential barriers.

### A. STUDENTS

Perhaps more than any other educational forum, clinical placements can give students a glimpse into their own personal and professional identities, increasing their understanding of the type of lawyer and person they can be and where they belong in the practice of law. The recent American Law School Survey of Student Engagement confirmed students’ own perceptions that clinical experiences were most helpful in developing client relationships, “deepening ... capacity for moral reasoning,” helping with stress management, “strengthening ... commitment to serving the public good,” and “acting with integrity in both personal and professional settings.”<sup>22</sup> Largely referencing the Carnegie Report’s emphasis on the “third apprenticeship” of professional identity, a significant number of recent articles document the role of clinics in helping students develop as legal professionals.<sup>23</sup> Clinical experiences also give voice to students’ aspirations to serve the community through the law. For some students, the legal clinic is an oasis from the

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<sup>21</sup> Benjamin Bloom set out his “Taxonomy of Learning Domains,” dividing learning into the cognitive, the affective and the psychomotor, as well as a list of behaviours or tasks that typify the cognitive and affective domains (but not psychomotor, although others have expanded on this domain). See *Taxonomy of Educational Objectives: Handbook I: The Cognitive Domain*, 2d ed (New York: Longman, 1984); and David R Krathwohl et al, *Taxonomy of Educational Objectives, the Classification of Educational Goals, Handbook II: Affective Domain* (Philadelphia: David McKay, 1970).

<sup>22</sup> For an analysis of survey results, see Carole Silver, Amy Garver & Lindsay Watkins, “Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement” (2011) 17 *Journal of the Legal Writing Institute* 373.

<sup>23</sup> See Charlotte S Alexander, “Learning to be Lawyers: Professional Identity and the Law School Curriculum” (2011) 70:2 *Md L Rev* 465; and Michael Robertson et al, *The Ethics Project in Legal Education* (London: Routledge-Cavendish, 2010).



competitive environment in many law schools. Well-crafted clinical experiences can provide an ideal collaborative learning environment, where students can work closely with their peers, file-share, test out theories, and commiserate. At LAW, students are also given the opportunity to work in an interdisciplinary or multidisciplinary setting. Significant data has shown the value of inter- and multidisciplinary practice in strengthening students' professional identities, collaborative capacities, and their understanding of the role of other professionals in solving client problems.<sup>24</sup>

Clinical experiences can also pose significant challenges for students. Students must quickly learn skills, gain specific knowledge, and establish (or at minimum test) certain values, which may seem quite foreign at first. Moreover, some we have observed our students experience "culture shock" because of the shift from doctrinal to clinical learning, with typical reactions ranging from outright rejection to eager embrace. This shift is more than simply adapting to a new environment and learning new tasks. It also involves dismantling received ideological understandings of what constitutes law and appropriate professional identity. These ideologies are generally not laid bare in doctrinal approaches to law.<sup>25</sup> Because students may have difficulty understanding and accepting that the law is not designed to serve people experiencing poverty (or the working poor or many members of the middle class), critical approaches can provide alternative frameworks to understand not only the law but also other foundational components of resistance. Reports such as Carnegie do assist by acknowledging the importance of professional identity but they do not provide a helpful model for students interested in critically engaged citizenship as a foundational component of their practice. Critical approaches to legal education are not new. Duncan Kennedy's critique of legal education, for example, continues to ring true for many of our students.<sup>26</sup> However, like many authors critical of legal education, Kennedy makes passing mention of clinical legal education as a site of critical and engaged citizenship, but is fairly surface in his suggestion (namely, that a clinic should exist and student should participate in it during a pre-determined period of time).<sup>27</sup>

The challenges that lawyers face in practice, such as clients missing appointments or court dates and failing to pay fines or lawyers' fees, also occur in clinical practice, and provide opportune moments to use critical approaches to understanding the operation of law in clients' lives. Breaking down relationships of power, understanding the realities of people living in poverty, and demystifying the importance of law in most peoples' lives can help destabilize assumptions of why clients may behave in ways that do not conform with students' assumptions. While students face the practical realities of dealing with such issues, often for the first time, supervisors are also providing templates for how to react to such issues. Although it is easy to shift into "poor bashing" and blaming the client as well as the student, it is often fundamental to

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<sup>24</sup> See Alan Repko, "Interdisciplinary Curriculum Design" (2007) 11:1 *Academic Exchange Quarterly* 130; Anita Weinberg & Carol Harding, "Interdisciplinary Teaching and Collaboration in Higher Education: A Concept Whose Time Has Come" (2004) 14 *Wash UJL & Pol'y* 15; Francis C Cady, "A Successful Experiment in Interdisciplinary Teaching and Learning" (1975) 27:4 *J Legal Educ* 609; Susan Jones, "Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law" (2004) 14 *Wash UJL & Pol'y* 249 at 270; Louise Trubek & Jennifer Farnham, *How to Create and Sustain a Successful Social Justice Collaborative* (Northampton: Center for Public Representation, 2000); and Julie Stubbs, "Teaching about Violence Against Women: An Interdisciplinary Project" (1995) 6:2 *Legal Education Review* 229.

<sup>25</sup> Studying the Speluncan Explorers, for example, may clarify various approaches to judicial reasoning but does not question the utility of legal analysis, accessibility of the law, influence of political realities, or power relationships.

<sup>26</sup> Duncan Kennedy, "Legal Education and the Reproduction of Hierarchy" (1982) 32:4 *J Legal Educ* 591.

<sup>27</sup> *Ibid* at 613-614.

understand their legal issues in the context of the realities of living in poverty and in terms of shifts in professional identity.

Students are also increasingly concerned about their own ability to secure employment. Many students experience pressure at an early stage in their legal education. At LAW, we observe students spending their days at the clinic, followed by their evenings writing job applications or working to support the cost of their legal education, or both. Students who are not successful in securing articles early often feel discouraged and disempowered in their search for a meaningful legal career. This can make using critical approaches to teaching and learning particularly challenging, but it may also provide a framework for students to understand why and how legal practice operates to privilege certain interests over others. Students who feel stress and uncertainty about their own employment may have less space for the empathy that is required to understand others' realities, or may assume that doctrinal classes make them appear more "mainstream" for the purposes of employment. We have both encountered many students who tell us "my firm expects me to take particular courses," or "I don't want to seem too left wing" as rationale for dropping out of clinic placement. We have no way of verifying whether these are accurate statements or not from the perspective of law firms, but if they are, we certainly have more work to do on unsettling some assumptions about the value and purpose of clinical legal education, or any form of education.

## **B. CLINIC SUPERVISORS**

Lawyers, social workers, and other activists working in clinical settings are uniquely positioned to advocate for systemic change, particularly within the deeply engrained institution of law, and can bring this activism through their work using a critical lens. Supervising law students is an opportunity to mentor them, helping identify skills, abilities, and values that may not have previously been identified, nurtured, or valued. Students come to law school with incredible personal and professional experiences, which contribute to and advance the mutual learning experience. Supervision in this context can be immensely gratifying, particularly when supervisors are able to participate in the development of the next generation of social activist lawyers. While some community clinic lawyers face burnout because of the isolating nature of social justice work, clinicians in student clinics can foster a mutually supportive learning environment with the students enrolled in the clinic by maintaining contact with their alumni.

At LAW, students rotate through the program three times a year. Through orientation sessions, ongoing group case conferences, and individual supervision, the supervisor has the opportunity to continually assess and modify their own practice. Teaching is an impetus to constantly test whether particular practices or approaches are best serving the needs of clients and the community. Particularly when students stay in a clinical placement for more than one term, the quality and efficiency of student work can also contribute significantly to the depth of clinical work.

There are also significant challenges for clinic staff and academics engaged in supervision of students in a clinical law setting, whether or not they use a critical approach. Most students transition into a clinical experience after having a minimum of one year of law school education. At Windsor, students have usually had little to no exposure to legal problems as experienced by clients in their first year curriculum.<sup>28</sup> Even if there has been some mention of

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<sup>28</sup> This trend has been well documented in many papers and books, including the MacCrate, Best Practices, and Carnegie Reports. American Bar Association Section on Legal Education and Admissions to the Bar, Legal

concepts or practices that students could apply in a clinical setting, students experience significant problems transferring knowledge from one setting to the other.<sup>29</sup> In fact, students may have had their initial interest in social justice quieted by their first year in law school. As Solomon wrote,

[s]tudents do come to law school filled with passion, with morality, with a sense of justice, and *we*, the generic *we*, the law school itself, spends three years doing our best to crush them under the weight of the rule of law instead of helping them to integrate their ideas and values with the law.<sup>30</sup>

Along with the emphasis on cognitive aspects of legal learning, the competencies required for clinical work are usually quite different from those required in doctrinal classes. While the legal knowledge required of students in clinical settings may overlap with doctrinal content, the process of client interviewing and counseling often bears little resemblance to the appellate-level cases students have read. Students who have excelled in such an approach to teaching and learning may find it difficult to adapt to a clinical setting and their relative failures can be overwhelming. It may be difficult for supervisors to assess how a student will learn new information and develop practice skills in a short period of time. In an interdisciplinary setting, social workers and community legal workers occasionally note that law students are not sufficiently able to work with non-lawyers, or to understand the value of non-legal approaches to problem solving. Hence, before embarking on an integrated approach to using critical approaches to clinical supervision, addressing some of these issues is important, preferably with support from the rest of the law school.

Although most supervisors we have spoken with are in favour of incorporating critical approaches, there is a sizeable group opposed to the idea. We categorize this opposition as follows:

- (1) Lack of knowledge: some supervisors are unfamiliar with critical pedagogy, or pedagogy generally, and may view it as outside the scope of their expertise.
- (2) Assumptions about theory: theory is sometimes considered antithetical to the work of clinicians, perceived as an elite and irrelevant exercise relegated to those who don't practice.
- (3) Understanding of the clinician's role as teacher: some supervisors do not see their primary role as one of teacher; rather, they view themselves as articling principal or "task supervisor." Exploring theory with students may be seen as superfluous to the main tasks of the clinical supervisor which, in this view, concentrates on teaching litigation skills and rules.

Tackling these assumptions is difficult, particularly with lawyers who established their practice norms in a private, for-profit practice setting. We have had some success through

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Education and Professional Development - An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (1992) ("MacCrate"), Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map*, (Clinical Legal Education Association, 2007) ("Best Practices"); and William Sullivan et al, *Educating Lawyers: Preparation for the Practice of Law* (San Francisco: Jossey-Bass, 2007)

<sup>29</sup> This was echoed in a recent set of interviews conducted with clinic law students, the vast majority of whom, when asked what they learned in the regular curriculum that was relevant to their clinic practice, responded "nothing" (interview transcripts on data with Gemma Smyth).

<sup>30</sup> Robert Solomon, "Teaching Morality" (1992) 40:3 Clev St L Rev 507 at 508.

exposing students to the various methodologies and empowering students to choose the most resonate approach.

### C. CLIENTS

Clients are both beneficiaries of clinic services, and teachers for law students engaged with their legal matters. The common denominator among clients of LAW is, of course, poverty. Critical pedagogy reminds students and clinic supervisors alike to avoid falling into a “charity” model of legal services provision but rather to acknowledge clients as holistic and self-determining persons living within a system that generally works against them. As social work practice posits, clients have strengths and abilities that can go unrecognized in the often deficit-based model of legal practice. Without an understanding of the lived experiences of people living in poverty, it is difficult to advocate in a holistic manner that supports people in meaningful ways, but also allows them to make decisions that are appropriate for their own circumstances. A critical stance towards social policy dictates that clients would not require particular types of poverty law services but for government policies and legislation. Higher welfare rates and amended service provision models, for example, would minimize the need for representation at Social Benefits Tribunal hearings.<sup>31</sup>

### D. OTHER ACTORS: THE FUNDER, THE UNIVERSITY, AND THE COMMUNITY

Legal Aid Ontario is the largest, although not the only, funder of student clinical law placements in Ontario. Students’ legal work provides significant value to the funder, the universities, and the communities with which clinics are affiliated. Clinics also train lawyers for the significant responsibilities of public interest work, thereby enriching and reviving the community legal system, as well as public interest law generally. As former Attorney General Roy McMurtry’s stated in 1976, “[l]egal aid, and, in particular, community law, is perhaps the single most important mechanism we have to make the equal rights dream a reality.”<sup>32</sup> In 1997, McMurtry, then Chief Justice of the Court of Appeal of Ontario, reiterated the importance of clinics, stating, “[t]he last twenty-five years have shown how the power of an idea—when matched with energy, determination, and community support—can make a crucial and enduring difference.”<sup>33</sup> However, significant questions remain as to whether—absent LAO—universities would continue funding face-to-face, full service clinic placements for students.

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<sup>31</sup> For critiques of the policies and bureaucracy of welfare in Ontario, see Lorne Sossin, “Boldly Going Where No Law Has Gone Before: Call Centres, Intake Scripts, Database Fields and Discretionary Justice in Social Welfare” (2004) 42:3 Osgoode Hall LJ 363; Lorne Sossin, “Redistributing Democracy: An Inquiry into Authority, Discretion, and the Possibility of Engagement in the Welfare State” (1994) 26:1 Ottawa L Rev; Janet Mosher, Patricia Evans & Margaret Little, *Walking on Eggshells: Abused Women’s Experiences of Ontario’s Welfare System*, online: <[http://www.yorku.ca/yorkweb/special/Welfare\\_Report\\_walking\\_on\\_eggshells\\_final\\_report.pdf](http://www.yorku.ca/yorkweb/special/Welfare_Report_walking_on_eggshells_final_report.pdf)>; and Janet Mosher, “Welfare Fraudsters and Tax Evaders: The State’s Selective Invocation of Criminality” in Bernard Schissel & Carolyn Brooks, eds, *Marginality and Condemnation: An Introduction to Critical Criminology*, 2d ed (Black Point, NS: Fernwood Press, 2008).

<sup>32</sup> R. Roy McMurtry, Address (delivered at the Community Law Conference, the Ontario Institute on Studies in Education, 13 November 1976).

<sup>33</sup> CJ Roy McMurtry, “25<sup>th</sup> Anniversary of Parkdale Community Legal Services” (delivered at Osgoode Hall Law School, 14 November 1996).

The non-profit sector also benefits from student legal clinics. LAW, for example, offers expanded services in the community, including satellite clinics, public legal education seminars, and direct services in clients' homes or community centres. Often community agencies are short-staffed and underfunded and are unable to participate fully in their community. Students at LAW and at other community clinics create workshops, prepare community reports, and generally support community engagement as an essential part of their practice.<sup>34</sup> Public legal education workshops allow students the opportunity to present information about clients' rights and entitlements, permitting students a better understanding of the impact of the laws on the client community. Students are also able to respond to government law reform initiatives to educate the public and facilitate the development of community participation. The most effective partnerships usually occur when students apply their research and writing skills to address community concerns and support existing community initiatives. This is evident in law reform initiatives and government taskforces that thrust students into a political arena and require them to adopt advocacy techniques that allow them to be heard and understood.

## E. CRITICAL ADULT EDUCATION THEORY IN A CLINICAL CONTEXT

Using theory in clinical legal education has not always garnered unanimous support, in part due to the perceived dichotomy between theory and practice, and also the disagreement concerning how theory should be applied. When theory has been embraced, it appears to be theory of clinical practice, particularly pedagogy.<sup>35</sup> In 1997, Janet Mosher noted that “[c]linical legal education... neither necessarily nor naturally facilitates transformative practice.... [C]linical legal education has often been... permeated by the same vision of law and lawyering that informs classroom instruction.”<sup>36</sup> This echoes some of the challenges experienced at LAW over

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<sup>34</sup> As Mary Jane Mossman notes, providing legal aid services in the form of direct client representation and community development work are interrelated. As Mossman writes, “the legal services mandate of Ontario’s community legal clinics includes promoting ‘the legal welfare of a community’ as an integral part of its scope. Indeed, in the absence of community development, Ontario’s clinic system will have failed completely to fulfill its unique legal service mandate.” Mary Jane Mossman, “Legal Services and Community Development: Competing or Compatible Activities”

(online:<http://www.opicco.org/files/Mossman%20paper%20-%20Legal%20Services%20and%20CD.pdf>) (emphasis in original) at 3.

<sup>35</sup> For instance: “I have previously argued that theory is overrated... this view does not mean that the theories of others are useless... Expert theory can help novices in at least four ways: (1) it can map the cognitive and performative dimensions of the expert domain; (2) it can describe expert heuristics and metacognitive skills, (3) it can facilitate the transfer of otherwise context-bound skills from one setting or problem to another, and (4) it can introduce the discourse practices of the domain so that the novice may communicate meaningfully with others.” Brook Baker, “Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice” (1999) 6:1 Clinical L Rev 60. Professor Baker writes about cross-cultural approaches to practice in other work, and he clearly employs critical approaches to clinical practice.

<sup>36</sup> Janet Mosher, “Legal Education: Nemesis or Ally of Social Movements” (1997) 35:3 Osgoode Hall LJ 613. This quote was also used by Voyvodic & Medcalf, *supra* note 6. Other clinicians have noted the importance of political critique in clinical legal education, including Robert Conclin, “‘Tastes Great Less Filling’: The Law School Clinic and Political Critique” (1986) 36:1 J Legal Educ 36. Conclin’s article famously critiques the often apolitical nature of in-house clinics in American law schools. His solution, however, was to use other models such as externships supervised by law school faculty members. See also, Carrie Menkel-Meadow, “Two Contradictory Criticisms of Clinical Education: Dilemmas and Directions in Lawyering Education” (1986) 4 Antioch Law Journal 287.

the past several decades.<sup>37</sup>

Many clinicians have used adult education theory to support their approaches to teaching, learning, and particularly supervision in a clinical context. For Americans, Malcolm Knowles's 1970 work appears to have been instrumental in launching interest in adult education in the clinical environment. Relying on Knowles's work, Frank Bloch galvanized the clinical adult education movement with his article "The Andragogical Basis of Clinical Legal Education."<sup>38</sup> Bloch's work turned from justifying clinical legal education based upon its substantive learning outcomes to the "clinical approach as a teaching method."<sup>39</sup> This approach has led to debates on how best to structure student-supervisor relationships<sup>40</sup> and clinical teaching methodology, the role of self-directed learning,<sup>41</sup> and other adult education concepts. Although these concepts are important in supporting a well-crafted student experience, they can also omit or subsume critical approaches to teaching, learning, and practice in favour of practice-focused or individualistic learning theory. In 1998, Minna Kotkin identified what she called "micro theory": The theory of lawyering including negotiation and client-centred representation (which, Kotkin argues, is not particularly effective due to students' preconceived notions of what happens in "the real world"<sup>42</sup>). To better respond to why the micro theory works, Kotkin proposes that macro theories informed by critical legal theory is more potent.

Despite the occasional dominance of the "micro" approach, many clinicians have written about their use of critical legal theory to inform their teaching,<sup>43</sup> and some have used critical pedagogy. These two approaches, while in some instances linked, are distinct. We might expect that the pursuit of social justice and social change through direct client service and institutional advocacy includes critical legal theory at its core, whether acknowledged or not. Critical pedagogy employs strategies that challenge domination, whether by the state, oneself, the

<sup>37</sup> Voyvodic & Medcalf, *supra* note 6.

<sup>38</sup> Frank Bloch, "The Andragogical Basis of Clinical Legal Education" (1982) 35:2 Vand L Rev 321. Works citing Bloch include: Stephen D Brookfield, "Understanding and Facilitating Adult Learning" (1988) 15 School Library Media Quarterly 99; Margaret Barry et al, "Clinical Education for this Millennium: The Third Wave" (2000) 7:1 Clinical L Rev 1; Fran Quigley, "Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics" (1995) 2:1 Clinical L Rev 37; Jane Harris Aiken, "Striving to Teaching Justice, Fairness and Morality" (1997) 4:1 Clinical L Rev 1; Jon C Dubin, "Clinical Design for Social Justice Imperatives" (1998) 51:5 SMU L Rev 1461; and Ann Shalleck, "Clinical Contexts: Theory and Practice in Law and Supervision" (1993) 21:1 NYU Rev L & Soc Change 109; and many others.

<sup>39</sup> *Ibid* at 324.

<sup>40</sup> Peter Toll Hoffman, "Clinical Course Design and the Supervisory Process" (1982) 1982:2 Ariz St LJ 277; Peter Toll Hoffman, "The Stages of the Clinical Supervisory Relationship" (1986) 4 Antioch Law Journal 301; Jennifer Howard, "Learning to 'Think like a Lawyer' through Experience" (1995) 2:1 Clinical L Rev 167; and James Stark, Jon Bauer & James Papillo, "Directiveness in Clinical Supervision" (1993) 3:1 BU Pub Intl LJ 35.

<sup>41</sup> Frank Bloch, *supra* note 38; JP Oglivy, "The Use of Journals in Legal Education: A Tool for Reflection" (1996-1997) 3:1 Clinical L Rev 55; Rob Stuckey et al, *supra* note 28; Michael Schwartz, *Expert Learning for Law Students* (Durham: Carolina Academic Press, 2005); Lawrence S. Krieger, "The Most Ethical of People, The Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation" University of St Thomas Law Journal [forthcoming]; and Lawrence S Krieger & Kennon Sheldon, "Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory" (2007) 33:6 Personality & Social Psychology Bulletin 883.

<sup>42</sup> Minna Kotkin, "Creating True Believers: Putting Macro Theory into Practice" (1998) 5:1 Clinical L Rev 95 at 97-98.

<sup>43</sup> Anthony Alfieri, "Theoretics of Practice: The Integration of Progressive Thought and Action: Disabled Clients, Disabling Lawyers" (1992) 43:4 Hastings LJ 769; Louise Trubek, "Lawyering for Poor People: Revisionist Scholarship and Practice" (1994) 48:5 U Miami L Rev 983; see also the work of Fran Quigley, Stephen Ellmann, Sue Bryant, Jean Koh Peters, and many others.

market, or education, in order to become critically conscious. Articulated by activists, educators and theorists including Paulo Friere,<sup>44</sup> Jack Mezirow,<sup>45</sup> bell hooks,<sup>46</sup> Ira Shor,<sup>47</sup> Paula Allmann,<sup>48</sup> and Joe Kincheloe,<sup>49</sup> critical pedagogy focuses on the capacity of adults to think critically about concepts they have learned “in order to formulate theories of action that challenge inequality and injustice and to question... the most archaic and disempowering social practices that structure every aspect of society and to take responsibility for intervening in the world they inhabit.”<sup>50</sup> This analysis is central to the ongoing use of the law and related institutions to challenge domination and oppression. Fran Quigley draws on Friere and Mezirow in his critical theory-based approach to teaching and learning. Quigley relies on Mezirow’s transformative learning in his support of the “disorienting moment” in clinical legal education—essentially a point at which a learner encounters a situation or information that leads to “exploration and reflection” and “reorientation.”<sup>51</sup>

In a Canadian context, Shin Imai traces his experiences in community-based lawyering at Keewaytinok Native Legal Services in Northern Ontario. Imai describes the need to expand the approaches he learned in law school to solving legal problems, and suggests that,

conventional legal tools... were not enough. Community organizing, media releases, demonstrations and road blockades were all ways of addressing ‘legal’ problems, and lawyers could play different supportive roles depending on the strategy chosen. For

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<sup>44</sup> Friere’s approach is most famously articulated in *Pedagogy of the Oppressed*, *supra* note 13.

<sup>45</sup> See e.g., Jack Mezirow’s work: *Transformative Dimensions of Adult Learning* (San Francisco: Jossey-Bass, 1991) [*Transformative Dimensions*]; *Transformative Learning in Practice: Insights from Community, Workplace and Education* (San Francisco: John Wiley & Sons, 2009). Mezirow’s work is particularly useful for his focus on the “emancipatory” dimensions of knowledge.

<sup>46</sup> bell hooks, *Teaching To Transgress: Education as the Practice of Freedom* (New York: Routledge, 2004); and bell hooks, *Teaching Community: A Pedagogy of Hope* (New York: Routledge, 2003).

<sup>47</sup> Critical pedagogy theorist Ira Shor defines critical pedagogy as: “Habits of thought, reading, writing, and speaking which go beneath surface meaning, first impressions, dominant myths, official pronouncements, traditional clichés, received wisdom, and mere opinions, to understand the deep meaning, root causes, social context, ideology, and personal consequences of any action, event, object, process, organization, experience, text, subject matter, policy, mass media, or discourse.” See *Empowering Education: Critical Teaching for Social Change* (Chicago: University of Chicago Press, 1992) at 129.

<sup>48</sup> Paula Allmann, *Critical Education against Global Capitalism: Karl Marx and Revolutionary Critical Education* (Westport: Bergin & Garvey, 2001).

<sup>49</sup> Joe L Kincheloe, *Knowledge and Critical Pedagogy: An Introduction* (New York: Springer, 2008); and Joe L Kincheloe, *Critical Pedagogy* (New York: Peter Lang, 2004).

<sup>50</sup> Henry A Giroux, “Democracy, Education, and the Politics of Critical Pedagogy” in Peter McLaren & Joe Kincheloe, eds, *Critical Pedagogy: Where Are We Now* (New York: Peter Lang, 2007) 1.

<sup>51</sup> Fran Quigley, citing Jack Mezirow, *Transformative Dimensions*, *supra* note 45 and Jack Mezirow, et al, *Fostering Critical Reflection in Adulthood: A Guide to Transformative and Emancipatory Learning* (San Francisco: Jossey-Bass, 1990) at 14 in “Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics” (1995-96) 2:1 Clinical L Rev 37. Quigley also argues that a critical, social justice approach to clinical legal education can be useful regardless where and how a student decides to practice in future:

Even if a clinical student never represents another poor person after graduation, the presentation of issues of institutional bias and structural barriers facing clinical clients can be a good skills model for the future development of effective attorney-client relationships. The graduate in future practice will be well-served by the habit of analyzing her cases for the influence of social justice issues such as sexism and racism that can influence the course of the case and/or the relationship with the client... and... will hopefully lead to... regular assessment of the moral and social consequences of their role in every case of their practice, (at 46).

these non-conventional roles, the lawyering skills learned at law school were at best of no assistance, and at worst, quite harmful.

Imai draws upon the work of critical theorists Friere,<sup>52</sup> Gerald Lopez,<sup>53</sup> and other critical clinicians, calling his training in law school that of an “epistemological imperialist.”<sup>54</sup>

Brookfield asks fundamental questions that are useful in guiding our exploration of supervising students:

How do adults learn forms of reasoning that challenge dominant ideology and that question social, cultural, and political forms that ideology justifies? How do adults learn to unmask the flow of power in their lives and communities?; How do adults learn of the existence of hegemony – the process whereby people learn to embrace ideas, practices, and institutions that actually work against their own best interests – and of their own complicity in its continued existence? And, once aware of it, how do they contest its all-pervasive effects? How do adults learn to think critically by recognizing when an embrace of alternative views is actually supporting the status quo it appears to be challenging? How do adults learn to recognize, accept, and exercise whatever freedom they have to change the world?

Critical theory also encourages us to attend to the inequality central to student-supervisor relationships. The promise of supervisory relationships in a clinical setting can be seductive, but also dangerous. The adult learning pedagogies employed in such settings can mask the reality of power relations in the clinic and in law generally. Jennifer P. Lyman describes the “coercive potential” of supervisory relationships in clinic law, both because of the inherently dominant power of the teacher, but also because clinic supervisors provide rare and sought-after one-on-one attention.<sup>55</sup> While it is tempting to create the illusion of nonhierarchical supervisory relationships, we must also acknowledge that supervision ultimately sets up an inherently unequal relationship between student and teacher.

Without a critical lens on supervision in clinics, the inherently political nature of the context of clinical work (and all legal work) may be lost. Focusing on an individualistic approach to teaching and learning that emphasizes skills development over the exploration of values and attitudes can lop off a central part of advocacy in a social justice setting. In Ontario and in other jurisdictions, the institutional context within which students work—with community Boards, funders, Directors, office managers, provincial and federal governments—determines whether services can or will be provided in particular areas of law, the location of legal services, the number of clients that may be served, and other essential components. Pretending these factors have no influence on legal services hides the reality of clinic practice and leaves students with false impressions that law is an apolitical enterprise. Whether students work as sole practitioners, in large firms, or in non-legal contexts, they will always face institutional supports and

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<sup>52</sup> Friere, *supra* note 13.

<sup>53</sup> Gerald Lopez, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice* (Boulder: Westview Press, 1992).

<sup>54</sup> Shin Imai, “Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering” (2002) 9:1 *Clinical L Rev* 195 at 197.

<sup>55</sup> Jennifer P Lyman, “Getting Personal in Supervision: Looking for That Fine Line” (1995) 2:1 *Clinical L Rev* 211 at 221.



constraints that will affect their work. Thus, in bringing a critical pedagogical approach to questioning institutions and practices, supervisors open space for students to become fully engaged citizens. As Brookfield writes, “[a] critical theory of adult learning... can contribute to building a society organized according to democratic values of fairness, justice, and compassion.”<sup>56</sup> These are all values at the heart of ethical legal practice.

### III. SUGGESTIONS TO STRENGTHEN SUPERVISORY RELATIONSHIPS

The important role of supervision in clinics has been well documented. Kenneth Kreiling, for example, sets out a “supervisory cycle” that emphasizes ongoing critical and reflective approaches “in evaluating [the student’s] standard of practice.”<sup>57</sup> Kreiling argues that “[t]he program must encourage and the supervisor must reflect the complex of personal characteristics, attitudes, and values necessary for competent lawyering.”<sup>58</sup> Others have employed critical pedagogical techniques in training clinical law students. Setting out his community-based approach to lawyering, Imai argues for a “counter-pedagogy” that “changes the way that knowledge is gained, alters hierarchies in the class, and provides a community-based analysis of the law.” Such an approach, Kreiling argues, relies on “techniques and exercises that are informed by the counter-pedagogy.”<sup>59</sup> Imai’s approach emphasizes the importance of underpinning class-based interactions with the methodology of critical pedagogy.

#### A. STUDENT ASSESSMENT

Although the classroom is an important place to model and teach critical approaches to learning and practice, if clinic supervisors do not employ complementary techniques, the classroom component of clinical learning can fall flat, or indeed seem unrealistic.<sup>60</sup> Before embarking on critical approaches to supervision, supervisors must assess each student’s stage of professional and personal learning development. We make this recommendation with full knowledge that, as Lyman wrote, “everyone... admonishes supervisors to ‘know thy student.’” But, Lyman continues: “These generic prescriptions... strike me as placebos applied to the dauntingly complex and unique condition of each separate supervisor-student relationship.”<sup>61</sup> We do not proffer cookie cutter solutions here but instead emphasize flexibility and trust-building. Any number of static supervision techniques will be meaningless to some students if the supervisor is not able to develop some degree of trust in order for students to disclose errors and honest perspectives. In our experience, many law students have rarely, if ever, failed or acknowledged failure in productive ways. In fact, legal education does little to encourage failure as an important way to learn. In this light, Lyman encourages “getting personal” in order to model a relationship of trust between supervisor and student. Of course, this trust relationship is not unlike the

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<sup>56</sup> Brookfield, *supra* note 1 at 7.

<sup>57</sup> Kenneth R. Kreiling, “Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience through Properly Structured Clinical Supervision” (1981) 40:2 Md L Rev 284 at 305.

<sup>58</sup> *Ibid* at 305.

<sup>59</sup> Imai, *supra* note 54 at 200.

<sup>60</sup> *Ibid*.

<sup>61</sup> Lyman, *supra* note 55 at 215.

relationship students might hope to build with clients in order to encourage effective legal representation.

Some students' difficulties arise out of what Carnegie calls the "third apprenticeship"—professional, and sometimes personal, identity formation.<sup>62</sup> Although students might have developed the cognitive skills to understand the law prior to engaging with the clinical experience, they have not assumed the professional identity of a lawyer, and some may not have yet reached a level of personal maturity to understand how one's personal identity may clash or complement one's professional identity. Most, though not all, students' life experiences are removed from their clients'. Although it is easy to generalize law students' pre-law school experiences, it is in fact important to understand them as individuals in order to draw them into what Lyman calls a "sincere partnership."<sup>63</sup> This partnership model is reflective of adult education models that acknowledge and incorporate students' prior learning.<sup>64</sup> This partnership can be strengthened by challenging dominant assumptions about poverty and the role of law and lawyers in maintaining hegemony.

Assessment also occurs in more formal ways. At LAW, critical approaches to learning and practice are tested through individual written assessments and meetings with supervisors that examine both substantive law and social justice awareness, particularly in relation to the law and poverty. Students also complete critical reflections that critically reflect on a variety of clinic-related issues. Perhaps most importantly, students complete a community project on an issue that directly affects one or more of their clients. Students have completed projects on issues ranging from the effects of changes in immigration law on temporary foreign workers in Leamington, Ontario, advocating on behalf of new Canadians wishing to attend school, to researching cultural competency in administrative tribunals. Some of these papers and projects have been used to inform larger, longer-term advocacy projects. Through these projects, as well as journals and supervision meetings, students must demonstrate understanding of their clients' individual disputes, but also must acknowledge and deconstruct the role of systems and institutions on their clients' lives. We also believe that, consonant with critical pedagogical approaches, these papers further students' participation as democratic citizens in their professional roles.

## **B. EXPLICITLY ACKNOWLEDGING THE ROLE OF COMMUNITY, INSTITUTION, AND POWER**

Although the funding, organizing, and administrative functioning of a clinic may not seemingly be of pedagogical or practical interest to students, we believe it is fundamental to understanding the work of the clinic and for preparing students for their future work in the profession and in the broader community. We view this as a form of unmasking power and power relationships. At LAW, we spend significant time outlining the history of legal aid in Canada and in Ontario particularly. We examine the *Legal Aid Services Act* and explore how legislation—or lack thereof—can work to support or undermine the work of poverty law lawyers. We also place the

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<sup>62</sup> Sullivan, *supra* note 28.

<sup>63</sup> *Ibid* at 218.

work of the clinic within the broader work of the community, particularly so students understand why LAW takes on particular types of cases and turns away others. We underscore the importance of government in our work, encouraging students to be mindful of ongoing legislative initiatives that can make life better or worse for clients. In this way, we hope students begin to understand not only the institutionalization of poverty, but also how institutions such as clinics can work to combat legislative and judicial approaches that maintain existing power relationships.

### **C. SETTING OUTCOMES THROUGH SELF-DIRECTED LEARNING**

Structured learning outcomes for clinical placements can also structure self-directed learning for students. LAW students set their own educational goals for their clinic placements and follow up with supervisors throughout the term. These outcomes generally complement the in-class learning outcomes set by the instructor. Giving students space to employ self-determination in their learning has proven difficult for some who have become divorced from their roles as agents and directors of their own learning. With guidance, however, even the most reticent students are able to craft outcomes that usually improve halfway through the term, often with assistance from their supervisors. The often-quoted “guide on the side” or “meddler in the middle”<sup>65</sup> rather than “sage on the stage”<sup>66</sup> metaphor describes the cooperative learning environment useful for most supervisor-student discussions, particularly about their own goals and learning.

Choosing which outcomes to focus on for the in-class portion of a clinical experience is also a challenging task. Teaching students legal skills divorced from how they impact clients can lead to disastrous results for clients. For example, teaching students file management skills without considering the people whose disputes are the sources of such files can encourage the depersonalization of the client. Over the years, the LAW clinic course that accompanies the placement has evolved from a skills-based course emphasizing negotiation, interviewing, and litigation skills to a critical and reflective course with a policy component. We believe the focus on self-determination, critical and reflective practice, and policy advocacy employs critical pedagogical approaches that are in greater alignment with the mission of community clinics in Ontario, and LAW in particular.

### **D. INTEGRATION WITH ACADEMIC STAFF/INSTITUTION**

The roles of clinic supervisors and academics involved in clinical work can be complementary, but are generally not identical. For on-site clinical supervisors, students are supported throughout cases, beginning with file opening, through case analysis, to hearing preparation and appearances. Ongoing discussion, analysis, and practice help students develop requisite skills and ensure the best service is provided to the client. For clinic supervisors, it is essential to ask on an ongoing basis: Have we done our best to provide the client with quality legal services? Students who are not properly supervised are more likely to make errors that harm their clients. Although there is an ongoing debate about the degree to which supervising lawyers should allow students to make mistakes, undoubtedly many mistakes can be prevented with thorough

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<sup>65</sup> Erica McWilliam, “Teaching for Creativity: From Sage to Guide to Meddler” (2009) 29:3 *Asia Pacific Journal of Education* 281.

<sup>66</sup> Quigley notes that this quote perhaps originates with Marcy Driscoll, “Evaluating the Clinical Program” (Paper delivered at the AALS Section on Clinical Education Meeting, St. Louis, May 1995) at 1 [unpublished].

preparation, practice, mock exercises, and quality class integration. For supervising lawyers, feedback is likely the most crucial aspect of the teaching and learning process. Without the opportunity for feedback on their performance at hearings and other critical events, students are more likely to attribute their successes and failures solely to their performance rather than on an assessment of the strengths and weaknesses of their case.

Supervisors can also help students understand the context of their clients' lives. A significant advantage of a multi-disciplinary approach to clinical work is the provision of both legal and social work services to address the needs of the client. The opportunity to use social work theories (such as strengths-based approaches to representation) enriches both the students' understanding of the client's situation and enhances the student's practical skills in developing effective solicitor-client relationships. The challenge can be to help the student recognize and respect the value of social work not only for the client, but also for their practice and themselves. When the clinic staff models mutual respect and collaboration between the two disciplines, the students are more likely to adopt this practice.

## **E. SEMINARS, OR OTHER FORMAL MECHANISMS FOR REFLECTION AND DISCUSSION**

Many law school-affiliated clinics, particularly in the United States, have a clinic seminar course associated with them, and many authors have written about the benefits of including seminar-based discussion and reflection. Gary Blasi describes the benefits of case rounds, in which students are not only able to describe and analyze their cases, but also compare them to their peers', both to learn about the substantive issues and to correct the bias of limited experience that may be unrepresentative.<sup>67</sup> At the University of Windsor Faculty of Law, we have increasingly moved towards unifying the academic components of students' legal education with their clinical experiences. This academic component allows space for the introduction, demonstration, and discussion of critical pedagogical approaches.

## **F. WHY TALK ABOUT INSTITUTIONAL AND LEGAL INEQUALITY? MANDATORY COMMUNITY DEVELOPMENT WORK FOR CRITICAL PEDAGOGY**

Supervisors can model community activism and respond to the moral and political imperatives to work for systemic change by engaging in community development and law reform work. Clinicians can balance and integrate individual casework with systemic advocacy, where broader systemic advocacy work is informed and grounded in casework. Through the term, students at LAW have the opportunity to review and revise their analysis of social justice in clinic law by reflecting on the outcomes and teaching of both their individual and systemic advocacy initiatives.

Community development work also presents opportunities for students to work together, rather than on individual casework. This leads to spaces for democratic conversation and

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<sup>67</sup> Gary Blasi, "The Homeless Seminar at UCLA" (1992) 42 Wash UJ Urb & Contemp L 85.

dialogue, collaboration, and shared efforts toward a common goal. Community development also opens up space to consider the role of clients as experts in how policy affects their lives. Clients therefore transition from “receiver” to “teacher,” allowing true mutual learning and collaboration to occur. Community development also engages a multitude of skills important to legal practice, including teambuilding, complex problem analysis, multi-disciplinary problem solving, critical analysis of institutions, law and policy, and creative thinking.

Students who engage in community development work at LAW are often those for whom clinic work is most “sticky;” they tend to work harder, stay for more terms, and become lifelong clinic advocates.

## **G. SIMULATIONS, PLAYS, AND CREATIVE ACTIVITIES**

Simulations, plays, and other creative activity allow students unique opportunities to explore other ways of being and to engage multiple forms of understanding beyond the purely cognitive. LAW students usually begin their clinical orientation with the Poverty Game in which students move through a game board where they are confronted with the common challenges one faces when living in poverty.<sup>68</sup> These exercises provide students the opportunity to challenge assumptions and beliefs while letting them build their own conclusions.

One of our most valuable teaching opportunities arose in 2005 when we scripted and acted in a mock trial where we put Mr. Government and Ms. Society on trial for creating homelessness. The students researched the parts, prepared the script, and acted in the roles of politicians, clients, defense, and prosecution. The play was performed before community audiences and, after the play, the students hosted discussion with the audience. The experience created room for everyone: students who wanted to tell the stories of clients’ hardships, the political activists who wanted to present the political reality behind the law, those who were living their dream of being a defense counsel or prosecutor, and the writers who crafted beautiful written analysis in the final judgment. The exercise included all the benefits of community building and collaboration both amongst the students and between the clinic and community. It was a newsworthy event, easy to understand and present, and both informative and entertaining for the community at large.

Other opportunities arise during protests, community campaigns, and during class. Students are encouraged to bring music, poetry, movies, or other media that assist them in engaging with the concepts explored throughout the term. When clinical supervisors create the space for these alternative forms of expression, students draw parallels between law and other disciplines, between the law and creativity, and hopefully begin to consider how multi-disciplinary action can increase the power of activist messages.

## **IV. CONCLUSION**

We have laid out the context in which clinical supervision takes place in Ontario, noting the sometimes overlapping and often-divergent views and interests of the funder, students, lawyers, and the university. Understanding these interests allows us to frame clinical supervisory relationships in ways that lay bare the challenges of maintaining an activist approach to legal practice, while encouraging students to make choices about how to use their clinical learning in

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<sup>68</sup> Janet Mosher also referred us to an online, American version of this game called “Spent.” See online: <<http://playspent.org/>>.

future. Our aim was to demonstrate the importance of maintaining a critical approach to pedagogy both in the classroom and in the field. In so doing, we focused on the lawyer-client supervisory relationship, the point at which learning critical pedagogy often becomes real for students. Some clinical supervisors worry that this approach requires a special set of skills or expertise. Although general familiarity with basic approaches and concepts may be useful, we do not think using a critical pedagogical supervision methodology is particularly difficult. In fact, critical pedagogy has been used in “non-academic” fields for decades, and its roots lie in teaching and learning in informal and non-professional settings. The work of critical pedagogy is never done. It requires an ongoing critique of assumptions, power, practice, self, and institution, term after term, with the goal of improving both supervision and student learning.