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A Snapshot of the Law in the Streets: Reflections of a Former Parkdale Academic Director

SEAN REHAAG*

Dans cet essai réflexif, un professeur de l'école de droit Osgoode Hall et ancien directeur universitaire de la clinique Parkdale Community Legal Services (PCLS) tente de montrer l'exemple du type de réflexion autocritique à laquelle on s'attend des étudiantes et étudiants inscrits au Programme intensif en droit de la pauvreté de la clinique. Il le fait en tirant des leçons d'une brève interaction qu'il a observée dans les rues de la communauté desservie par la clinique et de sa réaction à cette interaction. L'essai vise à souligner l'importance de la réflexion dans la pédagogie de l'éducation par l'expérience, dans l'exercice du droit au service de la communauté et dans l'apprentissage du droit dans son contexte.

In this reflective essay, an Osgoode Hall Law School professor and former Academic Director at Parkdale Community Legal Services attempts to model the sort of critical self-reflection expected of law students enrolled in the Intensive Program in Poverty Law at PCLS. The essay does so by drawing lessons from a brief interaction that the author observed in the streets of the community served by PCLS and from the author's responses to that interaction. The essay aims to highlight the value of reflection in experiential education pedagogies, in community lawyering practices, and in learning about law in context.

PARKDALE. FOR MOST RESIDENTS OF TORONTO, the word likely brings to mind images of a rapidly gentrifying area of the city that has been home to low-income residents, deinstitutionalized psychiatric survivors, and successive communities of newcomers to Canada.¹ Some may think of food and drink—from the many inexpensive Tibetan momo restaurants² to the ever-proliferating bars and lounges.³ For some, politics may be top of mind: Parkdale is a community that leans left with a long history of progressive politics.⁴ For others, real estate may be the main draw, whether

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¹ Tom Slater, "Municipally Managed Gentrification in South Parkdale, Toronto" (2004) 48:3 *Canadian Geographer* 303; Parkdale Neighbourhood Land Trust, "No Room for Unkept Promises: Parkdale Rooming House Study" (May 2017), online: <pnlt.ca/our-projects/parkdale-rooming-house-study> [perma.cc/WM3F-FM5K]; City of Toronto, "Neighbourhood Profiles: South Parkdale: 2016 Neighbourhood Census Profile," online: <<https://www.toronto.ca/ext/sdfa/Neighbourhood%20Profiles/pdf/2016/pdf1/cpa85.pdf>> [perma.cc/KE5Q-BSAT].

² Tenzin Nawang Tekan, "Crawling Through Parkdale for a Taste of Little Tibet" *The Torontist* (27 July 2017), online: <torontoist.com/2017/07/crawling-parkdale-taste-little-tibet/> [perma.cc/XJ8N-667K].

³ Rapid growth in the number of restaurants that "function more as bars, lounges and nightclubs" which generated concerns about "noise, vandalism, disruptive behavior, late night activity and parking congestion" led Toronto Council to impose a temporary moratorium on new restaurants. City of Toronto, "Queen Street West – Interim Control By Law – Final Report" (26 October 2012), online: <toronto.ca/legdocs/mmis/2012/mm/bgrd/backgroundfile-51609.pdf> [perma.cc/77PB-Q7TB].

⁴ Though, of course, much work remains to be done to live up to the community's progressive politics. See e.g. Kalsang Dolma, "Toronto Election 2018: The Inconvenient Truth is that Our Progressive Politics is Mostly White" *Now*

due to promising development opportunities or because Parkdale has one of the last pools of relatively inexpensive rental housing close to downtown that needs to be protected.⁶ For still others, thoughts may turn to colonialization, the theft of land belonging to Indigenous communities in what is now called Parkdale, and the ongoing challenges faced by these communities.⁷ And for many, Parkdale may just bring up thoughts of home, whether that be home for generations or since last week.

For most Osgoode Hall Law School faculty, students, and alumni, however, Parkdale brings to mind the legal clinic, Parkdale Community Legal Services (PCLS),⁸ and the Intensive Program in Poverty Law that the clinic houses.⁹ PCLS first opened in 1971, as one of the first store-front legal clinics associated with a law school in Canada.¹⁰ Since then, more than 1,700

Toronto (22 October 2018), online: <nowtoronto.com/news/toronto-election-2018-politics-racism> [perma.cc/65YZ-D73G].

⁵ Bosley Real Estate Ltd, “Parkdale Toronto; Central Toronto’s Emerging Neighbourhood Has It All” (8 September 2015), online (video): *YouTube* <youtube.com/watch?v=0bDczvAXP4> [perma.cc/DAS7-EBHT].

⁶ Liam Barrington-Bush, “Toronto’s Many Faces of Gentrification” *Now Magazine* (17 October 2018), online: <nowtoronto.com/news/gentrification-toronto-pakdale/> [perma.cc/57MP-5Q4L].

⁷ Parkdale is situated on the traditional territory of many Indigenous Nations, including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee, and the Wendat peoples. City of Toronto, “Land Acknowledgement” (February 2019), online: <toronto.ca/city-government/accessibility-human-rights/indigenous-affairs-office/land-acknowledgement/> [perma.cc/6JDX-M5XT]; JR Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto, ON: University of Toronto Press, 2009) at 81–84, 88–92, 225 (reviewing the history of Treaty 13, the so-called “Toronto Purchase”). Today, the Parkdale-High Park district is home to over 1,500 members of Indigenous communities. Statistics Canada, “Census Profile, Parkdale--High Park” (2016) online: <www12.statcan.gc.ca> [perma.cc/MLP4-WZFT]. I would like to acknowledge that I added this footnote and the accompanying text above in response to an observation by one of the JLSP peer reviewers who indicated: “There is no mention of Indigenous people, colonization, and where PCLS and the encounter on the streets are situated with respect to Indigenous land. In the introduction where the author explores what comes to mind for residents of Toronto when thinking of Parkdale, the fact of the land having been stolen and settled is missing.” I must admit that I have added in a mention of Indigenous communities with some trepidation. During my time at PCLS, Indigenous communities were not prominently present or at least not prominently visible at the clinic. Moreover, when the topic arose at the clinic, I was uncomfortable with the way that this seemed to happen largely through what I regarded as tokenistic gestures (land acknowledgements and the like). PCLS students were clearly interested in thinking about Indigenous issues and colonialization, and one year they voted to have PCLS responses to the Truth and Reconciliation Commission’s Calls to Action as a topic of one of our seminars. This prompted interesting discussions at the clinic for a few weeks, but with little follow-up beyond a land acknowledgment plaque. Also, near the end of my time at the clinic, there was some promising work undertaken by Chris Harris, a community legal worker who was trying to build connections between Indigenous and Black men in the Parkdale community who had been criminalized and incarcerated. But overall, the level of engagement with Indigenous issues and Indigenous communities during my time at the clinic was, in my view, unsatisfying. There is so much more that could and should be said about all of that. Doing justice to such a discussion would require another essay. In some ways, though, the absence of Indigenous people from the original version of my initial reflection said something useful both about me and about PCLS.

⁸ Parkdale Community Legal Services, “Parkdale Community Legal Services,” online <parkdalelegal.org> [perma.cc/UFS7-WWQN].

⁹ For a description of the Intensive Program in Poverty Law at PCLS, see: Parkdale Community Legal Services, “2018-19 Program Brochure,” online: <parkdalelegal.org/images/2018-19%20brochure.pdf> [perma.cc/AFF6-RRSZ][PCLS, “Program Brochure”]; Osgoode Hall Law School, “Poverty Law Intensive at Parkdale Community Legal Services” online: <osgoode.yorku.ca/programs/juris-doctor/jd-program/clinics-intensives/poverty-law-intensive-parkdale-community-legal-services> [perma.cc/4ZEU-GUPZ].

¹⁰ Shelley Gavigan, a former PCLS Academic Director has published an excellent history of the clinic. Shelley Gavigan, “Twenty-Five Years of Dynamic Tension: The Parkdale Community Legal Services Experience” (1997) 35:3 Osgoode Hall LJ 443.

Osgoode students have gone through the Poverty Law Intensive.¹¹ From 2015 to 2018, I was the latest in a long line of Osgoode Hall Law School faculty¹² who have served as Academic Director at PCLS.¹³

Osgoode students who are enrolled in the Poverty Law Intensive spend a full semester at PCLS learning through experiential education pedagogies about poverty law¹⁴ and community lawyering¹⁵ in one of the clinic's four divisions: housing, immigration, workers' rights, and social assistance, violence and health (SAVAH). Law students are at the clinic four days a week, conducting intake, working on files, and pursuing public legal education and change-oriented organizing—all supervised by staff lawyers and community legal workers. On the one weekday that students are not at the clinic, they spend the day at the law school, participating in a seminar about poverty law and working on a research paper.¹⁶

While law students spend the bulk of their time at the clinic working on individual case files, one of the main learning objectives of the Poverty Law Intensive is to help law students understand the limits of traditional, individual legal interventions.¹⁷ During their time at the clinic, students learn that the law is often the problem for low-income people—and that even when the

¹¹ Parkdale Community Legal Services, "Osgoode Program" online:

<parkdalelegal.org/about/osgoode-program/> [perma.cc/CK4L-S4RU].

¹² Past PCLS Academic Directors (and Osgoode faculty who directed the clinic before the Academic Director position was created) include: Frederick Zemans, Ron Ellis, Archie Campbell, Mary Jane Mossman, John Johnson, Shelley Gavigan, Dianne Martin, Simon Fodden, Shin Imai, Mary Truemner, Janet Mosher, and Chantal Morton. The current PCLS Academic Director is Adrian Smith.

¹³ The PCLS Academic Director is a full-time member of the regular tenured/tenure track faculty at Osgoode Hall Law School, typically serving two- or three-year terms at the clinic. There are usually four or more full-time faculty on the "roster" who are available to serve terms as PCLS Academic Director. The Academic Director's responsibilities are articulated in a memorandum of understanding between the law school and the clinic. Parkdale Community Legal Services, "PCLS Memorandum of Understanding with Osgoode Hall Law School" (2017) s 6–13, online: <parkdalelegal.org/about/osgoode-program/> [perma.cc/ZM9E-UNSJ].

¹⁴ Poverty law is understood at PCLS as law that disproportionately affects poor people *as poor people*, including areas of law relating to poor people's housing, employment, income supports, health, and immigration status. PCLS Board of Directors, "Poverty Law and Community Legal Clinics: A View from Parkdale Community Legal Services" (1997) 35:3 Osgoode Hall LJ 595 at 596–598. See also, Mary Jane Mossman, "Community Legal Clinics in Ontario" (1983) 3 Windsor YB Access Just 375 at 379; Frederick Zemans, "The Dream Is Still Alive: Twenty-Five Years of Parkdale Community Legal Services and the Osgoode Hall Law School Intensive Program in Poverty Law" (1997) 35:3 Osgoode Hall LJ 499 at 503. For a discussion of the impact that PCLS has had on understandings about poverty law in Ontario and Canada see Gavigan, *supra* note 10 at 473.

¹⁵ Community lawyering is understood at PCLS to mean lawyering that situates problems encountered by individual clients within a broader social and political context, and that attempts to tackle these problems not just individually but also by working with (and being accountable to) communities and social movements. PCLS Board of Directors, *supra* note 14 at 599–600. See also Michael Blazer, "The Community Legal Clinic Movement in Ontario: Practice and Theory, Means and Ends" (1991) 7 J L & Soc Pol'y 49; Lenny Abramowicz, "The Critical Characteristics of Community Legal Aid Clinics in Ontario" (2004) 19 J L & Soc Pol'y 70; Christine Zuni Cruz, "[On the Road] Back in: Community Lawyering in Indigenous Communities" (1999) 5 Clinical L Rev 557 at 572–573; Shin Imai, "A Counter-Pedagogy for Social Justice: Core Skills for Community Lawyering" (2002) 9 Clinical L Rev 195 at 197–198.

¹⁶ PCLS, "Program Brochure," *supra* note 9 at 4–5.

¹⁷ Parkdale Community Legal Services, "Learning Objectives" (2012) at 2, online: <parkdalelegal.org/about/osgoode-program/> [perma.cc/SZF9-NJEQ].

law is not the problem, there are typically any number of insurmountable constraints that make vindicating legal rights unhelpful.¹⁸

Of course, critical and socio-legal scholars have developed pedagogies for helping students learn these sorts of lessons in classroom environments. But one of the most exciting aspects of the Poverty Law Intensive is that it tries to provide students with an embodied experience of the disjunction between law in the books and law in the streets, and of the limits of formal positive law for marginalized people.¹⁹ Students in the Poverty Law Intensive must regularly tell clients that, unfortunately, the law does not provide them with remedies to the injustices that they face, or that attempting to access these remedies will likely result in further injustices. In those moments, students are encouraged to identify alternatives to individual legal remedies.²⁰ For example, students discuss with clients forms of collective action such as unionization,²¹ rent-strikes,²² and media campaigns to shame bad actors.²³ And where such options are no more viable than pursuing individual legal remedies, students are encouraged to connect their clients with others in similar circumstances, helping clients see that their challenges are not just individual misfortunes but rather are the product of a system designed to benefit those with more power.²⁴ The hope is that this helps clients feel less isolated in their experiences and encourages them to join with the clinic to fight broader political battles.²⁵ It also aims to lead students to politicize their disappointments at not being able to directly help resolve particular injustices with their clients.²⁶ Because this is a key learning objective of the Poverty Law Intensive, teaching about reflective lawyering

¹⁸ For a description of how a PCLS student learned these lessons, see Sophie Chiasson, “The Distance between Law and Justice,” *Obiter Dicta* (12 February 2017), online: <obiter-dicta.ca/2017/02/12/the-distance-between-law-and-justice/> [perma.cc/9AF6-KZNA].

¹⁹ It should be noted that many PCLS students bring embodied lived experiences and/or prior work or volunteer experience with disjunctions between the law in the books and the law in action—and with various strategies to try to address that disjunction. PCLS benefits enormously from the understandings and skills that such students bring to the clinic. Nonetheless, the day-to-day exposure to a variety of intersecting disjunctions in a specific area of poverty law, combined with opportunities for structured critical reflection on those disjunctions (and on strategies available to community lawyers to address those disjunctions) generally produces additional insights into this phenomenon.

²⁰ PCLS Board of Directors, *supra* note 14 at 599–600.

²¹ See e.g. Gelek Badheysang, “Tibetan Immigrants Fight for Fair Wages and Dignity at the Ontario Food Terminal” *Now Toronto* (2 May 2016), online: <nowtoronto.com/news/tibetan-immigrants-fight-for-fair-wages-and-dignity-at-the-ontario-food-terminal> [perma.cc/JM2V-GJ5E].

²² See e.g. Emily Mathieu, “Parkdale Tenants Rally in Face of Rent Increases” *Toronto Star* (17 March 2017), online: <thestar.com/news/gta/2017/03/17/parkdale-tenants-rally-in-face-of-rent-increases.html> [perma.cc/QX24-7W9K].

²³ See e.g. Sara Mojthehdzadeh, “Firm that Failed to Pay Translators ‘Aggressively Targets’ New Immigrants, Court Says” *Toronto Star* (12 February 2018), online: <thestar.com/news/gta/2018/02/12/firm-that-failed-to-pay-translators-aggressively-targets-new-immigrants-court-says.html> [perma.cc/74KF-NZNN].

²⁴ As the students read in the seminar: “Poor people are not poor by chance; they are not poor through lack of personal merit; they are not poor because it is inevitable that some-one be poor. Poor people are poor because some people who are not poor believe that it is a good thing to have some poor people around.” Stephen Wexler, “Practicing Law for Poor People” (1970) 79 *Yale LJ* 1049 at 1052.

²⁵ PCLS Alumni. Jeff Carolin has written a case study of how one project (Collaborative Legal Play) successfully used legal problems caused by restrictive rules relating to family reunification in immigration law (which seemed resistant to traditional law reform efforts) as a springboard to tackle the root causes of these rules and to build solidarity through grassroots collaborative game/theatre-based practices. Jeff Carolin, “When Law Reform Is Not Enough: A Case Study on Social Change and the Role that Lawyers and Legal Clinics Ought to Play” (2014) 23 *J L & Soc Pol’y* 107.

²⁶ For a discussion by a PCLS alumni about this sort of learning, see e.g. Ella Bedard, “Why Choose the Poverty Law Intensive at Parkdale Community Legal Services?” *Obiter Dicta* (17 January 2018), online: <obiter-dicta.ca/2018/01/17/why-choose-the-poverty-law-intensive-at-parkdale-community-legal-services/> [perma.cc/9TZM-N4JW].

practices—and especially critical self-reflection about one’s reactions to problems faced by marginalized people—is central to the learning expected of students in the program.

In this essay I attempt to model the sort of critical reflection expected of students by sharing some thoughts based on my experience as PCLS Academic Director. I do so by drawing lessons from a brief interaction I observed in the streets of the Parkdale community and from my responses to that interaction. The essay aims to highlight the value of reflection in experiential education pedagogies, in community lawyering practices, and in learning about law in context.

One point to note before getting to the substance of the essay. Because the essay reflects on my experience as PCLS Academic Director, I have mostly limited the references cited to materials that I consulted in my time as Academic Director—whether because they were readings that I assigned to students or because I reviewed them as I learned about the clinic or as I worked through various questions that arose. As such, this essay is not an attempt to engage broadly with the vast and growing literature about experiential education pedagogies, community lawyering, and reflective practice. Instead, the essay offers only a partial view—a snapshot—one very much influenced by the location in which my reflections took place. The partial nature of the reflections is also tied to my positionality. I came to PCLS as a scholar primarily engaged in one aspect of the work at the clinic: immigration and refugee law. While I was generally familiar with some literature relating to experiential legal education, and while I had been involved administratively with the PCLS Board of Directors and with experiential education at Osgoode Hall Law School for several years, my encounters with the literature on poverty law, community lawyering, and reflective practice occurred largely while I was at PCLS. The sources cited in the essay reflect these origins.

I. THE LAW IN THE STREETS IN PARKDALE²⁷

On a warm late summer afternoon, I was walking on Queen Street West a few blocks west of the clinic. I had just finished up my final lingering responsibility as PCLS Academic Director, and I was pondering the future. I was wondering about how my Osgoode colleague who had taken over as Academic Director, Adrian Smith, a PCLS alumni, would experience his new role.

As I was walking, a person passing by on a bicycle caught my eye. The first thing I noticed was a flowing blue dress with a flowered pattern. Next, I noticed black army boots. And then a dark beard. And last, a smile.

Just as the person passed by on the bike, I also noticed three white, male, clean-cut police officers with bikes in front of me on the sidewalk. One officer was confronting a racialized man outside the entrance to a discount store. The man appeared to be street-engaged or otherwise very low-income.

The other two police officers were speaking to each other, one facing me and one facing away. These officers also noticed the person passing by on the bicycle and both turned to look. Then the officer facing in my direction looked at the officer who was facing away from me, raised his eyebrows and exchanged a knowing smirk with the other officer.

I kept walking. But now my thoughts were focused on the officer’s smirk.

²⁷ I borrow the methodology in this section and the next from Patricia Williams, who uses stories drawn from day-to-day experiences to “fill the gaps of traditional legal scholarship” and to “write in a way that reveals the intersubjectivity of legal constructions, that forces the reader both to participate in the construction of meaning and to be conscious of that process.” Patricia Williams, *The Alchemy of Race and Rights* (Cambridge, MA: Harvard UP, 1991) at 7–8.

The smirk was so practiced. An ease of expression that comes only with repetition over years, echoing since boyhood.

It was so readable. It expected—or demanded—a shared common sense about the acceptable and the derisible.

It was so performative. A certain masculinity asserting itself, ordering the world.

It felt so inevitable. A response one might expect in a world saturated with compulsory heterosexuality and violently enforced gender binaries.

I thought about the smirk and the body it inhabited. The police officer. The uniform. The gun hanging on his belt. The power to detain, arrest, intimidate, kill. But also the power to protect, comfort, reassure. And beneath the uniform, a person, a history, a future, with hopes, dreams, and disappointments.

I thought about the law smirking in the streets.

II. REACTING TO THE LAW IN THE STREETS IN PARKDALE

As I kept walking, saying nothing, I began to compose an angry note to the police in my head. When I arrived home, I transcribed the note and sent it off to the 14th Division of the Toronto Police Service, which is responsible for the area where the incident occurred.²⁸

The note begins by setting out my credentials, my authority, distinguishing myself from others who might submit complaints (I am a law professor, was the Academic Director at the local community legal clinic). I then describe the incident, using some rather embarrassing gender-labeling language (a gentleman in a dress, I wrote). I next admit that this incident is less pressing than many other concerns raised about the police (it was only a smirk, probably unconscious). I say that I am not looking for any consequences for the officers involved (what might those be?). But I also note that it is these sorts of small every-day moments that convey the message that some people are not valued members of the community. They give sexual minorities reason to distrust—and refuse to engage with—the police. I suggest that my note be shared with officers so that they can be reminded that when they are in uniform in the streets, their behaviour is noticed.²⁹

I did not hear back from the 14th Division. That rankled a bit. I guess my claims to authority failed to impress.

Over the next several weeks, I continued to think about the incident and about my response. With all the injustices, the violence, and the harms that I had become so familiar with after three years at the clinic, why was I so struck by the smirk?

I began to wonder why, in focusing on this incident, I did not pay any attention to the police officer engaged with the low-income, racialized man in front of the discount store. What was the story there? Whatever was going on, the interaction was far more confrontational than a smirk.

²⁸ Correspondence between Sean Rehaag and the 14th Division of the Toronto Police Service (29 August 2018) [on file with author].

²⁹ *Ibid.*

One of the themes that regularly came up in the Poverty Law Intensive seminar was the violence of racialized interactions between low-income people and the police—and the hard work of organizations like Black Lives Matter to push back against this violence.³⁰ So why didn't I stop to find out what was going on with that interaction, or really give the interaction any thought as I was witnessing it?

Perhaps my reaction has to do with my own identity.³¹

I identify as queer, but I have the privileges that come with being cis-gendered. The police officer did not smirk when I walked past. I nonetheless felt the smirk as an attack on my community. If I had to engage with the officer, the smirk would have made me think twice about choosing to be visible. And for those for whom that is not a choice, I imagine that such behaviour might make them think twice about engaging with the police at all—where that engagement is a matter of choice rather than an imposition.

I am also white, highly educated, and financially well-off. In the brief glimpse I had of the person on the bike, my impression was that we shared these attributes. Between the bike (vintage), age (late-twenties), race (white), and overall style (gender transgressive in what appeared to me to be an intentionally ironic mode), I perceived the person as a “hipster.” Many young professionals working in creative fields have moved into the Parkdale community in recent years, bringing vegan restaurants, art galleries, specialized coffee and tea shops, fashionable (and expensive) bars, and a young, queer-friendly vibe.³² This is not exactly my demographic. I'm too old. But I have more in

³⁰ For example, in the seminar students read about efforts in the United States to fight “stop and frisk” policies deployed disproportionately against racialized and low-income people—including the various roles that law plays in those efforts. Nicole Smith Futrell, “Vulnerable, not Voiceless: Outsider Narrative in Advocacy Against Discriminatory Policing” (2015) 93 NCL Rev 1597. Students also read about research undertaken by former PCLS Academic Director Janet Mosher on the experiences of mostly racialized students in low-income schools in Toronto with mistreatment at the hands of the police and other authority figures. Janet Mosher, “Lessons in Access to Justice: Racialized Youths and Ontario's Safe Schools” (2008) 46 Osgoode Hall LJ 807. These readings are then connected with various campaigns in Toronto to push back against over-policing in racialized and low-income communities in Toronto. See e.g. Desmond Cole, “The Skin I'm In: I've Been Interrogated by Police More Than 50 Times—All Because I'm Black” *Toronto Life* (21 April 2015), online: <torontolife.com/city/life/skin-im-ive-interrogated-police-50-times-im-black/> [perma.cc/YCL2-CWS9]; Renu Mandhane, “A Collective Impact: Remarks by [Ontario Human Rights Commission] Chief Commissioner Renu Mandhane” (10 December 2018), online: <ohrc.on.ca/en/public-interest-inquiry-racial-profiling-and-discrimination-toronto-police-service/collective-impact-remarks-chief-commissioner-renu-mandhane-2018> [perma.cc/NWU3-DY9B]; Sarah-Joyce Battersby, “Black Lives Matter Protest Scores Victory After Putting Pride Parade on Pause” *Toronto Star* (4 July 2016), online: <thestar.com/news/gta/2016/07/03/black-lives-matter-protest-scores-victory-after-putting-pride-parade-on-pause.html> [perma.cc/7WFX-EJ5T]; Ellis Furman et al, “Activism, Intersectionality and Community Psychology: the Way in Which Black Lives Matter Toronto Helps us To Examine White Supremacy in Canada's LGBTQ Community” (2018) 4:2 Community Psychology in Global Perspective 34; Melayna Williams, “The Tragic Echoes in the Cycle of Black Death” *Maclean's* (19 July 2017), online: <macleans.ca/opinion/the-tragic-echoes-in-the-cycle-of-black-death> [perma.cc/3MNC-AFR8].

³¹ Students in the Poverty Law Intensive seminar have, for several years, read an article by Michael Spencer where Spencer attempts to critically reflect on how various aspects of his identity affect his role in perpetuating and dismantling oppression. Students are then encouraged to undertake a similar exercise themselves. I have tried to do the same here. Michael Spencer, “A Social Worker's Reflections on Power, Privilege and Oppression” (2008) 53:2 Social Work 99.

³² Manisha Krishnan, “Capitalist Vegans Are Tearing Apart This Toronto Neighbourhood” *Vice* (7 August 2018), online: <vice.com/en_ca/article/xwk5kq/toronto-parkdale-vegans-protest-vegandale> [perma.cc/S4JC-YETD]; Lauren Strapagiel, “Vogue Declares Toronto's West Queen West Second Hippest 'Hood in the World” *Canada.com*

common with this group than with the man being confronted by the police in front of the discount store. Is that why I focused on the smirk and not on the confrontation?

Or perhaps my reaction was influenced by the structure of the legal norms that I regularly engage with. In recent years, so much attention has been paid to discrimination based on various aspects of people's identities—particularly by those of us who work with the law. When we encounter marginalization and oppression, the first tools that we reach for are typically the equality norms and processes found in human rights codes³³ and in the *Charter of Rights and Freedoms*.³⁴ People who are transgender or who otherwise defy traditional gender norms face incredible levels of violence, mistreatment, and marginalization.³⁵ After years of struggle by transgender activists and their allies, such mistreatment has finally been recognized as an unlawful form of discrimination.³⁶ As a result, the police smirking at a person because of their gender identity or expression violates equality laws—in a particularly troubling way because the police are supposed to protect transgender people against all too common transphobic violence.³⁷

I care deeply about anti-discrimination work in this area. But I worry that focusing on discrimination due to factors such as race, gender, and sexual orientation has, at times, come at the expense of critiques of marginalization due to socio-economic status. Students in the Poverty Law Intensive encounter readings by Roderick Macdonald, who spent several years early in his legal academic career directing the Community Law Program at the Windsor Faculty of Law.³⁸ According to Macdonald, it is a mistake to pursue “equality by reference exclusively to those socio-biological characteristics of human beings that we have deemed to constitute their personhood ... [T]he one social differentiator, transcending all other inequalities, is social class ... [S]tudy after study has shown that the economic roots of inequality cannot be eradicated by legislated anti-discrimination surrogates.”³⁹

Did I fail to pay attention to the man being confronted by the police because it seems unremarkable to me that the police might harass a person who appears to be poor and living in the streets? Perhaps. But if the explanation is that I was distracted by identity-based anti-discrimination norms relating to gender and failed to attend to socio-economic class, why didn't I think about other intersecting factors at play—including race, which also clearly engages with anti-discrimination?

(9 September 2014), online: <o.canada.com/news/vogue-declares-torontos-west-queen-west-second-hippest-hood-in-the-world> [perma.cc/2EUS-GFBF]; Victor Dwyer, “Who's Afraid of ‘Queer Street West’?” *The Globe and Mail* (8 April 2006), online: <theglobeandmail.com/news/national/whos-afraid-of-queer-street-west/article4300566/> [perma.cc/QPL7-SRZX]; Joshua Ostroff, “Gord Perks and Toronto's War on Hipsters” *Huffpost* (16 July 2013), online: <huffingtonpost.ca/joshua-ostroff/parkdale-gentrification-gord-perks_b_3602328.html> [perma.cc/SM78-2TCZ].

³³ See e.g. *Human Rights Code*, RSO 1990, c H19.

³⁴ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

³⁵ Greta Bauer & Ayden Scheim, “Transgender People in Ontario, Canada: Statistics from the Trans PULSE Project to Inform Human Rights Policy” (2015) Trans Pulse Project, online: <transpulseproject.ca/research/statistics-from-trans-pulse-to-inform-human-rights-policy> [perma.cc/62ST-YZ4X].

³⁶ See e.g. Bill 33, *An Act to amend the Human Rights Code with respect to gender identity and gender expression*, 1st Sess, 40th Leg, Ontario, 2012 (assented to 19 June, 2012), SO 2012, c 7; Bill C-16, *An Act to amend the Canadian Human Rights Act and the Criminal Code*, 1st Sess, 42nd Parl, 2017, cl 2 (assented to 19 June 2017), SC 2017, c 13; Brenda Picard, “Gender Identity: Developments in the Law and Human Rights Protections” (2018) 69 UNBLJ 126.

³⁷ Unfortunately, a large proportion of transgender people report that rather than being protected by the police, they face harassment from the police. Bauer & Scheim, *supra* note 35 at 4.

³⁸ Roderick Macdonald, “Access to Justice and Law Reform #2” (2001) 19 Windsor YB Access Just 317 at 317–318.

³⁹ *Ibid* at 323.

Maybe the answer is simply racism. Had the man being confronted by the police been white, perhaps I would have paid more attention. In the Poverty Law Intensive seminar for the past several years, students have completed online Implicit Association Tests⁴⁰ as a way of prompting discussions about anti-oppression norms and processes. These tests measure differential response times to words and images to assess whether the test-taker more easily associates positive or negative ideas with specific groups—essentially to measure implicit bias.⁴¹ Each term when I taught the seminar, I took a few of these tests. And each time, while I was pleased with my test results on matters related to gender and sexuality, I was troubled by my results on the test involving race. The latter consistently showed that I have a “strong automatic preference for White People compared to Black People.”⁴² Research on implicit bias suggests that such biases are especially pernicious when one makes snap judgments.⁴³ When I took additional time to reflect on the incident on Queen Street West, it seems reasonable to think that race—in addition to class, sexual orientation, and several other factors—led me to see only a partial picture of what was going on in the moment.

As time went on and I continued to ponder all of this, I began to wonder more about why I was prompted to take action by the smirk, and why my action took the particular form it did (*i.e.*, an angry note to the 14th Division).

In the Poverty Law Intensive seminar, students are encouraged to critically reflect on their (selective) responses to injustice. Much of the literature we examine emphasizes that outrage is performative. It also emphasizes that performing outrage about injustice that others encounter is often about the identity of the performer—especially where the person performing the outrage is able to entrench their position of power by swooping in to correct the injustice.⁴⁴

For example, students in the seminar read work by Sarah Buhler, a PCLS alumni, the former Executive Director of Community Legal Assistance Services for Saskatoon Inner City, and now a faculty member at the University of Saskatchewan. In several articles, Buhler highlights the need for pedagogies that encourage critical readings of responses to injustice, particularly where those responses take the form of moral outrage. Buhler argues that it is through such critical readings that we come to realize the importance of working with communities and individuals

⁴⁰ IAT Corporation, “Implicit Association Test” online: <implicit.harvard.edu> [perma.cc/8BSU-LN3R].

⁴¹ Anthony Greenwald, Debbie McGhee & Jordan Schwartz, “Measuring Individual Differences in Implicit Cognition: The Implicit Association Test” (1998) 74:6 *Journal of Personality and Social Psychology* 1464.

⁴² Results of implicit association test for the author (30 November 2018) (on file with author), completed online: <implicit.harvard.edu> [perma.cc/8BSU-LN3R].

⁴³ Keith Payne, “Weapon Bias: Split-Second Decisions and Unintended Stereotyping” (2006) 15:6 *Current Directions in Psychological Science* 287.

⁴⁴ In addition to reading and discussing the literature described below, students in the seminar also engaged in various exercises to encourage reflection on selective responses. For example, students discussed their responses to the infamous picture of Alan Kurdi, a child asylum seeker who drowned while attempting to cross the Mediterranean. The image (and the connection of the child to Canada via family and unsuccessful inquiries about securing refugee resettlement in Canada) prompted a national debate in Canada during a hotly contested Federal election. The image was partly responsible for the Liberal Federal government initiating a resettlement program for thousands of Syrian refugees. In the seminar we discuss the image, responses to the image, and consider why the deaths of thousands of other migrants did not prompt similar responses. We also discuss the ethics of leveraging these sorts of incidents to achieve progressive social change. For an account of Alan Kurdi’s journey, see Tima Kurdi, *The Boy on the Beach: My Family’s Escape from Syria and our Hope for a New Home* (New York: Simon & Schuster, 2018).

affected by injustices, not as rescuers who save the day, but as allies who take our direction from those most closely affected.⁴⁵

Along similar lines, former PCLS Academic Director Shin Imai warns that traditional law school pedagogies—including those I encountered in my own legal education, which did not include anything like the Poverty Law Intensive—train law students to become “epistemological imperialist(s): invading, subjugating and transforming other people’s realities into forms and concepts that ma[k]e sense in the world of law.”⁴⁶

With these cautions in mind, I wonder: what do I really know about who the person on the bike is, who the person being confronted by the police is, and who the police officers are—all from the briefest moment that I observed? Have I taken complex and multifaceted experiences, pushed them into simplified forms (or perhaps stereotypes) that make sense to me? Have I then used that simplified vision to amplify my voice as a legal scholar? Does my observation, my angry note to the police, and the way that I have chosen to tell the story in this reflection, all say more about me than it does about what I observed?

Perhaps most importantly, I wonder where the voices of those involved in the incidents on Queen Street West are in all of this? What would those voices say about their experience? And what might they say about my decision to subject a moment in their lives—without, I might add, their permission—to the reflective musings of a law professor? In choosing to reflect on the law in the streets without attending to these voices, have I failed to apply the skills that former PCLS Academic Director Janet Mosher identifies as “essential to a lawyering practice that is responsive to social movements,” including the ability to listen and the ability to share power?⁴⁷

III. CONCLUSION: THE IMPORTANCE OF REFLECTION (AND THE CHALLENGE OF FINDING TIME)

So, I am left wondering quite a bit about my reaction to the moment that I observed on Queen Street West. Beyond all this wondering, though, there are two things that I feel quite certain of.

First, I know that during my time as Academic Director at PCLS, I encountered these sorts of incidents, spurring similar types of wondering, all the time. I regularly wanted to give those incidents a bit more space. I felt that they would make for interesting reflections. But it was hard to grab hold of the moments for long enough. The day-to-day pressures of the clinic, and the constant need to respond to urgent matters, made it difficult to carve out time to reflect, let alone to write. It took a sabbatical for me to sit down and write this reflective essay.

Second, I know that while I now enjoy having more time to reflect on my own and to write, I miss the way that I processed these incidents during my time as Academic Director. If I was still running the Poverty Law Intensive, I would have integrated the police officer’s smirk into class discussion in the seminar. We would have critically discussed the incident and my response. We would have considered how this links up with some of the critical literature on poverty law and the positionality of those who try to work in this area. I would have benefited from the multiple perspectives that students would bring to that discussion. Critical self-reflection can only take you so far, and I am sure there are many things that I have not considered on my own—both about the

⁴⁵ Sarah Buhler, “Troubled Feelings: Moral Anger and Clinical Legal Education” (2014) 37 Dal LJ 397 [Buhler, “Troubled Feelings”]; Sarah Buhler, “Painful Injustices: Encountering Social Suffering in Clinical Legal Education” (2013) 19 Clinical L Rev 405 [Buhler, “Painful Injustices”].

⁴⁶ Imai, *supra* note 15 at 196–197.

⁴⁷ Janet Mosher, “Legal Education: Nemesis or Ally of Social Movements” (1997) 35:3 Osgoode Hall LJ 613 at 633.

incident and about my response—that Poverty Law Intensive students, drawing on a wide variety of lived experiences as well as experiences they encountered at the clinic, would have pointed out.

These observations have, I think, implications for the Poverty Law Intensive at PCLS — and for clinical legal education programs more generally.

Most importantly, for the Poverty Law Intensive to continue be a valuable educational experience—an opportunity to learn about the socio-legal context of poverty law, about community lawyering, and about the limits of traditional legal interventions—substantial time for reflection, individually and collectively, must be actively carved out. That means that it is essential to protect student time for the seminar that accompanies the student’s clinical placement. It also means making sure that time for reflection is available for students while they are working on their files, while they are interacting informally with their colleagues, and while they are engaging with their supervising lawyers and community legal workers. It also, I think, means that space for reflection needs to be protected for supervising lawyers, community legal workers, and the Academic Director—partly so that they can model reflective practice for students, and partly so that they can spend time actively designing and implementing pedagogies that encourage student reflection.

This last point about pedagogy is, I think, important to emphasize. The type of reflection that I have in mind goes beyond students thinking about an activity that they have undertaken, with the aim of improving their ability to conduct that activity the next time around. To borrow Michele Leering’s terminology, my goal in encouraging reflection at PCLS was not only “instrumental” (*i.e.*, reflection aiming to “develop professional expertise and ‘do things better’”).⁴⁸ Rather, I tried to encourage “transformative” reflection that can “lead to changing fundamentally what we do, why we do it, and what we believe about our professional role and ethical responsibilities.”⁴⁹

Like past Academic Directors, I sought to make transformative reflection a cornerstone of the Poverty Law Intensive as an educational program—learning that occurs as part of a “designed, managed and guided experience.”⁵⁰ Former Academic Director Shelley Gavigan offers this description of the transformative reflection expected of Poverty Law Intensive students:

PCLS introduces students to access to justice issues, including but not limited to access to lawyers, to the issues confronting lawyers who practice in alternative contexts, and very importantly, alternative roles for lawyers and alternative routes to (social) justice ... Theories of inequality are tested, perspectives on the relationship between law and social change are tested, conventional legal wisdom on the efficacy of litigation as a vehicle for social change is tested, the meaning and implications of the *Rules of Professional Conduct* are tested. Every unexamined assumption to which a law student, or indeed clinic law teacher, subscribes is opened up for discussion ... In all of this, the thorny issue of “experience” never disappears. Parkdale students “experience” the responsibilities of poverty law practice; they learn of their clients’ “experiences” and they have their “experiences” of their clients’ experiences ... The challenge is to ensure that the result is not a tyranny of competing experiences—that

⁴⁸ Michele Leering, “Enhancing the Legal Profession’s Capacity for Innovation: The Promise of Reflective Practice and Action Research for Increasing Access to Justice” (2017) 34:1 Windsor YB Access Just 189 at 198.

⁴⁹ *Ibid.* See also Michele Leering, “Conceptualizing Reflective Practice for Legal Professionals” (2014) 23 JL & Soc Pol’y 83.

⁵⁰ James Moliterno, “Legal Education, Experiential Education, and Professional Responsibility” (1996) 38 Wm & Mary L Rev 71 at 78.

we produce experientially informed, as opposed to experientially driven, discussions and analyses.⁵¹

Creating space at the clinic for designed, managed, and guided transformative reflection—for experientially driven discussions and analysis—is hard to do. It has been hard ever since the clinic was established in 1971. Fred Zemans, the Founding Director of the clinic (and the first Academic Director of the Poverty Law Intensive) reports that:

From the earliest days, the question of appropriate levels of student caseloads was the subject of much debate by students, clinic staff, and the faculty. By the second year of the academic program, incoming students were expected to assume responsibility for thirty to forty files ... I urged that caseloads should be reduced through the use of paralegals or more stringent caseload criteria to provide high quality legal services to the community and a meaningful academic experience for students.⁵²

Part of the reason why it is so hard to maintain space for reflection is because the clinic is (quite rightly) accountable to the low-income community it serves. There is so much that urgently needs to be done to help the community fight against injustices that there is always enormous pressure to take on additional work. Moreover, the students and staff at the clinic are (again quite rightly) dedicated to doing what they can to help with these fights. PCLS Alumni, Christine Doucet, describes how this can lead students to feel overwhelmed:

My time at PCLS was the highlight of my law school experience. It was my first ‘real world’ experience with the practice of law. The ... program helped me develop skills and tools that I will undoubtedly use and build on throughout my career ... [It] exposed me to the law in a way that no textbook or substantive law course ever could ... Working at the clinic brought law school to life ...

[However,] [t]he environment at the clinic is fast-paced and high pressure. There is always work to be done; there is always another client to assist, another memo to write and another case to prepare ... [W]orking at the clinic can be an overwhelming experience.⁵³

During my time as Academic Director, I often found that it was a challenge to persuade (at times overwhelmed) students that doing critical readings about poverty law, discussing the theory of poverty law in a seminar, writing academically-oriented research papers about poverty law, or even taking a moment to critically reflect on the learning objectives of the Poverty Law Intensive were good uses of their time. After all, they had work to do on files for clients who were about to be evicted, fired, deported, or cut off of social assistance. It was not at all unusual to find students in my office at the clinic asking to be excused from obligations connected to the seminar so that they could do this urgent work. Students sometimes seemed frustrated when my answer was that

⁵¹ Gavigan, *supra* note 10 at 469.

⁵² Zemans, *supra* note 14 at 530. For a history of debates about caseload at the clinic, see Gavigan, *supra* note 10 at 462–464.

⁵³ Christine Doucet, “Law Student Heal Thyself: The Role and Responsibility of Clinical Education Programs in Promoting Self-Care” (2014) 23 *J L & Soc Pol’y* 135 at 137.

if they were struggling to meet their seminar obligations we should work together to address excessive workload in the clinical component of the program, rather than making space for that workload by reducing time for reflection.⁵⁴

At times, when I encountered those frustrations, I was in turn frustrated. After all, so much of the Poverty Law Intensive is designed specifically to help students see that taking on yet another case isn't going to resolve the problems encountered by the low-income community that the clinic serves. Rather, what is needed are efforts to identify the structures that are systematically creating these problems and then to work with people affected by those structures to develop strategies for pushing back collectively—something that requires lots of time for reflection, learning, and collective deliberation.⁵⁵ And yet it was rare that students would come to my office asking to be excused from the seminar so that they could pursue organizing initiatives or strategizing with low-income communities about systemic work. Rather, it was individual case work that the students so often felt drawn to and wanted to prioritize.⁵⁶

I hope, though, that with some distance, PCLS students who I have had the privilege to work with come to appreciate that it is through opportunities for guided reflection of the sort offered in the Poverty Law Intensive that we begin to wonder about our limited reactions to things like observations about police officers smirking in the street. It is through such reflection that we can at once take seriously our impulses to confront injustices, while also recognizing that those impulses are not themselves somehow outside of structures of power, oppression, and marginalization. The impulses, like everything else, are partly mediated by those structures. It is through reflection, alone and with others, that we learn to push back against the structures that, in day-to-day moments and at larger decision-points, make poverty and the injustices that accompany it disappear from our attention.

The Poverty Law Intensive—and the staff, students, clients, and community members that make PCLS the place that it is—helped me learn more about the value of such reflections. And I hope that, in my three years as PCLS Academic Director, I passed that forward to at least a few students.

⁵⁴ This approach is now reflected in the PCLS Student Workload Protocol. Parkdale Community Legal Services, “Student Workload Protocol” (2017), online: <parkdalelegal.org/about/osgoode-program/> [perma.cc/LR8Q-DVLU] at 15, 36–37.

⁵⁵ Students in the Poverty Law Intensive encountered many readings to this effect, for example: Wexler, *supra* note 24; Buhler, “Troubled Feelings,” *supra* note 45; Buhler, “Painful Injustices,” *supra* note 45; Paul R Tremblay, “Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy” (1992) 43 Hastings LJ 947; Ascanio Piomelli, “Sensibilities for Social Justice Lawyers” (2013) 10:41 Hastings LJ 177; Ascanio Piomelli, “The Lawyer’s Role in a Contemporary Democracy, Promoting Access to Justice and Government Institutions, The Challenge of Democratic Lawyering” (2009) 77:4 Fordham L Rev 1383; Sameer Ashar, “Law Clinics and Collective Mobilization” (2008) 14 Clinical L Rev 355; Sameer Ashar, “Deep Critique and Democratic Lawyering in Clinical Practice” (2016) 104 Cal L Rev 201 at 217–219.

⁵⁶ Sometimes, when pushed, students agreed that recalibrating and refocusing their efforts to prioritize systemic work was needed. At other times, though, students suggested that case work was a better use of their time. To assist students in thinking through how one might make such an argument, I ended up assigning an article in the seminar that always provoked animated discussion: Rebecca Sharpless, “More Than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy” (2012) 19:1 Clinical L Rev 347.