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The Future of Clinical Legal Scholarship

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THE FUTURE OF CLINICAL LEGAL SCHOLARSHIP

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Is there a future for legal scholarship? This is a long-brewing but urgent question across the legal academy, particularly as the cost of a legal education continues to increase and student enrollments have decreased from their peak.[1] Critics charge that legal scholarship is too costly – it requires vast commitments of time and resources that take professors out of the classroom.[2] Further, law review articles are too long, weighted down with footnotes, focused on obscure topics, and unhelpful to the profession.[3] To top it all off, articles are selected by unqualified students – resulting in a process of external validation based on law school rankings rather than quality.[4] Defenders of the scholarly enterprise counter that legal scholarship is part of the "creation of a just society. . .through its careful elucidation of the law,"[5] and they highlight the positive impacts scholarship has had in shaping the law.[6] This debate is happening separately from another major development in legal education – the accreditation requirement of the American Bar Association that students take at least six credits of experiential education before they graduate.[7]

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1 For a thorough discussion of the financial and demographic trends in legal education during and after the Great Recession, see Peter A. Joy, *Challenges to Legal Education, Clinical Legal Education, and Clinical Scholarship*, 26 CLINICAL L. REV. 237 (2019).

2 For a summary of the critiques of legal scholarship (in an article defending legal scholarship), see Tamara Piety, *In Praise of Legal Scholarship*, 25 WM. & MARY BILL RTS. J. 801, 809–11 (2017).

3 *See* Eric Segall, *The Law Review Follies*, 50 LOY. U. CHI. L.J. 385, 386-87 (2018); Frank O. Bowman, *Days of Future Past: A Plea for More Useful and More Local Legal Scholarship*, U. MO. LEGAL STUD. RES. PAPER SERIES, No. 2017-17, at 11 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2977593.

4 Segall, *supra* note 3, at 391–92; Lawprofblawg & Darren Bush, *Law Reviews, Citation Counts, and Twitter (Oh My!): Behind the Curtains of the Law Professor's Search for Meaning*, 50 LOY. U. CHI. L.J. 327 (2018).

5 Robin West and Danielle Citron, *On Legal Scholarship*, American Association of Law Schools, at 4 (2014), https://www.aals.org/wp-content/uploads/2014/08/OnLegalScholarship-West-Citron.pdf.

6 *See, e.g.*, Piety, *supra* note 2, at 807–08 (2017).

7 *ABA Standards and Rules of Procedure for Approval of Law Schools 2018-2019*,

While it may not be obvious, the future of legal scholarship and the experiential learning requirement are related in two ways. First, the rise in experiential education can lead to the hiring of more clinical and externship professors who have writing requirements as part of their status. In turn, this would result in more clinical scholarship. Alternatively, law schools may be tempted to fulfill the experiential requirement through simulation courses or by hiring less costly faculty who do not have scholarly writing obligations. Either way, there will be an impact on clinical scholarship. Thus, debates on the value of legal scholarship should also – but rarely do – include the voices of professors engaged in experiential education. If legal scholarship has a precarious future, then we must consider as well the fate of clinical legal scholarship.

Second, every law school must decide how to deliver experiential education, and this has impacts on legal scholarship, although law schools may not be aware of this dynamic. To be sure, the trends within scholarship and experiential education may seem like separate trains on divergent tracks. Many doctrinal faculty hope to buy themselves a first-class ticket on the theory train, leaving clinical faculty to board the skills caboose.[8] However, these dual tracks of legal education not only intersect, but the dichotomy is a false one. Clinical faculty are valuable scholars who bring real-world insights into legal scholarship. In addition, they are an overlooked conduit for disseminating scholarship outside the ivory tower. Doctrinal faculty are seemingly not aware how much they need clinical faculty to ensure their work has an impact beyond SSRN citation counts. Thus, this Essay argues that at this inflection point for legal education, choosing to promote, rather than to further degrade, structures to support clinical scholarship allows the academy not only to ensure quality legal education that graduates practice ready lawyers, but also to support engaged scholarship and enhance the scholarly mission of law schools. In short, the future of legal scholarship and the goals of experiential education are intertwined and hinge on a robust commitment to clinical faculty with security of position who write pursuant to an

A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR STANDARD 303(3) (2018), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-chapter3.pdf [hereinafter *ABA Law School Standards*].

[8] I am using the term "doctrinal" faculty to mean professors who do not teach in clinics. The term, however, is somewhat misleading because two-thirds of clinicians teach non-clinical courses in addition to their clinical courses. *See* Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENVER L. REV. 1, 24 (2014). Nevertheless, this Essay will use the term "doctrinal," as a shorthand that is less bulky than the more accurate term of "non-clinical faculty."

expansive definition of scholarship.

I. Experiential Education and Scholarly Requirements

In 2014, the ABA Council of the Section of Legal Education and Admissions to the Bar, which sets the accreditation standards for law schools, set forth a revised standard that law schools require students to complete at least six credits of experiential courses in order to graduate.[9] The new standard responded to critiques from the bench, bar, and students that law schools were not doing enough to ensure that students are practice ready.[10] Under Standard 303, experiential courses can include simulations, field placements (also called externships), and clinics. In addition to this requirement, law schools must also ensure "substantial opportunities to law students for law clinics and field placements,"[11] meaning that a law school cannot offer only simulation courses in the experiential category (although they could allow students to satisfy the experiential requirement solely through simulation courses). Law schools have leeway in determining how to satisfy Standard 303; they are not required to offer all three forms of experiential education.

Law schools generally consider simulations and externships to be less expensive than clinics.[12] In the former settings, a single faculty member can teach numerous students simultaneously.[13] By contrast, most clinics have a low student to teacher ratio – the national average is 8:1[14] — due to the need to supervise emerging lawyers closely. All three types of experiential education are valuable, but clinics provide unique opportunities for professional growth due to the immense responsibility that clinic students assume in lawyering for their clients.

Clinics that support clinical faculty as scholars may seem even more costly to administrators because faculty need reasonable supervision ratios and manageable caseloads to have the time to research and write. Still, with regard to cost, Robert Kuehn has crunched the

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[9] On the background of this provision, see Peter Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 Dickinson L. Rev. 551, 575–80 (2018).

[10] *See id.* at 574–75.

[11] *ABA Law School Standards*, *supra* note 7, at Standard 303(b).

[12] *See e.g.*, Martin J. Katz, *Understanding the Costs of Experiential Legal Education*, 1 J. Experiential Learning 28, 30 (2014).

[13] In field placements, students are placed outside the law school in law offices where they are supervised by practicing attorneys. They must be simultaneously enrolled in a classroom component taught by a faculty member. *ABA Law School Standards*, *supra* note 7, at Standard 305.

[14] Robert R. Kuehn & David A. Santacroce, with Margaret Reuter & Sue Schechter, *The 2016-17 Survey of Applied Legal Education*, Center for the Study of Applied Legal Education (CSALE) 21 (2017), http://www.csale.org/files/Report_on_2016-17_CSALE_Survey.pdf [hereinafter *CSALE 2016-17 Survey*].

numbers and concluded that schools with mandatory or guaranteed clinics do not charge higher tuition than those without and that other aspects of legal education, such as seminars, can be significantly more costly than clinics.[15] (And of course, the cost of producing scholarship is a factor tied to higher tuition, but one that Deans and doctrinal professors generally support.[16]) Thus, the fears surrounding the cost of clinics are exaggerated, if not incorrect. In the midst of the cost debate, it is important to recognize that clinics deliver incredible value to students, i.e., they have a high cost-benefit ratio.[17] This article highlights a hidden value of clinics; that is, their contributions to the scholarly enterprise of law schools. Scholarship should thus be an additional factor in the cost-benefit analysis.

There are 203 accredited United States law schools.[18] As of 2018, forty-three law schools require students to take a clinic or externship in order to graduate, and thirty-two additional schools guarantee spots in clinics or externships without requiring them.[19] The benefits of clinics are usually associated with the student hands-on learning experience and the service to low-income clients who would not otherwise be able to afford legal representation. Despite these concrete benefits of clinical education, law schools generally afford doctrinal faculty greater tenure protections and inclusion in law school governance than clinicians and other faculty who teach lawyering skills.[20] They also provide doctrinal faculty with greater support for scholarship.

The Center for the Study of Applied Legal Education (CSALE) conducts a regular survey of law clinic and externship courses and educators.[21] In its 2016-2017 Survey Report, twenty-three percent of full-time clinicians report being tenured or tenure track.[22] About nine percent of full-time clinicians are employed under a form of clinical

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15 Kuehn, *Pricing, supra* note 8; Robert R. Kuehn, *Universal Clinic Legal Education: Necessary and Feasible*, 53 WASH. U.J.L. & POL'Y 89, 97 (2017).

16 Kuehn, *Universal Clinic, supra* note 15, at 103.

17 Mark V. Tushnet, *Scenes from the Metropolitan Underground A Critical Perspective on the Status of Clinical Education*, 52 GEO. WASH. L. REV. 272, 273 (1984). *See also* Stephen Ellmann & K.R. Kruse, *Measuring the Values and Costs of Experiential Education, Report of the Working Group on Cost and Sustainability*, 7 ELON L. REV. 23, 24 (2015).

18 List of ABA-Approved Law Schools, A.B.A., https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/ (last visited June 26, 2019).

19 Robert R. Kuehn, *List of Schools with Required or Guaranteed Clinical Experience as of October 11, 2018* (sent via clinic listserv and on file with author).

20 Bryan L. Adamson, Bradford Colbert, Kathy Hessler, Katherine Kruse, Robert Kuehn, Mary Helen McNeal, Calvin Pang & David Santacroce, *The Status of* Clinical *Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353, 357, 394 (2012) [hereinafter *Task Force Report*].

21 *See generally CSALE 2016-17 Survey, supra* note 14.

22 *Id.* at 15.

tenure.[23] Clinicians working toward clinical tenure report different scholarship standards than their schools have for doctrinal faculty, including variations such as greater acceptance of "applied" scholarship (58%); consideration of a broader range of scholarship such as briefs (49%); and a lower publications requirement (51%).[24] Overall, thirty-seven percent of full-time clinical faculty are required to produce scholarship (which is a drop from forty-three percent in the previous 2013-14 Survey).[25] Of that group, ninety-one percent receive some form of financial support for writing and research, while twenty-two percent have their teaching and supervision obligations reduced at some point in order to pursue scholarship.[26] In sum, it is a minority of clinical professors – and a falling percentage — who are required to write scholarship and who have the appropriate support to do so.

Currently, ABA Standard 405(c) requires that law schools provide full-time clinical faculty with "a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members."[27] Although clinicians agree on the need for security of position, scholarly requirements are controversial within the clinical community. Some clinicians fear that emphasis on scholarship, particularly in its traditional forms, will detract from their teaching and social justice missions. As Sameer Ashar has written, some clinicians "embrace marginality in exchange for autonomy and more intense focus on direct student instruction and . . . client services."[28] For these reasons, a Task Force on the Status of Clinicians and the Legal Academy assembled in 2012 by the American Association of Law Schools cautioned against pushing clinicians to write scholarship unmoored to their expertise or reshaping clinics to accommodate scholarship at the expense of pedagogy and service.[29] Instead, the Task Force urged tenure standards that recognize unique features of clinical teaching, such as "the absence of efficiencies through repetition, the time-intensive one-

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[23] The data also show that thirty percent of clinicians work under long-term contracts of five or more years. The remainder of clinical faculty, or about thirty-nine percent, are on probationary contracts; short term contracts of four years or less; or are adjuncts fellows, or visitors. *Id.* at 15. The report does not discuss the scholarship requirements of contractual faculty in particular.

[24] *Id.* at 18.

[25] *Id.* at 47.

[26] *Id.* at 47.

[27] However, the Standard still allows for a "limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members." *ABA Law School Standards*, *supra* note 7, at Standard 405.

[28] Sameer Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CAL. L. REV. 201, 226 (2016).

[29] *Task Force Report*, *supra* note 20, at 399.

on-one supervision of students, and the inability to control the pace of legal matters."[30] To support clinical scholarship, schools need to provide institutional support in terms of case coverage during academic breaks and to consider a wider range of work "such as policy papers, briefs, and training materials" as satisfying writing requirements.[31]

Many law schools currently employ clinical faculty who lack security of position; are paid far less than doctrinal faculty; and who supervise caseloads and class sizes that leave no time for scholarly writing. In light of declining numbers of law school applicants and smaller class sizes, law schools may be tempted more than ever to rely on simulations and externships to satisfy the new experiential requirement, or to continue to hire short-term clinical faculty with large supervision loads. As described below, this disserves not only students and clients, but also the mission of legal scholarship.

II. CLINICAL SCHOLARSHIP AND CLINICAL SCHOLARS

A. Value of Clinical Scholarship

In 1992, Judge Harry Edwards famously asserted that legal scholarship fails to engage in work that helps the legal profession.[32] He accused law professors of "emphasizing abstract theory at the expense of practical scholarship and pedagogy,"[33] and rued that "too many important social issues are resolved without the needed input from academic lawyers."[34] His words have fomented years of debate and soul-searching. In 2016, Judge Edwards was asked again to reflect on the state of legal education. He commended the growing commitment of resources that make "clinics useful, productive, and educational."[35] He stuck to his guns however, in critiquing the academy for producing abstract scholarship of little use to the bench and bar.[36] In praising clinics and faulting scholarship, however, Judge Edwards assumed a bifurcation between the two. He failed to acknowledge highly useful scholarship written by clinicians and the potential of clinicians to overcome his critique if they are provided with adequate institutional support.

This potential arises not because clinicians write articles for practitioners (although sometimes they do) or because they write for fel-

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30 *Id.*

31 *Id.*

32 Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35–38 (1992).

33 *Id.* at 1.

34 *Id.* at 36.

35 Ronald K.L. Collins, *On Legal Scholarship: Questions for Judge Harry T. Edwards*, 65 J. LEGAL EDUC. 637, 644 (2016).

36 *Id.* at 645.

low clinicians (although there is a rich and extensive literature on clinical pedagogy). Rather, Judge Edwards' critique misses the clinical mark because clinical scholarship brings real-world insights into the academy. Clinical faculty have front-line understandings of how the justice system operates; the role that law and lawyers play in society; and the impact of law on people, communities, and society.[37] They work regularly with judges, legislators, community organizers, lawyers, and other players in our justice system. Through the eyes of their clients, clinicians gain perspective on where the law supports or fails marginalized communities. Moreover, clinicians are naturally interdisciplinary, as they regularly work with other professionals, such as doctors and nurses, business people, social workers, engineers, and experts in public health. Whereas much doctrinal scholarship analyzes appellate court opinions, clinicians often write from the vantage point of clients, trial courts, administrative agencies, non-litigation contexts, and other "bottom up" sources.[38]

In addition, the practice experience of clinicians stands in contrast to that of doctrinal professors. A 2015 study by Lynn LoPucki found that professors hired at the top 26 law schools had an average of 1.5 years of practice experience.[39] Indeed, as elite schools increasingly favor candidates with PhDs, the practice experience of new hires decreases as the rank of the school increases.[40] These trends spurred Judge Richard Posner to comment in 2016 that law schools should be hiring more professors with "significant practice experience."[41] Like many other critics of legal education, Judge Posner overlooks clinical faculty. He may be interested to learn that clinical hires arrive on campus with a median of seven years of practice experience[42] — and of course, clinical faculty continue to practice law once hired. In short, clinical faculty have a wealth of practice experience that informs their scholarship.

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[37] Professors David Hricik and Victoria S. Salzmann, for example, argue that professors should write "engaged scholarship" "to influence or shape the law itself" in lieu of articles that exist solely as "discourse among theorists." David Hrickik & Victoria S. Salzmann, *Why There Should be Fewer Articles Like This One: Law Professors Should Write More for Legal Decision-Makers and Less for Themselves*, 38 SUFFOLK L. REV. 761, 765, 768 (2005). Clinicians are ideally situated to write engaged scholarship.

[38] *See Task Force Report*, *supra* note 20, at 369; Clark D. Cunningham, *Hearing Voices: Why the Academy Needs Clinical Scholarship*, 76 WASH. U. L.Q. 85, 87 (1998).

[39] Lynn M. LoPucki, *Dawn of the Discipline-Based Law Faculty*, 65 J. LEGAL EDUC. 506, 523 (2016).

[40] *Id.* at 508.

[41] Richard A. Posner, *Law School Professors Need More Practical Experience*, SLATE (June 24, 2016), https://slate.com/news-and-politics/2016/06/law-school-professors-need-more-practical-experience.html.

[42] *CSALE 2016-17 Survey*, *supra* note 14, at 39 (this was unchanged from the 2013-14 survey).

In addition, scholarship written by clinicians will enhance the diversity of perspectives within the scholarly enterprise. Clinicians are 62% female, compared to 44% of all law professors (and that latter statistic includes clinical and legal writing faculty).[43] They are also slightly more likely to be non-white, as they constitute 21% of clinical faculty compared to 20% of the entire legal academy. Already, the law review validation game is "stacked against people who are of diverse races, classes, genders, *and* titles, *and* curricula."[44] For instance, the number of women authors published in the top ten law reviews in 2017 is around 20%.[45] Moreover, the majority of top tier law review placements come from authors who graduated from five elite law schools.[46] Highly ranked law schools have lower numbers of students of color,[47] and do a poor job of educating lower income students.[48] Yet external validation of scholarship favors metrics that reward "conformity and hierarchy, "[49] along with scholarship written by white and male faculty.[50] Increased clinical scholarship could help shift this dynamic because the population of clinical professors is itself more diverse, although its impact on external validation metrics is less certain. In the best case scenario, clinical scholarship will obtain value from its impact on the world and not from external and elitist criteria.

Over the years, clinicians have debated not only whether they should write scholarship, but also what they should write about. There has been some concern that clinicians will be forced to mimic some of the worst traits of traditional legal scholarship for their own academic survival. Several clinical scholars have advised clinicians to write in areas tailored to clinical practice, such as lawyering skills,[51] systemic reform,[52] skills and values,[53] or "in the language of clients, lawyers, or . . . judges."[54] Frank Bloch urges clinicians to resist the

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[43] Robert Kuehn, *Clinical Faculty – Who are you? Who, who, who, who?,* Best Practices for Legal Education Blog, Jan. 3, 2018, https://bestpracticeslegaled.com/2018/01/03/clinical-faculty-who-are-you-who-who-who-who/.

[44] Lawprofblawg & Bush, *supra* note 4, at 356.

[45] *Id.* at 337.

[46] *Id.* at 336.

[47] *Id.* at 336, 342 (noting that at the top ten law schools, black enrollment is no higher than nine percent).

[48] *Id.* at 343.

[49] *Id.* at 356.

[50] *Id.* at 346.

[51] Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 CLINICAL L. REV. 93, 110 (1994).

[52] Gary H. Palm, *Reconceptualizing Clinical Scholarship as Clinical Instruction*, 1 CLINICAL L. REV. 127, 131 (1994).

[53] Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 CLINICAL L. REV. 385, 392-93 (1996).

[54] Richard A. Boswell, *Keeping the Practice in Clinical Education and Scholarship*, 43

siren call of traditional legal scholarship and "to put the 'clinical' back into 'clinical scholarship' and then produc[e] it in force."[55]

Despite these well-intentioned calls to craft a unique clinical voice, clinicians have resisted being told what to write about or how to go about the task. As the Task Force notes, "Even when clinical faculty write more traditional doctrinal scholarship, as those in tenure-track positions increasingly do, they are well-positioned to investigate the ways doctrine will or could be put into practical effect, or the places where different kinds of legal doctrine intersect in the lives of persons affected by the law."[56] The fact that these "provocateurs of justice"[57] have refused to write in a predetermined mold is not surprising. The academy certainly does not need to take a stand on what topics are appropriate for clinicians. Without a doubt, a broad range of viewpoints and scholarly approaches benefit the many audiences for legal scholarship. It heightens the possibility that "a good body of legal scholarship [will] address law's purpose of serving society,"[58] as Judge Edwards urges.

The contributions of clinicians cannot be doubted. All of the authors of essays in this Volume have extensive scholarly records that have made important contributions to our understandings of the legal system, social justice, and the law. Their works are based on observations generated through years of law practice; they aim to better the justice system and the lives of marginalized people; they steer clear of jargon; and they blend theory and practice. In this volume, Jennifer Lee Koh describes how her students' work on individual immigration cases highlighted systemic issues and devastating impacts within immigration law that she brought into the legal literature through her scholarship. As she writes, "the Clinic's daily work and my scholarship were intertwined and mutually reinforcing."[59] Any roomful of clinical scholars would tell a similar tale.

B. Clinicians as a Bridge Between the Academy and Practice

While the value of clinical scholarship has been recognized for

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HASTINGS L.J. 1187, 1192 (1992).

[55] Frank S. Bloch, *The Case for Clinical Scholarship*, 4 J. CLINICAL LEGAL EDUC. 1, 11 (July 2004).

[56] *Task Force Report*, *supra* note 20, at 370. *See also* Wendy A. Bach and Sameer M. Asher, *Critical Theory and Clinical Stance*, 26 CLINICAL L. REV. 81 (2019) (advocating for the importance of theoretical work by clinicians).

[57] Jane Aiken coined this term, stating: "I aspire to be a provocateur for justice . . . one who instigates, a person who inspires others to action." Jane A. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 288 (2011).

[58] Collins, *supra* note 35, at 643.

[59] Jennifer Lee Koh, *Reflections on Elitism After the Closing of a Clinic: Pedagogy, Justice and Scholarship*, 26 CLINICAL L. REV. 263, 279 (2019).

some time (even if in limited quarters), there has been scant recognition of the role clinicians can and do play in disseminating the work of non-clinical faculty and serving as a bridge between academia and society. Clinicians who are integrated into their faculties are more likely to attend faculty workshops and colloquia. They participate in scholarly conferences and workshops at their own schools and elsewhere. On a day to day basis, they are part of the law school fabric of mentoring and critiquing peer scholarship. They are a resource for other faculty in brainstorming about real-life legal impacts. By contrast, practicing lawyers simply do not have this level of exposure to legal scholarship or the time to absorb emerging scholarly trends.

Accordingly, clinicians are ideally positioned to serve as a link between scholarship and practice. The entire body of legal scholarship benefits when clinicians apply and disseminate its theories. Clinicians ensure that scholarly trees do not fall in the forest without a sound. Moreover, after students are exposed to scholarly ideas in a live client context, they can then carry that skills/theory praxis into their future practice areas. And, as they mentor new lawyers, the ripple effects of exposure to legal theory can be profound. However, if clinicians are shut out of the scholarly project, these ripples will not form and certainly will never reach shore.

Some examples from my own clinical practice illustrate this dynamic. I run a civil litigation clinic that represents low-income people in Baltimore, Maryland. As a tenured faculty member, I also write scholarship and read cutting edge scholarship. I have been particularly influenced by the work of Professor Martha Fineman, who has articulated how a universal human condition of dependency and vulnerability shapes human existence, but is largely ignored by law.[60] As Fineman explains, vulnerability is a universal human condition, as everyone is dependent at some point in their lives, such as childhood or during times of illness, and everyone is likewise prey to harm in the form of emergencies, disasters, disabilities, and other catastrophes outside human control.[61] Yet American law and policy assumes a liberal and autonomous subject, which in turn minimizes shared societal responsibility for vulnerability while privatizing and devaluing care for our dependent family members. Fineman has explained how this conception harms low-income single mothers on welfare. These mothers are denigrated for their "dependency," even though all human beings share the condition of dependency at some point in their lives.[62] As a

[60] Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 1 (2008).

[61] *Id.* at 9–10.

[62] Martha Albertson Fineman, *The Nature of Dependencies and Welfare "Reform,"* 36

result, our welfare system justifies onerous welfare regulations and surveillance of low-income single mothers through draconian application requirements, drug tests, and home visits.

As a clinician, I can put Fineman's theoretical insights not only into my own scholarship, but also into practice. In the Clinic, we represent many low-income single mothers struggling to balance child care and work outside the home. When they fall off this balance beam, they can face legal troubles. Consider our client who was cut off from welfare benefits because she was required to stay on site with her suicidal teenager during his admission to a mental hospital and thus, she could not work for several days. In our welfare system, work is a requirement to receive benefits, and failure to appear at a job is immediate grounds for welfare to be terminated. She came to us challenging her welfare termination. Initially, students representing mothers receiving welfare often mirror society's liberal notions of individual responsibility that in turn blame the poor for their dependency.

By exposing students to Fineman's feminist legal theory, students gain greater understanding as to both the universality and particularity of vulnerability. By combining their casework with a scholarly frame, students can articulate why society has a shared responsibility to support families that do not conform to the patriarchal, marital household model. In turn, students can craft case theories and narratives that shift the fact finder's gaze away from individual blame and into a larger social context that stresses collective responsibility. Then, as these students move into law practice and policymaking positions, they are able to apply these theoretical insights to other problems and to influence the course of public debate. Simply put, these students are letting down the drawbridge from the Ivory Tower.

A similar example arises from the theory of intersectionality, developed by Kimberle Crenshaw. She identified how different systems of oppression are interlinked in people's lives and how law often fails to recognize those intersections. For instance, in the area of employment discrimination, Crenshaw explained how black women may experience discrimination in ways that are similar to white women or black men, but sometimes "experience discrimination as Black women – not the sum of race and sex discrimination."[63] Yet discrimination law recognizes harms only on the basis of the mutually exclusive cate-

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SANTA CLARA L. REV. (1996).

[63] Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. L. FORUM 139, 149 (1989).

gories of race and sex, and cannot see intersectional harms.[64] This forces black women to choose between legal theories that do not represent the entirety of their experience.[65] Intersectionality has been a powerful theory that has expanded to multiple areas of law and spurred sophisticated, related offshoots. It destroys the notion of women as a monolithic group sharing similar experiences and leads to more nuanced analyses of interlocking systems and possible solutions.

Intersectionality theory can be quite illuminating for students. Here is an example. I was in court one day with a student and client waiting for our case to be called when we observed a landlord attempting to evict a woman for noise and police calls related to domestic violence that the woman was obviously suffering. The court ruled in the landlord's favor. Following that observation, the clinic organized a group of statewide domestic violence and housing advocates to draft, support, and work with legislators to pass legislation providing housing rights to tenants suffering from domestic violence.[66]

The theory of intersectionality helped the students unpack the interlocking forms of oppression that were putting domestic violence victims in the position of losing their homes, such as gender, class, race, ethnicity, and systems of property ownership. With these insights, the students were able to see that a one size fits all legal approach would not increase safety and housing security for all domestic violence victims. Instead, the State would better enhance the autonomy of victims by giving them a range of legal options that best suited their needs. After negotiations and compromise inherent in the legislative process, a law was passed that reflects this insight. For victims who want to stay in their homes, the law grants them a defense to a breach of lease case as well as the legal right to have their locks changed. For victims who want to leave the property, the law permits them to break a lease early with minimal penalties. This is a concrete example of how legal theory impacted law, which in turn, impacts lives.

These are only two examples of the many legal theories that have shaped my thinking about poverty, gender, race, and justice. In ways large and small, overt and subtle, I impart these theories to my students for their intellectual growth and for the benefit of our clients. Sometimes I ask students to read law review articles or excerpts, other times I may provide legal theory as a frame for my students without explaining its scholarly pedigree. The impact however, is the same. In each of these situations, a fellow scholar wrote something hoping to

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[64] *Id.* at 150.

[65] *Id.* at 152.

[66] MD. CODE ANN., REAL PROP. § 8-5A-02.

impact the world. As a clinician, I was able to help make that happen.

Given the wide range of subject matters that clinics practice (a nationwide survey of clinicians lists over thirty-eight different types of clinics, and there are many more that fall within the category of "other"),[67] there are innumerable avenues for doctrinal faculty to reach audiences that can carry their work into the wider world. There are clinics that practice in the areas of business, immigration, tax, health, bankruptcy, civil rights, employment, criminal law, international transactions, and so on. The more scholars in those fields include and connect with clinical faculty, the more impact their work will have. Yet it is not enough to invite clinical faculty to attend scholarly workshops. As any scholar knows, deep engagement with theory happens when authors read, ponder, and integrate the insights of other scholars into their own work. Thus, clinicians need to write themselves in order to serve as effective bridges between theory and practice.

All scholars write for readers. Many scholars are trying to assess their impact by tracking their Westlaw citations and SSRN downloads. Yet, it is hard to know if and how those readers are using their work. Is it as a footnote in an echo chamber of experts? Or is it an idea that ignites real change in the world? For scholars interested in the latter, it is essential that clinical faculty have the support and opportunities to engage in the scholarly project.

III. A World Without Clinical Scholarship

In defending the value of legal scholarship, Robin West and Danielle Citron have asked us to imagine a world without legal scholarship. As they posit, in such a world, law schools would be "arid, mechanistic and formalistic places."[68] The legal profession would "lose the critical commentary on law, and the theoretical understanding of its underpinning."[69] In short, "When we lose, or threaten, the scholarly mission, we lose the 'learning' at the legal profession's core and hence we sacrifice professionalism."[70] This Essay asks a related, but equally important question – imagine a world without *clinical* legal scholarship.

All the losses outlined by West and Citron would be magnified if academia lost the view from the trenches that clinicians provide. Within clinics, we would have teachers who have a message to share with the wider world, but no vehicle or time or resources to share

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[67] *CSALE 2016-17 Survey*, *supra* note 14, at 8–9.
[68] West & Citron, *supra* note 5, at 16.
[69] *Id.* at 16.
[70] *Id.* at 17.

them. We would have students who have technocratic skills, but less of a theoretical framework to employ them effectively. We might never surface important problems that need resolution by creative thinkers. Judges and lawmakers would be deprived of insights from experts. Our profession, indeed society, would lose important perspectives from lawyers dedicated to social justice. We would also miss opportunities to think about the constraints and opportunities of law. If the role of law schools is to inculcate justice, we need to include professors whose jobs are to deliver justice.

Today, the experiential learning requirement puts law schools at a crossroads. Law schools will either embrace experiential learning through a live-client model or rely largely on courses that simulate law practice. Schools will either grant clinicians and externship professors status and the means to produce scholarship or they will not. The value of legal scholarship should be part of this equation. If law schools truly care about legal scholarship, they will embrace clinicians and externship professors within the scholarly fold. Clinical scholarship is a powerful rejoinder to the recurring critiques of legal scholarship – it is deeply engaged with real-world problems, and it has demonstrable impacts.

Here is what the legal academy needs to do to fulfill both its scholarly and experiential education missions. Law schools should support and recognize diverse forms of scholarship. Judge Edwards helpfully defines scholarship as work that "advances knowledge, tests our thinking, encourages better decision making by public officials, leads to reforms that serve the public good, improves teaching, and enriches our understanding of history."[71] There are forms of scholarship in addition to books and law review articles that accomplish these goals. Clinical faculty must have security of position, along with the support to write scholarship. Clinicians need reasonable caseloads and student supervision loads, as well as case coverage over breaks. Like other faculty, they should have research stipends, library support, travel stipends, and research assistants. Clinicians must be integrated into the scholarly life of the law school through workshops and other colloquia. As schools move to meet the demands of the profession to increase experiential opportunities, schools can do it cheap or they can do it right. Clinical scholarship is part of doing it right.

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[71] Collins, *supra* note 35, at 651.