

IS SOCIAL JUSTICE STILL RELEVANT?

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Abstract: Social justice remains relevant in teaching clinical legal education. The clinical legal education model teaches the basics of lawyering not otherwise taught in law school: a practical understanding of the practice of law, how to deal with difficult legal ethics issues, professional skills, and the doctrines that matter. Clinical education also teaches a more personal lesson; it instructs law students to question the machinery of society, instills socially responsible values, and teaches students to address social inequities. These latter lessons all stem from the social justice mission of clinical legal education. While times may have changed since the movement's beginnings in the 1960s and '70s, and clinical professors have become further entrenched in academia, the social justice mission continues to drive student learning and instill values not otherwise taught in law schools. As clinics evolve to meet the future demands of law schools and students, they should not eschew their social justice roots, but rather expand the range of educational experiences while continuing to serve under-privileged clients through new and innovative clinics.

INTRODUCTION

From the beginning of clinical legal education, one central goal has been to engage law students in the pursuit of social justice through the provision of legal assistance to the poor and others who lacked access to legal services.¹ Clinical pedagogy is designed around four tenets. It teaches students to employ legal knowledge, theory, and skills to meet individual and social needs; exposes students to the ways in which the law (and lawyers) can both advance and subvert the achievement of social justice and public welfare; instills in students good professional values; and provides supervised opportunities for students—acting in the role of lawyers—to learn to exercise judgment in a professionally competent, ethical, and socially responsible manner.²

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¹ See Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *FORDHAM L. REV.* 1929, 1933–34 (2002).

² See Stephen Wizner, *Beyond Skills Training*, 7 *CLINICAL L. REV.* 327, 328 (2001).

Clinical education plays a significant role in exposing students to social and economic injustice. It accomplishes this by offering students well-taught and well-supervised opportunities to provide legal services to low-income and other underserved individuals, groups, and communities. Law students learn about their clients' social and economic circumstances first-hand, not simply through studying appellate court decisions, legislation, social policy, and statistics.³

Part I of this Article locates the origins of clinical legal education in the social justice movements of the 1960s and '70s. In Part II, I describe my own journey from being a poverty lawyer at a civil legal services organization to a clinical professor at Yale Law School. Part III outlines what I believe are some of the objectives of clinical legal education in light of its social justice origins. Finally, Part IV posits that social justice remains relevant in clinical legal education.

I. THE SOCIAL JUSTICE ROOTS OF CLINICAL LEGAL EDUCATION

Toward the end of the tumultuous decade of the 1960s and in the early years of the 1970s, social and political forces in America pushed open the doors of American law schools for the entry of clinical legal education.⁴ Students entering law schools at that time were exposed to—if not participants in—demonstrations, sit-ins, freedom rides, or other political actions protesting the Vietnam War and supporting the Civil Rights Movement, the War on Poverty, women's rights, the rights of people with disabilities, and other movements for social justice and change.⁵ Not only had they seen and been part of the social activism swirling around them, they had witnessed the participation of activist lawyers in struggles for social justice.⁶ This struggle occurred around the same time as the inauguration of both the War on Poverty and federally-funded legal services.⁷

³ See *id.* at 329; Wizner, *supra* note 1, at 1934.

⁴ See Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 12–13 (2000).

⁵ See Laura G. Holland, Essay, *Invading the Ivory Tower: The History of Clinical Education at Yale Law School*, 49 J. LEGAL EDUC. 504, 514 (1999); see, e.g., WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 92 (2007); Barry et al., *supra* note 4, at 12; Praveen Kosuri, "Impact" in 3D—Maximizing Impact Through Transactional Clinics, 18 CLINICAL L. REV. 1, 12 (2011).

⁶ See Holland, *supra* note 5, at 514; see, e.g., SULLIVAN ET AL., *supra* note 5, at 92; Barry et al., *supra* note 4, at 12; Kosuri, *supra* note 5, at 12.

⁷ See *History of Civil Legal Aid*, NAT'L LEGAL AID & DEFENDER ASS'N, http://www.nlada.org/About/About_HistoryCivil (last visited Feb. 22, 2012).

These students were critical of the education offered by their law schools.⁸ They believed that law schools supported and perpetuated an unjust status quo.⁹ They complained that the existing curriculum failed to prepare them to engage as lawyers with issues of social justice.¹⁰ Accordingly, the belief that legal education should be relevant to students' concerns about poverty, racism, and discrimination drove their demands for reform.¹¹

With the infusion of financial support from the Ford Foundation—spearheaded by a Foundation officer named William Pincus—law schools began to apply for and receive seed-money grants to support experiential learning initiatives taught by teacher-practitioners, wherein law students would learn to provide legal services to low income and other underrepresented clients.¹² Pincus, who happened to be a lawyer, openly criticized the existing legal system and law schools for operating under the false assumption that everyone in need of legal services could obtain them.¹³

Student demands for curricular reform, driven by the social activism of the times and the availability of financial incentives, opened the doors of legal academia to clinical education.¹⁴ The founders of the modern era of clinical legal education did not envision clinical education simply as a way to enrich legal education with practical experience and skills training.¹⁵ They were responding to the social ferment and legal rights movements of that period in the United States, and saw clinical education as a means to expose law students to the legal needs of the poor, minorities, and other vulnerable or legally underprivileged individuals, groups, and communities.¹⁶ They saw it as an opportunity to involve law students in the struggle for social justice in America, and to fulfill what they believed to be a public service obligation of law schools.¹⁷

⁸ See Barry et al., *supra* note 4, at 11–12.

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

¹² See Wizner, *supra* note 1, at 1933.

¹³ See *id.*

¹⁴ See Wizner, *supra* note 1, at 1933; Holland, *supra* note 5, at 514.

¹⁵ See John S. Bradway, *The Legally Underprivileged*, 10 CAL. W. L. REV. 228, 233–34 (1974).

¹⁶ See *id.* at 233–34, 238.

¹⁷ See Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 997–98 (2004).

During the infancy of the modern clinical legal education movement, Pincus identified the pursuit of social justice as a primary educational value.¹⁸ Clinical education, he believed, “can develop in the future lawyer a sensitivity to malfunctioning and injustice in the machinery of justice and other arrangements of society”¹⁹ Pincus asserted that law students need “to learn to recognize what is wrong with the society around [them]—particularly what is wrong with the machinery of justice in which [they are] participating and for which [they have] a special responsibility.”²⁰

II. BECOMING A CLINICAL PROFESSOR

I arrived in New Haven in the fall of 1970 to begin what would turn out to be my life’s work—law school clinical teaching. I had been a neighborhood legal services lawyer during the 1960s, a time when many of us in the business believed—*really* believed—that lawyers had the power, and therefore the obligation, to use the law to achieve social justice. What, then, could have led me to give up my comfortable sinecure in a vermin-infested, store-front legal services office on New York City’s (at that time) economically impoverished Lower East Side to risk the unknown lurking within the hallowed halls and ivy-covered walls of Yale Law School?

I had read Clarence Darrow’s autobiography and the example of his life as a crusader for justice on behalf of unpopular clients led me to apply to law school.²¹ Then, as a law student at the University of Chicago, I was inspired by Bobby Kennedy, who came to the law school to invite and challenge us to commit ourselves to the struggle for social justice and the alleviation of poverty in America.

My own legal education at the University of Chicago in the early 1960s had consisted of liberal doses of legal realism administered by the likes of Karl Llewellyn, coupled with volunteer work in a neighborhood office of the Chicago Legal Aid Society located in the basement of the law school (the forerunner of the school’s current clinical program, the excellent Mandel Legal Aid Clinic). The notion of learning

¹⁸ See William Pincus & Peter deL. Swords, *Educational Values in Clinical Experience for Law Students*, COUNCIL ON LEGAL EDUC. PROF. RESP. NEWSLS. (Council on Legal Educ. for Prof'l Responsibility, Inc., New York, N.Y.), Sept. 1969, at 3–4, *reprinted in* COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY: NEWSLETTERS 1969–1972, at 29, 31–32 (1980).

¹⁹ *Id.* at 31.

²⁰ *Id.* at 32.

²¹ See CLARENCE DARROW, *THE STORY OF MY LIFE* 66, 75 (1932).

to practice law under the tutelage of members of the law school faculty never even occurred to us. A few members of the faculty, however, did take on controversial cases. Professors Malcolm Sharp and Harry Kalven represented Lenny Bruce in the appeal of his obscenity conviction to the Illinois Supreme Court. Malcolm Sharp participated in the defense of the Rosenbergs. Karl Llewellyn offered a simulation course that he called "Legal Argument Workshop." But law students belonged only in the classroom and the library—not in a law office or in court.

So, in the spring of 1970, when I received a telephone call from Dan Freed, a former colleague in the Kennedy Justice Department who had gone on to teach at Yale Law School, I was not even tempted by his invitation to apply for a position as supervising attorney in a so-called "clinical program" that Yale was about to initiate. I had no idea what a clinical program was, and I certainly had no intention of abandoning my legal services clients and comrades to come to an elitist institution like Yale. Dan pretended to accept my sanctimonious response to his invitation, but asked whether I might be willing to take the train up to New Haven for a day just to consult with him and his colleagues and offer my thoughts and advice about how they should design the new program.

I was wholly unprepared for what awaited me when, a few weeks later, I arrived on the doorstep of the Yale Law School. Dan's "colleagues" turned out to be a dozen or so bright, enthusiastic, sophisticated law students—one of whom, a young man named Avi Soifer, later became Dean of Boston College Law School—who boldly confronted, grilled, and cross-examined me with questions, opinions, and ideas about the law and legal education. At first I was startled, then amused, and finally intensely engaged intellectually and emotionally with them in a discussion of their desire to use the law they were learning to pursue social justice and social change. I was moved by the idealism and passion of these outspoken students. What fun it would be, I thought, to practice law with students like these. I was hooked.

During my years as a legal services lawyer we did have law students helping out in our neighborhood offices—mostly as volunteers, a few for law school credit. Their role was to assist the lawyers by performing legal research and fact investigation. We did not consider ourselves to be their teachers, except to the extent necessary to assign and supervise their work. They were there solely to assist us in representing our cli-

ents, and their learning was a byproduct, not the purpose, of doing the work.²²

So, in the summer of 1970, the prospect of practicing law with law students—of including in students' legal education the experience of actually *doing* something with the law that might make a difference, contribute to positive social change, help to create and sustain a more just society, and serve to democratize the legal system—induced me to leave the Lower East Side for Yale and become a clinical professor. My biggest adjustment when I became a clinical professor was to change my relationship with students.²³ Rather than having students help me represent *my* clients, I had to learn to hand over responsibility for representation to them and to help them with *their* cases.

To fulfill that role, I had to become a teacher. I had to learn to teach students how to relate to clients and to handle their cases, to supervise them as they did so, and help them learn from that experience. As the students learned and became more competent, I soon realized that having a coterie of well-trained and well-supervised students enabled me, through them, to represent more clients and handle more cases than I ever had as a legal services lawyer and to take on complex litigation that I could not have handled efficiently on my own.

In my first couple of years as a supervising attorney, I often supervised or co-supervised as many as twenty-five students. I did not teach classes. I did not attend faculty meetings. I did not attend conferences. I did not sit on committees. I did not write articles. I spent my days accompanying students to courts, administrative agencies, prisons, mental hospitals, government offices, and other practice venues. I spent the rest of the time brainstorming with students about their cases, reviewing and editing pleadings, motions, legal correspondence, memoranda and briefs, mooting students to prepare them for court appearances, and preparing them for negotiations and trials.

While after decades of teaching I continue to do all of these things, I now supervise fewer students, represent fewer clients, handle

²² I do not mean by this description to undervalue the students' substantial contributions to our efforts. Nor do I want to give the impression that we did not like having those idealistic, socially committed law students working with us in our neighborhood offices. My point is simply that, while the students' involvement in our legal services work assisted us in our representation of clients, we did not consider teaching as our function or obligation.

²³ I have described elsewhere my becoming a clinical teacher and the adjustment it required. See Wizner & Aiken, *supra* note 17, at 1003–04; Stephen Wizner, *Walking the Clinical Tightrope: Between Teaching and Doing*, 4 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 259, 260–61 (2004).

fewer cases, and instead spend a good deal of the time that I used to devote to those activities on classroom teaching and other professorial activities. I spend a lot of my working hours doing things that I did not do when I was a legal services lawyer, or in my early years as a clinical professor.

Notwithstanding my evolution over the years from supervising attorney to clinical professor, I continue to see my teaching role as one that encourages and empowers law students to provide access to justice through legal services to underprivileged and underserved individuals and communities. In so doing, I hope to remain faithful to my own past as a legal services lawyer, to the historical roots of clinical legal education, and to what I believe to be the public service obligation of the law school.

III. THE OBJECTIVES OF CLINICAL LEGAL EDUCATION

The methodology of clinical legal education consists of professional skills training through the supervised provision of legal services to real clients; that, however, is not the goal. The educational goal is far more ambitious. Beyond skills training, clinical legal education leads law students out of the protected environment of law school classrooms into the real world of law so that they may gain a deeper understanding of how legal doctrines and legal theories actually work (or fail to work), learn about the actual functioning (and malfunctioning) of the legal system, and develop good professional values and an appreciation of the important roles that lawyers play in society.²⁴ An equally important goal is to expose students to social injustices in society and to the potential (and limits) of the law and lawyers in addressing those injustices.²⁵

Clinicians therefore have many responsibilities as both lawyers and teachers. These include: (1) offering students practical experience through the supervised representation of clients; (2) teaching the professional skills students need to provide competent legal representation; (3) teaching students substantive legal doctrine, procedural rules and practices, and legal theory as they relate to the representation of their clients; (4) assuring that students actually provide competent legal services to their clients; (5) teaching legal ethics and professional re-

²⁴ Wizner, *supra* note 1, at 1934.

²⁵ See Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 287 (2001); Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLINICAL L. REV. 1, 3-4 (1997); Jane Aiken & Stephen Wizner, *Law As Social Work*, 11 WASH. U. J.L. & POL'Y 63, 78 (2003).

sponsibility; (6) instilling in students good professional values and guiding them in their development of socially responsible professional identities; (7) exposing students to social injustices and inequalities in society and the role that lawyers can play in addressing them; (8) teaching students about the potential (and limits) of law and legal process in achieving social change; (9) discussing with students the relationship between social policy and advocacy, and between theory and practice; and (10) raising basic jurisprudential questions about the functions of law and the role of lawyers. Clinicians should accept all ten of these challenges, even when acknowledging the tensions that exist between meeting these educational goals and fulfilling professional obligations to clients.

While clinicians should focus their teaching on the supervised provision of legal services to low-income and other underrepresented clients, they must also recognize that there is more to clinical education than simply offering law students the opportunity to learn lawyering skills.²⁶ Clinicians must aspire to inculcate in their students an understanding of and concern for the circumstances of those who live in poverty or otherwise lack access to legal services and a feeling of professional responsibility for increasing their access to justice.

This conception of clinical legal education should inform all of our work as clinicians, from designing clinics, to client and case selection, to supervision and teaching. As clinicians, we must continually ask ourselves: What are we teaching? How are we teaching it? What knowledge are we instilling in our students? What social, political, and ethical values are we seeking to inculcate in our students? And how are we teaching our students to address needs in the broader community, particularly toward those who cannot afford to pay for legal services? Achieving all of these objectives is not easy. Nevertheless, when we take on the challenge and the responsibility of being clinical professors, we must be ambitious in the goals we set for our teaching and our students' learning.

IV. THE CONTINUING RELEVANCE OF SOCIAL JUSTICE IN CLINICAL LEGAL EDUCATION

This is the fifth decade of the modern era of clinical legal education—an era that has witnessed the widespread introduction of experiential service learning into American (and some foreign) law schools

²⁶ See Wizner, *supra* note 2, at 327–28.

and produced a new breed of practice-oriented law professors. This is an appropriate moment to pause and reflect on the continuing relevance of the social justice and service aspirations of the founders of this major reform in American legal education.

The modern clinical legal education movement is rooted in a social justice mission.²⁷ That mission envisions clinical legal education as having both a political and moral purpose.²⁸ The methodology of clinical legal education is to engage law students in supervised legal services work on behalf of low-income and other underrepresented clients, to teach students to recognize and reflect on the responsibility to democratize the legal system, and to pursue justice.²⁹

Even as clinical professors have developed new and innovative approaches to clinical education, a social justice mission continues to inform and drive the majority of clinical program design, teaching, and student learning. Nevertheless, in some transactional, environmental, legislative advocacy, and other clinics—particularly those that do not represent individual clients but rather partner with advocacy organizations or serve as legal counsel to institutions, groups, or communities—the work that students do may not necessarily be limited to serving only the interests of low-income or other vulnerable beneficiaries. Similarly, as clinicians gain acceptance as members of the legal academy and climb the academic status ladder from “supervising attorney” to “clinical professor,” they increasingly yield some of the time originally spent on direct supervision of students’ legal representation to classroom teaching, legal scholarship, serving on law faculty committees, attending conferences, and other “professorial” activities.³⁰

Notwithstanding programmatic innovations and the “professorialization” of clinicians, the pursuit of social justice can and should continue to be a central mission of clinical legal education. Law school clinics can maintain their focus on the provision of legal services to low income and other under-represented clients in all of their clinical work, whether it be direct individual client service, impact litigation, transactional lawyering, legislative advocacy, environmental defense practice, or any of the other increasingly varied legal activities in which contemporary law school clinics are engaged.

Clinical educators need not make the choice of *either* serving under-privileged clients *or* providing a wide range of educational experi-

²⁷ See Aiken, *Provocateurs for Justice*, *supra* note 25, at 287.

²⁸ See Wizner, *supra* note 1, at 1936.

²⁹ See *id.* at 1934–35.

³⁰ See Wizner, *supra* note 23, at 259.

ences for students. They can do both. For example, transactional clinics can and should focus their economic development and economic justice work on providing services to low income clients in assisting small businesses, non-profit community organizations. The Yale Community and Economic Development Clinic did exactly that by performing the necessary legal work to assist community development corporations in opening a supermarket in a low income neighborhood and creating a community development bank to serve the needs of the unbanked poor. Similarly, environmental clinics can serve as environmental justice advocates, helping communities with large, low income populations to fight pollution and other environmental problems.

Clinics need not, and should not, abandon their social justice roots, even as they develop new and innovative approaches to clinical education. Due to their institutional support and ability to provide legal services without charging fees, clinics have the opportunity to teach students the importance of providing needed legal services and the value of making the law work for everyone. Clinical instruction and practice can enable students to experience the human side of law practice when they serve real clients, directly or indirectly. When clinics focus their work on the provision of legal services to or on behalf of low income clients—people who have little or no access to the legal assistance they need—students can experience the professional and personal satisfaction of making a difference in their lives.

CONCLUSION

It may not be possible for law school clinics to recapture the passion for challenging injustice and the experience of participating in a struggle for social change that animated legal services and civil rights lawyers in the 1960s. The feeling of being part of the movement for social justice that inspired activist lawyers no longer seems to be present in public life. But those who have the privilege of being clinical professors can still strive to re-create some of that spirit through teaching and the experiential learning opportunities offered to our students.

Some years ago, my clinical colleagues and I proposed to our students that they draft a mission statement for our clinical program that would define and inspire our efforts. The students produced a statement of principles that they called a “manifesto.” It concluded with the following words:

At the heart of the education provided by our clinical faculty stand individual clients and the interests of disadvantaged people. Because of this focus, the clinic provides a unique con-

text in which to explore the nature of advocacy as a form of service to one's community. It is a place where we as students have been able to explore the basic questions of our common calling to the law.³¹

It is that lesson that clinic students should—and deserve to—learn. And it is for that reason that clinical legal education must remain connected to its social justice roots.

³¹ A Manifesto from the LSO Board (Fall 1991) (on file with the author).

