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## Teaching social justice in clinics

### Introduction

Clinical legal education in Australia has many connections with social justice. In this chapter, we explore the longstanding relationship between clinical programs and community legal centres and how it has influenced the teaching of various aspects of social justice goals in Australian clinical courses. We explain how situating clinical courses in community legal centres gives a particular context to teaching legal ethics and challenges concepts of value-neutral, objective lawyering, and how teaching lawyering skills in community legal centres highlights the legal skills required in a social justice setting. We look at how the community legal centre context focuses on ‘access to justice’ as one understanding of social justice, and at other connections between social justice and clinical legal education such as multidisciplinary practices, community engagement, working on law reform, community legal education and community development. We examine the implications of the growth in clinical externship courses in Australia for the connections to social justice issues; while the growth in externships has built on the strong tradition of social justice goals in clinical courses in Australia, it has also diversified clinical courses into areas not explicitly related to social justice. We point out that through classroom discussion and readings the relationship between the legal system and social justice can be explored even in externship courses that are not explicitly ‘justice-related’.

## The idea of ‘social justice’ in law

Although the term ‘social justice’ is widely used, it is usually undefined. It is a contested concept, meaning different things to different people. It may be that ‘[a]t the present time it is almost unthinkable to be against the idea of social justice’,<sup>1</sup> but that same idea was notoriously dismissed by Hayek as having ‘no meaning whatsoever’.<sup>2</sup> A generally accepted meaning of social justice is a state of fairness and equity,<sup>3</sup> and of ‘inclusion’ or even ‘justice in general’,<sup>4</sup> although ideas of what is fair will play out differently for different disciplines and in different circumstances. Buettner-Schmidt and Lobo’s research leads them to conclude that although there are ‘differences among and within the various disciplines about the uses of social justice ... the goal of obtaining social justice, that is, attaining fairness and equity, appeared to be similar in each discipline’.<sup>5</sup>

The term ‘social justice’ has a long history.<sup>6</sup> However, more recently, especially after Rawls’ seminal *A Theory of Justice*,<sup>7</sup> a general, contemporary idea of social justice usually entails the provision to all people of basic human needs including income, housing, education and health care; equal enjoyment of human rights including non-discrimination, freedom of expression and movement, the right to liberty and the right to live free from violence; and some redistribution of resources to maximise the position of the worst-off.

An idea of social justice along these lines is comfortably accepted in Australia as a legitimate progressive social policy position, contested by conservative commentators. This level of acceptance is quite different from the position in the United States, where social justice is often seen as code for socialism and as antithetical to classical liberal ideas of individual

1 Brendan Edgeworth, ‘From Plato to NATO: Law and Social Justice in Historical Context’ (2012) 35(2) *University of New South Wales Law Journal* 417.

2 FA Hayek, *The Mirage of Social Justice*, Vol 2 of *Law, Legislation and Liberty* (1976) University of Chicago Press, xii, 33, cited in Andrew Lister, ‘The “Mirage” of Social Justice: Hayek Against (and for) Rawls’ (2013) 25(3–4) *Critical Review* 409, 410.

3 See e.g. Belinda Carpenter and Matthew Ball, *Justice in Society* (2012) The Federation Press.

4 Brendan Edgeworth, cited at footnote 1.

5 K Buettner-Schmidt and ML Lobo, ‘Social justice: A concept analysis’ (2012) 68(4) *Journal of Advanced Nursing* 948, 953.

6 See Brendan Edgeworth, cited at footnote 1.

7 John Rawls, *A Theory of Justice* (1971) Harvard University Press.

liberty.<sup>8</sup> Even so, the idea of social justice is an accepted goal of many professional disciplines in the United States, such as nursing, public health, law and economics.<sup>9</sup>

In their multidisciplinary research on the issue, Buettner-Schmidt and Lobo found that in the discipline of law, the social justice emphasis is on ‘empowerment [of under-represented minority groups], a just ordering of society and [a process of] remedying of oppression’.<sup>10</sup> This is an apt description of the concerns of community legal centres in Australia, and suggests what some of the content of a clinical legal education course might be in a community legal centre environment.

In fact, in clinical legal education (and the legal education curriculum more generally) the idea of social justice is often narrowed to a specifically legal characterisation of ‘access to justice’.

## ‘Access to justice’

Access to justice is usually seen by lawyers as access to the legal system (the so-called ‘justice’ system). In this sense, the fair and effective operation of the legal system is itself ‘justice’<sup>11</sup>—‘[t]he purpose of court proceedings is to do justice according to law’<sup>12</sup>—and so access to justice is concerned with the extent to which people understand the law, are able to get legal advice and representation, and are able to make or defend a claim. More narrowly still, access to justice can be seen simply as ‘making it easier for people to solve disputes’.<sup>13</sup>

In contrast, in their daily practice, community legal centres focus on ‘access to justice’ as an aspect of social justice. Access to justice is multifaceted, and can be a measure of the extent to which ‘justice’ is done by law in a range of ways, such as punitive retribution, victim recognition, wealth redistribution, loss compensation and rights vindication. But law

8 See e.g. John Bowman, *Socialism in America* (2005) iUniverse, 116; Sovereignty Education and Defense Ministry, *Socialism: The New American Civil Religion* (2014) Google eBook, 207–12.

9 K Buettner-Schmidt and ML Lobo, cited at footnote 5, 950–52.

10 K Buettner-Schmidt and ML Lobo, cited at footnote 5, 952, 953.

11 See e.g. Elizabeth Ellis, *Principles and Practice of Australian Law* (2013) Thomson Reuters, 3rd ed, Chapter 5; Attorney-General’s Department, *Access to Justice Taskforce, A Strategic Framework for Access to Justice in the Federal Civil Justice System: A Guide for Future Action* (September 2009).

12 *Giannarelli v Wraith* [1988] HCA 52; (1988) 165 CLR 543, per Brennan J at 578.

13 Productivity Commission, *Access to Justice Arrangements*, Draft Report Overview (April 2004), 3.

can, of course, be used to advance social causes both progressive and conservative, and ‘access to justice’ can have a strong political dimension to it that, as we explain below, can be problematic in some clinics.<sup>14</sup>

More broadly, access to justice can have a meaning that is removed from a necessary connection with law: ‘access to justice is not just a matter of bringing cases to a font of official justice, but of enhancing the justice quality of the relations and transactions in which people are engaged’.<sup>15</sup> This takes the idea of justice away from an exclusively legal context, and addresses issues of justice in ‘primary institutional locations of [people’s] activity—home, neighborhood, workplace, business setting and so on’.<sup>16</sup>

As we note below when discussing social justice practice in clinics, ideas of social justice and access to justice tend to overlap or conflate. While some precision might be expected when designing learning outcomes of a clinical course (see Chapter 4), it is perhaps sufficient to say that clinical practice is an opportunity for students to analyse and reflect on the relationship between law and these various ideas of access to justice and social justice, and the part that lawyers play.

## Clinical legal education and social justice

Clinical legal education in Australia was imbued from the outset with an ethic of social justice,<sup>17</sup> as courses were established by law schools whose critical approach to legal education explored the intersections of law and social justice.<sup>18</sup> Early clinical teachers and academics in Australia shared a progressive vision of legal education, and saw:

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14 See e.g. Peter Joy, ‘Political Interference in Clinical Programs: Lessons from the U.S. Experience’ (2005) 8 *International Journal of Clinical Legal Education* 83; Peter Joy, ‘Government Interference with Law School Clinics and Access to Justice: When Is There a Legal Remedy?’ (2011) 61 *Case Western Reserve Law Review* 1087.

15 Marc Galanter, ‘Justice in Many Rooms’ in Mauro Cappelletti (ed), *Access to Justice and the Welfare State* (1981) Sijtoff, 147, 161.

16 Marc Galanter, cited at footnote 15, 161–62.

17 Frank Bloch and Mary Anne Noone, ‘Legal Aid Origins of Clinical Legal Education’ in Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (2011) Oxford University Press, 153.

18 See Jeff Giddings, *Promoting Justice through Clinical Legal Education* (2013) Justice Press, Chapters 6 (Monash) and 7 (UNSW) (cited hereafter as Giddings (2013)).

a social, political and moral agenda in ... teaching, an agenda that exposes students to the maldistribution of wealth, power and rights in society, and that seeks to inculcate in them a sense of their own ability and responsibility for using law to challenge injustice by assisting the poor and the powerless.<sup>19</sup>

Within this legal education environment the Australian clinical movement has, since the beginning, been closely linked to community legal centres.

The 1960s and 1970s were times of questioning social hierarchies in Australia, the United States, the United Kingdom and in Europe.<sup>20</sup> As Neal has observed, '[s]omething big happened to public consciousness about law and power in the 1970s. Somehow law got caught up in a broader social upheaval about equality and poverty and the scales that masked the power embedded in legal relations fell away'.<sup>21</sup> In the new law schools this was reflected in a critical approach to legal education in both the curriculum and extra curricula activities. The University of New South Wales (UNSW) Law School and its staff and students were associated with the Australian Legal Workers' Group, the Prisoners' Action Group and the Feminist Legal Action Group and, in its curriculum, UNSW offered courses in poverty law, social security and housing.<sup>22</sup> Its staff and students established and staffed Redfern Legal Centre.<sup>23</sup> Monash University was similarly exploring new ways of teaching law and was well connected to community legal centres in Victoria, particularly in the founding of Springvale Legal Service.<sup>24</sup> And '[t]he founders of the Legal Studies Department at La Trobe University wanted to focus on law as a social institution and to make the power associated with legal knowledge widely available not only to its students but also to a wider public'.<sup>25</sup>

19 Stephen Wizner, 'Beyond Skills Training' (2001) 7 *Clinical Law Review* 327, 331.

20 See, generally, e.g. Adam Jamrozik, Cathy Boland and Robert Urquhart, *Social Change and Cultural Transformation in Australia* (1995) Cambridge University Press.

21 David Neal, 'Law and Power – livin in the 70s' (2013) 29(2) *Law in Context* 99, 103.

22 Marion Dixon, *Thirty Up: The Story of the UNSW Law School 1971–2001* (2001) UNSW Faculty of Law.

23 David Nichols, *From the Roundabout to the Roundhouse – 25 years of Kingsford Legal Centre* (2006) UNSW Faculty of Law, 8.

24 Simon Smith, 'Clinical Legal Education: the Case of Springvale Legal Service' in David Neal (ed), *On Tap, Not on Top: Legal Centres in Australia 1972–1982* (1984) Legal Service Bulletin Cooperative, 49; see also Kerry Greenwood, *It Seemed Like a Good Idea at the Time: a history of Springvale Legal Service 1973–1994* (1994) Springvale Legal Service.

25 David Neal, cited at footnote 21, 104.

This early commitment to social justice among emerging law schools in the 1970s has persisted and ‘social justice’-designated projects, activities and positions exist at a number of law schools in Australia.<sup>26</sup>

## Clinical legal education and community legal centres

Just as clinical legal education in the United States had its origins ‘in the fight against poverty, injustice and under-representation of minority interests in the legal process’,<sup>27</sup> so clinics in Australia have always been in ‘a symbiotic relationship [with] legal aid agencies, in particular community legal centres ... with a deep commitment to access to justice’.<sup>28</sup> Founders of the clinical movement in Australia<sup>29</sup> had previously worked in and with community legal centres (independent, non-profit legal services),<sup>30</sup> and the first clinical programs were established as ‘live client clinics’ in a community legal centre setting. Monash University collaborated with Springvale Community Aid and Advice Bureau in 1973,<sup>31</sup> and then established the clinic in 1975. La Trobe University explored the use of paralegal students in client service from the mid-1970s and, in 1978, arising from the Henderson Commission of Poverty,<sup>32</sup> it funded

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26 For example, law reform and social justice activities at the ANU College of Law; the Social Justice Project at UNSW Law Faculty; the Social Justice Program at Sydney University Law School; the social justice major in the law degree at Macquarie Law School; the Law and Social Justice research grouping at the TC Beirne Law School at the University of Queensland; social justice elective courses at Notre Dame Law School; the *Journal of Law and Social Justice* (‘Public Space’) at the University of Technology, Sydney; the Social Justice/Public Interest Clinic at Newcastle University Law School.

27 J Cooper and LG Trubek, ‘Social Values from Law School to Practice: an Introductory Essay’ in Jeremy Cooper and Louise Trubek (eds), *Educating for Justice: Social Values and Legal Education* (1997) Ashgate, 1 at 5.

28 Giddings (2013), 323–24.

29 Giddings (2013), 324.

30 See Mary Anne Noone, ‘Community legal centres: Autonomous and alternative’ in Mary Anne Noone and Steven Tomsen, *Lawyers in Conflict: Australian Lawyers and Legal Aid* (2006) The Federation Press; see also National Association of Community Legal Centres Australia (NACLC): ‘Community Legal Centres (CLCs) are independently operating not-for-profit, community-based organisations that provide legal services to the public, focusing on the disadvantaged and people with special needs’, at [perma.cc/5UN3-HSQY](http://perma.cc/5UN3-HSQY).

31 Jeff Giddings, ‘Two Way Traffic: the Scope for Clinics to Facilitate Law School Community Engagement’ in Patrick Keyzer, Amy Kenworthy and Gail S Wilson (eds), *Community Engagement in Contemporary Legal Education: Pro bono, Clinical Legal Education and Service-Learning* (2009) Halstead Press, 40, citing Simon Smith, cited at footnote 24, 49; see also Kerry Greenwood, cited at footnote 24.

32 Australian Government Commission of Inquiry into Poverty, *Poverty in Australia: first main report* (April 1975) Australian Government Publishing Service.

a lecturer/solicitor position to establish West Heidelberg Community Legal Service as a clinic.<sup>33</sup> UNSW established its first clinic as a community legal centre, Kingsford Legal Centre, in 1981.<sup>34</sup>

Community legal centres 'are committed to striving for equitable access to the legal system and justice, and the equal protection of human rights'.<sup>35</sup> Three essential aspects of community legal centre work are the provision of legal advice and the conduct of casework for disadvantaged clients and communities, the provision of community legal education, and the promotion of law and policy reform. Community legal centres work in legal areas that affect disadvantaged people in the community,<sup>36</sup> and their advice and casework in civil law is mostly in the areas of tenancy, credit and debt, administrative law, social security, family law, and family/domestic violence, all areas of work that have an affinity with issues of social justice.<sup>37</sup>

The claim by community legal centres that they work for equitable access to the legal system and to improve social justice has not gone unchallenged. Rich has criticised community legal centres for being overly focused on individual casework and advice.<sup>38</sup> Rich argues that they should adopt a 'law and organising' model that seeks the transformation of clients' lives, rather than dealing with their individual legal problems, and she advocates the importance of law reform work that is linked to social justice. This critique is significant and has caused many to question the role of community legal centres.<sup>39</sup> Nevertheless, a recurring theme in our research into the operation of clinical programs in Australia has been the reference to 'social justice' as a touchstone or guiding principle

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33 David Neal, cited at footnote 21, 123.

34 Giddings (2013), Chapters 6 and 7.

35 See [www.naclc.org.au](http://www.naclc.org.au). Accessed 27 February 2014.

36 National Association of Community Legal Centres Australia (NACLC) *Annual Report 2012/13* (2013), 13, at [perma.cc/9W9H-76KL](http://perma.cc/9W9H-76KL).

37 Mary Anne Noone, 'The Activist Origins of Australian Community Legal Centres' (2001) 19 *Law in Context* 128; T Ellis, 'Human Rights and Social Justice: A frontline perspective from a Community Legal Centre' (1996) 3(4) *ELaw Journal*, at [perma.cc/DTE6-TJYM](http://perma.cc/DTE6-TJYM).

38 Nicole Rich, *Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs* (2009) Victoria Law Foundation Community Legal Centre Fellowship 2007–08 Final Report, Consumer Action Law Centre.

39 Peter Noble, 'The Future of Community Legal Centres' (2012) 37(1) *Alternative Law Journal* 22; Simon Rice, 'Are CLCs Finished?' (2012) 37(1) *Alternative Law Journal* 16; Paula O'Brien, 'Changing Public Interest Law: Overcoming the law's barriers to social change lawyering' (2011) 36(2) *Alternative Law Journal* 82.

for designing clinics,<sup>40</sup> establishing course learning outcomes,<sup>41</sup> selecting clinical supervisors,<sup>42</sup> selecting casework,<sup>43</sup> and student selection.<sup>44</sup> Engaging in law reform work to improve the law or legal system for disadvantaged communities is also a significant aspect of various law schools' clinical offerings.<sup>45</sup>

## Working with other professions

A significant beneficial legacy in Australia of co-locating clinics with community legal centres is the exposure clinic students get to the multidisciplinary practice that characterises many centres. Since the outset, community legal centres have recognised that clients rarely have only a legal problem, and that their legal problems commonly arise from other social issues, such as poverty and related problems of housing, unemployment, debt, literacy, health and domestic violence.<sup>46</sup> As a result, a 'legal' client actually needs support and intervention from a range of other professional services including social workers, counsellors,

40 *Identifying Current Practices in Clinical Legal Education, Regional Report: Victoria and Tasmania*, 11, at perma.cc/J562-X6GU.

41 *Identifying Current Practices in Clinical Legal Education, Regional Report: New South Wales and Australian Capital Territory*, 13, 15 (at perma.cc/FU7X-5TNN); *Identifying Current Practices in Clinical Legal Education, Regional Report: Queensland and Northern New South Wales*, 10, 13, 19 (at perma.cc/257Z-6EMR); *Identifying Current Practices in Clinical Legal Education, Regional Report: South Australia*, 17 (at perma.cc/3MPF-5U5A); *Identifying Current Practices in Clinical Legal Education, Regional Report: Victoria and Tasmania*, 16, 18 (at perma.cc/J562-X6GU).

42 *Identifying Current Practices in Clinical Legal Education, Regional Report: New South Wales and Australian Capital Territory*, 8, 24 (at perma.cc/FU7X-5TNN); *Identifying Current Practices in Clinical Legal Education, Regional Report: Queensland and Northern New South Wales*, 7 (at perma.cc/257Z-6EMR); *Identifying Current Practices in Clinical Legal Education, Regional Report: South Australia*, 7–8 (at perma.cc/3MPF-5U5A); *Identifying Current Practices in Clinical Legal Education, Regional Report: Victoria and Tasmania*, 19 (at perma.cc/J562-X6GU).

43 *Identifying Current Practices in Clinical Legal Education, Regional Report: New South Wales and Australian Capital Territory*, 29, at perma.cc/FU7X-5TNN.

44 *Identifying Current Practices in Clinical Legal Education, Regional Report: South Australia*, 23, at perma.cc/3MPF-5U5A.

45 *Identifying Current Practices in Clinical Legal Education, Regional Report: Victoria and Tasmania*, 10 (at perma.cc/J562-X6GU); *Identifying Current Practices in Clinical Legal Education, Regional Report: South Australia*, 10 (at perma.cc/3MPF-5U5A); *Identifying Current Practices in Clinical Legal Education, Regional Report: New South Wales and Australian Capital Territory*, 15 (at perma.cc/FU7X-5TNN); *Identifying Current Practices in Clinical Legal Education, Regional Report: Queensland and Northern New South Wales*, 13 (at perma.cc/257Z-6EMR).

46 Mary Anne Noone, 'Key Features of Integrated Legal Services: lessons from West Heidelberg Community Legal Service' (2012) 37(1) *Alternative Law Journal* 26.

and therapists.<sup>47</sup> These complementary services are sometimes available within and as part of a community legal centre or are available from co-located social services or by referral to other services.

The opportunity to work with professionals and students in those other disciplines characterises many of the community legal centres in which clinical courses are located.<sup>48</sup> The Southern Communities Advocacy Legal and Education Service (SCALES), for example, hosts the Murdoch University legal clinic, which focuses on refugee and immigration law and frequently works with social workers and torture and trauma counsellors.<sup>49</sup> The degree of multidisciplinary practice varies from agency to agency—at one end of the scale two professionals can address a client's needs cooperatively but, essentially, independently (commonly the case in community legal centres) while, at the other end, two professionals can address a client's needs in close collaboration, consciously working together in a joint enterprise to understand and meet the client's needs.

## Multidisciplinary clinics

A multidisciplinary practice creates the opportunity for a multidisciplinary clinic where students of different disciplines can share a clinical experience. For a period, the UNSW clinic at Kingsford Legal Centre operated a multidisciplinary clinic, employing a social work academic who supervised social work students on placement alongside law students, in a shared clinic experience.<sup>50</sup>

A substantial current example is the multidisciplinary clinic at the Monash-Oakleigh Legal Service, comprising supervisors and students from the Faculties of Law, Medicine, Business and Economics and Arts.<sup>51</sup> Hyams and Gertner wrote that '[b]y focusing on assisting low income clients/patients and meeting their needs in a fully coordinated manner,

47 Liz Curran, 'University law clinics and their value in undertaking client-centred law reform to provide a voice for their client's experiences' (2007) 12 *International Journal of Clinical Legal Education* 105.

48 See Ross Hyams and Fay Gertner, 'Multidisciplinary clinics – broadening the outlook of clinical learning' (2012) 17 *International Journal of Clinical Legal Education* 35.

49 See Anna Copeland, 'Clinical Legal Education within a Community Legal Centre Context' (2003) 10(3) *Murdoch University Electronic Journal of Law* 25; Giddings (2013), Chapter 9.

50 Giddings (2013), 226–27.

51 *Identifying Current Practices in Clinical Legal Education, Regional Report: Victoria and Tasmania*, 5, at [perma.cc/J562-X6GU](http://perma.cc/J562-X6GU).

academic staff and students involved in the practice would deliver “whole of person” services to the community on a permanent basis’.<sup>52</sup> The multidisciplinary clinic has concentrated on refining its cross-disciplinary supervision and student debriefing protocols to ensure that the objective of a ‘whole of person’ service is not dissipated by competing priorities among supervisors or student despair that can accompany their recognition of the enormity of a ‘whole person’ life in disarray. When handled correctly, these experiences make not just law but also medical, social work and finance students acutely aware of the justice dimensions of their professionalism.

A multidisciplinary clinic offers students a powerful counter to conventional legal education, which both explicitly and unconsciously promotes Lopez’s idea of ‘regnant lawyering’—a form of lawyering that assumes the centrality of the lawyer to the process rather than placing the client’s vision and needs at the centre.<sup>53</sup> One of the key learnings that law students take away from working with another discipline is that an issue can be addressed in many ways, not only through law, and that other ways of dealing with problems may be more effective than a purely legal approach.

In a multidisciplinary clinic, students receive a strong message that teamwork is key to effective work. Law students commonly work with social work or other professionals to help the client resolve their issues, working not in an isolated and individual way, but collaborating in a team. This shows students another way to practise law, in stark contrast to the conventional model of legal practice, which focuses on an individual lawyer representing an individual client.

Differing professional rules and ethical understandings among professional disciplines also provide rich ground for law students to discuss the role of lawyers. A multidisciplinary clinic enables students to see that, unlike lawyers’ professional conduct rules, the conduct rules of other disciplines recognise social justice as an explicit ethical responsibility.<sup>54</sup>

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52 Ross Hyams and Fay Gertner, cited at footnote 48, 35.

53 Gerard Lopez, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice* (1992) Westview Press, 24.

54 Australian Association of Social Workers, *Code of Ethics*, 1.1 Commitment and aims; and see Margaret Castles ‘Possibilities for Multidisciplinary Collaboration in Clinical Practice: Practical Ethical Implications for Lawyers and Clients’ (2008) 34(1) *Monash University Law Review* 116.

The opportunity for law students to collaborate with a range of skilled professionals reinforces the message that a client is a ‘whole person’, not a combination of problems, and that law is not the only means through which to address clients’ issues. Multidisciplinary approaches are inherently related to social justice purposes as they challenge each discipline’s view of its own centrality in resolving issues, and encourage students to think broadly about their role as future lawyers.

## Growth in clinical externship courses

As we discussed in Chapters 1 and 3, externships are an area of growth in clinical legal education. Our *Best Practices* research project found that of all the universities in Australia who have clinical legal education courses, over half of those courses are externships.<sup>55</sup> Many externship placement sites are community legal centres, maintaining the historical relationship with clinical legal education.<sup>56</sup>

Externships have also grown through partnerships with a wide range of public legal agencies other than community legal centres.<sup>57</sup> Different course aims and learning outcomes have taken many of these externships away from a social justice orientation, and place students with agencies that provide clinical legal experience but do not engage in social justice-oriented activity. Even so, any externship placement course can aim to give students the opportunity to critically examine law and lawyers from a social justice perspective, in a concurrent classroom component supported by readings and discussion, and in reflective practice.

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55 See Chapter 3 of this book.

56 *Identifying Current Practices in Clinical Legal Education, Regional Report: Queensland and Northern New South Wales*, 5, 6 (at [perma.cc/257Z-6EMR](https://perma.cc/257Z-6EMR)); *Identifying Current Practices in Clinical Legal Education, Regional Report: Western Australia and Northern Territory*, 5 (at [perma.cc/4EDN-5SZG](https://perma.cc/4EDN-5SZG)).

57 *Identifying Current Practices in Clinical Legal Education*, Regional Reports for Victoria and Tasmania, New South Wales and Australian Capital Territory, Queensland and Northern New South Wales, Western Australia and Northern Territory, and South Australia, cited in Chapter 1 at footnote 6.

## International externships

Working internationally, for example, through clinical externships with non-government organisations (NGOs), offers students an opportunity to engage in a wider range of social justice issues than might be available to them domestically, and to experience diverse ways of working with community and within the law.

International opportunities can be complicated by issues of interruption to studies, insurance, risk, expense and, related to expense, equity of student access. Although students can and do travel overseas for a clinical externship in another country,<sup>58</sup> communications technology such as email, voice-over-internet protocol (VOIP) and internet video services mean that an NGO in another country can conduct remote supervision of clinical students who remain ‘at home’ while working on research and writing projects for the externship.<sup>59</sup> Clinical courses that have ‘placed’ students as clinical interns in this way have been offered at ANU<sup>60</sup> and QUT,<sup>61</sup> working with NGOs in Vietnam, Thailand, Laos and Swaziland.<sup>62</sup>

## The practice of social justice in clinics

Clinics commonly have ‘access to justice’ course aims and related learning outcomes. At the same time, community legal centres, where many clinical courses operate, have a broad social justice mission. But, as discussed above, the idea of social justice lacks precision. Its place in law, or as a goal of the operation and practice of law, is further complicated by a legal focus on ‘access to justice’, a term that itself has various meanings.

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58 For example, the Hong Kong Refugee Law Clinic, UNSW, where students are trained before leaving Australia and then interview and represent asylum seekers in Hong Kong in applications to the United Nations High Commission for Refugees.

59 *Identifying Current Practices in Clinical Legal Education*, Regional Reports for Queensland and Northern New South Wales (QUT), New South Wales and Australian Capital Territory (UNSW and ANU), and Victoria and Tasmania (La Trobe), cited in Chapter 1 at footnote 6.

60 *Identifying Current Practices in Clinical Legal Education*, *Regional Report: New South Wales and Australian Capital Territory*, 6, at [perma.cc/FU7X-5TNV](http://perma.cc/FU7X-5TNV).

61 *Identifying Current Practices in Clinical Legal Education*, *Regional Report: Queensland and Northern New South Wales*, 5, at [perma.cc/257Z-6EMR](http://perma.cc/257Z-6EMR).

62 See Bruce Lasky, Simon Rice, Tina Cockburn, Wendy Morrish, ‘The use of virtual law programs to support access to justice education’ (2011) Presentation to the 6th Conference of the Global Alliance for Justice Education, Valencia, at [www.gaje.org/conferences/6th-worldwide-conference](http://www.gaje.org/conferences/6th-worldwide-conference). Accessed 4 February 2017.

In both clinics and community legal centres, concrete aspects of social justice and access to justice are often not directly addressed and these concepts tend to overlap or conflate.

As we discuss in the following sections, a community legal centre environment enables analysis of and reflection on justice issues in a wide variety of ways. Clinical courses often focus on specific areas of law and legal practice, on skills development, and on ways of working professionally, such as in a multidisciplinary clinic. Giddings points out that '[c]linics have pursued social justice objectives by working well beyond the traditional service delivery model of advice and representation for individual clients',<sup>63</sup> and in the following section we canvass some of the different ways that clinics can pursue social justice goals.

## Skills development

Clinical legal education is clearly an effective means of teaching lawyering skills.<sup>64</sup> The question in a clinical course is not whether to teach skills or something else, but whether to teach something more about skills and examine what a lawyer can do with those skills.<sup>65</sup> One thing a lawyer can aspire to do with their legal skills is pursue social justice; there is a nexus between legal skills and social justice, such that 'the skills development and social justice dimensions of clinical legal education [share] a strong unifying justification'.<sup>66</sup>

Skills are not value-neutral. Reference is commonly made to teaching 'just skills', which suggests that skills are taught in a vacuum. An entire account of 'best practices for legal education', for example, characterises the teaching of skills as merely an exercise in professional competence, with no critical component.<sup>67</sup> Teaching 'just skills' ignores the potential

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63 Giddings (2013), 63.

64 See e.g. William M Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond and Lee S Shulman, *Educating Lawyers: Preparation for the Profession of Law* (2007) Jossey-Bass.

65 See e.g. Amy Ruth Tobol, 'Integrating Social Justice Values into the Teaching of Legal Research and Writing: Reflections from the Field' in Jeremy Cooper and Louise Trubek (eds), cited at footnote 27, 88.

66 Giddings (2013), 62, citing Frank Bloch and MRK Prasad, 'Institutionalising a Social Justice Mission for Clinical Legal Education: Cross-National Currents from India and the United States' (2006) 13 *Clinical Law Review* 165, 171.

67 Roy Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map* (2007) Clinical Legal Education Association.

to explore the implications of a lawyer's use (or not) of a legal skill in a particular circumstance, and fails to appreciate that the way a skill is used reflects the lawyer's own values (perhaps unconsciously) about the client and the legal matter.

In teaching interviewing skills, for example, clinical legal educators will often emphasise a client-centred approach. The importance of listening to the client and treating them as a person, not just as a legal problem, is stressed, reflecting social justice values such as people's dignity and right to equality. Teaching interviewing skills will also frequently focus on developing students' awareness of their preconceptions about clients, leading easily into a discussion about stereotypical views the student may have,<sup>68</sup> and 'the effects of race, class and ... gender on the interaction between lawyer and client'.<sup>69</sup>

At its most complex and analytical, skills teaching can be seen as truly complementary to a clinic's social justice mission, enabling students to 'suspend judgment, to communicate and listen across differences and to explore solutions creatively'.<sup>70</sup>

Although critical perspectives on lawyering—for example, on exercising power, mediating law's differential impact, and promoting reform—are available for any area of law, a critical perspective is more likely to be taken in a clinic involved in work that is explicitly concerned with exactly those aspects of lawyering. Conversely, critical perspectives may be less likely to arise in a clinic whose work implicitly accepts and relies on the established relations of law and power in society.

## Class content and readings

The classroom component of a clinical course complements the teaching and learning occurring in the clinic's legal practice (see Chapter 4), and frequently focuses on legal theory and concepts of justice, on skills

68 See e.g. Paul R Tremblay, 'Interviewing and Counseling across Cultures: Heuristics and Biases' (2002–03) 9 *Clinical Law Review* 373.

69 Michelle Jacobs, 'People from the footnotes: The missing element in client-centered counselling' (1997) 27 *Golden Gate University Law Review* 345, 346.

70 Antoinette Sedillo Lopez, 'Learning through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training' (2000–01) 7 *Clinical Law Review* 307, 322; and see Susan Bryant, 'The Five Habits: Building Cross-Culture Competence in Lawyers' (2001–02) 8 *Clinical Law Review* 33.

development and on areas of law relevant to community lawyering such as the legal aid system, housing law, employment law, debt and family law. Practice skills such as working with cultural competency, interviewing, negotiation, advocacy, and doing effective law reform work are taught in ways that specifically relate to disadvantaged client groups, emphasising the centrality of the client. Teaching plain English drafting, for example, both improves conventional lawyer communication, and addresses one of the demands of ‘access to justice as access to law’ discussed above.

## Legal ethics

A clinic in a social justice setting, such as a community legal centre, offers a rich opportunity for the study of legal ethics, professional responsibility and models of lawyering. For many years, for example, the La Trobe University legal ethics course offered this opportunity through its external, live client clinical course in successive partnerships with a Victoria Legal Aid office and West Heidelberg Community Legal Service.<sup>71</sup> In these clinics, La Trobe students interviewed, advised, and represented clients using clinical tools of supervision and reflection that ‘[encourage] students to critically analyse the law of lawyering including the various codes of practice and their rationales within a framework of access to justice issues, a client centred approach and a recognition of the public role of a legal practitioner’.<sup>72</sup> To the same end, UNSW incorporates a clinical component within the mandatory ethics course, enabling all law degree students to interview clients and then reflect on the role of lawyers and the capacity of law as a vehicle to achieve justice.<sup>73</sup>

Clinics provide the opportunity for students to reflect on the standard conception of a lawyer as a value-neutral, partisan and adversarial advocate for their client, and to actively consider other ethical approaches

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71 Mary Anne Noone, Judith Dickson and Liz Curran, ‘Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice’ (2005) 8 *International Journal of Clinical Legal Education* 104; Kingsford Legal Centre, *Guide to clinical legal education courses in Australian universities, 2011–2012*, UNSW Faculty of Law; Judith Dickson, ‘25 Years of Clinical Legal Education at La Trobe University’ (2004) 29(1) *Alternative Law Journal* 41; Liz Curran, ‘Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change’ (2004) 5 *International Journal of Clinical Legal Education* 162.

72 Mary Anne Noone, Judith Dickson and Liz Curran, cited at footnote 71.

73 Anna Cody, ‘What does legal ethics teaching gain, if anything, from including a clinical component?’ (2015) 22(1) *International Journal of Clinical Legal Education* 1.

to lawyering, such as responsible lawyering, moral activist lawyering, and an ethic of care.<sup>74</sup> Clinic cases in social justice settings such as community legal centres are an excellent vehicle for alternative perspectives such as these, enabling students to explore their values and to ask themselves broader ethical questions about their part, as lawyers, in improving access to justice and working to achieve social equality. Curran, Dickson and Noone, for example, describe their use in a clinic of ethical lawyering paradigms, drawing on the work of Parker and Evans to encourage students to reflect on the different approaches that a lawyer can take in lawyer–client relations: the zealous advocate (for one of the parties), the responsible lawyer (for a just outcome within the legal system), the moral activist (for a morally just outcome) and an ethic of care (for the parties’ wellbeing).<sup>75</sup> Analysing ethical frameworks enables students to understand moral activist lawyering, or ‘cause lawyering’,<sup>76</sup> and how it contributes to law’s pursuit of social justice goals.<sup>77</sup>

In these social justice settings, a clinic invites students to see that lawyers have agency. That is, the students have opportunity and responsibility, in contrast to the implicit lesson of conventional legal education that can encourage students:

to think like lawyers by adopting an emotionally remote, morally neutral approach to human problems and social issues, distancing themselves from the sentiments and suffering of others, avoiding emotional engagement with clients and their causes, and withholding moral judgment.<sup>78</sup>

Ethical discussions in a clinic setting can illustrate to students that lawyers, rather than being mere instruments of neutral positivist law, have choices about the clients they serve, the cases they take, the positions they adopt and about how they relate to clients, communities and causes.

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74 Christine Parker and Adrian Evans, *Inside Lawyers’ Ethics* (2014) Cambridge University Press, 2nd ed, Chapter 2.

75 Christine Parker and Adrian Evans, cited at footnote 74, Chapters 2 and 11.

76 See e.g. Margareth Etienne, ‘The Ethics of Cause Lawyering: An Empirical Examination of Criminal Defense Lawyers as Cause Lawyers’ (2005) 95(4) *Journal of Criminal Law and Criminology* 1195; Deborah J Cantrell, ‘Sensational Reports: The Ethical Duty of Cause Lawyers to be Competent in Public Advocacy’ (2007) 30 *Hamline Law Review* 567.

77 Christine Parker and Adrian Evans, cited at footnote 74, Chapter 2.

78 Jane Aiken, ‘The Clinical Mission of Justice Readiness’ (2012) *Boston College Journal of Law and Social Justice* 231.

Clinical legal education encourages students to reflect critically on both the influence on their work of stereotypical assumptions about clients and on their personal reactions to their clients. These views can influence how they perform their legal work and the decisions they make about actions to take in a legal case. For example, a student might assume when working with a client with an intellectual disability who wants to make a power of attorney, that they do not have the capacity to execute this type of legal document. Challenging this assumption provides an opportunity to explore concepts of disability, legal capacity, and the role of the lawyer. Models of client empowerment, and the assumption of ‘inability’ when working with clients with disability,<sup>79</sup> can be discussed immediately with students. This experience is an opportunity for students to reflect on client-centredness in legal practice.

Part of a supervisor’s role in helping students to envisage themselves as lawyers is to model types of lawyering. One such model is ‘community lawyering’. Cody says that ‘[c]ommunity lawyering seeks to improve the daily lives of community members’, and is defined as ‘lawyering for both individuals and communities, aware of how power may influence the relationships between lawyer and client and responsive to the needs of communities’.<sup>80</sup> Community lawyering often involves a partnership between lawyers and communities to achieve structural or real change in their lives; it may involve, but goes beyond, individual claims.<sup>81</sup> Modelling community lawyering in clinics provides career options to students.

The continuing connections between many clinics and community legal centres mitigates to an extent the ‘waning of student commitment to the public interest’<sup>82</sup> and students’ cynicism about practising law for justice.<sup>83</sup>

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79 On the assumption of ‘inability’, see Bruce Arnold, Patricia Easteal, Simon Easteal and Simon Rice, ‘It just doesn’t ADD Up: ADHD/ADD, the Workplace and Discrimination’ (2010) 34(2) *Melbourne University Law Review* 359.

80 Anna Cody, ‘Clinical programs in community legal centres, the Australian approach’ (2011) 4 *Education and Law Review* 4; and see Nicole Rich, cited at footnote 38; Karen Tokarz, Nancy Cook, Susan Brooks and Brenda Bratton Blum, ‘Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education’ (2008) 28 *Washington University Journal of Law and Policy* 359.

81 Muneer Ahmad, ‘Interpreting Communities: Lawyering Across Language Difference’ (2007) 54 *UCLA Law Review* 999.

82 Adrienne Stone, ‘Women, Law School and Student Commitment to the Public Interest’ in Jeremy Cooper and Louise Trubek (eds), cited at footnote 27, 60.

83 Kim Economides, ‘Cynical Legal Studies’ in Jeremy Cooper and Louise Trubek (eds), cited at footnote 27, 26 at 29.

A clinical legal education experience helps counter any tendency that law students may have to be uninterested and ‘ignorant about critical idealism and wider social perspectives’.<sup>84</sup>

The modelling of approaches to lawyering by supervisors raises the issue of a clinic’s own ethical approach to teaching, and the opportunity to practise transformative ethics.<sup>85</sup> Transformative ethics promote:

perspective transformation ... the process of becoming critically aware of how and why our assumptions have come to constrain the way we perceive, understand and feel about our world; changing these structures of habitual expectation to make possible a more inclusive, discriminating, and integrating perspective; and finally, making choices or otherwise acting upon these new understandings.<sup>86</sup>

If students’ assumptions and judgments are to be challenged, then it is essential for a clinic to adopt an explicit ethic of perspective transformation. An effective clinic challenges students’ willingness to apply legal rules to neatly stated problems, dispassionately and without regard to personal values. Engaging in perspective transformation through systematic reflection enables students to make constructive use of the opportunity that a clinic gives them to question their ways of looking at the world and to open themselves to alternatives.

As with any legal practice, a clinic operates within the formal, prescribed framework of professional ethics, and therefore presents regular opportunities to consider the apparently strict and clear ethical duties set out in legal profession practice rules.<sup>87</sup> A pedagogical advantage

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84 Kim Economides, cited at footnote 83, 26; see also T Walsh, ‘Putting Justice Back into Legal Education’ (2007) 17(1) *Legal Education Review* 119, and the growing literature on engaging students’ interest in the context of concerns about student mental health and wellbeing—e.g. Massimiliano Tani and Prue Vines, ‘Law Students’ Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?’ (2009) 19 *Legal Education Review* 3; Molly O’Brien, Stephen Tang and Kath Hall, ‘No time to lose: Negative impact on law student wellbeing may begin in year one’ (2011) 2(12) *International Journal of the First Year in Higher Education* 49; Molly O’Brien, ‘Connecting Law Student Wellbeing to Social Justice, Problem-Solving and Human Emotions’ (2014) 14(1) *QUT Law Review* 52.

85 Kevin Kerrigan, “‘How do you feel about this client?’ – A commentary on the clinical model as a vehicle for teaching ethics to law students’ (2007) 11 *International Journal of Clinical Legal Education* 7.

86 Jack Mezriow; *Transformative Dimensions of Adult Learning* (1991) Wiley, 167, quoted in Kevin Kerrigan, cited at footnote 85.

87 See e.g. Law Council of Australia, *Australian Solicitors Conduct Rules 2011*.

that a clinic has over the classroom in teaching ethics is that the ethical issues are neither abstract nor clear cut: they relate to a real client, giving them authenticity, immediacy, complexity and variability. A pedagogical advantage that a clinic has over legal practice in teaching ethics is that the spontaneous ethical issue—or the unnoticed one—is more easily identified and managed in a safe and supportive environment, in discussion with peers and supervisors.<sup>88</sup>

Of the prescribed ethics rules of legal practice, those concerning confidentiality and conflict of interest often arise in a clinic. Difficult issues concerning client confidentiality, for example, frequently arise in a community legal centre or legal aid practice where a lawyer may be told of possible harm to a child.<sup>89</sup> In a case where a client describes a violent family relationship, possibly exposing children to seeing and hearing violence, students and their supervisors must consider the limits of the duty of confidentiality and the possible harm that might follow when they respect that duty.<sup>90</sup> This responsibility can be discussed alongside models of client empowerment in domestic violence,<sup>91</sup> incorporating feminist perspectives of social change and, in the process, encouraging students to more confidently explore the permissive exceptions to confidentiality that apply in most conduct rules.<sup>92</sup> This process not only challenges students to gain a deeper understanding of the gendered nature of domestic violence, but also encourages them to critique ethical and legal duties from feminist perspectives. The social justice dimension of this arises when, for example, students explore how law commonly reflects the values of dominant groups and may or may not incorporate women's needs. Students can

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88 Mary Anne Noone, Judith Dickson and Liz Curran, cited at footnote 71; Anna Cody, cited at footnote 73.

89 Rule 9.2.4 *Australian Solicitors Conduct Rules 2011* states that 'the solicitor [may] disclose the information for the sole purpose of avoiding the probable commission of a serious criminal offence'. In *Attorney-General (NT) v Kearney* (1985) 158 CLR 500, the High Court of Australia held, more widely than cases of crime and fraud, that 'anything that might be described as a fraud on justice' would not fall under legal professional privilege.

90 Rule 9.2.5 *Australian Solicitors Conduct Rules 2011* allows a lawyer to breach client confidentiality 'for the purpose of preventing imminent serious physical harm to the client or to another person'.

91 H Douglas and R Fitzgerald, 'Legal Processes and Gendered Violence: Cross-applications for Domestic Violence Protection Orders' (2013) 36(1) *University of New South Wales Law Journal* 56–87; H Douglas, 'Battered Women's Experiences of the Criminal Justice System: Decentring the Law' (2012) 20(2) *Feminist Legal Studies* 121–34.

92 See e.g. Rule 9 *Australian Solicitors Conduct Rules 2011*.

see that law and perceptions of ‘justice’ are not synonymous; they are encouraged to recognise that law is value laden and that it frequently reflects the needs and values of the powerful in the community.<sup>93</sup>

## Justice issues in individual client clinics

When a clinic operates in a community legal centre setting, it is in the nature of the work that issues of access to justice arise daily, with almost every client who comes in the door. As a result, clinics offer students a powerful opportunity to analyse the ‘justice’ dimensions of law, ranging from the relationship between law and the perceived justice of its effect, to a lawyer’s ethical obligations to achieve what a client wants as a ‘just’ result, to systemic questions about access to law and legal services. These are especially rich opportunities for reflective practice (see Chapter 7).

Students who work with poor and disadvantaged clients learn some of the issues these people face. As well as seeing individual problems, students can begin to see that a person’s legal problem may be a product of external factors, such as poverty.<sup>94</sup> Students are frequently taught to solve complex problems, as the issues that clients present are multilayered and are rarely solely ‘legal’, as we discussed in relation to multidisciplinary clinics above.

Questions of the relationship between law and justice arise, for example, in public housing cases where the housing department, the community and various residents will each have their own—and often very different—idea of what a ‘just’ outcome will be. As well as reflecting on these differences, students can consider the role of the lawyer and related ethical issues, such as reconciling their own values with what their client wants as a ‘just’ result. For example, a client who is unhappy with the loud use of television by a public housing neighbour may want their neighbour to be evicted or transferred. Giving advice to the client will involve explaining the law and its limitations for dealing with neighbour disputes in public housing

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93 H Douglas and R Fitzgerald, cited at footnote 91; Zoe Rathus, ‘Shifting Language and Meaning Between Social Science and the Law: Defining Family Violence’ (2013) 3(1) *University of New South Wales Law Journal* 359; H Douglas, cited at footnote 91; J Stubbs, ‘Relations of Domination and Subordination: Challenges for Restorative Justice in Responding to Domestic Violence’ (2010) 16(2) *University of New South Wales Law Journal* 970–86; J Stubbs, ‘Gendered violence and restorative justice’ in A Heydon, L Gelsthorpe, V Kingi and A Morris (eds), *A Restorative Approach to Family Violence: Changing Tack* (2014) Ashgate.

94 Juliet Brodie, ‘Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighbourhood-Based Community Lawyering Clinics’ (2009) 15 *Clinical Law Review* 333.

estates. Debriefing with a student afterwards would involve a discussion of the role of public housing, how it is organised and its scarcity, the number of people living with mental illness and psychiatric disability in public housing, and the justice of a remedy that sees the eviction of a mentally ill public housing tenant. Different understandings of justice and social justice are inherent in ethical paradigms of lawyering raised by the scenario, discussed above.

The role of a clinic as a service provider will itself raise systemic questions about access to justice, for example, about available alternative services (private, public, legal and non-legal), about accessibility (geography, physical, cultural, language, etc) and about public policy (state funding, professional oversight, etc). Within the work of a clinic based in a community legal centre or legal aid organisation, questions of access to justice attach to almost every client, inviting students to reflect on, for example, why the legal needs of a client and a community are not being met, or how they can be better met.

## Justice issues in dispute resolution clinical courses

Particular clinical courses can examine more explicitly ‘how’ the legal system resolves disputes. Concepts of justice are, for example, explored in clinical dispute resolution courses where the practice of mediation or forms of dispute resolution other than litigation offer a means of critiquing courts as a legal dispute resolution mechanism. These clinical courses enable students to question adversarial approaches to dispute resolution that are reinforced in their legal studies through a case method of teaching. Macquarie University, for example, involves students in family dispute resolution mediation in a clinical course it runs with Macquarie Legal Centre.<sup>95</sup> Clinical courses at Griffith University involve a partnership with the Department of Justice that provides students with opportunities to complete a placement with Queensland’s major mediation service provider. Complemented by a focused classroom component (see Chapter 4), a clinical placement such as this enables

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95 Anna Cody and Frances Gibson, ‘Dispute Resolution and Experiential Learning’ in Michael Legg, *The Future of Dispute Resolution* (2013) LexisNexis, Chapter 25; and see *Identifying Current Practices in Clinical Legal Education, Regional Report: New South Wales and Australian Capital Territory*, 6, at [perma.cc/FU7X-5TNV](http://perma.cc/FU7X-5TNV).

exploration of ways in which power is used within negotiation and mediation.<sup>96</sup> At the same time, the students' observation of the different role of a mediator is an opportunity for the perspective transformation we discussed above. The mediation process offers a critical perspective on both the conventional ethical paradigm of adversarial lawyering and the 'just' operation of law and legal processes.

## Justice issues in community engagement clinics

Clinical courses that do not have individuals as clients present students with a different approach to issues of lawyers, law and social justice. Different forms of community engagement enable students to see the systemic problems, legal and non-legal, in a community, and encourage them to analyse systemic issues as well as address the needs of a client.<sup>97</sup> Such clinics focus on community legal education, community development and law reform, each of which is discussed below.

It has been argued that a one-to-one individual client experience is essential for a student to have a 'transformative'<sup>98</sup> experience, to encounter that 'disorienting moment'<sup>99</sup> that can, with supervision and good reflective practice, fundamentally shift a student's perception of the law and legal system. There is, however, no empirical research that compares approaches in a controlled manner, and no way currently to prove or disprove this assertion. Whatever the merits of seeking the disorienting moment, community engagement offers something else to students: they work at a systemic level, focusing on larger issues that affect an individual and working for a different type of legal response. This is as valid and

96 *Identifying Current Practices in Clinical Legal Education, Regional Report: Queensland and Northern New South Wales*, 5, at perma.cc/257Z-6EMR.

97 *Identifying Current Practices in Clinical Legal Education, Regional Report: Queensland and Northern New South Wales*, 5 (Street Law clinic at Griffith University), at perma.cc/257Z-6EMR; *Identifying Current Practices in Clinical Legal Education, Regional Report: New South Wales and Australian Capital Territory*, 6 (Family Law Community Education clinic at UNSW), at perma.cc/FU7X-5TNV; *Identifying Current Practices in Clinical Legal Education, Regional Report: Victoria and Tasmania*, 5 (Law Reform Community Development clinic at Monash University), at perma.cc/J562-X6GU.

98 Jane Aiken, cited at footnote 78, 238–41.

99 Fran Quigley, 'Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics' (1995) 2 *Clinical Law Review* 37, 50.

important a means for achieving the ‘law-in-context’ goal of clinical legal education, enabling students to analyse and critique law from the perspective of disadvantaged clients and communities.<sup>100</sup>

## Community legal education

A distinctive feature of community legal centres is their commitment to community legal education as a means of promoting access to justice. Through plain language materials and active engagement with the community, community legal education aims to empower people so they can engage effectively with the law that affects them.<sup>101</sup> Community legal education enables law students to understand how a lawyer can ‘journey with the community’:

This journey has to involve the community really getting a sense of who they are, in the sense of beginning to understand their own power. In working with community, the wisdom or the knowledge of the lawyer does not outweigh the wisdom and knowledge of the community, about itself especially ...<sup>102</sup>

Community legal education, as a dimension of a clinic, offers students an opportunity to examine the way law affects people and how they can respond, and to think critically about the different ways that a lawyer can work to promote access to justice. Students in the UNSW clinic at Kingsford Legal Centre, for example, run family law community

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100 Anna Cody and Annie Pettitt, ‘Our rights, our voices: a methodology for engaging women in human rights discourse’ (April 2007) 43 *Just Policy*, VCOSS; Jim Ife, *Human Rights from Below, Achieving Rights through Community Development* (2009) Cambridge University Press; Jim Ife, *Community Development: Community based alternatives in an age of globalisation* (2006) Pearson, 3rd ed.

101 See e.g. Sue Bruce, Elsje Van Moorst and Sophia Panagiotidis, ‘Community Legal Education: Access to Justice’ (1992) 17(6) *Alternative Law Journal* 278; Mark Rix, ‘Community legal centres and *pro bono* work: for the public good?’ (2003) 28(5) *Alternative Law Journal* 238, 240.

102 William P Quigley, ‘Reflections of Community Organizers: lawyering for empowerment for Community Organizations’ (1995) 21 *Ohio Northern University Law Review* 455, quoted in Margaret Martin Barry, A Rachel Camp, Margaret E Johnson, Catherine F Klein and Lisa V Martin, ‘Teaching Social Justice Lawyering: Systematically including Community Legal Education in Law School Clinics’ (2012) 18(2) *Clinical Law Review* 401, 406.

education workshops, collaborating with community agencies to develop topics and then designing and delivering workshops to community workers and community members.<sup>103</sup>

An aspect of community legal education is the increasingly popular ‘Street Law’<sup>104</sup> activity that has been popularised in clinics in India,<sup>105</sup> South Africa,<sup>106</sup> Thailand,<sup>107</sup> the United States<sup>108</sup> and the United Kingdom.<sup>109</sup> ‘Street Law’ focuses on teaching practical legal skills to people in the community through workshops and active classes. In the ‘Street Law’ course at Griffith University, for example, law students teach high school students about areas of law identified (in consultation with school students and teachers) as being of interest to the high school students.<sup>110</sup>

## Community development

Community development work is different from community legal education in that it empowers and supports local communities to improve their own ‘social, economic, and material conditions’,<sup>111</sup> through action, advocacy, education and, if necessary, litigation. Monash University, for

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103 *Identifying Current Practices in Clinical Legal Education, Regional Report: New South Wales and Australian Capital Territory*, 6, at [perma.cc/FU7X-5TNV](http://perma.cc/FU7X-5TNV); other examples of clinical students working in community legal education are the Clinical Youth Law Program at ANU, the Clinical Legal Education courses at La Trobe University and the Legal Clinic at QUT: see Kingsford Legal Centre, *Guide to clinical legal education courses in Australian universities* (2014) UNSW Faculty of Law.

104 See [www.streetlaw.org](http://www.streetlaw.org); note that the different URL [www.streetlaw.org.au](http://www.streetlaw.org.au) is for a homelessness legal service in the Australian Capital Territory.

105 Ajay Pandey and Sheena Shukkur, ‘Legal Literacy Projects Clinical Experiences of Empowering the Poor in India’, in Frank Bloch (ed), cited at footnote 17, 241.

106 R Grimes, D McQuoid-Mason, J O’Brien and J Zimmer, ‘Street Law and Social Justice education’, in Frank Bloch (ed), cited at footnote 17, 225.

107 B Lasky and MRK Prasad, ‘The Clinical Movement in Southeast Asia and India, A Comparative Perspective and Lessons to be Learned’, in Frank Bloch (ed), cited at footnote 17, 42.

108 R Grimes, D McQuoid-Mason, J O’Brien and J Zimmer, cited at footnote 106.

109 Richard Grimes, ‘Legal Literacy, community empowerment and law schools – some lessons from a working model in the UK’ (2003) 37(3) *The Law Teacher* 273.

110 *Identifying Current Practices in Clinical Legal Education, Regional Report: Queensland and Northern New South Wales*, 5, at [perma.cc/257Z-6EMR](http://perma.cc/257Z-6EMR); other examples of clinical students working in ‘Street Law’ programs are at Griffith University, La Trobe University, the University of New England and the University of Melbourne: see Kingsford Legal Centre, *Guide to clinical legal education courses in Australian universities* (2014) UNSW Faculty of Law. See also Brian Simpson, *Taking Street Law to Regional and Rural Towns* (2010) University of New England.

111 See e.g. Daniel S Shah, ‘Lawyering for Empowerment: Community Development and Social Change’ (1999) 6 *Clinical Law Review* 217, 218.

example, runs a course in ‘Law Reform and Community Development’<sup>112</sup> in which students work with groups in the community on an issue or problem they have in common, and focus on law reform activities and community development strategies.

## Law reform

With the growth in clinical externships, many universities offering clinical courses include the option of clinical externships at policy agencies, including law reform commissions.<sup>113</sup> While law reform work is not always aimed directly at improving the lives of disadvantaged communities and their access to justice, many of the approaches to law reform do have that as one of their goals; a clinic may be law reform–focused, but we cannot assume that it has specific social justice goals. An externship at a law reform commission is a good way of teaching students the processes of law reform, because it allows students a close-up view of how policy is developed, of the choices a government must make, and of the ways in which law reform issues are prioritised.<sup>114</sup> At the same time, there is considerable value in integrating law reform activity with individual client work<sup>115</sup> and community development.

## Conclusion

There is a profound and longstanding connection between Australian clinical legal education and social justice. Unlike in the United States, there is in Australia no dichotomy between teaching social justice and teaching skills in clinics. This integration is a significant positive characteristic of Australian clinics, creating many opportunities for teaching students about lawyering towards social justice. A diverse range of clinics teach ideas, values, skills and ethics of justice, through individual client work, specialist clinics, and innovative models such as multidisciplinary and

112 *Identifying Current Practices in Clinical Legal Education, Regional Report: Victoria and Tasmania*, 5, at [perma.cc/J562-X6GU](https://perma.cc/J562-X6GU).

113 UNSW and Sydney University both offer internships at law reform commissions; *Identifying Current Practices in Clinical Legal Education, Regional Report: New South Wales and Australian Capital Territory*, 6, at [perma.cc/FU7X-5TNV](https://perma.cc/FU7X-5TNV).

114 Les McCrimmon and Ed Santow, ‘Justice Education, Law Reform and the clinical method’ in Frank Bloch (ed), cited at footnote 17, 211, 214–16.

115 See e.g. Liz Curran, cited at footnote 47.

international clinics, and through community engagement. As externships grow in number, the explicit connection between clinical legal education and social justice may fall away, in which case focus on clinical learning objectives becomes increasingly important. Class content and reading, and supervision and reflection, are essential to ensure that social justice aspects of law and the legal system remain integral to clinical teaching.

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