

Untenured faculty members are counselled to limit their service activities to gain more time to work on scholarship and teaching. Such advice is not useful for most clinical law teachers. While other law professors might choose to practise law, the clinical law professor practises law as a requirement of the position. The clinician is a member of the bar with special duties that arise because of clinical teaching. These special duties arise from the reciprocation of the clinician's need to keep up with developments in law practice specialties and the profession's need for input gleaned from the experiences of clinical law professors.

Traditional methods for reviewing faculty may not work when reviewing clinical teachers. Unlike a classroom teacher whose contact with students consists of written materials, class discussion or lecture, and perhaps e-mail exchanges, the live-client clinical faculty member and the extern supervisor may interact with students on a daily basis by teaching and advising. Most of clinical teaching takes place outside the classroom. Moreover, the classroom is often used as a place to allow students to offer advice to each other, to raise issues or problems, or to perform exercises, small group workshops or case rounds. The classroom component is used to accomplish different objectives for the clinical teacher and is less likely to involve significant presentations by faculty. Thus, observation of classroom activities is a woefully inadequate way to evaluate most clinical teaching. The problem then becomes, how does a faculty evaluate clinical supervision?

While clinical professors share many common goals, there are many differences in style, approach, subject matter, and method. These differences should be welcomed. In fact, many clinical professors continue to vary their own teaching styles depending upon their interests and needs and those of their students. It is important for

those reviewing clinical teaching to understand the methods used by clinical teachers and to embrace a wide range of different approaches, while helping those professors achieve a high level of teaching quality.

The divorce case: supervisory teaching and learning in clinical legal education

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This article explores what and how law students learn in clinical legal education. More specifically, it examines the experiences of students handling divorce cases in the clinic and how those experiences contribute to the learning process. The article is based in part on the author's experience of teaching and learning during 1998 at Cornell University's Legal Aid Clinic. The article began as a description of clinical supervision and other clinical teaching processes; it was intended to help newer clinicians and clinical programs in thinking through their educational goals and methods. It has become a broader reflection on law teaching and how clinical methods can contribute to more effective teaching generally.

Clinical education offers teaching approaches that can work well throughout the law school curriculum. Using clinical processes, law teachers can encourage students to examine their roles as lawyers, to wrestle with issues of professional responsibility that they will face in practice and to become reflective lawyers. Clinical teaching methods provide law students with a rich learning experience. This fact should be considered as law teachers design their courses.

Since clinical training is not required in most law schools, many, if not most, law students complete their legal education without the kind of supervised practice experience that the clinic provides. Students who do not take a clinic course also miss out

on the opportunity to work closely with a faculty mentor and to reflect upon the role that attorneys play in the legal process.

Clinical legal education refers to that part of the law school curriculum, which provides students with experiential training where students learn by doing. Clinic courses are designed using a variety of educational models, including externships, where students observe and experience the practice of law by working in offices of legal services programs, prosecutors, judges, or other legal services providers; simulations, where students practise client interviewing, counselling, negotiation, trial advocacy, and other lawyering skills using structured problems in a supervised setting; and the 'live-client' or 'in-house' clinic, where students function as attorneys representing real clients. Many clinic models include a classroom component taught by full-time law school faculty or adjuncts.

The place that clinical education holds in the curricula of modern law schools has been justified based on important substantive training that it offers to law students, such as training in lawyering skills. In addition, and probably more importantly, clinical education as a method of teaching may be even more valuable than the substantive material taught. The clinic experience is intended to expose students to the practice of law. The clinic gives students experiences in three broad areas: (1) students learn and practise a set of lawyering skills; (2) they learn the basics of working with clients and being advocates; and (3) they are exposed to a variety of professional ethics issues and issues relating to their role as lawyers.

An even more basic goal of the clinic is to provide students with an experience of legal education that is in some ways fundamentally different from the 'traditional' legal education they have had up to this point in law school. In the clinic students are

encouraged to reflect upon their experience, and to learn as much about the processes by which the legal system works and by which the various participants act in that system, as they do about the substantive rules of law. It is in looking at this goal of developing reflective lawyers, where the goals of clinical legal education become entangled with the concept of clinical education as methodology.

Lawyering skills are taught on two levels in the clinic. First, in the classroom and through simulation exercises students are introduced to the skills that a lawyer needs to be a competent litigator. These include client interviewing, fact gathering and investigation, legal research and problem analysis, client counselling, negotiation, oral advocacy, and written advocacy. Using assigned readings, videotaped materials and written handouts, students engage in classroom discussions of these issues. In addition, some of the classes involve a series of exercises where the students practise client interviewing, counselling, and advocacy at a simulated administrative hearing. Second, students learn lawyering skills through supervised representation of individual clients in a variety of subject areas.

Service to clients is an important part of the clinic's mission. For many students it is the first time they have ever talked to a client. For many it is the first time they have ever interacted with a poor person. For most of them it is the first time that anyone, particularly someone older than they, has relied on them for help.

Students learn to sort out the relevant facts from all the material the client gives them. They learn that the clients have concerns that do not fit within the boundaries of the legal problem initially presented, and that these concerns also must be addressed. The need to hear and process clients' stories presents a wonderful opportunity for students to interact with their clients and to learn about differences.

Listening to the client's story helps the student to recognise how the client's perspective differs from that of the other parties in the case and sometimes how it differs from that of the student.

Handling cases in the clinic helps students focus on professional responsibility and ethics. Professional responsibility issues are raised when the party opposing our client is not represented. One issue is how to deal with the unrepresented party without giving legal advice or overreaching. When there is an attorney on the other side, the student may have to establish his or her legitimacy before a more experienced opposing attorney will take her seriously.

Much of the learning that takes place in the clinic comes when students and teacher reflect on the experiences encountered in cases. We constantly encourage students to examine the professional role they are playing in cases. Who controls the case — the client or the attorney? Where is the line between fundamental case decisions and strategic legal decisions? Does the fact that the client is not paying for the representation play any part in the strategic choices made during the representation? Does the student's role as an advocate for a poor person provide the student with any insights or information about how the justice system impacts the lives of the poor? Does the student see any public policy implications or areas of the legal system which are in need of improvement?

The substance of clinical education is sometimes referred to as skills training, as distinguished from theoretical or doctrinal training. Clinical methods refer to the experience of case handling, and what students learn about the lawyering process by performing tasks and then reflecting on their experience. In the clinic students have an opportunity to apply the principles they have learned in their other law school courses to real cases where there are real consequences for clients. Clinic

teachers make a conscious effort to expose students to a range of exercises and teaching methods beyond those they have experienced in law school previously. Those methods include drafting various kinds of documents, interviewing parties and witnesses, counselling clients, negotiating with other parties and courtroom advocacy. Such exercises are performed under close supervision and with an opportunity for prompt reflection and feedback.

In clinical courses students must do extensive fact investigation and must examine the facts from a variety of perspectives. A much greater emphasis is placed on discovering, understanding, and interpreting the facts than any place else in law school. And since the client is the primary source of the facts, and advocacy for the client's perspective is the primary *modus operandi*, clinic students have to learn how to hear and appreciate their clients' stories in ways that are not otherwise taught in law school.

Through the clinic experience and the supervisory process students learn a range of lawyering skills. Handling cases always involves meeting, interviewing, and developing a relationship with clients. Generally some level of legal research and analysis is required as well. Depending on the requirements of the cases they are handling, students may have an opportunity to draft pleadings, do discovery and negotiation, represent the client at a hearing or a trial, or argue a motion or appeal. Students learn from these tasks by preparing for them, performing them, and reflecting in the supervisory process on what they have learned.

In the clinic case supervision is our stock in trade, and there are lots of opportunities to teach using the method. The value of supervision is so clear that we should find opportunities to explore this and other clinical teaching methods throughout law school. Case supervision, the primary

teaching method used in the clinic, has much to offer in the quest to understand how law students learn and as we think about what it is that we want them to learn. Teachers who adopt clinicians' teaching methods, including particularly the use of thought provoking questions, may find more effective ways of reaching students. Clinical teaching methods offer significant value throughout the law school curriculum, where students could benefit from more interactive, collaborative, reflective learning experiences.

CURRICULUM

Human rights and legal education in the western hemisphere: legal parochialism and hollow universalism

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This essay examines the reality of human rights education within the Americas based on an acceptance of the assumptions about the teaching mission of law schools with respect to human rights and the relationship of that teaching mission to an assumed obligation of law schools to participate in the development of positive law. It introduces the problem of legal parochialism and hollow universalism as impediments to the internalisation of universal individual human rights norms in the Americas.

The world has been moving slowly toward a grudging acceptance of globalism in a variety of fields. If globalisation is the great postulate of the twenty-first century socio-economic organisation, its great corollary is legal convergence. The imperatives of modern commerce have been a great engine of globalism. Legal education, as well, has seen the beginnings of attempts to respond positively to the forces of convergence and globalisation. Convergence has come slowly

in other areas as well. Starting with the United Nation's Universal Declaration of Human Rights, there has been an accelerating trend, especially within the Americas, to embrace a universal normative structure for defining the rights of individuals. Convergence of notions of individual human rights has not had the sort of successes that have marked worldwide international economic integration but there is a noticeable inclination of governmental institutions across the Americas to at least acknowledge *de jure* the importance of protecting individual human rights.

US law schools serve a pivotal role in perpetuating the American Supreme Court's current division of rights discourse as a natural division of law. Our curricula normalises the great division between, on the one hand, domestic law and the rights of citizens and permanent residents of the United States and, on the other hand, rights available to outsiders. The foundation of fundamental rights in the United States is presumed to be the Federal Constitution — a product of domestic development. The foundation of fundamental human rights in other nations, on the other hand, is made up of the charters of rights recognised as fundamental and universal by supra-national organisations. Human rights education is necessary — but it is a subject of study of others.

In order to be effective, education must be a tool for the assimilation of universal principles of individual human rights. The universities must consciously engage in a sort of missionary activity, to work as the vanguard of changing cultural norms and expectations. This is difficult work for academics; as the tools of a universalising creed, academics will have to overcome the tension between one of the core norms of universal individual human rights, respect for cultural differences, and the purpose of the universal individual human rights project itself, requiring con-

formity within all cultural communities of a set of basic transcendent conduct norms.

Academics, in their role as teachers, must be prepared to further a set of meta-norms which cannot be disputed, and which must be protected against incursion in the name of national tradition or culture or religion or ethnicity or indigenous status. This assimilative project requires a continual stripping of the sovereignty of states. It is ironic that legal education in the western hemisphere, if it is to be truly effective in accordance with the assumptions earlier made, would have to be based on a commitment to a fundamental normative understanding that would strip core norm-making authority from independent communities and transfer this authority to a much larger global or regional community made up of a number of member states.

Incorporating universal individual human rights as part of the basis for the teaching of the social and political organisation in the United States requires a substantial reorientation by US law teachers. Such an incorporation entails liberation from the deeply ingrained provincialism that has characterised the teaching of human rights in the US as one thing for the US and another thing entirely for everyone else. Law must become an integral and integrated part of the curriculum of universal human rights laws applicable consistently throughout the Americas.

Universal individual human rights will neither be universal nor rights unless it is taught as such in all of the Americas, and taught in such a manner that similar situations produce similar results throughout the Americas. This requires a significant adjustment in the curriculum of American law schools, based on an acceptance of the supra-constitutional basis for the rights of the citizens and residents of the United States. At the same time, universal individual human rights remains an