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TEACHING NOTE

Client Group Activism and
Student Moral Development in Clinical
Legal Education

*Adrian Evans**

Introduction

At its best, clinical legal education exposes law teachers and students to the complexity of responding to clients' legal issues. The development of holistic, skilled and ethical student responses to clients' casework issues is of course an appropriate objective of a law school clinical program. Beyond this, it is also possible to look behind individual clients' problems at the common social factors contributing to their difficulties. Students who examine these "systemic" issues in their clients' lives seem to develop a more comprehensive understanding of the legal issues confronting their clients individually and as members of a group. Some clients who are encouraged to see their problems as a part of a wider social context also become active in the political process in order to try and improve their own circumstances and those of others. Law teachers who facilitate the exposure of their students and clients to the relationship between individual and collective social problems also benefit. They mature in the depth of their appreciation of substantive law reform.

While exposure by students, clients and teachers to real as opposed to simulated problems can catalyse a policy debate, resulting in better law reform and better administration of justice, these results are unlikely without close management by the clinical teacher. Law teachers need to help students and clients move from individual reflection to group reflection upon the underlying social injustices which diminish an equitable society. *Group* reflection is the key process in enabling policy change and it is this process which is at the core of the

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©2000. (1999) 10 *Legal Educ Rev* 179.

1 A process of collective social and community growth first systematically expounded by Paulo Freire. See P Freire, *Pedagogy of the Oppressed*

concept of Community Development (CD).¹ CD is the generic term used to describe various strategies designed to bring about the recognition that collective action can be effective. It has been practiced by groups as diverse as the National Farmers Federation and the National Union of Students,² but is less understood and less practiced among clients and consumers who are under-educated, unemployed and therefore impoverished. When the energy of some law students' commitment to social justice is applied to the CD process, the resources available to impoverished groups are increased dramatically.

This mobilisation begins with the teacher's appreciation of the core personal values which individual students bring to the clinical experience. Competing personal values often become apparent in the process of developing student and client consciousness with the use of clinical methods, because the confrontation with individual clients' poverty and (often) self-destructive behaviour tends to polarise responses. Some students react with empathy and then anger, recognising root causes readily. Others place more emphasis on choice, valuing personal autonomy and responsibility. The conflict of values, which typically exposes left and right wing conceptions on many policy issues, can fragment the student/student, teacher/student relationships and degrade communication with clients if it is not identified and addressed positively by the clinical supervisor. The teacher ought not to shrink from affirming his/her own values — ideally these will reflect a broad social tolerance — and in so doing affirm by example the diversity of values among

(London: Penguin Books, 1972). The process of client group development has suffered from the criticism that it promotes social instability rather than social growth. The criticism may be accurate but it is of limited use because social growth and instability inevitably go hand in hand. Another criticism of this process (derided as "morally active" lawyering) is that it overrides the autonomy of individual clients. David Luban has convincingly argued that this criticism is of little significance because the goal of client autonomy in this context is only a means to the end of "responsibility, creativity or authenticity". In essence, Luban gives priority to the interests of the client group when the latter includes a "morally active" approach to the practice of law. See D Luban, *Partisanship, Betrayal and Autonomy in the Lawyer-Client Relationship: A Reply to Stephen Ellmann* (1990) 90 *Colum L Rev* 1004, at 1037.

- 2 Both of these groups have been active in recent years on specific issues. Under Rick Farley as Chief Executive Officer, the National Farmers Federation helped to lobby the Federal Government in support of land rights for indigenous Australians during the 1980s. The National Union of Students has used student strikes and marches to influence public opinion for decades.

students and clients. Where the supervisory atmosphere opens up values conflicts, those students with attitudes which may be considered “anti-social” are often challenged by their peers in a manner which raises awareness effectively. It is often taken more seriously by students because of peer, rather than teacher, challenge.

Clinical supervision which is participative in this sense (in the context of CD experience) is a powerful but underused tool in the moral development of future lawyers. This teaching note explores a methodology for developing students’ values awareness in the clinical context. This methodology intends to maintain client autonomy and promote client activism within the political process.

In this Note there are a number of issues which are treated simultaneously: the nature of community development; students’ awareness of their own values; the role of supervision; the client group process and the links between student and client autonomy.

Insofar as interactions between teachers and students are concerned, it is suggested that the competing values emerging within a clinical-CD framework provide an opportunity for social policy reflection which ought to be embraced rather than avoided. Supervisors who can stimulate a respectful argument among their students³ about competing moral viewpoints will lay an essential foundation for this methodology. It is unnecessary that the argument be resolved — it is enough if the argument is in the open. In the final analysis students are entitled to criticise and, if they deem it necessary, disagree with a definite stance by their peers and/or the clinical supervisor as to the values which they think are important in any particular CD initiative. Having said that, it is necessary to emphasise that student debate about their own values is a preliminary stage only in the methodology and that the focus does shift to clients and the client group process with which students engage. While the “community” of students develops diversity of values, they do so alongside the (controlling) client group. If the CD model is to have integrity, a decision on policy issues and the consequential political strategy must in the end be made by the group of clients who have been (it is hoped) catalysed by the CD process.

3 And among themselves as supervisors.

Justice-Focused Law Schools: Quality and Clinical Experience in Collaboration

The genesis of the CD approach to client group activism and student moral development lies in the basic attraction to students of the clinical method. Anecdotal evidence suggests that law school graduates with clinical experience, having had close contact with clients in poverty, enter legal practice with attitudes, energies and techniques that are different in some way to those who do not choose this option within their undergraduate studies. My observation is that clinical graduates are, at the least, open to the notion that “justice” is as important as “law”. Self-selection may play a role, but it is possible that students who encounter only the varieties of Socratic method within conventional lecture environments learn mainly how to argue. While the techniques of argument are, naturally, key legal skills they are not the only skills. They are perhaps no longer the most important skills. As the “why” and not just the “how” of the lawyering task gains increasing attention within law schools, there is greater recognition that the technical “how” questions asked by students are, on their own, barren enquiries. More frequently, credence is given to the view that “to be ready and able to argue the case for either side of a controversy [underemphasises] consideration of legal ethics and the rights and wrongs of the situation”.⁴

The probability is that, for those students whose first significant workplace experience is a clinical program, development of personal values, social awareness and motivation are all enhanced because students are under the control of legal educators rather than “the market”.⁵ If “experience best promotes movement toward the highest levels of [moral] development”,⁶ the controlled experience of clinical process is ideal for that development.

There are a number of examples internationally of law school/community legal centre/law centre connections that have sought to develop student motivation, over decades in

4 RC Reuben, Change of Course Needed: Elder Statesman Says Acceptance of Law as Business Will Break the Profession (1994) 80 *ABA J* 99.

5 Myers considers that “values education is essentially experiential and must be embedded in context to be meaningful”: EW Myers, “Simple Truths” About Moral Education (1996) 45 *Am U L Rev* 823, at 832 (note 45).

6 *Id* at 836 (note 57) referring to PT Wangerin, Objective, Multiplistic, and Relative Truth in Developmental Psychology and Legal Education (1988) 62 *Tul L Rev* 1237, at 1282–83 (note 171).

some cases.⁷ Each of these law centres place students in responsible relationships with their clients: students come to understand they have an obligation to empathise, to gather facts carefully, to research and to advocate on behalf of their clients. They know (or come to know) that if they do not accept these responsibilities their clients will suffer. The sense of responsibility they discover is — for them — both daunting and exciting, and it is (at bottom) only because of this process of identification that their values are developed.⁸

The Client Group Process

Over the last 10 years at Monash University the CD process has become more reflective for students with the addition of a client-group process in partnership with Springvale Legal Service Inc (SLS). In addition to the traditional one-to-one clinical caseload, the student task groups at SLS have concentrated upon the CD issues which that caseload highlights.

The issues have been diverse, ranging, for example, from the over-charging of particular ethnic groups by private lawyers from their own community, to residents affected by toxic paint discharge, to the review of offensive cemetery practices, and to state exploitation of addicted gamblers. Client group facilitation has been chosen because it seems to offer the best opportunity for social reform. The prospect of achievable social reform also appears to be particularly attractive to students who are energised by clinical method.

While the mobilisation of client groups, especially in class actions, has an impressive history,⁹ it has not generally included a law student dimension. Sessions in which student task groups reflect on values have been a part of clinical supervision at SLS. This reflection appears to be useful in changing students beliefs/attitudes as to the interests that call out for responsible lawyering. The process involves encouraging students to talk about their developing insights.¹⁰

7 Notably Parkdale Legal Service / Osgoode Hall Law School in Toronto, Juss-Buss / University of Oslo in Oslo and Springvale Legal Service / Monash University in Melbourne.

8 The process is intricately described in H Brayne, N Duncan and R Grimes, *Clinical Legal Education: Active Learning in Your Law School* (London: Blackstone Press, 1998).

9 See, for example, S Ellmann, Client-Centredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers Representation of Groups (1992) 78 *Va L Rev* 1103.

10 This note is not intended to describe client group development process in detail: see above note 1. It is worth commenting, however,

Although dependent on insightful supervision that is not always available, values reflection seems to be effective because it is constructive in emphasis and case derivative; that is, personal interactions with clients' cases convince students that the policy discussion and the policy change process are legitimate avenues of endeavour.

One task group was set up in response to the large number of clients who had complained of their lawyers' insensitivity and level of fees. Clients were frustrated at what they saw as their inability to get the professional regulator to take their complaints seriously. The law students gradually accepted that their clients had a case for systemic reform of the regulatory structure. Significantly, this acceptance only occurred when students experienced, in their dealings with the regulator on behalf of those clients, the same frustration.

It is the task group discussion about clients' interests, and their right as clients to decide upon their own approach to change, that inevitably raises (for those students in the task group) the issue of their own autonomy. When they realise that they are free to disagree with each other and their supervisor — since that is the process that the putative client group is entitled to use — they begin to formulate their own views in relation to the task group problem. At that point, the insightful facilitator can draw out students' underlying values and acknowledge them respectfully. Student acceptance of their own autonomy is the first step in the process of developing their own values.

The second step is the teacher's recognition of those diverse values and the facilitation of students' own challenges to each other's values. Often there are choices for the task group to make which have an essential ethical quality. In one recent example a series of student task groups developed a "self exclusion" kit to allow addicted gamblers to legally exclude themselves from the local casino.¹¹ The kit is intended as a tool for a fledgling group of relatives of self-destroyed gamblers who, we hope, will emerge to lobby government on the links between their own misery and that government's sponsorship of large-scale gaming. Development of the kit necessarily involved seeking a sponsor to

that, from the perspective of the law teacher, the crucial issues are teacher / student ratios, delineation of individual student tasks, the frequency of supervision meetings and the methodology of values reflection in those meetings.

11 Crown Casino in Melbourne, the largest in the Southern Hemisphere, with 350 tables.

cover the costs of publication. The suggestion was made in the task group that the casino's own revenues be used to cover the cost from its Community Support Fund¹² and the suggestion was justified by students on an "end justifies the means" basis. The resulting debate among students and with their supervisor went to the essence of the students' values in that setting. Most were very happy to take the casino's money to publish the kit. Some felt the money was tainted. Collectively, they had to make a choice as to which ethic would prevail — accept the casino's money and refrain from criticism of the social effect of the fund itself, or reject it and preserve the ability to comment on that issue publicly. It may have been difficult to highlight the relationship between the casino's profits and the exploitation of vulnerable patrons if the money were accepted. In the end, the students were prepared to insist on an autonomy that rejected the views of their supervisor.¹³

Transcending Issues of Client Autonomy

Just as students must be able to exercise their own autonomy, so also, of course, must clients. Indeed, in the context of the lawyer/client relationship, client autonomy has been lionised.¹⁴ The recognition that a client is fundamentally "in charge" underlies nearly everything in modern clinical practice and needs no extensive restatement. A very serious debate has however emerged over client autonomy in reference to the concept of "moral activism".¹⁵ This debate has a number of foci, notably the merit or otherwise of ignoring an individual client's rights of confidentiality if the interests of others (that is, their "autonomy") require it. Lawyers who are prepared to act for the greater good by sacrificing an individual client's autonomy are said to be "morally active"

12 The Community Support Fund comes from and is in fact a small percentage of the casino's profits. The casino and the former Victorian State government maintained that the principal purpose of the fund was to ensure that victims of "problem" gambling were counselled. The casino was in fact willing to assist in publication with its own funds until it discovered that the students would have the final say on the contents and wording of the kit. The offer then lapsed and publication was supported by the Myer Foundation.

13 The supervisor preferred to avoid casino support.

14 See, for example, B Garth, *Rethinking The Legal Profession's Approach to Collective Self-Improvement: Competence and the Consumer Perspective* [1983] *Wis L Rev* 639-87, at 659.

15 See generally Luban, *supra* note 1.

16 *Id* at 1035.

and therefore acting appropriately.¹⁶ It is a debate which revives older notions of the “end justifying the means”, expressed in traditional moral philosophical terms as the choice between teleological and deontological decision making.¹⁷

Neither approach is entirely satisfactory. The teleological “end justifies the means” approach has been used to legitimise atrocities and many abuses of human rights in this century and may have fewer adherents amongst lawyers and jurists than in the general population. Similarly, deontological “moral justification” (that is, choosing what is “right” without regard to consequences) is said by many to lead to social evil.¹⁸

The community development process transcends the lawyer law student involvement in the “end justifies the means” conundrum by transferring the decision as to any particular strategy or policy from the lawyer to the client group. Community development is about client *group* empowerment rather than individual *versus* group interests. It is client group development (in community work) that truly “values” our clients because it is respectful of where the power to decide should lie. If practiced properly, client group development preserves client autonomy in the true sense because it is the “moral activism” of the group rather than of the facilitating lawyer or law student which prevails.

A Methodology for Promoting Values of Students and Client Groups

In the table below, a methodology for promoting values of both students and client groups over a period of approximately 16 weeks is briefly outlined. The time period in which each task is to be performed is broadly indicated. The clients

17 In contemporary language, teleology is the view that final outcomes are critical in making moral choices, and “outcomes” are defined as “the greatest good for the greatest number” (otherwise known as “utilitarianism”). In contrast, deontological decision making focuses upon what is “right” rather than upon what the outcome or consequences may be. The latter approach is defined by Kant as the “categorical imperative”. See I Kant, *Fundamental Principles of The Metaphysic of Ethics* 10th ed (London: Longmans Green, 1929).

18 A common example is the abortion debate, which may be said to have bad or undesirable consequences whichever way a decision is made. In the conventional debate on this issue the “right” (deontological) choice is to deliver the child alive and avoid “murder”. The teleological approach justifies termination of the pregnancy in order to protect both the mother and to avoid a probable low quality of life for the child.

are from a community legal centre who share a common (hypothetical) legal problem: the lack of compulsory property damage insurance for private vehicles. Where this type of insurance cover remains optional (and is not taken out), motor vehicle collisions of high dollar value often result in the loss of transport, employment, assets and credit ratings. As a result, in some western societies (including Australia) it is a common route to bankruptcy for the working poor.

Initially, the student task group will seek to facilitate the formation of a client group, where the pool of potential members is accessible from a client database maintained by a community legal centre. The database records the details of all low asset/low income drivers (most without optional insurance) who have suffered from the high dollar value claims of other drivers. Attention is given within the student task group to facilitating the autonomy of the group at all stages even if it means that both the student task group and the client group develop in unexpected directions. Autonomy for individuals within each group, and for each group in relationship to the other, is otherwise a meaningless concept.

In the first two weeks, the clinical supervisor is in control of the student learning process. Each student is set an initial familiarising task upon which they are asked to report to the task group. As time goes by, however, the model involves task group control shifting to the student members (away from the supervisor) in the same way as the client group ought to develop independently of the task group in the period beyond the initial 16 weeks. The role of the supervisor/law teacher is to model relinquishment of control in order that the task group in due course may see the need to relinquish control (of the campaign to change insurance laws) to the client group.

Towards the end of the 16 week period the supervisor explicitly encourages reflection amongst students on the values issues arising for them from the transfer of control to the client group, and upon the justification for that transfer. This process of values reflection, which ought to occur as a part of the normal task group meeting, is intended as the occasion for profound growth in students' understanding of the links between justice and autonomy for lawyers and clients. It is also the forum for developing law students' awareness of value choices which they can carry with them into their professional lives.

A MODEL FOR CLINICAL SUPERVISION OF COMMUNITY DEVELOPMENT TASK GROUPS
PERCEIVED PROBLEM – LACK OF COMPULSORY PROPERTY INSURANCE FOR MOTOR VEHICLE COLLISIONS

WEEKS 1-2 *CLINICAL SUPERVISOR AND TASK GROUP OF FOUR STUDENTS:*

They meet to define:

- Problem: clients financially destroyed by lack of motor vehicle property cover.
- Objective: to discover what affected clients want/need in this issue.
- Approach: consult (via database) clients known to share concern.

SUPERVISORS:

They need to be aware of:

- long timeline to develop client group
 - student knowledge
 - achievable goals
 - student 1:1 cases
 - individual task definition
-

WEEKS 3-6 *STUDENTS:*

- search client database to determine number of clients affected
- search files to identify potentially suitable cases
- compile list of clients who may be interested.

STUDENTS AND CLINICAL SUPERVISOR:

They meet to:

- review list of clients compiled
- review text of letter to client
- determine allocation of tasks in preparation for the initial client meeting.

STUDENTS:

They send letters to clients inviting them to a meeting to discuss the issue.

WEEKS 7-10 *STUDENTS AND CLINICAL SUPERVISOR:*

Planning meeting to discuss the process at the pending clients' meeting (see below):

- role of facilitator
- agenda
- ground rules

Values discussion begins.

WEEKS 11–12 *CLIENT MEETING:*

To ensure clients decide what happens, the process includes:

- introductions: to share power in the meeting
- facilitator backgrounds the issues
- clients tell their stories
- frustrations are aired
- brainstorming.

Suggestions made for further meetings.

STUDENTS:

Follow up telephone calls to clients.

WEEKS 13–16 *FURTHER CLIENT MEETING:*

It is held 3 weeks after initial client meeting.

CLINICAL SUPERVISOR AND STUDENTS:

They meet to evaluate process; “values” discussion continues.

Conclusion: Law Schools and Legal Centres in Collaboration

Law schools can enhance the development of students’ values and hence their legal education in thoughtful partnerships with community legal centres.¹⁹ Through a community development process, they can provide the opportunity to ensure that the first workplace experience of law students involves a partnership between the law school and the community. Partnerships of this nature are energetic contributors not just to quality legal education, but also to justice and the Rule of Law. The attraction to legal centres is the assistance in dealing with centre caseload. Small groups of students can be placed with appropriate centre supervisors and handle ongoing files as well as the systemic issues described in this note.

American experience suggests that, because of the limited exposure to clinical experience in law schools, the first workplace experience (that is, the private law firm) usually determines the values expressed in practice.²⁰ Monash experience

¹⁹ It is perhaps worth following the example of South African law schools, which are all to introduce a law degree with an agreed core curriculum, including a period of work in community settings. See D McQuoid-Mason, *Single New Degree for All Law Graduates in South Africa* 77 *Commonwealth Legal Education: Newsletter of the Commonwealth Legal Education Association* 27–29 (January 1998).

²⁰ Myers, *supra* note 5, at 836, referring to S Hartwell, *Promoting Moral Development Through Experiential Teaching* (1995) 1 *Clinical L Rev* 505, at 531–35.

suggests that, providing the reflective element of supervision is addressed within a community development model, students' motivation to subsequently act in the interests of justice is enhanced. This motivation also encourages and enables greater commitment amongst students to achieve higher standards of proficiency in their undergraduate studies. If valuing our clients in community settings is, with student proficiency and the promotion of justice, a primary goal of legal education, reflective student placements in a community development environment are an invaluable tool.