

University of Pennsylvania Carey Law School

Penn Carey Law: Legal Scholarship Repository

Faculty Scholarship at Penn Carey Law

Spring 4-1-2012

Losing My Religion: The Place of Social Justice in Clinical Legal Education

Praveen Kosuri

University of Pennsylvania Carey Law School

Follow this and additional works at: https://scholarship.law.upenn.edu/faculty_scholarship



Part of the [Educational Methods Commons](#), [Higher Education Commons](#), [Inequality and Stratification Commons](#), [Law and Society Commons](#), [Legal Education Commons](#), [Legal History Commons](#), and the [Public Law and Legal Theory Commons](#)

Repository Citation

Kosuri, Praveen, "Losing My Religion: The Place of Social Justice in Clinical Legal Education" (2012).
Faculty Scholarship at Penn Carey Law. 400.
https://scholarship.law.upenn.edu/faculty_scholarship/400

This Article is brought to you for free and open access by Penn Carey Law: Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship at Penn Carey Law by an authorized administrator of Penn Carey Law: Legal Scholarship Repository. For more information, please contact PennlawIR@law.upenn.edu.

LOSING MY RELIGION: THE PLACE OF SOCIAL JUSTICE IN CLINICAL LEGAL EDUCATION

PRAVEEN KOSURI*

Abstract: Many law school clinics presume a “social justice” mission—that is, representation of the indigent and under-represented about poverty law issues—as the only legitimate goal for clinic clients and matters. This Article contends that social justice should not be presumed, but rather should be considered an option—among many—to include in a clinic’s pedagogy. If increased experiential learning opportunities for students are a real objective, and clinics are the pinnacle of those opportunities, then broadening the portfolio of clinical offerings to include those that are not focused on social justice should be a valid proposition. The modern clinical legal education movement that began with Ford Foundation-funded clinics has moved from the fringe to the center of legal education. This Article urges that it is incumbent on the leaders of those clinical programs to accommodate different models of clinics, thereby expanding clinical education to more students and unleashing the next phase of innovation and creativity in law school education.

INTRODUCTION

Many of today’s clinical law faculty members presume that “social justice” should be a fundamental characteristic of any clinical offering.¹ In fact, if you attend a clinical conference, you will hear clinicians

© 2012, Praveen Kosuri.

* Practice Associate Professor of Law at the University of Pennsylvania Law School and Director of its Entrepreneurship Legal Clinic.

¹ See Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 360 (2008); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1473–74 (1998). Social justice is rarely defined in clinical education conversations, and there is often an assumption that everyone is talking about the same thing. For the most part, it is the assistance of low-income individuals and communities who cannot afford market rate lawyers or have limited access to them. From there, it ranges from individual client representation on “small” matters and “impact” litigation to collective mobilization of disenfranchised constituencies. See Ashar, *supra*, at 368; Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333, 335–36 (2009); Dubin, *supra*, at 1475; Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 997, 1011 (2004).

proudly extol the social good their clinics do and the audience dutifully applaud this ideology. Rarely, if ever, will you hear any comment about a clinic that does not at least presume social justice.² This is understandable on many levels. First, no one wants to be perceived as against “doing good” or helping the underprivileged. Second, the audiences at these conferences tend to be peers of the speakers doing the extolling and themselves conduct similar work. To criticize the social justice component of that work would be anathema, not to mention self-defeating. Social justice, after all, is what the modern clinical movement is based on, and clinicians who criticize that concept would be biting the hand that feeds them.

Without the influx of civil rights and poverty law lawyers into law schools during the late 1960s and 1970s, clinical legal education as we know it would not exist.³ Those lawyers became the founders of modern clinical education. When they entered the academy, not every law school in the country had a clinical program.⁴ There were no Association of American Law Schools (AALS) standards for clinical education.⁵ The national clinical conferences that now draw hundreds of clinicians every year were the size of a couple of schools’ clinical faculties today.⁶ To think about how far clinical legal education has come in forty years is truly a marvel. Much of the credit for that growth and stature goes to the founders and their progeny—a group Professor Stephen Reed has labeled the “Great Clinicians”—who fought for and built the programs from which all clinicians benefit.⁷ Social justice was

² Robert D. Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEV. ST. L. REV. 469, 469 (1992) (“To many people, the relationship between clinical programs and the justice mission of American law schools is so clear as to be self-evident.”).

³ See Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 16, 18–19 (2000) (describing the modern era of clinical legal education beginning in the 1960s with grants from the Ford Foundation to select law schools and continuing into the 1970s with “development of a clinical teaching methodology”); Douglas A. Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 941–42 (1997); Panel Discussion, *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U. L. REV. 337, 341 (1987).

⁴ See Barry et al., *supra* note 3, at 10, 20.

⁵ See *id.* at 8–9.

⁶ See J.P. “Sandy” Ogilvy, *Celebrating CLEPP’s 40th Anniversary: The Early Development of Clinical Legal Education and Legal Ethics Instruction in U.S. Law Schools*, 16 CLINICAL L. REV. 1, 16 (2009).

⁷ See Stephen F. Reed, *Clinical Legal Education at a Generational Crossroads: A Self-Focused Self-Study of Self*, 17 CLINICAL L. REV. 243, 243 (2010); Praveen Kosuri, *Clinical Legal Education at a Generational Crossroads: X Marks the Spot*, 17 CLINICAL L. REV. 205, 206–07 (2010).

a central tenet to the modern clinical movement.⁸ The Great Clinicians brought their fight for civil rights and access to justice from the streets into law schools.⁹ Initially they continued to do the same type of work they did in practice but with the assistance of law students, rarely thinking about teaching.¹⁰ In time, however, the Great Clinicians developed a pedagogy that allowed students to learn more from a clinical experience than they would from simply working at a job.¹¹ Central to that pedagogy were moral lessons about economic disparity, unequal access to the judicial system, and uneven application of laws.¹² Clinicians ultimately framed the pedagogy as “client-centered” lawyering, requiring preparation, performance, and reflection.¹³ The Great Clinicians defined social justice, chose the types of cases their clinics would take, and chose the lessons they would impart to students.¹⁴ Those choices conscribed future clinicians who would enter clinical teaching under their tutelage.¹⁵ Over the decades, representing the underserved and subordinated operated as the anchor for clinical legal education, almost religiously.¹⁶ If the modern clinical movement was the Church, then the Great Clinicians were its clergy. The message was clear: to be a good clinician meant believing in the Great Clinicians’ concept of social justice and inculcating students with that belief. To argue that social justice is not essential to clinical legal education is equivalent to Martin

⁸ See Barry et al., *supra* note 3, at 12–13; Dubin, *supra* note 1, at 1464–65; see also Kosuri, *supra* note 7, at 206–07 (discussing how clinical education developed out of the political and social atmosphere of the 1960s and 1970s); Stephen Wizner & Robert Solomon, Essay, *Law as Politics: A Response to Adam Babich*, 11 CLIN. L. REV. 473, 473 (2005) (discussing clinical education in the 1960s and stating, “we believed that we were making a political decision—that lawyering on behalf of poor people meant representing the oppressed against entrenched interests, including the state”).

⁹ See Wizner & Aiken, *supra* note 1, at 998.

¹⁰ Frank Askin, *A Law School Where Students Don’t Just Learn the Law, They Help Make the Law*, 51 RUTGERS L. REV. 855, 856 (1999) (admitting that he paid little attention to teaching all aspects of lawyering to the law students that worked with him in an impact litigation clinic); see Barry et al., *supra* note 3, at 9–10; Wizner & Aiken, *supra* note 1, at 998.

¹¹ See Barbara L. Bezdek, *To Forge New Hammers of Justice: Deep-Six the Doing-Teaching Dichotomy and Embrace the Dialectic of “Doing Theory,”* 4 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 301, 305–06 (2004). See generally Gary Bellow, *Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 374 (1973) (providing the framework for modern clinical pedagogy).

¹² See Barry et al., *supra* note 3, at 13.

¹³ See Ashar, *supra* note 1, at 369–70; Blaze, *supra* note 3, at 947–48; Wizner & Aiken, *supra* note 1, at 999.

¹⁴ See Barry et al., *supra* note 3 at 12–13; Kosuri, *supra* note 7, at 206–07.

¹⁵ See Kosuri, *supra* note 7, at 216; see also Karla Mari McKanders, *Clinical Legal Education at a Generational Crossroads: Shades of Gray*, 17 CLINICAL L. REV. 223, 224 (2010).

¹⁶ See Dubin, *supra* note 1, at 1475.

Luther posting his ninety-five theses to the Castle Church door.¹⁷ Maybe it is time for our Reformation.

This Article challenges the authority of the clinical clergy to describe the content and subject-matter of law school clinics. These are my five theses:

1. Clinical legal education is not the province of any one constituency or ideology.
2. Law schools primarily exist to educate and train law students—all law students.
3. Clinics are the pinnacle of experiential learning.
4. Clinical faculty should be empowered to create diverse clinical experiences for students.
5. Social justice is still relevant to clinical legal education.

I. CLINICAL LEGAL EDUCATION IS NOT THE PROVINCE OF ANY ONE CONSTITUENCY OR IDEOLOGY

When the founders of modern clinical education became law school teachers, they were rebels—iconoclasts that challenged the staid, theoretical world of American law schools.¹⁸ They brought the protests, injustices, and turmoil of the streets into the hallowed halls of law schools.¹⁹ Rather than read about neutered disputes in casebooks, the founders of the modern clinical movement allowed students to experience firsthand the fights going on outside the law school walls.²⁰ Initially, this appeal was enough.²¹ It reflected the world at that time—activist students working with activist lawyers. Eventually the turmoil in the streets subsided. The fervor that brought forth the clinical movement dissipated. Ford Foundation money that mandated that clinics be

¹⁷ See *id.* In the early 1500s, the Catholic Church used the practice of selling “indulgences,” a coupon for a rebate on penitence for sins already committed and confessed to. R.R. PALMER & JOEL COLTON, A HISTORY OF THE MODERN WORLD 75 (6th ed. 1984). Martin Luther was a German priest who disagreed with this practice arguing instead that remission of repentance was between God and the individual, not for the clergy or Church to dispense, and especially not to sell. *Id.* In 1517 he posted his ninety-five theses to the Castle Church door in Wittenberg, Germany. *Id.* Luther challenged the belief that the Pope and the Church were the only sources of divine knowledge and argued that all Christians had the power to discern their own religious truths. *Id.* at 75–76.

¹⁸ See Askin, *supra* note 10, at 857; Suzanne Valdez Carey, *An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice*, 51 KAN. L. REV. 509, 509, 513 (2003).

¹⁹ See Wizner & Aiken, *supra* note 1, at 998.

²⁰ See Carey, *supra* note 18, at 513.

²¹ See Dubin, *supra* note 1, at 1465–67.

socially progressive dried up.²² But the rebels, the iconoclasts, had become comfortable in their new habitat. They had learned how to teach—something that they had not been trained to do.²³ And they had an army of law students (albeit a relatively small one) to do the work they cared about.²⁴ Over the next two decades these former rebels turned law professors channeled energy once directed at civil rights advances and law reform efforts toward fighting battles to entrench themselves in the academy.²⁵ Students who shared their values fought alongside them. The battles achieved varying degrees of success but, in the aggregate, clinics found a permanent place in law schools.²⁶ They proliferated and became part of the norm.²⁷ Those rebels—the Great Clinicians—achieved much of this.²⁸ But now, they have become the “establishment.” The Great Clinicians no longer challenge the status quo regarding clinical legal education, but rather defend it.²⁹ They defend their legacy, their sense of social justice, and their niche in the academy.³⁰ Just as non-clinical faculty like to produce graduates in their image, so do clinical faculty.³¹ For the Great Clinicians, that means cultivating social justice lawyers.³² But the issue is not whether to challenge their accomplishments or their place in history.³³ The issue is whether, in that defense of the past, clinicians are failing multiple segments of students by limiting the types of clinical experiences offered to them.³⁴

²² See *id.*

²³ See Wizner & Aiken, *supra* note 1, at 1003.

²⁴ See, e.g., Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 334–35 (2001).

²⁵ See Blaze, *supra* note 3, at 958–59.

²⁶ See Barry et al., *supra* note 3, at 32; Blaze, *supra* note 3, at 961; Dubin, *supra* note 1, at 1462.

²⁷ See Barry et al., *supra* note 3, at 32; Blaze, *supra* note 3, at 961; Dubin, *supra* note 1, at 1462.

²⁸ See Kosuri, *supra* note 7, at 207.

²⁹ See Dubin, *supra* note 1, at 1466; McKanders, *supra* note 15, at 235.

³⁰ See Wizner & Aiken, *supra* note 1, at 1001–02.

³¹ See Reed, *supra* note 7, at 253–54.

³² See *id.*

³³ See *id.*

³⁴ See *id.* at 250–52. I once compared the modern clinical movement to a house built by the movement’s founders. The founders not only identified space to build their house, but they designed, furnished, and maintained it. It may have begun as a temporary dwelling that was never intended to last but, through the years, the founders strengthened and renovated it. Originally, the site of the house was on the edge of town and away from the main street. Invited guests needed to travel to get there. This was fine for the founders because they were not interested in entertaining lots of people. Instead, they wanted people that were like them; who were interested in the food they cooked and the drinks they served—people who wanted to stay awhile. Gradually, the town began to expand. As it did,

Though the Great Clinicians would likely not claim that they own all of clinical legal education, they have co-opted it and are in constructive possession of it. They are clinic directors, senior faculty members, and hiring committee chairpersons. They are the gatekeepers to the academy. As a result, there is a self-perpetuating aspect to clinical teachers just as there is for non-clinical teachers: we hire folks that look like us.³⁵ In the early years, this approach made a lot of sense; there were not very many clinical professors to begin with and the few that did exist needed comrades in arms.³⁶ Decades of building those ranks with people who shared the ideology, however, has resulted in an intellectual homogeneity.

We assume too much, discuss too little, and dismiss alternative perspectives. Politically, we defend our territory.³⁷ The Great Clinicians explicitly staked our place in the academy with social justice markers.³⁸ Movement of those markers or encroachment by foreigners is considered trespass on sacred ground. Clinical faculty fear being displaced. Going forward, however, we must shed that territoriality to enhance our position in the institution by promoting more clinical opportunities.³⁹

II. LAW SCHOOLS PRIMARILY EXIST TO EDUCATE AND TRAIN LAW STUDENTS—ALL LAW STUDENTS

Law school is first and foremost about educating students. Even though faculty members often use their positions to pursue their own social and political agendas (both inside and outside their institutions), without students, there are no law schools. Thus, the fundamental goal of every law school faculty member should be to educate students as ably as possible. The genius of Christopher Columbus Langdell—appointed Dean of Harvard Law School in 1870—was not in developing

the clinical house began to receive visitors. Where once it drew mostly those who shared the founders' taste for the wilderness, it then drew people who just wanted to drop in. The visitors had heard that the founders served meals rich in sustenance (much better than the town cafeteria). The founders, however, were not so keen on these new visitors. The founders suspected they were in their house for all the wrong reasons. They wanted the meat, but they didn't want to drink the punch. The punch, for the founders, was the essential part of the meal. It may be that the clinical community has outgrown a single house. The Great Clinicians anchored a new neighborhood featuring an appealing style of architecture favored by new residents seeking their own living space to entertain their own guests. This is a success story, not a failure. Kosuri, *supra* note 7, at 216.

³⁵ See Reed, *supra* note 7, at 253–54.

³⁶ See Wizner & Aiken, *supra* note 1, at 998.

³⁷ See Dubin, *supra* note 1, at 1475.

³⁸ See Reed, *supra* note 7, at 243, 253–54.

³⁹ See Ashar, *supra* note 1, at 411.

the case method of legal education, but rather in developing a method that was so efficient as to make law schools more profitable.⁴⁰ The case method allowed education of large numbers of students in a methodical and replicable manner.⁴¹ Clinical legal education, on the other hand, is relatively inefficient.⁴² It requires more time, more professors, and adds the complexity of real life into the equation. Yet, the return on investment for clinical education, at least to students, is arguably greater than the return acquired through traditional, large, Socratically-taught lecture classes.⁴³ Almost eighty years after early-twentieth century scholar and professor Jerome Frank asked *Why Not a Clinical Lawyer-School?*, experiential learning has begun to permeate doctrinal classrooms.⁴⁴ Increasingly, podium faculty are contextualizing doctrine by introducing lawyering.⁴⁵ This is a great development—much in line with the 2007 *Carnegie Report's* urging to better integrate theory and practice.⁴⁶ Presumably, incorporation of practical lawyering skills into these courses is done because it enhances students' education.⁴⁷

Clinical professors must also remember that educating students is the primary goal, and service to clients the second order. Of course, clinicians must maintain their professional responsibility to clients once representation commences.⁴⁸ Clinics, however, should let their teaching goals drive client selection, rather than the reverse.⁴⁹ Clinical faculty that use clinics as personal legal services firms run the risk of using law school resources for purposes other than the educational mission. Keeping priorities in order mitigates this risk.

To satisfy this educational priority, clinical opportunities should exist for every law student who wants one. The notion that clinics are

⁴⁰ Erwin Chemerinsky, *Why Not Clinical Education?*, 16 CLINICAL L. REV. 35, 38 (2009); Ogilvy, *supra* note 6, at 3–4.

⁴¹ See Chemerinsky, *supra* note 40, at 38.

⁴² See Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612, 617 (1984); Chemerinsky, *supra* note 40, at 38.

⁴³ See Amsterdam, *supra* note 42, at 618.

⁴⁴ See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 7–8 (2007) [hereinafter CARNegie REPORT]; Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 917 (1933). The 2007 book *Educating Lawyers: Preparation for the Profession of Law* was published by the Carnegie Foundation and is commonly referred to as the *Carnegie Report*.

⁴⁵ See, e.g., CARNegie REPORT, *supra* note 44, at 38–39.

⁴⁶ See *id.* at 12.

⁴⁷ See *id.* at 13.

⁴⁸ See David F. Chavkin, *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507, 1513 (1998).

⁴⁹ See Adrienne Jennings Lockie, *Encouraging Reflection on and Involving Students in the Decision to Begin Representation*, 16 CLINICAL L. REV. 357, 365–67 (2010).

only for “public interest” students or special factions of students must be abandoned. Every law student should feel welcome in a clinic regardless of ideology, background, or interest. This is not to suggest that most clinicians overtly prevent students who do not share their ideology from enrolling in their clinics, but tacit signals may nevertheless make many students feel uncomfortable with clinics that espouse a different ideology, or worse, fear being judged by professors. Additionally, some students may still be forming their ideology; others may not have one at all. Students may be dissuaded from working in a clinic for fear that clinical faculty will dogmatically preach rather than allow students to formulate their own beliefs and values. Incorporating more students in clinics, however, will only enhance the learning experience for everyone. More varied perspectives, greater interaction, and more discussion will only lead to profounder understanding of issues, people, and values.

III. CLINICS ARE THE PINNACLE OF EXPERIENTIAL LEARNING

The greatest contribution of clinical legal education is not in creating a haven for public interest-oriented law students or in promoting social justice causes, but rather in a methodology that teaches students how to learn from experience, whatever that experience may be.⁵⁰ For ninety years, various groups have called for greater experiential learning opportunities in law schools.⁵¹ In the midst of the greatest economic recession in a generation and a contracting legal marketplace affecting all law schools and every type of law practice, student demand for practical legal training is understandably heightened.⁵² Law school administrators are already responding to new pressures by increasing the number of simulation courses and externships.⁵³ Clinics are the top

⁵⁰ See Jeanne Charn, *Service and Learning: Reflections on Three Decades of the Lawyering Process at Harvard Law School*, 10 CLINICAL L. REV. 75, 77–78 (2003); Jennifer Howard, *Learning to “Think Like a Lawyer” Through Experience*, 2 CLINICAL L. REV. 167, 176 (1995).

⁵¹ Chemerinsky, *supra* note 40, at 37 (chronicling the 1921 study supported by the Carnegie Foundation for the Advancement of Teaching, Jerome Frank’s 1933 article extolling a “clinical law school,” a 1944 AALS report edited by Karl Llewellyn, the 1992 *MacCrate Report*, and the 2007 *Carnegie Report*).

⁵² See John Henry Schlegel, *Walt Was Right*, 51 J. LEGAL EDUC. 599, 608 (2001).

⁵³ See, e.g., *Law School Dean to Serve Second Five-Year Term*, DUKE CHRON. (Nov. 16, 2011), <http://dukechronicle.com/article/law-school-dean-serve-second-five-year-term> (describing how Duke School of Law Dean David Levi has “focused on preparing students with professional training, through externships, clinics and courtroom simulation courses”); *Lawyering Skills Center: Clinics, Externships, & Simulation Courses*, N.Y. LAW SCH., http://www.nyls.edu/academics/jd_programs/lawyering_skills_externships (last visited Feb. 17, 2012) (explaining that “[s]ince 1991, . . . experiential learning ha[s] increased significantly and [is] now an integral part of the NYLS curriculum”); *Simulation Courses*, THE CATHOLIC UNIV. OF AM. CO-

of the pyramid in terms of experiential learning. Clinicians should embrace this leading role and find ways to bring that superior experience to more students.

In slow economies, students need to develop marketable practice skills.⁵⁴ In years past, law firms invested time and money to develop young lawyers who would repay that investment by generating many years of billable hours. Law firms now, however, demand associates who can hit the ground running before they depart to another job, often within the first five years of practice.⁵⁵ This change in the market has pushed practical training downstream to law schools.⁵⁶

For law school administrators, simulation courses and externships are far cheaper alternatives to clinics. A clinic, however, offers a richer experience that cannot be replicated by other experiential learning. Clinical pedagogy is the multi-faceted jewel in the crown of clinical legal education. Preparation, performance, and reflection are key elements to any clinical experience regardless of subject-matter. The signature feature of clinical pedagogy is the students' placement in the primary role of representative, where faculty members use those experiences as focal points for further inquiry. This pedagogy can be applied in any clinical experience and unlocks discussions about varied political, economic, and social issues. Clinical faculty should bring that experience to more students regardless of whether it explicitly includes traditional notions of social justice.

IV. CLINICAL FACULTY SHOULD BE EMPOWERED TO CREATE DIVERSE CLINICAL EXPERIENCES FOR STUDENTS

Legal realists like Jerome Frank envisioned clinical cases to include more than just issues of poverty law.⁵⁷ Clinicians argue that it is important to expose students to social justice issues in clinics because most law students would not otherwise have any experience with under-

LUMBUS SCH. OF LAW, <http://www.law.edu/clinics/cle/legal-simulation.cfm> (last updated Apr. 12, 2011) ("In addition to externships and client-based, representational clinics, the law school offers an ever-increasing number of simulation courses that permit students to learn and improve a variety of essential lawyering skills.").

⁵⁴ See Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 602, 605 (2010).

⁵⁵ NALP FOUND. FOR LAW CAREER RESEARCH & EDUC., UPDATE ON ASSOCIATE ATTRITION: FINDINGS FROM A NATIONAL STUDY OF LAW FIRM ASSOCIATE HIRING AND DEPARTURES—CALENDAR YEAR 2010, at 4 (2010) (stating that "70% of 2010 departing associates left their firms within five or fewer years of their arrival"); Thies, *supra* note 54, at 605–06.

⁵⁶ Thies, *supra* note 54, at 611.

⁵⁷ See Frank, *supra* note 44, at 917–18.

served communities or poverty law.⁵⁸ This assumes a lot about law students, but even if true, it deliberately excludes an equally valuable learning experience for students lacking exposure to many other strata of American society.

The question is why should law school clinics be the exclusive province of one over the other? One could imagine a slew of law school clinics not rooted in traditional poverty law or social justice issues. Some examples include intellectual property, securities, venture finance, trusts and estates, tax, and bankruptcy. Many of these are related to business, though they may include litigation as well as transactional work. Though ideologically neutral on their face, one could create a social justice agenda to attach to most of these clinics, but the question is why is that necessary? Scholars often depict the clinical dichotomy as one of skills versus social justice, but this overly simplifies what it is to be a lawyer.⁵⁹

Clinicians tend to marry lawyering values with social justice values.⁶⁰ This is simply not accurate. There are, for example, a whole host of values activated by the lawyer-client relationship. Any clinic that involves clients will involve lawyering competencies that naturally involve more than technical skills. The question is how those competencies are taught—through social justice cases or some other types of cases. Lawyers are taught to zealously advocate for their clients. The professional rules of conduct carefully distinguish a client’s beliefs from that of the lawyer. Yet, to assert that the only values worth holding are social justice values removes the neutral-partisan ethic that is central to the profession.

Furthermore, different approaches and notions of social justice are visible through legal practice. In litigation, there are lawyers on each side of a dispute. One side is often painted as the “bad guy” when, in fact, the conflict is more nuanced. In an ideal world, students would be taught about each perspective. Instead, clinicians tend to champion their own paradigms and values, dismissing alternative views. The notion that if one does not agree with the clinical teacher then he or she is “against” social justice is dogmatic. Instead, both parties may simply have different notions of justice or a different hierarchy of values. For law students, this is an important point. Should the goal of clinical education be to inculcate students so that they see the world the way clinical faculty view it and champion their causes, or should it be to em-

⁵⁸ See Dubin, *supra* note 1, at 1476–77.

⁵⁹ See, e.g., Wizner, *supra* note 24, at 327, 330, 332.

⁶⁰ See, e.g., Dubin, *supra* note 1, at 1475, 1477–78; Wizner, *supra* note 24, at 329–31.

power students to develop their own understanding of the world and their own values? If the latter, then how must the social justice model be incorporated into clinics?

Most clinicians rightly acknowledge that only a few clinical students will go into public interest careers. As such, most of them are in clinics to learn transferable competencies. Social justice clinics teach many of those competencies, but so can many other types of clinics. Failure to recognize this possibility risks sending a message that the only legitimate clinic is one rooted in social justice, even if another might be a better teaching vehicle.

A venture finance clinic serves as a good example. Setting student practice rules aside, this type of clinic would, on its face, be devoid of traditional social justice issues.⁶¹ Students would represent businesses who are seeking to acquire early stage investment from financial sponsors. The legal work might involve negotiation, document and financial review, and contract drafting. Additionally, students must understand power dynamics between parties, understand various motivations, and learn how to manipulate them to the client's advantage. A successful representation results in a client receiving funding. This clinic is by and large devoid of social justice. But why is it not a legitimate clinical offering? What is being taught is much more than "skills." The richness of the experience is not in drafting the agreements, but in learning what motivates people and how to align interests to achieve a desired outcome. Professional ethics are still triggered, though not necessarily in the social justice context. Learning these things in the context of corporate and securities law may in fact benefit a student's career more than representing a wronged social security beneficiary. Regardless of the clinical context, non-social-justice-oriented clinics should be valid offering for students, thereby allowing them to choose their own pursuits in the clinical arena.

Students—with the right information—are quite capable of discerning the differences between various practical experiences. Law schools can assist by highlighting the spectrum of lessons presented in each type of experience from simulation to live-client clinic. Similarly, with full information, students can discern the differences between non-social justice clinics and social justice ones. They can prioritize their own values and learning objectives.

⁶¹ I purposely do not address the student practice rules in this essay for three reasons. First, every state has their own. Second, they may not apply to all clinical experiences. Third, if law schools had the inclination to modify them to accommodate a particular type of clinic, I have faith that they could figure out how.

Clinical legal education and clinical educators are not a monolith. When the modern clinical movement was established, clinicians brought a wide assortment of cases into the clinical fold.⁶² Though the subject matter may have been the personal preference of the instructors, law schools gave them the freedom and trust to turn whatever those cases were into rich educational experiences. Clinics should reestablish that academic freedom. Every clinician should be free to develop teaching objectives and design clinics without mandates about the type of case or a social justice perspective. Schools must set the curriculum so that clinics do not compete or overlap in subject matter, but they should not tell professors what to teach or how to teach it. Law schools should hire faculty they trust to educate their students and then give them the power to do so. No school would do otherwise in a contracts course or a torts course, but clinics prescribe social justice.

V. SOCIAL JUSTICE IS STILL RELEVANT

Despite how it may appear, I believe in social justice. I even believe that law school clinics should be free to champion social justice causes. In fact, I am firmly engaged in achieving social impact through the work of my clinic—a transactional clinic at the University of Pennsylvania.⁶³

Social justice clinics can provide rich, meaningful experiences to students while allowing them to develop transferable practice competencies that will be useful to them years into practice. I have worked to make my clinic such an experience. But, to be clear, when clinical faculty champion a social cause, it is almost always their cause. Law students do not have a say in what it is. My clinic is the only transactional clinic at my institution. As such, I attract students who wish to explore transactional careers in corporate and securities, intellectual property, and tax practices. I must make sure that my focus on social impact does not impede my goal to train and educate great transactional lawyers.

Despite claims to the contrary, the social justice mission in law school clinics is alive and well.⁶⁴ Educating students about economic disparities, unequal application of the law, and abuses of power are important lessons. The strength of these lessons and the valuable service provided to clients will sustain social justice clinics regardless of how

⁶² See Wizner, *supra* note 24, at 330.

⁶³ Praveen Kosuri, “Impact” in *3D—Maximizing Impact Through Transactional Clinics*, 18 CLINICAL L. REV. 1, 30 (2011).

⁶⁴ Dubin, *supra* note 1, at 1474 (concluding that the demise of social justice imperatives in law school clinics is premature).

many other offerings enter the fold. Clinicians need to have confidence in the pedagogical model and not fear the introduction of new clinics with non-traditional subject matter. Independent of the subject matter of a clinic, it is lawyering values that we should care most about.

CONCLUSION

I thought about starting this Article with an apology and a disclaimer—an apology to those that would be offended by what I have to say and a disclaimer to let folks know that I do believe in social justice. The fact that I considered these things highlights the reason why clinicians need more ideological neutrality in clinical programs and discourse. Social justice causes are laudable and incredibly important. I am not advocating that social justice should be removed from all clinics. Instead, I espouse a more expansive and inclusive view of what clinics can do for law students. Experiential learning is here to stay and clinical legal education in particular has been a tremendous success. Clinical pedagogy enhances experiential learning in a way that simulation courses and externships do not. Clinicians should embrace that success and look to share it with more students.

We live in an increasingly factionalized and partisan world. When clinicians champion one world view to the exclusion of another, we are just aiding in that factionalization. Law schools are meant to allow students to explore competing theories and develop their own ideologies. Clinics that are intellectually and ideologically diverse further that mission. Education of students should drive service choices, but each faculty member should have the freedom and independence to structure and design their clinics according to their teaching objectives.

As more students look for competitive advantages when they enter the workforce, more will be driven to clinics. Clinicians should strive to provide a portfolio of opportunities that appeal to a wide array of students. Even if clinicians think that social justice clinics are the Cadillac sedans of clinical education, there is nothing wrong with offering a Chevy pick-up truck, too. Different experiences can serve different purposes. There is no reason to preempt one over another merely because of personal preference or ideology.

Martin Luther ended up breaking from the Catholic Church. He was unable to convince the Church to concede that its followers had the power to attain salvation on their own. Clinical legal education, however, does not need a Reformation. It needs to avoid one by entertaining new perspectives and alternatives to social justice clinics while still preserving the core of the modern movement—its pedagogical

method. In my estimation, law school administrators will begin to pressure clinical programs to expand their offerings to include non-social justice clinics. If clinical programs do not take proactive control over that process, clinical educators risk a schism brought about by a Reformation thrust upon us.