

THE TRANSFORMATIVE POTENTIAL OF CLINICAL LEGAL EDUCATION[©]

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PREFACE

I delivered the remarks that follow at the twentieth anniversary of the Parkdale Clinic. Five years later, in November of 1996, I returned to Toronto to speak at Parkdale's twenty-fifth anniversary celebration. Much had changed, in the Parkdale neighbourhood and across Canada, in those years. Just like the United States and other industrial countries, Canada had substantially scaled back on its commitment to economic and social security for impoverished groups during those years. At the same time, however, new social movements—of diverse groups of women, immigrants from southern countries, and First Nations peoples from within Canada's borders, for example—were challenging the state's old ways of doing its business: its jurisdictional boundaries, its conceptions of social citizenship, and its processes of law. In 1996, legal workers and community residents at Parkdale were both angrier than they had been five years before, and more creative, more audacious, in the practice that they were calling "law."

The tenor of my own thinking about social change lawyering had changed during those years as well. In my remarks at the twenty-fifth anniversary, unlike the remarks from five years before that are finally published in this volume, I could no longer offer any prescriptions or advice to other political lawyers and clinical teachers. I could not even offer prescriptions about what kinds of *questions* we should ask to ourselves, to guide our practices. Rather, in my twenty-fifth anniversary remarks, I invoked the title image of literary theorist Susan Suleiman's brave book of unabashedly postmodernist reflections on ethical

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judgment and political action.¹ And I spoke in fragmentary images, images that did not claim to be grounded anywhere, except in what came to mind as I put one step in front of the other in my own work.

In those remarks, I talked about *moving* ourselves to places where relatively powerless people are pulling themselves together, be those places food pantries, or abandoned buildings, or family court waiting rooms, or the day rooms of mental health clinics, or battered women's shelters, or production lines of sweatshops, or the promenades of shopping malls. I talked about using our lawyers' knowledge and power to help the people in those places to *sustain* and *enhance* the enigmatic of safety, and healing, and mutual recognition, and transformation that seem to happen, sometimes, in that space. I talked about joining in the work of bringing those kinds of places and moments—that kind of movement—*inside* our own everyday professional and academic worlds. Finally, I talked about the repositioning and recreation of our “selves”—our individual identities and our sources of social and political power—that this kind of practice might engender. Thus, I suggested that moving towards the places where disenfranchised groups are finding and making justice, joining with that work, and bringing that movement back inside of our own “home” institutions, which tend to be sites of privilege, might chart new pathways towards emancipation.

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This symposium commemorates the twentieth anniversary of the Parkdale clinic. For two decades, Parkdale has been in the forefront of clinical education and poverty advocacy throughout Canada, and indeed, beyond the Canadian border. Yet, in spite of the pre-eminence of programs like Parkdale, clinical legal education has never been a cohesive movement with a clear transformative vision for either law schools or poverty law practice. Rather, clinical legal education has described a range of innovations with diverse and even conflicting ambitions. These innovations range from community-based poverty law centres like Parkdale to simulation-based clinical classes in which students learn “lawyering skills” abstracted from social or political context.²

¹ See S.R. Suleiman, *Risking Who One Is: Encounters With Contemporary Art and Literature* (Cambridge, Mass.: Harvard University Press, 1994).

² I speak from the perspective of one whose formal legal education took place at a neighbourhood-based clinical program like Parkdale; who began my own teaching career at a clinical program funded by the Legal Services Corporation at a state law school; who spent six

In this essay, I do not seek to analyze the full range of practices that comprise clinical education. Nor do I seek to critique the “generic” approach to teaching clinical skills that became popular in the 1980s, exploring how that tradition, through its purported blindness to race and class subordination, worked to reinforce, rather than reduce, race and class privilege.³ That work has been undertaken by other clinical scholars and it should continue. Rather, in this essay, I will focus on clinics like Parkdale—the empowerment-focused, community-based clinics that are both visionary in their goals and down-to-earth in their law practices. I focus on the exemplary work of such clinics in order to address the topic of this panel—the “transformative potential of clinical legal education.”

This phrase, “the transformative potential of clinical legal education,” immediately brings to mind a list of achievements. In their first generation, community-based legal clinics like Parkdale have not merely presented the potential for effecting far-reaching “transformations;” those clinics have already contributed to institutional and cultural change. The kinds of change that such clinics have triggered are quite varied. At the top of the list of these changes is a new approach to the practices of legal advocacy through which these clinics have addressed the “legal problems” of individual clients. Through the “client centred”⁴ advocacy that clinics like Parkdale have modelled, the voices of clients are respected; their material burdens are at least temporarily lightened; their understanding of the legal and political systems is deepened; and their sense of both solidarity and possibility is heightened. Through the community focus of these clinics, grassroots organizations have been strengthened, or indeed given birth: multiple, intersecting networks have been formed—among groups like tenants, prisoners and their families, the physically and emotionally challenged, battered women, marginalized workers, AIDS survivors, undocumented immigrants. Through the institutional litigation of clinics like Parkdale, local bureaucracies have been challenged and reined in.

extraordinary years learning from generous and wise colleagues at the UCLA Law School; and who is currently seeking to reshape my own teaching and practice to address an increasingly skewed division of wealth and power in my home city, and across the globe.

³ See, for example, W.H. Simon’s classic article, “Homo Psychologicus: Notes on a New Legal Formalism” (1980) 32 *Stan. L. Rev.* 487. See also, for example, A.V. Alfieri, “The Antinomies of Poverty Law and a Theory of Dialogic Empowerment” (1988) 16 *N.Y.U Rev. L. & Soc. Change* 659; and P. Goldfarb, “Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory” (1992) 43 *Hastings L.J.* 717.

⁴ See D.A. Binder & S.C. Price, *Legal Interviewing and Counseling: A Client-Centered Approach* (St. Paul, Minn.: West, 1977); and the updated version, D.A. Binder, *Lawyers as Counselors: A Client-Centered Approach* (St. Paul, Minn.: West, 1991).

When a robust clinic settles into a neighbourhood for the long haul, people begin to see how the everyday insults that they suffer—the harassment, the evictions, the lay-offs—need not be accepted as routine abuses of power. Rather, those injuries can be challenged as acts of domination. With long-term support from clinics like Parkdale, people can begin to fit those everyday injuries into larger patterns of disenfranchisement—acts of violence—that must be contested because lives are at stake. With people mobilized around these new understandings, it can become too costly for a landlord or a boss to keep someone quiet by putting her out. It can become too costly for a man to take out his own frustration on a woman's body.

The transformative achievements of visionary clinics like Parkdale go beyond imposing such behavioural controls on bullies. Those achievements go beyond coercing those in power to respect the rights of poor people in order to avoid punishment. In addition, the best of our community-based clinics have sometimes sponsored programs and practices that help “perpetrators” to transform themselves. Through support programs that such clinics sometimes host, people within a clinic's community who have done violence to their families or neighbours can glimpse alternatives to the habits of reactive domination through which they have learned to take out their own frustration on those they love.

Community-based clinics have not merely transformed individuals and grassroots institutions. They have also transformed the university itself. For individual students, a clinical experience can transform career goals and professional self-conceptions. After going through a clinic like Parkdale's, students often rethink their own roles as social change lawyers, from that proverbial “hired gun” to that of a “subject” and an “ally” in multidimensional practices of transformation. Clinics can also challenge the assumptions that have fixed the standard law school curriculum. By providing models of experiential pedagogy and by bringing public law advocacy to the top of the classroom agenda, clinics have shown that law school programs do not have to stay mired in the past. Clinics can educate other law school faculty about the realities of poverty in their own communities, particularly when those faculty are recruited to work on clinic projects. Clinics can also help redirect the universities' research agendas, as the complexities of systematic poverty and the challenges of poverty advocacy are subjected to sustained, practically-grounded reflection. To be sure, few clinics, not even Parkdale, have fully realized all of these transformative possibilities. Yet the potential for clinical legal education to transform the people that

they touch and the institutions in which they are embedded—that potential is great indeed.

This strong vision of the transformative potential law school clinic suggests ways that even the best of our clinics might be improved. For instance, our university-based law school clinics might make greater efforts to enlist their institutions' multidisciplinary research and teaching resources into the clinics' work.⁵ All of our law schools might seek to make clinical courses available to all law students, particularly in their first year of law school, when their sense of vocation as lawyers is being formed. Clinics might do more to prepare all students for public service—the many students who will practise in private firms as well as the few who will work full-time in public interest jobs. The clinics might also become centres of theoretical work on advocacy, places where new concepts of public interest lawyering emerge as students, community members, and clinical faculty reflect together on their practice.⁶ But these potentials for improvement do not diminish the achievements that clinics like Parkdale have already attained. Such clinics signal more than a mere potential for transformation. They are also sites where individual, institutional, and indeed societal transformation is well under way.

Thus, clinical education of the Parkdale variety is already bringing about important “transformations” in local worlds. And with a few improvements, our clinics have the potential to effect transformations in even wider spheres. Though this assessment of our clinics' significance is a fair one, it is also somehow too glib. For this rosy judgment about the transformative achievements and potential of law school clinics is only one dimension of a much more complex reality. To those positioned within the clinical legal education movement and committed to the value of the work that they do, this judgment might seem to tell the whole story, for those people are situated to see clinical education as a powerful agent of the progressive transformation of the social world. But this “insider” perspective is not the only vantage point from which one might study the clinics' multiple, and often elusive, roles in social change.

⁵ See, for example, the articles describing the work of the Interuniversity Consortium on Poverty Law, published in volume 42 of the Washington University Journal of Urban and Contemporary Law, especially: J.S. Lehman & R.E. Lento, “Law School Support for Community-Based Economic Development in Low-Income Urban Neighborhoods” (1992) 42 Wash. U. J. Urb. & Contemp. L. 65; and G.L. Blasi, “The ‘Homeless Seminar’ at UCLA” (1992) 42 Wash. U. J. Urb. & Contemp. L. 85.

⁶ See L. White, “Paradox, Piece-Work, and Patience” (1992) 43 Hastings L.J. 853; and Blasi, *supra* note 5.

As I thought about this “insider” perspective on the clinics’ roles in supporting social change, I came back to the phrase with which my reflection had begun—“the transformative potential of clinical legal education.” When I first heard the phrase, I had assumed that it referred to the capacity of law school clinics like Parkdale to transform other institutions and individuals in the law schools’ local communities. On reflection, I realized that several subtle assumptions were packed into my seemingly “natural” reading of the phrase. First, there was the assumption that those other institutions and individuals were indeed in need of “transformation.” Second, there was the assumption that legal clinics are in a position to determine what “transformations” are needed, and endowed with the social power to carry out the transformations that they have first prescribed. Third, there was the assumption that clinical educators and their students are an appropriate social agent to execute those transformations. When these assumptions are spelled out, they are quite clearly contestable; indeed, they sound somewhat obnoxious. Particularly in contexts where clinics work with poor people, their institutions, and their communities, it is hard to say exactly why lawyers and legal clinics should designate ourselves to be the privileged agents of other people’s social and political change. From where does our knowledge, power, and normative claim to assume their role purport to come?

In this perplexed state of mind, I suddenly saw a hidden ambiguity in the phrase with which all of this had begun. Like one of those cut-out black-on-white silhouettes that at first appears to be a vase, but on further study becomes two human figures facing each other in profile, the syntax of this phrase, which had at first seemed so straightforward, suddenly shifted on me. No longer did the phrase pose the simple question of how our clinics have the potential to transform the world. Instead, the phrase seemed to pose a much less comfortable question. It seemed to ask the *clinics* how much potential *they* have to change. Can we, as progressive clinicians, transform who we are, how we see ourselves, what we do—our own practices—so as to open those practices to the knowledge, power, and human agency of the people with whom we work? Do we as clinical legal educators have any potential to deprivilege our own self-concepts, routines, and institutions, in the interest of a more collaborative practice of advocacy toward social justice?

This new reading of the potential for transformation does not negate the accomplishments that legal clinics make in transforming community institutions and law school routines. Rather, this new reading introduces a tension, a counterpoint, that asks to be attended to

at the same time that we survey our past accomplishments and map our future possibilities. This counterpoint—this challenge to our own legitimacy as the agents of other people’s transformation—suggests three questions. First, how much potential do we really have to change ourselves—the profession and the pedagogy of lawyering—before we cease to be lawyers in any common sense meaning of the term? We can only address that question as we work to stretch the boundaries of the lawyer role through new, less lawyer-dominated advocacy practices. Second, as a practical matter, how do we find time for self-transformation amid the pressing demands of our day to day work? And how do we motivate our students to challenge the lawyer’s traditional privilege, just as they are beginning to enjoy it? And third, why should we bother taking the challenge of self-transformation seriously? Why should we worry over the ethical questions that are embedded in our claim to transform others? Why should we seek to change our own self-concepts and modes of practice? Why not just get on with the urgent work of helping the poor?

There are at least two compelling reasons for taking these questions seriously, and to commit ourselves to the project of our own transformation. The first reason arises from the historical moment in which we now work. Like it or not, over the last few years, we have witnessed the demise of the grand social theories that authorized us to see ourselves as part of an elite professional and academic “vanguard” that could guide, or catalyze, or organize “oppressed groups” to change the world. Those theories have been discredited on both political and theoretical grounds. This debunking has been done by postmodernist legal and social theorists, such as Boaventura de Sousa Santos and Michel Foucault as much as by post-Marxist political leaders such as Nelson Mandela and Vaclav Havel. The multiple, cross-cutting character of identity, and of domination, is a fact of life in our post-liberal world.⁷ We are no longer in an age of “scientific” politics. Rather, we are entering an era in which shifting coalitions of gay, feminist, differently-abled, insurgent activists of colour enact their “citizenship” through their efforts to achieve it, reshaping the process of politics by refusing to fight among themselves over its spoils. In such a world, we can no longer call upon vanguardist theories to position us as the agents of other people’s change. And any claim by legal clinics that

⁷ See, for example, J.W. Scott, “Multiculturalism and the Politics of Identity” in J. Rajchman ed., *The Identity in Question* (New York: Routledge, 1995); and J.C. Scott, *Domination and the Arts of Resistance: Hidden Transcript* (New Haven, Conn.: Yale University Press, 1990).

it is our place to transform others' worlds is subtly premised on such vanguardist pretensions.

The second reason to question our own status as change-agents has been forcefully set forth in the writings of Gerald López.⁸ His work suggests that lawyers who seek to transform the world for their clients, or to transform their clients to change the world, risk producing a very different result. For the paradigm within which legal clinics transform others pictures “the client” or the “community” as the entity with the “problem” that needs the help of lawyers in order to “change.” This paradigm attributes to lawyers the insight to translate those problems into the symptoms of political and economics subordination. It then authorizes lawyers to prescribe the practices—be they impact litigation or community organizing—that will reverse those pathologies. Within this paradigm, it is the lawyers but not the clients, who are called upon to act in the roles of fully human beings. In contrast, the clients are called upon to respond to the lawyer’s questions, and to comply with the lawyers’ instructions. One sign of how deeply this disabling paradigm infects our most basic ideas of lawyering is the etymology of the term “client,” which can be traced back to a Latin verb referring to the privilege of a Roman patrician to call “his” slaves by his own, the master’s, name.⁹

Thus, the very project that we, as progressive lawyers and clinicians, undertake when we aspire to transform the world replicates and therefore reinforces the subordination of impoverished peoples to the world-making power of the elites who dominate their lives. So stated, this proposition may sound like a nay-saying cliché, for it seems to imply that lawyers have no legitimate role to play among poor people. The importance of the new advocacy scholarship that Lopez and others have undertaken is that, in defiance of apparent “logic,” it does not endorse this cynical conclusion. Rather, it assumes that the work of lawyering for disenfranchised groups *should* be done, and then examines how the day to day encounters of lawyers and poor people might be re-scripted to give both clients and their lawyers more space for human agency within this lawyering project.

The era of vanguard visions is over. The theories which grounded those visions are in crisis. The violence which those visions has supported is finally getting exposed in every area of social and

⁸ See G.P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (Boulder, Colo.: Westview Press, 1992).

⁹ See *Oxford English Dictionary* 2d ed., prepared by J.A. Simpson & E.S.C. Weiner, vol. 3 (Oxford: Clarendon, 1989) at 320.

political life. We can no longer repress this insight and return to a complacent practice which positions us to draw the blueprints for changing other people's lives. Rather, we have no morally consistent option except to confront and embrace the tension between our aspirations to "fix" the blatant injustices of poverty, and the poverty of our claims to undertake that task. Our challenge is to hold on to our commitments while at the same time questioning our own capacity and legitimacy to act out the commitments that we have embraced. Our challenge is to practise law for poor people in a way that looks inward, resisting elitist concepts of lawyering, and at the same time looks outward, seeking new ways to ally with "clients" and to join in mutual, but keenly self-reflective, power-sensitive projects of change. As we accept this challenge to change our own self-concepts and modes of advocacy, our legal clinics and our visions of clinical education will change as well. Given the times in which we find ourselves, we must take such risks if we are to seek justice in the work that we do.