

Boston College Journal of Law & Social Justice

Volume 32

Issue 2 *The Way to Carnegie: Practice, Practice, Practice— Pedagogy, Social Justice, and Cost in Experiential Legal Education*

Article 2

April 2012

The Clinical Mission of Justice Readiness

Jane H. Aiken

Georgetown University Law Center, jha33@law.georgetown.edu

Follow this and additional works at: <https://lawdigitalcommons.bc.edu/jlsj>



Part of the [Legal Education Commons](#)

Recommended Citation

Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C.J.L. & Soc. Just. 231 (2012), <https://lawdigitalcommons.bc.edu/jlsj/vol32/iss2/2>

This Symposium Article is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Journal of Law & Social Justice by an authorized editor of Digital Commons @ Boston College Law School. For more information, please contact abraham.bauer@bc.edu.

THE CLINICAL MISSION OF JUSTICE READINESS

JANE H. AIKEN*

Abstract: Law schools strive to teach students to be practice ready. That noble goal, however, is not enough. Because of the powerful role that lawyers play in society, educators must also teach students to be “justice ready.” Justice ready graduates are able to recognize injustice and appropriately evaluate the consequences of their actions in a way that mere practice readiness does not teach. The traditional law school curriculum fails to teach justice readiness, instead inculcating in students a penchant for the status quo—an unjust and unchanging social order. Clinical education is the solution for creating justice ready graduates. Its use of Transformative Learning Theory allows students to learn about justice through experience and creates a long-lasting understanding of the lawyer’s role in society.

INTRODUCTION

What is the purpose of clinical legal education? Should clinics aim to teach students awareness of injustice and the role that lawyers play in fighting it? Or is that not an essential component of clinical legal education? At one point, the debate over the purpose of clinics was whether to provide teaching or service.¹ Educators, however, struck a balance between the two, and the debate switched to contemplating what to teach: skills or justice.² This shift indicates the progress in the debate, as clinical faculty members have embraced their role as teachers. Throughout these debates, however, one thing has stayed the same in the legal profession: justice and injustice are the backdrop. There is no such thing as neutrality; everything has just or unjust effects. Therefore, clinical legal education cannot avoid dealing with justice. The only

© 2012, Jane H. Aiken.

* Professor of Law and Director of The Community Justice Project, Georgetown University Law Center. I wish to thank Boston College Law School for hosting such a stimulating symposium and Andrew Mosher for his research assistance. Finally, I would like to thank Professor Stephen Wizner. I am sure he will recognize his thoughts, if not his actual words, presented as my own.

¹ See Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 *FORDHAM L. REV.* 997, 999 (2004).

² See *id.* at 1005.

question is whether to ignore justice issues that constantly emerge or prepare students to identify injustice when they see it and develop the skills and strategic thinking to remedy it. Clinics must move students beyond being just practice ready.

Law school graduates enter a troubled world. The September 11 attacks still reverberate and the U.S. economy sinks as the greed born in the 1970s and fueled in the 1980s and '90s comes home to roost.³ This is a time of drone attacks on American citizens, roving wiretaps, secret tribunals issuing search warrants, and incarceration rates higher in the United States than in any other nation.⁴ The rich are sheltered from higher taxes and lobbyists try to convince the rest that this policy is for their benefit.⁵ The U.S. government enacts draconian immigration laws and fortifies the borders.⁶ Banks fail and people lose their homes because they received mortgages they could not afford.⁷ The wealthy enjoy comprehensive health insurance as millions of Americans remain one health problem away from economic crisis.⁸

Law school faculty certify to practice and evaluate lawyers—the very people who introduced the torture memo, the war on terror, the resistance to the Kyoto Protocol, the invasion of Iraq, and the tax structure that rewards greed and avarice and abandons the poor. But law schools also educate and certify lawyers who work tirelessly for civil rights, try to create solutions for global poverty, and struggle for peace. Where does the difference between the two groups lie? Lawyers in the latter group feel a sense of responsibility to the world and resist invitations to act out of fear and self-indulgence.

³ See JEFF G. MADRICK, *AGE OF GREED: THE TRIUMPH OF FINANCE AND THE DECLINE OF AMERICA, 1970 TO THE PRESENT*, at ix–x (2011); Jo Craven McGinty, *In 9/11 Remains, Grief Anew*, N.Y. TIMES, Nov. 12, 2011, at A1.

⁴ See ELAINE CASSEL, *THE WAR ON CIVIL LIBERTIES: HOW BUSH AND ASHCROFT HAVE DISMANTLED THE BILL OF RIGHTS* 13, 141 (2004); Karen DeYoung, *ACLU Sues to Force Release of Drone Attack Records*, WASH. POST, Feb. 2, 2012, at A2; Adam Liptak, *Inmate Count in U.S. Dwarfs Other Nations': Tough Laws and Long Terms Create Gap*, N.Y. TIMES, Apr. 23, 2008, at A1.

⁵ See David Kocieniewski, *Since 1980s, the Kindest of Tax Cuts for the Rich*, N.Y. TIMES, Jan. 18, 2012, at A12.

⁶ See Russell Contreas, *U.S. Border Patrol to Build Station in New Mexico's Bootheel*, HUFFINGTON POST (Jan. 20, 2012, 8:19 PM), http://www.huffingtonpost.com/2012/01/21/us-border-patrol-to-build_0_n_1221072.html; see, e.g., Radha Vishnuvajjala, Note, *Insecure Communities: How an Immigration Enforcement Program Encourages Battered Women to Stay Silent*, 32 B.C. J.L. & SOC. JUST. 185, 201 (2012).

⁷ See THOMAS A. RUSSO & AARON J. KATZEL, *THE 2008 FINANCIAL CRISIS AND ITS AFTERMATH: ADDRESSING THE NEXT DEBT CHALLENGE* 21–22 (2011).

⁸ See Jessica Schorr Saxe, *Next Civil Rights Frontier? It Surely Has to Be Health Care*, CHARLOTTE OBSERVER, Jan. 14, 2012, at 13A.

Part I of this Article argues that law school clinics ought to teach students not just to be practice ready but “justice ready”—to be aware of injustice and commit to fighting it in their legal careers. It then lays out some of the questions clinical faculty should ask in figuring out how to achieve that goal. Part II identifies the ways in which traditional law school courses work against inculcating justice readiness and instead teach students to reproduce an unjust social order. Part III explains that clinical legal education can teach justice readiness by encouraging students to reflect on their own experiences in a social justice context. It emphasizes that justice readiness is best taught by fostering insight rather than by transferring knowledge. Finally, Part IV discusses and advocates for Transformative Learning Theory, which provides a theoretical foundation for the notion that reflection in the clinical setting promotes justice readiness.

I. THE OBLIGATION TO TEACH JUSTICE READINESS

It is tempting for law professors to deny responsibility for what students take away from educational experiences and choose to do with their lives. Professors know that students will exercise power in their relationships with clients, courts, and the community. Professors may think that law students are adults, already fully formed. How, then, can we teach them to do good if they have not already developed the idealism, the willingness to forego financial rewards and social standing, and the commitment to social justice that is necessary to sustain people who work for the poor and challenge injustice?

As educators in a professional school, law school faculty provide credentials to the elite. Everything a lawyer does has to do with justice or injustice, sometimes on the surface and sometimes in the background. Justice is about doing, and clinicians are among the only faculty in law schools who teach students how to “do” law. Therefore, clinical faculty ought to pull back the curtain and reveal the injustice; they ought to teach within a context of justice, showing the effect that all lawyers have on society. If clinical faculty throw up their hands and abdicate their responsibility to the poor and oppressed, they reinforce the ideological justification for oppressive social orders. Professors know that they cannot control their students. They, however, can have a deep effect on how students think about problems and solutions. Virtue, like proficiency in legal analysis and advocacy, comes from understanding, insight, and practice. It must be incorporated into the educational process.

Clinicians have a choice: they can be complicit in ensuring that students are good soldiers for the status quo or they can develop teaching strategies to ensure that future lawyers have an appreciation for justice.⁹ Teachers are obligated to take responsibility for what they produce. If teaching methods reproduce the status quo, faculty cannot sit back in their ivory towers and bemoan the state of the world. As educators, they can make a significant difference in how students engage in critical decision-making as community actors.

Thus, the only debate worth engaging in is how best to teach students to be justice ready.¹⁰ First, clinical faculty must determine the skills and knowledge that improve students' ability to identify injustice. Second, they must develop teaching interventions that increase the probability that students will acquire those skills. Clinical faculty need to work together to discuss appropriate projects for students, develop teaching interventions that inspire students to embrace the role lawyers play in justice, and support one another in this difficult endeavor. Clinicians can help their students make a commitment to justice in their lives as lawyers. The tools just need to be refined.

What kinds of interventions with students can make this happen? How can clinical faculty relate to students as both peers and experts to maximize the chance that they will be faithful trustees of justice in the future? How can faculty teach students to recognize injustice when they see it, engage in meaningful analysis of the causes and potential cures for injustice, and develop an abiding desire to use their legal skills to ensure that justice is done? How can schools do this and still accomplish other pedagogical goals? Teaching students to recognize injustice using, for example, civil rights issues raised by the Patriot Act or homeland security would create too political an environment for teaching critical thinking. Clinical faculty need to focus on what they are trying to teach and find an appropriate vehicle for teaching it. If clinical education is ineffective, law schools can hardly produce lawyers who use clinical insights and understanding to enhance human dignity and build a more just society.

II. LAW SCHOOLS UNDERMINE JUSTICE READINESS

A clinician's job is made harder because of what students have already endured in law school. Typical law school classes have the effect of

⁹ See Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 288–89 (2001).

¹⁰ See *id.* at 290 (developing the concept of “justice readiness”).

teaching students that they have little power to affect justice in society.¹¹ Traditional teaching methodology tends to inhibit a student's development of critical thinking skills and value commitment. First, the student becomes passive through a process that neutralizes critical faculties and reinforces a receptive mode.¹² Then, the student goes through a process of confusion, ensuring that former values are questioned and undermined.

In a traditional law school curriculum, the student becomes passive through an experience of dilution. When stepping into the classroom, the student becomes a mere recipient of the professor's teaching and yields to the professor an ability to express personal thoughts and to criticize the message taught. Learning is bulimic, it occurs through reading and digesting a large body of judicial decisions, articles, and books and then disgorging it. The case method constitutes the lion's share of legal study and focuses on appellate judges as the ultimate hero. Their words are "the law" and their image dominates the classroom. The hierarchical structure and educational distancing between student and judges stifles the possibility of genuine doubt.

Students may even develop the notion that the law cannot be a vehicle for justice. Because the U.S. legal system is based on stare decisis, students assume that lawyers acting within that system are not agents of change but are agents of stasis. If students enter law schools with ideas and ambitions of justice, the indoctrination process will detach initial intuitions from the law taught in class and remove their sense of justice through the classroom dynamic.¹³

The case method, comprising only opinions written by appellate court judges, allows this detachment. The opinions are displayed in an abstract way, playing down or ignoring the fact that the decision is a culmination of a controversy.¹⁴ Facts are presented in a condensed form—with just enough detail to explain the doctrine—and sometimes parties to the dispute remain nameless, only known as plaintiff or defendant.

¹¹ See Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 392–93 (1971).

¹² See *id.* at 415 (noting that "the student's values are attacked" through the use of the Socratic method, which then causes "rationalization for the professor's own inaction and acceptance of the status quo").

¹³ See Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 279, 287 (2012); Stephen C. Halpern, *On the Politics and Pathology of Legal Education (or, Whatever Happened to That Blindfolded Lady with the Scales?)*, 32 J. LEGAL EDUC. 383, 384–85, 390 (1982).

¹⁴ See Halpern, *supra* note 13, at 385.

The difficult stories that form the basis of the cases are presented in a cold, indifferent way. Students will rarely express shock at an instance of physical injury or human tragedy, where a person unjustly loses rights or liberties. This dynamic breeds the attitude among students that the cases they read have imaginary facts and concern the legal doctrine instead of the parties' emotions, pains, or pleas for justice.¹⁵

Therefore, students learn how to think like lawyers by adopting an emotionally remote, morally neutral approach to human problems and social issues, distancing themselves from the sentiments and suffering of others, avoiding emotional engagement with clients and their causes, and withholding moral judgment. The result is that schools produce graduates who view themselves as mere facilitators of the even-handed application of process, who behave as if there is a level playing field and that they have little or no power or responsibility for ensuring substantive justice.¹⁶ Further, they believe that law is naturally like this and they have no insight into alternate ways in which a legal system could function. This is the price of embracing neutrality and treating clinical legal education merely as a skills training ground.

III. CORRECTING LAW SCHOOLS' WRONGS

Clinics must teach skills, but they should also challenge the conception of law inculcated by law schools. There is no dichotomy between lawyering skills and sensitivity to injustice. Teachers can work toward inspiring students to bring about a more just society with their legal skills.

Teaching students to reflect on their experiences is an essential part of this process. Every day, people are implicitly invited to engage in the cognitive shortcuts that reinforce bias and stoke fear.¹⁷ The best strategy to avoid further indoctrinating students is to identify this invitation and challenge its underlying assumptions. For clinical professors to accomplish this, they must teach "reflective skepticism," where students learn to understand that knowledge is constructed, gain the ability to identify and challenge assumptions, and imagine and explore alternatives. Society needs lawyers who can offer a healthy dose of reflective

¹⁵ See *id.* at 384.

¹⁶ See Jerold S. Auerbach, *What Has the Teaching of Law to Do with Justice?*, 53 N.Y.U. L. REV. 457, 463–64 (1978).

¹⁷ See Jane H. Aiken, *Walking the Clinical Tightrope: Embracing the Role of Teacher*, 4 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 267, 269–70 (2004).

skepticism. Thus, clinical education should aim to create opportunities for students to reflect on their experiences.

Learning should also be placed in a social justice context, where students can glimpse the close relationship between knowledge, culture, and power. In that context students may also recognize the important role lawyers can play in unearthing and challenging hierarchical and oppressive systems of power. Students should be exposed to the ways in which legal power is distributed and exercised in American society, to what ends, and in whose interests. Ultimately, the goal should be to imbue students with a lifelong desire to learn about justice, identify injustice, recognize when they are perpetuating injustice, and work toward a legal solution. When students see this as an essential component of their professional identity, they will leave the educational institution with a sense of personal obligation to confront injustice.

One problem with this kind of learning is that it only works when students gain the insight on their own. Sometimes, good teaching requires that educators be transparent about goals and expectations. At other times, however, educators want students to learn for themselves. In these situations, transparency as to the ultimate goal of the educational experience would interfere with that process of revelation. For students learning justice readiness, revelation is quintessential to the learning process. Clinical faculty cannot say to students, “That is an injustice” or “See how the system and its structural requirements have disadvantaged your client?” and hope students will be able to identify future injustice and understand its causes. Instead, clinical faculty should construct learning experiences that permit the justice issues to unfold, and require students to identify injustice and to understand its structural causes to solve the clients’ problems. The clinician’s job is to tease out those insights through careful case choices and skillful, goal-oriented questioning.

The skills versus justice debate invokes the image of a serious clinician—mentoring students to inculcate the skills necessary for providing excellent legal services—pitted against a firebrand lawyer. It focuses upon combating injustice rather than teaching. It is time to let go of that dichotomy. Yes, clinics can increase access to justice for the systematically disadvantaged, but providing legal services to the needy does not necessarily teach students to be justice ready. It is the clinician’s choice about cases, experiences, interventions, and supervision that increases the likelihood of students gaining insight into justice. That same choice ensures that students have the necessary skills to become excellent lawyers.

In my interactions with students in supervision, I aim to help them gain those insights that I recognize but they do not. I ask them questions alluding to that insight but do not tell them outright what conclusions they should reach. The key is insight, not knowledge. Surely, for my students to adequately handle cases, they require a certain amount of basic knowledge; that is provided through the classroom component, readings, and direct supervision. My more challenging tasks, though, are to teach my students judgment, strategic decision-making, relationship-building skills, professional demeanor, and sensitivity to the justice issues that their cases necessarily raise. This aspect of teaching is generally accomplished through supervision. My challenge, however, is to teach in such a way that my students learn and experience for themselves. This often is directive but not always transparent.

IV. TRANSFORMATIVE LEARNING THEORY

Educational literature suggests that revelatory insights like those regularly obtained through clinical legal education require a transformation in the student that is best achieved through personal reflection.¹⁸ Transformative learning theory, largely pioneered by Professor Jack Mezirow, suggests that adult students come to law school already socialized with well-developed meaning schemes—patterns of thought that control the way they interpret perception and construe experience.¹⁹ Discussing Professor Mezirow's theory, Professor Edward Taylor noted that these sets of habitual expectations operate as codes to form, limit, and distort how adults think, believe, feel, and judge.²⁰ Learning is essentially a process of appropriating a new or revised interpretation of the meaning of an experience.²¹ Adults naturally tend to integrate experiences that validate or fit their meaning schemes and discount those that do not.²² This process is not so much a matter of matching new and stored information, but rather construing events by referring to an existing frame of reference or an already-established symbolic

¹⁸ See JACK MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING 104, 110 (1991); cf. Thomas W. Heaney & Aimee I. Horton, *Reflective Engagement for Social Change*, in FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING 74, 84–85 (Jack Mezirow et al. eds., 1990).

¹⁹ See MEZIROW, *supra* note 18, at 4–5; EDWARD W. TAYLOR, THE THEORY AND PRACTICE OF TRANSFORMATIVE LEARNING: A CRITICAL REVIEW 5–7 (1998).

²⁰ See TAYLOR, *supra* note 19, at 6.

²¹ See *id.* at 5.

²² See *id.* at 7.

model with cognitive, affective, and connotative dimensions.²³ Thus, a person's current frame of reference serves as the boundary condition for interpreting the meaning of an experience.²⁴ To learn, adults must break through preexisting patterns, allowing them to either validate or transform assumptions that they may bring to a given situation.²⁵ Because of the effects of traditional legal education, law school courses reinforce the paradigm that lawyers are not agents of change and the notion that law is not really about justice. Law students begin clinical experiences with this frame of reference and the clinician's responsibility is to pressure this paradigm.

Occasionally, adults must assess their own basic, presupposed notions—long since taken for granted—and find them unjustified or insufficient. This may result in a major transformation, where the student engages in critical self-reflection, changes his or her self-concept, and integrates the ensuing insights. Reinterpreting the old experiences through a new lens gives them new meaning. Professor Mezirow identified ten phases of transformation:

- (1) [a] disorienting dilemma (2) [s]elf-examination with feelings of guilt or shame (3) [a] critical assessment of epistemic, sociocultural, or psychic assumptions (4) [r]ecognition that one's discontent and the process of transformation are shared and that others have negotiated a similar change (5) [e]xploration of options for new roles, relationships, and actions (6) [p]lanning a course of action (7) [a]cquisition of knowledge and skills for implementing one's plans (8) [p]rovisional trying of new roles (9) [b]uilding of competence and self-confidence in new roles and relationships; and (10) [a] reintegration into one's life on the basis of conditions dictated by one's new perspective.²⁶

The key to transformation is critical reflection.²⁷ The learner engages in exploration of and reflection on the content of a problem or the premise upon which it is predicated.²⁸ Finally, the learner enters a "re-orientation" stage.²⁹ There, the learner creates a means for coping with

²³ See *id.* at 6–7.

²⁴ See *id.*

²⁵ See TAYLOR, *supra* note 19, at 7.

²⁶ MEZIROW, *supra* note 18, at 168–69.

²⁷ See *id.* at 116.

²⁸ See *id.* at 104–05.

²⁹ See *id.* at 168–69.

the problem should it arise again.³⁰ Learning theory calls this “transfer.”³¹ As Professor Mezirow put it, the goal of education is “to help the individual become a more autonomous thinker by learning to negotiate his or her own values, meanings, and purposes rather than to uncritically act on those of others.”³²

During the Symposium, Professor Stephen Wizner offered an example of a “disorienting moment.”³³ He spoke of a student representing a client in a domestic violence hearing against an unrepresented party. The student engaged in a rigorous cross-examination, devastating the opposing party, and won on a motion for a protection order. The student basked in her victory as she walked home, reflecting on the process. Professor Wizner, her clinical supervisor, asked her if she noticed anything troubling, but she could not identify any issues. Professor Wizner helped her “notice” that the opposing party was unrepresented and that nothing in the law required that he be provided counsel. As a result of the hearing, he lost access to his children and had an order entered against him that could result in his arrest if violated.³⁴ This was a powerful insight into the justice system for the student and an important learning experience that went well beyond the effective use of legal skills.

Clinical legal education not only creates opportunities for students to learn and use legal skills to promote access to justice, it also creates the space in which these larger explorations of systemic injustice can occur. Yet, it is necessary to go even further. When moments like what happened to Professor Wizner’s student occur, students must examine the role they may have played in perpetuating injustice. A clinical professor could ask the student, “Why do you suppose that you did not no-

³⁰ See *id.*; Jack Mezirow, *How Critical Reflection Triggers Transformative Learning*, in *FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING* 1, 6 (Jack Mezirow et al. eds., 1990).

³¹ See Liu Yang et al., *A Theory of Transfer Learning with Applications to Active Learning*, 87 *MACHINE LEARNING* (forthcoming 2012) (manuscript at 16), available at http://www.cs.cmu.edu/~jgc/publication/PublicationPDF/A_Theory_Of_Transfer_Learning_With_Applications_To_Active_Learning.pdf.

³² Jack Mezirow, *Transformative Learning: Theory to Practice*, in 74 *TRANSFORMATIVE LEARNING IN ACTION: INSIGHTS FROM PRACTICE* 5, 11 (Patricia Cranton, ed., 1997).

³³ Stephen Wizner, William O. Douglas Clinical Professor Emeritus of Law, Yale Law School, Remarks at the Boston College Journal of Law & Social Justice Symposium: The Way to Carnegie: Practice, Practice, Practice—Pedagogy, Social Justice, and Cost in Experiential Legal Education, Boston College Law School (Oct. 28, 2011), available at http://www.bc.edu/schools/law/newsevents/events/conferences/carnegie_symp_twlj/carnegie_video.html.

³⁴ *Id.*

tice the other side's lack of representation?" This could require the student to engage in critical reflection and introspection. That question could then be followed with, "And who benefits from your lack of noticing?" This question asks the student to probe the realm of structural injustice and how acquiescence reinforces that structure. That insight has the possibility of creating a long-term commitment to and responsibility for justice.

Transformative learning theory identifies social responsibility as a critical goal. Renowned educational scholar Paulo Freire's emancipatory theory of learning calls for people to develop an "ontological vocation," in which individuals are viewed as subjects—not objects—and work toward transforming their world so that it becomes more equitable.³⁵ Freire said that it is critical to transformation to understand that people are hosts to the oppressors and need to embrace humanization.³⁶ He expressed desire for social transformation and the development of critical consciousness so that people can learn to perceive social, political, and economic contradictions and act to transform the world.³⁷ Transformative learning, particularly as articulated by Freire, offers a theoretical ground for teaching justice readiness in law school clinics.

V. FROM THEORY TO PRACTICE

A shortcoming of transformative learning theory is that it fails to explain how to create the conditions that prompt reflection. Disorientation lends itself to this kind of transformational learning, but how do educators ensure that students experience disorientation and re-orient with a sense of connection and responsibility?

Clinical education creates ideal conditions for transformational learning. Through experience with clients and projects, students can gain new appreciation for their role as lawyers, insight into the privileges they previously had taken for granted, an expanded sense of social responsibility, and belief in the possibility to affect change. Through guided reflection, clinic students can increase their ability to generate ideas about non-clinical matters and become more creative in their approach to problem-solving. Supervision, informed by the insights from transformational learning theory, can help students change

³⁵ See PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 61–62, 74 (17th ed. 1981); see also TAYLOR, *supra* note 19, at 16.

³⁶ See FREIRE, *supra* note 35, at 83–84.

³⁷ See *id.* at 83, 89.

their assumptions about their own agency, change their perspective on their own privilege, and change their behavior in light of these insights.

For example, the shock that students experience in realizing that they have responsibility for real cases—real people’s problems—can be disorienting. It is also disorienting to get to know clients who have lived lives so different from the students’ yet who are so remarkably similar to the students in their humanity. Choosing cases and projects that are likely to have an emotional impact on the student is one way to create the potential for transformation.

Indeed, the choice of cases may have a transformative impact on students without intervention through supervision. Professor Taylor critiqued Professor Mezirow’s theory as being too wedded to rational thinking and committed to conscious discourse as key to critical reflection.³⁸ He drew from neurobiological studies that show that a form of long-term memory called “implicit memory” receives and stores information without conscious awareness.³⁹ Implicit memory has a significant impact on how people behave and make meaning.⁴⁰ Professor Taylor suggested that transformations need not be the product of rational reflection and conscious change alone, but can also happen in the individual’s implicit memory without any awareness.⁴¹ Developing intercultural competency, for example, causes changes through implicit memory in an unconscious manner.⁴²

Taylor’s concept of culture encompasses more than just the culture of other societies or countries; it includes, for example, the culture of the classroom and, by extension, the legal profession.⁴³ This is proven experimentally by the students in my clinic who often remark that, after the clinical experience, they feel much more comfortable in a courtroom setting—a culture many of them had not experienced before. Moreover, after handling unemployment hearings, they expressed shock at the notion that the loss of jobs could have such devastating effects on clients within only a couple of weeks. For many of my students, this marks their first insight into how many people lack wealth even if they are not defined as “poor.” The students see firsthand how

³⁸ TAYLOR, *supra* note 19, at 33–35.

³⁹ Edward W. Taylor, *Transformative Learning Theory: A Neurobiological Perspective of the Role of Emotions and Unconscious Ways of Knowing*, 20 INT’L J. LIFELONG EDUC. 218, 219 (2001).

⁴⁰ *Id.*

⁴¹ *Id.* at 225.

⁴² *Id.* at 229.

⁴³ See Edward W. Taylor, *An Update of Transformative Learning Theory: A Critical Review of the Empirical Research (1999–2005)*, 26 INT’L J. LIFELONG EDUC. 173, 180–81 (2007); Taylor, *supra* note 39, at 229.

few support mechanisms exist for people who have previously worked hard but teeter on the edge of destitution after losing a steady paycheck.

In addition to gaining insight into the culture of poverty, students also develop enormous concern for their clients. Some research suggests that transformation occurs not only because the experience is disconcerting, but because the student has an emotional connection to the experience.⁴⁴ It is my experience that the typical student does not choose to engage in a clinic without some kind of passion informing that choice. Emotions, necessarily, are a part of the mix. When I speak with students after a typical semester, their descriptions of the events are loaded with emotional connection—with the people they worked with and the deepening relationships that evolved among them as a group. The constant presence of emotions appears to be a critical component of their burgeoning insight into justice and social responsibility.

Feelings are often the trigger to reflection. Research shows that transformative learning depends not only on rational analysis and reflection, but on the affective aspects of learning.⁴⁵ One researcher found that when reflective learning included affective and experiential components, “the learning is likely to be much more clear-sighted, and the actions of those learners grounded in a pragmatically examined cultural, social, economic and political context.”⁴⁶ Perhaps it is the emotional connection to the work that permits not only the transformation of the students’ perspective about their clients but the more personal transformation about their visions of themselves and their responsibility.

Professor Elizabeth Lange, an education researcher, noted that when Professor Mezirow’s theory of disorienting moments is combined with restorative learning, a deeper learning occurs that moves from individual understanding to social responsibility.⁴⁷ In her empirical study, she found that “transformation is not just an epistemological process involving a change in worldview and habits of thinking; it is also an on-

⁴⁴ See Taylor, *supra* note 43, at 182; Taylor, *supra* note 39, at 222–23.

⁴⁵ Sue M. Scott, *Personal Transformation Through Participation in Social Action: A Case Study of the Leaders in the Lincoln Alliance*, in PROCEEDINGS: 32ND ANNUAL ADULT EDUCATION RESEARCH CONFERENCE 259, 261 (Michael Langenbach ed., 1991).

⁴⁶ Michael Newman, *Response to Understanding Transformation Theory*, 44 ADULT EDUC. Q. 236, 241 (1994).

⁴⁷ Elizabeth A. Lange, *Transformative and Restorative Learning: A Vital Dialectic for Sustainable Societies*, 54 ADULT EDUC. Q. 121, 137 (2004).

tological process where participants experience a change in their being in the world”⁴⁸ The participants in her research shifted their world view and became more connected to their “material, social, and physical realities” and looked for socially responsible ways to act.⁴⁹ Professor Lange focused on disorientation regarding social and economic relations and the re-integrating phase of Professor Mezirow’s theory. Her research suggests that a willingness to encounter change is a necessary prerequisite to making change.⁵⁰

Professor Lange also added another insight into how educators can facilitate transformative learning. She described the learning process, not necessarily sequentially, but as the moments arose. The description of her process looks remarkably like the typical clinical method: (1) have the learner identify and describe a problem; (2) immerse the learner into alternatives for dealing with the problem with an eye toward sustainability; (3) do a cultural analysis of family and social circumstances; (4) do a cultural analysis of personal—fiscal and temporal—circumstances; (5) engage in personal, ethical reflection; (6) do a socioeconomic analysis; (7) “engage in action planning,” individually and within a group; (8) “act on the action plan”; (9) “reflect on the action plan”; and (10) “celebrate.”⁵¹ This list builds upon Professor Mezirow’s pedagogy of critically reflecting on assumptions, engaging in discourse about contested meanings, taking action on one’s insight, and then critically assessing it.⁵²

Applying these theories to clinical education, a student’s transformation of values may be partially attributable to the nature of being a law student. Law students necessarily view their learning as instrumental. Scholars David Brown and Vanessa Timmer studied how civil society actors can be catalysts for transnational social learning.⁵³ They defined social learning as “processes that increase awareness, capacities, and repertoires of action amongst actors in a social domain,” with a particular interest in “enhancing awareness, capacity, and action to address transnational problem domains.”⁵⁴ Although focused on learning that occurs within organizations, their research reveals that the kinds of ex-

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *See id.*

⁵¹ *Id.* at 125.

⁵² Mezirow, *supra* note 32, at 10.

⁵³ L. David Brown & Vanessa Timmer, *Civil Society Actors as Catalysts for Transnational Social Learning*, 17 INT’L J. VOLUNTARY & NONPROFIT ORGS. 1, 1–2 (2006).

⁵⁴ *Id.* at 3.

periences that are the fodder for clinical legal education are more likely to facilitate social learning.⁵⁵ These domains are all concerned about problems that “are linked to strongly held values,” “affect vulnerable groups,” have “generated social and intellectual capital to support transnational campaigns,” and “have developed legitimacy with their constituents and with the larger publics.”⁵⁶ Domains that are least likely to inspire social learning are those in which there is a lack of collaboration among civil society actors and one party dominates, the problems are poorly understood, the actors are ineffective in bridging “polarized values and ideologies,” and there are questions about the organizations’ “legitimacy, transparency, and accountability.”⁵⁷

CONCLUSION

Teaching students justice readiness should not be left to chance. The clinical legal education debate must shift from whether clinicians should be in the justice business at all to which methods are most effective in teaching this critical part of the clinical mission. Research on transformative learning suggests that the clinical experience, with properly chosen cases or projects, provides an opportunity for students to experience disorienting moments, have emotional investment in their work, encounter change, and reflect on their experience, thus facilitating social responsibility and commitment to justice in their professional lives. The clinician’s job as an educator is to make that process more intentional and help students mine their experiences by focusing their reflection in ways suggested by these theorists.

Clinicians can identify cases and projects that are likely to stimulate transformative learning and insight. They can assign students individual and group tasks that will increase the chances for critical reflection. They can draw on the research for ways to approach this experience that will incite reflective thinking. This research can help develop effective questions, engage clinical students, encourage further reflection, spur experimentation and research into ways to assess learning—an area of research that is quite thin—and lobby law schools to offer more experiential opportunities. The net result is a sense of purpose and satisfaction in creating lawyers committed to social justice. At the very least, those students will understand that to act as a lawyer is to engage in the project of justice. They must make their choices inten-

⁵⁵ *See id.* at 12–13.

⁵⁶ *Id.* (emphasis omitted).

⁵⁷ *Id.* at 13 (emphasis omitted).

tionally. For clinical educators to do less is to abdicate their own responsibility for social justice.