

PAINFUL INJUSTICES: ENCOUNTERING SOCIAL SUFFERING IN CLINICAL LEGAL EDUCATION

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This article examines and problematizes students' encounters with expressions of social suffering in clinical law contexts. Unless clinic students critically reflect on these encounters, clinics can function to reproduce dominant understandings of suffering as a non-legal, private, or psychological experience of clients, a matter to be "managed" by the lawyer. This approach can reinforce an acontextual and uncritical form of law practice. To prevent this outcome, the article highlights the importance of attention to encounters with human suffering in clinical legal education and identifies the risks of failing to do so. It advocates a critical "pedagogy of suffering" that might be applied in clinical law contexts, and describes aspects of its content. This pedagogy regards human suffering as a signifier of larger political and systemic injustice and encourages lawyers and law students to engage in critical, attentive, and politicized "witnessing" and responses to social suffering.

INTRODUCTION

In a frequently-cited essay, Stephen Wexler writes: "poor people are always bumping into sharp legal things."¹ Wexler proceeds to depict law as an intrusive and abrasive force in the lives of poor clients, a source of wounding and suffering.² In another article about clinical poverty law practice, Shelley Gavigan compares community legal clinics to wartime field hospitals caring for clients devastated by poverty and injustice.³ Reworking the emergency room metaphor, Paul Trem-

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¹ Stephen Wexler, *Practicing Law for Poor People*, 79 *YALE L.J.* 1049, 1050 (1970). This article has been cited at least 242 times, according to heinonline: <http://home.heinonline.org> [last visited Feb. 5, 2013].

² *Id.* at 1051.

³ Shelley A.M. Gavigan, *Poverty Law, Theory, and Practice: The Place of Class and Gender in Access to Justice*, in *LOCATING LAW: RACE/CLASS/GENDER CONNECTIONS* 208, 208 (Elizabeth Comack ed., 1999) (describing her time as a supervising lawyer at Parkdale Community Legal Services in Toronto, Gavigan writes that "[d]uring that year I often felt like a person with a bit part in the film and, later, television series *M*A*S*H*. With each crackle of the intercom, I imagined that our receptionist . . . would next say: 'The choppers are here. They are bringing in the wounded.'").

blay writes about the importance of “triage” in clinical case selection,⁴ and Jane Spinak chronicles the intense suffering of a client struggling with poverty and the apprehension of her children by child protection officials.⁵ Writing about a clinical law program located in Vancouver’s downtown eastside neighborhood, Renee Taylor writes that “the [clients] I see are totally crushed . . . What I see are people whose spirit has been broken.”⁶ In the poverty law and clinical law literature, depictions abound of clients as wounded, hurt, and suffering due to the ravages of poverty, circumstance, and routine yet debilitating interactions with the machinery of the state.

Images of suffering clients and stories about traumatic events experienced by clients also routinely appear within the discourse of the clinical law classroom. Indeed, the suffering and distress of clients emerges regularly as a topic during case rounds⁷ and discussions in the clinical law classes that I teach at the University of Saskatchewan College of Law. Students enrolled in the College’s clinical law program take on cases at Community Legal Services for Saskatoon Inner City (CLASSIC),⁸ a community legal clinic whose mandate is to serve the

⁴ Paul R. Tremblay, *Acting a Very Moral Type of God: Triage Among Poor Clients*, 67 *FORDHAM L. REV.* 2475 (1998-1999).

⁵ Jane M. Spinak, *Reflections on a Case (of Motherhood)*, 95 *COLUM. L. REV.* 1990, 1992 (1995) (after hearing her client’s story, Spinak writes that “[h]er anguish as a mother overwhelmed me: her terror became mine My shoulders and chest ached . . . as I listened to her loss.”).

⁶ Dara Culhane and Renee Taylor, *Theory and Practice: Clinical Law and Aboriginal People*, in *LAW AS A GENDERING PRACTICE* 120, 120 (Dorothy E. Chunn & Dany Lacombe eds., 2000).

⁷ The pedagogical technique of “case rounds,” where clinical students and teachers use client cases as the basis for classroom discussion and learning, has been identified by Bryant and Milstein as a “signature pedagogy” of clinical legal education. Susan Bryant and Elliott S. Milstein, *Rounds: A ‘Signature Pedagogy’ for Clinical Education?*, 14 *CLIN. L. REV.* 195 (2007-2008). The “oral tradition” is an important part of clinical legal education. Certainly, stories and narratives about clients and cases have been important to clinical law scholarship. See Binny Miller, *Telling Stories about Cases and Clients: The Ethics of Narrative*, 14 *GEO. J. LEGAL ETHICS* 1, 11 (2000-2001).

⁸ CLASSIC was founded by a group of University of Saskatchewan College of Law students, including Kyle Vermette, Victoria Coffin, and Jody Busch, with the support and collaboration of the University of Saskatchewan College of Law and numerous community organizations. Although the College of Law had had a clinical law program in the late 1970s and early 1980s, CLASSIC opened its doors to clients in January, 2007. CLASSIC is a not-for-profit community legal clinic that focuses on assisting low-income clients with legal matters, focusing on areas of law where clients would not otherwise have access to assistance through Saskatchewan’s Legal Aid Commission. CLASSIC takes on cases in many areas of law, including residential tenancies, employment insurance, workers’ compensation, social assistance appeals, refugee and immigration law, criminal law, wills, estates, and guardianship matters. It also assists clients with issues relating to the Indian Residential School settlement. See *infra* note 10. Approximately 50% of CLASSIC’s clientele are First Nations or Métis. Although the majority of CLASSIC’s work involves individual client representation, CLASSIC works closely with community agencies on

needs of Saskatoon's low-income community.⁹

During the clinical law seminar, or in their critical reflective journals, students often describe encounters with clients who face multiple and significant hardships in their lives. CLASSIC's clients include refugee claimants, single parents who have been evicted by landlords and who find themselves homeless, and parents who have had their children apprehended by child welfare officials. They also include residential school survivors, Aboriginal Canadians who suffered abuses while attending residential schools run by the Canadian government and various churches.¹⁰ Many of CLASSIC's clients struggle with chronic disabilities and health conditions, including HIV-AIDS, diabetes, and addictions. Others struggle with mental health diagnoses or fetal alcohol spectrum disorder. Some are imprisoned, and many are socially isolated. The stories that CLASSIC's clients tell to students about their lives and troubles are often traumatic ones, and some clients express deep stress and suffering to students during the course of their attorney-client relationship. In short, human suffering, in its multitudinous forms and permutations, enters into the day-to-day reality of legal clinics such as CLASSIC, and the question of how lawyers should respond to and understand this suffering enters into clinical legal education by virtue of this reality.¹¹

Students display a range of reactions to the expressions and stories of client suffering that they encounter in the clinical law context. In my experience, students often respond by entering into a critical self-analysis, admonishing themselves to focus on separating "legal issues" from "non-legal issues" in their interactions with clients, to better shore up "boundaries" between themselves and their clients, and to focus on law rather than emotions. Various clinical law writers

broader projects, including community legal education and other initiatives.

⁹ CLASSIC's mandate is as follows: "The purpose of CLASSIC is to provide legal assistance to low-income, historically disadvantaged Saskatchewan residents (with particular attention to the needs of Aboriginal peoples) through a legal clinic that meets the needs of the community. This provides students with clinical experience, new insights into the social reality of law, and also fosters an ethic of social justice and cultural understanding." See COMMUNITY LEGAL ASSISTANCE SERVICES FOR SASKATOON INNER CITY, <http://www.classiclaw.ca> (last visited Feb. 5, 2013).

¹⁰ The Indian Residential School court settlement agreement arose from litigation regarding the systemic abuses inflicted upon Aboriginal students throughout much of the twentieth century in residential schools operated by the Canadian government and by a number of churches. For more details about the settlement, see INDIAN RESIDENTIAL SCHOOLS CLASS ACTION SETTLEMENT OFFICIAL COURT WEBSITE, http://www.residential.schoolsettlement.ca/english_index.html (last visited Feb. 5, 2013).

¹¹ As I will discuss in more detail below, I am not suggesting that all clients suffer, nor that suffering defines clients in any way, but rather that the subject of suffering must be critically interrogated within clinical law pedagogy and practice.

have also identified these phenomena.¹²

Yet many students do not easily adopt dispassionate professional boundaries in the face of their clients' traumatic narratives and emotional expressions of suffering. Indeed, many respond with compassion and empathy, while attempting to reconcile and balance notions of professional boundaries and propriety. For many students, emotional responses to their clients' stories and expressions of suffering are challenging to understand and integrate into larger visions of professional legal identity. Thus, clinical students' encounters with the painful stories of some clients can trigger, but also destabilize, idealized notions of professional identity and normative ideas about how lawyers should respond to human suffering.

In this article, I examine and problematize clinical law students' encounters with the traumatic stories and expressions of suffering that some clients share. I argue that unless clinic students critically reflect on these encounters, the clinic can function to produce and reinforce dominant understandings of suffering as a non-legal, private, emotional, or psychological experience of clients, a matter to be referred to other professionals, ignored, or otherwise managed by the lawyer. This reading of suffering, I argue, can reinforce an acontextual and uncritical legal practice. Furthermore, this reification of notions of professional identity and role is often compounded by the reproduction of dominant images of poor clients as victims who are helpless or responsible for their suffering. These reactions fetishize, appropriate, or otherwise problematically approach the reality of suffering.

In Part I of this article, I highlight the importance of paying critical attention to encounters with human suffering in clinical legal education. In Part II, I identify the risks of failing to do so. In Part III, I describe aspects of a critical "pedagogy of suffering" that might be applied in clinical law contexts, a pedagogy that views human suffering as a signifier of larger political and systemic injustice and that encourages lawyers and law students to engage in critical, attentive, and

¹² For example, Linda Mills writes that law students often argue that by becoming too involved emotionally in their clients' problems they will not have the distance to advise their clients objectively. Linda G. Mills, *Affective Lawyering: The Emotional Dimensions of the Lawyer-Client Relation*, in PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 419, 420 (Dennis P. Stolle, David B. Wexler & Bruce J. Winick eds., 2000). Similarly, Julie Macfarlane notes that clinical law students tend to suppress concerns about their clients' emotions or anxieties and focus instead on litigation strategies. Julie Macfarlane, *Bringing the Clinic into the 21st Century*, 27 WINDSOR Y.B. ACCESS JUST. 35, 48 (2009). And Fran Quigley describes the "disorientation" experienced by law students who are "confronted with their clients' very real suffering and frustration," noting that many students are ill-equipped to assimilate or respond to these realities. Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37, 53 (1995-1996).

politicized “witnessing” and responses to suffering. Throughout the article, I draw for support on the eclectic and emerging body of literature on “social suffering,” as well as the critical feminist and post-colonial theoretical literature on emotions, suffering, and “embodied encounters.”¹³

I. SOCIAL SUFFERING AND LAW SCHOOL CLINICS: CRITICAL APPROACHES

I do not attempt in this article to define, catalogue, or categorize the experiences of clients of a legal clinic. Nor, given the deeply subjective and culturally contingent nature of human suffering, do I adopt a single or rigid definition of “suffering.” Indeed, as Iain Wilkinson explains, human suffering by its very nature resists definition and categorization.¹⁴ Thus, when I refer to suffering in clinical law contexts, I am discussing a multitude of experiences and expressions, adopting the views of social suffering theorists Arthur and Joan Kleinman, who write that: “[t]here is no single way to suffer; there is no timeless or spaceless universal shape to suffering.”¹⁵ Nonetheless, I agree with Wilkinson’s broad observation that despite the inherent difficulty in categorizing or defining suffering, generally suffering can be found in “experiences of bereavement and loss, social isolation and personal estrangement . . . [and] can comprise feelings of depression, anxiety, guilt, humiliation, boredom and distress . . . [and] may all at once be physical, psychological, social, economic, political and cultural.”¹⁶ In law school clinics, encounters by clinic students with human suffering include encounters with clients’ traumatic stories, and with the emotional manifestations of suffering, including expressions of grief, pain, and distress.

I do not suggest that all, or even most, clients who seek legal services at community legal clinics have experienced trauma, nor that those who do express trauma or suffering are disempowered victims who must be “rescued.” To the contrary, my analysis is deeply critical of the ways in which dominant perceptions and assumptions about suffering produce unhelpful responses to suffering, and reproduce problematic images of lawyers as benevolent agents of justice in poverty law contexts. The work of critical lawyering theorists, including Anthony Alfieri, admonishes lawyers to be suspicious of assumptions about, and stereotypes of, clients as weak and disempowered.

¹³ See *infra* notes 28-51, 54-92, and 94-112 and accompanying text.

¹⁴ IAIN WILKINSON, *SUFFERING: A SOCIOLOGICAL INTRODUCTION* 17 (2005).

¹⁵ Arthur Kleinman & Joan Kleinman, *The Appeal of Experience; The Dismay of Images: Cultural Appropriations of Suffering in Our Times*, 125 *DAEDALUS* 1, 2 (1996).

¹⁶ WILKINSON, *supra* note 14, at 16-17.

For example, in his detailed theoretical work on “reconstructive poverty law practice,” Alfieri critiques the tendency of lawyers to “displace client narratives”¹⁷ by silencing the voices of clients and applying false assumptions about client dependency and powerlessness to their interpretation of client stories.¹⁸ Similarly, Shin Imai points out the myriad problems associated with the “epistemological imperialism” endemic in much traditional legal practice, which involves “invading, subjugating and transforming other peoples’ realities into forms and concepts that [make] sense in the world of law.”¹⁹ Arguing that these practices constitute acts of “interpretive violence” by lawyers,²⁰ Alfieri suggests that lawyers should embrace techniques of listening to their clients’ stories in order to hear stories of client “self-empowerment”²¹ and to construct an “alternative vision of the client as a self-empowering subject.”²² Overall, this body of literature emphasizes that clients are “able to speak out and to act collectively on their own behalf” and are “not just sources of information on the problems they face, but active partners in working collectively to solve those problems.”²³ From this perspective, the focus is on challenging hierarchy, removing it from the lawyer-client relationship,²⁴ and investing in the empowerment of clients.²⁵

At the same time, there is danger that a lawyering practice focusing primarily upon empowerment may obscure attention to the systemic violence that continually plays out in subordinated communities. As Lucie White notes, an admonition that lawyers only

¹⁷ Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L. J. 2107, 2111 (1990-1991).

¹⁸ *Id.* at 2118.

¹⁹ Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLIN. L. REV. 195, 197 (2002-2003).

²⁰ Alfieri, *supra* note 17, at 2118. See also Anthony V. Alfieri, *Faith in Community: Representing ‘Colored Town’*, 95 CAL. L. REV. 1829, 1852 (2007) (“[lawyers tend to] reenact the cultural and socio-economic marginalization of poor clients and communities in their advocacy.”).

²¹ Alfieri, *supra* note 17, at 2118.

²² *Id.* at 2120.

²³ Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383, 1385 (2008-2009). See also Janet E. Mosher, *Legal Education: Nemesis or Ally of Social Movements?*, 35 OSGOODE HALL L. J. 613, 624 (1997) (“In sum, [dominant and uncritical lawyering practice] actively works against the creation of counter-hegemonic discourses about needs, and about justice, and [undermines]. . . confidence in the ability of the oppressed to name, and to take action to change, the unjust order which shapes their everyday realities.”).

²⁴ See Stuart Scheingold & Anne Bloom, *Transgressive Cause Lawyering: Practice Sites and the Politicization of the Professional*, 5 INT. J. LEGAL PROF. 209, 216 (1998).

²⁵ See Melanie B. Abbott, *Seeking Shelter Under a Deconstructed Roof: Homelessness and Critical Lawyering*, 64 TENN. L. REV. 269, 287 (1996-1997); Piomelli, *supra* note 23, at 1393.

listen for “stories of dignity and power from our clients . . . renders us less attentive when a client attempts to name for us the violence that threatens her life.”²⁶ Similarly, Binny Miller cautions that it is important to be aware that “not all client stories are empowering, nor are all clients empowered.”²⁷

Given the current economic and political context, with its widespread poverty, marginalization, and other forms of systemic violence, some clinic clients will continue to tell stories of trauma and suffering to clinic students, and to express profound distress and pain to them. Consequently, a critical “pedagogy of suffering”—one that seeks to understand suffering in its historical and social context and to critically examine problematic responses to social suffering—can be an important aspect of clinical law teaching and practice.

The emerging body of literature on social suffering provides a helpful theoretical framework for this analysis. Scholars of social suffering seek in their work to chronicle the “*lived experience* of pain, misery, violence and terror . . . [the] occasions when human dignity is violated and people come to some kind of grief and harm.”²⁸ They endeavor to show how these embodied experiences are directly and causally linked to structural violence, inequity, and injustice.

As medical anthropologist and physician Paul Farmer writes, a key question for the social suffering literature is “[b]y what mechanisms, precisely, do social forces ranging from poverty to racism become *embodied* as individual experience?”²⁹ This body of literature seeks to show that the experience of individual suffering is often actively produced by larger systemic forces, and to trace the ways in which individual experiences of suffering exist “in a dialectical space between individuality and sociality.”³⁰ Thus, encounters with suffering in clinical law contexts can be understood as encounters with the systemic forces that have produced this suffering, encounters with what Michael Serres calls the point where “the global touches the local, the universal the singular.”³¹

²⁶ Lucie White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L. J. 853, 858 (1991-1992).

²⁷ Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 525 (1994-1995).

²⁸ WILKINSON, *supra* note 14, at 83-4.

²⁹ PAUL FARMER, *PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS, AND THE NEW WAR ON THE POOR* 30 (2005).

³⁰ MICHALINOS ZEMBYLAS, *THE POLITICS OF TRAUMA IN EDUCATION* 25 (2008).

³¹ MICHAEL SERRES, *THE TROUBADOUR OF KNOWLEDGE* 70 (Sheila Faria Glaser & William Paulson trans., 1997).

II. RISKS IN ENCOUNTERS WITH SUFFERING IN LAW SCHOOL CLINICS

Without critical reflection upon trauma and social suffering, law students may very well reproduce dominant notions and understandings of suffering as a private emotional response of clients, located in the “non-legal” sphere, and therefore unrelated to justice and legal practice. In this section, I draw on the critical scholarship of social suffering theorists to illuminate and contextualize the ways in which these dominant understandings of suffering can undermine progressive and alternative visions of clinical legal practice and pedagogy. In particular, I focus on the risks associated with interpreting a client’s suffering as an acontextualized private experience, and the dangers of an uncritical focus on compassion as an appropriate response by clinic students to a client’s suffering.

A. *Suffering As Acontextual Spectacle and Private Experience*

E. Ann Kaplan’s study of dominant media images of human suffering provides a helpful framework for understanding how suffering tends to be understood as a private and personal experience, separate from larger social forces. In her analysis of mainstream media portrayals of the Iraq War, Kaplan notes that media stories overwhelmingly focused on individual stories of suffering, without any analysis of the context in which this suffering took place.³² As a result, dominant media portrayals of the war tended toward a series of fragmented images of individuals experiencing various facets of the war, seeking to evoke emotional or empathetic reactions in viewers.³³

As Kaplan notes, however, the effect of these disparate images was to give the viewer a sense that he or she was simply “[p]eeking in on the action . . . [without any] context through which to organize empathic feelings.”³⁴ This approach promotes a sense of human suffering as being “murky.”³⁵ In Kaplan’s words:

One is encouraged to identify with specific people, to enter into their experiences rather than to think about what we are looking at, or to engage on any larger intellectual or analytical level.³⁶

Her concern is that the political and social context is missing and the trauma of individuals evokes a confused and “empty empathy” in the

³² E. ANN KAPLAN, *TRAUMA CULTURE: THE POLITICS OF TERROR AND LOSS IN MEDIA AND LITERATURE* 93 (2005).

³³ *Id.* at 94.

³⁴ *Id.* at 95.

³⁵ *Id.* at 97.

³⁶ *Id.* at 99.

viewer.³⁷ Similarly, Michalinos Zembylas, a critical pedagogical theorist, argues that dominant narratives and media spectacles of suffering tend to show suffering as “consumable,” while simultaneously rendering viewers unable and unwilling to engage with the implications of suffering.³⁸

Suffering and trauma tend to be portrayed in both expert literature and popular discourse as manifestations of individual problems, falling within the realm of the “private” and the “personal.”³⁹ The emphasis on suffering as a private and psychological experience of individuals is reinforced through the application of scientific, technocratic, or “expert” language—what Naomi Adelson calls the “medicalization of social distress.”⁴⁰ An understanding of human suffering as an acontextual spectacle, but one that may be categorized through expert discourses, brings to mind the observations of Hannah Arendt, who wrote extensively about the ways in which human suffering becomes routinized through mundane and technical language. Arendt argued that language and ordinary technocratic discourse can obscure the painful reality of suffering and influence the responses of people to human suffering.⁴¹

Pedagogical approaches and models of lawyering that encourage law students to view suffering as a phenomenon isolated from broader political or systemic contexts can promote and reproduce notions of clients’ traumatic experiences as messy and confusing individual emotional problems, unrelated to the larger and more important questions of legal representation and justice. Echoing Ann Kaplan, without a critical theoretical understanding of suffering, law students are likely to experience encounters with suffering as a somewhat confusing array of emotions, a sense of “peeking in” on individual experiences without any framework for organizing or contextualizing the suffering into a larger political or legal analysis. This may encourage law students to further define professional boundaries, adopt technocratic language to categorize suffering, or disregard social suffering altogether.

B. Sentimentalizing Suffering and the Danger of Compassion

While a reduction of suffering to technical discourse, private indi-

³⁷ *Id.* at 94.

³⁸ ZEMBYLAS, *supra* note 30, at 29.

³⁹ *Id.* at 38.

⁴⁰ Naomi Adelson, *Reimagining Aboriginality: An Indigenous People’s Response to Social Suffering*, in REMAKING A WORLD: VIOLENCE, SOCIAL SUFFERING, AND RECOVERY 76, 80 (Veena Das, Arthur Kleinman, Margaret Lock, Mamphela Ramphele, Pamela Reynolds eds., 2001)[hereinafter REMAKING A WORLD].

⁴¹ See HANNAH ARENDT, ON REVOLUTION (1963).

vidual experience, or spectacle serves to create a sense of distance and disconnection in viewers of suffering, a clinic student's overly sentimentalized or emotional response to suffering also can be problematic. As Sara Ahmed cautions, to turn indifference into sympathy is "not necessarily to repair the costs of injustice . . . [because] this conversion can repeat the forms of violence it seeks to redress, as it can sustain the distinction between the subject and object of feeling."⁴² In other words, compassionate or empathetic emotional responses to suffering can serve to sustain the very power relations that create the conditions for suffering in the first place, and can also obscure the role of the empathizer in ongoing conditions of injustice.⁴³

Popular discourses of compassion may lead members of dominant groups to a benevolent sense of themselves as "rescuers," and caring and empathetic responses can create or perpetuate relationships where the "charitable" person has the power to reduce the pain of the victim of suffering. Zembylas notes that this approach can lead to "melodramatic attempts to close the wound"⁴⁴ by well-meaning and privileged observers. In clinics, this frame for responding to suffering may lead to what Peter Margulies calls the "rescue mission" of poverty lawyers, who seek to save the "desperate person subject to legal sanctions."⁴⁵ Like the privatized and acontextual view of suffering described above, this view of suffering tends to disregard social context and instead assume that an individualized and caring approach can alleviate suffering.

Ahmed writes that viewing others' suffering as tragic, and solvable through compassionate responses, tends to "over-represent" the pain of others by "fix[ing] the other as the one who 'has' pain, and who can overcome that pain only when the [privileged] subject feels moved enough to give."⁴⁶ In this view, those who suffer are *defined* by their suffering, becoming what Ratna Kapur calls "hegemonic victim subjects."⁴⁷ This approach reinforces the notion of suffering as private and removed from the larger political or public sphere. In clinical and poverty law contexts, this view of clients as victims is par-

⁴² SARA AHMED, *THE CULTURAL POLITICS OF EMOTION* 193 (2004).

⁴³ See ELIZABETH V. SPELMAN, *FRUITS OF SORROW: FRAMING OUR ATTENTION TO SUFFERING* 7 (1997). See also Lauren Berlant, *Introduction: Compassion (and Withholding) in COMPASSION: THE CULTURE AND POLITICS OF AN EMOTION* 1 (Lauren Berlant ed., 2004).

⁴⁴ ZEMBYLAS, *supra* note 30, at 4.

⁴⁵ Peter Margulies, *Re-framing Empathy in Clinical Legal Education*, 5 *CLIN. L. REV.* 605, 620-21 (1998-1999).

⁴⁶ AHMED, *supra* note 42, at 22.

⁴⁷ Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics*, 15 *HARV. HUM. RTS. J.* 1, 3 (2002).

ticularly problematic, because it can perpetuate “regnant lawyering”⁴⁸ and silencing of clients.⁴⁹

Related to sentimentalized, charitable responses to suffering is what some writers refer to as the “appropriation” of suffering by non-sufferers. Those who are suffering are understood as “carriers of experiences from which others can benefit.”⁵⁰ This approach simultaneously reproduces the notion of subordinated groups as voiceless, and dominant groups, observers of suffering, as capable of speaking for and understanding the experiences of the subordinated. This theme is echoed by feminist theorist bell hooks, who writes that dominant observers of suffering may appropriate stories of suffering in order to maintain their status as the “colonizer[s], the speaking subject[s].”⁵¹ In this way, dominant notions of empathy and compassion can involve over-identification of the empathizer with the object of empathy, situating the empathizer as the authoritative observer, judge, and articulator of suffering.

Dominant client-centered models of the lawyer-client relationship tend to understand suffering and trauma as individualized, private problems of clients unrelated to larger social and political questions. As Sameer Ashar writes, the client-centered model can completely remove the lawyer-client relationship from the socio-political sphere and lead to the “chiseling of clients away from their political and racial solidarities.”⁵² The dominant assumption that lawyers can assess and address client suffering tends to view clients as arriving at the lawyer-client relationship in a “state of defeat.”⁵³ In other words, clinicians and lawyers who ascribe to the client-centered model risk replicating dominant notions of legal practice and professional identity in the face of suffering. The client-centered model arguably

⁴⁸ See GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* 24 (1992) (describing “regnant lawyers” as lawyers who emphasize litigation over community-building, lack knowledge about how law impacts the lives of subordinated people, and understand themselves as “preeminent problem-solvers in most situations they find themselves trying to alter.”).

⁴⁹ See Alfieri, *supra* note 17.

⁵⁰ SPELMAN, *supra* note 43, at 1.

⁵¹ Bell hooks writes of the tendency of dominant groups to appropriate the suffering and voice of subordinated groups:

Only tell me about your pain. I want to know your story. And then I will tell it back to you in such a way that it has become mine, my own. Re-writing you, I write myself anew. I am still author, authority. I am still the colonizer, the speaking subject, and you are now at the center of my talk.

BELL HOOKS, *YEARNING: RACE, GENDER, AND CULTURAL POLITICS* 152 (1990).

⁵² Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 *CLIN. L. REV.* 355, 359 (2007-2008).

⁵³ Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 *GOLDEN GATE U. L. REV.* 345, 352 (1997).

reproduces ideals of the lawyer as a competent and cool “expert,” who is able to assess, read, and manage client suffering as a private emotional experience, then cross over into the legal realm and solve the client’s legal problems.

While compassionate responses to suffering are unquestionably important, an uncritical embrace of these approaches risks focusing on narrow and acontextual therapeutic responses to suffering. Even more problematically, it may perpetuate rescue fantasies and notions of clients as voiceless victims. What is missing, I would argue, is a critical theory of suffering and a pedagogy that teaches clinic students a practice of critical and contextual “witnessing” to suffering. This pedagogy can provide a frame for thinking about justice and about lawyering for social justice.

III. TOWARD A CRITICAL PEDAGOGY OF SUFFERING

In this section, I propose that clinical legal educators seek to develop and articulate a “pedagogy of suffering” to address the encounter of their clinic students with the suffering of clients. In particular, I propose that clinical legal educators seek in their classrooms and clinics to open discussions about the ways in which suffering and the responses to suffering are directly related to questions of justice and politics, rather than separate or detached from these questions. I argue that this pedagogy needs to balance engaged critical and theoretical analysis of suffering with a politicized “critical emotional praxis.”⁵⁴ A pedagogy of suffering would invite students to bear critical witness to their encounter with suffering, to engage in a praxis of critical listening, and to raise questions about how lawyers working in poverty law contexts can shape their practice in response to suffering.

The phrase “pedagogy of suffering” has been used independently by at least two authors, Arthur Frank and Rebecca Martusewicz. Frank, a medical anthropologist, seeks to illuminate the narratives of patients, with the goal of highlighting how traditional medical pedagogy, characterized by an ethics of separation and distance, fails to take into account the lived experiences of pain and suffering of patients.⁵⁵ For Frank, the pedagogy of suffering functions as an “antidote to administrative systems that cannot take suffering into account because they are abstracted from the needs of bodies.”⁵⁶ Frank writes that “when the body’s vulnerability and pain are in the foreground, a

⁵⁴ ZEMBYLAS, *supra* note 30, at 1.

⁵⁵ See ARTHUR W. FRANK, *THE WOUNDED STORYTELLER: BODY, ILLNESS, AND ETHICS* 147 (1995).

⁵⁶ *Id.* at 146.

new social ethic is required.”⁵⁷

Likewise, Rebecca Martusewicz, a pedagogical theorist, writes that “[i]n all my teaching, what matters most to me is that students begin to grapple with the complex and difficult problem of suffering.”⁵⁸ For Martusewicz, a pedagogy of suffering seeks to teach students to see that individual suffering is intimately connected with structural injustices. Both Frank and Martusewicz view suffering as an expression of structural and systemic injustices, and both encourage educators to focus pedagogical attention upon the phenomenon of human suffering.

Like Frank and Martusewicz, I argue that a pedagogy of suffering requires an analysis of the ways in which suffering is an embodied expression of larger systemic forces. In clinics, where students encounter expressions and stories of suffering face to face, I argue that clinical law teachers can help students understand these connections by cultivating practices of “critical witnessing” and “critical listening” as part of a “critical emotional praxis.” This praxis would engage emotional and affective responses to suffering and seek to link these responses with larger questions about the role of lawyers in the face of social suffering and social injustice.

A. *Attention to Suffering: Critical Witnessing and Critical Listening*

In her work on the politics of trauma, E. Ann Kaplan develops the notion of “witnessing” in the context of the pervasive spectacles of violence and suffering that permeate dominant media, especially its saturation with images of war and violence.⁵⁹ In contrast to the dominant practice of passive and uncritical viewing of spectacles of suffering, Kaplan calls instead for a practice of “witnessing,” which she sees as a passionate and ethical response to images of suffering.⁶⁰ In Kaplan’s words, “[w]itnessing’ is the term I use for prompting an ethical response that will perhaps transform the way someone views the world, or thinks about justice.”⁶¹ She asserts that a frame of witnessing not only intensifies “the desire to help an individual in front of one . . . [but also] leads to a broader understanding of the meaning of what has been done to victims, of the politics of trauma being possible.”⁶²

For Kaplan, critical witnessing may require in some cases a re-

⁵⁷ *Id.*

⁵⁸ REBECCA A. MARTUSEWICZ, SEEKING PASSAGE: POST-STRUCTURALISM, PEDAGOGY, ETHICS 102 (2001).

⁵⁹ KAPLAN, *supra* note 32, at 22 and 122-135.

⁶⁰ *Id.* at 123.

⁶¹ *Id.*

⁶² *Id.*

fusal of direct identification with the specificity of suffering of the individual. In other words, as Kaplan writes, there may be a requirement for a “deliberate distancing from the subject to enable the interviewer to take in and respond to the traumatic *situation*.”⁶³ Kaplan suggests that an overwhelming emotional or caring response to individual suffering can distract from the interviewer’s ability to pay attention to the larger situation and context. This positioning of distance, writes Kaplan, “opens the text out to larger social and political meanings.”⁶⁴

Kaplan does not, however, dismiss the role of caring and empathy. Rather, she suggests that the emotional response must be held in balance with a critical response to suffering, and in fact suggests that the empathetic response be understood as a resource for political analysis. She writes: “[w]itnessing’ involves not just empathy and motivation to help, but understanding the structure of injustice – that an injustice has taken place – rather than focusing on a specific case.”⁶⁵

Feminist theorist Kelly Oliver’s work on witnessing echoes the themes elucidated by Kaplan. Oliver urges witnesses of suffering to learn how to, as she puts it, bear “witness to what cannot be seen.”⁶⁶ Oliver, like Kaplan, is referring to the importance of developing a frame of analysis that places individual suffering and trauma into a larger political context. Thus, the notion of witnessing developed by Oliver is one that requires a process of learning how “[a]ttention to social context addresses the ways in which an individual is constituted by and within his or her circumstances.”⁶⁷

Oliver’s conception of witnessing also requires the witness to learn how to become a critical witness *to herself* and to be acutely aware of her responses to what she is witnessing.⁶⁸ Oliver writes that in order to “bear witness,” we as witnesses “must reconceive of ourselves.”⁶⁹ This ability to “bear witness to oneself,” Oliver argues, requires an awareness that our own sense of self and subjectivity is created “by virtue of our dialogic relationships with others.”⁷⁰ Such a

⁶³ *Id.* at 125.

⁶⁴ *Id.*

⁶⁵ *Id.* at 23.

⁶⁶ KELLY OLIVER, *WOMEN AS WEAPONS OF WAR: IRAQ, SEX, AND THE MEDIA* 103 (2007).

⁶⁷ *Id.*

⁶⁸ *Id.* at 105. See also Dori Laub, *Bearing Witness or the Vicissitudes of Listening*, in *TESTIMONY: CRISES OF WITNESSING IN LITERATURE* 58 (Susan Felman & Dori Laub, eds., 1992) (observing that the listener “has to be at the same time a witness to the trauma witness and a witness to himself.”).

⁶⁹ KELLY OLIVER, *WITNESSING: BEYOND RECOGNITION* 18 (2001).

⁷⁰ *Id.*

self-critical practice of witness, she writes, can counter the “objectifying gaze” that can otherwise accompany the witnessing of suffering.⁷¹ For Oliver, then, it is important to engage in an ongoing practice of “witnessing to the process of witnessing itself”⁷² which involves “witnessing as perpetual questioning.”⁷³

Oliver’s description of witnessing depicts it as an ongoing process of critical analysis that contextualizes and makes sense of what and how we see. This practice of witnessing requires “vigilant attention,” and a commitment to moving beyond what we see to what is:

beyond recognition: the subjectivity and agency, along with the social and political context or subject positions, of the “objects” of our gaze, and our own desires and fears, both conscious and unconscious, that motivate our actions in relation to others.⁷⁴

Clinical legal educators can draw on Kaplan’s and Oliver’s work as a foundation for exploring how students might approach encounters with social suffering in clinical law environments. First, the notion of critical witnessing can be used as a reminder to students that, in many cases, it is helpful for them to step back from the close encounter with their clients to think carefully and critically about the larger context in which their clients’ suffering has arisen, and to try to “see” the bigger picture that is, in Oliver’s phrase, “beyond recognition.”⁷⁵ The rich literature on social suffering, referenced in more detail below, is a helpful resource for this analysis. As I will argue, this contextual analysis of suffering can illuminate the ways in which suffering is an embodied expression of larger systemic injustice. This contextual analysis can in turn be used by lawyers and clients as a resource for understanding and strategizing about the legal problem at hand.

Second, clinical legal educators can draw on Oliver’s notion of “witnessing to oneself” to urge students to engage in a critical self-interrogation of their responses to, and assumptions about, their clients and of the ways in which their encounter with suffering shapes their sense of professional identity, privilege, and power. In particular, this practice of “witnessing to oneself” would encourage clinical students to critically question and analyze their responses to suffering, to understand these responses as politically relevant, and to appreciate how they are constitutive of their professional practice and iden-

⁷¹ *Id.* at 19.

⁷² OLIVER, *supra* note 66, at 105.

⁷³ *Id.* See also Laub, *supra* note 68, at 58 (asserting that listeners to the narratives told by those who have suffered traumatic events must recognize that they themselves are “battleground for forces raging . . . to which [they] must pay attention.”).

⁷⁴ OLIVER, *supra* note 66, at 106.

⁷⁵ *Id.*

tity. A critical analysis of suffering, in which students engage in the kind of “witnessing to themselves” described by Oliver, would require them to inquire into the ways that the social production and distribution of suffering means that some people are “much better insured against suffering” than others.⁷⁶ This type of analysis can lead to discussions about the relative privilege of law students and lawyers in comparison to their clients, related questions of the accessibility of the legal system to clients, and whether or not access to the legal system could truly provide “justice” to a clinic client.⁷⁷ As Gada Mahrouse writes about her experience working with students involved in social justice initiatives in the global south, it is vital to “caution [them] to be vigilant about what injustices their participation may inadvertently reinforce.”⁷⁸ She further writes that:

[i]ndeed, instead of showing students all that can be achieved through social justice efforts, I contend that it is better to show them how real change fails to take place as a result of certain initiatives. This is not to discourage them, but to help them see with some candour just how hollow many claims to social justice can be.⁷⁹

Students should also be encouraged to develop practices of “critical listening” to the traumatic narratives of clients in clinical settings. This practice requires patience and humility, virtues that are not generally honed in law practice. As Lucie White has written, “[t]he lawyer might feel it a waste of resources to immerse herself in the endless, chaotic stories of suffering that individuals might want to tell.”⁸⁰ The practice of critical listening in the face of suffering is often a painstaking one, where students must be encouraged to recognize that, as Elaine Scarry has said, suffering is at one level fundamentally unshareable, and can be experienced as the “unmaking of the world” for those who are suffering.⁸¹ The recognition that suffering is, in many respects, incapable of being “represented” fully through language is a reminder to students that they cannot and should not leap to conclusions, or make quick judgments, about their clients’ experiences or

⁷⁶ SPELMAN, *supra* note 43, at 8.

⁷⁷ See Nancy Cook, *Looking for Justice on a Two-Way Street*, 20 WASH. U.J.L. & POLICY 169, 170 (2006).

⁷⁸ Gada Mahrouse, *Questioning Efforts that Seek to ‘Do Good’: Insights from Transnational Solidarity Activism and Socially Responsible Tourism*, in STATES OF RACE: CRITICAL RACE FEMINISM FOR THE 21ST CENTURY 169, 183 (Sharene Razack, Malinda Smith, & Sunera Thobani, eds., 2010).

⁷⁹ *Id.*

⁸⁰ Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 545 (1987-1988).

⁸¹ ELAINE SCARRY, *THE BODY IN PAIN: THE MAKING AND UNMAKING OF THE WORLD* 23 (1985).

identities.⁸² Students might be encouraged, instead, to practice listening in ways that allow them, as psychiatrist Dori Laub writes, simply to “hear the silence.”⁸³

A practice of critical listening in clinical law contexts recognizes that law students should seek to listen to their clients’ narratives of suffering, and that this stance of listening might involve listening beyond the words and into the silence of their clients’ stories and experiences. This practice requires overcoming the impatience to get to the “facts” or the “legal issue” that so often characterizes legal practice, and recognizing that the act of telling a traumatic story may in some cases be a process of “remaking” the world for the teller.⁸⁴ While the time constraints of clinical work can militate against this kind of patient and attentive practice, I would argue that the act of inquiring deeply into the client’s narrative of suffering, and also his or her perspective on the meaning and context of this narrative, can provide for the client an opportunity to “reconstitute the world.” In the end, a pedagogy that encourages students to understand encounters with their clients and the narratives of their clients as defying their full understanding, yet requiring a stance of critical listening and witnessing, can be a powerful challenge to dominant messages about the technocratic expertise of lawyers.

B. Beyond Empathy: Critical Emotional Praxis

I have argued that a critical pedagogy of suffering would encourage students to approach encounters with clients’ expressions and stories of suffering with a stance of critical witnessing and listening. This stance would foster a “critical emotional praxis,”⁸⁵ which encourages clinic students to understand their emotional responses to stories and expressions of suffering as directly related to questions of justice and legal practice in poverty law contexts. For Zembylas, a critical emotional praxis entails understanding emotions as “practices,” emphasizing the “connection between inner feelings and their external manifestation through action.”⁸⁶ This view, he writes, holds that

⁸² See Michalinos Zembylas, *Bearing Witness to the Ethics and Politics of Suffering: J.M. Coetzee’s Disgrace, Inconsolable Mourning, and the Task of Educators*, 28 *STUD. PHILOS. EDUC.* 223, 230 (2009).

⁸³ Laub, *supra* note 68, at 58 (stating that the listener must learn to “listen to and hear the silence, speaking mutely both in silence and in speech, both from behind and from within the speech. He or she must recognize, acknowledge, and address that silence, even if this simply means respect – and knowing how to wait.”).

⁸⁴ See generally SCARRY, *supra* note 81. See also DAVID P. MORRIS, *ILLNESS AND CULTURE IN THE POSTMODERN AGE* 196 (1998).

⁸⁵ See *supra* note 54 and accompanying text.

⁸⁶ Michalinos Zembylas, *Trauma, Justice and the Politics of Emotion: The Violence of Sentimentality in Education*, 29 *DISCOURSE: STUD. CULTURAL POLITICS EDUC.* 3 (2008).

“emotions are . . . performances that produce action within the context of particular social and political arrangements.”⁸⁷ Stated differently, a pedagogy that encourages critical emotional praxis would encourage students to see emotions and affect as politically and indeed legally relevant, and as a resource for further reflection and action.

In his writings on what he calls the “politics of trauma” in education, Zembylas considers the ways in which representations of traumatic events in educational contexts may affect students.⁸⁸ Like Kaplan and Oliver, Zembylas is critical of the tendency of students to respond to traumatic images or narratives with numbness or, alternately, with overly sentimental or emotional responses. In both cases, suffering is viewed as a private matter, unrelated to larger questions of social justice.

For Zembylas, it is important for educators to create pedagogical spaces where students and teachers can critically examine their emotional and affective responses to such traumatic images and events, where “those affective investments can be challenged.”⁸⁹ He writes that critical educators must seek to challenge the “strong grip” of sentimental or desensitized responses to suffering, and instead seek to develop pedagogies that “acknowledge the discomfort caused by trauma narratives and transform such feelings into energy for praxis and transformation.”⁹⁰ He argues that emotion ought to be politicized in educational contexts as a means of addressing questions of otherness, difference, and power.⁹¹

A pedagogy of critical emotional praxis in clinical legal education would seek to politicize the emotional or affective responses of students to the suffering of their clients and to examine how these responses might be relevant to other inquiries related to clinical law practice. This entails a deliberate and sustained attention to these emotional and affective responses in clinical law classrooms and supervisory interactions. Clinical law teachers can encourage students to describe and analyze their often conflicting emotional responses to the traumatic or difficult stories that some of their clients share with them. Teachers can ask students to interrogate what their responses might say about their professional identities and conceptions of their role in the face of suffering, as well as what responses would be most conducive to the social justice aims of a poverty law practice.

⁸⁷ *Id.*

⁸⁸ ZEMBYLAS, *supra* note 30, at 15.

⁸⁹ *Id.*

⁹⁰ *Id.* at 32.

⁹¹ *Id.* at 16.

Students who might feel that they are emotionally exhausted or “burned out” because of their empathetic responses to clients can be urged to critically examine the ways in which empathy, although important, can also function to focus attention on individual emotions, and to magnify the individual lawyer-client relationship at the expense of larger systemic forces that produce suffering. Students can also be encouraged to reflect on how a focus on their own emotional burnout or pain as a result of the encounter may obscure and neutralize the power differences between themselves and their clients. Similarly, students who feel numb or conflicted about their responses to the narratives of suffering of their clients can be engaged in examining how the suppression of emotional responses can maintain dominant ideas about the irrationality of emotional responses in legal practice, and how these ideas similarly reproduce dominant notions of the proper sphere of legal practice and professional identity. Indeed, as Zembylas and others point out, if emotions are indeed political, then their suppression is an ideological move.⁹²

A clinical law pedagogy that embraces and encourages critical emotional praxis subverts dominant norms of coolness, rationality, and neutrality in legal education,⁹³ and disrupts dominant ideas of emotions as being separate and irrelevant to legal practice. Bringing a discussion of emotional responses into the classroom, and subjecting emotional responses to critical analysis rather than simply treating emotions as apolitical and unrelated to other subjects of discussion, challenge notions that lawyers must possess dispassionate boundaries in the face of emotions and suffering. This approach, however, does not encourage students to fall into a swamp of sentimental emotional responses to the suffering of clients, but instead encourages a careful and critical analysis of these kinds of responses.

A pedagogy of critical emotional praxis thus encourages students to understand emotional responses to their clients as potential resources for analysis and fuel for passionate responses to suffering, but always subject to a critical analysis and a search for underlying assumptions. By critically interrogating emotional responses, clinical law teachers can help students to politicize their emotions and use them as tools or modes of analysis.⁹⁴ Thus, this pedagogy suggests

⁹² *Id.* at 120. See also SPELMAN, *supra* note 43, at 88 (noting that “our emotional lives are often highly politicized.”).

⁹³ See PHILIP C. KISSAM, *THE DISCIPLINE OF LAW SCHOOLS: THE MAKING OF MODERN LAWYERS* 96, 97 (2003) (noting the “relentless rationality” of law school casebooks, classroom discussions, and most legal scholarship and the pervasiveness throughout law schools of an emotional style that he terms “coolness,” which is characterized by caution, muted emotions, and “impersonal” or “strategic” friendliness).

⁹⁴ See ZEMBYLAS, *supra* note 30, at 131.

that emotional responses can be a resource for political action and a politicized understanding of legal practice. As Ahmed writes, the “call of . . . pain . . . is a call for action, and a demand for collective politics.”⁹⁵

C. Painful Injustices: The Political and Legal Contexts of Suffering and Trauma

In Part II, I argued that there is a risk that encounters between law students and clients who express pain or suffering may reproduce for students dominant notions about lawyers as rescuers and clients as victims, as well as dominant notions about suffering as a private and apolitical experience of clients. I have argued that a critical pedagogy of human suffering and trauma requires political and contextual understanding of suffering itself, which can engage students in the moral, ethical, and political contexts for suffering and trauma. This pedagogy urges students to approach suffering with “not just empathy and motivation to help, but the responsibility to recognize others through an awareness of injustice in the world.”⁹⁶ A critical clinical pedagogy of suffering, then, must seek to encourage students to identify dominant assumptions about suffering and responses to suffering, and to draw on contextual and critical theories of suffering.

An analysis of suffering requires historical and political understanding. For example, in the case of suffering expressed by Aboriginal clients who are survivors of horrific acts of physical, sexual, and cultural violence at residential schools,⁹⁷ an analysis of colonial history in Canada is required to contextualize the individual suffering of a survivor. As Adelson writes, this type of analysis leads to an ability to locate suffering as the “embodied expression of damaging and often long-term and systemic asymmetrical social and political relations.”⁹⁸ Ahmed provides another way of framing this understanding of residential school experience, writing that the damage to the bodies of residential school survivors in Australia did simultaneous damage to the metaphorical “skin” of the Aboriginal community. In this way, colonial “violence was not simply inflicted upon the body of the individual who was taken away, but also on the body of the indigenous community, which was ‘torn apart.’”⁹⁹

⁹⁵ AHMED, *supra* note 42, at 39.

⁹⁶ OLIVER, *supra* note 69, at 166.

⁹⁷ See *supra* note 10 and accompanying text.

⁹⁸ Naomi Adelson, *Toward a Recuperation of Souls and Bodies: Community Healing and the Complex Interplay of Faith and History*, in HEALING TRADITIONS: THE MENTAL HEALTH OF ABORIGINAL PEOPLES IN CANADA 272, 273 (Laurence J. Kimayer & Gail Guthrie Valaskakis, eds., 2009).

⁹⁹ AHMED, *supra* note 42, at 34.

In other cases, the history and context of suffering and harm experienced and expressed by an individual client might be more subtle, related to what Veena Das and Arthur Kleinman call the “slow erosion of community through the soft knife of policies that severely disrupt the life worlds of people.”¹⁰⁰ An inquiry that is “historically deep”¹⁰¹ and “geographically broad”¹⁰² may reveal the source of the “soft knife” that has shaped the suffering experienced by an individual client. In many cases, an analysis of current political and economic forces, including the current climate of neo-liberal globalization, perpetual economic crisis, and precipitous dismantling of public institutions provides insight into how individual clients come to their embodied experiences of suffering.¹⁰³ Students can be urged to analyze how current legal systems function to maintain and reproduce these conditions, and therefore how law can be implicated in the production and distribution of suffering. They can be asked to examine and challenge dominant assumptions that the lives of many poor people are somehow superfluous.¹⁰⁴

Clinical law students can also be encouraged to analyze the ways in which law actively produces and distributes human suffering. As Jeanne Gaakeer has written, suffering is at the heart of law and legal institutions. As Gaakeer observed:

*[s]uffering in the broadest sense of that word remains law’s core business . . . suffering, albeit in different forms for different people, is inextricably bound to law in its modern institutional guise. . . . The initial impetus to law in action is always someone’s feeling, be it rightly or wrongly, that he or she suffers by what another person did or failed to do.*¹⁰⁵

Similarly, Austin Sarat draws attention to the fact that “[b]odies are everywhere in law,”¹⁰⁶ noting that aspects of human suffering, including police brutality, abortion, and euthanasia, are key focal points in law despite dominant techno-rational discourses. As Martha Nussbaum points out, our need for law itself is founded upon our

¹⁰⁰ Veena Das & Arthur Kleinman, *Introduction*, in *REMAKING A WORLD*, *supra* note 40, at 1, 1.

¹⁰¹ FARMER, *supra* note 29, at 158.

¹⁰² *Id.*

¹⁰³ See Ashar, *supra* note 52, at 360 (urging clinical teachers to take current political context into consideration in their teaching).

¹⁰⁴ See JUDITH BUTLER, *PRECARIOUS LIFE: THE POWERS OF MOURNING AND VIOLENCE* 20 (2004) (describing “precarious lives” as lives that are not “counted as human” in dominant consciousness).

¹⁰⁵ Jeanne Gaakeer, *The Legal Hermeneutics of Suffering*, 3 *LAW AND HUMAN* 123, 128 (2009) (emphasis added).

¹⁰⁶ Austin Sarat, *Introduction: On Pain and Death as Facts of Legal Life*, in *PAIN, DEATH, AND THE LAW* 1, 5 (Austin Sarat ed., 2001).

“vulnerab[ility] to harm and damage.”¹⁰⁷

In an influential essay entitled *Violence and the Word*, legal theorist Robert Cover urged lawyers to be attentive to the ways in which legal institutions actually produce and sanction suffering and pain in stark material ways. Cover wrote that “[l]egal interpretation takes place in a field of pain and death. . . . A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life.”¹⁰⁸ Cover described the ways in which the “Word,” or the written or spoken decision of judges, is filtered down through the hierarchical structure of the legal system (to police, jailers, and so on) and transforms into material and often painful consequences for the subjects of law.¹⁰⁹ Cover thereby draws attention to the specific ways in which legal interpretation and legal discourse actually produce, routinize, and distribute suffering.¹¹⁰ Similarly, Richard Devlin shows how law often functions to normalize, sanitize, and domesticate violence, playing a role in maintaining unequal and hegemonic power structures.¹¹¹

What insights about legal practice and social justice might be gained from this kind of analysis of social suffering? First, this kind of analysis shows that embodied experiences of suffering can be produced by larger legal, political, and social forces. More importantly, if suffering is produced by larger social and political forces, then this approach suggests that the proper response to suffering should also include a social and political response.¹¹² This approach also suggests that lawyers can respond to social suffering by learning more about the context of the community in which the suffering arises, which in turn requires a commitment to move beyond the “compressed” space of the legal clinic and into the community, and towards a commitment to addressing the systemic political and legal forces that have created the experiences and legal problems of individual clients.¹¹³ Of course,

¹⁰⁷ MARTHA C. NUSSBAUM, *HIDING FROM HUMANITY: DISGUST, SHAME, AND THE LAW* 6 (2004).

¹⁰⁸ Robert M. Cover, *Violence and the Word*, 95 *YALE L.J.* 1601, 1601 (1985-1986).

¹⁰⁹ *Id.* at 1619.

¹¹⁰ *Id.* at 1609 (describing the legal system as a “pyramid of violence,” that acts to “restrain, hurt, render helpless, even kill the prisoner.”).

¹¹¹ Richard F. Devlin, *Nomos and Thanatos (Part A). The Killing Fields: Modern Law and Legal Theory*, 12 *DAL. L.J.* 298, 339-43 (1989-1990). See also ROBIN WEST, *CARING FOR JUSTICE* 96-97 (1997) (observing that often the harms suffered by certain groups, i.e. women, are not registered by law).

¹¹² See Adelson, *supra* note 40, at 97 (stating that “if social suffering derives from a colonial and postcolonial history of disenfranchisement and attempts to eradicate a cultural history, then the proper response to that suffering must include the reconstitution and reaffirmation of social identity.”).

¹¹³ See Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 *UCLA L. REV.* 999, 1078 (2006-2007).

as advocated by “community lawyering” writers such as Nancy Cook, an approach like this should be tempered by an acute awareness of the limits of lawyers, who are usually “outsiders” to the community, to bring about any change without community collaboration.¹¹⁴ Therefore, lawyers should seek to collaborate with communities themselves, and understand how communities define the solutions to social suffering. This approach may entail involvement by law students in community-based campaigns, law reform initiatives, and other activities as a critical response to individual encounters with social suffering.

This pedagogy does not deny the importance of the individual relationships between clinical students and their clients, and the emotional and affective dimensions of these relationships. Indeed, through practices of critical witnessing, listening, and critical emotional praxis, students may come to identify the political nature of individual responses to clients. Students may uncover the ways in which dominant approaches to professional identity and legal practice reproduce particular views about how lawyers ought to respond to clients, and to question whether these approaches to social suffering challenge or transform the conditions that produce suffering in the first place. In other words, students can be encouraged to identify the ways in which individual “feelings” and emotions (their own and their clients’) are politically significant, related to understandings about legal practice, and serve to either maintain or challenge dominant norms.

In addition, students can be encouraged to understand that “practical moments” within lawyer-client relationships can challenge dominant tropes that render the lives of poor people “superfluous,” and assume what Corey Shdaimah calls “social justice ramifications.”¹¹⁵ Students can be challenged to balance and connect their individual, practical, day-to-day responses to their clients with a larger political analysis about social suffering. Students can be invited to seek responses to individual suffering of clients that do not depoliticize the claims of clients.¹¹⁶ Practices of critical witnessing and listening would help students to develop a contextual understanding of the client’s particular history and story, underscoring the point made by Leslie Espinoza that “legal interaction should incorporate cultural and sociopolitical exploration.”¹¹⁷ By linking social suffering to questions

¹¹⁴ See generally Cook, *supra* note 77.

¹¹⁵ COREY S. SHDAIMAH, *NEGOTIATING JUSTICE: PROGRESSIVE LAWYERING, LOW-INCOME CLIENTS, AND THE QUEST FOR SOCIAL CHANGE* 141 (2009).

¹¹⁶ *Id.*

¹¹⁷ Leslie G. Espinoza, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 MICH. L. REV. 901, 908-09 (1996-1997).

of justice and social justice, this approach may help law students to understand and act upon the profoundly political dimensions of poverty lawyering, whether in clinics or elsewhere.

CONCLUSION

It is important for clinical law teachers to be prepared, during class discussions, case rounds, or routine supervisory interactions with students, to critically interrogate dominant discourse about suffering, and to urge students to ask questions about the proper terrain of legal practice. This may require clinicians to push students into examining their own emotional responses, and to help them to develop a critical vocabulary for understanding and contextualizing these experiences. A critical pedagogy of suffering would entail a deliberate challenge to the tendency to suppress or divert emotional responses within the clinical classroom, and to encourage students to understand their own sadness or distress about their clients' stories as resources for thinking about larger questions of justice and injustice in society. Assigning critical and reflective journals, and exposing students to the multidisciplinary literature about social suffering, might be good places to start.

I have argued that there is a need in clinical pedagogy for a deeper theoretical analysis of the encounter with human and social suffering that inevitably occurs in poverty law contexts, one that seeks to inquire whether the encounter with suffering can teach students about larger questions of legal practice in the face of deep social injustice. I argue that a pedagogy of suffering would seek to show that suffering, lawyers' readings of suffering, and legal practice in response to suffering, are profoundly political and deeply related to questions about law and legal practice. Ahmed has discussed the importance of bringing "pain into politics," which, she writes, would entail a commitment to showing how past injustices manifest in the "very wounds that remain open in the present."¹¹⁸ So too would the use in legal clinics of a critical pedagogy of suffering bring "pain into lawyering," and into clinical law classrooms, and develop understanding of how various responses to the suffering of individual clients can be an important aspect of lawyering for social justice.

¹¹⁸ AHMED, *supra* note 42, at 33.