

**ACKNOWLEDGING THE RELEVANCE OF EMPATHY IN CLINICAL  
LEGAL EDUCATION. SOME PROPOSALS FROM THE EXPERIENCE  
OF THE UNIVERSITY OF BRESCIA (IT) AND VALENCIA (ESP)**

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Legal Clinical Education is experiencing a great development in the Spanish and the Italian university context. Nevertheless, it comes with new challenges that professors have not faced until now: students working in the field with people in situations of vulnerability or in complex realities. Given that one of the major goals of CLE is the preparation not only of professionals for the practice of law, but also people concerned about social justice and social diversity, this piece of research looks into the significance of working with students about the key role that empathy plays in the development of their relation with the people they assist. Moreover, we will suggest some activities to be introduced in the clinical training plan with this purpose, and lastly, we will construct some final thoughts about this research and the feedback we obtain from our clinical colleagues.

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### **1. Working in the field: Students facing up complex realities.**

Legal Clinics can adopt multiple forms to meet social justice goals, to help individuals and communities with their legal needs, such as Penitentiary Law Clinic, Public Interest Clinic, Live-Client Clinic, and so on. Within the vast reality, the Legal Clinics of the University of Brescia and Valencia mainly work with cases and projects related to public interest<sup>2</sup>. The services offered are directed to people qualified as disadvantaged or at least in a condition of being a *weak party* in their relation with the legal system. More specifically, we focus our resources in working hand in hand with disabled persons, inmates, homeless, single moms, LGTBIQ, asylum seekers, Roma people and many others groups that struggle in their relation with the law for the fulfilment of their rights. Indeed, one of the main goals of our clinics is to encourage students to consider how law impacts the members of the disadvantaged groups.

Nevertheless, this works exposes students to stressful situations where they have to work with people in vulnerable situations and challenging realities (Roma camps, prison, favelas, etc.). Moreover, these particular scenarios may increase biases thoughts or stereotypes the students might have towards the minority groups they are working with, based on cultural differences that may cause misunderstandings and tensions between clients and students, unprepared to manage the emotions coming from that relationship, that might make them feel uncomfortable (embarrassment, bias, fear, anger...).

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<sup>2</sup> Mestre i Mestre, R. M. (ed). *Guía práctica para la enseñanza del derecho a través de las clínicas jurídicas*. (Valencia, Tirant lo Blanch, 2018), 14 ff.

Given that one of the major goals of CLE is the preparation not only of professionals for the practice of law<sup>3</sup>, but also people concerned about social justice and social diversity<sup>4</sup>, we work strongly with our students to teach them why building a collaborative relationship with clients is a landmark objective on performance of their legal work, and how to achieve it. Thus, in the subsequent sections we will research into, firstly, the importance of empathy as one of the central values of clinical legal education, secondly, we will suggest some activities to be introduced in the clinic in order to work with students about empathy, and finally, we will construct some final conclusions about this piece of research and the feedback we obtain from our clinical colleagues.

## **2. Empathy as a core value in legal clinic education: students' reactions to human suffering.**

Despite the changes introduced by the Bologna process in the European higher educational system, both the Italian and the Spanish factual reality shows that law students continue to receive master classes in their formation, at the expenses of a more collaborative group-based one. Even though the curriculum of the courses has

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<sup>3</sup> García Añón, J. «Acceder a la justicia y hacer justicia: la función de las universidades, las clínicas jurídicas y las ONG, y su impacto construyendo los límites del derecho», in García Pascual, C. (ed.), *Acceso a la justicia y garantía de los derechos en tiempos de crisis* (Valencia: Tirant lo Blanch, 2018), 301-328.

<sup>4</sup> Gascón Cuenca, A., «La evolución de la enseñanza jurídica clínica en las universidades españolas: oportunidades y desafíos de la litigación estratégica en las clínicas de derechos humanos», *Revista de educación y derecho. Education and Law Review* 14 (2016): 5-7.

been changed in order to implement the new criteria that came along with it, professors continue to mainly use a theoretical approach to the contents of their lectures, and specially when it comes to law area. Given this situation, law professors are not used to manage challenging pedagogical situations, such as the ones introduced by legal clinics, derived from students working directly with the society in different scenarios. Moreover, legal clinics dealing with social justice problems, work in especially complicated areas such as: ethnicity, gender, poverty, disability, groups that have been historically marginalized, and many others; making a clear stand for justice, equality, respect, inclusion and non-discrimination. Accordingly, this section will introduce the importance of working about empathy within the legal clinics, in order to address some of the challenges that it poses to clinical professors and supervisors.

If we research into other realities where clinical legal education has been longer implemented, we realize that clinical professors have faced highly intricate situations that require from them to work with students in areas that are far away from text books and master classes. Just two examples to illustrate the above affirmation. Professor Stephen Wexler has descried the law school curriculum as a one that teaches students to deal with law and the rich, leaving aside capital questions like how the law came to be like this or why there are certain groups of the society that are always struggling in their relations with the law (like poor people or ex-convicted)<sup>5</sup>. The

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<sup>5</sup> Stephen, W., «Practicing Law for Poor People», *Yale Law Journal* 79 (1970): 1049-1069.

second example is the one published by professor Gavigan, where she describes the reality she encountered when supervising law students at Parkdale Community Legal Services. She depicts the situation as a wartime field hospital, waiting for the worst to happen, remembering that the work they did is like being in the trenches, and the communities they serve, felt constantly under siege<sup>6</sup>. These realities reinforce the ideas of Cambron-McCabe/McCarthy<sup>7</sup> and Marshall<sup>8</sup>. These authors argue that the forefront activity of a social justice legal clinic is working about the topics we mentioned previously, such as race, gender or diversity, instead of technical competences or a pure positivist knowledge of the law.

Furthermore, these two examples serve us to introduce a core concept for the work we do in legal clinics: empathy. Clinical students collaborate in direct contact with communities and persons that have been left aside by the system, like homeless, people being abused, clients that live with HIV, people with functional diversity, with health conditions, and many others. People that had suffer from greatly distressing situations where their rights have been crushed by the most powerful machine we can encounter, the state. Within this relation, the sorrow and the torment suffered by clients is somehow transferred to the students, and case supervisors and clinical

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<sup>6</sup> Gavigan, S. A. M., «Poverty Law and Poor People: e Place of Gender and Class in Clinic Practice», *Journal of Law and Social Policy* 11 (1995): 165-182.<sup>[1]</sup><sub>SEP</sub>

<sup>7</sup> Cambron-McCabe, N., and Martha M. McCarthy. «Educating School Leaders for Social Justice», *Education Policy* 19 (2005): 201-222.

<sup>8</sup> Marshall, C., «Social Justice Challenges to Educational Administration: Introduction to a Special Issue», *Educational Administration Quarterly* 40-1 (2004): 3-13.

directors can realize about this when talking with students, specially in case control rounds, where they debate and discuss with the rest of their peers about the cases or projects they are working with<sup>9</sup>.

Previous studies have shown that teaching about dignity, equality and discrimination is not an easy task, as it evokes a wide range of powerful feelings and emotions in both students and educators<sup>10</sup>. When we add to this picture the work clinical students do with communities that have suffered from these behaviours, they react to this reality in different ways, from what we are going to identify as the professional approach to the over empathetic one. Thus, we need to provide students with the resources they need in order to manage their empathy towards clients in order to avoid behaviours that can jeopardise or even damage that relationship and the outcome we are expecting out of it.

As said before, when students encounter clients, and the latter share their traumatic stories and the emotions they have felt, like anxiety or agony, this situation has a challenging impact on students, as they have to deal with it in a twofold way, as human beings, and as future lawyers<sup>11</sup>. Consequently, these situations where the rights of certain collectives have been violated, have to be approached from a critical

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<sup>9</sup> Besides our experience in this area, see: Buhler, S., «Painful Injustices: Encountering Social Suffering in Clinical Legal Education», *Clinical Law Review* 19 (2003): 405- 428.

<sup>10</sup> Berlak, A. C., «Confrontation and Pedagogy: Cultural Secrets, Trauma, and Emotion in Antioppressive Pedagogies», *Counterpoints* 240 (2004): 123-144.

<sup>11</sup> Fletcher, L. E., and H. M. Weinstein, «When Students Lose Perspective: Clinical Supervision and the Management of Empathy», *Clinical Law Review* 9 (2002): 147-155.

point of view in order to deconstruct concepts like power, and its relation with discrimination and subjugation. This scenario gives us the occasion of discussing with students concepts like equality, justice, indirect or structural discrimination, all placed at the backbone of social justice. Moreover, these principles are barely known by them, because they have been expelled or reduced to the ranks (all together with courses about human rights), from the law curriculum, in favour of *more practical* knowledge of the regulations of the legal system.

### **2.1. Student reactions to human suffering**

The relation lawyers (and students) adopt when working with clients might be pretty different depending on the case and its features. Previous research has made a clear distinction between the traditional conceptions and the client-centred ones<sup>12</sup>. Derived from these two major conceptions, we consider the following taxonomy: a) the detached professional approach; b) the over-identification approach; and c) the critical emotional praxis. In next paragraphs, we will research into their characteristics in order to make visible the risks they might have for our work and our relation with the people we are working with, and offer arguments for adopting the third model.

- a) The detached “professional approach”.

Under this conception, lawyers view legal problems as something completely

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<sup>12</sup> Binder, A., P. Bergman, and S. Price, «Lawyers as Counsellors: A Client-Centered Approach», *NYL School Rev.* 29 (1990): 29-86.

disconnected from client's emotions and non-legal concerns. In this perspective, lawyers "tend to regard themselves as experts who can and should determine, in a detached and rational manner, and with minimal client input, what solution is best"<sup>13</sup>.

In a reality as the one described above, this approach may reinforce the vulnerability (victimization) of clients, reproducing a model of systemic psychological violence that might be present in the situation. The clients' expertise, thoughts and feelings do not play a role in the decision making of the lawyer, as he or she adopts a position of *life-saver*. This kind of approach is set far away from an idea of clinical legal education as a tool to further social justice values and, among other, social inclusion. On the contrary, we encourage students to estimate clients' perspectives, goals and values to find way of working contribute to their sense of efficacy end empowerment, avoiding hierarchical relationships.

In this regard, if we rather choose to ignore this challenge we can found ourselves and our work, not only reinforcing behaviours that undermine the empowerment of the victims, by reinforcing ideas that represent dominant images of clients as helpless victims or people how have earned their suffering. but also, we will be failing to prepare students to engage with difficult emotional work that requires a shift in values, attitudes and behaviours, limiting their capabilities to address fundamental social justice issues<sup>14</sup>. So that, we have to promote students' aptitudes

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<sup>13</sup> Chen, K., A., and S. Cummings. *Public Interest Lawyering: A Contemporary Perspective* (New York: Wolters Kluwer Law & Business, 2014), 290.

<sup>14</sup> Cambron-McCabe, N., and M. M. McCarthy, «Educating School Leaders for Social Justice». *Education*



and give them the required expertise for them to know, on one hand, how to avoid these pitfalls and, on the other hand, how to work hand in hand with communities to develop their self-empowerment on the given subject. When we allow clients to express themselves, we are in a better position to incorporate the cultural and socio-political vision to the concrete case. This work, not only allows us to both work from the roots to the top of the problem and build up self-empowerment in the community, but also, to overcome the idea of *helpless victims*, by letting them being the leaders of the cause and not mere observers or sources of information. A critical approach to this scenario helps us to dilute biased thoughts about minority groups, all together with the widespread image of lawyers as life-savers for people that cannot *manage their own problems in a right way*.

b) The over identification approach.

Whereas the professional approach builds strong boundaries between lawyers and clients, the over identification approach (or compassionated approach) denies any distance between them. When lawyers and students proceed with a project or a case by this model, they jump into it with both feet trying to fight against the major problems of society like poverty, racial discrimination, structural discrimination, and so on, without controlling the emotions or the reactions these situations produce in them. They are driven by the willing of battle against injustice (which is a positive thing), but losing the perspective of the case as a whole or withdrawing the ability of

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Policy 19 (2005): 214.

making strategic decisions. This situation poses at least two main risks.

On one hand this approach may reproduce a paternalistic model that promotes minorities as *voiceless groups*, that need the majority to guarantee their rights; on the other, becoming too emotionally involved in the clients' legal and non-legal problems may make lawyers lose their necessary objectivity while handling the case. By doing so, lawyer do not practice empathy, but a useless empty empathy<sup>15</sup>, with no concrete benefits for clients.

Moreover, as stated above and generally speaking, the law curriculum does not introduce compulsory subjects where law is studied as a factor for social control. Thus, students may be not aware of these relations of domination, and their work with the community risk to «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»<sup>16</sup>. If we lose sight of the social context and the role law plays in it, we might find ourselves enhancing the power relations that had created the discriminatory situations in the first place, by non-bringing them to the surface, making visible and counteracting them side by side with the affected collective. If our students observe client suffering from a pure private empathetically point of view, they will not be addressing the given problems from its roots, but the

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<sup>15</sup> Buhler, S., «Painful Injustice: Encountering Social Suffering in Clinical Legal Education», *Clinical L. Rev.* 19 (2013): 412.

<sup>16</sup> Buhler, S., «Painful Injustice: Encountering Social Suffering in Clinical Legal Education», *Clinical L. Rev.* 19 (2013): 408.

other way around, as they will see it as a problem created by the victims without any other correlations.

c) The critical emotional praxis.

Turning down the previous two models, we consider the critical emotional praxis, *rectius*, empathy, non-only as a value but as a core lawyering skill that we, as clinicians, should promote and enhance in our students.

According to the Oxford Dictionary definition, empathy is *the ability to understand and share the feelings of another*, otherwise than sympathy, which means *feelings of pity and sorrow for someone else's misfortune*.

When assisting people in a vulnerable situation, adopting an empathetic attitude facilitates to build up a relationship based on trust. By deconstructing and working with this definition and its components, we help students to understand why the *detached professional* approach or the *compassioned* one, have negative effects on their work and on the promotion of social justice<sup>17</sup>. Later, as critical witnesses in their encounters with suffering, we teach them how to create a balance between empathetic and critical response, to understand the core of the structures of injustice<sup>18</sup>. We must use the force coming from the empathetic approach to overlap the concrete situation and observe the role that political decisions play in the case we are working with, in

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<sup>17</sup> Sedillo Lopez, A., «Learning through service in a clinical setting: the effect of specialization on social justice and skills training», *Clinical L. Rev.* 7 (2001): 307-326.

<sup>18</sup> Kaplan, E. W., *Trauma, Social Rupture and the Work of Repair*, *Theatre Topics* (2005): 171-183, underlines a basic concept «There is nothing as vital to the understanding and communication of experience as distance».

order to challenge them as the real forces that generate injustice.

In addition, students have to be able to critically identify the position they hold within the systemic forces that play a role in their society, precisely because the interrogation of students' "emotional investments in specific assumptions and ideas is an important component of critical pedagogies"<sup>19</sup>. This is what Zembylas calls *critical emotional reflexivity*<sup>20</sup>, Fletcher and Weinstein identify as *self-awareness*<sup>21</sup>, or Franck identified as *Pedagogy of suffering*<sup>22</sup> and *Pedagogy of Responsibility*<sup>23</sup>. The goal is to teach the students how to examine and manage their emotional responses, to be able to listen to the other people.

In the context of our clinics, where a great number of students belong to the same cultural and ethnic group, we have to invite them to reflect about their assumptions about other members of the society, in order to counteract stereotyped thoughts that put at stake the work we do with members of the society. This activity requires from students to exam their own experiences and assumptions towards social and cultural

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<sup>19</sup> Zembylas, M., «Engaging with Issues of Cultural Diversity and Discrimination Through Critical Emotional Reflexivity in Online Learning», *Adult Education Quarterly* 59-1 (2008): 61.

<sup>20</sup> Zembylas, M., «Engaging with Issues of Cultural Diversity and Discrimination Through Critical Emotional Reflexivity in Online Learning», *Adult Education Quarterly* 59-1 (2008): 61-82.

<sup>21</sup> FletcherL. E., and H. M. Weinstein, «When Students Lose Perspective: Clinical Supervision and the Management of Empathy», *Clinical Law Review* 9 (2002): 144.

<sup>22</sup> Frank, A.W., *The wounded storyteller: Body, illness and ethics* (Chicago: Chicago University Press, 1995).

<sup>23</sup> Martusewicz, R., and J. Edmundson, «Social Foundations as Pedagogies of Responsibility and Eco-Ethical Commitment», in D. W. Butin (ed.), *Teaching Social Foundations of Education: Contexts, Theories, and Issues* (London: Lea, 2005, 71 ss.)

diversity, by confronting one's own ideas about ethnicity, poverty, people with functional diversity, and so forth. Likewise, it is also helpful to deconstruct concepts that have been used to maintain the *status quo* inside of these systemic relations of power, such as race or the traditional role of women as caregivers.

Apart from cases involving suffering clients, empathy has many rewards for lawyers: they become more “effective” in their job<sup>24</sup>, improving their performances. Generally, as said before, lawyer who can truly view issues as their client do, will develop a stronger relationship with them.

Once a lawyer recognizes that there are emotional components related to their client's legal problem, she can fully understand their needs and provide a better service.

### ***3. Tools experiences of implementing empathy***

Generally speaking, empathy is observed by society as an innate quality, a talent that some people have and others do not. Nevertheless, our approach to empathy is somehow different. We consider that our work as supervisors must include exercises where students need to understand the necessity of having an empathetic approach when working with clients, and specifically, with vulnerable groups. As Westaby and Jones said, working with empathy in the legal profession «can provide both a more

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<sup>24</sup> Zembylas, M., *The Politics of Trauma in Education* (Berlin: Springer, 2008, 35 ss.).

effective form of practice and a deeper appreciation of ethics and values»<sup>25</sup>. Thus, these pedagogical instruments, not only help students to realize the key role that empathy plays in their relations with clients, but also, they are a mean for students to retain this knowledge as a part of their expertise for the future.

As said by many commentators, one cornerstone of the legal clinics is «the coexistence (...) of social justice aim and educational aims. The existence of this dual purpose makes clinics a forum that facilitates a better understanding of the nature of legal knowledge and legal practice and a critical reflection on how the right to access to justice is actually enforced»<sup>26</sup>. Working about empathy in the legal clinics helps us to underline the importance of this reality, and as we have said, the legal clinic teaching methodology is one of the best approaches to empathy.

In the following sections, we will suggest some exercises we used in our courses in order to develop these threefold purpose, social justice, educational aims, and student's empathy, in order to train better lawyers.

### ***3.1. The so-called "steaming out exercises".***

As said before, while assisting vulnerable clients students may feel embarrassment, fear, bias: emotions that can make them feel uncomfortable and become an obstacle in

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<sup>25</sup> Westaby, C., and E. Jones, «Empathy: an essential element of legal practice or 'never the twain shall meet'?, Int' J. of the Legal Profession, 25:1 (2018): 107-124.

<sup>26</sup> Barbera, M., and V. Protopapa, «Access to Justice and Legal Clinics: Developing a Reflective Lawyering Space. Some Insights from the Italian Experience», WP CSDLE "Massimo D'Antona".INT, 141 (2017): 22.

handling the casework.

Given this scenario we, as supervisors, should facilitate a process of self-awareness, helping students to 1) identify their feelings and 2) learn how to manage the emotional aspect of their legal work<sup>27</sup>. The idea is to let the steam out before our students blow, to get them rid of frustration and negative feelings.

1) Identify student's conscious or unconscious emotional state it's crucial in order to prevent this thinking from affecting their legal work and their relationship with the client.

To do so, we suggest two activities. Both of them must be conduct in a "safe place": students should feel free to explore their own emotions and share their ideas. For that reason, introducing these exercises too early in the semester can be risky and inhibit further sharing. Moreover, both of them include a debriefing session, to let the students reflects on the activity performed and capitalize the experience of the workshop.

a) Self-awareness exercise: the students stress out the possible bias they may have against certain target groups. Sharing and discussing "common bias" instead of "own bias" help students to be more secure about exploring and identifying them.

Supervisors should engage a discussion about prejudices against inmates (or Muslims, or homeless, depending on the case accepted by the Law Clinic) and ask

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<sup>27</sup> Fletcher L. E., and H. W. Weinstein, «When Students Lose Perspective: Clinical Supervision and the Management of Empathy», *Clinical L. Rev.* 9 (2002): 135-156.

students to share, at the beginning, common opinion about that target group and later, if students agree to, their own beliefs.

At a certain point law teacher start exploring how much participants know about the target group, asking on what their opinion is based on (personal experience; newspapers; others).

Finally, supervisors should report data, statistics, and any reliable documents about the chosen target group (i.e. providing information about inmates' level of education, family and cultural backgrounds, mental disease, poverty); if possible inviting representatives from the advocacy group to give a speech to the class.

b) Role play: "A Step Forward": taking part to this exercise, also called "Privilege Walk Lesson Plan"<sup>28</sup> students experience what is like to be someone else in their society. The purpose of the activity is to learn to recognize how some factors can affect our lives even when we are not aware of.

Before the class, prepare a list of statements related to money, religion, national identity, race, disability (v. g. *"If you're ill or injured, you can afford medical care"*; *"You can practice your religion without any restrictions"*; and role cards (v. g. a 20-years old asylum seeker from Syria"; a famous movie star, a blind student and so on) adapting them to the cases you are going to work on during the semester.

In the class, follow these instructions:

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<sup>28</sup> Privilege Walk Lesson Plan – <https://peacelearner.wordpress.com/2016/03/14/privilege-walk-lesson-plan/>



- 1) Create a safe atmosphere
- 2) Hand out role card at random one to each student and tell him or her to keep it to themselves and to not show it to anyone.
- 3) Ask students to get into the role and to build up a picture of the character. In order to help them, read out some questions (v. g. "What was your childhood like? What sort of house did you live in? What kind of game did you play? How's your everyday life? What sort of lifestyle do you have? What are you afraid of?).
- 4) Ask students to form a straight line across the room (or, if possible, across the University yard), leaving space in front.
- 5) Tell them that you're going to read out a list of statements and to take one step forward if the statement applies to the character, to stand still if don't.
- 6) Read out the statements and take pauses to allow students to move and to look around to check classmate's position.
- 7) At the end, invite students to take note of the final positions.

Invite the students to sit down in circle, and start the debriefing session asking them what do they think about the exercise. In particular, ask them how do they feel about stepping forward or not, why did they decide to stand still and how was to play a role (how much did they know about the character?).

In the final part of the class, introduce a discussion about how the exercise reflect society and how to shorten the distance.

- 2) After these initial steps, supervisor should assist students to manage their feelings,

distinguishing between external triggers and internal over-reactions. In order to maintain a receptive environment, essential in the learning process, teacher may choose if addressing the student in a one to one meeting or, alternatively, in class.

In both cases, should be adopt a problem-centred approach to the matter, locating the issue outside the student's personality<sup>29</sup> and highlighting how it affected the relationship with the client and, consequentially, the casework.

### ***3.2. Collaborative or peer approach***

The usage of a cooperative learning environment in a law clinic is not an easy task to do, at least from the perspective of the Spanish and Italian university. Students are not used to work with their colleagues, as the law curriculum enhances and promotes a purely individualistic model of learning and working in the class, which was not modified by the *Bologna process*. Nevertheless, setting up a law clinic requires from the professors in charge of the supervision a strong effort to overcome this model and advocate for a change on how the students interact with each other in these contexts.

The benefits of the collaborative training have been discussed by many commentators in a wide range of fields, including clinical education<sup>30</sup>, and it is

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<sup>29</sup> Fletcher, L. E., and H. W. Weinstein, «When Students Lose Perspective: Clinical Supervision and the Management of Empathy», *Clinical L. Rev.* 9 (2002): 135-156.

<sup>30</sup> Prince, M., «Does Active Learning Work? A Review of the Research», *J. Engr. Education*, 93-3(2004): 223-231; Gorkhale, A.A., «Collaborative Learning Enhances Critical Thinking», *Journal of Technology Education* 7-1 (1995: 1-4); Burgess, A., K. Black, R. Chapman, T. Clark, C. Roberts, and C. Mellis, «Teaching Skills for Students: our Future Educators», *The Clinical Teacher* 9 (2012): 312-316.

precisely in this context, due to the commitment we have of working with social justice dilemmas, when we have to leave behind the competition model where students struggle among them to *be the best*, towards a model where the group success is a mean to achieve the formational goals. By creating an atmosphere where, senior clinical students share their knowledge, motivations and experiences with the junior ones, we will be upholding a self-directed behaviour where both groups will learn by gaining information from a variety of resources<sup>31</sup>.

Organizing this setting as a structured activity within the clinic will help to obtain a better outcome in the projects the students are working with<sup>32</sup>. It will add important elements of cogitation and adaptation from the social justice point of view, not only because senior students might have been working in similar cases where they faced similar empirical situations, but also because both groups will be able to debate and discuss about the ethical dilemmas that cases and projects pose, and the stances society has towards the groups with which the clinic works from a critical point of view<sup>33</sup>. This task regularly requires from students to realize and undercover the functioning of social relations of power and subjugation (whether structural or coming from the state), in order to identify patterns of discrimination our clients might

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<sup>31</sup> Quigley F., «Seixing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics», *Clinic L. Rev.* 2-57 (1995): 37-72.

<sup>32</sup> See the activities proposed by Mcquoid Mason, D., R. Palmer (eds), *African Law Clinicians' Manual* (Durban: Masgrave, 2013), 119-124, in particular about teaching ethics and professional responsibility.

<sup>33</sup> Mthethwa-Sommers, S., *Narratives for Social Justice Educators. Standing Firm* (New York: Springer, 2014), 12-15.

be subjected to<sup>34</sup>.

Moreover, this work will help us in two more formative areas: teaching for transfer and working with clients. On one hand, clinic students debating with their senior fellows about the cases they are working with, will add to the picture the necessity of adapting the knowledge they have acquired to similar or new situations. Students-to-student discussions promote this activity as they will need to transform their expertise in order to guide the work of their junior peers, for instance by using brainstorming sessions where they confront what they know and what they need to know to better represent the interests of the project. And, on the other hand, it will help students to deconstruct previous stereotypes they might have towards clients that miss appointments or fail to follow the instructions given by sharing their experiences about this, and realizing that it is not a behaviour linked to a certain type of client<sup>35</sup>.

Summing up, these are the major areas in which the utilization of collaborative learning might help within a legal clinic based on the promotion of the values of social justice.

### ***3.3. The psychological approach.***

We decided to interview a psychologist in order to understand, in a deeper way, the

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<sup>34</sup> Adams, M., *Pedagogical Foundations for Social Justice Education*, 40-42, in M. Adams and, L. A. Bell, *Teaching for Diversity and Social Justice* (New York: Routledge, 2016).

<sup>35</sup> Quigley, F., «Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics», *Clinic L. Rev.* 57 2 (1995): 58.

opportunity given by a correct use of empathy in our clinics. Thus, we chose an expert who has been collaborating with the Penal and Civil Court in Brescia, as she has a great expertise working with inmates, victims of domestic violence, children abused or involved in parents' problematic separations, among other people or groups in a situation of vulnerability.

We decided to take this approach, not only because we are sure that a multidisciplinary perspective is necessary to focus on the different (legal, moral, psychological) implications the legal clinic education has for our students, but also because it is crucial to improve the value of empathy as a skill for better managing legal strategies. In particular, because working in hostile atmosphere, as said before, requires some cautions and we need to prepare ourselves as teacher but also, and above all, our young student to face up these *special* situations.

The implementation of empathy, as core value in legal clinic education is not an immediate goal. On the contrary, it is the result of a long-run process that requires some efforts and investments.

The psychologist suggested us different useful tools and steps to reach our goal, that we can divide in these three macro-steps:

1) The first one is quite elementary: give our students a lot of information. Let them be comfortable – or more comfortable as possible – with the new situation (if for example they have to visit a jail/prison, an asylum seeker camp describes the space; explain the access procedures: “You cannot carry the cell phone in jail”).

The other steps are more elaborate, they demand an iterative or circular process.

2) In the second macro-step we can find some tools as for example *steaming out* (*supra* § 3.1.); *intervision*, which is an auto-training or a peer-training for teachers (the committee of teachers involved in the clinic share and compare experiences, problems, solutions)<sup>36</sup>.

3) The third macro-step provides a more specific professionalism (it is a really deeper step). It consists in implementing some therapies or techniques as for example mindfulness<sup>37</sup>; the tools are the same we often use in our courses - even if without classify them in a specific taxonomy - but the idea is to involve some experts (enforcing the multidisciplinary perspective). We can use these tools to improve a non-judgmentally approach, which may be frequent if our students have some biases or if they believe/promote some stereotypes<sup>38</sup>.

### **3.4. Others' methodologies**

Although the methodologies we just explain have been proved as fruitful for us to work with students about empathy, there is a wide range of other activities that

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<sup>36</sup> Epprecht C., «Intervision: a group-based peer-supervision project by EMCC Switzerland», in Bachkirova, T., P. Jackson, and D. Clutterbuck (eds), *Coaching And Mentoring Supervision: Theory And Practice* (Milton Keynes: Open University Press, 2011, 265-272).

<sup>37</sup> Roeser, R. W., E. Skinner, J. Beers, and P. A. Jennings, «Mindfulness Training and Teachers' Professional Development: An Emerging Area of Research and Practice» *Child Development Perspective*, 6-2 (2012): 167-173.

<sup>38</sup> Fulton, P. R., *Mindfulness as Clinical Training*, in Germer, C. K., R. D. Siegel, and P. R. Fulton (eds.), *Mindfulness and Psychotherapy* (London: Guilford Press, 2016, 59 – 75).

can be used within the legal clinics to do so<sup>39</sup>. The experience of “seeing the world through another’s eyes, hearing as they might hear, and feeling and experiencing their internal world”<sup>40</sup> is an activity that can be performed by using other methodologies that can complement the mains ones introduced in the previous sections. Thus, is not our intention to explain in detail the following exercises, but to point out that working about empathy requires a set of activities that move along with the clinical courses. So that, depending on the stage we are of it, an activity might be more adequate than the others, and professors are the ones in charge to decide which one should be implemented.

Firstly, performing *mock interviews* where some students adopt a role while being interview by their peers is a good dynamic to point out bias behaviours that they might have towards certain members of the society. This training might rise some important red flags, which can be used to develop the rest of the exercises about empathy during the course.

Secondly, it has been proved as an important exercise too, the *use of documentaries* for students to understand the complexities and ambivalences of empathy. When selecting them, we should have in mind that the projections must adopt a critical point of view with the relations of power and subjugation, hierarchy

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<sup>39</sup> For example: Angeles, L. C., and G. Pratt, «Empathy and Entangled Engagements: Critical-Creative Methodologies in Transnational Spaces», *GeoHumanities* 3:2 (2017): 269-278.

<sup>40</sup> Ivery, A. E., M. B. Ivery, and L. Simek-Morgan, *Theories of Counseling and psychotherapy: A Multicultural Perspective*, 7th ed. (Boston: Allyn & Bacon, 1993, 21).

and exclusion, not only within our society, but globally.

Thirdly, the *use of art* in the legal clinics. Art is a powerful instrument that can be used to deconstruct the concepts mentioned above such as power structures and discrimination<sup>41</sup>. Poetry and scenic arts are valuable concepts, useful to make visible acts of intolerance, injustice, sexism, etc., that are present in our daily life but interiorized as *ordinary* patterns of behaviour. Analysing the wording of poems such as *Pretty Normal Day* (written by a mother participating in a project called Sure Start), or the message some paintings give us about the different roles people can adopt in the society, it is an interesting activity for the students to critically realize about how they interact with others.

Fourthly, teach students about the importance of active listening<sup>42</sup> when doing the interviews to clients, as this approach is essential for understanding their problems. Students have to listen not only what the client says, but also to be alert to non-verbal communication as it is essential for better comprehend clients' problems from a holistic point of view.

And last, but no least, *invite representatives and members of groups* that have been historically marginalized in our societies to participate in the training of the clinical students. First-hand testimonies of people that have suffered from biased or bigot

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<sup>41</sup> Foster, V., «The Art of Empathy: Employing the Arts in Social Inquiry with Poor, Working-Class Women» *Social Justice* 34 (2007): 12-27; Foster, V., *Collaborative Art-Based Research for Social Justice* (Oxon: Routledge, 2016).

<sup>42</sup> Active listening, or as Mcquoid Mason says, empathetic listening. See: Mcquoid Mason, D., R. Palmer (eds), *African Law Clinicians' Manual* (Durban: Masgrave, 2013), 164-165.



conducts are a forceful vehicle to evidence the impact that the relations of power have in our societies, and how it affects specifically to certain groups, them members of whom observe their life aspirations reduced to the minimum, or their rights being granted poorly.

These exercises are a brief comment of a vast set of tools that can be used to work about empathy within legal clinics. As said before, the best scenario is to combine some of them depending on the situation we are facing.

#### **4. Conclusions**

Since legal clinics are a program of study aimed at teaching law through direct experience, it has always been clear to us the importance to reflect not only on *what* we teach and *how* we teach, but also to reflect on the resources we can use to enhance students legal and non-legal skills, such as empathy, as it has proved as a backbone concept in our work.

Even if we were not used to manage challenging pedagogical situations such as the ones introduced by legal clinics, we realised quite soon how empathy was relevant to our students, lawyers to-be, to increase their impact and effectiveness in the cases they work with. Particularly, this topic raised our attention after the first visit students from the Legal Clinic of Brescia did to the regional prison facility, and the feedback we got from them when they stated to work with the inmates.

On one hand some students, frightened by the hostile context, were unable to focus on the legal problem and refused the idea of coming back to jail for a second time. Their personal involvement severely affected their ability to manage the case at stake, due to their emotional reaction to the context and their concerns about the “non-friendly” environment they were facing. On the other hand, some other students’ approach to hostile contexts and vulnerable people was to keep the distances with clients in order to avoid any personal involvement. According to these students’ view, a good lawyer is the one who does not leave room for emotional implications but only offers professional legal solutions to his/her clients. Nevertheless, this approach does not take into account of the importance of building a mutual trust relationship with the client. This whole scenario was the main reason for us to start working together about this issue in order to put together synergies and design some activities that empower students to deal with situations.

In light of these two opposite approaches, but equally inadequate, we realized that we lacked the necessary expertise to address these situations. So that we needed to build specific knowledge and competences in order to provide students with the necessary means to confront hostile atmospheres when dealing with clients, keeping in mind that empathy is essential to build a mutual trustful relationship with clients.

As a result of this work, we decided to present its outcomes in different international meetings for having some feedback from colleagues that have been working already in this field and have confronted the challenges we were facing at

the time. Through these conferences (IJCLE 2016, Toronto; ENCLE 2016, Valencia; ENCLE 2017, Newcastle), and foremost, thanks to their contribution, our work has been growing not only with the intention of offering to students a better approach to the situations described previously, but also to avoid some of the pitfalls pointed out by our peers.

Accordingly, the major drawbacks that were identified by them are: 1. The lack of time for the preparation of the students in such detailed way only regarding empathy; 2. The inadequate preparation of ourselves as supervisors to deal with these situations by our own; and 3. The risk of working in a superficial way in such delicate areas like equality, discrimination, racism, and many others. Once we evaluated them, we enhanced our work to confront these flaws, providing a solution to them. Thus, even though we designed diverse exercises that can be included in the training students received when they first enrol in the clinical course, it is true that working in such complicated subjects requires from legal clinics a comprehensive programme to work about them. The ones that adopt a social justice model mainly work with groups in risk of social exclusion or with communities that have suffered from structural patterns of discrimination. Bringing experts of other areas, like psychologist or sociologists all together with representatives of these communities have demonstrated as a strong resource to deconstruct biased thoughts about other members of the society that can jeopardise the work we do. Nevertheless, it is crux to point out that the

exercises suggested are fruitful to start the work, but as previously said, they need to be complemented by other actions, such as the ones suggested in the section 3.4.

One of our duties as legal clinical professors is to make visible that the process of enacting and applying the law has not a neutral impact on the people. Thus, our students should adopt an empathetic approach to their client's problems with the intention of better understand their needs, enhance their access to justice and create a more inclusive society.

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