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Perceptions of Competence and Well-Being in Clinical Legal Education

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Abstract

This paper examines the interrelationship between clinical legal education and student well-being in an Australian setting. It reviews literature on the association between studying law and student psychological distress, and the role of clinical legal education in educating students about empathic lawyering. The paper reports on the findings of a small empirical study in an Australian university, which compared students' and their supervisors' perceptions of student well-being in the clinic context. Study findings discovered considerable variance between study participants' perceptions of student well-being, with supervisors noting a tendency for students to be over confident, demanding, competitive and lacking in empathy. This finding does not accord with the literature which suggests students can become overly invested in and emotionally involved with their clients. The authors posit a range of reasons for this finding and present suggestions to address it.

I Introduction

University law schools across Australia and overseas have readily embraced clinical legal education as a form of work-integrated learning. In Australia, educational standards for clinical legal education are loosely governed by a Best Practice Guide to Australian Clinical Legal Education (Evans et al, 2013). Whilst previously situated on the fringe of a law school curriculum, law clinics have grown in breadth and scope and are now a regular feature of most Australian law schools (University of NSW, 2016/17; Taylor and Cappa, 2016). They are regarded as a significant method of learning and teaching in law (Evans et al, 2013, p. 6). Clinics also provide beneficial links between law schools, the legal assistance sector and the clients that they serve. The benefits of clinics to community legal centres and law schools in fulfilling their mission of community engagement has received extensive scholarly attention both in Australia and abroad (Giddings, 2009, p. 45; Noone and Tomsen, 2006; Giddings and Lyman, 2010; Rees, 2001, p. 111).

The benefits of clinical legal education for students are widely reported in the literature and encompass the imparting of valuable practical legal (lawyering) skills (Maranville, 2000), sensitising students to working with real clients (Barry et. al, 2011-2012) and instilling in students an awareness of the importance of reflective practice in professional life (Schön,1983; Spence, 2012). Clinical legal education assists students to develop empathy and emotional maturity through their interactions with clients, as well as teaching professional ethics (Nicholson, 2008, p. 165; Curran, Dickson and Noone, 2005, p. 104; Joy, 2004). Perhaps most importantly, clinics can reconnect students with their original motivation to study law and this in turn may have a beneficial effect on law student well-being (Thornton, 2016, p. 45).¹

The cultivation of students' emotional intelligence is a persistent theme in clinical legal education scholarship (Hyams, 2011; James, 2005; Silver, 1999). A clinical placement may be the first time a law student confronts suffering, inequality and injustice (Barlow and Hall, 2007, p. 399-400). Clinical legal education scholars note that while students may feel challenged by such experiences (James, 2005, p. 140) they are rich learning opportunities that help develop their students' emotional intelligence (Silver, 1999). Clinical educators are implored to encourage students to 'seize the disorientating moment' (Quigley, 1995-1996) because this provides a basis for learning how to critically reflect on one's role as a lawyer in working with disadvantaged clients. Helping students learn how to meaningfully reflect on their experiences in clinical legal education is an essential feature of effective supervision. Francis presents reflection as a three-stage process involving direct exposure, followed by thoughtful examination of existing beliefs, knowledge or values, ultimately resulting in systematic contemplation of observations and potential actions (Francis, 1995).²

Without question, clinical legal education benefits students; however, its risks must also be acknowledged. For example, exposure to client vulnerability and systemic disadvantage may adversely impact upon students' well-being.³ As Watson and Field note, legal educators have 'a clear ethical duty to work to ameliorate student distress' and to 'do no harm' throughout the teaching and learning process (Watson and Field, 2011, p. 395).

We undertook empirical research with students and clinical supervisors to interrogate the assumption that legal clinics deliver wholly positive experiential learning opportunities for law students. We conducted this research by surveying law students who undertook clinical legal education to examine how stressful the clinical experience was for them, and whether they felt adequately prepared for the tasks they undertook in their clinical setting. We then undertook focus

¹ Margaret Thornton makes this point in the broader context of what she argues is the pernicious impact of a systemic neoliberal agenda across university law school curricula.

² For a thorough overview of the importance of reflective practice in clinical legal education generally, see Spence, R. (2012).

³ Student placements have been identified by universities as one of the largest sources of institutional risk (Cameron, C. and Klopfer, C., 2015).

groups with clinical supervisors to ascertain their views on the student experience, including the level of distress they observed, and how competent they perceived students to be at clinical work.

Our study found that students' personal assessments of their individual performance and coping capacities whilst on clinic duty were at variance with supervisors' perceptions of students' anxieties and capabilities. The reflections of the students and their clinical supervisors provide important information that could influence program planning, including how law schools could better prepare students for clinical legal work, and the kinds of protective measures that could be built into clinic design.

II Law Student Well-Being in Australia and Clinical Legal Education

A Psychological Distress Amongst Lawyers and Law Students

Research on law student well-being indicates that Australian law students experience high rates of psychological distress. In 2009, a major empirical study into levels of depression amongst law students and lawyers revealed that Australian law students experience disproportionately high levels of psychological distress compared to medical students and the general population (Kelk et al. 2009 p. 12). The *Courting the Blues* study found that law students indicated 'a much higher level than expected of reported psychological distress and risk of depression on all measures used.' (Kelk et al. 2009 p. 37). Similar findings have been made in other Australian studies (Bergin and Pakenham, 2015).⁴ In response to concerns raised by this research, a body of 'wellness' scholarship has emerged, academic networks have been created (for example, Wellness in Law) and law schools and the Council of Australian Law Deans have developed programs to address the problem.⁵

The well-being literature tends to suggest that there is something about legal education and the values which it imparts that exacerbates law student distress (O'Brien, Tang and Hall, 2011). Meanwhile, proponents of clinical legal education implicitly assert the beneficial effects of law clinics on student well-being.⁶ It is *assumed* that student well-being in a clinical context will be safeguarded through effective supervision and reflective practice. The provision of constructive feedback to students, and training students how to receive and utilise feedback, are features of best practice supervision (Evans et al. 2013, p. 57). Yet, student evaluation questionnaires and formal and informal reflection (blunt tools) are the only measures for appraising the well-being of students in clinical contexts.

B International Literature on Law Clinics and Student Well-Being

The connection between law students' clinic experiences and reported levels of emotional distress has received considerable attention from international scholars. A 2014 UK study considered the contribution that law clinics make to the development of law students' emotional management skills (Westaby, 2014). Law students in this study were asked to consider what the consequences might be of performing 'emotional labour' when interacting with clients.⁷ Participants were more inclined to identify negative consequences such as, 'thinking about cases too much, stress, feelings of guilt, sadness or being upset, feeling drained, depressed, alcoholism, burnout, becoming too emotionally detached and even falling in love with your client.' (Westaby, 2014, p. 272-273). Law students considered that the most common cause of negative

⁴ Paula Baron also provides a careful overview of Australian law student distress (Baron, 2016).

⁵ For a recent consideration of this issue, see generally (Field et al, 2016).

⁶ The Best Practices Guide to Australian Clinical Legal Education (Evans et al) does not mention student well-being. However, its stated rationale for clinical methodology includes many features that imply student well-being, for example, the development of student emotional skills, values, responsibility, resilience, confidence, self-esteem, self-awareness and humility. (Evans et al, 2013 p.12).

⁷ Westaby defines emotional labour as 'the management of feelings in order to present expected emotional displays within the workforce.' (Westaby, 2014 p. 251).

consequences for solicitors was becoming too emotionally involved and unable to disassociate oneself from the client's situation (Westaby, 2014, p. 279).

US scholar Danielle Cover notes that despite loss and disappointment being a regular feature of legal work, 'law students receive almost no training in how to respond on an emotional level when loss manifests itself during practice.' (Cover, 2015-2016, p. 56). Cover applies a therapeutic framework known as 'ambiguous loss' to the practice of lawyering. Ambiguous loss is that which is not socially valued and can be contrasted with universal losses such as the death of a loved one. Ambiguous loss is relational in nature, and can include experiences like the loss of trust or identity. Cover observes that such losses may be minor but can nonetheless have a detrimental, cumulative impact on one's professional and personal resilience. She argues that this framework can support students in the development of their professional identities by naming loss experiences as they occur, thereby offering insights into how law students perceive themselves, and the value and meaning of their work:

"For example, serving marginalised populations requires recognising and giving equal weight to the diametrically opposed realities that working within the legal system can both help and hurt a client. It requires the attorney to reconcile that what we believe and value about legal process can be simultaneously good and bad. Learning to live with and to integrate the ambiguity created by the realities of working with clients into one's world view is critical to avoiding feelings of defeat and continued feelings of loss, particularly in practice." (Cover, 2015-2016, p. 60)

Another US scholar, Christine Doucet, asks, 'How can we effectively recognise and address the issues of stress, stress management, and self-care in the legal profession and prepare students for the emotional side of lawyering?' (Doucet, 2014, p.137). Doucet frames this as an ethical duty for educators, asserting that clinical programs 'have a responsibility, not only to the students... but to the clients with whom they work, to prepare students for the inherent emotional and mental health issues that arise when working with clients.' (2014, p. 138) Doucet examines how self-care and stress management can be used as a way to address occupational hazards such as stress, vicarious trauma, secondary trauma, compassion fatigue and burnout. She argues that by addressing the mental health and well-being of students in clinical programs, students 'will be better equipped to proactively address issues and situations as they arise and will be in a better position to effectively manage their professional and personal lives.' (2014, p. 145).

Similarly, Katz and Haldar assert that law students should be assisted to identify and understand trauma and its effects on clients and, vicariously, themselves as legal practitioners (Katz and Haldar, 2015-2016). They note that teaching 'trauma-informed lawyering' in clinical legal education settings 'bolsters and builds upon existing approaches to clinical pedagogy' (2015-2016, p. 372) and that law students 'will be better able to incorporate empathy into their interactions with clients if they are trained in trauma.' (2015-2016, p. 376). Buhler advocates the development of a 'critical pedagogy of suffering' to frame students' encounters of client suffering (Buhler, 2012-2013). This approach views human suffering as symptomatic of political and systemic injustice as opposed to an 'acontextual spectacle and private experience.' (Buhler, 2012-2013, p. 412). A critical pedagogy of suffering can teach students to bear witness to their clients' lived experience and to critically reflect on how their individual circumstances are connected with structural injustice.

These theoretical frameworks do inform the practice of empathic lawyering in the Australian context. Conversations about trauma-informed practice are now more commonplace in the Australian legal assistance sector, with more lawyers and public legal sector organisations becoming aware of the emotional challenges and strategies needed to work effectively with vulnerable client groups.⁸

⁸ The increasing awareness of trauma-informed practice and the importance of lawyer self-care in Australia is illustrated by the establishment of knowmore, a specialist national community legal centre that was established specifically to advise and support potential witnesses to a 2013 Royal Commission Inquiry into Institutionalised

In the realm of legal education, clinic supervisors naturally want their students to be aware of the importance of mental well-being in practice. Many clinics do seek to bring to students' attention the signs of not coping, and the differences between vicarious trauma and burnout. The purpose of our study was to examine students' and supervisors' perceptions of well-being against this backdrop.

III Research methods and participants

We undertook two pieces of empirical research to examine the extent to which clinic was experienced as stressful or distressing for a group of Australian law students, and how this compared with their clinical supervisors' perceptions of students' capacities to cope. Both studies received ethical clearance from the relevant University ethics committee.

The results of these studies reflect the experiences of students from only one university and only a small sample of clinical supervisors, so they may not be generalisable. However, the results provide some interesting insights into the clinical experiences of this group of students both from their own point of view, and that of the lawyers who supervised them.

The first study involved an online survey of students who participated in a clinical legal education program at an Australian university. Former students who had completed clinical legal education between 2013 and 2015 were invited by email to participate in the survey which was administered in early 2016. Students were informed that the survey was being conducted for the purposes of research, and were assured that they would remain anonymous and their responses would have no impact on their past or future studies. The survey instrument asked students to indicate:

- what tasks they undertook whilst on clinic, and what client groups they worked with;
- how prepared they felt for clinic and the tasks they undertook;
- how stressful they found clinic and individual tasks to be;
- how well they felt they coped with their clinical experience; and
- whether they enjoyed their clinical experience.

241 students were invited to participate and a total of 51 students responded to the survey, equating to a response rate of 21%.

After the online survey was administered, a second study was undertaken with the aim of ascertaining clinical supervisors' views on student performance and well-being. This study provided supervisors with an opportunity to respond to the trends observed in the online survey of students, and to reflect upon their experiences supervising students in the past.

Three focus groups were held with a total of 13 lawyers who had supervised law students in clinics within the past 12 months ('the supervisors'). Focus groups were conducted over a three month period, from May to August 2016. All of the supervisors worked in community legal centres (five community legal centres were represented). Between them, the supervisors and their clinics serviced a wide range of client groups including refugees and asylum seekers, prisoners, tenants, people on low incomes, people with mental illness, and people experiencing homelessness. They mostly dealt with civil rather than criminal matters, particularly fines and debt, housing, consumer and administrative law. Many of their clinics were held at outreach locations including homelessness services, hospitals and prisons.

Supervisors' expertise was extensive with some lawyers having more than 20 years' experience in frontline community legal work. Each of these community legal centres run student clinics in partnership with at least two universities, so the lawyers were able to draw upon their experiences with students from a range of universities over a number of years.

Child Sexual Abuse. knowmore describes its service as one that delivers 'specialist trauma-informed support': <<http://knowmore.org.au/about/>> accessed 21 June 2018.

The focus groups were semi-structured in nature, and the same set of prompt questions was used in each of the three groups. The supervisors were asked to reflect upon:

- what kinds of tasks and client population groups students should work with in clinical settings;
- what kinds of tasks students were equipped to undertake;
- how common it is for students to exhibit signs of stress or distress during clinic; and
- whether universities could take any further action to ensure students are sufficiently prepared for their clinical experience.

The supervisors were then asked to respond to key findings of the online student survey, including the fact that the vast majority of students reported feeling well-prepared for their clinical experience, and said they experienced very low levels of stress and distress during clinic.

IV Student Survey: Results

A Findings Regarding Clinical Tasks

The students reported that their primary motivations for participating in the clinical legal education program were: to gain legal practice skills (n=48, 94%), to gain experience working with clients (n=40, 78%) and to support access to justice (n=38, 75%).⁹ They were most likely to have undertaken clinical legal education in their final or penultimate year of legal study (n=42, 82%).

The client groups most often encountered by students on clinic were people on low incomes (n=30, 59%), people who were reliant on social security benefits as their primary source of income (n=29, 57%), and/or people with mental health problems (n=22, 43%). In addition to this, some students worked with people with physical disabilities or medical conditions (n=15, 29%), people experiencing homelessness (n=13, 26%) and people from culturally and linguistically diverse backgrounds (n=12, 24%).

Two thirds of the students reported that they had face-to-face contact with clients whilst on clinic (n=35, 69%) and the majority had client contact over the telephone (n=43, 84%).¹⁰ Most students assisted up to ten clients over the course of the clinic: 24 students (47%) reported dealing with five clients or fewer, and 19 students (37%) assisted between five and ten clients. Very few students reported having contact with more than 10 clients. All but one of the students said that they undertook legal research and writing as part of their clinical placement (n=50, 98%).

The most common tasks students reported undertaking on clinic were: writing letters to clients (n=37, 73%), observing client interviews and advice sessions (n=31, 61%) and taking instructions from clients over the phone (n=27, 53%). A substantial number of students reported that they had provided legal advice to clients over the phone (n=19, 37%) or in person (n=10, 20%). The extent to which they were responsible for developing or drafting the advice is not known. However, when asked whether they felt adequately informed and supported by their supervisors to do this, 95% of those who answered the question agreed that they were (n=36).

B Findings Related to Students' Confidence, Competence and Preparedness

In response to questions regarding the extent to which they felt prepared to undertake these legal tasks, most students reported that they felt either adequately or very well-prepared for the tasks they undertook, with the exception of drafting legal documents and providing legal advice.

⁹ Students were able to nominate more than one reason for participating in the clinical legal education program.

¹⁰ One of the clinics offered to students each semester is a public interest research clinic that does not have any client contact.

Table 1 lists the percentage of students who considered themselves either adequately prepared, or very well prepared, for each task.¹¹

Table 1
Proportion of students who reported feeling very well or adequately prepared to undertake certain clinical tasks

Clinical task	Students who said they felt adequately or very well-prepared to undertake this task (% and total)*
Dealing with supervisors	96% (n=47)
Dealing with student team members	92% (n=45)
Legal research	88% (n=45)
Administrative tasks including file management	69% (n=34)
Drafting law reform reports or submissions	63% (n=27)
Talking to clients over the telephone	62% (n=28)
Talking to clients in person	51% (n= 21)
Drafting legal letters	49% (n=23)
Providing legal advice in person	44% (n=15)
Providing legal advice over the telephone	39% (n=15)
Drafting other legal documents, eg. affidavits	33% (n=12)

As can be seen, students rated their ‘interpersonal’ preparedness (for example their capacity to deal with supervisors and other students) more highly than their preparedness to undertake legal or administrative tasks. Along these lines, in their qualitative comments, a number of students said that they wished they had received more practical legal training whilst at law school. For example, they said:

‘In my experience, I would say that the law school and the clinics need to teach...practical skills such as client interviewing and file management.’

‘It made me wish that my own legal education had consisted of more practical elements before this experience, because many of the new skills we were utilising (from filing to client interviewing etc.) were ALL a new experience.’

‘I felt my law degree had not prepared me at all for any of the practical elements of law and working with disadvantaged clients.’

C Findings Related to Students’ Well-Being

In response to questions regarding the impact of clinic on their well-being, the vast majority of students reported that they coped well with their clinic experience (98%), enjoyed their placement (96%) and wished they could undertake another semester of clinic (90%). In their qualitative comments, students reflected extremely positively on their clinical experience. They described it as ‘invaluable’, ‘fantastic’, ‘rewarding and highly educational’, ‘the highlight of [their] degree’, and commented that they ‘loved every second of it’ and were ‘grateful’ to have had the experience.

¹¹ Other possible responses included ‘somewhat prepared’, ‘not adequately prepared’ or ‘completely unprepared’. Note that not all students answered every question. The value presented is the percentage of students who agreed they were adequately or very well prepared, as a percentage of those who answered the question.

None of the students agreed with the statement, 'It will take me a while to recover from this placement.'

Only a small number of students (6%, n=3) reported that they found clinic to be 'extremely stressful'. More specifically, 22% (n=10) agreed that they found dealing with clients over the phone to be stressful, and 15% (n=6) agreed that they found dealing with clients in person to be stressful. Notably, only 11% (3 of 38) agreed that visiting hospitals or prisons to see clients was stressful.

The vast majority of students reported their level of distress in clinic to be very low, however one student reported that he/she wished she had not undertaken clinic, and one student agreed with the statement, 'I wish I had had access to a counsellor while I was on clinic.'

Generally, students reported feeling well-supported by their supervisors and their comments revealed effective supervision. One student remarked, 'The only reason I did not feel out of my depth was the wonderful induction from our supervisor.' However, another student remarked:

'I think my supervisor could be a bit too laissez-faire with [his/her] approach at times. [He/she] never came with us to see clients, we would see them by ourselves and then report back to our supervisor. Sometimes [he/she] gave us advice on what to do that wasn't really appropriate for the situation.'

D Overall Findings Related to Student Satisfaction with Clinical Legal Education

Only one student agreed with the statement, 'I wish I had never done this clinic'. Students' qualitative comments regarding the clinical education program were generally very positive. They included:

'I loved every second of it, thank you!'

'Clinic was the best thing I have ever done at university. I would recommend it to anyone.'

'I really enjoyed it, particularly the client contact part of it.'

Thus, overall, students reported very low levels of distress, a high degree of preparedness, and high levels of enjoyment. The main cause of stress for students was in relation to the actual legal tasks they were required to perform. However, as will be seen below, these findings did not correlate with the supervisors' perceptions of students' levels of distress, competence or preparedness.

V Focus Groups with Clinical Supervisors: Results

A Findings Regarding Clinical Tasks

Supervisors generally agreed with the students as to the tasks students were most likely engage in whilst on clinic. They included: observation (of interviews and advice sessions); taking instructions and general intake work (both in person and over the phone); research (both in relation to systemic and law reform issues, as well as in relation to individual legal matters); letter writing; and providing legal advice over the phone with support from a lawyer. There was significant variability between the clinics as to the amount of client contact, and professional responsibility and autonomy, experienced by students. In some clinics, students undertook research and observation only, whilst in others, students were 'the consistent body' seen by the client throughout the course of their matter.

The supervisors seemed to suggest that students had less responsibility and autonomy than the students themselves reported. For example, the supervisors said that students mostly observed interactions between lawyers and clients, and that they generally did not provide legal advice to clients. The supervisors emphasised that they closely monitored the students' work and that, when students did interact directly with clients, a lawyer was generally present with them in client interviews or next to them whilst they were on the phone.

B Findings Related to Students' Competence and Confidence

Generally, the supervisors agreed with the students' self-reports that students do very well in clinic in terms of confidence, performance and their capacity to cope. Most supervisors agreed that students generally 'do really, really well in clinic', and are 'mostly' competent, 'capable' and 'bright'.

The clinical supervisors acknowledged that, predictably, students come into a clinical environment with significant skills deficits. They observed that students generally lacked practical workplace skills, such as 'what you should do in an office', how to approach 'file work or case work' and time management. In particular, there was agreement amongst the supervisors that students were not prepared for, and were often anxious about, speaking to clients over the telephone. One supervisor said:

'We used to try and get students to be independent from the first phone call and it doesn't really work particularly well for them or for us.'

Another said:

'I wonder if students don't have phone skills full stop anymore. I'm reflecting on my own young adult children and they don't actually talk on the [phone. I say] why don't you just phone them and they're like... who phones?'

Generally, however, there was agreement that whilst some students were 'very nervous', 'anxious' or 'hesitant' at the beginning of their clinical experience, they most often grew in confidence as the weeks progressed. The supervisors felt that this was because they (the supervisors) provided a significant amount of scaffolding in their clinical settings, for example, by assisting students to formulate questions for client interviews, and reworking drafts of legal documents. As a result, they said, students' skills increased substantially during the placement.

C Findings Related to Students' Well-Being

Overall, the supervisors reported low levels of student distress when it came to actual client work and other clinical tasks. They felt that this was because they (the supervisors) 'shielded' them to a certain extent, and they described the various protective measures that they took to ensure that students did not become overwhelmed. For example, the supervisors said they provided a significant amount of emotional support to students most often in the form of debriefing and encouragement. Two of the supervisors said that they worked hard to establish a trusting relationship with students so they could have an 'open dialogue' with them on their personal response to the issues they confronted. Comments along these lines included:

'We have debriefing and people do express concern, being confronted, lack of fairness, and all that sort of thing. I feel that through talking about it, that really dissipates.'

'I'm very, very open with them about the times that I've had really difficult clients and it's affected me and if it's affecting them, to come and talk to me and that there's never anything they can't say.'

The supervisors in all focus groups said that they sought to insulate students from particularly challenging situations. For example, in clinics where students were given a lot of responsibility and had a lot of client contact, the supervisors said they limited students' involvement to matters with less complex clients, less confronting circumstances, and less demanding legal tasks. Along these lines, supervisors said:

'We've had files from time to time that we have sheltered and not given to students because we feel that it's not appropriate for them to be exposed to the kind of things that are in the file.'

'I think there is a small group of clients who I probably would never expose [students to], or it would be totally inappropriate to have students involved in that.'

In all three focus groups, isolated stories were told of students who 'fell apart' during clinic, but this was described as very 'rare'. The supervisors did note that students tended to find the injustice of the law confronting. As one supervisor said:

'So you've done all this study and in a particular discipline where you get a problem question for an exam and you know how to identify the issues and you might not have been exposed to lots of disadvantage... then all of a sudden you're thrown into this environment and you think, 'But it's not fair – why is it not fair, why is the outcome so bad, how can it possibly be?'

The supervisors tended to agree, however, that these realisations represented 'eye opening moments' that might be 'frustrating' and need to be 'grappled with', but did not cause profound or lasting distress. Thus, the supervisors reported that, generally, students did not tend to think about cases too much or become too emotionally involved with their clients.

However, this is not to say that the supervisors did not observe stress or distress amongst their students. On the contrary, the supervisors reported high levels of student distress, but only when the supervisors failed to provide the students with sufficient affirmation or encouragement in relation to their personal performance. There was agreement across all three of the focus groups that students routinely became visibly upset or angry if they received a negative or discouraging comment from their supervisor, another lawyer, or a client. Indeed, this seemed to be the only time they observed student distress within their clinical settings. Related to this, the supervisors agreed that students tended to respond to negative feedback in an 'unreceptive', 'disbelieving' or 'passive aggressive' way. The following comments summed up the consensus of the groups:

'If you want to see them getting distressed, any feedback, any non-praise feedback, they do take really personally.'

'I've had students cry before [when] they thought they didn't do well and it was going to affect their grades. That's the only crying I've had from students.'

This effect was so pronounced that many supervisors confessed that they no longer provided students with 'constructive' feedback because they wanted to avoid conflict with the students. An exchange in one focus group went as follows:

Lawyer 1: 'I don't even really spend the time doing feedback anymore, because I found it's a waste of my time... it's going to sound awful but I'm busy. I'm not going to try and teach this person how to do something that they have no interest in learning how to do or improve on.'

Lawyer 2: 'They're not going to listen and the best-case scenario is they leave all upset that they weren't perfect and that's our fault somehow.'

Along these lines, the supervisors also noted that students became troubled if they were not provided with detailed instructions on how to go about professional tasks such as undertaking client interviews and drafting documents. Supervisors made the following comments in relation to this issue:

'[Y]ou must prescribe how it is to be done or it – they just freeze up.'

'Students say, "Can you give me specific questions to ask?"'

In one of the focus groups, the supervisors said often students are very 'demanding' in the sense that they approach clinic with certain 'expectations', including that they should be given 'interesting work' and provided with a good 'experience'. They observed that students may avoid mundane tasks, such as filling in forms, because they feel they deserve more 'challenging tasks'.

Further, in two of the focus groups, the supervisors described students as extremely competitive against one another. They said that for this reason they preferred universities to assess clinical students on a 'pass/fail' basis rather than through grades, to eliminate the need for competition. Yet, they agreed that grading the students in this manner did not eliminate competitiveness completely. In one of the focus groups, the lawyers shared stories of students attempting to 'one up each other' based on the complexity of the issues their clients presented with. In another group, the lawyers described groups of students competing against former groups of students. One of the supervisors said:

'This last group wanted the targets, and they wanted to know if they were on target, and they go, "Yes, we've met our target, we're the best group." They really wanted me to say that they were the best

group... It was interesting that there was a little bit of competitiveness with these other clinics they'd never met. They wanted to have the highest target and the biggest photo.'

On the basis of these observed behaviours the supervisors concluded: 'they're very insecure'.

D Findings Related to Students' Emotional Intelligence, Maturity and Empathy

Further to this, supervisors in all three of the focus groups expressed some disappointment and dismay at the unprofessional manner in which students conducted themselves at times. For example, in one focus group, supervisors said that they had struggled to deal with the unprofessional behaviour of students during advice sessions with vulnerable clients. They found that the students would get 'completely out of control', 'chatting, making so much noise', and 'having such a great time', whilst vulnerable and distressed clients were within earshot. The supervisors felt that this was insensitive and inappropriate, and they were surprised that the students 'didn't have the emotional intelligence' that one would expect of them in that situation.

Along the same lines, some of the supervisors said they felt students sometimes took a 'cavalier' approach to their client work. They reported high levels of self-assuredness amongst students, bordering on over-confidence, when it came to dealing with clients which they felt was misplaced. To illustrate the point, one lawyer described a situation in which students were required to engage in a challenging and confronting task whilst attending clinic:

'I was like, "Have you done it yet?" "No, no, no." "Are you nervous?" "Should be fine. A piece of cake... We've got our notes. We've got some dot points." I was amazed... I was like, this is not the real story. This is not going to work out at all... Then [after the task had been completed, they said] "Oh yes, piece of cake. We killed it. We smashed it." He [the student] was fine. It was amazing. I just couldn't comprehend.'

Another comment was made along these lines:

'I'm always quite surprised – they tend to be more fine than I am [laughter]... Even the student who I gave the example of the really difficult client, [he/she] was like "I'm happy to ring him next week." I'm like, "No, we're taking him away from you!" But [he/she] was actually happy to keep going. [He/she] wasn't distressed by it, which I don't understand, because he [the client] distresses me.'

Others said that they regularly felt the need to remind students that clinical work is 'real life', 'someone's life', 'not a game', and not a 'spectator sport'. One lawyer said:

'[I]t's not a zoo. You don't just get to be part of someone's intimate relationship just because you've read all of their file notes... you have to make sure that you're respectful and build trust.'

In two of the focus groups, the lawyers said they felt students did not sufficiently value establishing rapport, and were hesitant to ask questions of clients that related to their safety and well-being, such as '[A]re you using anything? Where are you living at the moment? Is anyone helping you out?'

One supervisor described a situation where students had created a word-for-word script for a phone interview with a client, failing to realise that what was required was a dialogue, which is not always predictable. The lawyer explained:

'They spent a long time on the script and they thought, we'll nail everything we need to ask, so we don't make a mistake. I said, "Oh, we're dealing with people – you can't predict behaviour. It's not like it's a machine or a computer game or something."

The supervisors believed that this demonstrated a lack of empathy. Indeed, one supervisor said students displayed 'the complete reverse of any kind of empathic connection' with clients. They advanced a number of possible explanations for this.

Some wondered if this apparent lack of empathy was actually a form of self-protection: that 'they're saying they're not that distressed because they can't afford to be.' Supervisors in two of the focus groups remarked that it could be a form of 'bravado'. One lawyer remarked:

'I've had students where you just wonder how they can't be moved by a client's story. You wonder whether it's just bravado and they've just put a wall [up] and they're not allowing themselves to engage or what... Some of them, I marvel at – they just seem completely unaffected.'

Some were concerned that this emotional disconnectedness reflected students' perceptions and experiences of power within the student/client relationship:

'Unlike mootings or presentations where you are still the powerful one, [client work requires] mutuality which is a skill that I observe is not taught in law schools. My general observation would be the kind of student that tends to do law, to succeed in school enough to do law, tends to be someone who is much more comfortable with their own thoughts and their own capacities.'

Of course, the supervisors acknowledged that the capacity to have 'deep, meaningful' conversations with clients is something that you develop over time 'in practice when you have to deal with people.' One of the lawyers reflected that, in general, the students have little in common with their clients, and that when they do find some common ground, and 'really identify with the client' it can 'strike a chord'.

Two of the lawyers remarked that it was 'hard to know how the students cope with it' because there is limited opportunity to build a relationship that is close and trusting enough for the students to be willing to make themselves vulnerable, and to be willing to acknowledge any feelings of self-doubt.

'[E]ven if you do talk about it beforehand and provide them with the articles about dealing with challenging behaviours and all that stuff... it really probably comes down to a student's life experience and their resilience in situations.'

Importantly, not all of the supervisors agreed that empathy was a necessary characteristic of a 'good lawyer'. One said:

'I don't think it's at all a problem if there's the odd student who's perhaps not as empathic. Some of our volunteer lawyers are the same. Some of those big pointy end firm people are incredibly empathic and others are very business-like. But some clients love that. They feel like they've got a proper lawyer.'

Supervisors in another focus group had the following exchange:

Lawyer 1: 'I don't have a problem with snobs, to be honest, as long as they do a good job... I don't care what their incentive is for coming.'

Lawyer 2: 'Often those who express the greatest desire to get involved in our area of work are the ones who are most susceptible to over-investing, putting too much of themselves into it. A bit of aloofness or arrogance or detachment is actually very handy.'

Lawyer 1: 'Give me the snobs. They're not going to break down on me.'

VI Discussion

A Synthesising the Results of the Two Studies

To say that students are generally competitive, over-confident and unempathetic is not to deny significant variability and individual difference. The supervisors who participated in our focus groups noted that students vary considerably in relation to their life experience, resilience and interpersonal skills. However, the discussions in the focus groups did tend to indicate that supervisors had observed a trend in recent years towards students becoming more demanding, more competitive and less empathic.

The findings of the two studies reported on here do not accord with the literature that suggests students can become too emotionally involved with and concerned about clients in clinical contexts. Rather, the vast majority of students who participated in our survey reported no, or very low levels of, emotional distress in clinical environments, and the supervisors confirmed that (far from becoming too emotionally involved), students actually seemed to lack empathy for their clients.

There are a number of possible explanations for this. First, just as students self-select into clinic, supervisors also self-select into community lawyer roles. It may be that they are more empathic than the average lawyer, whilst law students that undertake clinic may be more representative of lawyers generally. The difference in gender breakdown should also be noted. Around three-quarters of community lawyers are women, whilst around half of all law students are men. (Federation of Community Legal Centres (Victoria) Inc. and Community Legal Centres NSW Inc., 2011, p. 3; Australian Bureau of Statistics, 2013).

Second, students may find it difficult to empathise with clients because their situations are simply too far removed from their own experience or because the design of the law clinic (typically one day per week for 13 weeks) does not afford students sufficient time to identify with their clients through building rapport or trust. Regardless of the role that legal education could or does play in preparing law students for the workforce, students have generally not had exposure to a community legal centre environment, so they cannot be expected to arrive suitably qualified for the role. Indeed, this is one of the very purposes of clinical legal education.

Third, in light of the research on law student well-being it is possible that students who undertake clinic are already experiencing high levels of depression and anxiety, even if their external presentation is more outwardly confident. This could explain why their anxiety clusters around their personal performance rather than the experiences of their clients.

Fourth, this study may reveal a genuine generational effect. Many of the behaviours that the supervisors in this study identified are suggestive of character traits of 'Millennials'.¹² In particular, difficulties with accepting constructive criticism, a constant need for positive reinforcement and an aversion to completing tasks like making telephone calls may all be generational features.

B The Millennial Generation?

As a group, the Millennial generation is said to be 'unlike any other youth generation in living memory.' They are, 'more numerous, more affluent, better educated, and more ethnically diverse.' (Howe and Strauss, 2000, p. 4) Howe and Strauss identify seven distinguishing traits of Millennials: special, sheltered, confident, team-oriented, achieving, pressured and conventional. (Howe and Strauss, 2000, p. 43 – 44).¹³

Characteristic traits of Millennials have been examined in studies of students from other disciplines in experiential learning contexts. In considering 'Generation Y' occupational therapy students, Hills and her colleagues reported that, 'student skill and knowledge does not always match their confidence... in giving feedback, students can be quick to question and can become defensive if criticized, making excuses for their behaviour.' (Hills, Ryan, Smith and Warren-Forward, 2012, p. 156). Empirical studies of medicine students (Twenge, 2009) and business students (Jackson, 2012) have arrived at similar conclusions. In relation to the importance of age-based values and attitudes it has been stated that: 'Generation Y members possess high levels of confidence and optimism, coupled with expectations for immediate feedback and almost continuous recognition.' (Crumpacker and Crumpacker, 2007, p. 354).

C Recommendations for Supervisors Working with Millennial Students

Newbern and Suski argue that there is value in considering generational perspectives through a cross-cultural lens, similar to a framework for cross-cultural lawyering (Newbern and Suski, 2013). Generational trends are necessarily fluid (Bohl, 2008, p. 779) and individuals should not be pigeonholed or stereotyped, however supervisors may need to be mindful of this 'generation

¹² Most generational researchers identify Millennials as individuals born between 1982 and the mid-2000s. These individuals are also sometimes referred to as Generation Y however for simplicity, this paper uses the term Millennials. See Howe and Strauss, (2000).

¹³ McClennan also applies Howard and Strauss's definition in her examination of Millennials in law school externships (McClellan, 2009, p. 261).

gap'. (Newbern and Suski, 2013, p. 181). Millennial law students are said to thrive on instant gratification, 'yearn for frequent feedback' and 'crave praise' from their supervisors (Benfer and Shanahan, 2013, p. 13). Millennials also require structure and precise directions and will become stressed if given ambiguous instructions (Twenge, 2009, p. 403).

In terms of practical communication strategies for giving instructions and providing feedback, one scholar proposes a six-step model of feedback (Blaustone, 2006-2007, pp.155-159):¹⁴

1. The student identifies the strengths of their performance;
2. The supervisor responds solely to those items raised by the student;
3. The supervisor identifies other strengths of the performance;
4. The student identifies difficulties and/or changes to be made;
5. The supervisor responds to the identified difficulties; and
6. The supervisor indicates additional difficulties.

Others note that extensive feedback in clinical settings is unrealistic, given the heavy demands on supervisors' time (McClennan, 2009, p. 274). Twenge suggests that clinic supervisors have little option but to accept that regular feedback is more necessary for Millennials than for their generational predecessors, and it needs to be both frequently and explicitly delivered (Twenge, 2009). Camp advises that Millennials process constructive criticism best when it is delivered in between layers of praise, because the positive information will balance out the negative (Camp, 2014, p. 24).¹⁵ Layered praise is one practical strategy that clinical supervisors may wish to incorporate into their style of supervision.

One of the consequences of being raised with ready access to technology is that Millennials' preferred communication systems lie in an intertwined array of messaging systems (emails, web pages, text messages) (Bohl, 2008, p. 780). Traditional communication methods like telephone calls, letter-writing and even face-to-face contact are less familiar. This may explain the various comments from supervisors in this study about students' reluctance to make phone calls, or their 'frozen' demeanor when asked to perform a basic communication task fundamental to legal practice, such as calling a client in order to take instructions. A practical solution to this problem, and one regularly applied by clinic supervisors, is the use of simulation and role-play, so that situations and mediums of communication that cause anxiety can be workshopped and practised before a student actually engages with a client.

VII Conclusion

The key finding of this study is that law students seem to worry a lot about their own performance, whilst less worry is reported in respect of the well-being of their clients. In one sense, this is encouraging: if only a small minority of students find clinic distressing, it would seem that universities and clinical supervisors are being sufficiently protective of student well-being. However, this finding might also suggest an insufficient cultivation of empathy amongst students, or inadequate understanding of the profound impacts of structural injustice on the lives of people experiencing disadvantage. This may, or may not, impact on their competence as lawyers. Some clinical supervisors believed that a lack of empathy negatively impacted a student's performance, whilst others felt that empathy was unnecessary, or even limiting, in practice.

Better attention to, and awareness of, student stress and anxiety in law clinics will add to our awareness as educators, and ultimately strengthen clinical legal education pedagogy. The findings of this study present an opportunity for us to contemplate the significance of teaching a new generation of students who do not see the world in the same way as their supervisors. Clinical educators may need to accept that 'conventional' styles of feedback and instruction that have traditionally worked well in clinical legal education are plainly not as effective in modern law clinics (or indeed, in workplaces more generally). This study also invites us to consider the

¹⁴ Blaustone uses the terms 'feedback recipient' instead of 'student' and notes that feedback might also be provided by peers.

¹⁵ Warren Camp draws on conflict management theory to inform practical strategies (Camp, 2014).

importance of explicitly imparting to our students the theory and effect of trauma-informed practice (Katz and Haldar, 2015-2016) and a framework for a pedagogy of suffering (Buhler, 2012-2013). Ultimately, as educators it is our role to equip our students with the tools to enable them to develop appropriately as professionals as a result of their encounters in clinic. This is important if we want our students to avoid fetishizing disadvantage (Buhler, 2012-2013, p.408) and the suffering that our clients encounter.

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