

Law School Pedagogy:
Moving from the 19th Century to 2015

by
Daniel Gallant

Community Lawyering – 3780

Faculty of Law
Thompson Rivers University
Kamloops
2015

Law School Pedagogy:
Moving from the 19th Century to 2015

Table of Contents

- 1. Legal Information Service**
 - A. The *Square***
- 2. Context**
- 3. First Year Law**
 - A. Including Critical Pedagogy within Law Schools**
 - B. Narratives and Empathy**
- 4. Practice, Theory, Praxis**
 - A. Praxis**
- 5. Social Work, Law, Empathy**
 - A. Integrating disciplines**
 - B. Legal Education and Structural Issues**
 - i. Resistance to Change**
 - ii. Disabilities and Law School**
 - iii. Indigenous Peoples, Law, discrimination**
 - C. Discrimination Denial is False Consciousness**
 - D. Reconsidering Educational Spaces**
 - i. Change is Possible**
- 6. Conclusion**

1. Legal Information Service

A. The Square

I stood at the edge of the *Spirit Square*, a commemoration to Secwepemc Chiefs on unceded territory of Tk'emlups te Secwepemculew. In front of me stood an erected fold-up table with a small blanket draped over and an assortment of legal information pamphlets.

Members of the community gathered at the *square* in order to engage with the *spirit* of fellowship and collectivity. The event was organized and made possible by a variety of local agencies that wanted to offer free services to those in the community that face poverty and homelessness. When I spoke to passers-by I ensured that the table was not between them and I.¹

When I lived on the street, all too often those that were 'helping' us (the homeless) always kept a table or chair in between them and the people they were helping (us). This had to do with both universal precautions and safety reasons. Now, I am ever so conscious to not conduct myself in accordance with those 'best practices.' My training as a professional social worker dictates that one need always have an escape route when working with their client base, which I disagree.

Standing there at the table was profound for me. I stood there talking to others about our law school's *Legal Information Service*.² I explained that we do not offer legal advice but we can be accessed to understand legal processes and to facilitate a role as a broker to other community services and legal resources. I felt empathy for those I was providing information to in the *square*. I felt empathy for the individual. I felt empathy for the social and political realities these peoples face.

One particular man I spoke to stood out. He was taking pictures of people in the *square*. He said he had been on the street for five years. He was very pleased to be involved with his community, and expressed love for his community. In spite of the frustration this man felt about the array of systemic oppression and discrimination that he ongoingly witnesses, he expressed that he still has privilege while living on the street. His privilege existed because of the community members. They provide each other with support. They have respect for one another. The man then became somewhat agitated and expressed that the last thing they need is a bunch of 'yuppie kids' coming down from the 'top of the hill' to provide 'help.'

The man expressed his personal experience, and the experience of his peers as street people when they enter the premise of our university. He said they are immediately judged and tossed out by security and feared the same would happen when accessing the *Legal Information Service*. Of course the campus is an attractive safe zone for those who want refuge from the realities of street life. In actuality, this

¹ *Legal Information Service* attends *Project Homelessness* event at *Spirit Square* in Kamloops, BC, October 16th 2015 at 12:00 – 4:00 PM. [LIS-PH]

² Thompson Rivers University Faculty of Law - *Legal Information Service* – hours of operation: Fridays, 3:00 – 5:00 PM in the Old Main Building in room #4613, online: < http://www.tru.ca/law/current-students/Community_Outreach/clinical.html > [LIS]

is why I love universities. They became a safe zone and escape from the streets. I explained this to the man.

I explained that when I was twelve years old I left home from Toronto and I moved to Indian Reservation(s). By the time I was fourteen I lived homeless in the core of the downtown lower eastside of Vancouver. I told him that I lived homeless until I was in my mid twenties with few stints of *homefullness*.³ I also acknowledged that I did have a break from the streets when I spent nearly three years incarcerated.

The man's agitation dissipated. He smiled and his eyes brightened. He felt empathy for me. We established rapport. He acknowledged the accomplishment. I told him why I was present at the *square* standing at a fold up table with pamphlets and how I do care, and to an even greater end I do understand aspects of where he comes from. I am there just as my colleagues are as well, to offer a service to the community for no cost. I expressed that we as a *law student/faculty collective* do have a vested interest in the community for a variety of reasons.

"I hope you can appreciate my reasons, and know that I am here for you and others in the capacity as a law student, and in turn that you can come utilize our service."

The man smiled and shook my hand and said surely he and others will use our service. He took the *Legal Information Services* contact information for himself and his peers. He noted that not everyone in the law school is like me, and I had to agree with him.

2. Context

Storytelling has been a form of praxis within my academic career thus far and is an integral part of the lawyers role.⁴ Social workers and lawyers alike engage with narratives everyday.⁵ Story narratives used to address issues with people we wish to establish rapport and relationships with.⁶

³ *Homefullness* is a term I use to describe short stints of having an actual home that did include times when I was in the system, working in bush camps or short periods of renting a home. I had never lived in one home for longer than under two years throughout my entire life until I began university. For more information see my small press company: Daniel Gallant, "Scholars From The Underground" (November 20, 2015), SFTU Press (blog), online: < <http://scholarsfromtheunderground.com> > [SFTU]

⁴ This study incorporates autoethnography as method for locating researcher within the study and utilizes story to contextualize and fill in gaps. The story narrative provided is also a data set, as is the secondary sources used for analysis. For a more in-depth insight into autoethnography and education as healing and praxis see (also see note 6 [Chang]): Daniel Gallant, *A "Former" Perspective: An Exploration of the Disengagement Process from Violent Right Wing Extremism*, (MSW Thesis, University of Northern British Columbia Faculty of Social Work, 2014) [Prince George: UNBC]. [Gallant]; Antonin Scalia & Bryan Garner, *Making Your Case: The Art of Persuading Judges* (USA: West Publishing, 2008). [Scalia]

⁵ Jane Aiken & Stephen Wizner, "Law as Social Work" (2003) 11 Wash UJL & Pol'y 63. [Aiken]; *Supra* note 4. [Gallant] & [Scalia]

⁶ Gallant, *Supra* note 4. Heewon Chang, *Autoethnography as Methodology* (CA: Left Coast Press, 2008); Norman Denzin, *The Qualitative Manifesto: A Call to Arms*, (CA: Left Coast Press, 2010). [Denzin-1]; Norman Denzin, *Performance Ethnography: Critical pedagogy and the politics culture*, (CA: Sage, 2003). [Denzin-2]; Joanne Archibald, *Indigenous Storywork*, (Vancouver: UBC Press, 2008). [Archibald]; Leanne Simpson & Kiera Ladner, *This is an Honour Song: Twenty years since the blockades*, (Winnipeg: Arbeiter, 2010). [Ladner]; Fyre-Jean Graveline, *Healing Wounded Hearts*, (Canada: Fernwood, 2004).; Fyre-Jean Graveline, *Circle Works: Transforming Eurocentric consciousness*, (Canada: Fernwood, 1998).

Establishing relationships with service users is essential in most professional applications. A bridging between social work and law is an aspired direction for my future practice. As a registered social worker and community based activist, who maintains a structuralist-based practice approach, it is natural for me to explore and contemplate my future legal career. Law school seems to be a good place to give serious consideration to my professional pathway. A primary form of communication that I rely upon as a practitioner and academic is storytelling.

Social work and law share some practice spaces, especially in relation to social justice and advocacy practices.⁷ This paper will contemplate a selected professional practice model developed within social work to explore whether it is workable within law and how such a structuralist-based practice model could inform and work to contributing to improve legal education and the legal profession. How can the legal profession include a structuralist-based practice model?

The model is based on the principle that social and political issues that impact the individual are structurally borne (structural social work).⁸ I argue that the model should be used in the practice of law. Structural social work can inform law practitioners and the legal profession at large on better ways to practice. By *better* I mean more conducive with contemporary Canadian values, more so than 19th Century traditions that are often relied upon by law practitioners and educators.⁹ The law profession may be shooting itself in the foot by continuously replicating hierarchal practices. One can see many problems within the law when exploring discrimination in Canada. Our law is built upon white supremacist and patriarchal foundations.¹⁰

Social work is a feminist based profession that has evolved beyond its own limits and perhaps can both theoretically, and through practice, inform the law profession into better ways of practice, more particularly in regards to working with marginalized, oppressed and structurally abused service users.¹¹ I argue that empathy is one of the vehicles that can bridge not only the client and practitioner but also social work and law professions.

The embodiment of such a practice is possible, but it could be suppressed if the practice environment and structures attempt to suppress, repress or oppress the practitioner who goes *against the grain* of the steady state.¹² I am more hopeful for

⁷ Aiken, *supra* note 5.

⁸ Robert Mullaly, *The New Structural Social Work* (3rd ed.), (Don Mills: Oxford, 2007). [Mullaly-1]; Bob Mullaly, *Challenging Oppression and Confronting Privilege*, (New York: Oxford, 2010). [Mullaly-2]; Wendy Flanagan, *Cultural Studies: The silenced or courageously loud sister of social work* (MSW Thesis, UNBC Faculty of Social Work, 2011) [Prince George: UNBC]. [Flanagan]; *Supra* note 4. [Gallant]

⁹ Duncan Kennedy, "Legal Education as Training for Hierarchy" (1982) 32:591 *Journal of Legal Education* at 54. [Kennedy]; Janet Guttsman, "Re-inventing the Legal Wheel: Thompson Rivers University law course looks at legal challenges ahead", *Canadian Lawyer* 10:1 (Fall 2015) at 8-11. [Sykes]

¹⁰ Truth and Reconciliation Commission of Canada, *Final Report of the Truth and Reconciliation Commission of Canada Volume One: Summary: Honouring the Truth, Reconciling for the Future* (Toronto: Lorimer, 2015). [TRC]; Paulo Freire, *Pedagogy of the Oppressed*, (London: Penguin 1993) [Freire-1]; Paulo Freire, *Pedagogy of the Heart*, (New York: Continuum, 1997). [Freire-2]; *Supra* note 4. [Gallant]; *Supra* note 8. [Flanagan]; *Supra* note 8. [Mullaly-1&2]; *Indian Act*, RSC 1985 c 1-5. [IA]

¹¹ Tuula Heinonen & Len Spearmen, *Social Work Practice: Problem solving and Beyond* 3rd ed (Canada: Nelson, 2010). [Heinonen]; Francis Turner, *Social Work Practice: A Canadian Perspective* 2nd ed (Canada: Prentice Hall, 2002). [Turner]

¹² Heinonen, *ibid*.

the fate of law than to believe that law practitioners and educators only want *more of the same* old school traditions. The application of this idea is “praxis.”¹³

When Prime Minister Justin Trudeau was asked why he comprised his Cabinet with a gender balance he responded dumbfounded: “because it is 2015.”¹⁴ While it is 2015, the law profession faces its own challenge with capitalist imposed discriminative actions and attitudes that synthesize 19th Century perspectives in regards to people who are protected in contemporary society by human rights and *Charter* rights. As a social worker and law student I plan to further explore this arena of practice. It is my hope that the legal profession, welcomes this practice approach.

3. First Year Law

A. Including Critical Pedagogy within Law Schools

As a first year law student with disabilities and a different value system and life experience than is commonplace, I was treated differently and felt unwelcome in law school.

Duncan Kennedy states that “law schools are intensely political places”¹⁵ that are structured and function as a process to become lawyer-like through the complicity and learned appropriate response to hierarchy. What is appropriate is as deemed by the legal education system and law profession.¹⁶ However, in our Community Lawyering course, in 2L, I was introduced to a curriculum that offered something that was missing throughout 1L.

Kennedy stated professors convey superiority and practice social segregation so sufficiently extreme that there are no occasions that the reality of the socially constructed system of supremacy can be *tested*; and if it is *tested* by serious challenge to the regime then surely the student would be met with outrage and retaliation.¹⁷ If a student challenges the dynamic byway of attempt to re-construct the power dimension then the student will surely suffer repercussions, as a professor will engage with tactics to attempt to force the student in their ‘appropriate’ role within the hierarchy. This is especially true when professors discuss the concept of the law profession and how the student’s reputation will mark them within the broader community.¹⁸ A student should not contest nor challenge their ‘superiors’ if they wish to be successful.

¹³ Freire-1-2, *supra* note 10.

¹⁴ Jennifer Ditchburn, “Because it's 2015': Trudeau forms Canada's 1st gender-balanced cabinet: Women will hold 15 of 31 posts compared to 12 of 39 under Conservatives” (November 6 2015), CBC (website), online: <<http://www.cbc.ca/news/politics/canada-trudeau-liberal-government-cabinet-1.3304590>>

¹⁵ Kennedy, *supra* note 9 at p 54.

¹⁶ Kennedy, *supra* note 9.

¹⁷ Kennedy, *supra* note 9 at p 68.

¹⁸ See discussion about *community* and how the idea of community itself creates an imposed boundary/barrier and others those that are outside of the community; Joshua Ben David Nichols, *End(s) of Community: History, Law, Sovereignty and the Question of Law*, (Waterloo: Wilfred Laurier Press 2013) at ch 1. [Nichols]

Accordingly, Kennedy refers to legal education as a “reproducer of hierarchy,”¹⁹ which was highlighted and inflated in my first year as a law student who deviated from what is known to be ‘typical.’ Therefore I paid the consequences of almost not surviving first year.²⁰ To that end surviving the streets was far easier than surviving law school.

My conception of both law school and the legal profession was limited to that of what I saw in the movies, which often portrayed the profession as honorable.²¹ Prior to my admission I was diagnosed with several learning related disabilities. This set me up for unforeseen challenges in law school, such as stigma.

Throughout my first year of studies I was juggling life as a mature student, a public educator and a consultant resource for media, government and law enforcement. The discipline of law was fundamentally different in delivery than that of my undergraduate degree in First Nations Studies and subsequent Masters of social work. I felt as if my social justice ethic and sensitivity to issues that relate to access to justice were an anomaly. There did seem to be an extreme pressure to accept and become saturated into a profit driven practice. I was resistant to the ethic of the bottom line of profit. I was alienated and my values did not seem to fit within what was defined as our ‘law school community.’

It seemed that every aspect of my being was in conflict with law school. During first year I spoke out publicly against discrimination that occurred in our law school. I wrote an opinion-editorial article for a Six Nations Newspaper. The article aspired to contribute to reconciling relationships between Canadian society and Indigenous peoples, in a manner that was respectful to the historic relationship that founded our nation.²² Afterwards it appeared that I was challenging the hierarchal system that Kennedy refers to. As a result certain tactics were engaged to remind me of my role as a mere law student.

Now that I have re-ignited inspiration through being engaged in the community vis-à-vis *Legal Information Service* and Community Lawyering course I became alive to my potential value as a future legal practitioner in contribution to our society in spite of my environment.

B. Narratives and Empathy

Although the legal profession is keenly aware of the power of story and narrative, or as it is sometimes referred to as the *theory of the case*;²³ it is also recognized this

¹⁹ Kennedy, *supra* note 9 at p 58-59.

²⁰ Kennedy, *supra* note 9. David Lepofsky, “Disabled Persons and Canadian Law Schools: The Right to the Equal Benefit of the Law School” (1991) 36 McGill LG 636. [Lepofsky]; Ian Gallacher, “Thinking like Nonlawyers: Why Empathy is a Core Lawyering Skill and Why Legal Education should Change to Reflect its Importance.” (2011) 8 JALWD online: <<http://ssrn.com/abstract=1933473>> [Gallacher]

²¹ Steven Berenson, “Preparing Clinical Law Students for Advocacy in Poor People’s Courts” (2013) 43:363 New Mexico LJ at 363.

²² Daniel Gallant, “The Two Row Wampum is a History to be Honored, Not Abused”, *Two Row Times* (11 February 2015). online: <<https://tworowtimes.com/opinions/opinion/two-row-wampum-history-honored-abused/>> [Gallant-TRT]

²³ Gallacher, *supra* note 20 at 117 & 120.

function of story is typically not empathetic in nature.²⁴ It is noted that often those law students who are 'empathy feelers' are the most likely to drop out of law school.²⁵ I can attest to this point. I was relieved when I was introduced to practice-based curriculum that openly discussed experiences of students and scholars who identify the issues related to hierarchy and supremacism in law similar to myself.²⁶

As a social worker I have been professionally and academically conditioned to recognize that personal is political and stems from structural issues.²⁷ Additionally, my traumatic upbringing and sub-cultural leanings as a youngster (gang involved-punkrock-metalhead-skinhead) also made me a prime candidate for ascribing to the personal is political philosophy. This allows me to connect with others in context of social work ethic and practice, which was a preliminary influence as to why I aspired to become a student at law.

Ian Gallacher states "law schools intentionally and systematically prevent students from responding emotionally during their first year of law school,²⁸" which makes it difficult to empathize with clients/others, or to even want to. This is likely why some law students who do empathize more so than others desire to drop out of law school.²⁹ A learning institution that seems to work towards an end that is not set up for learning but rather to construct practitioners who are conditioned to detach from empathy and to reproduce hierarchal relationships and systems does not seem to be very humanistic for the purpose to serve future clients in the community.

Sarah Buhler recommends that law schools do facilitate a critical pedagogical component that prepares law students for real world practice to assist clients who have faced social sufferance. She argues the mechanical nature of legal education on its own is likely not sufficient as a stand alone to prepare law students for these real world happenings.³⁰ Thus I conclude, there is room for structural social work ethic, value and practice as an approach to the law profession.

Similarly, Lynette Parker suggests that lawyers who represent victims of trauma will likely be faced with counselor and social work roles within their legal practice.³¹ While Aiken reminds us that there are distinctions to the professional roles of

²⁴ Gallacher, *supra* note 20.

²⁵ Gallacher, *supra* note 20 at p 117.

²⁶ Patricia Monture-Angus, "Ka-nin-geh-heh-gah-e-sa-nonh-yah-ga" (1987) 2 Can J Women & Law 157-171, online: <<http://www.heinonline.org.ezproxy.tru.ca/HOL/Print?collection=journals&handle=hein.journals/cajwol2&id=177&print=section§ion=15&ext=.pdf>> [Monture]; Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.* in Susan Carle, *Lawyers' Ethics and the Pursuit of Social Justice: A Critical Reader* (New York: NY Press 2005). [White]; *Supra* note 9. [Kennedy]; *Supra* note 5. [Aiken]; The Law Society of Upper Canada, "Students and Lawyers with Disabilities: Increasing access to the legal profession", (Ontario: LSUC 2005). [LSUC]; The Law Society of British Columbia, "Lawyers with Disabilities: Overcoming Barriers to Equality", (Vancouver: LSBC 2004). [LSBC-I]; The Law Society of British Columbia, "Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Term January 1, 2011 to December 31, 2011", (Vancouver: LSBC 2012). [LSBC-Ombuds]; Gallacher, *supra* note 20.

²⁷ Gallant, *supra* note 4.

²⁸ Gallacher, *supra* note 20 at 151.

²⁹ Gallacher, *supra* note 20. Kennedy, *supra* note 9.

³⁰ Sarah Buhler, "Painful Injustices: Encountering social suffering in clinical legal education" (2013) *Clinical Law Review*. online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2131501> [Buhler]

³¹ Lynette Parker, "Increasing Law Student's Effectiveness When Representing Traumatized Clients: A case study of the Katherine & George Alexander Community Law Center" (2007) Santa Clara School of Law Working Paper No. 07-31. [Parker]

lawyers and social workers, but one practitioner can inform the other in practicable applications.³²

4. Practice, Theory, Praxis

A. Praxis

I am committed to contribute to social change, which includes education as a way to present challenges and opportunity for institutions to change.³³ A qualitative and structuralist researcher aims to teach people/institutions how to treat people better, with hopes that this will improve the way people are treated by the system.³⁴ This does not seem all that different from Canada's *Charter of Rights and Freedoms* and human rights contexts.³⁵

Mao stated that "knowledge begins with practice, and theoretical knowledge is acquired through practice and then must return to practice."³⁶ This statement suggests that the distinction between theory and practice should not be seen as divisive polarities; rather, they should be viewed as a dialectical relationship between the two.³⁷ Perhaps even a grey area that needs to be embraced. This is a fundamental principle to my understanding of experiential learning.

Professional practice approach model options are endless. A practice model based within relationship building, social justice, access to justice, empathy and inclusiveness would need to be both progressive and transformative in its application for me to select it as a mode of operation. My selected practice model from social work will be carried forward into my future law practice. This practice model is described as:

"structural anti-colonial indigenized critique of the ethno-centric-mono-culture through an organic anarchic semi-progressive-socialist approach, informed by transformative existential meaning/purpose on a pathway to liberation through my ontological vocation of praxis situated within decolonization as socio-political psycho-educational healing journey that inherently challenges the profession of social work and Canadian society."³⁸

...and now law.

Although it is recognized that legal education is a training ground for professional practice of law, much like social work education is, there does exist differences.³⁹ Pedagogical systems and attitudes of many professionals and professors in the field may not necessarily welcome someone that may challenge the steady state of

³² Aiken, *supra* note 5.

³³ Gallant, *supra* note 4. SFTU, *supra* note 2.

³⁴ Denzin-1-2, *supra* note 6. Gallant, *supra* note 4. Mullaly-1-2, *supra* note 8.

³⁵ *Constitution Act*, 1982. [*Constitution*]

³⁶ W. K. Carroll, *Organizing Dissent: Contemporary social movements in theory and practice*, (Toronto: U of T Press 1997) at p 33. [Carroll]

³⁷ *Ibid.*

³⁸ Gallant, *supra* note 4 at 61.

³⁹ Aiken, *supra* note 5.

hierarchy.⁴⁰ Surely the application of structuralist informed practice approach would be discouraged if it would seemingly disrupt the steady state of the profession, as is similarly true in social work.⁴¹ Jane Aiken explains that there are similarities between law and social work professions that are relevant considerations.⁴² It should be noted that while law profession is mandated and guided by policy of respective law societies social work is guided by legislation and respective college of social workers.⁴³

As Dr. Norman Denzin stated, to be a qualitative researcher one must intend to change the world.⁴⁴ In spite of knowing that those of a different 'wing' will attempt to suppress *us* in order to carry out 'their' political agenda against those of *us* who go *against the grain*.⁴⁵ Application of one's learned lessons through experiential learning that become a form of analysis and transcends toward theoretical contexts and returns to practice is praxis is necessary.⁴⁶

In law school a practice-based curriculum that focuses on lawyer skillset building emphasizes and substantiates that the notion praxis can be valuable in legal practice.⁴⁷ Analyzing course readings written by legal scholars who offer personal stories and analysis, while facilitating *Legal Information Service* clinics and providing legal information to marginalized populations in community, reminded me of the value of my own praxis in context of my future as a legal practitioner. The Community Lawyering course offered me an opportunity, a snapshot, to see that there is room for critical thinking and doing within the legal profession. It should not be limited to its own stream or sub-discipline, but rather integrated as a commonplace pedagogical vehicle.

Making more room within legal education for practice based education seems necessary if it is desired to move the law profession from being dominated by those who grip onto a profit driven practice that consistently clutch hierarchal structures and functions in order to maintain purposiveness of profit.⁴⁸ We do know that profit affects the decisions of law professionals and law schools that does result in discrimination.⁴⁹ If the profession is guided by profits, which does result in discrimination, then it would be necessary for the law profession to consider

⁴⁰ Kennedy, *supra* note 9.

⁴¹ Gallacher, *supra* note 20. Mullaly-1-2, *supra* note 8. Gallant, *supra* note 4. Flanagan, *supra* note 8.

⁴² Aiken, *supra* note 5.

⁴³ Law Society of British Columbia, "Professional Conduct Handbook" at ch 2 s3: "A lawyer has a special responsibility to respect the requirements of human rights laws". online: <<https://www.lawsociety.bc.ca/page.cfm?cid=1028&t=Professional-Conduct-Handbook-Chapter-2-Integrity>> [LSBC Handbook]; BC College of Social Workers, "Code of Ethics and Standards of Practice" (21 November 2015), BCCSW (website), online <<http://www.bccollegeofsocialworkers.ca/registrants/code-of-ethicsstandards-of-practice>> [BCCSW]

⁴⁴ Denzin-1, *supra* note 6.

⁴⁵ UCLA Professor, Dr. Greg Graffin Lyrics for Bad Religion song *Against the Grain* (1990).

⁴⁶ Freire-1, *supra* note 10. Gallant, *supra* note 4. Carroll, *supra* note 36.

⁴⁷ Shin Imai, "Counter-Pedagogy for Social Justice: Core Skills for Community Lawyering" (2002) 9 Clinical Law Review at p 195. online: <<http://ssrn.com/abstract=1271452>> [Imai]; Sarah Buhler, "Skills Training in Clinical Legal Education: A Critical Approach" (2011) Canadian Legal Education Annual Review at 1-20. online: <<http://ssrn.com/abstract=2088224>> [Buhler-2]; Sarah Buhler, "Journeys to 20th Street: The inner city as critical pedagogical space for legal education" (2009) Dalhousie Law Journal at 381-416. online: <<http://ssrn.com/abstract=2078557>> [Buhler-3]

⁴⁸ LSBC-1-Ombuds, LSUC, *supra* note 26. Lepofsky, *supra* note 20.

⁴⁹ *Ibid.*

overcoming its own self created structural issue. Where structural issues exist and discriminative outcomes remain there are reasons to consider moving away from this practice as it is oppressive and hegemonic.⁵⁰

Transforming legal education, pedagogy, could end many discriminative outcomes that are created by the profit driven business model. It seems that there is a need to pay heed to Jane Aiken's notion that importing social work values and ethic into law could be beneficial for society.⁵¹ Kin to social work, lawyers are charged with an ethical obligation to have special sensitivity and not practice in discriminative ends. Payment of heed to the context of profit driven practice that results in discrimination continues as steady state of the profession and will eventually result in dilemma.⁵²

5. Social Work, Law, Empathy

A. Integrating disciplines

As stated by Jane Aiken, social work practices and ethics can be included within the professional of law and in legal education.⁵³ Aiken explains that legal practice can be so narrow in its application that it removes the context from a client's situation.⁵⁴ The ethics comparison between law and social work in Aiken's study does show differences do not make it impossible for law to include elements of a social worker's consciousness and practice.⁵⁵ Moreover, Aiken emphasizes that professional training does not exist in a moral vacuum, but rather does exist within a social milieu.⁵⁶

It is acknowledged that the legal profession is adversarial in nature and that conflict is inherent to the profession.⁵⁷ Whereas social work acknowledges and operates from the fundamental perspective that client issues are systemic in nature, especially in context of oppression and discrimination.⁵⁸ With consideration that there are distinguishable differences between law and social work there are ways that one could import from the other, and vice versa.⁵⁹ There are ways that both professional fields do overlap, work together and at times conflict.

First year law specifically facilitates the separation between reasoning and empathy.⁶⁰ Legal education has been contended as being harmful to law students' well being through the mechanism of removing empathy, or promotion of

⁵⁰ Freire-1, *supra* note 10.

⁵¹ Gallant, *supra* note 4. Aiken, *supra* note 5. Mullaly-2, Flanagan, *supra* note 8.

⁵² Law Society of British Columbia, "Professional Conduct Handbook" at ch 2 s3: "A lawyer has a special responsibility to respect the requirements of human rights laws". online: <<https://www.lawsociety.bc.ca/page.cfm?cid=1028&t=Professional-Conduct-Handbook-Chapter-2-Integrity>> [LSBC Handbook]

⁵³ Aiken, *supra* note 5.

⁵⁴ Aiken, *supra* note 5 at p 76.

⁵⁵ Aiken, *ibid* at p 78-82.

⁵⁶ Aiken, *ibid* at p 78.

⁵⁷ Aiken, *supra* note 5 at p 80.

⁵⁸ Aiken, *supra* note 5 at p 73. Mullaly-1-2, Flanagan, *supra* note 8. Gallant, *supra* note 4.

⁵⁹ Aiken, *supra* note 5. Gallant, *supra* note 4.

⁶⁰ Gallacher, *supra* note 20.

mechanical function.⁶¹ This is quite contrary to much of the academic, professional and personal experience of social work⁶². While acknowledging the social work profession does face its own limits to empathy and social justice as it does operate within limits of professional conduct that is regulated via legislation and policy.⁶³ Relationships is what life is about, and in my view is the purpose of both law and social work.⁶⁴

Law guides us how to treat one another. It is my view that emphasizing the economic imperative and putting profit before all else as a justification for discriminative outcomes is a mistake and an oppressive mechanical device that is hegemonic. It is through community and story that we can share our experiences and educate one another; and thus form a democratic voice through collectivity that demands transformation when it is due as a manifest purposiveness of story.⁶⁵ We can become the change we want to see in society and duly hold the system to the same standard.⁶⁶ Especially when that *system* produces discriminative ends that '*they*' respectively declare '*they*' are opposed to.⁶⁷

B. Legal Education and Structural Issues

Katie Sykes stated that "[t]he model for teaching law is basically from the 19th Century – it hasn't changed a lot since then..."⁶⁸ and goes on to suggest that this process is essential to teaching lawyering skills, which is not necessarily an uncommon perspective.⁶⁹ Sykes also indicates that she, herself, graduated law school ill prepared for practice applications, except for the fact that she held high expectations of "working hard."⁷⁰ It is common that law professors believe it is essential to have students reproduce hierarchal relationships learned in law school into legal practice at firms and in Canadian courts.⁷¹

This gripping to archaic teaching practices may undermine the values of contemporary society, in the 21st Century, by reproducing these hierarchal structures and supremacist doctrines that were the cause of horrendous discrimination; both historically and contemporarily.⁷² It is important to consider and critique the perspective that legal education should remain, essentially, static pedagogically. This will result in not only reproducing hierarchy but also result in replication of discrimination where it exists within law schools and legal profession,

⁶¹ Gallacher, *supra* note 20 at p 117.

⁶² Aiken, *supra* note 5. Gallant, *supra* note 4.

⁶³ *Social Workers Act*, SBC 2008 c 31.; BC College of Social Workers, "Code of Ethics and Standards of Practice" (21 November

2015), BCCSW (website), online < <http://www.bccollegeofsocialworkers.ca/registrants/code-of-ethicsstandards-of-practice>>

Aiken, *supra* note 5. Gallant, *supra* note 4. Parker, *supra* note 31.

⁶⁴ Gallant, *supra* note 4.

⁶⁵ Gallant, *ibid.*

⁶⁶ Gallant, *ibid.*

⁶⁷ Mullaly-1-2, *supra* note 8. Flanagan, *supra* note 8. Gallant, *supra* note 4.

⁶⁸ Sykes, *supra* note 9 at p 10.

⁶⁹ Sykes, *supra* note 9 at p 10. Kennedy, *supra* note 9.

⁷⁰ Sykes, *supra* note 9 at p 11.

⁷¹ Kennedy, *supra* note 9.

⁷² IA, *supra* note 10. Gallant, *supra* note 4.

which do not function well in contemporary society due to human rights and *Charter* protections.

Research indicates that discrimination in law schools and in the legal profession is an alive issue.⁷³ For instance, it has been stated that discrimination against persons with disabilities in law school and legal profession is the result of two main reasons.⁷⁴ First, is because of the profit driven business model of law firms that aim to maximize profits and decreasing expenditures combined with the fear that making accommodations for persons with disabilities is not 'worth it' in economic reasoning.⁷⁵ Second, is due to the attitudes of those in positions of power within the hierarchy of the legal profession; attitudes that are discriminative against persons with disabilities as being less than or as being problematic.⁷⁶ All of this seems contrary to the practice standards of lawyers, at least in BC, and surely in violation of human rights standards.⁷⁷

It is unfortunate that law professors themselves are the reproducers of hierarchy and classism.⁷⁸ Kennedy and Imai argue that classism is rooted within the superiority complex of students conditioned by legal education and law profession and that this does not need to be a mainstay.⁷⁹ Law teachers are models for students.⁸⁰ When a teacher models to their students that abuse of power and hierarchy, or at minimum the reproduction and complicity of classist *supremacist doctrines*, is acceptable then surely that teacher produces an oppressive learning environment.⁸¹ When a student resists or challenges supremacist and hierarchal environments they surely face retaliation and essentially be brow beaten into submission, complicity or at least silence.⁸² This type of institutional dynamic is not conducive with building a critical practice approach into a learners skillset.

The indirect pressure of conformity to hierarchy and supremacism is inherent in legal education.⁸³ Law teachers will convince students that those who are at odds with the hierarchal system is due to their own fault and incompetence, rather than acknowledging the fact that the system is inherently hierarchal and supremacist in structure and function; and that the system itself is not conducive for all types of learners;⁸⁴ especially those who may be challenged with intersectional vulnerabilities.

⁷³ LSBC-1-Ombuds, LSUC, *supra* note 26. Lepofsky, *supra* note 20.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Supra* note 73.

⁷⁷ LSBC Handbook, *supra* note 43.

⁷⁸ Kennedy, *supra* note 9.

⁷⁹ Kennedy, *ibid.* Imai, *supra* note 47 at p 3.

⁸⁰ Kennedy, *supra* note 9 at p 66.

⁸¹ Kennedy, *supra* note 9 at p 66-68. Freire-1-2, *supra* note 10. Gallant, *supra* note 4.

⁸² Kennedy, *supra* note 9 at p 68.

⁸³ Kennedy, *supra* note 9. Imai, *supra* note 47.

⁸⁴ Kennedy, *supra* note 9 at p 64. LSBC-1- Ombuds, LSUC, *supra* note 26. Imai, *supra* note 47.

i. Resistance to Change

Derald Wing Sue outlines how the dynamics of *cognitive dissonance* in context to discrimination results in resistance to change even where discrimination is evident.⁸⁵ In Canada we are proclaimed to be opposed to racism;⁸⁶ yet, we maintain law that is inherently racist to the point that it incorporates a schismatic design that was developed, and is maintained, for the purpose of extinguishment of Aboriginal peoples, title and rights as per the *Indian Act*.⁸⁷

It is only through *dialogical education* that we can establish and ensure long-term change that could revolutionize a particular institution.⁸⁸ However, this being said one must ensure when tackling such issues that care and empathy are inclusive in tactic in order to defeat or revolutionize mechanically oppressive elements that intend to de-humanize and de-personalize the 'other.'⁸⁹

It is my intention to utilize my personal experience and professional practice to political and legal ends, to do what I can to inform law with social work principles to end discrimination by engaging dialogue.⁹⁰ Unfortunately if the institution holding power-over is unwilling to engage, this can often open oneself up to being targeted by an institution, which is precisely the warning offered by Duncan Kennedy, Bell Hooks and Paulo Freire.⁹¹ But even then there does still exist a hopeful workable space as it is arguably beneficial to the law profession to reconsider the reproduction of hierarchy, especially if this reproduction perpetuates power-over-dynamic that is not conducive to contemporary Canadian values. I ask why cling to a 19th Century teaching tradition that is known to be riddled with hierarchy and supremacism, especially when we as a society are attempting to move away from such archaic practices.

ii. Disabilities and Law School

I examine the barriers for students with disabilities in law school. I use a social work paradigm and various theoretical tenets of educational reform to ensure that a more inclusive approach to legal education will become accessible to students like myself. Law students and legal professionals with disabilities are seen as a 'problem' due to accommodation needs.⁹² Placing those with disabilities in context of the hierarchal legal education system, which is the same since the *19th Century*, seems to logically inflate the issues discussed by legal scholars.⁹³ Law teachers who demand continuity of these archaic pedagogical traditions, are not only holding onto trite gripes of

⁸⁵ Gallant, *supra* note 4 at p 150. Derald Wing Sue, *Overcoming Our Racism*, (USA: Jossey-Baas 2003). [Sue]

⁸⁶ Constitution, *supra* note 35.

⁸⁷ IA, TRC, *supra* note 10. Gallant, *supra* note 4. S. Grammond, *Identity captured by law* (Montreal, McGill University Press, 2009) at c 3-4. [Grammond]; Shiri Pasternak, Sue Collis, & Tia Dafnos, "Criminalization at Tyendinaga: Securing Canada's Colonial Property Regime through Specific Land Claims" (2013) 28 CJL&S 65-81. [Collis]

⁸⁸ Freire-1-2, TRC, *supra* note 10. Denzin-1-2, Chang, *supra* note 6.

⁸⁹ Freire-2, *supra* note 10. Albert Memmi, *The Colonizer & The Colonized*, (USA: Orion 1965). [Memmi]

⁹⁰ Gallant, *supra* note 4.

⁹¹ Bell Hooks, *Teaching Community: A pedagogy of hope*, (London: Routledge 2003). [Hooks];

Freire-1-2, *supra* note 10. Kennedy, *supra* note 9.

⁹² LSBC-1-Ombuds, LSUC, *supra* note 26. Lepofsky, *supra* note 20. ARCH Disability Law Centre, *Disability Law Primer*, (Ontario: ARCH 2013). [ARCH]

⁹³ Kennedy, *supra* note 9. Aiken, *supra* note 5. Gallacher, *supra* note 20.

yesteryear and demanding more than attentive learners, but also are requiring submissiveness to their own folly. Educational institutions that facilitate professional training for future practitioners should arguably be aligned with teaching practices that are conducive with institutional policies and legislation that reflect humanistic multi-cultural values rather than maintaining focus upon homogenous hierarchal reproductions.

If the law in itself is oppressive, schismatic or discriminative by nature and outcome, then surely this will manifest, perhaps latently, in the students' perspectives and practice. This will surely occur if pedagogical process and practice are not shifted, or as Paulo Freire would assert: *revolutionized*.⁹⁴

If these old traditions of legal education are not transformed to a higher bar measure conducive with modern values, we run risk of perpetuating the discrimination we are attempting to move away from. To resolve this conflict perhaps consideration of shifting to practice based education that focuses less on hierarchy and more upon skillset building in conjunction with more empathy and importing professional social justice values from other disciplines i.e. social work, as a model for students to learn from; would result in less reproduction of hierarchy.

iii. Indigenous Peoples, Law, discrimination

In particular, for evidence of discriminatory laws one only need to look to one of the first legislative formations in Canada i.e. *Indian Act*.⁹⁵ This legislation is historically discriminative in structure and function to the point of extinguishment of Indigenous culture, identity and rights.⁹⁶ This Act is rooted within *supremacist doctrines*. This is what I would consider a prime example of how the 'system' results in discriminative outputs as we mainstay this discriminative law as a steady state; whereas Canada in large is provided with opportunity to change this legacy in name of reconciliation.⁹⁷ Canada is called to repudiate the justification of European sovereignty.⁹⁸ I argue that repudiation could assist in facilitation of opportunity to essentially reconstruct hierarchal traditions of law schools that demand submission to supremacist doctrines; one way to achieve this is to engage students more actively with skill based learning through experiential clinical practices, rather than the reproduction of problematic hierarchies.⁹⁹

⁹⁴ Freire-1-2, *supra* note 10. Kennedy, *supra* note 9.

⁹⁵ *IA*, *supra* note 10.

⁹⁶ *McIvor v. The Registrar, Indian and Northern Affairs Canada*, 2007 BCSC 827.; *McIvor v. Canada (Registrar of Indian and Northern Affairs)*, 2009 BCCA 153; *Sandra Lovelace v. Canada*, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981).; Canadian Bar Association, (2010) *Bill C-3 – Gender Equity in Indian Registration Act*. online:

<<https://www.cba.org/CBA/submissions/pdf/10-21-eng.pdf>>; Jessie King, *The Identity Enigma: Denial of First Nation's women's right to identity*, (M.A. Thesis, UNBC Faculty of Arts, 2011) [Prince George: UNBC]. [King]; *Supra* note 4. [Gallant]; Daniel Gallant, "band aid policies" (2015) Thompson Rivers University Faculty of Law Working Paper No. 01-15. [Gallant-WP]

⁹⁷ *TRC*, *supra* note 10.

⁹⁸ *Ibid*.

⁹⁹ *Imai*, *supra* note 47.

Indigenous scholars have contemplated legal process, legislation and legal doctrines in Canada as essentially racist, abusive and oppressive;¹⁰⁰ some energy must be lent to consider how to deconstruct and reconstruct some of these elements. Further to this point, Paulo Freire indicated that oppressive regimes in the western world operate and maintain power-over through education systems.¹⁰¹ This does and would include, perhaps even may be emphasized, in connection to legal education. In my view the *TRC Report* in the *calls to action #28, 29* that beckon law schools in Canada to require all law students to take a course in Aboriginal law that will offer anti-racist skillset building, which supports theoretical contexts of this paper is an essential manifestation of critical-practice and praxis.¹⁰²

The legal profession is well aware that just because something is legal does not necessarily make it 'right.'¹⁰³ This is most plain, retrospectively, in context of residential schools that was administered by way of Duncan Campbell Scott who did seek to *kill the Indian in the child* through legislation.¹⁰⁴ This has been recognized as a form of genocide.¹⁰⁵ As John Borrows explains that the legal system in Canada does operate rather differently for Indigenous peoples than it does for the rest of Canada.¹⁰⁶ Moreover, Bonnie Lawrence emphasize that Indigenous peoples are the only ones who face constant threat of military action in Canada. If law schools continue to reproduce more of the same from the 19th Century, surely this will result in lingering issues for generations to come.

C. Discrimination Denial is False Consciousness

Although Canadian law prohibits discrimination it is continuously challenged due to discrimination that occurs. The question of the *integrity* of the legal system becomes a serious consideration when tested upon such repeated patterns of discrimination.¹⁰⁷ If the system is so *incongruent* between its *values, words* and *actions* that where discrimination is prohibited, yet perpetuated, there exists a serious structural issue; however, it seems this is not always apparent.

The complexity of legal reasoning is exhaustive to many people. Thus, these issues often go unacknowledged except in narrow discursive discourse and scholarship. I argue if there is no *integrity of congruence* and it is not necessarily *transparent* to Canadians where the government or institutions aim to end discrimination, but then

¹⁰⁰ Howard Adams, *Prisons of Grass: Canada from a native point of view*, (Saskatoon: Fifth House 1989); *Supra* note 6. [*Ladner*]; *Supra* note 4. [*Gallant*]; Marie Battiste, *Reclaiming Indigenous Voice and Vision*, (Vancouver: UBC 2000). [*Battiste*]

¹⁰¹ Freire-1, *supra* note 10.

¹⁰² *TRC*, *supra* note 10.

¹⁰³ Lon Fuller, *The Morality of Law: Eight ways to fail to make law & consequences of failure* (New Haven: Yale University Press 1969) at p 33-37, 38-40. [*Fuller*]; *Supra* note 10. [*TRC*]

¹⁰⁴ J.S. Milloy, *A National Crime* (Manitoba: U of M 2000). [*Milloy*]; D. Neu & R. Therrien, *Accounting for Genocide: Canada's bureaucratic assault on aboriginal people* (Nova Scotia: Fernwood 2003). [*Neu*]; *TRC*, *supra* note 10.

¹⁰⁵ Sean Fine, "Chief Justice Says Canada Attempted 'Cultural Genocide' on Aboriginals", *Globe & Mail* (28 May 2015) online: <<http://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/>>; John Paul Tasker, "Residential Schools Findings PPoint to 'Cultural Genocide,' Commission Chair Says" *CBC* (29 May 2015) online: <<http://www.cbc.ca/news/politics/residential-schools-findings-point-to-cultural-genocide-commission-chair-says-1.3093580>>

¹⁰⁶ John Borrows, "(Ab)Originalism and Canada's Constitution" (2012) 58 *Supreme Court Law Review*.

¹⁰⁷ *Gallant-WP*, *supra* note 96.

continue to discriminate, this issue is structural in nature; and similar in context of law schools.

Perhaps there is a structural issue that needs to be acknowledged, named and *revolutionized* within context of how we teach students to practice in their respective professions. If legal education continues to perpetuate these 19th Century teaching processes that are inherently hierarchal then perhaps there is a necessary consideration for structural change of the legal education system. When the hierarchal dynamic is reproduced in areas that result in discriminative ends there is reason to consider re-constitution of process, method, structure and pedagogical process. To not do so is to willingly maintain complicity in a process that is known to be discriminative. Moreover, if these dynamics are being reproduced for mere purposes of profit concerns that is clearly problematic. Or if these issues occur because of attitudes of those in power the end result is the same and this is not seemingly conducive with the aim to eliminate discrimination. Thus, being un-Canadian.

The issues relating to supremacy and hierarchy are caused by legal education as reproduction of hierarchy as found in the legal system and later plays out within the legal profession, also legal education is as much a product of the hierarchy it causes.¹⁰⁸ There is no doubt that in Canada we do face the challenge of a schismatic legal design.¹⁰⁹ According to Duncan Kennedy law teachers must take responsibility for legal hierarchy, including what I refer to as *supremacism* in legal education.¹¹⁰ It is a cycle that produces itself since the 19th Century, as Kennedy stated “generation after generation, just as lawyers do.”¹¹¹

The reproduction of hierarchy and supremacy that can take form of discrimination is evidenced in a plethora of case law and legislation, especially in context of Indigenous peoples. The discriminative elements of Canadian law were so prominent and recurring that the International human rights forum intervened and Canada then had to amend its 1982 *Charter*.¹¹² While the intent of this paper is to provide a particular argument it is imperative to mention these primary examples of racism and discrimination that are definitively inherent in our legal system.¹¹³ To deny hierarchy and supremacy in law, and legal education, is false consciousness.¹¹⁴

D. Reconsidering Educational Spaces

Ethical space is a place between two parties that allows for each to be as they are without personal attacks and abuse, allowance of both to exist and recognize the other while also sharing a larger space and attempting to create another conceptual

¹⁰⁸ Kennedy, *supra* note 9 at p 72.

¹⁰⁹ Gallant, *supra* note 4.

¹¹⁰ Kennedy, *supra* note 9 at p 72.

¹¹¹ *Ibid.*

¹¹² *Supra* note 96.

¹¹³ Battiste, *supra* note 100. LSUC, LSBC, LSBC-Ombuds, *supra* note 26.

¹¹⁴ Kennedy, *supra* note 9 at p 74. Gallant, *supra* note 4.

and practical space of relationary ground.¹¹⁵ The divide between two parties often comes through manifestation of language and its symbolic meaning.¹¹⁶ If one party has a worldview based within the acceptance that dichotomies, binaries and *supremacist doctrines* are the preferred steady state of society and the other does not accept that such linear and hierarchal contentions apply to them, this can result in further conflict. This abusive dynamic, which I argue is hegemonic will continue until both parties are convinced it is best to re-focus on humanistic grounds that result in dialogical relations; as Paulo Freire would describe as praxis.¹¹⁷

The position asserted in this paper is that law schools should consider the radical end of relinquishing the 19th Century power grip. To import social work values into law practice in a society that declares imperatives such as human rights, social justice and access to justice. Exposing law students to clients, community activity and curriculum that focuses on these values is similar to social work training and have more practicable and meaningful purpose than the courses that merely replicate the dynamics asserted within this paper.¹¹⁸

i. Change is Possible

The nature of principles found within my selected practice model, when utilized, do result in effecting structural change. Teaching law students how to tackle structural issues due to their affect upon citizens, as opposed to reproduction of hierarchy and complicity, would result in profound structural change. I argue that including a widespread skills based structural approach to legal education, combined with critical pedagogy, would re-constitute our legal landscape. This cannot or will not be possible until the legal profession itself comes to terms with its own socially constructed reality that has been deemed as abusive to the very people it serves;¹¹⁹ and this is quite similar to government policies relating to Indigenous peoples in function.

Social work taught me that change is possible in personal, professional and political contexts. Change is also an integral element to culture, as culture is dynamic.¹²⁰ In my experience change can be very positive in fact and effect.¹²¹ Change can occur incrementally or radically to degrees that include revolutions.¹²² To this end human rights law and *Charter* rights were and are radical and very necessary for Canada to be where we are today. To reproduce these bold movements we do need to engage similar radical changes to our learning institutions. Education is the best vehicle for long term change.¹²³ What better way to affect change than to revolutionize legal education rather than reproducing abusive hierarchal processes that are rooted within 19th Century and practices.

¹¹⁵ Willie Ermine, "The Ethical Space of Engagement" (2007) 6:1 Indigenous Law Journal.

¹¹⁶ *Supra* note 100. [Battiste]; M. Foucault, *Space, Knowledge and Power: Foucault and Geography*, (Britain: TJ International 1971).

¹¹⁷ Freire, *supra* note 10.

¹¹⁸ Kennedy, *supra* note 9. Gallacher, *supra* note 20.

¹¹⁹ Kennedy, *supra* note 9.

¹²⁰ M. Kimmel, *Gendered Society* (New York: Oxford 2010).

¹²¹ Gallant, *supra* note 4.

¹²² Gallant, *supra* note 4. Revolution as defined by Camus in Gallant: a full circle, cycle.

¹²³ Gallant, *supra* note 4. Hooks, *supra* note 91. Freire, *supra* note 10.

There is a burden to pay by those that challenge hierarchy in law school and that is the ongoing stress and pressure that those in power focalize onto those that challenge, which I argue is rationally connected to the pattern of behavior that originally resulted in the core issue that is being discussed e.g. discrimination in a given situation. This can be described as violent in nature and the essence of the particular community structure.¹²⁴

6. Conclusion

I presented a story at the beginning of this paper related to volunteering at an event for homeless people in order to provide them with introduction to our *Legal Information Service*. I believe this story speaks to the experience of people in poverty who attempt to access services, as I did for a large portion of my life. Life on the street is rough and often the system and the actors within the system make life on the streets rougher.

Story and narratives are inherent to both social work and law professions. Our national story includes a whole lot of discrimination due to structural issues. It is now 2015 and our political climate has again shifted to allow Canada to reach new heights in context of human rights and humanistic relations. We can shift and transform dynamic in Canada by changing the legal landscape. This is attainable through transforming and revolutionizing our legal education system in Canada. Discrimination is an occurrence that happens to often in law schools and the legal profession.

The reproduction of power-over dynamics that take place in first year law can be transformed. To release our grip on 19th Century pedagogy, which teach law students to be submissive, complicit and reproducers of hierarchy and supremacy, would allow law schools to engage with professional ethics and building relationships in every direction that would benefit students future practice. Not to do so would result in a clutching onto archaic dynamics our society is attempting to move away from. Hegemony and discrimination belong in times prior to 2015. We can teach students to build relationships with themselves, each other, with educators and clients in a manner that is both humanistic and empowering; rather than the steady state of the reproduction of hierarchy and supremacism.

The greatness in our democratic society, in my mind, is that one individual can carry a voice for many and that a community can change the face of the nation. Collectivity can result in profound social, cultural, political and legal change. If law students were trained to advocate for communities, rather than the bottom line of profit and mainstay of 19th Century power dimensions, the legal landscape would transform in revolutionary ways.

In the words of Duncan Kennedy:

¹²⁴ Gallant, *supra* note 4. Nichols, *supra* note 18.

“The problem is not whether hierarchy is there, but how to understand it, and what its implications are for political action”¹²⁵

Consideration should be lent to a new type of law school rather than only offering institutions that reproduce the 19th Century traditions of law school pedagogy. This problem is not insulated to law. It is shared in its function in aspects of social work, especially in context of social workers who apply archaic law.¹²⁶ Development of practicable skill building for students oriented towards social justice and access to justice could be informed by including a curriculum that focuses less on hierarchy and more on skills based learning in clinics and community outreach much like social work education and practice.

¹²⁵ *Kennedy, supra* note 9 at p 75.

¹²⁶ *Supra* note 8. *Gallant, supra* note 4.

LEGISLATION

Constitution Act, 1982.

Indian Act, RSC 1985 c 1-5.

Social Workers Act, SBC 2008 c 31.

JURISPRUDENCE

McIvor v. The Registrar, Indian and Northern Affairs Canada, 2007 BCSC 827.

McIvor v. Canada (Registrar of Indian and Northern Affairs), 2009 BCCA 153.

Sandra Lovelace v. Canada, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981).

SECONDARY MATERIALS: ARTICLES, THESIS AND PAPERS

Daniel Gallant, *A "Former" Perspective: An Exploration of the Disengagement Process from Violent Right Wing Extremism*, (MSW Thesis, University of Northern British Columbia Faculty of Social Work, 2014) [Prince George: UNBC].

Daniel Gallant, "band aid policies" (2015) Thompson Rivers University Faculty of Law Working Paper No. 01-15.

David Lepofsky, "Disabled Persons and Canadian Law Schools: The Right to the Equal Benefit of the Law School" (1991) 36 McGill LG 636.

Duncan Kennedy, "Legal Education as Training for Hierarchy" (1982) 32:591 Journal of Legal Education at 54.

Ian Gallacher, "Thinking like Nonlawyers: Why Empathy is a Core Lawyering Skill and Why Legal Education should Change to Reflect its Importance." (2011) 8 JALWD online:
<<http://ssrn.com/abstract=1933473>>

Jane Aiken & Stephen Wizner, "Law as Social Work" (2003) 11 Wash UJL & Pol'y 63.

Jessie King, *The Identity Enigma: Denial of First Nation's women's right to identity*, (M.A. Thesis, UNBC Faculty of Arts, 2011) [Prince George: UNBC].

John Borrows, "(Ab)Originalism and Canada's Constitution" (2012) 58 Supreme Court Law Review.

Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.* in Susan Carle, *Lawyers' Ethics and the Pursuit of Social Justice: A Critical Reader* (New York: NY Press 2005).

Lynette Parker, "Increasing Law Student's Effectiveness When Representing Traumatized Clients: A case study of the Katherine & George Alexander Community Law Center" (2007) Santa Clara School of Law Working Paper No. 07-31.

Patricia Monture-Angus, "Ka-nin-geh-heh-gah-e-sa-nonh-yah-ga" (1987) 2 Can J Women & Law 157-171, online:
<<http://www.heinonline.org.ezproxy.tru.ca/HOL/Print?collection=journals&handle=hein.journals/cajwol2&id=177&print=section§ion=15&ext=.pdf>>

Sarah Buhler, "Skills Training in Clinical Legal Education: A Critical Approach" (2011) Canadian Legal Education Annual Review at 1-20. online: <<http://ssrn.com/abstract=2088224>>

Sarah Buhler, "Journeys to 20th Street: The inner city as critical pedagogical space for legal education" (2009) Dalhousie Law Journal at 381-416. online: <<http://ssrn.com/abstract=2078557>>

Sarah Buhler, "Painful Injustices: Encountering social suffering in clinical legal education" (2013) Clinical Law Review. online: < http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2131501>

Shiri Pasternak, Sue Collis, & Tia Dafnos, "Criminalization at Tyendinaga: Securing Canada's Colonial Property Regime through Specific Land Claims" (2013) 28 CJL&S 65-81.

Shin Imai, "Counter-Pedagogy for Social Justice: Core Skills for Community Lawyering" (2002) 9 Clinical Law Review at p 195. online: <<http://ssrn.com/abstract=1271452>>

Steven Berenson, "Preparing Clinical Law Students for Advocacy in Poor People's Courts" (2013) 43:363 New Mexico LJ at 363.

Wendy Flanagan, *Cultural Studies: The silenced or courageously loud sister of social work* (MSW Thesis, UNBC Faculty of Social Work, 2011) [Prince George: UNBC].

Willie Ermine, "The Ethical Space of Engagement" (2007) 6:1 Indigenous Law Journal.

SECONDARY MATERIALS: BOOKS

Antonin Scalia & Bryan Garner, *Making Your Case: The Art of Persuading Judges* (USA: West Publishing, 2008).

Albert Memmi, *The Colonizer & The Colonized*, (USA: Orion 1965).

Bell Hooks, *Teaching Community: A pedagogy of hope*, (London: Routledge 2003).

Bob Mullaly, *Challenging Oppression and Confronting Privilege*, (New York: Oxford, 2010).

Derald Wing Sue, *Overcoming Our Racism*, (USA: Jossey-Baas 2003).

D. Neu & R. Therrien, *Accounting for Genocide: Canada's bureaucratic assault on aboriginal people* (Nova Scotia: Fernwood 2003).

Francis Turner, *Social Work Practice: A Canadian Perspective* 2nd ed (Canada: Prentice Hall, 2002).

Fyre-Jean Graveline, *Healing Wounded Hearts*, (Canada: Fernwood, 2004).

Fyre-Jean Graveline, *Circle Works: Transforming Eurocentric consciousness*, (Canada: Fernwood, 1998).

Heewon Chang, *Autoethnography as Methodology* (CA: Left Coast Press, 2008).

Howard Adams, *Prisons of Grass: Canada from a native point of view*, (Saskatoon: Fifth House 1989).

Joanne Archibald, *Indigenous Storywork*, (Vancouver: UBC Press, 2008).

Joshua Ben David Nichols, *End(s) of Community: History, Law, Sovereignty and the Question of Law*, (Waterloo: Wilfred Laurier Press 2013) at ch 1.

Leanne Simpson & Kiera Ladner, *This is an Honour Song: Twenty years since the blockades*, (Winnipeg: Arbeiter, 2010).

Lon Fuller, *The Morality of Law: Eight ways to fail to make law & consequences of failure* (New Haven: Yale University Press 1969) at p 33-37, 38-40.

M. Foucault, *Space, Knowledge and Power: Foucault and Geography*, (Britain: TJ International 1971).

M. Kimmel, *Gendered Society* (New York: Oxford 2010).

Marie Battiste, *Reclaiming Indigenous Voice and Vision*, (Vancouver: UBC 2000).

J.S. Milloy, *A National Crime* (Manitoba: U of M 2000).

Norman Denzin, *The Qualitative Manifesto: A Call to Arms*, (CA: Left Coast Press, 2010).

Norman Denzin, *Performance Ethnography: Critical pedagogy and the politics culture*, (CA: Sage, 2003).

Paulo Freire, *Pedagogy of the Oppressed*, (London: Penguin 1993).

Paulo Freire, *Pedagogy of the Heart*, (New York: Continuum, 1997).

Robert Mullaly, *The New Structural Social Work* (3rd ed.), (Don Mills: Oxford, 2007).

S. Grammond, *Identity captured by law* (Montreal, McGill University Press, 2009) at c 3-4. [Grammond]

W. K. Carroll, *Organizing Dissent: Contemporary social movements in theory and practice*, (Toronto: U of T Press 1997) at p 33.

SECONDARY MATERIALS: REPORTS, POLICY AND SERVICES

ARCH Disability Law Centre, *Disability Law Primer*, (Ontario: ARCH 2013).

BC College of Social Workers, “Code of Ethics and Standards of Practice” (21 November 2015), BCCSW (website), online <<http://www.bccollegeofsocialworkers.ca/registrants/code-of-ethicsstandards-of-practice>>

Canadian Bar Association, (2010) *Bill C-3 – Gender Equity in Indian Registration Act*. online: <<https://www.cba.org/CBA/submissions/pdf/10-21-eng.pdf>>

The Law Society of British Columbia, “Lawyers with Disabilities: Overcoming Barriers to Equality”, (Vancouver: LSBC 2004).

The Law Society of British Columbia, “Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Term January 1, 2011 to December 31, 2011”, (Vancouver: LSBC 2012).

The Law Society of Upper Canada, “Students and Lawyers with Disabilities: Increasing access to the legal profession”, (Ontario: LSUC 2005).

Law Society of British Columbia, “Professional Conduct Handbook” at ch 2 s3: “A lawyer has a special responsibility to respect the requirements of human rights laws”. online: <<https://www.lawsociety.bc.ca/page.cfm?cid=1028&t=Professional-Conduct-Handbook-Chapter-2-Integrity>>

Legal Information Service attends *Project Homelessness* event at *Spirit Square* in Kamloops, BC, October 16th 2015 at 12:00 – 4:00 PM.

Thompson Rivers University Faculty of Law - *Legal Information Service* – hours of operation: Fridays, 3:00 – 5: 00 PM in the Old Main Building in room #4613, online: < http://www.tru.ca/law/current-students/Community_Outreach/clinical.html>

Truth and Reconciliation Commission of Canada, *Final Report of the Truth and Reconciliation Commission of Canada Volume One: Summary: Honouring the Truth, Reconciling for the Future* (Toronto: Lorimer, 2015).

Tuula Heinonen & Len Spearman, *Social Work Practice: Problem solving and Beyond* 3rd ed (Canada: Nelson, 2010).

SECONDARY MATERIALS: NEWS, WEBSITES AND BLOGS

Daniel Gallant, “Scholars From The Underground” (November 20, 2015), SFTU Press (blog), online: < <http://scholarsfromtheunderground.com>> [SFTU]

Daniel Gallant, “The Two Row Wampum is a History to be Honored, Not Abused”, *Two Row Times* (11 February 2015). online: <<https://tworowtimes.com/opinions/opinion/two-row-wampum-history-honored-abused/>>

Extreme Dialogue, “Extreme Dialogue” (2015), Institute for Strategic Dialogue (website resource), online: <<http://extremedialogue.org>>

Janet Guttsman, “Re-inventing the Legal Wheel: Thompson Rivers University law course looks at legal challenges ahead”, *Canadian Lawyer* 10:1 (Fall 2015) at 8-11.

Jennifer Ditchburn, “Because it's 2015': Trudeau forms Canada's 1st gender-balanced cabinet: Women will hold 15 of 31 posts compared to 12 of 39 under Conservatives” (November 6 2015), CBC (website), online: <<http://www.cbc.ca/news/politics/canada-trudeau-liberal-government-cabinet-1.3304590>>

John Paul Tasker, “Residential Schools Findings PPoint to ‘Cultural Genocide,’ Commission Chair Says” *CBC* (29 May 2015) online: <<http://www.cbc.ca/news/politics/residential-schools-findings-point-to-cultural-genocide-commission-chair-says-1.3093580>>

Sean Fine, “Chief Justice Says Canada Attempted ‘Cultural Genocide’ on Aboriginals”, *Globe & Mail* (28 May 2015) online: <<http://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/>>

UCLA Professor, Dr. Greg Graffin Lyrics for Bad Religion song *Against the Grain* (1990).