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Published in:
Alternative Law Journal

DOI:
[10.1177/1037969X18823563](https://doi.org/10.1177/1037969X18823563)

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Recommended citation(APA):
Stevenson, L. (2019). Clinical programs, social justice and transformation through student learning. *Alternative Law Journal*, 44(3), 232-237. <https://doi.org/10.1177/1037969X18823563>

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Clinical Programs, Social Justice, and Transformation through Student Learning

Law students at Australian universities have played an integral role in ensuring social justice for vulnerable people before the legal system for more than 40 years. Through Clinical Legal Education (CLE) and Pro Bono programs students have gained a deeper awareness of the strengths and weaknesses of our legal system while also experiencing practical application of the law. For some students, this type of learning can result in a transformation of their views on social justice, ignited by an exposure to injustices in the legal system that are predominately experienced by the most vulnerable members of Australian society. This article asserts that CLE programs with a focus on assisting middle income Australians may not provide the necessary environment for transformative learning, unlike programs in which students assist lower income clients.

Since the first CLE program started in 1971, student clinics have grown in popularity and there are now 26 Australian Universities that provide clinical opportunities.¹ Most university CLE programs have the dual objective of providing legal services to those most in need while at the same time providing law students with invaluable experiential learning. In the last five years, with the growth in interest in experiential learning, CLE programs have further diversified, expanding both the type of assistance they offer and their clientele, sometimes beyond demographics traditionally regarded as those in need of free legal assistance.

During this same time, several reports have highlighted the fact that many middle income Australians are no longer able to afford representation for most legal matters before the courts.² However, the current system is geared to assist only the rich or the very poor. The rich can afford representation; the government provides the poor with representation through legal aid. But the ‘missing middle’ can be left under served. This article adopts the definition of missing middle provided by the Centre for Innovative Justice: ‘people whose income is sufficient to exclude them from a grant of public or pro bono legal assistance, yet insufficient to fund a team of private lawyers.’³

This article explores the idea of using CLE programs to help the missing middle and the resulting impacts on society and on the students involved. First, it identifies CLE programs that are already assisting middle income Australians. Second, it considers how providing services to small businesses and to people who may be considered middle income, but who are not the most vulnerable, impacts society and whether providing such services still falls within the social justice goals of CLE. Third, it explores the educational impact on students who participate in CLE programs that assist middle income Australians as opposed to traditional social justice clinics. It examines the experiences in these programs in light of transformative theory to determine whether CLE programs aimed at assisting the missing middle benefit or detract from student understanding of barriers to justice. This article proposes that students participating in CLE programs targeting the missing middle may be

¹ Kingsford Legal Centre, UNSW, *Clinical Legal Education Guide 2016-2017* (2017)

<http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/2676%20CLE%20guide_WEB.pdf>. In addition to those courses in the guide, Curtin University offers a CLE course. 39 Australian universities currently offer a law degree.

² Productivity Commission, *Inquiry Report: Access to Justice Arrangements* Report No 72 (2014) Vol 2, 639-40.

³ Centre for Innovative Justice, RMIT, *Affordable Justice – a pragmatic path to greater flexibility and access in the private legal services market* (October 2013) <<http://mams.rmit.edu.au/gr7u4uejwols1.pdf>>.

foregoing an opportunity to have the transformative experience that is offered only by CLE programs aimed at assisting society's most vulnerable people.

This article asserts that while new and innovative CLE programs, such as entrepreneur assistance programs created to help sections of the missing middle, are also providing benefits to universities, communities and to students, such programs do not provide a similarly stimulating environment for transformative education as compared to more traditional CLE and pro bono programs, as the newer programs do not usually expose students to adequately 'disorienting dilemmas'.

Identification of clinics that assist the missing middle

Diversity of clients, legal matters and even students, is now common at Australian university CLE programs.⁴ Initially, universities established CLE and Pro Bono programs in order to provide access to justice for only the most vulnerable members of our community at the same time as providing students with practical legal experience. The first clinics helped, and many continue to help, clients whose income fell below the poverty line. In the past 10 years the benefits of experiential learning during legal studies have received greater recognition and more universities are offering more clinical opportunities. As clinical placements become a more prominent part of legal education in Australia, the types of CLE programs set up by universities continue to diversify. And the diverse CLE programs attract a diverse range of students, such as students focusing on commercial law who might not otherwise participate in traditional clinics for low-income clients. Thus, no longer do CLE programs only focus on providing advice to the most vulnerable. In recent years, several CLE programs have been created with an emphasis on assisting the missing middle.

In this time of rapidly advancing technology, law school clinics are being created to assist clients such as the following: small commercial entities, entrepreneurs creating new technology, environmentally sustainable companies, and small internet, social-media or other technology businesses. These clinics focus on those who have some financial security, as although clients of these clinics may not be able to afford legal assistance, they are not the most vulnerable people in our society. A desktop survey of university clinics reveals three main types of CLE programs that provide services outside the traditional scope of the vulnerable client: commercial law clinics, environmental law clinics and other entrepreneurial programs.⁵

Commercial law clinics

CLE programs to assist small businesses are currently run at Bond University (Commercial Law Clinic), Curtin University (Small Business Clinic), and University of Canberra (Small Business Legal Advice Clinic). These programs are set up both as Pro Bono clinics and in the traditional CLE model, as a course. A common denominator between these programs is that

⁴ Kingsford Legal Centre, UNSW, *Clinical Legal Education Guide 2016-2017* (2017)

<http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/2676%20CLE%20guide_WEB.pdf>.

⁵ This article primarily relies on the listings included in Kingsford Legal Centre, UNSW, *Clinical Legal Education Guide 2016-2017* (2017)

<http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/2676%20CLE%20guide_WEB.pdf>. The label 'clinics' includes both Clinical Legal Education courses and Pro Bono clinics.

small businesses and Not for Profit (NFP) organisations are able to receive advice at these clinics on a range of legal concerns that impact small business. For example, Pro Bono clinics and CLE courses were created to assist those who may have enough income to start a small business but not enough income to pay a solicitor to ensure that the business is legally sound or well positioned for growth.

The Bond Commercial Law Clinic is a joint initiative of Bond University and local legal practitioners. The objectives of the Clinic are: 'to offer free legal advice as a community service initiative; to provide Bond law students with an opportunity to gain practical experience in a controlled and supportive environment under the supervision of legal practitioners and to prepare them for practice; and to provide local legal practitioners with an opportunity to engage in pro bono service.'⁶ This pro bono teaching clinic provides assistance to small businesses, NFP organisations and individuals thinking of setting up a small business. It targets clients who would not typically qualify for Legal Aid or be able to receive assistance from most community legal centres. It provides these clients with an array of commercial law advice with respect to 'issues such as business structures, leases, debt recovery, intellectual property, sale and purchase of business advice, franchising and general commercial law matters.'⁷

Like Bond, the University of Canberra, in conjunction with Legal Aid ACT, has created a clinic to advise small businesses. The Small Business Legal Advice Clinic is offered as a course for credit where students assist local legal practitioners to provide initial advice to small business operators with a legal problem or query.⁸ The Clinic provides advice on most legal areas concerning small businesses.⁹

Similarly, at John Curtin Law Clinic, which commenced in 2017 with the objective of providing legal aid to small businesses, students gain credit towards their degree by assisting local small Western Australian businesses with legal issues. According to the Clinic's half-year report, the Clinic 'gives clients access to advice and remedies on which their businesses depend and which they could not otherwise afford. In a very short time ... students have achieved tangible results for indigent small businesses who would otherwise have had no recourse or relief from injustice.'¹⁰

Environmental law clinics

Several Universities have established environmental law clinics. While these clinics for the most part provide advice to small businesses, they can be distinguished from the commercial law clinics described above not only by the types of client legal concerns, but also because these clinics aim to benefit the greater community by encouraging environmental

⁶ Bond Law Clinic, Bond University, *About the Bond Law Clinic* <<https://bond.edu.au/about-bond/facilities-services/services/bond-law-clinic>>.

⁷ Francina Cantatore, 'Boosting Law Graduate Employability: Using a Pro Bono Teaching Clinic to Facilitate Experiential Learning in Commercial Law Subjects' (2015) 25 (1) *Legal Education Review* 147, 161.

⁸ Legal Advice Clinic for Small Businesses, University of Canberra, *Do you need legal advice about a business matter* <<https://www.canberra.edu.au/about-uc/faculties/busgovlaw/about-us/school-of-law/legal-advice-clinic-for-small-business>>.

⁹ *Ibid.*

¹⁰ John Curtin Law Clinic, *Half Year Report for the period ending 30 June 2017* <<https://businesslaw.curtin.edu.au/wp-content/uploads/sites/5/2017/08/JCLC-Half-year-report-ending-30-June-2017.pdf>>.

sustainability. In other words, these clinics only assist small businesses and NFP organisations that are endeavouring to have a more positive impact on the environment. In these clinics, students are potentially exposed to a broad area of the law, including: environment law, planning law, contract law, property law and corporate governance law.

An example of this model is the University of Melbourne Sustainability Business Clinic. In this CLE subject, juris doctor students are paired with ‘small, start-up community and social enterprises that work in the public interest to improve environmental wellbeing.’¹¹ Some examples of the clients advised through this program are community wind farms, neighbourhood urban renewal projects, green energy co-operatives and transport sharing initiatives.¹²

Other models of environmental law clinics, such as those at Australian National University and the University of Queensland, work with a local Environmental Defender’s Office (EDO) to provide services to the missing middle. With the assistance of students, EDOs offer free legal advice to individuals, environmental organisations and community groups seeking to protect the environment in the public interest ACT environmental law matters.¹³ In addition, the Public Interest Environmental Law Clinic at the University of Newcastle ‘offers members of the community free legal advice on environmental law matters of public interest.’¹⁴

Environmental law clinics provide assistance to clients who are small businesses, NFP organisations and specific individuals; thus clients who often do not fall within the traditional scope of a social justice clinic. However, due to the inherent focus of environmental law clinics on the greater community and sustainable development, these clinics are innately considered to promote social justice.

Entrepreneurial clinics including Law Apps

A number of innovative clinics have commenced in the last three years as a response to developing technology. Students and their supervisors now assist entrepreneurs to develop legally sound technology. For example, the University of Melbourne offers a Law Apps course providing assistance to Not for Profit organisations. In Law Apps, students are provided ‘a unique opportunity to explore and apply the potential of artificial intelligence to provide practical solutions to common legal problems ... in the not-for-profit sector.’¹⁵

Based on the diverging interests of the above described CLE programs from traditional programs, there is concern that the focus of these clinics is primarily on students gaining practical experience and less on giving back to the most vulnerable in society. However, in this era of legal ambivalence towards middle income Australians, many of these clinics are picking up the slack and assisting those who are not necessarily the *most* vulnerable, but who still have legal issues that they would not be able to resolve on their own.

¹¹ Sustainability Business Clinic, The University of Melbourne, *What is Sustainability Business Clinic* <<https://law.unimelb.edu.au/students/jd/enrichment/pili/subjects/sustainability-business-clinic>>.

¹² Ibid.

¹³ Environmental Defenders Office, *Get Advice*, <https://www.edoqld.org.au/get_advice>.

¹⁴ University of New Castle, *LAWS 6029 Social Justice / Public Interest Law Clinic* <<https://www.newcastle.edu.au/course/LAWS6029>>.

¹⁵ University of Melbourne, *Law Apps* <<https://law.unimelb.edu.au/students/jd/enrichment/pili/subjects/law-apps>>.

Providing legal services to the missing middle addresses a societal need and thereby contributes to social justice

Social justice aims to make unjust social circumstances more equitable. In use the term is often interchangeable with access to justice and is associated with actions taken in the public interest. From the beginning, CLE has been linked to the promotion of social justice.¹⁶ Objectives of CLE programs consistently include providing equitable outcomes for clients. However, no single definition of ‘social justice’ is used by CLE programs and different programs have distinct social justice aims. The definition of social justice accepted by this article is the following: providing access to justice for disadvantaged members of society. This article acknowledges that clinics aimed primarily at assisting the missing middle address a recognized social need and as such promote social justice.

Over the last five years, several reports have highlighted a growing inability for middle income Australians to access the justice system. The Centre for Innovative Justice (CIJ) explained that ‘[f]or a great many in the Australian population, the prospect of seeking professional help to resolve a civil legal problem can be too costly to contemplate.’¹⁷ The Productivity Commission Report of 2014 confirmed this finding, dedicating an entire chapter to the plight of the missing middle, concluding that the legal system is ‘out of reach to all but those with either the greatest, or the least, economic resources.’¹⁸ This impacts small businesses who often find the costs of legal representation to be unaffordable. For example, the average cost of legal advice and representation for small businesses using Victoria’s Civil and Administrative Tribunal is over \$8000.¹⁹ Such costs are prohibitive for many small businesses and result in a system that is not accessible to many parties in need. Further, Community Legal Centres are usually unable to address this need and assist the missing middle as their funding agreements require that at least 90 percent of their representative services are to people experiencing *financial disadvantage*.²⁰

Commercial law clinics, environmental law clinics and entrepreneurial clinics assist small businesses, not for profit organisations, and individual entrepreneurs. These clients often fall in the middle income bracket and as such form a subsection of the missing middle. Without the assistance of CLE programs, these clients do not have adequate access to our complex legal system. As the Productivity Commission reflected, ‘a well-functioning [legal] system ... gives people the confidence to enter into business relationships, to enter into contracts, and to invest.’²¹ By responding to a societal need to assist small businesses with their legal matters, CLE programs are providing a public benefit and stimulating the Australian economy.

¹⁶ Adrian Evans et al, *Australian Clinical Legal Education: designing and operating a best practice clinical program in an Australian law school* (ANU Press, 2017) 97.

¹⁷ Centre for Innovative Justice, RMIT, *Affordable Justice: a pragmatic path to greater flexibility and access in the private legal services market* (October 2013) 7 <<http://mams.rmit.edu.au/qr7u4uejwols1.pdf>>.

¹⁸ Productivity Commission, above n 2, 40.

¹⁹ Productivity Commission, *Inquiry Report: Access to Justice Arrangements* Report No 72 (2014) Vol 1, 14.

²⁰ Council of Australian Governments, *National Partnership Agreement on Legal Assistance Services 2015-2020* (2017) 6 <<https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Pages/National-Partnership-Agreement-on-Legal-Assistance-Services.aspx>>.

²¹ *Ibid* 6.

One can conclude that by enabling part of the missing middle to access a complex legal system, these programs foster social justice and have a positive effect on Australian society. Through participating in these CLE programs, students are exposed to the current failings in a legal system that is inaccessible for a large proportion of Australian society. However, it is unclear whether students involved in these clinics benefit in the same manner as those involved in more traditional clinics that assist the most vulnerable members of society.

The educational transformation of students who participate in legal clinics that assist the middle class as opposed to more traditional social justice clinics

CLE programs provide a range of benefits to students. For many students, clinics provide their first opportunity to assist real clients with real legal issues. This enables students to draw connections between legal doctrine taught in the classroom and its application in practice. Students develop practical legal skills and even enhance their CVs. For some students, their clinic experience is eye opening and life changing. That is the result of transformative learning;²² a student's focus is shifted from the acquisition of knowledge and legal skills to the transformation of oneself. The result is a shift in perspective to one that is more open and better justified.²³ It is useful to consider Mezirow's transformative learning theory to examine whether all CLE programs provide the necessary environment for transformative learning to take place.

Transformative learning theory is rooted in the concept that each person has a unique interpretation of their experiences. Certain experiences, if reflected upon and critically analysed, are likely to challenge a student's prior perceptions, providing an opportunity for deeper understanding and better-justified views. Under the right circumstances, and with adequate support and guidance, students may be given the opportunity to identify, contest and amend preconceived ideas and make decisions to act upon their new understanding.²⁴ According to Mezirow, prior to perception transformation, a learner must experience a disorienting dilemma.²⁵ Disorienting dilemmas challenge student thinking. After such an experience, in order for transformative learning to take place, students must be encouraged to critically analyse their current assumptions to determine if their worldview is accurate.²⁶ Therefore, transformative learning has three principal components: a disorienting dilemma, perspective transformation and critical reflection (including critical self-reflection).²⁷ A focus on disorienting dilemmas is all that is required for the purposes of this article, as the other two components are reliant upon a learner experiencing a disorienting dilemma.

A disorienting dilemma occurs when a learner experiences the world in an unexpected way. Disorienting dilemmas have been described as *trigger events*. These include: ill health, separation or divorce, death of a spouse, life shattering occurrences such as natural disasters, or other experiences that challenge one's social meanings.²⁸ Disorientation triggers a

²² Jack Mezirow, *Transformative Dimensions of Adult Learning* (Jossey-Bass, 1991) 169-70.

²³ Jack Mezirow, 'Understanding Transformation Theory' (1994) 44(4) *Adult Education Quarterly* 225.

²⁴ Jack Mezirow et al, *Fostering Critical Reflection in Adulthood* (Jossey-Bass 1990).

²⁵ Mezirow, above n 22, 168-169.

²⁶ Michael Christie et al, Putting transformative learning theory into practice (2015) 55 (1) *Australian Journal of Adult Learning* 11.

²⁷ Michael Christie et al, 'Jack Mezirow's conceptualisation of adult transformative learning: A review' (2014) 20 (1) *Journal of Adult and Continuing Education* 129.

²⁸ Jack Mezirow, above n 22, 169-70.

doubting process in which existing *meaning perspectives* are found to be inadequate;²⁹ the right experience heightens the learner's awareness of these inadequacies. And such disorientation can result in transformative education having inherent value that provokes 'personal transformation that inevitably will influence social, cultural, and political life.'³⁰

Therefore, to determine whether all types of CLE programs are transformative, it is useful to ask whether students are exposed to disorienting dilemmas in all types of CLE programs; such exposure will depend primarily on the type of clients assisted by each clinic and whether, in assisting these clients, students' initial perceptions and social meanings are challenged. More traditional CLE programs with a primary focus on social justice assist indigent or lower income clients or target a particularly vulnerable group of society such as youth or refugees. Destitute clients, and those with particular vulnerabilities, often experience an array of issues that are not experienced by other groups of clients, and their legal concerns are frequently compounded by social and health concerns.³¹ For example, a homeless client may be more concerned about where he is going to sleep on a given night than he is about turning up to court because of outstanding parking fees. According to the Legal Access report, the most vulnerable Australians are much more likely to have complex legal issues.³² Students assisting vulnerable clients in a CLE program are often confronted by these types of hardship for the first time. Reading about domestic violence, for example, is very different than sitting across the table from a woman who has experienced domestic violence and becomes distressed when telling her story. Similarly, students' perceptions of a fair and accessible legal system will be challenged by the client who unknowingly received overpayments from Centrelink and is having to repay debt to the government at a time when she is finding it hard to put food on the table.

While clinics that assist small businesses, not for profits and other entrepreneurs fill a needed gap in our legal system, I would argue that they do not provide students with the disorienting dilemmas that are necessary for transformative learning. In most cases, it is unlikely in such clinics that interactions with clients would create an environment that substantially challenges students' current perspectives. Although students may be surprised that their clients are not able to afford legal assistance, such experiences are unlikely to trigger doubts in students' perceptions of the legal system and thus their *meaning perspectives* will remain intact. On the other hand, students assisting, for example, indigent people with multifaceted legal and social issues will frequently find their perspectives challenged, and if they are encouraged to critically reflect on these experiences, the students may transform their personal perspectives through rational consideration. Clark contends that such learning 'shapes people; they are different afterwards, in ways both they and others can recognise'.³³

In conclusion, while innovative CLE programs created to assist sections of the missing middle are providing benefits to universities, communities and to students, I believe that they do not provide an environment for transformative education as they do not usually expose students to disorienting dilemmas.

²⁹ Ibid 177 citing R. Keane, *The Experience of Doubt and Associated Learning in Religious Men* (Unpublished PhD thesis, University of Toronto, 1985).

³⁰ Mezirow, above n 22, 189.

³¹ Christine Coumarelos et al, *Legal Australia-Wide Survey: legal need in Australia* (Law & Justice Foundation of New South Wales, 2012) xvii.

³² Ibid xviii.

³³ Michael Christie et al, above n 27, 120, quoting CM Clark, 'Transformative Learning' in SB Merriam (ed), *An Update on Adult Learning Theory* (Jossey-Bass, 1993).