

CLIENT-CENTERED HUMAN RIGHTS ADVOCACY

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Human rights advocates are at risk of essentializing and re-victimizing the beneficiaries of their own human rights advocacy, or so critics argue. This article looks at human rights advocacy and the merits of client-centered lawyering as opposed to cause lawyering in the human rights context. In this article, the author both acknowledges the validity of and responds to arguments put forward by human rights critics, in which they admonish human rights activists that they are at risk of Western Imperialism in both the selection of their causes and the strategies they use to move their advocacy forward. The author describes client-centered human rights advocacy, particularly as it is being taught and practiced in law school clinics. The author responds to the critics by asking them to consider whether human rights advocacy as practiced when centered in the real needs of a real client, or "client-centered human rights advocacy" would escape some or all of their criticism. Finally, in acknowledging those parts of the human rights critiques with which the author agrees, she concludes that human rights practitioners, and particularly human rights clinicians, must be rigorously reflective, in particular when taking on particular human rights cases, and must consider the benefits of centering their advocacy in the goals and needs of a real client, as opposed to an issue.

OVERVIEW

At a conference I attended in Europe, a human rights critic and critical race feminist delivered a talk in which she cautioned human rights advocates to avoid re-victimizing their clients in presenting what she called "The Victim Story." She posited that unreflective human rights advocates were selling short the subjects of their own advocacy, women subjects in particular, by reducing them to the state of "victim subject." Her point, which has been expanded upon by several other human rights critics from a

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feminist and critical race perspective,¹ was that human rights advocates were essentializing the subjects of their own campaigns.

In part, she implied, advocates essentialized their subjects because they could not help doing so. Advocates centered in the privileged West, or even advocates who were members of the privileged classes of the victimized persons' own culture could have no proper conception of the persons on behalf of whom they advocated.² She also observed that advocates should be careful of what narratives they use when telling the stories of those abused, as by telling any victim story they risk furthering the "victim subject" paradigm. Her particular critique concluded with the advice that human rights advocates simply could not be reflective enough, and thus risked re-victimizing the very people whom they hoped to protect.

Some human rights advocates have reacted to this type of critique by dismissing it entirely as insulting or "extremist." Human rights advocates have become accustomed to responding to cultural relativist arguments, in which the apologist for the practice (a society that practices female genital mutilation, for example) insists that the practice is not a human rights abuse, but rather a cultural practice that is not being respected by westerners or people unfamiliar with their ways. Likewise, some human rights advocates have reflexively dismissed as ridiculous an argument that suggests that the lawyer should be as mindful of not essentializing the subject (or object) of her human rights advocacy as she is of successfully eradicating the human rights abuse in question. Rather than dismiss

¹ See, e.g., Jacqueline Bhabha, "More Than Their Share of Sorrows": *International Migration Law and the Rights of Children*, 22 ST. LOUIS U. PUB. L. REV. 253, 266 (2003); Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INTL. L.J. 201 (2001).

² Implied by the scholar at this conference, it is Makau Mutua who overtly makes the claim that advocates are too often too distant (geographically, economically, culturally) to truly understand those on behalf of whom they advocate. See generally, Mutua, *supra* note 1.

the argument, however, in this article I attempt to identify meritorious aspects of this critique and those like it, in order to examine whether our human rights advocacy can be enhanced through awareness of and sensitivity to these admonishments. I conclude that it can, and that in fact, via client-centered human rights lawyering in human rights clinics in particular, we can most effectively attune law students to the validity of much of the critiques.

With the expansion of human rights advocacy into standard legal discourse and practice, scholars and practitioners alike have been grappling with the complexities of addressing human rights concerns within the legal system. The sheer breadth of potential issues involved in the practice of human rights advocacy is astonishing. The rights and forums in which they can be addressed are international, regional and domestic, and the parties with standing to bring the cases can be equally broad. At the heart of the theoretical discourse has been a quintessential question – how, or whether, culture and group identity play out against abuses of human rights. In an attempt to discern the issues that are truly at stake, scholars have addressed the problem by deconstructing particular human rights issues from the perspective of feminist theory, multiculturalism, and critical race theory. They critique the arguments made and actions taken by those who advocate that a human rights abuse has occurred.³

Meanwhile, in the arena of clinical legal education, international human rights law clinics have begun to gain ground in law schools. Among human rights clinics,

³ A popular issue to look at, for instance, is “female genital mutilation,” or “female circumcision” [FGM]. See, e.g., Karen Engle, *Female Subjects of Public International Law: Human Rights and the Exotic Other Female*, 26 NEW ENG. L. REV. 1509 (1992); David Fraser, *The First Cut Is (Not) The Deepest: Deconstructing “Female Genital Mutilation” and the Criminalization of the Other*, 18.7 DALLHOUSIE LAW JOURNAL 310 (1995); Isabelle R. Gunning, *Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RIGHTS L. REV. 189 (1992).

different models, methodologies and intake procedures are employed depending upon many factors, including and most importantly, the ultimate goal of the clinic – for instance, whether to offer students an opportunity to represent a client or to allow students to work on a human rights issue. Many clinics, but among them a very small number of human rights clinics, emphasize “client-centered lawyering,” a set of practice skills and techniques applied in clinical law teaching that asks students to center their work around the goals, needs and expectations of the client.

Client-centered lawyering, and the practices inherent in it, can respond to some of the concerns that human rights critics have about human rights advocacy. Client-centered advocacy alone will not resolve all of these concerns, but a client-centered model offers a stronger methodology for teaching students good human rights lawyering habits than does an issue-based model. Some of the human rights critics have legitimate critiques, and advocates can better avoid the errors highlighted by the critics when centering human rights practice in the real problems of a real person who has the ability to make choices about how to tell the story and pursue the advocacy.

INTRODUCTION

In her 1992 article, “Female Subjects of Public International Law: Human Rights and the Exotic Other Female,” Karen Engle asks how it would be possible for human rights advocates, to “move beyond merely imagining” this Exotic Other Female,⁴ to truly

⁴ Engle, *supra* note 3 at 1512. Although Engle defines her Exotic Other Female specifically as “collectively those women within a culture that practices clitoridectomy [FGM] who through their action (or inaction) condone the practice,” Kapur and others, like Isabelle Gunning, broaden the Other to anyone whose conception of a human rights norm is different than our own, because of her culture, religion and world view. “The Other,” says Gunning, explaining the feminist concept of ‘arrogant perception,’ “is unlike me,” and “othering” or “differencing” is setting up the classic construct of “Us” and “Them.” Gunning, *supra* note 3 at 199.

engaging her when we advocate. However, when we advocate with her, directly on her behalf, through a client-centered, lawyer-client relationship, we can truly engage her.⁵

Both the human rights critic and the client-centered human rights lawyer would likely agree that the victim of a human rights abuse should have agency in determining how or whether to address her human rights violation. Bolstering that agency is central to client-centered lawyering. The critic at the particular conference I referred to above was absolutely correct when she admonished advocates to “be reflective,” in their practice. Yet perhaps her guidance could be more specific, more nuanced and more helpful if she understood more about client-centered lawyering and human rights clinical education. Critics of human rights work point out some legitimate problems within human rights advocacy, and a client-based human rights program might begin to solve some of those problems.

Part One of this article describes human rights advocacy, and summarizes some of the critiques of it. Part Two provides an overview of client-centered lawyering, and describes how it might be employed within the human rights advocacy context. Part Three presents cases in which law students struggle with some of the very issues the critics raise, within the context of client representation. Most of these cases will be described in the context in which they took place -- students in a human rights clinic working through these issues in supervision meetings with a clinical law professor. Part Four summarizes both the value and difficulties inherent in a client-centered model of human rights advocacy, and offers some recommendations and conclusions regarding lessons theorists and practitioners have to learn from each other.

⁵ It is also worth noting that when we engage her, the interaction itself shapes and changes her, as it shapes and changes us. This thread will be picked up later in this article.

I. WHAT IS HUMAN RIGHTS ADVOCACY?

Human rights law is a very broad field and, particularly within the clinical context, relatively new. Thus definitions differ depending upon whom you ask.⁶ One human rights clinic director trying to make the very point that human rights advocacy can be many things, not necessarily or even likely resulting in litigation, defined human rights advocacy as,

[possibly] legal (e.g., impact litigation, legal assistance and counseling, or legislative advocacy), but much human rights work is also non-legal, such as community education, media outreach, fact-finding, and reporting. Human rights advocacy is accomplished by a wide variety of organizations, including traditional legal aid groups providing legal assistance, public defender offices, human rights NGO's, issue-focused NGO's, constituency-based NGO's, and law school clinics. In fact, relatively little of what human rights lawyers actually do looks like traditional legal practice.⁷

Human rights law derives from many sources, including: international laws (UN Charters and protocols, customary international law), regional laws (European Convention on Human Rights, the Charter of the Organization of American States, the African Charter on Human and People's Rights, treaties), and domestic laws (constitutions, statutes). The potential issues are vast in scope: discriminatory practices, genocide, forcible relocation, persecution, torture, religious oppression, human trafficking, lack of representation in government, lack of due process, access to land and

⁶Henry Steiner, in the Introduction from *The Role of the University in the Human Rights Movement*, an Interdisciplinary Roundtable held at Harvard Law School, in September 1999, described the universal human rights movement as "far younger in its reach, powers, and commitments than its formal half century of existence since the Universal Declaration might suggest. It is not surprising then that universities' interest in human rights through courses, research, clinical work, programs and centers gathered momentum only as the movement expanded and grew in prominence, partly through the embedding of human rights discourse in legal argument, moral debate, internal politics, diplomacy and international relations." Henry Steiner, *Introduction to THE ROLE OF THE UNIVERSITY IN THE HUMAN RIGHTS MOVEMENT, AN INTERDISCIPLINARY DISCUSSION HELD AT HARVARD LAW SCHOOL SEPTEMBER 1999* 7-8 (Harvard Law School Human Rights Program 2004) [hereinafter *The Role of the University*].

⁷Deena Hurwitz, *Lawyering for Justice and the Inevitability of the International Human Rights Clinics*, 28 YALE J. INTL. L. 505, 513 (2003).

natural resources – just to name a few. The forums in which the issues can be addressed are global in nature, and the rules governing standing are broad.

The arena is global and can be overwhelming. The breathtaking scope of potential human rights issues itself accounts for some of the tension between the advocates and the critics. The advocates fear for victims of all sorts of abuse, all over the world, while the critics fear that human rights law allows advocates to interfere in other people's business all over the world. In fact, however, most human rights advocates would also consider themselves human rights critics, in that all are interested in "best practices" in human rights advocacy, and are more than willing to improve upon them.

In addition to broad content and a multitude of forums in which human rights cases can be brought, there are also a multitude of human rights advocacy organizations and institutions engaged in a wide variety of practice. Some report on human rights abuses, thematically or by region. Sometimes they are reactive, responding to a particular plea for assistance or a request for an intervention. The request might come from the person being abused, from a third party observer, or from another organization or local NGO. Others are proactive, offering recommendations for improvement to particular governments or organizations. Sometimes those recommendations are solicited and more often they are not. Some organizations are well-known for being "watchdogs" for particular abuses or particular regions. Sometimes the reporting on a particular theme or country is selected based on a perceived need of the reporting organization to follow an issue, and sometimes it is based, at least in part, on what issues are currently considered "sexy" or well-funded.

To further complicate matters, a human rights clinic has several options about whom to represent: it could choose to operate like an NGO in terms of its advocacy procedures and content; the clinic could accept an NGO as its client; or it could consult with and use the NGO's as experts to help support the advocacy. There is no bright-line reason why a client-centered human rights clinic could not accept an NGO as its client, to promote the NGO's agenda. However, the further away the client and the advocate are (both figuratively and literally) from the persons suffering the abuse, the greater the risk for essentializing those suffering the abuse, and the greater the risk of engaging in Western Imperialism – two of the primary and valid critiques put forward by the critics, as will be discussed below.

A fundamental tension in human rights advocacy persists between cultural relativism and universality, despite some very good arguments as to why this dilemma is a false one.⁸ The question: Is there such a thing as a universally accepted human right or are all rights relative to culture and cultural practice?⁹ Should it be legally acceptable in some parts of the world to restrict marriage? To limit travel? To ban women from government jobs? To discriminate on the basis of class or gender or race or sexual orientation? And should a cultural acceptance of these practices trump a claim that they abuse the human rights of an individual within that culture? Does law follow the dictates of culture and religion?

Acknowledging that anthropologists have been grappling with this problem for years, Isabella Gunning asks the question in a slightly different way, “Can one be respectful of other perspectives or cultures and still be critical? . . . Are there ‘universally

⁸ See, e.g., Leti Volpp, *Feminism Versus Multiculturalism*, 101 Colum. L. Rev. 1181 (2001).

⁹ See, e.g., Engle, *supra* note 3, at 1515; see also, Gunning, *supra* note 3.

valid moral beliefs and right and wrong rules and modes of conduct?’ Or is universalism barely disguised ethnocentrism, a cultural imperialism – the truth being that all cultures are fine on their own terms?’ (internal citations omitted).¹⁰

Perhaps in part because of the broad range of issues and actions possible, human rights advocacy is vulnerable to a world of criticism. Some recent critiques arise from academics who come from parts of the world where human rights advocates intervene frequently. They complain, rightly, that the human rights interventions are sometimes offered without solicitation, without full awareness of and respect for the issues at play, and without benefit of consultation with knowledgeable local counterparts regarding the potential efficacy of those interventions.

A. Critiques of Human Rights Advocacy

Even though human rights lawyering is relatively new, academics -- particularly those who write and think about critical race theory, feminist legal theory, and multiculturalism -- have exposed some flabbiness, hypocrisy, and shallow thinking by human rights advocates. Juan Mendez, Executive Director of the International Center on Transitional Justice, observed, for instance, “[s]uddenly, everyone has something to say about human rights. Much of it is improvisation.”¹¹ Some of the critiques are quite scathing: that human rights activists are thoughtless, shortsighted, Anglo/Eurocentric, Western Imperialists, perpetuating colonialist stereotypes, and glorifying autonomy (which they label a Western construct) over collectivism.¹²

¹⁰Gunning, *supra* note 3, at 190 (citing Marvin Harris, *THE RISE OF ANTHROPOLOGICAL THEORY: A HISTORY OF THEORIES OF CULTURE* 13 (Thomas Y. Crowell Company 1968)).

¹¹Juan Mendez, *The Role of the University*, *supra* note 6, at 88.

¹²*See, e.g.,* Mutua, *supra* note 1.

The spectrum of criticism ranges from describing human rights advocates as privileged, and therein supposedly possessing less legitimacy to speak on behalf of those for whom they purport to advocate,¹³ to arguments that human rights advocates undersell the importance of, and fail to zealously advocate for social, cultural, and economic rights. This latter critique is found to arise from an alleged less visceral appeal to social, cultural and economic rights than does exposing abuse that produces an immediate and identifiable (and usually female) victim (such as FGM, human trafficking, and dowry deaths). These writers criticize the alleged preference of human rights advocates to perpetuate the image of the Victim Subject, and sell it to an eager public through an even more eager media.¹⁴

1. Human Rights Advocate as Western Imperialist

Makau wa Mutua, who is a law professor and director of the Human Rights Center at State University of New York at Buffalo, is also a harsh critic of human rights activism,¹⁵ equating “human rights activist” with “zealot,” and warning against the

¹³ *Id.* In an earlier comment, Mutua made the following illuminating and I think accurate comment, which may explain his later, and harsher criticism: “Much of the non-West labors mightily under the conceptual domination of the West in virtually all arenas of human endeavor. In fact, I will go so far as to say that non-Western cultures are at risk of decimation – total destruction – by the seductions of Western hegemonic thought and popular culture. And this clearly includes human rights.” *The Role of the University*, *supra* note 6 at 57.

¹⁴ See generally, Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1 (2002); Mutua, *supra* note 1. I agree with many of the critics that there is an inequitable amount of attention paid to human rights abuses involving sexuality and sexual abuse. Trafficking in human beings for sexual exploitation, death by stoning for adultery, FGM and others are the most often mentioned. Few of those who focus on these topics delve into the socio-economic factors involved in the perpetuation of the practice. Most approach the issues from a racy, journalistic perspective. During the Roundtable Discussion, *The Role of the University*, Upendra Baxi noted, accurately, I think, that the “less romantic” answer to the question as to why we are more interested in human rights today than 20 years ago is that “human rights and suffering have become a mass media commodity that serve a function in the growth of capitalistic mass media throughout the world.” *The Role of the University*, *supra* note 6 at 48.

¹⁵ At the Roundtable, *The Role of the University*, Mutua described himself as “an insider-outsider to the human rights movement”, and made a number of very interesting observations that serve to illuminate his perspective. He said, “I do not take the view that the human rights corpus is an unqualified good. It is rather an ideological experiment. There have been other ideologies – good and bad – including racism,

“religious zeal and ‘clubbiness’,” of the human rights movement.¹⁶ He harbors a special aversion to human rights NGO’s, for projecting themselves as the “moral guardians” of the “human rights corpus.”¹⁷

Human rights activism, as conceived of by Mutua, seems not to take place between a client and lawyer engaged in anything resembling client-centered lawyering, but is a one-sided, zero sum game, in which an NGO or human rights activist goes looking for an issue to poke his nose into.¹⁸ Mutua describes human rights activists as people who perceive themselves as “rescuers, [and] redeemers of the benighted world;”¹⁹ trying to rescue victims, redeem (or punish) third world aggressors and recreate both as clones of Western civilization.²⁰ In Mutua’s construct, human rights activists are journalistic-investigators who write reports exhorting the world to act or react against an atrocity, without having a full understanding of the issues at play.²¹ In Mutua’s

apartheid and colonialism that held sway in their time. Human rights is a particular historical and cultural avenue for the protection of human dignity.” *The Role of the University*, *supra* note 6, at 71.

¹⁶ Certainly, not everyone agrees with him, and some expose this perspective as, in reality, a bias of “thinkers” against “actors.” Juan Mendez states that “[t]here is a bias against activism . . . and a sense that people who are committed and politically active are probably not scholarly enough. I think this is unfortunate.” *Id.* at 70.

¹⁷ Of NGOs, Mutua stated: “As promoters of human rights, NGOs proceed from a perspective of moral certainty that, for them, is reflected in the human rights corpus itself. In fact they project themselves as the moral guardians of that corpus.” He reserved particular criticism for the role of the NGO as western imperialist. “They are based in the West and have played an influential role in setting the agenda of the human rights movement as a whole. . . . They inspire copycat organizations in the South.” *Id.* at 72.

¹⁸ See Mutua, *supra* note 1, at 201-202.

¹⁹ *Id.* at 204.

²⁰ *Id.* at 205. “The [Savage/Victim/Savior] metaphor is premised on the transformation by Western cultures of non-Western cultures into a Eurocentric prototype . . . [and] results in an “othering” process that imagines the creation of inferior clones, in effect dumb copies of the original.” *Id.*

²¹ *Id.* at 224-225. Notably, when speaking at a roundtable at Harvard in 1999, he made an exception for what he called “clinical hands-on training for students,” in advising to what extent a university should involve itself in human rights advocacy. *The Role of the University*, *supra* note 6, at 76-77. Nevertheless, the conception of “clinic” as used at that particular roundtable, as defined by Henry Steiner, was a program that based its pedagogical philosophy in “satisfying the needs of NGOs,” rather than using the law student/client as a teaching tool. *Id.* at 82. Earlier in the discussion, Steiner had noted “a broad tendency among lawyers . . . to imagine the human rights movement only as a legal movement and to comprehend it principally through tools of lawyering.” *Id.* at 44. Nevertheless, he does not mention law school clinics as an option for responding to human rights concerns “principally through tools of lawyering.” *Id.* The brief discussion of human rights clinics at this Roundtable on the Role of the University in the Human Rights

paradigm, human rights activists essentialize all parties in a human rights action, even themselves. In what he describes as the Savages/Victims/Saviors dynamic, human rights activists paint the aggressors as The Savages, the people transgressed as The Victims, and themselves as The Saviors, fighting the Savages on behalf of the Victim.²²

Although expressed with some not always fairly-directed hostility, the validity of his point could be illustrated by the world attention paid to the case of Amina Lawal. Amina Lawal is a Nigerian woman who was sentenced to death by stoning by the Shari'a Court of Appeals in a Northern Nigerian state, for the crime of adultery.²³ Although ably represented by local counsel, a female lawyer trained in Nigeria and familiar with Shari'a Law, exhortations against the sentence poured in by the millions. Counsel for Amina Lawal made a strategic decision to distance herself and her client from the international interventions, as she believed that the Court would not respond favorably to the international pressure.²⁴ The human rights interventions were not solicited, and were unwelcome. Most were undoubtedly made in a good-faith attempt to save Ms. Lawal's life. Perhaps some were interested in exposing the practice of death by stoning or criticizing the Shari'a Court for its treatment of women, but whatever the intentions of those intervening, her lawyer did not believe that the interventions would be effective, or could even backfire and encourage the court to go forward with the execution. As

Movement imagined clinic students engaged in legal research or fieldwork and information gathering by students, rather than representation of clients with human rights problems, although implicit in some of the comments was imagining the NGO as the "client" of the human rights clinic. *Id.* This dynamic will be discussed further *infra*.

²²Mutua, *supra* note 1, at 204. Writing years before Mutua, Gunning introduced this theme when describing Western reporters writing about FGM, who built into the issue an "us v. them" paradigm in which "we," [Western, white and often male] were "willingly shouldering [our] eternal burden, [and] slowly saving the day." Gunning, *supra* note 3, at 200 (citations omitted). Savages/Victims/Saviors is Mutua's observation. Mutua, *supra* note 1.

²³ *Saving Amina Lawal: Human Rights Symbolism and the Dangers of Colonialism*, 117 HARV. L. REV. 2365, 2365-2367 (May 2004) [hereinafter *Saving Amina Lawal*].

observed by the editors in a Harvard Law Review note on the subject, “[t]he single minded focus [of human rights activists] on Ms. Lawal,” was considered alarming by human rights critics for two reasons: because it allegedly cast the issue solely as a matter of gender equality and sexual expression, and because the savior perspective evoked ‘colonialist rhetoric.’²⁵

Another oft-cited example of human rights advocacy with heavy Western Imperialist overtones, and one presented by Mutua as well as many postmodernist critics, is advocacy against the practice of female genital mutilation, or FGM. This very description of the act, as opposed to “female circumcision” or some other more benign descriptive phrase, is exemplary of what Mutua would describe as the Western preconception of the savagery inherent in the practice, in which the advocate reduces those who practice FGM to the stereotype of “barbaric savages . . . willful [and] sadistic,” and those upon whom it is practiced as “hapless victims.”²⁶

In using such highly critical labels when describing the alleged motives and actions of human rights advocates who reduce people to stereotypes (of Victim/Savage), Mutua does precisely what he decries -- he caricatures human rights activists, turning them into one dimensional persons with political agendas (Saviors) who are utterly incapable of or disinterested in exploring the nuance of a particular human rights issue, preferring instead the racy, dramatic, one dimensional victim/abusers story. For Mutua,

²⁴ *Id.* at 2382.

²⁵ *Id.* at 2365-2367. The most interesting example of retreading colonialist rhetoric is offered by Leti Volpp who describes the attempts of British suffragists to enlighten the British public to the plight of Indian women, seemingly without awareness that they themselves were victims of incredible gender inequities, including, for instance, a prohibition against owning property. Leti Volpp, *supra* note 8 at 1196-97. Or, put another way, “[e]ven as colonial leaders suppressed the feminist movement ‘on the home front,’ they coopted the movement’s language and redirected it toward, ‘Other men and the cultures of Other men.’” *Saving Anima Lawal*, *supra* note 24, at 2374.

²⁶ Mutua, *supra* note 1 at 225.

human rights activists are at best naïve or misguided – “drawing from a well of noblesse oblige.”²⁷ He excepts from his stronger criticisms “[t]he white American suburban high school or college student who joins the local chapter of AI [Amnesty International] and protests FGM in far away lands”²⁸ – presumably because their hearts are in the right place but they are regrettably incapable of thinking beyond their own privileged and Western naïveté, the beneficiaries of Colonialism.²⁹ He is highly critical of human rights activists for being from the wrong hemisphere, the wrong socio-economic background, and for generally shallow and insufficiently reflective thinking. The critique is scathing, and at times seems unfairly directed, yet the heart of his critique is valid: shallow and misguided activism³⁰ or advocacy that fails to accurately represent the will or needs of the people affected is not good advocacy.

2. Essentializing, Othering, and Re-victimizing the victim

A related criticism comes from Ratna Kapur and other critical race feminists who warn that a human rights approach of the type identified by Mutua, also risks essentializing and “othering” the person abused.³¹ Whereas Mutua reserves his harshest

²⁷ *Id.* at 219. Gunning, too, picked up this theme of good intentions failing miserably when combined with “arrogant perception.” Describing the work of a Western female scholar writing about FGM, Gunning states that “for all her hard work and probably good intentions, her ‘us helping them’ approach has created an enormous amount of bitterness in non-Western feminists for whom the attitude is chillingly reminiscent of colonialism. Gunning, *supra* note 3, at 200.

²⁸ Mutua, *supra* note 1 at 219.

²⁹ *Id.* at 219 (“What the high school or college student ought to realize is that her zeal to save others – even from themselves – is steeped in Western and European history [of Colonialism and slavery]”).

³⁰ Although Mutua reserves his harshest criticism for the “activists,” and does not define or except from his criticism the “advocate,” he has stated in a different context that “human rights lawyers cannot simply be legal mechanics; they have also to go beyond abstract legal norms.” See *The Role of the University*, *supra* note 6, at 46. Can we deduce from this remark that “advocates” should look beyond legal means for resolving human rights problems, but “activists” should not? Is he excepting “advocates” from the “activist” critique? If so, would this be an acknowledgement that the skills we hope to teach our law students should guide them towards avoiding the various missteps made by “activists”?

³¹ Ratna Kapur, *Postcolonial Erotic Disruptions: Legal Narratives of Culture, Sex, and Nation in India*, 10 COLUM. J. GENDER & L. 333, 377 (2001). See Gunning, *supra* note 3, for Gunning’s description of “othering.”

criticism for “activists,” Kapur has expressed her concern that lawyers and therefore advocates can be the greatest contributors to the re-victimization of their own clients. David Kennedy, perhaps the best known critic of the human rights movement, also directs his criticism at lawyers, even though he veils it in a balanced critique in which he acknowledges that “[a] career in the human rights movement had provided thousands of professionals, many of them lawyers, with a sense of dignity and confidence that one sometimes can do well while doing good.” The implicit “but,” is that human rights advocacy is self-interested or naïve or that it unintentionally does harm to those the advocates are trying to help, and his explicit intention in stating his reservations about human rights advocacy is to “encourage other well-meaning legal professionals to adopt a more pragmatic attitude towards human rights.”³²

Kapur is concerned with the person who is labeled a “victim” by her own advocate and, according to Kapur, is therein rendered one-dimensional -- a victim only and nothing more. The other aspects of her personhood (culture, family, personality, dreams, strengths) are stripped away in the shortsighted attempt of the advocate to tell the “victim story” to the world, or at least to the court. Kapur implores us to remember that the victim story is not the full story or the only story of an individual, just as there is not one story for an entire culture.³³

In the early 1990’s Karen Engle explored the various ways in which women’s human rights advocates view what she refers to as the “Exotic Other Female” when

³² David Kennedy, *Boundaries in the Field of Human Rights*, 15 HARV. HUM. RTS. J. 99, 102 (2002).

³³ She acknowledges, however, that cultural essentialism is deployed not only by myopic human rights advocates to paint the parties to a human rights transgression as savages (as Mutua proposes), but also locally by those attempting to counter the impact of Western Imperialism. She describes cultural essentialism, “a stagnant, exclusive understanding of culture,” as being wielded not only by human rights activists, but also by those in positions of power within the culture “to legitimate dominant [] ideology. . . .

attacking particular human rights abuses that occur or originate outside of the Northern and Western Hemispheres. Focusing in particular on FGM, Engle identified the Exotic Other Female as, for example, a woman who supports or perpetuates FGM, or one who is subjected to it. She can be victim or victimizer, but what renders her Other is that “we” perceive her to hold a different world view because she (most likely) comes from a different culture. Engle identified various approaches to human rights advocacy, but criticized each for failing to actually “engage” the women who undergo or who support and thereby perpetuate the practice.³⁴

It is this “engaging” -- the speaking with, interviewing, counseling, working directly with, and understanding the perspective of a client and her own perceptions of her abuser, helping her create her own narrative within the context of her goals – that is the focus of client-centered advocacy, and which will be discussed at length, below. This realization is one of the points at which theory and practice can inform one another, but it alone does not solve the entire problem. Yes, an advocate should learn how to be reflective, so as not to further victimize or essentialize her own client. However, a practical truth of human rights advocacy in the clinical context is that a client is not likely to make her way to an advocate or a clinic, nor is a clinic likely to take on a human rights case, in which there has been no identifiable human rights abuse. The most practical advice that can be taken from these particular human rights critiques and applied in the human rights clinic setting is that the reflection and intellectual honesty needs to begin

Cultural essentialism weaves a cultural tale based on a notion of oneness, of one culture that is fixed and timeless” [punctuation omitted]. Kapur, *Postcolonial Erotic Disruptions*, *supra* note 31, at 376.

³⁴ See generally, Engle, *supra* note 3. Gender and culture are inextricably linked in human rights discourse, yet we are rightly warned against pitting gender against culture in our attacks on a particular human rights abuse, in which culture is blamed as the reason that the “woman victim” suffers. The critics suggest both that this gender v. culture construct is too shallow, and that it wrongly assumes that the woman gains

with case selection. It is when an advocate goes searching for a client, case or issue that the advocate or clinic would be most at risk of engaging in imperialist practice or essentializing and re-victimizing the subjects of their advocacy.

B. The Human Rights Law Clinic

The critiques discussed above presented some descriptions of human rights activists and advocates engaged in questionable or bad advocacy. Many advocates make a conscious effort to formulate, engage in and teach good human rights advocacy practices. A number of human rights clinics have as a primary objective the modeling and teaching of good, reflective human rights advocacy to their students.

In order to measure the criticisms of these academics against the work done within such a clinic, I will describe how one human rights law clinic does its work. The International Human Rights Law Clinic at American University engages in client-centered lawyering, within the context of student involvement in legal problems that falls within the broad category of human rights.³⁵ The clinic devotes a great deal of time selecting cases that have an identifiable client, often after grappling for some time with precisely who the client is. However, just as there are many, many approaches to human rights advocacy, so are there many approaches to operating a human rights clinic.

Many, but not all human rights clinics are located within law schools.³⁶ Some support a methodology that employs direct student representation, where the students are

nothing, including power as a woman, from her culture. Volpp, *supra* note 8. See also Kapur, *The Tragedy of Victimization Rhetoric*, *supra* note 14.

³⁵ When I began writing this article, I was teaching in the International Human Rights Law Clinic at American University's Washington College of Law. The teaching of client-centered lawyering, as well as the doctrinal critiques raised by Kapur, Matua and others, were incorporated into the clinic seminar, as well as within the individual supervision sessions I held with my students on their specific cases. My description of the practices at that clinic are based on my experiences teaching in it.

³⁶ A few schools, including, for instance, the University of Denver, host an interdisciplinary human rights clinic, within another faculty within the school, often international studies or criminal justice.

responsible for all matters related to addressing the client's legal concerns, and are supervised by a professor or practitioner. In this model, the emphasis is on intensive supervision in which students work through choices and strategies before and after each client meeting. Others have attorneys within or affiliated with the clinic who handle litigation or other aspects of representation. In essence, some clinics direct their energies towards working on human rights issues: eradicating a particular human rights abuse, advising human rights institutions, or drafting *amicus* briefs in pending cases, while others take cases that put the law student representatives into a direct client representation role, with a tangible human client.³⁷ Some engage in a combination of the foregoing. I subscribe to the pedagogical value of a teaching mission in which students directly represent the interests of a client. Placing a client at the heart of human rights advocacy is the best way both to avoid engaging in Western Imperialism and to teach law students that essentializing and imperialist practices are not good human rights advocacy. Accordingly, the next section focuses primarily on the value and difficulties inherent in that sort of model.

C. Testing the Human Rights Theory in the Clinical Practice Setting

Exposing students to human rights theory and critiques of human rights advocacy while they learn to represent a real client with real human rights concerns is crucial. As Ann Shalleck wrote in her introductory sentence to an article on the topic of supervision in clinical education, "Nowhere is the intersection of legal theory and legal practice more intense than in supervising students representing real clients on real cases. . . . Much of the intellectual strength and excitement of clinical culture come from the persistent quest

³⁷ This list is not all-inclusive, as there are a multitude of methodologies employed by human rights clinics.

to integrate participation in and analysis of an activity.”³⁸ Human rights scholars, too, have acknowledged that intersections between theory and practice can be valuable for “the intellectual.” Upendra Baxi, a law professor at University of Warwick and former Vice Chancellor at the University of Delhi, noted that research and study needs to emerge from “organic intellectuals (as opposed to erudite intellectuals),” the organic intellectuals being those who are closer to or more grounded in the issues upon which they reflect, and are not coming to them from such a distance.³⁹ Students should learn that theory provides valuable insight to practitioners and objectivity through distance, and should be able to reference theory to help them improve their practice. It would be helpful if theorists would also ground their hypothesis in an understanding of the practice area, to render their critiques of more use to the student and practitioner.

Many of the human rights critiques discussed above seem to imagine the human rights advocate with an agenda to push. They imagine an advocate who has sought and found a problem, rather than a person with a legal issue, who has sought out a legal representative to assist in finding a solution to a problem.⁴⁰ With these critiques in mind, some legal educators have built a curriculum that teaches students to balance newly learned professional obligations with a real understanding of the person who will be affected by their advocacy. The curriculum stresses listening, reflecting, counseling, and helping the client tell her story within the forum most appropriate for remedying the problem. One way to mitigate the Savages/Victims/Saviours paradigm described by

³⁸ Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 110 & 112 (1993-1994).

³⁹ *The Role of the University*, *supra* note 6, at 58.

⁴⁰ They do not discuss the possibility that in initiating legal action or choosing to engage the assistance of a lawyer to respond to a problem, a person could be empowering herself.

Mutua is to create some room for the “victim” to have some agency in resolving her situation.

II. CLIENT-CENTERED LAWYERING

In their work on client-centered lawyering, David Binder and Susan Price described the client-centered approach.⁴¹ To move away from old school lawyering, and develop a client-centered approach, a lawyer must at least: acknowledge that the client “owns” the problem and its solution, understand the motivations involved (of both the client and oneself), listen to and develop a case theory jointly with the client, and generally counsel with the understanding that the client is the primary decision-maker in the relationship.⁴²

Client-centered lawyering developed from the entry of public interest lawyers practicing in the United States in the 1960’s and 1970’s into clinical legal education.⁴³

Of the evolution of client-centered lawyering, Robert Dinnerstein writes,

Many of the proponents of the client-centered approach were former legal services or public interest lawyers who entered academia as clinical law teachers. The experience of these lawyer-teachers with poor clients had a profound effect on their assessment of problems in the lawyerclient [sic] relationship and their proposed solutions. In particular, these teachers’ goals of empowering politically disadvantaged clients provided a rationale for client-centered practice on behalf of poor people.⁴⁴

Client-centered lawyering grew from lawyers and clinic educators trying to understand how the power dynamic inherent in the lawyer-client relationship shapes that relationship. Writes Dinnerstein,

⁴¹ DAVID BINDER & SUSAN PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977).

⁴² *See generally id.* The limited list is my paraphrasing and is not exhaustive of the myriad points made by Binder and Price.

⁴³ Robert Dinnerstein, “*Client-Centered Counseling: Reappraisal and Refinement*,” 32 *ARIZONA L. REV.*, 501, 518-519 (1990).

⁴⁴ *Id.*

The political argument for client-centeredness is an argument about the redistribution of power. . . if client-centered counseling values the client's individual experience by providing an outlet for its expression within the lawyer-client relationship, clients could be expected to have more opportunities to assert themselves authentically with whatever system they are challenging (or being challenged by) by being able to insist to their lawyers that their perspective gets heard.⁴⁵

Where could that power dynamic be explored more thoroughly, and with the potential pitfalls observed as readily, as within the context of human rights lawyering, where cultural (and often language and religious) differences between the client, the lawyer and the legal system compound the complexity of those relationships?

A. Multi-Cultural Client-Centered Lawyering

In subsequent decades, with the turbo-charging of globalization and movement of people around the world, lawyers and clinicians also began to grapple with the issues inherent in multicultural legal practice.⁴⁶ While some of the considerations inherent in the practice of poverty law may also exist in multicultural practice, the cultural differences between the lawyer, the client, and the legal system create new challenges and considerations for thoughtful client-centered lawyering.

In their wonderful article, "The Five Habits: Building Cross-Cultural Competence in Lawyers," Susan Bryant and Jean Koh Peters describe a process created to help lawyers and clinic students examine how culture, race, gender, religion, age and socio-economic differences impact upon the lawyer/client relationship.⁴⁷ They ask

⁴⁵ *Id.* at 522-23.

⁴⁶ Client-centered lawyering has continued to evolve precisely through interplay between theory and practice. For instance, concepts such as "the ethic of care," derived from feminist doctrine have arguably been incorporated into client-centered lawyering pedagogy. See, e.g., Ann Shalleck, *The Feminist Transformation of Lawyering: A Response to Naomi Cahn*, 43 HASTINGS L.J. 1071 (1992); Ann Shalleck, *Feminist Theory and Feminist Method: Transforming the Experience of the Classroom*, 7 AM U. J. GENDER SOC. POL'Y AND L. 229 (1999).

⁴⁷ Susan Bryant, *The Five Habits: Building Cross Cultural Competence in Lawyers*, 8 CLIN L. REV. 33, (Fall 2001).

lawyers to explore what assumptions lawyers and clients have about each other, and what role those assumptions, on both sides, play in the lawyering process.⁴⁸

The experience at the International Human Rights Law Clinic at American University offers some examples of cases where law students and clinical professors have grappled with the intersection of human rights advocacy and client-centered advocacy. Most of the examples set forth come from my own experience supervising students as they represent persons seeking recourse from human trafficking (for domestic labor or sexual exploitation) and persecution (through asylum) who have escaped from their exploitation or persecution and hope to find an immigration solution beyond deportation. Other cases described include non-immigration related human rights cases, representing groups and individuals seeking redress for infringement on their human rights before regional human rights bodies or United Nations human rights bodies. In each of these types of cases, the case team, comprised of law students and one or more clinical supervisor, worked through some difficult issues, with particular attention to understanding our client and her motivations and goals.

1. Identifying Goals

a) Who is “the Client,” and what are her goals?

In order to understand a client’s situation, to understand the client herself, and to even begin to move towards finding a remedy, a lawyer has to understand her client’s goals. In particular when a client has survived torture or abuse, it may be necessary to develop a certain level of mutual trust before the story can be told and be truly heard, and only then can goals be identified and discussed.

⁴⁸ *Id.*

One particularly tricky aspect of human rights representation involves clarifying precisely who the client is, in order to understand what “the client’s” goals might be. By “who the client is,” I mean several things: 1) that, in the esoteric sense, an individual client “is” more than her legal claim, and should be understood holistically; 2) that the client can be an individual person or a group; 3) that whether an individual or a group, the client can pursue goals on behalf of herself/itself, but which impact others who are similarly situated; and 4) that the client can also pursue a matter on behalf of others who will be the objects of the remedy.

b) Who the individual client “is”

By way of example, let me describe a client, part of whose story is illustrative. Sara⁴⁹ was referred to the clinic via a human rights NGO. She came from a West African country, and wanted to secure some legal status in United States. She suffered horribly in her home country where guerillas forced to watch her father beheaded after he refused their orders to rape her and her cousin. The guerillas then gang-raped her in front of her surviving family members, and ultimately took her as a sex slave for eight months until she escaped them. Sara is also a survivor who managed to make her way to a refugee camp in a neighboring country, and from there to the United States. Her daughter is a United States citizen and she is separated from her husband, who lives in the United States. As a young girl, her mother and aunts forced her to undergo FGM against her will, and she intends to spare her daughter the same fate. Her asylum case is straightforward. Her life and story are not. Her two year-old daughter has cancer. Sara may have been supporting herself illegally in the United States through sex work. She was diagnosed as suffering from severe depression and post traumatic stress disorder.

She may have been physically and emotionally abused by her husband, but has decided to invite him back into her life for economic and emotional support while their daughter undergoes cancer treatment.

The two students working on this case were male and they had been randomly assigned to the case. For months, they were paralyzed by the gravity of Sara's present situation and story. They were very sensitized to the horrors of her past and their understanding of her current mental state. They felt particularly insecure about being two young men representing a woman who had suffered so many painfully private acts of torture and persecution. They were scared that she would have difficulty discussing what had happened, particularly with men, and were gingerly soliciting the details of her story. One day, several months into their representation of her, and after more than ten meetings to work up her affidavit (her "story") to submit to the immigration court, Sara asked the students "When are you going to ask me about the rapes and my father's killing? I want to win my asylum case."

The students recounted at the next supervision meeting how relieved they were. They also recognized that while they had thought their motivation in proceeding so cautiously was sensitivity to their client's trauma, they were really acting out of their own insecurities about hurting her further, and their own aversion to being present with her while they heard the full story. They recognized that they had not even begun to understand her goals or how she wanted to proceed, because they did not really know who she was. They had been blinded by their own their own fears. Only when the students acknowledged how their own fears and motivations had held them back were they able to understand the deep reserves of strength from which their client was

⁴⁹ The client's name and certain case-related details have been changed to protect her identity.

drawing. Then they were able to hear her when she said that her primary goal for that moment was to win her asylum case, not to avoid talking further about what had happened to her, and understood then how to go forward in her case.⁵⁰

In this particular case, there was little or no discussion about alternative remedies, because the particular clinic focused on asylum cases, and this case was a classic asylum case. In another type of clinic, with a different client, the advocates might have spent more time understanding all of the broader and longer term goals of the client. In Sara's case, however, she was utterly clear that she wanted to perfect her legal status in the United States, so that she could care and provide for her daughter. This was as far as she could see at that point, and given her own traumatic history and present mental state, obtaining asylum and finding social services for which she would qualify seemed like the logical first step. After she won her asylum case, the advocates talked with her further about going for long term counseling, developing a support network and finding a source of employment, all possibilities that opened up significantly with a grant of asylum.

c) "The Client" is part or all of a group

An example of the second situation is the case of the Imu,⁵¹ an ethnic group from North Africa. An expatriate Imu contacted the clinic for help in ending the atrocities being committed against the Imu people in the form of mass human rights violations (rape, slaughter, forcible relocation and expropriation of their land and property) by the government of one of the countries in which the Imu live. The expatriate member had formed an Imu Council, with whom he strategized, but it was the expatriate member of

⁵⁰ Sara was granted asylum before the Immigration Judge, not on the gravity of her past persecution, but during a two-minute hearing in which the Immigration Judge complimented the students on providing proof of the fact that she had been circumcised against her will. The judge then stated that **she, the judge,** did not want to put Sara through the trauma of telling her story again, and granted asylum.

the Council with whom the student lawyers interacted to elicit goals and make decisions about how to proceed.

Not long after the clinic took the case, the students found themselves asking precisely who the client was: the entire group of people suffering the abuse, the Council, or the one expatriate who initially solicited our assistance? To what extent should legal representatives, seek assurance that these three potential client entities did not have conflicting goals, or that the persons through whom the clinic interacted had the same interests as the whole group which would be impacted by any action taken?⁵²

d) The Client pursuing a matter on behalf of someone else

Illustrative of the third category, which I believe is the most difficult to navigate in a client –centered fashion, is the case of The Death Penalty Abolition Association,⁵³ an NGO in a Central African country comprised of lawyers who are interested in death penalty-related human rights issues. The Death Penalty Abolition Association, approached the clinic, asking specifically for help with a petition to the African Commission to challenge the practice of summary executions by its military. Over the three years in which the clinic represented the Association, the Association underwent considerable turnover of personnel and funding sources, and had begun prioritizing different human rights issues. Although the clinic had filed a Petition and had an ongoing case within the African Commission in support of the Associations' claim, the clinic students had to decide whether to continue to pursue the issue on behalf of those affected by the practice of summary executions, or withdraw from the case, when the clinic

⁵¹ The clients' name and certain case-related details have been changed to protect identity.

⁵² The matter is ongoing, being pursued before various international tribunals and through mediation and other means of human rights advocacy.

⁵³ The client's name and certain case-related details have been changed to protect their identity.

determined, through lack of communication and follow through on their part that the client, the Association, was no longer interested in pursuing the matter.⁵⁴ Although the African Commission would accept a Petition directly from the clinic, even without the signature of the Association, clinic advocates had concerns, in line with those expressed by Mutua, that intervening without a local counterpart interested in the matter, smacked of Western imperialism.⁵⁵

Representing a client that is not part of the group of people directly afflicted by a particular human rights violation is tricky. In the foregoing example, the client is a sort of “issue-broker,” retaining an attorney, or in this case a clinic, to pursue an issue that has a direct impact on another group of people. Of course, there is a good argument to be made that a human rights violation like summary execution does, as a matter of social policy, affect the Association and all citizens subject to the same policy. But it is also the case that the further away the advocate is from having a direct relationship with the persons affected by a human rights abuse, the harder it is to be client-centered in the decision making process, and the greater the risk for the advocate of “othering,” essentializing, and otherwise making assumptions about the goals of the persons who have been, or are immediately at risk of being subjected to the abuse.

2. Recognizing other goals in play

⁵⁴ To make the question even more complex, the African Commission solicits cases and inquiries from any party that has the ability to enlighten the Commission about a human rights issue, which could be seen as a direct request from the Commission that the clinic pursue the matter, even without the participation of the original client. The African Charter on Human and Peoples’ Rights, *adopted* June 27, 1981, 21 I.L.M. 58, Art. 46 (entered into force Oct. 21, 1986) (allowing the Commission to “resort to any appropriate method of investigation”).

⁵⁵ The students decided to send a letter to the Association, essentially closing out the clinic’s representation, with the offer to again represent the Association or any other entity pursuing the matter, when domestic remedies were exhausted and the case was again actively before the African Commission.

With the rise of globalization many have begun deconstructing the ways in which culture plays out against human rights in advocacy, lawyering and theorizing. As discussed earlier, many scholars have selected the particular human rights conundrum of FGM in which to play out the competing arguments and concerns, because it provides such a stark example of the universality v. cultural relativity dilemma. Client-centered lawyering suggests, and some scholars seem to also subscribe to the proposition, that as a starting point in deconstructing the “us” v. “them” paradigm, we might first figure out who “we” are.⁵⁶

In their work on building cross-cultural competence in lawyers, Jean Koh Peters and Susan Bryant describe five “habits” that should be incorporated into cross-cultural lawyering.⁵⁷ Habit One asks lawyers to look at the effects that may flow from assumptions about similarities or difference between themselves and their clients. Habit Two asks that we analyze how those similarities and differences effect interaction between the client, the legal decision-maker and the lawyer. Habit Three shows us how to explore alternative explanations for the behavior of our client, without making assumptions based on our own experiences. Habit Four encourages us to recognize problem conversations and misunderstandings with our clients when they are happening. Habit Five suggests that we take action to protect ourselves against stress and pressure, in order to remain more receptive and less judgmental about our client’s behavior, and more able to engage in self-analysis about why we are reacting negatively.⁵⁸

⁵⁶ David Fraser, in a rather heady article entitled, *The First Cut is (Not) the Deepest: Deconstructing ‘Female Genital Mutilation’ and the Criminalization of the Other*, acknowledges that only by realizing *our situation* can we begin the task of constructing responsible discourses." Fraser, *supra* note 3, at 313 (emphasis added).

⁵⁷ See generally, *The Five Habits*, *supra* note 47.

⁵⁸ *Id.*

Isabella Gunning, a clinician, feminist and human rights scholar, developed a similar methodology for “understanding culturally challenging practices” such as FGM.

She proposed that advocates (including both scholars and activists),

1) be clear about the boundaries and ramifications of [their] own will and interests, i.e., understand one’s own historical context, 2) understand how as an outsider one impacts on the ‘other’s’ world and is perceived by the ‘other’, i.e., see yourself as the other woman might see you; and 3) recognize the complexities of the life and circumstances of the other woman, i.e., see the other woman, her world and sense of self through her eyes.⁵⁹

In other words, “be more reflective,” but with a bit more specificity and advice about how to carry it out in practice.

Ultimately, scholars, critics, and practitioners have begun asking for the same thing: more self-awareness and reflection on the part of the “representer,” whether it be representation in court or representing an issue through scholarly discourse. “It is not a solution,” writes G.C. Spivak, “the idea of the disenfranchised speaking for themselves, or the radical critics speaking for them; this question of representation, self-representation, representing others, is a problem. . . . there has to be a persistent critique of what one is up to.”⁶⁰ We have to be aware of who we are and what motivates us in order to be intellectually honest about who holds the power in the relationship between “us” and “them.”

a) Systemic requirements

Perhaps even before we look at ourselves and ask our students to do the same, we might first look at what the law or practice rules are going to require, were we to pursue a

⁵⁹ Gunning, *supra* note 3, at 194.

⁶⁰ G.C. Spivak, *Questions of Multiculturalism*, in *THE POST-COLONIAL CRITIC* 63 (New York: Routledge, 1990).

human rights challenge within a legal framework. For better or worse, and some human rights critics might well argue that it is for the worse, many laws, statutes and regulations that attempt to address human rights violations *require* that the client present herself, at least in part, as a victim. Take, for example, two interpretations of international law as applied in US courts: obtaining asylum and qualifying to receive a T-visa (visa given to trafficked persons, which allows them to remain in the US).⁶¹ To obtain asylum, the applicant must establish that she *was persecuted or has a fear (subjective and objective) of returning* to her country.⁶² To obtain a T-visa, she has to show that she was *the victim of a severe form of trafficking*.⁶³ The trafficked person cannot simply have been trafficked, (which includes demonstrating coercion, use of force, etc.) but must prove that she was severely trafficked and victimized in the process. The asylum-seeker cannot merely have been persecuted in her home country and since moved on psychologically to the emotional and psychological state of “survivor,” but by law must prove that she remains fearful.⁶⁴

The critical scholar discussed in the introduction to this article was speaking specifically about asylum and trafficking cases when she advised that practitioners take care to avoid re-victimizing their clients. I interpreted her comment to mean, at least in part, that advocates should be mindful that “telling the victim story” may do broader harm or longer term damage to the psyche of our client (or to the cause of all women similarly situated) in casting her as only a victim, and nothing more. And yet, as

⁶¹ Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified in scattered sections of 8 U.S.C.) and Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7100 (2000) [hereinafter TVPA].

⁶² 8 U.S.C. § 1101(a)(42)(A) (defining a “refugee”).

⁶³ TVPA, *supra* note 61. The language “severe” was included to placate those who would not include “prostitutes” in the definition of “victim of trafficking.”

⁶⁴ 8 U.S.C. § 1101(a)(15)(T).

described above, some laws require advocates, undeniably, to tell that victim story in order to obtain the relief the client is seeking.⁶⁵

In order to incorporate the warning against re-victimizing our own clients, advocates first must identify what the court and legal system require. Only then can advocates reasonably discuss with clients how directing a narrative or case theory towards the systemic requirements might negatively impact a larger group to which the client belongs (women everywhere, Third World Women, African Women, immigrant women) or the broader interests of the client herself. Nevertheless, professional responsibility obligations, as well as a respect for client-centered advocacy, would also require advocates to counsel the client about how choosing *not* to direct case theory and client story to the systemic requirements might negatively affect the client's immediate interests.⁶⁶

But there are more than the systemic requirements to consider, if truly considering how differing goals affect strategy. Whenever a decision-maker (the judge) has any discretionary authority (and arguably even when they do not), the decisions, mindset and personality of the trier of fact are also in play. In the case of Sara, for example, described above, the Immigration Judge granted her asylum on one small part of the story that was presented to the court – the fact that she had been forced to undergo FGM. Legally, that part of the story had no greater weight than any other, but the Immigration Judge stated

⁶⁵ Although the requirement of “victim” is found not only in the context of immigration, but also with domestic violence and many self-defense arguments, when the person is trying to secure the protection of a country not her own, laws seem aimed at making the migrant grovel and beg. Because she is not entitled by citizenship to protection from her intended host government, she must throw herself on their mercy, as if only a fearful victim can demonstrate that she deserves the protection of a sovereign entity which would otherwise have no obligations to her.

⁶⁶ MODEL RULES OF PROF'L CONDUCT R. 1.4(b) (amended 2002). There is also an argument to be made here that the Rules of Professional Responsibility require a lawyer's loyalties be with the client's

that she was granting asylum on the sole basis of FGM. The judge's stated rationale was that she *did not want* to put Sara "through the ordeal" of telling her full [victim] story in court.

Critics could argue that the Immigration Judge was guilty of the worst sort of essentializing: she reduced Sara to the smallest portion of her victim state – 'Victim of FGM,' and in doing so, robbed Sara of her own fuller version of herself within her victim story. Here, again, theory and practice can inform each other. While it may be true that the judge was doing Sara some sort of larger as yet not understood injustice (arguably as much by not allowing her to tell her story in court, as by finding her worthy of asylum only because she had undergone FGM when she was a young girl), it is certainly also true that this judge was not the best audience for whatever therapeutic effect telling her story might have had on Sara. It would be better for Sara to obtain asylum, so that she can qualify for medical and psychological care, and then work through her trauma with someone skilled in that field. Alternatively, the advocate could come back to Sara after she has had some time to heal, and ask her if she would like to lobby to change the regulations to allow for the telling of one's story beyond a narrow "victim" narrative.

b) The Client's Goals

As discussed earlier in this article, determining who the client is, and therefore what the client's goals are, can be particularly tricky in human rights cases. "Human rights" covers individual rights of persons transgressed, but also concerns collective rights. Human rights lawyers can represent an issue or fight to eradicate an abuse against a person or persons, in many cases, even without any awareness on the part of the person

immediate legal interests, within the scope of representation, and that how others might be affected should not play into our decision-making process.

or persons transgressed that lawyers are fighting on their behalf. As Mutua has pointed out, and the Amina Lawal case demonstrates, this lack of accountability can easily lead to misguided, shortsighted or faulty advocacy efforts, without careful thought and reflection prior to action. When the purpose for advocacy is to fight *against an abuse*, rather than *for a person*, it can be much harder to truly understand the goals of those affected, unless the advocacy work also includes regular and ongoing discussions with those persons.

Earlier in this article, I introduced the case of the Imu People. The clinic students and their supervisor had several discussions about whom they would actually be representing before they drafted a retainer agreement. The students wondered, quite appropriately: Were they representing the Council? The individual member of the Council who had approached us, and with whom we most often communicated? The Imu People as a whole? Or were they representing the issues -- advocating for the eradication of the abuses? If they represented the Council, would they risk advocating for or against something that was meaningful to the Council, but not the Imu People? Could they be certain that the Council had a world view that was representative of the Imu as a whole, especially given that the Council were expatriates and no longer directly subject to the abuse. On the other hand, as David Fraser notes, where a Diaspora relocates, “new cultural discourses are created,” and advocates have to acknowledge that this new culture, something between “us” and “them” exists.⁶⁷ “Cultures grow and mutate.” This is neither good nor bad; it simply is.⁶⁸ The expatriate Council members add to the cultural discourse.

⁶⁷ Fraser, *supra* note 3, at 330.

⁶⁸ *Id.* at 330-31.

Clinic advocates decided that the students should meet with the entire Council, at their invitation. The client-centered conversation between clinic advocates and the Council was to inform them of questions and concerns regarding viewing the Council as the client, when the remedy would impact the entire people. After this opening, the Council members expressed their appreciation for the concern, and arranged for the students to meet and confer with as many non-Council members of the Imu as they could find. The Council members themselves then also engaged in a bit of self-reflection, and thought about the extent to which they had a real understanding of the present needs and interests of the Imu people as a whole, the vast majority of whom remained in two countries in Northern Africa. The Council members were impressed that the students had considered the real needs of the whole ethnic group, which seemed to raise their level of confidence in the clinic as their representative. The students left the three day meeting with their own contacts within the non-diaspora community, with whom they could communicate directly. Clinic advocates could never speak with every Imu, or even find a sampling of every representative subgroup, but because the participants (the student/supervisor group, the Council and individual members of the Imu People) were mutually satisfied that they could elicit goals and select remedies for the Imu People as a whole through regular contact with the Council, the clinic agreed to represent the Imu People through the Council. This discourse led to a request for broad remedies in the Petition to the African Commission, asking that Imu people, those displaced as well as those who had remained, be incorporated into negotiations between the Imu and the government for resolution of the issues at stake. If the clinic had determined that the Council had been so out of touch with non-diaspora Imu that it could not work with them

to develop remedies that would help the Imu as a whole, it is likely that the clinic would have declined to take the case.

3. *Narrative*

In her clinical writing, Binny Miller has responded to some broad critiques of lawyering in general, squarely addressing the theme of power and who holds it. It is not, of course, human rights lawyering alone that receives the attention of academics: “Critical theorists [in critical race theory, feminist legal theory, ethnographic theory and others] see legal narrative through the lens of power. In this picture of power, legal narrative is a battleground of competing lawyer and client narratives in which lawyer narratives always emerge victorious.”⁶⁹ In other words, it is bad advocacy -- that is, advocacy in which the lawyer (or scholar) is controlling the story that the client gets to tell -- that risks the essentializing and re-victimization of the client. The story that is told and who gets to tell it indicates who holds that power.

a. The story that meets the systemic legal requirements

Bindu⁷⁰, an asylum seeker, told her student representatives how she traveled from Rwanda to Belgium. She said that she went to a man known to practice magic, and he gave her an egg and told her to hold onto the egg and think of the place she wanted to go. She did, and the next she knew, she was in Brussels.

The students met with the client for hours, asking in any number of ways, how the client really traveled to Brussels. They asked her to be open with them, and to feel safe, explaining that they could still present the case if she had traveled illegally. Fearing that they had not yet secured the trust of their client, they went back to square one, and tried

⁶⁹ Binny Miller, *Give Them Back Their Lives Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 515-16 (1994).

to build further rapport, even going so far as to tell the client more about themselves and their own personal backgrounds and experiences, attempting to secure her trust through personal disclosure. No matter how many times and no matter how many ways they asked the client, she held fast to the story that she had arrived in Brussels after holding onto the egg and thinking of Belgium.

The students explained to Bindu that at her deportation hearing, the immigration judge would ask many questions about how she got from place to place in order to determine whether she had lied to any government officials to gain entry to any countries. If the government attorney could prove that she lied about how she traveled, it would destroy her credibility. They explained that the “travel by egg” story would not serve to answer the Immigration Judge’s questions about whether she told a consular official from Belgium what had happened to her in Rwanda, when securing a visa to enter Belgium. Bindu maintained that she held the egg, thought of Belgium, and was in Belgium.

b. The story that the lawyer wants to tell

The students gave up trying to determine whether the client would tell another story that would be more pleasing to the court, and set about the task of finding a plausible explanation for why the woman believed she had traveled to Brussels by egg. The students decided to seek out experts who knew something about the use of witchcraft in Rwanda, and tried to research the effect that believing in magic has on the human mind. They were unable to find enough upon which to build a legal theory.

Finally, they asked their client if she would be willing to see a psychiatrist, thinking that she may have suffered from post traumatic stress disorder. She was willing, and indeed she was found to have been suffering from post traumatic stress

⁷⁰ Name and details altered to preserve confidentiality.

disorder. Nevertheless, she was not willing to characterize her mode of travel as either a delusion or the by-product of blocking out a painful experience. She believed that she had traveled to Belgium by egg.

c. The story that is the client's "actual" story

At the hearing, the students put their client on the stand, and asked her to describe how she had traveled from Rwanda to Brussels. She told her story of traveling to Brussels by egg. Then they put on the stand the examining psychologist who presented theories about dissociation and believing what one needed to believe as a defense of the psyche to painful experiences. The psychologist also suggested that for some the power of belief in magic was enough to "make it so." In the end, the students, the client and the system needed to hear differing rationales for why Bindu traveled to Belgium by egg, but each accepted the story that the client presented, regardless of whether it comported with their differing world views.⁷¹

d. The story that the client wants to tell the world

Sometimes the client has a story to tell that doesn't support his case theory, but is so important to his current well-being that he insists upon using this most respected forum, the courtroom, to tell the story, no matter how ill-advised it may be as a legal strategy.

Ngis's⁷² family had been persecuted for generations by his government's regime. The family were once landholders and academics, and but had lost all of their landholdings and all of their professional positions and status over the years, as the government accused them of being enemies of the regime. By the time Ngis was a child,

⁷¹ The client was granted asylum on the basis of past persecution.

⁷² Names and details have been changed.

the good name and reputation of his family was utterly unknown outside of the family itself, and they struggled to keep it alive by telling it again and again, to each new child born to the family.

Ngi had fled China with his wife after she was forced to undergo sterilization when they found themselves expecting a second child (in opposition to Chinese law). The student attorneys on the case felt that they had a very strong claim, and believed that if they could find enough supporting documents to prove that the sterilization had taken place, they could win their case on that basis.

Ngi, however, was determined to use this one chance before a government official to tell the history of his family's fall from power. He explained, gently but firmly, again and again, that both he and his family had been for generations denied a voice, and that he owed it to his ancestors to use this one opportunity in so public a forum to let his story be known. The students had researched the habits and proclivities of the judge before whom they were to appear, and knew that the judge would not stand for anything that deviated from the "script" of an asylum claim. She was known for cutting off lawyers and interrupting client testimony to "get to the point."

Eventually, the students offered Ngi an alternative. They prepared two affidavits, the first of which told the entire family history of the Ngi's and the second of which focused on facts they believed were most relevant to his claim for asylum. Then, they offered to moot Ngi before a live audience and panel of "judges," comprised of esteemed professors, other academics, and law students. Ngi was satisfied when he had the

opportunity to tell the story that was most important to him, albeit not before the immigration judge.⁷³

4. *The Lawyer's Own (Conscious or Subconscious) Goals and Narrative*

In the series of works referred to above, “The Five Habits,” Susan Bryant and Jean Koh Peters encourage clinic students who are engaging in cross-cultural representation of clients to reflect deeply on their own personal biases, reflexes, opinions and goals. Habit Two specifically asks students to determine what goals their clients have, and how those goals might intersect or conflict with their own goals as lawyers. A simple example might be the lawyer who wants to take a case to an appellate court. His motivations are many: he wants the experience of engaging in appellate litigation, he also believes that justice will not be served unless the lower court’s decision is overturned, and he wants to fight the policy behind the law itself. His client, an immigrant afraid of the government, wants to disappear to the system and have no further attention brought to himself.⁷⁴

The lawyer is asked to engage in some intellectually honest reflection to determine whose motives and goals are guiding the process. The lawyer is not forbidden from discussing with her client other factors in play.⁷⁵ For instance, a lawyer who supported the critics’ position that telling the Victim Story in an individual asylum case places one more nail in the coffin labeled “Third World Immigrant Women are Victims,”

⁷³ Although this was the course we chose in this case, Lucie E. White’s article “The Sunday Shoes,” offers an alternative view in which her client, without consulting with her prior to the hearing, tells her whole story to the hearing officer. Although it would have been against the advice of the attorney, the client won her case. See generally, Lucie E. White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G*, 38 BUFF. L. REV. 1 (1990).

⁷⁴ In this example, the legal community or other persons similarly situated to the client may also have a stake in the outcome of the matter.

⁷⁵ Prohibited by the Rules of Professional Responsibility or even dissuaded by suggestions of the Five Habits. I do not understand this footnote.

could, if she so chose, have a discussion with her client in which she explains her own opinion that telling the Victim Story, while meeting the legal system's requirements, perpetuates the myth of the Victim state of all third world women. Ultimately, however, according to client-centered practice, which story to tell would be the client's choice.

Deena Hurwitz has written, appropriately, that “the law school clinic is a particularly effective medium for teaching international human rights lawyering.”⁷⁶ She also writes that “in international human rights we find an extraordinary vehicle for the original social justice mission of clinical legal education.”⁷⁷ It is this latter statement that requires further attention and elaboration, as it might be that when engaging in human rights advocacy as issue-based, social-justice lawyering, advocates need be most reflective in order to reduce the risk of replacing the goals of the potential group or person on whose behalf they advocate with their own goals as human rights practitioners on a social justice mission. The Amina Lawal case was a pure social justice mission on the part of those who sent letters and signed petitions, their goals (perhaps) to save a woman from death by stoning, and bring the world's attention to the practice so that others might be spared the same fate. And yet, the myriad of criticisms launched at this advocacy action are not to be dismissed lightly. Ms. Lawal's lawyer tried to distance herself and her client, who never spoke with any international advocates, from the five million signatures and numerous human rights actions brought on her behalf.⁷⁸ In this instance, the goals of the human rights advocates took center stage.

⁷⁶ Hurwitz, *supra* note 7, at 508.

⁷⁷ *Id.*

⁷⁸ See generally, *Saving Amina Lawal*, *supra* note 23. This issue of case selection will be taken up further, below.

I do not mean to suggest that there is no place in a human rights clinic for issue-based social justice lawyering. But I do want to raise for discussion whether choosing to approach human rights advocacy through issue-based lawyering requires an even more careful, rigorous and reflective look at the motivations in play when taking on the “case” or project in the first place.⁷⁹

5. The Critics’ Goals and Narrative for the Client

Human rights critics must also be willing to reflect and acknowledge that they, too, have an agenda. Look at the original comment that prompted me to write this article.⁸⁰ As I interpreted her comment, the critic who suggested that I should be more reflective, was asking me to replace my client’s chosen story with her own goals. She wanted my client, through me, to do her part in refusing to propagate the myth that all migrant women are Victim Subjects. In order to accomplish this, the client would have to replace her own goals (obtaining asylum) with something fuller and deeper or at least more than a Victim Story. When I specifically asked the critic whether she was suggesting that I simply replace my client’s goal with her own or with what she thought my own goals should be, her only response to me was that I should be “more reflective.”

After much reflection, I cannot believe that the critic really thinks that someone who has been abused should sublimate her opportunity to obtain important legal relief for some larger theoretical goal that is not of immediate importance to her. Instead, I will interpret the critic’s comment slightly more favorably to mean that the lawyer must be

⁷⁹ There is probably a case to be made that issue-based and client-centered lawyering do not have to be mutually exclusive, but I am not going to make it here.

⁸⁰ In the context of an international conference on gender and migration, she expressed her concern that human rights attorneys were revictimizing their own clients from insufficient reflection. The critic is not mentioned by name, as the point is to address the validity of the point, rather than to launch into a counter-attack.

careful of winning the battle, but losing the war, so to speak – the battle being gaining the client asylum, and the war being the larger struggle of women everywhere to avoid being reduced to the Victim Subject. Rather than subvert the client’s immediate goal – obtaining asylum – why not obtain the asylum first, and then also discuss other remedies that might provide her some sense of agency and control and an opportunity to heal?

In her article described above, “Female Subjects of Public International Law,” Karen Engle puts forth the particular criticism of human rights scholar/advocates who utterly fail to engage the subjects of their advocacy and scholarship at all, let alone attempt to assess her goals. “That [the scholar/advocates] take account of her . . . does not mean that they engage her; rather, they attempt to change her mind about the practice [of FGM] by choosing a doctrinal position with which she might agree.”⁸¹ At a minimum, students in a client-centered human rights clinic are not failing to engage.

The goal of a clinician practicing law and teaching students client-centered lawyering would be to bring out as much of the client’s story as she was interested in telling, disclosing to her the ramifications of failing to tell her whole story and explaining to her how certain details would advance the case theory that she was participating in crafting. But a good advocate would no sooner tell a client that she should not tell her Victim Story, if that was what she wanted to convey, as she would tell her that there was only one particular version of that story that could be told to the court.

Perhaps it is the tension between theory and practice that is really at issue here. While the perspectives of both the scholar/critic and the lawyer are valid, the scholar/critic at the conference was clearly approaching the issue from a theoretical perspective – exposing the subjugation of primarily Third World women through their

portrayal as the Victim Subject -- while the practitioner approaches the issue from a respect for (or fear of violating) her professional responsibility obligations and her client's expressed goals. What the critics need to acknowledge, though, is that *they* are not neutral and objective bystanders when they ask that the client not be portrayed as a Victim. They are asking that their own goals (in the form of unimpeachable doctrine) be superimposed on top of (or simply replace) those of the client.

Without such an acknowledgement, the critic seems to imply that while the client might legitimately have the goal of not being deported, she *should also* have the goal of avoiding being essentialized, if not for herself, then for the benefit of all women similarly situated. And that although the student lawyer might in fact have the goal of winning the case or winning her client's trust, she *should* have the goal of avoiding re-victimizing or essentializing her client and all women like her client. The arguments of the critics would be stronger if they acknowledged by asking that their concerns be taken into consideration in human rights advocacy, or even that their goals replace those of the client and lawyer, the critics become players, not neutral commentators.

Some scholars have begun to recognize the validity of a bottom-up approach to human rights, in which human rights theory trickles up through interaction with real people, who have real problems, as opposed to "top-down thinking," in which scholars hand down "mantras," going so far as to describe the top-down approach as "anti-human rights."⁸² As G.C. Spivak stated, "there has to be a persistent critique of what one is up to."⁸³

⁸¹ Engle, *supra* note 3, at 1512.

⁸² Rebecca Cook, Upendra Baxi and Philip Alston, *The Role of the University*, *supra* note 6, at 60-63.

⁸³ Fraser, *supra* note 3, at 316.

Another important consideration that the critics have failed to address is that the lawyer-client relationship is a fluid and dynamic one. The client who comes to a lawyer during or immediately after a crisis, as many seeking a solution to a human rights problem are, is in a state of great flux. She may be in the process of healing, and the healing may in part be due to the very fact that she is empowering herself by attempting to address her legal concerns. But she may also be working through some severe trauma.⁸⁴ Student practitioners and lawyers should come to understand that their clients may well be in a state of great emotional transformation, and that it is necessary to check in with the client at every meeting, to ascertain whether the same considerations for the client exist from meeting to meeting. The client is not static, and in the process of telling her story to the lawyer, the client moves. Like Heisenberg's Principle,⁸⁵ the client and the lawyer both change from the interaction.

B. Employing Client-centeredness in the Human Rights Context

In the human rights clinic, the process of "being more reflective" starts very early on, with the clear identification of the clinic's goals, in order to develop an intake process; ideally, a relatively transparent intake process. The type of human rights advocacy most strongly and fairly critiqued with charges of Western Imperialism, essentialism, othering or re-victimizing the subjects of their own advocacy is one in which the advocate goes searching for an issue to champion, without consulting the people who will be impacted by the advocacy.

⁸⁴ This is particularly true for many asylum-seekers who were persecuted or tortured, and perhaps those seeking protection from domestic violence or human trafficking.

⁸⁵ The Uncertainty Principle, developed by German physicist Werner Heisenberg in 1927, states that the very act of observation changes the object observed. *See e.g.* WERNER HEISENBERG, *ACROSS THE FRONTIERS* (1974).

The process of selecting which cases students and supervisors will work on is one that will require a clear understanding both of the clinic goals, and the geographic region in which the clinic operates. In a region in which there are a number of related public interest organizations, a clinic may be able to put out the word as to which type of cases interest them, and select from a list of possibilities. Alternatively, when the clinic is attached to a well-known school, program, or faculty supervisor, cases may find their way to the program, based upon their reputation or recognition that the clinic specializes in a particular type of case.

I am not suggesting that any particular type of human rights focus is more legitimate than any other, although I do believe that clearly identifying a client with whom students can develop a relationship is a better method for learning how to be a reflective human rights practitioner. What I am suggesting is that when selecting a case, the person selecting the case needs to reflect on their motivation for taking it on. Whether that case is selected because it interests the clinic professor, because it will be set in a forum in which the clinic has experience or wants to gain experience, because the client is from a country or region in which the students share a common language (or want to gain experience working through an interpreter), because the clinic wants to accept some cases from a particular referral source to develop that relationship – no reasons are any more or less legitimate than others. The point is to reflect early on, at the intake stage, as to whether the people who are likely to be impacted by the advocacy are aware that the advocacy is taking place. The further the objects of the advocacy are from the advocacy itself, the more attention needs to be paid during the interviewing and counseling stages

so that the solutions developed with the client are consonant with the real needs and desires of the people who will be impacted by that advocacy.

After a case is selected and developed, the remedy stage is another point at which the expansive potential of human rights advocacy requires reflection and care, but also offers broader opportunities for the client. For instance, in the scenario described above, in which Ngi wanted a forum in which to tell his family history, an alternative could have been to try to obtain asylum for him first, and then later help him to create more extensive history and find a forum in which to share it. Or bring the Imu's case of mass victimization to the African Commission, but then also provide the Imu people with resources to negotiate a stronger position with the offending government.

C. Challenges to Employing Client-centeredness in the Human Rights Context

As much as I hold that client-centered lawyering principles bring necessary practice skills to human rights advocacy, I want to acknowledge and highlight some aspects of human rights law and practice that make client-centered lawyering very challenging. Client-centered lawyering imagines that the client be at least an equal partner in the development of the case theory, legal approach and remedies that will be sought, and that identification of the remedies will flow organically from the process of interviewing and counseling. In true client-centered lawyering, then, the client's goals would emerge through open-ended interviewing. Discussion of remedies would come much later, after a thorough understanding of the client's life, situation and goals.

The first difficulty with employing client-centered lawyering in human rights practice comes with identifying the client. As discussed above, it is often a struggle to identify who the client is, which I do not think is a struggle limited to human rights practice.

Specific to human rights practice, however, is the fact that the average client will have little to no understanding of the various human rights institutions and mechanisms available and applicable to their case.⁸⁶ As a consequence, it may be necessary for the human rights lawyer to begin earlier discussions about the existence and practicability of the various human rights institutions and relevant legal systems that might remedy the harm, a conversation that might not ever take place in a truly client-centered interview. Because of this, the client-centered human rights lawyer must take extra precaution against playing a larger role than desirable in guiding the client to select or acquiesce to a potential course of action, and to do this, must take more time explaining the possibilities to the client, so that the client can retain agency in securing his solution to the human rights problem.

IV. RECOMMENDATIONS

A. Lawyers and Human Rights Advocates – Be rigorous in reflecting upon and identifying for whom, and why you advocate. It might be useful to ask yourself certain preliminary questions: Are you working on a cause or an individual case? If a cause, was the cause selection based primarily on need within the affected community or on the advocate's desire to pursue it? Is there a client? If so, who is the client? How far away from you are the people who will be affected by your advocacy? Are those affected people aware of your advocacy on their behalf? Are you tailoring your strategy to one held by the community of human rights advocates? If so, does this strategy comport with the goals of your client?⁸⁷

⁸⁶ Additionally, it may take some extra work to discover just “who is the client,” although this is not unique to human rights clinical practice.

⁸⁷ David Kennedy has suggested that it might be a particular failing of human rights advocates who are not strategic in the right way, and so fail to evaluate the “harms that might attend human rights initiatives in

B. Human Rights Critics – Acknowledge that you are also asking that a client be portrayed in a particular light. You want the client to be Not A Victim Subject, Not Essentialized and Not Subjected to Western Imperialism. The story that you would have told is not selected by the client, but by you. You are not a bystander offering objective scholarly expertise if you are asking the practitioner to help you subvert the client’s goals for a larger cause.

C. Human Rights Clinical Educators – 1) Consider whether scholarly criticism makes a case for client-based and client-centered representation. It may be markedly easier to run an issue-based human rights clinic: easier to focus on a particular issue, to package one’s product, to find cases or projects for students to work on, easier to receive funding and support due to the recognition of the clinic’s association with a particular issue.⁸⁸ In the human rights context, however, advocacy that is not centered in a relationship with a client who can be interviewed and counseled may run a higher risk of running afoul of some of the primary criticisms put forward by critics. 2) To reduce the foregoing risk, take as many client-centered cases as possible. 3) Consciously struggle with the question of “who is the client.” 4) When working to eradicate a practice or abuse occurring elsewhere, coordinate with a local counterpart, and consider including “capacity building” as a component of the clinic’s work. 5) Realize that human rights advocacy

particular cases, under specific conditions, in particular time periods and so forth.” *Supra* note 32 at 102. Here I have to differ. The harm, I believe, would be in tailoring your client’s objectives to comport with the preferences of the human rights “community” at a particular time. We can advise our client that the time might not be ripe for moving forward in a particular way, for particular strategic concerns, but if we alter the best course for attaining our particular client’s objective in order to better serve the larger strategy of the human rights social justice agenda at a particular time, place and period, then we are doing our client and the concept of “human rights advocacy” a disservice.

⁸⁸ For an interesting commentary on this trend, see Stephanie Grant’s comments in *The Role of the University*, *supra* note 6, at 68. She says that well-funded NGO’s (and clinics) search for “the next generation of human rights” issue, suggesting that clinics in need of funding can find it by responding to the latest “hot” human rights issue. *Id.*

may be fast paced and reactive, but the business of clinics is to work through cases and issues in a reflective, self-critical, hardnosed, highly principled, and unrealistically slow manner, in order to ensure that the lessons and values of good human rights lawyering are passed on to our students.

CONCLUSION

At the heart of this discussion is a subtext about power dynamics, and who has the power in an advocacy relationship. Academics and clinicians alike explore the dynamics of power, and how it is the abused person or “the victim,” who either has no power or is misperceived as having no power. After all, even Kapur acknowledges that not everyone runs the risk of essentializing by wielding a “cultural values” argument, but that in the right hands, e.g. in the hands of “disempowered and excluded people, . . . [i]t can be an important form of resistance.”⁸⁹ The person wronged has little power compared to the persons who wronged her. She can try to redress the wrong, but unless she finds the right source to succor redress, she risks being disempowered again by activists or bad lawyers advocating for her. Client-centered lawyering gives the power back to the client, and we hope that the client is further empowered through that interaction.

As human rights advocates and educators, we owe it to the world to know whether we are doing more good than harm. A client-centered lawyer/client relationship is one in which the lawyer sees the client as a whole person, not a victim, not a gender, not a race, not a legal issue, not a doctrinal theory. Centering human rights advocacy in a holistic, client-centered, lawyer-client relationship offers more opportunity to avoid the pitfalls enumerated by human rights critics. The lawyer spends significant time learning to understand her client, not only in the narrow confines of the legal problem to be

resolved, but as a whole person, and takes great pain to bring forth the client's voice.

Done effectively, it would be very difficult to simultaneously engage in client-centered lawyering and at the same time essentialize, re-victimize or "other" one's client.

But client-centered lawyering also asks the lawyer to look deeply and reflectively at her own positions and goals, and understand how those might shape the direction in which she guides her client or why she selects the case in the first place. Done well, the lawyer will have to struggle with questions about what cases to take and which narratives to put forward, in furtherance of whose goals. It will also require her to reflect on how her own experience, including her socio-economic, cultural and political experiences, and position as the beneficiary of a legal system that grew out of the Colonial past, affects her worldview and her actions in each lawyering interaction.

Human rights advocates who care deeply about human rights issues should consider how to center their advocacy in the concerns of an individual or group of persons with whom they have a direct client-to-advocate relationship. It is within that client-centered lawyer/client relationship that they can most safely avoid missteps such as those identified by Kapur, Mutua, Kennedy and others.

In observing the nature of human rights advocacy, I am not concluding that there is no place for issue-based lawyering in human rights advocacy and human rights clinical education. Certainly, students in these types of law clinics and programs have much to gain in terms of learning how to apply human rights law to real legal problems. Nor am I dogmatically suggesting that the only place for exploring the body of human rights criticism is within a lawyer/client relationship. Nevertheless, students engaging in issue-based human rights advocacy should be particularly sensitized to the risks of re-

⁸⁹ Kapur, *Postcolonial Erotic Disruptions*, *supra* note 31, at 378.

victimization and essentializing the very persons whom they hope to serve. Without direct contact with a client who either is the person suffering or is closely connected to the person suffering, it may be too easy to start thinking of the person suffering as The Victim who has no attributes or human qualities other than having suffered.

Human rights clinics and centers should consider how centering the work of their students in a lawyer-client relationship not only adds to the learning potential of future lawyers and human rights advocates, but additionally allows students to carefully consider the admonishments put forward by the human rights critics. Adding a clinical component in which students grapple with client-lawyer relationship issues in the context of human rights cases delivers an entirely different dimension and infinite possibilities for teaching how, precisely, a human rights advocate can and must confront questions of imperialism, essentialism, reduction of a person or group to a state of Victim Subject, and the unreflective advocate's potential role in essentializing the very persons she is purporting to help.