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TRAUMA-INFORMED LAWYERING LEADS TO MOVEMENT LAWYERING IN INTERNATIONAL HUMAN RIGHTS WORK

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Professors of international human rights law often discuss in their classes the potential conflict between client-centered lawyering and community or movement lawyering. Client-centered lawyering is focused on the interests of the client and fits neatly within a traditional model of ethical lawyering.[1] Movement lawyering is when lawyers work alongside community organizations, activists, or community groups to further systemic change in addition to the individual remedies they are seeking for their clients.[2] Traditionally, public interest classes have focused on the tensions inherent in such work and the ethical way to resolve such conflicts through client-led decisions and appropriate client advice.

Trauma-informed lawyering provides another lens with which to view and resolve this tension. The psychological literature emphasizes that some of the effects of trauma– particularly trauma that arises from a chronic situation like homelessness, domestic violence, or human trafficking– may include a loss of self-efficacy (also called "learned helplessness") and a loss of social connection.[3] Intentionally inflicted trauma, in particular, can cause increased post traumatic distress due to a loss of trust in the norms by which the survivor may have assumed society operated.[4] These effects of trauma can be ameliorated and client resiliency can be increased by connecting a survivor to advocacy and community organizations that empower the survivor to take action, to meet others in the same situation, and to make real-world change.[5] Thus, offering to reach out to and connect with community organizations during the lawsuit should be considered

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1. Katherine R. Kruse, *Engaged Client-Centered Representation and the Moral Foundations of the Lawyer-Client Relationship*, 39 HOFSTRA L. REV. 577, 584-85 (2011).

2. Movement lawyering is critical within the international human rights space, although not always labeled as such. Sami Schramm, et al., *Movement Lawyering: Rebuilding Community Power & Decentering Law*, 26 HUM. RTS. BRIEF 101, 103 (2023).

3. Goodman et al., *Homelessness as Psychological Trauma: Broadening Perspectives*, 1991 AM. PSYCH. 1219, 1219 (1991).

4. JUDITH HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR 54 (2015).

5. *Id*. at 133, 190.

best practices for any lawyer representing a survivor of a traumatic event or conditions.

In the international, as opposed to domestic, human rights context, movement or community lawyering is even more crucial to trauma-informed lawyering because the lawyer will often be working for clients that come from a different cultural background than their own. Community organizations and organizing other survivors can be crucial to ensuring that the client has culturally sensitive support throughout the lawsuit and to ensuring that the lawyer is plugged into the larger cultural context when advising the client. The power imbalance when giving advice to a client that might not be familiar with the law becomes even greater when the client is in another country and has access to even less information about the legal system than if they were present in the United States and had some access to culturally shared information about how the American legal system functions. Thus, movement lawyering is crucial to ensure that client-centered lawyering is effective in the international context.

I. Movement Lawyering and the Traditional Tension with Client-Centered Lawyering.

Movement lawyering, also called community lawyering, has been defined as "[l]awyering that supports and advances social movements, defined as the building and exercise of collective power, led by the most directly impacted, to achieve systemic institutional and cultural change."[6] In practice, movement lawyering can include direct action by lawyers, but here I am specifically referring to the traditional role of lawyers in representing movements and in working strategically and collaboratively with organizers. Movement lawyering involves lawyers being accountable to vulnerable communities, where "accountability is a relationship requiring commitment from both legal and non-legal actors."[7] As particularly relevant to international human rights practitioners, movement lawyering differs from community lawyering as it crosses geographic boundaries to look more broadly at the systemic context that impacts multiple communities.[8]

Client-centered lawyering, while sharing similarities with movement lawyering, is a model of lawyering that "prioritizes client authority and views the client as the best situated person to make decisions."[9] This model has been developed to allow the client to not only set the goals of the litigation and make

6. Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 CLINICAL L. REV. 663, 664 (2017).

7. Marisol Orihuela, *Crim-Imm Lawyering*, 34 GEO. IMMIGR. L.J. 613, 627 (2020).

8. *Id*. at 624.

9. Marisol Orihuela, *The Lawyer's Quandary: Client-Centered Lawyering in the Treatment Paradigm*, 102 N.C. L. REV. 1655, 1685 (2024).

decisions about things like whether to proceed to trial versus settle a case, but also to allow the client to make moral decisions and be provided sufficient information to strategize together with the lawyer about the broader questions of the case.[10]

Law school clinical programs frequently have the desire and the resources to act as "movement counsel," that is, to support social movements through strategic advocacy and litigation.[11] However, law school clinical programs, just like other counsel, frequently retain individual and organizational clients whose goals may not always align with the larger movement.

Traditionally, the law school clinic has taught movement lawyering as potentially opposed to client-centered lawyering, although movement lawyering is itself an outgrowth of client-centered lawyering. Thus, the clinical professor might present two countervailing examples: the first, where the individual client hopes to recover or be vindicated in their case despite a strong possibility of a decision against them. The community organizations and other movement lawyers in the area might counsel against bringing the case or appealing a bad decision, wary of creating bad law. Yet, the individual client's interest is to pursue the case in the hope (even a slim hope) that they can prevail.

The second example, somewhat the opposite, is one where the individual client might grow weary of pursuing the case, even if it could set a positive precedent or be useful for strategic advocacy. Particularly where individuals have suffered trauma, as is common in the human rights space, they frequently might choose to settle rather than participate further in an adversarial process that is further retraumatizing. In these cases, it might be that the movement sees utility in the case but the client is simply no longer willing to participate in the litigation.

Both of these examples frame movement lawyering as opposed to the interests of the individual client. As in the engaged client-centered lawyering model, the difficulties can be partially resolved by discussing and counseling the client on the broader context of the case.[12] I personally have found in my practice of law that clients are more sophisticated than lawyers give them credit for; they understand the limitations of bad precedents and often do not wish to be responsible for a loss that will be to the detriment of future litigants.

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10. *Id*.; Katherine R. Kruse, *Engaged Client-Centered Representation and the Moral Foundations of the Lawyer-Client Relationship*, 39 HOFSTRA L. REV. 577, 584–85 (2011).

11. Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645, 1701 (2017).

12. Katherine R. Kruse, *Engaged Client-Centered Representation and the Moral Foundations of the Lawyer-Client Relationship*, 39 HOFSTRA L. REV. 577, 587 (2011) ("[c]lients' objectives are tied to their feelings, relationships, and experiences; their objectives often change over the course of representation; and their objectives are shaped in part by the information about the law and legal objectives that lawyers explain to them.").

However, the engaged client-centered lawyering solution still frames this as a *conflict* to be resolved by the moral decisionmaking of the individual client. Below, I discuss how, more than a potential conflict, movement lawyering is actually therapeutic lawyering and ethical lawyering that is critical to ensure the client's psychological security in the international human rights space. In this work, the movement lawyering model *is* actually client-centered because it addresses client trauma and empowers the client.

II. Trauma-Informed Lawyering is Client-Centered Lawyering.

Trauma-informed lawyering is a key part of client-centered lawyering. As clinical teachers have long noted, it is crucial for lawyers to understand the inhibiting factors, including psychological ones, in order to facilitate full and effective client participation.[13] Thus, strategies that reduce retraumatization during the litigation and allow clients to participate fully in testimony and decision-making are in fact client-centered strategies. Various experts have defined trauma in different ways; some refer to trauma as the event while others refer to trauma as the emotional response. I will refer to the precipitating event as "the traumatic event" and the emotionally reactive experience during the time of the event as "trauma." I will further refer to the responses and coping mechanisms that develop after the incident as the "trauma response."

The traumatic event has been defined as the precipitating event that "renders an individual's internal and external resources inadequate, making effective coping impossible."[14] Traumatic events can come in many different shapes and sizes, but some common characteristics include "being taken by surprise, trapped, or exposed to the point of exhaustion."[15] The "salient characteristic of the traumatic event is its power to inspire helplessness and terror."[16] Thus, the traumatic event is often defined by the emotionally reactive experience—the trauma itself.

The trajectory of Post Traumatic Stress Disorder ("PTSD") and other trauma responses differs in victims of intentional trauma (defined as trauma intentionally caused by another person) and accidental trauma.[17] While non-intentional trauma tends to result in higher rates of PTSD in the immediate

13. DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING, A CLIENT CENTERED APPROACH, 17 (1977) (discussing the need to understand psychological issues in order to facilitate participation); *see also* Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 361 (2016).

14. Katz & Haldar, *supra* note 13, at 364 (*citing* Richard R. Kluft, Sandra L. Bloom & John D. Kinzie, *Treating the Traumatized Patient and Victims of Violence*, in *86 New Directions in Mental Health Services* 79 (2000)).

15. HERMAN, *supra* note 4, at 34.

16. *Id.*

17. GEORGE A. BONANNO, THE END OF TRAUMA: HOW THE NEW SCIENCE OF RESILIENCE IS CHANGING HOW WE THINK ABOUT PTSD 113, 187 (2021).

aftermath, it also declines steeply over time.[18] PTSD from intentional trauma, on the other hand, rises over time after the event. The mechanism driving the difference between intentional and accidental trauma has not yet been explained but has been hypothesized to be related to the effect of trauma on the subjects' sense of efficacy and control.[19] Survivors of the World Trade Center attack, for example, expressed shock that someone would try to kill them.[20] The damage to and destruction of their narrative of the world meant that their coping mechanisms were not functioning in the same way as someone who has suffered an accident.[21] It is common sense that indifference or hostility can trigger more of an emotional reaction than a naturally traumatic event, and that common sense is borne out by psychological research.[22]

Judith Herman calls this the "violation of human connection," and notes that it can affect perpetrators as well as victims, both of whom she calls survivors.[23] In particular, she recounts a case study of a man who, serving in the Navy, experienced the sinking of his ship in rough seas. More than the enemy attack, the man was traumatized by his own side's disregard for his life:

> The officers had been rescued first, even though they were already relatively safe in lifeboats, while the enlisted men hanging onto the raft were passed over, and some of them drowned as they awaited rescue . . . The rescuers' disregard for this man's life was more traumatic to him than were the enemy attack, the physical pain of submersion in the cold water, the terror of death, and the loss of the other men who shared his ordeal. The indifference of the rescuers destroyed his faith in his community.[24]

In that particular case, the man's trauma resulted in disrupted relationships; the effect of the experience of both physical and structural violence resulted in an oscillation between "uncontrolled expressions of rage and intolerance of aggression in any form," a common presentation among survivors.[25]

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18. Patcho N. Santiago et al., *A Systematic Review of PTSD Prevalence and Trajectories in DSM-5 Defined Trauma Exposed Populations: Intentional and Non-Intentional Traumatic Events*, 8 PLOS ONE, no. 4, Apr. 2013, at 1, 3.

19. Stevan E. Hobfall et al., *Five Essential Elements of Immediate and Mid-Term Mass Trauma Intervention: Empirical Evidence*, 70 PSYCHIATRY 283, 285 (Winter 2007).

20. BONANNO, *supra* note 17, at 90.

21. *Id.*

22. *Id.*

23. HERMAN, *supra* note 4, at 54.

24. *Id.* at 55.

25. *Id*. at 56.

In the international human rights context, students will most likely be working with victims of intentional trauma, not accidental trauma. Clients may exhibit a number of trauma symptoms that could interfere with their participation in the litigation, including, among others, fragmented speech,[26] avoidance of the litigation,[27] anger, [28] an inability to sleep,[29] dissociation during discussions,[30] difficulty making decisions,[31] or inability to access their emotions.[32] As the trauma results from intentional conduct, it may increase over the course of the litigation, and the client may feel increasingly isolated from their community. The violation of connectedness they experience may lead to additional disruption of relationships.

It is important for students to be able to recognize and address these symptoms of trauma as they can be obstacles to the full participation of the client and the success of the litigation. Such symptoms can obstruct responding to the lawyers, answering questions fully, testifying in a compelling way, or making decisions about the strategy and goals of the case. In the next part, I discuss how movement lawyering is one strategy that addresses client trauma.

III. Movement Lawyering is Client-Centered Lawyering Where It Empowers the Client and Improves Their Resiliency.

Trauma-informed lawyering leads to movement lawyering where the lawyer is concerned with the retraumatization or resiliency of the survivor throughout the litigation. The psychological literature shows that activism and working for systemic change can lessen trauma symptoms in clients. Herman emphasizes in her work the extent to which "empowerment of the survivor and creation of new connections," including through advocacy and political organizing, can be redemptive for survivors.[33] Psychologists recognize a "natural desire to take action to overcome post-traumatic helplessness" which can manifest itself in a social, policy making context.[34] Movement lawyering recognizes the therapeutic effect of working for systemic change and, in the international human rights context, becomes a crucial tool to avoid retraumatization of the client.

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26. BESSEL VAN DER KOLK, THE BODY KEEPS THE SCORE 43 (2014).
27. BINDER & PRICE, *supra* note 13, at 15.
28. HERMAN, *supra* note 4, at 137.
29. Richard J. McNally, *Progress and Controversy in the Study of Posttraumatic Stress Disorder*, 54 ANN. REV. PSYCH. 229, 230-31 (2003).
30. BESSEL VAN DE KOLK, *supra* note 26, at 66.
31. Nicole Fidler, Nefertiti J. Alexander & Kate Okamoto, *Trauma-Informed Approach to Client Interviews*, Practicing Law Inst. slide 13-14.
32. BESSEL VAN DE KOLK, *supra* note 26, at 100.
33. HERMAN, *supra* note 4, at 133.
34. ALEXANDER C. MCFARLANE & BESSEL A. VAN DER KOLK, TRAUMATIC STRESS: THE EFFECTS OF OVERWHELMING EXPERIENCE ON MIND, BODY, AND SOCIETY, 34–35 (1996).

Some of the classic literature on resiliency from trauma was authored by Hobfall and Watson, discussing in the therapeutic context how to promote client resiliency. [35] The key strategies (or in the psychological literature's language, "essential elements") include "(1) Promote a sense of safety; (2) Promote calming; (3) Promote sense of self and collective-efficacy; (4) Promote connectedness; and (5) Promote hope." [36] In these essential elements, movement lawyering strategies relate most obviously to promoting a sense of self-efficacy and collective-efficacy and promoting connectedness. By coming together in a community of survivors working for a common goal, the client can increase their connectedness and individual self and collective efficacy. Meeting with other survivors who believe in systemic change can also promote hope, calming, and safety as the client becomes empowered and recognizes that others are building power together. The psychological literature shows what many lawyers know in practice: that movement lawyering overlaps with client centered lawyering when a community movement focused on survivors exists to support and empower the client.

Refocusing the client's goals on the bigger movement may also improve client satisfaction with the outcomes. A client may feel that they are making a difference even where the lawsuit is unsuccessful or where the individual perpetrator is not remorseful if larger advocacy goals are achieved. The client may become focused on "an acknowledgement of harm [or] an apology."[37] This desire is natural, but as lawyers often have to discuss with clients, an apology is not one of the possible outcomes forced by a trial. Connectedness keeps the client's desire for justice from being "tie[d] to the fate of the perpetrator," by focusing the client on a social, general abstract sense of restitution and not ceding any power over the client's present life to the perpetrator.[38] This focus can protect the client from retraumatization in the litigation by emphasizing the overall struggle as opposed to outcomes in one litigation in particular.

Finally, in the international space, movement lawyering also helps hold lawyers accountable within a cultural context.[39] Here, we have talked only about trauma research in the United States as it pertains to human rights work. In other cultures, trauma-informed lawyering will look different and trauma itself might look different according to the cultural values and norms of that society. For example, in an Afro-communitarian society such as the Ibibio

35. Hobfall et al., *supra* note 19, at 285.

36. *Id*.

37. HERMAN, *supra* note 4, at 190.

38. *Id.*

39. Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO J. ON POVERTY L. & POL'Y 337, 356 (2011) (discussing how human rights lawyers "have endeavored to develop a client-centered, non-hierarchical approach in their work in order to accomplish a 'redistribution of power' within their own relationships as they simultaneously seek such a goal for their clients.").

people in Nigeria, an intentional trauma might cause a rupture in the person's sense of identity or moral value.[40] Decisions might also be made in a communal context. Learning about the cultural context of community groups would thus be a very important factor in assisting the client in realizing their ultimate goals in such a community.

Cultural context is also important in determining strategies for lessening trauma that could result from the litigation. For example, in the context of interviewing or preparing for depositions, retraumatization is a constant concern for the responsible human rights litigator, and "planning for the aspects of legal interactions that may potentially aggravate existing traumatic stress is one of the most important aspects of trauma-informed approaches to legal advocacy."[41] In the United States context, one strategy my law students have used to ground the client and make the experience of interviewing someone about a difficult subject easier is to bring a meal to share. But as I have previously been informed about Ibibio culture, asking questions or talking extensively while sharing a meal is traditionally considered impolite. Having community organizers who can guide *culturally specific* interventions for trauma-informed lawyering during interviewing and litigation is essential for the human rights lawyer who wishes to avoid retraumatization to the client throughout the litigation.

In the international human rights space, movement lawyering is not only protective of the trauma survivor and encourages their resiliency, it also encourages the lawyer to educate themselves about the broader context and to make sure that they know the appropriate actions to take to avoid themselves retraumatizing their client.

IV. Reflecting on the Movement or Community Lawyering Aspects of the Case is The Responsibility of the Lawyer Representing the Trauma Survivor.

Rather than presenting movement lawyering as an opposition to client-centered lawyering, international human rights professors and clinicians should encourage students to reflect on what a connection to movement or community organizations would do for their clients. Placing the case in a broader political and cultural context for the client, including by identifying and connecting them with survivor-led organizations, can actually increase their self-efficacy and give them options for action, connectedness, and solidarity outside the

40. PRINCEWILL UDOH ET AL., *A Critical Analysis of Eti-Owo in Ibibio Ethics*, 2 ADVANCES IN L., PEDAGOGY, AND MULTIDISCIPLINARY HUMANS. 116, 119 (2024) (discussing value prioritization in a heavily communitarian culture).

41. Beth Ribet, *Legal Ethics and Trauma-Informed Lawyering*, 3 (2017), http://repairconnect.org/sites/default/files/2017-Ribet-Legal-Ethics-Trauma-Informed-Lawyering.pdf.

intensive, often brutal atmosphere of litigation. Grassroots lawyering also avoids "cultural arrogance" and improper narratives from human rights advocates that have been critiqued in the past,[42] ensuring that advocates remain accountable to directly impacted people. Human rights lawyers should not feel that they are embarking on an unnecessary or selfish interest of their own in examining the broader context of the case. They are acting responsibly to ensure that they minimize the trauma inflicted on the client by the litigation itself. Far from creating conflicts, engaged client-centered decisionmaking around the broader context of the case is the responsibility of the trauma-informed lawyer.

42. Bettinger-Lopez et al., *supra* note 39, at 356 (discussing critical theories of cultural ignorance).