Law Schools' Duties Toward Victims of Sexual Assault

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Introduction

When I began researching on sexual violence, I – like many others before me – concluded that the legal system does not offer an adequate answer to complainants of sexual assault. Consequently, when I first delved into ways to improve the predicaments of sexual assault complainants, I considered proposing extra-legal solutions. The solutions I envisioned included widespread sexual education and reforms of legal education. However, comments from colleagues having more experience within the academia promptly buried this thread: "Your field of interest is law, you can't write on education… you must write on the law"; "This does not look like legal scholarship"; and so on. At that moment, I followed the advice of my peers and examined specific provisions of the *Criminal Code*.[1] In this paper, I return to my first instinct and tackle extra-legal avenues. More precisely, I will analyse the impact of legal education on complainants of sexual assault. My experiences as former civil servant (who dealt with

[1] R.S.C. 1985, c. C-46

and supervised several law students), former law student, and now doctoral candidate in law at McGill University provide me with a dual view on legal education, as both an insider and an outsider. While I believe that the hurdles encountered by complainants of sexual assault originate both from law schools and society, I will focus on the former.

Reframing legal education is an ambitious task that comes with its load of obstacles. Changes need to be carefully thought through, as implementing poor reforms can have negative results while consuming resources. A prevailing critique in legal education literature is that curricula and reforms are not always planned purposively.[2] This article thus advances one reason for the alterations it proposes: Improving the satisfaction of sexual assault complainants with the justice system by increasing law students' (i.e., future legal professionals) sensitivity, respect, knowledge and empathy. This paper contends that these four criteria can be used to assess the quality of legal assistance. With this aim in mind, this paper offers a glimpse into legal education's pitfalls and future. Part I provides context as to why law schools should consider changing their approach to sexual assault. The rest of the piece is two-fold and presents both academic and practical ways to reform sexual assault teaching. Part II analyses the place of sexual assault in textbooks and criminal law syllabi through the lenses of interdisciplinarity and language. The syllabi examined come from three law schools in Quebec (i.e., McGill University, Laval University and Sherbrooke University). This section suggests that both interdisciplinary and language can lead to a better comprehension as well as a more sensitive and respectful approach to sexual assault. Part

[2] Annie Rochette and W. Wesley Pue, "Back to Basics"? University Legal Education and 21st Century Professionalism" (2001) 20 Windsor Y.B. Access to Just. 167.

III proposes a new form of teaching (i.e., Experimental Teaching Applied to Sexual Assault) as a means to improve social skills of law students, including but not limited to respect and empathy. Although this paper recognizes that victims' rights should not be pitted against those of the accused, this article focuses exclusively on complainant-centred (or victim-centred)[3] perspectives to legal education without exploring the impacts of these approaches on accused rights.

1. An Achilles' Heel in Criminal Justice?

Sexual assault is commonly described as the least reported and most gendered crime.[4] It is also said to be "endemic",[5] a strong but accurate word to describe the persistence and prevalence of sexual assault in our society. Parliament has tried to change the situation for the better: legal reforms have been enacted in order to induce reporting, debunk stereotypes and reduce attrition of sexual assault cases.[6] The shift from rape and gendered offences to 'sexual assault' is perhaps one of the most important reforms in the

[3] Although the words 'complainant' and 'victim' have different meanings, they are used interchangeably in this article.

[4] Statistics Canada, "Criminal victimization in Canada, 2014" by Samuel Perreault in *Juristat*, Catalogue No. 85-002-X (Ottawa, Statistics Canada, 23 November 2015) at 23-25; Canada, Department of Justice, *A Survey of Survivors of Sexual Violence in Three Canadian Cities*, by Melissa Lindsay, Catalogue No. J2-403/2014E (Ottawa: Research and Statistics Division, 2014) at 6 and 9 ["Lindsay"]; "JustFacts: Sexual Assault" (last modified April 2019), online: *Department of Justice, Research and Statistics Division* <www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/docs/apr01.pdf> at 1; Holly Johnson, "Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault" in Elizabeth Sheehy, ed. *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012); Julie Desrosiers and Geneviève Beausoleil-Allard, *L'agression sexuelle en droit canadien*, 2nd ed. (Montréal: Yvon Blais, 2017) at 36 and 42; Rosemary Cairns Way and Daphne Gilbert, "Teaching Sexual Assault: The Education of Canadian Law Students" (available on SSRN) at 8.

[5] Steve Coughlan and Don Stuart, eds., *Learning Canadian Criminal Law*, 14th ed. (Toronto: Carswell, 2018) at 589; Cairns Way and Gilbert, *supra* note 4 at 8.

[6] See, e.g., Johnson, *supra* note 4 at 614 and 636-634. *Cf* Kimberly A. Lonsway and Joanne Archambault, "The 'Justice Gap' for Sexual Assault Cases: Future Directions for Research and Reform" (2012) 18:2 Violence Against Women 145 especially at 156-157; Mary P. Koss, Karen J. Bachar and C. Quince Hopkins, "Restorative Justice for Sexual Violence: Repairing Victims, Building Community, and Holding Offender Accountable" (2003) Ann NY Acad Sci 384 at 387-388.

substance of Canadian sexual assault law.[7] Rape shield provisions – prohibiting the admission of evidence of complainants' prior sexual history – are also a good example of Parliament's attempts to fight against issues plaguing the prosecution of sexual offences.[8]

Without going more in-depth into the history of sexual assault law in Canada, it cannot be stressed enough that the legal system does not offer a satisfying answer to victims of sexual assault.[9] Dissatisfaction appears to have transcended reforms. When commenting on criminal trials from the 1980s, Desrosiers and Beausoleil-Allard reported that victims of sexual assault experienced two traumas: the sexual assault and the criminal process.[10] Since the 1980s, complainants have continued to decry the pitfalls of the justice system. In 2019, the *Huffington Post* depicted the experience of a sexual assault victim as traumatizing and a source of (re)victimization. The complainant interviewed for this article added: "I was treated as if I was a liar, the criminal, like I had done something wrong when in fact all these horrific crimes had happened against me."[11]

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[7] For more information regarding sexual assault law reforms, see Kent Roach, *Criminal Law*, 7th ed. (Toronto: Irwin Law, 2018) at 472-474 (including Bill C-51) ["Roach (2018)"]; Desrosiers and Beausoleil-Allard, *supra* note 4 at 7-34.

[8] *Criminal Code*, *supra* note 1 at ss. 276 and ff. First versions of this type of provision were enacted in the 1970s and 1980s: Desrosiers and Beausoleil-Allard, *supra* note 4 at 23-28. See also Coughlan and Stuart, *supra* note 5 at 657-714. Of note, the interpretation of these provisions is still very contentious (see on this matter: *R v Barton*, 2019 SCC 33; *R v Goldfinch*, 2019 SCC 38; *R v R.V.*, 2019 SCC 41).

[9] See Cheryl Regehr et al., "Victims of Sexual Violence in the Canadian Criminal Courts" (2008) 3 Victims and Offenders 99 at 109 which concluded that positive experiences with actors of the system could help victims, but that the satisfaction of victims is predominantly linked with sentencing. There is an interesting parallel to make with Lonsway and Archambault, *supra* note 6 at 159.

[10] Desrosiers and Beausoleil-Allard, *supra* note 4 at 24 citing E.L. Haines (Ontario High Court), "The Character of the Rape Victim" (1975) 23 Chitty's Law Journal 57; Wendy Lacombe, "The Ideal Victim v. Successful Rape Complainants: Not What You Might Expect" (2002) 10 Feminist Legal Studies 131; Henri Kélada, *Les délits sexuels* (Montréal: Éditions Aquila, 1975) at 45. *Cf* Bronwyn Naylor. "Effective Justice for Victims of Sexual Assault: Taking Up the Debate on Alternative Pathways" (2010) 33 University of New South Wales Law Journal 662**.**

[11] Samantha Beattie, "When Judges Make Sexual Assault Victims Feel Like Criminals" (last modified 8 August 2019), online: *Huffington Post* <www.huffingtonpost.ca/entry/judge-sexual-assault-victims_ca_5d4ad4ede4b09e72973f7743>.

These concerns are quite similar to the critiques reported in the literature.[12] In a Canadian victimization survey published in 2014, almost two thirds of the participants responded that they did not trust the criminal justice system or the court process.[13] When asked what should be improved in the justice system, some victims answered that their "unfortunate experiences […] led them to perceive […] that some criminal justice professionals are not helpful or sympathetic to survivors."[14] This answer clearly highlights the necessity to sensitize and educate future legal professionals regarding needs of victims.

This necessity also stems from concrete examples of insensitivity in the profession. On this matter, we can recall several cases in which judges uttered words reminiscent of myths targeted by the legal reforms aforementioned: Camp J.'s infamous "why couldn't you just keep your knees together?",[15] Braun J.'s remarks on the

[12] See, e.g., Lindsay, *supra* note 4 at 24 and 27; Elaine Craig, *Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession* (Montréal & Kingston: McGill-Queen's University Press) 2018 at 4-11 (albeit the whole book is relevant).

[13] Lindsay, *supra* note 4 at 20-21. It should be noted that this feeling of distrust is not exclusive to Canada. For example, a study in the United States concluded that victims of assaults were satisfied with the justice system at a rate of 66.6%: Amy L. Henninger et al., "Reporting Sexual Assault: Survivors' Satisfaction With Sexual Assault Response Personnel" (2019) Violence Against Women 1 at 7. Patrol officers, detectives and State Attorneys were given lower satisfaction rates (see 12 and 13). See also Ryan M. Walsh and Steven E. Bruce, "The Relationships Between Perceived Levels of Control, Psychological Distress and Legal System Variables in a Sample of Sexual Assault Survivors" (2011) 15:5 Violence Against Women 603 at 605-606 and 611-612.

[14] Lindsay, *supra* note 4 at 22.

[15] *R v Wagar*, Trial Transcript (9 September 2014) Calgary 130288731P1 (ABPC) at 17-18 (as cited by Craig, *supra* note 12 at 199). The Court of Appeal of Alberta, when overturning the acquittal entered by Camp J. stated "We are also persuaded that sexual stereotypes and stereotypical myths, which have long since been discredited, may have found their way into the trial judge's judgment": *R v Wagar*, 2015 ABCA 327 at 4. These events prompted judicial training, see Catharine Tunney, "Proposed bill on sexual assault awareness training for judges 'above politics', Ambrose says" (last modified 4 February 2020), online: *CBC* <www.cbc.ca/news/politics/ambrose-lametti-judge-awareness-training-1.5451117>. Compare Bill C-337, *An Act to amend the Judges Act and the Criminal Code (sexual assault)*, 1st Sess., 42 Parl., 2019 (introduced in 2017 as a private members' bill) and Bill C-5, *An Act to amend the Judges Act and the Criminal Code*, 1st Sess. 43rd Parl., 2020, sponsored by the Minister of Justice, the Honourable David Lametti.

appearance and desires of a teenage girl,[16] and Lenehan J.'s assertion that "clearly a drunk can consent"[17] are only a sample of judicial comments which made their way to national headlines. Incidentally, a study on victims of sexual offences in Canada concluded that 70% of the participants who had contact with lawyers found defence counsels insensitive, compared to 27.3% for Crown Attorneys.[18] The authors of that same paper also reported that defence counsels had caused distress and made the victim feel that their case was unimportant.[19]

In light of the above, there is no doubt that revamping legal education and infuse it with victim-centred knowledge and skills is an appealing idea.[20] Indeed, as one means of changing legal culture is to look at law schools,[21] this paper adds to the literature contending that legal education can be used to increase sexual assault complainants' satisfaction with the justice system. This paper argues that satisfaction depends among other things on a better assistance from legal professionals. This article assess improvement in terms of assistance through four criteria: sensitivity, understanding of

[16] *R c Figaro*, 2017 QCCQ 7275 at 23 and 35-36. On this matter, see also Ashifa Kassam, "Canada judge says sexual assault victim may have been 'flattered' by the incident" (last modified 27 October 2017), online: *The Guardian* <www.theguardian.com/world/2017/oct/27/canada-judge-says-sexual-assault-victim-may-have-been-flattered-by-the-incident>; Louis-Samuel Perron, "Propos 'inacceptables' le juge Braun se dessaisit de la cause (last modified 20 November 2017), online: *La Presse* <www.lapresse.ca/actualites/justice-et-faits-divers/actualites-judiciaires/201711/20/01-5144164-propos-inacceptables-le-juge-braun-se-dessaisit-de-la-cause.php>.

[17] As quoted by the Court of Appeal in *R v Al-Rawi*, 2018 NSCA 10 at 109.

[18] Regher et al., *supra* note 9 at 105 and 107. Of note, at 109, the authors conclude that sentencing sensitivity was not linked with satisfaction. Interestingly, victims' advocacy was not always effective in the Canadian legal framework, perhaps with the exception of the sentencing stage (to a certain extent): Kent Roach, *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice* (University of Toronto Press: Toronto, 1999) at 278-279, 289-290 and 299 ["Roach (1999)].

[19] Regehr et al., *supra* note 9 at 106.

[20] Rochette and Pue, *supra* note 2 on the necessity to know what we expect from law schools.

[21] This is argued in a different context by Catherine A. MacKinnon in "Mainstream Feminism in Legal Education" (2003) 53:2 J Leg Educ 199 at 207, in which she states: "If jail does not reduce these crimes, and perpetrators and crimes are ordinary rather than exceptional, criminal justice needs fundamental rethinking – and where better to start than in law school?" See also Cairns Way, *supra* note 4.

complainants' needs and sexual assault consequences, empathy and respect. These elements stem from the sources and arguments exposed in Part I and will guide the arguments in Parts II and III.

Since legal education is divided into two poles, academic and practical, the remaining parts of this paper mirror this division.[22] Part II focuses on the academic pursuits of legal education and, more precisely, on integrating interdisciplinarity and victim-centred language to criminal law textbooks and syllabi. Consequently, the following section argues (1) that law schools should adapt their curricula to include interdisciplinarity insights on sexual violence and (2) impart respectful language in order to increase sensitivity and respect towards complainants as well as to improve law students' knowledge on sexual assault and complainants' needs.

2. Academic Perspectives

If legal avenues such as statutory reforms are insufficient to increase the satisfaction of sexual assault complainants with the justice system, we can turn to another major actor in law: law professors. Law professors participate in law's development in various ways including, but not limited to, the production of scholarship and the education of future legal professionals. Textbooks and syllabi are thus two preeminent

[22] See, e.g., Harry W. Arthurs, "The Future of Legal Education Three Visions and a Prediction", Research Paper No. 49/2013 at 6-7; Eric J. Miller, "The False Dichotomy between Practice (Doctrine) and Academics" (accessed on 13 April 2020), online: *Society of American Law Teacher* <www.saltlaw.org/the-false-dichotomy-between-practice-doctrine-and-academics/>. When concluding his argument, the author presents a four-fold argument that he explores in other posts on this blog: "(1) Academics have not practiced and so cannot teach students about the practice of law; (2) Academics teach practice-irrelevant subjects and so distract students from learning about the practice of law; (3) Only doctrinal training is essential for the practice of law; and (4) Important judges' attacks on certain "academic" subjects is dispositive for determining what is useful in practice."

components of law professors' contributions to the law and society.[23] The following subsection examines these teaching tools and assess whether they could be altered to improve the satisfaction of sexual assault complainants with the justice system.

(a) Interdisciplinarity: Sexual Assault Beyond Law

Sexual assault law has been the source of an impressive amount of erudition. From discussions on pure criminal law principles – such as consent and its underpinnings[24] – to philosophical takes on sexual violence,[25] law professors and jurists have flooded libraries and law journals with articles and manuscripts on sexual offences. Literature exclusively dedicated to the teaching of sexual assault law (or rape law) has also flourished,[26] albeit to a lesser degree.[27] A good example of the latter type of scholarship is Professors Cairns Way and Gilbert's article on sexual assault law teaching. They suggest that students are the future of our society and that they will, one day, dictate criminal law policies. Cairns Way and Gilbert argue that law professors have the opportunity to transmit not only abilities but also values that will help address issues of gender, attrition and lack of reporting in sexual assault cases. For the authors, teaching law is thus inherently political since it allows professors to have an indirect impact on the

[23] This methodology is inspired by David Sandomierski's work. See "Tension and Reconciliation in Canadian Contract Law Casebooks" (2017) 54:4 Osgoode Hall LJ 1181.
[24] See, e.g., Roach (2018), *supra* note 7; Desrosiers and Beausoleil-Allard, *supra* note 4; Coughlan and Stuart, *supra* note 5; and many other textbooks.
[25] John Gardner is one of the authors who contributed to this trend: see, for example, "The Opposite of Rape" (2018) 38:1 Oxf J Leg Stud 48 and "The Wrongness of Rape" in *Offences and Defences: Selected Essays in the Philosophy of Criminal Law* (Oxford: Oxford University Press, 2007).
[26] Susan Estrich, "Teaching Rape Law" (1992) 102 Yale LJ 509; James J. Tomkovicz, "On Teaching Rape: Reasons, Risks, and Rewards" (1992) 102 Yale LJ 481; Kate E. Bloch, "A Rape Law Pedagogy" (1995) 7 Yale JL Feminism 306; Jennifer M. Denbow, "The Pedagogy of Rape Law: Objectivity, Identity and Emotions (2014) 64:1 J Leg Educ 16; Cairns Way and Gilbert, *supra* note 4.
[27] I agree with Cairns Way and Gilbert, *supra* note 4 at 5-6, that although there is literature on how to teach sexual assault, its volume is way less impressive than other subsets of sexual assault literature.

legal profession and social policies. Consequently, they highlight that sexual assault law teaching should be planned cautiously.[28] Professor Bloch, on her end, recommends using a student-legislator approach as a way to sensitize students regarding the difficulty of enacting legislation on rape and fixing morality lines, as well as to improve their understanding of connections between criminal law and other legal fields.[29] I add to Bloch's suggestion that, in order to understand sexual assault holistically, law students should not only be aware of the intersections between various legal fields but also between several disciplines. Interdisciplinarity is key to sexual assault prosecutions. Future legal professionals' legal knowledge can be enriched by insights from, for example, psychology and sociology as a way to increase their sensitivity and understanding of complainants' needs.

The integration of interdisciplinary courses within legal curricula while valuable in the context sexual assault law, extend beyond this narrow field. Interdisciplinarity can broaden law students' critical thinking and, ultimately, produce well-informed lawyers.[30] For instance, in a piece on interdisciplinary teaching in law, Manderson states: "[I]t is hard to see where a narrowly confined understanding of law could ever locate the content and spirit of ethics and justice that is meant somehow, in ways rarely thought through to animate it."[31] Although some may consider that teaching interdisciplinary knowledge within law schools is too complicated, interdisciplinarity can be integrated in various

[28] Cairns Way and Gilbert, *supra* note 4 at 3-10.
[29] Bloch, *supra* note 26 at 310.
[30] See, for example, Sandra K. Miller and Larry A. DiMatteo, "Law in Context: Teaching Legal Studies through the Lens of Extra-Legal Sources" (2012) 29:2 J Leg Stud Educ 155; Arthurs, *supra* note 22 at 6-9; Nancy B. Rapoport, "Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools" (2012) 116:4 Penn St L Rew 1119 at 1145.
[31] Desmond Manderson, "In the Moot Court of Shakespeare: Interdisciplinary Pedagogy in Law" (2004) 54 J Leg Educ 283 at 284.

ways: admitting non-law students to law courses,[32] offering concentrations, and so on. Preeminent schools such as Stanford Law School have reshaped their programmes to integrate interdisciplinary courses and proved the feasibility of adding extra-legal courses to JD or LL.B. curricula.[33] In 2018, Stanford Law offered 21 joint degrees as well as the opportunity to enrol in interdisciplinary courses for students who opted for the regular curriculum.[34] Law schools can also collaborate with other institutions when designing interdisciplinary curricula. For instance, the Faculty of Medicine at University Laval, in Québec City, offers a short undergraduate programme of 15 credits on human sexuality and sexual abuse dissecting *inter alia* child sexual violence, adult sexual violence, and needs of victims.[35] A partnership between the Faculty of Medicine and the Faculty of Law could lead to a concentration in sexual violence within the LL.B.

The arguments on the merits of interdisciplinary perspectives in legal studies are indeed especially relevant in the context sexual assault law. Sexual assault is not a purely legal phenomenon. It concerns numerous fields beyond law. Some specializations such as statistics and legal history document the evolution of sexual violence and its regulation, whereas others, such as psychology and medicine, are meant to treat physical and mental health issues of both victims and offenders, when required. Given the connections

[32] Rapoport, *supra* note 30 at 1153. This suggestion allows for law students in the regular curriculum to be confronted with extra-legal perspectives brought by students from other fields.
[33] Margaret Martin Barry, "Practice Ready: Are We There Yet?" (2012) 32:2 BC JL & Soc Just 247 at 263; Rapoport, *supra* note 30 at 1132 (on Stanford) and 1146, 1148, 1151-1153 (on the integration of interdisciplinarity within law schools).
[34] "Joint Degree and Cooperative Programs" (accessed on 17 March 2020), online <law.stanford.edu/education/degrees/joint-degrees-within-stanford-university/#slsnav-established-joint-degrees>; "Interdisciplinary Learning" (accessed on 17 March 2020) online: *Stanford Law School* <law.stanford.edu/education/only-at-sls/interdisciplinary-learning/>.
[35] "*Microprogramme en sexualité humaine – études sur les abus sexuels*" (accessed on 20 March 2020), online: *Université Laval* <www.ulaval.ca/les-etudes/programmes/repertoire/details/microprogramme-en-sexualite-humaine-etudes-sur-les-abus-sexuels.html#presentation-generale>.

between these disciplines, integrating interdisciplinary perspectives to sexual assault teaching appears to be a valid option. This is especially true given sexual violence experts' recommendation to impart legal professionals with "education across all sectors of the system on the neurobiology of trauma, violence, and abuse, and the social contexts of victim responses",[36] topics presumably outside legal education's boundaries. Criminal law textbooks and first-year criminal law syllabi are valuable tools to assess the substance of legal education and, more precisely, whether interdisciplinary perspectives permeate law schools' courses. The few next paragraphs will be dedicated to this task.

In a study on sexual assault teaching, Cairns Way and Gilbert concluded that the first-year criminal law casebooks covered the same major doctrinal topics. Nevertheless, the casebooks also had individual specificities. [37] For instance, Roach, Healy and Trotter (now Roach, et al.) [38] expanded their analyses to wrongful convictions, whereas Stuart, Delisle and Coughlan (now Coughlan and Stuart) dedicated a segment of their treaty to victim rights.[39] Adding Desrosiers and Beausoleil-Allard's textbook on sexual assault – and Roach's (*Criminal Law*, 7th ed.) subchapter on sexual offences[40] does not really change the results from Gilbert and Cairns Way's paper. The former shares most of its content with other textbooks, including Roach's *Criminal Law*, but adds extensive

[36] Lori Haskell and Melanie Randall, "The Impact of Trauma on Adult Sexual Assault Victims" (Justice Canada, 2019) at 34.
[37] Cairns Way and Gilbert, *supra* note 4 at 13-14.
[38] Kent Roach, Patrick Healy, Gary Trotter, eds., *Criminal Law and Procedure: Cases and Materials*, 9th ed. (Toronto: Emond Montgomery, 2004). This casebook can now be referred to as Kent Roach, et al., *Criminal Law and Procedure: Cases and Materials*, 11th ed. (Toronto: Emond Montgomery, 2015). This paper examines the latest version of this casebook.
[39] Cairns Way and Gilbert, *supra* note 4 at 14. Cairns Way and Gilbert analysed Don Stuart, Ronald J. Delisle, Steve Coughlan, eds., Learning Canadian Criminal Law, 11th edition (Toronto: Carswell, 2009). Once again, we work in this paper with the latest version of this casebook, Coughlan and Stuart, *supra* note 5.
[40] Here referring to Roach (2018), *supra* note 7 and not to Roach, Healy and Trotter, *supra* note 38.

descriptions on evidence, procedure and sentencing in sexual assault cases. Desrosiers and Beausoleil-Allard's book unpacks each common topic in more length, which is not abnormal given its focus on sexual assault. One question remains: Do these books juggle with interdisciplinary perspectives? Roach et al., Coughlan and Stuart, Roach, Desrosiers and Beausoleil-Allard and Roach all provide some information regarding the evolution of sexual assault regulation, myths, stereotypes and the prevalence of sexual violence.[41] Nevertheless, interdisciplinarity remains mostly absent. There is no chapter or sub-chapter either on the consequences of sexual abuse or on psychology, medicine or other disciplines.

Likewise, interdisciplinarity tends to be absent from Quebec law schools' syllabi. Prior to critiquing criminal law courses, I wish to highlight that there are promising initiatives aimed at providing a more thorough understanding of sexual assault within law schools. A good example is found in a syllabus from one section of the Criminal Justice course at McGill University's Faculty of Law, which goes beyond case law and textbooks. The course dedicates 4.5 hours (i.e., 3 classes) to teaching sexual assault and does so in two axes: history and definition of the offence. The syllabus is composed of a combination of case law, statutes, news articles, and academic articles. In the three classes dedicated to sexual assault, students are sensitized to a variety of topics ranging from feminist definitions of sexual violence, judges' biases, pleasure, consent and criminal prohibitions afflicting sexual autonomy of HIV-positive individuals. The syllabus nevertheless operates exclusively in a legal paradigm. There is no sociological or

[41] Roach et al., *supra* note 38 at 641-643 and 689-692 (reproducing excerpts from Christine Boyle and Marilyn MacCrimmon, "The Constitutionality of Bill C-49; Analyzing Sexual Assault as if Equality Really Mattered" (1999) 41 CLQ 198); Coughlan and Stuart, *supra* note 5 at 589-596; Desrosiers and Beausoleil-Allard, *supra* note 4 at 7-45 and 657-714; Roach (2018), *supra* note 7 at 472-474.

psychological study in the mandatory readings despite recommendations from a psychology expert, Dr. Haskin, and a law professor, Prof. Randall, to develop a holistic understanding of sexual violence extending to neurobiology and trauma. These recommendations were included in a report – submitted to Justice Canada in 2019 – on sexual assault and the role of the actors within the criminal justice system.[42]

In addition to the Criminal Justice syllabi, two syllabi from Laval and Sherbrooke universities were examined when researching for this paper. Both excluded interdisciplinary elements or sections on sexual assault. [43] They focused on traditional criminal law principles, such as the *actus reus*, the *mens rea* and defences. In some instances, sexual assault case law was used to exemplify general principles or criminal law theory.[44] Students who attend faculties with the latter approach have no choice but to enrol in extracurricular activities or optional specialized criminal law courses to thoroughly engage with sexual assault law's substance and its critiques.[45] For example, criminal law evidence (which includes s. 276 on sexual history evidence) is generally optional in Québec's law schools.[46]

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[42] See for example, Haskell and Randall, *supra* note 36.

[43] See Cairns Way and Gilbert, *supra* note 4 at 17 on why it is important to devote a part of every first-year Criminal law course to sexual assault.

[44] E.g. *R v Ewanchuck*, [1999] 1 S.C.R. 330, a decision on consent, was used to explain the connections between social values and criminal law. *Cf* Cairns Way and Gilbert, *supra* note 4 at 15-18.

[45] Of note, Peter A. Allard School of Law at the University of British Columbia offers many optional courses for upper-years students including "Sexuality and the Law" and other courses linked to sexuality and gender. Unfortunately, I do not have access to these syllabuses. See "Requirements" (accessed 20 March 2020), online: *Peter A. Allard School of Law* <www.allard.ubc.ca/lsj/requirements>. See also Rochette and Pue, *supra* note 2 at 180-185 for an analysis of this law school's curriculum.

[46] See, e.g., "*Baccalauréat en droit*" (accessed on 24 March 2020), online: *Université Laval* <www.ulaval.ca/les-etudes/programmes/repertoire/details/baccalaureat-en-droit-ll-b.html#description-officielle&structure-programme>; "*Baccalauréat en droit*" (accessed on 24 March 2020), online: *Université de Sherbrooke* <www.usherbrooke.ca/admission/programme/290/baccalaureat-en-droit/#c38916-1>; "*Baccalauréat en droit*" (accessed on 24 March 2020), online: *Université du Québec à Montréal* <etudier.uqam.ca/programme?code=8308#bloc_cours>; "*Baccalauréat en droit*" (accessed on 24

Some caveats must be noted regarding the first syllabus examined (i.e., McGill's one): (1) the different sections of the Criminal Justice course do not share this syllabus, (2) the Criminal Course is taught over a year and this paper only examined the Winter syllabus, and (3) some students have decried that McGill's emphasis on critical perspectives results in a poor understanding of the law.[47] Consequently, these students may be afraid that adding interdisciplinarity will result in learning less 'law'. I would answer this concern in the following way: by enriching our legal knowledge with interdisciplinarity insights, it is easier not only to critique the limits of criminal law but to understand fully the rationale and scope of the law. Let's take the rape shield provisions as an example. Craig provides many examples of traumatic uses these provisions that could perhaps be avoided by increased sensitivity and knowledge of sexual assault consequences and myths. Craig shows that despite these new rules of evidence, applications are not always filled prior to introducing sexual history evidence. [48] While this may be strategic, it is not allowed under the *Criminal Code*. I argue that understanding the reasons for the rape shield provisions, as well as the prevalence of stereotypes in our society, would lead to better uses of s. 276 by Crown, defence counsels and judges. While we may think that the introduction of sexual history evidence depends on defence counsel; refusing and objecting to the admission of this kind of evidence relies on the work of Crowns and judges. Inappropriately introducing sexual history

March 2020), online: *Université de Montréal* <admission.umontreal.ca/programmes/baccalaureat-en-droit/structure-du-programme/>.

[47] This statement is not statistically significant. It results from discussion with McGill students and alumni. *Cf* Cairns Way and Gilbert, *supra* note 4 at 15. The caveats noted apply throughout this article.

[48] Craig, *supra* note 12 at 41-60.

evidence may also rely on other participants than defence counsels. On these matters, see one of the paragraphs of the disposition in *R. v. Goldfinch*, a case discussing of s. 276:

> Much of the evidence that ultimately came out in this case was adduced during the Crown's examination of the complainant and, to a lesser degree, its cross-examination of Goldfinch. This requires two observations. First, I note that Crown counsel would not have adduced this evidence but for the s. 276 application, which I have concluded should not have been granted. […] Second, proper management of evidence which falls within the scope of the s. 276 regime requires vigilance from all trial participants, but especially trial judges — the ultimate evidentiary gatekeepers.[49]

For judges to be effective "evidentiary gatekeepers" and for defence counsels and Crown to apply correctly s. 276, all legal actors have to be sensitized regarding the consequences of sexual assault, the prevalence of myths and stereotype and the trauma linked to the criminal process. When imparting this knowledge, we need to infuse our teachings with extra-legal sources that thoroughly explain the emotional and social predicaments faced by sexual assault complainants who report the crime they have been victim of.

In conclusion, this section argued that interdisciplinarity could help inform our understanding of the law, contribute to enhancing sensitivity and provide insights into non-legal components of sexual assault. These three elements are linked to the criteria of sensitivity, knowledge of sexual assault consequences and knowledge of complainant's needs, which can all contribute to better assistance and increase satisfaction of sexual assaults complainants. However, this section also shown that the use of interdisciplinary perspectives could be integrated more effectively in Canadian textbooks and Québec law schools' syllabi. This observation should not be considered as statistically significant or

[49] *R. v. Goldfinch*, *supra* note 8, at para. 75 (per Karakatsanis J.), see also para. 99 (per Moldaver J.).

sound but reveals a potential gap in Canadian (and more accurately Québec's) legal education. Interdisciplinarity cannot resolve every problem afflicting sexual assault law. Law schools also have to examine the issues pervading the 'legal' component of sexual assault law teaching. By this, I mean that law schools must pay attention to the language used when teaching sexual assault. Since words have the power to dictate our understanding of the law and the way other receive our messages, law schools have to be vigilant not to impart their students with language that discredit or turn a blind eye to victims. The following section will delve into language and its potential influence on satisfaction of sexual assault complainants.

(b) Language as Shaping Minds

The previous subsection answered one question: What should we teach when teaching sexual assault? It argued that in order to teach sexual assault holistically, interdisciplinarity is needed. The present section responds to the same question differently, by focusing on the language used to impart knowledge on sexual assault. The argument on language is two-fold: (a) the criminal law paradigm usually removes victims from the discussion, and (b) the language used to talk of victims does not contribute to enhancing their experience within the criminal justice system. Therefore, this next subsection builds on an argument from Miller and DiMatteo. These authors contend that "rules become masks that hide and render irrelevant the humanity of those affected by the law",[50] an argument that I reshape as follows: 'The language used become [a mask] that hide and render irrelevant the humanity of [victims]'. This subsection thus deal with three

[50] Miller and DiMatteo, *supra* note 30 at 163.

criteria that were previously identified as essential to increase sexual assault complainants' satisfaction with the justice system through better assistance: understanding victims' needs, enhancing respect and increasing sensitivity.

Criminal law in the common law tradition is traditionally seen as a bipartite field. Packer's models compellingly depicted this opposition by analyzing crime control and due process through the standpoint of two actors: State and offenders.[51] Although we can still use Packer's models to comprehend criminal law objectives, there is vigorous criticism against this framework. Packer's critiques suggest, among other things, adding victim-centred perspectives to the dual model as a way to represent accurately the social reality behind criminal law.[52]

We can find similar arguments in legal education scholarship. Scholars advance that legal education is erasing victims from criminal law teaching. Young and Craig, both Canadian criminal law professors, have recommended imparting legal professionals with victim-centred perspectives. Although Young focuses on victim rights and not specifically on victims of sexual offences, the points he makes are not foreign to sexual assault. Young posits that for any amendment to be effective, the legal culture has to be altered.[53] Applied to sexual assault law, Young's assertion means that without profoundly changing the way sexual assault is conceived of in the legal culture, reforms such as those

[51] Herbert L. Packer. "Two Models of the Criminal Process" (1964) 113:1 U Pa L Rev 1.
[52] Douglas Evan Beloof, "The Third Model of Criminal Process: The Victim Participation Model" (1999) 2 Utah Law Rev 289; Roach (1999), *supra* note 18 at 310-320 (of note, the whole book is based on Packer's framework); Kent Roach, "Four Models of the Criminal Process" (1999) 89:2 J Crim L & Criminology 671; Marie Manikis, "A New Model of the Criminal Justice Process: Victims' Rights as Advancing Penal Parsimony and Moderation" (2019) 30:2 Crim Law Forum 201.
[53] Alan N. Young, "Crime Victims and Constitutional Rights" (2005) 49:4 CLQ 432 at 446-449.

referred to in the introduction will remain ineffective. Young further suggests that lawyers are not trained to deal with victims.[54] In his opinion, it mainly derives from the absence of victim rights in legal curricula.[55] My argument is that if victims are absent from curricula, victim-centred language is also underdeveloped. While Young and I both noticed the absence of victim rights within legal curricula, I am more interested in the impact of this absence on legal language. Continuing my textbooks and syllabi analysis (and adding other considerations), the next few paragraphs delve into the merits of these arguments.

I have already mentioned that criminal law textbooks cover mostly the same content.[56] When discussing the Canadian study that reached this conclusion, I pinpointed that Coughlan and Stuart's book was the only one that dedicates an entire segment to victims of crime. This sounds promising. Since Coughlan and Stuart's book is preferred by many Canadian law professors teaching a first-year criminal law class, it also appears to act as an argument against the position that victims are erased from legal education.[57] The casebook indeed mentions victim rights. However, it is done in an extremely condensed way. The section accounts for a few pages of the voluminous more than 1200-page work.[58] As for the textbooks I added to this analysis (i.e., Desrosiers and Beausoleil-Allard, and Roach), they thoroughly present the gaps in sexual violence regulation but include no chapter or section on victim rights or advocacy. This is not intended to be a

[54] Young, *supra* note 53 at 446-449.
[55] *Id.* at 469-470.
[56] Craig, *supra* note 12 at 98-99, 130, 137, 142, 147, 161-162, 165 and 174.
[57] Cairns Way and Gilbert, *supra* note 4 at 13.
[58] See section 3(a) of Coughlan and Stuart, *supra* note 5 at 112. Of note, a longer section will not be of any help if it is not assigned to students.

critique of the authors, but rather an observation of the fettered place reserved for victim rights in legal education.

As for syllabi, the word 'victim' was either absent or making very timid appearances. Although the Criminal Justice course inquires into sexual assault very meticulously, its syllabus contains the word 'victim' only once. The term can be found in the title of one of the mandatory readings (i.e., "Rape and the *Querela* in Italy: False Protection of Victim Agency").[59] This article outlines many concerns regarding the regulation of sexual offences and the protection of victims in Italy. However, there is no class dedicated specifically to victims or their rights. In its end, another course examines restitution (in French, "*dédommagement de la victime*") when providing an overview of sentencing. It is the only instance where the word '*victime*' can be seen in the 14-page syllabus. It is difficult to envision how legal professional can assist victims and be sensitive to their needs if victims' legal rights and victim advocacy are absent from course material. One may respond that victim rights may be part of other criminal law courses, but as aforementioned, advanced criminal law class are optional in Québec law schools.

Although including victims' rights and advocacy to legal curricula is desirable, this paper argues that while including the victims in syllabi or handbooks contribute to increasing sensitivity and impart knowledge on sexual assault; it is, on its own, not sufficient. Indeed, this paper contends that the development of a victim-centre language is a means to offer better assistance and, thus, increase satisfaction of sexual assault

[59] Rachel A Van Cleave, (2007) 13:2 Mich J Gend Law 273.

complainants with the justice system since victim-centred language engages with two of the criteria previously identified: sensitivity and respect. There are various ways in which language impacts the treatment of victims within the justice system and thus justify the need for more sensitivity and respect.[60] For instance, a disturbing proof of the power of language in the jurisprudence is found in the *Barton* case.[61] Mr. Barton was charged with first-degree murder in the death of Ms. Gladue, a sex worker, who died in Barton's hotel room after they had engaged in sexual activity. The comments of the court in *Barton* can undoubtedly be added to the comments of Camp, Braun and Lenehan JJ. mentioned in Part I of this paper. While *Barton* is not a sexual assault case, it involves many issues similar to sexual assault prosecutions (e.g., twin myths, description of the sexual activity, consent of Ms. Gladue, intoxication, etc.). In this case, the Supreme Court of Canada had to intervene to remind that victims are worthy of respect and that this respect should transpire from courts' judgments.[62] The Court remarked that legal professionals and witnesses had "referred to Ms. Gladue[63] as a 'Native girl' or 'Native woman' […] approximately 26 times".[64] Without dismissing the potential relevance of biographical information, the Court concluded that "[b]eing respectful and remaining cognizant of the language used to refer to a person is particularly important in a case like this" and that the

[60] See, e.g., Regehr et al., *supra* note 9 at 106. See also Barbara Hudson, "Restorative Justice and Gendered Violence: Diversion of Effective Justice?" (2002) 42 Brit J Criminol 616 at 624-625 and 630 (on limitations of the tradition criminal justice language in gendered violence cases). *Cf* Nils Christie, "Conflicts as Property" in *Principled Sentencing: Readings on Theory and Policy*, 3rd ed. Andrew von Hirsch, Andrew Ashworth and Julian Roberts, eds. (Oxford: Hart Publishing, 2009) at 173-174. In these pages, Christie argues that lawyers are trained to "steal conflicts" and compellingly provides another example of how victims can lose their voices in the criminal justice system.
[61] *R v Barton*, *supra* note 8.
[62] *Id.* at 205-207.
[63] See Tunney, *supra* note 15 on the language used and the lack of respect for the victims in this case.
[64] *R v Barton*, *supra* note 8 at 205.

name of the victim should have been preferred "as a simple matter of respect".[65] The conclusion of the majority reasons is also revealing of the Court's attempt to repair the harm done to Ms. Gladue and her family by the language of legal professionals and by the criminal process:

> …[E]veryone is equally entitled to the law's full protection and to be treated with dignity, humanity, and respect. Ms. Gladue was no exception. She was a mother, a daughter, a friend, and a member of her community. Her life mattered. She was valued. She was important. She was loved.[66]

A similar argument of language was advanced in legal education scholarship albeit formulated differently. For instance, Mertz in her book *The Language of Law School: Learning to "Think Like a Lawyer"* provides an example of the role of language in legal education. She argues that the language used in law schools has the power to shape students' minds.[67] By relying on classes' transcripts, she gives a compelling example of how the understanding of *Sullivan v O'Connor*[68] was moulded by the Professor's word choice. Here is an excerpt of one of the transcripts:

> Prof.: [...] How did this get to the appellate court?
>
> Ms. A.: Well the um the the patient was a woman who wanted // a //
>
> Prof.: // How // did this case get to the appellate court?
>
> Ms. A.: The defendant disagreed with the way the damages were awarded in the trial court.

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[65] *R v Barton, supra* note 8 at 207 (see 206 on relevance of biographical details).
[66] *Id.* at 210.
[67] Elizabeth Mertz, "Learning to Read Like a Lawyer: Text, Context, and Linguistic Ideology" in *The Language of Law School Learning to "Think Like a Lawyer"* (Oxford University Press: Oxford, 2007).
[68] 1973. 363 Mass. 579, 296 N.E.2d 183.

Prof.: How did this case get to the appellate court? [...]

Ms. A.: It was appealed.[69]

It is astonishing how personal elements were removed from the student's discourse. Mertz explains that understanding the decision as 'the story of a woman who had a bad nose surgery' was presented as an inappropriate reading of the case.[70] More preoccupying is that this kind of exercise intends to impart students with the ability 'to think like lawyers'. Are we suggesting that lawyers should not consider personal perspectives or, in other words, should not attempt to humanize their clients and other users or the justice system? [71] According to the Cambridge online dictionary, 'sensitivity' means: "[the] ability to understand what other people need, and be helpful and kind to them", while 'respect' is defined as "care shown towards someone or something that is considered important".[72] Hence, showing respect and sensitivity imply knowing what is important to the person and being considerate about it. The fact that the decision 'was appealed' is not necessarily what was the most important to the plaintiff in the example. If legal education excludes the personal considerations of 'the patient woman who wanted' and instead focuses only on legal requirements and standards, one could argue that legal education falls behind on respect and sensitivity. Incidentally, the following part proposes to remove the distance between law students and victims of sexual assault through experimental teaching. Part III delves into experimental teaching as it is seen as

[69] Mertz, *supra* note 67 at 53-54.
[70] *Id.*
[71] See on related matters Anna Cody, "Developing Students' Sense of Autonomy, Competence and Purpose through a Clinical Component in Ethics Teaching" (2019) 29:1 Leg Education Rev 1 at 7; Ian Gallacher, Thinking Like Non-Lawyers: Why Empathy is a Core Lawyering Skill and Why Legal Education Should Change to Reflect its Importance" (2012) 6 Syracuse College of Law Faculty – Scholarship 1.
[72] "respect" and "sensitivity" (accessed on 3 June 2020), online: *Cambridge Dictionary* <dictionary.cambridge.org/dictionary/english/respect> and <dictionary.cambridge.org/dictionary/english/sensitivity>.

being a way to promote – among other things – a criterion until here not unpacked: empathy.

3. Experimental Teaching Applied to Sexual Assault

In the previous section, I unpacked the academic side of legal education, but what about practical pursuits? This segment retains the following definition of practice: "'Practice' itself is a complex concept, requiring both an understanding of the law and an understanding of how to relate well to others."[73] Relating to others in sexual assault cases could reduce the distance between legal professionals and victims and, perhaps, contribute to enhancing complainants' experience within the justice system. Can experimental teaching help achieve this dual goal? One may think that given the place that social justice took in law schools' clinics,[74] the answer is yes. Without dismissing the contribution of these clinics to social justice and the assistance they provide to people in need, I wish to propose a definition of experimental teaching that transcends social-justice-focused clinical teaching.

[73] Rapoport, *supra* note 30 at 1119. Nevertheless I distance myself from a conception of "being practice ready" that relies only on writing and argumentative skills.

[74] Adrian Evans et al., "Teaching social justice in clinics" in *Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school* (Acton, A.C.T.: ANU Press, 2017) ["Teaching social justice in clinics"]; Adrian Evans et al., "Designing and operating a best practice clinical program in an Australian law school" in *Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school* (Acton, A.C.T.: ANU Press, 2017) at 75-76 ["Designing and operating best practice clinical program"]; Praveen Kosuri, "Losing My Religion: The Place of Social Justice in Clinical Legal Education" (2012) 32 Boston College Journal of Law & Social Justice 331; Anna Carpenter, "The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact" (Fall 2013) 20 Clinical L Rev 39. For details on the Canadian context, see, e.g., "Our Vision" (accessed on 17 March 2020), online: *Parkdale Community Legal Services* <www.parkdalelegal.org/about/vision/>; Lorne Sossin, "Experience the Future of Legal Education" (2014) 51:4 Alta Law Rev 849 at 852 and 861.

Experimental Teaching Applied to Sexual Assault ('ETASA'): [75] ETASA combines traditional objectives of experimental teaching, such as exposing students to the context in which rules operates and fostering critical thinking,[76] with goals proper to sexual assault prosecutions. ETASA focuses on social skills needed by judges, prosecutors and defence lawyers to deal with victims of sexual assault. These social skills may include (but are not limited to) empathy, [77] respect,[78] listening skills,[79] and knowledge of appropriate terms (e.g., not using the words "to make love", "the 'alleged' crime",[80] and so on, when describing the events).[81] These skills should improve the abilities of law students to engage in non-traumatic conversations with survivors of sexual violence. Although, most of these examples were primarily addressed to judges and the police, this paper argues that they could benefit to all future legal professionals, including future defence counsel and prosecutors.

One caveat should be noted right from the start: I am not suggesting that lawyers should engage in therapeutic relations. Their role obviously differs from sexual assault response centres and health professionals.[82] However, their relationships with victims of sexual violence should be at least respectful and non-traumatic. This being said, one question logically comes to mind when reading ETASA's definition: How can we impart law students with these abilities? [83] Many (if not all) of these suggestions require

[75] Of note, although this paper focuses on sexual assault, the argument could probably be extended to a number of sexual offences.
[76] Sossin, *supra* note 74 at 852; "Teaching social justice in clinics", *supra* note 74 at 107, 110-113 and 119; "Designing and operating best practice clinical program", *supra* note 74 at 94; Arthurs, *supra* note 22 at 10.
[77] See Haskell and Randall, *supra* note 36 at 27-28. See also Gallacher, *supra* note 71 on the importance of empathy in legal education.
[78] Henninger et al., *supra* note 13 at 14; Haskell and Randall, *supra* note 36 at 25.
[79] Haskell and Randall, *supra* note 36 at 27.
[80] *Id.* at 28 (although this idiom was especially targeting police officers). Link to previous section of this paper on language.
[81] See Lindsay, *supra* note 4 at 24 and 25 in addition to other sources referred to in this paragraph.
[82] Henninger et al., *supra* note 13 at 12-13.
[83] Justice Canada has published a manual entitled *Working with victims of crime: Applying research to practice*, 2nd ed., by James K. Hill (Department of Justice Canada, 2009). It can be a good start, but there is

knowledge extending far beyond law.[84] Henceforth, prior interdisciplinary teaching is needed to fully comprehend the impact of sexual assault and successfully implement ETASA.[85] Here, the previous section on interdisciplinary teaching connects with the current argument and interlocks the different pieces of the puzzle that is sexual assault teaching. Interdisciplinary teaching (or the use of extra-legal sources) allows for "[e]motional engagement and empathy [which] are critical attributes in legal […] education."[86] This statement is reminiscent of sexual violence literature advocating for imparting empathy and listening skills to legal professionals.[87] The next question raised by ETASA is the following: What format should it take? Looking at the literature, rich in ideas on how to improve legal education, is a first step to conceptualise ETASA.

From the onset, the use of simulation and standardized patients (or clients) is not new to education or legal education. In law, these methods have been used to enhance students' client skills (e.g., professionalism, continual assessment of client needs and legal communication).[88] Other disciplines use simulation and role-play to teach a variety of skills. For instance, these methods have been commonly employed to help impart

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no section focusing specifically on sexual assault or sexual offences despite sexual assault and rape being described as "one of the most traumatizing experiences a woman can go through" (see Haskell and Randall, *supra* note 36 at 9).

[84] See Haskell and Randall, *supra* note 36 for a similar argument albeit focusing on neurobiology and trauma.

[85] "Designing and operating best practice clinical program", *supra* note 74 at 90-94. This excerpt highlights the need for classroom teaching in clinical legal education. This could be part of seminar components recommended in clinical course, see Carpenter, *supra* note 74 at 92-94.

[86] Miller and DiMatteo, *supra* note 30 at 161-164. See also Dan Froomkin's piece on the role of empathy in Obama's philosophy and, more precisely, in judicial decision-making, "The Empathy War" (last modified 13 May 2009), online: *Washington Post* <voices.washingtonpost.com/white-house-watch/2009/05/the_empathy_war/pf.html>.

[87] Lindsay, *supra* note 4 at 24 and 25; Haskell and Randall, *supra* note 36 at 27-28.

[88] Karen Barton, John Garney and Paul Maharg, "'You are Here': Learning Law, Practice and Professionalism in the Academy" in *Emerging Legal Education: Arts and the Legal Academy: Beyond Text in Legal Education*, Zenon Bankowski and Paul Maharg eds. (Farnham, Surrey, GBR: Ashgate Publishing Group, 2012).

empathy to future health professionals.[89] A synthesis of the literature concluded that these methods are effective at fostering empathic behaviours.[90] Empathy simulation in law could be inspired by medical education and medical research. For instance, medical research has shown that virtual patients, if complemented by human feedback, can help enhance empathy in future interactions. In this specific research, assessors were observing students' interactions and rating student's empathic responses. They also provided feedback including alternative empathic answers that could have been given by the student.[91] Similarly, law schools could develop experimental teaching in which students would have to interact with virtual sexual assault complainants and receive feedback from qualified instructors. One could also envision testing students' social skills (i.e., empathy, sensitivity and respect) through simulation of sexual assault preliminary inquiry, trial, and so on. These two options could be integrated within existing simulation exercises (for law schools who are already familiar with this kind of educative method) or build from the group up, which would require more resources.

Although victims of sexual assault have wished for more empathetic legal professionals, some authors argue that empathy is an essential lawyering skill that is required beyond sexual assault prosecutions. Empathy can help relating to non-lawyers

[89] Marcelo Schweller et al., "The Impact of Simulated Medical Consultations on the Empathy Levels of Students at One Medical School" (April 2014) 89:4 Acad Med 631. See also Katrina Schwartz, "How Do You Teach Empathy? Harvard Pilots Game Simulation" (last modified 9 May 2013), online: *KQED* <www.kqed.org/mindshift/28554/how-do-you-teach-empathy-harvard-pilots-game-simulation>.
[90] Margaret Bearman et al., "Learning Empathy Through Simulation a Systematic Literature Review" (2015) 10:5 Simul Healthc 308 at 316-317.
[91] Adriana Foster et al., "Using Virtual Patients to Teach Empathy: A Randomized Controlled Study to Enhance Medical Students' Empathic Communication" (2016) 11(3) Simul Healthc 181.

and produce more effective cross-examination, interviews, and so on.[92] While virtual tools can prepare students to act with victims, there are other methods that may teach them social skills and potentially improve victims' perceptions of the justice system. Experimental teaching forms implying non-virtual environments can also promote empathy.[93] Prior to delving into further details on non-virtual tools, it is worth noting that collaborating with experts from other disciplines may help implement successful and effective simulation tools. Here again, interdisciplinarity may be the key to success.

Working with professionals from other disciplines either to develop educational tools or to teach law students can deepen their knowledge of the law and its consequences. It can also provide law students with more information regarding human behaviour and appropriate responses to sexual assault (from disclosure to interviewing sexual assault victims using victim-centred language), something not taught within law schools.[94] A survey on victimization and sexual violence highlighted that educating legal professionals is one of the solutions envisioned to improve the experience of victims within the justice system. One of the participants in this research suggested that, in order to educate actors of the legal system on the effects and prevalence of sexual assault, they should be required to "spend more time with front-line workers [e.g. social workers, psychologists, victims' advocates] or others who know about sexual assault and its

[92] See Haskell and Randall, *supra* note 36 at 27-28; Gallacher, *supra* note 71. *Cf* Cynthia Pay, "Teaching Cultural Competency in Legal Clinics" (2014) 23 JLSP 188 at 212-213 citing Michelle S Jacobs, "People from the Footnotes: The Missing Element in Client-Centred Counselling" (1997) 27:3 Golden Gate UL Rev 345 (on the limits of empathy in cross-cultural context).
[93] See Cody, *supra* note 71 at 12-16.
[94] Rapoport, *supra* note 30 at 1152 state "Just as we need other disciplines to understand how best to solve our clients' problems, we need to understand human behaviour to realize how easy it is for lawyers to step over the ethical line."

effects, as well as more one-on-one time with the survivors prior to trials". [95] Legal clinics and experimental teaching are often focused on the law, but sexual assault cannot be understood exclusively through a legal lens. Front-line workers conceive of sexual assault in a different way than legal professionals and their experience can add to law students' views and knowledge.

An additional way to increase exposure to other disciplines is the possibility to work in multidisciplinary centres or clinics. For Evans et al., law students interning in multidisciplinary clinics should receive cross-disciplinary supervision. This approach leads to perceiving clients as "whole persons" and treating all their needs, as opposed to focusing only on legal representation and legal needs.[96] This concept of 'whole person' is interesting to contrast with the teaching approach exhibit in Mertz's book and reproduced in Part II (i.e., the excerpt showing how a law student was taught to exclude considerations relating to the identity of the patient). The clinic format, multidisciplinary or not, can contribute to the development of client-focused skills that are transposable to sexual assault prosecutions. For instance, learning interviewing skills can teach students the "importance of listening to the client and treating them as a person".[97] Legal clinics are also said to provide students with the opportunity to engage with responsibilities and ethics of legal professionals. In addition, experimental teaching can push students to debunk stereotypes they may have formed vis-à-vis some clienteles.[98]

[95] Lindsay, *supra* note 4 at 25.
[96] "Teaching social justice in clinics", *supra* note 74 at 106.
[97] *Id.* at 110.
[98] *Id.* at 111-116. Carpenter, *supra* note 74 argues that Clinical education can impart many other skills such as collaboration, information gathering, research abilities, and so on (see especially 88-90).

The exact format of ETASA is vague at the moment although its objective is clear: Improving the satisfaction of sexual assault complainants with the justice system through better assistance. This section – and this paper, more generally – argued that this can be achieved by increasing law students' sensitivity, respect, knowledge and empathy. ETASA is thus not focused on future defence counsels but on as many future legal professionals as possible. Another thing is certain; it has to be planned carefully. Indeed, the literature contends that this type of teaching – if poorly planned [99] – is in no way superior to doctrinal in-classroom courses. Empathy, respect and understanding of victim responses nevertheless need to be imparted to law students, in a format or another. These values and skills may be taught more successfully if law students are exposed to more perspectives on sexual violence. The latter is true for experimental teaching but also, as previously mentioned, for traditional teaching.

Conclusion

Turning to legal education as a means to increase the satisfaction of sexual assault victims with the justice system is an ambitious idea. Colleagues who advised me to study sexual assault through another lens may have been concerned by the many hurdles accompanying legal education reforms: uncertainty, costs, resistance from the academia and the profession, bar requirements, etc. However, improving the satisfaction of sexual assault complainants with the justice system through sensitive, respectful, well-informed and empathetic assistance may require facing the obstacles aforementioned. Law schools are in charge of the education of preservice legal professionals. Law schools are

[99] Barry, *supra* note 33 at 857; "Designing and operating best practice clinical program", *supra* note 74. See also Sossin, *supra* note 74 at 857 (on funding).

consequently also responsible (at least in part) for lawyers' ethics and conduct when they graduate. Given the role of law schools, legal education appears to be a solution to tackle the issues plaguing sexual violence prosecutions. Since the literature points to the insensitivity of legal professionals as a source of victims' (re)victimization and distress, this article suggested various solutions to improve law students' social skills and cross-disciplinary knowledge.

First, academic pursuits of legal education could be achieved while disseminating victim-centred approaches. Interdisciplinarity courses and classes on victim rights and needs could be integrated within law schools' curricula. Second, experimental teaching – which as increased in popularity – could be directed at fostering empathy, respectful behaviours and interdisciplinary knowledge. Of course, even if these solutions were implemented tomorrow, not all law students would have the opportunity to learn in sexual-violence-focused experimental settings or to enrol in all optional classes.[100] Law schools nevertheless have the duty to offer students who want to promote victim interests the possibility of doing so. Most of all, law schools should impart their students not only with relevant knowledge but also will empathy, sensitivity and respect. While these skills are considered as permitting to offer better assistance and thus increase sexual assault complainants' satisfaction with the justice system, they are transposable to other areas of practice. All complainants or plaintiffs should be treated as 'whole persons'.

[100] On legal education not being a 'one-size fits all', see Arthurs, *supra* note 22 at 3. See also Mark A. Cohen, "What Are Law Schools Training Students For?" (last modified 19 November 2018), online: *Forbes* <www.forbes.com/sites/markcohen1/2018/11/19/what-are-law-schools-training-students-for/#6a6c0d4564f2>.

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