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DO LAW CLINICS NEED TRIGGER WARNINGS? PHILOSOPHICAL, PEDAGOGICAL AND PRACTICAL CONCERNS

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I INTRODUCTION

In recent years, there has been growing concern about poor mental health among both law students and lawyers.[1] Concerns about the mental health of law students and lawyers are often traced back to the mid-1980s in North America, emerging from a series of studies that examined lawyers' and law students' physical and mental health and wellbeing, rates of alcohol and other drug use, suicidal ideations and more. In Australia, where I am based, these concerns are also the subject of considerable debate and attention. Several scholars attribute the Australian interest in these issues to the publication of the landmark *Courting the Blues* report in 2009.[2] Following the publication of that report, there has been something of an explosion of work[3] in this space, and a series of initiatives designed to address mental health and wellbeing, both at law school and among practitioners. In 2006, for

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1 I am indebted to my PhD student Claire Carroll for bringing much of this literature to my attention, and to the work of scholars such as Paula Baron and Christine Parker, for their collation and analysis of it.

2 Norm Kelk et al, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Legal Practitioners* (Brain and Mind Research Institute, 2009).

3 Paula Baron, 'The Elephant in the Room? Lawyer Wellbeing and the Impact of Unethical Behaviours' (2015) 41 *Australian Feminist Law Journal* 87; Janet Chan, Suzanne Poynton and Jasmine Bruce, 'Lawyering Stress and Work Culture: An Australian Study' (2014) 37 *University of New South Wales Law Journal* 1062; Christine Parker, 'The "Moral Panic" Over Psychological Wellbeing in the Legal Profession: A Personal or Political Ethical Response?' (2014) 37 *University of New South Wales Law Journal* 1103; Richard Collier, '"Love Law, Love Life": Neoliberalism, Wellbeing and Gender in the Legal Profession — The Case of Law School' (2014) 17 *Legal Ethics* 202; Adele J Bergin and Nerina L Jimmieson, 'Explaining Psychological Distress in the Legal Profession: The Role of Overcommitment' (2013) 20 *International Journal of Stress Management* 134; Colin James, Miles Bore and Susanna Zito, 'Emotional Intelligence and Personality as Predictors of Psychological Well-Being' (2012) 30 *Journal of Psychoeducational Assessment* 425; Molly Townes O'Brien, Stephen Tang and Kath Hall, 'Changing Our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum' (2011) 21 *Legal Education Review* 149; Anthony Lester, Lloyd England and Natalia Antolak-Saper, 'Health and Wellbeing in the First Year: The Law School Experience' (2011) 36 *Alternative Law Journal* 47.

instance, the Tristan Jepson Memorial Foundation was established. The Foundation was named in honour of a young lawyer who had experienced clinical depression and taken his own life. Arguably, it is now the preeminent vehicle for raising awareness of depression and mental health concerns within the profession. Among other activities, the Foundation has developed guidelines for workplace mental health and wellbeing, and multiple courts, legal associations and law schools have adopted them. The Foundation also holds an annual lecture in which a typically high-profile member of the profession addresses mental health issues. These have now branched out to multiple annual lectures held across major Australian cities. In 2017, for example, Magistrate David Heilpern delivered the Tristan Jepson Memorial Sydney lecture. He spoke about his work as a magistrate in a regional location of Australia, somewhat isolated from colleagues and immediate debriefing support, and the vicarious trauma he experienced as a result of dealing with child pornography cases which required him to view thousands of pornographic images involving children. Magistrate Heilpern explained:

> I dealt with over a dozen of these cases within a couple of months. I started dreaming of these children and the torment perpetrated upon them. I would wake up in the witching hour screaming, sweating and panicked. I thought it would pass, but it did not. I was pretty scared about going to sleep, and that fear was well placed. I began thrashing around in my sleep, making it impossible for my wife to remain in bed with me for fear of getting struck. After a period of weeks of this, I sought professional help and was referred to a trauma psychologist who engaged in some talk therapy by way of de-briefing.[4]

Magistrate Heilpern described dealing with a particularly heinous child sexual abuse case where the offenders were the parents: a case that impacted him deeply. This coincided with the birth of his grandchildren, a period in which he noted feeling 'particularly empathetic'. There were other cases. It doesn't bear to repeat them all here. The point, among other things, is that the sharing of personal stories like these — particularly from those on the bench — would have been unthinkable not too long ago.[5] In many ways, these and other stories touch upon some of the factors that are increasingly thought to be associated with diminished mental health and wellbeing among lawyers: we are exposed, sometimes on a daily basis, to what one magistrate described as 'the dark and depraved side of the human condition'.[6]

As concerns about the impact of lawyering on those in the profession have grown, a separate but related set of developments have

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4 David Heilpern, 'Lifting the Judicial Veil – Vicarious Trauma, PTSD and the Judiciary: A Personal Story' (Speech delivered at the Annual Tristan Jepson Memorial Foundation Sydney Lecture, Sydney, 25 October 2017).

5 Although I note that former Australian High Court Judge, Justice Michael Kirby was an early pioneer in this space. See, eg, Michael Kirby, 'Why are Lawyers So Unhappy?' (Speech delivered at the Law Institute of Victoria Annual Dinner, Melbourne, 22 June 1996).

6 *Police v Power* [2007] NSWLC 1 [36].

been unfolding across universities. Universities around the world have been developing a heightened awareness of student needs, sensitivities and mental health, and have been considering how teaching methods, materials and styles may impact these. As part of this, a number of North American universities have begun to grapple with the question of whether content to which students are exposed in their degree should contain a 'trigger warning'. Trigger warnings emerged out of feminist blogs and online forums,[7] and have been defined as:

> a cautionary note that may be added to syllabi or online sites to alert readers, students, or casual browsers about violent or sexually explicit images and text in the materials on a site, in a course reader, or up ahead in a blind chain of Internet clicks.[8]

Although the relationship between the use of trigger warnings and law student mental health is not an explicit focus in education — at least in Australia — there is an obvious overlap between the two. In other words, at least on the surface, trigger warnings may be a preventative measure — or at least a part of the solution — to the problem of diminished law student mental health. Trigger warnings are, however, not without controversy. According to Jack Halberstam, debates about trigger warnings in American universities have 'become a site for dynamic and often polemical debates about censorship, exposure, sensitivity, and the politics of discomfort'.[9] On the one hand, proponents of trigger warnings see them as a necessary practice that safeguards students against emotional upset and/or trauma. Because of their feminist origins,[10] many view them as a kind of feminist political intervention. They have the potential to provoke an essential and long overdue recalibration in power imbalances between academics and students, compelling the former to think more carefully and sensitively about the politics and ethics of what they teach, the politics of knowledge and of knowledge production, as well as the ways in which pedagogical strategies and structures are linked to the perpetuation of sexism, racism, ableism, colonialism and more.[11] In this sense, some proponents of trigger warnings view them as having a dual function: of protecting students on the one hand, while holding academics to account in their reproduction of offensive, demeaning or politicised content, on the other. Moreover, some see trigger warnings as an act of compassion directed towards vulnerable populations — including those

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7 Peter Schmidt, 'Many Instructors Embrace Trigger Warnings, Despite Their Peers' Misgivings', *Chronicle of Higher Education* (online), 16 June 2015 <http://chronicle.com/article/Many-Instructors-Embrace/230915>.

8 Jack Halberstam, 'Trigger Happy: From Content Warning to Censorship' (2017) 42 *Signs: Journal of Women in Culture and Society* 535, 535.

9 Ibid.

10 Jenny Jarvie, 'Trigger Happy', *New Republic* (online), 4 March 2014 <http://www.newrepublic.com/article/116842/trigger-warnings-have-spread-blogs-college-classes-thats-bad>.

11 Logan Rae, 'Re-Focusing the Debate on Trigger Warnings: Privilege, Trauma, and Disability in the Classroom' (2016) 50 *First Amendment Studies* 95.

who have witnessed or experienced harm — and a means by which to provide a safer and more just pedagogical environment.[12]

In contrast, opponents of trigger warnings view them as an unhelpful manifestation of so-called 'political correctness'.[13] They view them as restricting one of the key tenets of academic practice — academic freedom — through dictating what can be thought, or said, by whom and how. They have been described as antithetical to free speech and as 'academically destructive'.[14] Some academics thus view trigger warnings as compromising their own (and students') capacity for intellectual curiosity and for intellectual debate, precisely because they 'mark' certain content and practices as controversial, unknowable or even unteachable. Jack Halberstam offers an example of how trigger warnings would restrict his own teaching, noting that:

> in a class I taught on the Holocaust a few years ago, students were appalled and shocked on the first day of class when I showed clips from Alain Resnais's classic 1955 film *Night and Fog*. The now all-too-familiar imagery of bodies being shoveled into shallow graves, of mounds of rotting and emaciated flesh, was more than some students in the class wanted to see, and they left the room. However, a few weeks later when we watched a clip from Leni Riefenstahl's 1935 *Triumph of the Will*, Adolf Hitler's millennium speech at the end of the film, the students were spellbound and asked to see more of the clip. One could argue here that the clips from *Night and Fog* need to be seen without warnings ahead of time in order to allow the students to grapple with their own shocked reactions before delving into the history of the representation of genocide.[15]

It would seem important, alongside this, to ask students to consider why they reacted so enthusiastically to *Triumph of the Will*. Setting these two films alongside each other, without prior 'warnings' as to how students were expected to react, opens up questions about fascistic imagery and how propaganda 'works'. At their worst, some academics thus see trigger warnings as a form of governmentality: a mechanism, in other words, through which the most fundamental practices of the academy — intellectual thought, debate and analysis — are surveilled and compromised by external forces. Where trigger warnings are used to sanction or reprimand academics, they may also have a chilling

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[12] See, eg, Kate Manne, 'Why I Use Trigger Warnings', *New York Times* (online), 19 September 2015 <https://www.nytimes.com/2015/09/20/opinion/sunday/why-i-use-trigger-warnings.html>; Angela M Carter, 'Teaching with Trauma: Trigger Warnings, Feminism, and Disability Pedagogy' (2015) 35(2) *Disability Studies Quarterly* 9; Emily J M Knox (ed), *Trigger Warnings: History, Theory, Context* (Rowman and Littlefield, 2017); Katie Byron, 'From Infantilizing to World Making: Safe Spaces and Trigger Warnings on Campus' (2017) 66 *Family Relations: Interdisciplinary Journal of Applied Family Studies* 116.

[13] For a discussion, see Stephanie Saul, 'Campuses Cautiously Train Freshmen Against Subtle Insults', *New York Times* (online), 6 September 2016 <www.nytimes.com/2016/09/07/us/campuses-cautiously-train-freshmen-against-subtle-insults.html>.

[14] Richard E Vatz, 'The Academically Destructive Nature of Trigger Warnings' (2016) 50 *First Amendment Studies* 51. Although on the question of their relationship with free speech, cf Eleanor Amaranth Lockhart, 'Why Trigger Warnings are Beneficial, Perhaps Even Necessary' (2016) 50 *First Amendment Studies* 59.

[15] Halberstam, above n 8, 540.

censorial effect, ultimately stifling speech and thought.[16] These are not the only concerns that have been offered. Some worry about the possibility that, in attempting to shield students from confronting or difficult material, universities are not replicating 'real world' conditions. In this sense, some have argued that trigger warnings encourage students to view themselves as weak, vulnerable and fragile,[17] and that this does a disservice to students.

All of these are valid concerns. In this paper, however, I want to avoid rehearsing those debates at length. I explore a series of interrelated concerns about power, practice and pedagogy in the academy. I want to be clear from the outset that in making the argument I seek to make in this paper, I do not discount the possibility that: some students can be upset, challenged, disturbed or even traumatised by the content to which they are exposed at universities. I also do not discount the possibility that some academics have in the past taught (or continue to teach) in ways that are insensitive or unreflective, or in ways that produce, reproduce, exacerbate or reiterate social and political norms, including ones we might consider to be profoundly harmful (eg gender inequality). I also do not discount subjective experiences of pain, grief, sadness and depression among law students, legal practitioners or judicial officers of the kind that David Heilpern described, as noted above. In my own work over many years as a lawyer, and as a clinician, I have encountered difficult and distressing content. As a junior lawyer, I represented hundreds of women who had endured extreme physical and sexual abuse at the hands of intimate partners, former partners, other family members and strangers. Many of these women had been strangled, beaten unconscious, or raped. Many of these cases were profoundly upsetting and memories of them have stayed with me. Conversations about all of these issues are relatively new in law, however. As Danielle R Cover has argued: 'Lawyering culture, more than any other, epitomizes a lack of comfort with — and distaste for — emotional vulnerability'.[18] In this way, the willingness of students, academics, lawyers and members of the judiciary to engage in a more open dialogue about emotions and the law is an important step forward. These conversations help to break down the (gendered) binary logic of law as dispassionate, rational and ordered, and send a signal to lawyers — new and old alike — that experiencing and expressing emotions is okay.

My point, then, is not to trivialise or dismiss individual experiences. Rather, it is to ask whether the problems we are talking about are best addressed by, or can be overcome through, the imposition of a trigger warning. I also ask whether trigger warnings introduce additional challenges or problems. In this paper, I want to consider these questions

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16 For a broader (critical) discussion of the politics of governmentality in academia, including sexual freedom, sexual harassment, due process and other rights, including Title IX investigations, see Laura Kipnis, *Unwanted Advances: Sexual Paranoia Comes to Campus* (Harper, 2017).

17 Jarvie, above n 10.

18 Danielle R Cover, 'Good Grief' (2015) 22 *Clinical Law Review* 55, 55–6.

specifically as they relate to the deployment of trigger warnings within clinical legal education. The approach I advocate does not deny or dismiss emotions in clinics, but in fact embraces them as valuable tools for learning. *It approaches emotions as critical objects for analysis and thought.*

This paper is inspired by three main events. The first is the international trend, noted earlier, to deploy trigger warnings in higher education. Regardless of one's perspective on trigger warnings, these developments increasingly oblige academics from all disciplines to grapple with what trigger warnings might mean for their own work. Secondly, and as a consequence of the first point, colleagues within my own clinical program have begun to debate whether or not we should introduce trigger warnings. These questions appear to be especially pertinent for clinical legal education, given that 'Law school clinics, by their nature, expose their students to emotional experiences and loss in a variety of forms'.[19] The third factor that inspired this paper is a major study I am undertaking on the relationship between 'addiction' and the law. Although this research deals with a set of issues seemingly far removed from trigger warnings (how lawyers and judges conceptualise 'addiction' in their work), a recurrent theme throughout has been the lack of respect afforded to people who use drugs. For reasons I will explain, these findings have encouraged me to think about how we teach our students to work with people who use drugs and those labelled as 'addicts'. Articulations of emotions such as sympathy are crucial to this analysis and link directly to trigger warnings, as I will explain.

In the analysis that follows, I raise a series of questions, some of which are specific to trigger warnings within law clinics, as well as some that speak to the deployment of them outside of the clinic. I argue that academics should be extremely cautious about calls to impose trigger warnings in clinical legal education, because they introduce a series of major philosophical, practical and pedagogical problems. I also argue that although trigger warnings may appear, on the face of it, to align with the values that many clinicians would see as being at the heart of clinical legal education, including social justice, respect for clients, minorities and disadvantaged populations, trigger warnings have the potential to paradoxically instantiate power dynamics, to entrench injustice, and to foreclose intellectual curiosity. They also have a series of implications for the ethics and politics of legal practice, some of which I consider to be both substantial and antithetical to the proper practice of clinical legal education. My analysis unfolds in three parts. First, I consider philosophical aspects of trigger warnings, inspired by the work of feminist scholars Sara Ahmed and Judith Butler. I then explore some of the pedagogical implications that would flow from the use of trigger warnings in law clinics. Finally, I turn to a consideration of some of the practical implications of the deployment of trigger warnings.

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[19] Ibid.

II PHILOSOPHICAL CONSIDERATIONS

As a starting point, we need to consider a question that is both practical and — as I shall explain — philosophical. If a trigger warning is to be imposed, who decides that it is warranted, and on what basis?

For many the starting point will be an assumption that certain kinds of content encountered in the course of a clinical placement are likely to be upsetting, confronting, challenging or even traumatising. Many law schools now offer a suite of clinical offerings in diverse areas of law, including criminal law, family law, family violence, small business, corporate social responsibility, debt, social security, innocence projects and more. Clinicians are likely to have differing views as to which clinics need a trigger warning and on what basis, or whether all clinics should have one. Crucially, any decisions about which clinics 'need' a trigger warning and which do not involve a set of political and ethical assessments about matters including: what kinds of clients will present to that clinic; what sorts of problems the clinic will address (and which they will not); whether the subject matter of those clinics is or is likely to be distressing, disturbing or upsetting to students; how students will respond to that material; and how likely it is that students will be disturbed, upset or even traumatised as a result of exposure to such material. In some contexts, the answers to these questions might seem relatively uncontroversial and even straightforward. There is likely to be a consensus, at least among some clinicians, for instance, that family violence, sexual assault and sexual abuse cases may be upsetting and confronting to some students.[20] But even an ostensibly 'obvious' observation like this one presents a series of immediate challenges for clinicians. What is the basis of the assumption that such content 'is' triggering? And who has the right to make such a decision? I want to interrogate some of the logics associated with the assumption that particular clinics are (or might be) traumatising, since these are the kinds of questions that all too often are skipped over in debates about trigger warnings. I want to think through not only what these assumptions mean, but *what they do*, and the politics and ethics associated with them.

How one thinks about trigger warnings depends in part upon one's approach to emotions. Conventional approaches to emotions understand them as interior to individuals: as fundamental expressions of feeling that come from within and which are then expressed outwards, into the world. In recent years, however, a number of scholars from a range of disciplines have begun to think more critically about this framing. One of the most influential scholars in this regard is Sara

[20] I have previously worked as joint director of a specialist clinic representing victims of sexual assault and sexual abuse (the Springvale Monash Legal Service/South Eastern Centre Against Sexual Assault joint clinic). Many of the clients attending that clinic have experienced extreme violence, profound violations of trust and significant emotional, physical and psychological abuse, sometimes sustained over several years, while children and adults. The subject matter was often unpleasant, and myself, the joint director and our students often found the cases troubling.

Ahmed. Ahmed's work is concerned with the relationship between emotions, politics and power. In introducing her approach to emotions, Ahmed begins with an explanation and critique of conventional approaches to emotion. She writes that the:

> everyday language of emotion is based on the presumption of interiority. If I was thinking about emotions, I would probably assume that I need to look inwards, asking myself, 'How do I feel?' Such a model of emotion as interiority is crucial to psychology […] The logic here is that I have feelings, which *then* move outwards towards objects and others, and which might then return to me. I will call this the 'inside out' model of emotions.[21]

Critiquing this 'inside out' model, and drawing upon ideas from Spinoza, Deleuze, Marx and more, Ahmed argues that 'emotions are not "in" either the individual or the social, but produce the very surfaces and boundaries that allow the individual and the social to be delineated as if they were objects'.[22] Ahmed notes that her work is indebted to feminist and queer scholarship, especially that of Judith Butler, Lauren Berlant and Wendy Brown. Referencing Butler's [23] work in performativity theory, Ahmed notes that 'it is through the repetition of norms that worlds materialise'.[24] She goes on:

> Such norms appear as forms of life only through the concealment of the work of this repetition. Feminist and queer scholars have shown us that emotions 'matter' for politics; emotions show us how power shapes the very surface of bodies as well as worlds.[25]

Through this focus on the performative dimensions of emotion, Ahmed's work concentrates not on what emotions *are*, but on *what emotions can do*. She argues, for example, that the emotion of 'disgust' works to produce a category of subjects we might call 'the disgusting', and to surface 'disgusting' bodies as those 'that must be ejected from the community'.[26] She also traces the emotions of love and hate, demonstrating how articulations of 'hate' against non-White subjects work to 'secure collectivities' (eg African-Americans), surface bodies (White and Others) and worlds, therein working 'to align some subjects with others and against other others'.[27] The key point of Ahmed's work is thus that emotions are constitutive (they *do work*) and thusly that emotion articulations are *always already political*.[28] I will return to

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21 Sara Ahmed, *The Cultural Politics of Emotion* (Routledge, 2015) 9 (emphasis in original).

22 Ibid 10.

23 Judith Butler, *Bodies That Matter: On the Discursive Limits of 'Sex'* (Routledge, 1993).

24 Ahmed, above n 21, 12.

25 Ibid.

26 Ibid 15.

27 Ibid 42.

28 Although it is beyond the scope of this paper to explore these issues in depth, it is worth noting that a number of scholars have sought to problematise the relationship between law and emotions, as well as the political and ethical dimensions of emotions such as stress, grief and trauma. Although these scholars work from a range of different perspectives, some of which are in tension with the approach I adopt in this paper (in that they still accept emotions as interior states), they are united by skepticism about claims that work to individualise emotions. For instance, Cover,

consider what these ideas mean for trigger warnings in law clinics shortly.

As I noted earlier, Judith Butler's analyses of emotions were one of the main inspirations for Ahmed's work. There are overlaps between their two approaches, as I shall explain, as well as some differences. Of particular value is Butler's work on emotions in the aftermath of 9/11, since that work has the most relevance for the argument that I want to make in this paper. In a series of essays forming part of a book called *Precarious Life*, Butler reflects on processes of public memorialisation and grieving in the wake of Al-Qaeda's attack on the Twin Towers and President George Bush's subsequent incursions into Iraq and Afghanistan.[29] Butler also reflects on American foreign policy in the lead-up to 9/11, and on deaths in other parts of the world that precede those on 9/11. In thinking about these events, Butler writes,

> The question that preoccupies me in the light of recent global violence is, Who counts as human? Whose lives count as lives? And, finally, What *makes for a grievable life?* [30]

These questions emerge out of a concern with the enormous outpouring of public grief that followed 9/11, and with the apparently disproportionate interest, at least among some people, in grieving for others whose lives were lost — including those directly affected by America's response to 9/11, or those killed in connection with American foreign policy that pre-dated the World Trade Centre attacks. Butler's point is not that those who died on 9/11 were not 'worthy' of grief, nor that they weren't loved, valued or valuable people, but rather, that some subjects are grieved in ways that others are not. The politics of mourning are underscored, for Butler, in the public horror and grief that followed the death of American journalist Daniel Pearl, in an avowedly barbaric act of violence, and the relative invisibility of countless citizens killed in Iraq, or in Afghanistan, around the same time. In some instances, attempts to publicly memorialise victims of violence — including Palestinian families killed in Israel — are censored, as in a case Butler describes where the *San Francisco*

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above n 18, argues that difficult emotions in the form of grief, vulnerability, stress and loss can stem from a range of sources in legal practice, including the immediate sense of disappointment that can come from losing a case, but also the impact on a lawyer's ideals posed by the inadequacies of the legal system itself. Importantly, she is skeptical about stress-focused approaches, in part because of the possibility that they sometimes imply some 'flaw' on the part of the lawyer, or because they imply that difficult emotions can (and thus need to) be managed. In this sense, Cover understands the emotions associated with lawyering to emerge from a range of sources, many of which are associated with the adversarial nature of the system and/or failings of the system. In the Australian context, Baron, above n 3, has raised similar concerns about the nature and origins of poor mental health and negative emotions experienced by those working in the legal profession. She argues that unethical practices such as bullying, discrimination and harassment are rife in the legal profession, and that these dynamics are 'distinctly gendered'. For Baron, the focus in research and advocacy should be on the structural factors implicated in the production of poor mental health. Parker, above n 3, raises similar concerns.

29 Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (Verso, 2006).

30 Ibid 20 (emphasis in original).

Chronicle refused to allow publication of an obituary documenting such deaths. She argues

> …we have to consider how the norm governing who will be a grievable human is circumscribed and produced in these acts of permissible and celebrated public grieving, how they sometimes operate in tandem with a prohibition on the public grieving of others' lives, and how this differential allocation of grief serves the derealizing aims of military violence.[31]

For Butler, like Ahmed, vulnerability, practices of mourning and grief are always already political, and 'cannot be properly thought of outside a differentiated field of power and, specifically, the differential operation of *norms of recognition*'.[32] Importantly, Butler seems less skeptical or cynical about articulations of emotion than Ahmed. Butler sees articulations of emotion including grief as a means for a global ethics, as a way through which to restore not only 'our collective responsibility for the physical lives of one another'[33] but as one of the conditions of 'humanization'.[34] In this sense, Butler does not advocate a *turning away* from articulations of emotion, but rather, a *turning towards them*. As a practice, grappling with the politics and ethics of emotional articulation may afford a greater appreciation of what emotions do, what they make possible, what they foreclose and what they obscure.

Taken together, I suggest that Ahmed and Butler's work has implications for thinking through the place of trigger warnings in clinics, including key assumptions that underpin them and their deployment. As I see it, both scholars share a profound skepticism regarding claims that emotions exist as 'interior' to subjects, or to 'naturalistic' or 'essentialising' assertions about emotional expression. Both understand emotions as performative, political and ethical, and view articulations of emotion as having *constitutive action* — as producing, in other words, particular effects. These effects are often normative, whether it pertains to norms about 'disgust', shame and stigma, or to nationhood, politics and citizenship. Crucially, for present purposes, both scholars urge us to reconsider the possibility that articulations of emotion, especially (although not exclusively) in formal and public settings, constitute certain subjects as valid, valuable and worthy. This is perhaps most apparent in Ahmed's work on sympathy and justice, and in the ways that articulations of sympathy, especially in legal settings, can work 'to elevate some subjects over others',[35] a point that I have examined elsewhere.[36]

Of course, as I noted earlier in this article, some people argue that trigger warnings are intended as a caring and compassionate response to those who have had personal experience of trauma, or who have

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31 Ibid 37.
32 Ibid 44 (emphasis added).
33 Ibid 30.
34 Ibid 43.
35 Ahmed, n 21, 195.
36 Kate Seear, Suzanne Fraser and Emily Lenton, 'Guilty or Angry? The Politics of Emotion in Accounts of Hepatitis C Transmission' (2010) 37 *Contemporary Drug Problems* 619.

witnessed trauma, and thus might be more likely to be triggered by difficult content. Although I acknowledge that some people may indeed be impacted by difficult content, this line of thinking still involves political and ethical considerations; namely, that some students will 'really' be distressed and require care and compassion, whereas others will not. With respect, this misses two key points of my argument. The first is that (absent knowing in advance that a particular student in the class might have had experience with the subject matter in question) the process of engaging with the 'real world experiences of students' necessarily requires a decision to be made by educators about what is *likely* to be triggering and what is not (even if the decision is borne out of compassion and care). The second — related — point, following Sara Ahmed is that this misses the point about the inherent political dimensions of emotions, including those that are acknowledged or thought worthy of acknowledgment and those that are not.

So what does this mean for trigger warnings in the clinic? At the very least, I suggest that insofar as trigger warnings presume meanings of something in advance (such as potential offensiveness) or assume that people will react in particular ways (ie by expressing sadness, horror or grief), *trigger warnings do work*. They operate to produce, in other words, certain subjects, individuals or collectivities, practices, activities and events as worthy of certain emotions, or as valid, valuable and deserving. I recognise that in some instances this be might appear to a good thing, especially where those emotions attach to historically disenfranchised groups (eg family violence victims) but I will return to that question shortly. Where I believe that we may really find ourselves in trouble is in the imposition of trigger warnings in some settings and not others (ie in the family violence clinic but not in others), since the decision to impose a warning is based on a set of political and ethical assumptions about whether and how we will be moved by something, or not. I want to illustrate this through a short example.

Much of my research examines the needs and experiences of people who use drugs, those characterised as 'addicts' or as experiencing 'addiction', and on associated processes such as the stigmatisation of injecting or illicit drug use. Although it is beyond the scope of this paper to revisit the history of addiction and addiction concepts at length, it is enough to say that: addiction is a relatively recent historical concept, that there are a range of perspectives about drug use and 'addiction', that drug use and 'addiction' are often thought to be a form of moral failing, and that drug use and addiction are often highly stigmatised and marginalised practices. In Western, liberal discursive contexts, alcohol and other drug 'addicts' often figure as less-than-full citizens, and are frequently deemed unworthy of public sympathies. In previous work,[37] I have examined the relationship between drug use, sympathy and

[37] Kate Seear, 'Making Addiction, Making Gender: A Feminist Performativity Analysis of *Kakavas v Crown Melbourne Limited*' (2015) 41 *Australian Feminist Law Journal* 65; Kate Seear and Suzanne Fraser, 'The Addict as Victim: Producing the "Problem" of Addiction in Australian Victims of Crime Compensation Laws' (2014) 25 *International Journal of Drug Policy* 826.

suffering, both in law, policy and elsewhere. Some of my writing has been inspired by Sara Ahmed's work on the politics of emotional articulation. My work has found that people who use drugs and those who are described or labelled as 'addicts' are frequently enacted through law and policy as 'undeserving' of sympathy, support and certain forms of care and attention. As part of this research, I have undertaken interviews with lawyers and judicial officers (judges, magistrates and others) who encounter addiction in their work.[38] A common theme from these interviews is that people who work in the law lack sufficient empathy for people labelled as 'addicts', and that they make judgments about them and their lives. There are mixed views, however, about how to address this problem. Some take the view that students and lawyers need to be taught to sympathise with 'addicts', while others express concerns that this is patronising to clients and thus counter-productive. My research participants seem to be grappling with a problem similar to the one Ahmed is concerned with: emotions of all kinds inevitably surface bodies, subjects and collectivities, with diverse and sometimes perverse effects.

What does it mean — or what work is done — if clinicians decide that trigger warnings are warranted in one clinic (for family violence victims) but not in another (dedicated to assisting people who inject drugs)? The decision made by clinicians is not 'simply' a prediction of how students will receive such matters, but an assessment of what kinds of matters, and indeed, what kinds of people, are likely to attract empathy. We must ask ourselves: what assumptions about suffering, trauma, sympathy and vulnerability might underpin the deployment of a trigger warning in the first clinic but not the second? Perhaps even more uncomfortably, we must also ask ourselves: are emotions of hate, disgust, revulsion or fear also circulating in these deliberations? To what extent are they present, and how do they shape our apparently 'obvious' and value-neutral judgments about what material is 'triggering'? And finally: might some perverse effects flow when we adjudge only some individuals as 'deserving' of our sympathies?

I appreciate that some readers may simply conclude, 'But I have sympathy for them all, and consider both worthy of a trigger warning'. Crucially, this does not resolve the problem. This is because the bequest of the trigger warning by the clinician appears 'obvious' but in fact relies upon an assessment of emotions, values, worth and sympathy that is only made possible by a parallel process of assessing a subject's experiences, behaviours, and 'worth' as human. Of course, all of this assumes that clinicians would deem people who inject drugs 'worthy'

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[38] It is beyond the scope of this paper to provide a comprehensive overview of this research or the methodology, but some details can be found in Kate Seear, 'The Emerging Role of Lawyers as Addiction "Quasi-Experts"' (2017) 44 *International Journal of Drug Policy* 183 and in my forthcoming book: Kate Seear, *Law, Drugs and the Making of Addiction: Just Habits* (Routledge, forthcoming). That research is funded by the Australian Research Council DECRA Fellowship scheme (DE160100134).

of sympathy and feeling in a clinical context.[39] This is a position that is at odds with dominant cultural renderings of drug use and 'addiction'. As a hypothetical exercise it is also highly selective; there are undoubtedly similar examples we could consider that would generate varying responses. These are also fluid and changeable, across time and cultures. It is not so long ago, in countries like the United States and Australia, for example, that homosexuality was considered a 'disease' and a crime and where a majority of the population considered such activities to be abhorrent. Things have changed radically in recent decades and in many parts of the world, people convicted of those crimes have been offered official government apologies. This variation, fluidity and complexity is *not beside the point*, but *precisely the point*: articulations of emotion are always already political. This is why they must be approached with caution. Of course, it's also worth pointing out that articulations of emotion might be constitutive in ways that we think are valuable. They might disrupt or problematise orthodox thinking (on 'addiction' or family violence, for example) and thus constitute subjects, bodies and collectivities in ways that are more productive. Although this is potentially promising, emotional articulations are not without risks and costs. I explore some of these in the next section.

III PEDAGOGICAL CONSIDERATIONS

If trigger warnings are constitutive of subjects, and if such processes are inherently political, what effects might this have on clinical teaching? In this section, I argue that because trigger warnings contain assumptions about subjects, and thus constitute them in particular ways, they introduce obstacles for clinical pedagogy. In particular, they undermine a clinician's ability to have conversations with their students about assumptions or stereotypes they might hold about their clients. This is so because the trigger warning is itself constitutive of stereotypes and assumptions. I address these issues in this section, while acknowledging that this is only a partial account of the challenges that trigger warnings would pose for clinical teaching. In making this argument, I also recognise that there is no singular clinical pedagogy. I want to focus instead on what I consider to be some of the most salient features of clinical teaching that are potentially impacted adversely by trigger warnings. I argue that trigger warnings would profoundly impact the capacity of clinicians and students to explore the meanings, effects, politics and ethics of emotional articulation, and that this is at odds with

[39] Importantly, I am not suggesting here that it matters which side of a matter a lawyer is on. Both the lawyers who represent and who prosecute accused paedophiles may experience grief, sadness and even trauma as a result of their practice. I argue that these emotions are not necessarily linked to one's role in a case (as lawyer, prosecutor or even judge) but on the lawyer's ability to identify someone as worthy of sympathy (in this example, the child).

principles of social justice[40] and clinical methodologies. In this sense, as I shall explain, my argument in this section is informed by critical theory on emotions, as outlined above. Critical theory on emotions has been examined by clinical legal education scholars previously, and this is worth examining briefly.

Sarah Buhler is one of the few scholars who has attempted to bring together critical feminist theory on emotions (including, in particular, Sara Ahmed's work) and clinical legal education, and in this sense I consider her work to be extremely valuable for the argument I make here. To be clear, Buhler's work does not examine trigger warnings in clinics. Instead, she is concerned more generally with 'suffering' in the clinic. Buhler has written about the way that law clinics approach client suffering, particularly among poor and disadvantaged clients.[41] She argues that problematic notions about the 'proper' role of lawyers as benevolent saviours of traumatised clients are:

> often compounded by the reproduction of dominant images of poor clients as victims who are helpless or responsible for their suffering. These reactions fetishize, appropriate, or otherwise problematically approach the reality of suffering.

Buhler's work draws upon an important tradition of critical legal scholarship which 'admonishes lawyers to be suspicious of assumptions about, and stereotypes of, clients as weak and disempowered'.[42] Lawyers should instead critically reflect upon their own assumptions about matters such as: how particular clients will feel, react to or cope with certain phenomena, especially where such judgments involve assumptions about client agency, emotional or mental strength or capacity. In many instances, the assumptions lawyers make about clients will be shaped by gender, race and class, and will operate not only to 'fetishize' suffering in the sense Buhler describes, but to infantilise and patronise clients, resulting in a reproduction, rather than a dislodging, of problematic power imbalances.

Drawing upon ideas from writers such as bell hooks and Ratna Kapur, Buhler describes conventional approaches to suffering as 'privatized and acontextual' and argues that:

> Dominant client-centered models of the lawyer-client relationship tend to understand suffering and trauma as individualized, private problems of clients unrelated to larger social and political questions.[43]

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40 For debates about the relationship between social justice and clinical legal education see, eg, Praveen Kosuri, 'Losing My Religion: The Place of Social Justice in Clinical Legal Education' (2012) 32 *Boston College Journal of Law and Social Justice* 331; Stephen Wizner, 'Is Social Justice Still Relevant?' (2012) 32 *Boston College Journal of Law and Social Justice* 345; Jeff Giddings, *Promoting Justice Through Clinical Legal Education* (Justice Press, 2013); Adrian Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (Australian National University Press, 2016).

41 Sarah Buhler, 'Painful Injustices: Encountering Social Suffering in Clinical Legal Education' (2013) 19 *Clinical Law Review* 405.

42 Ibid 409.

43 Ibid 414–5.

One of Buhler's concerns is that 'an uncritical embrace' of patronising stereotypes about client suffering — even in the well-meaning context of empathic lawyering — risks perpetuating 'rescue fantasies and notions of clients as voiceless victims'.[44] In other words, somewhat paradoxically, attempts to locate and respond to client suffering risk instantiating notions of clients as weak, damaged, vulnerable and in need of protection, and of lawyers as strong, unblemished, benevolent and capable of protecting clients. Crucially, this binary logic is likely to be implicated in the very 'problem' that law schools and the profession are concerned about — poor mental health among lawyers. This is because wherever lawyers are encouraged to infantilise clients and see themselves as saviours, they may become responsibilised, and feel even more pressure to 'win'. In other words: assumptions about client suffering may operate to reproduce the very dynamics we should be trying to avoid.

Buhler urges clinicians to develop a critical approach to emotions in the clinic, including suffering, and to develop a critical pedagogy of suffering. Drawing on the work of E Ann Kaplan and Kelly Oliver, Buhler's suggestion is to engage in a process of 'critical witnessing', in which clinicians:

> urge students to engage in a critical self-interrogation of their responses to, and assumptions about, their clients and of the ways in which their encounter with suffering shapes their sense of professional identity, privilege, and power. In particular, this practice of 'witnessing to oneself' would encourage clinical students to critically question and analyze their responses to suffering, to understand these responses as politically relevant, and to appreciate how they are constitutive of their professional practice and identity.[45]

This also involves attention to the political dimensions of emotions. I argue that these are commendable practices that should be explored within clinical settings. Inspired by Michalinos Zembylas' work on the politics of trauma in education, Buhler calls for:

> a deliberate and sustained attention to these emotional and affective responses in clinical law classrooms and supervisory interactions.[46]

For reasons that are hopefully clear by now, this kind of deliberate sustained and critical attention to emotion, including its political and cultural dimensions, will not be possible if trigger warnings are introduced. Among other things, trigger warnings assume meanings in advance, reducing opportunities for critical witnessing and self-interrogation. If the clinic constitutes subjects in particular ways (as 'deserving' of sympathies) how can a clinician challenge the student who judges a drug-using client as undeserving? What space is left to explore these important practical, political and ethical concerns?

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44 Ibid 416.
45 Ibid 419.
46 Ibid 422.

A crucial component of much clinical teaching is reflective practice.[47] Students are often encouraged to express and reflect upon their emotional responses to material, including to clients. There is inherent value in reminding students that emotional upset of some kind or another is not abnormal, wrong, irrational, unprofessional or otherwise problematic. One of the strengths of clinics is that students learn how to process these feelings, where they do come up, in a safe, supportive and supervised environment. Once they join the profession, however, students may have fewer opportunities for critical reflection and supported self-interrogation. Apart from its normalising effect, giving students the room to discuss their emotions is a valuable teaching tool. In this context, emotions also become the means by which to access the underlying assumptions, norms and values that students hold. If a student has sympathy for a family violence victim but not a person experiencing homelessness, for instance, this is a subject that could (and should) be the subject of critical reflection. If a trigger warning is in place, however, it may signal that such debates are completely off limits, at worst, or make them more difficult, at best. This is antithetical to both clinical pedagogy and the intellectual curiosity that clinicians should instead be encouraging.

These issues are also relevant for students who have no emotional reaction at all. Some students will not feel sympathy, or may not experience distress, upset or trauma (including in subjects they have been told might be 'triggering'). If trigger warnings work as more than mere alarms, and have constitutive effects, then it's likely that students will view them as prescriptive: as signalling, in other words, *how we expect them to react*. They may cause some students to be concerned, in an age of heightened awareness of the need for emotional intelligence and empathy among practitioners, about whether they are 'cut out' for practice. In other words: if some students are told that they are likely to experience distress, upset or trauma in connection with their enrolment in a family violence clinic, what unintended consequences may flow if students do not experience any of those feelings? Will they worry that they lack sufficient empathy to practice in those areas, and how will clinicians respond to questions about these issues from their students? And how would we, as clinicians, teach for this?

In a similar vein, we must consider whether trigger warnings may have a set of paradoxical unintended consequences that actually produce and reproduce ideas about lawyers needing to be 'rational', 'analytical', 'ordered', and so on. I say this for a few reasons. One purpose of the trigger warning is to acknowledge the possibility of emotional harm arising in connection with legal work. It is possible that trigger warnings work to constitute emotional reactions to legal content in one of two ways: as 'natural', 'normal' and/or entirely acceptable responses, on the one hand, or as severe forms of psychological injury,

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[47] J P Ogilvy, 'The Use of Journals in Legal Education: A Tool for Reflection' (1996) 3 *Clinical Law Review* 55; Ross Hyams, 'Assessing Insight: Grading Reflective Journals in Clinical Legal Education' (2010) 17 *James Cook University Law Review* 25; Ross Hyams, 'Nurturing Multiple Intelligences Through Clinical Legal Education' (2011) 15 *University of Western Sydney Law Review* 80.

on the other. I say this not to discount the fact that many lawyers will indeed sustain psychological or psychiatric injury as a result of their work. Rather, my point is that the trigger warning sounds an alarm to law students that some content will deeply impact them and that in some instances the best way to manage troubling content is to avoid it altogether. In a sense, somewhat paradoxically, this may mean that the trigger warning encourages avoidance of 'emotive' or 'moving' material, in ways that symbolically and practically align with, rather than depart from, the normative binary logic many claim is emblematic of the law. It may even work in ways that remain personalising and individuating, by positioning emotions as 'private' reactions and/or 'interior' dispositions of subjects. This results in the systemic and structural factors that shape the nature and scale of lawyers' suffering being left completely unexamined.[48] There is thus a real risk that the deployment of trigger warnings within the context of clinical legal education will work against the profound and radical political change that its proponents believe to be necessary in law. Paradoxically then, trigger warnings have the potential to be stigmatising and counterproductive to resilience, mental health and wellbeing.

Outside the clinic, there is already evidence that academics are adapting their teaching practices by avoiding potentially triggering content altogether. A social work professor from the University of California, Berkeley recently acknowledged dropping a lecture on abortion from his syllabus, for example, based on concerns it could be upsetting.[49] Writing about the implications of trigger warnings for the field of social work, Susan Robbins argued that:

> Permitting students to opt out of lectures or readings to avoid content that may cause discomfort or canceling entire lectures or classes to assuage student fears of emotional distress does a disservice to our students and to the profession.[50]

Similarly, Harvard Law School professor Jeannie Suk Gersen has argued that rape is increasingly difficult to teach in law schools. She argues that:

> a perverse and unintended side effect of the intense public attention given to sexual violence in recent years. If the topic of sexual assault were to leave the law-school classroom, it would be a tremendous loss—above all to victims of sexual assault.[51]

There is a disturbing commonality across these three examples. Certain kinds of 'challenging' or 'difficult' subjects, many of which are

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48 See also, on a similar point, Parker, above n 3; Baron, above n 3.

49 Robin Wilson, 'Students' Requests for Trigger Warnings Grow More Varied', *Chronicle of Higher Education* (online), 14 September 2015 <http://chronicle.com/article/Students-Requests-for/233043?cid=rclink>.

50 Susan P Robbins, 'From the Editor — Sticks and Stones: Trigger Warnings, Microaggressions, and Political Correctness' (2016) 52 *Journal of Social Work Education* 1.

51 Jeannie Suk Gersen, 'The Trouble with Teaching Rape Law', *The New Yorker* (online), 15 December 2014 <https://www.newyorker.com/news/news-desk/trouble-teaching-rape-law>.

disproportionately experienced by women, may become increasingly hard to teach. What does it mean if we become so risk averse that we are no longer prepared to speak of rape, or of abortion, for fear of upsetting students? What does it mean if future lawyers, social workers and psychologists never encounter these realities in their studies? Do we risk shrinking the pool of professionals who may one day represent victims of sexual assault, female genital mutilation, or forced marriages? If this is the case, then trigger warnings may undermine many of the values that drove early clinical legal education and which continue to inform and inspire clinical praxis. These include advocacy for minorities and disadvantaged populations, including women and girls, and a commitment to social justice.

IV PRACTICAL CONSIDERATIONS

Finally, we must consider what practical effects — intended or otherwise — are likely to follow trigger warnings. As I have already noted, trigger warnings are traditionally conceptualised as a means by which to prepare students for the possibility that they will encounter difficult or challenging content during a subject. The warning is not only intended to brace students for potentially challenging content, but may offer them an opportunity to opt out of being exposed to such content in certain circumstances. In a clinical setting, this raises a series of major practical problems. Here I list a few of these, many of which overlap with the pedagogical concerns explored in the previous section. At least the following issues arise:

- How will clinics respond if a student indicates that:
  - They wish to be excused from seeing clients who present with certain kinds of problems (eg family violence) going forward?
  - They do not wish to deal — on an ongoing basis — with certain kinds of cases (eg cases involving family violence) going forward?;
- How will clinics deal with the fact that in many instances it is not possible to anticipate or prevent students from coming into contact with potentially upsetting content (eg because a client who presents with an ostensible debt matter may in fact then reveal that they are a victim of family violence and that the debt was incurred as a result of intimate partner violence/duress)? In other words, can we actually protect students from the inherent dynamism and spontaneity of clinical practice, even if we wanted to?;
- What will we do about the fact that in some clinical contexts, the entirety of the content might be something that the student asserts that they need to avoid? How, in other words, will we proceed if a student says that they need to be treated differently or separately in terms of workload, case allocation, legal work

and/or assessment, in circumstances where it is difficult or perhaps even impossible to accommodate such requests?;

- What will we do if a student makes a complaint to the effect that:
  - They were upset and/or traumatised as a result of content to which they were exposed in the unit, but that they did not raise it at the time, and now wish for this to be taken into account in their assessment?;
  - They were upset and/or traumatised as a result of content to which they were exposed in the unit, did raise it at the time, and now wish for this to be taken into account in their assessment;
  - They were upset and/or traumatised as a result of content to which they were exposed in the unit, did raise it at the time, but did not have their needs sufficiently accommodated and/or were later exposed to upsetting content (eg in unanticipated circumstances, as described above), and now wish for this to be taken into account in their assessment?
- How will the clinic handle things if the student complains about a supervisor and/or the subject for any of the reasons above?
- How will the clinic deal with all of these issues within the context of partnerships with external host organisations?
- How does all of this intersect with client confidentiality? In other words, how would student complaints, requests for special consideration for assessment and so on be handled, especially in contexts where specific details of the source of the student's concerns cannot be raised without breaching client confidentiality?
- What are the implications of this for notifying professional indemnity insurers and for legal liability claims?

This is not an exhaustive list, by any means. My point is that if trigger warnings are to be implemented, careful consideration needs to be given to how each of these (and potentially other) practical considerations will be handled.

Let's consider one of these practical challenges in some more detail. Let's imagine that a student is enrolled in a consumer debt clinic, and has been led to believe — by virtue of the absence of any trigger warning — that the subject matter will be relatively innocuous and uncontroversial. A client attends with an ostensibly straightforward debt matter but in the course of the interview, reveals that the debt they have incurred is a 'sexually transmitted debt',[52] incurred under extreme

[52] This term is often attributed to a publication by Fehlberg (Belinda Fehlberg, *Sexually Transmitted Debt: Surety Experience and English Law* (Clarendon Press, 1997)) and refers to the process by which liability for a loan or other debt – such as a bank loan – is transmitted from one partner to another, often by means such as duress, coercion,

duress from a sadistic and violent partner. How will the clinician manage this situation, including the fact that the student enrolled in the debt clinic because they believed they would not be exposed to confronting material? Law clinics are dynamic environments, and spontaneity and unpredictability is a feature of much legal practice. Perhaps the solution is to screen clients first — by asking them what kind of legal problem they have. This is unlikely to work because clients do not always articulate, in legal terms, what their problem is. Clients may present with a 'family matter', for instance, that turns out to be about constructive trusts, undue influence, wills and estates or guardianship, or it may be about sexual abuse, family violence, tenancy law, or divorce. Often it is only through a comprehensive client interview that the legal dimensions of an issue become clear. What are we to do if a student is enrolled in a clinic without a trigger warning, but they are then exposed to content they find disturbing? Does the student now have grounds for a complaint against the clinic, the faculty or the university? And if so, how will that complaint be handled within the context of the student's assessment? In this sense, the fact that some clinics have trigger warnings and others do not becomes a potential practical problem. It may also be one that exposes the clinic to legal liability — although some may argue that the absence of a trigger warning may raise similar concerns. As academics, we might be asked to explain why the clinic did not carry a trigger warning. Should we have foreseen that content could be triggering? Is it a dereliction of duty to have not done so? And will we be asked to defend ourselves and our choices on some (who knows what?) basis? One way to do so is to try and refer to some 'prior' or 'objective' truth about a subject as a means of justifying our decision. We might say, that is, that 'debt matters are different to family violence matters because the latter can be upsetting but the former rarely are'. As I have explained in previous sections, there are always ramifications of such moves, including the entrenchment of views about that which is 'naturally' offensive and that which is not.

It is tempting to resolve these problems by just imposing a trigger warning on all clinical units, regardless of content. But this raises yet more questions and challenges. On the one hand, it is conceptually unsound to impose a trigger warning in contexts where it is thought to be either unnecessary or meaningless (and this is quite apart from the fact, noted earlier, that these decisions always involve value judgments about clients). If a trigger warning is to have meaning and effect, then surely it should not be deployed in settings where it is thought to be devoid of value, or where its deployment is tokenistic only. On the other hand, the deployment of a trigger warning in all clinical contexts introduces potential practical obligations, as above, not just on clinicians within the law school, but upon those outside of the clinic. As many law schools develop agency clinics and externship arrangements with external organisations, what obligations might those organisations

threats of violence, and so on. In cases such as these, family violence is often an issue.

have to provide safe working conditions for students? What are the implications of the imposition (or absence) of a trigger warning for them? How does this affect professional indemnity insurance? And how will compliance with those obligations be assessed and monitored by universities? These are all questions that must be resolved before any trigger warnings are to be contemplated. Finally, the imposition of trigger warnings across all clinical subjects on offer in a law school has, I suggest, a set of implications for other subjects on offer in a law school. Put simply, it compels our colleagues teaching other subjects (including compulsory or core subjects) to consider whether trigger warnings are needed in their teaching. If they decide not to introduce them, perhaps for philosophical, practical or pedagogical reasons, there is a real risk that students may complain. Students might argue that if some faculty staff saw fit to introduce trigger warnings but others did not, the implication — by omission — is that the content of that unit is not confronting. If students then experience it as confronting, it opens up those other subjects taught by our non-clinical colleagues to complaint. The imposition of trigger warnings introduces an ethical obligation to our colleagues. How will a decision in one subject impact upon other subjects?

V Conclusion

In this article, I have examined some of the practical, pedagogical and philosophical considerations associated with the call for trigger warnings in clinical legal education. I have argued that, if introduced, trigger warnings will produce a series of practical challenges for legal clinics. These are not necessarily insurmountable but in respect of some clinics (such as family violence and sexual assault clinics), could pose serious problems that may risk their integrity, viability and survival. I have argued that trigger warnings also raise a series of more fundamental philosophical and pedagogical challenges that require very careful consideration. It is problematic, for instance, that clinicians prescribe what kinds of subject matters are difficult, upsetting, or traumatising. This is so not only because there will be differing views on these issues, but because the assignation of the warning in some contexts and not others is itself constitutive: it signals to law students how we anticipate or expect them to feel, who we expect them to feel for, and who we do not. As cultural studies theorist Sara Ahmed has elsewhere argued, articulations of emotion are always already political, and work to surface bodies, subjects and collectivities. Similarly, the trigger warning does work, and not only work of the kind its advocates might think worthwhile. While it may have the effect of helping law students to anticipate and/or prepare for emotional upset or distress, thus potentially helping them to navigate and negotiate difficult emotions, it also constitutes some subjects, bodies and collectivities as more or less valuable, pitiable, or desirable. These processes are thus inherently political and ethical: a point compellingly made in Judith Butler's work on emotions and grief in a post–9/11 world.

I also considered how trigger warnings align with some of the values that underpin many approaches to clinical legal education, and how they might impact upon clinical pedagogies. I argued that although trigger warnings may appear, on the face of it, to align with the values that many clinicians would see as being at the heart of clinical legal education, including social justice, respect for clients, minorities and disadvantaged populations, trigger warnings have the potential to paradoxically instantiate power dynamics, to entrench injustice, and to foreclose intellectual curiosity. In this sense, they are actually antithetical to the proper practice of clinical legal education. Drawing upon ideas from Canadian clinician Sarah Buhler, I also argued that articulations of emotion — including sympathy for client suffering — can be risky in clinics. This is the case even where the articulation of sympathy and concerns about 'disadvantaged' or 'suffering' clients are well-intentioned. Sarah Buhler urges clinical legal education to avoid any 'uncritical embrace' of certain stereotypes, assumptions and emotions. She prefers an emphasis on openness, intellectual curiosity and critical self-interrogation, untarnished by preconceived ideas about clients. I see this as an extremely valuable approach and one that clinical legal education should foster. In lieu of implementing trigger warnings, then, I argue that we should encourage students to discuss and reflect upon their emotions, and to explore where they came from, how they connect to values and norms and what these emotions do, in Sara Ahmed's terms.

The approach I advocate does not deny or dismiss emotions in clinics, but in fact embraces them as valuable tools for learning. It approaches emotions as critical objects for analysis and thought. My approach urges us to look at emotions critically, and to encourage students to view them as constitutive. Such an approach also has the potential to help us better understand the nature and dimensions of stress, suffering and trauma, where it arises, because it treats such phenomena as political, relational and social, rather than as individual, psychological or 'interior'. This is a more productive approach than the one advocated by proponents of trigger warnings. It does not involve disrespect for clients or students, including the realities of emotional distress among some students. Indeed, it's an approach that has the potential to add to — rather than detract from — students' capacity to understand themselves, their 'emotions' and their practice. It may also improve the way that lawyers deal with traditionally marginalised and stigmatised groups, such as people who use drugs, women and minorities.