

Bridging the Gap? The Effect of Pro Bono¹ Initiatives on Clinical Legal Education in the UK

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Legal education in the UK has undergone significant changes over the last decade and is once again under review². Whilst there is now wide spread acceptance of the benefits of experiential learning in educational terms and a focus on the distinction between deep and surface learning, clinical legal education in the UK has remained firmly on the sidelines.

Its first introduction into UK legal education emerged in the mid 1970s with the University of Kent at Canterbury's real client clinic shortly followed by the University of Warwick's programme in 1975³. By the 1980s only four clinics remained in existence at Birmingham, Warwick, South Bank and Northumbria, a contrast to developments in the USA where by 1973 clinical programmes had been established in 125 out of the 147 accredited law schools. Such programmes, whilst welcomed almost universally by the participating students, have been harder to establish as offering a valid contribution to legal education by academics and to some extent by the legal profession itself. Clinical programmes have come and gone and are often first to feel the effect of resource crises. However, recent years have seen the establishment of a number of pro bono schemes based within law schools and operated with student voluntary participation. Whilst offering a different experience to the in house, real client programmes which are incorporated and

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¹ *Pro bono publico* – literally for the public good – the term commonly used in the UK to denote the giving of legal advice and services without charge.

² *The Training Framework Review Group Consultation Paper 2001* – The Law Society.

³ *Learning Law by doing Law in the UK* by Richard Grimes. *International Journal of Clinical Legal Education*, November 2000, Edition 1.

assessed as part of a course of legal study, they have commanded the attention of the legal academy and profession alike. This article examines the reasons for the UK's apparent reluctance to accept clinical legal education as an essential element of legal education and argues for its inclusion as an addition to, not a distraction from, rigorous and specialist legal education. It will then consider current developments in legal education and trends in the profession which have led to the rise of pro bono work in law schools and to what extent these pave the way for the wider acceptance of curriculum based clinical programmes in the UK.

Whilst there can be no doubt that more law students are involved in schemes bringing them into contact with practical legal work, the in-house real client clinic based in the law school and operating as a solicitor's office is still relatively rare. Sheffield Hallam, Queens Belfast and Kent Universities all provide optional, assessed clinical legal education programmes which are integrated into their undergraduate degree programmes. At Northumbria the clinical course is a compulsory element of the exempting degree with all 120 fourth year LLB exempting degree students participating in an assessed clinical course of study⁴. Such programmes have huge resource implications for schools but the expansion of pro bono work shows that law schools have been resourceful in finding ways of introducing schemes offering practical involvement to their students.

A survey conducted by Sara Browne in 1999⁵ found that out of 73 law schools offering undergraduate qualifying degrees and/or postgraduate education 43% stated that some pro bono activity existed within the law school and a further 17% stated that pro bono activity was planned. 16 law schools had schemes in which students worked in conjunction with providers of free legal services, such as Citizens Advice Bureaux, to provide pro bono work. 12 providers had clinics operating within the law school and three others had schemes based within the law school but not described as clinics. The students from the London schools of law participated in the long established Free Representation Scheme⁶ and the University of Westminster continues to run its death row clinic providing advice to assist death row inmates with their legal appeals in the USA. In recent years the College of Law has set up advice centres at all its colleges. Such schemes are clearly very popular with students although the study does not give figures for the proportion of students participating in these schemes. The 1999 study confirmed that out of the 29 law schools who participated in pro bono activity nine schemes were assessed and one was compulsory as opposed to voluntary.

Clinical Legal Education as Part of Legal Education in the UK

In the UK, the undergraduate law degree, has always remained distinct from professional training in law. At undergraduate level the profession is not compartmentalised between barristers and solicitors or indeed between legal scholars and those intending to become legal professionals.

4 *The University of Northumbria is unique in that it runs a 4 year exempting degree which meets both the undergraduate degree requirements and the post graduate Legal Practice Course requirements. On graduating with this exempting degree students are able to enter immediately into the required 2 year period of apprenticeship with a solicitor's firms known as a training contract.*

5 *A Survey of Pro Bono Activity by Students in Law Schools in England and Wales by Sara Browne The Law Teacher.*

6 *The Free Representation Unit was set up in 1972 to provide free representation for those who cannot afford to pay for representation at tribunals in the Greater London Area. Volunteers at FRU are 3rd year law students, trainee solicitors and pupil barristers.*

The professional training for solicitors takes place through a one year post graduate course (the Legal Practice Course) followed by a two year training contract.

The dichotomy between legal and professional legal education has continued to engage academics and professionals alike despite a number of moves to blur the distinction and move towards more integration in legal education. In 1971 the ACLEC report⁷ emphasised that the academic and vocational stages of legal education are joined by 'common threads'. The Law Society introduced requirements for ongoing professional education for solicitors and barristers making an element of continuing professional development compulsory for all solicitors since November 1998⁸. It appeared that some moves were being made to view legal education as a continuum with an ongoing role permeating the professional life of a lawyer.

Undergraduate Legal Education:

For academics the provision of legal education focuses on the undergraduate degree in law. The contents of which are determined with reference to the Joint Announcement on Full Time Qualifying Law Degrees issued by the Law Society and the General Council of the Bar.⁹ This document identifies seven foundation areas of legal knowledge to be covered by a qualifying law degree. The seven foundation areas include obligations I (contract), obligations II (tort), criminal law, equity and trusts, european law, property law and public law; areas traditionally covered by a lecture/seminar approach. Fundamentally these cores have not changed throughout the last 10 years. Nevertheless the announcement is not proscriptive on how such information is to be imparted 'we would not want to see the intellectual richness of law school teaching diluted or these different scholarly approaches inhibited; nor do we want to see curricular developments obstructed or discouraged'¹⁰.

Within the undergraduate law degree there is ample opportunity for a clinical approach but this has not been adopted wholesale by academics and law schools for a number of reasons. Firstly, clinical legal education is often interpreted as primarily skills training with a more appropriate role to play in professional legal education.

Secondly, large numbers of undergraduate law students do not enter the legal profession and many never have any intention of doing so. To impose a clinical element is seen as diluting the academic study of law with skills only relevant to the legal professional. In 2000 the Lord Chancellor's Department, at the request of David Lock MP, proposed in a discussion paper that all qualifying law degrees in the UK should include an element of compulsory practical work. Whilst the practical work envisaged was never specified, the proposal provoked angry responses from academics; 'This practical training will do students no good. Working in the CAB¹¹ is not like

7 *The Lord Chancellor's Advisory Committee on Legal Education produced its first report on Legal Education and Training in April 1996.*

8 *Research carried out on behalf of the Law Society in 1998 by Jon Hales and Nina Stratford of Social and Community Planning Research found that the majority of courses attended by solicitors as part of the continuing professional development requirements*

concerned areas of substantive law.

9 *Announcement of full time qualifying law degrees issued jointly by the General Council for the Bar in 1995 and amended in 1999.*

10 *Ibid.*

11 *Citizens Advice Bureau – A national free advice service open to all members of the public.*

being a lawyer, being a lawyer is not the same thing as studying law and being a lawyer is what only a minority of law students will be'¹².

Thirdly, many academics do not accept that clinical legal education has a valid role to play in undergraduate legal education, or indeed a role which brings to legal education anything that is an improvement on what can be achieved by more traditional study within the more focussed environment of a specialist subject.

Focusing on the intellectual skills (as opposed to practical skills) of the lawyer William Twining¹³ identified a number of intellectual qualities required by the good lawyer:

- a) an ability to express oneself clearly both orally and in writing
- b) an ability to distinguish the relevant from the irrelevant
- c) an ability to construct and present a valid, cogent and appropriate argument
- d) an ability to identify issues and to ask questions in a sequence appropriate to a particular context
- e) general problem solving skills
- f) library research skills
- g) an ability to spot ethical dilemmas and issues

The list would not be out of place as objectives for virtually any undergraduate degree programme including law. Clinical legal education also holds the above aims as central. Perhaps the emphasis on the more practical legal skills experienced in law clinics detracts from the fact that clinic has, at its heart, the aim of developing many of the same disciplines with the same rigour as in the study of academic law. The skills that it develops are transferable not only between the academy and the profession, but also between law and other disciplines. Indeed clinicians would say that the problem based learning approach of clinical legal education focuses much more intensively on developing these skills and the interaction between them.

In trying to identify 'the core' at the heart of legal education Twining concludes 'There is little unique or special about 'the legal mind' except the ability to apply some general intellectual skills in some specific kinds of context....if there is anything unique or special that academic lawyers have to offer at a general level to colleagues from other disciplines it is local knowledge of an important area'.

Despite Twining's observations, the academy has always been resistant to what it interprets as interference by the profession. In recent years the changing profile of the profession, discussed later in this article, has unashamedly impacted on the second stage of legal training the Legal Practice Course. It is of concern that these pressures must feed through to undergraduate education forcing it to respond to the economic vagaries of the profession. Toddington comments that 'some degree of educational and curricular integration is undoubtedly desirable but let us not feel compelled to suggest that the world of law and professional practice on the one hand , and on

12 Tony Bradney, Faculty of Law University of Leicester is the editor of the Reporter, the newsletter of The Society of Public Teachers of Law. This article was published in the Winter 2000 edition.

13 William Twining – In Blackstone's Tower – The English Law School 1994 Hamblyn Lecture.

the other, the academic study of the philosophical, cultural, ideological and economic complexities of this world are one and the same thing'¹⁴.

However, the inaction between the two cannot be denied. Law has always developed piecemeal. There are no boundaries between the academic and the professional; both inform and develop the other. Whilst we may complain of professional lawyers performing mechanistic tasks as a means to an end, it is clear that not all legal practice is like this or we would not get the daily developments fed by the decisions of the court and the legislative changes of parliament. Some professional lawyers are making law whilst some academic lawyers are interpreting law and feeding it back into the circle.

What is essential is that law students make the link. Whether it be through studying precedent and case law or whether it be through clinic, when that piece of research doesn't just supply the answer to the question but also highlights the gaps in the law.

Nigel Savage and Gary Watt¹⁵ identified the link and urged that 'if law is to remain the learned profession the law school should assert its role as guardian of that special body of learning and skills which constitutes lawyerliness. If the law school fails to become the House of Intellect¹⁶ for the profession it is certain that the profession will build other houses to serve its needs.'

Postgraduate Legal Education: The Legal Practice Course

The introduction of the postgraduate Legal Practice Course for the training of solicitors in the early 1990s increased the focus on skills. It was a move away from the didactic and mechanistic teaching of legal practice and acknowledged, for the first time, that professional education should also include training in practical legal skills. The course identified five key skills relevant to legal practice; drafting, research, advocacy, interviewing and negotiation (commonly known as the DRAIN¹⁷ skills) which were to be examined in the one year course. The skills were taught in the context of one of the other practical subject areas (e.g. civil litigation or conveyancing). The approach is highly formulaic and teaches the skills in isolation to each other. Its aim is to bring students to a level of competency required for entry to the profession as a trainee. This approach to skills teaching on the LPC has received its fair share of criticism not least from the profession who felt that whilst the DRAIN skills were important in legal practice they were more effectively developed at the training contract stage. The main area of change in the LPC course was in its delivery. It moved away from the traditional lecture based approach to a more interactive workshop based approach.

The compartmentalisation of legal education in the UK into the academic and the practical and into ever expanding numbers of specialist subject areas militates against the integration of clinical legal education. The above consideration of undergraduate and postgraduate legal education in the UK demonstrates a clear role for clinical legal education as a developer of both the intellectual and practical skills of the lawyer. Whilst specialisation in itself is synonymous with expertise and

14 Stuart Toddington *The Emperors New Skills: The Academy, The Profession and the Idea of Legal Education. Pressing Problems in the Law Vol 2* Edited by Peter Birks.

ed Peter Birks.

16 The law school as a 'House of Intellect' was identified by Twining in his 1994 Hamblin lecture.

15 A 'House of Intellect' for the Profession Nigel Savage and Gary Watts – *Pressing Problems in the Law Vol 2*

17 The skill of Negotiation has subsequently been dropped as an assessed skill on the LPC.

expertise is increasingly the future of the profession, some would argue that by developing the intellectual, academic and practical skills through clinic we prepare students for the ever-changing specialised profession. We prepare students for a the multi dimensional approach to the law needed for problem solving in both practical and academic settings.

The Requirements of the Profession

The legal profession in the UK continues to change rapidly. In recent years the number of solicitors in the UK has increased dramatically; in 1990 there were just under 55,000 solicitors and by July 2000 there were 83,000. Solicitors in private practice have become increasingly specialised particularly in areas such as corporate work. The size of firms has increased so that by the year 2000 there was 447 firms with over 11 partners. Out of these, 23 firms had 81 or more partners and 104 had between 26 and 80 partners. The income patterns of firms has also changed considerably. In 1989 residential conveyancing was the main stay in terms of gross fee income for solicitors. By the late 1990s it contributed only 10% of gross fees compared to a rapid rise in fees from commercial and business work (28%) and overseas earnings (8%). The emergence of the large, specialist, corporate firm and the decline of smaller, high street, general practice has inevitably fed into the debate on legal education.

In addition to changes in the private sector, the publicly funded (legal aid) sector was also curtailed with the introduction of the Community Legal Service¹⁸ which restricted the provision of legal aid work to solicitors entering contracts with the LSC. The first contracts for civil work were entered into in January 2000 and for criminal legal aid in April 2002. In its consultation document; *The Future of Funded Legal Services*,¹⁹ the Law Society drew attention to a clear drop in the numbers of solicitors prepared to provide services to the legal aid sector because of heavy regulation by the Legal Services Commission and relatively poor rates of remuneration. In its Annual 2001/2002 report the Legal Services Commission confirmed that 6% of suppliers of publicly funded work had left the system with a further 50% of firms seriously considering leaving. In immediate terms there has already been a significant drop in the provision of publicly funded advice particularly in areas such as employment law (a 12% drop), consumer law (8% drop) and welfare benefits (8% drop).

Not surprisingly, the profession's demands of its new recruits changed correspondingly. Firms complained that the whole pre admission training process was insufficiently rigorous and was producing students with a lower standard of knowledge and analytical skills than was previously the case. Many complained that legal education was not sufficiently preparing students for the specialist work of the specialist practice and, as a direct consequence, the City Legal Practice Course came into existence suggesting a move towards the niche LPCs.

From the publicly funded profession complaints came that the LPC course was too business orientated and the course was slanted towards the business end of the profession.

¹⁸ Introduced under the Access to Justice Act 1999.

¹⁹ *The Future of Publicly funded Legal Services; A Consultation published by the Law Society February 2003.*

Indeed the profession seemed to be rejecting legal education entirely in favour of choosing its entrants from graduates of non law degrees²⁰. Figures published in 1993 showed that in the top 100 law firms 30% of training places went to non law graduates and in thirty of these firms more than 50% went to non law graduate entrants. An analysis of responses from 57 solicitors practices and 53 barristers chambers recruiting over 290 entrants in 1998 found that what the employer was looking for first and foremost was ‘Good students from good universities’²¹. A good degree was seen as an upper second in a single or joint honours in a respectable (humanities) subject area. A good university was seen as Oxbridge or a redbrick university. A depressingly unimaginative approach to recruitment. However, looking at the analysis some indication can be found as to what attributes the respondents valued. When asked to rank attributes, the most highly ranked quality was that of synthesis /analysis, followed by communication /literacy then evaluation and problem solving . The DRAIN skills ranked in the mid range. The respondents also indicated strong support for the propositions that those entering the profession should know the law before they enter the profession; that finding the law was more important than knowing the law and that however much a new lawyer knew he is likely to meet an unfamiliar area of law.

It could be argued that the whims of the profession and its ever changing demands to meet economic expediencies is reason in itself to maintain the independence of legal education. However, it must also be clear that if a law degree ceases to be the primary route for preparation for the profession and the profession takes to filling what it perceives as the gaps for itself, both the profession and the academy are likely to be diminished.

Developments in UK Legal Education

In 1996 the Lord Chancellor’s Advisory Committee on Legal Education and Conduct produced its First Report on Legal Education and Training. The report identified as serious weaknesses ‘the artificially rigid divisions between the academic and professional stages of legal education and the perception by some of the academic stage as a preparation primarily for vocational training as a barrister or solicitor’. The Committee identified ‘unnecessary compartmentalisation of the ‘vocational’ and the ‘academic’ aspects of legal education’. The legitimate tensions between academic lawyers and skills trainers can and should be the basis for creative partnership rather than a cause of hostility’.²² The report put skills training firmly on the agenda for legal education identifying a particular deficiency in relation to legal research skills.

The Law Society’s Training Framework Review

In response to the criticism from the profession and the law schools, as well as a concern over the divisions appearing within legal education, the Law Society published a ‘Training Framework Review Group Consultation Paper’ in 2001. This document purported to tackle the training of lawyers from ‘cradle to grave’. It presupposed that a consensus could be reached on the competencies a modern solicitor required in order to practice. It then proposed the development

20 *In the UK a graduate of any discipline can enter the profession by taking a one year course of study (the CPE) followed by the Legal Practice Course.*

21 *Desiderata: What Lawyers Want From Their Recruits by Vera Birmingham and John Hodgson.*

22 *A New Vision of Legal Education* chapt 2 of the report.

of a framework or grid of competencies 'around which it will be possible to identify what should be required of the training process at every stage of a solicitors career'²³. It divided the competencies into the following three areas: knowledge, skills and ethics.

The idea of the framework is that it will set a benchmark for standards and will also identify the outcomes of the training process thereby making it easier to make decisions on the individual parts of the process. Presumably allowing for training programmes tailor made to specific practices and furthering the scope for the niche training programme.

The focus on competencies has the benefit of identifying the huge areas of common ground in academic and professional education and practice and may lead to a more rounded approach to legal education from pre to post qualification and beyond. The overwhelming difficulty remains in the huge task of identifying the outcomes at each stage of the process. The devil, as they say, is in the detail.

Establishing Clinical Legal Education in the Curriculum

In the light of the above turmoil in legal education and the profession, does clinical legal education have a role to play?

From an educational point of view, clinical education has a sound basis; Kolb's learning cycle²⁴ and the findings surrounding problem based learning make clear the advantages of experiential learning.

From a student's perspective their motivation and involvement in real client work is always received enthusiastically (each year of feedback from the Law Office Programme reminds me of this).

However, we need to establish clinical legal education as an integral part of legal education not just as a taste of the profession or an exciting way of gaining students attention to the practice of law, but as a relevant discipline. Indeed, I believe it can plug the hole of the damaging criticisms of legal education. It can be used as a tool not only for learning law and the skills identified as traditional lawyering skills (interviewing, advocacy etc). It can go further to develop those skills of synthesis and analysis that appear to be a common goal for both the profession and the academy.

The UK, although slow in adopting the clinical approach, has an excellent basis upon which to build. The established clinical programmes have not been demand led by a need for free legal services, nor were they established with the emphasis on provision of practical experience for students (as in countries where the training opportunities for law students are limited). The existing programmes have always had, at their forefront, educational priorities. The increase in pro bono initiatives and greater involvement of students in legal practical work may compromise this. Not all pro bono initiatives make any claim to providing clinical legal education, but of those that do a new set of priorities come into play.

²³ *Training Framework Review Group Consultation paper 2001 Law Society.*

²⁴ *Kolb's Learning Cycle 1984 identified four stages in a natural learning cycle; Experiencing, Reflection, Conceptualisation and planning.*

Why the climate is right for clinical legal education to develop

Clinical legal education in the UK has never been driven by demand. In the USA the provision of legal services through post graduate law students is a major player in the provision of free legal advice²⁵ and this has clearly provided impetus from many different interested bodies for the development of clinical programmes.

The UK first introduced a system of public funding for legal work in 1945 initially to deal with matrimonial cases, by 1970 this had spread to cover a substantial amount of criminal work. Criminal work has always been covered generously by the UK Legal aid system but rising costs in this area threaten to push out funding for other civil welfare legal areas. From 1970 onwards expenditure and coverage of legal aid expanded dramatically and by 1991–1993 the legal aid budget was increasing by 20% per year²⁶. In order to keep control on costs, areas of work were removed from the system (e.g. personal injury litigation), eligibility rates were cut and rates of remuneration under the scheme did not increase.

Complementing the work of the legal aid lawyers, the UK has a strongly developed advice sector. In the late 1960s Law Centres had begun to emerge and through the 1970s and 1980s the numbers of free advice agencies and Citizens Advice Bureaux continued to increase.

In an attempt to curtail the ever expanding legal aid budget the government introduced a franchising system and established the Legal Services Commission (LSC) in April 2000. Through these schemes both solicitors who have contracts with the LSC for providing legally aided work and advice agencies who are dependent on the LSC for funding have their case numbers monitored and legal aid income restricted. Coupled with demanding quality standards which are audited on a regular basis, many firms are abandoning publicly funded work.

Certain areas of work; housing, employment law, welfare benefits and consumer problems have all been hit by these restrictions. All areas in which law clinics can operate effectively.²⁷ The Legal Services Commission have identified this potential which has multiple benefits. By funding or supporting clinics the LSC can encourage students to take up areas of law which are being deserted by the legal profession at the same time as providing a service which is not being provided for adequately at a level which meets the LSC's stringent quality requirements. For the first time clinics may be identified as a possible plug for shortfall caused by the reducing legal aid sector.

In the UK, universities have fought to retain their academic freedom. However, there is a funding crisis in Higher Education²⁸ and much talk of alternative sources of funding and increasing student numbers. Increasingly universities are required to demonstrate that they contribute to their local

25 In 1969 case of *Gideon v Wainwright* the Supreme Court confirmed the requirement for free legal representation in serious criminal charges where there was a possibility of a substantial prison sentence.

26 Figures taken from *The Future of Publicly Funded Legal Services* A consultation paper by the Law Society February 2003.

27 At Northumbria the Law Clinic has entered into contracts for providing publicly funded work in employment and housing work having met the specialist quality requirements in these areas.

28 White Paper on *The Future of Higher Education* published 22.1.03.

communities and economies. In many African universities, this is of such importance that it has been incorporated into their mission statements,²⁹ but in the UK the contribution clinics can make to their communities has rarely been acknowledged.

However, there is still no commitment, in the form of guidance or direction in professional rules, from the professional bodies to encourage student involvement in clinical work. In the USA the American Bar Association, as part of its pro bono commitment under model rule 6.1³⁰, encourages student involvement³¹. In 1996 the ABA amended its accreditation standards to provide that law schools should 'encourage students to participate in pro bono activities and provide opportunities for them to do so'³².

Nevertheless in the UK a pro bono imperative is emerging. In 1999 the Solicitors Pro Bono group in the UK launched an initiative with law firm Clyde and Co to encourage widespread involvement of law students in pro bono work. The aim of the project was to encourage them to undertake pro bono work which would lead to an ongoing involvement and commitment to pro bono activities throughout their career³³. Such a move was part of a general acknowledgement of pro bono by the profession; 'it may just be a passing thing... But there is a prevailing sense of a kinder age dawning in the nice 90s as a backlash to the elephantine excesses of the 1980s when the eat what you kill ethic was practised so religiously that the less fit and fortunate went without'³⁴. The justification for pro bono work has always been that it is an intrinsic part of being a professional 'pro bono should also be seen as a professional responsibility and as part of the professional culture, rather than as an ad hoc philanthropic exercise'³⁵. The media coverage of fat cat lawyers and a general public mistrust of lawyers has forced firms to consider the benefits of publicising its good works. What effect this has on the quality of work provided by pro bono schemes is the subject of another debate. Nevertheless, there has been a marked shift towards pro bono commitments with the larger national firms directing staff to become involved in pro bono projects some of which are linked to law schools or involve law students.

The above factors and the clear direction given by ACLEC towards a more unified approach to legal education suggests that the climate exists, both in the law school and the profession, to make practical involvement in legal work an expanding area. Amongst this proliferation of new and exciting projects it is important to recognise that the factors that are lending support to these developments may not be in the best interests of clinical legal education. Not all practical experience is clinical legal education 'raw undigested experience does not require a law school, is not educational and is not clinical'³⁶.

29 *The Law Faculty of Makerere University states in its mission statement that it is to 'provide other university students and member of the public with the quality and quantity of legal knowledge and service required in their various callings or pursuits both within and outside the country of their residence'. Philip F Iya Fighting Africa's Poverty. IJCLE November 2000.*

30 *Which requires lawyers to take a responsibility to those unable to pay and calls on them to perform at least 50 hours of service each year on a pro bono basis.*

31 <http://www.abanet.org/legaled/probono>

32 *Report of the AALS Pro Bono Project – Learning to serve* <http://www.aals.org/probono/report2>

33 *Solicitors Pro Bono Group* <http://www.students.probonogroup.org.uk/about.htm>

34 *The Law Society's Gazette 11.7.90 The Politics of Pro Bono* by Evlynn Gilvarry.

35 *Why Pro Bono Makes For Better Lawyers – Pete Sweet* *New Law Journal* 29.Oct 1999.

36 *Hugh Brayne – A case for getting law students engaged in the real thing – the challenge of the sabre tooth curriculum. The Law Teacher 2000 vol 34 No1.*

What does Clinical Legal Education have to offer that pro bono may not?

Pro Bono initiatives in law schools are, as established by Browne's research, many and various. Whilst it is difficult to imagine that any would not provide some learning for a student, much of it could not be described as clinical legal education. What then is the essence of clinical legal education?

Boon defines clinical legal education as 'a curriculum-based learning experience, requiring students in role, interacting with others in role, to take responsibility for the resolution of a potentially dynamic problem'.

Much is made of the learning environment for clinical education Grimes³⁷ describes clinic as offering 'a supportive environment which empowers and encourages a student to move towards a deeper learning approach, based on the understanding and not just the acquisition of knowledge'.

An emphasis on the deeper learning approach provides clinic with its opportunity to really make strides in terms of the holy grail of analysis /synthesis and problem solving and other intellectual legal skills as well as developing the more easily quantifiable legal skills of drafting etc.

Both Grimes and Boon identify the need for clinic to be part of the curriculum 'with a rationale behind its development'. Given the voluntary, non assessed nature of much of the pro bono work it is clear that such a rationale may follow the development of the project and not lead it.

One of the widely acknowledged prerequisites for clinical legal education requires students to reflect on what they do. The concept of the reflective practitioner as described by Schon³⁸ has been widely acknowledged. Jones³⁹ describes the approach as one in which 'professionals learn to 'frame' problems, impose a kind of coherence on 'messy' situations and through which they discover the consequences and implications of their chosen frames'. It encourages critical self assessment, contemplation and insight. Savage and Watts refer to an 'elite of reflective practitioners, who 'bridge the academic – practical divide'.

Clinic also provides an opportunity to consider law in context. Grimes describes the defining characteristic as being a holistic approach which allows the 'theoretical, practical and ethical to be studied side by side'. This begs the question of whether a clinical programme has to have all these dimensions to it. Whilst it is possible for pro bono initiatives to include the above elements, it may be that they are squeezed out by other priorities.

Boon⁴⁰ identified a conflict between the educational objectives of clinical work and the aim of client empowerment through pro bono work. 'in conflicts between student's educational needs and client needs, the former must triumph'.

In reality such priorities are hard to establish. In the clinic at Northumbria we do have a clause in our terms and conditions for clients that states that if the case ceases to be of educational value we have an option to cease acting. We do not have any means test or merits test in selecting cases and as far as I know this is the norm for other clinical programmes in the UK. Nevertheless we do

37 Richard Grimes – *The Theory and Practice of Clinical Legal Education. Teaching Lawyers Skills.*

38 Donald Schon – *Educating the Reflective Practitioner* 1987.

39 Philip Jones – *We're all Reflective Practitioners Now:*

Reflections on Professional Education. Teaching Lawyers Skills.

40 Andy Boon *University of Westminster Making Good Lawyers: Challenges to Vocational Legal Education* 26.9.01.

encourage students to take a critical approach to the work they do in clinic and to consider good practice. The very nature of the work we do in clinic lends itself to a consideration of acting in the public interest.⁴¹

Judith Dickson⁴² identifies three potential routes for clinics in the era of a new professionalism. She suggests clinics could abandon any 'social or reformist purpose' 'It can be seen as a sophisticated method of professional training with an intellectual base' or it could become 'cause lawyering in the legal/social activist model' or finally it could become a mixed model of both approaches. In the UK clinical legal education has always had its basis in the training approach. It is clear that this is now broadening out and it may well be that different models emerge with different emphases.

The most interesting developments in clinical legal education are yet to come. As long as resourcing clinical programmes remains an issue it is clear that the profession's new found commitment to pro bono initiatives can give CLE a huge impetus in the UK. This, combined with the moves towards a more unified approach to legal education could finally move CLE onto the firmer footing it deserves and more extensively into the curriculum. What remains to be assessed is the influence of the multitude of interested parties behind the scenes; the LSC, the firms financing the initiatives, the participating advice centres, the law schools, the Law Society and the Government with its plans for legal education.

41 At Northumbria students attend possession days to represent tenants in danger of losing their homes and learn very quickly the limitation of the public funding schemes.

42 *Clinical Legal Education in the 21st Century :Still Educating for Service? IJCLE Edition 1 page 33.*