

## **ADRIAN EVANS AND CRITICAL PEDAGOGY: HIS EARLY CAREER**

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I was delighted to accept the invitation to be a part of Professor Adrian Evan's Festschrift in November 2018 because over the last thirty years Adrian and I have journeyed together along the social justice and clinical legal education path, sharing many challenges, discoveries, losses and adventures.



Specifically I have been asked to discuss Adrian's early contribution to clinical legal education but to do this it is necessary to also focus on his contribution to the community legal centres. In Australia, like many other countries (as detailed in Frank Bloch's book) early clinical legal education programs were intertwined with the developing community legal centres or neighbourhood law centres movement.<sup>1</sup>

In fact in the first part of Adrian's career, his contribution relates more to community legal centres than to academic pursuits. However having noted that, from early on, Adrian's actions and writings reveal a clear and strong commitment to a philosophy of education

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<sup>1</sup> Bloch F. & Noone M.A. (2010), 'Legal Aid Origins of Clinical Legal Education' in Bloch F.(ed) *The Global Clinical Movement: Educating Lawyers for Social Justice* Oxford University Press; Noone M.A. (1997), 'Australian Community Legal Centres - The University Connection' in Cooper J. & Trubek L. (eds), *Educating for Justice: Social Values and Legal Education*, Dartmouth

which has endured throughout his working life: critical pedagogy. I draw this out in this paper, drawing on my own archives as well as rereading Adrian's early publications. These were not refereed academic articles but pieces in the *Legal Services Bulletin*<sup>2</sup> and *Hearsay*<sup>3</sup>.

I will focus on a couple of examples that reveal Adrian is, and always has been, an agitator, a disrupter and an innovator, someone prepared to challenge the status quo and propose alternative approaches to legal education, to the operation of community legal centres and to the regulation of the legal profession.

But first a little background.

Adrian studied law and commerce at Melbourne University, graduating in 1972. This was at the time that the Whitlam Labor Government came to power in Australia with a election theme of 'It's time for change'.<sup>4</sup> A progressive government was elected after 23 years of conservatism. Globally and domestically it was a time of significant social disruption and change.

Although there was changes in many aspects of society, this was not necessarily the case in the legal profession. As David Neal notes, for a law graduate at this time, "options like working for a legal aid commission, a public interest law practice, a law reform commission, in the pro bono program at one of the big law firms, or even volunteering at a community

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<sup>2</sup> The *Legal Service Bulletin*, an initiative of the Fitzroy Legal Service, was a newsletter then journal, that aimed to provide a medium for the distribution of educational material and general information relating to legal aid in Australia. It became the *Alternative Law Journal* in 1992. See Brown D., 'A Critique of the Legal Service Bulletin' in Neal D., *On tap not on top: Legal Centres in Australia 1972-1982* Legal Service Bulletin p40-48

<sup>3</sup> *Hearsay* was the newsletter of the Federation of Community Legal Centres (Victoria) from 1985- 1998.

<sup>4</sup> Neal D., 'Law and Power- living in the 70s' (2014) *Law in Context* 99, 101

legal centre did not exist. It was a much narrower legal world."<sup>5</sup> Consequently Adrian pursued the traditional path of completing his articles<sup>6</sup> and he then worked in the tax department at Price Waterhouse & Co. - Chartered Accountants for a short time.

However in a move that was to characterise Adrian's career, he took on an unconventional position. He became the legal advisor to student volunteers who were giving free legal advice at the Monash university student union.<sup>7</sup> Then in 1976 he was appointed by the Students Representative Council at La Trobe University to establish an in-house legal service for students of the university. La Trobe University was a young university (commenced in 1967) with quite a reputation for student activism and innovative academic programs.<sup>8</sup>

This was a time of radical change in the provision of legal services in Australia and elsewhere: the first Aboriginal Legal Service opened in 1971, the first community legal service Fitzroy Legal Service opened in December 1972 quickly followed by a number of other community legal centres in Victoria. These voluntary, independent, community run organisations offered free legal assistance, out of office hours, in 'shop front' locations. It is hard for us to imagine now, but these services were, at the time, seen as an serious affront and perceived by many as a threat to, the existing conservative legal profession.<sup>9</sup> In taking up this position

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<sup>5</sup> Neal above

<sup>6</sup> Law graduates had to complete a year long period of 'apprenticeship' under the supervision of a legal practitioner before becoming admitted to legal practice. This was called articles.

<sup>7</sup> Giddings J., *Promoting Justice through Clinical Legal Education* (2013) Justice Press pp 171 - 189

<sup>8</sup> La Trobe University, *From the Paddock to the Agora* (2017) La Trobe University Press in conjuction with Black Inc ; Neal note 2 pp 112-118

<sup>9</sup> Noone M.A. (2001), 'The Activist Origins of Australian Community Legal Centres' (19) Law in Context 128; Noone M.A. & Tomsen S., *Lawyers in Conflict: Australian Lawyers and Legal Aid* (2006) Federation Press 69-72, 199-230

at La Trobe University student union, Adrian was throwing his hat into the alternative/progressive ring.

Simultaneously Adrian was studying theology at the Australian College of Theology, and playing an active role in his church. I surmise that Adrian's religious beliefs may have also prompted him to become involved in improving access to justice rather than assisting the rich with their tax issues.

In his role at the La Trobe University student union, Adrian was advising and providing legal services to students with a particular emphasis upon assisting students facing disciplinary issues but he soon realised the demand was more than he could meet. At the university campus there was a Department of Legal Studies focused on taking an interdisciplinary approach to the study of law.<sup>10</sup> Adrian approached the Department and requested they allow him to 'co-opt' the students on the basis that he would train them 'on the job' in basic legal skills. He was given approval and in 1978 a subject was established integrating this training into the La Trobe Bachelor of Arts.<sup>11</sup>

This was Adrian's first foray into clinical legal education and is an early example of Adrian identifying a problem and creatively devising a solution. He was unable to address the student demand for legal services and so proactively sought to train students to work as paralegals assisting him. But this was not just a technical skills based course.

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<sup>10</sup> Petersen, K. Socio-legality and La Trobe University : introducing and celebrating a broad church of ideas. (2013) 29 (2) *Law in Context*, 1-9; DaviesS, S. From law to 'legal consciousness' : a socio-legal pedagogical expedition.. (2013) 29 (2) *Law in Context*, 42-58.

<sup>11</sup> Evans, A., 'Para-legal training at LaTrobe' (1978) 3 *Legal Service Bulletin* 65

Innovatively, Adrian engaged with the counselling service on campus to assist him in preparing the students for these roles and teaching interviewing skills to the students. In this endeavour we see the seeds developing of Adrian's philosophy of education as indicated in one of his first written pieces in 1978

*"On the premise that education is the fruit of human interchange rather than an exercise in role definition [my emphasis], first year students from the Department of Legal Studies are invited to apply for a half unit para-legal training programme".<sup>12</sup>*

JOURNAL OF CONSUMERS

65

fact, any doubts in this regard were dispelled by the decision in *Given v. C.V. Holland (Holdings) Pty Ltd* 1977 A.P.R. 40-029, which held that the words 'of a particular liability' were wide enough to cover a statement as to the number of miles covered by a car.

*v. Southern Motors Box Hill Pty Ltd* 1977 A.P.R. 026; *Eva v. Preston Motors Pty Ltd*, (unreported, Federal Court of Australia, 9 June 1977).

*Cv. C.G. Smith Pty Ltd and others* (unreported, Federal Court of Australia, 21 July 1977).

(75) 5 A.L.R. 493.

8 This is dealt with in s.87 (2) (a). At first glance, s.87(2) (a) seems to confer on the court a power to rescind contracts. However, in exercising its jurisdiction in *TPC v. Milner Pty. Ltd* 1977 ATC 40-029, the Federal Court held that the provision did no more than confer a power to declare contracts void for illegality, on the basis that they contravene the *Trade Practices Act*.

9 Manufacturers' warranties legislation already exists in South Australia (*Manufacturers Warranties Act 1974*) and the A.C.T. (*Law Reform (Manufacturers Warranties) Ordinance 1977*).

## Para-legal training at La Trobe University



### ADRIAN EVANS

The La Trobe Legal Service began in the Department of Legal Studies in 1974, staffed by members of the Department. By the close of 1975, the Students' Representative Council was able to allocate funds to employ a solicitor to take over much of this work. A solicitor was appointed on a part-time basis in April 1976, with the aim of providing advice and generally representing the interests of students. By 1977 the scope of the service had become virtually that of a private legal practice and it was clear that the time was ripe to begin training 'para-legal' personnel for work in the service. The following account of the training programme emphasises the relationship between the provision of fully adequate advice in the broad sense of the phrase and the availability of emotionally attuned listeners who are trained in the areas of law most commonly encountered by students.

On the premise that education is the fruit of human interchange rather than an exercise in role definition, first year students from the Department of Legal Studies are invited to apply for a half unit para-legal training programme in the first part of their second year. Successful completion counts towards degree qualification. Candidates are interviewed by myself as solicitor from the Legal Service, together with a counsellor from the University Counselling Unit. In this interview we are looking for indications of the student's ability to listen attentively, the level of general maturity and i.e. degree of self-confidence or assertion. Those who do not appear to rate well in these areas are selected out at this stage.

At a subsequent two day seminar held before re-enrolment for second year, all those who rank well enough in these interviews are exposed to teaching techniques and exercises – academic and interpersonal – designed to minimise initial nervousness and highlight individual strengths and weaknesses within an atmosphere that encourages self-awareness and disclosure and seeks to strengthen each candidate's ability to project his or herself sensitively.

Since this necessarily requires a degree of personal interaction, the seminar is limited to approximately 12 students, with myself and two counsellors as facilitators. In broad terms, the seminar seeks to inform students of the techniques to be used and to give each person the opportunity to opt out of the course without disadvantage to their subject selection if there are disagreements. From experience it seems that such doubts, often in connection with the self-disclosure inherent in the educational techniques, are best spelt out and resolved before students are committed to enrolling in the half unit.

<sup>12</sup> Evans, A., 'Para-legal training at LaTrobe' (1978) 3 Legal Service Bulletin 65

Over a 10 year period, Adrian established a group of paralegals specialising in representing students before the University's disciplinary tribunals. The utilisation of paralegals was unconventional at that time and is an illustration of Adrian's preparedness to challenge the status quo.<sup>13</sup> Based on this experience, in 1989, when legal aid funding was being cut, Adrian controversially suggested having paralegals rather than lawyers as front line advisers.<sup>14</sup>

Of course whilst all this was happening at LaTrobe, Adrian was also the father of 4 young boys, including twins (see Maria's contribution).

In May 1985, I commenced working at La Trobe university in a unique position as a lecturer practising as a lawyer at another community legal service close to campus; West Heidelberg Community Legal Service. As part of that role I was responsible for a subject called Law and Social Justice in which students undertook placements at the legal service.<sup>15</sup>

A month after starting in the position (June 1985) I attended the National community legal centres conference in Brisbane. I have a strong recollection of wandering home from dinner with group of conference attendees, when Adrian and I got chatting about the theme of the conference, social change. He suggested we might work together - we could revise his subject to more directly focus the curriculum on social change. This was the beginning of my clinical journey and working together with Adrian. Although I had worked at Springvale

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<sup>13</sup> For further contemporary discussion see: Noone M.A. (1991), 'Paralegals - in the Community's Interest?' in Vernon J. & Regan F. (Eds), *Improving Access to Justice* Australian Institute of Criminology Noone M.A. (1988), 'Paralegals - a growth area in times of restraint?' 13 *Legal Service Bulletin* 253

<sup>14</sup> Evans, A, 'Para-Legal Advisors!' (1989) 19 *Hearsay* 5

<sup>15</sup> See Dickson, J., '25 Years of Clinical Legal Education at La Trobe Uni: Keeping the community in legal education' (2004) 29 *Alternative Law Journal* 37; Neal D., 'Law and Power- living in the 70s' (2014) *Law in Context* 99, 101

Community Legal Service, which had a clinical program with Monash University, I had been the community lawyer and had no direct responsibility for students.<sup>16</sup> Looking back, I probably had more experience with activism, having been the lawyer for the squatters union<sup>17</sup>, whereas Adrian had developed a sophisticated clinical program at the SRC. He recognised the potential of bringing these two aspects together.

Working together, we developed a most ambitious and exciting course. The subject went for a full year, students spent time on placement at both our respective legal services. The original University Handbook entry for the subject stated:

*'the aim of the subject is to produce students with firsthand experience of community legal services and a priority for social action, together with the strategies for implementation developed within the reality of client contact and the opportunities now being provided with the legal system. The approach is to link clinical skills, substantive law, research, exposure to case work environments and the technique of public interest legal analysis and strategies'" [my emphasis]*

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<sup>16</sup> Greenwood K., *It seemed like a good idea at the time : a history of Springvale Legal Service 1973-1993* (1994) Springvale Legal Service

<sup>17</sup> Noone M.A., Stewart I., Trezise P., & Winn G. (1983), 'Bona Vista-A Large and Attractive Property' 8 (6) *Legal Service Bulletin* 253

Teaching this course with Adrian, I learnt about the Binder and Price approach to legal interviewing skills<sup>18</sup>, the Myers-Briggs Type Indicator<sup>19</sup>, utilising Structural Analysis to strategise about social problems<sup>20</sup>, theories of non-violent action<sup>21</sup> and much more.<sup>22</sup>

Adrian's philosophy of education pervaded many aspects of the course. He drew on the work of Ivan Illich<sup>23</sup> and Paulo Friere<sup>24</sup> and shunned a 'banking' concept of education. He was clearly an advocate of 'critical pedagogy'.<sup>25</sup>

To quote Wikipedia,

*Advocates of critical pedagogy view teaching as an inherently political act, reject the neutrality of knowledge, and insist that issues of social justice and democracy itself are not distinct from acts of teaching and learning.<sup>[2]</sup> The goal of critical pedagogy is emancipation from oppression through an awakening of the critical consciousness. When achieved, critical consciousness encourages individuals to effect change in their world through social critique and political action.*<sup>26</sup>

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<sup>18</sup> Binder D. & Price S., *Legal Interviewing and Counselling: a client centred approach* (1977) West Academic Publishing USA

<sup>19</sup> <https://www.myersbriggs.org/my-mbti-personality-type/mbti-basics/home.htm?bhcp=1>; Peters, Don, & Peters, Martha M. (1990). Maybe that's why I do that: Psychological type theory, the Myers-Briggs type indicator, and learning legal interviewing. *New York Law School Law Review*, 35(1), 169-198.

<sup>20</sup> Reid, S., *Change for justice : structural analysis and strategies for change* (1987) Uniting Church (Victorian Synod) in conjunction with Centre for Structural Analysis

<sup>21</sup> Burrowes, R., *The Strategy of Nonviolence Defense: A Gandhian Approach* (1996) Albany, NY: State University of New York Press, .

<sup>22</sup> Notes from the course detail guest lecturers from range of related organisations as well as legal aid, community legal centres, police force etc.

<sup>23</sup> Illich, I, *Disabling professions* (1977); *Deschooling Society* (1973)

<sup>24</sup> Friere, P., *Pedagogy of the Oppressed* (1970) [English version]

<sup>25</sup> For a detailed explanation see entry here Coghlan, D., & Brydon-Miller, M. (2014). The SAGE encyclopedia of action research (Vols. 1-2). London, : SAGE Publications Ltd doi: 10.4135/9781446294406

<sup>26</sup> [https://en.wikipedia.org/wiki/Critical\\_pedagogy](https://en.wikipedia.org/wiki/Critical_pedagogy)

I think anyone who has worked with Adrian, will recognise how this approach has underpinned his attitude to legal education and provided the foundation for much of the work of his career.

At the same time as Adrian was working at La Trobe, he was actively engaged in the Community Legal Centres sector and the Federation of Community Legal Centres. In 1985, Adrian took on responsibility for establishing a mutual professional indemnity insurance scheme all Victorian Community Legal Centres. This scheme became the template for the national scheme after he oversaw a related Commonwealth government funded consultancy.<sup>27</sup>

Whilst working on the insurance issue, which was aimed at enhancing the longevity of community legal centres, Adrian published an article titled “A Challenge to Community Legal Centres”.<sup>28</sup> Community legal centres in Victoria were celebrating 15 years of existence but Adrian was not about to wish those working in centres Happy Birthday, instead he said:

*Community legal centres are in a mid-life crisis which could see them decline in impact in much the same way as many males do. Collectively and at individual level some real soul searching is necessary if the impetus of the 1970s is to be recovered by the majority of centres. The process must include the motivational regeneration of workers, the education and empowerment of the client groups they serve and the*

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<sup>27</sup> Evans, A ‘Community and Aboriginal Legal Centres – National professional indemnity insurance options for 1988’ 1987) 12 *Legal Service Bulletin* 277 ; Evans, A, ‘Professional Indemnity Insurance for Legal Centres’ 1987 (9) *Hearsay* 12

<sup>28</sup> Evans A., ‘A challenge to community legal centres’ 1987 (12) *Legal Service Bulletin* 165

development of investigative, analytical and strategic techniques at the price of lower time inputs into routine case work. [my emphasis]

In this article Adrian is challenging those working in community legal centres to adopt aspects of critical pedagogy; to work towards social justice to both achieve political relevance as well as having personal integrity; he talks of education and empowerment of the community; and he encourages workers to use not only individual litigation but consider mediation and non-violent disobedience.

165

**LEGAL CENTRES**

The second ramification for people with disabilities is the successful use by the Commission of s.6 of the Public Service Act as a defence. This means that if a person is not appointed to a permanent position in the NSW Public Service because he/she fails a medical examination *before* will have no recourse to discrimination legislation. This is a total acceptance of the 'medical' model by which power to govern the lives of people with disabilities is placed in the hands of doctors, and it is which people who are not qualified in all areas of law can judge whether a person with a disability can or cannot carry out the duties of a job successfully. Permanency, with all its associated benefits such as availability of promotion and security, will not be available to many people with disabilities.

An assessment as to a person's capacity to carry out a particular job is much broader than a medical examination. A doctor is certainly qualified to express an opinion on a person's medical condition, but *she/he* is not qualified to express an opinion on the duties of a particular job, or whether a particular person can carry them out. This is the task of someone who understands the job functions, such as an expert in job design, a person who has previously worked in the job, or the supervisor of the job. Once all of these opinions have been obtained, and the view of the person with the disability has been heard, the decision as to whether to appoint should be a management one.

The irony of this whole situation is that, had Brendan commenced employment and attained permanency as a ticket-seller, and then been promoted to the position of guide, this would never have taken place and he would probably be successfully guiding parties of visitors through the caves today. There is only a medical examination to determine the question for permanent appointment, not for promotion. The suitability for permanent appointment, not for promotion. The suitability for promotion is a management decision.

Perhaps though, the problem is greater than the use of a narrow 'medical' rather than a broad 'functional' assessment. The current system is set up negatively, i.e. to focus on the person's disability, rather than on his/her ability to carry out the work required. It may be that beneath all the rhetoric on the surface, there is a basic error in government philosophy which causes a negative approach to be taken. This outdated philosophy must be very concerning to people with disabilities in NSW, because the State Public Service is the State's largest employer, with 12.7% of the workforce. As such, its actions are very influential on many other employers.

This case, as the Tribunal recognised in its judgment, demonstrates clearly the need for amendment of the NSW Anti-Discrimination Act and the NSW Public Service Act. The Tribunal has placed the ball squarely in the court of the NSW Government, which now has the chance to close the gap, and turn its rhetoric about equal opportunity for people with disabilities in the NSW Public Service into reality.

**A challenge to community legal centres**  
Adrian Evans

Motivating Justice for the individual in an institutional society and personal and political skills and their linkages are issues raised in discussing what is seen as a mid-life crisis for the legal centres movement.

In the legal centres 'movement' there are some high flyers who have concentrated on effective achievement at the cost of their personal interactions with people. At the other end of the scale there are caseworkers who just want to get on with dispensing 'solutions' to one client after another with no thought to whether they are really helping to change anything for the better. In the middle of these extremes there are also many who still aspire to 'revolution' but who have been ground down to a blunt edge by client pressure and have been reduced but increasingly controlling bureaucracy. Even allowing for the exceptional individuals who have their 'vision' firmly in place and are moving towards it without backsliding or aggression, it is still remarkable how many social reformers have lost either their 'fire' or their intimate friendships.

Where this has occurred among legal centre workers, productivity, social impact and job satisfaction can be increased considerably if the imbalance is reduced. The reduction occurs when legal and community workers take a close look at their individual orientation and ask questions like:

- \* Am I into policy, 'consultation' and success, but keep people at arm's length?

\* Am I a high output caseworker who gives little time to the distribution of wealth?

\* Do I look more to a career track than to equity and justice?

\* If that close look puts you okay about it, then read no further. If however you do feel uncomfortable then that is probably because what follows has nothing to say to you.

If you however do feel uncomfortable that you are one of those for whom there is:

- \* potential for renewal in your own commitment, and the commitment,
- \* possibility for greater impact on politicians, and the public,
- \* the benefit of regenerated personal interactions,

Before we go on, understand that this is not some 'slippery concept of 'therapy' or 'born again' crusading, but a simple awareness that our western culture values aggression and productivity at the cost of looking inward, of friendship and intimacy. On the other hand, the eastern tradition of contemplation and 'karma' seems to have meant the same thing as population explosion, passivity and gentleness. Neither approach has much to recommend it without the other.

To transcend these extremes and achieve success in the terms described above, legal centre workers need to accept

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Adrian did not hold back in this article – it is highly provocative:

*Only by grasping the nettle of identification with the oppressed will centres lose their Cinderella fragility and recover the idealism with which they were founded such a short time ago. If we wallow much longer in the comfort of acceptance by the established profession, or in the warmth of the wages and conditions spa bath, political legitimacy will be handed over to less conservative groups and growing irrelevancy will tighten like a noose on the energy and output of our workers.<sup>29</sup>*

Adrian's challenges were subsequently discussed at the 1987 National community legal centre conference in Hobart, Tasmania which itself was a controversial affair. The Conference had tried to confront the "fundamental issues" raised in Adrian's article and challenged the community legal centre movement to define its role in addressing poverty.<sup>30</sup> Many of the issues Adrian identified in 1987 have been revisited, albeit in less direct terms, many times in the intervening years.<sup>31</sup>

Unfortunately Adrian and I only taught the Clinical Legal Education course together for one year (1987) however the subject continued to be taught by myself and my colleague Judith Dickson for several years and many aspects of the pedagogy underpinning the contents and approach continued into the clinical legal education program at La Trobe University.

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<sup>29</sup> P 169

<sup>30</sup> Farrelly, S., 'Reflections on the 1987 Community Legal Centres Conference' (1987) *Legal Service Bulletin* 227

<sup>31</sup> Rich N., Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs (2009) Consumer Action Law Centre and Victoria Law Foundation; Rice S., 'Are CLCs finished?' (2012) 37(1) Alternative Law Journal 17; Noone M.A. (1992), 'Imperatives for Community Legal Centres', 17 Alternative Law Journal 121

In 1988 Adrian moved to the position of Coordinator of the Springvale Legal Service and Lecturer in Law at Monash University where he joined Australian clinical pioneers Sue Campbell and Guy Powles.<sup>32</sup> Now he was in charge of a large community legal service and the related clinical legal education program. Although Adrian continued to have a role in community legal centres (he was on the executive of the Federation of Community Legal Centres in 1989<sup>33</sup>) including continuing to offer a critical perspective<sup>34</sup>, his focus shifted more towards legal education and research.

However Adrian's commitment to critical pedagogy did not diminish. In an article he wrote in 1990 titled 'Developing socially responsible lawyers' he again spoke of the difference between *the 'ladder' or linear approach to teaching (conventional) compared to the "participatory 'web' approach 'where both 'teacher' and students interact around the context of real clients' situation.*

In this article Adrian strongly asserts, 'critical' or 'liberating' education is the only method that works well in clinical environments,<sup>35</sup> and that clinical legal education can only reach its full social and educative potential in a *community* environment.<sup>36</sup>

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<sup>32</sup> Giddings J., *Promoting Justice through Clinical Legal Education* (2013) Justice Press pp 171 - 189

<sup>33</sup> Federation of Community Legal Centres Annual Report 1989

<sup>34</sup> Evans, A. 'The Leadership of CLCs – letter to Editor' (1991) 32 *Hearsay* 15

<sup>35</sup> Evans A., 'Developing socially responsible lawyers' ( 1990) 15 *Legal Service Bulletin* 218

<sup>36</sup> This article also is an illustration of Adrian's preference for setting out his ideas in diagrammatic form.

218

# Developing socially responsible lawyers

Adrian Evans

*In what direction is legal education pointing the lawyers of the next century?*

In general, legal education has little or no conceivable role in the process of social change. Most programmes appear to focus on the law firms and partnerships and the economic and social status quo which supports them. The ideals of the Fifties appear early 1970s to have very hardly re-emerged, if at all, which may allow the lawyers a clinical (or experimental) legal education.

In Australia, and elsewhere, clinical legal education takes a variety of forms. It can be as simple as to teach how to interview, fill in a form, cope with a real client's personal, social and legal problems. One approach which may allow the lawyers to re-emerge is to be seen in the "Potential" law in the Australian program. The CLD in Australia is probably a pre-frontal education course. Other routes to practice such as "on the job" attachment, clinics have already been phased out. As a result the focus of law schools is on subjects which are personal to each State or Territory (or the Council of Legal Education for Scotland).

The content of the courses appears to reflect the social and economic priorities and the needs of economic elites and to some the fact that 2-3 million people live in poverty or are on the margins because often gender and education. Crime and family law are important in their own right, but don't attract high social and financial rewards. In Victoria, Justice Academy reports to Council of Legal Education that has recommended that "legally trained students be compelled subject to admission to practice and that legal practice (i.e., theistic logic of the common law system) be removed from the policy list. Where power bases do the

mainstream subjects serve and whose interests do they marginalise? An understanding of the issues raised by these questions is central not only to legal education but also to lawyering.

The process of developing lawyers' relevance to the wider community begins with our educational process and involves not only the content of the curriculum, but its mode of teaching "pedagogy" or "learning methodologies" (with "web" or connecting methods).<sup>1</sup>

**Educational processes**

The "Adder" or linear approach to teaching typically involves one fact or single objective or concept at a time. Learning "causes" an aura of certainty to make it also tends to be favoured by cultural or multi-disciplinary awareness.

The "web" approach uses the image of connected nodes with radial receiving arms. The cluster and interrelatedness of intersecting thoughts and alternative realities. Web analytics are typically accepting of almost every conceivable perspective from almost every conceivable variety of almost age, income, race and religion, and are comfortable with the notion of ultimate values.

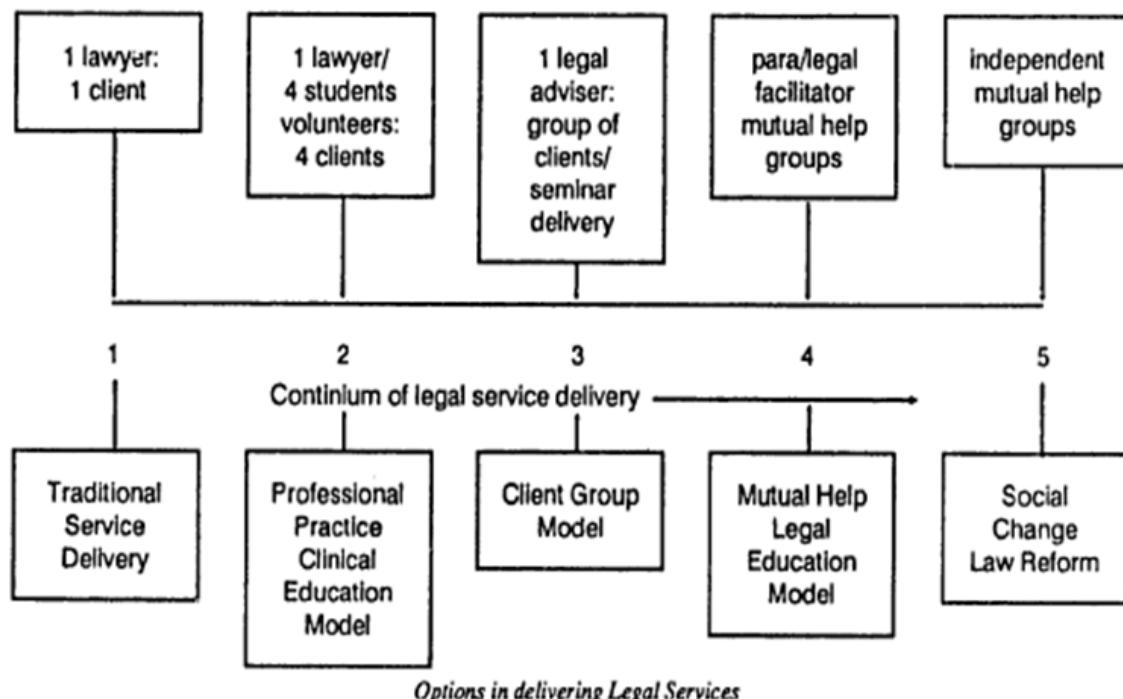
Despite pressure on academics to learn how to teach, there is still almost no reference on the importance of "teaching".<sup>2</sup> In fact, the approaches to law teaching, e.g., "top down" dictated by the expert to over-full students, are often diametrically opposite to the "bottom up" hypothesis. This is the "learning" approach to education, where dependence, information and energy are made for many students and teacher skills are low and the learning curve is relatively flat. On the whole, connections and distance between students and teacher is never expected to agree nor expected. This approach may be contrasted with passivity, being like "sheep" which both "teacher" and "student" interact with. The concept of a "real class" is a solution. This alternative is known as "the 'bottom up' education model and is the only method that works well in a legal environment, either in court or in practical situations.

It is not necessary or appropriate to eliminate distance methods of teaching for a "bottom up" learning style of legal education and the commercialization

LEGAL SERVICE AUSTRALIA

## Developing socially responsible lawyers

219



Although Springvale Community Legal Service had been involved in range of community projects, these did not involve the law students. Putting his theory into practice, Adrian quickly developed a community development component to the clinical legal education program, where students would work on projects with community groups.<sup>37</sup> As Giddings notes, Adrian together with Springvale staff, Roy Reekie and Phillip Somerville, were "heavily influenced by Brazilian educator Paulo Friere's writings on the concept of 'dialogical empowerment' with students engaged in a process of mutual enquiry with their teacher. Adrian saw the role of 'close facilitative supervision' as critical.<sup>38</sup>

In the role at Springvale and Monash, Adrian begins taking a key leadership role in Australian clinical legal education and establishing an international network of clinicians and legal ethicists.<sup>39</sup> He is asked to assist in the establishment of new programs around Australia and had a role in convincing the Commonwealth government to fund four clinical programs around the country.<sup>40</sup>

In April 1990, he organised the first national clinical legal education conference titled "Australian Clinical Legal Education in the 1990s".<sup>41</sup> The conference was held the day before the National Community Legal Centre conference illustrating the continuing close links

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<sup>37</sup> Giddings J., above pp 189 - 190

<sup>38</sup> Giddings above

<sup>39</sup> For example Adrian attended the Third International Conference on Clinical Legal Education in July 1993. Evans, A., 'Clinical Legal Education and Justice Entwined' (1993) 18(5) *Alternative Law Journal* 237 and he was active in the formation of the Global Alliance for Justice Education : <https://www.gaje.org/>

<sup>40</sup> Giddings J., Promoting ..... p 191-192; Giddings, Jeff --- "Legal Education: The Commonwealth discovers clinical legal education" (1998) 23(3) *Alternative Law Journal* 140

<sup>41</sup> There had been an 'Australian Clinical Legal Education Teachers Conference' in February 1987 organised by Monash Faculty of Law.

between Australian clinical programs and community legal centres. Conference topics included 'discussion on the 'type' of lawyers which present programs seek to produce and developing socio-legal awareness of clients.

Adrian's presentation at the conference was titled "structural factors giving the context to legal education'. Again he talked of "the participatory 'web-like' paradigm of clinical teaching compared to the hierarchical/ladder like methods of didactic teachers".

I referred at the start to my concurrent clinical journey with Adrian. In 1991, we did literally embark on a clinical expedition. Together we visited 25 'peak' or 'best practices' clinical legal education programs in north America over a four week period. Adrian had received a grant from the Monash Development fund to address recommendations for the future of the Monash clinical program and I was on sabbatical. We were fortunate to meet with many of the 'wise' men and women of American clinical legal education.

These photos include – Haywood Burns at Cuny, Steve Wizner at Yale, Fred Zemans at Parkdale/Osgoode Hall, Rick North at University of Maryland , Jeff Hartje, University of Denver University..



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A strand of Adrian's career is his interest in technology. He was and still is an early adopter of new technology. At Springvale he was responsible for planning and implementation of successive generations of computerised client case management software, commencing in 1988 with the conversion of existing Macintosh to IBM based word processing and continuing in 1989 with the design, supervision and marketing of a customised client information system for file and statute of limitation management, student supervision, research and statistical reporting purposes. So as part of this trip we not only learnt about the innovative curriculum developments we also explored the latest in technology and physical clinical environments.

I think for both of us this was a formative experience. In visiting a range of clinical legal education programs, we were able to appreciate the soundness of Australian clinical legal education, however we came back to Australia wanting to establish more focussed or specialised clinical legal education programs. I developed a clinical legal ethics course<sup>42</sup> and Adrian, the Sexual Assault Clinic (see Carolyn Worth's contribution).<sup>43</sup>

Around this time, Adrian also starts to crank up his analysis and criticism of aspects of the legal profession – there was a community group project at Springvale based around people with complaints against lawyers. One of his first research projects was to survey people's opinions of lawyers.<sup>44</sup> He also begins to take an interest in solicitors trust accounts and enrols in a Masters of Laws.<sup>45</sup> Other speakers will develop these themes.

Adrian was also increasingly involved in law reform and participating on various advisory groups both with government and for non-government organisations. As an example in 1989 he worked with others from the Federation of Community Legal Centres on a submission to a Senate Standing Committee of Legal and Constitutional Affairs enquiry into the Costs of Legal Services and Litigation. Adrian made a particular contribution to the section on the

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<sup>42</sup> Noone M.A & Dickson J. (2002) 'Teaching towards a new professionalism: Challenging law students to become ethical lawyers' 4 (2) *Legal Ethics* 127

<sup>43</sup> Evans A., 'Specialised clinical legal education begins in Australia' (1996) 21(2) *Alternative Law Journal* 70

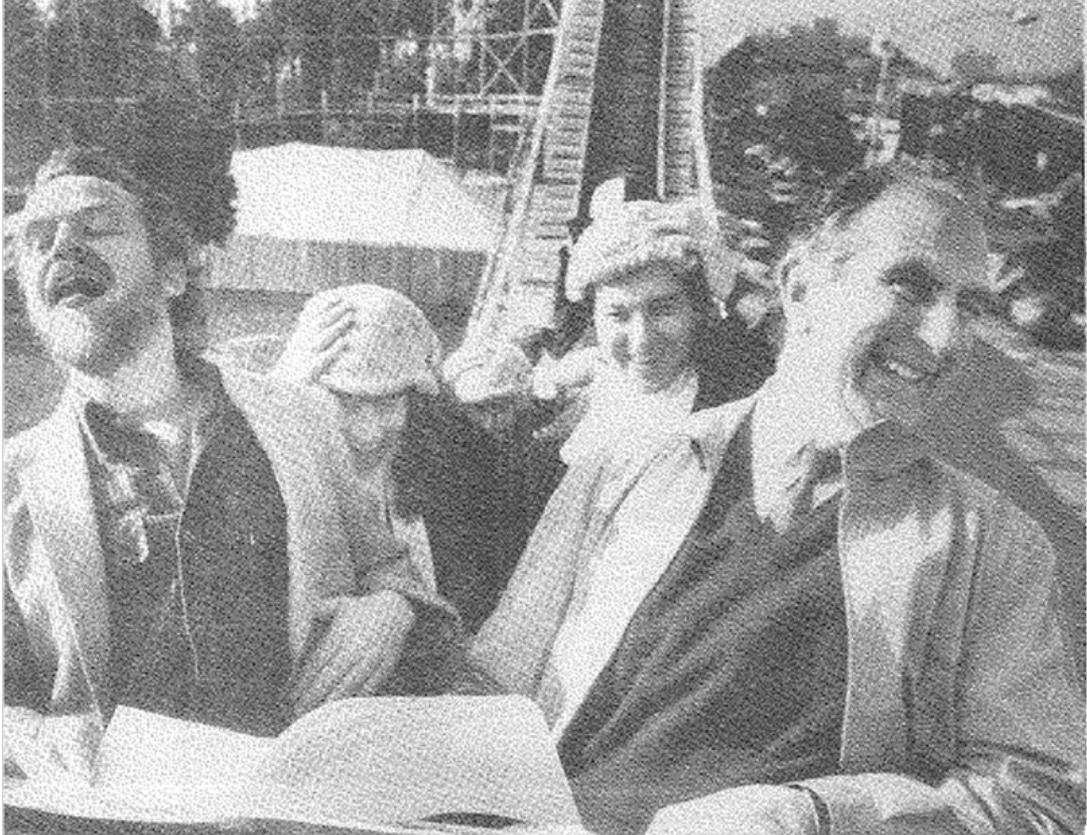
<sup>44</sup> Evans A., 'Acceptable But Not Entirely Satisfied: Client Perceptions of Victorian Solicitors' (1995) 20 *Alternative Law Journal* 57-62; 'A Concise History of the Solicitors Guarantee Fund (Vic): A Marriage of Principle and Pragmatism' (200) Monash University Law Review,??; 'Professional Ethics North and South: Interest on Client Trust Funds and Lawyer Fraud – An Opportunity to Redeem Professionalism'(1996) 3 *International Journal of The Legal Profession* 281-300

<sup>45</sup> Evans A., 'Whose Money? The Solicitors Guarantee Fund', (1993) 18 *Alternative Law Journal* 220-225

regulation and ethics of the legal profession, an area he became an international expert on – again others will pick up this theme.

THE AGE, Monday 16 July 1990

Picture: RAY KENNEDY



our wigs: Mr Adrian Evans, from the Springvale Legal Service, left, Senator Barney Cooney and two lawyers ride on the scenic railway at Luna Park. They were there to launch the Federation of Community Legal Centres' submission to the Cost of Justice inquiry.

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tion of Community is has put the legal control and self- under scrutiny, and wanting.

ssion to the Senate's e inquiry, the federated the way lawyers' and how the profes- es itself. Neither pro- lation argued, did ll public confidence. ation has a unique

will lack momentum," the submis- sion said.

A key recommendation was for complaints bodies to be independent of solicitors and barristers, perhaps through an expanded role for the lay observer. It also wants complaints against barris-

some cases, and prohibition of the practice of lawyers demanding or implying that a third party must meet the lawyer's costs to avoid being sued.

It wants entry to law schools to be expanded and more training at undergraduate level on socially

to ensure that our legal and political systems provide justice to all Australians," the submission says.

"This inquiry should give attention to measures that are able to increase technical competence and ethical responsibility in lawyers in a pro-active cost-control role."

The Federation of Community Legal Centres objects strongly to the funding link between self-regulation and clients' money.

"While the cost of discipline is not the responsibility of the lawyers, there is no internal impetus for well-managed and indepen-

## Legal centres criticise lawyers on fees, rules

So to conclude I want to show a photo taken at Luna park<sup>46</sup> at the launch of the Federation of Community Legal Centre's submission to the Senate inquiry into Cost of Legal Services

<sup>46</sup> Fun parlour at StKilda, Victoria Australia <https://lunapark.com.au/>

and Liltigation. Adrian is sitting with the chair of the committee, Senator Barney Cooney and in the background are several legal centre workers. At the time of this photo, 1989, Adrian academic career is about to take off – he will go on to complete a Masters of Law, a PhD, become a professor and author several books.<sup>47</sup>

From the examples I have discussed, we can see that Adrian has been prepared to take risks and be unconventional in his approach. He is someone prepared to challenge and disrupt the status quo. He is an agitator and innovator.

More than three decades ago Adrian adopted a particular approach to teaching, critical pedagogy and this has grounded his involvement in clinical legal education. He is firmly committed to creating deep and transformative learning experiences for students in the furtherance of social justice.<sup>48</sup>

I feel very fortunate to have shared aspects of Adrian's journey through community legal centres and clinical legal education. In my experience, Adrian is a person of great integrity and sound values. He is someone who has sought to practice what he preaches. He an

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<sup>47</sup>Evans, A. H., Cody, A., Copeland, A., Giddings, J. M., Joy, P., Noone, M. A. & Rice, S., *Australian clinical legal education: Designing and operating a best practice clinical program in an Australian law school* (2017) 1st ed. The Australian National University; Parker, C. E. & Evans, A. H., *Inside Lawyers' Ethics* (2017) 3<sup>rd</sup> ed Cambridge University Press; Hyams, R. L., Campbell, S. L. & Evans, A. H., *Practical Legal Skills: Developing Your Clinical Technique* (2014), 4<sup>th</sup> ed. South Melbourne, Victoria, Australia: Oxford University Press; Evans A.H., *The Good Lawyer*, (2014), Port Melbourne, Victoria, Australia: Cambridge University Press. 232; Evans A., *Assessing lawyers' ethics: A practitioners' guide*, ( 2011), 1st ed. New York NY USA: Cambridge University Press.

<sup>48</sup> Evans, A., 'Client Group Activism and Student Moral Development in Clinical Legal Education' (1999) 10 *Legal Education Review* 179

exemplar of a ‘good lawyer’<sup>49</sup>. It has been a privilege, Adrian, to share experiences and collaborate on projects throughout your career, particularly those in the early stages.

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<sup>49</sup> Evans A, *The Good Lawyer* (2014) Cambridge University Press