Foreword

Welcome to the 19th issue of the journal.

This issue is a special issue containing papers from our conference in Durham in July 2012. These include the keynote address from Mary Anne Noone which provided a timely reminder that as well as our concerns with pedagogy and social justice, we cannot afford to neglect the practicalities of ensuring clinic continues to grow and thrive. In this, creating a positive and persuasive brand for our work is an important, and overlooked, issue.

The papers in this edition reflect the growing true internationalisation of clinic. The conference had delegates from over 25 countries. We had an unprecedented number of submissions to the journal and I am pleased to report that the papers we publish here are written by clinicians practising in Nigeria, Croatia, the Czech Republic, Australia, India, and New Zealand as well as numerous papers from our colleagues in the UK. As Clinical Legal Education grows around the World we are witnessing the growth in this journal of international colleagues publishing their work.

The papers we publish in this issue are of course a small proportion of the papers presented at the 2012 conference. My colleague Christopher Simmonds chaired many of the sessions at the 2012 conference and the remainder of this foreword is given over to his observations on the themes that he identified while attending those sessions.

Jonny Hall
Editor
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Introduction

These comments draw out some of the themes that I noticed with the aim of promoting debate and reflection and highlighting some of the challenges and opportunities that we face as clinicians.

It also highlights what I see as being one of the biggest selling points of clinical legal education – the passion that we as clinicians have for the way in which we teach.

Economic Challenges:

One of the most significant themes that emerged throughout the conference was in relation to the challenges that we are facing as clinicians both in terms of the delivery of existing clinical programmes, but also in terms of expanding the clinical legal education movement throughout the world.

We have all seen recent news stories relating to the state of the world economy and the austerity measures that are being implemented internationally. But what is perhaps not as clear is the impact that the economy is having on our own work as clinicians.

One of the last sessions that I chaired was a paper by Prado Perez and Casey (2012)[1]. In it they discussed the challenges faced by clinics both in America and in Spain for numerous reasons, but underlying everything was the current economic climate.

In Spain, there are relatively few clinics and of those that exist not all will give credit to the student for their participation. Yet the picture that emerged from the paper was one of a growing acceptance of clinics and a drive to expand and integrate them into the law curriculum.

America is perhaps at the other end of the scale. The majority of Law Schools there offer some form of clinical experience and in some cases they will offer several different models. Their clinics are well established and the majority will award the student credit for taking part on the course. In some cases a form of clinic must be included in the student's course in order for them to graduate.

In both jurisdictions clinic is expensive though. That is, I suspect, something that is common to clinics around the world. The result is that questions are being asked as to whether Clinical Legal Education is worth the money that it costs. At a time when universities are having to justify their expenditure and minimise their debts there is a growing fear that those who criticise clinical teaching will lobby for the closure of clinical programmes.

This is not a minor threat. When a student can obtain a practical legal experience without any cost to the university by attending work experience or by taking part in a compulsory placement (without any pedagogical intervention by the university) then the issue arises as to whether the university management will see the unique educational benefits that are inherent in clinic.

But while the economic climate is causing universities around the world to tighten their belts, it is also having the effect of increasing the demand for clinics.

One of the common themes that emerged from the papers from England, including my own [2], was related to the decision of the British government to significantly reduce the scope of legal aid as one of the austerity measures targeted at reducing the national debt.

The effect of this is that far fewer cases will now be eligible for financial assistance from public funds. Unless a person is at risk of losing their home, their life or their liberty then it is unlikely that they will benefit from legal aid.

Yet the question that remains to be answered is who will pick up those clients whose cases are too expensive for them to fund privately but that are too important to just sweep under the carpet and forget about. The answer that is increasingly being given by the government is that they expect that role to be filled by pro bono legal advice, whether from law firms or from clinics, charities and other similar organisations.

Other jurisdictions are undergoing similar processes and as austerity measures bite there will no doubt be an increased demand for the services offered by clinics.

We will therefore have to plan ahead to ensure that we can continue to meet the needs of our

1 Prado Perez, R and Casey, T (2012) 'A Comparative Approach to Clinical Legal Education' *Entering the Mainstream: Clinic for All: The 10th International Clinical Legal Education Conference* Radisson Blu Hotel, Durham 11-13 July 2012.

Summary available at http://www.numyspace.co.uk/~unn_mlif1/school_of_law/IJCLE/materials.html (Accessed 08 September 2012).

2 Simmonds, C. (2012) 'Legal Advice Byker – Clinic on the High Street' *Entering the Mainstream: Clinic for All: The 10th International Clinical Legal Education Conference* Radisson Blu Hotel, Durham 11-13 July 2012. Abstract available at http://www.numyspace.co.uk/~unn_mlif1/school_of_law/IJCLE/abstracts.html (last accessed 28 September 2012).

communities while doing so in a cost-effective manner. Ultimately, though, the question will be whether we will grow to meet the increased demand or shrink in order to reduce costs or whether we can maintain the status quo in spite of all of the pressures.

Innovative Projects:

But what is impressive given the climate I describe above is the number of new and innovative projects that are developing around the world.

Clinicians are a strange breed. We are usually practitioners in our jurisdictions but we are also academics, tasked with educating the next generation of lawyers and as with all academics there is an expectation that we will engage in research alongside clinic.

A fascinating paper by Mullen (2012) [3] from the Catholic University of America, USA highlighted the fact that research and clinic need not be mutually exclusive concepts.

She highlighted her own work with students carrying out discrete pieces of research that benefitted not only the university, herself and her students but which were also of benefit to the university's community partners. By way of a practical example, she presented a research project that she undertook with her clinic students whereby they investigated what turned out to be a misapprehension that judges were forcing employees to give evidence against their best interests in undefended wrongful dismissal cases.

In another paper, Russell (2012) [4] from London South Bank University described the development of his own clinic which operates as a drop-in advice service on a scale previously unheard of in England.

The area of London within which the university is based has a high level of depravation. Some investigations with the local Citizens' Advice Bureau showed that they had a high demand for their services that they could not meet.

The university established a weekly drop in clinic where general advice was offered on a variety of legal problems. In the event that follow up advice was needed the university teamed up with local solicitors and barristers to offer a further evening advice session where the original advice could be built upon and the client's case could potentially be taken on for full advice and representation.

In running a programme such as this, the university was able to meet demand for free legal advice in an area in extreme need and at the same time give students a broad and varied experience of advising clients with legal problems. It also meant that students were exposed to social justice issues that they would not ordinarily face through a doctrinal undergraduate law degree in England.

Focus on Students:

This leads neatly into the third trend that I observed throughout the conference. Attempts to define Clinical Legal Education have led to differences of opinion as to whether social justice should always play a part in clinic and there will no doubt be debates in relation to this in future years.

3 Mullen, F. (2012) 'Engaging with the Profession: Teaching Clinical Students to Conduct Small-Scale Empirical Research on Behalf of Community Partners' *Entering the Mainstream: Clinic for All: The 10th International Clinical Legal Education Conference* Radisson Blu Hotel, Durham 11-13 July 2012. Abstract available at http://www.numyspace.co.uk/~unn_mlif1/school_of_law/IJCLE/abstracts.html (last accessed 28 September 2012).

4 Published in this issue

Nonetheless what was clear throughout the conference was that as clinicians our focus remains on students.

The projects that I have described above all had a single aim – achieving the best possible experience for the student. They sought to make clinic interesting, educational and reflective of practice. At the heart of clinical education remains a recognition that clinic is above all a means of training and educating future practitioners.

Some would argue that at the heart of any clinical programme must therefore be credit for the student. Clubb (2012)[5] presented a paper exploring the use of patch text assessment as an alternative to the traditional portfolio as a means for assessing students undertaking clinical programmes.

The use of patch text addresses the issue of students struggling with reflection, having to recall experiences at the end of the year that they have often forgotten. Drawing on wider pedagogical theories and research and adapting it to the clinical environment, Clubb investigated the benefits that could be gained by drawing on wider educational theories to enhance our own practice.

Passion for Clinic:

By far the most common theme that came through the conference for me, though, was the passion that we as clinicians have for the work that we do.

Nazeri and Mohd Suhaimi from the University of Malaya, Malaysia presented a paper that they had written jointly with colleagues from the Univeristy of Pasundan, Indonesia[6] which described a project that they had undertaken where they sought to educate migrant workers coming into Malaysia from Indonesia about key areas of law that they needed to understand.

The project itself, which involved travelling to another country and presenting the law in a way that overcame language barriers, was a fascinating subject but for me the main thing about the presentation was the energy, the passion and the humour that emerged. The room was in fits of laughter and everyone left the room smiling.

This presentation was followed by a paper by Rauch (2012)[7] from the University of British Columbia, Canada in which she described the work that she has undertaken with the indigenous populace.

5 Clubb, K. (2012) 'Assessing Clinic – the Use of Patch Text Assessment as an Alternative to Portfolios' *Entering the Mainstream: Clinic for All: The 10th International Clinical Legal Education Conference* Radisson Blu Hotel, Durham 11-13 July 2012.

Abstract available at http://www.numyspace.co.uk/~unn_mlif1/school_of_law/IJCLE/abstracts.html (last accessed 28 September 2012).

6 Nazeri, N; Mohd Suhaimi, A; Hasballah, W; Widi Mulyani, L and Septianita, H ' Working with Migrant Workers: A Cross Border CLE Experience' *Entering the Mainstream: Clinic for All: The 10th International Clinical Legal Education Conference* Radisson Blu Hotel, Durham 11-13 July 2012. Abstract available at http://www.numyspace.co.uk/~unn_mlif1/school_of_law/IJCLE/abstracts.html (last accessed 28 September 2012).

7 Rauch, S. (2012) 'In Whose Interest? Listening: Indigenous Clinical Practice and Pedagogy' *Entering the Mainstream: Clinic for All: The 10th International Clinical Legal Education Conference* Radisson Blu Hotel, Durham 11-13 July 2012.

Abstract available at http://www.numyspace.co.uk/~unn_mlif1/school_of_law/IJCLE/abstracts.html (last accessed 28 September 2012).

She talked about the way that the indigenous tribes and people used stories as a means of passing on knowledge and experience and explored how that approach could be used to educate students. Encouraging students to listen to the stories of their clients helped them to understand the context of the case and to come to empathise with the client much more effectively.

Underlying it all was a real desire to help people. In this instance, to help a group of people who had lived in a country for centuries before it was colonised by the western world but who now faced laws and restrictions that had been thrust on them.

In much the same way that Indonesian migrant workers had insufficient knowledge of the laws of the land that they were working in, here there was a population having to come to terms with the laws of their own country, because they were not their own laws.

Conclusion:

Having listened to so many papers over the three day conference it struck me that there are undoubtedly challenges that we are facing and that we will have to overcome, such as the economic issues that we face in coming years.

Yet despite that, we continue to seek out new challenges for our students. We look to improve our links with communities. We look to improve our assessment methods and ensure that our students have the best opportunity to do as well as they possibly can.

Overall, we continue to have a real passion for Clinical Legal Education, for learning through and from experience. We have a real desire to help people and to carry out casework to the best of our abilities. Passion, in any form of teaching, is key to engaging students with the subject and getting them to enjoy learning. Our passion is our main strength.

So moving forward to the next IJCLE conference in 2013 we will have to face challenges, we will be working hard to introduce new schemes and new ideas, at times we may even wonder if it is worth all of the effort. But our passion for clinic leaves me in no doubt that we will all be back for next year's conference and, more than that, we will have overcome our challenges through working together and will have more innovative projects and more enhancements for students to talk about.

I have only been able to mention a small number of the interesting, informative, and enjoyable papers that I heard through the conference and of course there are the many papers that I was not able to hear. I would like to thank everyone for their participation and for making the conference such a success.

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Models of Clinic and Their Value to Students, Universities and the Community in the post-2012 Fees Era

*Lydia Bleasdale-Hill**

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1. Introduction

The number of clinics in existence within higher education institutions has continued to proliferate in recent years. The 2011 LawWorks[1] report examining the pro bono work undertaken within Universities in the United Kingdom found that at least 61 per cent of all Law schools now offer pro bono activities to their students,[2] with 40 respondents offering clinic. This compares with 53 per cent of respondents offering pro bono activity and 11 respondents offering clinical activities in 2006.[3] This evidence suggests that an increasing number of Law Schools recognise the benefits of clinic to students. However, the arrival of a new era in higher education funding arguably requires some reflection on (and perhaps greater articulation of) those benefits and the priorities of clinic activity overall, in order to ensure that the expectations of the key clinic stakeholders (the hosting institution, student volunteers and participating members of the public) are met. Concerns that the significant reduction in state funding for higher education will impact adversely on institutional resources is well-documented and at an institutional level there is likely to be

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1 Formerly the Solicitors Pro Bono Group, LawWorks assists those in need of free legal advice and supports practitioners, advice organisations and Universities wishing to provide such advice. See http://www.lawworks.org.uk/ for further information

2 Richard Grimes and Martin Curtis (2011) 'LawWorks Student Pro Bono Report 2011' (LawWorks, London) p.4 http://lawworks.org.uk/tmp_downloads/o2v88f3f137p128g145t70j59f52x27r1z128n57l81z67/lawworks-student-pro-bono-report-2011.pdf (last accessed 16th August 2012)

3 LawWorks *LawWorks Students Project Pro Bono - The Next Generation* (2006, London) pp.3 and 8 http://lawworks.org.uk/tmp_downloads/q101o72i98q12k149j45a111o114o86k44u4e104j98c126r62/student-report-final.pdf (last accessed 16th August 2012)

increased scrutiny of the efficiency of devoting scarce resources to clinic activity in a climate of lower (or potentially lower) income streams and leaner budgets. Similarly, some students are likely to exhibit a heightened sense of wanting value for money in their expectations of clinical education and may well demand greater input in the design of clinic activity. Against this, there has been a general and significant reduction in funding for the provision of free legal advice and an associated increased demand amongst the general public for quality free legal advice and access to justice. Therefore, for new and established clinicians alike, the post-2012 era provides the opportunity for, if not necessitates, reflection on the expectations and ambitions of the three key clinic stakeholders (the host institution, the student volunteers and the general public) and, particularly, the question of whether they are sufficiently aligned with each other and the priorities of the clinic activity in place. Arguably, the possibility of conflicting priorities for clinic originating from these key stakeholders and methods of resolving them has featured little in the academic commentary. This paper seeks to contribute to such a debate by offering some insights into resolving these tensions. Taking the interests of each stakeholder in turn, this paper discusses methods of maximising the efficiency of administering the clinic and managing student expectations.

2. The Value and Organisation of Clinics

a) Introduction

Clinic offers a variety of benefits to higher education institutions: it allows them to provide a valuable service to the local community; it allows them to potentially work alongside local service providers, including businesses (some of which might be potential graduate employers, or sponsors of other School activities); and – perhaps most crucially – it allows them to demonstrate a concern with the future employment prospects of their students. The introduction of up to £9000 per year tuition fees in England from August 2012 onwards has been widely linked to an anticipated increase in students viewing themselves as 'consumers' of their higher educational experience. Such consumerism is evidenced by, for example, the increased focus on the employment record of University graduates; the expectation that students will become ever-more involved in determining how Universities are run and how courses are taught;[4] and the expectation on the part of the Office of the Independent Adjudicator that the number of complaints about University courses will see a further rise in the coming years.[5] This paper does not seek to advocate this consumerist approach to higher education, or to suggest that this approach should be the sole driver behind institutional decisions regarding how to improve the 'student experience'. However, for those institutions seeking to enhance the employability skills of their Law school graduates (and thereby potentially enhance their post-graduation employment prospects), as well as to develop a competitive edge over institutions with which they are in competition for students, clinic represents an attractive way forward. Of course, in an uncertain era in higher education it may also be the case that clinics

4 See, for example, the QAA's student engagement chapter within its Quality Code for Higher Education, available at http://www.qaa.ac.uk/Publications/InformationAndGuidance/Documents/Quality%20Code%20-%20Chapter%20B5.pdf, as well as the following article by the President of the National Union of Students: http://www.guardian.co.uk/education/2012/jun/12/power-to-students-says-liam-burns?INTCMP=SRCH (last accessed 16th August 2012)

5 Office of the Independent Adjudicator *Annual Report 2011* p.4 http://www.oiahe.org.uk/media/57882/oia_annual_report_2011.pdf (last accessed 16th August 2012)

represent a significant financial risk to many institutions, particularly in light of increased funding pressures. The benefits offered by clinic do carry with them potentially significant resource implications (particularly if the clinic is to be sustainable in the long-term), to which discussion will now turn.[6]

b) Location and client systems

In the long term any clinic may need its own office and secure storage space. There are examples of clinics which have initially started operating from a member of staff's office for example, but this is not a viable long term alternative to having a dedicated, professional space into which clients and potentially external supervisors can come. Client documents will need to be stored in a secure area (in order to guarantee client confidentiality) which the students can readily access. The students will need to be provided with clear training about how to maintain client confidentiality, how to ensure paperwork is maintained properly, how to maintain a client file, how to update information both in hard form and electronically, how to record information and where to store it. A reliable system of recording client contact and appointments needs to be established (assuming the clinic operates an appointment system), including all client outcomes (appointment; reasons for rejections; referral etc).

c) Financial support

Costs of the clinic will vary with the supervision model adopted: if the University or School will insure the advice given then the costs will of course be higher than if the advice is insured by external supervisors.[7] Kerrigan provides further details of the costs which clinics are likely to incur, including office equipment, stationary and access to relevant research materials. [8]

d) Staffing

The amount of time initially required to run the clinic very much depends on, for example, the number of staff within the School working on the clinic, the number of anticipated clients, the

6 The discussion within this section is primarily based on the authors' experience of establishing and managing an in-house, advice-only model of clinic, whereby all clients are interviewed face-to-face on an appointment-only basis, with the advice being given in writing. Alternative models include clinics focused on specific areas of law/connected with particular charities or other external partners; advice and advocacy service; email-only service; simulated clinics; telephone-only services; face-to-face advice service; and drop-in clinics. For information about such models, or about the factors to consider during the process of establishing or re-developing a clinic see, for example Lydia Bleasdale-Hill (2011) *The Experience of Establishing and Maintaining Pro Bono Projects Within an Educational Setting: A Narrative*, available at http://lawworks.org.uk/tmp_downloads/i63n13v72v110l44x131t137b32g146t25l83z115a47j85v135/law-school-pro-bono-case-studies---bleasdale-hill.pdf; Frank Dignan (2011) 'Bridging the Academic/Vocational Divide: The Creation of a Law Clinic in an Academic Law School' 16 *International Journal of Clinical Legal Education* 75; Stacy Caplow (2006) 'Clinical Legal Education in Hong Kong: A Time to Move Forward' 36 *Hong Kong Law Journal* 229; Richard Grimes and Hugh Brayne (2004) 'Mapping Best Practice in Clinical Legal Education' (UKCLE) available at http://www.ukcle.ac.uk/projects/past-projects/clinic/ (last accessed 16th August 2012); Philip Schrag (1996-97) 'Constructing a Clinic' 3 *Clinical Law Review* 175; and W. Warren H. Binford (2008-09) 'Reconstructing a Clinic' 15 *Clinical Law Review* 283

7 See Richard Grimes and Martin Curtis (2011) 'LawWorks Student Pro Bono Report 2011' (LawWorks, London) pp.15-17 for information about the insurance position of Law Schools surveyed.

8 Kevin Kerrigan 'Setting up a clinical legal education or pro bono project' in Kevin Kerrigan and Victoria Murray (eds.) (2011) *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave MacMillan, Basingstoke) pp.31-37

number of student volunteers, whether the clinic will only run in term-time and the number of external organisations the clinic will work with. Once a clinic is established the potential for growth is highly likely to be linked to staffing. For example, more supervisors and/or additional administrative support might be necessary if an expanded clinic service is to be offered. The experience of the authors is that one member of academic staff with a nominal workload allowance allocated to the clinic can be sufficient to establish and initially run one,[9] but that opportunities to evolve, develop and expand are most likely to be grasped only once significant staff time is invested in the clinic (either through an increased workload allowance, or thought the appointment of staff to work specifically on the clinic). The costs inherent within that model might be easier for clinicians or the wider School to justify to those controlling the allocation of a School's financial resources if the clinic exists on an assessed (as opposed to co-curricular) basis, primarily because the clinic would thereby be very clearly linked to the educational development of the students.[10]

3. Supervision models

Broadly speaking, there are three supervision models which are the most popular within the United Kingdom context[11]:

1. Member(s) of academic staff (non-practising) directing the clinic, with external practitioners supervising the advice: under this primarily external supervision model at least one member of academic staff oversees the administrative functioning of the clinic as part of a wider job role (perhaps with some clerical assistance), while the advice is supervised by external practitioners. There are several ways of satisfying the insurance requirements under this model, the most common of which is to extend the University's insurance policy to cover the advice supervised by external partners. A rarer approach is for advice to be supervised and insured by the external parties in question (this is the model used at the University of Leeds, where the letters of advice are supervised, insured, signed and dispatched by partner law firms). The former approach perhaps makes it easier to convince external partners to become involved with the clinic (because there are fewer liabilities and costs attached); the latter approach allows the University to distance itself from any potential liabilities.
2. A full-time or part-time clinic or Pro Bono director, either holding a current practising certificate or working alongside those with such certificates (with the associated insurance models described above). The attraction of such a post is that it allows for some continuity (there are countless examples of clinics disbanding as a result of one particularly enthusiastic member of staff who was the main driver behind it departing the institution), and that it allows the clinic to be the primary focus of that person's attention (something which is not always

9 Although it should be noted that the Leeds model involves advice being supervised by external practitioners; an internal practitioner model might require additional support

10 However, the decision has been taken at Leeds for the clinic to remain outside of the curriculum For a discussion of the reasons why this decision was taken, see Lydia Bleasdale-Hill (2011) *The Experience of Establishing and Maintaining Pro Bono Projects Within an Educational Setting: A Narrative* pp.11-12.There is also ample literature on assessment methods and models; see for example chapter thirteen of Kevin Kerrigan and Victoria Murray (eds.) (2011) *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave MacMillan, Basingstoke), and Richard Grimes and Hugh Brayne (2004) 'Mapping Best Practice in Clinical Legal Education' (UKCLE) pp.78-81

11 Examples of different models and their operation are discussed in Lydia Bleasdale-Hill (2011) *The Experience of Establishing and Maintaining Pro Bono Projects Within an Educational Setting: A Narrative*

possible when clinic responsibilities are combined with teaching and research responsibilities). This supervision model does however come with a heavier financial burden to the University due to the associated salary and practising certificate costs, and the potential insurance costs.

3. Academic staff with practising certificates supervising the advice: under this internal supervision model academic members of staff in possession of current practising certificates are allocated time to supervise cases and the students working on them (perhaps in conjunction with a dedicated clinic director, or someone for whom that role forms a significant part of their workload allocation). This has the benefit of creating a more sustainable clinic (because the clinic is not reliant on external partners for case supervision), as well as allowing the School greater control over the areas of law to be advised upon and the advice given. It also ensures the students are supervised in a way which enhances their learning opportunities: solicitors might not be as willing to refrain from simply giving the students the answer to a particular problem as someone with a clearer focus on the students' development might be, recognising that doing so enhances the opportunity for students to actually learn for themselves. As Giddings notes:

   'The practice-based context of clinical legal education has the potential to offer a very rich learning environment. However, the benefits of such an environment may be lost or diluted without close supervision or if the supervision is not focused on facilitating student learning as well as controlling casework. Developing an environment in which students feel both suitably supported and challenged is a key aspect of the work of the clinic supervisor.'[12]

However, this model does carry with it significant resource implications: staff time will need to be allocated to overseeing the cases, and such time cannot always be distributed in an equitable manner (the amount of time staff spend on cases being determined not only by the skills and abilities of the student volunteers, but also by the complexity of the case and the areas of law accepted cases fall into).[13] There are also further potential insurance and practising certificate costs to take into consideration under this model.

Of course, each model has its own merits and each offers value to the key stakeholders associated with the clinic; this discussion is not intending to suggest otherwise.[14] However, the experience of working within an external supervision model at Leeds has provided the authors with an insight into the particular difficulties which can arise from that (in spite of an ongoing, supportive and mutually beneficial relationship with several partner firms). While there are difficulties with an internal supervision model, based on the evidence available,[15] the authors would not presently be deterred from recommending such a model to new clinicians (or to existing clinicians wishing to re-develop a clinic). In order to provide further context for the adoption of this position, attention will now turn to how the value of the clinic to the students' employability skills set might be enhanced (or otherwise) within any model of clinic.

12 Jeff Giddings (2008) 'Contemplating the Future of Clinical Legal Education' 17 *Griffith Law Review* 1, at 17. See also Angela Macfarlane and Paul McKeown, (2008) '10 Lessons for New Clinicians' 13 *International Journal of Clinical Legal Education* 65, at 68

13 Lydia Bleasdale-Hill (2011) *The Experience of Establishing and Maintaining Pro Bono Projects Within an Educational Setting: A Narrative* pp.29-30

14 Indeed, the success of the Leeds clinic demonstrates that an externally-supervised model can offer real benefit to all three key stakeholders.

15 Primarily gained through the experience of interviewing a number of colleagues running Clinics at several institutions – see Lydia Bleasdale-Hill (2011) *The Experience of Establishing and Maintaining Pro Bono Projects Within an Educational Setting: A Narrative*

4. Enhancing the value of Clinic to students

a) Introduction

It is well-documented in the academic literature that participation enhances the student's employability skills profile.[16] However, perhaps less discussed is the extent to which the clinic director, when establishing the parameters of the clinic, should orchestrate the type and level of employability skills gained by participants or, instead, should this development occur organically with minimal input by the director? This process is important because it is not inconceivable (it may even be likely) that a post-2012 student will be more instrumentally focussed on engaging only with those co-curricular activities that enhance career prospects. If the director is to take an active role in designing the employability skills outcomes then some decisions will need to be taken about the student profile that will inform these outcomes. Designing the profile, however, is not straightforward since it raises a number of interrelated issues. For example, if there is a choice to be made, should the employability skills ambitions of the clinic be confined to enhancing skills peculiar to legal practice or should it cater to a broader market and therefore should there be an emphasis on developing generic, transferable skills? Likewise, what kind of legal issue and, therefore, potential client should the clinic focus on? The underlying social justice aspects of clinical legal education suggest that the clinic should focus on those clients least able to afford legal advice,[17] for example, by providing a stopgap to the shortfall in legal aid funding and local authority funding for CAB.[18] However, instrumentally-motivated students may be more interested in gaining exposure to the type of commercial disputes that mid- to large-sized law firms are involved in if their ambition is to obtain training contracts there. With these questions in mind, it becomes clear that there might be conflict between the community-minded ambitions of the clinic and the consumer-orientated interests of the student as well as conflict between the student who wants to pursue a career in legal practice and the student who wants to follow a non-traditional career path.

The following discussion examines these two distinct issues: first, to what extent can potentially conflicting community and individual ambitions for the type of clinic work (and therefore employability skills arising from it) be resolved? Secondly, to what extent should the formulation of employability skills be directed at specific legal practice skills or general transferable graduate employability skills? Before considering how these issues might be grappled with, it is worth considering the potential range of skills that a clinic might involve.

16 See, for example, the discussion in Ross Hyams (2008) 'On teaching students to "act like a lawyer": What sort of lawyer?' 13 *International Journal of Clinical Legal Education* 21-32; Stacy Caplow (2006) 'Clinical Legal Education in Hong Kong: A Time to Move Forward' 36 *Hong Kong Law Journal* 229; Frank Dignan (2011) 'Bridging the Academic/Vocational Divide: The Creation of a Law Clinic in an Academic Law School' 16 *International Journal of Clinical Legal Education* 75

17 See discussion in Stacy Caplow (2006) 'Clinical Legal Education in Hong Kong: A Time to Move Forward' 36 *Hong Kong Law Journal* 229 on the history and ambitions of Clinical Legal Education in the USA.

18 This concern animates Frank Dignan's narrative about the legal advice clinic at the University of Hull (Frank Dignan (2011) 'Bridging the Academic/Vocational Divide: The Creation of a Law Clinic in an Academic Law School' 16 *International Journal of Clinical Legal Education* 75)

b) Generic Skills and Specific Skills

Arguably, participation in clinic work enhances student employability skills in two distinct ways: through the exercise of those skills and, perhaps more importantly from an instrumentalist perspective, by evidencing the existence of those skills. This latter point is useful to emphasise to the consumer-orientated student because law firms (particularly the larger ones) appear to place greater emphasis on co-curricular activities to evidence the type of skills they value than similar activities on the degree programme.[19] Indeed, it may be useful to bear this point in mind when considering whether to subsume clinical legal education within the curriculum. Although Hall and Kerrigan for example advocate such a strategy,[20] one consequence of this may be to devalue the currency of skills gained from the experience. Consequently, employers may not value communication and organisational skills gained on a typical LLB programme through active participation in a seminar programme, successful completion of a dissertation or participation in compulsory mooting or presentations to the same extent as communication and organisational skills gained through co-curricular participation in clinic. It may be that this reaction expresses the lack of distinctiveness in the claim that regular curricular activities enhance employability skills and that clinical education would not suffer in the same way because participation is more unusual and, usually, optional.

Participation provides obvious enhancements to the practice specific skill set through exposure to legal practitioners and the opportunity of interviewing clients, inputting into decisions on potential client suitability for the clinic, collating evidence and drafting legal letters. Likewise, by inputting into decisions on a client's suitability for the clinic and strategy for advice letters, participants have the opportunity to develop their ability to exercise personal judgement, independence or autonomy,[21] skills that are characteristic of practising lawyers.[22] As Foley et al report, new practitioners often feel vulnerable in this regard for want of an opportunity to exercise those skills and the clinic provides an ideal controlled environment in which to take the first tentative steps, particularly since the constant oversight of the director (on questions of clinic suitability) and a qualified solicitor (on questions of advice strategy) provide an obvious safety net. It also introduces students to professional obligations such as preserving confidentiality, treating others with respect and dignity, punctuality, politeness and ethics. However, in common with other skills, time must be devoted to recognising and explaining the value of clinics in providing students with the opportunity to develop an understanding of the ethical demands of being a lawyer (or, indeed, working within a professional context). Kerrigan argues that clinic can be one of the best – if not the best – formats in which to teach students about ethics; not simply the 'relevant professional lawyer codes but also a broader and deeper engagement with what it means to be a lawyer and the

19 See, *e.g.*, 'What law firms are looking for from new recruits', *The Guardian*, 14 February 2012, http://careers.guardian.co.uk/law-firm-careers-advice last accessed 14 August 2012.

20 Jonny Hall and Kevin Kerrigan (2011) 'Clinic and the wider law curriculum' 16 *International Journal of Clinical Legal Education* 25-37.

21 Tony Foley, Margie Rowe, Vivien Holmes and Stephen Tang (2012) 'Teaching professionalism in legal clinic – what new practitioners say is important' 17 *International Journal of Clinical Legal Education* 5, 18-19; Stacy Caplow (2006) 'Clinical Legal Education in Hong Kong: A Time to Move Forward' 36 *Hong Kong Law Journal* 229, at 231.

22 Tony Foley, Margie Rowe, Vivien Holmes and Stephen Tang (2012) 'Teaching professionalism in legal clinic – what new practitioners say is important' 17 *International Journal of Clinical Legal Education* 5; Ross Hyams (2008) 'On teaching students to "act like a lawyer": What sort of lawyer?' 13 *Int'l J. Clinical Legal Educ.* 21-32

moral attitudes, decisions and outcomes implicit in legal practice.'[23] Similarly, Joy states that 'only by taking primary responsibility for clients may any law student fully experience the 'professional pulls and choices' and the 'balancing of loyalties and professional responsibilities' of being a lawyer'[24] However, taking part in clinic cannot, in and of itself, be sufficient to ensure such an understanding does develop. Clinic directors should consider how their students will be trained to recognise and reflect upon opportunities to develop such an understanding within the clinic. Students should have the opportunity to explore ethical issues and dilemmas which might arise within a case with their supervisor, and with each other: by doing so, ethical obligations offer a learning experience which might not otherwise be grasped.[25]

Through exposure to real life legal disputes, by conducting interviews with clients and drafting advice letters following discussion with practitioners, participants have the opportunity to gain a deeper insight into the nature of legal advice in practice and, therefore, overcome that particular conceptual hurdle which plagues students of law: recognising that identification of liability is not the end sought by a hypothetical client but rather a means to an end, i.e., advice on the range of options open to the client to resolve their complaint. Once this threshold point is reached, participation also allows for an enriched view of the importance of client expectations and desired outcomes in framing advice. It is an opportunity for any remaining idealism about the operation of law to be tempered and realism instilled. In particular, participants glimpse the real world of law: *e.g.*, that establishing liability can depend on any number of imponderables, such as witness performance at trial, evidential weaknesses, the commercial viability of the defendant and the wealth and/or appetite of the claimant for litigation. Likewise, since outcomes are often negotiated prior to trial, solutions are often a product of compromise in which the litigation risks and associated legal fees are balanced against accepting a discounted settlement. Also, not every litigant is primarily motivated by financial compensation and may attach just as great a weight to an apology or promise to change their practice so as to avoid future repetition. These considerations are often overlooked by the student of law and achieving an appreciation of them is often not helped by the mysterious labelling of them by graduate recruitment managers as 'commercial awareness' or 'business acumen'.

Finally, student participants on the Leeds clinic have reported an increase in their perceived level of specific transferrable skills, such as general communication and organisational skills (in identifying the nature of the potential client's complaint through initial contact and subsequent interview as well as drafting the advice letter); team working skills; and leadership skills (in deciding strategy in both the interview and advice letter). It is likely that working in a team will also provide opportunities to exercise negotiation skills, in particular, achieving the delicate balance between compromise and resolve. Involvement in determining the suitability of a prospective claim for the clinic, requesting particular documents or evidence are brought to interview, researching

23 Kevin Kerrigan (2007) 'How do you feel about this client? A Commentary on the Clinical Model as a Vehicle for Teaching Ethics to Law Students' *International Journal of Clinical Legal Education* 7, at 7

24 Peter Joy (2003-04) 'The Ethics of Law School Clinic Students as Student-Lawyers' 45 *South Texas Law Review* 815, at 837

25 See further Peter Joy (2003-04) 'The Ethics of Law School Clinic Students as Student-Lawyers' 45 *South Texas Law Review* 815, at 840; chapter three of Kevin Kerrigan and Victoria Murray (eds.) (2011) *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave MacMillan, Basingstoke); Jeff Giddings (2008) 'Contemplating the Future of Clinical Legal Education' 17 *Griffith Law Review* 1, at 13.

the law to identify potential claims to suggest to the qualified solicitor and following up missing documents or evidence in order to draft the advice may also allow participants to demonstrate initiative and creative thinking.

c) Respecting Specific and Non-Specific Career Ambitions

In determining the parameters of the clinic experience for the participant, the director may draw inspiration from the US model(s). However, in doing so, some caution is advisable in light of one significant difference, in particular, between US and UK legal education. Law, in the US, is a post-graduate degree and it has been said that 'most law students expect to practice law upon [graduation]'.[26] The same cannot be said for UK students. In a recent survey commissioned by UK Centre for Legal Education 47 per cent of respondents on a law degree course expressed a desire to enter the legal profession.[27] In a similar survey conducted at the School of Law, University of Leeds, we found that 63.65 per cent of respondent students on the LLB wanted to become a solicitor on qualification. The dilemma, therefore, for the director establishing a new clinic (or revising an existing one) is the extent to which this should be accounted for in the clinic design and recruiting method. Should clinic participation be available only to those interested in becoming a lawyer? Even then, there is a question about whether participation is confined to those who will practice in the areas of law that the clinic caters for, or whether it is reasonable to expect that there will be a natural process of self-selection whereby only those students interested in such a career path will apply.

Perhaps the most pressing reason why the clinic might be confined to those with a strong preference for a career as a lawyer is the expectation that such students are more likely to commit to the programme both in terms of time but also energy. Conversely, those who are indifferent (or, even, hostile), to such a career may find the project unfulfilling or dull and there is, thus, a risk that this negativity may be transmitted to any partner law firm(s) and/or clients, damaging the reputation of the clinic over the longer term. Of course, there is a certain degree of speculation in this assessment and these are not absolute reasons why those who do not wish to become lawyers should be barred from applying. To some extent, commitment to the clinic might be ensured where the participant is dependent on a positive reference from the clinic director afterwards. Even so, it is understandable that sensitivities about the longer term success of the clinic (particularly where it is newly established) may influence directors to take a more restrictive approach to recruitment (and this is another reason why subsuming the clinic within the curriculum might be unattractive). By doing so, however, the clinic is less inclusive and the opportunity to gain broader employability skills is lost by a higher number of students (in the case of Leeds, this would mean up to 40 per cent of LLB students excluded from consideration). The consumer-orientated student may object to exclusion on this basis. There is also the possibility that students may become interested in a career as a lawyer having participated in the clinic, which should be weighed against the possibility that participants may lose interest in such a career having gained insights into the practical realities.

26 Stacy Caplow (2006) 'Clinical Legal Education in Hong Kong: A Time to Move Forward' 36 *Hong Kong Law Journal* 229, at 231.

27 http://www.heacademy.ac.uk/assets/documents/disciplines/law/Hardee-Report-2012.pdf last accessed 21 June 2012.

A further issue for clinic directors to address is whether to restrict clinic involvement to undergraduates, or to also allow postgraduate students the opportunity to be involved. If both cohorts are allowed onto the clinic then consideration should be given to whether the clinic experience will offer the same value to each group. An undergraduate in their second year will potentially have fewer relevant skills than a second year postgraduate student, particularly one who has returned to education from the workplace. The same is true of mature entrants to an undergraduate programme of study. Consideration should therefore be given to whether 'one size fits all' within the clinic context, or whether specific steps need to be taken to ensure each participant gains new employability skills from their involvement. At Leeds both undergraduates and postgraduates are eligible for entry onto the clinic and care is taken to ensure the role each student is assigned is most likely to enhance their skill set. For example, students applying to be part of the 2012-13 clinic at Leeds could apply to be either interviewers or managers. Briefly, interviewers conduct interviews and research and draft advice letters whereas managers liaise with the clinic director about potential clients, organise interviews and obtain pre- and post-interview evidence from clients. Clearly, different skill sets are being exercised in each of the two roles. The director might therefore take the decision to allocate a student with extensive administrative experience the advising (as opposed to office manager) role, in order to add value to their skills set. It is worth noting, however, that most students will gain some new skills from their clinic involvement, if only in the form of new legal knowledge. The areas of law covered by the clinic at Leeds are such that many students have not studied them (family law and employment law being two prime examples).

Regardless of whether participation is or becomes more inclusive to allow for participants who are not interested in the profession as a career, or whether it is restricted to particular year groups, the director may wish to consider whether the participant might specify or else nominate which employability skills they would like to develop on the course. By organising the clinic in such a way as to allow students to specify their preferred role (office manager/advisor), specific and non-specific employability skills may be met. As a possible further enhancement of this, it may be possible for students to nominate the type of claims they wish to gain experience of. For example, those students who want to qualify into a large commercial law firm (at Leeds, this accounts for 25 per cent of those interested in a career as a solicitor), may wish to avoid housing claims, for example, and concentrate on tax or employment on the basis they are unlikely to encounter such disputes in practice. Of course, the feasibility of this approach is entirely dependent on the prospective disputes that clients bring to the clinic. It may be that a director can do no more than promise to give consideration to this preference in allocating files to participant teams.

5. Meeting Community, Client and Individual Ambitions for the Clinic

The prospect of allowing students to decide which types of claims to be involved with raises a separate point. If students are keen to participate in the clinic principally to gain practical experience in those areas of law they wish to practice in, a conflict may emerge between the student's individual ambitions and the larger social aims of the clinic. To what extent is it, therefore, important to resist student-led design of the clinic programme?

To give the discussion context, Frank Dignan, director of the law clinic at the University of Hull, in a thoughtful paper on the social aims of clinics, recently commented that in Hull the creation of

the clinic had especial significance given the loss of £700,000 of funding for the local CAB.[28] The loss of financing for CABs as well as diminishing legal aid budgets is a significant contemporary problem and has obvious impact on access to justice. As Dignan notes, clinics allow Universities to connect with local communities, provide help and support to a broad range of individuals who could not otherwise afford it and provide students with the opportunity to gain deeper insights into the social and personal issues affecting those local communities.[29] Indeed, the benefits of law clinics to the local community (and to clients drawn from a wider geographical area) are well-established in the pedagogical literature[30] and the dangers of specialisation to achieving this social justice goal have been outlined by Lopez, who argues that the priorities of the community (and, it might also be said, client) should be foremost in clinic design.[31] Regardless of the type of law that the participant wishes to specialise in, an appreciation of these social issues can only be of benefit. In providing members of the public with free legal advice, many of whom (or even all of whom, depending upon a clinic's target client base) could not otherwise access legal advice, clinic offers an opportunity for students to:

> '…begin to realise the distinction between legal rights and access to what they might perceive to be justice…injustice in CLE has a real face, the students develop the skills to inform clients of the limits of the redress which they have, and a key skill was highlighted to the student lawyers in the necessity to learn to manage their own emotional reactions.'[32]

So, not only can participation provide personal satisfaction through helping others[33] but it also provides valuable insights of benefit in practice of dealing with clients and managing client expectations. Often, in larger firms, trainee solicitors may have limited opportunities to interact with clients to the same degree. Similarly, since clinic clients are likely to be claimants rather than defendants, participation benefits the student by humanising the claimant's needs and develops sensitivity to the claimant's position, which can be valuable to enhancing negotiation techniques in practice. Moreover, participation in a clinic focused on meeting social goals can be beneficial to a student's employability prospects since it allows them to speak to the corporate responsibility agenda that many law firms have adopted (often in response to the corporate responsibility policies of large multi-national corporations who insist that panel law firms have similar policies in place).

28 Frank Dignan (2011) 'Bridging the Academic/Vocational Divide: The Creation of a Law Clinic in an Academic Law School' 16 *International Journal of Clinical Legal Education* 75, at 76.

29 Frank Dignan (2011) 'Bridging the Academic/Vocational Divide: The Creation of a Law Clinic in an Academic Law School' 16 *International Journal of Clinical Legal Education* 75, at 77.

30 See, e.g., Stephen Wizner (2001) 'Beyond Skills Training' 7 *Clinical Law Review* 327-340; Antoinette Sedillo Lopez (2001) 'Learning through Service in a Clinical Setting: the Effect of Specialization on Social Justice and Skills Training' 7 *Clinical Law Review* 307-326; James Marson, Adam Wilson and Mark Van Hoorebeek (2005) 'The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective' 7 *International Journal of Clinical Legal Education* 29-42; Jeff Giddings (2008) 'Contemplating the Future of Clinical Legal Education' 17 *Griffith Law Review* 1; W. Warren H. Binford (2008-09) 'Reconstructing a Clinic' 15 *Clinical Law Review* 283

31 Antoinette Sedillo Lopez (2001) 'Learning through Service in a Clinical Setting: the Effect of Specialization on Social Justice and Skills Training' 7 *Clinical Law Review* 307-326

32 James Marson, Adam Wilson and Mark Van Hoorebeek (2005) 'The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective' 7 *International Journal of Clinical Legal Education* 29-42, at 34.

33 See discussion in James Marson, Adam Wilson and Mark Van Hoorebeek (2005) 'The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective' 7 *International Journal of Clinical Legal Education* 29-42, at 38-39.

6. Conclusion

Clinics hold a number of benefits to participating students, including the opportunity to establish preferred career paths and to develop transferrable employability skills within a controlled, supervised environment. However, this paper has sought to demonstrate that such benefits to students cannot be viewed in isolation, either from the clinical supervision model or from the agendas of the other two key stakeholders within a clinic (the institution within which the clinic is housed, and the clinic client base). Potential clinicians, new clinicians and existing clinicians must be alive to these competing agendas throughout the establishment and management processes and must be conscious of the fact such agendas will not necessarily be resolved once the clinic is well-established. The process of establishing a clinic is fraught with practical concerns regarding supervision, insurance, office protocols and practices, client confidentiality, client selection and recruitment and so on - concerns which can easily override the bigger strategic question of *why* the clinic is being undertaken and who it is intended to benefit. This question applies not only to the students involved (what is it the clinic should give them?), but also to clients: what is their position relative to the students? Are they equally important, or will the potential educational benefits of a case trump the client's needs for support?

Equally, once a clinic is well-established sight should not to be lost of why it is being run. All clinics are likely to evolve over time in response to internal and external factors (not all of which will be within the immediate control of those responsible for the strategic direction of the clinic). This paper has sought to highlight areas in which such competing agendas might emerge and to demonstrate how an internal supervision model might provide clinics with the optimum opportunity of overcoming the associated challenges. Each model offers specific benefits to the three key stakeholders and each carries with it particular drawbacks, but the internal supervision model appears to offer the most flexibility to respond to competing (and potentially changing) agendas. The model adopted will of course depend upon an institution's priorities and financial circumstances; the size of clinic; the extent to which it is feasible to work with external partners; and so on. However, the authors' observations are that an internal supervision model (where the advice is supervised and approved by School staff) offers the most long-term benefits and value to key stakeholders. From an institutional perspective, an internal supervisor, although bearing extra costs, provides the clinic with more long-term stability than a model whereby the advice is approved and insured by external partners. Under the latter model, the decision of a partner agency to remove itself from the clinic would have potentially disastrous consequences for the students, clients and institution, particularly if the clinic forms part of an assessed module. The internal supervision model also provides institutions with greater control over the strategic direction and growth of the clinic, allowing as it does the institution to respond to changes in the student and/or client needs and adapt the clinical model and areas of advice accordingly. Partnerships with external practitioners supervising the advice can potentially hinder such change, particularly if those external partners have different strategic aims to those of the institution.

From a student perspective an internal supervision model provides for more contact with the supervising practitioner than an external model (where contact might be limited to a short meeting and a few emails), which can in turn enhance the skills gained from clinic involvement. Working alongside an internal practitioner provides students with an opportunity to gain more frequent and regular feedback on their clinic performances, with such feedback potentially more likely to be delivered in a pedagogically sound manner. Should the feedback not be delivered in such a manner an institution is better able to provide suitable direction to ensure it is in future: doing so in the context of an external supervision model is much more politically sensitive, carrying with it a risk of alienation of partners upon which the operation of the clinic might be entirely dependent. The value of the clinic to the students is also potentially enhanced through an internal supervision model because such a model opens up the opportunity to adapt the manner in which the advice is given and the areas of law in which it is given. At Leeds, for example, the clinic has generally been restricted to an appointment only, written advice model. Alternative approaches are much more difficult to adopt, even if these would offer enhanced value to the clients. To take the example of a drop-in service, such as the excellent one provided by London South Bank University:[34] this would, under the Leeds model, be difficult to manage because externally-based supervisors are allocated to particular pre-arranged clients on the basis of their areas of expertise - something which would be almost impossible to arrange on a drop-in service.

Finally, the client can benefit from the internal supervision model, primarily because of the long-term sustainability offered by that model, but also because of the flexibility to respond to changing client needs such a model can offer.

Clinicians ought therefore to not be discouraged from developing, or re-developing, a clinic on the assumption that the competing agendas of the three key clinic stakeholders are likely to ultimately be insurmountable: rather, care must be taken to ensure that the supervision model adopted allows for as much flexibility as possible (within the financial parameters determined by the host institution), in order to respond to those competing (and potentially changing) demands.

34 http://www.lsbu.ac.uk/ahs/departments/law/legaladviceclinic.shtml, last accessed 16th August 2012

Practical Nous as the Aim of Legal Education?

*Graham Ferris**

*Nick Johnson***

There has been an implicit assumption that legal education should be about exposition and evaluation, and should reward facility in exposition and theoretical awareness. This theoretically based assumption generates a theory-induced blindness. Specifically, it obscures the dynamic relationship between law and legal practice, despite it being a familiar aspect of the world. The lawyer as rule entrepreneur is lost sight of. One alternative assumption about legal education would be that law is a game like activity; and legal education should be directed towards promoting those qualities that would enhance performance in this game. In this approach to legal education it would be practical *nous* that would be sought and rewarded, and such qualities as facility in exposition and theoretical awareness would receive recognition merely as qualities that can be ancillary to and elements of practical *nous*. Doctrinal legal education naturally pulls towards the first theory, and clinical legal education naturally pulls towards the second. We argue for a clearer awareness of the role of rule entrepreneurship in clinical programmes and in legal education generally.

Theories: how they illuminate and how they obscure

Daniel Kahneman, in his popular summary of his work in behavioural psychology, refers to "theory-induced blindness": an idea he calls upon to explain why even quite obvious (in retrospect) errors in science may have significant longevity.[1] All models of the world are simplifications, ignoring some features of the world in order to focus attention upon other features common across different specific activities.[2] This focus enables analysts to penetrate surface difference and understand at a common or deeper level, it enables us to learn from the experience of others and from the past: to see how Tulip mania demonstrated many of the same features as the market in sub-prime mortgage derivatives.[3] Many successful scientific theories have what Ian Glynn refers to as "elegance" a quality that combines parsimony with a feeling of axiomatic certitude:

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1 Daniel Kahneman, *Thinking, Fast and Slow* (2011) Allen Lane: London at 277.

2 Thomas Schelling, *Micromotives and Macrobehaviour* (2006) Norton: New York, NY at 83-133.

3 Charles Kindleburger and Robert Aliber, *Manias, Panics and Crashes* (2005) Palgrave Macmillan: Houndmills

both uncluttered and convincing.[4] An elegant theoretical model that can be usefully deployed is a powerful and attractive educational tool but is one that can induce a blindness that seriously distorts educational programmes. We feel contemporary doctrinal legal education suffers from such distortion, specifically that it is blind to the role of lawyers in practice in changing rules.

This article attempts to articulate an approach to law and legal education that is centred not in exposition, which rewards generality and logical consistency, but in practice, that rewards alertness to potential distinctions and goal directed efficacy. We use the old term of Greek thought "nous" to try and put this approach into a historical and theoretical context. The problem of reason in practice was explored by Aristotle, and for him nous was an essential part of his approach to "phronesis" or practical wisdom – how to act well and rationally, rather than how to reason well and rationally.[5] We felt "nous" both connected to the Aristotelian tradition and maintained some contemporary resonance, "nous" is used in modern English to mean (according to the New Shorter Oxford English Dictionary): "common sense, practical intelligence, gumption". We want to move the inculcation of nous, and support of the potential to develop nous, into the centre of legal education.[6] At present we feel legal education is too focused upon the "know that" or exposition of law, and too little concerned with practical nous or creative use of the law.[7] Nous is concerned with how one achieves one's purposes using the resources that are available; as such it is concerned with purposes and effectiveness in action.

Once the importance and independence of nous as an educational end is realised the role of clinical legal education is cast in a new light. The development of skills, basic and advanced, can no longer be seen as the purpose of experiential learning. This aspect becomes a means towards a more ambitious end. Facilitating the establishment of nous in the student, and preparation for a lifelong

4 Ian Glynn, *Elegance in Science* (2010) Oxford University Press: Oxford.

5 Aristotle, *The Nicomachean Ethics* (London: Penguin Books, 2004) tr. J.A.K. Thomson. Rosalind Hursthouse, *Practical Wisdom: A Mundane Account (*2006) 106 Proceedings of the Aristotelian Society 285-309. Hursthouse's is an illuminating commentary: "… Aristotle says about practical nous in Book VI, and, in stressing the point that practical nous is akin to perceptual capacity rather than the knowledge *that* some general principles hold …" at 287; and "… this entirely mundane, non-moral sort of 'technical' expertise is essential to practical wisdom." at 305.

6 Of all qualities nous must be one that is a lifelong learning project, as was recognised by Aristotle. Peter Jarvis, *Learning to be an expert: competence development and expertise, in Teaching, Learning and Education in Late Modernity* (2012) Routledge: Abingdon at p. 91 refers to: "the old debates about knowledge and skill" and calls for a focus upon "what it really means for whole people to learn" in relation to vocational education, and he goes on to cite J. Delors *Learning: The treasure within* (1996) UNESCO: Paris "in which there are four pillars of learning – to be, to do, to know and to live together". Nous is concerned with all four pillars, with "to do" being centre stage.

7 In 1930 Karl Llewellyn, *The Bramble Bush* (1996) Oceana Publications, Inc.: New York, NY at p. 116: "The hardest job of the first year is to lop off your common sense, knock your ethics into temporary anesthesia." There is reason to think such an approach persists into modern practice: "We certainly discovered that the same process is very much at work in today's law schools. Faculty, like students, vary considerably as to how worrisome they find this 'lopping' and 'knocking,' this temporary moral lobotomy. However, virtually everyone with whom we spoke was aware that this process was a major facet of the case-dialogue pedagogy of the first year." William M, Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman *Educating Lawyers: Preparation for the Profession of Law* (2007) Jossey-Bass: San Francisco, CA at loc. 1116. Common sense combined with ethical awareness, comes close to being a useable if partial definition of nous. Of course Llewellyn was not under the illusion that the educational aim of inculcating "thinking like a lawyer" in the first year sufficed for a complete, or even an acceptable legal education: "For a mere legal machine is a social danger. Indeed, a mere legal machine is not even a good lawyer. It lacks insight and judgment, It lacks the power to draw into hunching that body of intangibles that lie in social experience." Despite these misgivings he felt the process a necessary one after which: "we shall then duly endeavour to develop will, we hope, regain the homo." Ibid. at 116-117.

cultivation of nous in practice (whether that practice be legal or not, as nous is useful in any life), become ultimate purposes that should inform clinical legal education.

Legal Education: modernity and the rejection of Aristotle

When one realises the deep links between nous and legal practice then at first blush it is hard to understand why legal education should have neglected practical nous and embraced theoretical elaboration.[8] However it is not only *legal* education that has shown this prejudice against practical wisdom:[9]

> "The idea that all the practical arts owe a debt to the skills Aristotle calls phronesis was not especially welcome to rational-minded thinkers in the modern period. Although, in its Latinized form prudence, this term keeps a place in words like jurisprudence, its broader implications are largely forgotten."

The problem was bound up with the self-image of modernity (c. 1600 to present) and the philosophical quest for certainty. The reputation of Aristotle's works on practical wisdom was contaminated by the rejection of his physics:[10]

> "Both good and evil consequences resulted when philosophy turned its back on Aristotle … Aristotle's physics was hopelessly erroneous, and had been shown to be so … but for philosophy in the narrow sense … there were losses as well as gains resulting from the abandonment of Aristotle."

The modern philosopher would find certainty by deduction from indubitable first principles, and no longer rely upon the authority of tradition.[11] The Greek model was Euclid rather than Aristotle. At the birth of university legal education in the common law Blackstone had allowed a traditional and pious, if vague and unsystematic, natural law spirit to inform his *Commentaries*

8 Of course the neglect has not been total. We are not the first to sense incongruence between the claims of theory and the evidence of practice. Karl Llewellyn and E. Adamson Hoebel, *The Cheyenne Way: conflict and case law in primitive jurisprudence* (1941) University of Oklahoma: Norman, OK at p. 42: "When seen thus [i.e. when law is seen as working tools for the solution of problems that arise outside of law], each legal concept becomes a candle to illumine the working of society. It became a concept because some type of problem has recurred often enough, has required to be wrestled with often enough, to be not only felt but seen, as a type of problem. Every legal concept represents then in first instance an effort at diagnosis of a recurrent social trouble of some particular kind. … Comparative study is to this extent a study in comparative diagnosis, if really similar problems have occurred in different cultures." Here the implication is clearly that practice generates law, that the solution of recurrent problems gives rise to the principles, and rules, and processes of law. Elsewhere Llewellyn described law as a craft activity, again to give emphasis to the practical nature of the subject. However, his attempt to describe and analyse the good and excellent, the ideal, became difficult to distinguish from mere subjective preference or taste. Despite his earnest attempts to demonstrate the grand style of judgment through examples the distinguishing features remained elusive, and no clear paradigm could be discerned, see: Karl Llewellyn, *The Common Law Tradition: deciding appeals* (1960) Little, Brown: Boston.

9 Steven Toulmin, *Return to Reason* (2003) Harvard University Press: Cambridge, Mass loc 1525-26

10 Anthony Kenny, *The Rise of Modern Philosophy* (2006) Clarendon Press: Oxford at xii-xiii.

11 Rene Descartes is "often considered the father of modern philosophy" Kenny, Ibid. at 33.

on the Laws of England,[12] but it was the irritated and contemptuous reaction to his confused reflections by Jeremy Bentham that would dominate the jurisprudence and educational practice of the nineteenth and twentieth centuries.

Legal education in the common law world is built upon an elegant and powerful model that reflects a distinction made over two centuries ago by Bentham between the expositor and the censor of law.[13] "To the province of the *Expositor* it belongs to explain to us what, as he supposes, the law *is*: to that of the *Censor*, to observe to us what he thinks it *ought to be*." This basic distinction between the two roles, and the dependence of the second upon the first, has been defended and re-asserted expressly on many occasions.[14] However, it is the relationships between the theoretical Expositor and the professional lawyer and legal education that concern us here.

Essentially, the expert knowledge and skills that underpin the claim of professional status are often equated with the role of the expositor. The lawyer does not claim any exclusive authority as censor of the law; such matters are in the realm of policy and politics. However, the lawyer does claim expertise in knowledge of what the law demands and how the legal system operates. The realm of exposition is the particular subject matter of legal studies, and as exposition is logically prior to the censoring of law, the sole remaining issue is how much policy, or politics, or ethics, or social science, or other sources of evaluative standards, should be included in legal education.

Theory and Practice: "The question is," said Humpty Dumpty, "which is to be master — that's all."

One effect of this theoretical approach to law is that is lends itself to an associated set of beliefs about the relationship between theory and practice. In short it seems obvious that theory, the principles and rules of legal doctrine, and the principles and systems of procedure, are the starting point. The practitioner will then derive more specific guidance by application of the general to the specific circumstances of the case or the client. Legal science mirrors the methodology of deduction of particulars from principles of modern philosophy. Doctrine is prior and governing; clinical action and education is subsequent and governed. Stephen Toulmin suggests a very different relationship between theory and practice:[15]

12 Available at: http://avalon.law.yale.edu/subject_menus/blackstone.asp last accessed 27 May 2013. Legal education in the common law had taken place in the Inns of Court for centuries, and university education in the civil (Roman) law had taken place in the Universities. However, common law education in the University made a stuttering start in the eighteenth century when Blackstone was appointed to the Vinerian Chair at Oxford in 1758. In "Of the Nature of Laws in General" Blackstone starts by confounding scientific laws with the laws governing people, then proceeds to confound the laws of God with Roman law and the common law: "CONSIDERING the creator only as a being of infinite power … he is also a being of infinite wisdom, he has laid down only such laws as were founded in those relations of justice, that existed in the nature of things antecedent to any positive precept. These are the eternal, immutable laws of good and evil, to which the creator himself in all his dispensations conforms; and which he has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such among others are these principles: that we should live honestly, should hurt nobody, and should render to every one it's due; to which three general precepts Justinian has reduced the whole doctrine of law." The whole section is redolent of a rhetorical flourish rather than a serious attempt to analyse and reflect upon the connections between different contemporary usages of the word and concept "law". Bentham was not given to recognising the propriety of rhetorical flourishes.

13 Jeremy Bentham, *A Fragment On Government, Preface* (1998) Cambridge University Press: Cambridge at 7

14 H.L.A. Hart, *Positivism and the Separation of Law and Morals* (1958) 71 Harv. L. R. 593.

15 Steven Toulmin, *Return to Reason* (2003) Harvard University Press: Cambridge, Mass loc. 1762-63.

> "Theory (so to speak) is not a foundation on which we can safely construct Practice; rather, it is a way of bringing our external commitments into line with our experience as practitioners."

This is an aspect of practice, "doing", being primary. The theory should serve the practice: it enables us to consider what to do; it enables us to plan by predicting what reactions will follow our actions; and it enables us to reflect whether what we did was right or wrong, the best or merely an acceptable solution.[16] We dislike being inconsistent in our beliefs, and we dislike our beliefs and action being inconsistent.[17] Theory helps us identify apparent inconsistencies, and to address them. What it cannot do is teach us how to act effectively, because speculative knowledge, however valuable in itself, cannot substitute for the experiential knowledge that nous requires.[18] Of course this reversal of our understanding of the relationship between base (necessary) and superstructure (optional) may threaten some academics as it undermines the kudos of the forms of knowledge and reasoning upon which their status depends.

The division made by Bentham between the expositor of the law and the censor of the law generates theory-induced blindness. Specifically, the product of the role of the expositor creates the feeling that the exposition of the law has a given quality. However, the exposition is a construct, and it has been produced for some purpose or other. In Bentham's classic account it was produced to allow an evaluation of the law; it was ancillary to Bentham's desire to censor the law from a utilitarian evaluative standpoint. Despite this well known incompleteness inherent in the exposition it still generates a sense of inevitability, a matter of fact quality. It is taken for granted that the freedom of professional lawyers' movement is defined by the exposition of the substantive law and procedure. However, this is patently not true. Legal professionals can, and do, influence

16 The inappropriateness of theoretical, or in legal education doctrinal, impulses for informing practice is brought out by the role of reflective criticism in ethical argument, Bernard Williams, *Ethics and the Limits of Philosophy* (2006) Routledge: Abingdon at 116-117: "The main consequence that this discussion has for ethical argument is that reflective criticism should basically go in a direction opposite to that encouraged by ethical theory. Theory looks characteristically for considerations that are very general and have as little distinctive content as possible, because it is trying to systematize and because it wants to represent as many reasons as possible as applications of other reasons. But critical reflection should seek for as much shared understanding as it can find on any issue, and use any ethical material that, in the context of reflective discussion, make some sense and commands some loyalty." Doctrine wants exclusive principles and rules with as few exceptions as possible. Practice wants to find common ground, avoid unnecessary conflict, and argue persuasively, which entails arguing in terms of values recognised by the other side. Broad and exclusive rules often give no useful guidance for specific situations (one always has to check the exceptions – which in practice are often more copious than the specific circumstances encompassed in the rule) that require inclusive thinking (demonstrating why the other side is applying the wrong exclusive rule risks hardening the interaction around principled differences – the most intractable of mind sets).

17 Cognitive dissonance is the term coined by Leon Festinger and his co-workers for this psychological discomfort, cognitive dissonance was explored in: Leon Festinger, Stanley Schachter, Henry W. Riecken, Elliot Aronson, *When Prophecy Fails* (2008)Pinter & Martin Ltd: London.

18 Ultimately, it may be a question of temperament. Some of us seek the one right answer that will enable us to argue with and from certainty: these are the natural theorists, the hedgehogs as the term is used in Ronald Dworkin, *Justice for Hedgehogs* (2011) Belknap Press: Cambridge Mass. Some of us seek an answer adequate to the problems we face: these are the natural practitioners, who strive to cope, and who sometimes find the time for reflection and development of expertise. The problem is not one peculiar to legal education. In cognitive theoretic terms it is this issue that divides Kahneman and Gigerenzer: See Gerd Gigerenzer, *Bounded and Rational in Rationality for Mortals: How people cope with uncertainty* (2008) Oxford University Press: Oxford. In political theory it is the difference between the "monist" and the "pluralist" in the terms coined by Isaiah Berlin *The Pursuit of the Ideal* in *The Proper Study of Mankind: An anthology of Essays* (1998) ed. Henry Hardy and Roger Hausheer, Fwd. by Noel Annan, Pimlico: London. In jurisprudence it is the difference between "transcendent" and "comparative" theories of justice as these terms are used by Amartya Sen, *The Idea of Justice* (2009) Allen Lane: London.

the substantive and procedural systems of law in which they practice on behalf of client, the public interest, and collective professional self-interest. An entire aspect of legal practice is obscured by theory –induced blindness.

This is not to claim the theory inducing the blindness is necessarily false or useless. The theory is true if law, in practice and theory, is concerned with that which is expounded, in other words if exposition can be supported as an independent activity. However, what if law is not like Euclid's geometry: the exploration of the relationship between axioms of universal validity. What if law is more like a game played by us all in the way Wittgenstein came to understand language:[19] a shared activity that had a meaning derived from the activity? In the game approach to law the key question is not: "How would one describe this?" The key question is: "How does one win?" The subject matter is not exposition of doctrine and procedure but techniques for effective service to client and the public. Not: what is law? Rather: how can law be used?

This placing of law in its context as activity is not a novel insight. In the words of Stephen Sedley:[20] "Their[21] argument that law is 'a social process where information is constructed, passed on and mediated through a myriad of ways' is of more than sociological interest, because it starts to shed light on the myth that the business of law is the ascertainment of truth. It is no such thing: the business of law is winning cases." The difficulty is to avoid theoretical obfuscation, theory-induced blindness, of legal practice and the use of law in practice, as Wittgenstein remarked of language:[22] "Here we are in enormous danger of wanting to make fine distinctions … the everyday language-game is to be accepted, and false accounts of it characterised as false..", or in Sedley's words:[23] "… the product of an academic industry … which has built edifices of often baffling elaboration on the work of earlier practice-orientated theorists such as H.L.A. Hart." Meaning in law is a search for the "practical sense of words"[24] and the purposive nature of the search is a vital and common "tacit presupposition" underlying legal language games.[25]

However, it is not only the aim of legal activity and education that is altered by this perspective on law as a contextually situated language game. It introduces the possibility of a social cognitive space, neither the subjective (isolated individual of Descartes) nor objective (the common-sense

19 Ludwig Wittgenstein, *Philosophical Investigations* (2009) Wiley-Blackwell: Chichester at [7] p. 8: "I shall also call the whole, consisting of language and the activities into which it is woven, a 'language-game'"; at [23] p 15: "The word 'language-game' is used here to emphasize the fact that the speaking of language is part of an activity, or of a form of life."

20 Stephen Sedley, *Declining the brief, in Ashes and Sparks: Essays on Law and Justice* (2011) Cambridge University Press: Cambridge at 156.

21 John Morison and Philip Leith, *Barrister's World: And the Nature of Law* (1991) Oxford University Press: Oxford.

22 Ludwig Wittgenstein, *Philosophical Investigations*, Part II [161] at 210.

23 Stephen Sedly, *This beats me , in Ashes and Sparks: Essays on Law and Justice* (2011) Cambridge University Press: Cambridge at 329

24 Ibid.

25 Wittgenstein, *Philosophical Investigations*, Part II [31] at 188: "'But then they make a tacit presupposition.' Then playing our language –game always rests on a tacit presupposition."

possibility of non-evaluative exposition deployed by Bentham; the view from nowhere[26]) but "subjunctive".[27] The subjunctive point of view is that of the game players. Subjunctive worlds are typically built upon repetitive actions or "habits" or rituals, similar to Aristotle's conception of character built upon habits of virtuous (or vicious) action.[28] These habits are informed by the belief that beliefs are shared, and they make sense only given assumptions about other people's understanding (tacit presuppositions). The subjunctive is ritualistic in nature, rather than based upon sincerity of feeling, and it is a shared practice as much as a shared belief.

Legal practice has qualities typical of the subjunctive. Consider the rules of communication in court, a ritualistic elaboration of discourse norms of turn taking, not talking at the same time as each other, and appearing to listen to the other side. Pleading and rules of evidence are legal devices to produce brief, orderly expression that avoids obscurity and ambiguity for the professional participants in the legal language game. Legal procedure attempts to limit the communicative actions to those seen as necessary, ruling irrelevant or immaterial much that is of great concern to litigants, and lawyers take part under a professional ethics that requires they do not say what they know to be false.[29]

The process is game like or ritualistic because it is not concerned with any subjective or inner beliefs of the participants. Consider the right of an accused to face his accuser and make his defence on the basis of the evidence produced by the prosecution. It is not necessary for the legal professionals to believe a defendant is innocent in order to give effect to the presumption of innocence. We engage in behaviour that is based upon a "what if" – "what if the defendant is innocent?"[30] Legal fictions are of course formal exercises in "what if", and Bentham notoriously failed to distinguish legal fiction from legal falsehood and deception.[31] The objective exposition brooked no subjunctive reality to be understood from the perspective of the participants and their shared understanding of the process. Thus, our shared subjunctive worlds are shared ways of acting as much as shared ways of understanding.

26 A single "objective" viewpoint that is outside of social action is implicit in Ayer's bold assertion in reference to the problem of induction, A.J. Ayer, *Language Truth and Logic* (2001) Penguin Books: London at p. 35 that: "… it is a fictitious problem, since all genuine problems are at least theoretically capable of being solved." The possibility of such a viewpoint is of course the subject of the book by Thomas Nagel, *The View From Nowhere* (1989) Oxford University Press: Oxford. An excellent review of the problem of the possibility of an objective viewpoint is given by Simon Blackburn, *Truth* (2005) Penguin Books: London.

27 A.B. Seligman and R.P. Weller and M.J. Puett and B. Simon, *Ritual and its Consequences: An essay on the limits of sincerity* (2008) Oxford University Press: Oxford.

28 Aristotle, *The Nicomachean Ethics* (London: Penguin Books, 2004) tr. J.A.K. Thomson.

29 See Paul Grice, *Logic and Conversation, in Studies in the Way of Words* (1989) Harvard University Press: Cambridge, Mass at pp. 26-27 for discussion of "conversational implicatures" such as those noted in the text.

30 H. Vaihinger, *The Philosophy of "As if"* (2009) Martino Publishing: Mansfield Centre, CT, tr. C.K. Ogden.

31 Jeremy Bentham, *A Fragment On Government* (1998) Cambridge University Press: Cambridge.

The Argument: and a few terms defined

We argue in this paper that traditional doctrinal legal studies are inextricably bound up with the theory of exposition as a necessary precursor to evaluation. The virtue or excellence they seek is elegance in statement and application of general propositions descriptive of the law. We will call this "facility in exposition". Sometimes legal education also seeks to develop a capacity to evaluate the law by some intelligible and appropriate standard of evaluation, and we will call this capability "theoretical awareness". However, such expository education involves a blindness to features of the law that are brought into focus by viewing legal process as a shared activity giving rise to a subjunctive understanding. Viewing the law as a game allows a powerful and necessary alternative approach to legal education.

Clinical legal education tends to pull towards an approach to legal education that treats law as a game because it has an experiential orientation. It is based on a belief that what we can learn from doing has a value. Legal education founded on a theory of law as a game – law as activity in a rule structured social environment - has less concern with exposition, which is ancillary to the educational task. Clear exposition will be required, in explaining to a client, or in advocacy. However, excellence in exposition is not the only purpose of the enterprise. Theoretical evaluation of the law in general terms, as opposed to evaluation in terms determined by the needs of the client or the public interest being served, is generally only of use for rhetorical purposes. The purpose aimed at by law as a game, is successful service of the client or public interest. We will call the capacity that produces this end "practical nous". Thus, the virtue or excellence that is sought in legal education on this model, the desired outcome in terms of the development of the student, is practical nous and not facility in exposition or theoretical awareness.

Obviously, the inculcation, development, and assessment of practical nous raise many difficult, and some possibly intractable, problems. However, one area of activity that can go some way towards the nurturing of nous is intervention in the field of rule change. We term "rule entrepreneurs" those legal professionals who engage in litigation, legislative or administrative process, formal consultations, or social activism with a view to bringing about rule changes. Rule entrepreneurs may be involved in advancing the same interests as rule acceptors, but they are open to another field of activity. Practical nous especially in rule entrepreneurship relies upon an awareness of what might be possible, together with intelligence about what the client or public interest requires, and an ingrained realisation that resources are always limited. Deciding where and how to expend resources is the test of practical nous. To do this well requires: sophisticated understanding of the possible outcomes that are desired (the imperatives of the client, or public interest – avoiding assumptions imposed by legal categories and processes); as fully informed as possible awareness of the field of action (the structures of power and influence that operate); and an understanding of what resources are available (financial, legal, political, ideological, moral, psychological, not limited by preconceptions of typically legal action).

The remainder of this article begins at the difficult challenge of delimiting or describing the nature of "demonstrable practical nous" by deploying an example of litigation and legislative action undertaken by a firm of lawyers in the United States of America. No attempt is made

to advance a formal definition of practical nous.[32] Second, we reflect upon the ordinariness of rule entrepreneurship in legal practice. Then we use examples from the practice of clinical legal education to illustrate how legal education can allow students to take part in rule entrepreneurship. Hopefully, at this stage we will have established the prima facie desirability and utility of thinking about the development of practical nous as the aim of legal education. In concluding we return to the importance of theory–induced blindness in this area, and consider why clinical legal education may be more naturally supportive of a shift towards making practical nous the aim of legal education, and what this would mean in terms of an integration of clinical and academic emphases within the legal academy.

The Lawyer Successfully Using Practical Nous: Same Sex Marriage in Vermont

The following account rests upon earlier publications by Beth Robinson, and Scott Barclay with Anna-Maria Marshall.[33] The activity of Susan Murray and Beth Robinson, two partners in the Vermont law firm of Langrock, Sperry and Wool, will be our focus in this account. They were two of the three attorneys that filed the claim that was upheld in substance by the Vermont Supreme Court as *State v Baker*.[34] The decision of the court was followed by the passage of Vermont Civil Union Law, Act 91,[35] that granted same sex couples the right to enter Civil Unions that created rights and obligations identical to those created by marriage.[36] This law has since been superseded by an Act to Protect Religious Freedom and Recognise Equality in Civil Marriage passed in 2009.

32 It is a concept if not a word that is deeply familiar. It reflects the nature of "counsel". We are trying for a concept that has family resemblances rather than strict definitional boundaries. Thus, as noted below the concept is congruous with Eskridge's equality practice. Eskidge recognises the balancing act between liberal right and communitarian fear, and sees familiarity as the strongest weapon for enhanced tolerance, acceptance and eventually full legal and social recognition. William N. Eskridge Jr. *Equality Practice: Civil Unions and the Future of Gay Rights* (2002) Routledge: New York, NY at xiii: "This is what I call equality practice. Equality for lesbians, gay men, bisexuals, and their relationships is a liberal right for which there is no sufficient justification for state denial – but it is not a right that ought to be delivered immediately, if it would unsettle the community. So equality comes on little cat's feet." To ignore social norms, or to demand as of right everything that could be demanded as of right, is likely to set off a damaging reaction, so it is better not to do so. It also shares features with Kronman's "lawyer-statesmen" as can be seen in this descriptive account: "possessed of great practical wisdom, devoted to the public good but keenly aware of the limitations of human beings and their political arrangements"; Anthony Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (1993) Harvard University Press: Cambridge, Mass at 12. What we are trying to capture is not some novel aspect of legal practice, it is familiar but elusive, especially in a legal education context. It is also more general than public interest or cause lawyering. Commercial lawyers need, and the best have, practical nous. Indeed, there are many examples of rule entrepreneurship from commercial practice, a few aspects of which are noted below.

33 Beth Robinson, *The Road to Inclusion for Same Sex Couples: The Lessons From Vermont* (2001) 11 Seton Hall Const. L. J. 237; Scott Barclay and Anna-Maria Marshall, *Supporting a Cause, Developing a Movement, and Consolidating a Practice: Cause Lawyers and Sexual Orientation Litigation in Vermont*, in *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice*, ed. Austin Sarat and Stuart Scheingold, (2005) Stanford University Press: Stanford, CA. See also: William N. Eskridge Jnr, *Equality Practice: Civil Unions and the Future of Gay Rights*, (2002) Routledge: New York, NY at pp. 43-82.

34 10 Vt. L. Wk. 363 (Vt. December 20, 1999). The third was Mary Bonauto of Gay & Lesbian Advocates & Defenders. The text of the brief is available in (1999) 5 Mich j Gender & L 409.

35 Vt. Pub. Act 91, 2000 session.

36 "Partners to a civil union shall have all the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law, or any other source of civil law, as are granted to spouses in a marriage."

The account below focuses upon the period between 1995 and 2000.

The involvement of Murray and Robinson in campaigning for same sex marriage developed from their client base and earlier public interest work involving gay and lesbian couples. In 1989 Murray had offered the firm's aid to a smaller firm acting in a case concerned with the guardianship of a child whose biological mother had been killed in an accident. Her partner, who had been co-parenting the child since his birth, was trying to establish her right to his guardianship. The case, *In re Hamilton* (1989), received a lot of press coverage and Langrock, Sperry and Wool became known as a firm supportive of gay couples. This led to significant private client work, concerned with powers of attorney, wills and trusts, and the guardianship and adoption of children, as well as problems arising from the breakdown of long-term same sex relationships: the structuring of private transactions and use of public law mechanisms to try and generate rights for same sex couples similar to the rights the law would normally grant to married couples. As well as this private client work the firm also intervened in *Adoption of B.L.V.D. and E.L.V.B* (1993) by filing an *amicus curiae* brief. This case held that adoptive same sex step-parents were to be treated in the same manner as other step-parents for the purposes of adoption law, the judicial decision was later given statutory force.[37] Thus, Murray and Robinson were very familiar with the difficulties generated for same sex couples by the legal refusal to allow them to marry each other – indeed, cobbling together legal arrangements to assuage these problems was a significant source of work for their firm.

In the light of the needs of their clients and the injustice they felt was generated by denying marriage to same sex couples Murray and Robinson decided to try and amend the legal situation in Vermont. The groundwork began in 1995 when they became founder members of Vermont Freedom to Marry Task Force. In the words of Robinson:[38] "All the great case citations in the world won't get you to your goal if the political and educational context is wrong." The first task was one of building an organisation of activists, establishing links with potential allies, and generating public awareness and acceptance. Public meetings were held, and it is from such gatherings of supporters that litigants came forward for the test case, three couples willing to sue for the right to marry each other. Speakers went to church groups and community groups to make people aware of the real problems caused to same sex couples by the discriminatory law. From these meetings support was obtained and new activists emerged. People were trained to speak to media representatives and the general public about same sex marriage and a general educative effort was made, in an attempt to reach those who would be willing to support the cause, but who may never have given the problem any real thought. The effort to garner support and educate people would not stop when suit was filed in 1997. However, the grass roots activity was a vital preparation for the inevitable resistance the campaign would face after filing.

The case of *State v Baker* was commenced in 1997, and the arguments were directed to the Constitutional provisions of the State of Vermont.[39] Vermont has a "common benefits clause" that provides:[40]

37 15A V.S.A.

38 (2001) 11 Seton Hall Const. L. J. 237 at 241.

39 The original brief filed by Bonauto, Murray, and Robinson is available at: (1999) 5 Mich J Gender & L 409.

40 Ch. 1 Article 7.

> "That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community …."

The argument was that this clause, and the jurisprudence upon its meaning, made marriage laws that prohibited same-sex marriage unconstitutional, as it favoured one part of the community and there was no valid State purpose served by the discrimination. Essentially, this argument was accepted by the Vermont Supreme Court. However, rather than ruling prohibition of same-sex marriages unconstitutional the majority deferred any remedy in order to allow the legislature to consider the matter.

Thus, the third phase of involvement by Murray and Robinson was around the legislative consideration of the issue. Murray gave evidence to the House Judiciary Committee, and they both took part in organising evidence and lobby activity as part of the newly formed Vermonters for Civil Union Defense Fund (essentially organising the same activists as the Vermont Freedom to Marry Task Force). Also, they personally lobbied members of the legislature, a form of representation Robinson found very distinct from advocacy in litigation:[41]

> "It's certainly different from litigation. As a lawyer, I'm used to crossing the street to avoid the judge if I'm in the middle of a trial lest I inadvertently walk into an ex parte contact. In the legislative process, on the other hand, I found myself prowling around the coatroom just hoping to catch a legislator for a quick, private conversation. The rules of the game are quite different, and sometimes a little messy."

Having decided to support the Civil Union Bill, despite reservations of principle, Murray and Robinson played an important role in the Bill's success. They also campaigned in the hotly contested elections of 2000 in Vermont, in which the issue of same sex marriage loomed large.

In the light of this account it is hoped we can illustrate what is meant by practical nous.

It certainly includes knowledge and skills normally associated with the legal professional. The possibility of the argument (based on the relatively more obscure Article 7, and not the Federal law) and the supporting judicial history of dealing with the provision was founded in knowledge; and had the quality of expertise rather than competence.[42] The arguments deployed played heavily with a powerful analogy (the striking down of laws that prevented miscegenation in marriage) and with ethical arguments founded upon empathy for the individuals affected by the discrimination as individuals (problems of responsibility for children after tragic death, the exclusion of people from medical decisions concerning their life partner, arbitrary unfairness and insult) combined with a strong appeal to the local legal tradition for tolerance, progressive thinking and justice. Rhetorically, the briefs combined technical plausibility with appealing ethical arguments – inviting the Supreme Court to do the right thing and in so doing to advance a proud tradition. Thus, there is no argument here that practical nous can be built upon professional inadequacies; on the contrary high levels of professional skill are called for.

What may be more unusual for an aim of legal education is the realisation that the legal struggle had to also be located in a cultural or political struggle. Legal expertise is effective, it has traction,

41 (2001) 11 Seton Hall Const. L. J. 237 at 253.

42 The distinction we are making is between competence that tries to avoid being wrong by covering the bases, and expertise that exploits a clean focus and greatly increases the chances of success.

when it is understood that legal argumentation is founded in broader social dialogue. What seems reasonable, or possible, or absurd is determined by the lay discourse. Thus, in a slave owning democracy *Dred Scott v Sandford* seemed a reasonable defence of private property.[43] Thus, in the context of the struggle against racist political parties in World War II, the burgeoning sense of collective responsibility of the welfare state, and the increasing effectiveness of the civil rights movement, *Brown v Board of Education of Topeka* seemed a possible judicial response to a policy of segregation in an area that fatally undermined hopes for equality of opportunity.[44] Thus, in the context of consensual sexual acts between people of the same sex being criminal in most States the arguments in *Singer v Hara* were absurd.[45] That what is possible in legal argument is dependent upon broader discourse is both obvious and problematic for any transcendent account of law. Practical nous is not a transcendent account of law; it is demonstrated by dealing with the contingent and dependent nature of the law in society.

Murray and Robinson did not simply understand that social context matters; they intervened to shift the discourse. The activity of the Vermont Freedom to Marry Taskforce had directly beneficial impacts upon the litigation strategy. Discussion in different settings honed the arguments eventually used in court; the plaintiffs in the litigation came forward, and were able to prepare for a novel public role imposed upon them by their role in the litigation; the Taskforce provided a supportive environment in which the litigation could be discussed. Furthermore, political support and the resources of allies were secured for the activities of the Taskforce. However, the rationale of the group was the preparation of public opinion for the litigation. It was a self-conscious effort to shift the discourse towards one that would view gay and lesbian marriage as a realistic possibility, as a desirable possibility, and as an issue about being fair and decent to fair and decent people. As described by Robinson:[46]

43 (1857) 60 U.S. 393. *Dred Scott* was infamous not for confirming the status of the Scott's as slaves, as determined by the law of Missouri, but for gratuitously declaring Congress' use of its power to prohibit slavery in the territories unconstitutional and providing an explicitly racist justification for the exclusion of African Americans from citizenship. See: Walter Ehrlich, *They Have No Rights* (2007) Applewood: Lea Vander Velde, *Mrs. Dred Scott* (2009) Oxford University Press: New York, NY; for insight into the lives behind the litigation. Dred and Harriet Scott were not deliberately involved in a test case; they sought freedom on well established grounds, probably for the sake of their two daughters, and were surprised by judicial activism that denied them well established rights. Sanford may well have fought the litigation as a rule entrepreneur, opposed to any legal recognition of rights that might weaken slavery. Sanford was certainly an active lobbyist in his business life.

44 (1954) 347 U.S. 483. Kluger's account of the discussions that preceded the arguments before the Supreme Court in *Brown* makes dramatically clear that counsel decided it was *possible* the Court would overturn educational segregation, there were strong arguments that it was *also possible* that it would not do so, and that a more cautious policy that gave the Court the option to enforce the "equality" requirement in *Plessy v Ferguson* (1896) 163 U.S. 537 might be more prudent: Richard Kluger, *Simple Justice* (2004) Vintage Books: New York, NY at pp. 510-542.

45 (1974) 11 Wn. App. 247. Barclay and Fisher argue that the Singer case was not a failed attempt to obtain recognition of same sex marriage, but rather an attempt to: "effectively reclaim ownership and legitimacy over the idea of same sex marriage", Scott Barclay and Shauna Fisher, *Cause Lawyers in the First Wave of Same Sex Marriage Litigation*, in *Cause Lawyers and Social Movements*, eds. Austin Sarat and Stuart Scheingold (2006) Stanford University Press: Stanford, CA at p. 96.

46 (2001) 11 Seton Hall Const. L. J. 237 at 243.

> "We raised these policyish issues during our public education work but, frankly, they were not the most important messages we share. Far more important were our stories – real stories about real people and the reality of our lives. … Those stories, and our willingness to be honest and open about our lives and our families, cut through the myths that bind gay and lesbian progress far more than any policy paper or research project ever could."

The key rhetorical shift is away from defining people by their sexual conduct (gay and lesbian marriage) and towards defining people as individuals, couples, and families who happen to be gay or lesbian. If this frame is accepted then it is obvious that treating such people differently is discriminatory, and therefore the refusal to allow them to marry requires justification. If enough church groups, media reports, and public discourse adopt that viewpoint then public discourse has been changed. That change to public discourse was the aim of the stories, meetings, discussions, and media appearances. That changed discourse provided the context that would allow the Supreme Court to accept the arguments addressed to it. Murray and Robinson not merely saw the importance of the public discourse; they acted effectively to shift it towards a discourse that saw the question as one about discrimination.

The suggestion here is not that legal education should have compulsory modules on organisation and mobilisation. The practical skills Murray and Robinson deployed were linked to but went beyond those necessary for legal practice. The feature of importance to legal education in this aspect of our account is the practical nous to realise the necessity for addressing the public discourse. An understanding of the reliance of successful legal advocacy upon the structure of lay discourse is important for the provision of expert legal services. Helping students to see the commonalities across the discourses is something legal education should be concerned with. Awareness of the vital links between discourses, and indeed between various lay discourse inter se as well as between lay discourse and legal, is vital in commercial contexts as much as in political ones. Indeed in the light of the practice of Langrock, Sperry and Wool the commercial and the political were undifferentiated in important respects.

The final aspect of the account considered here is the lobby activity that followed the judgment in *State v Baker*. The judgment raised three related problems for Murray and Robinson, and all those involved with the campaign.

First, the refusal of the Supreme Court to grant the remedy sought was game changing. The litigation had been argued on a simple win or lose basis: either civil marriage between gay and lesbian couples should be recognised by Vermont, or the law should remain that marriage had to be between a man and a woman. Legal principle and logical consistency made anything less than equality of treatment a violation of citizens' rights. The new phase made the issue political not legal. Once in the political arena the possibility of compromises, such as Civil Union, was present. If the campaign was about legal redress through the courts then taking part in the political process undermined credibility and weakened bargaining position. Again Robinson's account highlights the nature of the issue as seen from her vantage:

> "The Court acknowledged that the Vermont Constitution was there to protect gay and lesbian Vermonters as much as any other Vermonters, but then turned us over to the political process as if our constitutional rights were subject to popular vote."

In the spirit of practical nous the campaigners continued the campaign into the political arena. The problem was to achieve what was needed; the litigation was a preferred road to legal change, but

the purpose was legal change. Realistically refusal to make political representations would have been to reduce the chances for an acceptable outcome. Also, the arguments and the representative resources were already in place as a result of the pre-litigation activities of the Taskforce, and the lawyers who had argued before and persuaded the Supreme Court had a unique weight behind the evidence they gave to the committee that was considering the issue on behalf of the Vermont legislature.[47]

Second, was the problem of what was appropriate for legal professionals to do in terms of conduct in connection with the political process. Giving evidence before the committee had been not dissimilar from public education and advocacy in court. Robinson, as noted above, found the lobby process disconcerting, because it is not subject to procedural safeguards familiar from litigation. We argue below that some of this discomfort is self-deluding, because lawyers have been involved in the political influence business for a very long time and remain active in the field today.

Third, and finally, the campaigners had a difficult choice to make when the committee reported. The principle of equal rights was recognised, but the politically charged decision to allow civil marriage was shied away from. The recommendation was for legislation to create a novel status for gay and lesbian couples, Civil Union, all the consequences of marriage but not the name. Without the support of those involved in the *Baker* litigation the Civil Union Bill was doomed. To give the Bill support was to compromise on an important principle. The Taskforce was essentially renamed as the Vermonters for Civil Union Defense Fund and the campaign put its weight behind the Bill. This was congruent with the arguments developed in the campaign and is our final example of practical nous derived from this account.

The arguments, in court and out, had led with stories of real people who had been insulted, disempowered, and harmed by the discrimination inherent in Vermont's marriage law. Civil Union was still insulting, but it empowered and avoided harming gay and lesbian couples and their families. If law is about justice and fairness in social life then the Civil Union was a vital step forward, it provided for an equality of legal consequences with marriage. It also allowed people to live with the reality of social and legal recognition for gay and lesbian relationships, and as Robinson puts it:

47 Murray and Robinson seem to have seen the shift from court to legislature, and from principle to political arrangement in an overwhelmingly negative light, for them the Supreme Court's timidity in remedial terms was a disappointment. However, Eskridge saw this aspect of the Vermont experience as a positive, because it allowed "equality practice" – the community to practice a more equal legal and social life in a movement towards full equality (as one might practice fishing without catching any fish). The account of equality practice (and the discussion of how it sits within jurisprudential theory) has strong congruence with the idea of practical nous, although equality practice is held out as appropriate to a specific area of law and practical nous is held out as a general model of law and as an aspiration for legal education. "So equality comes on little cats feet … Theoretically, equality practice seeks a law-based synthesis: liberalism instructs us as to rights, communitarianism as to remedies … Equality practice has the vice of messiness and the virtue of workability … The advantage of equality practice – or something like it – is that it recognises both the need to accommodate new ideas and the inability of human beings and their communities to do so without a long process of education and personal experience." Eskridge (2002) at pp. xii-xv. Practical nous is seeing what is possible by being guided by the end sought rather than any given process, as with equality practice understanding that norms and laws are dynamically interrelated and that education and discourse and lived experience are all part of the situation is called for by practical nous. That is why it is so difficult to be good at it, it is not a skill based in repetition, but the ability to navigate the currents of change, more like white water canoeing, to use a metaphor favoured by Jeff Giddings in Keynote Speech 4, *Backwaters and Cascades – A Navigation Guide for Efforts to Mainstream Clinical Legal Education* IJCLE Conference 2012.

> "The sky hasn't fallen. The institution of marriage hasn't dissolved. Some Vermont families are a little more secure, and nothing's been taken away from anybody else."

Her hope when she wrote in 2002 was that Civil Unions would be a precursor to the recognition of marriage for gay and lesbian couples, and as noted above that day did finally arrive in 2009. The discourse had been altered and never returned to its earlier form despite a punishing political process in the elections that followed the passage of the Civil Unions Bill.

When Murray and Robinson accepted the redefinition of the process as political, took part in the committee and lobby process, and supported the compromise of Civil Union, their actions were once again characterised by practical nous. The aims of the campaign had been consistent and the arguments deployed congruent across the three phases of the campaign. The problems faced by the clients of Murray and Robinson had led to their commitment to the campaign. Those problems were addressed by the establishment of Civil Unions. The legally unprincipled compromise was a life-line to families struggling to be recognised and respected in Vermont society. Understanding what is possible in the face of the structure of the situation and the resources available is the essence of practical nous. This is what Murray and Robinson did when they accepted the need to give full support to a less than ideal, but practically important reform.[48]

Once again we are not suggesting legal education demand lengthy study of the nature of political compromise and process. However, the case of *State v Baker* demonstrates once again that politics and law are not hermetically sealed universes of discourse. They are linked. An awareness of the links is vital to a realistic understanding of the role of the lawyer. Clients and the public interest do not demand punctilious regard to legal process and legalistic propriety. The lawyer is retained to find answers to problems, and if the best answer is to shift public opinion through a strategic engagement with public discourse and to help give birth to reforming legislation or a change in the interpretation of law then that is one avenue open to the practising lawyer; that possibility should therefore be part of legal education. Hopefully, the account of Murray and Robinson's efforts has left the reader with a high level of respect for their professional skills and for their ability to act effectively outside the stereotypical role of the trial lawyer, but to deploy both sets of desirable qualities towards an appropriate aim for a legal professional.

Rule Entrepreneurship and Legal Professional Practice

A common perception of the professional role of lawyers is bound up with litigation and representation. Indeed, if we broaden this idea to include dispute settlement more generally, recognising the importance of negotiation, then it probably accords with the assumptions of many legal professionals, both within and outside of academia. However, it neglects three important aspects of professional practice: the structuring of transactions, the role of lawyer as agent, and the modification of rules (what we have termed above "rule entrepreneurship"). It is this last, role that our argument is focussed upon here. Our argument is that rather than taking the law as the given structure of action within which our students are called to operate, whether on behalf of clients or the public good, lawyers do, and always have, acted as rule entrepreneurs.

48 Here is Robinson on the *principle* of Civil Union (2001) 11 Seton Hall Const. L. J. 237 at 249: "… the Vermont Supreme Court opened the door to consideration of a 'separate-but-equal' regime for gay and lesbian couples in marriage by suggesting that after all these years of walking we were entitled to ride on the bus – but it might be okay to require us to sit in the back."

William Blackstone serves as an example of the historical depth of rule changing role for lawyers. The author of the *Commentaries on the Laws of England* was involved in the passing of private Acts of Parliament, and the management of a rotten borough on behalf of his clients when he worked as a barrister.[49]

A contemporary example of the importance ascribed to professional involvement in rule changing is provided by the web site of the City of London Law Society, which lists seventeen committees:

> " … drawn from the Society's membership, who meet regularly to discuss pending legislation, law reform and practice issues in their fields. These specialist Committees provide unique City expertise and have regularly influenced the Government's law reform activities."[50]

This aspect of main-stream practice was emphasised by Marc Galanter in his seminal article *Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change*.[51] He noted that it is the lawyers who work for the "haves" (large companies, insurers, Government agencies) who he termed "repeat players" who are most effective in the arena of rule changing. It is the repeat players who have the interest, and the resources, to engage in legal activity directed to changing the legal rules, or the application of the legal rules, he lamented that in terms of efficacy:[52]

> "Paradoxically, those legal professions most open to accentuating the advantages of the "haves" (by allowing themselves to be "captured" by recurrent clients) may be most able to become (or have room for, more likely) agents of change, precisely because they provide more license for identification with clients and their "causes" and have a less strict definition of what are properly professional activities."

Thus, we have long known that a concern for the substantive and procedural content of the legal rules is an important part of the business of law. Specifically, that lawyers have always and still do concern themselves with rule change, that the profession is interested not just in what the law is, but what it will become.

We would suggest for the purpose of analysis and exposition that the policy role of the lawyer be divided into two activities:

A. Strategic litigation and lawyering and;

B. Lobby activity.

Obviously, and as was illustrated by our account of the introduction of Civil Union in Vermont, the two activities are not exclusive, but dynamically linked.

49 Wilfred Prest, *Blackstone as a barrister* (2010) Seldon Society, London at pp. 28-29.

50 http://www.citysolicitors.org.uk/Default.aspx?sID=754&lID=0 last accessed 12/09/2012

51 Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change* (1974) 9 Law and Society Review 95

52 Ibid. at p. 151.

A. Strategic litigation

Those who have ever worked for large clients will know the fear that an adverse decision in the courts can induce in clients or groups of clients. The use of "strategic litigation" to obtain (or not obtain) decisions which may adversely impact on aspects of a client's business is well-known (see: *Swotbooks.Com Ltd v Royal Bank of Scotland* plc for an example of refusing to take a point in commercial litigation to avoid a potentially damaging judicial review of a standard contract term).[53]

Galanter classified those who use legal processes as either "one-shotters" or "repeat players" and he generated "ideal types" of his categories.[54] Thus, he sought to describe the typical repeat player and one-shotter, in order to highlight the systematic differences each type experience in encounters with legal process. The hypothesis is that these systematic differences are the causes of the observed behavioural differences across the two groups of users of legal process. Specifically, that the situation of each group explains why one group, the repeat players, is far more engaged in rule entrepreneurship than the other group.

For repeat players legal process is a normal work-place activity, they are familiar with the process and anticipate its demands, structuring transactions in litigation helpful ways, and generating records that will be available if litigation becomes necessary. Familiarity generates reputation and relationships with officials, as well as knowledge of the market for specialist legal and other professional assistance. The size and resources of the typical repeat player (typical examples would be insurance companies or Government agencies), and the routine nature of its use of legal process, mean that it can afford to treat individual litigation outcomes as business risks. This is because any one decision is unlikely to threaten the vital interests of a repeat player. Therefore, it can bargain from strength and risk the occasional loss through overplaying its hand.[55] In similar fashion, and for the same reasons, repeat players can "play for the rules" because the result of a single dispute is not vital, and the opportunity to influence future cases may be far more valuable:[56]

> "For the R[epeat] P[layer], on the other hand, anything that will favourably influence the outcomes of future cases is a worthwhile result. The larger the stake for any player and the lower the probability of repeat play, the less likely that he will be concerned with the rules which govern future cases of the same kind."

The situation of the one-shotter differs in all relevant respects. The one-shotter is involved in what is likely to be a once in a lifetime experience; she is unlikely to have kept records and almost certainly accepted as given the structure of the transaction as designed by the repeat player; she has no knowledge about the market for specialised professional services; and she has no established relationships or reputation to use or protect. For the one-shotter the outcome is felt to be vital, and the financial and psychological costs of losing in the legal process are likely to be seen as prohibitively high. The one-shotter does not plan to return to the arena again. Therefore, the one-shotter has no personal incentive to seek rule change, and the perceived risk of pursuing rule

53 [2011] EWHC 2025 (QB)

54 Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change* (1974) 9 Law and Society Review 95 at 98.

55 Ibid. pp. 98-103.

56 Ibid, at 100.

change is far higher than for the repeat player.[57]

Thus, systematic differences in aims and resources between the groups that use legal processes predispose one group, the repeat players, toward rule entrepreneurship and the other, the one-shotter group, toward a sole focus upon the dispute at hand. This explains the "paradoxical" (perhaps counter-intuitive would be more accurate) outcome Galanter described in the quotation above. "Paradoxical" because the powerful and regular users of legal process, whose interest are most likely to be reflected already in current law and practice, are also the most energetically engaged in rule entrepreneurship through litigation. This role of the lawyer is prominent in normal commercial practice.

To some degree some of these systematic differences between repeat player groups and one-shotter groups have been reduced by the growth of specialist groups of lawyers acting for many one-shotters. Members of such professional organisations may act as rule entrepreneurs through strategic litigation, in a similar fashion to the use of test cases by cause lawyers.[58] In the UK examples of such organisations include: the Immigration Lawyers' Practitioners Association;[59] the Housing Law Practitioners Association;[60] and the Association of Personal Injury Lawyers.[61] All these professional organisations expressly identify development of the law and legal process as an aspect of their work. Through their activities they also increase the collective benefits that can be derived from successful test cases by sharing information on cases going through the lower courts. Thus, the impact on future litigation and negotiation is increased through use of the network, and individual members of the network can gain professional reputational benefits by assuming a rule entrepreneurship role. However, professional loyalty to the client means the strategic aspect of litigation must be subservient to the interest of the individual client, unlike a repeat player who can sacrifice its own interests in a dispute for its own long term advantage. Individual firms select and promote test cases, usually cases that can be funded through legal aid, which may result in political change. A recent example of self-conscious use of litigation to pursue a social justice agenda was actions brought by Public Interest Lawyers for judicial review of the government's Community Action Programme and Work Academy Schemes.[62]

57 Ibid. pp. 98-103. Galanter makes the valid point that analytically repeat players and one–shotters are independent groups to the "haves" and implied "haves not" of his title; however, as he notes, there is obviously a strong overlap between the memberships of the repeat player and the haves groups, and the one-shotters and the have-nots groups. Ibid. pp. 103-104.

58 It is moot whether such organisations and their members should be thought of as cause lawyers or not. The tension between altruism and the need to make a living is always present, and it is in part a question of whether good intentions or effectiveness should be given most importance: see Austin Sarat and Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Authority: An Introduction* in *Cause Lawyering: Political Commitments and Professional Responsibilities* (1998) Oxford University Press: Oxford. Obviously our case study of Langrock, Sperry and Wool is an example of a profitable but socially engaged firm. A concern with nous would tend to emphasis effectiveness over good intentions.

59 http://www.ilpa.org.uk/pages/ilpas-influencing-work.html last accessed 30/05/2013.

60 http://www.hlpa.org.uk/cms/about-hlpa/ last accessed 30/05/2013.

61 http://www.apil.org.uk/campaigning last accessed 30/05/2013.

62 http://www.publicinterestlawyers.co.uk/news_details.php?id=263 last accessed 28/05/2013. See also: http://www.guardian.co.uk/society/2013/may/23/benefits-cap-catastrophic-effect-families?INTCMP=SRCH last accessed 28/05/2013.

B. Lobby activity

The rule entrepreneurship of repeat players is likely to extend to political action as well as strategic litigation:[63]

> "First, it pays an R[epeat] P[ayer] to expend resources in influencing the making of the relevant rules by such methods as lobbying"

Of course an organisation may not involve its lawyers in lobbying, and in this important respect for our purposes lobby activity differs from litigation. Litigation is universally recognised as mainstream legal service. However, involvement by law firms in lobbying activity on behalf of clients seems to be relatively common.

A very useful study by Matthew Darke was published in 1997 reviewed the activity of Australian national law firms as lobbyists in Canberra, the Federal capital.[64] All nine of the largest Australian law firms were active, and most of the activity was on behalf of business corporations or commercial associations.[65] Interestingly, the service was one the lawyers providing it characterised as going beyond mere representation, rather being informed by what we have termed here practical nous as the lawyers are involved in evaluating what it is sensible to attempt:[66]

> "The law firms interviewed for this thesis were of the view that their lobbyists act as mediators because they inform their clients if a particular goal is unachievable."

Indeed, the description by Darke of the services aspired to by law large law firms for their business clients approaches a description of nous informed support, proactive as much as reactive, and concerned with all practical factors that influence business success and failure:[67]

> "a comprehensive and proactive style of lawyering in which lawyers try to shape their clients' legal, economic and political environment".

Clearly, what is being described includes rule entrepreneurship as part of comprehensive legal service.

Rule entrepreneurship may not be in the service of individual clients, as seems to be the case with the work of the City of London Law Society.[68] One might describe the representation of

63 Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change* (1974) 9 Law and Society Review 95 at 100.

64 Matthew Darke, *Lobbying by Law Firms: a Study of Lobbying by National Law Firms* (1997) 56(4) Australian Journal of Public Administration 32-46.

65 Ibid. at p. 34.

66 Ibid. at p. 38.

67 Ibid. at p. 42.

68 http://www.citysolicitors.org.uk/Default.aspx?sID=754&lID=0 last accessed 02/07/2012

collective interest as a form of elite cause lawyering.[69] However, it is likely that the majority of rule entrepreneurship by commercial law firms is driven by client service. The House of Commons Political and Constitutional Reform Committee in March 2012 accepted an estimation that 20 law firms in the United Kingdom currently engage in direct legislative lobbying of Parliament on behalf of specific clients. [70] If the Australian experience that most law firm lobbying was to administrative bodies is representative, then this activity in the legislative field is probably a small part of the total activity at Westminster. Direct "client-based" lobbying by UK based law firms appears to be more prominent in engagement with European Union institutions. One firm in Brussels states on its website that:[71]

> "Our government affairs lawyers and advisers assist clients by monitoring, lobbying and intervening in EU legislative and policy developments, through contacts with EU decision-makers in the Commission, the European Parliament and the Council."

Less overtly, another indicates that:

> "Our multidisciplinary and multilingual lawyers enjoy strong professional and personal contacts with European regulatory and legislative bodies, offering clients up-to-the-minute knowledge of procedures and policy priorities at the European level."[72]

Rule entrepreneurship by UK law firms through lobbying is alive and well. It is not only on the commercial side that such activity is a part of legal services. An organisation that represents perhaps more one-shotter clients than any other is Citizens Advice whose mission includes: "improve the policies and practices that affect people's lives" together with the more familiar provision of: "the advice people need for the problems they face".[73] The Parliamentary activity of Citizens Advice is well-documented and a transparent example of lobbying practice in the public interest.

Public interest legal practice, or cause lawyering, tends to attract accusations of being "political" as opposed to "legal", in a way that echoes the asserted independence of expository (legal) and censorious (political) jurisprudence. In the light of this it is worth noting how much of the practice described by academics or practitioners as "cause" law is familiar from the "ordinary" practice we have already noticed above. Indeed, this has been reflected in the provisions of Ethical Canon 8.4 of the American Bar Association's Model Code of Professional Responsibility (1994) as cited

69 See: Ann Southworth, *Professional Identity and Political Commitment among Lawyers for Conservative Causes and Laura Hatcher, Economic Libertarians, Property, and Institutions: Linking Activism, Ideas, and Identities among Property Rights Advocates* both in Austin Sarat & Stuart A. Scheingold, *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice* (2005) Stanford University Press: Stanford, CA. See also: Keven R. den Dulk, *In Legal Culture but Not of It: The Role of Cause Lawyers in Evangelical Legal Mobilisation* in Austin Sarat & Stuart A. Scheingold, *Cause Lawyers and Social Movements* (2006) Stanford University Press: Stanford, CA. See finally: Keven R. den Dulk, *Purpose-Driven Lawyers: Evangelical Cause Lawyering and the Culture War* and Laura J. Hatcher, *Of Windmills and Wetlands: The Press and the Romance of Property Rights* both in Austin Sarat & Stuart Scheingold, *The Cultural Lives of Cause Lawyers* (2008) Cambridge University Press: Cambridge.

70 http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/153/15306.htm#a5 last accessed 28/05/2013. The table was derived from: HM Government, *Introducing a statutory register of lobbyists*, Impact Assessment, January 2012.

71 http://www.whitecase.com/brussels/ last accessed 02/07/2012.

72 http://www.hoganlovells.com/brussels-belgium/ last accessed 02/ 07/2012.

73 http://www.citizensadvice.org.uk/index/aboutus.htm last accessed 02 /07/ 2012.

by Galowitz:[74]

> "Whenever a lawyer seeks legislative or administrative changes, he should identify the capacity in which he appears, whether on behalf of himself, a client, or the public. A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest."

In similar vein it has been noted that sometimes the most effective and persistent "cause lawyers" turn out to be the jobbing professionals rather than the ideologically motivated practitioners.[75]

However, the context of cause lawyering for oppressed client groups or left wing or progressive causes has increased the attention given to the rule changing activities of lawyers. Indeed, the feeling that rule entrepreneurship is not part of lawyers' traditional role undoubtedly informed the express and severe restrictions imposed in the United States of America upon Federally funded lawyers' freedom to undertake such activities a process described by Galowitz.[76] This is one area where developments in the US and the UK are divergent, as can be seen from a consideration of the approved role of the Citizens Advice Bureaux (CABx), an organisation that provides an example of rule changing activity based upon the "representation" not of individual clients but of a social interest group in the UK. It is not usual to regard the CABx as a transgressive or radical organisation, and as we notice below law student placements at CABx are not uncommon, and serve as a real world example of the importance of rule entrepreneurship in contemporary legal education.

Clinical Legal Education and Practical Nous

Hopefully we have demonstrated above that doctrinal legal education is based upon a limited understanding of the nature of law and legal practice, and that this limited understanding has given rise to a limited perception, a limitation that has prevented important aspects of legal practice being perceived. One aspect of practice that has been obscured by this theoretical blindness is the rule entrepreneurship of legal actors, especially legal professionals. We have shown that there is plenty of rule entrepreneurship going on in legal practice, in mainstream private practice and in cause lawyering, which is located both within and outside the mainstream business of law. We have suggested a shift in theory will allow the subjunctive aspect of law to become visible, and the game like properties of law to come into focus. Finally, when this shift in awareness takes place we can realign the aspirational purposes of legal education to what we have called practical nous and illustrated by an example of legal practice in Vermont. So far we have not explored the links between clinical legal education, our conception of a subjunctive model of law and legal practice, and our concept of practical nous.

74 Paula Galowitz, *Restrictions on Lobbying by Legal Services Attorneys: Redefining Professional Norms and Obligations* (1994) 4 B.U. Public Interest Law Journal 39 at n. 151.

75 Our account of the Murray and Robinson has this feature, see also: Rohen Shamir and Sara Chinski, *Destruction of Houses and Construction of a Cause: Lawyers and Bedouins in the Israeli Courts, in Cause Lawyering: Political Commitments and Professional Responsibilities*, ed. Austin Sarat and Stuart Scheingold (1998) Oxford University Press, Oxford at 227-257; some tort and employment law practices allow the service of both clients and the public interest.

76 Paula Galowitz, *Restrictions on Lobbying by Legal Services Attorneys: Redefining Professional Norms and Obligations* (1994) 4 B.U. Public Interest Law Journal 39.

Practices

It would be possible to argue that client advice and the provision of legal services through negotiation or adversarial process is more naturally understood (and therefore should be taught) in terms of client aims, and wins or losses than doctrine, rights, remedies and process; in other words that clinical legal education naturally pulls legal education away from the inculcation of faculty in exposition and theoretical awareness as ends in themselves. However, it is in those areas where theory induced blindness is operative that the educational potential of clinical legal education is greatest, and where opportunities are perhaps not being taken because of the lack of an articulation of a vision of legal education informed by practical nous. Therefore we shall note examples of clinical legal education operating in the space between exposition and evaluation. Indeed, it was realisation that the student clinical experience was generating understanding that was not explicable or classifiable within a doctrinal legal frame that began the process that led to this article.

Our experience has been that student placements with the CABx regularly generate student awareness of problems with the existing substantive laws and procedural rules. Students realise that the role of the advisor can be reciprocal, the lawyer gives out advice but learns from the client what is happening in the world. The collection of information to inform the legal reform process is an explicit part of the advisor's role in CABx. As CABx advisors students are required to develop a sense of whether law is just in the sense of being fair and apt, and whether the law is administered justly or unjustly; this necessary sense of justice being additional to needing to know what the law is, and how to negotiate the legal or bureaucratic processes. This sensitivity to justice in practice is required to meet the objectives of the organisation that the students have volunteered to serve. Our third year undergraduate Clinical Legal Education module involves placement with organisations such as CABx. The engagement with the law reform aspect of the organisation's work often provides students with an excellent basis to satisfy learning outcomes which relate to critical evaluation of the fairness or otherwise of the law. We have captured this opportunity for developing theoretical awareness, but the challenge is to exploit it as a bridge to the development of nous. The practice presents the opportunity, but without an articulation of what we seek it is very difficult to generalise from the experience and take full educational advantage.

Another aspect of our practice that facilitates theoretical awareness, and could be used to foster nous, is participation by our students in work for the Innocence Project.[77] Our Innocence Project is also available to third year undergraduates on the Clinical Legal Education module. Though expressly not a campaigning organisation, the aim of the Innocence Network to which our project subscribes involves:

> "…improv[ing] the criminal justice system by overturning convictions… and effecting reforms of the criminal justice system to prevent such wrongful convictions from occurring in the future."

Inevitably, the work that students engage in often involves their realising systemic weaknesses exist within both the process of criminal investigation and trial process, weaknesses which can lead to miscarriages of justice. This in turn can lead to awareness of the need for reform of the relevant statute, or reform of the manner in which the Criminal Cases Review Commission in England

77 http://www.innocencenetwork.org.uk/about-us last accessed 30/05/2013.

and Wales interprets its statutory role, and thus develop an understanding of the role of rule entrepreneurship within legal practice.

A final and somewhat more unusual example from our own experience has been with students who are seeking to use experience working with an NGO in the Indian state of Kerala as part of this same module. Students working in Kerala have worked on projects which involved scrutinising proposed environmental legislation for the State legislature. Clearly these students had direct engagement with a rule changing process and gained insight into the processes that lead to legislative change. Cast in the role of legislator the problem of trying to anticipating how various interests could be affected by legal change becomes unavoidable.

Thus, awareness of the plasticity of policy aspects of the legal environment, awareness of the possibilities and limits upon rule entrepreneurship, are naturally embedded in Clinical Legal Education programmes already. It is from awareness of such factors as elements or aspects of legal practice that the development of practical nous can begin. Fransiscus Haupt's account of the University of Pretoria law clinic's activity shows how, after many years of development, a University law clinic can engage in rule entrepreneurship through direct lobbying:[78]

> "It [the clinic] is also increasingly involved in advocacy, lobbying, as well as engaged scholarship, and research that sometimes informs government policy:"

We are aware of other examples from the practice of colleagues and made public though Journal conferences. Richard Owen's paper at the IJCLE conference in 2010 outlined a module delivered at the University of Glamorgan which engaged students in lobbying the Welsh assembly to achieve policy and legislative change.[79] While the focus of the module was specifically on developing student engagement with public policy and political processes, the development of political understanding which this entails can feed directly into what we have termed practical nous, and provide an opportunity for the development of an understanding of rule entrepreneurship.

Finally, the Bill of Rights project created at Northumbria University engaged students on an extra-curricular basis in responding to a government consultation on proposals to replace the Human Rights Act 1998 with a British Bill of Rights.[80] The Bill of Rights project involved students participating in the processes associated with legal change, involving a potentially fundamental constitutional change. This particular project was not formally assessed. However, such activities could be incorporated into assessed modules. Whether assessed or not the project illustrates how, with a relatively small institutional investment of resources, students can be enabled to engage with the actual processes associated with legal change. Engagement with such political or quasi-political processes quickly bring awareness of limits to the possible, an awareness that can be used to assist in the development of nous. For UK clinicians the use of Law Commission consultations, as a basis for a clinical module or extra-curricular law school activity, represents a clear opportunity to engage students in the process of rule change, and possibly even rule entrepreneurship.

78 Franciscus Haupt, University of Pretoria, South Africa, *Towards "Clinic For All": The evolution of a South African University Law Clinic: from volunteerism to institutionalized community engagement*, IJCLE conference paper 2012.

79 Richard Owen, *Making a Difference: Using Clinical Legal Education for Policy Change* IJCLE conference paper 2010.

80 Richard Glancey, Ronagh Craddock, and Rachel Dunn *Northumbria Law School Students' Bill of Rights Project* IJCLE conference paper 2012.

Conclusion

Thus, it seems that although the Legislative Advocacy Clinic run by Professor Pottenger at Yale is unusual in its clear identification of policy work as legal education it is not alone in engaging upon such activity.[81] We hope that in this article we have managed to articulate some of the reasons why such policy orientated clinical legal education is in fact not merely appropriate but should be central to clinical legal education and legal education more generally.

Legal education is inescapably influenced by the theories that inform educators. Clinical legal education has tended to be viewed as a rather theoretically barren area of legal education: focused upon polishing skills such as English composition and the drafting of business documents, note taking and filing, communication skills involved in client interview and advice giving, and presentational skills such as posture, elocution and rhetorical structure of arguments. Clinicians have had to struggle for equality of respect and contractual conditions. Those involved in clinical legal education know how ill informed such views are, and that the educational benefits of clinical legal education transcend such trade school caricatures in many ways. However, in an academy dominated by the presupposition that legal education is about facility in exposition and theoretical awareness clinical legal education is under constant pressure to try and justify itself in such terms. We have argued that these aims are fundamentally inadequate as they distort the very nature of law as a discipline. Law is meaningful in a practical context and as part of a social process that is game like in nature.

It is clinical legal education that most naturally allows this aspect of law to become apparent, and the aims of legal education should not be limited to those associated with doctrinal law but should include the cultivation of practical nous. As we have noted, this does not mean that exposition, or theoretical awareness should be discarded, but that they should take their subordinated place, along with clinical programs, in the development of those skills (intellectual as well as practical), personality traits (such as ethical behavior), and knowledge and understanding (including thinking like a lawyer) that together can begin the process of developing practical nous. In this context we can perhaps realize the full import for legal education of the well known observation by Lewin that:[82] "There is nothing so practical as a good theory". As a good theory both arises from practice and has practical applicability, the theory we need is the theory that will enable us to fully articulate the nature of practical nous. The practical aspect of clinic should put it in the centre of good legal theory, and thus at the centre of academic legal thought. Difficulties in harvesting the full potential gains from clinical legal education are in part generated by a blindness generated by a partial theory of law and practice in the academy.

81 Professor Pottenger delivered *Tales from a Policy Clinic: Triumph, Tragedy & Tribulation – but no 'Trials'*, the opening key note presentation at the IJCLE Conference2012.

82 Kurt Lewin, *Problems of Research in Social Psychology, in Resolving Social Conflicts and Field Theory in Social Science* (1997) American Psychological Association, Electronic Edition, loc. 6858.

Establishing An International Human Rights Clinic in the New Zealand Context

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Introduction

Whilst clinical programmes are an established and core feature of legal education in the USA, and play a significant role in various other jurisdictions, they are essentially absent from New Zealand. The existence of a marked difference is itself a reason to investigate whether experiential learning should have a place in the curriculum of New Zealand's law schools. This is done by examining briefly the growth of clinical legal education in order to illuminate its purpose; and then considering whether structural differences mean that this does not resonate as much in New Zealand. It is suggested that there are indeed some reasons for caution, in particular that there is a concern around having a two-tier system of legal provision. But it is also suggested that an international human rights clinic could surmount these reasons for caution; and a prospective design for such a programme is developed and its ability to secure the needs of students and clients is assessed.

A. The Purposes and Extent of Clinical Legal Education

1. The Return of Clinical Legal Education in the USA

It is worth considering the renaissance of clinical legal education in order to understand its purpose. A brief review of legal education in the USA over the last 150 years[1] shows that it was originally entirely experiential through apprenticeship to a practitioner and then became a law school experience of reviewing appellate judgments through the Socratic method to discern legal

1 See the account by James Moliterno in *Legal Education, Experiential Education and Professional Responsibility*, (1996) 38 Wm and Mary Law Review 71.

principles.[2] This "library law" process of learning was gradually modified by the recognition of the importance of factors beyond legal principle in the practice of the law, and which might indeed be obscured by reading appellate judgments;[3] and of the need for law students to have some practical skills in negotiation, advocacy and legal writing to equip them for their roles.[4] It is the expansion of these practical skills courses, together with the building of an infrastructure to support and validate clinical legal education,[5] as part of what Moliterno has described as "a well-balanced preparation for entry into the legal profession",[6] that has been the feature of the last generation.

A second development is relevant, which is the growth of cause-based lawyering, namely by using the law to promote particular goals. At the outset, this was the somewhat amorphous idea of promoting access to counsel by those unable to pay. So, one of the benefits said to accrue from having students involved in more practical matters was that the process could secure access to legal advice for those who could not otherwise afford it (which would benefit students by allowing them to come into contact with the "human side of the administration of justice").[7] This sowed important seeds for what would happen in the 1960s, when philanthropic money began to "provide grants to law schools to establish legal clinics to serve the poor".[8] Hurwitz emphasises that acceptance of funding for this second iteration of the growth of practical education within the law school setting was linked to the social justice mission exemplified by the constitutional cases

2 This is the Langdellian method, so-called after the Harvard Law School professor, Christopher Langdell, associated with its development: ibid, 72; see also Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 Fordham L Rev 1929, (2002) Yale Faculty Scholarship Series. Paper 1843 (available at http://digitalcommons.law.yale.edu/fss_papers/1843, last accessed 22 May 2013), at 1930-1931.

3 See in particular the critique by Jerome Frank, starting in *Why Not a Clinical Lawyer-School?* 1933) 81 U. PA. L. Rev. 907, in which he called for practical learning of the art (rather than science) of the law, because many more factors than legal principle were relevant to what happened in practice.

4 Moliterno, 38 Wm and Mary Law Review 71 at page 75.

5 The infrastructure consists of organisations such as the Clinical Legal Education Association (CLEA) and peer-reviewed journals such as the Clinical Law Review; these are replicated transnationally by journals such as this one.

6 Moliterno, 38 Wm and Mary Law Review 71 at pages 76-77. The need to ensure that American law schools prepare people to enter the legal profession has been a recurrent theme of recent decades: see the MacCrate Report of 1992 *(Legal Education and Professional Development: An Educational Continuum*, the Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, chaired by Robert MacCrate) and the Carnegie Foundation Report of 2007 *(Educating Lawyers: Preparation for the Profession of Law*. William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman. San Francisco: Jossey-Bass, 2007, being the report prepared for the Carnegie Foundation for the Advancement of Teaching).

7 Frank, (1933) 81 U. PA. L. Rev. 907 at 917-920. He noted that whilst medical schools relied to a large extent on free clinics at which eminent physicians gave of their time, the legal aid societies were staffed by poor quality lawyers and able practitioners did not assist: law school-based clinics could remedy this. See also Giddings et al, *The First Wave of Modern Clinical Legal Education in The Global Clinical Movement, Educating Lawyers for Social Justice*, Frank S Bloch (Ed), OUP, New York 2011, pp4-5, where the authors credit legal aid clinics within university law schools, starting in 1893 at the University of Pennsylvania, as providing a model for further such clinics that developed in the late 1920s.

8 Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 Fordham L Rev 1929, 1933, noting the activities of the Ford Foundation-funded Council on Legal Education for Professional Responsibility.

being taken at that time.[9]

So, three motivations seem apparent in the support for an experiential component to the law school education. One is ensuring that students learn the skills they will need in their professional careers, which will involve inter-acting with clients and recognising that many things beyond knowing legal principle are required for success in legal practice. A second is assisting in the provision of legal services for indigent people, thereby promoting access to justice, which seems a self-evident good. And a third is cause-based advocacy, reflecting an idealised obligation of lawyers to assist society; this could also benefit law schools by ensuring that they are exciting places to study.

These different motivations can be seen in the wide range of legal clinics that now exist in US law schools.[10] In the Handbook for New Clinical Teachers (5th ed)[11] a taxonomy of clinics by lawyering activity notes that they may involve:

(i) Litigation: ie formal advocacy, whether before a court (either at trial level or appellate level) of before administrative agencies;[12]

> (ii) Dispute resolution: ie negotiation, mediation or arbitration, with the student acting in the role as mediator etc;
>
> (iii) Judicial: ie acting as a judicial clerk;
>
> (iv) Advocacy of various other forms – (a) community organising: advocating for community groups; (b) legislative advocacy: ie calls for legislation to be developed; (c) ombudsman or other informal advocacy;
>
> (v) Transactional: this can have many different forms, depending on the nature of the transaction, which can include regulatory or legislative rule-making as well as individual transactions.
>
> (vi) Other sorts of work, such as counselling, offering assistance to clients who represent themselves.

In terms of the purposes of clinical education, students can learn real-life skills in all these areas, clients without resources can be assisted in most of them, and cause-based legal work can be carried out in particular under categories (i) and (iv), though it could also be that campaigning organisations are the beneficiaries of legal services in the other areas.

It is also possible to make a rough estimate of the relative importance of the three purposes

9 Deena Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, (2003) 28 Yale J Intl Law 505 at 523. The central figure was Arthur Kinnoy, whose article *The Present Crisis in American Legal Education* (1969-1970) 24 Rutgers L Rev 1 included the call that law schools "reflect the reality of these exciting "new frontiers" of the legal profession", rather than simply training technicians for corporate and government operations (ibid at page 5).

10 A 2010-2011 survey by the Center for the Study of Applied Legal Education, to which 163 of the 194 accredited law schools replied, revealed 1036 clinics that had clients and 1393 "field placement programs"; this grew from the 2007-2008 survey, which had 145 replies from 188 law schools, and identified 809 clinics based in the school and involving direct access to clients and 895 external clinics. See http://www.csale.org/ (last accessed 22 May 2013).

11 Available at http://www.cleaweb.org/new-clinicians (last accessed 22 May 2013).

12 Note that students may in some states be apprentice members of the bar with rights of audience: for example, Guideline 15 of the Professional Guidelines of the Virginia State Bar (available at http://www.vsb.org/pro-guidelines/index.php/bar-govt/third-year-student-practice-rule/, last accessed 22 May 2013).

behind clinics. A recent survey of clinics[13] notes that the most common forms of clinic – whether in-house or involving external placements – deal with typical lawyering skills (litigation and typical commercial practice areas such as wills and trusts and intellectual property). Cause-based clinics are present, though in smaller numbers. As for the more general cause of access to justice, the suggestion made from this recent survey is that law students are giving some 1,800,000 hours of free legal advice per annum:[14] not all of this will involve indigent clients, but much of it may well secure services that would otherwise be beyond the means of clients.

2. Clinical Legal Education in Other Jurisdictions

The US experience is not matched elsewhere in terms of extent, but clinical programmes do exist in other jurisdictions`. In the United Kingdom, clinics have been established since the 1970s at Kent University, and there are now several programmes after an expansion in interest around the turn of the century.[15] These have similar objectives to those in the US, namely the development of skills that would be of benefit in practice but also public service motives (albeit that the "cause-based" lawyering does not seem to be an overt feature beyond securing access to justice).[16]

Similarly, in Australia, clinics have been operating since the 1970s, and expanded in the 1990s as several new law schools opened.[17] There are now legal clinics at many law schools.[18] They tend to be general in nature, though, as Campbell and Ray describe in *Specialist Clinical Education: An Australian Model*,[19] some attempt to concentrate on a particular area, noticeably family law. Again, the rationale seems to be a mixture of the development of useful skills for students and the need to secure access to legal assistance for those who could not afford to pay privately.[20]

Clinics also exist in many jurisdictions, both of the common law and civil law tradition, in the Americas, Asia, Africa, Europe, with similar motivations.[21] So the worldwide network, the Global Alliance for Justice Education, emphasises the value of clinical education of law students as a way of ensuring that those who chose to enter a legal career are aware of the potential for lawyers to promote access to justice.[22]

13 The CSALE survey of 2010-2011, in fn 10 above.

14 CSALE survey of 2010-2011, fn 10 above, page 20.

15 See Richard Grimes and Hugh Brayne, *Mapping Best Practice in Clinical Legal Education*, UK Centre for Legal Education, October 2004, available at http://www.ukcle.ac.uk/projects/past-projects/clinic/ (last accessed 22 May 2013); and Marson et al, *The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective*, (2005) 7 Int'l J Clinical Legal Educ 29.

16 Grimes and Brayne, *Mapping Best Practice*, pp14-15.

17 Jeff Giddings, *Clinical Legal Education in Australia: A Historical Perspective*, (2003) 3 Intl J Clinical Legal Educ 7.

18 See the Clinical Legal Education Guide (9th ed, for 2009-2010), Kingsford Legal Centre at the University of New South Wales, http://www.law.unsw.edu.au/centres/faculty-centres/kingsford-legal-centre/students (last accessed 22 May 2013).

19 (2003) 3 Intl J Clinical Legal Educ 67.

20 So Campbell and Ray, op cit, note that more specialist clinics were developed at Monash University to allow students "to develop ... skills ... to a more sophisticated level" and that the some clinics developed in particular response to the reduction in legal aid as part of government policy: (2003) 3 Intl J Clinical Legal Educ 67 at 67-68.

21 *The Global Clinical Movement, Educating Lawyers for Social Justice*, Frank S Bloch (Ed), OUP, New York 2011, Part I.

22 See its mission statement: http://www.gaje.org/about-gaje/mission-statement/ (last accessed 25 May 2013).

3. Clinical Legal Education in New Zealand

New Zealand, however, has not followed its neighbour across the Tasman.[23] For example, and accepting that the implication from this must be a matter of caution, the Membership Directory of the Australasian Law Teachers' Association reveals only a handful of New Zealand-based members of the Clinical Legal Education group.[24] A manual review of law school prospectuses or online lists of course offerings indicates no clinical legal course, save that the University of Auckland Faculty of Law allows students to earn credit from a 75-hour community placement accompanied by a reflective essay[25] and to obtain credit towards the compulsory legal research course from a 40-hour community placement.[26] In the past, the Law School at the Victoria University of Wellington had offered an internship opportunity for Honours and LLM students, but this was not available in 2013;[27] and similarly the University of Canterbury Law School has in the past offered a legal internship, but not in 2013.[28] On anecdotal evidence, however, it is possible that some work that is clinical in nature is achieved under the guise of individual supervised research projects. Moreover, it is also understood that interest about developing a clinical experience, which may lead to programmes being announced imminently.

The lack of formal clinical courses thus far does not mean that students do not engage in practical work during their degrees (excluding from this the mooting and similar competitions that do not involve real problems): rather that there is limited such work done for credit. Opportunities are provided for students to be involved in legal centres and other community work. For example, the University of Otago is involved in the Dunedin Community Law Centre (established by students in 1980 and currently having four solicitors and other full time staff supplemented by 120 students and 80 other lawyers).[29] Similarly, law students at the University of Canterbury may volunteer for the Community Law Canterbury law centre[30] and those at the University of Waikato may volunteer for the Hamilton Law Centre.[31]

Equally importantly, students have formed their own social justice organisations. Students at the University of Auckland formed the Equal Justice Project, which is involved in various pro

23 It is not the only jurisdiction to be conservative in the take-up of the model: see Lawrence Donnelly, *Irish Clinical Legal Education Ab Initio: Challenges and Opportunities*, (2008) 13 Intl J Clinical Legal Educ 56, describing the nascent programme at the National University of Ireland, Galway.

24 See http://alta.edu.au/membership-directory.aspx (last accessed 25 May 2013): 5 of 131 members.

25 University of Auckland Faculty of Law Undergraduate Handbook 2013, pages 57 and 94 (course LawGenrl 447 – Community Law Project).

26 Handbook, pages 76 and 94.

27 See http://www.victoria.ac.nz/law/study/courses/laws-459 (last accessed 25 May 2013).

28 See http://www.canterbury.ac.nz/courseinfo/GetCourseDetails.aspx?course=LAWS382&year=2013 (last accessed 25 May 2013). Note also that the University of Canterbury developed a community engagement course for undergraduate students as part of the response to recent earthquakes: http://www.canterbury.ac.nz/courseinfo/GetCourseDetails.aspx?course=CHCH101 (last accessed 25 May 2013).

29 See http://www.dclc.org.nz/modules/content/index.php?id=21 (last accessed 25 May 2013) and the University of Otago Faculty of Law Handbook 2013, page 83.

30 University of Canterbury School of Law Undergraduate Handbook 2013, page 24; there is also a useful guide for courses students might want to take if they wish to have a career in community law (page 6 of the Handbook).

31 University of Waikato Te Piringa Faculty of Law Undergraduate Handbook 2013, page 67; there is a member of staff designated as Director of Clinical Legal Education and Competitions.

bono projects, including working at community law centres.[32] A similar body, the Wellington Community Justice Project has been established recently by students from Victoria University of Wellington.[33] No doubt these reflect similar motivations of securing wider access to justice whilst learning useful skills.

B. Concerns as to the Extension of Clinical Legal Education in New Zealand

The mere fact that there has been a growth of experiential learning in other jurisdictions does not mean that it is a good idea for New Zealand law schools, even presumptively so. However, it does suggest that there is good reason to investigate and assess the value of adopting experience from overseas to New Zealand. The following major questions arise, which may impact on whether a clinical programme should be developed and, if so, the form it should adopt:

(i) Is the structure of legal education different, such that there is less call for university law schools to be involved in experiential learning?

(ii) Are there legal or ethical reasons (relating both the interests of students and of clients) why university law schools and their students should not be concerned with the provision of legal advice and services?

1. Structure of Legal Education

Part of the rationale for clinical legal education, noted above, is the value of experiential learning as part of the move from being a student to being a practitioner. However, that does not mean that a university law school should use clinical courses, because there is a distinct question of where practical skills should be learned. In other words, is it primarily the job of the legal academy or of the profession (including the bar examiners) to ensure that students turn into good practitioners?

A number of factors may be relevant to answering the question of the extent to which degree-conferring law schools should be a place for learning practical skills. For example, if a significant number of students undertake a law degree because it gives them an understanding of legal structures so that they are equipped to work in policy-related areas – the concept of a law degree as a good general degree – the introduction of practical skills may be of limited value to that proportion of students. Similarly, if the arrangements for admission to the legal profession include a significant period of training before a graduate is admitted to practice before the courts, the legal academy may suggest that its role is to concentrate on teaching doctrine, with more practical skills left to post-degree processes.

In this context, it is worth noting that in New Zealand law is an undergraduate degree, with those who want to enter practice taking a further professional qualification.[34] However, this does not rule out experiential programmes. At most, it means that the construction of the law degree can proceed in the knowledge that there are other places in which a law student could be required to demonstrate practical skills essential for practice. Clinical learning would only be excluded from

32 University of Auckland Faculty of Law Undergraduate Handbook 2013, page 95.

33 http://wellingtoncjp.org/ (last accessed 25 May 2013).

34 See http://www.nzcle.org.nz/about_us.html (last accessed 25 May 2013) and the various regulations referred to there: there is a requirement for graduates to undertake a Professional Legal Studies course.

the law degree if it was shown that it is not possible to teach doctrine other than through typical university-style lectures and seminars. It is worth noting that the different jurisdictions in the UK have undergraduate law degrees, followed by a professional training course; this has also been the case in Australia (though some law schools now offer post-graduate law degrees). This has not prevented clinical legal education developing.

Of course, it can also be said that the possibility of entry to the profession shortly after obtaining a law degree does not justify giving a priority to practical lawyering skills at the degree stage. After all, those who control admission to the bar can always insist on a wider course of training before admission or take such steps as requiring an apprenticeship period or supervised practice before direct responsibility for client work or solo practice is permitted, thereby ensuring supervised learning of practical skills.[35]

Accordingly, the structure of legal education at both degree and bar examination level is a largely neutral feature in determining the advisability or otherwise of including a clinical programme: the only proviso to this is whether a clinical course can be used to teach students properly, which introduces the ethical component of the question.

2. Legal and Ethical Concerns

The propriety of clinical legal education involves the need for pedagogical soundness to satisfy the needs of students. As clients are involved, there must be suitable safeguards to secure professionalism and competence. Furthermore, it may also be relevant to examine more systemic matters such as the level of access to justice, which can cover both the needs of those without funds who need fairly typical legal services and also the needs of those who want to use the law to promote a perspective. In short, the legal and ethical concerns reflect the purposes that have been put forward for experiential programmes.

(a) The Student Perspective

There are many ways in which tuition can be offered to a student: what works best may depend on the learning style of the particular student and the teaching abilities of the particular academic. As Stuckey notes, the experiential approach is one that "integrates theory and practice by combining academic inquiry with actual experience".[36] The essential idea – interactions between students and "real" clients, moderated by the academic – can clearly involve genuine inquiry that furthers the purpose of education and academic study. It happens to do so in the context of a real situation that is developing rather than a past situation that is being described in a case report or text. There is no reason to suggest that this cannot be done in a pedagogically valid manner. There may be practical points, such as whether it is more difficult to organise or requires additional resources: but if those points can be resolved, it becomes a matter for the faculty to ensure academic validity. Accordingly, a student's needs can be satisfied.

35 For example, the English Bar's Code of Conduct provides in Rule 203 that a barrister cannot exercise rights of audience unless he or she has been in practice for three years other than as a sole practitioner (available at http://www.barstandardsboard.org.uk/regulatory-requirements/the-code-of-conduct/the-code-of-conduct/part-ii-practising-requirements/ (last accessed 25 May 2013). And in New Zealand statutory regulation requires that someone has 3 years' legal experience in New Zealand in the previous 5 years: regulation 12 of the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008, SR 2008/188, as amended.

36 Roy Stuckey, *Best Practices for Legal Education*, CLEA, Columbia, 2007, p121.

(b) The Client Perspective – Fair Trial and Equality Rights

It goes without saying that an appropriate level of service provision that meets standards of professionalism is necessary. There is, however, a wider perspective to consider, namely the adequacy of access to justice for clients as a group. Clinical legal education is linked with a premise that a level of unmet need requires philanthropy through law schools. So, for example, Harvard Law School's Legal Services Center describes itself[37] as having been established in 1979 "with a commitment to combine education and service in the study of law". Its purposes are set as:

> "to educate law students for practice and professional service in a fully functioning law office; to harness the energies and efforts of those law students to meet the legal needs of a *diverse, urban clientele*; to *experiment* with approaches to increase access to legal services; and to study and understand the public policies and institutions that most directly affect *lower income individuals and families*."

Different readers may find different implications from the emphasised words. A positive reading is that the aim is to allow students to become aware that there are laws which particularly affect these sections of society (housing law, welfare rights etc) and so students should be aware that law is not just a tool used by business (that being the main job market for students from the top law schools). A less positive reading is that students will benefit from seeing how a law office works and might as do so not at the expense of corporate clients and the law firms they employ but by practicing on "diverse, urban" and poor clients; since such clients do not have corporate law problems, the students will have to learn practical skills in the context of the areas of law relevant to the clients.

These implications are on a spectrum involving the interests of the student rather than the client. If the focus is on the interests of the client, it becomes a matter of benefitting from the 'noblesse oblige' concept that those who have the good fortune to be entering a lucrative career should donate some of their time and ability to those less fortunate in society.[38] But there may be a tension here with the human rights standards for access to justice. In short, a right to a fair trial can be found in international human rights law,[39] which may require legal aid for those who cannot afford the costs of a lawyer.[40] However, what is essential is that there is adequate provision *in* a state, not whether there is adequate provision *by* a state: the obligation of the latter is to intervene when there is a gap in provision. The Australian experience is worth reiterating here: part of the growth of clinical legal programmes in the 1990s was that government funding was provided as an

37 See www.law.harvard.edu/academics/clinical/lsc/ (last accessed 25 May 2013).

38 See the discussion of the benefits of pro bono work by Michael Kirby, a former Justice of the High Court of Australia, in his forward to Keyzer et al (ed), *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service-Learning*, Halstead Press, Canberra 2009.

39 For example, Article 14 of the International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, entered into force 23 March 1976.

40 The express guarantee of legal aid in relation to criminal matters (see Article 14(3) ICCPR) does not exclude it in civil matters if it is necessary to secure fairness: see, for example, *Airey v Ireland* 2 EHRR 305, which decided that Article 6 of the European Convention on Human Rights (4 November 1950, 213 UNTS 222 (or CETS No 5), entered into force 3 September 1953), which is similar to Article 14 of the ICCPR, required legal aid for judicial separation proceedings in light of their complexity.

alternative to legal aid in family law cases.[41] Of course, this may give rise to a significant tension between the Law School and the local profession.[42] Nevertheless, securing adequate provision via legal clinics is both better than having no legal assistance and may be adequate to ensure that trials are fair.

Fair trial rights, however, are only one part of the rights-based framework. The systematic provision of legal aid in the Legal Aid and Advice Act 1949 (UK) followed the Report of the Committee on Legal Aid and Legal Advice (the Rushcliffe Committee) of 1945.[43] Its starting point was that "Legal aid is not a charity stemming out of private philanthropy but is a right which the state has a duty to foster and protect".[44] So legal aid in the form of paying private lawyers' fees was part of the series of reforms, including the creation of the National Health Service, that were designed to be pillars of the more egalitarian society that was to be created out of the destruction of the first part of the Twentieth Century. In short, socio-economic status would not condition access to necessary professional services, whether from doctors or lawyers.

This introduces a new motif: it is not the obligation to ensure a fair trial (which might well be secured through philanthropy, including pro bono service provision by lawyers or law students), but the right to be treated equally. This right is central to the ICCPR: Article 2 prevents discrimination in relation to other fundamental rights (including that to a fair trial, a part of which is access to legal advice)[45] and Article 26 goes further and provides a free-standing right to the equal protection of the law, and so not to be discriminated against in relation to any legal right, whether fundamental or otherwise. It is not necessary to reach a final conclusion as to how far this obligation goes: for present purposes, it is sufficient to say that it provides a solid reason for caution about two-tier systems of legal provision. Given the state's obligation to ensure access to legal services irrespective of socio-economic status, this should mean advice from a practicing lawyer, since that it what is enjoyed by those who have the wherewithal to fund such access.

(c) The Regulation of Legal Advice

There is also a specific issue, at least in the New Zealand context, of the lawfulness of students seeing clients; clearly, a university-based clinic would not wish to breach any legal regulations. The Lawyers and Conveyancers Act 2006 (NZ) makes it a criminal offence to provide legal services or describe oneself in a manner that suggests one is providing legal services unless one is qualified as

41 Campbell and Ray, *Specialist Clinical Education: An Australian Model* (2003) 3 Intl J Clinical Legal Educ 67 at 68: instead of responding to arguments that legal aid be restored from where it had been cut in 1996, the government turned to other options. "One such measure was the discovery by the government of clinical legal education, with its use of students as "free labour" and its connection with Universities, which might be expected to contribute to the costs of programs. In its 1998 budget the government allocated funding for new clinical legal education projects "to maximise service delivery to disadvantaged clients and co-operation with universities"."

42 See Giddings et al, *The First Wave of Modern Clinical Legal Education in The Global Clinical Movement, Educating Lawyers for Social Justice*, Frank S Bloch (Ed), OUP, New York 2011, pp10-11. This may be a major concern, given the imperative of finding jobs for graduates and raising funds for the academic mission.

43 Cmd 6641.

44 See Alex Elson, *The Rushcliffe Report*, (1946) 13 U Chicago L Rev 131 at 134: Elson called for the Supreme Court or the Attorney-General of the United States to establish a committee to consider the shape of similar proposals in the USA. He noted that if nothing was done and the legal profession remained indifferent, the consequence would be that "Injustice and deprivation will be the toll, and our practices will continue to fall far short of our preachments". (Ibid, p144)

45 This is also secured by Article 14 of the ECHR for Council of Europe members.

a lawyer and holds a current practising certificate.[46] A somewhat convoluted journey through the definitions in section 6 of the Act is necessary to understand what is actually proscribed. First, legal services are "carrying out legal work for any other person". Secondly, there is a definition of legal work: it includes "(a) the reserved areas of work: (b) advice in relation to any legal or equitable rights or obligations: (c) the preparation or review of any document that— (i) creates, or provides evidence of, legal or equitable rights or obligations; …". Thirdly, there is the following definition of the "reserved areas of work" as:

> "work … (a) in giving legal advice to any other person in relation to the direction or management of— (i) any proceedings that the other person is considering bringing, or has decided to bring, before any New Zealand court or New Zealand tribunal; or (ii) any proceedings before any New Zealand court or New Zealand tribunal to which the other person is a party or is likely to become a party; or (b) in appearing as an advocate for any other person before any New Zealand court or New Zealand tribunal; or (c) in representing any other person involved in any proceedings before any New Zealand court or New Zealand tribunal; …"

Accordingly, the "reserved areas" are limited to work in front of New Zealand courts and tribunals. As such, any experiential work relating to domestic law has to be done under the supervision of someone with a practicing certificate. However, it is worth noting, as a precursor to the next section, that a clinic operating in international human rights law does not present such practical issues: that is not a reserved area and the other component of what is defined as legal work – referring as it does to "legal or equitable rights or obligations" – does not seem apt to cover rights arising under international legal treaties that are not directly enforceable in the New Zealand's dualist legal system.[47]

C. The Value of an International Human Rights Clinic

1. Introduction

Thus far we have a number of propositions. First, clinical legal education supports various purposes, including worthwhile training for future practitioners and social justice purposes, including extending access to justice and introducing lawyering for causes. As to its application to New Zealand, the imperative that clinical education complies with domestic legal and ethical requirements as to the provision of legal services requires supervision by someone with a practicing certificate except in relation to international human rights work. Moreover, even if law schools are able to secure this, there remains the concern about whether the existence of clinical education amounts to or supports a two-tier service provision that is problematic from an equal access to justice perspective.

46 Lawyers and Conveyancers Act 2006 (NZ), s21; there are exceptions in relation to overseas lawyers who hold themselves out only as able to practice in relation to the overseas jurisdictions (s25) and various situations such as working for a community law centre (which offer various services under contract to the Ministry of Justice, which can include advocacy, regulated by the Legal Services Act 2011) or appearing when a court permits it (s27). The practising certificate is issued by the New Zealand Law Society on it being satisfied that fees are up to date and the person remains a "fit and proper person" to be a lawyer: ss39-42.

47 A caveat is that "legal work" is said to "include" the various elements set out and so it might be argued that other areas could be covered, including advice and action in the international legal sphere.

This section outlines why an international human rights clinic presents fewer concerns from the unequal access to justice perspective and provides significant opportunities for both student-learning and meeting unmet needs.

2. The Purposes and Practices of Human Rights Clinics

A recent survey of clinics in the USA[48] indicates that there are 30 in-house human rights clinics in USA law schools and 20 that involve field placements. For example, the University of Virginia Law School clinic[49] involves placing students to work on projects with NGOs in the USA and abroad, though not undertaking direct work for lay clients. Hurwitz, who directs the Virginia clinic, has noted of human rights clinics that "Students learn many of the same skills in a human rights clinic as they would in traditional clinics – with the added dimension of transnationalism".[50] She provides a useful list of skills that should be acquired in all clinics, including a human rights clinic: research (in domestic and international law), writing skills (legal, factual and advocacy), oral communication, critical thinking, problem solving, integrating theory and practice, professionalism, competence, collaborative working and working effectively under pressure.

Indeed, Hurwitz points out that there may be an additional dimension, because of differences in terms of "the client, the lawyering process and the fora".[51] As such, there may be additional experiences that can be secured from a human rights clinic. It is worth considering these further.

(a) The Client

The client may often be not an individual or typical corporate client but an organisation in civil society:[52] indeed, the relevant human rights standard might be viewed as the client in the sense that there is work that might involve seeking to promote access to justice or to give practical effect to equality standards.[53] In this way, a human rights clinic is one that can illustrate to law students that there are career opportunities in cause-based lawyering and in functions such as building capacity within a society to operate in a rights-compliant fashion, where legal skills may be particularly useful. If one criticism of a typical law school curriculum is that it might create too narrow impression that the practice of law is all about resolving disputes between two parties, which is the paradigm suggested by an emphasis on reviewing decided cases, then a clinic that focuses on human rights work may be particularly valuable in expanding the horizon.

(b) The Lawyering Process

48 The CSALE survey for 2010-11: fn 10 supra.

49 http://www.law.virginia.edu/html/academics/practical/ihrclinic.htm (last accessed 25 May 2013).

50 (2003) 28 Yale J Intl Law 505 at 532.

51 (2003) 28 Yale J Intl Law 505 at 533.

52 Hurwitz notes an exception to this in that a clinic with a focus on refugee work will often have real clients: (2003) 28 Yale J Intl Law 505 at 534-6. The CSALE survey for 2010-11 lists asylum as a separate area, having 22 in-house clinics and 11 field placement clinics. The concern expressed in this article about not allowing clinics to undermine situations when there ought to be proper funding to secure access to a practitioner is one that applies to refugee work, which may involve clients with real vulnerabilities and issues that require experienced advocacy.

53 For example, the relevant clinic at Harvard Law School involves both work in Cambridge and travelling with supervisors "to promote respect for the rule of law" as well as documenting human rights abuses: http://www.law.harvard.edu/programs/hrp/ihrc.html (last accessed 25 May 2013).

Hurwitz comments that the lawyering process is different because the subject-matter may be in a state of flux (which often means that work may be on the cutting edge), and it rarely involves the standard legal process of obtaining a judgment and then enforcing it.[54] So there are contrasting positives (of securing progress) and negatives (the obstacles to enforcement), which students benefit from understanding by experience.

The examples given by Hurwitz involve collecting evidence through field-work. Other features contribute to this state of flux: in the first place, international human rights standards, arising from treaties, other international standards and jurisprudence, is relatively novel and so is developing as new issues arise for consideration. In addition, new mechanisms are being added: for example, the African Court of Human Rights started its operation in November 2006.[55] Moreover, more established bodies, such as the European Court of Human Rights and the Human Rights Committee of the United Nations, have accepted that human rights treaties are to be interpreted as living instruments, such that there is no strict concept of precedent: there are countless examples of these bodies departing from previous rulings in light of their view that it is time to move the standard forward.

(c) The Fora

As to the fora being different, this is a reference to the mechanisms available within the international human rights framework. Using the United Nations as an example, its obligation to "achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"[56] has led to the development of mechanisms through its Human Rights Council,[57] and through the bodies established pursuant to each of the nine main human rights treaties to monitor the implementation of each treaty.[58] For example, the International Covenant on Civil and Political Rights 1966[59] provides in Articles 28 and following for the creation of the Human Rights Committee.[60]

These bodies do three types of work. They all monitor progress in the basic obligation to secure compliance with human rights standards by calling on governments to report on the situation in their country. This is reviewed, the process including the questioning of government officials, and comments and recommendations are made. But it is important to note that the process of review involves input by civil society. So, using the example of the Human Rights Committee, it

54 (2003) 28 Yale J Intl Law 505 at 536-538.

55 See http://www.african-court.org/en/index.php/about-the-court/brief-history (last accessed 25 May 2013).

56 Charter of the United Nations, 26 June 1945 (available at http://www.un.org/en/documents/charter/, last accessed 25 May 2013).

57 Established in 2006 as a subsidiary organ of the General Assembly to replace the Commission on Human Rights: General Assembly Resolution 60/251. See http://www2.ohchr.org/english/bodies/hrcouncil (last accessed 25 May 2013).

58 A summary of the treaties, their monitoring bodies, and lists of the additional treaties and standards, is compiled by the Office of the High Commissioner for Human Rights at http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx (last accessed 25 May 2013). For a list of the main human rights standards, see http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx (last accessed 25 May 2013); see also http://www.ohchr.org/EN/Issues/Pages/ListofIssues.aspx (last accessed 25 May 2013).

59 16 December 1966, 999 UNTS 171, entered into force 23 March 1976.

60 A Committee of 18 individuals of "recognised competence in the field of human rights".

encourages states to involve members of civil society in the compilation of their reports, and also allows separate "shadow" reports which comment on the government report.[61] In addition, the Human Rights Council has a reporting mechanism, the Universal Periodic Review, which judges states against all human rights standards; it also calls for involvement by civil society.[62] Naturally, successful participation in a shadow-reporting process calls for research-based advocacy, a core legal skill.

In addition, UN bodies may be able to initiate inquiries, typically into allegations of serious or systemic abuses of human rights. For example, the Committee Against Torture and the Committee on the Elimination of Discrimination Against Women may carry out such investigations in states that have accepted their jurisdiction to do so; the trigger is the receipt of reliable information.[63] Similarly, the Human Rights Council has a "Special Procedures" process, [64] pursuant to which investigations may be carried out into the human rights situation in a particular country or into a theme. Naturally, civil society groups can play a role in invoking these processes, which again will benefit from research-based and well-drafted calls for investigation.

The Special Procedures processes may also lend themselves to raising situations affecting individuals, which is akin to the more typical situation of representing a client seeking a solution to a specific problem. Similarly, various of the treaty monitoring bodies may consider individual complaints alleging a breach of a particular right. For example, complaints to the Human Rights Committee by individual victims are permitted if the state has adopted the First Optional Protocol to the ICCPR.[65] Although the procedural rules are relatively relaxed when compared to a typical instance of civil litigation, there are some rules (such as the need to exhaust domestic remedies if they are available and not unreasonably delayed) and persuasive pleading of a case is likely to secure benefits for a client: so, again, core legal skills come into play.

It is also worth noting that there might be instances in which third parties can intervene in cases before international tribunals. For example, the European Court of Human Rights allows interventions by third parties, pursuant to Article 36 of the European Convention on Human Rights.[66] For example, in Kiss v Hungary,[67] which involved a successful challenge to the disenfranchisement of those placed under guardianship. The applicant was represented by a legal officer of the Mental Disability Advocacy Center, a transnational NGO that works in particular in various parts of Eastern Europe.[68] In addition, the President of the Court allowed a written intervention by the Harvard Law School Project on Disability.[69]

61 See Office of the High Commissioner for Human Rights, Fact Sheet No 15 (Rev 1), *Civil and Political Rights: The Human Rights Committee*, available at http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf (last accessed 25 May 2013).

62 See http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx (last accessed 25 May 2013).

63 Article 8 of the Optional Protocol to the Convention on the Elimination of Discrimination Against Women 1979, 1249 UNTS 13, and Article 20 of the Convention Against Torture 1984, 1465 UNTS 85.

64 See details at http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx (last accessed 25 May 2013)

65 16 December 1966, 999 UNTS 171, entered into force 23 March 1976

66 CETS No 005; available at http://conventions.coe.int/ (last accessed 25 May 2013).

67 appn 38832/06, 20 May 2010.

68 See http://www.mdac.info/ (last accessed 25 May 2013).

69 http://www.hpod.org/ (last accessed 25 May 2013).

3. New Zealand's Engagement with the International Human Rights Regime

New Zealand is a signatory to most of the core UN human rights treaties; as such, it participates in the reporting processes of the various monitoring bodies outlined above (and hence there are opportunities for civil society to engage by providing shadow reports). In addition, individual complaints are permissible under the ICCPR, CEDAW and CAT. The mechanisms available by virtue of membership of the UN, namely those that have their basis in the UN Charter, are applicable to New Zealand: these are the Universal Period Review process of the Human Rights Council and its Special Procedures.

However, it is apparent that there is relatively limited engagement with these mechanisms. So, no individual complaints have been taken under CEDAW or CAT. There have been individual complaints taken to the Human Rights Committee under the Optional Protocol to the ICCPR, but only 23 decisions have been made.[70] Of the last 10 of these, which span a decade, one barrister has taken 7 of them. The obvious implication is that there is not an abundance of lawyers who make active use the UN complaints mechanisms. In relation to the reporting process, a review of the relevant records reveals that only a handful of shadow reports are typically lodged with the expert body. For example, at the last examination by the Human Rights Committee, in 2010, 5 civil society bodies filed material.[71]

4. Designing a Human Rights Clinic

(a) Outline

With these points in mind, what follows is a suggestion for experiential learning in the New Zealand context. A clinical legal education programme can involve placing students in another organisation and/or practitioner, or there can be a cadre of students working within the law school setting: in either form, it is possible that the students will be working with clients, but that is not necessarily so. In the context of international human rights law, the externship opportunity that presents itself is placing students with practitioners or with NGOs that might be involved in taking individual complaints to UN bodies or in drafting shadow reports. As noted above, the model used by the University of Auckland of having students placed somewhere for 75 hours and then required to provide a reflective essay can be used. It can be organised in a systematic fashion, with arrangements made to offer additional capacity for relevant organisations so as to allow them to undertake supplemental projects. As for the model of an in-house clinic, it is possible to put together a group of students who can be involved in the preparation of a shadow report or in taking individual complaints to a UN body.

70 As listed on www.bayefsky.com (last accessed 25 May 2013).

71 98th Session of the Human Rights Committee, 8-26 March 2010, http://www2.ohchr.org/english/bodies/hrc/sessions.htm (last accessed 25 May 2013).

(b) Ensuring Compliance with Ethical Standards

Those designing an international human rights clinic will, of course, wish to ensure that it meets the needs of its students, its clients, and that it complies with any relevant ethical and legal requirements. Looking first at the student perspective, it is clear from the account given of international human rights clinics in the USA that these are well-suited to the learning of skills that are useful for would-be lawyers: research and drafting are at the core of the suggested arrangements, including translating the wishes of the client (which may well be phrased in domestic legal terms) into the international human rights framework. If there is involvement in individual complaints, this is akin to pleading a case in any court context; if there is involvement in preparation of shadow reports, this is akin to the many opportunities for lawyers to be involved in advocacy at the policy level, dealing with systemic issues. In addition to these fully-transferable skills, which students can use in other areas of legal work, they will benefit from knowing about the additional fora in which legal skills come in useful, which may expand knowledge as to career options. From the perspective of the student, therefore, experiential education in international human rights law provides the opportunity to develop appropriate skills for a would-be practitioner and also to do so in a context that has some unique features. Such a clinic will lend itself to the cause-based lawyering that has played a role in the re-emergence of experiential learning in the USA.

From the perspective of the client, whether an individual with a specific problem or an organisation that brings pressure in relation to a particular cause, the need for appropriate professional standards will have to be part of the design for the programme. What of the concerns outlined above of avoiding the governmental obligation to ensure adequate access to justice? It can certainly be suggested that the need for equality of access to justice for individual complainants should extend to making use of international mechanisms. However, whilst the Council of Europe has a legal aid scheme for complaints being taken to the European Court of Human Rights, the UN bodies do not; although individual countries may provide assistance for applications to UN bodies, this is not so in New Zealand and might well be unusual. Accordingly, cases are invariably taken on a pro bono basis if the client is not one who can pay.

In any event, as noted above, there is limited use made in New Zealand of the individual complaint mechanisms. Accordingly, the existence of a clinic that supports such actions is more a matter of building capacity and ensuring that there is some provision made rather than a matter of playing a role in preserving a problematic two-tier structure of legal provision. The proposal is to build capacity to meet an unmet need rather than to be a cheaper, and perhaps less satisfactory, alternative. Further, because it relates to matters of international law, the restrictions outlined above on the giving of legal advice without a practicing certificate do not apply. In any event, it should not be a difficult matter to ensure that a clinic is organised in a manner that involves a practitioner to lead the clinic or, if the cost implications of that are problematic, to act as an adjunct to the faculty, sign any submissions as counsel and be on the record as such. Indeed, given the limited engagement of the legal profession in the process to date, involving practitioners will educate them as to the possible avenue of complaint for clients: this may be a source of work for the clinic.

As for the preparation of shadow reports, this could be done for a client or as an activity of the clinic. If the former, any clients will be a civil society body that is involved in social justice matters and making use of the international human rights mechanisms in this regard. Any offering of legal advice by those involved in the clinic will be analogous to being in-house counsel rather than providing externally-regulated legal services. In any event, non-governmental organisations often have lawyers sitting on their governing boards, offering pro bono advice on legal matters relevant to its operations or being involved in campaigning work. Placing students within such organisations as part of an experiential learning process should be a way of inculcating the pro bono ethic and allowing the organisations and students to form contacts that may be long-standing.

Accordingly, it is to be hoped that an international human rights clinic can benefit clients and society by providing access to international remedies that are currently under-used in New Zealand, whilst at the same time providing students with the benefits of experiential learning in an area of law that will also serve to widen their horizons as to the value that can be secured by becoming a lawyer.

Clinical Pathways to Ethically Substantive Autonomy

*Philip Drake, Professor Stuart Toddington**

There is no shortage of support for the idea that ethics should be incorporated into the academic and professional curriculum. There is a difference, however, between, on the one hand, teaching professionals about ethics, and, on the other, demanding that they give ethical expression to the range of professional skills they are expected to apply daily in their work. If this expression is not to be perfunctory, ethical judgement must be genuinely integrated into the professional skill set. The mark of integration in this regard is the capacity for *autonomous* judgement. Ethical autonomy cannot be achieved by a mechanical, rule-bound and circumstance-specific checklist of ethical *do's and don'ts*, and it is only partially achieved by a move from mechanistic rules to 'outcome based' processes.[1] Rather, professional ethical autonomy presupposes not only a *formal* understanding of the requirements of an ethical code of conduct, but a genuine engagement with the *substantive* values and techniques that enable practitioners to interpret and apply principles confidently over a range of circumstances. It is not then, that ethical skill is not valued by the legal profession or legal education, or that the shortfall of ethical skill goes unacknowledged, it is rather that the language of professional ethics struggles to break free from the cautious circularity that is the mark of its formal expression. To require a professional to 'act in their client's interests', or 'act in accordance with the expectations of the profession' or act 'fairly and effectively' are *formal*, infinitely ambiguous and entirely safe suggestions; to offer a *substantive* account of what, specifically, those interests might be, or what expectations we *should* have, are rather more contentious. Fears of dogma and a narrowing of discretion do, of course, accompany the idea of a search for ethical

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1 The new SRA Handbook emphasises a move to 'outcomes focused regulation'. In this document the SRA say:

"Responsibility for meeting the requirements in the Handbook, and for operating effective systems and processes, lies with you. In the SRA Code of Conduct (the Code) in particular, we have stripped out a lot of the detail of the previous Code to empower you to implement the right systems and controls for your clients and type of practice. You will have more flexibility in how you achieve the right outcomes for your clients, which will require greater judgement on your part."

This reference to greater judgement [on the part of the practising lawyer] is clearly an acknowledgement that autonomy is now necessary in ethical skill application. This is to be welcomed, or point is simply that no amount of contingent examples of ethical rule application can impart the attribute of autonomy to a learner. (See S.3.2)

http://www.sra.org.uk/solicitors/freedom-in-practice/OFR/ofr-quick-guide.page

substance, and caution is to be expected in response to it. Notwithstanding these anxieties, there would appear to be no coherent alternative to the aspiration to substantive autonomy, and this must remain the goal of teaching legal ethics. In light of this, the problem facing educationalists is then perhaps expressed more diplomatically in terms of how ethical skill might be substantively developed, imparted, and integrated into a genuinely comprehensive conception of professional skill.

Clinical education can go a long way to solving this problem: exposure to the practical tasks of lawyering is the surest and best way of raising consciousness in this regard: 'Hands-on' is good - and consciousness-raising is a step in the direction of autonomy, but raw experience and elevated awareness is not enough. We know that our most influential theories of learning tells us that it is in the process of *reflection* upon problem solving that the practitioner begins to take autonomous control of skill development.[2] In the view of the author, reflection, requires *content* and *direction*, and in this paper, with the aid of three models of skill integration inspired by Nigel Duncan's detailed analysis and video reconstruction of the ethical and technical skill deficiencies brought to light by *R v Griffiths*,[3] we attempt to specify what might be understood in this regard: Reflective *content* refers to the discrete interests and values that compete to produce tension in what we will refer to the 'matrix' of concerns that feature in *all* forms of dispute resolution; reflective *direction* points to an engagement with the resources and techniques that can empower critical and autonomous judgment. In the context of a clinical process broadly structured by the insights of Wenger and by Rest's model of ethical skill,[4] guided reflection so specified thus serves as an *interface* between on the one hand, indeterminate ethical *form*, and, on the other, the *substantive* ethical wisdom to be found in the repository of values that underpin the very idea of the legal enterprise.

The Matrix of Technical and Ethical Skill: Three Models of Integration

When we introduce the idea of ethical behaviour into the concept of professional skill we face a logical problem of greater complexity than might first be imagined. Skill-sets can be compiled and evaluated simply as linear sets of practical means in relation to a given end (task or enterprise). If engineering, for example, a range of basic and discrete craft skills might be specified and enumerated as a series: measuring, cutting, milling, filing, welding and so on; the set might be enlarged as other basic skills, or other more advanced skills are added *on to* the linear series. Here the idea of a linear series of skills will be contrasted with a systematic or organically integrated set of skills. The linear analogy is probably an oversimplification even in basic engineering – it is probably true to say that an integrated set of basic skills in combination is minimally required to perform any engineering task, and so the distinction we seek to establish is perhaps a matter of degree. But the problem about 'adding on' or rather, 'adding *in*' ethical skills to an accepted linear set of professional skills or competences, is that ethical skill in the form of autonomous moral judgment does not merely enlarge the set of skills and thus increase the range of tasks that might be undertaken. Rather, the

2 See David A. Kolb, *Experiential learning: experience as the source of learning and development*. (Englewood Cliffs, N.J, London : Prentice-Hall) 1984

3 See *R v Griffiths* [2006] All ER (D) 19. See also Nigel Duncan "Preparing for the Challenge of a Corrupt Environment" (elfa-afde.eu/app/download/5788681553/n.duncan.pdf). See video at www.teachinglegalethics.org under 'resource library' - 'teaching materials', then scroll down to 'Nigel Duncan'.

4 See fn. 18 *infra*

ethical dimensional of skill application radically and qualitatively changes not only the *nature* of skill application, but the *criteria* by which we might judge the successful (competent and skilful) completion of the task in hand. In fact, adding *in* ethical autonomy to the lawyers skill set might profoundly affect the understanding of the goals of the entire legal enterprise. That is to say, we cannot conceive of skill acquisition for lawyers in linear terms, but rather must approach the issue of skills in a holistic way: ethical judgement cannot be 'added in' or 'bolted on' to a skill-set it must be suitably *integrated*. Relieving the pressure of this abstraction we offer three familiar scenarios that highlight certain ethical constants (judgments about interests and values) that constitute a matrix of concerns common to all lawyer/client interactions. There are five such: (a) the interest of the client, (b), the provisions of relevant law – statute, common law principle - practice guidelines, (c) the requirements of the professional ethical code, (d), the orthodoxly accepted set of clerical, technical and administrative skills expected of practising lawyers, (e), the underlying social or moral purpose of the law. The three scenarios present these concerns in a way that shows that our understanding of what is to count as 'skilful execution' and 'successful outcome' varies in relation to our conception of what constitutes a suitably professional model of skill integration and application.[5] The models are drawn from reality, but it is their hypothetical or 'ideal-typical' validity that is important in what follows. The first model (See the video reconstruction of stages 1, 2 and 3 of *R v Griffiths*)[6] provides a convenient illustration of what we have called the 'the automatically integrated' model.

(i) 'Automatically' integrated model

What we refer to as an 'automatically integrated' model occurs where *prima facie* it appears that the client interest, the range of orthodox technical skills, and the quality of ethical judgement required to tie their application together are all automatically entwined. A good example of this is provided by the role play corrective to *R v Griffiths* constructed by Nigel Duncan (See video at www.teachinglegalethics.org). Here, an estate agent approaches a solicitor with a view to acting on the purchase of a property appearing on the market at a remarkably low price. The solicitor is aware that the vendors had recently been convicted of drug dealing and money-laundering and immediately perceived a connection between the low selling price of £43,000 (against a market value of approximately £150,000) and the attempt to dispose of assets prior to potential confiscation under the Proceeds of Crime Act 2002.[7] Despite what actually occurred,[8] the solicitor's statutory duty in this situation could not be clearer: it is to report any such suspicion. Similarly, it seems a straightforward matter for the solicitor to point out to the prospective purchaser that it simply would not be in their interest to acquire criminal property in this regard. It would be inevitably confiscated and very possibly the discrepancy between the selling price and the actual market value might be recovered from the client. If this course of action is followed, the happy coincidence of (a) the interests of the client, (b) the provisions of the statute, (c) the maxims of the professional code

5 By'skill integration' we are trying to convey the message that Julia Black expresses such that '*ethics is what raises competence to professionalism*'. Julia Black "Legal Education and Training and its Interaction with Regulation". (Paper to the LETR Symposium, Manchester, July 2012 (forthcoming).

6 *R v Griffiths* [2006] EWCA Crim 2155,. See video at www.teachinglegalethics.org under 'resource library' - 'teaching materials' then scroll down to 'Nigel Duncan'. See fn 3 *supra*

7 See: Proceeds of Crime Act 2002, s.330 (1) 'Failing to make a required disclosure'.

8 See Nigel Duncan "Preparing for the Challenge of a Corrupt Environment" (Op.Cit. fn 3)

(d) the technical and administrative competence skills of the lawyer, and (e) the underlying purpose of the legislation, come together to produce an *automatically* balanced and cohesive solution to the situation. It would require (as it did in the actual events leading to the prosecution of the solicitor and the client) a determined effort *not* to act skilfully and diligently in serving cohesively interests (a) – (e). Thus *R v Griffiths* provides an invaluable general model which, when analysed, serves as an interface to a more focused level of reflection: the student or future practitioner takes the first step to ethical autonomy when he or she *becomes aware* of the matrix of concerns that lie between (a) – (e). Guided reflection by the tutor can bring these concerns systematically to the fore. This contributes not only to elevated ethical awareness, but allows the student or practitioner to push beyond the *formal* identification of the problem of skill integration towards the kind of knowledge and techniques required to advance substantive solutions to it. Models two and three below present this 'matrix of concerns' in more problematic permutation.

(ii) 'Problematically' integrated model

R v Griffiths provided a convenient illustration of an integrated solution and a valuable model to aid our analysis of a problem, but most lawyer/client interactions involve 'problematically integrated' situations: A good example of this kind of interaction occurs in cases where legal advice and skilful manipulation of financial arrangements is required to effect, say, a tax burden reduction. Here, 'the client interest' ('easing' the tax burden) and the technical skills of the tax lawyer or accountant might appear to conflict with the apparent clarity of the ethically redistributive and progressive intentions of the statute. But the economic and psychological models that form the rationale *behind* the legislative intention are highly contentious.[9] In addition, what might emerge as an expression of the client interest is ethically and philosophically uncertain (for example, the client might genuinely be appalled by the leniency of the law in this regard and insist on paying more tax than is legally required) . Here, then the integration of the matrix concerns (a) – (e) is disrupted and made problematic.

(iii) Unintegrated model

A third model (drawn from reality, but which could plausibly be mooted hypothetically) is a situation where the 'client interest' and what counts as the 'technical skill' of the lawyer are entirely antithetical to the universally understood and accepted moral intentions of the legislation: i.e., and e.g., ingeniously defending torture at Guantánamo Bay for the benefit of providing legal immunity for the U.S. military.[10] If we assume, ideal-typically, a civilised legislative intention and a

9 One need only to refer to the immense controversy arising from proponents and critics of supply-side economics and in particular, the issue of the 'Laffer Curve' See, for example, Arthur Laffer, "The Laffer Curve: Past Present and Future" (Heritage Foundation June 1, 2004) http://www.heritage.org/research/reports/2004/06/the-laffer-curve-past-present-and-future

10 See Richard B Builder & Detlev F Vagts, "Speaking Law to Power: Lawyers and Torture" (2004) *American Society of International Law*, at pp 689-695. The advice provided was that the President as Commander-in-Chief has constitutional authority to disregard treaty or statutory prohibitions on the use of torture or other coercive interrogation techniques in conducting the "war on terror".

principled 'client interest' in a democratic society,[11] we have an example of an entirely *un*integrated application of technical skill and ethical judgment: The 'skill' required of lawyers in this situation is what ethical common sense would regard as the capacity to subvert or nullify the legislative and democratic purpose of the law to serve the immoral and unconstitutional interests of the 'client'. A fully rational reconstruction of this interaction from an ideal-typically 'integrated' perspective could not, we argue, regard *this* permutation of technical competence, client interest and ethical judgment as unproblematically to be regarded as 'skilful'.[12]

An Interface Between Ethical Form and Ethical Substance

When we speak about an integrated approach to legal education in this sense of producing a cognitive grasp of the relations between skill, interests, legislative intent, and ethical judgment what we are striving to do is express a maximally comprehensive notion of high professional competence. We noted in our introductory remarks that mechanistic and rule-bound regimes, and a pathologically cautious formalism fall short of our aspirations in this regard. Ethical skill can sensibly be understood only as a capacity for autonomous, reflective and accomplished ethical judgement - and pure form cannot facilitate this autonomy. Endlessly insisting on the need for reflection will not magically produce the level of accomplishment we desire, rather we must openly and honestly specify the *content and direction* of reflection. By the same token, if the educational task is to develop an understanding of ethical skill, impart it, and ensure that it becomes integrated into a genuinely comprehensive conception of professional skill, we need to do more than compile wish-lists of virtues that we would hope to find evenly distributed throughout the profession. Such lists are not to be criticised on the basis of their formalism *per se*, formal articulation of any problem is not only methodologically unavoidable, in the context of ethical endeavour it is also vitally important to us in creating as Potter points out, a *universal* focus of hope.[13]

Lists of desirable virtues thus provide an initial formal orientation:. Rowe et al recently and rightly suggest that our understanding of 'professionalism' ought to include a recognition of 'the broader implications of work'. This involves:[14]

- considering the interests and values of clients and others
- providing high quality services at fair cost
- maintaining independence of judgement
- embodying honour integrity and fair play
- being truthful and candid
- exhibiting diligence and punctuality
- showing courtesy and respect towards others

11 The question here, of course, is who is the client? The government and the military are archetypal public bodies and in it could be(should be) argued law have no interests antithetical to the public interest. See in particular "The Meaning of Public Authority Under the Human Rights Act" - Seventh Report of Session 2003–04" in relation to s. 6(3)(b) of the HRA 1998.

12 This resonates with Julia Black's aphorism. See fn. 4 *supra*

13 See Potter 2005: 24

14 M. Rowe *et al* "Professionalism in Pre-Practice Legal Education: An Insight Into the Universal Nature of Professionalism and the Developemnt of Professional Identity." *The Law Teacher* (2012 Vol 46 No.2) pp.123-124

- complying with rules and expectations of the profession.
- Managing law practice effectively and efficiently
- engaging in professional self-development
- nurturing quality of life

Additionally, ' professionals' should support the aims of the legal profession by:

- providing access to justice
- upholding the vitality and effectiveness of the legal system
- promoting justice fairness and morality
- and encouraging diversity.

They go on to say that traditional law teaching does little to address these values and attributes which could be said "to be at the core of lawyers' professional identity". [15]

There is nothing in this list that anyone would wish to disagree with; but we should by now be aware that it is the purity of the form – quite literally, the absence of substance – that lies behind this guarantee of unanimous approval. Thus despite the unanimity, as Rowe *et al*, point out, little is done, effectively, to promote these virtues. There is no paradox, however, once we acknowledge that this failure lies in the inability of legal ethical discourse to break free from these formalist constraints. Ironically, Rowe's list of virtues provide a good illustration of the problem. This is not to criticise *tout court* what is listed; the analytical process, as noted, renders this formal first step logically unavoidable in identifying the practical problem and providing a systematic orientation to its separable dimensions. Its separable dimensions concern, formally, what might be involved in successfully serving 'the interests and values of clients' and 'others'; of providing 'high quality' at a 'fair cost'; of encouraging 'independence of judgement'; 'honour integrity and fair play'; of meeting 'expectations of the profession'; 'professional self-development'; 'quality of life' and so on. But the enumeration of these dimensions of the problem is not a solution to the problem, nor even an identification of what is required to synthesise a solution to the problem. What is enumerated here is infinitely interpretable: a list of 'blanks' that must urgently be 'filled in' by substantive information. It seems that these empty formal shells cry out for *substantive* ethical content, but that we are condemned to proceed in circles, trying to fathom what, concretely, it means to teach lawyers to be 'fair', 'effective', 'honourable' and what is entailed by making them aware of the 'broader implications of their work'.

Progress beyond this formalism - progress towards professional ethical skill seen as substantive ethical autonomy – demands of us that we engage with what we are now naturally conditioned to avoid: 'value-judgments', 'essentially contested concepts' or 'metaphysical' notions. We live, as Alisdair MacIntyre[16] pointed out, in an age of Emotivism: a world where philosophical orthodoxy - and the post-rational *rejection* of the orthodoxy - *both* regard the engagement with concrete value as not a proper topic of rational or 'scientific' discussion. Hope, however, lies in the fact that law, in a profound sense, *accepts* this moral impasse and attempts to fashion and stabilize justificatory norms as a response to the potential for disagreement inevitably arising from it. Given this, there is no reason why we should not find answers to what is skilful, fair, effective and honourable

15 Ibid. Rowe Law Teacher p. 123,4

16 Alisdair MacIntyre *After Virtue: A Study in Moral Theory* (2nd. Edition, Duckworth, London) 1982, pp.6-10.

within the *practice* of law by looking at the values that underpin the practical wisdom of the very *idea* of law. We find this suggestion increasingly in contemporary policy discourse concerned with the future of the profession,[17] but we also find it throughout the history of philosophy – from Aristotle to Aquinas, from Kant to Hume, and in the under-utilized work of Lon L.Fuller. It is the idea that specific and particular problems relating to ethical *means* might be resolved by examining the generality of our ultimate ends.

A Clinical Context for Guided Reflection

Our aim has been to articulate the nature of the interface that is required to connect the formal and unspecified acknowledgement of the importance of ethical skill with the substantive values required to bring about an autonomous understanding of them. This interface consists in what we have identified as the context and direction of guided reflection provided by familiarity with the 'matrix of concerns' that points practitioners towards underlying values. This guided reflection must operate within a suitable structure of clinical learning, and Donald Nicholson[18] has done much to forge a widespread acceptance of the general model which is shaped by the various insights of Wenger, Rest, and Merrit.[19] Wenger's notion of a 'community of practice' is perhaps the central structural consideration in modern educational theory. Learning occurs through a combination of the influence of the cultural environment and the process of negotiating meaning through participation and reification within this environment. But an ethically pristine 'community of practice' does not arise spontaneously and automatically, ready to guide inexorably and productively towards autonomy. It should, of course, as Nicholson insists, *encourage* the kind of developmental virtues outlined in Rest's model: the moral sensitivity, capable judgement, active commitment and courage required by 'altru-ethical' professionalism.[20] But these virtues *must* function as much as the ability to *resist* institutional norms and pressures as to act in conformity with them; this is obvious, for a community can just as easily discourage and repress moral development as it can promote and sustain it. Thus autonomous ethical judgement must work from within and upon the community if it is to provide what Merrit refers to as a 'sustaining social contribution to character,[21] and this points us to substantive foundations and to the notion of a source of autonomous ethical insight *prior to* community. To be sure, there is a dialectic at work here, but not a paradox: reflection leads to autonomy, but reflection must be guided by substantive insight. This is best explained by augmenting Wenger and modifying Rest by introducing what

17 See fn. 23 *infra*

18 See Nicolson, Donald J *Teaching Ethics Clinically*, (Teaching Ethics Clinically Without Breaking the Bank,) (2012)., - www.teachinglegalethics.org - and more generally "Making Lawyers Moral : Ethical Codes and Moral Character" (*Legal Studies* Vol .25, No. 4, 2005) pp. 601-626

19 Etienne Wenger, *Communities of Practice : Learning Meaning and Identity* (Cambridge University Press, Cambridge, 1998); Rest, J. 'Background: Theory and Research'. In *Moral Development in the Professions* J.R.Rest & D.Narvaez Eds .(Hillsdale, NJ: Ehrlbaum. 1994) pp.1-26; Maria Merrit "Virtue Ethics and Situationist Personality Psychology" *Ethical Theory and Moral Practice* (3, 365 – 383, 2000)

20 See fn. 16 *supra*

21 See Maria Merrit "Virtue Ethics and Situationist Personality Psychology" *Ethical Theory and Moral Practice* (3, 365 – 383, 2000)

Vigotsky refers to as the 'zone of proximal development'.[22] This high-tech (sic?) phrase simply denotes that part of the process wherein a learner is empowered to achieve something by being provided with guidance without which they would have been unable to progress. *Subsequent* to this intervention and guidance, the zone of *proximal* development (proximate to the guidance or guide) becomes the zone of *actual* development. For our purposes, and in the context of ethical learning, the zone of *actual* development can be understood as progress towards the skills of ethical autonomy.

The Ethical Dynamism of Law

When ethical reflection becomes focused it goes in search of substantive principle, when it finds it, substantive principle informs clinical judgement; we begin to move from ethical awareness in the simple practical involvement with a task to the beginnings of an autonomous understanding of the task and what is required for its comprehensive resolution. The *formally* irreproachable values of ethical professionalism attain a concrete and dynamic importance when through an *interface* they connect with the repository of the ethically substantive. We have suggested that critical engagement with the 'matrix of concern's points us in the direction of a repository of values that expansively *underpin the idea of law itself*. This is undoubtedly the right direction, as those charged with charting the future of the profession now seem to accept,[23] and this sounds a lot like a job for 'Jurisprudence'. One can expect antipathies to the colonization of legal ethics by Jurisprudence, and unease about the association between dogma and ethical substance, to intensify at this stage of the discussion. But this should not tempt us to evade or obscure the fact that the discipline of legal ethics appears to acknowledge that progress beyond mechanism and formalism must do more to connect the concept of professionalism with the theoretical relationship between legality and morality. This is the relationship that underpins the respect for individual worth implicit (and explicit) in the commitment to the Rule of Law. This is not to suggest that *legal* validity – even from the Idealist's perspective – is to be regarded as synonymous with *moral* validity, nor is it to assume that professional legal ethics is simply another word for Jurisprudence and/or Moral Philosophy. In fact, to be effective, legal ethics must be circumscribed and differentiated as a discipline from the purely philosophical sciences. However, it must answer the questions it appears centrally to

22 See L. S Vygotsky Mind in society: The Development of Higher Psychological Processes. (Cambridge, MA: Harvard University Press, 1978.) p.86). Saul McLeod, says: The zone of proximal development ... has been defined as "the distance between the actual developmental level as determined by independent problem solving and the level of potential development as determined through problem solving under adult guidance, or in collaboration with more capable peers" See S.A. McLeod The Zone of Proximal Development. http://www.simplypsychology.org/Zone-of-Proximal-Development.html

23 In paragraphs 87 -89 of the LETR Discussion Paper 02/2012 at p. 30 we find:

"Both the ACLEC Report and the more recent Economides and Rogers Report (2009), in their recommendations to bring ethics into the initial or academic stage of training for solicitors, have raised uncertainties about what that implies. Are we talking about individual professional ethics, per se, are we addressing the institutional ethical roles of the professions, judges and lawyers as a collectivity, or are we primarily concerned with the 'system ethics' and values of law itself? This is reflected in Boon's (2011) definition of legal ethics as...

> The study of the relationship between morality and Law, the values underpinning the legal system, and the regulation of the legal services market, including the institutions, professional roles and ethics of the judiciary and legal professions. ....

If we accept that definition, all of these options are possible..."

set itself - especially about its rationale and method – and if in so doing, it must inevitably draw on the philosophical sciences, it must acknowledge its debt to them.

In approaching our concluding remarks on this problem, however, it is worth noting that one very important substantive value is presented to us as a *fait accompli* requiring no philosophical effort of analysis whatsoever, namely the constitutional and moral issue of access to justice. It is in the context of a much reduced legal aid budget that our clinical students will encounter the general public and their legal needs. Whatever 'justice' might be, 'access to it' in a world of commodified legal services and limited funding generally means 'being able to hire a skilled legal representative' or be provided with one free of charge. On the premise that 'access to justice' in a constitutional system of laws (i.e. all such systems) means ideally, access to *all* who require it, or, realistically, as much of it as can feasibly be provided, and that a failure in this regard is unethical and unconstitutional, 'legal professionals' are 'ethically underdeveloped' to the extent to which they are unaware of this substantive failure. From here we can make a further connection to another aspect of our wish-list of virtues noted above by Rowe *et al*: namely, the *ethical* requirement for practitioners to 'recogni[e] the broader implications of [their] work'. Reflection on these 'broader implications' leads to a wider remit for 'considering the 'interest and values of clients' and '*others*'. Here, ironically, 'others' will increasingly denote persons who are unable to attain the status of being someone's 'client'. Thus, these days, 'Access to Justice' becomes automatically integrated into the notion of clinical legal education, and this substantive connection with formal ethical requirements appears to require no deeply theoretical justification: it is simply accepted as a mark of well-rounded ethical professionalism.

This natural current of sympathy is to be welcomed, but it should not lead us to believe that autonomous ethical judgement in the professions descends automatically upon all practitioners in all historical circumstances. Autonomy requires constant critical and deliberate reflection. Interestingly, however, the more closely we examine the jurisprudential rationale for maintaining access to justice and related constitutional and social entitlements, the more our fears about dogma and rigidity in engaging with substantive concerns are allayed. That is, what jurisprudential reflection on foundational values leads us to is not so much a list of conveniently concrete principles, but rather, insight into the method of their dynamic creation.

Our view is that the more clinical law students and practitioners come to understand the nature of rules, the more they understand what surrounds their ethical interpretation and application, and this surely must signal the start of the journey from the mechanical and formal grasp of the problem, towards the level of autonomous accomplishment required to deal with the problem professionally. There is, to be sure, a great deal that is unedifying in the traditional debates between Legal Positivism and Natural Law, but there is much to be learned from the challenge to law's validity arising from the unavoidably 'open texture' of rules. It is this 'open texture' that fuels the perennial search for principles which are required to give semantic context and form to rules that will be, or might be, accorded the status of law. Positivists and Idealists might differ as to how, in preserving the distinction between law and morality, these principles might be incorporated as such in the form of procedurally recognisable sources, but what emerges from the debate is an acknowledgement, reluctant or otherwise, of the nature of the recognition of sources. The educational, doctrinal, professional, procedural, and political problems of law are irreducibly ethical not simply because law is a form of normativity that demands pre-eminence and compliance, but because implicit in its every utterance is a claim to legitimacy. If the acquisition of

legal skills requires an understanding of the values that underpin the legal enterprise, an encounter with the *philosophical method* that seeks to identify these values must necessarily be seen to be of great *practical* importance.

Hart's debate with Fuller[24] about the 'inner morality of law' is as accessible as any, and this famous exchange devotes scrupulous critical attention to whether or not we can detect substantive ethical principle embedded in the very idea of a rule - regardless of its content. Once we invite Dworkin into this discussion the formal stability of the Black Letter gives way to a much more imaginative structure of creative interpretation where moral good sense reveals itself as legal substance in its own right. Dworkin's famous example in *Riggs v Palmer* of the ethical integrity required to make coherent sense of seemingly straightforward probate rules is as valuable to our understanding as it is simple. We might point out to students that (in the USA) probate 'law' is to be ignored and the principle that, 'a person should not profit from wrong doing", is to override it where appropriate.[25] *Mechanical* knowledge of this particular judgement – or several similar to it – would surely be of practical and technical value, but it is not, of course, an indication that one has achieved a level of autonomous ethical maturity. Understanding from this illustration that the entire process of adjudication is structured by the constant search for cohesion between ethical principle and rules of general applicability, is, however, a step towards it, and it offers to clinical educationalists a clue as to how progress might be encouraged in this regard.

Bringing together the *content* of our model of the 'matrix of concerns' and establishing the *direction* of philosophical analysis exemplified in the debate between Hart, Fuller and Dworkin offers a simple but perfectly coherent example of we understand by an *interface* of guided reflection: it is a phase of experiential learning that can lead the clinical student to grasp the by which mechanical and formal ethical requirements can be connected synthetically with substantive values. The interface could be said to amount to creating' a zone of proximal development'. That can enable us to break the bonds of formalism in our educational literature and discourses. 'Knowing the law' is an indispensable element of technical skill, but once it is revealed and accepted that there is an ethical dynamism and a creativity necessarily inherent in bringing legal rules into legitimate existence, then, the search for ethical principle, or the search for coherent principle overall, becomes an integral part of the professional understanding of the nature of legal practice.

24 H.L.A Hart "Positivism and the Separation of Law and Morals" *Harvard Law Review*, Vol. 71, (I958). 593-629 at p. 607. See, importantly Fuller's methodological comments in reply: Lon L. Fuller "Positivism and Fidelity to Law: A Reply to Professor Hart" *Harvard Law Review*, Vol. 71 No.4, 1958, pp. 630-672.

25 See Ronald Dworkin *Taking Rights Seriously* (Cambridge, MA: Harvard University Press) 1977; also *Law's Empire* (Cambridge, MA: Belknap Press 1986

Empowering The Underprivileged: The Social Justice Mission For Clinical Legal Education In India

*Shuvro Prosun Sarker**

I. Introduction

The 1960s and 1970s were an important time in the history of legal education in India, when the legal aid movement and various legal aid committees' reports started to draw attention to the importance of experiential learning, or learning on the job, in legal education. The main aim of involving law students in the national legal aid movement was to make them feel more responsible for the considerable part of the Indian population who, because of their socio-economic status, couldn't access justice. The history of how India's clinical programs were introduced has a lot in common with the history of clinical programs in other parts of the world. There was a desire to create a pool of lawyers, who would serve as soldiers in the fight for social justice for underprivileged groups in the country.

While some prestigious universities started their clinical programs in the 1970s, most of the regulators of legal education took a long time to include clinical papers in the curriculum. In 1997 the Bar Council of India introduced four practical papers in the curriculum. The spirit of public service, and the widespread poverty in a country, has always been central to the push for clinical programs everywhere. But in India, the legal aid committees' and other statutory bodies' reports calling for clinical programs to support social justice, were always ignored. The National Knowledge Commission's working group on legal education specifically mentioned the need to

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introduce students to issues relating to poverty, social change and social exclusion, through clinical legal education.[1]

After the introductory section, the second section discusses the introduction of clinical programs with their roots in the search for social justice in the United States and India. The third section discusses the continuous deliberation by various bodies, commissions and committees about the need to introduce clinical programs with a social justice perspective in India. The fourth section discusses the social justice-based clinical programs in China and South Africa. This section tries to highlight some of the clinical models focused on serving underprivileged groups, that have been introduced and implemented in these two countries and which ~ after local modifications ~ could serve as a template for programs in Indian law schools. The fifth section tries to search for clinical models best suited to India with reference to clinical programs in China and South Africa. Several examples of clinical activities in a few Indian law schools have been highlighted in this chapter to explain these models' effectiveness and suitability for Indian circumstances. The sixth section sets out some suggestions for law schools and stakeholders of legal education in India as to how to further the country's social justice mission of clinical legal education.

II. Justice Mission Of Clinical Legal Education And India

A. Introduction

"What do generations signify?

- Growth in self reflection and wisdom and capacity to serve the underprivileged."

- Prof. Upendra Baxi [2]

In an interview about legal education reform, Prof. Upendra Baxi expressed his concern that there is no new generation of lawyers coming up in India who will work to help the underprivileged access justice. The reason behind this fear might be the failure of the law school curriculum to put the values of public service and social justice at the centre of young law student's education, instead encouraging the growth of a corporate culture.[3]

There should be a teaching method within the law school framework that will inculcate a spirit of public service, and help young law '*students to confront the uncertainties and challenges of problem solving for clients in fora that often challenge precepts regarding the rule of law and justice*'.[4] Clinical legal education aims at exactly this sort of teaching method and spirit of public service. Prof. N. R. Madhava Menon refers to '*clinical legal education as a pedagogic technique is its focus on the learner and the process of learning*'[5] not to create future lawyers who are '*mere craftsman manipulating*

1 National Knowledge Commission, *Report of the Working Group on Legal Education*, ¶ 3.3.2 (2007), available at http://www.knowledgecommission.gov.in/downloads/documents/wg_legal.pdf (last visited on Jun. 04, 2013).

2 Interview with MyLaw.Net, Youtube, http://www.youtube.com/watch?v=0y2AT-rk6-E (last visited on Jun. 04, 2013).

3 *Id*.

4 Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 Clinical L. Rev. 1, 38 (2000).

5 N. R. Madhava Menon, *Foreword*, in A Handbook on Clinical Legal Education (N. R. Madhava Menon ed., 1998).

advocacy skills in the traditional role of conflict resolution in court'.[6] Avrom Sheer emphasizes that understanding, imagination and the ethics of justice are central to clinical legal education.[7] Accordingly, clinical legal education plays an important role in making access to justice a reality for many low-income people. It does so not only by exposing law students to the legal problems that the poor face but also by allowing students to experience an obligation to find substantive and creative ways to respond to unmet legal needs.[8]

This chapter analyzes the social justice orientation of clinical legal education in the United States of America and how the legal realism movement influenced the social justice mission. It concludes with its impact on the Indian clinical legal education.

B. The 'Social Justice' 9 Orientation in the U.S.

Advocates of clinical legal education lacked any specific, detailed vision during the first fifty years of its existence in the U.S.[10] They campaigned for skills training of the students and providing access to justice for the underprivileged and were supported by the legal realism movement.[11]

The neo-realists' idea of developing future lawyers as policy-makers led to the addition of new courses like professional ethics into the law school curriculum.[12] But the movement for social relevance in the law school curriculum in the Unites States of America in the 1960s developed clinical legal education's primary objective *'to use law as an instrument for social justice and change'*. [13] The idea was to represent indigent clients as there is a different market of legal professionals to represent paying clients. Clinical legal education, therefore, should be strictly focused on social justice concerns, which would not only be helpful for indigent clients but also for students given exposure to real world incidents.[14]

This movement of social justice education is considered a return to the roots of clinical legal education.[15] Thus *'clinics play a critical role, both in terms of educating students to their professional*

6 N. R. Madhava Menon, *Clinical Legal Education: Concept and Concerns*, in *id*.

7 Avrom Sherr, *Clinical Legal Education at Warwick and the Skills Movement: Was Clinic a Creature of its Time?* in Frontiers of Legal Scholarship 108, 119 (Geoffrey Wilson ed., 1995).

8 Margaret Martin Barry, *supra* note 4, at 15.

9 Justice has no absolute meaning because it, too, like all knowledge, is grounded in context. At a minimum, however, those of us who dedicate ourselves to social justice must ask ourselves if our proposed action as a lawyer will support and increase human dignity. See Jane H. Aiken, *Provocateurs For Justice*, 7 Clinical L. Rev. 287, 296 (2000-2001) (I believe that teaching law students to be socially conscious practitioners is at the heart of clinical education and should be at the heart of a good legal education. Equal access to justice cannot be achieved if legal services are not made available to the poor and subordinated and if the barriers they face are not challenged. For many schools, community service and social justice are very much an aspect of the mission of clinical legal education); see Antoinette Sedillo Lopez, *Learning Through Service In A Clinical Setting: The Effect Of Specialization On Social Justice And Skills Training*, 7 Clinical L. Rev. 307, 310 (2000-2001).

10 Margaret Martin Barry *supra* note 4, at 9.

11 Margaret Martin Barry *supra* note 4, at 12.

12 Harold D. Lasswell and Myres S. McDougal, *Legal Education and Public Policy: Professional Training In The Public Interest*, 52 Yale L. J. 203, 206 (1942-1943).

13 Margaret Martin Barry *supra* note 4, at 13.

14 Martin Guggenheim, *Fee Generating Clinics: Can We Bear the Costs?*, 1 Clinical L. Rev. 677,679 (1994-1995).

15 *See generally* Nina Tarr, Current *Issues in Clinical Legal Education*, 37 HOW. L. J. 31 (1993); *see generally* Jane Harris Aiken, *Striving to Teach "Justice, Fairness and Morality"*, 4 Clinical L. Rev. 1 (1997).

obligations and sensitizing them to the needs of people'.[16] Therefore, the goal of social justice education is to ensure equal participation for all visualizing the equitable distribution of wealth.[17] Clinical legal education promotes social justice in three ways[18]. Firstly, it promotes access to justice for the underprivileged by representing them in various forums. Secondly, it introduces law students to ideas of public service responsibility or pro-bono work. Finally, it creates an understanding of the relationship between law and social justice among the law students.

All three ways have some effect on the law student's education about social justice values, because the unusual experience gained is different from, and complements, the student's prior understanding of law and legal procedure.[19] The 1992 Report of the Committee on the Future of In-House Clinics of the American Association of Law Schools urges clinicians to assist the students in pro-bono works.[20] The benefits of instructions on social justice responsibility of legal profession by involving students to legal aid activities will help them to self identify themselves.[21]

C. Legal Aid And Social Justice Orientation For Clinical Legal Education In India

Teaching students that they are responsible for their actions and society has always been at the heart of clinical legal education.[22] In India, recognition of the difficulties that the majority of the population faced when they tried to access justice through legal institutions kick started the free legal aid movement. The Ministry of Law and Justice formed three committees in the 1970s to come up with solutions to help deal with the struggle that many faced trying to access justice. All three committees recommended involving law schools in the country's legal aid mission, but clinical work was only introduced in the curriculum later.

In 1973, the Expert Committee on Legal Aid[23] proposed involving law teachers and students in legal aid programmes. They characterized legal aid services as '*every step or action by which legal institutions are sensitised to respond to the socio-economic realities*' of India.[24] The expert committee's '*idea of linking legal aid and law schools had a practical element; given the extent of the need for legal services for the poor and the limited resources available, this made perfect sense*'.[25]

The Juridicare Committee on Legal Aid[26] submitted its report in 1977 echoing the ideas of the

16 Martin Guggenheim, *supra* note 14, at 683; see also Jane H. Aiken, *Provocateurs For Justice*, 7 Clinical L. Rev. 287, 296 (2000-2001).

17 Jane H. Aiken, *id*.

18 *See* Jon C. Dubin, *Clinical design for Social Justice Imperatives*, 51 S.M.U. L. Rev. 1461,1475-76 (1997-1998).

19 *Id*., at 1478.

20 *Report of the Committee on the Future of the In-House Clinic*, 42 J. Legal Educ. 508,515 (1992).

21 Frank S. Bloch and Iqbal S. Ishar, *Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States*, 12 Mich. J. Int'l L. 92, 108 (1990-1991).

22 Redlich, *The Moral Value of Clinical Legal Education: A Reply*, 33 J. Legal Educ. 613,616 (1983).

23 *See generally* Govt. of India, Ministry of Law, Justice and Company Affairs, *Processual Justice to the People: Report of the Expert Committee on Legal Aid* (1973). (On file with the author).

24 *Id*. at 180.

25 Frank S. Bloch and M. R. K. Prasad, *Institutionalizing A Social Justice Mission For Clinical Legal Education: Cross-National Currents From India And The United States*, 13 Clinical L. Rev. 165,169 (2006-2007).

26 *See generally* generally Govt. of India, Ministry of Law, Justice And Company Affairs, *Equal Justice-Social Justice: Report Of The Juridicare Committee* (1977).

previous expert committee and formulated more focused recommendations relating to legal aid schemes. These were more focused on reaching the most helpless members of society and identifying the broadest possible types of assistance that could be made available to them under the law, including education, community development and community organizing.[27]

Along the same lines, in 1981, the Committee for Implementing Legal Aid Schemes insisted that court-oriented legal aid programs alone cannot provide social justice in India. The committee concentrated more on the promotion of legal literacy, the organization of legal aid camps to carry legal services to people's doorsteps, training paralegals to support legal aid programs, establishing legal aid clinics in law schools and universities, and bringing class actions through public interest litigations.[28]

D. Conclusion

An important part of the clinical methodology is its emphasis on experimental learning and other interactive teaching techniques that give students a sense of participating in the process as adults and draw them into the role of a lawyer.[29] Thus legal educators in India had a responsibility to improve the quality of legal education through the legal services clinical method of law teaching, which will help to encourage a sense of justice, equity and public service responsibility among young law students. They have failed to do so.

III. Clinical Legal Education In India

A. Introduction

The idea of involving law schools in legal aid can be seen as the first attempt to introduce some kind of clinical legal education framework in India. The legal aid movement of the 1960s in India '*assumed that law schools would have a significant role in dispensing legal services*'.[30] This idea has been reflected in various reports relating to legal aid and judicial reform dating back to the 1970s. Reform was considered necessary to foster the country's nascent democracy and help achieve the goals of good governance, expressed in the Constitution of India, by developing competent legal minds.[31] In India, after long deliberations, the Bar Council of India introduced four clinical papers in 1997. The papers introduced are far from comprehensive and do not place much emphasis on the need for young lawyers to struggle for social justice, one of the original aims of clinical legal education.

This chapter examines the legal aid orientation of clinical legal education in India and various other reports on legal education reform. It concludes with the need to use law school clinics to further the cause of social justice in India.

27 *Id.*, at 52-65.

28 Frank S. Bloch, *supra* note 25, at 175.

29 *See* Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 Vand. L. Rev. 321, 322-23 (1982); *see generally* Bradway, *Some Distinctive Features of a Legal Aid Clinic Course*, 1 U. Chi. L. Rev. 469, 469-73 (1934); Gorman, *Clinical Legal Education: A Prospectus*, 44 S. Cal. L. Rev. 537, 551-55 (1971); Meltsner & Schrag, *Report from a CLEPR Colony*, 76 Colum. L. Rev. 581, 584-87 (1976).

30 Frank S. Bloch, *supra* note 21, at 96

31 *See generally* A.S. Anand, *Legal Education in India - Past, Present and Future*, 3 S.C.C. (Jour.) 1 (1998) (India).

B. The Bay Of Good Hope

In 1994, a three-member committee made up of Justice A. M. Ahmadi, Justice B.N. Kirpal and Justice M. Jaganaddha Rao dealt in detail with law school teaching methods.[32] The committee made important suggestions relating to pedagogy and the more practical side of legal education.

The committee's suggestions marked the starting point for the introduction of a clinical teaching curriculum into the modern Indian legal education system. It was after this committee's report that the Bar Council of India introduced four practical papers into the curriculum, which was viewed at the time as a *'big step toward introducing clinical legal education formally into the curriculum and law schools have been required to introduce the four papers since academic year 1998-99'*.[33] These papers concentrated on specific issues of legal skill training: Paper I addresses instruction in litigation skills, including pre-trial preparation and trial practice; Paper II focuses on legal drafting skills and pleading; Paper III covers professional ethics and bar-bench relations; and Paper IV introduces legal aid work and public interest litigations.

However, most legal educators see the papers as providing only limited support for including instruction in social justice lawyering in the new curriculum or for providing social justice to indigent clients.[34] Finally, the Bar Council of India's mandatory directive to introduce the four practical papers into the curriculum was welcomed only half-heartedly by law school authorities as their staff lacked the skills and experience necessary to teach the course properly or '*simply put, law faculty neither had a vision for, nor properly understood, the value of these papers.*' [35]

Nevertheless, the Law Commission Report of 2002 emphasized further the professional skills and values future lawyers need to develop at law school.[36] Though their central focus on the Mac-Crate Report [37] to be introduced into the curriculum safely by modifying it as per the India circumstances, but some of the legal educators find it unacceptable to start teaching of skills training into the law schools as India need more on to concentrate into the social justice movement elaborated by the legal aid committees in 1970s.[38]

The Bar Council of India adopted a resolution, based on the recommendations of the Supreme Court's three member committee, to set up legal aid clinics in every law school to provide inexpensive and speedy service to underprivileged groups in society.[39] This was a mandatory

32 Frank S. Bloch, *supra* note 25, at 179; *see also* Bar Council of India, 3 *Member Committee Report on Reform of Legal Education* (2009), *available at* http://www.barcouncilofindia.org/wp-content/uploads/2010/06/3-member-Committee-Report-on-Legal-Education.pdf (last visited on Jun. 04, 2013).

33 Bar Council of India Resolution No 04/1997; *see also* Frank S. Bloch, *supra* note 57, at 180.

34 Frank S. Bloch, *supra* note 25, at 180.

35 *Id*.

36 The Law Commission of India, *184th Report on the Legal Education and Professional Training and Proposal for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956* (2002), *available at* http://lawcommissionofindia.nic.in/ (last visited on Jun. 04, 2013).

37 American Bar Association, 1992

38 *See* Frank S. Bloch, *supra* note 25, at 187-195.

39 *See 3 Member Committee Report*, *supra* note 32, at 4.

requirement, reflected in the Bar Council of India's Inspection Manual 2010.[40] It serves as a starting point for a formal system, giving law schools a very good opportunity to build their legal aid programs in line with the requirements of the local community. It affirmed the need for a multi-client-based legal aid program for every community.[41] The vision statement of the then law minister on legal education reform played an important role in encouraging the Bar Council of India to take this initiative.[42]

Another important authority which bears responsibility for regulating legal aid services nationally, the National Legal Services Authority (NALSA), has come up with an important set of rules in line with the Bar Council of India's mandatory clinic resolution in 2011. NALSA issued the National Legal Services (Legal Aid Clinics) Regulation on 10th August, 2011.[43] This regulation in reality serves as the implementation mechanism for legal aid clinics in cooperation with the local authorities.

Another Planning Commission sub-committee, which focused on how to get higher learning institutions involved in community development, came up with effective recommendations for planning and funding.[44]

The sub-committee came up with several ways to boost academic institutions' community engagement through networking, funding and policy change. First, it proposed an Alliance for Community Engagement, an active membership-based network to promote ideas and practices of community engagement throughout India, and a funding and policy committee, the Autonomous Empowered Committee on Community Engagement, to review funding proposals, design schemes to encourage community engagement, and set policy at the level of Planning Commission and University Grants Commission. Next, it recommended that higher education institutions be given more curricular flexibility in offering programs, courses and initiatives that are more relevant to the needs of society, and that due recognition for public intellectual engagement be given to faculty, students and institutions. Lastly, it recommended that a few educational institutions are

40 Bar Council of India, *Inspection Manual 2010: Guideline for Inspection of Bar Council of India of University/ Institution*, *available at* http://www.barcouncilofindia.org/about/legal-education/inspection-manual-2010 (last visited on Jun. 04, 2013).

41 Bar Council of India, *Inspection Manual 2010: Guideline for Inspection of Bar Council of India of University/ Institution* 36, *available at* http://www.barcouncilofindia.org/wp-content/uploads/2010/06/Inspection-Manual.pdf.

(G. Legal Aid Clinic

24. Legal Aid Clinic: Each Institution shall have at least one community-based Legal Aid Clinic which shall function under a faculty, preferably who is or was practicing law.

25. Link up with District Legal Aid Center: Each District has a Legal Aid Program under the chairman of the District Judge. Guidance would be required to establish links with the Program and also with Lok Adalat organized under the Scheme. Inspection has to be used as a means of participatory development especially of those institutions away from professional facilities so that professional skills can develop at every level.)

42 The Bar Council of India, *The Law Minister Announces Vision for Legal Educational Reform*, *see* http://www.barcouncilofindia.org/law-ministers-vision-statement-for-second-generation-reforms-in-legal-education/ (last visited on Jun. 04, 2013).

43 National Legal Services Authority, *National Legal Services Authority (Legal Aid Clinics) Regulations 2011*, *available at* http://nalsa.gov.in/schemes.html (last visited on Jun. 04, 2013).

44 Rajesh Tandon, *Re-Affirming Civil Engagement of Education* (2011), *see blog at* http://priaeducation.org/rajeshtandon-blog/.

set up to focus on community-based and common knowledge traditions.[45]

C. Conclusion

The regulatory authorities overseeing legal education, and other administrative bodies, have taken many initiatives to increase access to justice for the underprivileged. But bureaucratic hassles, and the indifference of almost all of the 950 legal institutions in India, have prevented these initiatives from being properly implemented. The Report of the Law School Based Legal Aid Clinics, 2011 has very effectively pointed to all of the reasons why the legal aid programs at law school clinics have not been running well.[46]

The next chapter looks at clinical legal education programs focused on community development in other countries around the world, as a way of finding a model useful in India.

IV. The 'Global Clinical Movement'[47]

A. Introduction

By the 1970s and early 1980s, clinical legal education had taken root in a number of countries around the world, focused on local problems and on the need to reform legal education to include ideas of social justice. By looking at local developments in various countries, clinicians elsewhere have developed a clear understanding about each other's work in equally challenging circumstances. Within a region, many countries share social, economic, and cultural characteristics and the obstacles preventing accessing to justice for the underprivileged are often the same. Clinical educators must look to learn from the experiences of others in similar situations when developing their own models of clinical teaching.

This chapter discusses some of these models in China and South Africa. China had developed a system or clinical law teaching by the 1990s. However, weak rule of law in the country because of the supremacy of the Communist Party's word meant the judiciary has only a small role to play in securing justice for the majority of the population. Despite this difficulty, Chinese clinical educators are trying to deal with the situation by using clinical techniques to serve the population at large. How they are doing this is instructive.

South African clinical legal education is very community-oriented and the history of South Africa has much in common with India's. In South Africa, clinical legal education was born about the same time as in India. India is one of the largest democracies in the world with a diverse mix of communities with different languages and cultures. Finding a way to help all of these people, and to make sure they can lead a life with liberty and equality is a very difficult task in India. The South African community clinical movement could be a good model for India to use to develop community clinical programs to ensure social justice.

45 *Id.*

46 *Report of the Law School Based Legal Aid Clinic* (2011), *available at* http://www.undp.org/content/dam/india/docs/a_study_of_law_school_based_legal_services_clinics.pdf (last visited on Jun. 04, 2013).

47 Prof. Frank S. Bloch and Prof. N. R. Madhave Menon are the key writers and thinkers behind the 'Global Clinical Movement'. In late 1990s, the Global Alliance for Justice Education (GAJE) has been formed by their preliminary initiative. Prof. Bloch has also edited a book titled 'Global Clinical Movement: Educating Lawyers for Social Justice' published by the Oxford University Press in 2010.

B. Let A Hundred Flowers Bloom48: The Chinese Model

The present legal education system in China has followed a long, tortuous path on the way to becoming a professional legal education system.[49] The present day legal education aims to *'resolve all complicated disputes and safeguard justice in order to meet the needs of social, economic, political, and cultural development in China'*. [50]

There are four factors which hinder efforts to develop strong rule of law in China: an unprofessional judiciary with corruption and political interference; poorly trained lawyers with no commitment to pro bono work; poor quality of instruction in law schools; and a lack of participation from the civil society.[51] The system has been in need of improvement. To a certain extent, the introduction of the clinical legal education program in China resulted from a strong demand for higher legal education reform, and especially for exploring new legal teaching methods.[52]

Seven law school clinics were established in 2000, funded by the Ford Foundation and some U.S. law schools.[53] The establishment of the Committee of Chinese Clinical Legal Educators (CCCLE) in 2002 was a major step towards expanding clinical legal education in China.

The mission of CCCLE is *'to bring all clinical legal educators, administrators and others together to perform theoretical and practical research of foreign and Chinese clinical legal education programs, cooperate and carry out exchange of clinical legal education activities with counterparts abroad and at home, and promote the growth of clinical legal education in China'*.[54] By 2009, CCCLE had 115 institutional members and 76 out of 115 had formally introduced clinical programs into their curricula.[55] The CCCLE network, along with the clinical faculties at different law schools, has brought significant changes to Chinese clinical legal education and there is a lot to learn from how the group has managed to do this in challenging circumstances.

Northwest University of Politics and Law's legislation clinic is the most innovative of all the clinics in Chinese universities.[56] Members of the legislation clinic work with local governmental agencies and civic groups to analyze local problems and then propose legislative solutions to help disadvantaged social groups, such as the elderly or migrant workers. Teams of students gather information from a variety of public and individual sources and bring this knowledge into the policy-making process. One of their projects resulted in provincial-level legislation against

48 Cai Yanmin and J. L. Pottenger, JR, *The "Chinese Characteristics" of Clinical Legal Education*, in Global Clinical Movement 87, 93 (Frank S. Bloch ed., 2010).

49 See Wang Weiguo, *A Brief Introduction to the Legal Education in China, presented at the Conference of Legal Educators*, Association of American Law Schools, (May 24-24, 2000)

50 Mao Ling, *Clinical Legal Education and the Reform of the Higher Legal Education System in China*, 30 Fordham Int'l L. J. 421,425 (2006-2007).

51 Brian K. Landsber, *Promoting Social Justice Values and Reflective Legal Practice in Chinese Law Schools*, 24 PAC. McGeorge Global. Bus. & Dev. L. J. 107,108 (2011).

52 Mao Ling, *supra* note 50, at 432.

53 Peking University, Tsinghua University, Renmin University of China, Wuhan University, Zhongnan University of Economics and Law, East China University of Political Science and Law, and Fudan University. *See* Mao Ling, *supra* note 81, at 433.

54 *Id.*

55 Cai Yanmin, *supra* note 48

56 *Id.*, at 94.

domestic violence, another enhanced wage protection for rural migrant workers. Others yielded local legislation designed to benefit the urban elderly.

Hundreds of students took part in these projects, as did a wide array of faculty members, lawyers and judges. The legislation clinic has several elements to it, and it fulfills all the requirements of clinical legal education and helps to further social justice. It is also a model for countries where clinical legal education is short of funding. The legislation clinic is a place where students from diverse backgrounds develop a more mature attitude towards law and their responsibility to society, at very little cost.[57]

Clinical legal education in China has made great strides in a single decade, growing from only one or two NGO-style clinics at leading universities to more than hundred programs integrated into the curricula at law schools and departments throughout the country.[58] In the process, distinctive adaptations have emerged to address China's access to justice issues at a level beyond the individual case.

C. Education And Community Service: South African Clinical Network

Over the past three decades South African university law clinics *'have evolved from being ad-hoc student initiatives with limited capacity into mature institutions with a definite presence on the South African legal landscape.'*[59] Law clinics were introduced at South African universities in the early 1970s. After the Ford Foundation Conference on Legal Aid at University of Natal in 1973, the speed at which they were set up increased.[60]

The earlier clinics have faced various obstacles like a lack of educational values which should be present in clinical programs, a lack of resources, voluntary student participation with no rule of credit, and lack of faculty involvement. But these early efforts highlighted that the aim of South African clinics was to promote equal justice and social justice for the poor people in the country. Since the first democratic elections in 1994, law clinics have expanded rapidly with a view *'to make the law school experience more educational and relevant for students and to promote equal justice and the rule of law, scholars have devoted considerable attention and resources to creating or expanding clinical legal education.'* [61]

Clinical programs in South Africa are more community-based than individual client clinics and the *'basic guiding principle remains firmly entrenched in the fundamental role that education must play in developing a culture of democracy and respect for human rights as an integral part of the common values and universal heritage of humanity.'* [62]

57 *Adopting and Adapting: Clinical Legal Education and Access to Justice in China*, 120 Harv. L. Rev. 2134, 2152 (2007).

58 *Id*. at 2155.

59 Willem De Klerk, *University Law Clinics In South Africa*, 122 S. African L.J. 929,929 (2005).

60 Id., at 930; *see also* Peggy Maisel, *Expanding And Sustaining Clinical Legal Education In Developing Countries: What We Can Learn From South Africa*, 30 Fordham Int'l L.J. 374,381 (2006-2007).

61 Peggy Maisel, *id*., at 374; *see also* Kenneth S. Broun, Black Lawyers, White Courts: The Soul of South African Law 235-243 (2000).

62 Philip F. Iya, *Legal Education For Democracy And Human Rights In The New South Africa With Lessons From The American Legal Aid Movement*,12 J. Prof. Legal Educ. 211,211 (1994).

The clinical programs try to achieve five different objectives[63]: the inclusion of poverty and development issues into the curriculum to reflect the realities of the economically disadvantaged citizens to all the students, white or black[64]; to promote the values to provide equal justice to the disadvantaged; to confront ethical issues by dealing with real cases and to gain basic lawyering skills; to increase access to the legal profession among disadvantaged people; to expand the resources for legal representation for the disadvantaged. In 1987, the Association of University Legal Aid Institutions (AULAI) was set up, a major step in the clinical legal education movement in South Africa. This organization has played a very important role in improving the performance and resources of university-based legal aid clinics.

South African law clinics have two different working techniques. First is the *palm tree justice*[65] when paralegals in rural areas, who can speak the local community language, work for poor people who can't afford a lawyer or where there is no lawyer. Up to the year 2000, South Africa had only 1,000 black lawyers who would represent the 70 percent black population of the country.[66] These community-based paralegals have provided often the only access to justice for poor people in rural areas.

Secondly, Prof. David McQuoid-Mason set up South African Street Law Programs, another type of clinical program which introduced students to the idea of preventive legal education practice. Street law students learned how to teach lay people about legal rights and responsibilities, and then went to high schools and jails to teach ordinary citizens about their rights in criminal, juvenile, consumer, housing, welfare law, and human rights matters. The teaching methods which the students used included holding mock trials and other interactive learning experiences. They also wrote and distributed pamphlets dealing with common legal problems such as arrest, and housing and credit issues.[67]

In 2000, a survey of the twenty-one university-based law clinics in South Africa was conducted to assess the state of clinical legal education there.[68] The survey pointed out four kinds of obstacles to the current development of clinical programs in South Africa: a lack of funding; a lack of acceptance of clinical legal education by the faculty members; a lack of skilled clinical teaching; and huge case load. These four problems are similar to those in other developing countries. But some prominent clinical legal educators in South Africa have tried and are still trying to overcome these problems in clinical legal education. The formation of AULAI and the AULAI Trust have gone some way to solving problems of funding and training opportunities for clinical teachers with the help of national and international funding agencies and universities from the West. The Ford Foundation, the International Commission of Jurists, UNDP, and GAJE have all helped the AULAI and universities in various ways to accelerate the funding, organize conferences and workshops on clinical legal education, faculty training, and exchange program for staff members.

63 Peggy Maisel , *supra* note 60, at 375.

64 *See* Kenneth S. Broun, *supra* note 61 at 237.

65 *See* Legal Aid and Law Clinics in South Africa vii (David J. McQuoid-Mason ed., 1985)

66 Kenneth S. Broun, *supra* note 61 at 236.

67 Peggy Maisel, *supra* note 91, at 384.

68 The survey was conducted by Peggy Maisel, Associate Professor and founding Director of the Clinical Program, Florida International University College of Law.

Since the era of apartheid, social divisions have been a serious problem for South Africa. Because of this historical inequality, the justice system was struggling to support the underprivileged sections of the society. The university law clinics in South Africa have therefore tried to reach a large number of people through their community clinics.

Clinical legal education should be adapted to different social circumstances. There might be some misbalance on the teaching ethics and the ethics of a clinic. But eventually, the South African model could become a best practice model for all the countries with a large unrepresented and underprivileged population.

D. Conclusion

On the basis of the findings of this chapter on clinical legal education in China and South Africa, the next section will begin to establish some best practice models for clinical legal education in India. In the next chapter, some model clinics will be proposed taking into account what Indian society needs.

V. The Indian Model

A. Introduction

Legal education of India has been described as a '*sea of institutionalized mediocrity with a few islands of excellence*'.[69] There are often calls for reform of legal education, for a system which is of excellent quality and can spread its scope to be more sensitive to the underprivileged sections of the Indian society. It must be kept in mind that law grows when it engages with society and interacts with other branches of knowledge. Engagement with social problems and movements make legal education relevant and contextual. For this to happen, a liberal, holistic and decentralized approach to curriculum planning and development of clinical teaching is necessary, for which each university teaching law should have the primary responsibility.

Law schools should take up the clinical legal education syllabi to implement it in line with local needs through some clinic-based activity. To implement this sort of activity, a meaningful coordination with the local bar and bench, non-government organizations, and legal services authority is required. This combined effort to set up social justice-based clinical activity will make legal education more socially relevant and meaningful.

This chapter deals with creating a model for law schools' clinical activity which will not only supplement the curricular requirements of clinical legal education but also complement social justice-based clinical legal education and secure the rights of underprivileged groups in India.

B. Rural Access To Justice

'The Soul of India Lives in Its Villages'

- Mohandas Karamchand Gandhi

In the beginning of the 20th century, Mohandas Karamchand Gandhi, father of the Indian nation,

69 N. R. Madhava Menon, *To Go from Mediocrity to Excellence*, The Hindu, June 18, 2010, *available at* http://www.thehindu.com/opinion/lead/article470073.ece?homepage=true.

expressed this thought-provoking statement. Even today, the same could be said. Data from the Census of India, 2011 shows us how many people live in rural India: 833,087,662 persons live in rural India, amongst them 427,917,052 are men and 405,170,610 are women.[70]

Most rural Indians do not have in-depth or accurate knowledge about the administration of justice or administration and governance procedures. This lack of knowledge makes it difficult for rural Indians to access the system of justice delivery, administration and governance. Not only that, the problem of a lack of transparency and accountability in the administration and governance system is, in part, result of that ignorance.

The focus of this clinic model is on the reform of legal education to accelerate the empowerment[71] of marginalized rural communities in India. This model is primarily inspired by the community lawyering movement of South African clinical legal education. The idea of community lawyering in India as a way to ensure access to justice and legal empowerment for the underprivileged is gaining importance as '*advocacy on behalf of a group is seen as more efficient and cost effective, particularly when the group as a whole is at odds with the social, economic, cultural, and political situation*' [72].

If we look at Jindal Global Law School (JGLS) and the Institute of Rural Research and Development (IRRAD), we can broadly determine the nature and duties of a clinic for the empowerment of rural Indians. Using clinical legal education methodology, IRRAD and JGLS train rural villagers in their locality about government programs enacted to help them.

The training explains the Right to Information Act and the proper channels for following up on applications that become stuck in the system. Armed with the knowledge acquired over the course of the year-long training, villagers monitor the functioning of local government and share their findings at periodic feedback sessions. Residents of over 200 villages have been trained as of December 2011.

To conduct the training, IRRAD staff partner with law students and their teachers at JGLS. JGLS established a Good Governance and Citizen Participation Clinic. For the training, IRRAD has published brochures in the local language, Hindi, drafted by law students on government schemes and the Right to Information. The clinic supports the efforts of villagers in several ways in addition to the governance training, including through panel discussions with government officials, policy advocacy based on problems identified in the field, legal aid camps in villages, and responses to bribe-seeking and other forms of corruption that villagers encounter. IRRAD and JGLS seek to replicate the NGO-law school-community model through conferences, publications and research on its impact. They host an annual conference on good rural governance and citizen participation and in 2011-12 held regional conferences across India.[73] To support Good Governance Now partnerships, IRRAD and JGLS offer training to interested NGOs and academic institutions to deliver training and support to rural communities. IRRAD's Rural Research Center and JGLS'

70 Census of India (2011), *available at* http://censusindia.gov.in/2011census/censusinfodashboard/index.html (last visited Jun. 04, 2013).

71 Access to justice for the rural poor includes not only access to courts and legal redress mechanisms, but also good governance including transparency and accountability in the making of laws and process of their implementation and administration.

72 Sopriyo Routh, *Experiential Learning Through Community Lawyering: A Proposal for Indian Legal Education*, 24 Pac. McGeorge Global Bus. & Dev. L.J. 1,116 (2011).

73 In 2011, Regional Good Governance and Citizen Participation Conferences have been held at Assam University, Silchar; J.S.S. Law College, Mysore, Karnataka and Chanakya National Law University, Patna, Bihar.

clinical program also host fellowship recipients and other visitors engaged in research or teaching on rural development and governance.

This sort of experiential clinical model can be an inspiration for all law schools in India. The collaboration between a law school clinic and a NGO while working in the rural development sector can bring significant change in that particular area, when it comes to citizen participation in democracy, governance and administrative procedure.

The students who were involved in this program were required to prepare legal literacy materials in local languages that explain in easy-to-understand terms government schemes, programs and acts like the public distribution system, the anganwadi system, the Right of Children to Free and Compulsory Education Act, the National Rural Employment Guarantee Scheme, the midday meal program, and the Right to Information Act which rural community members should know about.[74] They also assist community peers to prepare right to information applications and write letters to government officials. Students have also undertaken advocacy on behalf of the rural community to various commissions and statutory bodies.[75] The students who work for this sort of clinic have the opportunity to develop skills in interviewing, client representation, fact investigation, report writing and documentation, and emphatic lawyering.[76]

It could be said that this model cannot be followed or implemented by other law school clinics because of a lack of financial resources. But this lack of financial resources can be overcome through collaboration between that particular law school, a local NGO working in the area of that particular law school and the district or taluka legal services authority. The district or taluka legal services authority can create the platform and take some financial initiative for the combined work with the law schools and NGOs with the help of the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, National Legal Services Authority (Legal Aid Clinics) Scheme, 2010 and Para Legal Volunteer Scheme, 2010.

It is now up to law schools to decide whether they are ready to undertake this sort of clinical activity. It will also be up to the law schools to find their local NGO partner and enlist the help of the district or taluka legal services authority.

C. Human Rights Litigation And Law Reform

Strategic human rights litigation seeks to use the authority of the law to advocate for social change on behalf of individuals whose voices are otherwise not heard.[77] In India, the use of public interest litigation has the same meaning. Human rights litigation can be a helpful tool to provide relief to a large number of people and to create a policy that state must follow. It can provide 'broad access to justice and judicial redress to all persons or class of persons that are in a position of poverty,

74 *See Promoting Clinical Legal Education in India: A Case Study of the Citizen Participation Clinic* 18-22 (2012) (A Joint Report Prepared by Cornell International Human Rights Clinic and Jindal Good Rural Governance and Citizen Participation Clinic).

75 *Id.*

76 *Id.*, at 9-12.

77 *Litigation Report: Global Human Rights Litigation*, Open Society Justice Initiative (Feb. 2012), *available at* http://www.soros.org/sites/default/files/litigation-report-20120228.pdf (last visited Jun. 04, 2013).

vulnerability, disability and exclusion in general'[78] . Noble Laureate Amartya Sen refers to poverty as not only the lack of resources but also the concept of capability.[79] So it is necessary to provide essential tools to the underprivileged to use their assets to move out of poverty and to change the rule of power in society.

Human rights litigation is an essential tool to make government policy more comprehensive and functional to alleviate poverty and other social exclusions. It is through both human rights litigation and law reform clinics, that social or economic issue that need to be dealt with can be found.[80]

China's legislation clinic, where law students work with civic bodies and grassroot organizations to find specific issues in legislations for amendment, is the inspiration behind this human rights litigation and law reform clinic.

In India, there are some examples of public interest litigation by law students[81] and also zeal towards law reform activities. The Legal Aid Society of the West Bengal National University of Juridical Sciences (NUJS), Kolkata has been involved in seeking justice for scheduled castes population in Puri District, Odisha since 2010.[82] They have filed specific complaints with the Odisha State Human Rights Commission regarding right to water, right to enter into the temple for the scheduled caste population and free and compulsory education for the scheduled caste children.

Because of the intervention of the NUJS Legal Aid Society, the District Legal Services Authority has been proactive in engaging legal aid lawyers for the scheduled caste population of Puri. The change in the lives of the scheduled caste population of Puri because of the intervention of the NUJS Legal Aid Society has been discussed in the Seminar on Civil Rights of Scheduled Castes and Scheduled Tribes.[83] In that seminar, leaders of scheduled caste community and various human

78 Discrimination on the grounds of poverty often prevents access to the very tools needed to fight this condition. It is important to fight against recognized forms of discrimination which include race, ethnicity, religion, gender and others. Poor people are also often discriminated against on the basis of their socio-economic condition. The challenge is to overcome this major obstacle to their empowerment; otherwise, those trapped in poverty may fall into a vicious circle from which it is hard to break out. See Maritza Formisano Prada, Empowering the Poor through Human Rights Litigation 28 (2011).

79 Drawn up and expanded in the work of Amartya Sen. *See generally* Amartya Sen, Development as Freedom (1999); Inequality Re-Examined (1995); Commodities and Capabilities (1987); Poverty and Famines: An Essay on Entitlements and Deprivation (1982).

80 Law school based, credit bearing course or program that combine clinical methodology around skills and values training with live case-project work, all or most of which takes place in the human rights context. See Arturo J. Carrillo, *Bringing International Law Home: The Innovative Role of Human Rights Clinics in the Transnational Legal Process*, 35 Colum. Hum. Rts. L. Rev. 527, 533-34 (2004) (Here, 'human rights context' refers to 'a dynamic ecosystem comprised of the formal and informal rules, procedures, mechanisms, and actors that continuously interact at myriad levels to apply, promote, defend or develop human rights principles').

81 Students of the V. M. Salgaokar College of Law, Goa have successfully filed 14 public interest litigations before the Mumbai High Court (Panaji Bench) on various issues ranging from the use of helmets to violations of Coastal Regulation Zones. See V. M. Salgaocar College of Law, http://www.vmslaw.edu/.

82 Author was a part of the team consisting of Prof. Anirban Chakraborty, Soumyajit Das (LL.M Student), Sabyasachi Chatterjee (LL.M Student), S. Jyotiranjan (LL.M Student), Amarendra Gogoi (LL.M Student), Niteesh Kumar Upadhyay (LL.M Student), Lokenath Chatterjee (LL.B Student), Puneet Rathsharma (LL.B Student) and Rajesh Kumar Singh (NUJS Staff).

83 The seminar was organized in Puri District, Odisha jointly by the Legal Aid Society, The West Bengal National University of Juridical Sciences and District Legal Services Authority, Puri on September 01, 2012.

rights NGOs presented their views and voiced their appreciation for the work done by NUJS Legal Aid Society.

The activities of the students in this sort of human rights litigation and law reform activity will help them to develop interviewing skills, counseling, drafting capability of the students. As one scholar has put it, *'…human rights lawyering involve litigation, advocacy, monitoring and reporting, policy and legislative drafting, organizing and lobbying. Human rights clinics aim to acquaint law students with this variety of practice, and to engage them critically and practically in developing one or more of these skills.'* [84]

It is important that if this sort of clinic is to work, it must be a long-term project. That is the only way to gain people's confidence. The goals of clinical legal education have to be developed in this sort of clinic and these goals may include advancing human rights and social justice.[85] This human rights litigation and law reform clinic can operate alongside the rural access to justice clinic to ensure community engagement.

For law schools, community engagement for human rights litigation and law reform should occur in three spheres: teaching and learning; community service; and research. Engaging with the community is an important way of making students aware of society around them, teaching them to apply academic learning to real life, providing material for curriculum and research that is relevant to society, preserving traditional knowledge and culture, and promoting social justice. Proper collaboration and division of work between the two clinics could bring significant change for the underprivileged and fulfill the goals and values of clinical legal education.

D. Conclusion

These proposed models of clinical activities for Indian law schools focus on fulfilling the curricular objectives of clinical legal education at large and also to put some stake on Indian socio-economic structure to fulfill the millennium development goals. Though it is argued by the Western world that clinical legal education is primarily concerned with skills training for law students, in a world full of poverty and discrimination in distribution of wealth, we can set an agenda to serve the underprivileged and develop lawyering skills.

The issue of financial resources to run clinical program is important in India as most Indian law schools are privately managed. This is also a point where we can learn from clinical programs in China and South Africa. China manages its clinical programs using money from donors through the organized efforts of CCCLE. A developing country like South Africa has also formed a national forum of university-based legal aid institutions, named AULAI, which can then take a more organized approach towards getting funding. In India, many lacunas can be addressed by forming a national legal aid advocacy institution for law schools, to help them set up their clinical programs and get funds from various governmental, non-governmental and international organizations.

It is promising that there is a new generation of legal academics and students who have risen in India with a mission to inspire others to action, particularly in the pursuit of justice. The government

84 Deena Hurwitz, *Engaging Law School Students Through Human Rights Clinics. A Perspective from the United States*, 11 Austl. J. Hum. Rts. 37, 38-39 (2006).

85 Jocelyn Getgen Kestenbaum, Esteban Ho Yos Ceballos & Melissa C. Del Aguila Talvadkar, *Catalysts For Change: A Proposed Framework For Human Rights Clinical Teaching And Advocacy*, 18 Clinical L. Rev. 459, 482 (2011-2012).

is also expanding its vision of legal education, working towards systematic reform and listening to ideas about how to make legal education more meaningful and relevant for Indian society. Now, it is only a matter of time until we see law students, under the supervision of their teachers, working closely with underprivileged communities throughout India to make the Preamble of the Indian Constitution a reality for all.

VI. Suggestions And Conclusion

Having looked closely at the nature and status of clinical legal education in India, and in three other countries, it is clear that Indian clinical legal education's primary objective is to secure social justice mission and work for the empowerment of underprivileged groups in Indian society. The two models put forwarded in this paper could be of great value, not only helping to empower the underprivileged but also to ensure the goals and values of clinical legal education.

Now all the stakeholders of legal education have to take up certain points, to create a platform for the law schools to introduce these models of clinical teaching, get funds to continue with these models, and train faculty members in clinical teaching. These suggestions can be divided into the following headings:

A. For Law Schools/ Colleges/ Universities: It has been made mandatory by the Bar Council of India for every law school or college to have a functional clinic which should work with the community to provide basic legal services. It is now suggested that each law school or college should establish their clinic in rural or semi-urban areas. This kind of clinic may be established in association with any local NGO or municipality or panchayat authority. The office must be easily accessible by the community members. It would be helpful if those behind the institution liaise with the District or Taluka Legal Services Authority, telling them about the clinic. These government bodies could provide some funding.

The community clinic should be open at the weekends like Saturday evening or Sunday morning because the prospective client must be free to attend. The ideal student group for a clinic should not exceed 25 for each Saturday evening or Sunday morning. The forth year and fifth year (in case of 5 year LL.B course) students or second year and third year (in case of 3 year LL.B course) students should be divided into several groups to run the clinic each Saturday evening or Sunday morning and these groups should rotate as is convenient. One faculty member experienced in clinical teaching must supervise the students. In other cases, lawyers appointed by the District or Taluka Legal Services Authority may also supervise the students in their clinical activities. If there is continuous clinical activity in a village, villagers will be more confident that they are not going to be left alone, and are more likely to come to the clinic for advice. The cases may range from domestic violence, maintenance, land related dispute, RTI matters, to atrocities towards SC/ST population.

First of all it will be the students who will take care of these cases, interviewing and counseling the client, prepare necessary drafts and instructing the client to approach the appropriate authority for consideration. For example, if the client is in need of a legal aid lawyer to defend his or her case in a court of law then the clinic can act as a bridge between the legal services authority and the client.

B. For Bar Council of India/ State Bar Councils/ Bar Associations: The Bar Council of India (BCI) under the Advocates Act, 1961 has the authority to regulate legal education. BCI has framed several rules, curriculum development committees to bring excellence to legal education. Despite these efforts there are areas where gaps exists, like in clinical legal education. As establishing a clinic is now mandatory under the BCI rules, so clinical activity of the students in those clinics must be credit-based.

It is now urgently required by the BCI to take clinical activity under the credit based/ marks based system. It is also important to establish a Sub-Committee on Clinical Legal Education under the Legal Education Committee of BCI, where trained Indian clinicians will be members. The sub-committee should work to standardize clinical programs and make it a uniform activity, inspecting and monitoring clinical programs of various law schools, liaise with various authorities to get fund for clinical programs, arrange workshops and seminars for clinical law teachers or designated clinical faculties once in a year.

State Bar Councils and Bar Associations should play an active role in implementing the clinical programs in each state. State Bar Councils with the help of local Bar Association may provide some mentor lawyers for the students in a particular clinic. The mentor lawyers, in-cooperation with the designated clinical faculty, may supervise the works of the clinic students in Saturday evening or Sunday morning. This would not only build a working relationship between the senior lawyers and the future lawyers but also bring a idea of professional ethics and etiquette.

C. For National Legal Services Authority (NALSA): The potential of a law school to reach the community has historically been ignored by the National Legal Services Authority. But recently, some of NALSA's activities have created a light in the middle of the sea. The NALSA Clinic Regulation Rules, 2010 have shown the direction towards collaboration between the legal services authorities and the law schools. Now, NALSA should come up with a resolution for all the District Legal Services Authorities to take appropriate steps to collaborate with law schools in that district to provide legal services at the door steps of the people. The model of starting clinic at rural or semi-urban areas can be effectively implemented with the help of the District Legal Services Authority or Taluka Legal Services Authority. One legal aid lawyer may be present there to collaborate on behalf of the legal services authority and if any litigation comes he may take the matter to the appropriate court of law. The clinic students can work under the legal aid lawyer to prepare the necessary documents. It is also important for NALSA to come with some funds for these collaboration activities with the law schools. NALSA should allocate a separate fund for every District Legal Services Authority depending upon the number of law schools in that district. There must be an equal amount of fund for every law school in each district and the District Legal Services Authority may distribute the funds to the law schools for running the clinic activities and at the end of each financial year they may ask for an audited report of the expenditure of funds by the clinic.

D. For University Grants Commission (UGC): Finally, the UGC must take some steps to develop the faculty standard for clinical teaching in law. It should start a faculty development course on clinical legal education for staff of law schools in charge of teaching practical papers.

First, UGC should look at some model institutions which have exceptionally good clinical activities and have trained clinical faculty members and use these models as a basis to develop a curriculum for a faculty development course in clinical legal education. The duration of this sort of course may range from two to four weeks. The model institutions, after preparing the curriculum, will conduct the course in association with UGC. There should be at least four to six model institutions throughout the country to conduct the course. UGC must provide funds for this course and encourage experienced law teachers who have prior experience in conducting large scale clinical programs in their own university or college to teach this course.

Another faculty improvement activity which can be undertaken by UGC is to start some fellowships for clinical law teachers to undergo special training in clinical legal education in foreign law schools. Previously the United States India Education Foundation (USIEF), New Delhi in association with Govt. of India had the Neheru-Vanderbilt Fulbright Scholarship for Indian clinical law teachers to study one year specialized LL.M in Clinical Legal Education from Vanderbilt University, USA. But this program has been discontinued. Now, there is no opportunity for Indian clinical law teachers to take such courses, mainly due to a lack of funds. However, the UGC may start similar programs with some foreign universities who offer an LL.M in Clinical Legal Education, PG Diploma in Clinical Legal Education, or a Diploma in Clinical Legal Education. Bringing back the fellowships for law teachers in clinical legal education will also encourage them to work hard for their respective law school clinics and the rigorous training will make them equipped with the art of clinical working and supervising.

On a final note, the author is of opinion that Indian clinical legal education's primary objective is to ensure social justice and empower the underprivileged groups in Indian society. This mission cannot be achieved unless there is a combined effort from the law schools, BCI, UGC and NALSA. The models which have been formulated in this paper and the formality of starting clinical programs like that will be the primary responsibility of the law schools. It is the stakeholders of legal education which must act positively to carry forward with these models.

Clinical Practice

Keynote Address

Tenth International Journal of Clinical Education Conference in July 2012 Durham, Uk

Time to rework the brand 'Clinical Legal Education'[1]

Mary Anne Noone

Introduction

At the Tenth International Journal of Clinical Legal Education, the involvement of more than 200 participants from 22 different countries and jurisdictions highlighted the varying circumstances and challenges facing clinicians around the globe. The conference discussions were vibrant and often inspiring. The conference themes were: *Clinic for All? Should clinic integrate into traditional legal teaching? Should all students have the opportunity to do clinic? Should clinics engage more with the profession?* It was not the first time these themes have been addressed at clinical legal education conferences. They are perennial issues for the clinical legal education movement and their merits have been forcefully argued over several decades. For many of those attending the conference, the definitive answer to all four questions is "Yes".

Clinical legal educators can readily recite a litany of reasons why clinical legal education is a preeminent form of legal education. The benefits for students, the communities they serve and the legal profession are clearly apparent to clinicians. These positive attributes have been recognised in a range of different documents reviewing legal education. However the real challenge is how to make clinic for all students a reality. How can we make this happen?

In reflecting on this question I wondered why if the merits of clinical legal education are so obvious, why is it that we do not have clinic for all? Why isn't clinical legal education an integral part of legal education? Why don't all students get the opportunity to undertake clinical legal education and why isn't the legal profession advocating for clinical legal education to be a mandatory aspect of law degrees?

Obviously the answers to these questions are going to be jurisdiction and university specific. In this paper I address one possible response, the branding of clinical legal education. Although my comments are informed by what is happening in Australian university sector and my recent work with five Australian clinicians in our best practices project,[2] I hope my remarks have some common resonance to differing clinical legal education environments.

1 This paper given as a keynote address at the 10th International Journal of Clinical Legal Education Conference in July 2012 Durham, UK.

2 Evans, A., Cody, A., Copeland A., Giddings, J., Noone M.A. & Rice S., *Best Practices Australian Clinical Legal Education* Office of Teaching and Learning 2013 accessible at http://www.olt.gov.au/resources?text=clinical legal education ; See also *Strengthening legal education by integrating clinical experiences* http://www.law.monash.edu.au/about-us/legal/altc-project/ .

Carer's Victoria story

To put the focus of my paper in context I recount a short story. I am a Board member of a not-for-profit organisation representing carers. It works to support and advocate on behalf of carers and caring families.[3] The organisation is primarily reliant on government funds but it has recently gone through a strategic planning exercise and wants to decrease its reliance on government funding and increase non-government funding. This would enable the organisation to become sustainable into the future and be more involved in advocacy and policy work.

As part of this process, the organisation engaged a consultant company to help with fundraising and organising fundraising events. However before the company took on the job they did an informal survey. They went out into the city centre and asked random people what they understood a carer to be? Had they heard of the organisation? What did they think the organisation did? and finally would they give money to such an organisation? The results of the survey indicated people were confused about who was a carer, that they did not know the organisation but generally indicated the work of the organisation was worthwhile and said they might donate money to support such an organisation.

The consultants concluded that before they could increase fundraising capacity of the organisation, they must create greater awareness of the brand of Carers Victoria. The public needed to know about carers and the role of the organisation before there would be an increase in donations.

This experience resonated for me in the context of this conference's themes and the work we have been doing on best practices in clinical legal education in Australia. In order to achieve '*Clinic for All'* and integrate clinic into traditional legal teaching I suggest we need to improve our brand awareness. We need to have a clinical legal education brand that deans, faculty, students and the legal profession identify and want to be involved with.

In order to improve our brand, at least three fundamental questions need addressing: What is the current clinical legal education brand? What are the competing brands? And what could be the CLE brand? I explore each of these topics in the following discussion. However there is a preliminary issue that needs clarification.

What is a Brand?

Before addressing what is the Clinical Legal Education brand I needed to learn about branding as I am a novice in the discipline of marketing. Through web based research I learnt that branding creates visibility; convinces supporters of the commodity/ organization/services' value; and encourages them to purchase or provide funds.

> *Brands are the cultural phenomenon of our time. Branding is no longer just about corporations, products and services…. Today towns, regions, sports, museums, consumer groups and charities are all branded and have strength of identity, cohesion and a defining role.*[4]

3 Carers Victoria http://www.carersvic.org.au/ accessed 30/8/12

4 *3548QCA: Branding* http://www3.griffith.edu.au/03/STIP4/app?page=CourseEntry&service=external&sp=S3548QCA accessed 7/7/12.

Wikipedia states:

A brand is a "Name, term, design, symbol, or any other feature that identifies one seller's good or service as distinct from those of other sellers.

A concept brand is a brand that is associated with an abstract concept, like breast cancer awareness or environmentalism, rather than a specific product, service, or business.

Brand is the personality that identifies a product, service or company (name, term, sign, symbol, or design, or combination of them) and how it relates to key constituencies: customers, staff, partners, investors etc. [5] [11]

Individuals want to be part of a brand because of what it says about you and signifies you are part of a particular group. According to a provocative report by an Australian brand agency Bastion Brands, the top three brands in Australia are Salvation Army, the Hells Angels and Apple. The report found they were the most effective brands because consumers understood what they believed in, felt they could belong to the brand and would change their behaviour for it.[6]

All universities are involved in branding and marketing. They create message packages to sell their product.[7] For instance University of Sydney states:

> *The University's brand goal is to achieve a cohesive brand presence and a clearly defined distinctive image in the market. This is much more than designing a logo – it's about the active management of how the University is perceived and creating a clearly defined, differentiated, sustainable brand over time.* [8]

And the University of Melbourne:

> *Through consistency and dedication to brand principles we build recognition and maintain brand loyalty to ensure that the experience of the University of Melbourne brand for all our key stakeholders is meaningful, inspiring, and differentiates us from our competitors.*[9]

A related example illustrates how governments also are involved in the branding of education. The Australian Parliamentary Secretary for Trade, Justine Elliot recently announced a new brand for Australia's international education sector, *Future Unlimited*. The initiative was claimed to "refocus attention on the benefits of Australian educational qualifications, and the doors they open for international students". The Minister claimed, in the past Australia has relied on its affordability, spectacular natural environment and friendly lifestyle to attract overseas students however increased competition caused a rethink.[10]

Checco suggests that a brand needs to answer the questions: Who are we? What do we do? How

5 http://en.wikipedia.org/wiki/Brand#cite_note-0 accessed 7.7.13

6 Governance & Management Pty Ltd. http://www.governance.com.au/board-matters/fx-view-article.cfm?loadref=2&article_id=B17E7F62-D942-B207-C0B4F166C9E8B895 accessed 7 July 2102

7 Victoria Neumark, What's in a name? The value of a good university brand guardian.co.uk 3 April 2012 http://www.guardian.co.uk/higher-education-network/blog/2012/apr/03/branding-universities accessed 10 October 2012

8 http://sydney.edu.au/ups/orders_quotes/branding.shtml accessed 10 October 2012

9 http://marketing.unimelb.edu.au/branding/index.html accessed 10 October 2012.

10 http://ministers.dfat.gov.au/elliot/releases/2011/je_mr_110607.html accessed 10 October 2012.

do we do it? And why should anyone care? [11]

What is the brand 'clinical legal education'?

If a survey was conducted of a random selection of people in the main street and they were asked what do they know about 'clinical legal education'? What do they think it means? Do they think it is a good thing? It is most likely that, like the carers example above, there would be ignorance, confusion and maybe general uninformed support. More importantly, what if this survey was done within the legal profession, academia or potential law students? Quite likely there would be more awareness but also significant confusion. As Checco posits, would they truly understand what we do? Have we made it clear why they should support and align themselves with Clinical Legal Education in a meaningful way? Do they understand the impact clinical legal education programs have in the community? Why would they choose to support clinical legal education over other legal education developments?[12]

At the conference I conducted a short exercise where participants were asked to think of a word or short phrase that might encapsulate what the clinic legal education brand meant to them. The responses included the following words:

- Practical
- Hands on
- Experiential
- Providing services to those in need
- Social justice
- Teaching ethical lawyering
- Skills based
- Sexy!!!

The concept of clinical legal education is not widely understood and there is no clear identifiable brand. In Australia, the acronym CLE gets confused with continuing legal education for lawyers and community legal education.

Additionally there is no common visual image for clinical legal education. An internet search for images of clinical legal education reveals the predominant image of students sitting around a table or in a court room, photos of individual clinicians and images of conference locations![13] The images of students involved in clinical legal education are not all that different from other forms of legal education or education more broadly. There is certainly no readily identifiable symbol or image for clinical legal education. It is often associated with the symbol for justice, the scales or

11 Checco, Larry *Branding for Success - A roadmap for raising the visibility and value of your non-profit organization* 2005 Trafford Canada p 40

12 Checco, *Larry Branding for Success- A roadmap for raising the visibility and value of your non-profit organization* 2005 Trafford Canada p 17

13 http://www.google.com.au/search?q=images+of+clinical+legal+education&hl=en&gbv=2&um=1&tbm=ischtab=wi&oq=images+of+clinical+legal+education&gs_l=img.12...396312.396312.0.397922.1.1.0.0.0.0.94.94.1.1.0...0.0.oGvezkn2qas accessed 9 July 2012

court rooms but this does not differentiate it from other forms of legal education.

The term clinical legal education covers many different endeavours. Clinical legal education is diverse in its form and substance. In the Best Practices project in Australia we found an amazing diversity of developments. We defined clinic as:

> 'Clinic' or clinical legal education (CLE) is a significant experiential method of learning and teaching. CLE places law students in close contact with the realities, demands and compromises of legal practice. In so doing, CLE provides students with real-life reference points for learning the law. CLE also invites students to see the wider context and everyday realities of accessing an imperfect legal system. Clinical pedagogy involves a system of self-critique and supervisory feedback so that law students may learn how to learn from their experiences of simulated environments, observation and, at its most effective level, personal responsibility for real clients and their legal problems. CLE is, in summary, a learning methodology for law students that compels them, through a constant reality check, to integrate their learning of substantive law with the justice or otherwise of its practical operation.[14]

We identified five different approaches to provding clinical legal education. They are

- In-house live-client clinic
- In-house live-client clinic, with some external funding
- External live-client clinic/ agency
- Externships/internships/placements
- Clinical components in other courses, including simulation[15].

Those who seek to expand and promote clinical legal education often face opposition from other academic colleagues. Critics or non-supporters claim that clinical legal education is not 'real' legal education or that it is not 'academic' or intellectually rigorous. A common response from university decision makers is that clinical legal education is expensive. Certainly it is resource intensive. The challenge for those convinced of the benefits of clinical legal education is to develop a 'brand' that is attractive and appealing to those with the funds.

How to create a positive/persuasive brand for clinical legal education?

Although branding is used intensively by educational institutions, I was unable to locate a relevant reference. Instead, the analysis in a book by Checco aimed at not for profit organisations, *Branding for Success: A Roadmap for Raising the Visibility and Value of Your Nonprofit Organization*, provides a simple five-step process addressed at assisting an organization develop successful branding.[16] Although the focus is not for educational environments, I suggest the basic principles are applicable to the context of clinical legal education.

14 Evans, A., Cody, A., Copeland A., Giddings, J., Noone M.A. & Rice S., Best Practices Australian Clinical Legal Education Office of Teaching and Learning 2013 p 20

15 Ibid.

16 Checco, *Larry Branding for Success- A roadmap for raising the visibility and value of your non-profit organization* 2005 Trafford Canada; Checco's book, reviewed at http://nonprofit.about.com/od/nonprofitpromotion/fr/branding.htm accessed 5 July 2012

The five steps Checco describes are:

1. Conduct a SWOT analysis.

2. Review your SWOT analysis for brand messaging opportunities.

3. Determine what messages your audiences want or need to hear.

4. Create a "messaging package."

5. Before finalizing your message package, go back to your focus group.

1. Conduct a SWOT analysis.

A SWOT analysis is commonly used in strategic planning exercises. It is an acronym for strength, weaknesses, opportunities, and external threats. Ideally participants in a SWOT analysis of clinical legal education would include all stakeholders including the dean, other non-clinical colleagues, clinical staff both academic and administrative, students, local legal profession. Most clinical legal educators can easily cite the strengths of clinical legal education but what might be the strengths for other stakeholders not just students, clinical teachers and clients?

Checco suggests a series of questions for use in each part of the SWOT analysis. [17] I have adapted these to assist those seeking to promote clinical legal education:

- "Strengths - What do we do best? How do we want our target audiences (colleagues, students, legal profession) to view us? What distinguishes us from our competition?
- Weaknesses - In what ways do we have trouble clearly explaining to people outside our field what we do? How much does our university/law school know about branding, and how effective will the university/colleagues be in promoting and protecting our brand?
- Opportunities - Can we identify an expanding market for clinical legal education? What is the current educational landscape and what are the current educational developments?
- Threats - Are there external factors that would prohibit clinical legal education from promoting our brand? Who/what are our competitors? How much do we know about them?"

2. Review your SWOT analysis for brand messaging opportunities.

In reviewing the SWOT analysis, most clinical legal educators could articulate what they consider to be the strengths of clinical legal education and how it is distinguishable from other forms of legal education. Although there may be disagreement between clinicians about the relative merits, what will be just as instructive is the discussion about weaknesses and why the merits of clinical legal education are not clear to other stakeholders. Checco suggests the analysis focus on "What have you learned about who you are, what you do, how you do it, and why anyone should care?"

17 Ibid p 45

3. Determine what messages your audiences want or need to hear.

This point is most relevant to further the promotion of clinical legal education. The SWOT analysis may reveal that "what you might want to say about your organization is not what your audiences want to hear"[18].

An example Checco uses relates to provision of affordable housing. For years, proponents of such housing emphasized the needs of the people being served. But audiences did not like the idea of "subsidized" housing for "needy" people in their communities. When the message was changed to emphasize the positive impact such housing would have such as tax benefits, shoppers to help maintain a downtown, or diversity in the schools, such housing became much more palatable to communities.

For at least three decades, those involved in clinical legal education have emphasized a range of benefits in their promotional material. For instance in the Australian Best Practices Report we state that Clinical Legal Education has the potential to:

- help students reflect on and analyse their experiences;
- develop student awareness of law in the context of society;
- engage students in deep and active learning, with timely, rich feedback;
- develop student emotional skills, values, responsibility, resilience, confidence, self-esteem, self-awareness and humility;
- move a student towards responsible professional identity;
- sensitise students to the importance of all relationships – including with clients, students, professionals;
- benefit from student-centred learning, which comes out of flexible and adaptable approaches; and
- educate students to become effective, ethical practitioners.[19]

Given the still marginal state of clinical legal education (in most countries) as indicated by the conference themes, perhaps we need to reassess what other perspectives on clinical legal education could be highlighted. Checco suggests that to complete this step in the process, it is useful to survey a representative number of your audience. He suggests a short survey to give a better understanding of (I have adapted the questions for clinical legal education): How they currently perceive clinical legal education? What more they would like to know about clinical legal education and what it involves? What key words come to them when they think about clinical legal education? What kinds of messages they think clinical legal education brand needs to convey? [20]

18 Ibid p 51

19 Evans, A. Cody A., Copeland A., Giddings J, Noone MA. & Rice S., (2012), *Best Practices Australian Clinical Legal Education* p 12

20 Checco, *Larry Branding for Success - A roadmap for raising the visibility and value of your non-profit organization* 2005 Trafford Canada p 53

4. Create a "messaging package."

The messaging package includes a tagline, a mission statement, a positioning statement, supporting statements, and a logo[21]. As Checco says,

> *A 'messaging package' is simply a compilation of the core messages you want your brand to convey. Its purpose is to help you* ***stay on message*** *whenever you communicate information about your organization.*[22]

A tagline is a "catchy, quick-identifying reference, usually no more than five to seven words in length'. Good taglines elicit "an emotion or an energy that people tend to gravitate to naturally, something they can associate with that is positive and good".[23] Some current examples of taglines for clinical legal education are: 'Beyond the classroom'[24], 'Real, relevant reflective and rad' and 'Real, committed, active'.

Once those involved with clinical legal education have clarified the message they wish to convey, ideally assistance could be sought from the relevant university marketing section or staff.

5. Before finalizing your message package, go back to your focus group.

Checco recommends this final step in order to ensure the words that have been chosen have the meaning intended for the audience. He gives examples of words carrying different meanings to different groups. He cautions, "Language is a powerful tool. It forms our images, thoughts, opinions and actions. Therefore, when defining your brand, choose your words wisely".[25]

Clinical Legal Education: Opportunities and Threats

One of the steps in the SWOT analysis is assessing opportunities and threats. For those interested in improving the brand of clinical legal education, the following questions need to be addressed: What are the competing brands or threats? and What brands could we align with ?

Related developments in tertiary education

In order to answer these questions we need to have an understanding and awareness of other current developments in the tertiary sector. Some related examples from the Australian context are Service Learning, Community Engagement, Experiential Learning and Work Integrated Learning. These developments are also occurring in other countries. Are these developments threats or potential opportunities for clinical legal education?

Despite being involved in clinical legal education for several decades, until recently I was personally unaware or disinterested or dismissive of these developments. However at the beginning of 2012, my university held workshops in Service Learning given by Dr Trae Stewart[26] and also one by

21 Checco p 54

22 ibid

23 P 55

24 Law School, University of New South Wales http://www.law.unsw.edu.au/current-students/beyond-classroom

25 P 61.

26 http://www.latrobe.edu.au/ctlc/workshops/schedule.php?fldWorkshopTID=4 accessed 9/7/12; http://www.aucea.org.au/events/visiting-scholars-program/ accessed 25/10/12.

Barbara Holland on Community Engagement[27]. I attended these workshops and was surprised when I was called on to describe our clinical legal education program as an example of the university's service learning and our ongoing relationship with local community legal service as a strong example of community engagement.

The Clinical Legal Education program has generally enjoyed strong support from my Law School but this series of events made me reflect on what other opportunities there were to seek further support to expand and consolidate our clinical program. I began to explore what these developments involved. I discovered that a small number of other clinicians had already written on the synergies that might exist.[28]

Experiential Learning

Generally experiential learning encompasses clinical legal education. Put most simply, experiential learning is 'learning by doing' however many proponents state that to get the most out of the learning experience there should also be feedback, reflection and application of new skills and ideas.[29] The various developments including service learning, community engagement and work integrated learning all adopt experiential learning as their pedagogical base.

Many law schools include, under the banner of experiential learning, their clinical legal education programs. For example Yale Law School[30] and at New York Law School there is the Office of Clinical and Experiential Learning[31] and at University of New South Wales there is a Director of Experiential Learning[32].

Service learning

The National Service-Learning Clearinghouse in the US describes service learning as "a teaching and learning strategy that integrates meaningful community service with instruction and reflection to enrich the learning experience, teach civic responsibility, and strengthen communities".[33] It is an approach to education that applies to all levels of education and not just focussed on tertiary institutions. The National Service-Learning Clearinghouse gives this example of what service learning looks like.

27 Sponsored by Engagement Australia (formerly Australian Universities Community Engagement Alliance) http://www.aucea.org.au/ .

28 Blissenden, M., "Service Learning: An Example of Experiential Education in the Area of Taxation Law" (2006) 16(1&2) *Legal Education Review* 183; Giddings J., 'Two-Way Traffic: The scope for clinics to facilitate law school community engagement' in Keyser, P, Kenwrothy A. & Wilson G(eds), *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service-Learning* (2009 Haltstead Press Canberra) p 40; Morin, L. & Waysdorf S., The service-learning model in the law school curriculum: expanding opportunities for the ethical-social apprenticeship (2011-12) 56 *New York Law School Law Review*; Smith, L., 'Why clinical programs should embrace civic engagement, services learning and community based research' (2003-04) 10 *Clinical Law Review* 723

29 Smith p 725-727.

30 http://www.law.yale.edu/academics/clinicalopportunities.htm

31 http://www.nyls.edu/academics/jd_programs/office_of_clinical_and_experiential_learning/

32 http://www.law.unsw.edu.au/current-students/beyond-classroom

33 'What is Service Learning? ' on National Service Learning Clearinghouse US website- http://www.servicelearning.org/what-service-learning accessed 9 July 2012

> *If school students collect trash out of an urban streambed, they are providing a valued service to the community as volunteers. If school students collect trash from an urban streambed, analyze their findings to determine the possible sources of pollution, and share the results with residents of the neighborhood, they are engaging in service-learning.* [34]

At a tertiary level, Service Learning typically involves the student engaging with a non-government or community organisation to experience work-integrated learning and citizenship in this particular context.

> *"Students apply what they have learnt in the classroom to address priorities in the community in partnership with that community."*[35]

Smith argues many high quality clinical legal education externships fall into the category of 'service learning' courses.[36] She suggests that clinicians and students can rely on "service-learning movements and theories for pedagogical theory and support".[37] There is some indication that law academics, not clinicians, are embracing service learning.[38]

Community engagement

The Australian Catholic University defines community engagement as the process that "brings the capabilities of its staff and students to work collaboratively with community groups and organisations to achieve mutually agreed goals that build capacity, improve wellbeing, and produce just and sustainable outcomes in the interests of people, communities, and the University".[39]

The peak body Engagement Australia has set out the following principles applying to the Engaged University:

1. University community engagement is based on a mutually beneficial exchange of knowledge and expertise between universities and communities
2. Engaged research is designed, managed and disseminated as a partnership that addresses both academic and community priorities.
3. Engaged learning and teaching programs respond to individual and community needs and opportunities and links to specific learning goals and experiences for students. Programs are designed and managed in partnership with communities, and are socially inclusive and globally and locally relevant.[40]

In the USA the term 'civic engagement' is used. Engagement describes "mutually beneficial

34 Ibid.

35 'Service Learning' Griffith University http://www.griffith.edu.au/gihe/resources-support/service-learning accessed 9 July 2012

36 Smith p 729.

37 bid p 731

38 Blissenden, M., "Service Learning: An Example of Experiential Education in the Area of Taxation Law" (2006) 16(1&2) *Legal Education Review* 183

39 'Definition of Community Engagement' Australian Catholic University http://www.acu.edu.au/about_acu/community_engagement/ce_at_acu/definition/

40 http://www.aucea.org.au/about/structure-charter/ accessed 9 July 2012.

community-university knowledge-based relationships".[41] This approach encourages academics and students to engage with the community through research activities and sharing knowledge to improve and enhance jointly identified issues. Interestingly Jonny Hall (the 2012 IJCLE conference organiser) is *Associate Dean Region, Engagement and Partnerships* at University of Northumbria[42]. Universities are increasingly focussed on 'engagement' with their communities.

Work integrated learning

Work-Integrated Learning (WIL) describes directed or supported educational activities that integrate theoretical learning with its application in the workplace.[43] It is a form of experiential learning. The Australian Collaborative Education Network (ACEN) list the following forms of work integrated learning:

- Internships
- Cooperative education
- Work placements
- Industry based learning
- Community based learning
- Clinical rotations
- Sandwich year
- Practical projects. [44]

Clearly in these various developments there are overlapping features with clinical legal education and potential commonality of purpose. For instance at Griffith University (in Australia) they are exploring the expansion of Service Learning as a component of its growing Work-integrated Learning (WIL) profile.[45] This is because Service Learning is similar to WIL in that it involves the intentional integration of academic theory with practice, with the practice component providing a community benefit.

Clinical legal education brand

Clinical Legal Education has things in common with these 'competing brands'. Clearly there are synergies between service learning, community engagement and clinical legal education. Obviously they all encompass learning by doing. They have a pedagogical base of experiential learning. Additionally, it could be argued that they all aim to engage students in providing services to

41 Holland B, 'Institutional Impacts and organisational Issues Related to Service Learning' Michigan Journal of Community Service-Learning (2000) p52-60 quoted in Smith at n.44.

42 http://www.northumbria.ac.uk/sd/academic/law/staff/jonnyhall accessed 9/7/12

43 'What is Work Integrated Learning?' at http://www.flinders.edu.au/teaching/wil/ accessed 30/10/12

44 http://www.acen.edu.au/ Accessed 9 July 2012

45 Griffith Institute for Higher Education Service Learning at Griffith University http://www.griffith.edu.au/__data/assets/pdf_file/0006/351285/Service-Learning-at-Griffith-University.pdf accessed 9 July 2012.

community whilst being involved in a learning experience.[46] Is it advantageous to align the clinical legal education brand to these other brands? Or if branding is about distinguishing a product or service from other competitors and garnering support how do we distinguish the clinical legal education brand?

One of the challenging aspects for the brand 'clinical legal education' is that it refers to a great many endeavours. A survey of the International Journal of Clinical Legal Education and attendance at IJCLE biannual conferences illustrates that globally there are many variations of clinical legal education. It refers to different pedagogy, different sites of teaching and often different purposes of teaching. As illustrated in recent Australian research it can encompass live-client clinics, externships/ internships/ placements and clinical components in other courses, including simulation.[47] Ideally we need to find a clinical legal education brand that is inclusive of all the various clinical activities and simultaneously highlights our distinctiveness. What words could be used to describe this variety of clinical experience but is also illustrative of what binds them together?

The Australian research found that the current features of Australian clinical legal education are:

- strong focus on service to the community,
- discussion of law in context
- involvement in a range of legal activities including individual case work, law reform, legal research and community legal education
- located in not for profits, community legal centres and legal aid organisations
- current growth is in externships. [48]

My preference, in context of Australian experience, is that we develop a brand that represents the benefits for students, community and legal profession. A brand that indicates this approach to legal education is the best way for students to integrate knowledge and at same time learn about the complex nature of justice and injustice. I would like a tagline that includes reference to justice. Perhaps "developing justice' as this would have two meanings: developing our students as well as seeking to pursue justice. Additionally we could align with existing brands for instance, the Global Alliance for Justice Education already has a logo and a developed network of "persons committed to achieving JUSTICE through EDUCATION"[49].

46 Bloch F. and 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

47 Evans, A., Cody, A., Copeland A., Giddings, J., Noone M.A. & Rice S., Best Practices *Australian Clinical Legal Education* Office of Teaching and Learning 2013 p 20.

48 Evans, A. Cody A., Copeland A., Giddings J, Noone MA. & Rice S., (2011) *Strengthening Australian legal education by integrating clinical experiences: identifying and supporting effective practices: Regional Reports* http://www.law.monash.edu.au/about-us/legal/altc-project/regional-reports/index.html

49 For further details see http://www.gaje.org/; Organisations like Global Alliance for Justice Education bring together clinical legal educators with a common interest in social justice and broader justice themes but not all clinical legal education has this focus.

Alternatively we could align with Service Learning and/or Community engagement. If the purpose is to achieve '*clinic for all students; integrate clinic into traditional legal teaching; and have clinics engage more with the profession?* We should explore all opportunities. Clinical legal education can benefit from being associated with the tertiary education movements discussed above.[50] In this way we could encompass all the variations of clinical work. Some universities and clinics are already doing this and have benefited as a result.[51] Could clinical legal education be named something else? If the objectives coincide and the students experience is good and the cause of improved access to justice is achieved what does it matter if a school does not have clinic but instead 'service learning' or 'community engagement'?

Finally it is critical to reflect again on Checco's steps and advice. If we want the brand clinical legal education to capture the imagination and support of students, colleagues, deans, legal profession and funders, we need to seek their views because the brand needs to be something they relate to, not our preferences. The brand developed needs to 'speak' to the jurisdiction specific legal profession and academics, university managers, law school students and communities served.

One of the traits I admire amongst my clinical colleagues is their preparedness to listen to new ideas, be innovative and flexible. If we truly want to 'expand the market' that is 'grow the sector' and make '*clinic for all'* a reality, we need to be attuned to other educational trends and movements in the tertiary sector and utilise these opportunities. The brand 'clinical legal education' has not worked to achieve '*clinic for all'* to date. It is time to rework the brand 'clinical legal education'.

50 Smith, L., 'Why clinical programs should embrace civic engagement, services learning and community based research' (2003-04) 10 *Clinical Law Review* 723

51 Morin, L. & Waysdorf S., The service-learning model in the law school curriculum: expanding opportunities for the ethical-social apprenticeship (2011-12) 56 *New York Law School Law Review*

Clinical Practice

Collaborating with other Disciplines: Best Practice For Legal Clinics - A Case Study of the Women's Law Clinic, University of Ibadan Nigeria

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Abstract

There is a gradual shift in research towards a multi-disciplinary approach. This paradigm move is in compliance with globalization. According to Carla Mariano, the human service professions are facing problems so complex that no one discipline can possibly respond to them effectively.[1] It has been noted that many clients in the Women's Law Clinic (WLC) of the University of Ibadan not only have problems tagged as legal, but problems closely related to other disciplines such as psychology, sociology, medicine, counselling and social works. It was therefore so obvious that the clinic was not an island; it could not exist all alone and effectively find a holistic solution to the all embracing problems presented by the clients. The clinic therefore partnered with other departments/units to achieve its goals.

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1 Mariano Carla (1989) The case for interdisciplinary collaboration *Nursing Outlook November/December 1989* at www.umdnj.edu/idsweb/idst5340/interdisciplinarycollaboration.pdf Retrieved on I June 2012

The goals of the WLC include providing legal services to the less advantaged women in society. It is a specialized clinic for women. It started off in the areas of human rights and family law, and has since expanded to accommodate other areas of law.

Thus in the light of the above, this paper considers ways by which legal clinics can collaborate with other disciplines in order to render all-round and balanced services to its clients. It details an interdisciplinary collaboration between the WLC in the Faculty of Law, University of Ibadan, Ibadan and other disciplines and units within and outside the University.

A personal involvement in the problems of the disadvantaged and a solution to the problem can be one of the most rewarding experiences in the life of a lawyer.

Clients in a clinic present different cases expecting the clinician to find a solution to the problems whether or not it is legal. This makes partnering with other disciplines a best practice to meet the expectations of the client.

History of the Women's Law Clinic, Faculty of Law, University of Ibadan

The idea to start a legal clinic was conceived during a stakeholders' forum held in 2005 at the Premier Hotel, Ibadan, Oyo State, Nigeria. At the forum, representatives from some human rights NGOs lamented the lack of adequate personnel and funding to reach and service the target population. It was noted at that meeting that systematic efforts at protecting the rights of women would require the provision of additional legal services. It was then suggested that creative legal solutions like clinical legal education that enable women to have greater access to legal representation would help to eliminate barriers to access to justice. It was noted that academic institutions would have to collaborate with NGOs and existing governmental legal institutions in addressing these issues in order to make any significant impact.It was also recognized that contribution from the academic community; including the legal education system, could have a significant impact in advancing the response to women's justice issues in Nigeria. University-based activities that include providing legal aid and conducting research would complement and support the exemplary work of NGOs working in this area. It was noted that inadequate research on identifying and understanding issues associated with women's access to justice as well as inadequate information about women's rights NGOs have contributed to women's lack of access to justice.[2] Such research findings would help to define or understand the issues related to access facing women; evaluate the effectiveness of current programs addressing justice issues for women and design new programs to do the same.[3]

It was therefore agreed at the stakeholders meeting that one of the ways to overcome the problem of access of women to justice, is to establish a legal clinic at the Faculty of Law, University of Ibadan, which would provide free legal services to indigent women while training and engaging the services of law students and staff clinicians. The Faculty of Law agreed to start a specialized clinic to provide pro bono services for indigent women and adopt clinical legal education methods in training the students. The decision of the Faculty stems out of the fact that it is committed to the transformation of the society and particularly to fulfil the mission of the University which is to contribute to the transformation of society through creativity and innovation.[4]

2 Ibid

3 Ibid

4 Vision of the University of Ibadan retrieved from http://ww.ui.edu.ng/content/vision-and-mission/ on June 30, 2012

The Vision Statement of the Faculty is to be a World Class Faculty of Law, dedicated to excellent legal training, research and development aimed at meeting the needs of the society; and the Mission Statements of the Faculty are:-

1. To expand the frontiers of legal knowledge through learning and research.
2. To produce law graduates who are worthy in character, learning and sound judgment.
3. To contribute to the transformation of society through legal creativity, research and clinical legal education.
4. To serve as a dynamic custodian of society's legal rights and values and thus sustain its integrity.
5. To be a centre of excellence in research for legal models of cutting edge global issues.
6. To be a focal point and voice for law faculties and legal education in sub Saharan Africa.[5]

The WLC was formally inaugurated on the 18th of July 2007 with good publicity at local and national levels; in print and electronic media.

The Women's Law Clinic was therefore established in 2007 under Consortium for Development Partnerships (CDP) Project on 'The Rule of Law: Access to Justice. The CDP is an international consortium of institutions devoted to conducting collaborative research and capacity- building activities in West Africa. The Faculty of Law, University of Ibadan, Nigeria is one of the CDP member institutions playing an active role in the projects of the consortium. The clinic is one of the eight (8) projects developed and effectively launched.

The Women's Law Clinic, University of Ibadan, Nigeria (WLC) is a specialized law clinic. It is a specialized clinic in the sense that it is for women and it began offering legal services in the areas of human rights and family law, which are in fact very wide areas and has since expanded to accommodate other areas of law. The clinic is a law school based in–house clinic located within the Law Faculty, University of Ibadan, but in a separate building. It is also a live client clinic as students come in contact with live clients. It is also a clinic where students for academic credit and under the supervision of staff supervisors/clinicians, provide pro bono legal services to indigent and less advantaged women within Ibadan metropolis.[6]

The WLC was established under phase I of the project. The clinic started in 2007 with a Director, a full time Clinic Administrator, a clerk, a driver, five male and female staff clinicians and about twenty law student clinicians. As at the 2011/2012 session, the number of staff rose to ten academic staff clinicians, and eighty (80) students both at undergraduate and post graduate levels. The final year undergraduate students of Criminology and Public & International Law and the 700 level (master's programme) students of comparative family law, comparative criminal law and procedure, human rights and alternative dispute resolution are now involved in the clinic service.[7]

5 Vision of the Faculty of Law, University of Ibadan retrieved from http://law.ui.edu.ng/visionandmission on June 30 2012

6 BamgboseOluyemisi, OlarindeSmaranda, Akintayo John, EkundayoOsifunke, OlaleyeFolake, OlomolaOmolade, AkinbolaBukola, Adejumo Isaac, Lifu Peter, Byron Ibijoke (2011) "Access To Justice And Human Rights For Women Project Under CDP 11" Final Report On CDP Phase 11 Codesria. Submitted by the Women's Law Clinic, Faculty of Law, University of Ibadan, Ibadan. Nigeria

7 Ibid

With a generous grant from the Netherlands Ministry of Foreign Affairs in 2007 to the Consortium, the clinic was able to take off. The successful operation of the Clinic under the phase I project, provided the impetus to embark on the objectives under CDP phase II which were to continue to provide free legal services to less privileged (indigent) women in Ibadan and its environs; continue to train law students using the Women's Law Clinic in the practice of law by utilizing techniques of clinical legal education to research and document the basic problems on women's access to justice and to carry out intervention programmes in order to facilitate women's access to justice.

The clinic adopts a multidisciplinary approach in the representation of indigent women: It provides free legal and counselling services; educates women on their rights and follows-up on its cases, encourages alternative dispute resolution mechanisms (besides litigation), that remedy wrongs and at the same time maintain the integrity and harmony of the community.

The clients in the clinic as stated above are indigent women. The clinic provides a legal platform for this category of women, who are poor and who have little or no access to justice as a result of social cultural and political factors. At inception, clients who came to the clinic were those that were financially poor and could not afford the services of a lawyer. However, the clinic came to realize that some women were being denied access to justice because of political factors. These categories of women were deemed to be politically indigent. The clinic therefore took in such clients and extended the services to them. The goal of the clinic is therefore to educate them and give assistance with pro bono legal services.

The student clinicians who work in the clinic are trained to put into practice their theoretical legal knowledge, using clinical legal education. They interact with, and advise live clients under the supervision and guidance of staff clinicians.[8]

A Day in the WLC

A normal day in the WLC starts at 8.am with the clinic administrator and clerk opening up the clinic and resuming for the day's work. Women walk in as new clients, referral cases or on appointment. A roster which is prepared by the clinic administrator is available at the clinic, showing the staff and student clinicians on duty for the day. Clinicians on duty for the day report at the clinic and in their cubicles. The cubicles are to ensure confidentiality and privacy during discussions. In the case of new clients; it is the duty of the clinic administrator to preliminarily determine if the client is eligible for representation in the clinic. Once this is determined, the case is assigned to a group of student clinicians on duty. A case note is opened for the client and all the necessary details and information are recorded. Clients are usually asked what they want or expect from the clinic before any advice is given. This is to allow the client to express herself while at the same time given proper counselling. The clinic has a policy not to impose advice on a client except where it is involves illegality, crime or life is endangered. This is followed by a detailed investigation of the case by the students under the supervision of a staff supervisor. The investigation may include letter writing to parties in the case inviting them to the clinic, immediate intervention in life threatening cases, visitation to parties involved in the case and referrals if necessary. Depending on the nature of the case, appointments are given to clients to enable further investigations. After the exit of the client, the case is reviewed by the students and supervisor on how to proceed. Where the case involves another party, the party is invited to give his or her

8 Ibid

in own side of the case. The methods adopted in resolving cases in the clinic are the alternative dispute resolution methods that include mediation and reconciliation. Where these methods fail, and there is need to go to court, if the client agrees, court papers are filed on behalf of the client and the client is represented in court.

The Need for Collaboration in the WLC

The word 'Collaboration' is derived from the words com and labor which means to work jointly with others or together especially in an intellectual endeavor.[9]

The trend for many centuries has been that of single specialization in the different professions and disciplines. There have been arguments between professionals on which profession is the most important or the profession that was first in time and many other arguments. In an article by Bamgbose, an illustration of one of such arguments was given.[10] It was between a social worker and a lawyer. Each boasted that his profession was the first in time. Both lay claim to the earlier existence by tracing their profession to the story of creation as contained in the Holy Bible. The first argument was from the social worker who claimed that God is the first social worker and his first activity was social work inclined in that God created light out of darkness to enable all living things that were consequently created to have the opportunity to see clearly and enjoy whatsoever God apportioned to them. Bamgbose further stated that in counter attack to this argument, the lawyer said that the first thing God did was to make a law when he said "let there be light". Not wanting to run in contempt of God's court, the universe obliged God and there was light.[11] He added that the argument had advanced to other areas such as the consideration whether one profession or discipline is relevant to the other or vice versa.[12] Professionals generally had always looked at cases before them in isolation and only in relation to their own discipline. The effect is that there is no coordinated approach adopted in solving other related cases arising from cases before them and they have not been able to look at problems holistically.This has sometimes aggravated the problem brought before them as problems are at times interwoven. On the approach to issues in contemporary times, Bloch says that there is a strong appeal these days to approaching just about any topic from a global perspective.[13] In order to provide socially relevant legal education, there is a need to address it from a global dimension. Bloch therefore states that legal education has a global reach as it is available in one form or the other all over the world.[14]

It is high time law clinicians understood that they are members of a team. As such, the overall interest of the client must be their paramount concern.

9 Merriam-Webster's Dictionary and Thesaurus 2006

10 Bamgbose, Olatokunbo John (2002) Social work and the Law. An unpublished seminar paper presented for during the 2002/2003 session during a Social Work course towards the award of a Masters in Social Work in the Faculty of Education

11 Ibid

12 Ibid

13 BlochFrank (2008) Access to Justice and the Global Clinical Movement retrieved fromhttps://law.wustl.edu/Journal/28/Blochbookpages.pdf on June 30 2012

14 Ibid

Mariano has stated that there are many crises facing society today.[15] She stated that each of these crises requires a comprehensive approach and necessitates that professionals relate to many client institutional systems and collaborate with many professions. Legal education is becoming more interdisciplinary. Chenault is of the opinion that the historical models of single specialization should not continue. He therefore advocated that there be an attempt to develop an integrated whole rather than a combination of separate professional content areas or field.[16]

Mariano therefore opined that the combination of the expertise in one discipline with another will result in coordinated services and provide a more holistic and integrated approach to addressing issues.[17]

With special reference to the legal profession, the conventional attitude of law professionals has been a problem for many centuries. In order to tackle the challenges posed by the knotty issues facing globalization, lawyers are now joining with other disciplines in problem-solving collaborations.[18] During discussions with clients, it has been discovered that not all cases are solely legal related matters. Many clients who come to the clinic face complex legal, psychological, social welfare, medical, financial, communal and juvenile related issues. Many of the clients who come to the clinic are poor. Apart from the free legal services provided by the clinic, they are not likely to be able to afford the services of other professionals to whom they may be referred to during or after dealing with the legal issue in the clinic or due to lack of knowledge may be unable to pursue the matter to a logical conclusion. The clinic does not have resources to pay for services rendered for these non legal services. As clinicians face the need to solve clients' legal problems and the myriad of other personal, interpersonal and interdisciplinary problems, the need to develop strategies and tactics, which may involve other disciplines, governmental agencies, and various service providers become inevitable. It therefore became necessary to explore alternative methods of solving issues that may arise while dealing with legal issues without incurring further cost.

Apart from clients that walk in to the clinic, the clinic is also committed to educating women who are denied access or who do not have the knowledge as to how to gain access to justice. The student clinicians go on outreaches to educate women in medical clinics, hospitals, open markets, women groups in churches and mosques.

In order to have a holistic approach to the problem brought to the clinic, an interdisciplinary collaboration with other disciplines, professionals and units had to be adopted.

In many of the family related issues pertaining to custody or maintenance, the State Social Welfare Department has had to be involved. Where the matter has a criminal related issue, the police had to be contacted and the clinic had to follow up on the administrative issues. Health related issues are referred to the university health services where it relates to a staff or student of the university or to the appropriate medical clinic with other clients or the Department of Psychology where it is

15 Mariano Carla (1989) The case for interdisciplinary collaborationNursing Outlook November/December 1989 at www.umdnj.edu/idsweb/idst5340/interdisciplinarycollaboration.pdf Retrieved on I June 2012.

16 Chenault, J.andBurnford F eds. (1978) Future Directions for Human Services. In Human Services ProfessionalEducation: Future Directions, New York, McGraw-Hill Book Co., 1978.

17 Mariano Carla (1989) The case for interdisciplinary collaborationNursing Outlook November/December 1989 at www.umdnj.edu/idsweb/idst5340/interdisciplinarycollaboration.pdf Retrieved on I June 2012.

18 Martha Minow (2003) Public and Private Partnerships: Accounting for the new religion. 116 Harvard Law Review 1229 (2003)

a psychological issue. The clinic has enjoyed a cordial working relationship with the Nigerian Bar Association (NBA) and the International Federation of Women Lawyers (FIDA). In a few cases where clients need to be represented in court, members of these two associations have volunteered their services pro-bono and assisted the clinic.

With this approach, the clinic has had clients whose legal issue has not only been looked into or solved successfully, but other non legal related problems dealt with. Interdisciplinary work has to a great extent assisted in the training of the law students in solving problems using creative methods while it has also introduced a holistic approach to solving cases in the clinic.

Knowledge is power. All women who walk into the clinic, whether they are eligible or not are attended to. Clients, who are not eligible, are still educated and directed appropriately.

The collaboration model used in the women's law clinic and some case studies will be discussed.

Collaborative models and the wlc model

The WLC works closely with other departments and units of the University of Ibadan. The experts from these disciplines, and those from other organizations within Ibadan metropolis, work together to enhance services for the clients. In addition to the benefits to the clients, the students' professional education is enriched. Mariano (1989) is an advocate of interdisciplinary collaboration.[19] She stated this in relation to health issues. She however stated that the concept is poorly understood. This statement is true. Quoting Scot[20] , Mariano went further to state that the term interdisciplinarity is plagued with misunderstandings about terminology.[21] She added that terms used interchangeably with the word interdisciplinary include multidisciplinary, transdisciplinary, pluridisciplinary and crossdisciplinary and there are different definitions given to the term. One of the definitions is that "*it is the continuous interaction of two or more disciplines organized into a common effort to solve or explore a common problem.*"[22] The authors of this paper adopt this definition as it best describes the collaborative model used in the WLC as will be discussed below.

From the onset, it should be made clear that the WLC does not operate the *clinic within clinic* model neither does it adopt the *integrated model clinic*. The other disciplines, professionals or third persons with which the WLC works, are not based and do not have offices within the WLC. Clients who are seen or recognized to be in need of any other professional care are "referred" to the departments or units concerned while the clinicians handling the case has the responsibility of following up on the case. As mentioned earlier, the clinic does not only deal with clients that come into the clinic. The clinic regularly goes out on outreaches to educate women about their

19 Mariano Carla (1989) The case for interdisciplinary collaboration *Nursing Outlook November/December 1989* at www.umdnj.edu/idsweb/idst5340/interdisciplinarycollaboration.pdf Retrieved on I June 2012

20 Scott, R. (1979) Personal and institutional problems encountered in being interdisciplinary. In *Interdisciplinarity and HigherEducation*. ed. by J. J. Kockelmans. University Park, Pennsylvania State University Press, 1979, p. 307

21 Mariano Carla (1989) The case for interdisciplinary collaboration *Nursing Outlook November/December 1989* at www.umdnj.edu/idsweb/idst5340/interdisciplinarycollaboration.pdf Retrieved on I June 2012

22 Mariano Carla (1989) The case for interdisciplinary collaboration *Nursing Outlook November/December 1989* at www.umdnj.edu/idsweb/idst5340/interdisciplinarycollaboration.pdf Retrieved on I June 2012

Scott, R.Personal and institutional problems encountered in being interdisciplinary. In Interdisciplinarity and HigherEducation.ed. by J. J. Kockelmans. University Park, Pennsylvania State University Press, 1979, p. 307

rights and sensitize them about the clinic. These outreaches and sensitization drives are held in various communities, markets, religious houses, hospitals and schools as these places have a higher population of indigent women.

In a study, Gross and Filante stated that merely bringing together the legal discipline with another discipline in the University setting does not guarantee educational enhancement.[23] The above statement was also echoed by Barry, Dubin and Joy.[24] While agreeing that interdisciplinary clinical programs offer many valuable skills by means of collaboration, they further stated that bringing professionals together does not ensure that they will function well as a team or make appropriate collaborative decision. The position of the authors of this paper is that though the version of the collaboration between the WLC and other units and disciplines is not based on any specific model, it has worked well for the clinic. The WLC took into consideration certain factors which include administrative, space, logistics and cultural and found this type of collaboration, to be the most appropriate and practical one for the clinic. The cases brought to the WLC differ from one to the other. While some are purely legal, the others vary and are interdisciplinary in nature. Therefore, it is convenient for the WLC to refer clients to other collaborating disciplines where there is an existing formal understanding to collaborate.

The student clinicians in the WLC are final year law students and postgraduate students of law. This is to ensure that the students have a proper understanding of the issues being handled, with more experience and skill to advice. This model is to provide legal expertise to the clients while facilitating other services which the client may need. With this model of collaboration, files of clients are restricted to only law clinicians and the confidentiality of the client and the case is protected.

Community Collaboration

In Africa in general and Nigeria in particular, there are different cultural practices. One of such is obvious in the selection of communities within which researchers carry out their work. During the course of selecting communities within which to embark on the sensitization drives, the clinicians had to meet with the relevant community leaders for permission to relate with the women in the community. This has to do with the culture. It is a cultural practice in most Nigerian indigenous community (where the indigent women live) that the traditional head of the community must give permission before there is any interaction with residents. In Idi-Omo village, a small rural community in Ibadan, Nigeria, there is an on-going collaboration with the community through a working relationship with the community head. The clinic has access in to the community and a working relationship with the women with the kind cooperation of the traditional leader and the head of the women in the community known as ***Iyalode***.[25] Through this collaboration, the clinic has been able to intervene and resolve disputes in and for the community, regularly organizing programs for women and there are on-going cases that are being handled for some women who

23 Gross, J. I and Filante, R. W (2005) Developing a law / Business Collaboration through Pace's Securities Arbitration Clinic in *Fordham Journal of Corporate and Financial Law volume 11 2005-2006* at http://ssm.com/abstract=1032301 Retrieved on 12 June 2012

24 Barry M.M, Dubin, J.C. and Joy, P. A (2000) Clinical Legal Education for the Millennium: The Third Wave. *7 Clinical Law Review. I. 69-70* 2000.

25 Iyalode is the administrative head of all women in any traditional south-western community of Nigeria. She also has some controlling powers on women under her community

are clients in the clinic.

Department of Psychology

This is a Department within the University located near the Faculty of Law particularly at the Faculty of Social Sciences. In 2009, after clinicians noted that some clients had psychological issues in addition to the legal problems presented at the clinic, the Director and the clinic administrator visited the Psychology Department and met with the Head of Department and clinicians in the Department. The WLC was informed that the Department has an active clinic and would be willing to handle cases referred from the WLC. The agreement was documented with an understanding that both the WLC and the Department of Psychology will benefit mutually. This collaborative relationship is working well. A client whose case is still on-going in the clinic is closely, monitored in the Department of Psychology. However cases that are completed and or closed in the clinic, but still ongoing in the Department of Psychology are left to the discretion of the department as to what to do to it.

Department of Social Work

This Department is within the University and located in the Faculty of Education. The WLC has enjoyed a working collaboration with the department. Personnel from the department, posted to the social welfare unit of the University Health Services (Jaja Clinic) attend to clients who are referred to them.

Department of Special Education

The Department is located in the Faculty of Education with different specialized clinics. Referrals are made from the WLC to their clinics.

Department of Guidance and Counselling

The Department is within the University and is also located in the Faculty of Education. The department approached the clinic with a request that some of their final year students be allowed to spend about six (6) weeks internship in the clinic offering free counselling to clients. The students are posted to the clinic, and the counselling is done in the clinic. Most of the clients that are counselled are those with domestic violence cases and the children of such families. Case files of the clients are studied and appropriate counselling given.

The University Health Center (Jaja Clinic)

The University Health Center popularly called Jaja Clinic is the health center of the University of Ibadan and located within the University. Jaja Clinic serves both staff and students of the University and services are offered to students free and staff at a very subsidized rate. The maternal health unit of Jaja Clinic, which is for nursing mothers, is opened to the public at a subsidized rate on Tuesdays. The Jaja Clinic is headed by a Medical Director. The WLC has a collaborative working relationship with Jaja clinic especially with the Maternal Health Unit. Once a month, the WLC addresses the nursing mothers who attend the Maternal Health Unit on reproductive health issues and other right matters. Some of the clients in the clinic got to know about the clinic through this sensitization and educative outreach. In addition to the above, medical cases

involving staff and students are referred to Jaja Clinic while legal issues arising from medical issues are referred from Jaja clinic to the WLC. These are mainly assault and domestic violence cases.

University of Ibadan, Diamond FM Radio Station

This is the University owned radio station. The station is located within the University campus from where it transmits within and outside the University covering four states in Nigeria. With this relatively large coverage area and the fact that it is aired in Ibadan, the station serves as a means of sensitizing and educating the target group of indigent women. The program is broadcast in English and the local languages. Through this means some of the clients got to know about the clinic. Programs organized by the clinic are also aired on the station.

The Juvenile/ Family Court

Though the WLC is a specialized clinic for women, the family court in Ibadan requested collaboration with the clinic. This collaborative relationship has eventually been of mutual benefit to both the court and the clinic. Regarding the benefit to the court, a few cases involving female children relating to their sexual habits have been referred to and handled by the clinic. This was as a result of shortage of social workers in the courts. The clinic handled such cases using the legal clinicians, social workers from the University health services and counsellors from collaborating departments. On its own part, the WLC sought the assistance of the juvenile court in the placement of two children for adoption.

The Oyo State Police Command

On the inauguration of the WLC in 2007, there was wide publicity. At the ceremony, stakeholders including the police, community leaders, magistrates, journalists and many others indicated that they would support the work at the clinic and some agreed to have a collaborative working relationship with the clinic. The collaborative relationship with the police is one of such. Some of the clients in the clinic have expressed their concerns about the police. Whether the concerns are justified or not is not the crux of this paper.

However, Bamgbose (1997), in an article, that examined the perception of the police by the poor, stated that the poor would not want to have anything to do with the police. The involvement of the WLC in cases requiring the police coming in, has allayed any fears

the clients have. The clinic has enjoyed working with the female divisional police officer in charge of the station, under whose jurisdiction the University falls.

A few case studies highlighting the collaboration of the WLC with other disciplines and units are discussed below.

1. Case WLC/ CAS/ 077

The client was a 400 level student in the University who was being sexually harassed by her lecturer. She reported this case at the clinic. While the case was being investigated, it was discovered that the issue had a psychological effect on the client. The client was referred to the Department of Psychology of the University and a psychologist took up this aspect of the case. There was need for evidence of this case which the student produced by tricking her lecturer into her hostel and

pictures of the lecturer were taken in a compromising situation. The matter was later reported to the students' affairs unit of the University and it became a disciplinary matter. The lecturer after due process was followed was dismissed from the University.

Collaborative Department/Unit: Department of Psychology

2. Case WLC/CAS/133

The client came to the clinic because her husband had deserted her and she wanted him to be responsible for her maintenance and the upkeep of the children. The clinician in charge invited the husband to the clinic but he refused to honour the invitation. The clinicians referred the case to the State Social Welfare Unit. (SSWU). The SSWU invited the husband of the client for a meeting with the WLC and the SSWU. The husband agreed to pay for her maintenance and upkeep of the children. The parties then agreed that the agreed sum was to be deposited monthly in a bank account.

Collaborative Unit: State Social Welfare Unit

3. Case WLC/CAS/180

The client, a young girl of about sixteen years old was alleged to have been sexually assaulted by four (4) young boys. The boys were arrested by the police and taken before a Juvenile Court. They alleged that they did not assault the young lady but were having fun with the consent of the girl. The court while considering the case discovered that all parties were sexually active and exposed to sexual activities. The Juvenile Court referred the young girl to the WLC for counselling. The young girl came to the clinic with her parents. The clinicians in this case had to depart from the normal practice of referral and invited a social worker and a guidance counsellor from the Departments of Social Work and Guidance Counselling. This was because of the peculiar nature of the case which involved an under aged girl. The three (3) experts advised and counselled the client on sex education and also had a talk with the parents who appeared to have neglected the young girl. After sessions of advice and counselling spanning over a few weeks, the young client was sent back to the Juvenile Court with a report. The State Juvenile Court has shortage of social workers which makes comprehensive supervision of young offenders impossible. The collaboration with the clinic has been mutual as cases involving children are also brought to the court from the WLC.

Collaborative Departments/Units: Department of Social Work; Department of Guidance and Counselling; State Juvenile Court

4. Case WLC/C.AS/181

The client, a girl of 16 years old claimed before a Juvenile Court that two boys raped her on her way home. She was discovered by a pastor at the scene and the matter reported to her parents. She was taken to the police station and then taken to the hospital. The two boys denied sexually assaulting her. They claimed that they did not forcefully assault her as she claimed, but that our client was the one who persuaded the boys to "sleep" with her. The boys stated that the girl practically begged them to "sleep" with her. The boys are 12 years of age. The parents of both

boys are divorcees. The State Juvenile Court after listening to the case referred the young girl and her parents to the WLC. Two clinicians were assigned to the case to counsel the girl and her parents. A social worker and a guidance counsellor from the Departments of Social Work and Guidance Counselling were also invited.It was discovered during the counselling that the girl had some mental challenges and other medical issues. The case could not be referred to the University Health Services as the client was neither a staff nor student of the University. However, the observation of the clinic was in the report sent back to the court and the advice for medical intervention in a government health center.

Collaborative Departments/Units: State Juvenile Court; Department of social work and Department of Guidance and Counselling

5. Case WLC/CAS/140

The client, **E**, a student of the University, reported in the clinic that she was raped by an acquaintance outside the University campus. **E** alleged that the incident happened in the house of an influential politician and expressed her fears that it might be impossible to obtain justice. The WLC immediately reported the case at the Campus Security Service (CSS) and E was taken to the University Health Services for medical attention. Being a criminal offence, the CSS referred the case to the police having jurisdiction over the matter. E again expressed her fears about going to the police and the clinicians accompanied her. A female police officer and the clinicians then accompanied E to the scene of the crime. Upon getting to the house, the suspect had escaped. All efforts to reach him thereafter proved abortive. The police kept surveillance on the premises for some time and E was told to contact the police any time she heard from the suspect. E after a few weeks came to the WLC and informed the clinicians that she was no longer interested in pursuing the case and would like to face her studies. She was however counselled to complete her medical treatment.

Collaborativedepartments/ Units: University Health Services (Jaja Clinic); The Police

6. Case WLC/CAS/108

The client, F, came to the clinic to report that her siblings (brothers and sisters) beat her. The reason for the beating was to force her out of their parent's house which F was occupying. F, a University staff member was referred to the University Health Services (Jaja Clinic) for medical attention. Several efforts were made by the WLC to invite F's sibling but this proved abortive. Because of the threat to her life, the matter was referred to the Sango Police Station. The WLC observed that F was psychologically disturbed by this problem. She was referred to the Department of Psychology for further treatment. The police intervened into the family matter with the help of the WLC and the matter was amicably settled.

Collaborative Departments/Units: University health services (Jaja Clinic); Department of Psychology; The Police

7. Case WLC/CAS/039

The client, G, came to the clinic seeking legal aid for access to her children after her husband deserted her taking the children with him. G's husband was invited to the WLC and an agreement was reached by the parties on having access to the children. The agreement was adhered to until the children refused to go back to their father's house. The husband reported at the police station and G was arrested. At the police station, the WLC represented G. Both parties were advised and counselled by the police and the clinicians. A concrete arrangement was thereafter made on how G will have access to her children on a regular basis. The husband agreed on an allowance to be sent to G for the upkeep of the baby which was to be left with her.

Collaborative Unit: The Police

8. Case WLC/CAS/111

The initial client, H, now deceased reported to the WLC that she became pregnant to her partner to whom she was not legally married. After her baby died a few months after delivery she continued her relationship with her partner. When she got pregnant again, she alleged that her partner denied the pregnancy and deserted her. She asked the clinic to ensure that her partner took care of her, the pregnancy and the baby after delivery. The partner did not honour the letters of invitation written to him by the WLC. Two months after the case came to the WLC, H died. The immediate sister to H referred to as J immediately reported the death to the WLC because the family of H suspected foul play. J was advised to report to the police. Because of her reluctance to go alone, the clinician accompanied her to the police station and the partner was arrested. After the arrest, his family members from his community came to the WLC, seeking the intervention for his release from the police. This case according to the community members was a community/family issue that should be amicably resolved. The police after due investigation found out that the allegation of foul play was not true and the partner was released to his community/family members. The community/family of the partner of late H, approached the WLC to intervene in the matter which J is now pursuing in the WLC. J informed the WLC that she was pursuing the case in the WLC on behalf of her family/community members. Investigation by the clinicians handling the case revealed that this was more than a legal issue and that traditional and cultural issues had to be resolved. It was regarded as a taboo in the community of late H, J and the partner, to impregnate a woman without paying the bride price and for her to die with the pregnancy while the bride price remains unpaid. The WLC had a clear understanding of the cultural milieu within which the clinic operated. At this stage, a new clinician who understood the culture of the two parties had to be invited to join in the case. The partner was re-invited to the WLC and he honoured the invitation. To resolve the issue, the WLC advised him to go with the representatives of his community members to apologize to the deceased's community members and this was done. J came back to the WLC to report that the case had been settled and the case file was closed

Collaborativedepartment/ Unit: The Police,

9. Case WLC/CAS/122

The client, K, came to the clinic for legal assistance so that her husband can take parental responsibility and support in taking care of the children and for the WLC to intervene in the constant beating by her husband. The WLC was of the opinion that K had to be moved immediately from the home while the case was being looked into. Efforts to get her father to accommodate her proved abortive. Arrangements were made by the WLC for K and her husband to see a psychologist but they were not willing to submit themselves for counselling session. While the case was on-going, K suffered a psychiatric break down and had to be admitted at a teaching hospital. The WLC was later informed that the issue has been settled amicably.

Collaborativedepartment/ Unit: Department Of Psychology

10. Special Case

This special case was reported to the Clinic by the Director. The case was that of a student of the University with hearing impediment. This was affecting her studies. The client was interviewed with the assistance of an interpreter and the issue was referred to the Special Education Department for urgent intervention.

Collaborativedepartment/ Unit: Department Of Special Education

11. Classified Case

This classified case of an abandoned baby girl was referred to the WLC by the University Health Services (Jaja Clinic).The WLC initially worked with the Campus Security Services and the Police. The case is presently being handled by the WLC, Jaja Clinic, the University Social Welfare unit, the State Social Welfare Unit and the State Juvenile Court.

Collaborative Units: The Campus Security Unit, The Police, University Health Services (Jaja Clinic), University Social Welfare Office,State Social Welfare office and the Juvenile Court.

Benefits Of The Collaborative Model Of The WLC

The traditional legal education does not provide the training needed to solve non-legal issues. However with the introduction of clinical legal education and the involvement of students in the clinic, coupled with the fact that non-legal issues come up and are referred to the appropriate collaborating units, law students become more creative problem solvers in law practice. A student clinician in the WLC stated, "I am becoming more confident in handling cases of clients. It is not only the case brought by the client that a clinician will have to deal with. Other issues come up and if they are not addressed, the legal issue cannot be appropriately resolved. Referring non-legal issues to the appropriate units heals the client"

Another benefit of the collaboration of the WLC with other disciplines is that it brings to reality the multidimensional angle of some cases, therefore letting the student clinician experience what legal practice will be. It therefore prepares a student for practice. A graduate student who spent a year in the WLC had this to say. "I realized that some of the cases I handled in the clinic where not strictly on legal issues. The purported legal issues at times arose out of non legal issues. The clinic was just the first point of call. What I did in most cases was to calm the client down, give a good listening ear, counsel, handle the legal issue, and refer to the appropriate discipline or unit like the social welfare unit. Now that I am in practice, I take the cases of clients from a holistic perspective and advise them accordingly. While I handle the legal issues, I advise as to other experts that may be called in and be involved in the case"

Gross and Filante stated that the clients are the greatest beneficiaries when clinics collaborate with other disciplines.[26] The authors of this paper agree with this statement. As a result of the collaboration model adopted in the WLC, clients in the clinic have the benefit of free legal services and those with non-legal issues have been able to resolve them free. Mrs A, a client in the WLC had this to say. "I came to the clinic because I wanted the clinic to tell my husband who had abandoned me and the children, to be giving me money to take care of me and the children. I was not well and unhappy when I came to the clinic and I thought the money will remove all these problems. At the clinic, the man listened to me very well and asked me what I wanted. He assured me that the clinic will assist me. He told me that I will have to see someone, who is not a lawyer, and who is not in the clinic, who will not take money from me, who will talk to me because I was unhappy and not well and that because my children are involved, the clinic will have to contact the state social welfare department. My husband is now paying some money to take care of me and the children and I collect this weekly from the clinic. They talked to me at the place where I was told to go and I am now well and happy" In this case, the Psychology Department and the Social Welfare Unit were involved in resolving the case.

Another benefit of the collaborative model adopted by the WLC is that it exposes law students to non legal problems arising from legal problems. The effect is that the students are able to appreciate the importance of other disciplines.

Arising from the above benefit is the fact that law students interact with students and experts in other disciplines. As seen in the case studies above, the clinicians from the WLC in certain instances accompany clients whose cases are referred to other collaborating disciplines and also do some follow up with clients in these places. Through this, law clinicians have an insight into the work done in other disciplines. The collaboration has made law clinicians move out of their legal confine and boundaries. A few law graduates who worked in the WLC enrolled for postgraduate courses in other disciplines. The interest to take the courses was as a result of the experience with clients in the WLC.

The interaction referred to above has mutual benefits to all the collaborating disciplines. A final student from the Department of Guidance and Counselling in the University of Ibadanwas an intern in the WLC for three (3) months. In an interview with her, she had this to say on the collaborative model adopted by the WLC. "There is no one way solution to a problem. A problem should be

26 Gross, J. I and Filante, R. W (2005) Developing a law / Business Collaboration through Pace's Securities Arbitration Clinic in *Fordham Journal of Corporate and Financial Law volume 11 2005-2006* at http://ssm.com/abstract=1032301 Retrieved on 12 June 2012

tackled from all aspects." She further stated "from my training in guidance and counselling, I have come to realize that everyone can guide but not everyone is trained to counsel. In my department, there are different areas of specialization just like in law. I like the referral method adopted by the WLC. It allows the client referred from the WLC to the collaborating discipline/unit to have the benefit of having a number of specialist attention needed to resolve her problem"

There are cases where the issue that triggered off the legal issue was a non legal one. Collaborating with such discipline/unit will be of tremendous benefit in resolving thelegal issue.

Challenges

The collaborative model adopted by the WLC, which is interdisciplinary or multidisciplinary in approach, has some challenges. These include

Wide Scope

The scope of the collaboration model adopted by the WLC is too wide. This has brought the clinic into working contact with quite a large number of disciplines.

Inadequate Monitoring/Follow up/ Feedback

The effect of the wide scope is that clinicians in some cases are unable to properly follow up clients who are referred to other disciplines and unable to have feedbacks which is an important aspect of collaboration

Differences in Goals and Ethical Norms.

The goals of the WLC and the ethical norms of the legal profession and that of other disciplines/ units sometimes differ. While a goal of the WLC is to provide free legal access to justice for indigent women, some of the collaborating disciplines do not have the same goal. While clients in the WLC are attended to free, they are at times required to pay a token amount in the department referred to. The authors of this paper therefore agree with Connolly (2003) when he stated that some of the barriers to collaboration include cost logistics, and different ethical norms between disciplines.[27] An example was the case of a client who was physically assaulted by her husband and had to come to the clinic. The clinic referred the case to the police station. At the station, the male officer who attended to the case quietly advised the client to go back home and resolve the issue amicably to the dismay of the clinician and client. It took the intervention of the clinician at the station for the police to take action. The fact was that while the police viewed the matter from a cultural perspective, the WLC took a legal stand.

27 Connolly Kim D (2003) Elucidating the Elephant: Interdisciplinary Law School Classes 11 WASH U Journal of Law and Policy 11 at 18.

Geographical proximity/logistic complications

The fact that the clients are referred to other departments which are not within the WLC has its challenges. The geographical proximity poses a problem for some indigent clients who are unable to afford the cost of transportation. This at times causes problems in keeping up with appointments. Logistic complication has been identified as a major problem.[28]

Conclusion

The whole world is gradually becoming a global village thus there is a paradigm shift of individuality in solving developmental issues to combination of efforts.

Governments of different countries are not left out in the campaign for collaboration to move their countries forward and internationally relevant. For research, the focus is gradually shifting from personal research to joint research in form of collaboration.

An African proverb says "two heads are better one". In complementing this proverb, researchers are coming together to have comprehensive results. In a bid to be relevant to the immediate community of the University of Ibadan and in furtherance of the internalization policy of the university, the Women's Law Clinic has adopted a collaborative approach in resolving issues. This has been evidenced in the best practice that has been achieved so far whilst more will be done in the nearest future.

In order to deal with the challenges posed by the complex problems faced with globalization, lawyers are joining with other disciplines in problem-solving collaborations.[29] Collaboration is always the next stage when a person is confused and solution seems not to be in sight. Collaborations is done to exchange ideas and information and to source for information on the way out. In order to achieve the laudable aims and objectives of legal clinics, collaborative ventures are inevitable.

28 Schlossberg D (2003) An Examination of Transactional Law Clinics and Interdisciplinary Education *11 WASHU Law Journal and Policy 195 at 212 – 214 (2003)*

29 Minow Martha (2003) Public and Private Partnerships: Accounting for the new religion. 116 Harvard Law Review 1229

Clinical legal education in Croatia – from providing legal assistance to the poor to practical education of students

Barbara Preložnjak

1. Establishing the Legal Clinic in Zagreb – Historical background

Although clinical legal education has a long tradition in common law countries, the countries of the continental European legal system, to which the Republic of Croatia (hereinafter Croatia) belongs, have recognized its importance in the last few years. The first established legal clinic in Croatia was the one of the Faculty of Law at the University of Rijeka. It has been implemented as part of the curriculum for the academic year 1996/1997 and offered to the fourth year students as an elective course entitled "Clinic for Civil Law".[1] Within the Rijeka Clinic, law students were able to acquire theoretical and practical knowledge, by resolving hypothetical cases, under the supervision and with the support of teachers, lawyers, judges, notaries public and state attorneys.[2] In 2002, with the support of the Institute Open Society from Budapest, the Faculty of Law at the University of Osijek established a legal clinic in the form of practical training for students of the third and fourth year of legal studies.[3] [4] By participating in the clinic's activity, students of Osijek Law Faculty helped provide legal aid to citizens of lower economic status. This included help in providing general legal information and legal advice, as well as help in covering procedural costs

1 Barić 2004, p. 950

2 Ibid.

3 Jelinić 2008, p. 183.

4 Informations about the Legal Clinic at the Faculty of Law, University of Zagreb are available on the website: http://zakon.pravos.hr/klinika/ (05. 05. 2012)

from the funds donated to the Clinic.[5] The lack of financial means that were needed for daily expenditures meant that the Legal Clinic in Osijek was temporarily closed. Nowadays, faculty members of Osijek Law Faculty are trying to solve financial problems and to continue previous good practice in providing legal aid to the poor citizens.

The adoption of the Legal Aid Act[6] in 2008 and legal standardization of legal clinics as one of the authorized providers of legal aid, encouraged the establishment of two more legal clinics.[7] In 2009 and 2010, the Legal Clinic of the Faculty of Law at the University of Split and the Legal Clinic of the Faculty of Law at the University of Zagreb were established, which now actively participate in the system of providing free legal assistance to socially vulnerable Croatian citizens.[8] The Zagreb Law Faculty Legal Clinic is distinguished by the fact that in its work the students are directly and actively involved in providing legal aid to underprivileged citizens, with professional assistance and supervision of academic staff and legal practitioners.[9] In practice, this means that students have a real opportunity to participate in providing legal aid by solving legal cases in their social context. This challenges students to deepen their knowledge on the application of legal regulations in concrete cases and provides them with an opportunity to acquire practical skills in choosing the best strategy to resolve cases in the best interest of their clients.[10]

2. Zagreb Legal Clinic – an important contribution to legal education and the preservation of equal access to justice

In accordance with the Ordinance on the study, the Legal Clinic study is defined as a form of teaching in which students, under the supervision of faculty staff, provide free legal assistance in practical legal matters.[11] Legal Clinic represents, along with practical exercises and simulated trials, one of three forms of practical training in the ninth semester of the educational curriculum, at a Jelinić 2008, p. 184. fifth year of legal studies.[12] Student participation in the work of legal clinics is

5 Jelinić 2008, p. 184.

6 Legal Aid Act *(Zakon o besplatnoj pravnoj pomoći)* (Narodne novine RH (Official Gazette) 62/08, 44/11, 81/11; hereinafter: CLAA)

7 "Higher education institutions that conduct university studies in the scientific field of law may, through legal clinics, and in accordance with its regulations, can provide primary legal aid …" See: čl. 14. ZBPP'08

In 2009 Legal Clinic of the Faculty of Law, University of Split issued two orders (vouchers). See Report Ministry of Justice 2009.

8 In 2009 Legal Clinic of the Faculty of Law, University of Split issued two orders (vouchers). See Report Ministry of Justice 2009.

For the period of 2010 there is no availabe data regarding applications for legal aid received legal aid beneficiaries. See Report Ministry of Justice 2010.

9 Legal Clinic was founded at the Faculty of Law, University of Zagreb, in October 2010. In the academic years 2010/2011 and 2011/2012 around hunderd studends joined Legal Clinic in providing legal aid under supervision of thirteen academic mentor. See more on website: http://klinika.pravo.unizg.hr/. (5.5.2012)

10 See ibid.

11 Art. 14. a., para. 1. Ordinace of study (Pravilnik o studiju) available on website: http://klinika.pravo.unizg.hr/sites/default/files/pravilnik_o_studiju.pdf

12 See Law study program, curriculum for IX semester available on website: www.pravo.unizg.hr/diplomski_studij/5.godina/nastavni_plan?_v1=ckIPgg_H0qGU0cWjvWoVgaWNrlbP2a_roLtuulzyi6gzZcZXQmLjvLhyZB9Q659usnn9jmmFg-Q0G7pMAI1_gA==&_lid=22629#news_22629

evaluated as equivalent to six hours of work per week during one semester, and equals 10 ECTS credits.[13] Students who participate in the work of the legal clinic are primarily those who meet the conditions prescribed by the study program, i.e., the students who are authorized to enroll at least 10 ECTS credits in the ninth semester.[14]

By working in the clinic, students provide legally allowed forms of legal aid i.e. they provide citizens with general legal information, legal advice and prepare written legal opinions, in accordance with the study program and Legal Aid Act.[15] Students are not allowed to directly represent clients in the court, but they may attend the hearings and, within the work of legal clinics, they may assist persons authorized to represent clients in the court.[16] Students provide legal aid to socially vulnerable citizens but, in accordance with the Ordinance on the study, they are also authorized to provide legal aid in various kinds of legal cases, which are of great importance for gaining practical knowledge.[17]

Students who enroll in the legal clinic go through several stages and forms of clinical work. During their clinical practice students are obliged to attend introductory seminars, where they gain knowledge on the technique of receipt and processing of legal cases. After finishing introductory seminars students take their daily duties in residential clinic where they work in groups in order to provide legal aid to citizens who have applied for clinical legal aid.[18] Although students are obliged to work in the group, they also may take individual research regarding preliminary processing of cases.[19]

In residential clinic students have at least one meeting per week of working groups, where they discuss on results of clinical work and problems with which they are facing during their clinical practice.[20] At least once a month student and clinical leadership hold plenary meetings with the aim of discussing organizational and strategic issues of clinical work such as enrollment of new students, new projects of cooperation with NGOs and other regional legal clinics, planning the schedule for providing legal aid in external (field) legal clinics, etc.[21]

Beside the work in residential clinic, students are obliged to work in an external (field) clinic, where they provide legal aid outside the residential clinic, in areas of Croatia where legal aid is most needed.[22]

13 Ibid.

14 The Legal Clinic provides legal aid to citizens regarding their various legal problems so there is a need for ensuring the continuity of the clinical work. This is possible only if we ensure the continuity of theoretical and practical training of students involved in providing legal aid throughout all academic year. In accordance with this need it is very important to enrol in clinical trainings a number of students who have already finished the obligatory part of clinical legal education and are willing to stay and help in further development of clinical legal education. See Uzelac 2010., p. 3.

15 Art. 14. a. st. 2. Ordinance of study. See: http://klinika.pravo.unizg.hr/sites/default/files/pravilnik_o_studiju.pdf; See also: art. 14. para 2. CLAA

16 Ibid.

17 Art. 14. a. para. 3. Ordinance of study. See: http://klinika.pravo.unizg.hr/sites/default/files/pravilnik_o_studiju.pdf; See also: art. 14. para 3. CLAA

18 See Uzelac 2010, p. 3.

19 Ibid.

20 Ibid.

21 Ibid.

22 Ibid.

The segment of the clinical work which comprises practical resolution of legal cases, in the form of providing legal aid, represents a significant contribution not only to legal education, but also to the community. By providing general legal information, legal advice and by assisting in the preparation of documents in various types of procedures for individuals with low income, students for the first time during their studies take responsibility for the resolution of actual cases. Besides the opportunity to apply theoretical knowledge in practice, the contribution to legal education of students of the Faculty of Law at the University of Zagreb is achieved through international projects. Particularly noteworthy, in this regard, is the project "Support to setting up of the Legal Clinic for the Zagreb Faculty", achieved in cooperation with the British Embassy. [23] This valuable project enabled the exchange of knowledge and experience between Legal Clinics of the Law Faculties in Newcastle and Manchester, and Legal Clinic of the Law Faculty in Zagreb, with the goal of the improvement of Croatian clinical legal education and the improvement of clinical curriculum.[24]

3. Organization of clinical work

3.1. Organizational structure of the Legal Clinic

The Ordinance on the study prescribes the organizational structure of the legal clinic, according to which the clinic is governed and its work coordinated by the Head of the clinic (Clinical Director), who is law professor and member of Faculty.[25] The administrative affairs of the clinic are carried out by two assistant managers with the help of two clinic administrators, who are appointed amongst students.[26] All the important decisions on the provision of legal assistance in specific cases are brought independently by students. Strategic questions about the direction of clinical actions, organization and other decisions that require the engagement of additional resources or work, are decided on joint meetings by students in agreement with the Clinical Director, his deputies and assistants, academic mentors.[27] [28]

The clinic has clinical groups that serve as working groups. They are independently formed in accordance with characteristics of specific cases and areas to which they pertain.[29] In the beginning

23 Legal Clinic in the period 2011 – 2012 recorded several projects that gave her the possibility of cooperation with foreign partners and acquire new knowledge and experience regarding the clinical legal education. Beside the project with British Embassy the most interesting projects are: "Public and Private Justice. Exchange program between students in London and Oslo "with Norwegian Embassy," Assistance mechanism for effective social integration of Roma and People with Disabilities "with Finish Embassy.. See http://klinika.pravo.unizg.hr/medunarodna-suradnja-i-pomoc (5.5.2012)

24 See http://klinika.pravo.unizg.hr/medunarodna-suradnja-i-pomoc (5.5.2012)

25 Art. 14. b. para. 2. Ordinance of study. See: http://klinika.pravo.unizg.hr/sites/default/files/pravilnik_o_studiju.pdf

26 Uzelac 2010, p. 3

27 Meetings of clinicians are held monthly in the form of the Small Council. The clinical director, his deputies, assistants, academic mentors, administrators and students which represent clinical groups discuss important questions of clinical organization, collaboration with civil society organizations, government agencies, legal practices, as well as presenting and analyzing the performance achievements of students in providing of legal aid. Also at the meetings current difficulties in the work with which students and their mentors meet are discussed with the aim of proposing concrete suggestions for their successful resolution.

28 Uzelac 2010, p. 3

29 Ibid.

of its work or during the academic year 2010/2011, the clinic was operating through three working groups: civil and family law group - in which the cases concerning the property and status were handled; administrative and labor law group - in which the cases concerning labor and social issues were handled; and criminal law group - in which the cases concerning criminal implications in the broader sense (criminal, misdemeanor, disciplinary and similar cases) were handled.[30] However, since this classification of the working groups was too general and less client oriented, at the end of academic year 2010/2011 a new classification of working groups was made. Thus, the clinic now operates in eight working groups: a group for asylum seekers and foreigners, a group for anti-discrimination and rights of minorities; a group for the rights of children and family support; a group for protection and assistance of crime victims; a group for protection of workers' rights; a group for protection of patients' rights; a group for PR; and a group for special cases and projects. [31]

3.2. Mentoring

The clinic has academic mentors, chosen among the professors and faculty associates, depending on their interest and knowledge in specific matters of significance for the clinic.[32] Academic mentors monitor the work of their clinical groups, they advise students regarding the direction of their research in solving the legal cases and discuss with them various legal issues that are needed for successful provision of legal aid. Although mentors are involved in students work, they are not allowed to solve the cases instead of the students nor are they allowed to impose on students their legal opinions.[33] In addition to academic mentors, the students are also mentored by 'senior' students who, after finishing one semester of active work in the clinic, continue to volunteer in the clinic.[34]

External mentors, selected on a voluntary basis among interested members of the legal profession (lawyers, lawyers in NGOs and other legal professionals) also participate in activities of the clinic.[35] They help students with the practical training, mainly by participating in the reception and analysis of specific cases (receiving instructions from the client, identifying the main issues and advocacy strategies, etc.).[36] So far, the legal clinic has successfully cooperated with several attorneys specializing in providing legal assistance in various aspects of law, lawyers working in NGOs and bodies of state administration.

3. 3. Residential and external clinic

Students gain practical experience by working in a residential clinic at the Faculty and external clinics outside the Faculty, on the basis of agreements with organizations, institutions and persons authorized to provide free legal assistance.

In the residential clinic the students receive citizens' requests for legal aid via phone, e-mail and in person by citizen's visits to the premises of the clinic. Regardless of the ways in which citizens

30 Uzelac 2010, p. 4

31 See http://klinika.pravo.unizg.hr/organizacijska-struktura (5.5.2012)

32 Uzelac 2010, p. 4

33 Ibid.

34 Ibid.

35 Ibid.

36 Ibid.

seek legal aid in the clinic, the student on duty takes the case, and, on the basis of standardized questions, enters the basic information on the case and clients (name and surname, contact information, financial status and motivation for addressing the clinic, the nature and basic data of the case, the requirements and interests of the client, etc.) in the database. Based on the information gathered by the student on duty, the case is assigned to one of the working groups, within which one student is appointed as referent in charge of the case. Exceptionally, for complex cases it can be determined that the case is assigned to more students as referents, between which there should be a clear division of tasks. The task of the referent comprises a preliminary review of the case and the presentation of his proposal at the meeting of the working group. His proposal must include an assessment on whether the clinic should get involved and provide some form of legal assistance (self-protective need of the client, evaluation of individual and social need for legal assistance, the suitability of case for the legal clinic and the chances of success). For cases which are assessed as eligible for legal assistance, the student referent prepares a preliminary analysis on the basis of which a form of legal aid will be proposed, the actions which the clinic shall undertake and a draft of the contents of legal advice or other document which would be prepared for the client.

All the proposals made by the student referent must be presented to the working group in charge, which collectively reaches a decision on all important issues (accepting or refusing cases, the form and content of legal aid).[37] Even though the decision of the working groups is autonomous, it is liable to the quality control of the academic mentors.[38] The intervention of the mentors in the merit of the content of provided legal aid is limited to cases in which the working group cannot reach a decision on its own, so they need an expert advice regarding the direction or deepening their research regarding the successful provision of legal aid.[39] In any event, mentors encourage active and independent research and responsible collective effort of working groups, and, in that respect, refrain from providing legal aid instead of the students.[40] Based on the decision of the working group, the referent acts accordingly (i.e. finishes the text of the legal advice) and contacts the citizen who demanded legal aid.[41] The provided legal aid is referred to at the next meeting of the working group, after which a decision on further acts in the case or closing of the records follows.[42]

Apart from the residential Clinic, students can gain practical experience by giving legal aid in external (field) clinics, settled in places with a greater need for free legal aid (poor communities, prisons, detention houses, etc.).[43] Students who take part in the work of the clinic can also organize public debates, contact competent authorities, and inform the public of their work and the problems they face.[44]

As a part of the project led in cooperation with the British Embassy, the clinic took part in the organization of two round tables: ''Reform of Legal Aid System – The Future of Legal Advice?'',

37 Ibid.

38 Uzelac 2010, p. 6

39 Ibid.

40 Ibid.

41 Ibid.

42 Ibid.

43 Uzelac 2010, p. 4

44 Ibid.

in 2011, and ''Promoting Effective Clinical Legal Education and Discussion and Workshop'', in 2012. In addition, within the framework of the international project ''Assistance mechanism for effective social integration of Roma and people with disabilities'' launched in 2011 and financed by the Finnish Embassy, the students of the Legal Clinic started the ''Bridge the differences'' project - a charity program aimed at collecting money and material resources (food, clothes, shoes) for underprivileged groups of the Roma ethnic minority in Croatia.

3.3. Malpractice insurance

The Legal Clinic of the Law Faculty, University of Zagreb aims to provide legal aid based on the highest professional standards. Thus, a contract has been signed with an insurance company with the aim of insurance against malpractice damage. Apart from what has been mentioned about providing legal aid, all users are warned that ''the education and training of students is an integral part of the purpose of the Clinic, and that the legal aid offered, although composed in good faith, is the result of their work and not the work of the institution or its academic staff and associates.''[45] Also, for certain forms of legal aid the users of the aid must provide a written statement about being informed of the previously mentioned circumstances and give a written consent regarding the limiting of the responsibility of the Clinic only for the damage done by willful miscounseling.[46]

3. 4. Funding

The Legal Clinic of the Law Faculty, University of Zagreb provides the end user with legal aid free of charge.[47] However, the user may, in specific cases and depending on their financial resources, be asked to bear certain expenses in the process of exercising his/her rights, such as evidence gathering costs, costs of external legal representation, costs adjudged to the opposing party in the case, etc.[48]

The Clinic is financed from the budget of the Law Faculty, University of Zagreb, but the funds are gathered from other sources as well, such as the projects within the University of Zagreb, contracts with the Ministry of Justice[49] based on the Free Legal Aid Act and the projects with international institutions, as well as foreign and international organizations.[50]

45 Ibid.

46 Ibid.

47 Ibid.

48 Ibid.

49 In 2010 the Legal Clinic received 15,000.00 HRK out of 100,000.00 HRK it asked from the project financing of free legal aid provider from the Ministry of Justice, that is, the state budget. But at the end of the project period (the end of 2010), the Clinic was obligated to give back all the allocated funds despite the fact that the so called ''order'' was used to provide legal aid in two cases outside the system, and that a major part of the funds that exceed 15,000.00 HRK was spent on the equipment of the Legal Clinic and work training. For the project period of 2011, the Legal Clinic was not awarded funds from the state budget, which the Ministry of Justice gathers yearly based on an invitation for tender. Therefore, the Legal Clinic is fully financed from the Faculty budget and the projects in cooperation with foreign institutions.

50 Until now, the Legal Clinic of the Law Faculty, University of Zagreb has succeeded in winning projects with the British Embassy and the Norwegian Embassy, through which it will establish valuable contacts with renowned legal clinics in Great Britain and Norway. See http://klinika.pravo.unizg.hr/medunarodna-suradnja-i-pomoc (20.7. 2012)

4. The impact of clinical legal education on the more efficient exercising of Croatian citizens' right to judicature

The fact that student work in the Legal Clinic of Zagreb Law Faculty is not just ''a figure of speech'', but that clinical legal education benefits the broadening of the practical knowledge of students, is supported by statistical data on actual clinical accomplishment in providing legal aid. In the academic year of 2010/2011, 137 cases were registered, out of which 58 were civil cases, 24 criminal cases, 27 administrative cases and 28 medical cases. In the winter term of 2011/2012, there were a total of 232 cases, out of which 172 were civil cases, 10 criminal cases, 36 administrative cases and 14 medical cases.[51] In March 2012, the first month of the summer term of 2011/2012, there were a total of 64 cases, out of which 40 were civil cases, 14 administrative cases and 7 criminal cases. [52] In May 2012, the first month of the summer term of 2011/2012, there were a total of 44 cases, out of which 30 were civil cases, 11 administrative cases and 3 medical and in June there were 28 cases out of which 23 were civil cases, 5 administrative cases and 0 criminal cases.[53]

5. Conclusion

Clinical legal education is a novelty in Croatian law schools curriculums and poses new challenges to Law Faculties regarding the improvement of student education. Apart from its significant role in legal education, existence of legal clinics is also very important in terms of enhancing the legal aid system by broadening the cycle of legal aid providers to which underprivileged citizens can turn when they are in need of legal aid. Moreover, clinical legal education has a positive impact on the strengthening of public policies of exercising constitutional principles of equality before the law, the right of access to justice and a fair trial within a reasonable period.[54] These important goals, which clinical legal education aims to achieve, are closely linked and should be constantly improved by powering the law schools curriculums through the process of learning from best clinical legal practices. Therefore, to maintain the positive development of the Croatian clinical legal education, Law Faculties have to continue to enhance the awareness of students and faculty members on the need of continuous empowerments of clinical curriculums. That is the only way to keep the track with development of modern clinical legal education which aims to support students interested in gaining theoretical and practical experience through provision of legal aid in the interest of the public benefit.[55]

51 See http://klinika.pravo.unizg.hr/broj-i-vrsta-predmeta

52 Ibid.

53 Ibid.

54 Uzelac 2010, p. 2

55 Ibid.

Literature:

Barić 2004

Sanja Barić., *Pravna pomoć i neprofitne organizacije u Republici Hrvatskoj* (Legal aid and Unprofit organizations in the Republic of Croatia), Zbornik Pravnog fakulteta Sveučilišta u Rijeci, vol. 25., br. 2., 2004.

Jelinić 2008

Zvonimir Jelinić, *Ostvarivanje prava na pristup sudu kroz sustav besplatne i subvencionirane pravne pomoći* (Exercising the Right of Access to Courts through the System of Free and Subsidized Legal Assistence), Zagreb (master thesis), 2008.

Report Ministry of Justice 2009

Report on the exercise of the right to legal aid and expenditure for the year 2009 (Izvješće o ostvarivanju prava na besplatnu pravnu pomoć i utrošku sredstava za 2009.godini), Ministry of Justice (Ministarstvo pravosuđa), Zagreb, 2010 (text available on the website: www.pravosudje.hr/izvjesce-2009)

Report Ministry of Justice 2010

Report on the exercise of the right to legal aid and expenditure for the year 2010 (Izvješće o ostvarivanju prava na besplatnu pravnu pomoć i utrošku sredstava za 2010.godini), Ministry of Justice (Ministarstvo pravosuđa), Zagreb, 2011 (text is available on the website: www.pravosudje.hr/izvjesce-2010)

Uzelac 2010

Alan Uzelac, *Pravna klinika Pravnog fakulteta Sveučilišta u Zagrebu - Koncept programa ustrojstva i rada* (Legal Clinic of the Faculty of Law, University of Zagreb - The concept of program of its organization and operation), 2010

Running drop-in advice services in a university setting

*Dr John Russell**

Running drop-in advice services in a university setting

In October 2011, London South Bank University ('LSBU') opened a new Drop-In Legal Advice Clinic where law student volunteers – working under the supervision of practising solicitors – provide free, on-the-spot, face-to-face legal advice to the general public. Our aim was to establish a drop-in advice service which would deliver a tangible benefit to the local community, develop students' practical knowledge of the law in context, and provide a basis for developing a teaching and learning resource for other higher education institutions. In February 2012, we were highlighted in the Million+ think tank's report on innovative teaching in modern universities, 'Teaching that Matters', as involving students in a valuable community service while gaining real-world legal experience, developing transferable skills and enhancing their employability prospects. [1] In April 2012, we won a £5,000 LSBU Vice-Chancellor's Enterprising Staff Award for our demonstration of enterprise in enhancing the student experience and employability, providing a significant benefit for the local community, and demonstrating a wider significance to other higher education institutions nationwide. The Legal Advice Clinic is now key to the marketing strategy for the Law Department. This paper describes our new service in its first year of operation.

Why run a drop-in advice clinic

Different institutions across the country are running a whole variety of interesting clinical legal education projects that are unique to them.[2] However, the underlying basis of most university law clinics is the 'letters of advice' model as described by LawWorks in its "Sample Law School Clinic

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1 Million+ (2012) Teaching That Matters, http://www.millionplus.ac.uk/research/teaching-that-matters.

2 LawWorks Student Pro Bono Report 2011 and Lydia Bleasdale-Hill, The Experience of Establishing and Maintaining Pro bono Projects within an Educational Setting: A Narrative (Sept 2011) – both at lawworks.org.uk.

Handbook".[3] In this model, there is no public drop-in service. Potential clients telephone the clinic and speak initially to the Centre Administrator. The administrator passes brief details onto the Supervising Solicitor who takes a view as to whether the inquiry is appropriate to be handled by the clinic: "Factors taken into account include urgency, complexity and available expertise and whether or not the case is likely to be of educational benefit to the students."[4] If an inquiry passes this assessment, then an initial appointment will be for the client in at least one week's time. A team of students will be assigned to the matter and begin preliminary legal research based on the information provided by the client in the initial telephone-call. After a week of research, the students meet the client for the first time and conduct a "fact-finding" interview where the giving of advice is strictly prohibited. The client leaves. The students have a post-interview review with the supervisor. There is a further reassessment as to whether the inquiry is suitable to be handled by the clinic. If the inquiry is deemed suitable, the students conduct further legal research and then over at least the next two weeks draft successive versions of a letter of advice for the supervisor to check. When the letter of advice is finally approved, it is sent to the client. Advice is only given by writing.

The drop-in clinic model works much more like a Citizens Advice Bureau or Law Centre. The core service is delivered at open-door drop-in sessions where members of public simply turn up, and are given on-the-spot face-to-face legal advice. Working under supervision, student volunteers interview and assess clients, research the enquiry while the client waits, and then give information and generalist advice, and/or signpost and refer to other local advice agencies and solicitors. There is also the option to refer clients to the Clinic's own appointment-based evening sessions, where volunteer solicitors give face-to-face specialist advice in a number of practice areas. At these evening sessions, students shadow the volunteer solicitor, and assist by writing up the attendance note.

The main benefits of the drop-in model include that with suitable premises on the public highway and some local publicity, clinics are likely to find themselves inundated with clients. They will develop close working links with their local network of legal advice providers. According to Schön's terminology of 'high ground' and 'swamp' that describes the distinction between the rarefied artificiality of law exam problem questions and the messy reality of the undigested world,[5] students are dropped in the deep end by making them the first point of client contact without any prior filtering. They will be presented with people who do not necessarily have a readily identifiable legal problem and learn to assist clients in translating their concerns into legally recognisable categories and provide concise explanations of legal concepts and processes which will be entirely new to people. This intensively develops their interview skills, practical legal knowledge and understanding of client care – in particular, learning to be non-judgmental and non-discriminatory towards clients and their problems, and providing the best possible service within the time-constraints of a busy drop-in service.

The table below compares the two models. Although it is convenient to describe them in

3 Derived from an original manual authored by the law clinic staff at Sheffield Hallam University in 1999; revised by the College of Law in 2006. LawWorks Sample Law Clinic Handbook 2006 <http://www.lawworks.org.uk/index.php?cID=163&cType=document> accessed 25 August 2012.

4 ibid p7.

5 Brayne, Duncan and Grimes, Clinical Legal Education: Active Learning in Your Law School (Blackstone, 1998) pp35-36.

opposition, there is clearly a lot of scope for picking and mixing elements of both models – for example, it would be easy to design a clinic that used the drop-in core service as filter through which it referred on to any number of satellite clinical projects (which could include 'letters of advice' in particular practice areas where appropriate expertise existed).

Letters of advice model	**Drop-in model**
Enquiries are filtered for suitability and educational benefit	No filtering whatsoever
Clinics can struggle to find suitable clients[6]	There is generally no shortage of clients
Advice in writing only	Face-to-face advice
At least 3 weeks from client's first contact until the letter of advice	Legal advice is instantaneous
Tends to function separately from the local legal advice network	Deeply embedded in the local legal advice network
Students are forewarned about the nature of the enquiry and research it in advance	No forewarning or research prior to meeting the client – students are plunged into Schön's 'swamp'
No requirement for premises on the public highway	Requires premises suitable for public drop-in
Easy to restrict enquiries based on available staff expertise	Difficult to restrict enquiries because of the open door policy – supervisors need to have a good basic working knowledge of social welfare law at generalist advice level or above
Can proceed to casework and representation	Can proceed to casework and representation

Levels of advice

In order to describe the drop-in model, it will help to explain the generally accepted hierarchy of legal advice provision for social welfare matters.

The lowest level of advice is basic information. Typically, this will involve giving a client a leaflet or a factsheet, or in some other way taking them through standardised information which is not tailored to them as an individual. Anyone living in the UK can access that advice by going to the Citizens Advice Bureaux website, where they maintain a publicly available online resource called adviceguide.[7] If a client visits a CAB in the UK, they will typically get a 10 minute triage appointment with a "gateway assessor" who will see if they can resolve the enquiry at the level of basic information.

6 Bleasdale-Hill (2011 – n1) confirms that written advice clinics can be "desperate for clients" and available interview slots are unfilled (p11).

7 www.adviceguide.org.uk

The next level of advice is generalist advice. This is much more sophisticated than basic information. The adviser is now dealing with the client as an individual, tailoring advice to their particular circumstances. It will be based on advice resources that the general public does not have direct access to – principally, Advisernet which is a vast subscription-only resource maintained by CAB,[8] and supplemented by various weighty practitioners handbooks on welfare benefits and other matters.[9] This is the second-tier of service at CABx in the UK. If the 10 minute "gateway assessor" appointment cannot resolve the enquiry, then the client will go through to a full generalist advice appointment, typically one hour long. This could be a one-off appointment, or there could also be casework at that level – for example, complex debt management where a client needs ongoing help (depending on what funding the particular bureau has).

Generalist advice is a massively complex area, which will cover all social welfare matters prior to legal proceedings. The CAB traditionally divides generalist advice into seven areas: benefits and tax credits, consumer goods and services, debt, employment, family, housing, and immigration. Generally it takes about 8-12 months to train as a CAB Generalist Adviser – i.e. before an adviser would interview and advise clients on their own, under the supervision of an advice session supervisor. In the drop-in clinic model we employ much more intensive supervision than the CABx in order that student volunteers give generalist advice to clients from day one.

The next level up in the hierarchy is specialist legal advice for people involved in (or in contemplation of) legal proceedings, provided by solicitors or some other substitute services – for example, a client might obtain advocacy services at tribunal level from the Free Representation Unit for employment or social security tribunals. In the drop-in clinic model, specialist legal advice is provided at the appointment-based evening sessions where students shadow volunteer solicitors and assist them by drafting the attendance note.

The drop-in clinic is a face-to-face generalist advice service, onto which can be added practice areas of appointment-based specialist advice depending on what links develop with local law firms.

The drop-in service

In our first year of operation, we ran two 3-hour daytime drop-in sessions each week (in the academic year 2012-13, we added a third drop-in session). Our publicity material said that we would:

- Provide basic information on any topic;
- Give generalist advice on any area of social welfare law in one-off one-hour appointments (except immigration, because we are not a registered immigration provider);
- Signpost and refer to appropriate local advice agencies and legal services; and
- Refer to the Clinic's own evening appointment-based specialist advice sessions.

8 It is issued on CD-ROM in monthly updates. The annual subscription charge for voluntary organisations is currently £539 + VAT: http://www.citizensadvice.org.uk/index/adviser_resources/advisernet.htm

9 In relation to welfare benefits, Child Poverty Action Group provides the finest hard-copy resources and training events. Their Welfare Benefits and Tax Credits Handbook (updated annually) is essential: http://www.cpag.org.uk/welfarerights. Disability Rights UK (formerly Disability Alliance) produces superior resources on disability benefits, especially the beautifully readable Disability Rights Handbook (updated annually): http://www.disabilityrightsuk.org.

The daytime drop-in sessions worked as follows:

- One student acted as receptionist, taking initial details on a pro forma (the students rotated reception duties each week).
- Four other students worked in two teams of two. Each team had a dedicated supervisor.
- The supervisor and students collected a client from reception and took them to an interview room.
- We took initial instructions – that is, we got the client talking and found out what the problem was, gathered all the relevant information (using our standard questions booklet as a guide) and identified what the client wanted to achieve.[10]
- Next the interview was paused briefly and the client waited while we returned to the base-room, researched the enquiry and formulated the advice.
- Then we returned to the interview room and gave the client the appropriate information and advice.
- Finally, we wrote up a succinct advice note once the client had left.

We had a maximum one-hour time-limit to complete that whole process, so in practice we advised approximately six clients in each 3-hour drop-in session.

We opened with two weekly daytime drop-in sessions providing generalist legal advice, and one weekly evening 3-hour appointment-based session for specialist legal advice in family and housing law provided by volunteer solicitors from local law firms Philcox Gray and Wainwright Cummins. Subsequently, we added evening appointments in employment law, long leaseholder matters and personal injury, with volunteer solicitors from Anthony Gold and Russell-Cooke. By the end of the year, we generally had two volunteer solicitors working each evening session, with one student shadowing each of them. The students would arrive 15 minutes before the appointment time and familiarise themselves with the drop-in case records. They shadowed the volunteer solicitor as they gave specialist advice. They took a careful note and wrote up an attendance note, which the volunteer solicitor checked and signed off.

We told clients that the evening appointments were one-off advice sessions, and that we did not offer casework or representation ourselves (however there is no reason at all why a clinic could not do this if it has the expertise and capacity). In most cases, this one-off session was sufficient to resolve the enquiry (in the sense that the client had no immediate need of further legal advice). In other cases:

- We invited clients to return to the Clinic as the matter developed and we could offer further help – and we had a small number of clients who visited us a number of times as the same matter unfolded.
- We assisted the client with finding legal representation by signposting or referring them to local solicitors.
- The client was taken on by the volunteer solicitors as a client of their firm (so long as it was made clear to the client that they had complete freedom of choice in respect of instructing a solicitor);

10 Students initially observe the supervisor taking instructions and giving advice, until they progress to doing this themselves – see 'Student progression and retention' below.

Outputs in our first year

Between September 2011 and May 2012 we were open for 27 weeks and conducted 192 face-to-face client interviews. The vast majority of our Clinic enquiries fell into the standard social welfare law categories (figure 1).

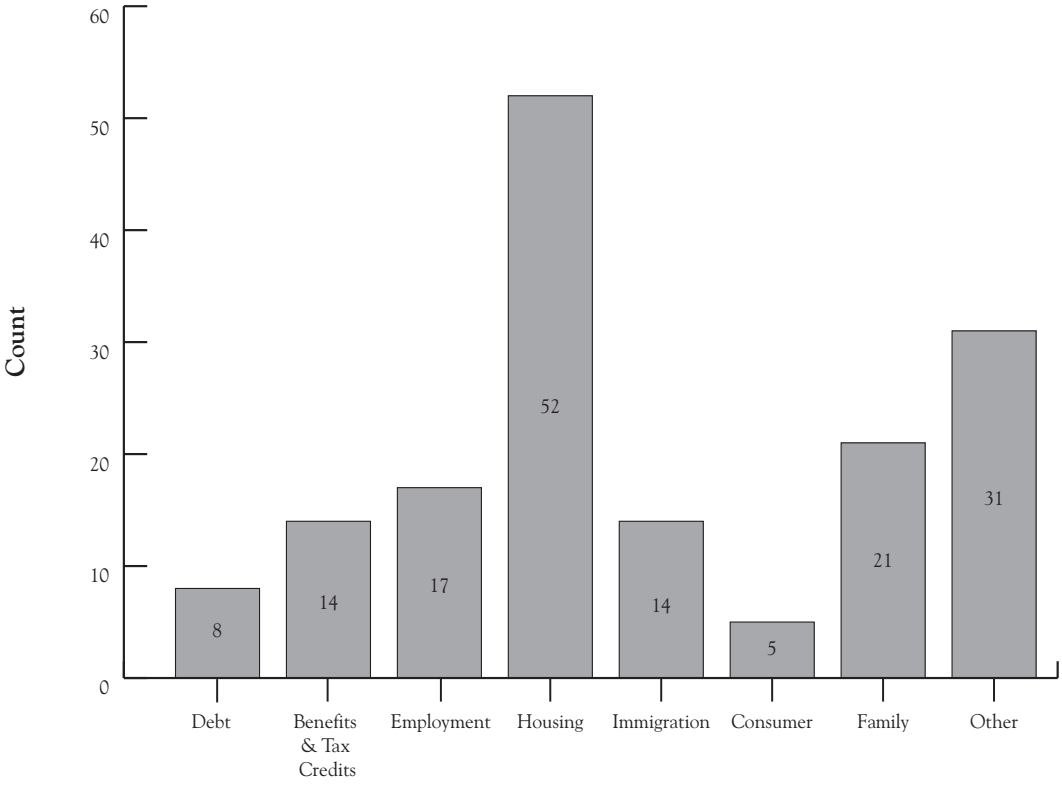

Figure 1

Figure 2 illustrates the outcome of enquiries at the daytime drop-in sessions. The vast majority (62%) were resolved at the level of generalist advice in the sense that the client was now able to take action and had no immediate need for further legal advice (though they might return to us or another service at a later stage, when there had been some further development). Another very substantial portion (25%) were referred to our own specialist advice evening sessions. Only a very small portion of enquiries (9%) were given basic information and signposted on; in practice, that was all immigration enquiries and a small number of commercial cases that were outside our expertise

The overwhelming majority were handled internally in our daytime or evening sessions. These statistics show that we ran a very busy and effective Clinic, with the majority of drop-in enquiries being resolved at the level of generalist advice. The high resolution figure is important because it means that we are providing a genuinely useful service for the public, which in turn means that our students get a real sense of satisfaction and completion from the work.

Outcome at daytime drop-in sessions

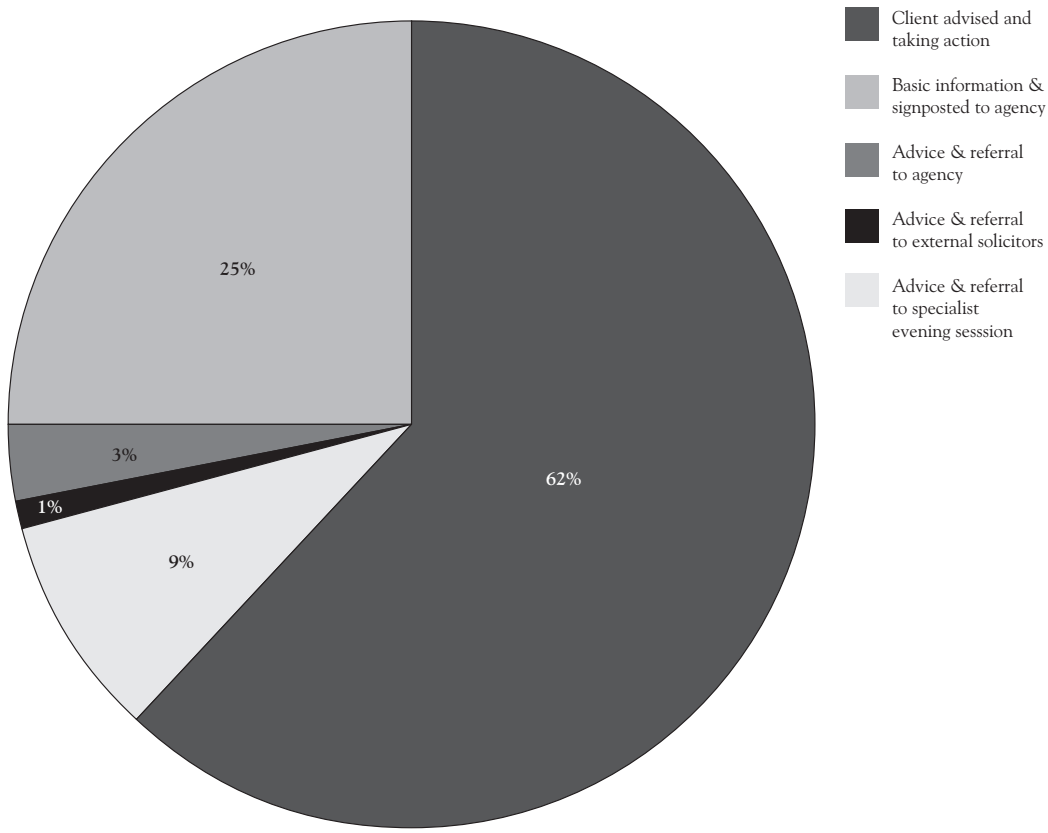

Figure 2

For our first 2011-12 session, we recruited 20 student volunteers. We selected applicants by way of application form and short interview. All law students were invited to apply; however we recruited towards the end of semester 2 to begin the following year, so in practice all our volunteers would be in at least their second year of study before they started their placement. We required a minimum of sixteen 3-hour sessions in order to deem a volunteer placement fulfilled. Upon completion of the placement, we provided a Certificate of Clinical Legal Education Placement and permitted the students to use the Clinic Directors as referees on any job or training applications they made. We promised them a detailed reference based on their work in the Clinic.

We gave our student volunteers two days initial training in the week prior to Week 1 of the semester. This was jointly delivered by us and local Citizens Advice Bureau staff and covered general matters such as working with clients, interview skills, using information resources, our policies and procedures, and how to refer and signpost to the local community advice network. All the rest of our training (i.e. all the substantive law) was delivered on-the-job. This is very different to how the CABx trains and works. A CAB Generalist Adviser training is much more front-loaded – there will typically be many weeks of training sessions about the substantive law before an adviser ever goes near a client, but once trained an adviser works under arms-length supervision. One CAB Advice Session Supervisor will supervise multiple Generalist Advisers working individually (figure 3).

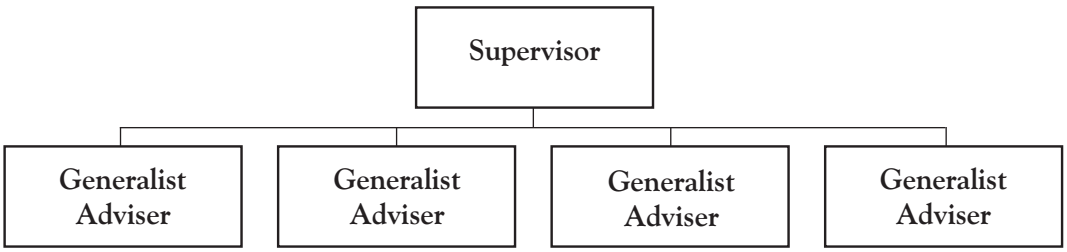

Figure 3: CABx supervision

We chose to run our project on a much more modelling and experiential learning basis – partly from choice and wanting to ensure the project had educational benefit (rather than simply being pro bono work) and partly because we had no scope to timetable a longer initial training. Our students work in teams of two with a dedicated supervisor. This means we are committed to a very high staff/student ratio, and there are no economies of scale in our model – if we want to add another student team then we need to add another supervisor.

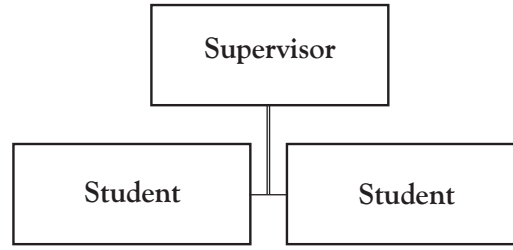

Figure 4: Drop-In Clinic Supervision

By joining the LawWorks group of clinical legal education projects, our student volunteers also had access to the comprehensive programme of LawWorks training sessions.[11] This programme cycles through a wide range of social welfare matters and advice skills every semester. The sessions are principally intended for volunteer solicitors working in clinical projects and they are delivered at a fairly high level. We encouraged our students to attend as many sessions as possible, or listen to the accompanying podcasts available online. Generally students found that they got more out of the training sessions once they had a certain level of experience in the Clinic.

Student progression and retention

For our 2011-12 session, we recruited 20 volunteers. With hindsight, we under-recruited. Two volunteers dropped out over the summer for personal reasons and did not attend the initial training. Two volunteer placements were terminated at the start of Semester 2 – one at the student's own request and one for persistent unreliability. Three further students reluctantly withdrew from the project for personal reasons. We still managed to run the Clinic very successfully, and never had to close the Clinic due to low student numbers. However, for the 2012-13 session we recruited substantially more students to give sufficient allowance for terminated placements and withdrawals.

At the start of a student's placement, the supervisor modelled every stage of the 4-part process:

- Taking initial instructions;
- Researching the answer;
- Feeding the advice back to the client; and
- Writing up the case record.

But we very quickly moved on to collaborating with the students in the process. Almost immediately, we required them to do the research and write up the note (with less and less guidance as their placement progressed). Next we encouraged them to feed the advice back to the client when we went back into the room. Finally, we invited them to take initial instructions from the client.

11 http://www.lawworks.org.uk/.

In our 2011-12 session, all our students learnt to research real-life legal issues and write professional quality case notes. Their writing skills – their ability to identify what elements were legally relevant, and to present that information clearly, precisely and concisely – improved tremendously. 85% of students progressed to giving face-to-face advice to clients – that is, once instructions had been taken, and the legal research was done, they formulated the oral advice and delivered that in a clear, systematic manner that was appropriate for the individual client. 69% progressed to taking initial client instructions, which we consider the most challenging stage of the advice process – going into the room without any forewarning, making sense of the client's story and asking all the relevant follow-up questions. Given that it takes about 8-12 months to train as a CAB generalist adviser, and we only have our students for 16 sessions (which equates to 48 hours) we are very pleased with that progression rate; although we are providing a very high level of on-the-job supervision – much more than a CAB is able to do.

Originally, we hoped to retain our experienced volunteers into the following year and pair them up with new recruits so that we were not beginning from square one and training up all the students from scratch every year. However, in practice this was impossible to arrange. Our university managers wanted to see as many new students benefiting from the project (rather than existing students taking up volunteer places in the following year). In any event, the student teaching timetables gave little scope to pair up students from different years in the same Clinic session. Other institutions may not be restricted in this way, and may be able to utilise experienced student volunteers to supplement direct supervision by staff.

At the end of the year, student volunteers completed a two-page feedback form. Overall, their feedback was excellent. 92% of students said their practical legal skills were very much improved from taking part in the Clinic. 92% of students rated the Clinic placement as very good or excellent overall. We were inclined to regard a successful placement as a student who progressed all the way through to taking initial instructions, but judging from the student feedback it was not necessary for a student to do that in order to rate the project highly. Two students who did not manage to progress to feeding back advice or to taking instructions, both said their practical legal skills were very much improved, and rated the placement as excellent. Even on its own the researching, writing up, and shadowing the drop-in service and the specialist evening sessions was very worthwhile for them.

Staff, premises & insurance

Our Drop-In Clinic is currently an extra-curricular clinical legal education project. Our two Clinic Directors are both lecturers in law and practising solicitors. Very significantly, both the Clinic Directors also have extensive experience of delivering generalist advice drop-in services. Approximately half their standard teaching allocation is given over to Clinic supervision – so together this is approximate to one full-time member of staff (there is no additional administrative support). In our first year, we received generous donations from Russell-Cooke and Anthony Gold solicitors. However, it is likely that we will need to embed the Clinic to some extent to ensure its long-term financial viability and we are still considering the best way of doing so.

The London South Bank University main site is located very close to Elephant & Castle, a major transport hub in the London Borough of Southwark. It is located on the south side of the Thames and bordered by Lambeth and Lewisham, with the City of London and Tower Hamlets north of

the river. Tate Modern, the Royal Festival Hall, the Globe Theatre and Borough food market are nearby. However, Southwark was ranked the 17th most deprived area out of 354 local authorities and districts in the Indices of Multiple Deprivation 2004 based on an overall aggregated measure of deprivation (income, employment, health, education skills, crime etc). The Clinic premises are part of the campus but on the high street – with a large street-level disabled-access reception area, two interview rooms, a lockable back office and a base-room teaching space.

It was very evident to us that there was a huge amount of unmet local need for legal advice in social welfare matters. Early on in developing our Clinic project we made a site visit to Peckham CAB and saw 60 people queuing when the doors opened at 10 am and another 30 who arrived before the session ended. If you are considering developing a drop-in clinic and you are unsure about the needs of your local community, then start by contacting your local CAB and Law Centres. They will be able to give you a clear idea of the nature of the enquiries they deal with, and whether there is unmet need in your area. It is very likely that there will be, even if it is not on your doorstep. If you are a campus-based university, think about a town-based outreach.

Despite being located at a major South East London transport hub where the local CAB will regularly have 60 people queuing outside, we still had to do a substantial amount of local publicity in the first few weeks to get started:

- We sent out over 3,000 leaflets to every advice agency, library, GP surgery, and anywhere else that we thought might have potential clients.
- We got our service listed in every online directory that we could find.
- We networked extensively with local services.
- We put a huge banner on the front of our building.
- We drafted press stories for local free papers and websites.

After that we seemed to reach critical mass, and when we reopened after the Christmas vacation, we had clients queuing up to be seen from day one. Lydia Bleasdale-Hill's recent excellent survey of clinical legal education projects also makes a number of suggestions about ways to publicise an advice service.[12]

With regard to security, every CAB in the country runs an open-door public drop-in without any security whatsoever. We have a general security team on campus but none in the Clinic building itself. In 192 face-to-face interviews in the Clinic, we have only had one client whose conduct required us to call the general university security and he left once security arrived. It is certainly very challenging to have to deal with situation like that while being observed by students looking to you to model best practice, but handle it well and debrief it properly and that becomes a very powerful learning experience. We would only stress that you should have a precise understanding of exactly what powers your security staff have (i.e. can they lay on hands and physically remove someone from the premises, or do you need the police in order to do that). We recommend that, prior to opening your doors, you meet with your security team to discuss their powers and the most effective way of contacting them urgently, and whether you should call the police at the same time. However, it is important not to allow very occasional difficult clients to have a disproportionate impact – people tend to remember the extremes and recall the one client who

12 See n2.

kicked off in reception rather than the 191 that did not. The prospect of difficult clients should not put anyone off running a drop-in service. The overwhelming majority of our clients are extremely satisfied and effusive in their thanks and that gives students a powerful sense of their capabilities.

Our Clinic is covered by our general University insurance. If you are considering opening a project and your institution insists that you obtain separate professional indemnity insurance then you can do this easily and inexpensively. LawWorks particularly recommends AdviceUK who are familiar with law clinic work.[13]

Drop-In Clinic Operational Manual

In July 2011, we obtained a Higher Education Academy Teaching Development Grant to produce teaching and learning resources for a drop-in model of clinical legal education. Our free 73-page Drop-In Clinic Operational Manual was officially launched at LSBU's 'Clinical Legal Education - Form and Funding' conference on Friday 15 February 2013, at which we and other institutions running innovative clinical projects shared their work with over 100 academics, practitioners and students. The Manual can be downloaded from the LSBU website (http://www.lsbu.ac.uk/ahs/downloads/law/lsbu-drop-in-clinic-manual-v1) and links to all the conference materials are available on the HEA Social Sciences blog (http://blogs.heacademy.ac.uk/social-sciences/2013/02/22/clinical-legal-education-form-and-funding/).

13 http://www.adviceuk.org.uk/supporting-you.

Masters of our Destiny – The Integration of law clinic into post graduate Masters provision

*Karen Clubb**

Increasingly students are looking to their undergraduate law degrees to do more than provide them with a qualification which acts a 'stepping stone' to further legal vocational training. The provision of law degrees across the sector includes both qualifying and non-qualifying degrees where the study of law is combined with other subjects, vocational and non-vocational. Not all students who obtain a qualifying law degree will continue to the vocational stage of training,[1] but all degrees need to address the employability agenda, and law students in particular need to consider future career aspirations early on in their degree.

Clinical legal education as a teaching methodology has received considerable academic attention for the benefits student engagement can yield in enhancing the overall student learning experience. This paper briefly reviews the benefits of undergraduate clinical legal education (CLE) and considers the benefits of developing this at post graduate level in a Masters in Law programme. This paper considers the distinction between the two approaches and the need for a different approach to the provision of a law clinic module within a postgraduate law Masters programme, identifying a possible model of delivery.

The paper further presents some of the potential challenges in developing and maintaining this provision over time and attempts to offer some insight into how these have been considered in the development of a postgraduate law clinic module at the University of Derby.

Clinical Legal Education – undergraduate experience

In the last ten years there has been a significant increase in the integration of Clinical Legal Education (CLE) into the undergraduate law curriculum.[2] The definitions of CLE are broad and include participation of students in legal service provision as well as the use of simulated exercises and tasks. The definition of CLE offered by Grimes defines CLE as:

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1 Cole Strategic Research Unit 'Trends in the Solicitors Profession Annual Statistical Report 2006'

2 Grimes R., Brayne H., 'Mapping best practice in clinical legal education' UKCLE October 2004, para 3.6

> a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised… It almost inevitably means that the student takes on some aspect of a case and conducts this as it would… be conducted in the real world. [3]

Other definitions seek to capture the pedagogic approach:

> exposure to real or realistic situations in which the student is required to address legal and related matters, taking responsibility (individually or collectively) for the resolution of problems and the associated tasks; coupled with the opportunity for reflection on issues, means of resolution and task performance, as an integral and structured part of a course of study.[4]

The provision of CLE across the sector is varied as are the models of practice supporting this experiential learning provision which promotes student learning by participation in the provision of some aspect of legal service/work.[5] Only a few institutions are able to offer integrated in house law clinics and the experience of 'live client work',[6] other institutions rely on community projects, often termed 'street law,' as the basis of CLE. Although CLE is valued as an experiential learning model it is not currently a mandatory requirement of qualifying law degrees in England and Wales.[7] The Joint Academic Stage Board (JASB) do not stipulate any particular teaching and learning methodologies, these are left for determination by the institutional providers.[8] This is also the case with the Legal Practice Course (LPC), which whilst specifying the minimum contact and teaching hours for core subjects, and stages of study, does not mandate that the learning be derived from participation in a work based learning environment and professional practice.[9]

Although CLE is not mandated as a component of a qualifying law degree, its inclusion in the undergraduate curriculum was considered by the ACLEC report as far back as 1996. This highlighted the need for provision of a "broad and intellectually demanding legal education" which it regarded as "fundamental to our commitment to constitutionalism and an extension of the rule of law." It identified the need for an awareness of the "ethical and humanitarian dimensions of the law as an instrument which affects the quality of life," recognising what it saw as the fundamental democratic value of the law, and of the need to impart and preserve the common core professional values and skills. The report clearly recommended as a vision for the future, a reduced demarcation between the academic and professional stages of training, integrating and instilling a commitment to "the rule of law, justice, fairness, and high ethical standards."[10] For institutional providers the

3 Grimes R., 'The Theory And Practice Of Clinical Legal Education' in J. Webb and C.Maugham (eds.) *Teaching Lawyers' Skills* (1996) at p 138.

4 Browne S. (2001) A survey of Pro Bono Activity By Students In law Schools in England and Wales *Law Teacher* Vol 35 pt 33, at 34.

5 Plowden P., 'Model standards for live-client clinics' Clinical Legal Education Organisation (CLEO) 1995.

6 Marson J., Wislon A, M Van Hoorebeek., 'The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective.' Available at http://www.northumbria.ac.uk/sd/academic/law/entunit/norlawpress/jour/IJCLE_2/IJCLE_Aug05/6633812/ Date Accessed 26/06/2012

7 Joint Academic Stage Board Handbook, September 2011, Appendix M.

8 Joint Academic Stage Board Handbook, September 2011, para 2.2

9 SRA' Information for the provider of Legal Practice Courses', Education and Training Unit, May 2012. Available at http://www.sra.org.uk/lpc/

10 The Lord Chancellor's Advisory Committee on Legal Education and Conduct, 'The First Report on Legal Education and Training'(ACLEC) London 1996, paras 1, 1.14, 1.15, 1.19

provision of CLE enables these values to be promoted in a way that is meaningful and derived from real and personal experience and participation of students in a work based and professional context facilitating the development of skills and values relevant to and necessary for professional practice.

Since the ACLEC report there has been a greater integration of CLE into undergraduate curriculum and the provision of law clinics and to a limited extent there has some movement towards the merger of the academic and vocational stage. Some institutions now offer integrated pathways of study that combine undergraduate and vocational stages of study. However the changes in the funding of higher education render the 'employability' agenda a more critical consideration regardless of whether students go onto the later vocational stage of legal training or take the route of further postgraduate study of law. Equally postgraduate provision also requires students to have 'an eye' on the employment context to convert their enhanced academic study into clear transferable skills that are relevant and valuable to future employers and to demonstrate they are in touch with the employment context in which theses skills will be delivered.

The Experiential Learning Model

The integration of CLE and experiential learning at undergraduate level remains firmly grounded in addressing the educational goals relevant to this academic stage of study.[11] The engagement within a work-based learning context affords students the opportunity to develop their knowledge of the substantive law alongside their knowledge of the relevant legal processes, as well as developing generic and transferable skills under supervision, equally relevant to those students focused on careers outside law.[12] Experiential learning is recognised as promoting more effective, deeper and contextualised learning, promoting insight into the professional values, and can illuminate as to the impact of 'policy' and the concepts of what some term 'social justice issues'.[13] Students are also able to develop an understanding of the commercial context and pressures relating to the delivery and operation of legal services.

The experiential learning associated with CLE is highly motivating and rewarding for learners,[14] taking them beyond the classroom where learning from 'action' is rooted in 'real life' situations. It also affords students the chance to see the tangible benefits to their contribution to both individuals and the community. Each learning experience remains unique with students taking a greater role and responsibility for their participation and reflection on their learning, preparing them for the ethos of continuing professional/ skills development.[15]

In the academic environment the context of theory and practice – legal knowledge and participation in the legal process are more often divorced from each other or limited to specific simulated skills, tasks or problem orientated assessment involving other students. Experiential 'law clinics' places

11 Plowden P., 'Model standards for live-client clinics' Clinical Legal Education Organisation (CLEO) 1995, See Appendix 4 for suggested learning outcomes.

12 The Lord Chancellor's Advisory Committee on Legal Education and Conduct, 'The First Report on Legal Education and Training'(ACLEC) London 1996, para 1.11.

13 Plowden P., 'Model standards for live-client clinics' Clinical Legal Education Organisation (CLEO) 1995, para 1.1-1.4

14 Cruess R.L., Cruess S.R. 'Teaching Professionalism: General Principles' *Medical Teacher* Vol 28(3) (2006) 205-208

15 Rees C., Forbes P., Kulber B., ' Student Employability Profiles A Guide for Higher Education Practitioners HEA (September2006)

learning in a realistic, genuine and dynamic context offering potentially rich insights into the legal values and norms.

The reflective process, which accompanies the experiential learning model[16] ensures that students are more highly attenuated to the learning process and their learning needs. Experiential learning can be instrumental in offering clarity on future career options. Additionally students are further motivated by the perceived value in the engagement with services which have an impact on and offer a value and contribution to the wider community.

Given the advantages of experiential learning in the context of CLE at undergraduate level, the need for students to develop transferable work skills linked to the attainment of generic and subject specific graduate profiles; one wonders why this has not been more readily replicated in postgraduate Masters programmes in law.

Postgraduate Masters Clinic

Masters level study is a distinctly different educational provision from undergraduate legal studies, not least as postgraduate law students at Masters level may not in every case have an undergraduate law degree, and may indeed have a law degree from a different jurisdiction. For some students their work experience and employment history may secure entry to the programme. Masters level provision is a more intensive time constrained pathway of study, demanding a greater degree of learner autonomy and critical reflection. Postgraduate study is undertaken with a view to developing niche areas of knowledge and expertise in a distinct and specific programme of study offering intellectual challenge. Increasingly programme selection is made in light of anticipated future career pathways and employment opportunities.

Masters study aims to develop advanced research skills through engagement with a critical analysis and examination of substantive areas of law and theoretical and doctrinal approaches to the selected area. At Masters level this requires further consideration of contemporary and emerging approaches to the relevant legal issues as well are a more detailed critique of their rationale and effectiveness. Students are expected to demonstrate a greater degree of originality in their work in preparation for possible further doctrinal study. A crucial feature of Masters level study is the examination of both the substantive and procedural aspects of the law, and a wider consideration of the socio-economic and political context in which the critical legal issues are situated. Students need to draw extensively on academic discourse, empirical research and normative approaches requiring consideration of issues beyond domestic jurisdiction, drawing on the international context and comparative approaches.

Generic transferable skills relate to the advanced research undertaken and the degree of independent learning accompanied by the ability to critically reflect on a wide range of concerns and conceptualisation of doctrinal and theoretical models to communicate effectively the key issues, propose solutions, and present research findings.

For law clinic to be applicable at postgraduate level given the nature and focus of study, the context in which current undergraduate law clinic experiential learning is offered may not yield appropriate opportunities to facilitate the depth of research and critical reflection commensurate with this

16 Clubb., K. 'Using Reflection to Enhance Work-Based Learning: Towards Professionalism' Lili Conference Warwick (2008).

stage of study. The experiential model of learning by doing offers a narrow range of activities and opportunity for practical skills (interviewing, letter writing, drafting) for student engagement under supervision which do not match the required research skills focus relevant to postgraduate study.

An important consideration for all undergraduate CLE experiential law clinics is that participating students actively contribute to service delivery, delivering a tangible benefit. This is crucial for institutions such as the University of Derby that rely on a placement provider type model of provision and is a relevant consideration in developing a clinic module at postgraduate level. At postgraduate level the student process of participation may vary but the clinic experience still needs to deliver benefits for the students and the legal service/ provider. For postgraduate clinic provision the opportunity for experiential learning needs to relate to some form of research activity and service audit. The participation in these areas still requires participation in practical tasks, such as interviewing, and competency in generic skills providing the platform for participation and student engagement.

The needs of postgraduate students regarding law clinic provision are very different calling into question the appropriateness and viability of the conception of law clinic at undergraduate level and the experiential model which underpins this. The narrow experiential context (professional practice) and practical tasks undertaken by students in undergraduate law clinics are not likely to deliver limited opportunities for reflection and identification of research opportunities relevant to postgraduate legal study. Indeed the service provision in which the experiential law clinics are based may preclude the resources, time and support needed to meet postgraduate student needs in practice.

The starting point is to attempt to capture the benefits of learning in the context which experiential learning affords within a model or approach that defines the relevant context for postgraduate law clinic and the process of learning and learning goals. The model adopted will then inform as to the appropriate selection of the relevant learning contexts and the selection of appropriate partner providers.

Whatever the model of postgraduate provision selected, employability remains as crucial as to the undergraduate experience, as does the need to 'integrate doctrinal knowledge with a fuller clinical experience throughout the student journey'.[17]

Postgraduate clinic provision can capitalise on the knowledge that students learn most effectively when their learning is context driven, related to current issues and challenges and supported by the knowledge of experts and those with experience in the field. To this end aspects of 'practice' as a form of CLE are already incorporated in the postgraduate curriculum by integrating the contributions of practitioners and researchers into module delivery. This offers a 'more intensive, mutual and fruitful partnership which should ultimately break down the distinction between clinical and traditional teaching sessions.' [18] The clinic module merely shifts the focus and balance of these elements and the context from CLE in the classroom to a work based context which offers a richer and broader learning experience that is potentially more meaningful. [19]

17 Hall J., Kerrigan K., 'Clinic and the Wider Law Curriculum' 16 Int'l J. Clinical Legal Educ (2011) 25, 25.

18 Hall J., Kerrigan K., 'Clinic and the Wider Law Curriculum' 16 Int'l J. Clinical Legal Educ (2011) 25,30

19 Hall J., Kerrigan K., 'Clinic and the Wider Law Curriculum' 16 Int'l J. Clinical Legal Educ (2011) 25,34

A possible model of delivery – 'Action research'

The author proposes consideration of an action research type model as a basis for the provision of postgraduate law clinic. This has history of use and application in the context of education and business by practitioners to examine and audit the effectiveness of service provision and the methodology of practice and its effectiveness. The aim of action research has been to seek to critically evaluate an aspect of professional practice to offer further insights and improvements on both the context of an identified area of professional practice and the service area in which it is located. The action research model goes beyond the immediate skills focus as to what is done and how, by seeking to critically evaluate the rationale for the practice and its effective application. The model merges both practice and theory and in so doing requires a more holistic consideration of the relevant professional and service context and its underlying values. The experiential model is highly dependent on the quality of the student's 'practical performance' to determine the overall learning experience in terms of the opportunity for participation and observation by the students to facilitate learning. The action research model requires access to the identified professional or service context to 'trigger' the identification of the research project and the identification and problematization of critical issues. The student's participation in the subsequent research project /process yields a potential end gain for the service and the student, whilst simultaneously offering the capacity to reconstruct the role of the student in their clinic experience, to one which compliments and support the attainment of postgraduate Masters level learning outcomes.

The action research model is traditionally associated with being a stimulus for organisational change and is based on the concept of collaborative team working to bring together a critical investigation of theory and practice through critical reflection and the application of selected research methodology. The approach is both reactive to the current position and practice as well as proactive in seeking to investigate and to further inform change. As a model of practice for postgraduate law clinics, it allows flexible accommodation of critical reflection on current legal issues, and can readily accommodate 'objective and naturalistic forms of enquiry.' [20] The model aligns well with the increasing trend to forge links between the academic community and Higher Education Institution's, public bodies and legal service sector. The latter have the expert knowledge of the law in practice and the former the experience and expertise in research necessary to investigate and scrutinise the value of aspects of practice or service provision. The model aligns theory and practice[21] in particular to address the wider context in which the law operates, comparatively and beyond national borders addressing 'matters such as legal theory, interdisciplinary team working, ethics, issues of internationalisation, and culture and gender', as appropriate. [22]

Additionally the identified features of action research identified by Stringer as 'change, reflection, participation, inclusion, sharing, understanding, repetition, practice, community' are relevant generically to the employment, context, where team working and a participatory and inclusive approach to project management and research are essential. [23] The action research approach offers

20 Stringer E., *Action research in Education* (2nd Edn Pearson Press 2008), 10.

21 Trehan K., Pedler M., 'Research and evaluation in assessing outcomes and impacts in action learning' Action Learning: Research and Practice, 7(1) (2010) 1, 1.

22 Mackinnon J, 'Problem Based Learning and New Zealand Legal Education 3 *Web JCLI* [2006] at 13 <http://webjcli.ncl.ac.uk/2006/issue3/mackinnon3.html> Date Accessed 20/06/2012

23 Stringer E., *Action research in Education* (2nd Edn Pearson Press 2008), 33.

flexibility in selection of research methodology and allows for the merging of a consideration of the legal issues with the context of service delivery, organisational structure, strategic decision making, offering insights into professional values within a 'community' context. The action research framework allows for scrutiny of existing practice to find a more positive solution and improved legal and wider service responses to client need and the presenting legal issues.[24] It also affords the opportunity for students to demonstrate leadership skills in the implementation of the team research and project management. The aim is for students to work in partnership with the clinic partner, without acting as consultants, to ensure that the research is meaningful and appropriate to the creation of relevant knowledge and originality and delivers meaningful outcomes for the clinic partner.

What is critical for postgraduate study is that research derived from a practice setting allows for the development of originality of thought to provide a theoretical frame work to pragmatic external processes that may drive behaviour.[25] The action theory model also creates possibilities for the development of theory from practice but additionally shares characteristics with problem based learning, since some of the solutions sought are derived from and are driven by the need to seek resolutions to a particular process, practice concern or problem.[26]

Pedagogic advantages of action research model

From a pedagogic perspective the action research approach has much to offer. Research indicates[27] that this promotes deeper learning across all phases of the action research process with learners better placed to resolve service/ legal problems, dilemmas. Further, learners gain a deeper understanding of the learning process linked to on-going critical reflection and continuous deeper rather than episodic learning. The problem based and reflective elements of this model require reflective participants; 'those who are sufficiently conceptually literate to read and critique key aspects of the social order and to understand their own and others' status and role,'[28] an essential skill for team work and project management. Continuous learning and development are crucial to continuous professional development, relevant to both academic and legal practice alike.

The offering of a law clinic experience at Masters level offers the opportunity to bring alive the rather dry area of legal research methodology by providing a realistic context in which these skills can be learnt, applied and developed. Rather than considering hypothetical situations at a distance, students are immersed in a real life context where they have to conceive a research project, design and design, critique and implement this in partnership with external agencies/ bodies. The work based context allows undertaking of data collection and analysis, production of research reports

24 Takis Karallis & Eric Sandelands (2011): Building better futures: leveraging action learning at Kentz Engineers & Constructors, Action Learning: Research and Practice, 8:1, 57-64. The authors here presented learning linked to the corporate context in finding new business solutions and to enable better responses to customer need.

25 Takis Karallis & Eric Sandelands (2011): Building better futures: leveraging action learning at Kentz Engineers & Constructors, Action Learning: Research and Practice, 8:1, 57, 63

26 Mackinnon J, 'Problem Based Learning and New Zealand Legal Education 3 *Web JCLI* [2006] <http://webjcli.ncl.ac.uk/2006/issue3/mackinnon3.html> Date Accessed 20/06/2012

27 Skipton Leonard H., and Marquardt M.J., Action Learning: Research and Practice Vol. 7, No. 2, July 2010, 121,126. Here the authors cite the research of Von Schuyver 92004) on this issue.

28 Mackinnon J, 'Problem Based Learning and New Zealand Legal Education 3 *Web JCLI* [2006] at 18 <http://webjcli.ncl.ac.uk/2006/issue3/mackinnon3.html> Date Accessed 20/06/2012

within time constraints, demonstrating an on-going sensitivity and consideration of the relevant ethical, social, policy and context and constraints of the partner institution service delivery.

Further the experience places student in a better position in terms of up skilling them for future Doctoral studies and places the advanced research that may have intimidated many within reach of their academic progression. Students who engage in research that has a worthwhile impact within the dynamics of live research environments connected to service provision are more likely to be enthused and motivated to further Doctoral research and study. They are also more confident and better placed in terms of their skills development to pursue this or to transfer these skills to an employment arena.

Practical considerations

Students undertaking a law clinic experience do so for their own personal and academic development, whether the provision is assessed or not. Provision at undergraduate level may serve to boost the student CV, may be voluntary and non-assessed. At Masters level this law clinic provision is likely and arguably should always form an assessed part of the student programme of study, if the action research and the partnership model advocated in this paper is followed.

The selection of projects and placements requires careful consideration and negotiation to ensure that the clinic provision at postgraduate level secures a student experience tailored to meet the learning outcomes of postgraduate study. The implementation of the action research model will require scrutiny of client files, access to documentary evidence from a placement provider, and may involve interviews of service users and staff team. These activities require a robust protocol for the management of the research process and associated ethical issues arising. This will apply to the research design and methodology and ethics approval processes required by the academic institution and the provider, but additionally to the implementation and management of these throughout the life of the project which is the basis of the clinic provision. A close partnership is required between the higher education institution and the providers to secure and manage this throughout.

As with undergraduate provision the challenge associated with this kind of experience is in firstly securing the placement opportunities that align with meeting the demands of postgraduate study. This proactive process may entail partnership projects involving a number of students at any one time, where the project operates over a longer period than the individual student placement and modular assessment. Students may make an active contribution by engagement with the research projects, completing reflective reports on their learning and contribution, adducing work to evidence this. Additionally as with undergraduate provision clear protocols need to be in place to oversee arrangements and clarify areas of responsibility and the degree of supervision and support needed by both the student and the partner provider. Students also need an induction process,[29] which may include a determination of the student's skills level, written and oral communication, interview technique, research skills, to ensure students are adequately positioned to be able to gain from the placement and function effectively whilst doing so.

29 Plowden P., 'Model standards for live-client clinics' Clinical Legal Education Organisation (CLEO) 1995.para 20.1.1.

Our Approach

The distinction between undergraduate and postgraduate clinic is exemplified in a number of ways, not least the different learning outcomes. At Masters level these require students to demonstrate an understanding and critical evaluation of the theoretical concepts and frameworks relating to a professional/ legal practice, reflection and research on a substantive area of law / aspect of the law or legal process or service relevant to the context of their overall pathway of study at postgraduate level. The learning outcomes contextualise the approach to learning and the focus and distinction of postgraduate study to ensure that the criticality and research are linked to a furthering of student knowledge and relevant to the focus of their postgraduate study. This is balanced with the needs of the partner providers and their conceptualisation of the issue which forms the focus of the postgraduate clinic research/ activity.

The experience of law students to date has been to engage in live court observation with a view to developing a formal research project in conjunction with partner providers, still at the stages of inception. Students undertook a comprehensive literature review and through discussion with practitioners and academics identified possible areas of research. As a research activity, students also had to present an outline title and research proposal which they submitted for ethics approval. This required students to select an appropriate methodology and to consider the application and viability of this in practice. Additionally students selected an appropriate area of substantive law and through observation of legal proceedings together with further reflection and research of specific aspects of legal process and procedure, considered comparatively with other jurisdictions and where appropriate, the international context.

Students were offered regular support and opportunities for formative feedback on the progression of their clinic experience and importantly clear guidance on the expected standards of academic engagement required for postgraduate level study.

The response from students was positive in that they felt able to apply in practice what they had learnt in their core legal scholarship modules in the context of delivery of legal services affording them a greater appreciation of the context and the relevant ethical issues. Students can readily adopt a comparative element in their research, benefitting home, EU and international students thus promoting inclusion. The module was particularly instructive in merging practical observation which stimulated reflection and curiosity, comparison and a critical and questioning approach. This then motivated students to research identified areas with interest and enthusiasm derived from real factual contexts. Students became aware that research is a natural, rather than separate, feature of reviewing service delivery and the substantive law and legal process in practice. The module brought alive the classroom based research activities which can often seem divorced from context and lack the interest that situated observation of 'real life cases' and proceedings deliver.

Conclusion

For the future it is envisaged that partnerships will be developed with external organisations, such as the Crown Prosecution Service, local authorities and charitable organisations, to develop and support their outreach work, undertake research related to an aspect of their function or service delivery, or aspect of service audit. This may include research that focuses on the impact of their service to their clients, for example relating to an aspect of victim participation or victim impact in the criminal justice process. Alternatively this could also involve research related to the legislative

framework relating to the exercise of a legal duty or function by the stakeholder partner and a review of the model of practice and decision making process and factors impacting on this.

Whatever the core research activity and project forming the basis of the student participation, this will require a sensitive balancing and positioning of service and student needs and expectations, to ensure all are adequately met. The structure of the Masters clinic provision presented, offers clear advantages in placing learning in the context of professional practice and service delivery, providing a valuable source of 'real world' learning and engagement. This context has the potential to enthuse and motivate students, adding to the quality of their student learning experience. A note of caution does however need to be sounded, At postgraduate level the period of study is arguably more advanced and intensive, and operates within a shorter time frame. Students come from more varied backgrounds, with different learning experiences and cultural sensitivities. The organisation of the clinic module and the support integrated into this at induction and on-going, may prove more critical at Masters level for the partner organisation as well as for the students. The management of the law clinic placement is arguably high risk for all involved, since postgraduate level learners are expected to operate with a significant degree of autonomy. This raises a different set of a concerns for clinic at Masters level, given the commercial sensitivity and confidentiality pertaining to the provider's processes and data, necessitating clear guidelines to students and robust protocols to manage the central research activity and the clinic opportunity.

This paper has considered some of the similarities in the provision of law clinic experiences as a form of CLE at undergraduate and postgraduate level, and has sought to highlight the differences and distinction between the two forms of provision. These differences justify the adoption of a different model of development and implementation of the postgraduate law 'clinic' experience. The action research model as a starting point, most closely aligns with the aims and expectations of postgraduate legal education and partner providers and capacity to support this.

Whilst some have considered the wider integration of CLE across the whole of the undergraduate curriculum,[30] this is not so essential at Masters level. The focus of study is more conceptual than skills based, and students by the nature of their studies are expected to consider issues holistically and comparatively more readily addressing the contextualisation of the law in practice, which is the key impetus at postgraduate level.[31] The integration of CLE at Masters level across the programme is however satisfied by inclusion of the perspective of 'experts' and those with 'experience' in appropriate settings, who can bring a unique perspective to the relevant issues. The greater focus on research informed teaching also supports this approach. This prevents reliance on the postgraduate clinic experience as the sole form of CLE, since it is prone to becoming 'hostage' to the on-going support of external organisations, whose priorities and commitments may not secure on-going and long term postgraduate clinic provision with the same provider.[32]

30 Hall J., Kerrigan K., 'Clinic and the Wider Law Curriculum' 16 Int'l J. Clinical Legal Education (2011) 25,29. the authors here considered the wider application of CLE into the undergraduate law curriculum but did not advocate this stating *'We do not advocate that students learn from clinical problems exclusively.Simply thatthey sometimes do'*

31 Grimes R., Brayne H., 'Mapping best practice in clinical legal education' UKCLE October 2004, para 3.3.2

32 Grimes R., Brayne H., 'Mapping best practice in clinical legal education' UKCLE October 2004, para 3.5

Do moot courts belong to high schools? And if so, under what circumstances?

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Tomáš Friedel

Jan Potucký[1]

Introduction

Moot courts are considered to be a common clinical legal education method. The purpose of the following article is to demonstrate advantages and disadvantages of using moot courts as a teaching method at high schools. This will be based on the experience of Street law assistants and their survey held among high school students. Gathered and analysed information will hopefully provide answers to the questions mentioned above.

The article is divided into four parts. The first part introduces Charles University Law School Street Law course since it serves as prime source of our experience with high school students teaching and organising moot court. The second part deals with basic benefits and set backs of high school moot courts. The third part is dedicated to survey results presentation and the fourth part is composed of our experience of moot court organisation.

The purpose of our article is to offer basic information about the moot court simulation itself, present our survey research of high school students' simulation perception and share our

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experience which might serve as encouragement for moot court organisation and also as basic advice on which common mistakes to avoid and what to pay close attention to.

Street Law programme at Charles University Law Faculty

The Street Law programme was founded at Charles University three years ago and it is designed as an optional course with one semester duration usually attended by fifteen students. Seminars are taught by one teacher and three assistants who help with lesson preparations and provide mentoring for street law students. The course is divided into two parts.

The first part is the "theoretical" one and initiates the semester. University students are taught basic teaching skills and methods and work to improve their presentation skills.

The second part is the "practical" one. University students are split into groups of three and teach at high schools under the Street Law teacher or assistant supervision. This part lasts approximately six weeks (each group should teach at least ten 45minute long lessons) and represents the peak of the course. Street law students are expected to conclude their teaching efforts in an appropriate way. Some of them choose a written test, some prefer a closing discussion and some decide to organise a high school moot court. According to our experience approximately 80% of Street Law students choose this option and approximately half of them refuse proven moot court model cases offered by the Street Law teacher and create their own stories.

Pros and cons of moot court organisation by university students

As already mentioned above, the Street Law course has been taught only for three years. Nonetheless the organisation of high school moot courts was studied comprehensively and both advantages and disadvantages were examined properly.

First of all it should be pointed out that high school moot courts are in general an attractive and challenging teaching method. This bold claim is justified by improved employment of creativity of both university students who create the case and manage the whole simulation and high school students who play different roles and learn to cooperate while extending their knowledge. Additionally high school moot courts test university students' knowledge of positive law, their organization skills and creativity.

On the other hand, high school moot court organization is very time-consuming and university students usually spend a lot of their spare time since it is necessary not only to prepare the case and roles, but also to possess perfect legal knowledge, because of the frequent appearance of unexpected situations during the moot court performance.

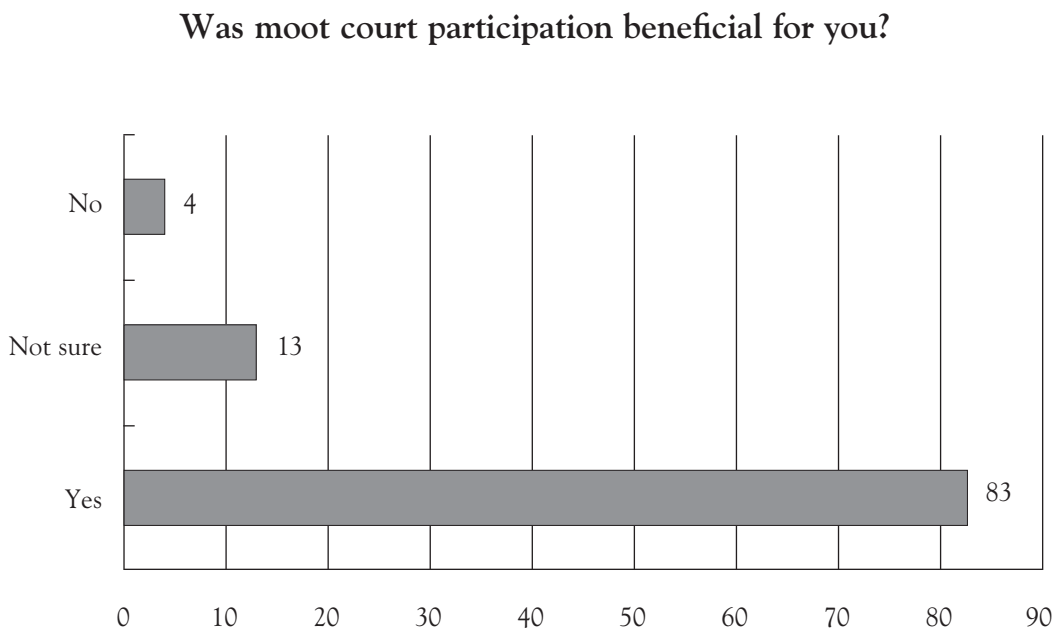
Moot court performance requires a certain legal knowledge which high school students mostly lack and the teacher's task is to find a proper balance between the necessary basics and overextension. So high school students will know what to do yet they won't be discouraged or even demotivated.

Despite the mentioned disadvantages or complications the organisation of high school moot court is a very popular teaching method among university students.

The survey and its results

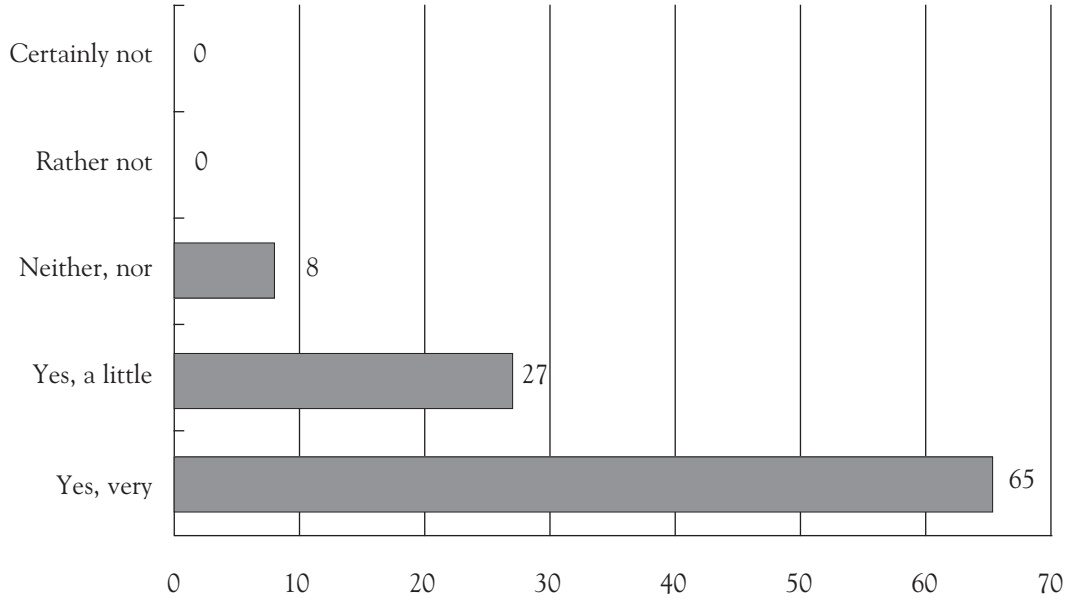
The survey was held among high school students who already participated on moot court simulation. In total we collected almost 30 answers which serve as a base for our research. We asked several questions combined both from simple yes and no ones and more narrative ones. However presented will be only some of the most important ones. Our goal and research purpose is both to ensure students receive desired impact and simulation serves its true educational purpose while held without any organisational troubles.

Moot Court is a method which differs from typical education. Maybe this uncommonness makes it so popular among High School students, at least according to our questionnaires results. Most (70%) of students looked forward to it. Another 20% were unsure and only 8% expressed their rather negative concern.



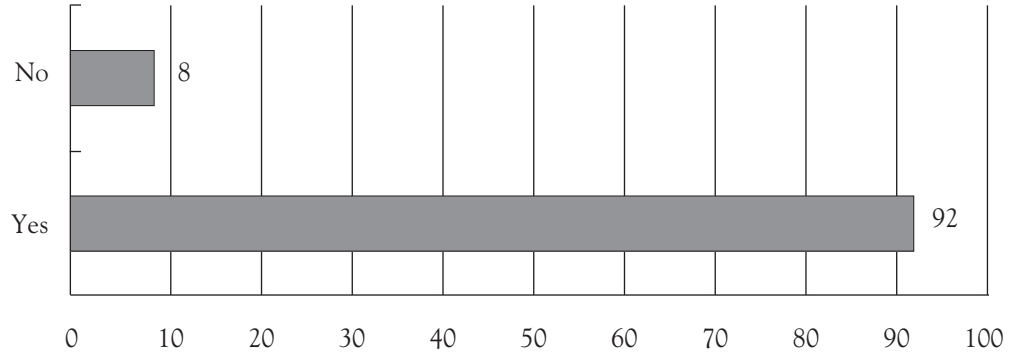
Many students also consider moot court as a very or rather useful educational method (92%) and no student stood in opposition claiming the method was useless.

Do you consider moot court as a beneficial teaching method?

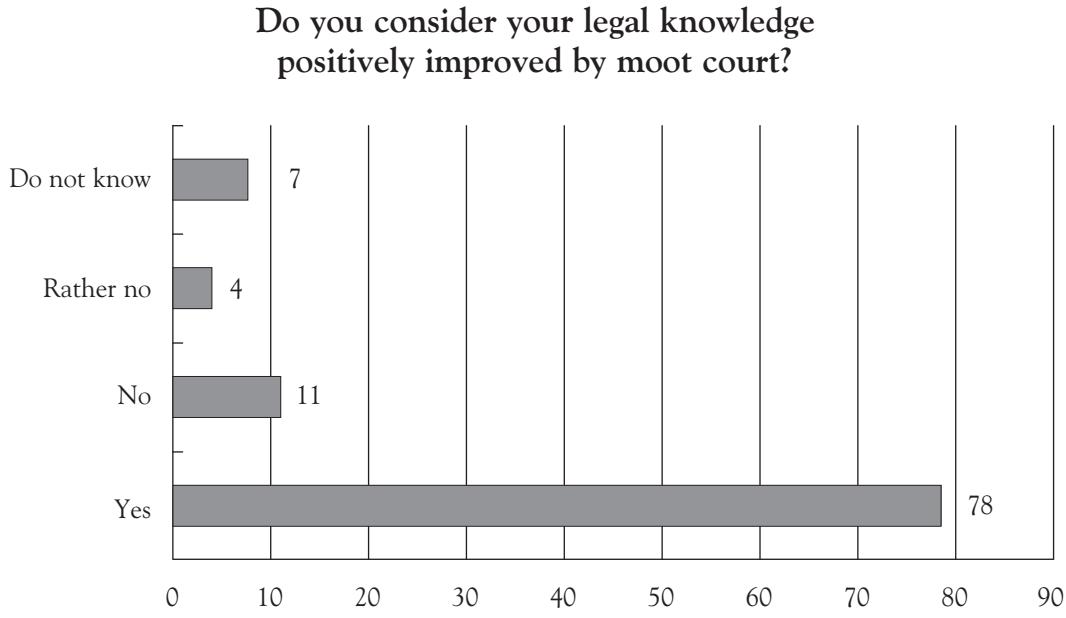


Most students (92%) would also integrate moot court as a compulsory high school teaching method. The rest of the students (8%) disagreed however they would make it optional or not compulsory for every high school or vocational school.

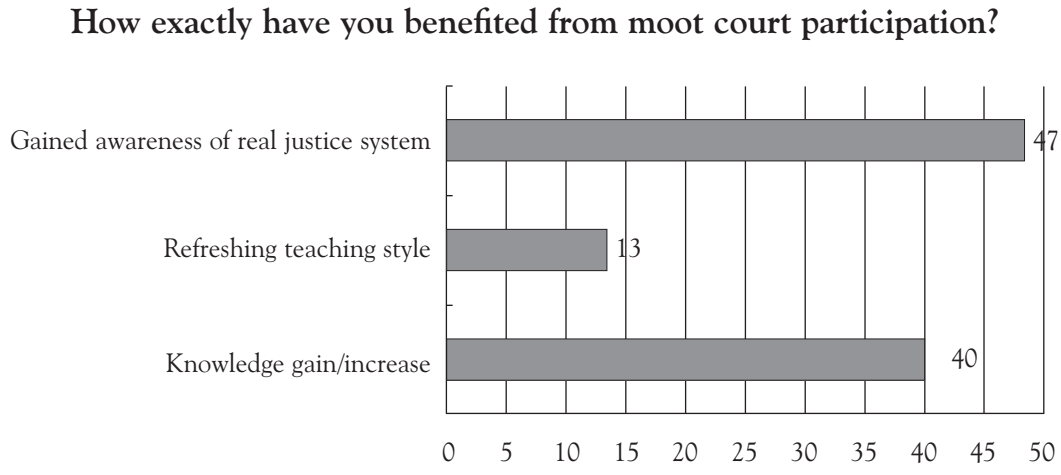
Do you think moot court should compulsory part of the high school curriculum?



Most students (78%) considered their legal knowledge improved by the moot court simulation.

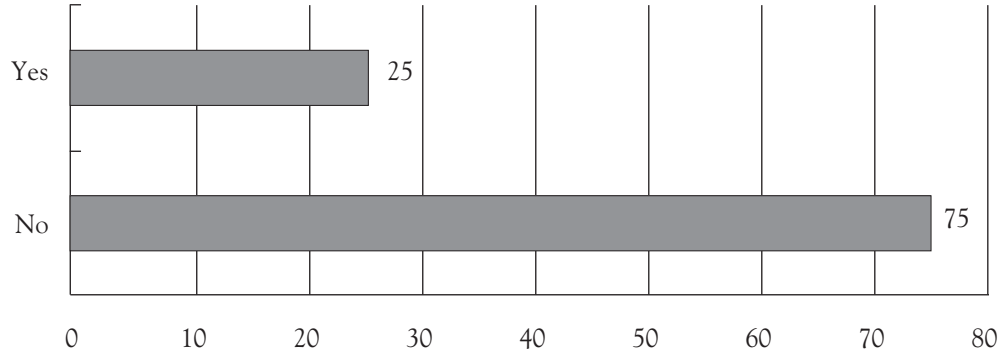


We also asked students how exactly they benefited from the simulation. Except knowledge gain (40%) and justice system awareness increase (47%) some students were just excited about the new teaching style (13%).



Finally we wanted to know if the simulation changed students' relationship to the law. To our surprise the dominant answer was no (75%) which students later explained was as a result of having a positive approach to the law already.

Have your moot court participation changed your relation to law?



Moot Court organisation

The main advantage lies with the fact that no matter what role is performed- judge, state prosecutor, witness or attorney- students must prove their newly consolidated and intensified knowledge at the "court". This method also develops logical thinking, rhetorical abilities and performance in public as well. The unusual experience of the court room atmosphere might strengthen the bond among the students and increase their relationships and cooperation within the group. According to the questionnaire high school students value the knowledge extension, experience gain and attractiveness of the teaching method itself almost equally.

Preparation of such a project is organisationally demanding and time consuming for both students and teachers alike. The following will deal with some of the most common difficulties and also provide suggestions and possible solutions according to our best experience.

The initial tasks of the University student teacher, or anyone organising Moot Court with high school students, are to choose and modify or adapt the case, assign roles to the high school students and most importantly prepare them for their performance. First of all a choice of the legal branch must be made. Most common are the criminal cases which are very attractive to high school students and thus beat civil law with its favoured family law cases. Criminal cases are very interesting also because of their close proximity to our own lives and environment meaning almost every student had seen a murder or robbery in the news. Civil issues are not such a preferred topic of mass media despite their charm and they also do not offer so much variety or numbers of roles for students as criminal cases.

After choosing the legal branch the teacher should create or choose a case. Either option has its pros and cons. While creating a case will suit the class' needs perfectly, choosing one from real pleadings is less time consuming.

Both options include a storyline which the teacher stops at a certain moment. The moment might be the very beginning of the investigation when nobody truly knows who the perpetrator is, or s/he can narrate everything till the end providing students with a vast knowledge of procedural options.

No option is absolutely correct and the teacher must balance the extremes to create the case which suits the class best. Generally with specialised seminars with enthusiastic students it is better to give them legal and procedural freedom based on their knowledge. With larger groups of compulsory subjects it might be better to line up the facts a bit more.

Some students incline to certain roles as they embody different type of powers and responsibilities. This might be caused by their personal references based on their perception, abilities or family experience. Students might thus be driven by the need of deciding the dispute (judge), represent justice (state prosecutor) or maybe improving their acting talents (accused or witness). Though not every student will strive for a certain position some might choose the passive approach and wait for directive role assignment. Role numbers and types vary according to the number of students participating, from smaller seminars of 10 to whole classes of 30 students. Nonetheless every student must have a role to perform and participate in a simulation. In order to achieve this goal we assign three or four students as state prosecutors or increase the number of attorneys no matter what is the reality. Such changes are acceptable as long as they serve an educational purpose. Easing the burden of prosecution or defence by distributing it among more students is definitely beneficial since team work might increase student productivity, cooperation, self-confidence and actually allow them to cover a wider range of knowledge. The teacher's task is to make the team work effectively by selecting proper group members so the eventual contribution would not be unequal. An additional benefit is task delegation among group members in case of illness or any other genuine reasons for absence of a student.

In large student groups we might need to deploy auxiliary roles such as journalists, additional witnesses and even security guards. Another option is to widen the process. Some students might be assigned police officers work such as providing proofs, testimonies and other background for the prosecution or eventually defence. This composition will however claim additional time.

Where to hold the simulation? Moot Court can be organised directly in a classroom or any lecture room at your disposal with sufficient capacity. Even P.E. classrooms might serve the purpose reasonably well. Some of the law faculties possess their own court room, specially designated and equipped for court session simulations. This environment adds a certain dignity and unique atmosphere to the simulation and students experience will be only enriched with these strong emotions. Similar improvement might be achieved by wearing the proper robes including wigs where appropriate. Transportation, additional time demands, securing the room and other organizational requirements might be seen as disadvantageous.

Schools frequently lack required space for such activities. How do you deal with the insufficiency of time while keeping the regular class in tact? Outsource every possible activity, communicate organizational details via emails and assign roles, law and case studies as homework?

Another very important issue is the teacher's intervention frequency. How much should the students' performance be interrupted and how do you give proper feedback? To answer this question we must first realize the purpose of the simulation which is to educate students. No matter how close this teaching method is to theatre play and acting its' prime focus is education. Students should thus not only recite legal texts but fully understand the sense and order of each act. For example when and why can testimony be denied, how are basic rights ensured and justice served.

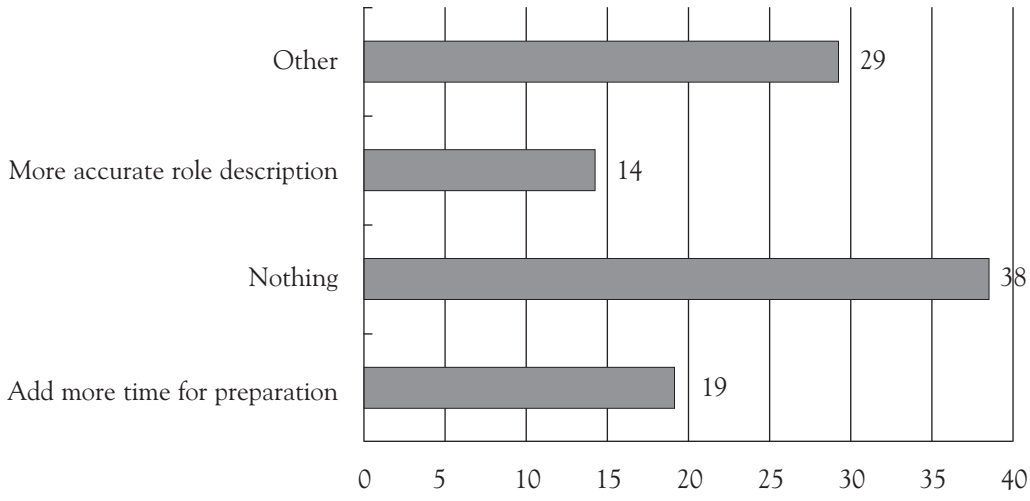
Feedback is a necessary part of education and also Moot Court simulation cannot be without it. The teacher may also choose how to provide students with feedback based on their performance. The first option is to stop the simulation and comment on what has happened both correct and not so well. The frequency of these interruptions can be pretty high but they must not exceed a certain level in order not to spoil the "fun" and become mere lectures resembling others. The second option is no interruption at all. Feedback is thus given as a whole after the simulation. A balance of these options seems to work optimally. However the teacher should focus on feedback amount and quality no matter which method he/she chooses to incline to more.

Conclusion

In the end we would like to provide one of our survey results which deals with high school students satisfaction with the organization of moot court. Most of the students would not change anything (38%) while others would appreciate more time to prepare (19%) or more accurate role descriptions (14%). 29% of students had different propositions like a more serious atmosphere, undisciplined student class or the need for a more complicated case.

After all, we hope that we have shown that despite the fact that high-school moot courts are demanding to organize and manage they are very challenging and definitely worth doing. So let's start another moot court!

What would you change on moot court organisation?



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Multi-disciplinary practice in a community law environment: new models for clinical legal education

Richard Foster

Introduction

The Monash-Oakleigh Legal Service (MOLS) is a community legal service auspiced by Monash University, Melbourne Australia, and partly funded by Victoria Legal Aid. MOLS was principally established to provide practical legal education to Monash law students over 30 years ago, but has since evolved to focus also on serving community legal needs. Incorporated within MOLS is the Family Law Assistance Program (FLAP) which, as the name suggests, deals exclusively with family law matters. FLAP students attend the Family Court each week with lawyers who provide assistance to clients in a duty lawyer capacity, as well as operating four clinical sessions each week within MOLS.

Like many community legal services, most MOLS clients experience a form of disadvantage and resultant financial difficulty. Consequently, MOLS deals with a range of legal matters including: criminal law, family law, tenancy and neighbourhood disputes, and a number of credit, debt, and bankruptcy issues.

In July 2010, the Multi-Disciplinary Clinic (MDC) was established at MOLS to provide a holistic service to clients by involving students from three academic disciplines to deal with client issues. Later, in December 2010 (the commencement of the university's summer semester), students from one other discipline were included in FLAP and a third discipline was also adopted in the following semester.

The MDC

Within the MDC the law practicum is combined with finance students and social work students who, as a team, provide assistance to clients of MOLS. The three students simultaneously take instructions from clients and refer the cases to supervisors together (one supervisor from each

discipline) who then provide advice to the client. The students then return to their client to issue the advice and take any further questions or instructions. The three supervisors sit together with the three students at the same time so that it is a collaborative exercise.

There are currently eight teams of three students operating over two clinical sessions each week.

Law students tend to lead client interviews and legal matters will usually be prioritised over financial or social issues in the first instance, although often non-legal issues come to share a priority and sometimes take precedence.

Students from each discipline are required to isolate aspects of the client's situation that they can assist with in the context of their own discipline. For example, a client presenting with a request for assistance with a criminal theft matter may also be experiencing financial difficulties that the finance student may assist with, this may also be relevant to the Court at the time of sentencing. Similarly, a family law client may also need assistance with social issues from the social work student (as well as financial assistance).

FLAP

The nature of supervision in FLAP varies somewhat to the rather structured system developed for the MDC. This is mostly due to the different resources available to FLAP which have resulted in a more fluid yet equally as effective supervisory model.

With the benefit of two administrators (one of which is a lawyer) students are able to receive immediate guidance on the progression of matters. FLAP also has a comprehensive database of precedents, which has developed extensively over several years, accessible by students to assist with their cases. Furthermore, client files are maintained on an electronic system which is accessible by the principal lawyer so that students' work can be reviewed at any time. Supervision with FLAP's principal lawyer is regular but on a needs basis with immediate support being provided by administrators.

Of note is the increasing complexity of family law cases which, if dealt with only in regularly scheduled reviews with the principal lawyer, would require such a lengthy meeting that it would be impractical when compared with the provision of more regular and ad hoc assistance.

Contrary to the more profoundly team-focussed model applied in the MDC, non-law students in FLAP are called upon to assist law students and clients on a consultative basis rather than as a permanent member of any one team. In this way, non-law students may work with several different law students over the course of the semester and provide advice on a range of matters.

Assessment

In addition to supervised casework, law students are required to attend weekly seminars, write and submit reflective journals every two weeks, participate in community engagement, and participate in weekly file reviews. Their assessment is based 60% on casework, 20% on their reflective journals, and 20% on community engagement activities.

Finance students are required to prepare a 3000 word report of their experience in the MDC or FLAP for submission at the end of the semester, as well as prepare and present a 20 minute presentation based on their report. This report is mostly reflective in nature. They are also

required to participate in weekly file reviews in the MDC, or regular meetings in FLAP. Their assessment is slightly different to that of law students as it is based 50% on their clinical work (supervisory observations of the quality of casework, client and team interaction) and 50% on their report and presentation.

Supervision

Two different models of supervision operate between the MDC and FLAP. In the MDC, weekly meetings involving each team of students and the supervisor from each discipline are conducted. In these meetings each student is required to provide both a verbal and written update on the progress and activity of each case that they are working on from the perspective of their academic discipline. In turn, supervisors provide feedback and advice on each case whilst at the same time paying due regard to the progress of each matter and the well-being of clients.

The supervision model in FLAP differs markedly insofar as there is not a regular cross-disciplinary meeting between students and supervisors. Instead, the non-law disciplines convene a meeting of their respective students on either a weekly or fortnightly basis in which general issues and unique cases are discussed. In this way, students not involved in a particular case can also share in the experience and learning of other students. To compensate for this lack of intensive and specific advice on individual cases during meetings, supervision during non-clinical periods in FLAP is more intense with administrators and non-law supervisors being available to students during every aspect of follow-up work. By comparison, the MDC favours a model whereby students use their own initiative to progress cases based on in-principle advice by supervisors, which is then confirmed and added to during weekly meetings.

In both the MDC and FLAP, any action taken on a file and advice given to clients is provided and confirmed by the relevant clinical supervisor.

Learning and pedagogical outcomes

Orientation programs occur prior to the commencement of student placements and are conducted separately in each discipline. Law students attend a comprehensive seminar program running over several days which covers information on specific areas of law likely to be encountered during their placements, as well as interview skills, social justice, communication skills, and procedural/administrative information.

Social work students and finance students undergo a more general orientation that introduces them to the role of MOLS and the MDC, and canvasses the types of matters they are likely to encounter. It is intended that, over time, more advanced and specific sessions will be developed for non-legal students. To date, they have also been encouraged to attend legal seminars on a voluntary basis.

In addition to the casework of the MDC, non-law students also have the opportunity to assist with Court appearances.

Of course, the vast majority of learning for all disciplines occurs in the conduct of casework in the live clinical environment. Priority is given, at least initially, to legal issues although this often quickly expands to financial and social issues. Students are required to prioritise the client's needs irrespective of which discipline's expertise may be required, and then prepare a strategy in order

to address all issues that have been presented. In some circumstances, clients may disagree with the prioritisation of issues that students (under supervision) determine, and at times clients disengage with the process for a variety of reasons, but in the majority of cases students are able to work with a client through the various legal, financial, and social issues they are confronting.

This enables students to quickly and actively assimilate a working knowledge of the other disciplines that are contributing to the outcomes the client will benefit from. Whilst it is not intended that students become versed in all three areas to the extent that they can provide advice in another field, it is certainly a positive outcome that students almost unavoidably develop a level of knowledge of the capacity of the other disciplines. Consequently, students quickly develop an appreciation of longer term issues arising from a presenting legal problem. Equally so, over the course of the semester students become increasingly adept at recognising longer term needs of their client even though these needs may be outside the realm of their own disciplinary practice.

As the combining of students into multi-disciplinary teams at the commencement of the semester is largely a random exercise, the resultant experience of team based practical experience is amplified. Students don't just learn to "work together", the experience extends from initially learning about the expertise of other students to establishing professional relationships with each other, and recognising and respecting the knowledge and function of the other students. Perhaps obviously, the effect of demonstrating this in a live clinical setting provides for a rather acute form of learning. Students also are encouraged to design their own work plans with minimal intervention from supervisors thus providing additional opportunities for students to develop their teamwork abilities. With responsibility for the dissemination of duties mostly left up to the students (subject to the relevance and contribution of each discipline), they develop mechanisms by which each student undertakes specific tasks, liaises with the client and/or other parties in relation to particular aspects of a client's case, and maintains an active dialogue with the other students and supervisors in relation to the client's issues.

Of course, each discipline has different expertise associated with it that would not previously have received particular attention from the other disciplines yet would certainly be beneficial to them. For example, in a practical sense, strong focuses on letter writing and, in a less practical way, special attention to the avoidance of ethical conflicts are both a matter of priority for law students. Whilst these issues haven't usually received the attention they deserve by the other disciplines, they are undoubtedly matters deserving of similar consideration by them. One of the primary considerations for social workers is the identification of possible mental illness; for both lawyers and consumer advocates (finance/accounting students) this often goes a long way towards understanding the reasons for a client's predicament and should be given close attention before considering a course of action. Similarly, social work students are given the opportunity to understand the legal process that their clients will be subject to as well as the financial options and protections that are available to them. Finance/accounting students are able to develop a more intimate understanding of legal procedure and also a far more identifiable appreciation of the reasons that many clients find themselves in financial difficulty; these often are matters outside their immediate control such as behaviours of addiction, unemployment/retrenchment, illness or accident, family/marriage breakdown, mental illness, and variety of other influences not usually canvassed in the course of undergraduate education in accounting and finance.

Consumer advocacy

The placement experience and work carried out by finance/accounting students is referred to as consumer advocacy as this essentially denotes the delineation between law students undertaking civil case work and a consumer advocate seeking to avoid litigation. Whilst there is a "financial counselling" movement in Australia there is a separation between this and the work of consumer advocates (students) at MOLS as the financial counselling sector has no formal qualification universally attached to it and has little documented ethical or practical standards. However, the subject matter considered by consumer advocates in the MDC is mostly the same.

Consumer advocates deal with a variety of cases including:

- Credit and debt matters (including negotiations, debt write offs, and payment plans)
- Bankruptcy
- Disputes with banks, utilities and insurers
- Tenancy
- CentreLink (social security)
- Fines and infringements

Where lawyers are often at a loss to achieve a positive outcome because the costs of litigation in a consumer dispute are prohibitive, and social workers often find it difficult to refer paralegal matters to a cost effective practitioner (such as a Community Legal Service), consumer advocates are able to exercise a client's rights under industry codes of practices as well as legislation, and are able to advocate for clients in jurisdictions such as Ombudsman services and tribunals. Furthermore, consumer advocates learn to assess the validity of a claim against a client prior to considering how to negotiate with the other party. For instance, there have been many instances where Australian banks and finance companies have engaged in predatory lending and other practices resulting in large debts that many disadvantaged consumers are unable to pay. Consumer advocates learn to seek redress for this type of conduct which often results in the waiver or substantial reduction of the debt through either negotiation with the creditor, a complaint to an Ombudsman, or a tribunal decision.

Similarly, positive outcomes for clients have been achieved in tenancy matters by considering the claim against the client in light of the regulatory framework and the views of the tribunal (VCAT). In addition to matters relating to regulation and legislation, consumer advocates are also able to ensure that clients are receiving all the government entitlements, concessions, and grants to which they are entitled. Students also learn how to dispute the decisions of government bodies such as CentreLink, the Child Support Agency (which assesses child support payments), and the Australian Tax Office, which often involves the drafting of lengthy applications and tribunal appearances.

Case studies

Mr N

One of the MDC's youngest clients, Mr N was 13 years old and presented with his father who he had come to live with after having been involved in the assault of his mother's new partner. At the time that he initially presented, an Intervention Order had been made against him as a result of allegations (later proved) that he conspired with his older cousin to have his mother's partner assaulted by a number of youths in his mother's home. He had been residing with his mother and his younger sister until the time of the assault, his mother and father had divorced some years earlier and the subsequent relationship with his father had not been close. The Intervention Order prevented him from going to his mother's home and from contacting both his mother and his sister. Shortly after his initial presentation to the MDC, he was charged with Conspiracy to Assault, his cousin had also been charged with related offences.

The law student acted for Mr N by taking instructions and briefing counsel in relation to the criminal charges he was facing in the Children's Court. The social work student worked with Mr N to try to rebuild the relationship with his mother and his sister, and to deal with issues relating to his mother's new relationship. There was also some attention by the social work student given to his current living arrangements as his father seemed to become gradually more disengaged. Living with Mr N and his father were his elderly grandparents which seemed to be increasingly reliant on Mr N after his father started to spend more time travelling back to his home country.

The finance student was made aware of some financial difficulties that Mr N's father was experiencing. He had accumulated approximately $60,000 in credit card debt and his only income was unemployment benefits. School fees owing to Mr N's private school were also unpaid and it was considered important by all students and supervisors to maintain stability by keeping Mr N in the same school, particularly as it had been especially supportive. Mr N's father did not own any material assets, accordingly it was considered that his best option would be bankruptcy although an arrangement was reached in relation to the outstanding school fees. This would extinguish his liability for the debts he couldn't pay. Mr N's father, however, had applied and had been granted a partial early release of his superannuation over one year earlier and had asked if he could do the same again. He was advised that he could, although as he had not previously considered bankruptcy he instructed that he now wanted both to seek another early release of his superannuation as well as declare bankruptcy. In essence, this would mean that he would be advising the superannuation regulator that he was seeking funds from his superannuation in order to pay his debts, when in actual fact he would be declaring bankruptcy and not paying his debts at all. This would result in him gaining the money from his superannuation under false pretences and not using it to pay his debts. Quite obviously, this raised serious ethical issues such that we could not act on these instructions and he was advised accordingly. Mr N's father then instructed that he would seek the early release of his superannuation himself (having done so before). We understand that he returned to his home country and remained there for quite some time.

Mr N was required by the Children's Court to continue counselling. The Court gave due regard to a report by the social work student, and the efforts of the finance student were exceptional despite the somewhat questionable motives of Mr N's father. Regardless, the finance student (as well as the other students) gained an invaluable insight into both a new set of options for clients in these circumstances as well as the ethical considerations that must be given to client instructions.

Mr A

Mr A's presenting legal issue was a criminal charge of Obtaining Property by Deception (fraud) from CentreLink, the organisation responsible for social security in Australia. The charge arose from Mr A having under-declared his earnings and thus having received a larger unemployment benefit than he would ordinarily have been entitled to over several years. He had been working as a taxi driver and had been declaring some but not all of his earnings.

The MDC's law student took instructions and briefed counsel in relation to his criminal matter on which he pleaded guilty.

Emerging from his instructions in relation to his criminal matter was the issue of some $30,000 owing in traffic infringements. For the most part, these related to the regular use of a toll road without the requisite vehicle tag and account.

It was apparent to the students that Mr A did not appear to completely understand why he had been accused of fraud against CentreLink, nor did he have an adequate comprehension of his obligation to report all of his earnings. This gave rise to some concern about his neurological capacity and, despite all attempts, Victoria Legal Aid would not agree to fund a neuropsychiatric assessment. The social work student, however, was able to prepare a psycho-social assessment which was presented to the Court and given some weight.

The finance student was able to scrutinise the Brief of Evidence which exposed inaccuracies in the quantum of the alleged fraud. The prosecution had relied upon information from CentreLink which essentially considered only Mr A's gross taxi takings in respect of the earnings that he ought to have declared. This was inaccurate because it did not take into consideration the costs of insurance, the toll road (although the fees were unpaid), and fuel for the taxi. The amount was consequently re-calculated by the finance student and the Brief was amended by the prosecution accordingly. The finance students continue to assist Mr A in connection with his traffic infringements with a view to these being dealt with by a Magistrate in Court.

Mr A's criminal matter was dealt with by the Magistrates' Court and, due in no small part to the contribution of the social work student's report, escaped without a conviction for the offence. Despite efforts to require substantial repayments of the amount owed to CentreLink, with the assistance of the finance student these were minimised.

In short, a summary of pedagogical outcomes can be seen as follows:

- Lateral analysis of problem solving with exposure to other disciplines
- Team work across disciplines, negotiation and collaboration
- Broad understanding of non-legal aspects of legal casework
- Appreciation of social disadvantage and the causes and effects of poverty
- Greater awareness of social justice issues and how the various disciplines can play a corrective role

Conclusion

The benefits of multi-disciplinary practice are somewhat obvious for students, but the benefits to clients should not be understated. Where there are benefits to students, there are usually benefits to clients too.

Whilst there will always be challenges in relation to finding the right supervisors (that is, those with appropriate and relevant practical experience and knowledge combined with the ability to teach and mentor), once this is overcome the other challenges that inevitably arise are far more easily dispensed with. For example, it is clear that the very nature of multi-disciplinary practice almost invites opportunities for disagreement and conflicts with the priorities of the different disciplines. However, dealing with these constructively and respectfully creates even greater learning opportunities for students and better outcomes for clients.

Perhaps demonstrable by this paper alone, which should be considered as a summary document of the MDC program, is the substantial research opportunities that programs such as this also invite.

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