

Editorial

How do we know what we know about clinical legal education?

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My habit of relying on a poet's eloquence to support my editorial comment continues. This edition looks to R.D. Laing to evoke and crystallise the sense we have that understanding is 'out there' if only we knew how to grasp it.

There is something I don't know

that I am supposed to know.

I don't know what it is I don't know,

and yet I am supposed to know,

and I feel I look stupid

if I seem both not to know it

and not know what it is I don't know.

Therefore, I pretend I know it.

This is nerve-racking

since I don't know what I must pretend to know.

Therefore, I pretend I know everything.

I feel you know what I am supposed to know

but you can't tell me what it is

because you don't know that I don't know what it is.

*You may know what I don't know, but not
that I don't know it,
and I can't tell you. So you will have to tell me everything.*

Of course the idea that we can know 'everything' is part of the painful delusion – so here at the IJCLE we'll settle for an exploration of what we do know and how we know it.

Tribe Mkwebu's paper breaks new ground in clinical legal education as the first systematic review of the clinical literature. He reports on the techniques of mapping the field in this way and gives a quantitative description of what we have to work with.

Rachel Dunn and Paul McKeown make us of another key source of knowledge – clinical colleagues. Their *From The Field* report gives insight into the experiences of clinicians from the European network and how the competing elements in academic and legal practice work are playing out in particular countries and jurisdictions as well as across Europe.

We then move from the pursuit of knowledge to new approaches to its' use. Ann Thanaraj and Michael Sales share a Practice report on Virtual Clinic which encourages us to think about how our legal expertise can be shared through new

media. Their account gives insight into the parameters of such a service, through setting up, client and student experiences.

Finally, Amy Barrow's paper looks in great depth at the need for and the growth of public interest law in Hong Kong – encouraging us to look at this place, this legal and philosophical position and the role of lawyers and law teachers in a new way.

Please let me know of upcoming events in the CLE world for our February 2016 edition. Next year (1-3 APRIL 2016) our colleagues in South Africa host the *Ed O'Brien International Street Law and Legal Literacy Best Practices Conference*, which will honour our late colleague Ed O'Brien and celebrate the 30th Anniversary of the First International Street Law Programme established at the University of KwaZulu-Natal (formerly the University of Natal), South Africa. The conference will be preceded by a three day Ed O'Brien Memorial Safari (29-31 March 2016) to the world famous Hluhluwe-Imfolozi Game Reserve where the white rhinoceros was saved from extinction).

Looking further ahead, a reminder of the two events scheduled (relatively) near to one another in time and space next July. The IJCLE conference with the Association for Canadian Clinical Legal Education (ACCLE) Conference will be hosted by the University of Toronto from 10-12 July. The conference, entitled *The Risks and Rewards of Clinic* encourages participants to reflect on the balance between risk and reward for all the stakeholders in clinic. We have a fantastic range of papers,

seminars and symposia and I'm delighted to announce that we have managed to secure Sarah Buhler and Adrian Evans as keynote speakers.

This will be followed by the *International Legal Ethics Conference VII* (ILEC VII), which Fordham Law School will host in New York City on July 14-16, 2016 focusing on legal education, ethics, technology, regulation, globalization and rule of law (www.law.fordham.edu/ilec2016). I hope to meet many more colleagues in 2016.

Laing, R. D., (1971) *Knots*. Ringwood, Victoria: Penguin.

Reviewed Article: Research and Impact

**A SYSTEMATIC REVIEW OF LITERATURE ON CLINICAL LEGAL
EDUCATION: A TOOL FOR RESEARCHERS IN RESPONDING TO
AN EXPLOSION OF CLINICAL SCHOLARSHIP**

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Abstract

Identifying where my research, on influential factors to consider in the establishment and sustainability of clinical legal education programmes, fitted within the existing clinical scholarship was by no means an easy task hence the decision to undertake a Systematic Review of literature. The current explosion of clinical scholarship seems to have been influenced by Jerome Frank's call for reform in legal education when in 1933, he asked "*Why not a Clinical-Lawyer School?*" (Frank, 1933). A constant construction of clinical scholarship is critical in understanding many of the facets of clinical legal education so as to sustain clinical programmes and foster new ones. Yet a 'boom' in literature scares the life out of many a scholar and novice researchers when attempting to find articles that specifically answer research questions. This paper therefore offers guidance in conducting a Systematic Review of literature on clinical legal education using a Grounded Theory method. Through a five- stage process that involved the formulation of a research question and protocol; the use of systematic methods to identify, select and critically appraise relevant journal articles,

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this paper outlines each formal methodological step in identifying and selecting journal articles for inclusion in answering the following research question: *What factors are influential in the establishment and sustainability of clinical legal education programmes in Zimbabwe?* The numbers of selected articles were presented in a PRISMA flow diagram. A final selection of ninety-one journal articles was juxtaposed; integrated and tabulated to produce an overarching explanation which attempts to account for the range of findings (Mays et al., 2005a) of the review. Through the process of synthesis, I endeavoured to contribute significant added value to my review through an examination of the composite evidence base for similarities of the articles, whether related to the homogeneity or indeed their relatedness of findings. The type of epistemology I favour for my research has also been influenced partly by the methods and findings undertaken in this review (Carter and Little, 2007). The paper concludes by suggesting that a Systematic Review method, rather than a Narrative Review, should be a researcher's tool in responding to an explosion of clinical scholarship.

Keywords – Boolean logic; Boolean operators; database selection; record keeping; clinical legal education; systematic review of literature; narrative review; Zimbabwe

INTRODUCTION

Knowing what information already exists before answering a research question is as important as successfully completing a given research project, hence the need for a literature review of the area under research. Different types of literature reviews exist but two are commonly used in research, i.e. narrative reviews and systematic reviews. According to Kirkevold (1997), a Narrative Review summarises different primary studies from which conclusions may be drawn into a holistic interpretation contributed by the reviewer's own experience, existing theories and models. On the other hand, a Systematic Review of literature is a type of literature review that is

designed to methodologically locate, appraise and synthesise the best available literature that can be used to answer a specific research question (Boland et al., 2014). The main purpose for undertaking a Systematic Review of literature for my research on influential factors to consider in the establishment and sustainability of clinical programmes within law, schools was to investigate the terrain and assess the positive and negative aspects of the Zimbabwean context in relation to clinical programmes.

WHY A SYSTEMATIC REVIEW OF LITERATURE?

While I accept that Narrative Reviews have an important role in research because they provide readers with an up to-date knowledge to answer specific topic or theme, they do not describe the methodological approach that would permit the minimisation of the risk of bias in selecting journal articles that answer a research question. The freedom to unsystematically pick and choose papers that support one's view is clearly a biased approach and using a review that has any kind of bias can lead to inconclusive findings. Situating the research project in the literature was by no means an easy task and more often than not, as doctoral researchers, we are more likely to fall into the trap of reading and reading without writing, especially where a lot of material has been written on the area of research. In order that I retrieved literature that would be relevant to the research question and enable my

research to make an original contribution to knowledge on clinical legal education, it was important that I knew what sort of information on law clinics already exists. I was intimidated by the amount of literature on clinical legal education. At first, it was not easy identifying where my research fitted within the existing clinical scholarship because of the 'boom' in literature. The current explosion of clinical scholarship seems to have been influenced by Jerome Frank when in 1933, almost 82 years ago, he asked "*Why not a Clinical-Lawyer School?*" Current debates and recent developments in clinical legal education seem to have focused renewed attention upon Frank's influential question. Frank's plea for clinical-lawyer schools has resulted in an extensive literature on clinical legal education. It is this attention that has seen an emergence of keen researchers and clinicians around the globe constantly writing on various clinical legal education issues.

As descriptive as they seem to be in their various responses to Frank's question, clinical researchers constantly argue that every law school should have a clinical component within its legal education curriculum, staffed by clinicians with the experience in the practice of law for the purpose of producing lawyers fit for practice. Almost 82 years on, the debate by the legal profession, the law faculty, the law students and society rages on. Stakeholders are now forced to question with greater intensity whether or not the training of future lawyers prepares them adequately for the future practice of law. As such, I ended up having to deal with a large volume of literature that made keeping up with research evidence in this area

of law an impossible feat. It is not unusual for the number of published papers in clinical legal education to run into several thousands. It is, therefore, this explosion in clinical legal education publishing that made me decide to undertake a Systematic Review of literature in order to keep up with research evidence.

Systematic Review Aims

The Systematic Review process I undertook aimed at:

1. establishing whether or not there has been any research on clinical legal education from a Zimbabwean context to avoid reinventing the wheel;
2. optimising efficiency by only concentrating on literature relevant to the phenomena being investigated;
3. locating and using specific literature in answering the research question by highlighting influential factors in the establishment and sustainability of clinical programmes; and
4. identifying knowledge gaps in literature on clinical legal education through a rigorous identification, evaluation and a summary of the findings of all relevant individual journal articles on clinical scholarship.

Systematic Review Method

In order to locate literature relevant in answering my research question, I adopted a search strategy that involved a five-stage iterative process; DEFINE; SEARCH; SELECT; ANALYSE and PRESENT, using a Grounded Theory method that aids understanding of the place of a Systematic Review in research (Webster and Watson,

2002). The first three stages were part of a search strategy that followed a specific method in locating existing studies; in selecting and evaluating articles in such a way that “allows reasonably clear conclusions to be reached about what is and is not known.” (Denyer and Tranfield, 2009: 671). The ANALYSE and PRESENT stages are discussed in a separate paper that describes a process of analysis and synthesis of the selected journal articles by reporting and discussing findings of the review using a Grounded Theory approach (Mkwebu, 2016, in preparation).

Research question formulation

I found out that most structures for formulating questions use the health services research question formulation framework, patient-intervention-comparison-outcome (PICO). I considered this framework. I decided against the use of PICO for two reasons. First, PICO is mostly used in health services research. My research on law clinics is purely social scientific in nature. Secondly, there is an alternative structure within the social sciences, i.e. the SPICE framework (Booth, 2006). I chose the SPICE framework because clinical legal education is a social science subject. The SPICE mnemonic was a suitable framework because it recognises that evaluations within social science areas of research are typically subjective and require definition of the specific stakeholder view (Booth, 2006).

The resultant SPICE framework for the formulation of this study’s research question comprised of the following:

- Setting – where? Zimbabwe, Developing Country, University of Zimbabwe and Midlands State University
- Perspective – for whom? The Global Clinical Movement, The Students, The General Public, Politicians, The Legal Profession, University of Zimbabwe and Midlands State University, Faculty of Law Lecturers and Law Clinicians
- Intervention – what? Emphasis towards the identification of the factors relevant in the establishment and sustainability clinical legal education programmes
- Comparison – compared with what? The influential factors compared with each other. Developed countries' approaches and experiences with clinical legal education and the utilisation of a lecture/seminar discussion format to the teaching of substantive law
- Evaluation – with what results? A better understanding of the impact on legal education in Zimbabwe of social factors, economic factors, political factors, cultural factors, historical factors and other practical issues in the establishment and sustainability of clinical legal education programmes in order to inform policy and reform

My research question was therefore defined in terms of its components according to five common features as set out in the SPICE framework.

Reputable data sources and search tools

My research on legal education and professional skills considers law in the context of broader social and economic issues; hence it is a socio-legal study. From that perspective, it is interdisciplinary and equally a human and social science study that

reflects a multidisciplinary research approach on law, on education and on professional skills. It is this interdisciplinary and multidisciplinary approach in my research that justified the selection of legal and non-legal databases suitable to retrieve clinical scholarship that would be relevant in answering my research question. Besides the online legal databases such as Hein Online, LexisNexis, Lawtel and Westlaw, other databases outside of law that provide reputable sources proved difficult to find. The non-legal database, Web of Knowledge (Web of Science) proved valuable as a premier research platform for information in the social sciences, arts and humanities and provided valuable information on clinical legal education.

Performing the search

The search conducted for this particular review was rigorous, time consuming and extremely episodic. At first, I was tempted to type into the databases, the whole research question as it was. The databases returned no results because they could not make sense of the whole sentence. It was only when I decided to break down my research question into key words and turn them into searchable terms and phrases that I began to retrieve journal articles from the databases.

Identifying key words

Clinical legal education is referred to by different terms that essentially mean one and the same thing such as *law clinic*, *clinical programme*, *student law office*, *clinical legal education programme*, *legal aid clinic* and *clinic*. To find out more about that one

programme called *clinical legal education* there had to be at least a further five terms or phrases that I had to use. This was the most challenging aspect of the first stage of the Systematic Review until I decided to seek help. Apart from the regular support and suggestions by my PhD supervisor, I benefited immensely from the support of the members of the library team at the University of Northumbria's City Campus library who offered guidance on planning the review process. An example of a key phrase I coined for the review following a one to one session with a librarian was *clinical legal education*.

Conceptualising the research question

The research question was divided into 3 separate concepts:

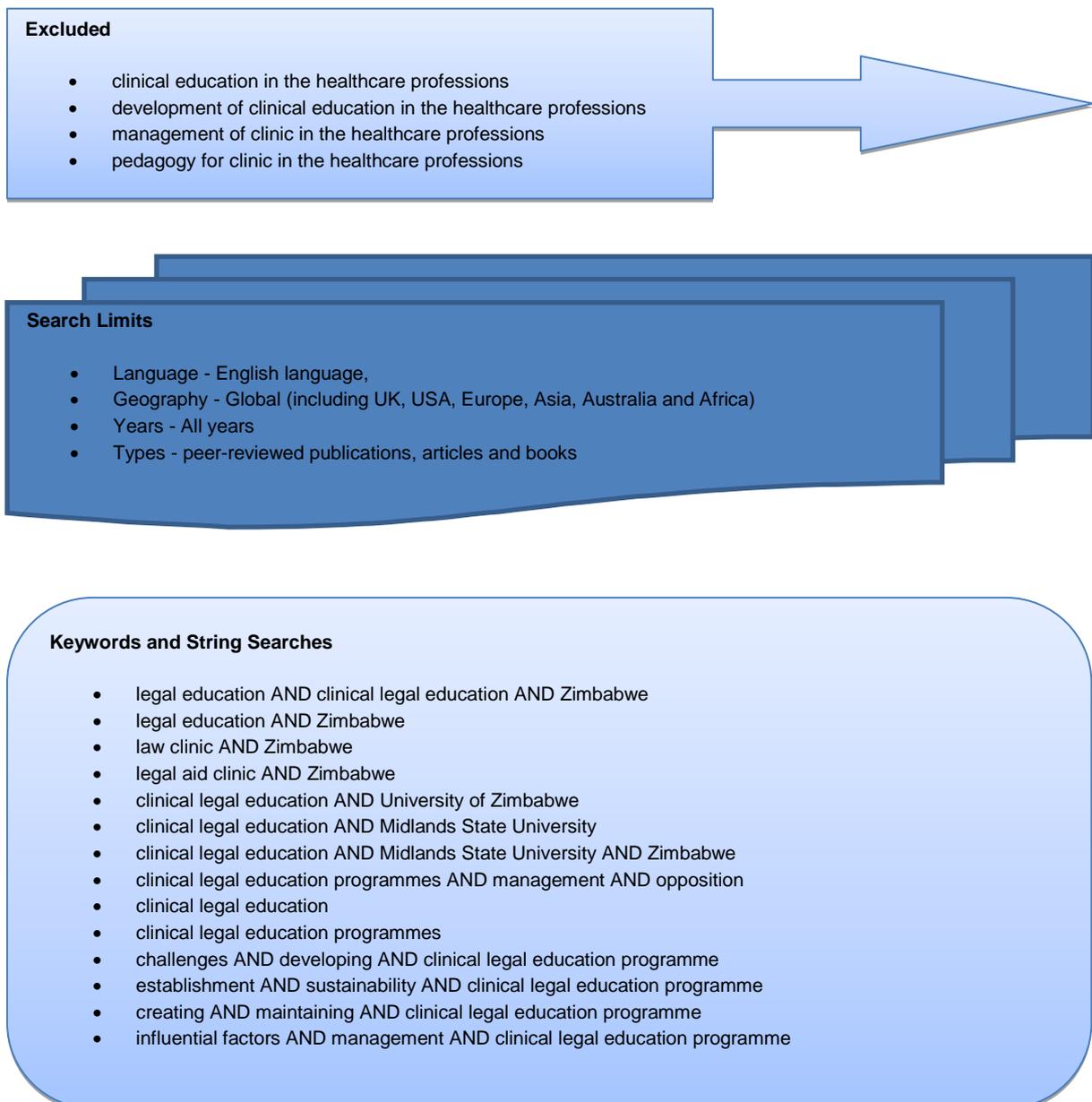
- Topic 1 (establishment/development/sustainability of clinical legal education)
- Topic 2 (management of a law clinic)
- Topic 3 (pedagogy of a law clinic)

Synonyms were written down for each topic:

- Topic 1 – establishment of clinical legal education (*start, initiation, formation, inception, creation, construction, foundation*); development of clinical legal education (*growth, expansion, evolution, progress, spread*); sustainability of clinical legal education (*defendable, defensible, justifiable, maintainable, supportable, continuity, consistency, persistence, perseverance*)
- Topic 2 – management of a law clinic (*administration, managing, running, organising*)

- Topic 3 – pedagogy of a law clinic (*direction, indoctrination, guidance, teaching, education, enlightenment, learning, instruction, scholarship, tuition, training, tutoring, study, apprenticeship, coaching*)

This process allowed me to adopt a search strategy that involved the breaking down of the review question into searchable keywords and search terms; the application of an eligibility criteria and the adoption of an inclusion and exclusion process as follows:



Main Search Terms

- legal education in Zimbabwe
- law clinics in Zimbabwe
- legal aid clinic at the university of Zimbabwe
- legal aid clinic at midlands state university
- development of clinical legal education
- management of a law clinic
- pedagogy for law clinic
- clinical legal education programmes in Zimbabwe

The correct format for Boolean operators AND, OR, NOT was adopted and the three different topics or concepts were 'AND'ed and synonyms were 'OR'ed using the Boolean logic. The Boolean operators are based on a method of logic developed by George Boole, a 19th century English mathematician. If the Boolean operator AND is entered between two words or phrases, the search will only bring up journal articles that contain both words and phrases. This will narrow the search. For example, I entered into the databases, *clinical legal education AND sustainability*. This search yielded journal articles that contained both the phrase and the word. Thus, the more terms I connected with the Boolean operator AND, the fewer search results I found that were relevant to what I was looking for. The use of the Boolean operator AND throughout the systematic search was effective because the more words and/or phrases I connected through the Boolean operator AND, the fewer results I retrieved as all terms were present in every match. I found out that using this strategy reduced the number of results and increased the likelihood of the results being relevant to the factors relevant in setting up and running of clinical legal education programmes.

The use of the Boolean operator AND proved vital in progressing the research on clinical legal education. Its use enabled the research to avoid reinventing the wheel. The Boolean operator's effectiveness lies in the results yielded through a search that combined the phrase *legal education* with the search terms, *Zimbabwe; University of Zimbabwe and Midlands State University*; all of which were research fieldwork cases for the collection of research data. It was therefore important that I started off by searching for publications addressing legal education and professional skills in Zimbabwe as a way of corroborating and defending a knowledge claim, which I made at the commencement of my research, that there was a lack of research on clinical legal education in Zimbabwe, particularly on factors relevant in the creation and sustainability of law clinics.

Where the Boolean operator OR is entered between two words or phrases, such a search will look for articles that contain either words or phrases. This will broaden the search. For example, I entered *clinical legal education OR clinical programmes*. This search yielded articles that contained either phrases but not necessarily both. Thus, the more terms and/or synonyms I connected with the Boolean operator OR, the more search results I found that were relevant to what I wanted. However, there were occasions during the search that the search terms used would produce too few results. One of the temptations I fell into was to use my identified synonyms as they were in the search engines. Doing so gave me too few results and most of them were irrelevant. I then decided to use the Boolean operator OR, in order to increase the

number of search results. This Boolean operator was used to link similar or synonymous concepts or ideas. The use of this technique helped in retrieving items which contained either or both phrases. Using this technique was quite useful in increasing the number of results retrieved by the search.

Sometimes, we do come across similar words or phrases that might appear to have the same meaning yet mean one thing in one subject area and mean another in a different area of research. For example, it is common for clinical scholarship to refer to *clinical legal education* as *clinical education* that is synonymous with studies that are associated with medicine and/or healthcare services. For a novice researcher, this may prove challenging and does create significant difficulties when one is faced with a huge chunk of papers that have something to do with *clinical education* in medicine and/or healthcare services but nothing to do with *clinical education* in the operation of a law clinic. In such instances, the Boolean operator NOT comes in handy. Where the Boolean operator NOT is entered between two words or phrases, that search will not bring up articles that contain any words or terms that come after the Boolean operator NOT. This will narrow the search and exclude irrelevant material.

In this review, I came across journal articles on clinical legal education in which authors have used the term *clinical education* to refer to clinical legal education in the context of the law and not clinical education in context of medicine and/or healthcare services. To avoid bringing up results that had anything to do with learning or

teaching in medicine and healthcare services, I entered *clinical education* NOT *clinical education in the healthcare profession*. This search yielded journal articles containing only information on clinical legal education and nothing on clinical education in the healthcare profession. The more terms I excluded using the Boolean operator NOT, the fewer relevant search results I found that I needed as the Boolean operator NOT restricted journal articles to studies on clinical education in the operation of law clinics and not on clinical education in the healthcare profession. I used the Boolean operator NOT when I had performed a search, looked at the results and decided that I did not want any items that had anything to do with research on medicine and/or healthcare services. Using the Boolean operator NOT reduced the number of results because it excluded items that would have been irrelevant to the aims of the review and only retrieved the ones that would be relevant in answering my research question and achieve the goals of the review.

The review also benefited from the advanced Boolean search techniques that use Quotation Marks ["""] as a way of retrieving relevant journal articles. The use of quotation marks ["""] narrowed my search for journal articles. Using the phrase *clinical legal education* on its own, without any quotation marks surrounding the phrase produced so many results. This is because the search treated the words in the phrase as a single word in isolation. I decided to use phrase searching which combined key words surrounded by quotation marks "*clinical legal education*". The use of this technique reduced the number of items because the quotation marks

indicate a phrase rather than single words and that made the search more effective. This advanced Boolean search technique required words to be searched as a phrase in the exact order that I had typed them within the quotation marks. I found this technique extremely useful for searching multiple-word terms such as, for example "*legal aid clinic*", "*clinical legal education*", "*clinical legal education programmes*", "*Zimbabwe*", "*University of Zimbabwe*", "*Midlands State University*". I noticed that using quotation marks in my search gave me different search results than those that were yielded by a search using the Boolean operator AND, between each word/phrases without quotes.

As I became more confident in using the Boolean operators to search for literature, I decided to use the operators in a more advanced manner by using the parentheses [()] technique to build my search with a combination of Boolean operators. I enclosed search terms and their operators in parentheses to specify the order in which they are interpreted. Information within parentheses is read first and then information outside parentheses is read next. For example, when I entered into the databases, *(challenges OR developing) AND clinical legal education*, the search engines returned results containing the word *challenges* or the word *developing* together with the search term *clinical legal education* in the fields searched by default. The use of parentheses technique allowed me to combine any of the Boolean operators together in a combination. Thus, the use of AND together with the Boolean operator OR broadened my search. By using this search string, I found journal articles that had

everything to do with clinical legal education as it relates to challenges facing such programmes particularly opposition from different stakeholders who are against the introduction of law clinics within law schools.

The addition of a truncation [*] on key words and/or synonyms gave me a few results. For example, the search term *establishment*, when truncated [*establish**] took me back to a point where the word began to change into many words such as *establishing; established*. I also discovered that most of the databases I used allow truncation searches using the truncation symbol, i.e. asterisk [*]. I discovered that using truncation increased the number of results as the items had to contain the various forms of the key word.

SYSTEMATIC REVIEW RESULTS

Electronic searches conducted from the 20th January 2014 until the 7th April 2014 identified 8904 journal articles from selected databases as follows:

Table 1 - Quantity of included articles

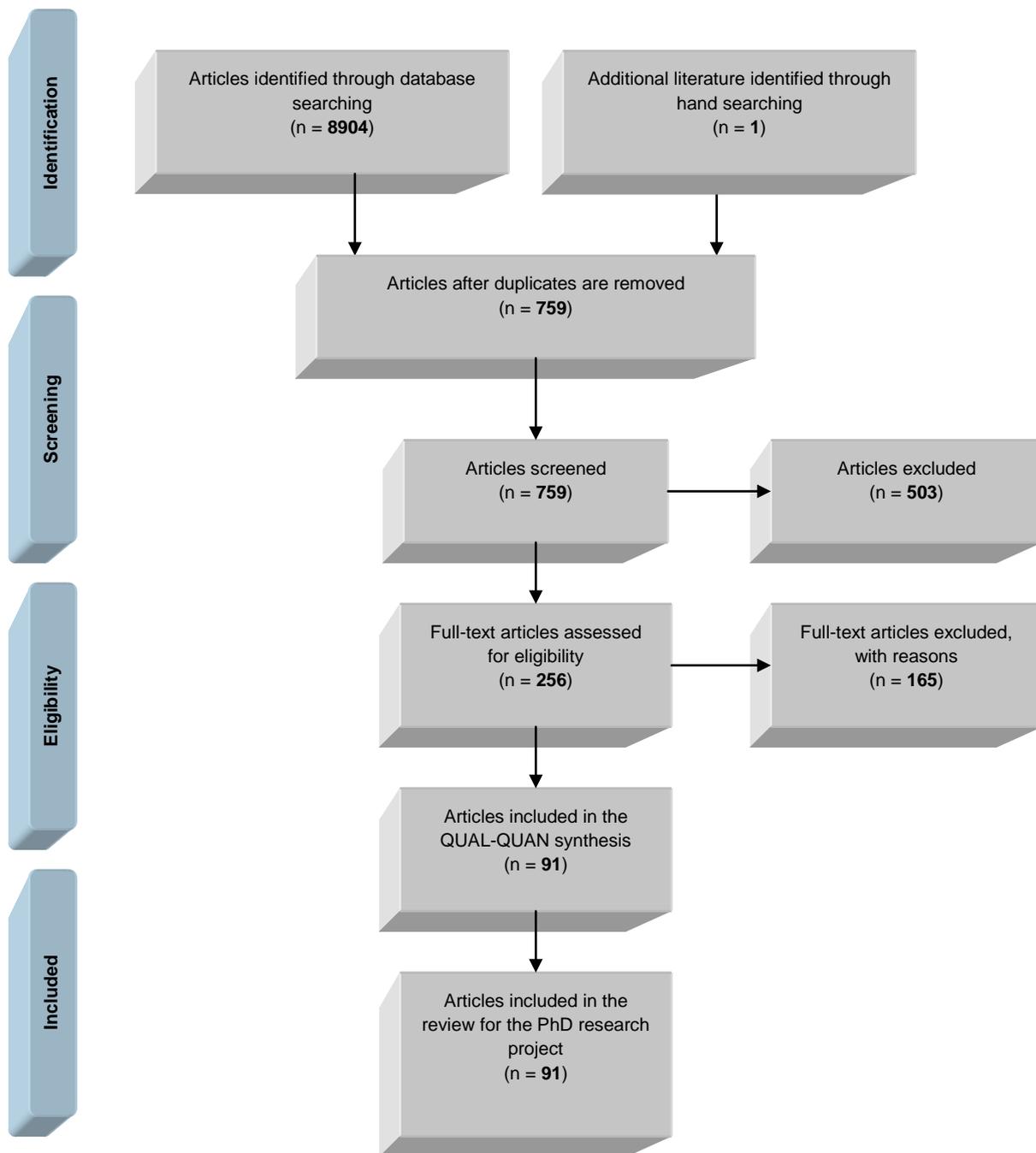
Database	Number of Hits	Retained as Potentially Relevant
Westlaw	487	103
Hein Online	5798	518
Lawtel	23	7
LexisNexis	140	49
Web of Knowledge	2456	82
Total	8904	759

The journal articles were subjected to a de-duplication process in which duplicates were identified and removed. This stage was followed by a further two-stage process that included, firstly, the screening of titles and abstracts and secondly, the selection of full-text journal articles for inclusion in the review. The de-duplication process left 759 journal articles to be screened for inclusion. These journal articles were subjected to an analysis of their titles and abstracts for relevance in answering the research question. Through an examination of the titles and abstracts and a reading of the introductions and conclusions of this batch of papers, 503 journal articles were excluded. This is because their contents did not relate to my research area and their findings were not relevant to the aims and objectives of my review.

The screening stage resulted in 256 journal articles being obtained and subjected to further scrutiny in the second stage which involved obtaining full-texts of these journal articles. These articles were subjected to further scrutiny in the selection stage to determine the extent to which they addressed factors that are influential in the establishment and sustainability of clinical legal education programmes within law schools. The aim of this review was not to find articles that discuss the entire broader topic of experiential learning and teaching per se. It is accepted that clinical legal education literature can be viewed through the lens of major differences in theory and approach, this review did not specifically set to address those differences that form distinct poles on various continuums such as, among others, very specific

learning objectives or more general learning objectives; classroom student learning or field placements student learning.

The review aimed at retrieving articles that have identified those crucial factors we ought to take into consideration when we plan to create clinical programmes or sustain clinical those that are already in existence. Out of the potentially relevant batch of 256 papers, 91 papers were selected as relevant. A further batch of 165 articles were excluded because they either addressed the differences in theory and approach of clinical programmes and/or the benefits of clinical legal education without specifically mentioning the crucial factors that we should consider to be relevant in the establishment and sustainability of clinical legal education. The results of the systematic review and identification of the included articles are presented overleaf in the form of a PRISMA flow diagram:



A diagram showing the flow of information through the Systematic Review stages

(Courtesy of the PRISMA-Statement.org)

From the onset of the search strategy and throughout the search process, I established that the electronic databases I chose could only pick up on the title, subject heading and abstract of the article as the authors had written it. I had no doubt that academic peer-reviewed articles are the best source of data for Systematic Reviews. Nevertheless, I consistently remained vigilant throughout the search process for misleading articles. I had to be on the watch out for authors who may not have given sufficient information for the abstract to be picked up as some abstracts may give a misleading picture of the contents of the article. I therefore decided to widen my search outside the narrow confines of the electronic search to include other methods of searching, such as manual examination of printed journals and looked at other forms of information such as, for example, conference proceedings that I have attended both at local and international levels.

There are specific sources in clinical legal education where materials are not published in electronic databases but the material is collated in books which, in response to the needs of clinicians and the research community, is beginning to centralise relevant and up to date information about the global clinical movement. An example of a more centralised clinical resource, I found extremely useful and therefore included in my review, is the book edited by Frank S Bloch, entitled *The Global Clinical Movement: Educating Lawyers for Social Justice*, published in 2011 by Oxford University Press. I got to know of this source through contact with one of the experts in the field, an Associate Dean with the Faculty of Business and Law at the

University of Northumbria, United Kingdom. It can sometimes be worthwhile to contact experts in the field who are familiar with the literature and who might be able to advise reviewers of any unpublished studies of which they are aware.

There is no doubt that following up references and hand searching individual journal contents pages can link one up with supplements, news items or indeed clinicians who may have additional information about other research undertaken on clinical legal education. Such additional steps can help to avoid bias in the selection of articles. Sometimes it is easy to take only the more readily accessible material, which is in the major indexed databases. However, such an approach could potentially defeat the aim of rigour that is associated with a Systematic Review process. Much of the evidence on the factors we ought to consider relevant in the establishment and sustainability of clinical programmes may lie in grey literature and to avoid missing out on information on clinical activity, particularly in Zimbabwe, I searched websites of institutions of higher learning in Zimbabwe where there was some written evidence of clinical activity within that jurisdiction. However, that information was skeletal and only referred to the existence of legal aid clinics and not the factors I was investigating hence its ultimate exclusion from my review.

The consideration of unpublished and grey literature was, nevertheless, essential for minimising the potential effects of publication bias. Published studies cannot be

assumed to be an accurate representation of the whole evidence base, as studies that show significant, positive results are more likely to be published than those that do not (Dickersin 1997). Consequently, if Systematic Reviews are limited to published studies, they risk excluding vital evidence and yielding inaccurate results, which are likely to be biased to positive research outcomes. It was therefore considered essential that active and extensive searching for unpublished and grey literature be undertaken as part of the review process for the identification of influential factors we ought to consider relevant in the establishment and sustainability clinical programmes.

SUMMARY OF THE QUANTITATIVE SYNTHESIS

The information from the summary tables below illustrates the geographical spread of clinical scholarship reviewed. Research on factors that are influential in the establishment and sustainability of clinical legal education programmes is predominantly carried out in the United States rather than in countries in Europe, including the United Kingdom. There are a significant number of research papers from Australia as compared to other jurisdictions but relatively less so in some parts of the world particularly in Africa.

Table 2 - Geographical spread of articles by country

Countries clinic studied	Number of articles per country
United States of America	35
England, United Kingdom	11
Australia	10
China	4
Canada	3
Ireland	3
Nigeria	3
South Africa	3
Croatia	2
Poland	2
Botswana	1
Chile	1
Czech Republic	1
Fiji	1
Germany	1
Iraq	1
Japan	1
Jordan	1
Kenya	1
New Zealand	1
Palestine	1
Romania	1
Scotland, United kingdom	1
Taiwan	1
Togo	1
Total number of countries (n=25)	Total number of articles (n=91)

As can be seen from the table above, there is therefore a real, strong geographical bias within the global clinical movement itself with the United States topping the table of the location where research on influential factors to consider in the creation and sustainability of clinical programmes is carried out. Literature on clinical legal education in Africa reveals quite a bit of clinical activity in South Africa and Nigeria but less so in other parts of the continent. It would be very interesting to find out why there is little or no clinical activity at all elsewhere in Africa and those research findings should be documented. Any arising issues should be addressed and acted upon by the global clinical movement, if we are to say with certainty, that clinical

legal education has a global reach. Hopefully, this trend will change in the near future as there now seem to be a lot of clinics emerging from elsewhere around the globe.

Table 3 - Geographical spread of articles by region

Region	Country in which the clinic is located	Number of articles per country
Africa (n=9)	Nigeria	3
	South Africa	3
	Botswana	1
	Kenya	1
	Togo	1
Americas (n=39)	United States of America	35
	Canada	3
	Chile	1
Australasia and the Pacific (n=13)	Australia	10
	Fiji	1
	Japan	1
	New Zealand	1
Europe (n= 22)	England, United Kingdom	11
	Ireland	3
	Croatia	2
	Poland	2
	Czech Republic	1
	Germany	1
	Romania	1
	Scotland, United kingdom	1
Middle East and Asia (n=8)	China	4
	Iraq	1
	Jordan	1
	Palestine	1
	Taiwan	1
Total number of regions (n=5)	Total number of countries (n=25)	Total number of articles (n=91)

The results from the table above indicate a very strong regional bias in the publication of studies that address factors we should consider crucial and hence relevant in our efforts to establish and sustain clinical programmes. However, as can be seen from the table, most journal articles come from those countries that have developed economies and stable democracies and less so from regions where the operations of the clinic could be affected by socio-economic and political turmoil.

The question therefore is: can we conclude, with certainty, that clinical legal education has a global reach when there is little or no evidence of whether or not the relevant factors identified from clinical scholarship on clinic in developed countries can equally apply to the clinic in those regions where there is little or no evidence of research? It is arguable therefore that until we have studies reporting on the creation and sustainability of clinical programmes from all regions where there is clinical activity there can be no consensus with the assertion that clinical legal education has a global reach.

Table 4 - Geographical spread of articles by time of publication

Decade articles produced	Africa	Americas	Australasia and Pacific	Europe	Middle East and Asia
1950-70		1			
1971-90		4			
1991-2000		10	3	3	
2001-2010	6	15	8	14	3
2011-2014	3	9	2	5	5

As can be seen from the table above, the period from the 1950s up to about the beginning of the millennium, clinical scholarship has been about clinic outside of Asia and Africa but more so from the United States followed by Australia and Europe within the decade leading to the millennium. However, this trend seems to be changing with more clinics created globally. There is an interesting trend in the surge of evidence of clinical activity between 2001 and 2010 from all regions including Asia and Africa. As we all know, this was a period of an economic recession and it could be that as people were losing jobs, law firms closing offices

and governments streamlining their spending budgets, the demand for free legal advice became higher than ever before and inevitably led to a surge in the creation of clinical programmes as an alternative avenue for legal services delivery. Even though we still have a lot of clinical scholarship addressing factors relevant in the creation and sustainability of clinical programmes from the Americas, Europe and Australasia and the Pacific, we now have quite a few articles drawing from the operations of the clinic in Asia and Africa from 2001 till to date. While the potential impact, on the global clinical movement, of research on the creation and sustainability of clinical programmes in Asia and Africa is yet to be felt, there seems to be some keenness amongst clinicians from these regions to share their experiences in creating and sustaining clinical programmes from their local bases. However, despite this keenness, it is still difficult to predict exactly when research on clinic in Asia and Africa will be at par with research from the rest of the world.

The table overleaf is illustrative of where most clinical legal education authors are based. Out of a batch of ninety-one clinical scholarship papers, forty-four articles are by authors from the United States. This number could be more if we knew where the anonymous author writing about clinic in China is based. A closer look at the table above indicates an interesting trend. Journal articles selected for the review are predominantly written by authors based in the United States for the clinic in the United States. Not only do the United States based authors write for the clinic in the

United States, they also write for the clinic in the Americas region except for Canada.

Table 5 - Geographical spread of articles by where authors are located

Region for clinic	Country in which the authors are located	Number of articles per country
Africa (n=9)	<p>Nigeria (Authors of the three articles and their co-authors are all based locally)</p> <p>South Africa (Authors of the two articles are locally based)</p> <p>United States (One author is based in the U.S but was in South Africa for a while; The author of the other article is based in the U.S was briefly in Togo as Consultant)</p> <p>Botswana (Author is locally based)</p> <p>Kenya (Author is locally based)</p>	<p>n=3</p> <p>n=2</p> <p>n=2</p> <p>n=1</p> <p>n=1</p>
Americas (n=39)	<p>United States (Twenty two different authors based in the U.S have published as single authors; Six have published either on their own or with others locally based or with others that are based abroad. One author is based in U.S but writes about clinic in Chile)</p> <p>Canada (Main authors in three articles are locally based)</p>	<p>n=36</p> <p>n=3</p>
Australasia and the Pacific (n=13)	<p>Australia (Main author and a co-author are both based locally; Main author and three other co-authors are based locally)</p> <p>England (Author is originally from England but have been in Fiji for a while as a Consultant)</p> <p>New Zealand (Author is originally from England but now settled in Auckland)</p> <p>United States (Main author and another co-author are locally based but the other two co-authors are from Japan)</p>	<p>n=10</p> <p>n=1</p> <p>n=1</p> <p>n=1</p>
Europe (n= 22)	<p>England (Main authors and co-authors in eleven articles are locally based;</p> <p>Ireland (Three main authors and one co-author in three are locally based)</p> <p>Croatia (Two authors in two articles are locally based)</p> <p>Poland (Two authors in two articles are locally based)</p> <p>Czech Republic (Main author and two co-authors are locally based)</p> <p>Germany (Author is locally based)</p> <p>Romania (Author is locally based)</p> <p>Scotland (Author is locally based)</p>	<p>n=11</p> <p>n=3</p> <p>n=2</p> <p>n=2</p> <p>n=1</p> <p>n=1</p> <p>n=1</p> <p>n=1</p>
Middle East and Asia (n=8)	<p>United States (Author is based in the U.S. but writes about clinic in China; Main author is based in the U.S based and co-author is based in China)</p> <p>Anonymous (It is unknown where Anonymous is based but writes about clinic in China)</p> <p>China (Author is locally based)</p> <p>Palestine (Author is locally based)</p> <p>United States (Author is originally from Iraq but is now based in U.S. Briefly went back to Iraq to create clinic)</p> <p>United States (Main author is based in the U.S but went to Jordan as a Consultant and the co-author is locally based)</p> <p>United States (Author is based in the U.S but worked in Taiwan and created a clinic there)</p>	<p>n=2</p> <p>n=1</p> <p>n=1</p> <p>n=1</p> <p>n=1</p> <p>n=1</p> <p>n=1</p>

What is interesting though is that we do not have evidence of authors outside of the United States writing about the clinic in the United States yet we have quite a number of United States based authors consulting in all other regions but not in

Europe. Europe based authors mostly write about the clinic in their own localities except for one article written by an English author who was briefly tasked with creating a clinic in Fiji. There is therefore a lot of consulting by the United States based authors as compared to Europe based authors. While there is nothing wrong with having the United States authors topping the table in relation to writing on the creation and sustainability of clinical legal education programmes both within and outside the United States there is a danger that this border transcending dominance may influence how we view research by colleagues in the United States. In the process, we may even attach a higher status to such work at the expense of similar research carried out elsewhere. Subsequently, we may end up believing that our research questions can only be answered by referring to such work and nothing else. Such an approach leads to citation bias. While we have to applaud colleagues from North America for undertaking research on the clinical movement and in the process riding high on the research treadmill, we need to encourage each other to publish more on the clinic where we are based and value such research.

There seems to be a growing interest in clinical legal education topics, particularly around the factors we should consider relevant in the establishment and sustainability of clinical programmes within law schools. A closer look at the table below is testimony to this assertion

Table 6 - Geographical spread of articles by publication in academic journals

Academic Journal	Africa	Americas	Australasia and the Pacific	Europe	Middle East and Asia	Articles per Journal
IJCLE	4	5	4	12		n=25
Clinical Law Review		10	1		1	n=12
Griffith Law Review	2		1	1		n=4
Fordham International Law Journal	1	2				n=3
German Law Journal		1		2		n=3
Berkeley Journal of Middle Eastern and Islamic Law					2	n=2
Legal Education Review			1		1	n=2
Newcastle Law Review			2			n=2
New York Law School Law Review		2				n=2
Osgoode Hall Law Journal		2				n=2
Phoenix Law Review		1		1		n=2
University of Michigan Journal of Law Reform		2				n=2
Alternative Law Journal			1			n=1
Boston College of Law Journal		1				n=1
Case Western Reserve Law Review		1				n=1
Cleveland State Law Review		1				n=1
Columbia Journal of East European Law				1		n=1
Commonwealth Law Bulletin			1			n=1
Comparative and International Law Journal of Southern Africa	1					n=1
Criminal Law and Justice Weekly Journals Index				1		n=1
Denver Law Journal		1				n=1
Drexel Law Review		1				n=1
Georgetown Journal of Legal ethics		1				n=1
Harvard Law Review					1	n=1
Journal of College and University Law		1				n=1
Journal of Law and Society				1		n=1
Journal of Legal Education		1				n=1
McGeorge Law Review					1	n=1
Michigan Journal of International Law		1				n=1
National Taiwan University Law Review					1	n=1
Nebraska Law Review		1				n=1
Pacific McGeorge Global Business and Development Law Journal					1	n=1
Potchefstroom Electronic Law Journal	1					n=1
SCOLAG				1		n=1
Southern California Law Review		1				n=1
Tennessee Law Review		1				n=1
The Law Teacher				1		n=1
The New Law Journal				1		n=1
University of New South Wales Law Journal			1			n=1
University of Pennsylvania Law Review		1				n=1
Washington University Journal of Law and Policy			1			n=1
Windsor Yearbook of Access to Justice		1				n=1
Total						n=91

There seems to be a growing interest in clinical legal education topics, particularly around the factors we should consider relevant in the establishment and sustainability of clinical programmes within law schools. A closer look at the table above is testimony to this assertion. As can be seen, a good example is the acceptance of clinical articles from across the globe by the International Journal of Clinical Legal Education (IJCLE). This is an exciting development, particularly for some of us who have just got onto the research treadmill and are so keen to remain on it for as long as we continue to have the capacity to think intellectually and the ability to type away. As clinical researchers, our reputation and career prospects are largely determined by our publications in academic journals. Taking the Clinical Law Review academic journal as an example, the New York University website states the following about the review:

The Clinical Law Review is a semi-annual peer-edited journal devoted to issues of lawyering theory and clinical legal education. The Review is jointly sponsored by the Association of American Law Schools (AALS), the Clinical Legal Education Association (CLEA), and New York University School of Law.

None of the articles reviewed were from members affiliated with the institution. Again there seem to be no bias in the Clinical Law Review's selection of articles for publication. A further examination of the information from the table above has also

revealed an interesting trend. While there is a presumption that law reviews publish more articles from colleagues at their own mother institutions than from academics and practitioners based in other law schools, the twelve articles published in the *Clinical Law Review* (three by one author and nine by others) have shown that all the ten authors whose work has been published by the review are from outside New York University but all are based in the United States. These highly cited authors include, among others, Peter A. Joy (1998, 2004, 2006); Peggy Maisel (2008); Richard J. Wilson (2002); Irene Scharf (2006); and Phillip Schrag (1997).

It is not surprising though that a law review with the word 'clinic' would attract the attention of such notable clinicians. Sometimes it is much easier to associate a journal with the type of articles it publishes by merely looking at the wording of the names it is called by. *Griffith Law Review* is another good example of a law review that publishes clinical articles, as are the *Newcastle Law Review* and the *Phoenix Law Review*. As such we can confidently conclude that clinical journals produce more clinic papers than anywhere else. However, this trend does not necessarily mean that other academic journals do not accept clinic papers. For example, the *Berkeley Journal of Middle Eastern & Islamic Law* is a digital, student-run publication of the University of California's Law School in Berkeley and is not exclusively a clinical legal education journal. Yet it does accept papers on this area of law, particularly from the Middle East and Asia. Fordham University's website states the following:

Currently in its 35th year of publication, the Fordham International Law Journal is one of the most competitive international law periodicals in the world and, according to a recent study, one of the most frequently cited student-edited legal publications dedicated to the study of international law.

The fact that we have these examples of academic journals also publishing material on clinical legal education is indicative of an acceptance of clinical legal education as a discipline and topics on clinical programmes as publication material worthy of a slot in academic journals regardless of ownership and location of the publisher. It is a widely held view that academic journals are representative of quality in publication of journal articles. While it is accepted that every article worthy of publication must be of high quality we know too well that proxy for quality has created two lenses upon which academic journals are viewed, i.e. prestigious journals and less-prestigious journals. There is a presumption that prestigious academic journals publish journal articles of higher quality than the less-prestigious academic journals. Likewise, where journals have evidence of just one article published on clinical legal education as shown in the table, the trend could mean that different academic journals have different levels of prestige. Their status is measured by their impact factor, a citation-based measure of the perceived importance of a journal in its field. However, the fact that there is evidence of acceptance of clinical scholarship from a wide spectrum of journals as evidenced by

the information from the table above, means that as clinician researchers, we have to respond to this wide acceptance by publishing more widely too.

This Systematic Review did not aim solely to identify and merely bring together relevant clinical legal education papers that specifically identified and discussed those factors relevant in the establishment and sustainability of clinical programmes. Selected journal articles from the five databases were juxtaposed through a process of synthesis to identify patterns and direction in findings. The selected articles were integrated and tabulated to produce an overarching explanation which attempts to account for the range of findings (Mays et al., 2005a). Through the process of synthesis I endeavoured to contribute significant added value to my review through an examination of the composite evidence base for similarities in my chosen selection of papers, whether related to the homogeneity of the papers (i.e. how they were carried out, where, when, why and by who) or indeed their relatedness of findings (i.e. what they found in their identification of those crucial factors we consider influential in the creation and sustainability of clinical programmes) as illustrated by the table below:

The example below of a categorised article is representative of all of the 91 articles selected for the review. The types of articles selected are qualitative in nature. They use a Case Study methodology and adopt an observational approach with a descriptive twist to their aims and their findings.

Table 7 – Example of a categorised journal article

Author	Date	Title	Citation	Location	Method	Aim	Findings	Critique
Anonymous	2007	Adopting and Adapting: Clinical Legal Education and Access to Justice in China	Harvard Law Review, Vol. 120, Issue 8, pp.2134-2155.	China, Asia	Qualitative; Case Study methodology; Observational approach	Examines China's importation and localisation of this one legal institution, the United States of America style legal clinic, with respect to one stated goal of the importation, promoting equal access to justice in China	Cross-jurisdictional borrowing of institutional models; legal transplantati on; indigenous circumstances; spectre of legal imperialism; and the Chinese legal systems are factors that are critical for consideration in the establishment and sustainability of a clinical programme	Descriptive

In the process, they contributed to an added value of the Case Study methodology as a research strategy to be adopted for the completion of my research on clinical legal education, particularly, the identification of the factors that are influential in the establishment and sustainability of clinical programmes.

QUALITATIVE QUESTIONS TO BE ADDRESSED IN PAPER 2 OF THE SYSTEMATIC REVIEW

Having gone through how being systematic and quantitative a Systematic Review process can be; having created and developed a personal review database; having put all the information about my selected clinical scholarship into the database and having used that information to create some tables, this paper has discussed, among other things, the various stages in which the method of searching and selecting relevant articles was conducted. The process involved dealing with actual numbers. Relevant journal articles were counted and summary tables were constructed. As can be seen, the whole process involved a transition from the systematic to the quantitative and from the quantitative to the qualitative making it possible for me to notice patterns and to strategically position myself to map out the gaps in knowledge; identify exactly where those gaps are and suggest ways in which we can address those gaps now or indeed in the future. So based on the method discussed in this paper and the assessment of the selected journal articles relevant in answering the research question on the factors we ought to consider relevant in the establishment and sustainability of clinical legal education programmes, the next paper, Mkwebu (2016, in preparation) will describe how a Systematic Review process was combined with a Grounded Theory method to form a nexus that identified the following:

- What is known (i.e. existing knowledge)
- What is unknown (i.e. the knowledge gaps)
- How I to contribute to knowledge (i.e. suggestions for filling in the knowledge gaps)

CONCLUSION

To aid my understanding of various worldviews on clinical legal education in general and on the influential factors in the establishment and sustainability of clinical legal education in particular, a Systematic Review of literature became a key method for “locating, appraising, synthesising and reporting best evidence” (Briner et al., 2009: 24). Besides, there is a general agreement that the right method is the one that will answer the research question (Holloway and Todres, 2003) even though it may not always be so obvious. Conducting a Systematic Review of literature was a mammoth task that required a focused effort to complete. Even though I endured months of laborious and tedious construction of the review, it later became apparent that Systematic Reviews are a wise investment of time when researching on clinical legal education as opposed to the more traditional Narrative Reviews that have the freedom to unsystematically pick and choose papers that support one’s view; itself a clearly biased approach.

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SITUATING SOCIAL PROBLEMS IN THE CONTEXT OF LAW: FOSTERING PUBLIC INTEREST LAWYERS IN HONG KONG

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Abstract

Hong Kong is often perceived as a global financial centre; an international, cosmopolitan city. Though Hong Kong has prospered economically, a myriad of social problems persist which undermine equity and social justice in society and many interest groups lack political and legal representation. Consequentially, the development of public interest law provides a pedagogical opportunity to cultivate individuals with the capacity to critically engage with and respond to social problems in society. While clinical legal education programmes provide one avenue of fostering public interest lawyers, socio-legal courses also provide a valuable means of developing socially responsible lawyers. First examining the context of Hong Kong law, this article considers the development of public interest law in Hong Kong and the role of socio-legal courses in fostering the development of public interest lawyers. Specifically, the article examines The Chinese University of Hong Kong, Faculty of Law's flagship course, 'The Individual, the Community and the Law' to explore how socio-legal courses can foster socially responsible lawyers.

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INTRODUCTION

Many will be familiar with Hong Kong's neon skyline, which firmly asserts its status as a global financial centre, yet masks a society riddled with inequalities and social problems. Hong Kong's economic success belies a significant wealth gap, with more than 1.3 million² Hong Kong residents living below the poverty line as well as a significant number of vulnerable social groups including migrant workers, refugees and asylum seekers. Hong Kong's social problems stem from a number of unique historical and political factors, which have helped to shape Hong Kong's distinct cultural, legal and political identity. Hong Kong was formally handed over from British colonial rule to the People's Republic of China (PRC) on July 1st, 1997. Founded on the principle of 'one country, two systems,' Hong Kong Special Administrative Region (HKSAR) enjoys a high degree of autonomy. The adoption of Hong Kong's Basic Law,³ a quasi-constitutional legal framework provides for the continuation of the common law system

² This figure is out of a total population of more than 7 million. 19.6 per cent of the population is classified as poor. *See* 1.3 million Hongkongers live in poverty, government says, but offers no solution <http://www.scmp.com/news/hong-kong/article/1319984/hong-kong-draws-poverty-line-13-million-living-below-it> 29 September 2013 (Last Accessed 16 April 2015).

³ The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the Third Session of the Seventh National People's Congress on 4 April 1990 Promulgated by Order No. 26 of the President of the People's Republic of China on 4 April 1990 Effective as of 1 July 1997). *See* www.basiclaw.gov.hk

premised upon the rule of law and independence of the judiciary for a period of fifty years until 2047.⁴

While Hong Kong prides itself as a society built upon the rule of law with a strong, independent judiciary, Hong Kong is undermined constitutionally by a lack of separation of powers between the Legislative Council and the Executive branches of government. Further, Hong Kong currently faces a constitutional crisis with tensions over political reforms in the lead up to the 2017 appointment of the Chief Executive. Presently there is no universal suffrage, although Article 45 of the Basic Law⁵ provides that the Chief Executive of Hong Kong should eventually be elected through a process of universal suffrage.

Given Hong Kong's post-colonial legacy and uncertain political and legal future, this article argues that cultivating law students with the ability and willingness to engage with and work towards addressing social problems is essential for strengthening social justice in Hong Kong. Socio-legal studies potentially play an instrumental role in

⁴ *Ibid* at Article 5. There are a number of notable exclusions to HKSAR's autonomy, principally matters of national security, diplomacy and international affairs, which fall under the power of the Central People's Government of the PRC.

⁵ Article 45 of the Basic Law specifies that The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government. The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. The specific method for selecting the Chief Executive is prescribed in Annex I: "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region".

fostering public interest lawyers, with the capacity to identify social problems, ensuing legal needs and underrepresented litigants. First, this article will consider the political situation in Hong Kong as well as cultural and social factors, which shape the 'context of law.' Second, the article will explore public interest law's potential in Hong Kong including the current use of strategic litigation. While individuals have increasingly turned to the process of judicial review as a mechanism of redress in the face of Hong Kong's democratic deficit, the article will argue that there is scope to strengthen public interest law by fostering socially responsible lawyers with the capacity to identify social problems and unmet legal needs. The article will finally turn to consider the role of socio-legal education in fostering public interest lawyers in Hong Kong, by critically examining the flagship course, The Individual, the Community and the Law (ICL), at the Faculty of Law, the Chinese University of Hong Kong (CUHK). Though this paper focuses specifically on the Hong Kong context, the author hopes to add to comparative pedagogical discourses on how socio-legal studies can be effectively integrated into law curriculums in different jurisdictions to foster socially responsible lawyers with an awareness of the intersections between law and society.

THE 'CONTEXT OF HONG KONG LAW'

A number of unique historical and political factors have shaped the context of law in Hong Kong and continue to have implications for the rule of law and civil liberties. Hong Kong was under British Colonial rule for a period of 150 years.⁶ In the early eighties, with the lease of the New Territories due to expire in 1997, Hong Kong's sovereignty was again called into question. Negotiations between Deng Xiaoping and Margaret Thatcher led to the signing of the Sino-British Joint Declaration⁷ in 1984, which provided for the resumption of Chinese sovereignty over Hong Kong. The Declaration stipulated that the socialist system of the People's Republic of China (PRC) would not be practiced in Hong Kong for a period of fifty years and this principle is clearly articulated in Hong Kong's Basic Law.⁸ Only a few years after the signing of the Sino-British Joint Declaration and prior to the handover, the Tiananmen Square

⁶ Following the defeat of China's Qing Dynasty government in the First Opium War of 1842, Hong Kong Island was ceded to the British, followed shortly after by Kowloon. The New Territories was leased to the British for a period of 99 years from 1898 to 1997. British Colonial rule was briefly interrupted during the Japanese occupation of 1941-1945. Under British rule Hong Kong evolved into a centre for international trade. The population of Hong Kong rapidly expanded, with the arrival of large numbers of refugees from China in the early 20th century, particularly during the Cultural Revolution in China. Though Hong Kong flourished economically, the British Colonial Government faced considerable dissent from Chinese Nationalists as well as other opposition groups. In 1967, for example, Hong Kong experienced a series of riots triggered by labour disputes. Leftist sympathisers rioted against the then Colonial Government. According to official statistics 51 persons were killed and 832 people were injured. By the end of 1967, 1,936 people had been convicted for their participation in the riots. 2012 marked the 45th anniversary of the '67 riots. See *Old leftists pay respects to workers killed in '67 riots* South China Morning Post, 7 May 2012.

⁷ Joint Declaration of the Government of the United Kingdom and Northern Ireland and the Government of the People's Republic of China, Cap. 2301, 19 December 1984.

⁸ Hong Kong Basic Law Article 5 states that 'The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.'

massacre on June 4 1989 caused grave political concern of the potential consequences of Chinese rule on the territory, particularly that the rule of law and civil liberties may erode.⁹

Significantly, a number of international human rights instruments were extended to Hong Kong by the British Colonial Government¹⁰ prior to the handover, including the International Covenant on Civil and Political Rights (ICCPR)¹¹ as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹² Article 39 of the Basic Law acknowledges that the ICCPR remains in force and shall be implemented through Hong Kong laws. The ICCPR has been formally incorporated into Hong Kong law through the Hong Kong Bill of Rights Ordinance (BORO) including the principle of non-discrimination.¹³ A number of laws also aim to protect distinct groups within society that have traditionally been disadvantaged, marginalized or underrepresented within society such as women and ethnic minority groups.

Following the adoption of the Beijing Declaration and Platform for Action (BPFA)¹⁴ in 1995 at the international level, the British Government also extended the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to Hong

⁹ Chen, Albert H.Y. "The Rule of Law under 'One Country, Two Systems': The Case of Hong Kong 1997-2010" (2011) 6:1 *National Taiwan University Law Review* 269-299.

¹⁰ The British Colonial Government failed to extend human rights protections to Hong Kong at an earlier stage, even though some treaty provisions were already applicable in the UK context.

¹¹ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.

¹² International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3.

¹³ Hong Kong Bill of Rights Ordinance (BORO) Cap. 383, 1991, Article 1.

¹⁴ Beijing Declaration and Platform for Action (BPFA).

Kong in 1996. Further, a series of piecemeal anti-discrimination legislation provide protection on the grounds of sex, disability, family status and race, specifically the Sex Discrimination Ordinance (SDO)¹⁵ and Disability Discrimination Ordinance (DDO)¹⁶ adopted in 1995, the Family Status Discrimination Ordinance (FSDO)¹⁷ adopted in 1997 and latterly the Race Discrimination Ordinance (RDO) adopted in 2008.¹⁸

On paper, Hong Kong appears to have a strong rights-based legal framework¹⁹ providing for the protection of individuals and distinct interest groups within society, thus creating an enabling environment for cause lawyering particularly around civil and political rights.²⁰ However, there are noticeable absences in legal protection, which leave minority groups susceptible to discrimination. Specifically, there is no anti-discrimination legislation on the basis of sexual orientation and gender identity. In the absence of statutory protections, individuals have increasingly sought legal redress through judicial review to challenge the constitutionality of legislation.

¹⁵ Sex Discrimination Ordinance (SDO) Cap. 480, 1995.

¹⁶ Disability Discrimination Ordinance (DDO) Cap. 487, 1995.

¹⁷ Family Status Discrimination Ordinance (FSDO) Cap. 527, 1997.

¹⁸ Race Discrimination Ordinance (RDO) Cap. 602, 2008.

¹⁹ Additionally, a number of institutional mechanisms potentially help to support the advancement of equal opportunities, principally, the Equal Opportunities Commission (EOC), a statutory body charged with advancing equality and eliminating discrimination. The EOC has no powers of adjudication and its role is limited to those powers and functions prescribed by s. 64 of the SDO S. 64 of the Sex Discrimination Ordinance 1(d) for example states that where any unlawful action under the Ordinance has been determined, the Commission should effect a settlement of the matter by conciliation.

²⁰ Tam, Waikeng 'Political Transition and the Rise of Cause Lawyering: The Case of Hong Kong' *Law & Social Inquiry* Vol. 35, Issue 3 at 671.

STRATEGIC LITIGATION AS A MEANS TO SECURE LEGAL PROTECTIONS AND ITS LIMITATIONS

Significantly, the use of strategic litigation in the form of judicial review has been adopted to secure rights, while simultaneously being used as a tool to foster public education and awareness of minority rights. To illustrate, the development of legal protections for LGBTI individuals has been piecemeal and largely as a result of judicial review cases launched to challenge existing laws which contravene Hong Kong's Basic Law. For example, the landmark 2006 case of *William TC Roy Leung*²¹ successfully challenged a number of provisions under the Hong Kong Crimes Ordinance²² for violating privacy and equality protections situated within Hong Kong's Basic Law (Articles 25 and 29) and BORO (Articles 1, 14 and 22) including s. 118 (C) of the Crimes Ordinance, which set the age of consent for buggery between same-sex couples at 21 years of age, with punishment of life imprisonment for offenders. Conversely, the age of consent for vaginal intercourse was set at 16 and punishment limited to five years.

In evaluating the inconsistency in age of consent between same-sex and opposite-sex couples, Judge Geoffrey Ma stated that “[d]enying persons of a minority class the right

²¹ *William TC Roy Leung v Secretary for Justice* [2006] 4 HKLRD 211 (CA).

²² Crimes Ordinance Cap. 200, 1972. The applicant specifically challenged provisions under s.118C, H and J, which were added to the Crimes Ordinance in 1991.

to sexual expression in the only way available to them,²³ even if that way is denied to all, remains discriminatory when persons of a majority class are permitted the right to sexual expression in a way natural to them.”²⁴ Though the Court declared relevant sections of the Crimes Ordinance unconstitutional, the ordinance was only recently amended to reflect the Court’s ruling in December 2014. The time lag between the ruling and the Legislative Council’s amendment of legislation is thus severely protracted and points to the limitations of using judicial review as a form of strategic litigation to secure minority rights.

On the one hand, a surge of judicial review cases suggests that there is broad recognition of the independence and impartiality of the Hong Kong judiciary as well as the rule of law in society.²⁵ On the other hand, the use of the Courts as an avenue to seek redress could also be due to Hong Kong’s perceived democratic deficit as a result of its Executive-led Government structure, which potentially undermines equity and social justice. Significantly, the Legislative Council is made up of both geographical²⁶

²³ Holning Lau, who has significant expertise on gender, sexuality and the law in Hong Kong suggests that there are limitations in the Court of Final Appeal’s reasoning, which focused on penetrative sex thus oversimplifying expressions of human sexuality between same-sex couples. See Lau, Holning ‘Sexual Orientation and Gender Identity: American Law in Light of East Asian Developments’ *Harvard Journal of Law & Gender* 31, 67, 2008 at p.85.

²⁴ Leung TC *William Roy v Secretary for Justice* [2006] 4 HKLRD 211 (CA), at para. 48.

²⁵ Kong, Karen ‘Public Interest Litigation in Hong Kong’ *Civil Justice Quarterly* Vol. 28, Issue 3 (2009) at 331.

²⁶ There are five geographical constituencies in Hong Kong, Hong Kong Island, Kowloon West, Kowloon East, New Territories West and New Territories East.

and functional constituencies.²⁷ Functional Constituencies represent professional groups within society such as the Legal Sector, Education Sector and other interest groups, for example the Heung Yee Kuk, which represents rural indigenous interests within the New Territories. While geographical constituencies are voted in by a process of direct election, Functional constituencies are voted in by a select group of eligible voters. This leaves noticeable absences in legal and political representation, particularly for groups within society such as women who stay at home or work in the informal sector, as well as other individuals who do not belong to a recognized profession and other minority groups.

Further, the political polarization of pan-democrats and pro-establishment lawmakers potentially risks undermining the due process of lawmaking leading to substantial delays in law reform. In 2014 for example, the Marriage (Amendment) Bill,²⁸ which sought to provide post-operative transgender individuals with the right to marry following the landmark case of *W v Registrar of Marriages*,²⁹ was vetoed in the

²⁷ The Basic Law of the Hong Kong Special Administrative Region Annex II.

²⁸ The Marriage (Amendment) Bill was triggered by the case of *W*, a post-operative transgender woman, who challenged the constitutionality of the Marriage Ordinance Cap. 181, s.40 and the Matrimonial Clauses Ordinance, which in effect impaired her right to marry under Article 37 of the Basic Law and Article 19(2) of the Bill of Rights Ordinance. The Marriage Ordinance replicates the English case, *Hyde v Hyde*'s definition of marriage (*Hyde v. Hyde and Woodmansee* [LR] 1 P&D 130), that is the heteronormative union of one man and one woman to the exclusion of all others. The Court of Final Appeal reasoned that the denial of *W*'s right to marry her male partner, effectively denied her right to marry at all and was therefore unconstitutional.

²⁹ *W v Registrar of Marriages* [2013] HKCFA 39.

Legislative Council by both pan-democrat and pro-establishment lawmakers.³⁰ Pro-establishment lawmakers suggested that the parameters of marriage should not be extended without wider public consultation while pan-democrats objected to the requirement that transgender individuals should have to go through full sex reassignment surgery before being recognized in their acquired gender.

Significantly, these and many other landmark cases in Hong Kong result from strategic litigation challenges, which go to the heart of the Basic Law. While constitutionally significant, pedagogically these cases also offer important illustrations of strategic litigations' promise as well as limitations, and thus form the bedrock of clinical legal education and other experiential learning courses including mootings. Though cause lawyering and the use of strategic litigation have been able to achieve considerable successes over the years, pedagogically it is also important to look beyond case law alone to wider claim-making in society and the framing of social problems, which may offer an alternative means of identifying unmet legal needs.

³⁰ See Transgender Marriage Law Vetoed by Legco <http://www.scmp.com/news/hong-kong/article/1622339/legco-vetoes-transgender-marriage-law-minister-accused-not-lobbying>, 23 October 2014. (Last Accessed 17 April 2015).

CLAIMS-MAKING: FRAMING SOCIAL PROBLEMS IN THE CONTEXT OF HONG KONG LAW

Merton explains social problems as physical or mental damage caused to individuals in society which may offend the values or standards of a large segment of society.³¹

Spector and Kitsuse theorise social problems as a process of claims-making.³² First, private problems have to be transformed into public issues, a process which is very much dependent on the power of claims-making by different groups and whether it is feasible to secure wider support from the public. During this process, resistance towards opposing claims may help to secure the objective of bringing the issue into the public domain, or if claims-making is ineffective, issues may shrink back into the private domain. Interest groups may adopt a range of strategies in a bid to secure formal recognition,³³ whether through public demonstrations, petition campaigns or through mass media campaigns. There is a risk however, that governments may effectively try to bury the issue at this stage. At the third stage, the absence of or inadequacy of solutions generated to address the issue further problematise the issue. Finally, in the absence of an effective institutional response, groups may seek to

³¹ Merton, Robert K., *Social Theory and Social Structure*, Free Press, 1968.

³² Malcolm Spector and John Kitsuse (2001), *Constructing Social Problems*, Transaction Publishers pp. 143-148.

³³ To be established as a social problem, issues need to transcend the private domain and require open acknowledgement in the public domain by policymakers and other stakeholders. Formal recognition of the claims by governments, could for example include establishing a committee to review the issues or claims, may help to cement the issue publically.

develop alternative solutions, which lead to the generation of competing claims that effectively sustain the issue as an ongoing social problem. Equally this process of claims-making is applicable to the Hong Kong context.

In recent years, Hong Kong has witnessed a growing protest culture with regular protests taking place on a range of political, economic, social and cultural issues, which suggest a clear process of claims-making by different interest groups in society. The roots of some of Hong Kong's social problems, many of which are interconnected, in part stem from policies and laws enacted both prior to and following the handover of Hong Kong from the British Colonial Government to the People's Republic of China in 1997. From concerns over pressure placed upon the HKSAR Government to implement Article 23³⁴ of the Basic Law, which requires the HKSAR Government to enact laws to prohibit any act of treason, secession, sedition or subversion against the Central People's Government,³⁵ to contentious proposals on national education reforms,³⁶ individuals and groups within society have actively participated in public

³⁴ Article 23 of the Basic Law provides that 'The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.'

³⁵ The Article 23 Concern Group was formed in response to the Hong Kong SAR Government's attempt to enact legislation to implement Article 23 in Hong Kong law. Following significant public pressure and mass demonstrations on 1 July 2003, the Bill was shelved indefinitely.

³⁶ Scholarism is a student activist pro-democracy group, which formed in 2011 in response to concerns over the autonomy of Hong Kong's educational policy. In 2012 the group protested against the proposed adoption of Moral and National Education by the Hong Kong Education Bureau. Controversially, the proposed curriculum appeared to praise communist and nationalist ideology, while being dismissive of democratic governance.

demonstrations. Increasing social and political awareness is evidenced by the growth of civil society organisations campaigning on a range of issues including the status of refugees; working conditions of migrant domestic workers; and the lack of legal protections of vulnerable groups within society including sexual minorities.³⁷

The mushrooming of civil society groups, as well as cause lawyering, has firmly entrenched recognition of some of these issues, such as the status of refugees, as social problems. Other issues, for example proposals on National Education, appear more transient in nature but may nevertheless link to the way in which Hong Kong and its citizens' culture and identity are framed and contested, an issue which may itself develop into a social problem. Since the 1997 handover, a significant number of mainland Chinese immigrants have moved to Hong Kong,³⁸ while numbers of Mainland Chinese visitors³⁹ has also risen, which has resulted in social tensions

³⁷ Hong Kong has a vibrant and active civil society including community organisations. The last comprehensive overview of Hong Kong's civil society seems to have taken place in 2006. The CIVICUS Civil Society Index (CSI) project was carried out between 2004 and 2005 in Hong Kong. *See Civil Society Index Report: Hong Kong Special Administrative Region of China*, May 2006 available at Centre for Civil Society and Governance, University of Hong Kong, <http://web.hku.hk/~ccsg/CSS.html> (Last Accessed 26 March 2015).

³⁸ Chinese migrants now make up ten per cent of Hong Kong's population. As of March 2013, 760,000 Chinese migrants arrived to permanently settle under the Hong Kong SAR Government's one way permit scheme. *See* <http://www.scmp.com/news/hong-kong/article/1195642/mainland-chinese-migrants-1997-now-make-10pc-hong-kong-population> 21 March 2013 (Last Accessed 31 March 2015).

³⁹ Tensions have arisen as a result of increased numbers of Chinese tourists to Hong Kong as well as other short term visitors, for example the increasing numbers of Chinese women who come to Hong Kong SAR with the specific intention of giving birth. In January 2013 the Hong Kong SAR Government banned Chinese women from giving birth in public hospitals to try to alleviate the problem. Private hospitals continue to provide maternity and neonatal services to Chinese women. There are a number of pragmatic reasons why Chinese women wish to give birth in Hong Kong, from the implications of China's One Child Policy to desiring better educational opportunities available to children born in Hong Kong.

between Hong Kong Chinese and Mainland Chinese.⁴⁰ These tensions have been heightened by the recent political crisis, which has drawn attention to the fragility of a political and legal system founded on the principle of “One Country, Two Systems.”

OCCUPY CENTRAL AND THE UMBRELLA MOVEMENT

Hong Kong currently stands at a political impasse as whether to implement constitutional reforms in line with the Central People’s Government’s interpretation of ‘universal suffrage.’ If the Executive fails to implement constitutional reforms accordingly, it must continue with the existing nomination process of HKSAR’s Chief Executive by a 1,200-member election committee. In September 2014, ‘Occupy Central,’⁴¹ a civil disobedience campaign was initiated to challenge the perceived failure of Hong Kong’s Executive to implement universal suffrage in accordance with international standards under the International Covenant on Civil and Political Rights (ICCPR). Article 25(b) of the ICCPR specifically states that:

“Every citizen shall have the right and the opportunity (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and

⁴⁰ The Equal Opportunities Commission is currently conducting a discrimination law review to evaluate how Hong Kong’s existing anti-discrimination ordinances may be improved. One of the central questions has been how to alleviate tensions and practices perceived as discriminatory but not formally recognized as such in law against Chinese immigrants and visitors to Hong Kong SAR. Further details of the Discrimination Law Review can be found at <http://www.eocdlr.org.hk/en/index.html> (Last Accessed 26 March 2015).

⁴¹ Occupy Central was initiated by Professor Benny Tai, an Associate Professor in the Faculty of Law at The University of Hong Kong together with Associate Professor Kin-Man Chan in the Department of Sociology at The Chinese University of Hong Kong and Reverend Chu Yiu-ming.

shall be held by secret ballot, guaranteeing the free expression of the will of the electors”

The Central People’s Government’s current proposal has interpreted this provision to allow for one person, one vote; however Chief Executive Candidates will first be screened and selected by a nominating committee. In effect, Hong Kong residents will have the capacity to elect the Chief Executive from a pool of only two to three candidates.⁴² Significantly, the Umbrella Movement (as it is often referred due to the images of protestors shielding themselves with umbrellas from the Police’s pepper spray) lasted for almost three months from 26 September to 15 December 2014. During the protests, the Hong Kong Bar Association condemned the excessive and disproportionate use of force used by the Hong Kong Police.⁴³ The Umbrella Movement

⁴²According to the Standing Committee of the National People’s Congress (NPC) ‘The Session is of the view that in accordance with the provisions of Article 45 of the Hong Kong Basic Law, in selecting the Chief Executive of the Hong Kong Special Administrative Region by the method of universal suffrage, a broadly representative nominating committee shall be formed. The nominating committee maybe formed with reference to the current provisions regarding the Election Committee in Annex I to the Hong Kong Basic Law. The nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive, who is to be elected through universal suffrage by all registered electors of the Hong Kong Special Administrative Region, and to be appointed by the Central People’s Government.’ For further detail see para. 4, Full text of NPC decision on Hong Kong’s Constitutional Development, Office of the Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in the Hong Kong Special Administrative Region <http://www.fmcoprc.gov.hk/eng/syzz/tyflsw/t944943.htm> (August 31, 2014).

⁴³ Statement of the Hong Kong Bar Association on the Use of Force by the Hong Kong Police at Harcourt Road on 28 September 2014, Press Release 29 September 2014, available at Hong Kong Bar Association <http://www.hkba.org/index.html> (Last Accessed 29 January 2014).

has led to significant scrutiny of the rule of law in Hong Kong and whether it is being eroded along with other civil liberties including freedom of expression.⁴⁴

Given Hong Kong's unique legal and political environment, as well as an absence of adequate statutory protections and legal and political representation for vulnerable groups, there is scope to strengthen public interest law. Pedagogically, while clinical legal education courses offer one means of exposing students to public interest law, socio-legal courses may also potentially foster socially responsible lawyers with heightened sensitivity to social problems that undermine equity and social justice in Hong Kong. In turn, socially responsible lawyers may choose to go on to practice public interest law. The development of socially responsible lawyers may help to strengthen public interest law and facilitate greater public awareness of vulnerable, unrepresented groups in society.

PUBLIC INTEREST LAW AND ITS DEVELOPMENT IN HONG KONG

Broadly construed, public interest law is employed as a tool used to help marginalized individuals and groups in society though public interest lawyering is undertaken by a wide range of organisations including non-governmental organisations that work to promote and protect human rights or raise awareness of, for example, consumer claims

⁴⁴ The World Justice Project (WJP) Rule of Law Index ranked Hong Kong 16 out of 99 countries measured. Rule of Law in the World Justice Project: Rule of Law Index <http://worldjusticeproject.org/rule-of-law-index> (Last Accessed 20 March 2015).

or environmental issues.⁴⁵ Traditionally, clinical legal education courses have been used as a means to foster public interest lawyers. Specialised legal clinics expose students to experiential learning opportunities which potentially enhance their commitment to public interest and pro bono lawyering. Many law schools in the United States have demonstrated a clear commitment towards promoting student lawyers' participation in public service.⁴⁶ Other jurisdictions including Australia and the United Kingdom,⁴⁷ have adopted clinical legal education programmes. The nature of legal clinics varies substantially. Clinics may be wholly law school funded and housed on campus,⁴⁸ whereas some programmes are offered on an externship basis⁴⁹ and include supervised internships with key partner agencies.⁵⁰

In 1996, the American Bar Association encouraged law schools to provide both voluntary and mandatory legal work opportunities to law students, due to the relatively low number of pro bono lawyers compared with numbers of lawyers in

⁴⁵ Chaifetz, Jill 'The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School.' *Stanford Law Review*. Vol. 45, No. 6 (Jul., 1993), pp.1695-171 at 1704.

⁴⁶ See for example Public Interest Law programmes at Chicago Law School and Columbia Law School.

⁴⁷ See for example, Manchester Law School, which set up its first legal advice clinic in 2000 and has subsequently opened a second clinic to cater to the needs of the community in East Manchester <http://www.law.manchester.ac.uk/law/legal-advice-centre/> (Last Accessed 26 March 2015).

⁴⁸ For example, University of South Australia Legal Advice Clinic.

⁴⁹ For example, Griffith University Semester in Practice Program.

⁵⁰ See discussion of Australian Clinical Legal Education at *Best Practices Australian Clinical Legal Education* [http://www.cald.asn.au/assets/lists/Resources/Best Practices Australian Clinical Legal Education Sept 2012.pdf](http://www.cald.asn.au/assets/lists/Resources/Best_Practices_Australian_Clinical_Legal_Education_Sept_2012.pdf) (Last Accessed 26 March 2015).

practice.⁵¹ Such work may be counted towards the accreditation process upon becoming a legal practitioner. The American Bar Association encourages legal practitioners to complete at least 50 hours of pro bono work annually.⁵² It is important to recognize that not all pro bono work, that is the provision of free legal advice to unrepresented litigants, would automatically fall within the realm of public interest law, though free legal advice is often facilitated with the aim of benefiting marginalized individuals or vulnerable groups with unmet legal needs. Rhode suggests that the rationale behind fostering pro bono services rests on recognition of access to legal services as a fundamental need, with lawyers bearing some responsibility for ensuring that such legal services are accessible and available.⁵³ Further, in a 'democratic social order, equality before the law is central to the rule of law and to the legitimacy of the State.'⁵⁴

A common objective of promoting law students participation in mandatory⁵⁵ or voluntary pro bono legal programmes is to provide practical legal training⁵⁶ and skills

⁵¹ Rhode, Deborah L. Cultures of Commitment: Pro Bono for Lawyers and Law Students, 67 Fordham L. Rev. 2415 (1999) at 2415-2416.

⁵² See American Bar Association

http://www.americanbar.org/groups/legal_education/resources/pro_bono.html (Last Accessed 17 April 2015).

⁵³ Supra note 50 at 2418.

⁵⁴ Supra note 50 at 2418.

⁵⁵ Some scholars have advocated implementing mandatory pro bono programmes as a method of exposing all students to a broad range of public services. See Rosas, Christina M. (2002) 'Mandatory Pro Bono Publico for Law Students: The Right Place to Start' *Hofstra Law Review* Vol. 30, Iss. 3 at 1076.

⁵⁶ Granfield, in his evaluation of mandatory pro bono programs found that even if participation in mandatory programmes did not lead to a significant increase in pro bono services, such participation nevertheless proved valuable in honing students' professional skills while also providing direct client contact. See Granfield, Robert Institutionalising Public Service in Law School: Results on the Impact of Mandatory Pro Bono Programs 54 *Buffalo Law Review* 1355, 2006-07 at 1470.

as well as raise awareness of future lawyers' professional duty to help marginalized groups in society to access justice.⁵⁷ Through participation in pro bono programmes, it is anticipated that upon admission to practice, lawyers will be committed to providing pro bono legal services, irrespective of their other professional duties and demands on their time. While there is no such equivalent requirement of pro bono hours stipulated by the Hong Kong Bar Association or Law Society⁵⁸ there is growing recognition of the need to strengthen legal ethics in Hong Kong. Significantly, the Redman-Roper Report on legal education in Hong Kong, which was commissioned by the Advisory Steering Committee of the Review of the Legal Education and Training in Hong Kong in 2000, highlighted the importance of experiential learning opportunities as a means to instill students with a sense of social responsibility.⁵⁹

The Redman-Roper report expressed concern that legal education in Hong Kong adopted a black-letter law approach, with the result that law graduates lacked an expanded view of the world.⁶⁰ Further, the report suggested that narrow, doctrinal approaches to the study of law inhibited the development of law graduates' ability to

⁵⁷ See examples of mandatory pro bono law programmes Lesnick, Howard, 'Why Pro Bono in Law Schools,' 13 *Law and Inequality* 25 (1994).

⁵⁸ The Hong Kong Law Society states: 'The Law Society supports and encourages a wide variety of pro bono legal services provided by lawyers to the public of Hong Kong,' but does not stipulate a recommended number of hours service per year. See hklawsoc.org.hk (Last Accessed 17 April 2015).

⁵⁹ Redman, Paul and Christopher Roper, *Legal Education and Training in Hong Kong*, August 2001 at 299.

⁶⁰ *Ibid* at 122.

respond professionally to the needs of ordinary people or those in the ‘sandwich class,’ that is those in the lower-middle class bracket, whose legal needs were often not met. Significantly, the report suggested that ‘law should not be seen as a narrow, self-referential discipline, but as one intimately connected with other bodies of knowledge and modes of social control and organization.’⁶¹ The report’s findings are particularly salient given the number of vulnerable groups in Hong Kong including female migrant workers, refugees and those living in poverty, who lack adequate access to justice, a constitutional right guaranteed under Article 35 of the Basic Law.⁶²

Awareness of public interest law in Hong Kong, though limited, is developing and there are notable examples of public interest lawyering. During the 1980s, Pamela Baker, a solicitor, pioneered the use of public interest law by bringing a series of landmark cases to challenge Government policies on the treatment of Vietnamese Refugees.⁶³ Subsequent strategic litigation cases on minority rights, as discussed above in relation to LGBTI rights, and environmental issues such as the judicial review case of Clean Air Foundation Ltd v The Government of Hong Kong⁶⁴ can also be construed as public

⁶¹ *Ibid* at 68.

⁶² Article 35 of the Basic Law states ‘Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies. Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.’

⁶³ See for example *R. v Director of Immigration and Refugee Status Review Board ex parte Do Giau & Others* (1992) 1 HKLR 287; *Tran Quoc Caong and Khoc The Loc* 1991 2 HKLR 312; *Re: Chung Tu Quan & Ors* 1996 1 HKC 566

⁶⁴ Clean Air Foundation, an NGO sought a declaration that the Government had a duty to protect its citizens from the harmful effects of air pollution given the constitutional protection conferred by Article

interest cases. More recently, a network of Public Interested Lawyers, *Hong Kong Public Interest Law Group*,⁶⁵ which draws together legal practitioners, academics and students was founded in 2013.

Further, several Faculties of Law in Hong Kong have sought to develop clinical legal education programmes largely in response to the recommendations of the Redman-Roper report, which suggested that clinical legal education should be incorporated at all stages of legal education.⁶⁶ The Law Faculty at The Chinese University of Hong Kong (CUHK), founded⁶⁷ with the vision that all law students should be engaged in the active learning of law in its social context,⁶⁸ developed the Refugee Rights Clinic programme in partnership with the Justice Centre Hong Kong.⁶⁹ This particular clinical legal programme was also developed at the Law Faculty of The University of Hong Kong.

28 of the Basic Law on the right to life and that the Air Pollution Control Ordinance, Cap. 311 and its subsidiary legislation were accordingly inconsistent with Basic Law Article 28. *See Clean Air Foundation Ltd v The Government of HKSAR* [2007] HKEC 1356.

⁶⁵ Hong Kong Public Interest Law Group was co-founded by Azan Marwah, Barrister, Hong Kong and Robert Precht, Founder and President of Justice Labs. Robert Precht's previous positions include federal public defender, assistant dean of public service at the University of Michigan Law School, and China Country Director for PILnet: The Global Network for Public Interest Law.

⁶⁶ *Supra* note 58 at 167.

⁶⁷ The Faculty of Law at The Chinese University of Hong Kong is a relatively young institution and the youngest Law Faculty in Hong Kong, having been established in 2008. Its predecessor, the School of Law at The Chinese University of Hong Kong was founded in 2005 and the first cohort of students enrolled in 2006.

⁶⁸ The Law School at CUHK was founded in 2005 with the vision that all students should acquire the necessary lawyering skills and ethical values to demonstrate leadership and serve the needs of the community. School of Law (CUHK) Mission Statement, submission to the Legislative Council, LC Paper No. CB(2) 1760/05-06(01)

⁶⁹ Formerly the Hong Kong Refugee Advice Clinic (HKRAC).

Additionally, the CUHK's Law Faculty developed a flagship course, *The Individual, the Community and the Law*, which adopts a 'context of law' approach.

Socio-Legal Studies: An Alternative Means of Fostering Public Interested Lawyers?

While clinical legal programmes have been adopted by Law Schools with a view to fostering public interested lawyers, it is less clear whether socio-legal courses such as the *Individual, the Community and the Law* course, have the capacity to foster the same level of engagement with public interest law. First, the doctrinal bias of the undergraduate law curriculum makes the integration of socio-legal studies and empirical research methods particularly challenging.⁷⁰ Second, law schools often exist in a vacuum and there is limited engagement with other disciplines such as the humanities or the social sciences, which means that legal scholars often lack the requisite empirical research and wider interdisciplinary skills required to teach and support student learning of alternative approaches to the study of law.

Further, in the context of Hong Kong's legal education environment, Jones suggests that as a result of globalization and neo-liberalist capitalism, lawyers have been discouraged from critical engagement with the law and this has proved to be the case in Hong Kong, particularly as a result of the socio-political context post-97,⁷¹ though this may be

⁷⁰ Caroline Hunter Introduction: Themes, Challenges and Overcoming Barriers in *Integrating Socio-Legal Studies into the Curriculum* (Ed. Caroline Hunter) Palgrave MacMillan Socio-Legal Studies at 1.

⁷¹ Jones, Carol, 'Legal Education in Hong Kong: Producing the Producers in Steele,' S. & Taylor, I.K. (eds.) *Legal Education in Asia. Australia*. Routledge.at 108.

changing as the rule of law and other founding principles of the HKSAR come under pressure.⁷² The Law Society professional practice requirements⁷³ also leave less room in the curriculum to develop elective courses as compared with other non-vocational degree programmes.

Rather than taking law as the starting point, the Faculty of Law's flagship course, the *Individual, the Community and the Law* (hereafter ICL) adopts a 'context of law' approach,⁷⁴ which first focuses on the identification of 'social problems' affecting distinct groups in society. This is not to preclude analysis of law and how it relates to social problems. While a 'context of law' approach does consider the role of the law, importantly law is not presented as the primary solution to social problems, which may instead be addressed by other cultural, economic, political or social means. Indeed the law can sometimes exacerbate social problems through inadequately or poorly drafted legislation or through the 'silences' of the law,⁷⁵ which can result in unmet legal needs.

⁷²According to the Hong Kong's Public Opinion Programme's latest survey results on social indicators released on 4 August 2015, people are less positive about Hong Kong society on issues including compliance with the rule of law and freedom compared with the past ten years <http://hkupop.hku.hk/english/> (4 August 2015).

⁷³ Hong Kong Law Society <http://www.hklawsoc.org.hk> (Last Accessed 17 April).

⁷⁴ Though doctrinal legal studies as a discipline have traditionally been resistant to interdisciplinary research the development of alternative approaches to the study of law including socio-legal studies and Critical Legal Studies have been influential in areas of law, which touch upon social policies and regulation, and increasingly law schools are shifting away from purely doctrinal legal research. See Banakar, Reza and Max Travers 'Law, Sociology and Method' in *Theory and Method in Socio-Legal Research* Hart Publishing Oxford and Portland Oregon, 2005 at p.9

⁷⁵ Hilary Charlesworth referred to the silences of international law in considering the notable absence of gender and women's experiences in the drafting of international legal instruments. See Charlesworth, Hilary 'Feminist Methods in International Law' 93 *American Journal of International Law* (1999) 379. The

It was envisaged that a 'context of law' approach would steep students with a rich understanding of law's limitations as well as its promise and potentially foster students' awareness of social justice and public interest lawyering. Similar to mandatory pro bono programmes the ICL course is compulsory for all third year undergraduate LLB Law students.

In the longer term, Emeritus Professor Mike McConville, the founding Dean of the Law Faculty at CUHK, conceived that the course may influence students' career aspirations and choices. Though it may take several years for graduating students to reflect on their ICL learning experience,⁷⁶ for some students, the course would heighten their awareness of inequity and social injustice within society and they would thus become socially responsible lawyers. In the longer term, it was envisaged that through students' exposure to social problems, the empirical research and learning opportunities offered by the ICL course would encourage LLB graduates to give something back to the community whether through engagement with public interest law, pro bono or other community service provision.

Without black letter law as the familiar starting point, ICL proves to be somewhat tempestuous. Given that the majority of the compulsory law courses on the LLB programme adopt a doctrinal approach to the study of law and focus on substantive

term is useful more generally to encapsulate the way in which the 'silences' of law more broadly serve to exclude vulnerable groups in society from legal protections.

⁷⁶ The ICL course is now in its 6th year of operation on the LLB programme.

law with little consideration of the cultural, social and political context in which the law is situated, many students feel somewhat uncomfortable to engage with contextual factors as well as social research methods. Starting from the social problem, students are introduced to qualitative and quantitative research methods as well as research ethics before undertaking fieldwork with multiple stakeholders across legal, policy, NGO and other circles. While the course does not include any direct client representation or shadowing of practicing lawyers as such, students do have direct contact with research subjects during empirical research which may involve a process of identifying unmet legal needs.

A principal aim of the ICL course is to encourage students to develop socio-legal research projects for the benefit of selected vulnerable groups within society such as minority groups, migrant workers, ex-offenders and unrepresented litigants. The nature of the ICL course does not lend itself to the traditional lecture-tutorial model, which most doctrinal law courses follow. Pedagogically, the course is delivered through multiple methods including interactive lectures, tailored individual group tutoring as well as drop-in advice sessions. Working in groups, students design and implement empirical research projects to effectively unpack how social problems impact upon individuals and the wider community, taking account of the role of the law in relation to the social problem. Since the first cohort of ICL students in 2008/09, students have identified and engaged with a wide range of social problems. ICL groups have

researched on a broad range of topics, though specific topics routinely surface each academic year including access to housing; the status of refugees; the status of LGBTI individuals; and implications of the *Small House Policy on Land Use and Rights in the New Territories*.⁷⁷

During the first semester, groups focus on drafting a research proposal which includes a detailed, critical review of secondary literature from which substantive research questions are identified and an appropriate research methodology designed. At the beginning of the course, delivery is weighted toward interactive lectures, where all groups are introduced to socio-legal analysis of social problems and to research ethics, which are particularly important given the human element involved in the design of such research projects including direct engagement with vulnerable individuals or groups. For example, student groups study the Stanley Milgram experiment to learn about the use of deception and its ethical implications⁷⁸ as well as review different academic disciplines' ethics codes.⁷⁹

⁷⁷ Under the Small House Policy, an indigenous male villager over the age of 18 can apply for a grant to build one small house in the New Territories <http://www.landsd.gov.hk/en/legco/house.htm> (Last Accessed 17 April 2015).

⁷⁸ See Milgram, S, 'Some Conditions of Obedience and Disobedience to Authority,' (1965) 18 *Human Relations*, 57.

⁷⁹ For example, the Socio-Legal Studies Association (SLSA) Code of Ethics is introduced to students as well as the American Anthropological Association's (AAA) Code of Ethics to consider the applicability of different discipline's ethical parameters and how these may apply to social research undertaken under the auspices of the ICL course.

Formal screening of research proposals by the University Survey and Behavioural Research Ethics Committee may help to legitimise the research process and strengthen student's understanding of the role and importance of ethics in research. During the drafting of ethics applications, student groups receive substantial guidance and support from the course leader on research design and administrative colleagues provide additional research support by screening ethics applications. The application is primarily vetted at the faculty level before submission to the university level. Thus applications are reviewed and refined multiple times before submission to the university level.

Student groups are also introduced to both quantitative and qualitative research skills including questionnaire planning and design, interviewing social research subjects and focus group planning and facilitation. Though initially lectures are interactive, individual groups ordinarily break off to undertake group exercises and then relate generic case-based and research methods exercises to their own research topics. Alongside these modules on socio-legal analysis and social research methods, external speakers including NGO representatives, pro bono lawyers and academics are invited to give guest lectures on public interest lawyering.

To illustrate, the Hong Kong Federation of Women's Centres (HKFWC),⁸⁰ which runs a free legal advice clinic, is invited to introduce student groups to the situation and status of women in Hong Kong including issues such as disparity in economic earnings between men and women. Further, HKFWC help to facilitate the sharing of pro bono lawyers, peer counsellors and service users, which gives student groups' direct insight into the scope and nature of services provided by HKFWC's free legal advice clinic. The aim of these sessions is to draw the connection between public interest lawyering and the design and development of student groups' own empirical research projects.

With ethics approval confirmed, during semester two, student groups undertake fieldwork with research subjects. Student groups design research instruments including interview schedules and questionnaires, which are reviewed during individually tailored group tutoring. During the design process, the course leader offers detailed feedback on the phrasing and sequencing of interview and survey questions as well as any complications which may arise including the potential for bias in the design of questions or interviewer bias. Additionally, student groups are introduced to data analysis, particularly analysis of qualitative data using coding or framework analysis, which is informed by grounded theory.⁸¹ Given that it is difficult to teach generic social

⁸⁰ Hong Kong Federation of Women's Centres (HKFWC) see <http://womencentre.org.hk/en> (Last Accessed 26 March 2015).

⁸¹ Framework analysis' roots are in Glaser & Strauss' pivotal work, which suggested that theory should be grounded in the data generated through research (i.e. inductive research). Framework analysis allows for the identification of *a priori* themes (deductive research) as well as emergent themes (inductive research).

research skills when each individual group is working on a highly specialized topic, over time the ICL course design has evolved⁸² to allow greater use of group tutoring individually tailored to the needs of each ICL group. Group tutoring is scheduled at key points in the research process including during the formation of research topics, submission of research ethics applications, design of research instruments and supervision during fieldwork.

The course includes both formative and summative assessment. In semester one student groups are required to give an oral research presentation in the latter part of the semester, which frames the social problem, identifies a research question and an appropriate research methodology to answer the question. Groups also submit a written research proposal, which includes a detailed literature review as well as a proposed research methodology, which may include quantitative or qualitative social research methods or a combination of both. In semester two, student groups are again required to give an oral research presentation to present preliminary empirical research findings from their fieldwork.

Importantly, during oral research presentations other peer groups are invited to ask questions and give written feedback directly to individual groups for their

⁸² Several colleagues have been involved in the course design including the article author; Prof. Mike McConville; Dr. Arthur McInnis; former colleagues Prof. Marlene le Brun and Prof. Mark Hsiao. Each colleague has contributed their respective perspectives, skills and insight to the Course design, but the course has been inhibited by LLB programme constraints.

consideration. This interactive process is designed to support student learning by encouraging student groups to identify any limitations in the research process including any potential for bias and how this may impact upon research findings. Individual groups are also required to undertake a self-evaluation of their group's research process in relation to each assessment. Including all groups in the evaluation process (while not informing the formal assessment process) helps to foster a sense of collegiality in the research process. At the end of the course student groups submit a final written report which includes an executive summary, a detailed literature review, research methodology, empirical research data analysis and findings as well as a conclusion. Though some groups present recommendations, this is not ultimately the goal of the ICL course, which instead aims to focus on unpacking the complexity of the social problem.

The design and implementation of the ICL course has not been without problems. The Faculty initially adopted the ICL as a compulsory⁸³ course requirement on both the undergraduate (LLB) and postgraduate (JD) programmes. However, the structure and design of the course deviates substantially. On the LLB programme the course is offered across two semesters, allowing for substantial guidance and support during the research process. Conversely, on the JD programme the course was only offered in

⁸³ From 2015/16 the course is no longer compulsory on the JD programme and will be offered as an elective. The status of the ICL course on the LLB and whether it will continue as a compulsory course is currently being evaluated.

summer semester, a substantially shorter term spanning seven weeks. This proved to be inherently problematic as student groups were required to design and implement research projects within a substantially shorter timeframe. Further, the course structure did not allow for the same level of guidance or support at all stages of the research process.⁸⁴

At the undergraduate level, given the doctrinal bias of the undergraduate law curriculum, students often lack a solid grounding in socio-legal research at the point upon which they enter the course, which may hinder their understanding of the aims and objectives of the course as well as their socio-legal analysis of social problems. The recent adoption of foundational core courses on legal analysis and argumentation as well as jurisprudence and ethics in the Faculty of Law's LLB curriculum may allow greater scope to strengthen students understanding of alternative approaches to the study of law. Further, given the limited number of elective courses that law students can opt to take in the first and second year of the LLB degree, the majority of students lack a solid grounding in public interest law although courses such as administrative and constitutional law do expose students to strategic litigation cases and a limited

⁸⁴ The University requires that all students undertaking social research should be screened by the survey and behavioural research ethics review process. Given the seven week timeframe allocated to delivery of the ICL course on the JD programme, this formal review process is lacking and thus the legitimacy of the aims and objectives of the ICL course on the JD programme may be undermined. From 2015/16 the course is no longer compulsory and will be offered as an elective.

number of individual law students also take clinical legal programmes such as the Refugee Rights Clinic alongside the ICL course.

Compared with doctrinal law courses, ICL is labour intensive ⁸⁵ for both students and the course leader, particularly during the second semester when student groups go out into the 'field' to interview civil society actors and policymakers. Greater flexibility is required to provide the tailored group tutoring, which individual student groups rely upon during the research process. On average, there are twelve ICL groups each year, the projects of which are distinct and consequentially require the design and implementation of different research methodologies. Thus the course leader has to be adaptable in order to respond to the individual research needs and challenges of each group.

As with other law courses, each semester students must complete a course teaching evaluation questionnaire to provide feedback on their learning experiences. However, this generic evaluation does not adequately capture how the ICL course impacts, if at all, on students' perceptions of the rule of law, access to justice and public interest law, key elements which underpin the philosophy of the ICL course's design. Thus, in 2014/15 a

⁸⁵ Socio-legal research and teaching is also susceptible to the doctrinal bias of the undergraduate curriculum. For socio-legal courses to be sustained effectively they require adequate support through recognition of the 'value' of the course including for example, the allocation of an appropriate number of course credits to account for the unique nature of the course and the significant time required to conduct empirical research. Students on the ICL course currently complain that the course is not given an adequate number of course credits. Additionally, the same numbers of contact hours are allocated to ICL as with other compulsory core courses, which follow the traditional model of two hours lecture per week and one-hour tutorial.

pedagogical research project was initiated - *Fostering Public Interested Lawyers: The Individual, the Community and the Law*.⁸⁶ This empirical research project aims to learn more about students' specific learning experiences on the ICL course including the influence that the course has had, if any, on LLB students and graduates' career aspirations and choices as well as perceptions of access to justice, the rule of law and public interest lawyering in Hong Kong.

While not directly inspired by any similar pedagogical evaluations of clinical legal programmes, insight was drawn from two large-scale surveys in the United States, after the JD.⁸⁷ However, the research project differs substantially given that the aim of the survey is to evaluate the influence, if any, of a single socio-legal course as opposed to the entire JD or LLB programme's impact on career aspirations and choices. Further, given the focus of the ICL course on social problems, the research specifically intends to

⁸⁶ We aim to map and track the year of graduation to try to gauge the impact over time, if any, of the ICL course on LLB graduate's pursuant careers. The impact of the ICL course may not be immediate but in the longer term the course may influence perceptions of public interest law, including whether LLB Graduates participate in pro bono legal advice or other work in the public interest domain. An anonymous questionnaire was distributed to students entering the ICL course in September 2014. With limited exposure to the ICL course, following the introductory lectures, we wanted to survey students in relation to their perceptions of the nature of the ICL course in comparison to the broader learning experiences on the LLB, as well as gauge students' views on rule of law, access to justice and vulnerable groups in Hong Kong. This cohort of students will also be surveyed upon completion of the ICL course to map whether their initial expectations of the course were accurate and to try to evaluate if the course has influenced their views on rule of law and access to justice in Hong Kong.

⁸⁷ 'After the JD the first ten years' was a longitudinal study to learn more about the influence, if any, of the JD course on career aspirations and choices. See <http://www.americanbarfoundation.org/publications/afterthejd.html> (Last Accessed 17 April 2015).

evaluate whether the course influences LLB students and graduates' understanding of the connection between social problems, the individual, the community and the law.

At this stage it is too premature within our pedagogical research project to fully evaluate whether socio-legal education, and specifically the ICL course, can provide an effective means of fostering public interested lawyers as a way to strengthen equity and social justice in Hong Kong. However, from our initial survey results with students entering the ICL course,⁸⁸ the majority of students are aware that public interest law aims to help marginalized groups within society (77%), though there is a lack of awareness amongst students as to the practicalities of public interest law including whether it is not-for-profit. 60% of students were uncertain as to whether public interest law is not-for-profit and 14% of students think it is carried out on a for-profit basis. The majority of students have undertaken legal internships (88%), and many students have also undertaken community service programmes (49%) with a relatively small percentage having undertaken overseas social service programmes (14%). Only a minority of students have participated in any of the Law Faculty's public interest

⁸⁸ The questionnaire was sent to 119 students entering the ICL course. Our response rate is lower than expected at 36%. There could be a number of factors for the response rate. Some students who gave further feedback on the ICL course expressed concern that they had only recently entered the course and therefore they did not have a clear understanding of the course's objectives at that stage. Additionally, relatively shortly after the questionnaire was circulated, the Hong Kong Students Federation called for a boycott of classes in response to the perceived failure to implement universal suffrage of the Chief Executive in Hong Kong in line with international standards. The boycott commenced on 22nd September shortly after the questionnaire had been circulated. Attendance at lectures dropped as low as 45% and attendance at lectures only started to recover in the latter weeks of the course in late November 2014.

programmes such as the Refugee Rights Clinic (9%) or the Refugee Pro Bono Project (5%). These findings suggest that only a limited number of LLB students voluntarily enter public interest law programmes.

While the pedagogical aims and objectives of the ICL course may differ substantially to clinical legal education programmes, the inclusion of empirical research with multiple stakeholders from legal, NGO and policy circles may effectively sensitize students to the cultural, social and political context in which law operates, and thus heighten students' awareness of the limitations of the law and lawyering. By exploring social problems experienced by vulnerable groups, students are exposed to different social strata within society. By engaging directly with stakeholders from civil society as well as policymakers and members of the vulnerable groups themselves, students can gain meaningful insight into the practical constraints of the law in providing an effective remedy to such vulnerable groups and the problems which they experience. Our ongoing pedagogical research aims to give an indication of the impact of ICL over time, if at all, on students' perceptions of the rule of law, access to justice and public interest law.

CONCLUSION

Though historically Hong Kong has prospered economically, a myriad of social problems persist which undermine equity and social justice in society. The

development of public interest law in Hong Kong provides a pedagogical opportunity to cultivate socially responsible lawyers with the capacity to critically engage with and respond to social problems in society. Law schools within Hong Kong have increasingly adopted clinical legal education programmes as a means of fostering public interest lawyers. While pedagogically distinct, socio-legal courses such as ICL may complement efforts to foster public interest lawyers through allowing students to engage in empirical research with multiple stakeholders to unpack the context of law in which social problems are situated and consider the role of the individual, the community and the law's response. This article has demonstrated how pedagogically law schools can contribute meaningfully to the development of law students' sense of social responsibility. The 'impact' of socio-legal courses may be challenging to measure longitudinally, but potentially such courses allow for a seed of social awareness to be planted, which may bear fruit in the future.

From the Field

**THE EUROPEAN NETWORK OF CLINICAL LEGAL EDUCATION:
THE SPRING WORKSHOP 2015**

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INTRODUCTION

The European Network for Clinical Legal Education (ENCLE) was established in 2013 with the aim of bringing individuals and organisations together to exchange ideas and work collaboratively to promote justice and increase the quality of law teaching through clinical legal education. According to its mission statement, 'ENCLE aims to support the growth and quality of [clinical legal education] programmes in Europe through facilitating transnational information sharing, fostering CLE scholarship and research, convening conferences, workshops and

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training session, establishing a website as an open resource for information sharing and promoting collaboration between CLE programmes and legal professionals.²

In furtherance of the mission statement, ENCLE have organised several conferences and workshops.³ In April 2015, a workshop was held at Northumbria University, Newcastle upon Tyne, UK entitled 'Preparing students for clinic'. The aim of the workshop was to generate discussion, through themed sessions, as to how clinicians can prepare their students for the clinical experience. Sessions were facilitated by experienced clinicians from around Europe who drew out ideas for best practice thus strengthening the abilities of attendees to prepare their students for the clinical experience.

The first session, which will be the predominant focus of this article, considered 'Why we do clinic'. It is important that as clinical educators we understand the rationale for what we do. If we do not know where we are going, we will never get there, which was highlighted at the start of the first session.

Other sessions included:

- Establishing a legal clinic
- Running and sustaining a legal clinic

² ENCLE, *Mission Statement* Available at: <http://www.encle.org/about-encle/memorandum-of-understanding-statute-in-entirety>

(Accessed: 24 September 2015)

³For more information on other ENCLE events please see, <http://encle.org/news-and-events/past-events>

- Standardised clients
- Approaches to preparation: legal knowledge or problem based learning
- Developing ethical sensitivity in clinical students
- Ethical aspects of clinical design and management
- Strengthening the social justice mission of clinic
- Impact of clinic in Europe: What do we know so far and where do we go from here (and how)?

The sessions covered various forms of clinical legal education, not just those working with live clients. However, throughout the two days other sub-themes started to emerge and the need to justify why we do clinic as a form of legal education was underlying in all sessions.

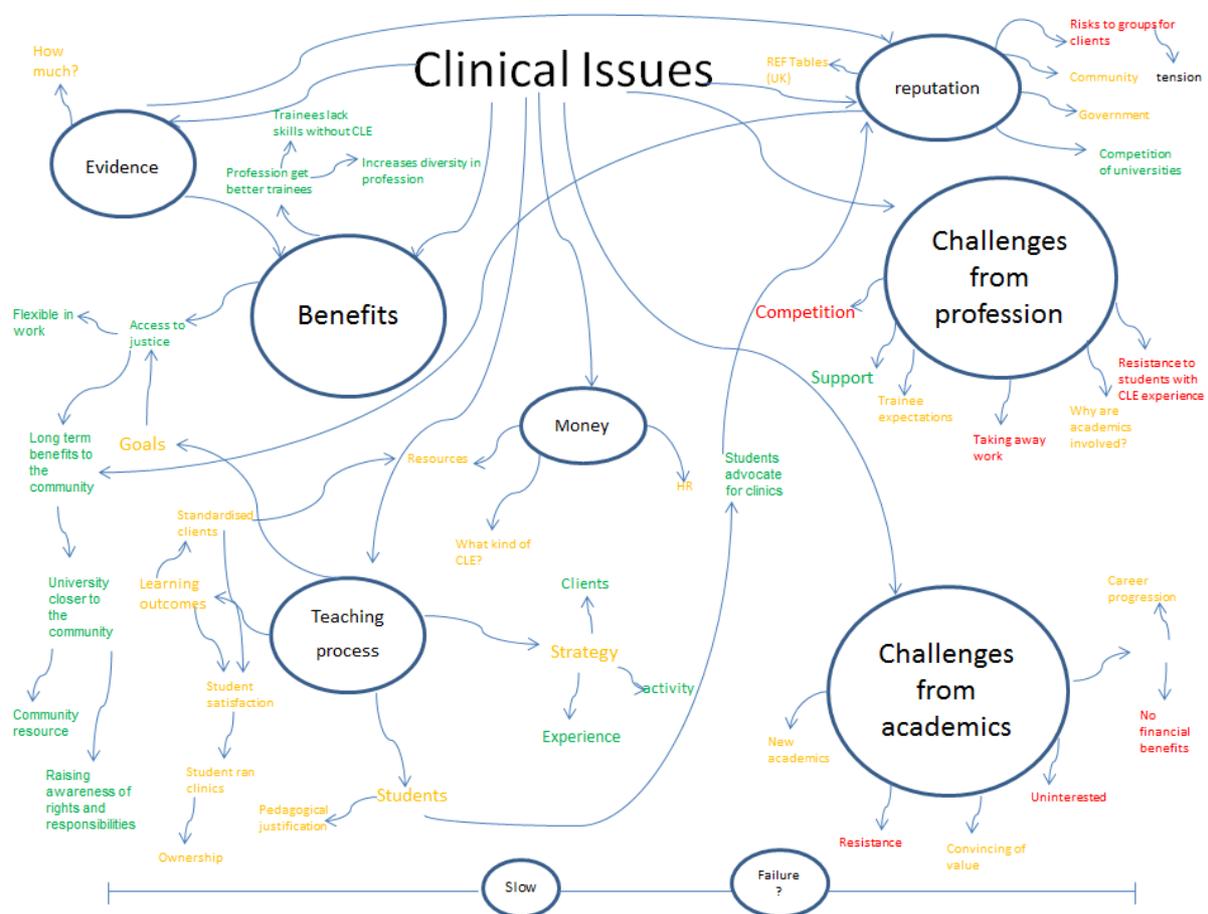
There were approximately 42 clinicians who attended the Workshop. The first session of the Workshop was recorded, lasting approximately one hour. Once we gained ethical approval to use this recording as data for an article and it was transcribed and analysed in order to highlight the main themes discussed during the Workshop. Attendees were notified of our intention to use the recording, provided with a username and password to access it securely on the ENCLE website and time was given for them to listen to it. They could then decide if they consented to their comments being used and were able to exclude any comments which they did not want to be used in this work. The comments discussed below are only those from attendees who agreed for their contributions to be used.

WHY WE DO CLINIC.

The first session of the Workshop, led by Professor Kevin Kerrigan and Carol Boothby, asked *'why do we do clinic'*. The purpose of this session, as Professor Kerrigan highlighted, was to justify why we, as educators, should have law clinics in universities. This justification is not just to Deans or Vice Chancellors, but also to the wider legal profession and community. This justification, or reason for doing clinic, is important for the sustainability of a clinic. However, an attendee also stated that it is important to know why we do clinic *'because this will then shape in what we need for it, how we do it, how we communicate with the students, what goals do we proceed, what we emphasise. So this is a really important thing to know in order to shape the teaching process in the right way.'* So, it is not just justifying to those outside of the clinic, but also for those working inside it, ensuring the clinic is pedagogically sound. As such, the purpose of the clinic needs to be clear in our own minds as to achieve anything, we need to know what it is we are trying to achieve.

There are various reasons why we establish clinics. Aksamovic and Genty highlight that it is important to distinguish between these reasons, and that two of the main goals of clinicians are *'...creating social change by giving disadvantaged groups access to legal services; making experiential courses mandatory so that all students*

are better prepared for the profession they will be entering...'⁴ However, this session highlighted other reasons as to why we do clinic and how we can justify it, which surfaced when we discussed the advantages and disadvantages, or the rewards and risks, of clinics. These advantages and disadvantages were to various groups, including the university, the community and the legal profession. Discussing the advantages and disadvantages of clinics also brought up other areas of discussion. The themes of this session can be displayed visually, taken from the recording:



⁴ Askamovic D and Genty P, 'An Examination of the Challenges, Successes and Setbacks for Clinical Legal Education in Eastern Europe' (2014) 20 The International Journal of Clinical Legal Education, p.437

The issues facing clinical programmes identified during the Workshop are represented above. The themes flowing from these issues are the main areas which were covered during the discussions, the bigger the circle the more weight placed on the discussion. We then have other comments flowing from these main areas, which attendees highlighted as advantages or disadvantages, or risks and rewards, of clinics. The bigger the comments the more it was discussed. Some of these issues link together, even though they were discussed during different themes. Looking at the data from the session in this way shows how certain issues can link together, even though they may seem very separate in practice. Furthermore, displaying the weighting of the conversations outlines what was most discussed, or was more of a concern to the attendees of the Workshop. The issues have also been colour coded. Comments in red represent issues which hinder the development of clinic whilst comments in green can be considered to advance the clinical mission, enhancing the education of our students and provide legal support to our community. Comments in orange could either advance or hinder the development of clinics depending upon their implementation in practice. At the bottom of the diagram is a comment made by an attendee that did not appear to fit with the other issues discussed, but is an important consideration none-the-less. This attendee wanted to highlight that when setting up a clinic you must be prepared to fail, as so many clinics do fail when they are first established. Also that establishing a clinic is a slow process and that you must be patient. This is a valid point to make to those who are considering setting up a clinic, and why it has been placed at the bottom of the diagram.

For example, one attendee talked of the educational benefits of law clinics and how there *'are certain things that a student can only learn in clinic.'* However, even though clinicians claim that this kind of pedagogy is beneficial to students, there is a lack of empirical evidence to help justify such a claim. To make such bold claims for clinics, which are logical to make, we must still be able to support them with evidence and research. These educational claims were then linked to reputation, the attendee advancing, *'students want to come to our university because we have an attractive clinical programme.'* These claims are connected to many of the issues. Reputation links back to students, and ultimately their satisfaction, to the community and their views of the university. In order to strengthen the reputation of clinic, we need more evidence. Should clinics be producing more research into their work to justify what they are doing?

Something which was highlighted during the discussion, and is apparent from the diagram, is the conflicting perception of clinic from the legal profession. There was a comment about how some law firms do not like their trainees to have prior clinical experience and like to *'mould'* them to their firm. This attendee stated that law firms can be resistant to taking on students who *'already have a professional identity.'* However, when looking at benefits there is a comment that clinic is beneficial to the profession as they are gaining trainees who are better prepared for practice and would otherwise lack the skills needed if it were not for a student's clinical experience. Thus, it appears that there can be confusion over the expectations of a

clinical programmes and what sort of position it can put students in when they have completed their degree. This difference of opinion is not surprising as all clinicians, and indeed the clinical programmes as a whole, have had different experiences with the legal profession and this will feed into their comments. Furthermore, different jurisdictions will have different experiences and relationships with the profession, resulting in this area of discussion not meeting a consensus.

It was highlighted that there are many reasons of why we do clinic, and these reasons will vary from clinic to clinic. Whatever the reason, we must be able to justify our clinics and be honest about the rewards and risks of them. This justification will help us with our teaching and shaping the clinical programme for the students. Getting the attendees to think about this from the start of the Workshop helped during the other sessions to think about what kinds of clinic is best for their institution and why.

ISSUES

Throughout the two day workshop there were issues highlighted which made sustaining a successful clinical programme difficult. As the diagram above illustrates, the issues faced by clinical programmes are complex. As attendees started to open up about this more people started to share and we realised that these issues are common throughout clinics in Europe. Knowing what issues there are assists with overcoming them and move forward with our European clinical movement. We will focus the discussion on two issues identified in the Workshop,

resistance from the legal profession and resistance from the university. As key stakeholders in any clinical programme, it appears useful to address these concerns.

Resistance/opposition from the profession

Resistance or opposition from the profession arises from a lack of understanding of a clinical programme's goals and how it operates. This opposition seems to stem from fear of a clinical programme taking away work from the profession. An attendee spoke about the opposition their programme faced when it was established, how local lawyers felt as though their livelihood was in trouble and they would face more competition for clients. The clinical programme had to *'justify why we're doing clinic and the type of clinic that we were running and ultimately, eventually, they came around and now they're many of our biggest supporters in the local legal profession.'*

If the resistance from the legal profession is broken down then the support they can provide for a clinical programme is invaluable. Clinical programmes are operating all over the world and many professionals can appreciate and encourage the work they do. This issue is one which most clinical programme have faced in many countries. Even countries which now have a well established clinical presence in their legal education have faced this problem when setting up clinical programmes. For example, Giddings brings to light resistance from the profession in the early

Australia movement.⁵ Whilst this jurisdiction, and many others, have overcome resistance from the profession, this cannot be said of all jurisdictions, where it is still a major hurdle clinical programmes face. Wilson has discussed this issue in relation to Western Europe, in particular Germany. He states that clinical programmes, ‘...are seen as a threat to the earnings of those lawyers who have “paid their dues” by going through the rigorous process of admission to the bar.’⁶

This was addressed by another attendee, who stated that the work clinical programmes do does not really take work from the legal profession as ‘*we are doing something else.*’ This something else is arguably providing legal services to those who struggle for access to justice. However, providing this service does not mean competition for clients, as this attendee concluded, ‘*but I believe there’s no country in the world where the problems of access to justice would be solved in a way that we would really be competing to clients. We might be competing for clients in some segments, but not in a global way.*’ This is an opinion which has been argued before, particularly by Wilson. From his research in Germany he provides two rebuttals to the opposition from the profession. Firstly, clinical programmes *usually* do not represent clients who could not otherwise afford legal services, nor would they be awarded legal aid. Secondly, students are limited in the extent they can represent clients, stating that

⁵ Giddings J, 'Clinical Legal Education in Australia: A Historical Perspective' (2003) 2003 International Journal of Clinical Legal Education, pp. 9-10

⁶ Wilson RJ, 'Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education' (2009) 10 German Law Journal, p.834

they focus instead on 'a narrow range of matters.'⁷ A further rebuttal is the availability of legal services. For commercial reasons, the availability of legal services in a particular area of law may not be available. This may be due to the fact a case is not financially viable for law firms to pursue, or alternatively, it is not financially viable for a client to pay for the case regardless of their means. This would often be the case in low value disputes where the legal costs would outweigh the value of the claim.

There will always be a need for legal services for those who do not have access to it, making the competition with the legal professions low. Whilst some clinical programmes may be competitive with the legal profession, this is likely to be the exception rather than the rule.

An example of a potentially competitive clinical model would be the business clinic. It may be taking some work away from the profession as they are providing free services to those whose primary alternative option is to hire a lawyer. These clinical programmes will find it more difficult to rebut competition arguments and justify their programme as a need for the community. However, not all business clinics assist clients who can afford legal advice. There are clients in these programmes who cannot afford to pay heavy legal fees to help launch their business, and some programmes will establish this through a means test.

⁷ *Ibid*

Further, some business or transactional clinics may only assist charities. Whilst it is arguable that a charity, especially larger charities would pay for legal services, there is an argument that the wider social benefit is served by retaining money for charitable purposes rather than paying legal fees. Even law firms often provide assistance to charities on a pro bono basis recognising these wider social benefits.

There is also a strong argument for the pedagogical benefits this kind of clinical programme can give to students, allowing them to work in an area of law whereby they may not otherwise get an opportunity. As Campbell states, *'It would be a shame if clinics focusing on transactional work had to continually fight for acceptance, as a consequence of a perceived detachment of that kind of work from a social justice ideology.'*⁸ If a clinic is providing a sound education for students, we may ask whether we do *have* to use social justice as a justification for our clinics. Surely a good education and an introduction to practice can only benefit the profession, providing them with new lawyers who have some experience and equipped with the necessary skills.

It is important in growing the clinical movement to establish what resistance there is to clinical legal education from the profession across Europe, and the reasons for this resistance. We cannot address the problem unless we know the reason for it. However, the anecdotal evidence suggests that measures can be taken to lessen the resistance. Fundamentally, it is important to open a dialogue with the local legal

⁸ Campbell E, 'A dangerous method? Defending the rise of business law clinics in the UK' (2015) 49 *The Law Teacher*, p.175

profession and be clear about what you are doing and why you are doing it. If clinical programmes are seen as a benefit and not a threat, it is likely that they will attract support, rather than resistance.

Resistance/opposition from the academy

This issue is one which has surfaced in many institutions across the globe. When clinical programmes began to evolve there could sometimes be opposition faced internally as well as externally.⁹ This opposition seems to still be alive in some European clinical programmes, especially the newer programmes. One attendee stated that:

'...often academics within the faculty, within the school, can be resistant. Or, even if they're not resistant, uninterested. And I think that a clinic can work really well when everybody's convinced with its value, even if they don't work within it. And they know what the students are doing with it because it can affect their own teaching.'

⁹ For more information please see, Iya, P.F. 'Fostering a Better Interaction Between Academics and Practitioners to Promote Quality Clinical Legal Education with High Ethical Values', *International Journal of Clinical Legal Education*, Vol.3, 2003, pp.41-57.

Bloch characterises the tension in legal education as a 'conflict between theory and practice.'¹⁰ Whilst theoretical scholarship has an established place within the academy, with a clear status and role for those who engage, practice or clinical scholarship has struggled to establish legitimacy. Perhaps this struggle goes to the core of clinical legal education, and in particular the background of many clinicians. Many clinicians are lawyers, not traditional academics, and see their role as teaching legal skills. As such, clinicians may sense their role is practiced based, and not focused on publishing the theory. Thus, it is arguable that it is clinicians who have established the barrier, or at least contributed to it.

However, there are also cultural barriers to overcome if clinicians are to become an accepted member of the academy. Some law schools, especially in countries such as Germany, prefer the traditional teaching methods and do not think there is a place for practical legal teaching within their schools. This is better left for after a student has finished their degree.¹¹

It is necessary to consider that theory and practice are not mutually exclusive concepts. Whilst theory leads to practice, practice also leads to theory and teaching at its best shapes both research and practice.¹² Boyer posits that the term

¹⁰ Bloch F S, 'The case for clinical scholarship', *International Journal of Clinical Legal Education*, Vol.4, 2004, pp.7-21

¹¹ For example see Bucker A and Woodruff A, 'The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences' (2008) 9 *German Law Journal*, p. 609

¹² Boyer E L, 'Scholarship Reconsidered: Priorities of the Professoriate', *The Carnegie Foundation for the Advancement of Teaching*, 1990

'scholarship' should have 'a broader, more capacious meaning, one that brings legitimacy to the full scope of academic work.'¹³ In doing so, he identifies that academic work has four separate but overlapping functions: the scholarship of discovery; the scholarship of integration; the scholarship of application; and the scholarship of teaching.¹⁴

The scholarship of discovery is the closest element to "research". Boyer states that the scholarship of discovery 'contributes not only to the stock of human knowledge but also the intellectual climate of a college or university.'¹⁵ Scholarship of integration is connected to the scholarship of discovery but relates to the connections across disciplines and the knowledge is seen within a larger context.¹⁶ He goes on to state that the difference between "discovery" and "integration" can be understood in the questions asked. Academics engaged in discovery ask, "What is to be known, what is yet to be found?" However, academics engaged in integration ask, "What do the findings mean?"¹⁷ The third element, the scholarship of application, addresses how knowledge can be applied to consequential problems and help both individuals and institutions.¹⁸ Boyer is careful to point out that application is not a one-way

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid, p.17

¹⁶ Ibid, pp.18-19

¹⁷ Ibid, p.19

¹⁸ Ibid, p.21

street; knowledge is not merely discovered then applied. Indeed, new intellectual understanding can arise from the application of the knowledge; theory and practice interact so that one will renew the other.¹⁹ Finally, the scholarship of teaching is more than transmitting knowledge, it is “transforming” and “extending” it as well.²⁰ The scholarship of teaching is important as it not only educates but also entices future scholars.²¹

Hutchings and Shulman stated that the ‘scholarship of teaching’ has three ‘central features of being public (“community property”), open to critique and evaluation and in a form that others can build on’. They go on to state that there is a fourth attribute, namely ‘that it involves question-asking, inquiry and investigation, particularly around the issues of student learning.’²²

In applying the notion of scholarship of teaching to clinical scholarship, clinicians are uniquely placed to study the legal profession from a different perspective to their academic colleagues. Indeed Bloch highlights that that a ‘great strength of clinical legal education is that it embraces its ties to the “real world” of law practice. The clinical methodology gains much of its richness when student are immersed in

¹⁹ Ibid, p.23

²⁰ Ibid, p.24

²¹ Ibid, p.23

²² Hutchings P and Shulman L, ‘The Scholarship of Teaching: New Elaborations, New Developments’, The Carnegie Foundation for the Advancement of Teaching, 1999

actual lawyer work, with all of its complexities and ambiguities.”²³ It is thus important that clinical work is made public allowing others to scrutinise and build upon the work already undertaken. Whilst there has been an historic tendency for clinicians either not to engage in scholarship, or alternatively to talk over one another, this has hindered the development of clinical scholarship within the academy. By engaging in such scholarship, arguably clinical scholarship will become an accepted part of the academy and thus reduce internal friction.

However, there are also practical difficulties faced by clinicians if they are to be on equal footing to other academics. As well as running the clinic they may also have the same responsibilities and duties as the other academics within the institution, but will not get paid extra for this extra work or have their other workload lessened. This is an issue which could have an impact on the running and sustainability of clinical programmes. Clinical programmes are becoming an accepted form of legal education and the clinicians running them should be allowed the time and support to do so.

Whilst clinicians work extremely hard to make their programmes successful, there can be a lack of recognition. They may not be publishing as much as other members of academic staff or their achievements not as widely recognised. For example, Donnelly argues that, *‘[i]t is grossly unrealistic to hold clinicians to the same boilerplate*

²³ Supra n.7

*standard as our colleagues when seeking promotion, especially when there is still little recognition granted to clinical work.'*²⁴

The publishing element of a clinician's work provides another issue in the argument of scholarship. As lawyers, and not academics, some clinicians are not provided with, or encouraged, to undertake training in how to conduct research and publish it. This makes it difficult for clinicians to produce the work they would like to and push them further to this scholarship status.

Furthermore, even if this training is provided not every institution allows sufficient work allocation to conduct and write up research. If a clinician wishes to write research for publication this comes out of their own time, which they do not seem to have a lot of when running a clinic.

If clinicians are to have equal status within the academy, it is important that they undertake research or, clinical scholarship. As the clinical movement is growing it is imperative that we gather evidence as to the effectiveness of our practice and that we are sharing our experiences. By making our work public, we allow others to learn from our experience and build upon our work, thus improving the quality of the educational experience.

Considering these differences, clinicians have a choice as to whether they argue their work is different to that of traditional academics, or whether to argue it has the same

²⁴ Donnelly L, 'Clinical Legal Education in Ireland: Some Transatlantic Musings' (2010-2011) 4 Phoenix Law Review, p.15

status. Bloch states that if the distinction is rejected, this can result in ‘a “blood bath” at the time of promotion or tenure.’²⁵ However, acceptance of the distinction creates ‘an almost unavoidable second-class status for the clinical program and its faculty.’²⁶ It seems that if clinicians wish to establish their equal status within the academy, their work must be held as equivalent to that of traditional academics. If clinicians are engaged in scholarship, then this must surely have the same standing as others engaged in scholarship.

Further, it is only through engagement in clinical scholarship that clinicians can address the issues identified above. Examples include evidencing the benefits of clinical programmes, identifying and tackling the barriers to the clinical mission and enhancing the quality of the programme for the students. These are important issues when we ask why we do clinic.

As clinical programmes grow within Europe and with the knowledge that they can provide students with a rich legal education, we should consider whether there is a divide between academics and clinicians. There should be a mutual appreciation between academics and clinicians of the work done and the value it holds to a

²⁵ Supra n.7

²⁶ Ibid

university. Arguably with the recent educational reforms in Europe and the introduction of the Bologna Process²⁷ clinic will help with implementation of this.²⁸

WHERE DO WE GO NEXT?

As the European clinical movement develops, it is clear that there are challenges ahead. In addressing these challenges, clinicians need to reflect upon their own practice and establish their own identity.

This article merely highlights issues raised throughout the two days of the Workshop. We must establish a clear vision of the next steps to take and to keep the European clinical movement pushing forward. However, during the discussion there was not a consensus reached on certain issues, different attendees haven different experiences in their clinics. This may suggest that it is not possible to establish a single identity for a European clinical movement with each jurisdiction facing its own challenges. We cannot treat all jurisdictions in the same way, but it may be possible to establish a common thread or adapt the model as and when necessary.

²⁷ For more information on the Bologna Process and its implementation please see

http://www.ehea.info/Uploads/SubmittedFiles/5_2015/132824.pdf

²⁸ *Supra* n.6

Research in clinic should now be a leading agenda throughout Europe. We learnt during the last session of the Workshop that the amount of peer reviewed articles published in clinical legal education is vast. However, Europe does not produce as much as other continents. In order for our movement to keep growing we must share experiences, failures and successes. Publishing research is a great way to do this. Furthermore, the research we can produce will help to justify why we do clinic. As Tomoszek states:

*'The positive contribution of clinical legal education towards the overall outcome of legal education system still has not been proven by a rigorous empirical evidence-based study – it is mostly based on belief of clinical teachers and clinical students.'*²⁹

ENCLE provides the network to support and facilitate this agenda across Europe. Supporting the growth and quality of clinical legal education through, amongst other things, research and scholarship is at the core of the ENCLE mission.

Whilst this belief is strong and the claims of the benefits of clinical legal education are logical to make, there is still a need for the rigorous and empirical research to be conducted. This will help to make our argument and justifications even stronger.

²⁹ Tomoszek M, 'The Growth of Legal Clinics in Europe - Faith and Hope, or Evidence and Hard Work?' (2014) 21 International Journal of Clinical Legal Education, pp. 99-100

With sharing these experiences comes the opportunity to help develop clinical programmes throughout Europe. The opposition faced by clinical programmes is sometimes great and with help from other established programmes, and experienced clinicians, they can be overcome.

Practice Report: Teaching and Learning in Clinic

LAWYERING IN A DIGITAL AGE: A PRACTICE REPORT

INTRODUCING THE VIRTUAL LAW CLINIC AT CUMBRIA

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Abstract

This practice paper offers a modest proposition that could make law graduates more capable of serving their clients in a modernised and efficient manner. We propose that in addition to law clinics and other forms of experiential activities, law schools could add a new type of clinical component to their curriculum that teaches students to use technology to assist in the delivery of legal services. Digital lawyering skills will help law students learn core competencies needed in an increasingly technological profession, and it may help close the gap between offering access to justice by making legal services available online in the most accessible and convenient way possible and in equipping law graduates with a modernised and digital legal education.

This is a practice report describing a new technological invention at the University of Cumbria Law department, and offers information on the reasons behind the creation and how it works. A research paper on the validity of this work, framing the learning outcomes in the context of clinical education and evaluating its effectiveness will be published in 2016.

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A TECHNOLOGICAL INNOVATION IN CLINICAL LEGAL EDUCATION

The Cumbria Virtual Law Clinic (VLC) is an online clinic in partnership between students, supervising tutors and pro-bono solicitors in practice locally. The VLC has been designed to enhance the legal education of students through direct experience of legal practice using the medium of a virtual law office under supervision and also to provide a public service for people who need legal advice and representation but cannot afford to pay for it. In working on the VLC, students are expected to have the full responsibility of their cases, undertaking such tasks as legal research, corresponding, drafting statements of case, interviewing clients and expert witnesses and to undertake online dispute resolution on under tutor supervision. All of these activities, including managing their case and keeping time will take place on the VLC platform.

The theoretical framework adopts that of the intended learning outcome of clinical legal education,² embedded through the pedagogy of collaborative experiential

² The Clinical Legal Education is a term which encompasses learning which is focused on enabling students to understand how the law works in action. This can be done by undertaking actual cases or realistic simulated case work. Leaders in the field of Clinical Legal Education have written substantially on this area including Kerrigan K., and Murry, V 'A student guide to Clinical Legal Education', Palgrave (2011); Hall, J and Kerrigan K (2011) Clinic and the wider law curriculum. *International Journal of Clinical Legal Education*, 15-16. pp. 25-37; Gold, N., Nurturing professionalism through Clinical legal education, for the *International Journal of Clinical Legal Education and European Network for Clinical Legal Education Joint Conference*, Olomouc, Czech Republic (2014)

learning with the opportunity to reflect on the transactional learning experience³ to promote deep learning.

The virtual law clinic project has also been an opportunity for international collaboration as one of its earlier prototype was used in an international negotiation exercise between Cumbria and a German law school. A paper on the design of the then prototype and the learning outcomes from the international collaboration project will be published in 2016.⁴

The design of the current VLC was completed in May 2015, and showcased in London, Berlin and Cumbria. After undertaking two pilot studies, the VLC has undergone a range of improvements and changes, taking on board feedback from law firms, student advisors and clients. A further pilot will be carried out by December 2015 with the aim of rolling out the VLC for full use by the public in April 2016. The current edition of the VLC prototype is accessible from www.cloudclinics.co.uk.

³ The philosophy behind transactional learning was created by Paul Maharg in Maharg, P (2004) *Virtual communities on the web: transactional learning and teaching*, in *Aan het werk met ICT in het academisch onderwijs*, Vedder, A. (Ed), Rotterdam: Wolf Legal Publisher, and it was then discussed further in Maharg P, (2006) *Authenticity in Learning: Transactional Learning in Virtual Communities*, Journal of Information, Law and Technology (JILT). Transactional Learning is defined as learning activities and opportunities that exhibit the following design characteristics:

- Active learning;
- The practical realities of transactions forming the basis of learning
- Opportunities to reflect on learning;
- Collaboration (both within and across teams
- Process, or holistic, learning.
- Immersion in professional role-play
- Task authenticity

⁴ Thanaraj, A., *Internationalizing Education: Evaluating the growth of intercultural communication and competency in students through an international negotiation project using an online law office*, Journal of Pedagogic Development, 2016, forthcoming.

The intended learning outcomes of the VLC project are:

1. To address the changes to the delivery of legal services
 - Preliminary work is underway with the Law Society on developing the VLC
 - Working with interested law schools to build a working group on
 - Digital Lawyering in Clinical Education to share ideas and showcase how we can equip our graduates for the 21st century legal profession.
2. To undertake and disseminate research in the field of digital clinical education
 - With the aim of exploring, understanding and ascertaining the future of the delivery of legal services
 - Examining its impact on the gap in offering a modernised legal education to meet the education and training needs for the future legal industry.
 - Identifying whether digital lawyering is a key component of a modern legal education and if so, what this means and the sorts of curriculum that needs to be developed and embedded into law programmes
3. To offer law students the opportunity to undertake digital lawyering experience
 - Develop understanding and gaining experience in online dispute resolution for solving disputes, using the practice of digital lawyering skills and e-practice management,
 - Gaining a realistic view of the future of legal services and the profession
 - Develop understand the role of technology, privacy and security and how it affects legal ethics and constrains associated with this.
 - Gaining transferable skills in maintain personal responsibility and accountability in both personal and group contexts online, working effectively with others online and undertaking decision-making in complex contexts.

CHANGES TO THE DELIVERY OF LEGAL SERVICES IN THE UK AND USA

There is a real need to provide our community, both locally and nationally with free and easily accessible legal advice. The VLC also offers our students the opportunity to engage with digital lawyering, the skills, experience and ethics involved in this method of delivering legal advice.

The Legal Services Act 2007⁵ has sought to liberalise and regulate the market for legal services in England and Wales, to encourage more competition, facilitated by the creation and delivery of legal services through alternative business structures, thereby offering a more competitive and flexible approach to how legal services are being offered to clients. In a publication entitled 'Legal innovation 2013 - New developments in an old profession', Andrew Grech, the managing director of Slater & Gordon explains that *'If we are looking to 2020 and 2030...I know there's a big focus on online as a delivery system and of course that's very important'*.⁶ Similarly, the creator of the website Road Traffic Representation, an online legal service for those faced with prosecution for motoring offences, solicitor Martin Langan argues that *'the big game changer is the power of technology to pull back the curtain of mystique...'*⁷

⁵ Legal Services Act 2007, accessible at <http://www.justice.gov.uk/publications/legalservicesbill.htm>

⁶ Grech, A., (June 2013) in 'Legal innovation 2013 - New developments in an old profession', Baker Tilly publications

⁷ Langan, M., (June 2013) in 'Legal innovation 2013 - New developments in an old profession', Baker Tilly publications

A similar change is taking place in the USA. Since 2010, the American Bar Association has set up a committee⁸ looking into proposing new approaches to the delivery of legal services and new ways of working. In 2014, The State Bar of Michigan discussed extensively on how technology, globalization, and other forces are transforming the ways legal services are accessed and delivered⁹ at its annual conference.

The concept of digital lawyering as a theoretical framework within legal education is a fairly new idea. There are still many unanswered question such as what does the legal professional need to know about how technology functions to be competent in the practice of law and what methods can we employ to educate law students entering a legal field which is technology-driven. In response to the impact of the Legal Services Act 2007, the research paper by the Legal Services Consumer Panel in November 2014 on '2020 Legal Services: How regulators should prepare for the future'¹⁰ identifies that technology will go to the heart of all aspects of legal services in the future, changing how legal problems are identified, people and businesses resolve their disagreements, the way consumers choose providers, how legal services are delivered and law firms run their businesses.

⁸ The ABA's Commission on the Future of Legal Services, accessible at:

http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html

⁹ The ABA's Commission on the Future of Legal Services, 'The Future of Legal Services: Changes and Challenges in the Delivery of Legal Services' November 10, 2014, State Bar of Michigan, accessible at: <http://www.michbar.org/file/generalinfo/pdfs/FutureReport.pdf>

¹⁰ Legal Services Consumer Panel in November 2014 on '2020 Legal Services: How regulators should prepare for the future', accessible at:

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2020consumerchallenge.pdf

We submit that the use of technology attracts little overhead cost, can streamline workflow processes and case management, improve efficiency and make easier the ethical and malpractice issues through automated built-in checks, whilst enjoying an expanded client base with a competitive advantage of easy accessibility and flexibility. Though this method of obtaining legal services, the public will benefit from greater access to services in our communities through collaboration between local organisations, pooling resources and streamlining referrals and communications. This would help ensure the people most in need of our services were able to be linked quickly with the organisation best able to provide it.

We also submit that our legal education system could do more to offer a modernised education which sets up law graduates as the future of the legal profession. It is now time for legal education to adopt technology as a necessary and vital part of learning to become a lawyer through the integration of apps such as the VLC and teaching about issues such as issues relating to security, management of data and privacy, alongside the experience of learning how to undertake lawyering on a digital platform. The VLC created in Cumbria takes this one step further to facilitate a client's full legal matter to be handled through its virtual clinic.

HOW DOES THE CUMBRIA VLC WORK?

The VLC will aim to provide general information and initial advice on solving straightforward legal disputes. Students and clients are able to securely discuss legal matters online and handle the transactions of a physical law office within a

secure digital environment. All aspects of the case including all aspects of managing the case will be recorded and archived.¹¹ Each firm contains 4-6 students specialising in: Landlord and Tenant law, Family law, Employment law, or Consumer Protection and general contract law matters.

Clients will request legal assistance through the contact form on the client portal. Clients will need to provide information relating to themselves and their contact details. We appreciate that many clients are not technology literate and will need access to advisers on the telephone and documents in hard copy. The VLC sets out very clearly that all work on the case and all communications will take place virtually, and it is then for the client to decide if this manner of receiving legal services is something that is suitable for them. Terms and conditions will be available for reading and clients will need to click to accept before proceeding with making a request using clickwrap agreements.¹² Clickwrap agreements are binding

¹¹ The Law Society is yet to comment on the intricacies, formalities and ethical constraints of different ways of working, especially in the delivery of online legal services. Thus, as a reference point, this paper will refer to the American Bar Association as a benchmark on good practice for the VLC development. The ABA of the city of New York gave a formal opinion in 2008 stating that '*A lawyer's ethical obligations to retain and to provide a client with electronic documentation relation to a representation*'. In practical terms this relates to the need for the lawyer must take affirmative action to preserve any digital communication regarding the representation that may otherwise be deleted or lost from their digital filing system. Accessible at: http://www2.nycbar.org/Publications/reports/show_html_new.php?rid=794

¹² Accepting terms and conditions in a client-advisor agreement for example using clickwrap agreements is a common method of clicking to accept the terms of agreement. These methods are commonly used in internet banking, social media, or when purchasing items. The application and critical discussions surrounding online contracts and viability of clickwrap agreements in the US is discussed by Kunz et.al in '*Click-Through Agreements: Strategies for Avoiding Disputes on Validity of Assent*', accessible at: <http://www.stepto.com/assets/attachments/2353.pdf> and also by Gupta, I, '*Are websites adequately communicating terms and conditions link in a browse-wrap agreement?*', European Journal for Law and Technology, Vol. 3, No. 2, 2012 accessible at <http://ejlt.org/article/view/47/239>.

and enforceable contracts provided the user has continued access to the terms they are clicking to accept.¹³

Tutors supervising the clinic will receive notice of a new registration and enquiry. Based on educational benefit, timescale and complexity of the request, tutors will approve or reject client requests within three working days of receiving the enquiry. If the enquiry is deemed to be unsuitable, the VLC will signpost another source of assistance. The VLC will run collaboratively with local firms, pooling resources and streamlining referrals and communications.

If accepted, tutors then add the approved user to the system. The client will receive a username/password combination and a link to the clinic. The student advisor/client relationship is formed through an agreement e-signed by both parties which sets out the scope of service, liability and timescale is clearly defined. The client will always have access to the terms and conditions of using the VLC service and the student advisor-client relationship agreement which they can refer to from the client portal.

The student providing legal assistance will then initiate contact with the client through a built in communication tool to introduce themselves and explain how

¹³ In England, the Unfair Contract Terms Directive, which applies to all consumer contracts whether online or offline, requires Member States to “ensure that contracts concluded with consumers do not contain unfair terms.” (Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts). Specifically relevant to internet contracts, the directive provides: “A contractual term which has not been individually negotiated shall be regarded as unfair if . . . it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer.” (Article 3.1) The Acts allow for direct enforcement action by the consumer and also empowers the Office of Fair Trading and other regulatory bodies to seek enforcement through the courts.

See IT Consumer Contracts Made at a Distance – Guidance on Compliance with the Distance Selling and Unfair Terms in Consumer Contracts Regulation, Publication no.672 (Dec. 2005), available at http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft672.pdf

their request will be handled. Tutors will supervise all work that is undertaken via the portal. Clients can request research and advice to be undertaken. All request sent to the clinic will be confirmed in writing. Case status will be updated when work is undertaken. Clients and advisors can communicate via built-in secure email within the clinic. If further discussions are required, the client and student can hold a video conference session within the client's portal itself. This will be recorded and archived for the client, tutor and student advisor to review where necessary.

Once an appointment has been arranged for a detailed discussion, the client will be interviewed by two student advisors from the University and a volunteer lawyer from a law firm via the VLC's communication tools. Clients will need to upload all the relevant documents for the interview. All communications between the client and the advisors will be undertaken through the secure and encrypted portal with the strictest confidence. In addition to providing legal advice, student advisors will write letters and otherwise communicate with others on the client's behalf.

The legal assistance that will be provided includes legal advice, writing letters, speaking to relevant authorities or opponents, negotiating settlements to disputes, and representation in the courts. Work undertaken by the student advisors under supervision will be free of charge. However clients may still need to pay their own legal expenses, such as the cost of instituting proceedings, or other expenses, such as getting to court.

Any documentations written or provided during this process is uploaded to the secure document repository within the clinic group. It is possible for the client and

student to feed back to each other's submissions using the commenting feature. All matters are recorded for training and auditing purposes. The security used in a VLC is the same high-level technology used by online banking to protect the information being exchanged. Documents stored by the firm in a VLO are protected by this level of security and are accessible anywhere as long as there is access to the internet.

Once the matter has closed, the client and advisor will sign an agreement to bring the representation to a close. The case will be archived and is available for the client and advisor to request access. The client will be provided with a digital encrypted version of their file for download and printing.



Figure 1: Virtual Law Clinic homepage

Figure 2: Client contact form

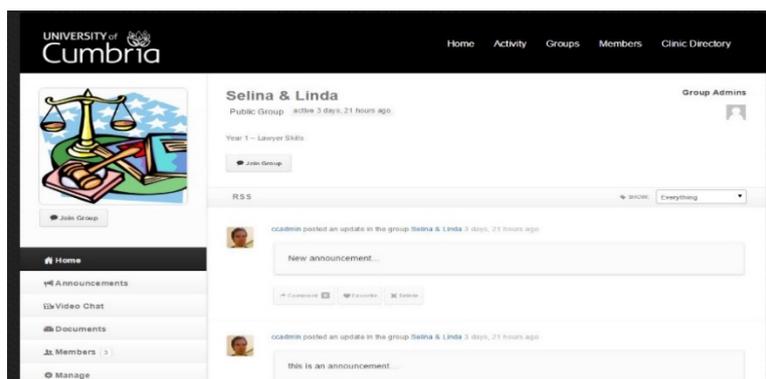


Figure 3 Group collaboration page

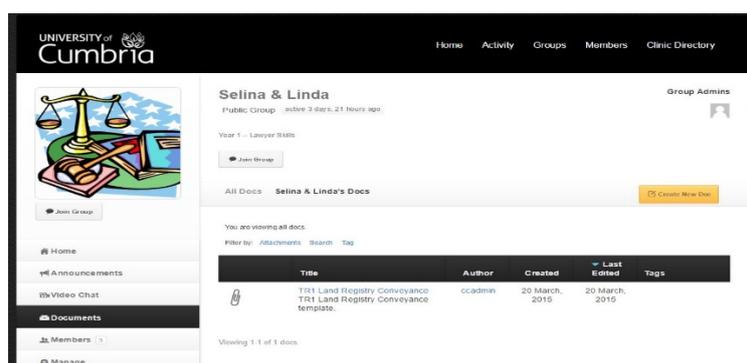


Figure 4: Process management and document system

THE DESIGN PRINCIPLES OF THE CUMBRIA VIRTUAL LAW CLINIC

Our intention was to create a secure platform which enabled new ways to communicate and collaborate with clients, supervising tutors and pro-bono solicitors, produce documents, settle disputes, interview clients, and fully manage client's cases online using suitable and secure electronic tools and techniques. The prototype¹⁴ that is currently designed has the ability to encompass the entire process of working with a client online from the start of the client-advisor relationship until the end of the case. It is bound in the real world by the jurisdiction of English law, expecting student advisors to demonstrate a high standard of care and demands close attention to compliance with the rules of professional responsibility, as they

¹⁴ The current edition of the VLC prototype is accessible from www.cloudclinics.co.uk

would in a traditional law clinic environment, supported with features for efficiency and compliancy such as keeping to limitation periods and deadlines with built in calendar and reminder notifications.

A full research paper which is forthcoming in 2016 will provide a detailed evaluation of the pedagogical benefits of a VLC, drawing upon the already well-established theory of clinical legal education and various pilot studies which have been conducted through this medium in testing the system.

Nevertheless, the VLC encompasses experimental learning, generating confidence in students as their success is determined by their own efforts, allowing for detailed application of knowledge, reflection and self-examination. It gives students the opportunity to explain why they are taking certain actions and they are able to discuss and reconsider their actions. Students can examine the legal and social issues in some depth, developing and acquiring improved skills in research, communication, interviewing, drafting, negotiating, and problem solving. Further, the work undertaken through the VLC platform allows awareness of ethics and the professional responsibility and conduct of lawyers, whilst understanding the problems of different generation and background. This experience can add to their understanding of the position of others in society, and can increase their maturity and sense of responsibility. Most importantly however, it equips students for the changes that is to come in future years in the delivery of legal services, using alternative cost-effective means, affordable and accessible for clients.

Given the rate at which technology evolves, and from the pilot studies we are undertaking, we believe that the features of the VLC will continue to expand to provide additional communication and security features.



Figure 5: Merging technology with clinical legal education

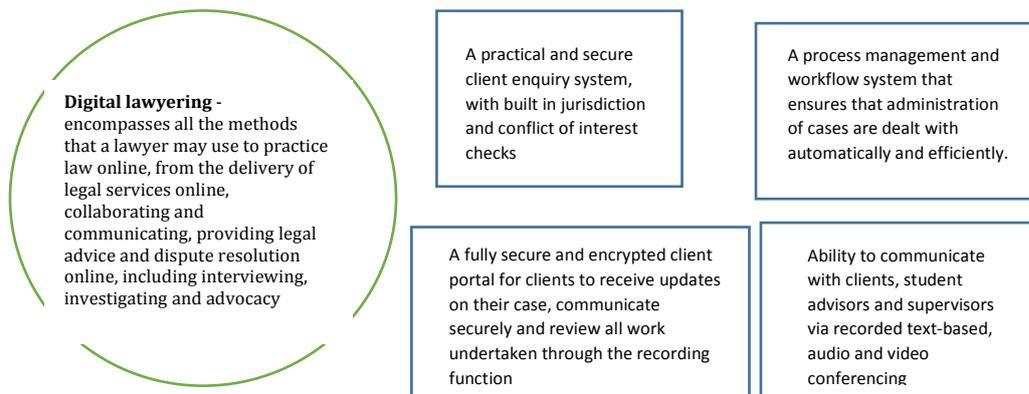


Figure 6: Features of a functioning and secure VLC

We began the project by considering the following factors:

- Software and application framework
 - Identifying and exploring the viability of various types of technology, software and application frameworks which will be relevant to design and function of a virtual law clinic
 - Questioning and determining how will the technology allow document automation and management, collation of client data, automated timesheets and calendar notifications and how clients and student advisors can utilize a variety of communication methods through the platform?

Our options were to use already available application frameworks as a backbone to creating a VLC

We reviewed the use of Blackboard and found that it had an intuitive interface and it was a familiar platform to many universities, students and easy to navigate for clients. However the standard version of Bb Learn did not have collaborative tools or document management and upgrading it to a premium version was expensive for a pilot project. We also reviewed Moodle, which is another learning management framework used by many universities. We found that it was open source with an active developer community which made the development and administration of the software more supportive. However it was an unintuitive system with a slightly outdated interface and difficult to administer for the purposes of a VLC and the complexity and functionality required.

Next we reviewed WordPress, which is widely known for its blogging functions. It is open source with a very active developer community offering a large library of

plugins and themes for customisation and adaption. Because of the nature of WordPress and the large array of possibilities it offers in terms of what it can be used for it requires regular maintenance. We settled on WordPress, thanks to no costly subscription fees for document management and collaboration features, its readily available plugins for many required features, ease of use for clients, students and tutors, straightforward administration and upgrade procedures and its ability to rapidly develop new features.

We configured WordPress to support multiple sites. Each site refer to a 'clinic' and administering and developing the technicalities behind it allowed for a highly scalable development with any number of clinics and users. Within WordPress, we utilized a plugin application called BuddyPress. This is a collection of collaboration tools for WordPress. We have created groups to organise participants within a clinic, messaging component allows user-to-user communications, BuddyPress Docs for document management (allows users to upload, share and store revisions of materials), Bastri for real-time video conferencing and BuddyPress Group Email Subscription plugin used to notify participants of activity within clinic groups and to ensure the efficient management of each case within appropriate deadlines.

- Building the Virtual Law Clinic exterior interface
 - We discussed with student advisors, pro-bono solicitors and law firms on what the look and feel of the VLC platform should be and what it should be capable of performing. We drew up a list of the case management protocol as a starting point.

- The VLC had to be capable of managing enquiries from clients and the workflow process of how the enquiry reaches the clinic and then determine what happens once a case is taken on, such as the automated built-in checks on jurisdiction, applicable law, conflict of interest and so on.

We have designed the VLC platform to allow tutors the flexibility to adapt to colour schemes, themes, university logo and image branding and an array of widgets useful to a clinic to display in the footer or side bar of each clinic. Each clinic template is highly customisable. We wanted an easy to navigate through site content, one which is not overwhelming with too many design features that is distracting. Tutors can quickly create new clinics using a bespoke administration tool. The clinics may be archived once complete. During administration upgrade, there will not be any disruption to the clinics or the materials held within it. Apart from mimicking the reality of a law firm, we also wanted the VLC to provide the sorts of content that will be educational for the public

In order to ensure that all clients are aware of how the VLC functions and how it works, information within the VLC is laid out upfront with the necessary information and advice relating to jurisdiction, that the legal services provided will be purely online only and the turnaround time for handling enquiries. Liability clause, terms and conditions, disclaimers, client-advisor agreements are made available on all pages of the platform for clients and potential clients to review at any time.

We have undertaken rigorous testing of the functionality of the platform including its security, efficiency and accessibility through two pilot projects involving 3 student advisors, 2 supervising tutors and 2 clients in each pilot. A third pilot involving a law firm will take place in December 2015 to ensure that the client's portal facilitates client's needs and expectations followed by making revisions to the portal after pilot feedback.

- Design and function of the internal site – the client portal
 - After a number of consultations with various law firms and student advisors, we came up with a list of design principles for the client portal and what it should be capable of doing.
 - A priority was the security, confidentiality and encryption of the portal
 - Features of the portal such as communication tools, updates and progress on case, ability to contact student advisors, uploading and downloading of documentations were key design and function features

Having made an enquiry using the VLC enquiry form, and this being reviewed by the supervising tutor and accepted as a matter that will be dealt with by the VLC, the client is provided with a unique login combination which will allow access into the client's bespoke portal. When the client logs in, they will be taken to their own portal. It is the primary feature of the VLC that facilitates the delivery of the online service.

The portal also includes built-in communication functions multiple-way communications between the client, advisor, supervising tutor and others. The communication options are by written correspondence on the portal, audio or video conferencing. No special software is required. The client will require either a mobile phone or personal computer or portal electronic device with a camera. It is through

this platform that the client and student advisor will communicate, exchange documentations, hold audio and video conferencing and obtain advice. The platform and its functionality is encrypted to keep the information secure.¹⁵

Once client-advisor relationship is formed, the client will always have access to their case files and documentations either uploaded by the client or those prepared by the advisors. These are available for reviewing online, feedback and commenting. The portal also consists of reminders and basic guidance for clients on protecting their computers, backups, keeping their login details secure and security issues and reminders. Tutorial have also been created to help clients navigate through the VLC and client portal. Educational publications are also made available for useful general knowledge on legal updates.

Inside the portal, each communication between the client and lawyer is recorded and stored within the client's portal space with a date and time of when the communication took place. Documentations will contain information of when it was uploaded, when work was undertaken on it, when it was last edited and by whom. Clients will not be able to delete or amend any information. All the data stored will remain on the hosted system and are subject to regular backups

We thought that prospective clients may benefit from watching a short five minute tutorial video that explains the firm's online legal services or how to register for an account and request legal assistance.

Before the client can access the full function of the client's portal, the client is required to undertake a registration process which requires a completion of personal details, address and employment history. The client will then need to read and accept each of the terms and conditions of the client-advisor services using a clickwrap agreement process. In the terms and conditions of service we have included information on liability, disclaimers, nature of the service provided, the

¹⁵ Encryption is a process in which the data is converted into a state using an algorithm that is not readable without a key to decrypt it. Information on the use and method of encryption can be accessible at: <http://searchsecurity.techtarget.com/definition/encryption>

methods of communication available, the storage and return of client's data and the recording of all transactions which take place on the portal.

We will also request that the client uploads two sets of identification documents to the portal with a signature to confirm their identity. It is after this process that the client will be able to access the full portal and begin work with the student advisor and supervising tutor.

CHALLENGES IN DESIGNING A VIRTUAL LAW CLINIC

A case of mistaken identity

When we undertook focus groups to determine what the client portal should be able to do, we came across a number of misunderstood functionality of a VLC. We found out that a VLC is mistaken to be a simulated clinic. Some thought that it was a platform to download forms and brochures about the law. Although we will be working on developing a section on publications with updates on the law, this is not the sole purpose of the VLC. Some also thought that it was possible to submit an enquiry but also meet the advisors in person. It is only possible to contact the members of the VLC via the built-in enquiries form on the site, and the conversation between the client and advisor takes place via video conferencing through the secure client portal. Our terms and conditions and information for clients section on the portal has addressed all of these mistaken identity factors.

Managing expectations

We wanted to develop a system that was client-friendly ensuring that the needs of the client is taken care of both by the advisors and the functionality of the system itself. We have revised this numerous times to allow the system to automate responses efficiently whenever a client or prospective client gets in touch. For example, we formulated a simple automated response to prospective clients who make an enquiry using the built-in contact form.

'Thank you for your enquiry to the Cumbria Virtual Law Clinic. We will get in touch with you within three working days. If we are unable to assist you we will offer you some assistance in finding a suitable law firm at the soonest'.

When work is undertaken on a client's case, the client will be notified.

'We are working on your case and an update on the progress of work will be made available to you in your portal at the end of the working day. Please access the client portal with your secure login details to review and update any requests'.

In order to ensure that the client is always aware and reminded of how the VLC functions, the terms and conditions, associated disclaimers and liability clauses are also set out on every page of the client's portal for convenient reference.¹⁶

¹⁶ This is in compliance with the application of IT Consumer Contracts Made at a Distance – Guidance on Compliance with the Distance Selling and Unfair Terms in Consumer Contracts Regulation, Publication no.672 (Dec. 2005), available at http://www.ofc.gov.uk/shared_ofc/reports/consumer_protection/ofc672.pdf

RECOMMENDATIONS FOR SECURITY AND SENSITIVE DATA MANAGEMENT

Student advisors, supervising tutors and clients must be educated about security threats when practicing on remote devices and how to mitigate those risks. This will form part of the introductory module to Digital Lawyering skills. Clients and everyone using the VLC will need to be reminded that any data held on portable devices such as mobile phones, laptops and other handheld devices are sometimes not encrypted and the data can be accessible widely. If devices are stolen or misplaced, sensitive and confidential legal matters would be vulnerable. Even if data is backed up, the information in the devices can be misused.

The Law Society is yet to comment on the intricacies, formalities and ethical constraints of different ways of working, especially in the delivery of online legal services. Thus, as a reference point, this paper will refer to the American Bar Association as a benchmark on good practice for the VLC development. In 2008, the Association of the Bar of New York Committee¹⁷ on professional and judicial ethics, gave their formal opinion suggesting that the lawyer must take affirmative action to preserve any digital communication regarding the representation that may otherwise be deleted or lost from their digital filing system. This includes discussing storage and retrieval of electronic data and documents at the beginning of client representation. Similarly, in 2009, the Arizona state bar stated that lawyers may store law office data online and use a system that allows their clients to access the

¹⁷ The ABA's Commission on the Future of Legal Services, accessible at: http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html

information online as long as the lawyer takes ‘reasonable precaution’¹⁸ to safeguard the security of that confidential information.

Using the advice given by the ABA, we translate the expectations of safe handling of data into the following practical tips to ensure secure storing and access of data:

- Full disk encryption on the hard drive
- Avoid free wifi hotspots as these are shared public access points, sometimes with open access
- Ensure that the data stored is hosted on a server that the organisation controls and has access to, rather than a third party.
- Only the client and advisor and relevant supervising tutors should have access to the client information.

REACTIONS FROM PILOT STUDY

Having conducted two pilot studies, here are some of the reactions of students and a client having completed a full case on the Virtual Law Clinic.

Jim, a final year student on the LLB programme was a student advisor on this matter. He said

“I couldn’t believe what we have here at Cumbria. This is quite a cool idea and really innovative! So we had some training on how to use the VLC – straightforward. I knew what to expect from working in law firms – the same process but online. In fact this time it was easier. The system managed a few aspects of timesheets and deadline updates automatically...”

¹⁸ State Bar of Arizona Ethics Opinions: Confidentiality; Maintaining Client Files; Electronic Storage; Internet, Rule 1.6a accessible at:

<http://www.azbar.org/Ethics/EthicsOpinions/ViewEthicsOpinion?id=704>

... Today, we received our first enquiry, an Employment law matter. I was amazed at how the VLC could automatically assign the cases to the respective firms. The enquiry after being approved by my tutor, just popped up on the Employment law clinic inbox. Everything we were doing on the firm, including talking to each other was automatically recorded. My tutor could check everything we were doing, and that made me feel more relaxed...

...The video conferencing interview was so different to what I was used to. There were no problems in using it though and the client was really pleased she could see us and the conversation went very well. But I think it takes some getting used to not speaking face-to-face. My tutor has plans of using this to collaborate with law schools across the UK and Europe. I am really excited to have some international experience in my studies”.

Sophie, is also a final year student and was an advisor on the Employment law matter. She said

“... My tutor mentioned digital lawyering – I never thought I would hear that in a small law school – and I am so glad that we are learning about how to run cases online...

...I undertook some work experience in New York last summer and a few attorneys were discussing a shift towards online legal services....

...I loved the experience from the exercise with the client we just completed on the virtual law clinic and I can see this catching on”.

Holly was our employment law client. She is also an employment lawyer by profession. She agreed to try out the VLC as if she was a client with the aim of exploring its potential in her own practice. She said

'I completed an enquiry form and within an hour it generated a secure login ID. I logged in a few hours later and found out that my case has been accepted by one of the firms. I was sent an automatic document explaining the how confidentiality and the security of the system worked. I felt this is the same as online banking, so didn't worry about it...

...I think the students at Cumbria are fortunate to be getting hands on real life experience of digital lawyering and how legal service can be delivered using technology...With online consultations in law already becoming the norm in America, I think the VLC allows students to learn all about practice and challenges of online law practice...

...The software is really well designed and I felt very happy and comfortable. I would recommend this to others who may need some free legal help...

FUTURE DIRECTION OF THE DIGITAL LAWYERING PROJECT

Phase 5 January-March 2016	Client videos and pilot 3	To develop further short video clips and factsheets to make legal advice more accessible to clients. These will be made available by students under supervision. <ul style="list-style-type: none"> • A final pilot study will take place before the clinic is fully rolled out at university. • Commencing work on funding application to the EU
	Promoting the services of the clinic	Requiring advice on how best to market the virtual law clinic. Our clients include new businesses, and clients requiring advice on housing and employment law.

Phase 6 February-April 2016	Implemented in curriculum	<p>Students will now be advising clients using the virtual law clinic. Aim is to provide access to justice to those who otherwise cannot access and afford legal advice. We will be working with local businesses and start-up enterprises on offering advice on Intellectual Property, Employment law or housing law matters.</p> <p>Selection of clients criteria include:</p> <ul style="list-style-type: none"> • The educational benefit of the legal issue for students • Capacity and expertise to deal with enquiry • No conflict of interest in line with professional obligations • Indemnity insurance • Opening hours and term-time limits on clinic
Phase 7 March 2016- May 2016	Showcasing and training to members of staff at Cumbria	<p>Encouraging members of staff at UoC to undertake experiments and pilot studies using the virtual clinic for their own programmes. Lunch time training events and showcases will be held</p>
Phase 8 Summer 2016	Hosting a Digital Lawyering national conference: D-CLE	<p>Digital Clinical Legal Education - Law Schools will be invited to participate in a one day workshop at Cumbria on digital lawyering skills and how best to educate our students for the changing future of the delivery of legal services. Conference planning is underway.</p> <ul style="list-style-type: none"> • Creating a community of practice to influence the Solicitors and Barristers Authority in the UK to understand the need to modernise legal education – a scoping paper will be provided.
Phase 9 July-August 2016	Showcasing the VLC and its functionality	<ul style="list-style-type: none"> • At various conferences • Research papers
Phase 10 September 2016- September 2017	Research projects And ongoing implementation into law curriculum	<p>Aim: To bring about a modernised legal education</p> <p>This platform can be used by the wider university for further research and initiations for</p>

		funding <ul style="list-style-type: none"> • Initiating research projects on digital lawyering in curriculum • Changing policy on legal education – equipping for digital delivery, legal ethics for online advice, what this means to legal education?
Phase 11 September 2016- September 2017	Added value and wider dissemination	The virtual law clinic will form a key part of the teaching and assessment tool across all law programmes, both UG and PG offered in Cumbria starting in September 2016 Setting up International collaborative partners Further workshops on digital lawyering <ul style="list-style-type: none"> • Thought leadership aimed at changing thinking about legal education • Rolling out the virtual clinic to interested institutions and law practice firms

FUTURE RESEARCH

As part of the project aims, we are intending to undertake some detailed research into how legal education can be modernised and aligned to the new developments and future trends of the profession. We aim to explore the changing policy on legal education, equipping for digital delivery, legal ethics for online advice, what this means to legal education.

We will focus on:

- 1) What innovations are currently underway in law school curriculum to address the competency requirements of digital lawyering?
- 2) Addressing the ethical constraints of delivering legal services online

In addition to research projects, we will be hosting a Digital Clinical Legal Education one day conference at Cumbria to disseminate further details of our upcoming pilot study and to demonstrate the full working of the Virtual Law Clinic project. We

would be extremely keen to hear from interested law schools to work with us or to utilize this platform in their own curriculum.

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