

“How do you *feel* about this client?” – A commentary on the clinical model as a vehicle for teaching ethics to law students

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Introduction

This article explores why law clinics can be the most creative, exciting and productive way of inculcating knowledge and understanding of ethical issues and why sometimes they are not.² I am concerned to understand what methods can be employed to successfully engage students with ethical questions in the context of their clinical case work. I am also concerned to avoid the complacent view that simply by exposing students to real or realistic cases we can ensure deep appreciation of ethical concerns.³ By ethics here I mean not only understanding of the relevant professional lawyer codes but also a broader and deeper engagement with what it means to be a lawyer and the moral attitudes, decisions and outcomes implicit in legal practice.⁴

It is first essential to acknowledge that there is no universal agreement on the superiority of clinical

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2 For discussion of ethics in the context of clinic see Moliterno, “On the future of integration between skills and ethics teaching – clinical legal education

in the year 2010”, 46 *J. Legal Educ.* 67 (1996); Myers, “Teaching good and teaching well: integrating values with theory and practice”, 47 *J. Legal Educ.* 404 (1997)

3 My discussion relates mainly to live client models, although part of my argument is that live client clinical work needs to be informed and supplemented by classroom based and simulated activities.

4 In this context see Bennett, “Making moral lawyers: a modest proposal”, 36 *Cath. U. L. Rev.* 45 (1986) which attacks the “mythical separation of law and morality”.

methodology for teaching legal ethics. Claims as to the necessity of a clinical approach are numerous and longstanding.⁵ However, there is a body of skeptical comment which remains to be convinced⁶ or has reservations as to the ability of clinic to deliver what it promises.⁷ Robertson⁸ has argued that clinics, at least in Australia, offer restricted places for students for limited time periods and have numerous learning outcomes of which ethics learning and experience may only be a small part. He maintains that “high quality learning outcomes in ethics cannot be guaranteed” and are “more likely to be achieved when the learning environment is crafted to ensure that students engage with these with the level of attention they require.” These concerns coupled with the rationing of clinic due to its expense means that, “... there are doubts about the extent to which clinics can be relied upon to provide quality learning opportunities in legal education generally, and in the development of ethical competencies in particular.”⁹ I do not wish to deny the existence of problems with using clinic to teach ethics¹⁰ and I certainly agree with the notion that clinic does

5 Jerome Frank, way back in 1933, was arguing that, “Professional ethics can be effectively taught only if the students while learning the canons of ethics have available some first-hand observation of the ways in which the ethical problems of the lawyer arise and of the actual habits (and ‘mores’) of the bar.” Jerome Frank, “Why Not a Clinical Lawyer-School?”, 81 U. PA. L. Rev. 907 at page 922. See also Neil Gold, “Legal Education, Law and Justice, The Clinical Experience”, 44 Sask. L. Rev 97; Andy Boon, “Ethics in Legal Education and Training: Four Reports, Three Jurisdictions and a Prospectus” (2002) 5 Legal Ethics 34; and Peter Joy, “The Ethics of Law School Clinic Students as Student Lawyers” 45 South Texas L. Rev. 815 at page 836-7: “By interacting with clients, lawyers, and others in role as lawyers, clinic students begin the process of truly becoming lawyers. In no other course are law students able to confront their own behaviour and relationships with others. And, unlike other law school subjects, legal ethics or professional responsibility is about a lawyer’s relationships with others.”

6 See Robertson, “Challenges in the Design of Legal Ethics Learning Systems: An Educational Perspective” [2005] Legal Ethics 222 at page 233: “... the case for clinics as sites for deep, authentic learning experiences in legal ethics would always need to be demonstrated conclusively. Unfortunately, some of the literature that celebrates the contributions of particular clinics to ‘deep learning’ in ethics provides little in the way of hard evidence to back the claims.” There is some hard evidence at least regarding the impact of simulated clinical methodology on moral development. Steven Hartwell reported a research project with law students using Kohlberg’s Defining Issues Test whereby they were tested at the beginning of a simulation ethics course and again at the end. The intervening period was spent in small group non-directive discussions of realistic ethical dilemmas and reading articles on legal ethics. During the three years of the study the DIT mean score rose respectively 10 points, 14 points and 10 points, all extensive improvements. He found no significant improvement

when conducting the same test with other simulated classes such as negotiation and interviewing and counselling. I am not aware of a DIT study using live client clinic students. Hartwell declined to undertake one due to the small size of the clinic classes and his belief that live clinic would not significantly improve students’ moral reasoning. See Steven Hartwell, “Promoting Moral Development Through Experiential Teaching” 1 Clinical L. Rev. 505 (1994–1995).

7 Moliterno has reported, “... concerns by classroom professional responsibility teachers that clinicians pay too little attention to the law of professional responsibility and ... concern by clinicians that classroom professional responsibility teachers are out of touch with the day-to-day rigors of practice, especially poverty practice.” James E. Moliterno, “In House Live Client Clinical Programs: Some Ethical Issues”, 67 Fordham L. Rev. 2377. Steven Hartwell, *supra* note 6, has argued that live client experience may be too sporadic to ensure consistently high quality ethical learning: “Although moral questions certainly do arise spontaneously in clinic work, they do not arise with the same frequency as they arise by design in a professional responsibility course.” Steven Hartwell, “Promoting Moral Development Through Experiential Teaching” 1 Clinical L. Rev. 505 (1994–1995).

8 *Supra* note 6 at page 233.

9 *Ibid.*

10 Nevertheless, some of Robertson’s concerns are structural or resource-driven and are likely to vary between institutions. My own university, for example, places clinic at the heart of its Exempting Law Degree. Clinic is a compulsory year-long module for all students in years 3 and 4 of the programme. There is also a significant and expanding clinical element in earlier years. Arguments about clinic’s lack of capacity to deliver ethics education seem to be more a case for enhanced clinical resources than a critique of the clinical model itself.

not guarantee good ethics education but I find myself firmly in the clinic-is-best camp, or rather clinic-can-be-best camp. The key reason for this is that clinical education uniquely places the learning of ethics in the context of real life practice. It provides students with the opportunity to grapple with the laws, rules, principles and values of the legal profession not as an external observer but as a participant and stakeholder.¹¹ It follows that I think live client work is an essential component of an effective clinical ethics education. This article seeks to identify ways that ethics education in clinic might retain its essential spontaneous value while being structured, rigorous and consistent.

(Lack of) External imperatives to deliver high quality ethics education

This section explains the dearth of regulatory requirements in this jurisdiction for any meaningful ethics content in the law curriculum. My own law degree is a useful model for illustrative purposes as it jumps to the tune of both undergraduate and postgraduate legal education requirements in England and Wales.¹²

For the undergraduate stage the professional bodies in England and Wales have agreed in consultation with the law schools and scholarly associations a Joint Statement of the outcomes required by any programme which exempts graduates from the academic stage of legal education for practice as a solicitor or barrister.¹³ A ‘qualifying law degree’ (QLD) will expect students to achieve at least the minimum level of performance in the Quality Assurance Agency benchmark standards.¹⁴ There is no explicit requirement for a QLD to contain any ethics component as such. The nearest the Joint Statement comes to such a requirement is:

“Students should have acquired:

- i. Knowledge and understanding of the fundamental doctrines and principles which underpin the law of England and Wales particularly in the Foundations of Legal Knowledge;*
- ii. A basic knowledge of the sources of that law, and how it is made and developed; of the institutions within which that law is administered and the personnel who practice law;*
- iii. The ability to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law and to explain the relationship between them in a number of particular areas.”¹⁵*

11 I agree with Peter Joy when he says, “Perhaps the greatest advantage of real client clinical legal education courses over traditional courses or simulation courses is the role socialization law students undergo and the exposure to ethical issues in role as lawyers.” Peter Joy, *supra* note 5.

12 The LLB Exempting Degree integrates the academic stage of legal education (the qualifying law degree) with the vocational stage (the Legal Practice Course for intending solicitors or the Bar Vocational Course for intending barristers).

13 A joint statement issued by the Law Society and the General Council of the Bar on the completion of the initial or academic stage of training by obtaining an undergraduate degree, 2001.

14 Benchmark Standards for Law Degrees in England, Wales and Northern Ireland, QAA. See www.qaa.ac.uk.

15 Joint Statement, *op. cit.* Schedule 1a, my emphasis.

The QAA National Benchmark Standards for Law to which the Joint Statement alludes is similarly undemanding:

“Study in context: Within different kinds of degree programme, there will be different emphases on the context of law. ... Study in context includes that a student should be able to demonstrate an understanding, as appropriate, of the relevant social, economic, political, historical, philosophical, ethical, and cultural contexts in which law operates, and to draw relevant comparisons with some other legal systems...”¹⁶

Beyond this there is no requirement for courses to address the ethical rules or the moral foundations of the law or lawyering. Many schools do offer jurisprudence or legal ethics modules to students which provide some foundation understanding of the relationship between legal theory, morality and the law. But these are not currently required by the academic or professional bodies.

At the “vocational” stage of legal education the professional bodies are much more prescriptive as to what and how students should be taught and assessed. The Solicitors Regulation Authority¹⁷ issues written standards that dictate the basic curriculum of the Legal Practice Course. The Bar Council has its equivalent in the “Gold book”.¹⁸

The Solicitors Regulation Authority written standards contain a requirement to teach students a “pervasive area” of “Professional Conduct, Client Care and accounts” together with financial services obligations.¹⁹ However, this contains no requirement to go beyond the teaching of the basic rules of professional conduct:

“Students are expected to be able to identify and advise the client on matters of Professional Conduct and Ethics arising both in the compulsory and elective subjects. They should be able to identify and deal with issues that will lead to better client care in all aspects of their work.”²⁰

There are specific requirements in relation to knowledge or skills areas. For example, a student should “understand the ethics of advocacy and be able to apply them.”²¹ They should also “be familiar with” rules likely to be encountered during the training period such as the retainer, fees/costs, conflict of interest, confidentiality, bad work and negligence, the solicitor and the court, undertakings and money laundering/proceeds of crime.²²

No definition or explanation of lawyer ethics is provided in the standards. The vision of professional conduct contemplated is rather narrow, largely rules-oriented and entirely client-centred. It presents very much as a technical “can do” approach which requires no consideration of wider themes such as the ethical facets of legal education and training identified in the ACLEC First Report: “...law’s social, economic, political, philosophical, moral and cultural contexts” or “a commitment to the rule of law, to justice, fairness and high ethical standards to acquiring and

16 National Benchmark, op. cit., my emphasis.

17 In January 2007 the Law Society’s regulation functions were transferred from the Law Society’s Regulation Board to the Solicitors Regulation Authority (SRA), an arms length independent body with responsibility for regulating the profession and professional legal education. See www.sra.org.uk. This article will refer to the SRA but at the time of writing the organisations are in a state of transition.

18 BVC course specification requirements and guidance, General Council of the Bar August 2004.

19 Legal Practice Course Board, Written Standards Version 10, September 2004 pages 15-20.

20 Ibid. page 15, my emphasis.

21 Ibid. page 11.

22 Ibid. page 16.

improving professional skills, to representing clients without fear or favour, to promoting equality of opportunity, and to ensuring that adequate legal services are provided to those who cannot afford to pay for them.”²³

The Bar Council is perhaps more demanding of providers of the Bar Vocational Course. The Gold Book specifies that students “will be expected to demonstrate a sound working knowledge of the Code of Conduct for the Bar of England and Wales” and “Teaching and learning must be designed to enable students to appreciate the core principles which underpin the Code.”²⁴ These principles are said to include the principles of: professional independence; integrity; loyalty to the lay client; non-discrimination on grounds of gender, race, ethnicity or sexual orientation, and “commitments to maintaining the highest professional standards of work, to the proper and efficient administration of justice and to the Rule of Law.”²⁵ This at least requires students to address principles as opposed to just rules and a potentially challenging consideration of the role of barristers in the justice system including their role as a constitutional safeguard.

Nevertheless, as a law teacher in England and Wales of the academic and vocational stage of legal education (particularly the solicitor route), I am given a great deal of freedom as to how and whether to teach legal ethics beyond the basic professional conduct rules. There is a relatively narrow and mechanistic view of the concept of legal ethics which is firmly rooted in compliance with those professional rules. Little depth of analysis or reflection is required. There is certainly no requirement that ethical discussions must arise in the context of real or simulated cases. I can be fairly confident that without too much effort on my (or their) part, my clinical students will be able to jump through the hoops of the Joint Statement and the Written Standards.

No professional values consensus

The dearth of ethical values content in professional education programmes perhaps reflects an inability at all levels to agree a common understanding of the role of the lawyer beyond acting on clients’ instructions.²⁶ This tends to discourage normative discourse and encourage a descriptive approach towards the aim of compliance with the ‘rules’.²⁷

It appears unlikely that there will be any fundamental alteration of this approach in the near future. The solicitor’s profession is currently undergoing a long and at times painful Pre-Qualification Review.²⁸ There have been numerous consultations since 2001²⁹ looking at all levels of education and training for solicitors. The review is based on the idea of a move to an outcomes approach for

23 First Report on Legal Education and Training, ACLEC, April 1996.

24 Gold Book op. cit. paragraphs 25-26, my emphasis.

25 Ibid. paragraph 32 my emphasis.

26 Webb suggests there is, “a marked lack of consensus about what (beyond the level of broadest generality) those values are in theory (let alone in practice). This difficulty is likely to be aggravated in ethical systems such as the English one, where the written ethics are found in what are essentially disciplinary, as opposed to aspirational, codes.” Julian Webb “Conduct, Ethics and Experience in Vocational Legal Education” in *Ethical Challenges to Legal Education and Conduct*, (Hart Publishing, Oxford 1998).

27 Sir Mark Potter lamented such a mechanistic approach: “But ethics go far wider than this. Ethics are not simply regulatory: they are aspirational. They inform the moral dimension of a lawyer’s role and work; the ideals and expectations which inform or ought to inform, the practice of his profession as well as his own view of himself and his function in society.” “The ethical challenges facing lawyers in the twenty-first century”, *Legal Ethics* Vol 4/1 23 at page 24.

28 Formerly known as the Training Framework Review.

29 *Training Framework Review Consultation papers*, July 2001, September 2003, March 2005, Law Society; *A New Framework for Work Based Learning*, February 2007, the Solicitors Regulation Authority.

solicitors so that qualification is based on what aspiring lawyers can do rather than on what courses they have done.

The first consultation asked for responses to a model for ethics that required prospective solicitors to:

- Manifest integrity
- Apply core duties
- Apply detailed rules
- Be client focused, understanding the client's interests have primacy subject to those of justice and the solicitor's duty of independence³⁰

The proposal did not require any broader or deeper appreciation of the solicitor's role or duty towards civil society. The Law Society commissioned an independent review of the review which found little positive to say about the ethical dimension:

*"It is difficult to see how lawyers can be expected to be responsible/feel accountable when they are taught nothing of the history of their own profession, its challenges and aspirations ... some deeper understanding of the professional project of lawyering ... It might also more generally be argued that development of an understanding of the ethical basis of law (not just lawyering) is also a necessary prerequisite of vocational training in professional ethics and conduct. This was broadly the position advanced by the ACLEC First Report, but it is barely reflected in the latest version of the Joint Announcement."*³²

The Law Society's second consultation posited the idea of a verifiable learning log indicating readiness for practice. It responded to concerns like that outlined above by insisting that any pathway to qualification should place "strong emphasis on understanding of the professional responsibilities, ethics and values required of a solicitor, as well as on the principles of good client care."³³ It thus departed from the outcomes based approach by suggesting a course covering professional responsibilities, ethics, values and client care to be undertaken only once the individual had sufficient exposure to practice.

The third consultation returned to an outcomes-based approach in that it no longer suggested a specific ethics course. However, it did propose an assessment following a period of work-based training of the trainee's "understanding of the core values and skills that are common across the profession and of their ability to maintain those values and demonstrate those skills in practice."³⁴

The third consultation suggested a range of "Day one outcomes" – the knowledge and attributes that should be expected of a newly qualified solicitor.³⁵ These included, for the first time, an explicit requirement for appreciation of the principles underpinning the profession:

30 Consultation 2001, paragraph 21.

31 Andrew Boon and Julian Webb Report to the Law Society of England and Wales on *The Consultation & Interim Report on The Training Framework Review* (London, School of Law University of Westminster, 1 February 2002)

32 Ibid. at paragraph 8.10.

33 Consultation 2003, paragraph 87.

34 Consultation 2005, paragraph 73. The Society is currently investigating the possibility of conducting

the assessment electronically including by multiple choice test. It remains to be seen how feasible it is to assess understanding of core values and skills via such a mechanism.

35 Ibid. paragraphs 21-25 and Annex 1. There is a separate consultation taking place as to the level of detail required to enable the requirements to be transparent. The consultation document envisages a substantial document that would require regular review (paragraph 23).

“Knowledge of ... the rules of professional conduct (including the accounts rules) ... understanding of ... the values and principles on which professional rules are constructed.”³⁶

Candidates for the profession would be required to “Demonstrate a practical understanding of the values, behaviours, attitudes and ethical requirements of a solicitor” including appropriate behaviours and integrity in a range of situations showing sensitivity to clients and others with respect to background, culture, disability etc.³⁷ They would also have the ability to recognise and resolve ethical dilemmas.³⁸

At the time of writing the Solicitors Regulation Authority is consulting on the future of work-based learning. The consultation retains the Day one outcomes approach and preserves the ethical content.^{39 40}

One outcome of the shift from a tightly prescribed series of programmes to a greater focus on outcomes is that although qualification as a solicitor might require *increased* ethical awareness, there may be *less* control over the content of law programmes or the student learning experience. This could have significant implications for the way clinical modules are viewed by law schools, by students and by the profession. As clinics become more widespread and formal teaching requirements are relaxed it is possible that clinics will be seen as the focus for early development of ethical awareness in future legal practitioners.⁴¹

There is clearly scope for greater flexibility than is currently the case on the Legal Practice Course as regards the legal ethics curriculum. The removal of the straightjacket of the professional conduct pervasive area could free up space for a more creative and imaginative approach which involved more extensive clinical components.

The future may also bring increased pressure on clinics to meet some of the day one outcomes identified above. Employers in the legal profession are likely to see clinic as one means of ensuring that new entrants to the profession achieve competence and compliance with professional conduct rules. I would argue that clinical legal education is well suited to the task of addressing the values, principles and ethical dilemmas inherent in the practice of law. Paradoxically, although the profession may relinquish its control over the content of law courses, there may be increased pressure on clinical providers to play a more formal role in the training of future lawyers.⁴²

The value of ethics education in a clinical context

The foregoing reveals how little regulatory incentive currently exists for the teaching of legal ethics in the clinical context but suggests that pressure may grow in the future. The remainder of this

36 Ibid. Annex 1, Outcome A, my emphasis.

37 Ibid. Outcome C.

38 Ibid. Outcome D

39 See A New Framework for Work Based Learning, February 2007, the Solicitors Regulation Authority, Annex A.

40 Consultation 2003 paragraph 17. Further, “It is proposed that in the new framework the Law Society would not prescribe how providers design and deliver courses.” (paragraph 19)

41 See Moliterno, “On the future of integration

between skills and ethics teaching – clinical legal education in the year 2010”, op. cit note 2, above. Moliterno, writing in 1995, predicted that by 2010 most ethics education would take place in an experiential setting but that there would be a demise of the role of the live client clinic.

42 At the time of writing Northumbria University is developing plans for a full qualification degree whereby clinic will perform a central role in the training stage of qualification as a solicitor and thus be responsible for a significant part of the future lawyer’s ethical education.

article seeks to address the questions of why ethical dialogue is thought to be valuable within a clinical environment and how clinical teachers can maximise the opportunities for enhancing ethical awareness while accepting that it is often not possible to influence the type of client we will attract or the type of case they will present. In other words, what teaching methodology is best able to prompt the hoped-for ethical dialogue?

In exploring these questions I will attempt to sketch how ethics teaching and learning currently occurs in UK clinics. I have drawn upon the practice and views of a number of clinical colleagues from the United Kingdom who answered detailed questionnaires about their own clinical teaching of ethics.⁴³

Law clinics in UK higher education

Law clinics in the United Kingdom are a relatively recent phenomenon. The first clinics were established in the 1970s and there has been a recent surge of interest with new clinics being established and existing clinics expanding.⁴⁴ Clinics exist in undergraduate and postgraduate programmes, mainly as extra curricular or optional modules. Typically, they do not form a central part of the academic or vocational stage of legal education but are seen as added value activities.⁴⁵

There are a wide variety of clinics including full representation in-house legal schemes,⁴⁶ simulation clinics,⁴⁷ street law/law in the community initiatives,⁴⁸ advice-only clinics,⁴⁹ representation services,⁵⁰ externship/placement programmes⁵¹ and so on.⁵² It follows that the approaches towards the teaching of legal ethics are likely to be fairly diverse.

Law clinics and the delivery of ethics education

This section explains how clinics can deliver ethics learning for students. It commences by considering the minimum one can expect from a live client programme and proceeds to explore how clinical directors and supervisors can add substance and value to the student experience.

43 See note 54 below.

44 For a general description of the history and development of law clinics see Brayne, Duncan and Grimes, *Clinical legal education: active learning in your law school*, 1998. See also the detailed description of five clinics in Brayne and Grimes, *Mapping best practice in clinical legal education*, United Kingdom Centre for Legal Education funded research project, 2004 www.ukcle.ac.uk/research/clinic.rtf. A recent survey carried out by colleagues at Northumbria University Student Law Office located clinical programmes at the following institutions: BPP, Bournemouth University, Bristol University, College of Law (all branches), De Montfort University, University of Derby, Inns of Court School of Law, Kent University, Manchester University, Northumbria University, Oxford Institute of Legal Practice, Queen's University Belfast, Sheffield Hallam University, Southampton University, University of Strathclyde, Sunderland University and Warwick University. No doubt there are many others out there.

45 Northumbria University's Exempting Degree is an exception in that the clinical modules constitute a major plank of the academic and vocational

assessment and replace the three Legal Practice Course electives for all students. Northumbria's freestanding Legal Practice Course and Bar Vocational Course also have clinical electives which formally contribute to the vocational qualification. The College of Law has a clinical elective on its BVC and Graduate Diploma in Law courses and has recently introduced an LPC elective.

46 For example, Northumbria's Student Law Office and Sheffield Hallam's Law Clinic

47 For example, Warwick's Law in Practice module.

48 For example, The College of Law's Streetlaw and Streetlaw Plus schemes.

49 For example, De Montfort's Law Clinic.

50 For example, The College of Law's London Residential Property Tribunal clinic

51 For example, Derby University's clinical placement programme.

52 There are mediation schemes, soup runs, campaign teams, letter writing help, innocence projects and other creative initiatives which have added to the diversity (some might say chaos) of the clinical picture in the UK.

Achieving the basics – teaching students professional conduct rules

With any client that comes in through the door of the Student Law Office⁵³ I can guarantee my students will conduct an interview, complete some legal research and write letters, including a letter of advice. They will work as a team, develop case and file management skills, become disciplined in time recording, probably do some legal drafting and perhaps perform a negotiation or even advocacy. These valuable experiences will all come their way without any prodding from me. I can put my feet up, check their draft work, send them away to do it again (of course), answer any queries they may have, ask them how it is going and so on.

But what about legal ethics? Here too I find a degree of automatically generated activity. Conflict check? Tick. Status explained? Tick. Complaints procedure? Tick. Costs information? Tick. Retainer explained? Tick. (Standardised) client care letter? Tick.

If I pause there and reflect on the student learning experience I have to recognise there have been some impressive tasks performed and a wide range of skills and knowledge developed. The students have learned by experiencing the day-to-day activities and disciplines of the lawyer. They have explored the legal rules in more detail than they ever do in their substantive legal modules. They have honed their ability to perform the law. They have done all of this in a safe, supporting but challenging environment. Their knowledge of the rules of professional conduct will be fairly detailed and their ability to comply with those rules will be enhanced.

But this tells only part of the story and unlocks only part of the potential of the clinic. I want my students to consider why the rules are as they are, examine how they fit with their own moral attitudes, and develop their own moral reasoning. A full clinical experience will explore these and other issues in depth and at length. In the following section I hope to explain how this might be possible and will illustrate what I say by reference to the questionnaire responses from UK-based clinicians.⁵⁴

Why do we teach ethics in law clinics?

All of the clinicians I surveyed did seek to address the issue of legal ethics in clinical teaching. The reasons tend to reflect a balance between (1) the desire to ensure a professional service and (2) to emphasise the value of legal ethics as a key to understanding the law in context and the role of the lawyer:

53 The Student Law Office is a full casework and representation, law centre style legal service. Each year approximately 150 students are supervised by 15 academics with current practising certificates. The case load is around 700 per year and is conducted largely pro bono but with Community Legal Service specialist quality marks in three areas of work. It is integrated into the third and fourth year of the Exempting Degree and it also offers clinical electives to Legal Practice and Bar Vocational postgraduate students. Its work covers mainly traditional “poor law” areas but it is also developing transactional and commercial case loads.

54 Questionnaires were sent to ten established clinics which provide the majority of clinical legal education in the United Kingdom. Seven detailed

responses were received. The list includes university-based and private law schools. The sample is by no means comprehensive but the responding institutions account for a significant proportion of the clinical legal education in the UK. The questions addressed the following areas: Type of clinic and programme; reasons for / advantages and disadvantages of teaching ethics in clinic; prior ethics learning; ethics learning outcomes; teaching methodology; learning resources; and assessment. The questionnaires encouraged a narrative response. Not all responses are presented in the body of the article. Those which are presented appear with coded references, “Clin1” to “Clin7” and are edited but verbatim extracts of the questionnaire responses.

Clin 5: “to protect our clients, students, supervisors and the reputation of the Law School; as an educational resource, a tool for reflection on the process of lawyering.”

Clin 4: “... because of the virtual silence in the curriculum on the issues.”

Clin 6: “Important as part of expanding our knowledge of law and society.”

Clin 1: “For obvious reasons this is important in ensuring a high level of service and that the clinic and solicitors and students working in it do not breach professional conduct rules. ... Students are encouraged to reflect upon their interaction with clients and their feelings about their work for those clients, the impact that that work has upon themselves and their clients ... It is important that work in clinic not be seen as simply mechanistic i.e. that lawyers should only be interested in ensuring they act in the best interests of their clients. If work students do in clinic is not reflected upon in this way there is very little chance of students doing so as practitioners.”

Clin 2: “It is important because if we don’t teach ethics then students lose part of the opportunity to reflect and to develop.”

It can readily be seen therefore that clinic is already used to teach *beyond* the bare rules – to explore the role of the law and lawyers and to give students space to think and reflect on the impact this has on clients and society. To me this reflects a unique potential of law clinics to allow students to engage in informed discussion – grounded in experience – about what the law is for but before they have become fully part of the system. Being at the interface of legal practice and legal education can give students the luxury of time and the freedom of academic inquiry to reflect deeply which many will not experience again.

Particular advantages of clinics for teaching legal ethics included:

Clin 6: “The complexities of actual (and developing) situations challenge students in a manner different from that of lecture/seminar teaching ...”

Clin 4: “Issues are raised contextually and require resolution rather than just discussion in the abstract. Issues thus come across as ‘real’ to students.”

Clin 2: “Immediacy: these are not abstract issues; they have immediate relevance. Breadth: covers ethics in its widest sense, from professional conduct to Aristotle.”

Clin 1: “Problems are real. The student is not being asked in the abstract whether they can act for a particular client who they feel is lying to them, it is real and this makes the decision much more difficult and engaging”

The dynamic nature of a real case with actual consequences for clients and others does seem to be central to the urgency and responsibility that students feel when dealing with ethical issues in clinics.⁵⁵ It also means that the supervisor cannot completely control the way the case will develop. This tends to break down the barriers between student and teacher in that neither may have the

⁵⁵ “Once they encounter a client, the blind faith that there is a ‘truth’ or a ‘law’ that can be applied must give way to a more sophisticated understanding. Clients’ cases rarely present simple facts that lend themselves to right an wrong answers. It is the complexity and

unpredictability of working with real people that makes clinical legal education so rich.” Jane Aitken, “Provocateurs for Justice”, 7 Clin L. Rev. 287 at page 292.

answers and they must work as a team to find them.⁵⁶ Ethical issues cannot be timetabled into the teaching session in the same way so when they emerge they have a freshness and vibrancy about them.

What is the purpose of ethics teaching in clinics?

Ethical learning outcomes are also likely to be many and varied. They depend on the teacher’s own view of the concept of legal ethics and the proper limits of the educative process.⁵⁷ Contrast the following two views of the purpose of ethics teaching in clinics:

Clin 4: “Teaching students about law’s injustice and the need for lawyers to be committed to addressing unmet legal need.”

Clin 2: “For me the immediate aim is to give students a more sophisticated language for analysis, reflection and thus self development.”

The former contribution suggests a particular approach towards an ethical issue. The latter envisages no end product but sees ethics teaching as providing a set of tools for students to use. This difference reflects an important debate about how far teachers ought to go in advocating ethical solutions. The modest proposal that lawyers ought to be committed to access to justice may not be universally supported, although it does appear to have achieved consensus support within the profession, at least in England and Wales.⁵⁸ Beyond this it is possible to secure general agreement that lawyers ought to preserve their independence, protect the rule of law and even secure human rights.⁵⁹ However, certain ideas (for example, that lawyers should be committed to social justice or equality) will appeal to a smaller constituency of teachers, students and professionals. We can all agree that we should make students think about ethics. There is bound to be less agreement over what we should make them think.⁶⁰

Other respondents focused on the development of analytical and evaluative thinking as a key outcome of clinical ethics teaching:

56 Eduard Lindeman, writing in the 1920’s about the concept of democratic teaching outlined the role of the teacher as follows: “In this process the teacher finds a new function. He is no longer the oracle who speaks from the platform of authority, but rather a guide, the pointer-out who also participates in the learning in proportion to the vitality and relevance of his facts and experiences.” Eduard C. Lindeman, *The Democratic Man: Selected Writings of Eduard C. Lindeman*, Robert Gessner, 1956.

57 In some jurisdictions, such as the USA, clinic might be used as a vehicle for delivery of compulsory lawyer ethics / professional conduct material.

58 The Attorney General with the support of the profession established a National Pro Bono Coordinating Committee and agreed to promote pro bono in law schools among other objectives: “We all know the popular perception that lawyers only care for their fees. Pro bono challenges those ill-informed views. In no other profession do practitioners work for free so extensively or so systematically. Their aim is to

help people who need lawyers’ skills and knowledge but won’t get them otherwise. Their efforts embody the principles of fairness and justice that are the cornerstone of the law. The Committee, with its concrete, practical measures to extend the reach and raise the profile of pro bono, is leading the way.” The Attorney General, speech to the Solicitors’ Pro Bono Group, 29th March 2003.

59 See *Havana Declaration on the Role of the Lawyer Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, in particular see paragraph 14: “Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.”

60 I return to this issue in the final section on typology of ethics dialogue, below.

Clin 5: "... reflect critically on the nature of lawyer-client relationships and other processes of lawyering"

Clin 7: "... to introduce students to and to develop their critical understanding of law in an applied context."

Clin 1: "A wider appreciation of the lawyer's role, pressures and dilemmas for lawyers and the social, political and economic impact of the law on individuals and groups in society."

Clin 6: "... Ability to identify analyse and evaluate issues relating to legal ethics (includes an awareness of the contemporary preoccupation with ethics in many spheres of social activity, and of the use of higher education to promote this further; and a consideration as to whether these developments might suggest a lack of confidence in ourselves and trust in others.)"

These aims are clearly not unique to clinical education. However, clinic provides a practical platform upon which the broader contextual learning can be developed. I am particularly attracted by the proposition that the teaching of legal ethics should ask why we teach legal ethics and require students to reflect on whether this is a positive or a negative thing. It prompts an interesting question that I do not propose to pursue further in this article: could the teaching of ethics itself be unethical?

How are legal ethics currently taught in clinics?

There is a surprising degree of commonality of approach to the teaching of ethics in the clinics I surveyed. Most respondents said that clinic students had little prior learning about legal ethics in their other studies.⁶¹ Within the clinic there tends to be some formal tuition, particularly at the outset of the clinic programme, although this sometimes continues for the duration of the module. There is almost without exception formal instruction on compliance with the rules of professional conduct and this is backed up by a wide variety of materials such as the Code of Conduct for Solicitors, clinic manuals/handbooks, clinic codes of ethics, supervisor tutor packs, ethics seminar materials and a wide variety of ethics and clinic reference books.

The main vehicle for the airing of ethical issues tends to be the small discussion group variously described as firm meetings, clinic ethics committees, clinic seminars, casework discussions and tutor and peer feedback. Some ethical issues (such as confidentiality) are emphasised on each occasion, although the picture tends to be that ethics issues are discussed as and when issues arise:

Clin 1: "It is up to the supervisor of each firm meeting to use the students' experiences which raise, or potentially raise, ethical issues to provoke discussion and thought. Students might be challenged about their view of the client and the effect that has on the conduct of their case. They might be asked to justify acting for a particular client. They might be asked whether they have personal or political bias towards or away from the client's case."

This approach has the advantage of flexibility and spontaneity, although it does place a fairly heavy burden on the tutor. S/he needs to identify opportunities for ethical dialogue, create the right

⁶¹ Where the clinic is part of a vocational course the students receive the formal tuition described earlier regarding professional conduct and client care.

environment for such discussions to take place, and provoke discussion at an appropriate level without dominating the session or providing all of the answers. I would argue that the individual supervisor requires support at clinic or programme director level to ensure that ethical issues can be discussed. The development of common teaching tools and materials to encourage students to spot and address ethical points is of real importance.

In clinics with a number of supervisors there may be an issue with consistency of approach. Such clinics tend to use some common teaching materials but it is difficult to see how ethical discussions (which in clinics tend to be context-specific) can be reduced to “tutor notes” such as those which tend to be used on most professional law courses. The risk of certain students experiencing less rigorous ethical discussions may also be compounded by the variety of cases within a clinic:

Clin 1: “Additionally, in the clinic much depends upon the supervisor and the area of law being practised. Students with a supervisor committed to ethics teaching in an area such as miscarriage of justice may get an entirely different appreciation than another student with another supervisor working in personal injury.”

Clinic 1 was developing a range of ethical teaching materials that could be adapted for use in any type of case. This involved the use of generic exercises, tasks, reflections, questions and follow-up reading. These activities related to particular ethical concerns (such as the value of confidentiality) and could be utilised irrespective of the issues arising in any given case. With some imagination and willingness to use hypothetical extensions to real life cases it ought to be possible to promote detailed discussion and debate about a very wide range of ethical issues. This approach retains the valuable case-specific dialogue and so ensures students are speaking about their own real cases but it ensures a degree of discipline and consistency of coverage.

Numerous examples of techniques and strategies for engaging students in ethical discussions were offered by respondents including the following:

‘balloon game’ exercise on the rules of ethics; simulated interview and negotiation activities; ‘law reform’ negotiation in which students negotiate revisions to the rules of professional conduct; ‘ethics audits’ of case files against the clinic code; resolution of potential conflict of interest by a ‘clinic ethics committee’; challenging students to identify and justify their proposed responses to situations; reflections in portfolios; analysis of the standard of work by previous lawyers’ in asylum cases and discussion of what can be expected given financial constraints; discussion of how much information to give a client about why exactly they have no case when you know that will upset them (conflict between paternalism and client autonomy); assessing the extent to which a client’s case can be put at its height without claiming remedies which in law are not available to them; deciding whether to allow a client to plead a claim when they have already informed the student of a fact which is inconsistent with that claim; discussing duties of disclosure to the court and the state when a client discloses benefit fraud; debating whether students should spend so much time working for a middle class person on a money only case when there are many more people in need around.

These examples indicate a rich seam of ethical issues arising out of relatively routine casework. They also illustrate that valuable ethical dialogue can be provoked via simulation activities. I wish to emphasise the importance of simulation as part of the overall package of clinical education.

Simulation can wrap around the live client experience in a way that ensures that students receive a basic introduction to ethical issues and extend their thinking about such issues from their real cases. It helps to ensure consistency and coverage of the syllabus. It is obviously possible to teach ethics solely via simulated clinic⁶² but ideally live client work will form the core trigger for ethical dialogue with simulation used as a supplementary and added value method.

Similarly, there is a place for more formal classroom-based activities including lectures and seminars which introduce or flow from the real ethical issues. This can help to provide the intellectual rigour that would be missing if ethical dialogue was all conducted spontaneously. Clinic 1 brings small groups together in “joint firm meetings” three times per year to discuss wider issues arising from their caseload. This is often an opportunity for ensuring students read core literature and debate ethical dilemmas.

Problems with teaching ethics in clinics

Clinical teaching is not a panacea and we should not assume that ethics teaching in clinics will always have more value than traditional methods. Clinics have the potential to provide a stimulating environment within which ethics discourse will take place but this requires careful organisation and skilful implementation. There are difficulties for clinicians in trying to engage students with legal ethical issues. Some of these difficulties were identified by respondents as follows:

Clin 2: “Lack of language: students have no knowledge of formal ethical issues, nor do their supervisors. How then do we progress beyond, ‘Its not fair?’”

Clin 4: “They do not always see the issues when they arise and they have no background understanding of the ethical debates when they do come to attempt to resolve issues.”

Clin 1: “Students can be tempted to see clinic as a means of obtaining skills and experience but not wider learning about the law and the ethics of law. They can become very enthused by the practical work but can lose sight of the wider picture because of this.”

These responses reflect a real problem of how to structure and manage ethics teaching within clinics. The typical approach seems to be that students will be encouraged to reflect on their experience within the case discussions. This is consistent with the idea that ethics discussion should be connected to the real life context of the client’s cases. However, it is then difficult to ensure that students develop awareness of ethical debates and theories in order to secure a degree of sophistication in the ethical discourse. There are only so many times a tutor can ask, “How do you feel?” before the question loses its ability to engage students’ imaginations. They need to be able to take the discussion to higher levels and for this they need to understand basic theoretical concepts. As one respondent put it:

Clin 1: “The question could be asked as to whether there should be clear syllabus together with some standard sources of text to ensure some common level of understanding and rigour. Against this might be set the concept that the learning should be driven by experience in the cases. In my experience, however, while the

62 See Steven Hartwell’s description of his experiential ethics clinic above at note 6.

clinic deals well with professional conduct issues, it is much more difficult to achieve a comprehensively satisfactory wider ethical appreciation for all students.”

If we are to develop a “clear syllabus” the answer might lie in prior legal theory learning. On my own course we introduced a compulsory module in jurisprudence for all third year students. This comes prior to their live clinical experience so we might expect that the following year our students will come with a solid theoretical framework that will help inform their ethical concerns and upon which their clinical discussions can build. However, ethics forms only a small part of the jurisprudence syllabus and I fear that the temporal and psychological dislocation between the theoretical module and the clinical module means that students do not see the link between the two.

The challenge is to retain the immediacy and enthusiasm that real life encounters provoke but to ensure that students develop the building blocks to make their ethical discussions varied and valuable.⁶³ The building of rigorous ethical study into the clinic routine is a key to successful achievement of sophisticated ethical understanding. Ethics libraries within clinics are also important so that the tutor can require students to see ethical research in the same way that they view their practical legal research – part of what makes them a good lawyer.

A further difficulty identified by a respondent reveals another key challenge to those involved in clinic management.

Clin 1: “Tutors need to be very sensitive to potential learning opportunities, to spot the potential for a full discussion of an issue rather than skate across the top of it.”

Ethics education will not happen simply by students being in close contact with a competent practitioner. Modelling ethical behaviour has value but if it stands alone it is seriously limited; ethics by osmosis does not work. The creative role of the clinical tutor is fundamental to the learning experience. Good teaching of ethics in a clinic will be able to draw out lively discussion of values, roles, assumptions, prejudice, commitments, attitudes, fears etc. from the simplest small claim. Poor ethics teaching will achieve sterile, mechanistic observations from the most outrageous human rights violation.

Many clinic supervisors come into the clinic environment direct from legal practice. They have not generally been used to daily wringing of hands over their professional obligations or their wider impact on society. They probably went through a legal education that was fairly silent on ethical issues. They need to be given training, encouragement, materials and time in order to become good ethics teachers.⁶⁴

63 Note the Legal Practice and Conduct module at La Trobe University described by Mary Anne Noone and Judith Dickson in “Teaching towards a new professionalism: challenging law students to become ethical lawyers” *Legal Ethics* Vol 4/2 127 whereby clinical case work is combined with a weekly three-hour seminar with the focus on what constitutes ethical legal practice. The real life

experience feeds into the classroom discussion to give it a real life application. In this way the risk of dislocation between classroom study and clinical activity is reduced.

64 See “Reflection-in-Action: Designing New Clinical Teacher Training by Using Lessons Learned from New Clinicians”, Dunlap, Justine A.; Joy, Peter A. 11 *Clinical L. Rev.* 49 (2004-2005)

How to ‘do’ ethics in the clinic – a typology of ethics dialogue

In this section I describe four possible approaches that could be used for encouraging valuable discussions of ethics within law clinics. I categorise them as follows:

- Passive (rule-based ethics)
- Reflective (role-based ethics)
- Transformative (attitude-based ethics)
- Engineered (outcome-based ethics)

I consciously adopt the first three in my teaching. I generally try to avoid the last but I suspect this creeps in at times. I have focused on case-inspired discussions as opposed to discrete / abstract teaching sessions. The latter can be valuable, particularly in the early or training stages of a live clinical programme, but once the students start to deal with real people it is much better if the discussion arises out of the real case and, if necessary, is taken further by hypothetical extensions.

Model 1 – passive (Rule-based ethics)

Live client clinics provide an excellent opportunity for learning the basic rules of professional conduct and compliance with professional standards. There are a wide range of activities that provide students with an unrivalled learning experience. Rather than the traditional classroom activities students can learn by doing. They should be asked to find out what rules of conduct govern a particular situation (for example, taking instructions from a third party) and propose a course of action that ensures the clinic complies with the rules. They should then implement the agreed action and appropriately record what they have done.

In this way they will develop technical knowledge of what the professional codes require and also the “how to do” skills such as drafting client care letters. This approach can become relatively sophisticated as students need to learn how to identify situations which engage professional conduct rules and develop strategies to avoid breaches of the rules. There is scope for use of hypotheticals to enhance the student learning such as, “what should we do if the client tells us his list of previous convictions is wrong?” This approach does not normally require a significant amount of deliberation or debate,⁶⁵ although it can run neatly into other models and provides students with excellent foundation knowledge for more in-depth discussions.

Model 2 – reflective (Role-based ethics)

[T]he work of a lawyer is often portrayed in the law school environment as quintessentially amoral in the sense that the lawyer is expected to exercise objectivity and detachment in dealing with legal matters ... One task of ethics is to disabuse students of the misconception that the profession of law, in any of its forms, is devoid of ethical ramifications.⁶⁶

65 For this reason this approach is rarely the exclusive method of teaching ethics in clinics. For analysis of the limitations of the role morality approach see Julian Webb, “Being a Lawyer/Being a Human Being”, *Legal Ethics*, Vol 5, 130 at 131 et seq.

66 Duncan Webb, “Ethics as a compulsory element of law degrees”, *Legal Ethics* Vol 4, No.2, 109, at 116.

A reflective approach adopts a more analytical attitude towards the rules and towards the role of the lawyer or legal system. For example, once students have a basic grasp of what a conduct rule is they can be asked to think about the origin and rationale of the rule. This can and often is conducted on the basis of the students' own thoughts about the proposition under consideration. However, value is added to such discussions when students are required to complete wider reading about the particular rule or about ethical norms. This approach lends itself to student presentations and student-led discussions whereby the group can reflect on the issues that have previously arisen on a case and review the way they were dealt with.

This approach can be particularly valuable when conducted in the context of a live case, especially if a difficult issue has arisen. In one criminal case I conducted the client asked the student whether she believed he was innocent. She immediately responded, “Yes, of course” and only later wondered whether it was a proper part of the lawyer's function to come to a conclusion about the objective merit of her client's case. We later involved the client in a discussion about whether and to what extent it mattered to him what his lawyer believed.

Techniques associated with this model include role reversal whereby students attempt to anticipate how clients might be affected by their interaction with the students, the law clinic, the court system etc. Use of role play can help to make these issues immediate, although often the reality comes from the situation itself. If clients consent to having the interview video recorded then student replay with commentary and peer review can provide an excellent opportunity to reflect on their impact as a legal adviser. Use of hypothetical situations can assist with teasing out the reflective discussions for example, “What if the client won the lottery tomorrow – can and should we stop acting for her because other people are more needy?”

The key to this model is asking students to think critically about the role of the lawyer and the role of the law. It might thus involve students in complex and irresolvable debates such as whether wrongful convictions are inevitable or whether a no-fault compensation scheme would resolve the problems of medical litigation. The issues encountered in these discussions are often popular topics for end of module reflective commentaries / essays.

Model 3 – transformative (Attitude-based ethics)

“Perspective transformation is the process of becoming critically aware of how and why our assumptions have come to constrain the way we perceive, understand, and feel about our world; changing these structures of habitual expectation to make possible a more inclusive, discriminating, and integrating perspective; and, finally, making choices or otherwise acting upon these new understandings”⁶⁷

Transformative learning is a theory extensively developed by Jack Mezirow whereby learners embark on a series of developmental stages including self-examination, critical assessment of assumptions, recognition of similar transformations in others, exploration of new roles or actions, development of a plan of action, building knowledge and skills, trial of the plan, development of competence and self-confidence, and reintegration on the basis of a new role and perspectives.⁶⁸ The process is supposed to alter the way the learner looks at themselves and their function.

67 Jack Mezirow, *Transformative Dimensions of Adult Learning*, 1991 page 167.

Learning” in *In Defense of the Lifeworld*, Welton ed. page 50.

68 Jack Mezirow, “Transformation Theory of Adult

It should start with a “disorienting dilemma” which acts as the catalyst for the process of rethinking.

This may seem an ambitious (and potentially destructive) project for clinic teaching. We do not necessarily want our students reappraising themselves so far that they decide to become accountants instead!⁶⁹ Nevertheless, clinical work does provide a useful opportunity for making the student question the bases of prior learning about the law, morality, politics etc.⁷⁰ If done in a challenging but supportive environment it can be a constructive and enjoyable process. Moreover, the clinic can provide the opportunity for a number of disorienting dilemmas in that students experience situations that they have never encountered previously and can become overwhelmed by the issues they face.

This approach goes a step beyond model 2 as it critiques not just the role of the lawyer but looks intensely at how the student as a person and professional fits into this role. I have tried to invoke transformational methods within the clinic in relation to fairly modest aspects of students’ work. For example if a student-client interview goes disastrously wrong in the eyes of the student this can be the trigger for the encouragement of a wholesale review of the way the student communicates within the law. The feeling of failure after the interview becomes the disorienting dilemma, the video replay is the start of self examination and they can be encouraged to systematically critique not just that interview but their general approach towards communicating with clients and others about the law. Slowly working towards a new approach (perhaps involving peers in role play preparations) prior to the next interview. Obviously it takes a degree of self-awareness to recognise a failure or to perceive a dilemma. Sometimes it may take some prompting from the supervisor and/or fellow students.

There is a danger that this sort of process becomes narcissistic in that the students become preoccupied with their *personal* development and neglect the wider ethical issues arising from their cases. It should thus be used in conjunction with other means of encouraging reflection.

In order to be effective, this method is likely to involve a degree of (sometimes forceful) challenging of students’ preconceptions about the role of the lawyer, forcing them to reflect on their own values and think critically about why they think the way they do about the law. It gives rise to a number of potential difficulties and controversies including which preconceptions to challenge, which criticisms to encourage, the impact of the teacher’s prejudices and so on. These issues are not unique to the teaching of ethics but may arise acutely in this context. The key to effective teaching of the lawyer’s role is to ensure that students understand the law is not an immutable set of rules for good or ill but rather a sophisticated and dynamic compromise between competing interests. Students should grasp that lawyers are in a highly privileged position of being able to participate in the resolution of doubt and conflict within the law and that they do not act as wholly neutral locators of ‘the answer’ but bring their own ‘baggage’ to the case.

69 The serious point behind my facetious comment is that transformative learning should not be seen as encouraging sado-masochistic approaches to learning. Bullying and humiliation should have no place in the law clinic. The process of learning about the law is bound to mean that some people decide the legal profession is not for them but transformational dialogue should not

disproportionately put people off the law.

70 See Fran Quigley, “Seizing the disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics” (1995) 2 *Clin LR* 37; See also Jane Aiken “Teaching Justice, Fairness and Morality” (1997) 4(1) *Clin LR* 3.

Model 4: engineered (Outcome-based ethics)

The point about this approach is that students are encouraged to think in a particular way about ethical propositions. The aim is not just to get students to think about their ethical response but to adopt a specific response. In this sense, unlike the earlier approaches, the value of the educative process here is teleological. The teacher succeeds to the extent that s/he achieves a given belief (and possibly conduct) on the part of students. For example Wizner believes that a value of legal education lies in encouraging students to nurture their:

“capacity for moral indignation at injustice in the world, or to challenge and inspire them as lawyers to use what they have learned to work for social justice.”⁷¹

As previously outlined, such views, based as they are on a particular socio-economic or political outlook, are not going to find universal support among other people, including other teachers, students and lawyers. It would be easy to dismiss this approach as indicating an arrogance of belief in moral superiority on the part of the educator. The role of ethics education should surely be to provide students with the knowledge and understanding and the reasoning skills to be able to form their own, not the teachers, moral viewpoint.

“... While any teacher will have a personal point of view that they should not resile from putting forward, it is also the task of the law teacher to represent the diversity of views that exist. Equipped with this knowledge students are then capable of adopting an ethical point of view of their own, or perhaps of giving reasons for their refusal to adopt a particular point of view.”⁷²

I have general sympathy with the idea that legal education should encourage students to make their own (informed) decisions and that success should be measured by their depth of understanding and their ability to reason, not the views they ultimately form. However, I have begun to wonder whether it is always inappropriate to try to engineer a particular ethical viewpoint.

Although I would not consciously advocate that my students should have a particular commitment to, say, ending poverty I might be less cautious about something I believe to be not only self-evidently true but also indisputable. I believe torture is wrong. Should I encourage (or require) my students to think (or at least express, at least in assessments that I am marking) similar sentiments? Or should I concede to moral relativism and ask students to come to their own conclusions? More than this, should I “represent the diversity of views that exist”?

Does it matter if the moral proposition is a binding professional obligation on lawyers such as the duty not to mislead the court? Should I explore the lawyer’s role in the administration of justice but leave it to the students to decide for themselves whether and when they will abide by the rules and when their moral beliefs dictate the rules be broken? As a teacher of future lawyers am I wholly lacking in any responsibility for the sort of lawyers they turn out to be? If they become dishonest rogues is my conscience cleared if they know *why* they are rogues?

71 Stephen Wizner “Beyond Skills Training” *Clin. L. Rev* 7/2 2001 and see also Jane Harris Aiken “Striving to Teach Justice, Fairness and Morality”, *Clin. L. Rev.* 4 1997

72 Duncan Webb, “Ethics as a compulsory element of law degrees”, *op cit*, at 116. This is reflected by one

respondent to my survey of clinicians who, when asked whether students should be encouraged to think in a particular way about an ethical proposition replied: “No – I am a firm believer in individual autonomy. I want them to think.”

There are no easy answers to these questions but I am ultimately drawn to the notion that there are certain ethical views that I have a personal and professional right to express. Julian Webb urges that ethics education should help future lawyers to avoid disjuncture between role morality and their personal values.⁷³ If we vest ultimate faith in student autonomy there is a risk that there will be disjuncture between the educational imperative and the *teacher's* personal values. We need to be comfortable with the general goals of our teaching (being a *teacher* and being a human being) and the consequences of that teaching can be seen as part of the picture.

Thus although I feel generally uneasy about dictating a particular ethical approach, it is inevitable that there will be certain issues where (consciously or unconsciously) I will espouse a particular opinion or alternatively not promote discussion about where the “right” answer might lie (because I know where it lies and I want my students to adopt the same approach).

Conclusion

Student evaluations of clinic often contain responses like, “It made me realise why I wanted to study law in the first place”. For many clinical teachers the response would be the same in relation to their motivation for teaching law in the first place. Clinic, particularly live client clinic, provides a creative, enthusiastic and democratic environment for the learning of the law. A key reason for this is the way that engagement with the real world as affected by real laws challenges moral codes and refreshes ethical thinking. Failure to take advantage of this in dialogue with students would be an abdication of responsibility as a teacher and show a poverty of imagination. This is why, despite the absence of any external imperatives, the teaching of ethics in law clinics continues to be highly valued, debated and researched. Ethics without clinic is artificial; clinic without ethics is sterile. This mutual interdependence ensures a vibrancy that is rare in modern higher education.

By outlining some views of clinical teachers in the United Kingdom and categorising various approaches towards clinical ethics methodology I hope this article will help to provoke further reflection among clinical scholars about why and how clinical legal education and ethics awareness should continue to develop together.

73 Julian Webb, “Being a Lawyer/Being a Human Being”. *Legal Ethics*, Vol 5, 130