

Editorial

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I would like to start this Editorial by highlighting that in summer 2024 it will be our 10 year anniversary of being online. Since the IJCLE has been online more than 100,000 papers have been downloaded with an average of over 700 downloads per paper! We think this milestone should be celebrated with a bumper Summer 2024 edition. Further details on this will follow soon and we will invite you to be part of that.

Meanwhile, in this edition, we have papers which offer valuable recommendations on how clinical legal education can be developed to further benefit our students, the wider community and those who supervise in clinic. There is a flourish of ideas which link across continents.

We begin with Anne Hewitt and Natalie Skead's fascinating article on '*The Resource Implications of Work Integrated Learning and Legal Clinics in Australian Legal System: managing workload, system support and recognition.*' The article explores the resources required to deliver Work Integrated Learning and the authors present survey data on how this is being accommodated by Australian law schools. Work Integrated Learning is a term used to describe learning experiences where students engage with workplaces as part of their legal studies. The authors conclude that there are positive aspects to the workload allocation of such Work Integrated Learning programmes,

however concerns are raised in relation to both the level of recognition for the external engagement and administration and valuable recommendations are put forward.

Students gain valuable work experience when they undertake the Student Law Office Law in the Community module at Northumbria University in the UK, which is the focus of our next article '*The Law in the Community Model of Clinical Legal Education – Assessing the Impact on Key Stakeholders*' by Lyndsey Bengtsson and Bethany A'Court. In this module the students conduct volunteer work from the offices of their local Citizens Advice as part of their law degree. Drawing on data from student focus groups and semi structured interviews with the Citizens Advice supervisors, the authors explore how this model impacts upon law students, Citizens Advice and the local community. It was found that there are clear pedagogical benefits to the students and to Citizens Advice with regards to the service they can provide to the local community. The students obtain first-hand experience of the access to justice challenges faced by their local community. However, issues were raised which included how to ensure an equivalent clinical experience for students and effective feedback is provided. The authors put forward important recommendations as to how to overcome these issues.

In our next article '*Forming Lawyers who can Contribute to Equitable Access to Justice in South Africa*' by Melanie Walker and Christopher Rawson, the researchers interviewed candidate attorneys across six University Law Clinics in South Africa to understand the contribution of university legal education and University Law Clinics to

professional formation, and the access to justice challenges faced. The authors propose that clinical legal education should be evaluated in light of contributions to wellbeing and agency freedoms.

From our *From the Field* section Hannah Franz reflects on the sessions she observed whilst attending the 2022 European Network for Clinical Legal Education conference at Brescia University in Italy. She concludes by highlighting the importance of international collaboration, so that we can continue to all learn from each other and overcome challenges. We also have a piece from Alina Kislova who discusses the barriers which exist in Russia which prevent Clinical Legal Education and she compares this to the European Union and the United Kingdom. She provides an interesting insight from both a social justice and educational perspective.

Finally, we look forward to seeing you at the upcoming 9<sup>th</sup> European Network for Clinical Legal Education (ENCLE), entitled 'Enhancing Clinical Legal Education in Europe: 10 years of ENCLE and – reflections and what is yet to come!', on 17<sup>th</sup> and 18<sup>th</sup> July 2023 in Liverpool. We also look forward to seeing many of you (and hearing about your research in progress) at our upcoming IJCLE Intensive Research Workshop on 20<sup>th</sup> and 21<sup>st</sup> July 2023 at the Law Society in Ireland.

**THE RESOURCE IMPLICATIONS OF WORK INTEGRATED LEARNING AND  
LEGAL CLINICS IN AUSTRALIAN LEGAL SYSTEM: MANAGING  
WORKLOAD, SYSTEM SUPPORT AND RECOGNITION**

**Anne Hewitt, The University of Adelaide Law School <sup>1</sup> and Natalie Skead, The  
University of Western Australia <sup>2</sup>**

**Abstract**

Work integrated learning (WIL) has been embraced as a valuable pedagogy by many Australian law schools, which offer students the opportunity to engage in a variety of WIL including clinical legal education, placements in law firms and industry projects. However, there is widespread recognition that WIL pedagogies have unique resourcing requirements in terms of workload and infrastructure. In addition, there is evidence that academic contribution to WIL pedagogies is not positively regarded in the context of academic advancement. This article explores the resources required to deliver legal WIL and presents novel data about how this is being accommodated by Australian law schools.

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<sup>1</sup> Associate Professor, The University of Adelaide Law School. The 2017/2018 research reported in this article was conducted with the support of Australian Research Council's Discovery Project funding ('Regulating Post-Secondary Work Experience: Labour Law at the Boundary of Work and Education', DP150104516). Professor Emerita Rosemary Owens, Professor Andrew Stewart, and Dr Joanna Howe were Chief Investigators on that project and integral to the collection and analysis of that data.

<sup>2</sup> Professor Natalie Skead, UWA Law School, The University of Western Australia.

This analysis informs the development of specific recommendations for Australian law schools on the resourcing of legal WIL.

## **Introduction: The many voices supporting work-integrated learning in our universities**

Work integrated learning (WIL) is an umbrella term used to describe a variety of learning experiences unified by the fact “students engage with workplaces ...as a formal part of their studies...”.<sup>3</sup> For the purposes of this article, WIL is restricted to pedagogies which: (1) engage students in aspects of real work; and (2) are part of a university course of study, usually for academic credit.<sup>4</sup> In a legal context, the two typologies of WIL which will be examined are internship style placements, where students undertake work within legal workplaces, and clinical legal education.<sup>5</sup>

WIL has been endorsed by a range of stakeholders in the Australian tertiary education sector, including the Australian government (which in 2020 increased the availability

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<sup>3</sup> Jan Orrell, *Good Practice Report: Work-integrated Learning* (Australian Learning and Teaching Council, 2011) 5. See also Debra D Burke and Robert Carton, ‘The Pedagogical, Legal, and Ethical Implications of Unpaid Internships’ (2013) 30 *Journal of Legal Studies Education* 99, 101–7.

<sup>4</sup> This is similar to the definition proposed by Craig Cameron, who defined WIL as ‘a tertiary program which combines and integrates learning with its workplace application in the workplace’: Craig Cameron, ‘The vulnerable worker? A labour law challenge for WIL and work experience’ (2013) 14(3) *Asia Pacific Journal of Cooperative Education* 135, 136. However, the definition in this article differs in that it is restricted to WIL programs offered by universities, not all tertiary education providers.

<sup>5</sup> The nature of clinical legal education is considered below, in the text associated with fn 41.

of funding for WIL courses),<sup>6</sup> professional accreditation bodies,<sup>7</sup> industry and universities.<sup>8</sup> WIL is undertaken by a significant number of Australia's university students, as confirmed by a national Universities Australia survey conducted in 2017 of Australia's 39 self-accredited universities. The survey found that more than one third of students enrolled at Australian universities had undertaken a WIL activity, with some students undertaking more than one.<sup>9</sup>

There is evidence suggesting there are good reasons for this stakeholder support. Data from the national Graduate Outcomes Survey<sup>10</sup> (GOS) suggests undertaking WIL improves graduates' employability and employment outcomes. Thirty-one

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<sup>6</sup> In 2020, as a part of its Job Ready Graduates package, the Australian government encouraged the offering of WIL courses by enacting legislation to remove the broad exclusion of 'work experience in industry' units of study from Commonwealth Grant Scheme funding: *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020* (Cth). This enabled universities to offer more WIL courses to commonwealth supported place students.

<sup>7</sup> The completion of periods of work experience is often required as a pre-requisite for professional accreditation. For example, to be admitted and enrolled as a barrister and solicitor of the Supreme Court of South Australia, individuals must have graduated with a recognised law degree and have completed 'a period of workplace experience at an appropriate workplace' sufficient to satisfy the requirements for admission prescribed in the Rules of the Legal Practitioners and Admissions Council 2018 (SA) Part 2; and the 2020 Australasian Veterinary Boards Council requires that 30% of the entire curriculum/coursework for the degree of Doctor of Veterinary Science must be 'practical, hands-on clinical instruction and experience' in order for the degree to receive accreditation: Australasian Veterinary Boards Council, 'Accreditation Standards' (2020) 32. Note, these Accreditation Standards are currently under review, see <https://avbc.asn.au/accreditation-standards-review/> [accessed 2 February 2023].

<sup>8</sup> This is demonstrated by a national joint statement in support of WIL by peak bodies representing universities, business, and industry in Australia: Universities Australia, Australian Chamber of Commerce and Industry, Australian Industry Group, Business Council of Australia, Australian Collaborative Education Network, 'National Strategy on Work Integrated Learning in University Education' (2015).

<sup>9</sup> Universities Australia, *Work Integrated Learning in Universities* (Final Report, April 2019) 8.

<sup>10</sup> The GOS is a component of the Quality Indicators for Learning and Teaching suite of surveys which is commissioned by the Federal Department of Education, Skills and Employment. The GOS is intended to measure the short-term labour force outcomes of graduates approximately four to six months after completing their qualification.

universities opted to include five questions about WIL in the GOS survey administered in 2021, and 30 universities in 2020.<sup>11</sup> Graduates of universities that opted to include the five additional questions were asked to identify if they completed some form of WIL during their degree. Those respondents who had undertaken WIL were also asked the extent to which they agreed or disagreed that participation in WIL had improved their employability outcomes. Respondents strongly agreed that the WIL activities they completed had done so. In summary,

- More than eighty percent felt completing WIL enhanced their professional capabilities and improved their job prospects (eighty percent / 80.2%);
- Close to three quarters felt WIL increased their awareness of organisations where graduates could work (seventy three percent / 73.1%);
- Close to sixty three percent stated WIL improved their appeal in the labour market (62.9%) and almost sixty two percent that WIL broadened their professional contact network which improved job prospects (61.7%).<sup>12</sup>

In addition, the 2021 GOS data indicated a correlation between completing WIL and graduate employment, with participation in workplace-based WIL during their degree (as opposed to simulations of real work or completing industry projects on campus) increasing graduate employment. Within the same graduating cohort,

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<sup>11</sup> Australian Collaborative Education Network, *Australian Collaborative Education Network – 2021 Summary Report for Graduate Outcomes Survey Items* (Report, Social Research Centre, October 2021) (**2021 Summary Report for Graduate Outcomes Survey Items**); Australian Collaborative Education Network, *Australian Collaborative Education Network – Summary Report for Graduate Outcomes Survey Items* (Report, Social Research Centre, November 2020).

<sup>12</sup> Australian Collaborative Education Network, *2021 Summary Report for Graduate Outcomes Survey Items* 13.

graduates who completed workplace based WIL had a graduate employment rate of seventy-four percent (74.1%) while those who completed on campus or simulated WIL had a graduate employment rate of just sixty-four percent (63.7%).<sup>13</sup> This confirms data from the United Kingdom, where surveys of employers suggest that completing curricular work experience during higher education can improve employment outcomes after graduation,<sup>14</sup> and a 2021 analysis suggesting that completing a curricular internship in the United Kingdom tends to improve the employability of recent graduates.<sup>15</sup>

As well as having potential value for students, WIL has been warmly embraced by universities as a signifier of the ‘real world’ relevance and industry connection of degree programs.<sup>16</sup> This can become a tool to re-market a traditionally academic course with a ‘vocational’ aura that may make it more attractive to potential students

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<sup>13</sup> Ibid 15.

<sup>14</sup> Carys Roberts, *The Inbetweeners: The New Role of Internships in the Graduate Labour Market* (Report, Institute for Public Policy Research, April 2017); UK Commission for Employment and Skills, *Employer Skills Survey 2015 of 91,000 Employers* (2015).

<sup>15</sup> Charikleia Tzanakou, Luca Cattani, Daria Luchinskaya and Giulio Pedrini, ‘How do Internships Undertaken During Higher Education Affect Graduates’ Labour Market Outcomes in Italy and the United Kingdom?’ in Andrew Stewart et al, *Internships, Employability and the Search for Decent Work Experience* (Edward Elgar, 2021) 55, 72.

<sup>16</sup> For example, The University of Wollongong (UOW) states: ‘At UOW, we focus on teaching not just specialist knowledge, but also the skills needed to embrace change and solve tomorrow's challenges. That's why practical experience, like an internship, is incorporated into every degree’: <https://www.uow.edu.au/study/high-school/7-things-youll-learn-from-doing-an-internship/> [accessed 2 February 2023]. The University of Adelaide states: ‘Internships are the perfect complement to your academic studies. They give you the chance to apply the principles and theories you learn in the classroom to real, meaningful work in a professional setting—and that’s just the start’: <https://www.adelaide.edu.au/internships/students> [accessed 2 February 2023].



seeking the highest future return for their investment in education.<sup>17</sup> This approach has been adopted by some Australian law Schools.<sup>18</sup>

Together, the many voices advocating for WIL risk creating a perfect storm, in which all WIL opportunities are extolled as beneficial, regardless of context or content. This is problematic, as there is evidence that not all workplace experiences convey equal benefits. In 2020 O'Higgins and Piñedo undertook a review of research into the impact of workplace learning on employment. Their study confirmed that completing curricular WIL (as opposed to non-curricular work experience) has a broadly positive impact on graduate employment in a wide range of jurisdictions and industries.<sup>19</sup> However, this positive employment correlation was often either only, or more, apparent when WIL was directly related to the student's study,<sup>20</sup> or was elective rather than mandatory.<sup>21</sup> It seems, therefore, that some WIL experiences have more positive employment outcomes for students than others.

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<sup>17</sup> Indra Abeysekera, 'Issues relating to designing a work-integrated learning program in an undergraduate accounting degree program and its implications for the curriculum' (2006) 7(1) *Asia-Pacific Journal of Cooperative Education* 7, 15.

<sup>18</sup> Some law schools promote themselves to prospective students by emphasising their employability rates and the starting salaries of their graduates. See Margaret Thornton and Lucinda Shannon, "'Selling the Dream': Law School Branding and the Illusion of Choice' (2013) 23 *Legal Education Review* 249, 257-65.

<sup>19</sup> Niall O'Higgins and Luis Piñedo Caro, 'What Makes for a "Good" Internship?' Andrew Stewart et al, *Internships, Employability and the Search for Decent Work Experience* (Edward Elgar, 2021) 35, 36-42.

<sup>20</sup> Niall O'Higgins and Luis Piñedo, citing Péter Róbert and Ella Saar, 'Learning and Working: The Impact of the "Double Status Position" on the Labour market Entry Process of Graduates in CEE Countries' (2012) 28 *European Sociology Review* 742.

<sup>21</sup> Niall O'Higgins and Luis Piñedo, citing Weiss et al 'The Effects of Work Experience During Higher Education on Labour Market Entry: Learning by Doping or An Entry Ticket?' (2014) 28 *Work Employment & Society* 788.

As well as research into the potentially differential outcomes of participating in different forms of WIL, others have examined the risks inherent in WIL.<sup>22</sup> For example, Hewitt et al considered the extent to which student WIL participants were covered by a variety of labour law protections, such as prohibitions of discrimination and harassment, and workplace rights, such as regulation of working hours.<sup>23</sup> They identified significant gaps in the legislative protections offered to students engaged in WIL, exposing these vulnerable workplace participants to a variety of risks. These risks included the absence of protections against being required to work excessive or unreasonable hours, the failure of prohibitions to regulate workplace discrimination and harassment directed towards student WIL participants, and potential failures in the educational regulation of WIL which meant some students may have sub-standard learning outcomes. They also identified a lack of regulatory knowledge by those developing and running WIL programs, and an absence of mechanisms to ensure regulatory compliance in the design and delivery of WIL by universities.<sup>24</sup>

In addition, it seems that students belonging to some equity groups face obstacles which limit their capacity to secure WIL placements, or impede their capacity to complete them.<sup>25</sup> For example, in 2019 First Nations students were less likely than their

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<sup>22</sup> Craig Cameron and Anne Hewitt (2021) *Facilitating student engagement with WIL: A risk management framework for studentships / Final Report* (ACEN) [https://drive.google.com/file/d/1suBuuFSDVAgJU-14H4JBW\]mvNnMM1xHa/view](https://drive.google.com/file/d/1suBuuFSDVAgJU-14H4JBW]mvNnMM1xHa/view) [accessed 2 February 2023].

<sup>23</sup> Anne Hewitt, Andrew Stewart, Rosemary Owens & Joanna Howe J (2021) *Protecting Students at Work: Australian Universities And Regulating For Quality Work Experience* (Adelaide) <https://law.adelaide.edu.au/ua/media/1851/protecting%20students%20at%20work%200.pdf> [accessed 2 February 2023].

<sup>24</sup> *Ibid*, 25-42.

<sup>25</sup> Universities Australia, n 6, 27-30.

non-Indigenous counterparts to participate in WIL (31.1% compared to 37.3% of domestic non-Indigenous students); as were those students from low Socio-Economic Status (SES) backgrounds (27.8% compared to 48.6% of students from high SES backgrounds); and students from regional (34.1%) and remote (27.2%) areas compared to those from metropolitan areas (37.7%).<sup>26</sup> To date, there is no research definitively identifying the reason/s for these differences in participation rates, however it is probable that they result from a variety of factors including: lack of opportunity; inability to cover the direct and indirect (for example, paid work foregone) expenses of completing WIL; absence of professional connections which could facilitate securing WIL positions; and discrimination in recruitment for WIL.<sup>27</sup>

Given the potential differential in the outcomes of various types of WIL, patchy extension of workplace protection for participants, and issues of equitable access, it is important that WIL courses offered in Australian universities are appropriately regulated and monitored. The Australian tertiary education regulator, Tertiary Education Quality and Standards Agency (TEQSA), provides guidance on the expectations for minimum standards of WIL in Australia. They include:

- There must be constructive alignment between the learning outcomes of a student's degree and the WIL placement;

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<sup>26</sup> Universities Australia, *2020 Higher Education Facts and Figures* (Report, October 2020), 52–3.

<sup>27</sup> These are canvassed in Hewitt, A., Grenfell, L., Abiyat, H., Hendry, M., Howe, J., & Whittaker, S. (2022). Weighing the Cost of Expectations that Students Complete Legal Work Experience. *Legal Education Review*, 32(1), 109-128 Part 2.

- WIL placements must be supported by adequate facilities and infrastructure to enable student success;
- Policies and procedures must be put in place to ensure WIL placements are of high quality and well supervised; and
- The WIL experience must be educationally sound.<sup>28</sup>

However, TEQSA's enforcement process for self-accrediting universities is risk based, and it may not rigorously check compliance with these principles, or only do so irregularly.<sup>29</sup> This means that universities themselves are largely responsible for ensuring these threshold expectations are met. However, ensuring this for WIL courses has resource implications, the nature of which have unique dynamics in some disciplines.<sup>30</sup> Rather than exploring the resourcing of WIL in Australia's higher education sector generally, this article seeks to explore the issue in a single professional discipline: law. In Part 1, the article canvasses some of the broad WIL resourcing issues identified in educational literature. In Part 2, it addresses resourcing issues specific to legal internships and clinical legal education. Part 3 considers qualitative data gathered from interviews conducted with 68 personnel at 15 universities around Australia about the resource implications of WIL in the Australian

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<sup>28</sup> TEQSA (2021) *Compliance Note: Work Integrated Learning* (version 2.0), 2. <https://www.teqsa.gov.au/sites/default/files/compliance-guide-work-integrated-learning.pdf?v=1634017523> [accessed 2 February 2023].

<sup>29</sup> Anne Hewitt (2022) 'Is Legislation Governing Tertiary Work Experience Effective? Exploring the Regulatory Role Played by Australian Universities' *Federal Law Review* 50(1) 62.

<sup>30</sup> Issues associated with meeting these resourcing demands are examined in Hewitt et al *Protecting Students at Work* (n 21 above) pp 39-41.

tertiary education sector generally. In Part 4, it sets out novel qualitative data gathered from a survey of the Associate Deans, Learning and Teaching (or equivalent) in Australia's law schools about the WIL courses they offer and how the workload and resourcing of those courses is managed. This data is discussed in Part 5, which informs the development of a series of recommendations for Australian law schools, put forward in Part 6.

### **Part 1: The resource implications of WIL pedagogies**

As discussed above, there is evidence that participating in WIL can assist students gain practical skills, develop professional connections, and showcase their worthiness to secure graduate positions, all of which can translate into positive employment outcomes.<sup>31</sup> However, evidence suggests not all WIL courses deliver equal benefits. Overseas data suggests that paid WIL positions are 'associated with better post-programme outcomes than unpaid' placements.<sup>32</sup> It has been suggested that the remuneration itself is not the reason for this, but that the improved outcomes are rather linked to the more 'structured and formalized approach' in paid experiences.<sup>33</sup> In contrast, poor quality placements, with inadequate supervision or training (which

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<sup>31</sup> Niall O'Higgins and Luis Piñedo, 'Interns and Outcomes: Just How Effective are Internships as a Bridge to Stable Employment?', (Employment Working Paper No 241, International Labour Organization, 9 August 2018); Universities Australia et al, *National Strategy on Work Integrated Learning in University Education* (2015).

<sup>32</sup> O'Higgins and Piñedo Caro, n 16, 45.

<sup>33</sup> O'Higgins and Piñedo Caro, n 16, 53. It is notable that in the Australian context completing work experience is associated with better employment outcomes, and that workplace learning undertaken as a part of study is even more effective than extra- or co-curricular arrangements: Australian Collaborative Education Network, *Australian Collaborative Education Network – 2021 Summary Report for Graduate Outcomes Survey Items* (Report, Social Research Centre, October 2021), 15

may also constitute exploitative or illegal unpaid work<sup>34</sup>) have limited impact on graduates' employment prospects.

It can be presumed, therefore, that WIL experiences with the best outcomes are those that are well structured and well supervised. This is consistent with the TEQSA guidance regarding expectations of WIL discussed above.<sup>35</sup> Developing and delivering high quality and effective WIL courses is time intensive and requires developing in students a particular skill set. As McNamara has noted in the legal education context:

In addition to feedback from the workplace supervisor, students should also be provided with support from the academic supervisor to assist the development of professional competence. This might include preparation for the placement, identification of skills or competencies able to be developed during the placement and the ability to self-evaluate and learn from experience. In addition students need clear guidance as to what the learning expectations from the placement are and how to achieve them and the distinction between work and what is learned at work. Students should also be supported in preparing for the commencement of their internship which may be their first experience of a professional workplace. Young and Blanco (2007–2008) suggest students are often unprepared for the workplace in that they do not know how to dress and

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<sup>34</sup> In 2018 it was estimated that at least 10% of unpaid work in Australia might be illegal: Andrew Stewart et al, 'The Nature and Prevalence of Unlawful Unpaid Work Experience in Australia' (2018) 31(2) *Australian Journal of Labour Law* 156, 171.

<sup>35</sup> See n 24.

communicate appropriately; and how to take instructions on assignments. This lack of preparedness can inhibit students from attaining the most from their placement experience and may even embarrass the university which has placed the student.<sup>36</sup>

A well-designed WIL placement with adequate supervision often requires more than just effort on the part of a single academic or placement host working in isolation. Delivering high quality WIL requires a range of other institutional supports. For example, Hewitt et al suggest that ensuring delivery of effective WIL programs requires:

- appropriate information technology and administrative systems to support WIL;
- adequate provision for, and recognition of, academic and professional staff workload in relation to WIL;
- professional development for university staff involved in WIL; and
- frameworks, procedures and processes to ensure regulatory compliance and risk management, in recognition of the fact there are unique regulatory requirements for WIL and specific risks.<sup>37</sup>

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<sup>36</sup> Judith McNamara, 'The challenge of assessing professional competence in work integrated learning' (2013) 38(2) *Assessment & Evaluation in Higher Education* 183, 187-8 (internal references omitted).

<sup>37</sup> For example, labour law issues such as compliance with the *Fair Work Act 2009* (Cth) arise in the context of WIL which are not relevant to non-WIL courses. In addition, students undertaking a work-based placement are exposed to a variety of risks the University cannot control, for instance the risk of workplace injury, harassment or discrimination. The regulation of and risks inherent in WIL are considered in Hewitt et al, n 20, 41-3.

Many of these factors were also recognised in the Queensland University of Technology project on Institutional Quality Assurance of WIL.<sup>38</sup> That project developed a framework that recognises that institutional resources are a critical domain of quality assurance with regards to WIL.

It is important to note that, in many discipline areas, these additional resourcing requirements do not arise or arise to a lesser extent, in the design and delivery of non-WIL courses.<sup>39</sup> While such courses inevitably involve labour costs associated with the teachers designing and delivering the course and general facility and administrative support costs, there is limited (if any) need for legal advice or drafting of placement contracts, or the education of, or guidance for, host supervisors needed, or the expense of off-site visits or inspections required for many non-WIL courses. In addition, most traditional courses utilise fairly generic information technology tools, whereas WIL courses may require placement management systems.

In the context of law, WIL often also gives rise to specific additional resourcing issues. These are canvassed in Part 2.

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<sup>38</sup> Matthew Campbell, Leoni Russell, Lindy McAllister, Lorraine Smith, Ricky Tunny, Kate Thomson and Maria Barrett, (2019) *A framework to support assurance of institution-wide quality in work integrated learning*. <https://research.qut.edu.au/wilquality/wp-content/uploads/sites/261/2019/12/FINAL-FRAMEWORK-DEC-2019.pdf> [accessed 2 February 2023].

<sup>39</sup> In some subject areas other costs, such as fieldwork, laboratory or material costs may be incurred.



## **Part 2: Resourcing WIL in law**

There are a number of WIL typologies in law, two of which will be canvassed here: (1) 'legal placement WIL'; and (2) 'clinical legal education'. Each has discrete resourcing implications.

### *Legal placement WIL*

Legal placement WIL replicates the WIL experiences common in other disciplines: work-based placements within the industry in which students engage in supervised professional tasks. The resource requirements of such placements are significant. McNamara details the various administrative burdens required to facilitate a law student undertaking a legal internship, including:

- administrative processes to ensure the host supervisor's qualifications are checked;
- provision of detailed resources to host supervisors regarding the requirements of supervision, provision of feedback, and assessment; and
- moderation of marks awarded by diverse host supervisors.<sup>40</sup>

In addition, academics involved in delivering legal placement WIL are often required to locate positions for students, which requires the development and maintenance of

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<sup>40</sup> Moderation of marks awarded by host supervisors may be more onerous than other moderation requirements because many are not experienced markers, and each may only be supervising/marketing a very limited number of students, increasing the potential for marking differences. Judith McNamara, 'Internships: effective work integrated learning for law students' (2009) 10(3) *Asia-Pacific Journal of Cooperative Education* 229, 235-6.

relationships with host firms and lawyers, and (in some instances) compliance with significant university administrative requirements.<sup>41</sup> As Joubert observes:

The lecturer responsible for the WIL-components ... is burdened with a huge responsibility of taking care of the logistical challenges of this process and playing an active role with the various practicing attorneys and advocates throughout.<sup>42</sup>

In addition to these time-consuming administrative tasks, academic staff involved with legal placement WIL also need to work with students prior to and during the placement to ensure they have the necessary academic, personal, professional and ethical skills expected by their hosts. For example, students need to be aware of critical issues relating to client confidentiality and conflicts of interest.<sup>43</sup>

### *Clinical Legal Education*

The second significant WIL typology prevalent in law is clinical legal education (CLE). Although CLE takes a variety of forms and is not amenable to a single precise definition, Giddings provides a general description of CLE as academic activity:

[I]n which each student takes responsibility for legal or law-related work for a client (whether real or simulated) in collaboration with a supervisor. Structures enable each student to receive feedback on their contributions and to take the

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<sup>41</sup> The extent to which placements are vetted by universities, and the paperwork required for placements, varies hugely: Hewitt et al (2021) n 20.

<sup>42</sup> Deidre Joubert, 'Innovative Work Integrated Learning for Law Students in South Africa' (2011) 4(21) *International Journal of Arts & Sciences* 231, 234.

<sup>43</sup> Law Council of Australia (2015) *Australian Solicitor's Conduct Rules* rr 9 and 12.

opportunity to learn from their experiences through reflecting on matters including their interactions with the client, their colleagues and their supervisor as well as the ethical dimensions of the issues raised and the impact of the law and legal processes.<sup>44</sup>

As with legal placement WIL, there is a growing awareness of the resource implications of developing and maintaining high quality CLE. For example, in 2008 Giddings stated '[t]he key challenge to greater use of clinical teaching remains its resource intensive nature'.<sup>45</sup> McNamara identifies some of the specific resources required for CLE programs, including: 'intensive academic supervision, partnerships with community legal organizations and government funding'.<sup>46</sup> Supervision of students undertaking real legal work in a CLE context, often on behalf of underprivileged members of the community, can also require a significant element of pastoral care, more perhaps, than in other legal education contexts. As Evans et al state, this 'demands major emotional and energy commitments from clinical supervisors year after year'.<sup>47</sup> In addition, CLE requires investment in specialised technology, such as case management software.<sup>48</sup>

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<sup>44</sup> Jeff Giddings, *Promoting justice through clinical legal education* (Justice Press, 2013), 14.

<sup>45</sup> Jeff Giddings, 'Contemplating the Future of Clinical Legal Education (2008) 17(1) *Griffith Law Review* 1, 2.

<sup>46</sup> Judith McNamara, 'Internships: effective work integrated learning for law students, (2009) 10(3) *Asia-Pacific Journal of Cooperative Education* 229, 230.

<sup>47</sup> Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone and Simon Rice, 'Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school' in Adrian Evans et al, *Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school* (ANU Press, 2017) ch 9, 213.

<sup>48</sup> Martin J Katz, 'Understanding the Costs of Experiential Legal Education' (2015) 1 *Journal of Experiential Learning* 28.

*Conclusion*

As this brief overview demonstrates, the resource demands of legal placement WIL and CLE (collectively, legal WIL) are broadly understood to be significant. This, of course, would not be an issue if Australian universities were consistently able to meet those demands. However, a review of the literature regarding the resource implications of legal WIL suggests that this is not always the case. Instead, a number of common concerns regarding resourcing emerge.

First, is the issue of appropriate workload allocation and recognition, and the second is the challenges posed by specific information technology requirements.

***Workload allocation and recognition***

There is a long history of clinical supervision being regarded as a distraction from research and scholarship, and not in itself worthy of commendation. For example, it is reported that in 1984 the Director of Research in the Monash Law Faculty, Professor Richard Fox, wrote to the Dean stating:

[A]cademic staff who devote their time whole-heartedly to the clinical programme may later find themselves at a disadvantage in securing promotion because of their reduced productivity during their time in the programme. Their contribution to the teaching, community service and administrative sides of the

legal service are not seen by those who place prime value on research as compensating for an apparent weakness in the publication record...<sup>49</sup>

This was also recognised by Shirley et al, who state:

The potential drawbacks [of work-integrated learning opportunities] include: ... the lack of career development opportunities for the academic staff members involved in such programs as distinct from research based opportunities.<sup>50</sup>

In some instances, the resource implications have been perceived as leading to a conflict between in-house clinics and cheaper external placements.

[T]he cost concern often pits in-house clinical courses against externships because the externship structure usually allows higher student-to-faculty ratios, and therefore, lower costs per student. The cost advantage of externship programs has consistently led commentators to predict that law schools will shift resources into externships as the primary form of clinical education.<sup>51</sup>

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<sup>49</sup> Jeff Giddings, 'Clinical Legal Education in Australia: A Historical Perspective' (2003) 3 *International Clinical Legal Education* 7, 24.

<sup>50</sup> Melinda Shirley, Iyla Davies, Tina Cockburn and Tracey Carver, 'The Challenge of Providing Work-Integrated Learning for Law Students – the QUT Experience' (2006) 10 *International Journal of Clinical Legal Education* 134, 137.

<sup>51</sup> Peter A Joy, 'The Cost of Clinical Legal Education' (2012) 32 *Boston College Journal of Law & Social Justice* 309, 328.

### ***Information technology requirements***

There is also significant consideration in the literature of the technology required to support WIL, especially CLE.<sup>52</sup> The resource implication of technology is recognised as being twofold: involving both investment and training.

Furthermore, students cannot be expected to receive any educational benefit from using case management software when they are unable to be adequately trained, due to supervisors' lack of commitment to the software or understanding of it.<sup>53</sup>

### **Part 3: Australian data regarding resourcing WIL**

During 2017 and 2018, as a part of an ARC Discovery Project (**2017/18 study**),<sup>54</sup> a series of 68 semi-structured interviews were conducted with Australian university staff working in WIL in a variety of roles.<sup>55</sup> The interviews were conducted at 15 diverse Australian universities located in five Australian states,<sup>56</sup> including universities with multi-state campuses, those located in the outer suburbs of a city, rural/regional universities and providers of distance education.<sup>57</sup> The four participant cohorts were

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<sup>52</sup> See, eg, Ross Hyams, 'Clinical Legal Education Management and Assessment Software (2004) 6 *International Journal of Clinical Legal Education* 177.

<sup>53</sup> *Ibid*, 191

<sup>54</sup> Australian Research Council's Discovery Project Grant DP150104516.

<sup>55</sup> The University of Adelaide Human Research Ethics Committee, Ethics Approval H-2016-254.

<sup>56</sup> New South Wales, Queensland, South Australia, Victoria and Western Australia. Excluded were Tasmania and all Australian territories. Our rationale for the exclusions was time, cost and particularity (accounts in excluded regions would be *sui generis*).

<sup>57</sup> These categories overlapped in some institutions; for example, a university could be both regional and have campuses in outer suburbs of cities in that region.

university staff working in: a) policy, legal and risk; b) education; c) careers and volunteering; and d) international service. The interviews shed light on a number of the WIL resourcing issues discussed above. The interviews were cross disciplinary and were useful in confirming the continued relevance of many of the issues, including resourcing issues, identified in the WIL literature. Some of the relevant content from the interviews is summarised here, both to provide context and because it inspired the law specific study described below.

As discussed, the literature suggests that clinical supervision in the context of law is undervalued in terms of workload and promotion. The evidence from the interviews conducted in the 2017/18 study suggests that across Australia there is a consistent perception that the development and supervision of work experience placements is under-recognised. There are two components to this, the first being that in many universities insufficient workload recognition is awarded compared to the time commitment required to develop and supervise WIL properly, with the result that supervisors are poorly resourced or overwhelmed by their supervision responsibilities. One interview participant summarised the problem as follows:

It's massive, it's massive and I don't think – well everyone has this rhetoric around work-integrated learning and work placements and industry partnerships – actually, we don't take it seriously enough because we don't, no-one gets workload though.<sup>58</sup>

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<sup>58</sup> Interviewee A.

The second component is that engaging with WIL is undervalued in terms of academic advancement:

[T]here's usually just a subject coordinator who runs the show and that is very isolating and non-recognised female activity. So the labour force issues are ginormous because people aren't committed to this area because it's career suicide...<sup>59</sup>

While it seems that some institutions are increasing funding and support to address this problem: '[w]e are better resourced in the employability space than we used to be', this is not a common theme. Instead, while institutional enthusiasm for work experience is growing almost uniformly, resourcing is not.

In this context, many interviewees indicated that cumbersome administrative requirements associated with WIL are often overlooked: '[b]asically the staff feel they're overworked, and this is just another thing they have to worry about'.<sup>60</sup> Some universities are seeking to address the workload implications of WIL by developing systems and processes to streamline the workload. However, where they exist, these systems and processes are focussed on risk management and accountability, rather than on academic content or the time required to manage and supervise effectively. In addition, there is some explicit recognition that the workload falling on academic and

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<sup>59</sup> Interviewee B.

<sup>60</sup> Interviewee C.



professional staff is not adequately recognised in workload allocation systems, and staff are not properly trained or supported:

A part of the problem, if I can add that in now, is that negotiating partnerships with our host organisations, which are fundamental to quality work experiences or work placements for our students, is a real problem for us for a number of reasons – staff are not resourced to do that; there is no workload allocated to it; staff don't know how to do it; staff feel intimidated. I have done a lot of research on that actually, so I know that that is absolutely a fact. <sup>61</sup>

The interviewees in the 2017/18 project also touched on the importance of investing in data management systems for WIL. In some instances, interviewees recognised that the cost of such infrastructure is a barrier to investment or a cause of delay.

I sponsored a project which hasn't really again got off the ground yet but it has been, you know, it has been approved, looking at an enterprise solution for the recording and tracking of placements. So we don't have such a thing at the moment. <sup>62</sup>

The University has also recently, this year, invested in a system that will create some common templates across reporting and how programs are managed ... So it's been quite a large investment<sup>63</sup>

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<sup>61</sup> Interviewee D.

<sup>62</sup> Interviewee E.

<sup>63</sup> Interviewee F.

Based on this data, we considered the resourcing of WIL in the context of legal education.

#### **Part 4: Law specific data regarding resourcing WIL**

In 2021 and 2022 we undertook an empirical Australia-wide study to understand better the resourcing constraints and other challenges facing Australian law schools offering legal WIL and how they manage, recognise and reward the workload associated with WIL in law (**2021/22 law study**).

#### ***Method***

The 2021/22 law study involved a survey of the Associate Deans, Learning and Teaching (or equivalent) in Australian law schools. The invitation to undertake the survey was distributed to participants via email, through the Council of Australian Law Deans, and through the Law Education Associate Deans network. Survey participants had the option of completing the survey online on the Qualtrics survey platform or via a telephone interview with one of the project team members.

#### ***Participants***

Representatives from twenty-six law schools completed the survey. Twenty-three completed the survey online and three via telephone interview. One representative indicated they did not complete the survey as their law school does not offer a WIL course. As there are 39 law schools in Australia, this represents a response rate of over 68%.

### *Survey*

Using a self-designed survey in Qualtrics the survey questions canvassed the following six broad areas relating to legal WIL:

- Whether the law school offers WIL courses and, if so, how many;
- Number of students participating in the WIL courses;
- Number of staff involved in delivering WIL courses and their roles;
- Recognition in workload and promotions for academic staff involved in delivering WIL;
- Data management systems in place for administering WIL; and
- Staff training, regulation, and compliance.

The survey comprised 20 questions and took approximately 15 minutes to complete.<sup>64</sup> Eight of the survey questions were open-ended and the remaining twelve gave participants a range of answer options from a drop-down menu. The responses to the eight open-ended questions provided much of the qualitative data used in this article.

### *Procedure and Method of Analysis*

The online survey was voluntary and anonymous, and participants could withdraw at any time. It contained no unique personal or institutional identifiers. The participants who elected to complete the survey via telephone interview were not

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<sup>64</sup> The survey is attached as an appendix.

anonymous, but all unique identifiers were removed from their responses when it was entered into the survey.

After the time window for completing the survey closed, the data was collated and analysed using Qualtrics to compile and present the demographic and descriptive data and NVivo qualitative analysis software to thematically codify and analyse the open-ended question responses.

### ***Limitations***

The data collected in the 2021/22 law study was limited by the knowledge of the survey participants. To ensure accuracy of information collected, we distributed copies of the survey topics with the invitation to complete the survey, so the Associate Dean, Learning and Teaching (or equivalent) for each law school could inform themselves of any information required which they may not have otherwise had easily to hand when completing the survey. However, we did not evaluate whether participants availed themselves of this opportunity.

As the 2021/22 law study progressed it became apparent that nomenclature was not consistent across institutions. This was particularly true with regard to the designation of staff roles (permanent, full time, sessional, academic, professional etc.) and types of WIL. It is possible different interpretations by participants of the terms used in the survey may have affected results.

Finally, in the three surveys completed during or after a telephone interview, it was possible for the researcher to interrogate responses and seek further information. This

may have elicited more or different details than if the participant had completed the survey online independently.

Cumulatively, these factors may constitute minor limitations on the integrity of the data collected.

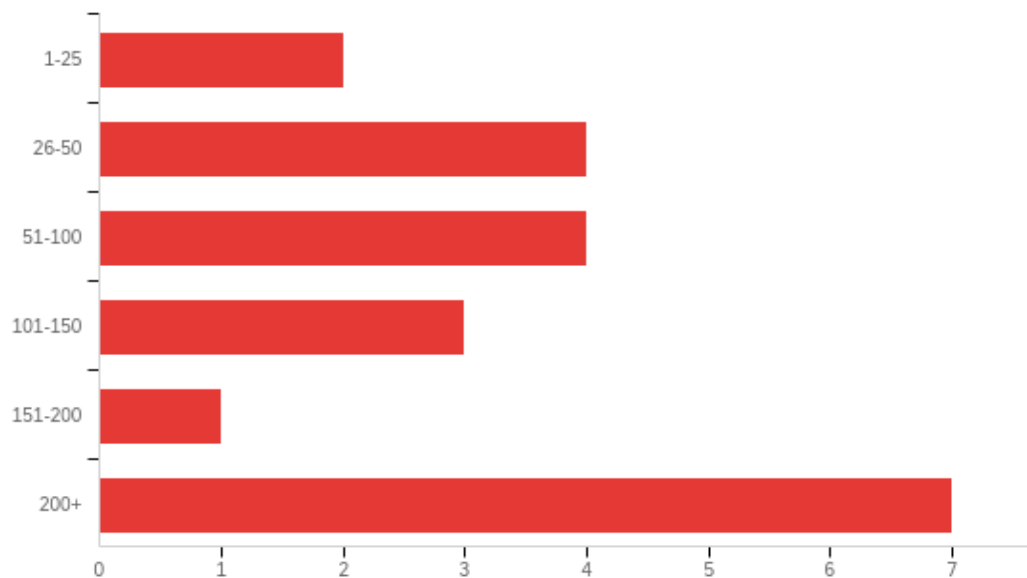
## ***Results***

### *WIL offerings and student participation*

The majority of participants reported that their law school offers between one and five WIL courses. Six reported having between six and ten and two have up to 15. No Australian law school that participated in the study offers more than 15 WIL courses. Included in these WIL numbers were CLE programs, internship courses, and industry projects. CLE programs ranged in offering from one to ten per law school and internship courses between one and six. In addition, 15 participating law schools reported providing students with the opportunity to participate in industry projects.

As reflected in Figure 1, the number of students participating in WIL courses range from one to 25 to over 200. Most of these students participate in internships in which they attend at a real workplace.

*Figure 1: number of students participating in WIL courses each academic year*



*Staff involved in WIL*

In contrast to the 2017/18 study, participants in the 2021/22 law study reported that, generally, the WIL courses in their law schools are well-staffed, with a few exceptions.

Participants were asked how many staff are involved in WIL course coordination, organising placements, marking assessments, supervising students, and data entry and management. One participant reported having only one academic staff member being responsible for the course coordination, teaching, and administration of WIL. Another had two and another three academic staff undertaking this work. At the other end of the workload spectrum, three law schools reported having over 20 academic staff involved in course coordination, organising placements, assessment, supervision, and data management relating to WIL. In all cases, at least some tenured/tenurable academics were involved in the WIL courses. However, 60% of respondents indicated additional reliance on sessional teachers.

All law schools reported having some professional staff support for their WIL courses. However, this support varies markedly across law schools, with most receiving minimal support. Although one participant indicated receiving support from seven professional staff, including five staff members supporting all aspects of WIL, nine (or over 42%) received support from one member of professional staff. For five of these the support is limited to data entry or data management relating to WIL courses. Another six law schools (or over 28%) are supported by two or three professional staff. Almost 60% of professional staff support and 95% of academic staff support for WIL is provided from within law schools, with 22% of professional support provided centrally and 18% professional support and 5% academic support provided by a mix of central and school staff.

Participants were asked to identify any other tasks related to WIL courses that were not included in the list of tasks identified above (organising placements, marking assessments, supervising students, and data entry and management). Several respondents identified more nuanced roles or specific role titles. For example, relating to the general task of 'organising placements', one participant commented:

There is [a] significant amount of relationship management and stakeholder engagement undertaken by academic staff setting up projects, placements etc which is not captured above. This is largely undertaken by academic staff.

And in relation to the general task of 'data entry/management', another participant noted:

For [the] XXX program, [a] professional staff member assists in... maintaining and administering files between semesters.

Other WIL roles not captured in the list provided were: 1) an overarching “WIL Director” role to develop WIL throughout the law program and to implement the university's WIL strategic priorities; and 2) facilitating student enrolment in WIL courses.

*Academic recognition for work associated with WIL*

### Workload allocation

Sixty-two per cent of participants reported that the allocation of academic workload for WIL courses was the same as for other traditional law courses:

The unit convenor gets same workload as for any other course.

For Industry project courses, this is given an identical workload allocation to any other course.

Clinics and internship subjects considered the same as electives.

Coordination of any course regardless of enrolments or type is given identical academic workload credit.

Relatedly, some participants stated that academic staff were allocated to WIL-units based on teaching load capacity in the course of normal workload allocation:



Teaching of each unit has a prescribed allocation that is considered as part of the academic staff workload. Staff are allocated to various WIL units according to teaching load capacity.

Clinical teaching is calculated as part of the workload allocation according to the policy. For most of the clinical supervisors the clinical subject forms only part of their regular teaching workload.

However, several participants noted the difference between delivering WIL and more traditional law courses. For example, one participant commented:

In a more traditionally oriented faculty there is sometimes limited awareness of just how much time goes into organising and maintaining partner relationships, supervising students. The relatively individualised nature of the programs, at least compared to traditional courses is not always well-understood.

This comment suggests that, in some contexts, allocating WIL workload on the same basis as for other courses may not, in fact, be equitable. Consistently with this, of the 38% of participants who reported that the workload allocation for WIL courses differed from that for other traditional courses, the difference related for the most part to additional workload recognition being given for the high-level coordination, supervision, arranging placements, and 'significant relationship management and [external] stakeholder engagement'. As one participant noted:

Given that much of the workload is administrative it does not translate to coordination and teaching function. However the CLE clinics are legal practices so require senior solicitor management, risk management, staff management and support, liaison with stakeholders such as the law society, insurers, partner organisations, quality assurance, practice oversight and support, training, process management and reporting as per legal practice management. Other than allowing admin functions to be dedicated to the clinics, there is no separate recognition of the role as practice manager. It is a significant outward looking role and requires annual accreditation, professional development of myself and supervisors, and meeting professional reporting obligations. The WIL workload recognition seeks to take into account all the time spent on arranging placements.

Several participants indicated, however, that this additional workload for WIL-specific duties was recognised in their workload allocations:

Normal co-ordination hours and seminar delivery hours and extra hours for supervision.

Co-ordination is the same but extra hours allocated for supervision.

Standard workload for lectures and tutorial hours, additional 20 hour for convening to account for organising placements.

The high level course coordination role is regarded the same, but the workload for supervising the projects is calculated differently.

Greater recognition is given to the engagement and relationship management requirements of a clinical/WIL course.

An additional 50 workload points is allocated for coordination of WIL units as they are categorised as 'High Student Contact Units'. We work on the basis of 1000 annual workload points for a full-time academic in an academic year.

The WIL workload recognition seeks to take into account all the time spent on arranging placements.

In contrast to the results from the 2017/18 study, generally, participants considered the workload allocation for WIL courses to be appropriate:

The current recognition seems to strike a good balance. ... the work is very different involving a more sustained relationship with fewer students and is more flexible. There is a lot less work involved than in a non internship course and so the recognition has seemed adequate.

There is no specific credit for administrative workload, however it is assigned as an administrative task in the law school. Credit for the teaching component is the same as in other courses. The current workload seems fair and reasonable in my view. Fewer hours workload credit given despite need for individual guidance and supervision of students throughout course is adequate but not generous. If I had to facilitate placements, run orientations, check on student

welfare etc then it would be vastly inadequate. Because those things are done externally it is ok.

The workload recognition is commensurate with the role of crafting and running an industry project course or a speciality WIL experience course (ie overseas WIL engagement).

### Academic promotion

While the vast majority of participants (over 84%) reported that academic staff receive recognition in the academic promotion process for their work in designing, implementing and running WIL courses, only 53% considered that this recognition was proportionate to the importance of the work and the time and expertise it requires. It is concerning that 16% of participants reported not receiving any such recognition and 47% considered that, where such recognition is given, it is not adequate. Some commented on the reasons for this:

The workload recognition is commensurate with the role of crafting and running an industry project course or a specialty WIL experience course (i.e., overseas WIL engagement). It can be included in a promotion application as evidence of pursuing the university goal of a WIL experience for every student, but there is no clear indication of its impact.

The university has a strong focus on stakeholder engagement, and for that reason does give promotion credit to the relationships developed through creating,

supervising WIL project opportunities for students. This has improved as the institutional focus on engagement and WIL has been embedded. However, there is still a mismatch between the recognition it receives, the real work commitment, and the work required to be invested by staff.

One theme to emerge from the open-ended responses was the undervaluing of work associated with WIL in academic promotions, compared to research and traditional teaching:

It should be more integrated with academic work, Uni's see the cost as per student but the enrolments are typically low but the workload is just as high regardless of enrolments; it is very difficult to find time for research because the work continues beyond the teaching semesters and the cases have to continue to be managed (clinical staff)- BUT still assessed for promotion against traditional academic measures, including research output, so it is difficult to keep up research performance.

Research academics get most recognition.

The view of central administration is that WIL does not contribute to student learning, ERA, or community engagement.

Participant responses to the question ‘What data management system/s does your school use relating to WIL? (i.e. what system/s record/s where placements are located, duration of placements, where do you store associated paperwork, etc.)’ revealed a range of practices, most of which are inadequate. Five law schools use “InPlace” which one participant described as a ‘terrible system’, three use Sonia and two CareerHub. A further three participants reported using a centralised system, the details of which were not provided. Remarkably, seven participants indicated they maintain their own records on their own device or in a shared drive using Excel, Word, email, and a Learning Management System. Regardless of the system used, in 90% of instances, all those involved in delivering WIL either in the law school or centrally have access to the WIL data on the system.

*Staff training, regulation, and compliance.*

The final suite of survey questions related to staff training, regulation, and compliance. Although 80% of participants reported that the course approval process for WIL courses in their institution explicitly or implicitly ensures compliance with external regulatory requirements for WIL, more than 85% of participants indicated that they receive no training in relation to the external regulation of, and compliance requirements for, WIL courses. Only three participants indicated they did receive relevant training.

**Part 5: Discussion**

While there are many potential benefits associated with WIL for law students, there are also a variety of risks for participants, hosts, and law schools.<sup>65</sup> Risk management demands we adequately resource WIL, to maximise the learning outcomes and safety of participants, and minimise the legal and reputational risks for other stakeholders. As the pressure on the tertiary sector to produce 'work ready graduates'<sup>66</sup> increases, risk management through adequate resourcing is likely to become even more important. This is particularly true for WIL in law, as the awareness of the risks of engagement in legal workplaces (especially for the young and vulnerable) increases.<sup>67</sup> For proof of the potential risks to junior participants in Australian legal workplaces we need only consider the June 2020 revelations that while he was a member of the High Court, the Hon Dyson Heydon AC QC harassed six Judge's Associates.<sup>68</sup>

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<sup>65</sup> See, for example, Craig Cameron, 'The student as inadvertent employee in work-integrated learning: A risk assessment by university lawyers' (2018) 19(4) *International Journal of Work-Integrated Learning* 337; Anne Hewitt, Rosemary Owens and Andrew Stewart, 'Mind the gap: Is the regulation of work-integrated learning in higher education working?' (2018) 44(1) *Monash University Law Review* 234.

<sup>66</sup> In the Ministerial Foreword to the 2019 *Career-Ready Graduates* report by Universities Australia, then Minister for Education Dan Tehan stated 'Work integrated learning at Australian universities is a win-win for students and employers. ... It is essential that students are exposed to how contemporary workplaces operate so they can hit the ground running from day one of the job'.

<sup>67</sup> Anne Hewitt and Laura Grenfell, 'A call for regulatory reform to make work experience accessible rather than an obstacle' (2022) 47(4) *Alternative Law Journal* 301.

<sup>68</sup> On 22 June 2020 the Chief Justice of the Australian High Court, the jurisdiction's ultimate court of appeal, released a public statement that multiple former associates had made accusations of sexual harassment against former High Court Justice, Dyson Heydon. An independent investigation found Heydon sexually harassed six junior court staff during his time on the High Court. The findings illustrate the vast power imbalances which can operate in a legal context, and the vulnerability of junior lawyers to inappropriate behaviour. Susan Kiefel, 'Statement By The Hon Susan Kiefel AC, Chief Justice Of The High Court Of Australia', 22 June 2020 <https://cdn.hcourt.gov.au/assets/news/Statement%20by%20Chief%20Justice%20Susan%20Kiefel%20A.C.pdf> [accessed 9 February 2023].

The 2017/2018 study suggested that, overall, WIL was not adequately resourced in Australia's 39 self-accrediting universities.<sup>69</sup> Of particular concern was the limited recognition of the workload involved in creating and delivering high quality WIL experiences for students. However, the discipline specific 2021/2022 law study presents a slightly different picture. Positively, the data emerging from participant law schools suggests that while the methodologies for calculating workload associated with "teaching" legal WIL vary, they generally offer far greater workload recognition than was reported in the earlier study. The reasons for this change are not clear. It may be that the sector's approach to WIL workload has changed between the two phases of data collection. Alternatively, instead of being reflective of a broader change, it may be that this phenomenon is specific to the discipline of law. The current analysis does not shed light on this, but it would be a fruitful area for future research.

While the workload allocation for legal WIL supervision and teaching was considered relatively good, there were issues reported regarding the adequacy of workload recognition of some of the unique work associated with WIL. These included the creation and management of relationships with external stakeholders, including WIL hosts, provision of stakeholder training, and managing workplace and legal issues,

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<sup>69</sup> Registered higher education providers can either be authorised as self-accrediting or have each of the courses of study the institution offers accredited by TEQSA. At the time of the 2017/2018 study all 39 Universities in Australia were self-accrediting. There are currently 41 self-accrediting universities plus the University of Divinity which is recognised as partially self-accrediting: <https://www.teqsa.gov.au/national-register> [accessed 9 February 2023].



such as creating placement contracts and ensuring insurance coverage for WIL participants.

While the 2021/2022 law study revealed more appropriate workload recognition for WIL than we anticipated based on the results of the 2017/18 study, it also disclosed ongoing issues regarding recognition of engagement with WIL in academic promotions. The data strongly suggested that contribution to legal WIL does not receive recognition in academic promotion processes proportionate to either the work involved, nor its value to students, the community, the legal profession, and the reputation of schools and universities.<sup>70</sup>

There is a real risk that failing to recognise contributions to WIL programs in academic promotions will make it more challenging to attract and retain academics into these roles. This has the potential to undermine the synergies between research, supervision and professional engagement which are facilitated by having academic faculty engaged with WIL programs and CLE clinics. In this context, it should also be noted that the 2021/2022 law study suggests that a considerable amount of legal WIL work is being performed by individuals employed in non-teaching capacities. For example, solicitors hired to supervise legal clinics, or professional staff managing placements. Whether outsourcing legal WIL from academics in this way is positive or

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<sup>70</sup> The Educating Lawyers report, published in 2007 by the Carnegie Foundation for the Advancement of Teaching, emphasised the importance of clinical experiences to effective legal education: William Sullivan, Anne Colby, Judith Wegner, Lloyd Bond and Lee Shulman (2007) *Educating Lawyers: Preparation for the Profession of Law*, Jossey-Bass. chs 2 and 3.

negative remains to be explored. It is, however, consistent with the general trend of reducing academic faculties and increasingly relying on contract and casual staff, which raises a variety of issues for the tertiary education sector.<sup>71</sup>

Two other areas of resource concern identified in the 2021/2022 law study were infrastructure support, and training. Managing legal WIL courses (whether CLE or placement based) requires use of an appropriate data management system with shared access. It was concerning that the law study revealed some WIL programs were being administered using an excel spreadsheet on one academic's computer. The risks associated with this, in terms of ensuring information about placements and placement related issues are accessible to all those who need it, are clear.

A final, significant resourcing issue is the lack of training for WIL staff (whether sessional, contract, tenured academic or others) on applicable regulation and compliance. This is a clear risk management imperative. The 2021/2022 law study suggests this is not well accommodated even in law, where it appears WIL may be better resourced than in other disciplines. The reasons for this are unclear. It may be that those associated with legal WIL are not offered relevant training based on a

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<sup>71</sup> See, for example, Hamish Coates, Ian Richard Dobson, L Goedegebuure and Lynn Meek, 'Australia's casual approach to its academic teaching workforce' (2009) 17(4) *People and Place* 47; Anne Junor 'Casual university work: choice, risk, inequity and the case for regulation' (2004) 1 (2) *The Economic and Labour Relations Review* 276; Suzanne Ryan, John Burgess, Julia Connell and Egbert Groen, 'Casual academic staff in an Australian university: marginalised and excluded' (2013) 19(2) *Tertiary Education and Management* 161; Jill Cowley, 'Confronting the reality of casualisation in Australia: valuing sessional staff in law schools' (2010) 10(1) *Queensland University of Technology Law and Justice Journal* 27; John Ross, 'Attempts to tackle casualisation in Australia "have failed"' 15 February 2022 <https://www.timeshighereducation.com/news/attempts-tackle-casualisation-australia-have-failed> [accessed 9 February 2023]; Archie Thomas, Hannah Forsyth and Andrew Bonnell 'The dice are loaded': History, solidarity and precarity in Australian universities' (2020) 17(1) *History Australia* 21.

presumption that they are already aware of the regulatory issues and able to manage compliance. However, given the plethora of specialist issues that may arise, including compliance with TEQSA and Education Services for Overseas Students legislation, Australian Qualifications Framework requirements, issues of confidentiality, intellectual property and workplace laws, such a presumption is likely to be unfounded.

## **Part 6: Conclusion and Recommendations**

In conclusion, our assessment of the resourcing of WIL in Australia's law schools is mixed. It seems there are some positive aspects to the way in which workload for WIL programs is allocated and recognised, however there remain some concerns about the level of recognition of the external engagement and unique administration required. We also query whether reliance on non-tenured academic staff is an appropriate resourcing choice, given its potential to affect WIL quality, risk management, or regulatory compliance. In this context, we note that the general lack of commensurate recognition of WIL in academic promotions is an obstacle to encouraging tenured academics to commit to WIL programs. However, regardless of who is designing and delivering legal WIL, it is imperative those individuals receive appropriate training on applicable regulation to ensure compliance.

The analysis above informs our development of specific recommendations for Australian law schools on the resourcing of legal WIL. We have framed the

recommendations at a high level so that they can be tailored to each law school's courses, staff and student cohort, and administrative context. Nonetheless, we suggest they constitute an important threshold commitment to appropriate resourcing to ensure the sustainability, quality and success of legal WIL programs, and facilitate regulatory compliance and risk minimisation.

**Recommendation 1: Provision of training**

Individuals involved in designing, delivering, administering and assessing WIL courses should receive training in relevant internal (university policy) and external (state and federal legislation) regulation.

**Recommendation 2: University policies and processes**

University policies and processes applicable to WIL (including those regarding development and approval of WIL courses, assessments, supervision, intellectual property and data management) should be tailored to ensure regulatory compliance and excellent learning outcomes in WIL courses.

**Recommendation 3: Appropriate data management systems**

Law schools should adopt and utilise an appropriate data management system for WIL courses.

#### **Recommendation 4: Workload recognition**

Law schools should ensure the time and effort associated with WIL is appropriately recognised in workload models and teaching allocations.

Workload allocations for WIL need to acknowledge not just supervision time but also other activities associated with WIL including:

- building and maintaining relationships with external partners;
- administration (including facilitating placements and putting placement contracts in place);
- delivery of preparatory training for students relating to ethical and professional conduct; and
- upskilling in the use of technology and specialist data management software.

#### **Recommendation 5: Recognition in Academic Promotion**

Involvement in the development and delivery of WIL courses should be valued and given due recognition in the assessment of promotion applications commensurate with the specialist and skilled nature of the work, and its value to students, the community and law schools.

## APPENDIX

### **2020/2021 law study survey instrument**

Thank you for participating in this survey about Work Integrated Learning in your Law School. We are interested in those courses/units in which students attend a real workplace OR do real work remotely and for which they receive academic credit. This could be described as a clinical placement, an internship, an industry project etc.

We are not interested in simulated work, or work experience done without academic credit.

In reporting the results of the survey, all results will be presented in aggregated form, and no individual or individual Law School will be identified with any specific data.

1. Approximately many WIL courses are offered in your Law School?

- a. 1-5
- b. 5-10
- c. 10-15
- d. 15-20
- e. 20+

2. Please provide some additional information about the WIL courses offered in your Law School.

	Drop down menu
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Number of clinical legal education courses	1 2 3 4 5 6 7 8 9 10 10+
Number of internship courses (where students attend a real workplace)	1 2 3 4 5 6 7 8 9 10 10+
Number of remote internship courses (where students work remotely from the workplace but do real legal work)	1 2 3 4 5 6 7 8 9 10 10+
Number of industry projects	1 2 3

	4
	5
	6
	7
	8
	9
	10
	10+

3. Approximately how many students participate in the various WIL courses in each academic year? If a student participates in two courses, please count them twice.

	Drop down
Number of students completing clinical legal education	1-19 20-39 40-59 60-79 80-99 100-119 120-139 140-159 160-179 180-200 200+
Number of students completing internships (where students attend a real workplace)	1-19 20-39 40-59 60-79 80-99 100-119 120-139 140-159 160-179 180-200



	200+
Number of students completing remote internship courses (where students work remotely from the workplace but do real legal work)	1-19 20-39 40-59 60-79 80-99 100-119 120-139 140-159 160-179 180-200 200+
Number of students undertaking industry projects	1-19 20-39 40-59 60-79 80-99 100-119 120-139 140-159 160-179 180-200 200+

4. How many staff are involved in delivering those courses, and are they professional or academic staff?

If one staff member completes all these roles, please use the “General WIL course coordination/teaching/admin” category. However, if roles are divided between individual staff, please use the category which best fits the role undertaken by each staff member.

ROLE	Number of academic staff	Number of professional staff
General WIL course coordination/teaching/admin		
Course coordination		
Organising placements		
Marking WIL assessments		
Supervising students		
Data entry/management re WIL		

5. If staff members undertake additional roles re WIL courses that are not included above, could you briefly describe their role and whether they are academic or professional below.

FREE TEXT

6. Are the professional staff members involved in delivering WIL courses located within Law School or central or a mixture?
- a. Law School
  - b. Central/faculty
  - c. Mixture
7. Are the academic staff members involved in delivering WIL courses located within Law School or central or a mixture?
- a. Law School
  - b. Central/faculty

c. Mixture

8. Are they tenured/able academics or sessional staff?

FREE TEXT

9. What workload recognition do academic staff get for that work? If possible, please explain the workload credit in hours/student or hours/course and what percentage of academic staff member's overall workload this represents.

FREE TEXT

10. If there is a workload document or policy that explains how the workload is determined, could you please provide us with a copy OR extract a copy of the relevant part below:

FREE TEXT

11. How does that workload recognition compare to the workload recognition for designing, coordinating and teaching in "traditional" law courses?

- a. The same per course or per student
- b. Different per course or per student

12. If you indicated the workload credit is different from traditional courses, please explain how.

FREE TEXT

13. Do academic staff receive recognition for work designing, implementing and running WIL courses in academic promotion applications?

a. Yes

b. No

14. Do you think the academic workload and promotion recognition given is proportionate to the importance of the work and the time and expertise it requires, or not?

a. Yes

b. No

15. If you indicated the academic workload and promotion recognition for WIL is not proportionate to the importance of the work and the time and expertise it requires, please explain why you hold that view.

FREE TEXT

16. What data management system/s does your school use relating to WIL? (i.e. what system/s record where placements are located, duration of placements, stores placement associated paperwork, etc.)

FREE TEXT

17. Who has access to data on that system?

a. All staff involved in WIL in all areas of the university

b. All staff involved in WIL in the Law School

c. Only the individual/s who entered the data

d. A small pool of people with access to a shared file

18. Do staff involved in WIL courses get any specific training re external regulation i.e., the Fair Work Act, TEQSA Guidelines etc?

a. Yes

b. No

19. If yes, could you please provide details.

FREE TEXT

20. Do course approval processes for WIL courses explicitly or implicitly ensure compliance with external regulation i.e., the Fair Work Act, TEQSA Guidelines etc?

a. Explicit

b. Implicit

c. Not ensured

## **THE LAW IN THE COMMUNITY MODEL OF CLINICAL LEGAL EDUCATION: ASSESSING THE IMPACT ON KEY STAKEHOLDERS**

**Lyndsey Bengtsson and Bethany A'Court, Northumbria University\***

### **Abstract**

This article examines a model of clinical legal education where a university law school works in partnership with an external organisation. The partnership enables law students to attend the offices of Citizens Advice during their law degree and under the guidance and supervision of their staff, advise their service users on a range of legal issues. Using data collected from a research study involving student focus groups and semi structured interviews with the Citizens Advice supervisors, this research contributes to the understanding of whether, and how, this model impacts upon law students, Citizens Advice and the local community. This study contributes to the knowledge on the value of this model of clinical legal education from both a pedagogical and social justice perspective. The research raises questions as to how a partnership between a university and external organisation can overcome challenges, ensuring an equivalent clinical experience for all students and that effective feedback is provided to students. The results indicate that there are a clear set of pedagogical benefits to the students and benefits to Citizens Advice with regards to the service they can provide to the local community. The authors argue that this module enables students to engage in transformative and impactful work, whilst obtaining first-hand experience of the access to justice challenges (and other socio-economic issues) faced

by their local community. The study will be of interest to clinics who incorporate, or intend to incorporate, an externship model in their curriculum, both in Europe and beyond.

## **Introduction**

The Law in the Community Student Law Office module was introduced into Northumbria University's LLB Hons curriculum during the academic year 2018-2019 and has now been running successfully for four years.<sup>1</sup> In this module, the students volunteer for 4 hours each week at Citizens Advice over the course of the second semester to provide legal advice, assistance and/or legal education to their service users.<sup>2</sup> This is in addition to the fortnightly workshops that they attend with their university tutor which further develop the students' skills and aim to contextualise their volunteering experience.

Citizens Advice is a network of charities, offering free and impartial advice to members of the community.<sup>3</sup> It is a vital service which helped over 2.55 million people

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\*Lyndsey Bengtsson and Bethany A'Court are Assistant Professors at Northumbria University. The authors wish to thank Callum Thomson for his help in running the student focus groups.

<sup>1</sup> For further information about the Student Law Office please see the webpage <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-lawschool/study/student-law-office/>.

<sup>2</sup> For a discussion on the design and implementation of this module see Lyndsey Bengtsson, Bethany A Court and Callum Thomson, 'The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool' (2021) *International Journal of Clinical Legal Education* Vol.28 No.1 pp. 111-148.

<sup>3</sup> Citizens Advice offers legal advice and assistance to the public in 2,540 locations across England and Wales, with 21,400 volunteers and 8,150 members of staff. They provide advice on a range of legal

with one-to-one advice in 2021/22.<sup>4</sup> Legal aid cuts introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO),<sup>5</sup> and cuts to charitable organisations,<sup>6</sup> has impacted on access to justice. Indeed, those who seek assistance from Citizens Advice are often *'the most disadvantaged in society with the greatest needs.'*<sup>7</sup> Accordingly, through the students' volunteer work, they increase the capacity of Citizens Advice and play a key role in ensuring advice and assistance is provided to those who may not otherwise be able to access legal services<sup>8</sup>. The students develop their *'knowledge of the law and professional skills and simultaneously gain an appreciation of the access to justice challenges faced by their local community.'*<sup>9</sup>

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matters including welfare benefits, family, housing and employment law. For further information, see the webpage <https://www.citizensadvice.org.uk> accessed 22 April 2021.

<sup>4</sup> Citizens Advice, 'All our impact' <https://www.citizensadvice.org.uk/about-us/about-us1/impact-of-citizens-advice-service/all-our-impact/> accessed 22 November 2022.

<sup>5</sup> The reforms being implemented through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted> accessed 27 November 2021.

<sup>6</sup> Debra Morris and Warren Barr 'The impact of cuts on legal aid funding on charities' *Journal of Social Welfare and Family Law* Vol. 35 No.1 pp.79-94.

<sup>7</sup> Citizens Advice, 'Our impact' <https://www.citizensadvice.org.uk/about-us/difference-we-make/impact-of-citizens-advice-service/all-our-impact/> accessed 3 December 2022.

<sup>8</sup> See Elaine Campbell, 'Pro bono is great education for law students but they shouldn't fill the gap left by legal aid cuts' published in *The Conversation* (2014) <https://theconversation.com/pro-bono-is-great-education-for-law-students-but-they-shouldnt-fill-gap-left-by-legal-aid-cuts-34323> accessed 4 December 2020. See also Donald Nicholson (2006) 'Legal Education or Community Service the Extra Curricular Student Law Clinic' *Web Journal of Current Legal Issues*, <http://www.bailii.org/uk/other/journals/WebJCLI/2006/issue3/nicolson3.html> accessed 4 December 2022.

<sup>9</sup> Lyndsey Bengtsson, Bethany A Court and Callum Thomson, 'The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool' (2021) *International Journal of Clinical Legal Education* Vol.28 No.1 pp. 111-148.



The benefits of law schools working with external organisations is not a new concept in clinical legal education and the benefits are well documented in the literature.<sup>10</sup> Similarly, law schools working in partnership with Citizens Advice is not new<sup>11</sup> however there is a dearth of literature on value of this model from the viewpoint of the students and the Citizens Advice supervisors. Previous research conducted by Sparrow reveals that a collaboration between the Law School of the University of Portsmouth<sup>12</sup> and their local Citizens Advice brings *'rewards for both teachers and students'* which *'have been significant'*.<sup>13</sup> For King and Jones the partnership between Birmingham City University Law School and their local Citizens Advice<sup>14</sup> brings benefits to Citizens Advice, its clients, the university and to the students. They highlight that it is *'the glue of mutually reinforcing benefits that makes this partnership so*

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<sup>10</sup> Lyndsey Bengtsson and Ana Speed, 'A case study approach: Legal Outreach clinics at Northumbria University' (2019) *International Journal of Clinical Legal Education* Vol. 26 No. 1 pp.179-215; Margaret Castles, 'Marriage of convenience or a match made in heaven? Collaboration between a law school clinic and a commercial law firm' (2016) *International Journal of Clinical Legal Education*, Vol. 23, pp. 7-47; Karen A Jordan, 'Enhancing Externships to Meet Expectations for Experiential Learning' (2016) *Clinical Law Review* Vol. 23 pp.339; Katie Spillane, 'Being the Change: Social Justice in Externship Program Evaluation' (2016) *Windsor Yearbook of Access to Justice* Vol. 33 pp. 45; Judith McNamara, Catherine Campbell and Evan Hamman, 'Community Projects: Extending the Community Lawyering Model' (2014) *International Journal of Clinical Legal Education* Vol. 21 No.2 pp.106-138; Lydia Bleasdale Hill and Paul Wragg, 'Models of Clinics and Their Value to Students, Universities and the Community in the post 2012 Fees Era' (2013) *International Journal of Clinical Legal Education*, Vol. 19, pp.257-270; Martin Partington, 'Academic and Practical Legal Education: The Contribution of the Sandwich System' (1984) *The Law Teacher* Vol. 18 pp. 110.

<sup>11</sup> See Sarah Nason, 'Holistic Legal Support for Litigants in Person: the North and Mid Wales Law Clinic Partnership' (2022) *International Journal of Clinical Legal Education*, Vol 29. No 2.pp. 69-111.

<sup>12</sup> In this model the students conduct their Citizens Advice training in year two of their LLB Hons degree and then act as Citizens Advice advisers for 120 hours in year three.

<sup>13</sup> Claire Sparrow, 'Reflective Student Practitioner - An example integrating clinical experience into the curriculum' (2009) *International Journal of Clinical Legal Education*, Vol. 14 pp.70-76.

<sup>14</sup> In this model the students in the third year of their LLB degree attend Citizens Advice for one day each week.

*strong and enduring.'*<sup>15</sup> A more recent study by Nason analysed a partnership between seven Local Citizens Advice branches and Bangor University using 13 student reflective reports.<sup>16</sup> She concludes her research by highlighting that this model of clinical legal education has helped hundreds of people and students *'have a greater appreciation and enabling people and communities to help themselves with some elements of their justice problems, as well as being aware that this is increasingly achieved or supported using new technology.'*<sup>17</sup> Finally, in previous research conducted by the authors, the pedagogic value of this module was highlighted from the viewpoint of the academic responsible for designing, and implementing the module. The research concluded that it *'not only develops students' professional skills, but also empowers students to better understand access to justice challenges and enables them to play a pivotal part in supporting their local community.'*<sup>18</sup>

This study builds on previous research and presents the first detailed empirical evidence of the importance of the Law in the Community model, capturing the perceptions of those who supervise students at Citizens Advice and those students who learn in the clinic. The overarching aim of this research was to assess the impact of the Law in the Community module on Citizens Advice, the community and the law

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<sup>15</sup> Christopher King and David Jones 'Cui pro bono? Working on Partnership: A Possible Blueprint for the Future of Clinical Legal Education' in Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch (eds) 'Reimagining Clinical Legal Education' (Hart Publishing, 2018) pp. 25-46.

<sup>16</sup> Sarah Nason, 'Holistic Legal Support for Litigants in Person: the North and Mid Wales Law Clinic Partnership' (2022) *International Journal of Clinical Legal Education*, Vol 29. No. 2 pp. 69-111.

<sup>17</sup> *Ibid* pp. 106.

<sup>18</sup> Lyndsey Bengtsson, Bethany A Court and Callum Thomson, 'The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool' (2021) *International Journal of Clinical Legal Education* Vol.28 No.1 pp. 111-148.

students. The study used semi structured interviews and focus groups to provide rich qualitative data. Students and Citizens Advice supervisors participated in the data collection between April and May 2022. Full details of the method adopted are set out in the Method and Methodology section.

This article begins by providing a brief overview of the Law in the Community module, highlighting its key features, and providing background and context to the research. The method and methodology adopted will then be explained and thereafter the results will be analysed.

## **Background**

### *Clinical Legal Education and the Clinic at Northumbria University*

The Northumbria Student Law Office clinic was first established in 1981<sup>19</sup> and utilises clinical legal education as the teaching method. There is no agreed definition of clinical legal education however one definition is '*Learning through participation in real or realistic legal interactions coupled with reflection on this experience*'.<sup>20</sup> The benefit of clinical

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<sup>19</sup> See Cath Sylvester, Jonny Hall and Elaine Hall, 'Problem Based Learning and Clinical Legal Education: What Can Clinical Educators Learn from PBL?' (2004) *International Journal of Clinical Legal Education* Vol. 4 pp. 39-64.

<sup>20</sup> Kevin Kerrigan, 'What is Clinical Legal Education and Pro Bono' in Kevin Kerrigan and Victoria Murray (eds), *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave Macmillan 2011) pp. 5.

legal education in terms of skill development,<sup>21</sup> employability<sup>22</sup> and the wider community<sup>23</sup> is well documented. As Gold highlights, clinical legal education can '*stand on its own as a powerful methodology for learning.*'<sup>24</sup> Such a wide definition of clinical legal education is needed for it can encompass a variety of different models<sup>25</sup>; including, drop-in clinics, simulation, letters of advice, full representation and policy clinics.<sup>26</sup> The Student Law Office at Northumbria University is a year long module for students in their third year of the Mlaw degree<sup>27</sup> and the final year of LLB Hons

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<sup>21</sup> Richard Grimes, 'Legal Skills and Clinical Legal Education' (1995) Web Journal of Current Legal Issues Vol. 3; J Giddings, 'Contemplating the Future of Clinical Legal Education' (2008) Griffith Law Review Vol. 15, p.15; Jonny Hall, Kevin Kerrigan, 'Clinic and the Wider Law Curriculum' (2011) International Journal of Clinical Legal Education, Vol. 15. pp.25-37. For a discussion on the link between clinical legal education as a learning methodology and the extent to which students become more aware of the knowledge, skills and professional responsibility see Ann Thanaraj, 'Understanding how law clinic can contribute towards students' development of professional responsibility' (2016) International Journal of Clinical Legal Education, Vol. 23 No. 4. pp. 89-135.

<sup>22</sup> Francina Cantatore, 'The Impact of Pro Bono Law Clinics on Employability and Work Readiness in Law Students' (2018) International Journal of Clinical Legal Education, Vol. 25 No. 1. pp.147-172.

<sup>23</sup> Frank Dignan, 'Bridging the Academic/Vocational Divide: The Creation of a Law Clinic in an Academic Law School' (2011) International Journal of Clinical Legal Education Vol. 15 pp.75-84; Lyndsey Bengtsson and Ana Speed, 'A Case Study Approach. Legal Outreach Clinics at Northumbria University' (2019) International Journal of Clinical Legal Education Vol. 26 No. 1 pp.179-215.

<sup>24</sup> Nigel Gold 'Why not an International Journal of Clinical Legal Education?' (2000) International Journal of Clinical Legal Education Vol. 1 pp. 7-12.

<sup>25</sup> For a consideration of the different models of clinic see Donald Nicholson, 'Our Roots Began in South Africa' Modelling Law Clinics to Maximise Social Justice Ends' (2016) International Journal of Clinical Legal Education Vol. 23 No. 3 pp.87-136.

<sup>26</sup> For a discussion on policy clinics see Rachel Dunn, Lyndsey Bengtsson and Siobhan McConnell, 'The Policy Clinic at Northumbria University. Influencing Policy/Law Reform as an Effective Educational Tool for Students' (2020) Vol. 27 No. 2 pp.68-102.

<sup>27</sup> The MLaw degree at Northumbria University is a 4 year qualifying law degree which incorporates a legal practice course (a 1 year post graduate level qualification required to qualify as a solicitor in England and Wales). The way in which individuals may qualify as a Solicitor in England and Wales is changing with the Solicitors Qualifying Examinations. For further information on the Solicitors Qualifying Examination please see <https://sqa.sra.org.uk/>.

degree<sup>28</sup> to advise and represent clients on a range of legal issues.<sup>29</sup> The Student Law Office utilises the full representation model where students advise and represent members of the public under the supervision of qualified solicitors, barristers or caseworkers employed by the University.<sup>30</sup> Bleasdale-Hill and Wragg highlight that this type of internal supervision model provides for more contact with the supervisor than an external model.<sup>31</sup> This is a labour-intensive model of clinical legal education. Approximately 200 students undertake this module each year and recover millions of pounds of compensation for clients.<sup>32</sup> Within the Student Law Office year long module there is also a Policy Clinic where the students undertake impactful research with a view to influencing law or policy reform.<sup>33</sup>

As Carpenter highlights, Law Schools are increasingly looking for ways to develop their clinical experience for students beyond the traditional representation model.<sup>34</sup> In order to widen the scope of Northumbria's Student Law Office, the Law in the Community module was introduced in the 2018-2019 academic year as an alternative

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<sup>28</sup> This is a qualifying law degree which does not incorporate a legal practice course. After completion of the LLB degree, students would then need to complete either a 1 year Legal Practice Course or the Solicitors Qualifying Examinations.

<sup>29</sup> The Student Law Office advises on a range of legal issues including housing law, employment law, welfare benefits, family law, civil dispute and criminal law.

<sup>30</sup> The module is also available to the Legal Practice Course students as a 12 week module in the second semester.

<sup>31</sup> Lydia Bleasdale-Hill and Paul Wragg, 'Models of Clinics and Their Value to Students, Universities and the Community in the post 2012 Fees Era' (2013) *International Journal of Clinical Legal Education*, Vol. 19, pp.257-270.

<sup>32</sup> See <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office/>.

<sup>33</sup> Rachel Dunn; Lyndsey Bengtsson and Siobhan McConnell, 'The Policy Clinic at Northumbria University. Influencing Policy/Law Reform as an Effective Educational Tool for Students' (2020) Vol. 27 No. 2 pp68-102.

<sup>34</sup> Anna E Carpenter, 'The project model of clinical education: Eight principles to maximize student learning and social justice impact' (2013) *Clinical Law Review*, Vol. 20 No. 1, pp. 39-94.

clinical module to the year long Student law Office module. The aim of the module was for all the law students at Northumbria University to have the opportunity to undertake a clinical module and *'gain the practical legal experience and develop their professional skills.'*<sup>35</sup> At the time the module was introduced, the Student Law Office did not have capacity to offer a clinical experience to all students.<sup>36</sup> With more of an institutional focus on student satisfaction with the introduction of the National Student Survey and the Teaching Excellence Framework (TEF)<sup>37</sup>, it was also acknowledged that clinical modules often attracted a *'high feedback rate'* due to *'a combination of the fact that students tend to build relationships with supervisors, which they would not do on an ordinary black letter law module and secondly it is such a different way of learning to what students are used to.'*<sup>38</sup>

The impetus behind the introduction of the Law and the Community module is pedagogical driven, however there is also a potential for social justice impact.<sup>39</sup> Students develop that social justice ethos and help increase the capacity of Citizens Advice in advising the local community. Whilst social justice was not an explicit aim

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<sup>35</sup> Lyndsey Bengtsson, Bethany A Court and Callum Thomson, 'The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool' (2021) *International Journal of Clinical Legal Education* Vol.28 No.1 pp. 111-148.

<sup>36</sup> *Ibid.*

<sup>37</sup> The National Student Survey and the Teaching Excellence Framework are ways in which the government assess UK universities. See Amanda French and Matt O'Leary 'Teaching Excellence in Higher Education: Challenges, Changes and the Teaching Excellence Framework' (Emerald Publishing, 2017).

<sup>38</sup> Lyndsey Bengtsson, Bethany A Court and Callum Thomson, 'The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool' (2021) *International Journal of Clinical Legal Education* Vol.28 No.1 pp. 111-148, 128.

<sup>39</sup> *Ibid.*

of the module, from this perspective the students provide support to Citizens Advice and help fill unmet legal need in the local community.<sup>40</sup> Furthermore, the students gain a greater understanding of the access to justice challenges their clients face.<sup>41</sup> Social justice as an aim of clinical legal education has been extensively covered in the literature in the context of live client programmes<sup>42</sup> and there is a debate as to whether it should be explicitly mentioned as a primary mission.<sup>43</sup> Many clinical programmes expressly adopt a social justice perspective<sup>44</sup> and there is academic debate as to whether social justice or the pedagogical benefit should take precedence.<sup>45</sup> However it is also important to acknowledge that students may not necessarily undertake clinical legal education because of the social justice perspective, with some students

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<sup>40</sup> Anna E Carpenter, 'The project model of clinical education: Eight principles to maximize student learning and social justice impact' (2013) *Clinical Law Review*, Vol. 20 No. 1, pp. 39-94.

<sup>41</sup> Lyndsey Bengtsson, Bethany A Court and Callum Thomson, 'The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool' (2021) *International Journal of Clinical Legal Education* Vol.28 No.1 pp. 111-148. See also Ben Waters and Jeanette Ashton, 'A study into situated learning through community leadership partnership' (2018) *International Journal of Clinical Legal Education*, Vol. 25 No.2, pp. 4-47; F S Bloch (ed.) (2011) *The Global Clinical Movement: Educating Lawyers for Social Justice*, (New York: Oxford University Press).

<sup>42</sup> See for example Donald Nicholson, 'Our Roots Began in South Africa Modelling Law Clinics to Maximise Social Justice Ends' (2016) *International Journal of Clinical Legal Education* Vol. 23 No. 3 pp.87-136; Praveen Kosuri 'Losing My Religion: The Place of Social Justice in Clinical Legal Education' (2012) *Boston College Journal of Law and Social Justice* Vol. 32 No. 2 pp. 336; Richard J. Wilson 'Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education' (2009) *German Law Journal* Vol. 10 Issues. 6/7 pp.835.

<sup>43</sup> Riette Du Plessis, 'Clinical Legal Education: Determining the Mission and Focus of a University Law Clinic and Required Outcomes, Skills and Values' (2015) *De Jure* 48, No 2; Stephen Wizner and Jane Aiken, 'Teaching and Doing; the Role of Law School Clinics in Enhancing Access to Justice' (2014) *Fordham Law Review* 73, no 3, pp.997-1012.

<sup>44</sup> Paul McKeown, 'Can Social Justice Values be Taught Through Clinical Legal Education?' In C. Ashford, & Paul McKeown (Eds.), *Social Justice and Legal Education* (First ed., pp. 84-110, 2018). Cambridge Scholars.

<sup>45</sup> *Ibid.*

motivated to enhance their employability.<sup>46</sup> There is no set definition of social justice in the literature. For Weinberg *'social justice means that able members of society should challenge political, economic, societal, legal and other structures that oppress the less advantaged'*.<sup>47</sup> Research has shown that pro bono experience can have a positive impact on students' willingness to undertake public service work in the future.<sup>48</sup> Arguably, law schools play a role of raising awareness of unequal access to justice and to *'implement strategies aimed at ameliorating these'*.<sup>49</sup>

The authors' previous article highlights the consequence of austerity measures and the cuts to legal aid have meant that there is a greater need for organisations such as Citizens Advice and law clinics.<sup>50</sup> A balance needs to be struck here, however, to ensure the students are not overloaded with clients, ensuring there is a pedagogic value to their work. Indeed, as Wilson highlights *'Loading students down with too many cases of poor clients is a disservice to both student learning and client service, and even with*

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<sup>46</sup> Paul McKeown 'Law Students Attitudes Towards Pro Bono and Voluntary Work: the Experience at Northumbria University (2015) *International Journal of Clinical Legal Education* Vol. 22 No. 1 pp. 6-46.

<sup>47</sup> Jacqueline Weinberg, 'Preparing students for 21<sup>st</sup> century practice: enhancing social justice teaching in clinical legal education' (2021) *International Journal of Clinical Legal Education* Vol. 28 No.1 pp.5-67.

<sup>48</sup> See Sally Maresh, 'The Impact of Clinical Legal Education on Decisions of Law Students to Practice Public Interest Law' in *Educating for Justice: Social Values and Legal Education* (Jeremy Cooper and Louise G. Trubek eds. 1997); Deborah A. Schmedemann, 'Priming for Pro Bono Publico: The Impact of the Law School on Pro Bono Participation in Practice', in *Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession* (Robert Granfield and Lynn Mather eds. 2009).

<sup>49</sup> Lauren Carasik, 'Justice in the Balance: An Evaluation of One Clinics Ability to Harmonise Practical Skills, Ethics and Professionalism within Social Justice Mission' (2016) *Southern California Review of Law and Social Justice* Vol. 16, pp.23. See also Elaine Campbell and Victoria Murray, 'Mind the Gap: Clinic and the Access to Justice Dilemma' (2015) *International Journal of Legal and Social Studies* Vol. 2 No. 3 pp. 94-106.

<sup>50</sup> Lyndsey Bengtsson, Bethany A Court and Callum Thomson, 'The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool' (2021) *International Journal of Clinical Legal Education* Vol.28 No.1 pp. 111-148.



*the most accomplished clinical supervisor cannot provide quality oversight with an excessive number of clients served by large numbers of students.'*<sup>51</sup>

### ***The Law in the Community Module***

Law schools working in partnership with Citizens Advice has become more and more prevalent over the years.<sup>52</sup> Some clinics have operated this model for several years, developing a partnership which is '*strong and enduring*.'<sup>53</sup> However there appears to be no set model as to how this partnership works in practice, with some universities requesting student volunteers to others making the module a mandatory part of their degree. Some students receive a Citizens Advice qualification/accreditation as part of their volunteer work and others provide more of an ad hoc assistance. Although not an exhaustive list, there are models of this partnership operating in Birmingham City University,<sup>54</sup> University of Portsmouth,<sup>55</sup> University of Central Lancashire,<sup>56</sup> University of Leeds, and Lancaster University.<sup>57</sup>

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<sup>51</sup> Richard J Wilson, 'Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education' (2009) *German Law Journal* Vol. 10, Issues 6/7 pp.835.

<sup>52</sup> Lyndsey Bengtsson, Bethany A Court and Callum Thomson, 'The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool' (2021) *International Journal of Clinical Legal Education* Vol.28 No.1 pp. 111-148.

<sup>53</sup> Christopher King and David Jones 'Cui pro bono? Working on Partnership: A Possible Blueprint for the Future of Clinical Legal Education' in Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch (eds) '*Reimagining Clinical Legal Education*' (Hart Publishing, 2018) pp. 25-46.

<sup>54</sup> Ibid. See also Birmingham City School of Law, 'Legal Advice and Representation Unit' <https://www.bcu.ac.uk/law/student-experience-and-employability/legal-advice-representations-unit>

<sup>55</sup> Claire Sparrow, 'Reflective Student Practitioner – an example integrating clinical experience into the curriculum' (2009) *International Journal of Clinical Legal Education* Vol. 14 No.4 pp 70-76.

<sup>56</sup> University of Central Lancashire, 'Law Clinic Student Support' [https://www.uclan.ac.uk/students/support/law\\_clinic.php](https://www.uclan.ac.uk/students/support/law_clinic.php) last accessed 8 February 2023

<sup>57</sup> Lancaster University, Law Clinics' <https://www.lancaster.ac.uk/study/why-lancaster/law-clinics/> last accessed 8 February 2023.

In the third year of the LLB programme at Northumbria University the students choose between the year long Student Law Office module and the Law in the Community module. The latter is undertaken alongside their dissertation. In the Law in the Community module, the students leave their university campus and work from the offices of Citizens Advice to advise members of the public on a range of legal matters. They undertake this module during the second semester which is between the months of January and May.

The students attend Citizens Advice for half a day each week for 10 weeks during the second semester. They are asked to complete approximately 16 hours of online mandatory training before the module starts so that they are ready to begin advising clients.<sup>58</sup> This training is split into induction training and core training. The induction training introduces the students to the aims, principles and work of Citizens Advice. The core training activities aim to provide the students with key skills and knowledge that they will need to provide clients with information and advice, such as interviewing skills, case recording and telephone skills. The training activities are the same as those that regular volunteers at Citizens Advice are required to complete. Where however, individuals volunteer longer term, they must complete further training.<sup>59</sup>

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<sup>58</sup> Approximately 2 months before the start of the module the students are sent details of the online training course and asked to complete this before they begin their volunteering.

<sup>59</sup> Once the module comes to an end the student may agree with Citizens Advice to continue their volunteer work.

Whilst at Citizens Advice, the students are involved in advising clients at the daily face-to-face drop-in sessions where up to 60 members of the public can attend. The students are also involved in giving telephone advice to clients. They are exposed to a wide variety of issues and areas of law, including welfare benefits, debt, employment, consumer protection, housing, immigration, tax and travel. They also undertake a diverse range of activities on behalf of their clients, which involves interviewing clients, taking instructions and advising clients. Additionally, they may undertake legal research, draft client statements and court documents, prepare case strategies and contribute to law reform.<sup>60</sup>

The students also attend fortnightly two hour workshops which further develop the students' skills<sup>61</sup> and contextualise their volunteering experience. These workshops take place within the law school with their university tutor. The students therefore gain the benefit of learning from multiple supervisors.<sup>62</sup> As Bengtsson and Speed note, a model using a combination of university and external supervisors has the potential

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<sup>60</sup> For a discussion on the benefits of students undertaking policy work: see for example Steven H Leleiko, 'Clinical Education, Empirical Study and Legal Scholarship' (1979) *Journal of Legal Education*, Vol. 30 No.1 pp. 149. See also Rachel Dunn and Richard Glancey, 'Using legal policy and law reform as assessment' in Alison Bone and Paul Maharg (Eds) *Critical Perspectives on the Scholarship of Assessment and Learning in Law* (2019) (pp.139-163). ANU Press; Rachel Dunn, Lyndsey Bengtsson and Siobhan McConnell, 'The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students' (2020) *International Journal of Clinical Legal Education* Vol. 27 No. 2, pp. 68-102.

<sup>61</sup> For example, there is a workshop where the students are asked to research an area of law that they are interested in and that is of relevance to the work they do at Citizens Advice. The students complete a research report for feedback and then convert that research into a blog article.

<sup>62</sup> Lyndsey Bengtsson and Ana Speed, 'Legal Outreach Clinics at Northumbria University' (2019) *International Journal of Clinical Legal Education* Vol. 26 (1) pp. 179- 215, Plerhoples, A and Spratley, A 'Engaging Outside Counsel in Transactional Law Clinics' (2014) *Clinical Law Review* Vol. 20, pp 379, 393, Lydia Bleasdale-Hill and Paul Wragg, 'Models of Clinics and Their Value to Students, Universities and the Community in the post 2012 Fees Era' (2013) *International Journal of Clinical Legal Education*, Vol. 19, pp.257-270.

for 'great rewards in terms of client satisfaction, community engagement and student development.'<sup>63</sup>

A theme throughout the workshops is the development of the students' social justice awareness and ensuring that they gain an appreciation of the valuable role that they play in supporting unmet legal need. The workshops are designed to enable the students to consider their role at Citizens Advice and also explore what access to justice barriers are faced by individuals. For example, in one workshop the students are asked to deliver a short presentation about a case or task they have worked on whilst at Citizens Advice.<sup>64</sup> In preparing for this presentation the students are directed to consider points such why the client came to Citizens Advice rather than any other provider of legal services. They are also asked to consider how the case may have developed had Citizens Advice not been involved and whether there are any implications of the case beyond the individual interests of the parties involved.

During the first year of the Law in the Community module, the students dealt with a total of 475 clients. During the second year, the students handled a total of 73 client enquiries. The reduction in the number of clients in the second year was due to fewer students enrolled on the module and the second-year placements being cut short by 4 weeks due to Covid-19. During the third year, due to Covid-19 restrictions and concern over client confidentiality, the students conducted work which was non data

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<sup>63</sup> Lyndsey Bengtsson and Ana Speed, 'A case study approach: Legal Outreach clinics at Northumbria University' (2019) *International Journal of Clinical Legal Education* Vol. 26 No. 1 pp.179-215.

<sup>64</sup> To protect client confidentiality, client details or other identifying information are not mentioned during this presentation.

sensitive and did not have any direct client contact. Notwithstanding the Covid-19 pandemic, the students were still able to support Citizens Advice with legal research. Given the rapid changes in various areas of law due to COVID- 19, there was a demand for legal research and public legal education.<sup>65</sup> In the last academic year 2021-2022, the students advised 300 clients.

At the end of the module, the students are assessed by way of a portfolio containing all the work they have done both at Citizens Advice and during the workshops.<sup>66</sup> This portfolio is stored at the offices of Citizens Advice and brought to the University by the students on the day of hand in at the end of the module.<sup>67</sup> The portfolio is assessed on a range of grade descriptors including contribution to the module, knowledge and understanding, teamwork, research skills, written and oral communication, case and task management.<sup>68</sup> Each grade descriptor provides a qualitative statement for a range of levels which equate to the degree classification.<sup>69</sup> One of the grade descriptors they are assessed on is reflection, which Ledvinka describes as the *'magic ingredient which converts legal experience into education.'*<sup>70</sup> The students demonstrate their reflective analysis in a reflective journal which they are asked to complete on a weekly basis.

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<sup>65</sup> Notably in employment law and welfare benefits.

<sup>66</sup> The students' portfolio contains all of their draft work they have completed during the module together with all the feedback they have received from their Citizens Advice supervisor and their university workshop tutor.

<sup>67</sup> The students agree the date and time they will transfer their portfolio from Citizens to the University with both Citizens Advice and their workshop tutor.

<sup>68</sup> The descriptors are meant to provide a guide to the likely performance level required for each criterion. The assessment criteria are equally weighted.

<sup>69</sup> Ranging from fail to high first.

<sup>70</sup> Georgina Ledvinka, 'Reflection and Assessment in Clinical Legal Education: Do You See What I See?' (2006) *International Journal of Clinical Legal Education* Vol. 9, pp. 29-56 at 29.

This is important to enable the students to evaluate their progress as the module progresses<sup>71</sup> and by encouraging students to reflect this develops their skills to be a life-long learner. It is also important to encourage students to begin to reflect at this early stage given that the Solicitor Regulation Authority<sup>72</sup> Competence Statement states that all solicitors need to '*reflect on and learn from their practice and learn from other people*'.<sup>73</sup> This will also be an important transferrable skill to those students entering into other professions.

## **Method and Methodology**

All students who had undertaken the Law in the Community module during the 2021/2022 academic year were invited to participate in a focus group at the end of their studies. A total of 25 students participated across two focus groups, representing 70% of the research population.<sup>74</sup> Each focus group lasted between 40-45 minutes. The use

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<sup>71</sup> Lyndsey Bengtsson, Bethany A Court and Callum Thomson, 'The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool' (2021) *International Journal of Clinical Legal Education* Vol.28 No.1 pp. 111-148; Louise Crowley, 'The Family Law Clinic at UCC Understanding the Law in the Classroom and Beyond' (2020) *International Journal of Clinical Legal Education* Vol. 27 No.3, pp 175-228; Keith Morrison 'Developing reflective practice in higher degree students through a learning journal' (1996) Vol.21 No.3 *Studies in Higher Education* pp., 317-332 DOI: 10.1080/03075079612331381241.

<sup>72</sup> Which regulates solicitors in England and Wales.

<sup>73</sup> SRA Statement of solicitor competence, A2 <https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/> last accessed 8 February 2023.

<sup>74</sup> The students were asked by the moderator to sign an informed consent form at the beginning of the focus group, which assured anonymity and confidentiality. Therefore their supervisor did not know who had participated and no names were referred to in the transcription. The students were also asked to read an information document before they agreed to participate. In this document, the purpose of the focus group was explained, and the authors made clear that their participation would not affect any aspect of their programme of study and was in no way linked to their grade within the SLO. The voluntary nature of their participation was highlighted, as was the fact that they could withdraw their consent to participate at any stage.

of focus groups in research is widespread.<sup>75</sup> They offer an opportunity to obtain '*high-quality data in a social context where people can consider their own views in the context of the views of others.*'<sup>76</sup> They offer cost effective data collection<sup>77</sup> and can elicit diverse perspectives on a particular topic.<sup>78</sup> Focus groups may also elicit information in a way which allows researchers to explore why a particular issue is important.<sup>79</sup> There are limitations to a focus group however, including ensuring the available response time for each participant is restricted so that everyone can be heard.<sup>80</sup> Also, those that feel their viewpoint is in the minority may be less inclined to share their opinion.<sup>81</sup> A framework of questions was devised to help guide the discussion and to give it focus. An example of one of the questions from the interview framework was 'what skills do you think you've developed and gained during your time in the module?' The moderator<sup>82</sup> however, could deviate from the framework and ask additional questions if required. This approach provided a balance between having a guide and flexibility.

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<sup>75</sup> Jean A King and Laurie Stevahn 'Interactive evaluation practice; Mastering the interpersonal dynamics of program evaluation.' (2013) Thousand Oaks, CA. Sage; Richard A Krueger and Jean King 'Involving community members in focus groups' (1997) Vol. 4 The focus group kit Thousand Oaks, CA: Sage.

<sup>76</sup>Michael Q Patton 'Qualitative Research and Evaluation Methods. Integrating Theory and Practice' (2015) 4<sup>th</sup> Edition Sage Publishing pp.475.

<sup>77</sup> Richard A Krueger "Focus groups: A practical guide for applied research" (1994) 2<sup>nd</sup> edition Thousand Oaks, CA. Sage.

<sup>78</sup> Michael Q Patton 'Qualitative Research and Evaluation Methods. Integrating Theory and Practice' (2015) 4<sup>th</sup> Edition Sage Publishing P477.

<sup>79</sup> David L Morgan 'Focus groups as qualitative research.' (1988) London: Sage.

<sup>80</sup> Michael Q Patton 'Qualitative Research and Evaluation Methods. Integrating Theory and Practice' (2015) Fourth Edition Sage Publishing.

<sup>81</sup> Ibid.

<sup>82</sup> Who was not involved in the teaching of the module for the students and therefore did not have an input into the students' assessment.

In addition to the student focus groups, all those who supervised the law students at Citizens Advice were invited to participate in a semi-structured, one-to-one interview. Interviews were chosen as they '*achieve a level depth and complexity.*'<sup>83</sup> All three supervisors agreed to be interviewed. Like the focus groups, a framework of questions was used to guide each semi-structured interview. However, the interviewee could deviate from this framework and ask additional questions if needed. From a practical viewpoint, sometimes there is simply not enough time for participants to be interviewed singly.<sup>84</sup> However, given there were only three supervisors on the module, a one-to-one interview could be undertaken with each supervisor at Citizens Advice and it would not be overly time consuming.

It also seemed more appropriate to interview the supervisors individually given the fact that one of the supervisors is the Director (and manager of the other supervisors). Watts found that participants can be inhibited where there is a dominant participant in the group<sup>85</sup> so given the relationships between the supervisors and the potential professional hierarchy, individual interviews appeared more appropriate. Of course, with any research, there is a risk that the participants could be influenced by the fact they know they are being studied, known as the Hawthorne Effect.<sup>86</sup> This is usually

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<sup>83</sup> Bridget Byrne 'Qualitative Interviewing' in C Seale (ed), *Researching Culture and Society* (4th edn, Sage 2018).

<sup>84</sup> Mike Watts and Dave Ebbut 'More than the sum of the parts: Research methods in groups interviewing' (1987) *British Education Research Journal* Vol. 13 Issue. 1 pp. 25-34

<sup>85</sup> *Ibid.*

<sup>86</sup> The Hawthorne Effect refers to a phenomenon in which individuals modify an aspect of their behaviour as a result of being observed. The term was coined during research at Western Electric's factory in the Hawthorne suburb of Chicago in the late 1920s and early 1930s. It was concluded that the



concerned with ethnographical research, but it can also be a challenge in other research methods. For example, in interviews respondents may change their answers to be more 'correct' when they know they are being studied. Fekjaer explains that a social desirability bias can occur when participants want to give a more favourable image of themselves because they want to make a good impression on others.<sup>87</sup>

All research was undertaken in accordance with the University's ethics procedure and each research participant provided informed consent to the study. Each focus group and semi-structured interview was recorded<sup>88</sup> and transcribed afterwards. Following completion of the data collection, the transcripts were thematically analysed to identify key issues and any different experiences or perspectives.<sup>89</sup> The transcripts were coded and thereafter organised into themes. The verification of the participant data by triangulation of research methods arises from the authors' observations from teaching on the module, as well as from anonymous feedback of the students in the end of year module evaluation survey.

A limitation of this research is that it examined a small-scale study, which may affect the quality of the study for some.<sup>90</sup> The authors would argue that universities

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workers' productivity was not affected by the changes in working conditions, but rather it was affected by the fact they knew they were being observed.

<sup>87</sup> Silje Fekjaer 'Old and New Methods in Police Research' (2018) *Nordisk politiforskning*, Vol 5 No. 2 pp.104-123.

<sup>88</sup> Bryan Marshall et al 'Does Sample Size Matter in Qualitative Research?: A Review of the Qualitative Interviews in IS Research' (2013) *Journal of Computer Information Systems* Vol. 54 Issue. 1, p. 11.

<sup>89</sup> Virginia Braun and Victoria Clarke 'Using thematic analysis in psychology' (2006) *Qualitative Research in Psychology* Vol. 3 Issue. 3, p. 5 accessed at: (<https://uwe-repository.worktribe.com/output/1043060>)

<sup>90</sup> Ali Alsaawi, 'A Critical Review of Qualitative Interviews' (2014) *European Journal of Business and Social Sciences* Vol. 3 No. 4 pp.149-156, 151.

operating a similar model of clinical legal education can transfer the results of this research to their work, through transferability.<sup>91</sup> However, a larger cross institutional study would further develop insight into the value of this model of clinical legal education.

The themes identified are as follows: (1) Skill and attribute development (2) Impact on the local community and to Citizens Advice (3) Student perception of access to justice challenges and (4) Supervision.

## **Results & Discussion**

### *Theme 1 – Skill and Attribute Development*

A qualitative analysis of the data demonstrated that there are clear pedagogical benefits of this module to the students. There was a consensus (amongst both students and supervisors) that the module allowed the students to develop a wide range of skills and attributes, including: communication skills, interviewing, professionalism, problem solving, confidence, case management, time management and teamwork.<sup>92</sup> The students felt strongly that they had developed their interviewing and oral communication skills. One student commented:

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<sup>91</sup> Staffan Larsson, 'A pluralist view of generalization in qualitative research' (2009) *International Journal of Research and Method in Education* Vol. 32 Issue. 1, p.13.

<sup>92</sup> These are all skills students are expected to develop in clinical legal education.

*...you need to be able to communicate with people who may not understand. So, it was beneficial to me because it kind of taught me to communicate to them in a way that they will understand. I think that that's very important.*

As one supervisor highlighted, the students advise those in the community who often have no other way to turn for legal advice. Some clients may come to the interview distressed, seeking help. Citizens Advice often advise people who are vulnerable by reason of poverty, mental health difficulties or domestic abuse. One student explained that the clinical experience with these clients helps *'you learn that this is how you're supposed to talk to people, and that you need to communicate with them emotionally as well.'* The students learnt how they *'just had to adapt to the different types of people that came in.'* Supporting Bengtsson and Speed's research on legal outreach clinics, the fact the students go into the local community to advise from the offices of Citizens Advice has meant that they have been able to meet *'people in different walks of life'*.<sup>93</sup> Also, by advising within the community the students have developed their ability to work with those who are vulnerable and who have complex needs. Whilst there is no data on the socio-economic class of the students, their experience did expose them to social issues<sup>94</sup> with one student commenting *'Just knowing our privileged position, from seeing what people struggle with can be very useful. We can just develop qualities to help make world*

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<sup>93</sup> Lyndsey Bengtsson and Ana Speed 'A Case Study Approach. Legal Outreach Clinics at Northumbria University' (2019) *International Journal of Clinical Legal Education* Vol. 26 No. 1 pp.179-215.

<sup>94</sup> For a discussion on how clinical legal education exposes privileged students to social issues see Jane H. Aiken 'Striving to Teach Justice, Fairness and Morality' (1997) *Clinical Law Review* Vol. 4 No. 1 pp.1-64.

*a better place.*' Another student described how they resorted to sliding notes across the table to use alternative methods of communication as the client was hard of hearing. The student described how they ultimately managed to advise this client acknowledging that they *'got there in the end, eventually. It's hard.'*

Some students commented on how they felt they had developed empathy for the clients and learnt how to deal with the cases on an emotional level. One student highlighted *'you have to learn to deal with it emotionally, as well as professionally. It teaches you that too.'* Another student commented *'I had a client who was crying and I just said take your time, say when you are ready to speak. Deal with the emotion too. Teaches you that too.'* For another student the experience *'personally opened my eyes to the real world in a sense. People coming in for food vouchers. I knew it went on but didn't realise it occurred as much as it does. Gave me a real kick.'* When students encounter clients who share their problems and emotions this can be a challenge for them.<sup>95</sup> As Fletcher and Weinstein note, this allows the students to deal with such situations both as human beings and as future lawyers.<sup>96</sup> Part of the mandatory online training focuses on emotional clients in the interviewing skills section to prepare them for these types of situations. The work they undertake at Citizens Advice allows an opportunity for the university workshop sessions to discuss concepts such as justice and equality with the students and allow them the opportunity to talk about their experiences.

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<sup>95</sup> Lauren E Fletcher and Harvey M Weinstein, 'When Students Lose Perspective: Clinical Supervision and the Management of Empathy', (2002) *Clinical Law Review* Vol. 9 pp.147-155.

<sup>96</sup> *Ibid.*

At times the students had to provide negative advice to their clients and advise them that their case could not be progressed. This may be because Citizens Advice did not have the capacity (or area of expertise) to assist or because the claim has little or no merit to pursue. One supervisor commented that these experiences gave the students strength and confidence when dealing with people and another supervisor commented that the students had come on '*great guns*'. This was echoed in the student focus groups which emphasised resilience and confidence as attributes which developed. Despite the shift from doctrinal to clinical learning often being a '*culture shock*',<sup>97</sup> the students commented that stressful situations where someone is depending on you, gives you confidence and determination. Whilst some felt that they had been '*dropped in the deep end*', they did feel they had developed throughout the module and their confidence grew. One student felt that they were '*more confident in practical work in general*' and another commented that initially they felt nervous and worried but by the end of the module they felt they could easily deal with clients because their confidence had increased.

The students' research skills had also really been intensively developed in this module. The supervisors explained that the students overall had advised on a '*massive*' range of practice areas (including housing law, law, consumer, employment, and welfare benefits) and often when a client came in, it was not just in relation to one issue. The supervisors commented that this meant the students had to ensure they

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<sup>97</sup> Gemma Smyth and Marion Overholt, 'Framing Supervisory Relationships in Clinical Law: The Role of Critical Pedagogy.' (2014) *Journal of Law and Social Policy* Vol. 23. pp. 62-82.

asked the client enough questions to determine what the enquiry was about. The students echoed this and felt that they were faced with clients who had various problems. They explained that they then had to research these different areas and relay the research to the clients quickly and efficiently, which they had never had to do prior to working at Citizens Advice. This thereby affords the students with a breadth of experience in different areas of law. Some students had a few clients in the same area of law, which is equally beneficial as they are exposed to the same legal issue but from a different perspective.<sup>98</sup> Some students felt that sometimes the work they did felt was more akin to '*social work*' rather than providing legal advice albeit they did not provide examples of this. However, the inclusion of interdisciplinary work is beneficial as we are also teaching our students that you may need to think outside the legal system and this '*enhances their ability to identify and cultivate additional resources and partners*'.<sup>99</sup>

The students felt that the module enabled them to develop their teamwork skills both with other students and with their supervisors. In addition, the supervisors enjoyed engaging with the students and '*helping them along and showing them how to do things*'. This presented the students with an opportunity to experience a trainee/supervisor relationship, similar to that they will experience in legal practice, or other professional workplaces. The module also offers the students the benefits of learning under

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<sup>98</sup> Emil Winkler, (2013) 'Clinical legal education: a report on the concept of law clinics', accessed at [https://law.handels.gu.se/digitalAssets/1500/1500268\\_law-clinic-rapport.pdf](https://law.handels.gu.se/digitalAssets/1500/1500268_law-clinic-rapport.pdf).

<sup>99</sup> Robin S Golden, 'Collaborative as Client: Lawyering for Effective Change' (2012) *New York Law School Law Review* Vol. 56 pp.393.

different supervisors, their Citizens Advice supervisor who is an experienced worker within Citizens Advice and their university workshop tutor who is an academic and qualified solicitor and who help contextualise their clinic experience.<sup>100</sup> Interestingly one supervisor commented that those students who were more confident '*acted as mentors to those less confident. We saw that in quite a few of them.*' A previous study by Dunn highlights that leadership skills are only really developed when students go into practice.<sup>101</sup> A more recent study by Dunn, Bengtsson and McConnell highlights however that students develop this skill in the policy clinic, where they undertake empirical research with a view to influencing policy or law reform.<sup>102</sup> However leadership skills or mentoring were not mentioned in the student focus groups, suggesting that they may not have seen themselves as mentors or developing leadership skills.

However, it was apparent from the data that not all students will have developed each of their professional skills at the same level. Both supervisors and students commented that those students who attended Citizens Advice in the morning had a different clinical experience to those in the afternoon. Those who attended in the morning had the benefit of the client drop-in service, and so could interview clients

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<sup>100</sup> Lydia Bleasdale-Hill and Paul Wragg 'Models of Clinics and Their Value to Students, Universities and the Community in the post 2012 Fees Era' (2013) *International Journal of Clinical Legal Education*, Vol. 19, pp.257-270.

<sup>101</sup> Rachel Dunn 'The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them' (2017) Doctoral thesis, Northumbria University.

<sup>102</sup> Rachel Dunn, Lyndsey Bengtsson and Siobhan McConnell 'The Policy Clinic at Northumbria University. Influencing Policy/Law Reform as an Effective Educational Tool for Students' (2020) *International Journal of Clinical Legal Education* Vol. 27 No. 2 pp.68-102.

and advise them in person. Those who attended on an afternoon did not benefit from the client interviews but dealt with all the email enquiries. One supervisor commented:

*Well the students that have been in the morning have had the advantage because they've done face to face work. So they've done a lot more because they are been governed by the numbers coming in and us moving them on. The people who came in in the afternoons haven't not done as much, they've been doing email enquiries and enquiries by phone. But it means they've done less. Some were sufficiently enthusiastic to change around to come in in the mornings.*

They therefore had the opportunity to change the times they attended to maximise their learning. However, it is apparent that some didn't take this opportunity or perhaps did not really understand that they could change sessions. One student commented '*Personally (I've) only had 2 face to face (clients) and that's really frustrating for me but I hear morning session students complain about how busy they are. I'd really appreciate it if that could change*'. By contrast another student commented that they had had '*over 20 face to face clients*.' This issue also translated into some concerns expressed by the students about their assessment, given that their portfolios may not have contained enough interview notes or emails. The fact that students can change the times they attend needs to be more explicit going forward (in the induction sessions and reinforced with regular reminders from both the university workshop tutor and Citizens Advice supervisor), so that students attend a combination of both morning and afternoon sessions.



Furthermore, there were some skills not mentioned in the data (including understanding of legal ethics, critical analysis and commercial awareness). However it is not surprising that students did not mention commercial awareness given the type of work they undertook at Citizens Advice and what previous research states in relation to this skill. Notably, McConnell suggests that students working in business, civil and employment clinics ranked commercial awareness more highly as a skill they developed compared to those working in family, housing and welfare clinics.<sup>103</sup> However it is surprising that there was not more of a discussion on ethics, especially as one workshop explicitly covers this.<sup>104</sup> The students did highlight however that they felt they had developed professionalism. Given the importance of understanding ethics (this was one of the key recommendations of the Legal Education Training Review),<sup>105</sup> it would be beneficial if the tutors are more explicit going forward as to the development of these skills during the module.

Some students were able to think about how they could use their experience and skills gained in the module in future job applications, indicating that the module has had a positive impact on the student perspective on their employability. One student highlighted in the context of discussing communication skills that he has '*applied for*

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<sup>103</sup> Siobhan McConnell, 'A Study of Supervisor and Student Views on the Role of Clinical Legal Education in Developing Commercial Awareness' (2022) *International Journal of Clinical Legal Education* Vol. 29 No. 2 pp. 4-67.

<sup>104</sup> Focussing on the article from Ross Hyams, 'On teaching students to 'act like a lawyer': what sort of lawyer?' (2014) *International Journal of Clinical Legal Education* Vol 13. pp.21-32.

<sup>105</sup> Julian Webb et al (2013) *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (The Legal Education and Training Review [LETR]), p.140. Accessed at <http://letr.org.uk/the-report/index.html> last accessed 10th February 2023.

*various jobs'* and that this skill tends *'to be the main criteria they're looking for. I relate to Citizens Advice. I can say I worked at a supermarket, but it is not the same as dealing with clients.'* McConnell highlights that the students must be able to articulate how their experience makes them more employable and they tended to lack confidence in how to use their experience to demonstrate it.<sup>106</sup> However the data did not suggest that the students lacked confidence in articulating their skill development in future job applications or interviews. Indeed, some students expressed confidence in attending assessment day type interviews because of the workshop tasks. One student explained how in one workshop *'we did an exercise where you had to rank all the different qualities a solicitor should have. Like a diagram of a pyramid from most important, and that could be an exercise that we could have in an interview.'* Also, from an employability perspective the time spent at Citizens Advice may constitute qualifying work experience (QWE). This is important because the Solicitors Qualifying Examination (SQE), which is the new system for qualifying as a solicitor in England and Wales, requires at least two years of QWE as well as passing two examinations.<sup>107</sup> To constitute QWE, the work must entail providing legal services that allow candidates to develop the competencies required to practise as a solicitor.<sup>108</sup>

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<sup>106</sup> Siobhan McConnell 'A Study of Supervisor and Student Views on the Role of Clinical Legal Education in Developing Commercial Awareness' (2022) *International Journal of Clinical Legal Education* Vol. 29 No. 2 pp 4-67.

<sup>107</sup> For information about QWE see <https://www.sra.org.uk/become-solicitor/sqe/qualifying-work-experience-candidates/> last accessed 8 February 2023. For a discussion on the SQE and QWE see Andy Todd and Lucy Blackburn 'Qualifying Work Experience in England and Wales: the Opportunities and Risks Presented to University Law Clinics' (2022) *Asian Journal of Legal Education* Vol. 10 Issue. 1.

<sup>108</sup> <https://www.lawsociety.org.uk/career-advice/becoming-a-solicitor/solicitors-qualifying-examination-sqe/qualifying-work-experience-qwe> last accessed 8 February 2023.

## ***Theme 2 - Impact on Citizens Advice and the local community***

The volunteer work undertaken by the students in this module undoubtedly increases the capacity of Citizens Advice to provide advice and assistance to those who may not otherwise be able to access legal services.<sup>109</sup> One student commented *'I didn't expect the amount that Citizens Advice deal with. I expected them to be all benefits. The diversity and amount they deal with – I didn't realise that.'* Another student said *'I think it definitely showed how many people actually use Citizens Advice. Because it's just like a constant amount of people coming in. The staff there as well, I know that Leslie had said that it makes their lives a lot easier and even being on the phone to people, they've got more people that can help.'*

All three supervisors clearly shared a similar view to these students and commented that having the students at Citizens Advice meant that more clients could be dealt with. One supervisor referred to the students as a *'valuable contribution'* and a *'massive help'*. Two of the supervisors commented that the number of volunteers had reduced since the pandemic so having the students made a *'huge difference'* and one felt that the students *'filled a useful gap'*. The supervisors commented that having students at Citizens Advice to answer emails, for example, allowed the supervisors to do other work and if clients could not be seen in the morning, students could deal with these

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<sup>109</sup> For a discussion on whether clinical legal education fills a gap in legal aid see E Campbell (2014) 'Pro bono is great education for law students but they shouldn't fill the gap left by legal aid cuts' published in The Conversation, <https://theconversation.com/pro-bono-is-great-education-for-law-students-but-they-shouldnt-fill-gap-left-by-legal-aid-cuts-34323> accessed 10 February 2023. See also Donald Nicholson 'Legal Education or Community Service the Extra Curricular Student Law Clinic' (2006) Web Journal of Current Legal Issues, <http://www.bailii.org/uk/other/journals/WebJCLI/2006/issue3/nicolson3.html> accessed 10 February 2023.

in the afternoon, increasing the overall number of clients advised and improving client service.

This increase of capacity at Citizens Advice to advise and assist members of the community supports unmet legal need in the local community.<sup>110</sup> Indeed, a total of 300 clients were advised by Northumbria students taking this module between academic year 2021 and 2022 and one of the supervisors commented that for many of these clients, it is their '*last hope*'. One supervisor remarked that one of the benefits of having the students at Citizens Advice was that clients were getting the advice '*very much immediately*'. Informal feedback received from one client was that the students had provided her with exactly what she needed and that they were '*brilliant*'.

The data suggests that the main aims of Citizens Advice in this module centres around social justice and the impact on the local community. In contrast, the aim of the module from a university perspective was more pedagogically focused. The module was introduced so students could gain practical legal experience and develop their professional skills.<sup>111</sup> This is reflected in the Student Law Office's approach to taking on cases. Where supervisors feel cases are too complex, too urgent, outside the area of their expertise or are not in line with the educational aims, they will not take the case

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<sup>110</sup> See, for example, Jeff Giddings 'Contemplating the Future of Clinical Legal Education' (2008) *Griffith Law Review* Vol. 17 No. 1; Stephen Wizner, 'Beyond Skills Training' (2001) *Clinical Law Review* Vol. 7 pp. 327-340; Antonette Sedillo Lopez, 'Learning through Service in a Clinical Setting: the Effect of Specialization on Social Justice and Skills Training' (2001) *Clinical Law Review* Vol.7, pp. 307-326; Warren H. Binford (2008-09) 'Reconstructing a Clinic' *Clinical Law Review* Vol. 15, pp. 283.

<sup>111</sup> Lyndsey Bengtsson, Bethany A Court and Callum Thomson, 'The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool' (2021) *International Journal of Clinical Legal Education* Vol.28 No.1 pp. 111-148.

on.<sup>112</sup> Carpenter argues that clinicians who put pedagogical aims first however can still meet social justice goals and engage in meaningful transformative work.<sup>113</sup> Smyth and Overholt also recognise that parties involved in clinical placements often have varying interests which can be challenging, but this can also provide the opportunity for authentic, deep and critically reflective relationships between the parties involved<sup>114</sup> ultimately having a positive impact on Citizens Advice and the local community.

It is important to note however that one supervisor did explain that having to spend time at the beginning explaining procedures, supporting students and answering a number of questions can be *'demanding'* and *'intensive'* which can put *'big pressure'* on the supervisor. This could arguably affect the level of productivity in the workplace. On the other hand, the supervision could inadvertently act as Continuing Professional Development for the supervisors. One of the supervisors commented that having the students at Citizens Advice acts as a *'good refresher'* for the supervisors because *'[we] need to remember what we need to explain about, who we are and what we do and the procedures we have.'* This could help develop and improve supervisors' skills and competencies and in turn enhance the workplace and ultimately the service received by the local community.

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<sup>112</sup> Student Law Office Terms and Conditions, section 2.

<sup>113</sup> Anne E Carpenter 'The project model of clinical education: Eight principles to maximize student learning and social justice impact.' (2013) *Clinical Law Review*, Vol. 20 No.1 pp. 39-94.

<sup>114</sup> Gemma Smyth and Marion Overholt 'Framing Supervisory Relationships in Clinical Law: The Role of Critical Pedagogy.' (2014) *Journal of Law and Social Policy* Vol. 23. pp. 62-822.

### ***Theme 3 – Student Awareness of Access to Justice Challenges***

One of the aims of the module is for students to develop an understanding of the access to justice challenges faced by their local community.<sup>115</sup> Smyth and Overholt comment on the importance of students developing an understanding of the marginalising role that law and legislation can play and how impactful it is to meet the people, families and communities systemically affected by the law and legal systems. They suggest that meeting clients in person often catapults students into understanding or at least confronting, the human consequences of legislative and judicial choices.<sup>116</sup> Similarly, Grose believes that the social justice mission of law clinics is not only to expose students to the legal system and its place and role in society, but also to challenge students to think critically about the system and their place in it.<sup>117</sup>

This critical approach was certainly reflected in the student focus groups where it was found that the experience raised the students' awareness of current issues and many said they were surprised at how many people came into Citizens Advice. One commented that Citizens Advice was a '*constant flow of helping people*'. One student said that the module '*personally opened my eyes to the real world in a sense*' and similarly, another student commented that the module gave them '*a different perspective*.' They felt that '*people are really struggling*' and one student said that the module helped them

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<sup>115</sup> Lyndsey Bengtsson, Bethany A Court and Callum Thomson, 'The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool' (2021) *International Journal of Clinical Legal Education* Vol.28 No.1 pp. 111-148.

<sup>116</sup> *Ibid.*

<sup>117</sup> Carolyn Grose, 'Beyond Skills Training, Revisited: The Clinical Education Spiral' (2013) *Clinical Law Review* Vol. 19 No.2 pp. 489-516.

to develop qualities to ‘*help make the world a better place*’ and ‘*attempt to change legal aid cuts.*’

The supervisors also felt that the experience opens students’ eyes, encourages them to think about the community and makes them want to help people more. One supervisor commented on the fact that students could see how often individuals are not getting responses from authorities such as the City Council and they struggle with accessing information online, often in relation to housing, council tax, rent arrears and debt collection.

The supervisor also spoke about how the module helps students develop an understanding of the access to justice issues where it is caused by language barriers which can be ‘*quite an issue*’ particularly with regards to immigration cases for example. Research has found that the monolingual criminal justice services in England and Wales can limit access to legal advice, especially in relation to immigration issues; as well as general assistance and information to guide individuals through the criminal justice processes and rehabilitative interventions under the probation and prison services.<sup>118</sup> It has been found that a number of individuals suffer anxiety regarding their immigration issues because they don’t understand procedures.<sup>119</sup> The lack of support and information is linked to wider funding cuts in the criminal justice

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<sup>118</sup> Gillian Hunter, Bina Bhardwa, Tamar Dinisman, Ania Moroz, Andrea Anastassiou, Anna Lynall, ‘Language Barriers in the Criminal Justice System’ (2022) Institute for Crime & Justice Policy Research [chrome-extension://efaidnbmninnibpcajpcglclefindmkaj/https://www.bell-foundation.org.uk/app/uploads/2022/03/Language-barriers-in-the-criminal-justice-system.pdf](https://www.bell-foundation.org.uk/app/uploads/2022/03/Language-barriers-in-the-criminal-justice-system.pdf) (last accessed 10 February 2023).

<sup>119</sup> Ibid.

system. Hunter et al highlights the importance of raising awareness of language barriers and their implications for fairness and equality within the Criminal Justice System.<sup>120</sup> Their research identified five key areas in which policy and practice reforms are urgently needed to address the language barriers. One of these recommendations was: *'Ensuring that all written and web-based materials offering information and guidance about the Criminal Justice System are available in easy read formats, using 'plain English''*.<sup>121</sup> Whilst at Citizens Advice, students can be involved in providing advice at drop-in sessions, they also undertake a wide range of activities, including producing legal information leaflets or factsheets for members of the public. Students at Citizens Advice can make a positive impact in this area and are likely to have a particular inclination to do so having been exposed to the difficulties faced by individuals and thus having their awareness of access to justice challenges raised. One student commented that it is important to show people that pro bono work is a huge part of society.

Furthermore, some studies suggest clinical legal education and pro bono work can have a positive impact upon students and their willingness to undertake public service work<sup>122</sup> and indeed students felt that when working at Citizens Advice, they

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<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> See Deborah A. Schmedemann, 'Priming for Pro Bono Publico: The Impact of the Law School on Pro Bono Participation in Practice', in *Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession* (Robert Granfield and Lynn Mather eds. 2009); Sally Maresh, 'The Impact of Clinical Legal Education on Decisions of Law Students to Practice Public Interest Law' in *Educating for Justice: Social Values and Legal Education* (Jeremy Cooper and Louise G. Trubek eds. 1997).



had '*done something good*' and having had this experience, they were more likely to take part in pro bono work in the future.

The general consensus amongst Citizens Advice supervisors and students was that they felt that they were positively helping the local community. However, a number of students commented that they felt they were not doing enough. For example, when they were referring someone onto a solicitor for legal advice, one student said they felt they were '*shipping people around*' and the students felt this was '*unsatisfactory*' and '*not ideal*'. They felt that they wanted to take the case further and help more. However, as Speed and Bengtsson note, from their experience as clinic supervisors, where a one-off advice appointment is not sufficient to resolve the client's issue, the advice will usually give the client the confidence, self-esteem and capacity to advance the case themselves.<sup>123</sup>

#### ***Theme 4 – Benefits and Challenges of Supervision***

The students benefit from having two supervisors in the Law in the Community module, one at Citizens Advice and one at Northumbria University for their workshops, providing them with a dual supervision experience. Smyth and Overholt explore the differences between clinical and doctrinal approaches to legal education. Amongst others, they observe that in a clinical setting teaching is generally conducted

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<sup>123</sup> Lyndsey Bengtsson and Ana Speed, 'A Case Study Approach. Legal Outreach Clinics at Northumbria University' (2019) *International Journal of Clinical Legal Education* Vol. 26 No. 1 pp.179-215.

one-on-one or in small groups. Conversely, with regards to doctrinal approaches, teaching is usually conducted in medium/large classes and lectures.<sup>124</sup> This one-on-one experience with a clinical supervisor is conducive to what the student will experience in the workplace following university and it provides them with an opportunity to practice building these relationships at this early stage. Smyth and Overholt comment that these relationships can play a crucial role in the formation of students' professional identity as students often take their clinic supervisor's advice as reflective of a valid construction of the meaning of legal practice.<sup>125</sup>

Even though the Citizens Advice supervisors have said that having the volunteers can be quite '*stressful*' and '*intensive*' until they have settled in, they generally felt that having the students at Citizens Advice, was a huge benefit, increasing their capacity and ultimately having a positive impact on the service received by the local community. In contrast, students raised the fact they felt like a '*burden*' at times and they didn't have a chance to talk to supervisors. One felt that their supervisor simply didn't have the time to supervise students. However, these views differed between students who attended in the mornings and students who attended in the afternoon. A student who attended afternoon sessions, reported that they received '*quite a lot of feedback from supervisors*'. Furthermore, although some students felt they were '*dropped in at the deep end*', for example when they had to research areas of the law they had not

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<sup>124</sup> Gemma Smyth and Marion Overholt, 'Framing Supervisory Relationships in Clinical Law: The Role of Critical Pedagogy' (2014) *Journal of Law and Social Policy* Vol. 23. pp. 62-82.

<sup>125</sup> *Ibid.*

come across before, one student commented that their supervisors were '*really good*' when checking the emails and provided them with constructive feedback. It seems therefore that supervisors were less able to spend time with students in the mornings as this was often a busy time for them. It is worth noting that since these focus groups took place, a different approach for students' attendance times at Citizens Advice has been adopted and will be implemented in academic year 2022/23. Rather than attending either in the morning or afternoon over the course of the module, the students will arrange their volunteer sessions each week, a week in advance, for a mutually convenient time. This will provide them with the opportunity to choose from a variety of times each week. It is hoped that this approach will not only provide them with a more diverse experience at Citizens Advice, but will also allow them to engage with supervisors more if they are attending at quieter times for some of their sessions.

The data also demonstrated that there were some concerns in relation to feedback in regards the work the students conducted at Citizens Advice<sup>126</sup> and in turn whether this translated into a fair assessment.<sup>127</sup> This is unsurprising as Law teachers report a

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<sup>126</sup> The students also received formative feedback on their workshop work but this concern was specifically in relation to their work done at Citizens Advice.

<sup>127</sup> A recurring theme in clinical legal education literature is how students can be assessed fairly. See José García Añón, 'How do we assess in Clinical Legal Education? A "reflection" about reflective learning' (2016) *International Journal of Clinical Legal Education* Vol.23 No.1 pp.48-65; Justine A Dunlap and Peter A Joy, "Reflection-in-action: designing new clinical teacher training by using lessons learned from new clinicians", (2004) *Clinical Law Review*, Vol.11, pp.49-113.

consistent criticism that students do not receive enough feedback.<sup>128</sup> Feedback is pivotal in clinical legal education and as Hyams highlights it '*is a powerful and effective vehicle for student learning.*'<sup>129</sup> Effective feedback will reinforce good practice and provide a pathway for students to improve their skills.<sup>130</sup> It will also motivate students.<sup>131</sup> Although the students in this module were each allocated a supervisor at Citizens Advice, they tended to seek advice and support during their volunteer work from all three of the supervisors. Their allocated supervisor, however, was the one who completed the two feedback sheets. The feedback sheet contains a section for all the portfolio grade descriptors except reflection<sup>132</sup> with a qualitative (with room for the supervisor to make comments) and quantitative aspect to each descriptor (numbers from 1 to 5) for them to rate performance (with 1 being poor and 5 being excellent). The first feedback sheet is completed at the midpoint and a second is completed at the end of the module.<sup>133</sup> In assessing the portfolio at the end of the module, the university tutor draws upon the Citizens Advice feedback sheets in addition to all the work that is in the portfolio and work completed in the workshops.

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<sup>128</sup> David F Chavkin, 'Matchmaker, Matchmaker: Student Collaboration in Clinical Programs' (1994) *Clinical Law Review* Vol. 1 pp.199-244; Susan Bryant, 'Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession' (1993) *Vermont Law Review* Vol. 17 pp.459-531.

<sup>129</sup> Ross Hyams 'Student assessment in the clinical environment – what can we learn from the US experience.' (2006) *Journal of Clinical Legal Education* accessed at [file:///C:/Users/kdqc2/Downloads/79-Article%20Text-160-1-10-20140718%20\(2\).pdf](file:///C:/Users/kdqc2/Downloads/79-Article%20Text-160-1-10-20140718%20(2).pdf) (last accessed 27 February 2023).

<sup>130</sup> *Ibid.*

<sup>131</sup> Elizabeth Molloy and David Clarke, 'The positioning of physiotherapy students and clinical supervisors in feedback sessions', (2005) *Focus on Health Professional Education*, Vol. 7, No. 1, pp. 79 - 90.

<sup>132</sup> The grade descriptors include knowledge and understanding of the law, research skills, oral and written communication skills, case and task management and strategising, commitment and teamwork.

<sup>133</sup> These feedback sheets are emailed to the student and to the University tutors and the students are asked to reflect on their performance in light of the comments made.

Several students expressed concern about their feedback sheets if they spoke to another supervisor at Citizens Advice a lot more than their allocated supervisor who completed the sheets. One student commented *'I feel like it would be fair for us to be judged by the supervisor that we go to the most, rather than the ones we were assigned to.'* Another student felt the sheets were *'quite limited'* and wanted more detailed feedback. Concerns were also expressed by the Citizens Advice supervisors, notably that they felt they the feedback sheets needed amending as they did not feel that they were working as well as they could. One supervisor gave the example that they are required to comment on the students' knowledge and understanding of the law, however at the mid-point they feel that sometimes students are often still understanding the basics such as interviewing technique and research skills and not yet been able to demonstrate their knowledge.

A change has been implemented for the 2022/2023 academic year so that supervisors will now meet with students at the mid-point and conduct a feedback conversation. This aims to encourage learning to reflect and motivate them to improve.<sup>134</sup> The conversation will enable the students and the supervisor to reach a shared view on what improvements can be made. Moving away from a written feedback sheet to a feedback conversation may also lead to a greater understanding by the student on their performance as they will have the opportunity to ask questions. Given the

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<sup>134</sup> Peter Cantillon and Joan Sargeant, 'Giving feedback in Clinical Settings' (2008) accessed at <https://doi.org/10.1136/bmj.a1961> (last accessed 27 February 2023).

accusation in the literature of subjectivity regarding assessment,<sup>135</sup> it is acknowledged that each meeting must adopt the same structure so that the same areas are discussed. It was agreed that Citizens Advice would use a pro forma feedback document during the meeting to ensure consistency. Supervisors will also consult each other in relation to each student before the feedback meeting and inform the students that this consultation has taken place. The onus will be on the student to record a note of the meeting afterwards and place that record on their portfolio.

In the focus groups, students also commented that they felt there was a lack of knowledge exchange between university supervisors and Citizens Advice supervisors. They commented that their university supervisors appeared '*surprised*' and '*confused*' at times when they explained what they did during their volunteer sessions and suggested that it could help if the university tutor attended Citizens Advice to '*see what goes on*'. This module is intended to have a dual supervision model which, as we have seen, has benefits, and having the university supervisor attending Citizens Advice would not be feasible, nor would it be necessary. Moving away from the written feedback sheet to a feedback conversation and allowing the students to record this themselves to document in their portfolio is likely to help alleviate concerns that there is a lack of knowledge exchange between the supervisors. A further change which was implemented for the 2022/2023 academic year was having

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<sup>135</sup> Ross Hyams, 'Student assessment in the clinical environment – what can we learn from the US experience.' (2006) Journal of Clinical Legal Education accessed at [file:///C:/Users/kdqc2/Downloads/79-Article%20Text-160-1-10-20140718%20\(2\).pdf](file:///C:/Users/kdqc2/Downloads/79-Article%20Text-160-1-10-20140718%20(2).pdf)

a supervisor from Citizens Advice attend the induction lecture at the university at the start of the module. This was intended to not only allow students to meet the supervisor and ask them any questions, but also introduce them to this unique dual supervision model early on and provide a sense of partnership and collaboration between the university and Citizens Advice.

## **Conclusions**

This research contributes to the knowledge and practice on the value of this model of clinical legal education from both a student and Citizens Advice perspective. Supporting previous research that has been conducted in this area; the results demonstrate that there are clear pedagogical benefits to the students, benefits to Citizens Advice and the local community. This research demonstrates that the model provides a rich and dynamic learning experience for law students, developing a range of professional skills. It also gives them first-hand experience of advising those who are vulnerable and who have complex needs, whilst simultaneously gaining that insight into the access to justice challenges faced by the local community.

There are also benefits to Citizens Advice and the local community as the students increase their capacity so that they can advise and assist more clients. Since the module began hundreds of clients have been helped by the students. In addition to this, supervising the students inadvertently acts as Continuing Professional Development for the supervisors, benefitting the supervisors personally, Citizens Advice as a whole and subsequently the local community receiving the services. The partnership

between the university and Citizens Advice engages students in valuable work which fills an unmet legal need in the community in which it operates, an approach to clinical legal education which as King and Jones point out is *'well suited to the ongoing climate of austerity prevailing not just in the UK but many other countries.'*<sup>136</sup> Indeed, some students do not stop their volunteering at the end of the module, instead choosing to stay on at Citizens Advice bringing value beyond the timescales of the academic year.

Smyth and Overholt describe supervision in a law clinic setting as *'immensely gratifying, particularly when supervisors are able to participate in the development of the next generation of social activist lawyers'*<sup>137</sup> Indeed, the Law in the Community supervision model has proven very effective. The combination of dealing with live clients under the supervision of Citizens Advice and contextualising and reflecting on this with their university supervisor has challenged the students to think about their place in the legal system and we have seen that having had this experience, the students feel they are more likely to take part in pro bono work in the future. It has not been without its challenges, but the authors believe the new approaches in relation to supervision and feedback implemented in the academic year 2022/23 will address the previous concerns raised by the students, enhance their educational experience, and ultimately engage in transformative and impactful work for the local community.

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<sup>136</sup> Christopher King and David Jones 'Cui pro bono? Working on Partnership: A Possible Blueprint for the Future of Clinical Legal Education' in Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch (eds) 'Reimagining Clinical Legal Education' (Hart Publishing, 2018) pp. 25-46.

<sup>137</sup> Gemma Smyth and Marion Overholt 'Framing Supervisory Relationships in Clinical Law: The Role of Critical Pedagogy.' (2014) *Journal of Law and Social Policy* Vol. 23. pp. 62-82.



## **FORMING LAWYERS WHO CAN CONTRIBUTE TO EQUITABLE ACCESS TO JUSTICE IN SOUTH AFRICA**

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### **ABSTRACT**

Drawing on Amartya Sen, this paper proposes that clinical legal education and training should be evaluated in the light of contributions to wellbeing and agency freedoms, foregrounding people's capabilities as an appropriate metric for judging access to justice. The context is post-apartheid South Africa and aspirations towards transformative Constitutionalism which seeks to operationalize values of dignity, equality and freedom for all. The role the legal system, mediated by legal practitioners, should support Constitutional values and the public good as envisaged by the National Standards for university legal education. This challenge is explored in the article, drawing on a qualitative interview study. The researchers interviewed candidate attorneys across six University Law Clinics to identify the professional capabilities they valued for the purposes of contributing to enabling people to flourish in their everyday lives. Transformative Constitutionalism further suggests a set of capabilities which legal practice should enable. Through the

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perspectives and voices of practitioners, valued legal capabilities and the corresponding university education and training practices are also identified. The idea of legal capability is developed and broadened both conceptually and empirically, building on work both by Atkins and Habbig and Robeyns. The claim is made that legal education, lawyers' professional capabilities, and transformative Constitutionalism should be grounded normatively in a capabilities metric of justice and hence what matters for people's wellbeing and agency freedoms.

*Key words: capability approach, South Africa, candidate attorneys, university law clinics, equitable access to justice*

## **INTRODUCTION**

The South African Constitution (RSA 1996) aspires, 'to improve the quality of life of all citizens and free the potential of each person'. In the light of this, we propose that equitable access to justice and hence legal education should be evaluated in the light of contributions to our wellbeing and agency freedoms (Sen 1999). As Nussbaum (2010, 432) argues, 'looking at what a nation has decided to protect through its system of constitutional law and judicial interpretation offers us useful information about what it thinks most central and most worth of protection'. Foregrounding people's capabilities (Sen 1999) constitutes an appropriate metric of access to justice based on the two normative claims set out by Robeyns (2017): that the freedom of persons to achieve wellbeing is of central moral importance, and that we understand

freedom to achieve wellbeing in terms of people's valuable capabilities. The South African Constitutional framework indicates broadly what counts as having wellbeing, enabling us to connect legal education, institutional arrangements of the law, and realizing entitlements to equality, dignity, freedom and rights.

What then is the role of legal practitioners and university education and training in operationalizing this aspiration in approaches, processes, and outcomes for everyday actions, and how can legal capabilities (Habbig and Robeyns 2022) which enable effective and equitable access to justice be fostered? As the Preamble to the 2015 National Standards (CHE 2015) for university legal education states: 'Law is central to creating a cohesive and successful society, it plays a significant role in facilitating economic development and most importantly, it is pivotal to entrenching the ethos and values of the country's constitutional democracy.... Therefore, legal education cannot be divorced from transformative constitutionalism'; legal education 'is a public good'. In the light of this, we wanted to find out what professional capabilities a group of trainee lawyers themselves value for transforming society, and how they can support Constitutional values and rights to enable people to flourish.

We also go beyond earlier conceptualisations to argue that any notion of legal capability must attend to broader social purposes, values and capabilities, as the legal education standards in South Africa envisage in evaluating equitable access to justice. We need then to have a normative view on which access to justice

capabilities matter (the guiding vision if you will) if we are to identify both which capabilities should be enabled through legal education and training, based both on the capabilities which legal practitioners themselves have reason to value and an access to justice capability set. The group we interviewed may well constitute a best case scenario and no doubt there will be varied views among legal practitioners regarding the value of the public or the private good (such as prioritising self-enrichment, see Walker and McLean 2013). But we are guided both by the aspiration for transformative Constitutionalism and by the required public-good standards in South Africa (CHE 2015) which suggest what legal education potentially could do - even if this is never guaranteed.

Turning to conceptualisations of legal capability, Atkins (2021) and Habbig and Robeyns (2022) have explained in some detail the origins of the notion of 'legal capability' and its undeveloped claim to arise from Sen's capability approach. Atkins (2021) explains that legal capability is understood as measuring or improving an individual's ability to deal with law-related problems in order to contribute to wellbeing. This applies to the broader population and is not necessarily specifically to legal practitioners. She points out that the concept lacks real theoretical grounding in the capabilities approach and calls for closer engagement with capabilities' literature; it is this that Habbig and Robeyns set out to rectify. Atkins (2021) further points out that in formulating a list of legal capabilities there is need to engage with the non-legal public as well. Suffice to note that she is critical of the

narrow framing of legal capability as embodying only knowledge, skills and attitudes, while Habbig and Robeyns (2022) add the focus narrowly on legal literacy. Habbig and Robeyns (2022) develop the conceptual underpinnings of legal capabilities beyond these narrower notions for an alignment with the capability approach whose aim is to foster human development by enlarging people's opportunities (their capabilities) and their agency (Sen 1999). They emphasize attention to both agency and structures in the framework; both determine people's real freedoms and flourishing. They draw on Martha Nussbaum's (2000) concept of 'combined capabilities' to emphasize the importance of external conditions of possibility in both forming and realizing people's capabilities. In light of this they define legal capabilities 'as the genuine or real opportunities someone has to get access to justice' (2022, 10). However, neither Atkins nor Habbig and Robeyns refer to the capability dimensions proposed by Wolff and De-Shalit (2007) which include two particularly relevant to legal capabilities: 1) living in a law-abiding fashion, that is the possibility of being able to live within the law; and 2) understanding the law. We think both these are important in our context.

We build on these accounts and the helpful capabilities-based definition of legal capabilities but, as we noted, we widen the scope beyond strictly legal capabilities in three ways: to consider the wider context and what capabilities should be advanced for equitable access to justice. Secondly, we introduce the empirical voices of practitioners, and we examine the role university education and training can play in

forming professionals who can enable justice access. We include experiences of working in a University Law Clinics (ULC) as part of this education and training. Thus we outline a normative access to a justice capability set for our Southern context of inequality, unemployment and widespread poverty in which people must navigate conditions of uncertainty and precarity on a daily basis. We think it may have relevance for other contexts where social and economic inequality and exclusions also feature.

The space of investigation is that of University Law Clinics (ULCs) in South Africa. These have their origins in the involvement of law students and academics in struggles for social justice, at the same time providing clinical legal education in the face of deep-seated social and economic inequalities (Mubangizi and McQuoid-Mason 2013). Their primary educational goal is 'training good future lawyers who can fulfill the promises of our progressive Constitution' (Mubangizi and McQuoid-Mason 2013, 63). From 1993 candidate attorneys were allowed to obtain practical training in approved legal community service organizations such as law clinics. This was followed in the early 2000s for provision by Legal Aid South Africa to fund ULCs with up to ten candidate attorney posts. Candidate attorneys undertake clinical training but may also work on projects funded by Legal Aid South Africa. The Legal Practice Act of 2014 (see <https://www.gov.za/documents/legal-practice-act>) prescribes that law graduates must undergo a compulsory practical vocational training as candidate attorneys before admission as an attorney. The Act regulates

Law Clinics, requiring registration as a non-profit organisation that provides free legal services. This differentiates the research participants from candidates in private practice who will not get the same exposure.

Nonetheless, ULCs still face the challenge of sufficient stable funding and may be undervalued by law faculties. In the challenging South African context candidate attorneys in ULCs need both to form their own effective (that is realizable) capabilities and their functionings as lawyers in order to contribute to realizing Constitutional values. Indeed, in the face of widespread poor service delivery there is considerable reliance on legal interventions around health, housing, education and environmental damage. However, important as landmark cases are and the significance of judgements secured, they do not directly address the everyday, granular realities of poor people struggling with evictions, divorce, contractual agreements, and such like. Both kinds of interventions – systemic judgements and improving everyday access - are needed for justice.

### **THE PROJECT METHODS: CONCEPTUAL AND EMPIRICAL**

In our view, we need methods that pay attention to people's lived experiences in order to understand the effect of the law on their lives; as Sen (2009, 18) puts it, 'justice cannot be indifferent to the lives that people can actually lead'. We therefore undertook a qualitative case study in which we set out to understand the contribution of universities and especially ULCs to the formation of lawyers with the values and skills to contribute meaningfully to transforming South Africa. We first

did conceptual work to justify adopting the capability approach and then to think about which capabilities might enable equitable access to justice, drawing on our understanding of South Africa as the context and also on earlier research with students from low-income backgrounds as a proxy for what communities might want for better lives (Walker et al. 2022). From this we generated a cluster of three intersecting capabilities. Then, in 2022, after securing ethical approval, we contacted a sample of nine of the university law clinics in South Africa; participants volunteered from six of these. We interviewed 16 volunteers online between March and May 2022, 13 were candidate attorneys at six different ULCs, as well as the director and two practising attorneys at one of the clinics. All interviews and universities have been given pseudonyms. The clinics were situated at Karee, Mahogany, Marula, all mid ranked research and teaching universities, and Mopane, Baobab, Yellowwood all elite universities in the top five in South Africa and globally ranked. All six are historically advantaged (that is formerly white) universities. Two interviewees had studied at Forest and another at Fynbos, both historically disadvantaged (that is formerly black) universities.

We wanted to understand the contribution of university legal education as well as participation in a ULC to professional formation, and what the challenges and barriers are to realizing equitable access to justice and hence also social justice for the marginalized in South Africa. In the interviews we asked participants about the following: their thoughts on a good future for all in South Africa and challenges or



obstacles, why they chose law, the contribution of their university education to becoming and being the kind of lawyer they want to be, why they came to work in a ULC and their experiences and learning there, and their future career aspirations. Based on our interview data, we report on how this sample of young lawyers develop their own professional capabilities and functionings to enable the agency of their clients. This involved us interpreting carefully what was told to us across three levels: a capability set young lawyers had reason to value, their professional education and training experiences, and broader capabilities which would need to be enabled and activated for equitable access to justice.

**Table 1: Participants**

<b>Name</b>	<b>ULC</b>	<b>Demographic</b>	<b>University where law degree completed</b>
Sindiswa	Karee	Black, female	Forest
Nadine	Yellowwood	White, female	Yellowwood
Mkhize	Yellowwood	Black, female	Fynbos
Fundiswa	Yellowwood	Black, female	Fynbos
Dineo	Yellowwood	Black female	Yellowwood

Naledi	Karee	Black, female	Marula
Puleng	Karee	Black female	Forest
Alan	Karee	Mixed race, male, ULC director	Yellowwood
Nomzano	Karee	Black, female, qualified attorney	Forest
Michelle	Baobab	White, female	Baobab
Michael	Mahogany	Mixed race, male	Mahogany
Abongile	Mahogany	Female, black	Mahogany
Mamello	Mopane	Black, female	Mopane
Jennifer	Mahogany	White, female	Mahogany
Ntando	Marula	Black, male	Marula
Nick	Karee	<a href="#">White</a> , male, qualified attorney	Karee

## CONCEPTUAL WORK

### *1) Capabilities, functionings and agency*

The capability approach (Sen 1999, 2009) provides the normative and conceptual basis for our study. The approach enables an informationally rich, people-centred analysis which can account for context and all relevant factors which shape people's opportunities for wellbeing. Briefly, capabilities are our opportunities and freedoms to be and to do in ways which we value so that wellbeing is understood as having and expanding a person's capabilities; the achievement of the richness of human life is the guiding norm for access to the law. Thus, a person's capability set is a set of real (actual) opportunities that they could use in one way or another; it indicates the possible pathways that lie open. Functionings are valuable beings and doings; these include a range of possible activities and imply that the person is actively involved in their life, not merely a passive bystander. Functionings might include basic capabilities such as being well-nourished, having shelter and adequate clothing, as well as more elaborate functionings such as having self-respect and going without shame in public. Income and public services are necessary for the realization of most of these functionings, but are only instrumentally important in the capability approach, not goals in themselves (Sen 1999). Connecting agency and structures, 'conversion factors' shape access to justice. These might be: 1) personal factors, such

as sex, disability, but also hard work, motivation etc.; 2) social factors deal with norms and values, the nature of institutions and cultural practices, relationships, and more; 3) environmental factors relate to the natural or created environment in which a person lives such as a rural village a long and costly distance from law courts compared to a large town, availability of a free law clinic, and language interpreters, but also wider factors such as the historical legacy of apartheid.

A second reason for using the approach is Sen's (1999) emphasis on agency as a central concept and also as a central normative concern - that we should be active choosers from our capability set with regard to the functionings and goals that matter to us. Thus, Habbig and Robeyns (2022, 14) prefer that access to justice should focus on the capability aspect rather than the functioning, 'since there might be reasons why a citizen would prefer not to exercise her freedom...we must protect the person's choice of whether or not (if so how) to get engaged in legal matters'. While we agree up to a point, in South Africa without looking at actual functionings it may be challenging to separate out why people do not access justice because of an active choice and why they do not access justice because of all the obstacles they face as poor and marginalized persons and communities. Thus in our context we think that both capabilities and functionings to access justice are important for wellbeing.

## **2) Capabilities for equitable access to justice**

We first generated a cluster of intersecting capabilities which we regard as arising from the Constitution, normative theorizing and an ubuntu ethic and way of life. They are also evident in what the interviewees said to us directly or indirectly. They are important for the flourishing of clients, and in an unequal and stratified higher education system with multiple exclusions they are as important for students (see Walker et al. 2022).

### **2. 1. A normative African justice ethic: Ubuntu**

We think an Ubuntu ethic ought to underpin equitable access to justice and provide ethical grip to legal and other capabilities and to higher education in our context. Ramose (1999, 37) explains that the saying *Motho ke motho ka batho* ('I am because you are', 'a person is person through other persons') encapsulates the idea that to be a human being 'is to affirm one's humanity by recognising the humanity of others and on that basis establish humane relations with them'. Thus, 'to denigrate and disrespect the other human being is in the first place to denigrate and disrespect oneself' (1999, 49). Forming the 'excellent' self cannot be achieved except through others; my wellbeing depends on others also having wellbeing. Thus, ethical, social and legal judgement of human worth and human conduct should be based on Ubuntu, Ramose argues. For Metz (2014, 6761) to exhibit Ubuntu is to be a person who is living a genuinely human way of life; the lack of Ubuntu is to lack human excellence or humanness. Further, says Metz (2014, 6764), community (harmony)

involves 'identifying with others and exhibiting solidarity with them'. Not to practice solidarity would show lack of concern for each other's flourishing or, 'worse, to exhibit ill will in the form of hostility and cruelty'. One displays human excellence through kindness, compassion, mercy, and similar values. Nelson Mandela (2002, 10) also affirmed this sub-Saharan ethic when he reminded us that, 'What counts in life is not the mere fact that we have lived. It is what difference we have made to the lives of others that will determine the significance of the life we lead'.

We do not think an ethic can be reduced to a capability, given that Ubuntu 'is a statement about being and cannot be reduced just to a methodology of doing something' (Matolino and Kwindigwi 2013, 200); it is a whole way of life. Maphosa and Nhlapo (2020, 30) suggest that Ubuntu, 'permeates the Constitution generally ... and specifically fundamental human rights'; Ubuntu thus animates transformative constitutionalism ethically and the advancement of community and social solidarity. It is this ethic which the working of the law and legal practitioners ought to uphold and to value in the South African context, challenging poverty, inequality and social exclusion. It underpins the capability set which we explain below.

## **2.2. A capability set**

The first of the capabilities we identify is human dignity, which is architectonic in that it suffuses all other capabilities. It means being able to function and flourish and to be recognized as a dignified human being. A concern with human dignity 'is to

say something about the worth, stature or value of a human being' (Sulmasy 2013, 938). Sulmasy conceptualizes 'inflorescent dignity', that is 'the worth or value of a process that is conducive to human excellence' (938), it is 'the value that comes from flowering or flourishing' (938). People who are flourishing as human beings, are 'living lives that are consistent with and expressive of the intrinsic dignity of the human' (938). Nussbaum (2000, 79) notes the importance of being 'a dignified free being who shapes his or her life in cooperation and reciprocity with others, rather than being passively shaped or pushed around'. The role of the law and legal practitioners is thus to enable inflorescent dignity and for all human beings to develop a sense of themselves as persons of dignity and worth to whom justice is due. Inflorescent dignity then requires that legal practitioners honour the intrinsic dignity of clients and work to enable them to flourish. In turn, universities should honour the dignity of their (law) students and enable them to flourish in higher education.

We find support in the Constitution (1996, 10) which states that: 'Everyone has inherent dignity and the right to have their dignity respected and protected'. Justice O' Regan (quoted in Liebenberg 2005, 3) described the value of dignity in constituting post-apartheid society in this way: 'The Constitution asserts dignity to contradict our past in which human dignity for black South Africans was routinely and cruelly denied. It asserts it too to inform the future, to invest in our democracy respect for the intrinsic worth of all human beings'; dignity is a 'founding value of

our new Constitution' (quoted in Liebenberg 2005, 7). Similarly, in the Grootboom (right of access to housing) case, Yacoob asserted 'that account be taken [by the state] of the inherent dignity of human beings' (quoted in Liebenberg 2005, 3). Davis et al. (2005, 2.1 and 3.1) affirm that, 'the recognition of intrinsic dignity and worth of all human beings, informs, animates and directs all fundamental rights'. Opening up the importance of conversion factors, Liebenberg (2005, 12) explains that, 'If we are to constitute ourselves as a society that respects human dignity...we [must be] committed to redressing the social and economic conditions of those whose capacity for development and agency is stunted by poverty. By failing to do so, we undermine the very foundations of our new constitutional democracy'. As Liebenberg (2005, 31) further emphasizes, in our context of severe inequalities and widespread poverty we are 'most in peril of failing to value the human dignity of the poor'. Nussbaum (2000, 74) too, notes that without supportive social uptake conditions, dignity, 'is like a promissory note whose claims have not been met'.

Second in our set, is the concept of repairing capabilities, which the Constitution (RSA 1996, 5) acknowledges in its Preamble when it enjoins us to: 'Recognise the injustices of our past'. We draw on Spelman (2002, 5) who writes that: 'To repair is to acknowledge and respond to the fracturability of the world in which we live in', and hence to carefully address past injustices in order to look to a future which is different, repairing past harms, and fostering flourishing. Past injustices should be dismantled for 'reparative futures' (Spriprakash et al 2020), which signal a

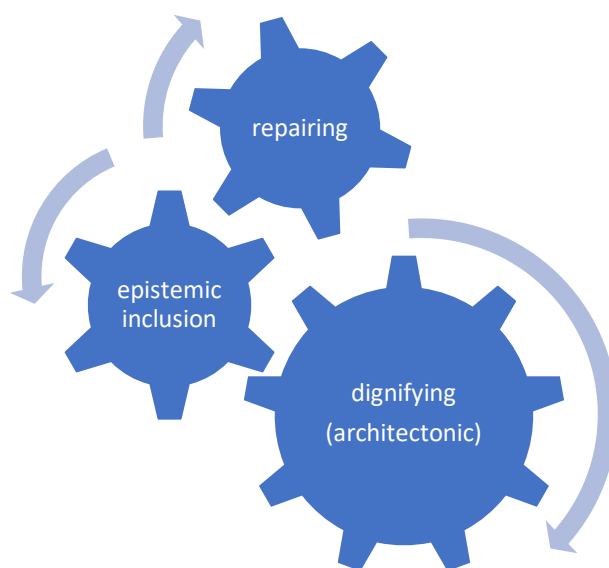


commitment to identify and recognize these injustices experienced by individuals and communities. Even when they appear over, past injustices will continue to endure in people's lives (economic exclusion and poverty for example) in material and affective ways unless they are carefully addressed. To this end, Spriprakash et al. (2020) highlight the importance of collective learning, of ethical listening, and of dialogue in producing enlarged understandings and practices, and of reciprocal relationships.

The third in our set are capabilities which foster and enable epistemic inclusion. Who can speak, who is heard and listened to, who is believed, who is credible, who can make themselves understood in the light of the available communicative resources, who has access to information about the law and information about their legal and human rights – all matter in making and sustaining a dignity-enhancing society. Fricker's (2015) conceptualization of epistemic injustice is helpful here. She argues that epistemic injustice occurs when someone is wronged specifically in their capacity as a knower, and that a central capability ought then to be each person's opportunity to be an epistemic contributor, both receiving and contributing epistemic materials to the common pool. Her two basic concepts for epistemic injustice (being excluded as an epistemic contributor) are: testimonial injustice when someone is not regarded as a credible knower because of identity prejudice (being black, or female, or working class, for example), such that a poor black client might not be listened to or regarded as credible. Hermeneutical injustice is structural, when

the knowledge resources of groups (of communities, of the poor, of indigenous peoples) are excluded or marginalized in the society's common knowledge pool. Here there would be inequitable access to the legal system or a legal system which is not oriented to the poor majority. Where there is epistemic injustice, epistemic relations and communication are distorted and hierarchized and people are denied their participation in a shared way of life. As Freire (1972) argues, dialogue is an existential necessity and can only truly exist where people have not been denied the right to speak. Epistemic inclusion is in place when everyone has the opportunity to have a legitimate, credible and dignified voice, to be believed and acknowledged and to have their meanings, experiences and contributions taken seriously.

***Figure 1: Capabilities for equitable access to justice (not a blueprint but worth discussing)***



Further, in identifying this capability set, we also extrapolated from what interviewees said was needed for a better future for South Africans as a proxy for transformation and justice. They spoke about all of these in thinking about the future and working towards a transformative legal system: spatial freedoms and safe mobility; access to quality education, healthcare, safe shelter, running water, electricity; the ability of people to make their own decisions about their lives; a life characterized by respect not stereotypes; narrowing the inequality gap; being able to trust government; equal access to opportunities; peace and harmony; seeing ourselves as a collective; being aware of each other's struggles and experiences as human beings; an end to endemic gender-based violence; and, a corruption-free future. Mamello summed it up well when she said: 'I think if everyone has human dignity and they're valued in society despite our differences, and our quality of life is good, just being given an equal chance in life, then I'd say, that's what a good future looks like'.

That this is not in place for many South Africans speaks to the formidable social and environmental conversion factors facing equitable access to justice. Nor is the law as it is practised necessarily enabling of dignity, repair and epistemic inclusion. As S'bu Zikode (2011, 2) of Abahlali baseMjondolo (Poor People's Movements) explains: 'the legal country is not the real country. The law may protect you against eviction or repression on paper but in reality, if you are poor, councillors, landlords and the police all treat you as if you are beneath the law – as if you don't count to the law.'

Poverty is treated as criminality, ignorance...the way life is lived beneath the law is very different to how the law looks in books'. Puleng in our study confirmed that, 'people say that if you don't have the money, the law will never speak for you'.

### **2.3. A capability set which legal practitioners' value**

Having outlined an access to justice capability set which asks that all people are treated as dignified human beings; that injustices are acknowledged and repaired; and, that everyone is able to be an epistemic contributor we now turn to the capabilities that legal practitioners value for their own professional contributions to society, based on what was told to us. Watkins (2021, 23-24) has proposed a list of legal capabilities for a European context, drawing on literature rather than empirical data. Her suggestions as to what a 'legally capable person' (we think she means a legal practitioner) might actually be able to do and be are: knowledge/education (about the law); recognition (of the relevance of law to an issue or situation); research; assistance (to seek and secure assistance from others); reasoning; assessing (courses of action and aware of own limitations); planning; fortitude (pushing for a desired outcome); and, influence/ communication. These capabilities seem broadly 'neutral' in so far as they have no obvious normative underpinnings in terms of what actual justice might entail. We think they can be subsumed under our capability below of legal competence.

We discussed with the interviewees their own experiences of studying law and their practical experiences at the ULCs. Because these are all university-based, we see them as an extension of the university education's contribution. Based on our interviews, the four broad capabilities we extrapolated, as told to us by practitioners, and which can be mapped over the three capability clusters outlined earlier are set out below. The set is multi-dimensional and intersecting. One capability cannot be extracted and evaluated absent the rest of the set.

*Legal competence.* This broad competence is acquired through university study and experientially through work in a ULC, with real clients: knowledge of the law (theoretical) and legal practice skills - including exposure to social justice challenges in communities, understanding how to use the law for redress and repair, understanding the limits of the law as a means of social redress, managing time, being well-prepared, preparing documentation carefully, communication skills, research skills, lifelong learning orientation, ethics, emotional balance and emotional intelligence. The capability includes being respected as someone with legal knowledge, as a lawyer, and being valued by clients. Alan commented that the candidate attorneys speak of valuing 'the huge sense of respect for what they are doing as attorneys'. As Michael said 'I feel very valuable, I feel a help to these people'. Emotional balance is important, when you are seen as 'a beacon of hope' (Nomzano), when 'the hardest thing is that there are certain things we cannot do' (Naledi), and, 'if you cannot help a client, they have nothing left' (Michael). Dineo

commented that, 'We get clients who are victims of domestic violence....if I were to carry that emotionally I would break'. The capability also involved being able to close the legal knowledge gap by communicating, educating, working with and empowering communities to enable their epistemic contributions. These all constitute elements of the capability of legal competence in South Africa.

*Being multilingual.* In a country with 11 official languages, this capability meant being able to speak more than one language (and especially an African language) in order to enable epistemic inclusion. As Nomzamo explained, 'I'm Xhosa speaking and the community there is Xhosa-speaking so I know that I can use isi-Xhosa'. Mkhize who did her law degree at Fynbos and then joined the Yellowwood law clinic commented on the clinic wanting people who were multilingual and she saw it as an opportunity 'to teach and educate people'. Beyond this, candidate attorneys also see themselves as translators of a client's narrative into legal processes and legal language into something their clients can understand.

*Interconnectedness and solidarity.* Here the focus is on people's humanness (their Ubuntu) as a way of living and being. The capability includes: being recognized and recognizing others dignity and humanity, taking responsibility for and showing care for a wider community beyond oneself and one's family, being able to develop inclusive relationships with clients, learning from clients what matters for their wellbeing, respect, patience, and being comfortable with diversity. As Michael explained, 'I've learned through the law clinic, the people that we deal with are real

people'. Jennifer emphasized humility in dealing with people. Ntando commented that you needed to be able to, 'put yourself in the shoes of anyone who comes before you and anyone who is passing across the street. Being willing to be considerate, not selfish. To be willing to live with other people and then be willing to assist where you can'. Naledi said that, 'be kind and understanding, just be patient'. Danielle thought it important not to be 'rude or abrupt as this is not conducive to people's situation.... it's going to frustrate them and me'. Michael explained further that, 'if you can listen to people in a way that makes them feel heard, that is the thing they care about'. This includes being 'a person to rely on'. All this in turn produces fulfilment which matters said Mamello, because 'If I'm going to be working long hours and the work is demanding, it should be something that fulfils me'.

*Transformation.* The law, said Mamello, 'needs agents of change'. All interviews valued learning how to make a difference by implementing the law in ways which are fair and empowering, by understanding current and past social and other injustices which bear on practising the law and working together with others in the Clinic. The capability includes: making a difference to families and grassroots communities who are vulnerable, a human rather than a money orientation, operationalizing human rights, and enabling agency by litigating with people rather than for them. Collective action was also important; Nomzano explained that, 'when voices are speaking collectively the impact is very big'. We find evidence for this capability also in why many decided to become lawyers - to help their families and

their communities. For example, Alan was motivated by his father's struggles with labour relations, with no one to assist him. Puleng observed that people in communities were badly served by the law, 'they get the runaround...I realized no-one can actually stand for these people, so if I can, maybe let's see how I can do it'. She added that she had grown up in a rural village where human rights and the law, 'was literally close to being a foreign concept....I thought maybe I should study something towards educating and taking it back to my community to let them know that there is the law in place'. Naledi had observed her mothers' struggles to get divorced, 'it took so long and I saw how much she was suffering, she used legal aid and the experience was not good'. This requires a 'non-egotistical, non-individualistic viewpoint of the world and ourselves', said Michael, not prizing status above the human reasons for being a lawyer. The importance of a commitment to transformation also comes through in criticism both of the legal profession and of law graduates for whom it is just a job. Thus, Michelle said that, 'if you do not want to make a difference...the law is not for you'.

Mamello commented that the law clinic not only provides a platform for access to law but also helping clients understand that, 'there's so much agency they have. I'm not now going to take all the decisions for you'. It was she said a 'partnership', one in which listening to people is crucial because clients 'are experts in their own lives'. Michael explained that, they should enable access to the law 'as well as [clients] getting educated about the law and opening the "bubble" to everyone'. He thinks



access to justice impacts on the wellbeing of whole families, commenting that, ‘You would see sometimes there’s a hopeless client, and then you do that one thing for them...They come with the assumption that it won’t be sorted out. So, when it’s sorted out, the value is not only in their lives but their children’s lives, that is something that will go on for very long time’. Finally, Alan confirmed the importance of, ‘having a real impact on someone’s life or a lot of people’s lives’.

We can map and compare legal capability clusters; the set identified above by ULC attorneys and candidate attorneys aligns well with dignity, repair and epistemic inclusion. There is less alignment with Watkins (2021), not surprisingly as the context is Europe. We think our set can incorporate Watkins, as well as Wolff and De Shalit’s (2007) two legal capabilities. Of course, the comparison is not really that neat as capabilities intersect and are multi-dimensional.

*Table 2: Aligning and comparing capabilities*

<p><b>Capability set for access to justice</b></p>	<p><b>Capability set identified by South African ULC candidate attorneys &amp; attorneys</b></p>	<p><b>Watkins (2021), Europe</b></p>	<p><b>Wolff and De Shalit (2007), UK and Israel interviewees</b></p>
<p>Dignity</p>	<p>Transformation</p>		<p>Living in a law-abiding fashion; Understanding</p>

			the law
Repair	Legal competence, including professional recognition	Knowledge/Education; Reasoning; Research; Planning; Assessing; Fortitude; Influence/communication.	Living in a law-abiding fashion; Understanding the law
Epistemic Inclusion	Interconnectedness and solidarity; Multilingual	Recognition	Living in a law-abiding fashion; Understanding the law

What then have are four ‘thick’ capability dimensions (column two) which our interviewees have reason to value for making a professional contribution to transforming society. They align well with the broad capability set (column one), as we show in table two above.

#### 2.4. The contributions of university legal education and training

In the light of these two capability sets identified thus far, what do universities (and ULCs) provide in forming and fostering these professionally-focused capabilities and the legal education standard of producing ‘critical thinkers and enlightened citizens with a profound understanding of the impact of the Constitution on the

development of the law' (CHE 2015)? We looked at this across intersecting spaces of classroom, campus and community (McCowan 2022).

### *Classroom space*

All interviewees had gained a legal qualification and the valued functioning of being able to practice law after their candidature. For many from working class backgrounds, it was the ULC which enabled their candidature place after a period of being unemployed. Across the different universities, there was considerable variation in what they had gained from their law degree. In some cases, lecturers had made the links to the Constitution and transformation but not in all cases or all the universities and generally not transversally across subjects. Similarly, an ethos oriented to transformation was uneven and seemed strongest at Mahogany and Forest but was also emergent at Marula and Mopane. On the other hand, classroom (and campus) spaces enabled meeting diverse people so that, 'people you meet in studies are the very people that create the practitioner that you will be, the moral compass you will hold' (Michael). Some had had the opportunity to reflect on their own middle-class privileges. For example, Jennifer explained that, 'being white I grew up in a certain way where I was very shielded from what was going on, the inequalities there are. Coming into university was a kind of culture shock...I learned that my story is not the only story there is, and my reality is not necessarily the reality of others. My one friend said that we always thought that we're all in the same boat for the same storm but in fact we're in the same storm with different

boats. Basically, what I took away is not to take for granted what I have. But also, not to expect others to be as privileged as I am'. Abongile commented that, 'being at university you get to see the injustices of how unequal the society is. It's more in your face in the university space...I was very naïve about that at high school, it was mostly at university that I realized how unequal our society is'.

For some, their university experiences were shaped by whether or not they felt they belonged; this is more challenging for young people from low-income homes (Walker et al. 2022). For example, Fundiswa who had studied at Baobab said she had felt like a 'refugee' during her studies, while Sindiswe struggled through her degree at Karee and just 'kept her head down'. The most engaging teaching adopted discussion methods and critical thinking, such as in jurisprudence and customary law. For example, Nick who teaches part-time in the Karee Law Faculty, described discussing legal cases with students such as the strictures around civil and customary marriage law: 'You challenge them, You tell them the law says this and you can see that they don't agree, and you can see them start to think about it...I think exposing them to these cases and having conversations, creating a space for dialogue is important....why does the law work this way'. Such opportunities for class discussions were uneven but welcomed, so that you could 'learn to think on your feet' (Jennifer). A number of interviewees were studying for masters degrees in law and finding the experience rather different from their undergraduate study. Puleng explained that there is more participation and engagement and they are

learning how to do research. In her case she always looks forward to her classes, however tired she is after a day at the ULC. Michelle had done her masters abroad and was initially seriously shocked by the challenges of learning independently compared to her degree. For many, the teaching had been dull, the lecturer, 'just read what is in the textbook until the hour had elapsed' (Puleng). This is not to say that learning content through lecture-based methods was not valued or uniformly dull and some of the interviewees spoke favourably about lecturers who 'know their stuff', who communicate legal knowledge, or who practice themselves. Good lecturers made even dryer subjects like Insolvency Law interesting at Mahogany, drawing on real life examples such as the collapse of South African Airways.

Overall, access to legal knowledge was understood as necessary. Jennifer explained that, 'it's good to have the theoretical background, to have the knowledge and an idea of where to start'. Some valued an orientation to lifelong learning. Thus, Mamello commented that, 'what my law degree taught me is how to continuously learn. It was clear to me very early on at Mopane that I've committed myself to a journey of lifelong learning'. It was also important to understand or learn how legal theory works out in practice, bridging the theory-practice gap which everyone mentioned, including enabling a client to understand the legal process. Both Nick and Michelle commented on this, that, 'this is the law, but this is how it actually gets done in actual lives'. As Michael explained, when we lose sight of the process, 'we forget about the human'.

Decolonizing or expanding the law curriculum to take on issues such as epistemological diversity or LGBTQI+ spaces was very uneven and surprisingly limited. At Mopane, Mamello felt introducing these debates, 'it just opened me up to different kind of consciousness'. This was not everyone's experience. Others felt the curriculum was too fragmented, with subjects not connecting to each other, for example commercial law not addressing transformative constitutionalism. Very little was said about decolonizing the curriculum apart from Mopane introducing epistemological diversity, and Mahogany teaching critical race theory debates.

The educational obstacles raised for a transformative legal education were numerous, as told to us: a crowded curriculum; a lack of attention to developing critical skills; law faculties that operate as silos not connecting with the social sciences or humanities; and the gap between theory and practice. For Nick the 'detachment' of a silo-ed field is also 'a detachment between the effect of the law on a person... you don't learn the tools to sit with a traumatized person', while many interviewees mentioned that transformative constitutionalism was not evident across all subjects.

Overall, the classroom space was uneven in contributing to quality in legal competence, interconnectedness, multilingualism (all teaching was in English except at Yellowwood where it was also in Afrikaans), and transformation capabilities and also public values.

*Campus space*

Like the classroom, campus space experiences were uneven. Not all of the interviewees had involved themselves in campus activities: they did not realize the opportunities were there, or they could not afford them, or coming from low quality schools, they felt they needed to focus on their studies. Thus, Puleng said, 'I didn't know about a lot of things that could be done while doing the law degree. I just came here to get my degree and then I had to work my way up again to start learning how things actually work'. For some societies students had to pay to join and this was not affordable for all of them. Where they do this or where conversion factors work such that opportunities can be taken up, they seem to gain a great deal, such as at Mopane. For example, Mamello appreciated the diverse student culture at her university, with specific opportunities for activities such as being chief justice of the students' constitutional tribunal located under Student Affairs, 'just seeing how students got really engaged, opened my mind to realizing that we are young adults going into the working world and we are the ones that are going to be shaping this country....I'm fortunate to have gone to Mopane because there was really good and robust organized student life and governance'. Also at Mopane, Michelle mentioned how the legal society organized 'transformative talks' and 'controversial conversations' (for example, legal issues around the 2012 police shooting of striking miners at the Marikana mine (see <https://www.sahistory.org.za/article/marikana-massacre-16-august-2012>)). In her studies at Mopane, Dineo participated in what

students called the 'legal shebeen [drinking tavern]', not obviously a shebeen for drinking but held every Friday for students and staff to discuss topics of significance, such as sexual assault. She also took part in Students for Law and Social Justice which provided an opportunity to have conversations about the law, 'and to question the law with people who could actually make a difference, for example the government department for Justice and Constitutional Development'.

### *Community space*

In this space, experiential and continuing learning are especially important, and the ULCs do an important job. Typically, the clinics deal with evictions, contracts (e.g. insurance), marriage and divorce, mediation, and for some, refugees. Of course, not everyone chooses this route, so it then becomes important to include community-based learning in the degree as well. For example, Karee now has a Street Law module for undergraduate law students. Nick explained how this works: 'that experience of connecting with someone or sitting across from someone. Going into a community and being greeted as an old friend even though they've never met you before, significantly changes the way you view that community. Especially if you never been, besides driving past or reading about it. Even the students who come from those communities, and already have that impetus to change things, you see them come into their own'. He also spoke about how community-based learning also allows students some control over their learning in that they can organize their own community service with an NGO, which, 'empowers this student to make a



difference in the field they want and not just feel like an observer fulfilling a pre-decided course requirement’.

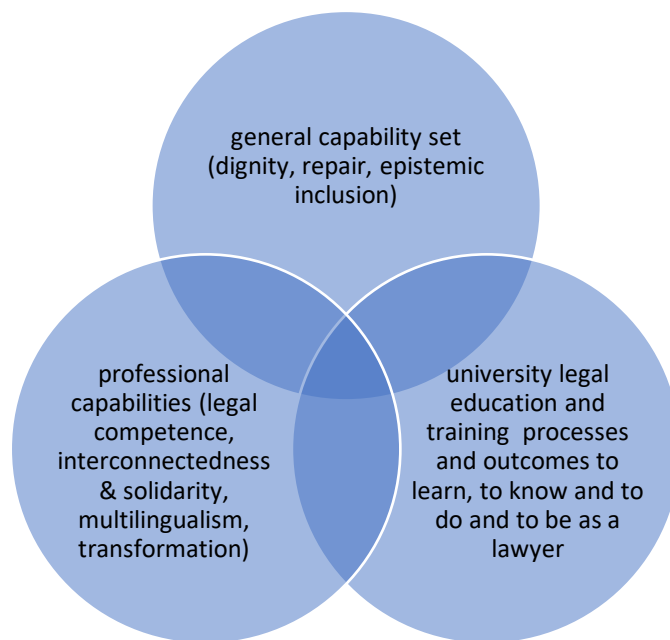
As candidate attorneys in the ULC, there is the opportunity to make mistakes and to be supported throughout by a supervising attorney, to learn how to be a lawyer and how to do as a lawyer. This community learning space fosters Ubuntu, you learn, ‘how to acknowledge other’s humanity....how to treat people very respectfully’ (Jennifer). Dineo commented that the clinic ‘is shaping me to become the lawyer that I think my grandmother would be proud of’.

From our interviews we thus found that interviewees valued being able to learn and to know the law and to be and to do as lawyers in operationalizing the professional capabilities they valued as a contribution to equitable access to justice. As we explained, this occurred across intersecting rather than stand-alone spaces of classroom (formal learning), campus (student associations, extra-curricular activities, life on campus. etc.), and community (service learning, community-based learning and projects, working in a ULC, working in and with communities, etc.). While this was uneven across different universities and for diverse students during their degree studies, experiences of working in ULCs was uniformly positive and empowering for candidate attorneys where they experienced being recognized as legal professionals and as the bearers of knowledge about the law.

Together, classroom-campus-community spaces can –if they work well - transform the students who come to university. For example, Michael explained how for him,

university, 'created the person you see before you...because of the circumstances of my life, I was very heated....law made me realize that you need to be disciplined....I grew into my studies'. We can also see how these education processes and practices can help realize the valued capabilities for lawyers, which emerged in our interviews: transformation, interconnectedness and solidarity, multilingualism, and legal competence. Professional capabilities and education can potentially contribute to forming the general capabilities of others (dignity, repair, epistemic inclusion) for equitable access of justice. This should be underpinned by the African ethic of justice of Ubuntu, contributing to the public good as envisaged by the Standards for Law Degrees (CHE 2015), and to operationalizing transformative constitutionalism (figure two).

**Figure 2: Intersecting capability sets and education processes**



The conversion factors (and see Walker and McLean 2013, Walker et al 2022) which emerge objectively and subjectively across society and higher education and which may be enabling or constraining for forming all these capabilities and exercising functionings, are quite severe: the legacy of colonialism and apartheid, materialism, poverty, inequality, and unemployment all get in the way. At the university level, quality of degree (curriculum, pedagogies, ethos), campus opportunities and community spaces for learning can work in disabling or enabling ways. What came out in our interviews are the gaps in the processes, practices and processes of university law degrees, notwithstanding the major contribution to professional learning and knowledge by the ULCs. The Constitution and the Standards ought to be and can be enabling factors. Still, the task is not easy.

Nonetheless the intersecting dimensions above might be used as an informationally rich, justice-facing lens for higher education and training, a tool to develop and evaluate change, and an aspirational architecture for transformed education and training and practice. They might be used as the basis for debate and dialogue across stakeholders where the purpose is to form lawyers who can work to enable equitable access to justice. Such work must always take account of conversion factors which shape conditions of what is possible, of basic capabilities of access to housing, health care, food and water, and schooling, while always keeping in view the architectonic importance of realising human dignity in and for a society undergoing post-apartheid and post-colonialism transformation struggles. They may be relevant to nations facing similar challenges.

## **CONCLUSION**

What repair and reparative futures specifically ask us to do is to look to the future, futures which can be more just than the present, and to work individually and collectively to bring about this alternative future, even though as Nick said, the law 'is often backwards looking...it's very difficult for the law to be forward-looking'. Michael put it well when he explained that, 'we need to try and look into the future, before we are there, in ways that can change the law'. He explained the idea of reparative futures well: 'We can't go back but we can start from the moment we are in and then in doing so create better future that will create a learned [about] past and more extrapolated lessons from those past injustices to make our daily life and our

future life better'. For him the law provides 'tools and mechanisms' for equitable access to justice over time as more as more people are given justice, while the Constitution provides the framing values.

We think our capability sets provide a metric for equitable access to justice and the basis for dialogue about the corresponding contributions of higher education and training and of the lawyers who graduate from universities. As Habbig and Robeyns (2022) argue, legal capabilities can potentially play an important role and take into account whether people have a genuine opportunity to access justice. We think our normative general capability set grounded in Constitutional values and South Africa's history provides depth to this claim by suggesting professional capabilities and the capabilities legal practitioners need to develop themselves to secure equitable access to justice, while also revealing the educational and social obstacles that stand in the way and which we need to work to remove. Working together, these capability sets for legal practitioners and university education and training might generate new transformation pathways as a contribution to dismantling existing inequalities, historical exclusions and injustices. As the Standards for Law Degrees (CHE 2015) envisage, graduates should be equipped with the capabilities and values to be able to take on the responsibility of working towards achieving social justice for everyone, with the responsibility to act on behalf of those who do not get the opportunity to enjoy rights and freedoms.

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**WHAT CAN BE LEARNED FROM INTERNATIONAL EXCHANGE BETWEEN  
LEGAL CLINICS: REPORT ON THE EXPERIENCES MADE DURING THE ENCLE  
CONFERENCE IN 2022**

**Hannah Franz, University of Hamburg\***

**1. Introduction**

“ENCLE” is the European Network for Clinical Legal Education. It is the networks’ goal to connect persons committed to achieving justice through education. ENCLE brings together persons from different countries, who exchange perspectives and work collaboratively from a variety of legal, educational and organizational settings in order to promote justice and increase the quality of law teaching through Clinical Legal Education.<sup>1</sup> The yearly ENCLE conferences are one part of achieving this goal. The 9<sup>th</sup> conference will take place on July 17 and 18<sup>th</sup> 2023 in Liverpool. In joyful anticipation of the conference, I would like to share my experiences as a (former) German clinic student at the 8<sup>th</sup> conference in Brescia, Italy.

**2. Presenting the conference subject**

The conference was held under the motto “Solidarity: We are ALL in this together”. Picking up the theme, *Mariia Tsypriashchuk* and *Yuliia Lomzhets* from the Association of Legal Clinics of Ukraine gave descriptive input on the current situation in Ukraine

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<sup>1</sup> <https://www.encle.org/> (last reviewed: 24.03.2023).

and what challenges arise for legal education due to the ongoing war. Besides material damages to facilities, they face challenges in regard to missing staff and students, psychological stress, issues with the financing of the clinics, pressure and an increased workload for faculty, missing practical training and an increase of corruption risk. In this context, *Bian Sukrow*, leader of the Law Clinic at the Bucerius Law School in Germany, gave an inspirational quote regarding the word “refugee crisis” which is generally used when many people are fleeing to another country. Whereas most recipient countries use crisis as a word to describe the situation they are in to deal with a large number of refugees, it should always be kept in mind, that the crisis is actually quite present for those fleeing from war, persecution, environmental degradation, natural catastrophes, ethical conflicts etc.

With this in mind, we went on into our sessions. The variety of the topics was tremendous. The topics included, for example, the digitalization of clinical legal education and the COVID-19 pandemic; specific country reports on the immigration system; dealing with specific situations such as the new migration wave from Ukraine; and promotions of specific legal clinics such as policy or statelessness clinics. Some subjects also targeted topics of internal forced displacement due to natural disasters, protection of LGBTQIA+ people and children. What was common to most of these sessions was the focus both on the practice of law and the practice of teaching.

The speakers focused on explaining their programs and pedagogies that encompassed the spectrum of lawyering skills and roles, including counseling and mediation but

also put the spotlight on supporting inclusion, equity, belonging and wellbeing within the classes. Other topics included training law clinic students to be resilient and trauma-informed; dealing with a multi-disciplinary team consisting of students, academics and professionals; introducing classes on the right to legal aid into a curriculum and expanding the clinical program and examining implicit bias in order to train effective lawyers in a multicultural world.

### **3. Experiences from some of the workshops**

#### *3.1. Personal background and experiences*

Coming from Germany where most legal clinics are mainly voluntarily run by students and clinical legal education is not part of the curriculum<sup>2</sup>, it was insightful that in other countries university professors focus on how to train students not just in different areas of law but also on how to apply the law.<sup>3</sup> They also train them on how to become “good” lawyers that encounter their clients with empathy. I was amazed to learn that the focus in other countries is not merely on providing free legal advice to those in need, but also on developing an extraordinarily useful enrichment legal education by making sure the students acquire “soft skills” such as competencies in reflection, leadership, ethics, professional responsibility, continuity, negotiation, lobbying, mediation, time management, legal research, strategic planning,

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<sup>2</sup> *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 9; *Kilian/Wenzel*, Law Clinics in Deutschland: Zahlen, Typologien und Strukturen, AnwBl. 10/2017, p. 964; *Wenzel/Kilian*, Law Clinics in Deutschland, 2022, p. 5, 27.

<sup>3</sup> See also e.g. *Evans/Cody/Copeland/Giddings/Joy/Noone/Rice*, Australian Clinical Legal Education – Designing and Operating a best Practice Clinical Program in an Australian Law School, 2017, pp. 48 f.

communication and strategic, critical, entrepreneurial, social and intercultural thinking. Behind this, is a whole different understanding of legal education than what I experienced in Germany. In Germany law students seem to be understood as empty vessels into which legal information can be poured into without end. Clinical legal education shapes these vessels by providing students with so much more of what they need to understand, including the nature and processes of law and to operate effectively as a legal professional.

In that regard, I was quite astonished to find out that a lot of educators in other countries are concerned with the well-being of their students and share the approach that psychologically strong students will be better and more resilient lawyers in the future. In Germany the student's mental health is not (or cannot be due to lack of institutionalization of the legal clinics) part of the legal clinics and not even part of any academic course within the entire legal studies.

### *3.2. Student Well-Being Within Clinical Legal Education to Form Wholehearted Lawyers*

*Kerry Trewern*, Director of the Diploma in Professional Legal Practice at the University of Glasgow talked about student wellbeing in legal education. The main inputs from her session were that problems exceed in seriousness and when students leave university, they especially suffer from mental health issues. Therefore, mental health training for educators is very much needed for student needs. The subsequent session by *Brontie Ansell* from the University of Sussex pointed out one reason students might

### *From the Field*

need mental health support: climate grief. *Brontie Ansell* talked about how to train law clinic students who will practice in a time of climate breakdown to be resilient and trauma-informed. It was outlined that the stages in climate grief are quite like normal grief. It is important to teach students not to cling to hope but to be courageous in the way they address trauma.

In another session *Przemek Kubiak*, assistant professor at the University of Lodz, Poland gave some helpful ideas for strong mental health for students and their educators, as well as lawyers and other professionals. He explained the importance of keeping it strong and simple: A strong motivation is key to dealing with life which again is important to function regardless of the surrounding circumstances. It is also important to train psychological flexibility, therefore finding a reasonable balance between doing what matters, being present, and being open. To train this, everybody should define their own values, try daily to be aware of mindfulness and lastly train their acceptance in every possible way.

### *3.3. Awareness of Clients and Contexts to Train Effective and Empathetic Legal Professionals*

Besides making sure that students are psychologically healthy, there were also a couple of other suggestions to ensure students are good advisors. Non-clinical subjects such as language, history, political science and sociology should be incorporated to motivate students to undertake the responsibility to face complicated problems and

*From the Field*

analyze facts with the help of studies in literature, art, economics, and other relevant subjects.

On this subject, ways to remind students of the delicate position their clients are in were put in the of the session. Students are supposed to tell strangers about personal problems and rely on these strangers for help. In order to center client relationships and interactions in empathy, it is quite effective to bring students into a somewhat similar situation. As an identical situation regarding the topic will not be possible, one should try to find another situation which might lead to a comparable discomfort as the clients feel. *Lee-Anne Paula Fraschia* and *Ulrich Stege* from the International University College of Turin promoted an approach which is called “Teaching refugee/migration law through the arts”. The needed discomfort in students can be created by asking them to dance or sit on the floor for the first half of the class, therefore bringing them out of their comfort zone. Furthermore, art is an important tool for introducing students to other cultures and enables them to engage with them in depth which also strengthens their understanding of these cultures.

Finally, the session by *Carolyn Frazier* and *Uzomaka Nzelibe* from the Northwestern Pritzker School of Law, Chicago, the importance of implicit bias was explored. They stated that in the interest of building empathetic and effective lawyers, stereotypes that effect our understanding and action need to be addressed. In order to know about our implicit bias, self-awareness and reflection need to be encouraged. Students must understand, that sometimes our brain links two things together that are not

necessarily linked. It is important for students to know about this effect as to reflect on it and take means to prevent this from having any affect outcome on their actions. As an example, it was explained that oftentimes, hesitant behavior of clients will be read as them preparing for a lie even though there might be various other reasons for the hesitation such as difficulty in understanding the question due to lack of language or cognitive ability or simply being unsure about the circumstances that are asked about. However, since students tend not to know their clients on a personal level, instead of trusting the answer they are given in these circumstances, students start to doubt. To overcome this psychological circumstance, it is important for students to replace judgement with curiosity. The students should also question their own assumptions: What might be the reasons for the clients to lie? What else might the behavior signify besides lying? They should also question the data they did or did not collect. Are any biases within that data? As a first step for students to overcome their first doubt towards clients, they should think about the similarities and differences they share with their clients. By thinking about the background of their clients, the client becomes more human and therefore more trustworthy from a psychological point of view.

#### **4. Concluding remarks on the ENCLE Conference**

The sessions have made it very clear, that legal clinics consist of far more than students giving free legal advice to those in need. They are also a means of educating law students in the field and enable them to gain experience with real cases. In order for



students to become competent advisors, it is important to sharpen their emotional skills, develop their awareness of social (in)justice and appreciate the role of the law and law in society.<sup>4</sup> With clinical legal education, students learn how to adjust to different psychological states, to language barriers and how to understand the non-legal issues behind legal problems and the diverse functions of law and the legal profession. They also learn to critically analyze the law, its limits and its rationales within the framework of access to justice.<sup>5</sup> Therefore law clinics can be seen as a guarantee for learning experiences that promote an understanding of the possibilities, limits and deficits of the law and legal processes, and highlight the importance of ethical standards for legal professionals.<sup>6</sup>

What was almost even more important than the sessions themselves was getting to know all these people who engage in clinical legal education. The information and project ideas shared during the breaks, the start of new collaborations between

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<sup>4</sup> See also: *Aiken/Wizner*, Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice, *Fordham Law Review*, 03/2004, accessible at: <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1296&context=facpub> (last reviewed: 15.08.2022), p. 1009; *Bücker/Woodruff*, The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences, *German Law Journal* 09/2008, p. 610; *Onoja/Sule*, Clinical Legal Education in Nigeria and the United States: A Comparative Perspective, *Public Law Research* 2015, p. 3.

<sup>5</sup> See also: *Curran/Dickson/Noone*, Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice, *International Journal of Clinical Legal Education*, 08/2005, accessible at: <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/90> (last reviewed: 15.08.2022), pp. 104, 121.

<sup>6</sup> See also: *Evans/Cody/Copeland/Giddings/Joy/Noone/Rice*, Australian Clinical Legal Education – Designing and Operating a best Practice Clinical Program in an Australian Law School, 2017, p. 12; *Giddings*, Promoting Justice through Clinical Legal Education, Justice Press 2013, pp. 3, 49; *Kilian*, Klinische Juristenausbildung als Element einer modernen Juristenausbildung – Warum die Nebenwirkungen und Risiken gering sind, der Gewinn für die Rechtspflege aber erheblich ist, *AnwBl* 10/2017, p. 953.

different legal clinics and all the bundled expertise that came across were mind-blowing. For me personally, the ENCLE conference showed me a whole new view on how to think and teach clinical legal education: Clinical legal education can be so much more than it is right now in Germany. When it is systematically organized, structured, built into the regular curriculum and focuses on student needs, clinical legal education can be a valuable approach to building strong future legal professionals.

It is important to keep the international exchange alive since we can all learn and thrive from other countries' experiences. It also strengthens our awareness for other challenges and how we can work together to overcome these and build a better, more peaceful world.

At this point, I would like to thank all the organizers of the ENCLE conference very much for providing this opportunity to engage with each other, share experiences and work together on promoting clinical legal education.

Since a lot of the sessions at the ENCLE conference dealt with the needs of students and a lot of lecturers often raised the question of what might be wanted and needed by students, it might be an idea for future conferences to explicitly invite more students to attend. By students, academics, and supervisors sharing their knowledge and expertise, an even broader range of research-related contributions could be acquired.

## **THE BARRIERS TO THE CLE PRACTICE IN RUSSIA, IN COMPARISON LIGHT WITH THE EUROPEAN UNION AND THE UNITED KINGDOM**

**Alina Kislova, The Open University, UK\***

Clinical legal education (CLE) is commonly used to refer to a law teaching method that incorporates experiential learning aimed at development of students' legal knowledge and skills<sup>1</sup>. At the same time, CLE also has social justice mission as it serves the needs of vulnerable members of society<sup>2</sup>. Like any other teaching methods, CLE requires a specific environment and factors to be in place to embrace its mission at maximum level and to allow its learners to reach pre-defined learning outcomes. While researching in three Western European university legal clinics, and then studying the legal clinics in Russia, I have reached the conclusion that CLE in Russia cannot fully exploit its mission and reach its objectives. While some barriers that prevent Russian universities to effectively run CLE are obvious, there are also the ones which will be new to a reader. Below I discuss the factors that could be considered as barriers preventing CLE practice in Russia to be effective in driving for its mission and goals, both from educational and social justice perspectives.

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<sup>1</sup> European Network for Clinical Legal Education Statute as Registered in October 2013, article 5, item 2 <Microsoft Word - ENCLE statute amendment 2015 registered version.docx> last accessed 01 May 2023.

<sup>2</sup> European Network for Clinical Legal Education Statute as Registered in October 2013, article 5, item 2 <Microsoft Word - ENCLE statute amendment 2015 registered version.docx> last accessed 01 May 2023.

***Authoritarian regime with no human rights and freedoms respected in Russia***

As stated above, apart from teaching and learning objectives, university legal clinics also aim to make a practical contribution to social justice and support democracy proclaimed by many states. They do that through catering pro bono legal service to citizens who otherwise will miss an opportunity for fair and reasonable legal representation<sup>3</sup>. To allow such social justice-oriented initiatives to be implemented and to run effectively, there needs to be a safe environment supported by the social justice agenda proclaimed and implemented at the state level. Keeping that in mind, could an environment and agenda proclaimed and run by the Russian state be considered as reliable for an effective run of the pro social justice initiatives i.e., CLE university modules? The answer to this question seems to be obvious.

***Limited opportunities for Russian universities to secure any form of funding to run a legal clinic***

Most universities in Russia are public i.e., they are owned and managed by the state, and hence, the Russian universities receive public funds mostly through the Russian government, it keeps distribution of the state budget according to the state approved university curriculum. Here, it is useful to draw your attention back to the first barrier described above and to think whether the Russian authoritarian state that neglects

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<sup>3</sup> Clelia Bartoli, *Legal clinics in Europe: for a commitment of higher education in social justice* (Diritto & Questioni Pubbliche, 2016) 77.

human rights and freedoms has been willing to allocate and approve the state budget for the university teaching method that has the social justice mission. Up to the date, according to the Human Freedom Index that is co-published by the Cato Institute, the Fraser Institute, and the Liberales Institut at the Friedrich Naumann Foundation for Freedom, Russia is ranked at 126 out of 165 countries acknowledged by the ranking. This index is made up based on measurement of personal freedom and economic freedom across the world. Personal freedom involves indicators such as the fairness of the laws, personal safety, freedom of movement and assembly, freedom of religion, freedom to run for political office, freedom of the press, freedom of speech and expression, and freedom to pursue same-sex relationships or obtain a divorce<sup>4</sup>.

Despite the fact that most of the university legal clinics with their faculty staff members, practicing lawyers and students deliver the legal service pro bono, CLE as an educational format cannot function with an absolute lack of budget. The reason is that for an effective functioning clinic, it is required to have at least one administrative staff member working full time who will oversee claims from society and further distributing it among the respective faculty staff members. The structure of legal clinics in the European Union presumes a secretary, manager, or an administrator

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<sup>4</sup> Freedom Index by Country 2023 <[Freedom Index by Country 2023 \(worldpopulationreview.com\)](https://www.freedomhouse.org/freedom-index)> last accessed 02 July 2023.

appointed to run the administrative routine<sup>5</sup>. Hiring such an administrator or a manager requires budget allocation equated for an annual salary amount and this is something that the Russian universities cannot gain the state budget approval for.

The problem of CLE funding does not belong to only the Russian universities. Many universities legal clinics in Europe consider the question of funding as the main challenge for running pro bono legal service<sup>6</sup>. Nonetheless, according to the research conducted by Clelia Bartoli in 2016, more than 60% university legal clinics in the European Union who participated in the study receive the funding from universities they operate and around 13 % clinics obtain financial support from local and national governmental levels<sup>7</sup>. At the same time, in the UK, funding of legal clinic operation comes from university students as during the last decade law schools in the UK have undergone a significant marketisation process and that lead the UK law schools to have the highest tuition fee on the European continent<sup>8</sup>. The direct financial dependency universities in the UK on their students contribute to the university legal

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<sup>5</sup> The Legal Clinics The Idea, Organization, Methodology (2005) The Legal Clinics Foundation Warsaw

<[Microsoft Word - ksiazka ENG5.doc \(fupp.org.pl\)](#)> last accessed 02 July 2023, 59,60,64, 65.

<sup>6</sup> Clelia Bartoli, *Legal clinics in Europe: for a commitment of higher education in social justice* (Diritto & Questioni Pubbliche, 2016) 16.

<sup>7</sup> Clelia Bartoli, *Legal clinics in Europe: for a commitment of higher education in social justice* (Diritto & Questioni Pubbliche, 2016) 48.

<sup>8</sup> Emma Jones, Hugh McFaul and Francine Ryan 'Clinical legal education in the United Kingdom: Origins, growth and the technological innovations and challenges of its future' (2017) 4 German Journal of Legal Education 107, 115.

clinics' growth as experiential, practice-oriented education, increases the level of student satisfaction<sup>9</sup>.

*The lack of effective partnership between institutions representing justice system in Russia and university legal clinics*

The CLE model presumes to build and maintain various partnerships with institutions of the justice system. This form of partnership and collaboration allows students to see how the justice system works from inside and to observe management of real legal cases from both sides, from justice system institutions and legal representatives<sup>10</sup>.

Studying empirically legal clinics in Western Europe during the last six years, I have seen many successful partnerships and collaborations built between university student clinics and institutions of the justice system. For example, the University of Strathclyde Mediation Clinic run an effective collaboration with the Glasgow Sheriff Court and Justice of the Peace Court, Paisley Sheriff Court and Justice of the Peace Court, while among the wide range of partners of Pro Bono Scheme of University of Cardiff were also ones that represent the justice system, for example Cardiff Employment Tribunal. It is useful to notice that the format of partnerships varied from clinic to clinic and hence, while some collaboration was aimed at clients' referrals for

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<sup>9</sup> Emma Jones, Hugh McFaul and Francine Ryan 'Clinical legal education in the United Kingdom: Origins, growth and the technological innovations and challenges of its future' (2017) 4 German Journal of Legal Education 107, 116.

<sup>10</sup> Clelia Bartoli, *Legal clinics in Europe: for a commitment of higher education in social justice* (Diritto & Questioni Pubbliche, 2016) 35.

a clinic, other partnerships were focused at providing to clinical students first-hand information on the justice system work processes. The paper of Bartoli has shown that 50% of all university legal clinics located around the EU who took part in the study, have been running formal or non-formal partnerships with their state institutions of justice system, while 85 % have official collaborations with institutions of civil society and almost 90% of the responded clinics set partnerships with private legal clinics<sup>11</sup>. While thinking on potentially effective collaboration between official representatives of the justice system in Russia and university legal clinics, it is important to draw attention to some factual data on the nature of the Russian justice system. Among the statistical data that can characterise the justice system nature is the official figure on the conviction and acquittal rates across the state. To specify, the acquittal rate in Russia has been at the level, less than 1 %. As acknowledged by the Former Prosecutor General of the Russian Federation (1995-2000) Professor Jury Skuratov, conviction inclination in criminal litigation process in Russia is a 'chronic condition' of the justice system that is based on an undeniable trust and complete reliance on prosecutor bodies during the litigation process<sup>12</sup>. To compare, the acquittal rate in the United Kingdom was at the level of 10-13 %, over the period of the last years<sup>13</sup>.

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<sup>11</sup> Clelia Bartoli, *Legal clinics in Europe: for a commitment of higher education in social justice* (Diritto & Questioni Pubbliche, 2016) 55, 56.

<sup>12</sup> Hundred to One: why there are so few acquittals in Russia (*Legalacademy.Ru*, 05 February 2020) <<https://lfacademy.ru/sphere/post/sto-k-odnomu-pochemu-v-rossii-tak-malo-opravdatelnyh-prigovorov>> last accessed 01 May 2023.

<sup>13</sup> Ministry of Justice, National statistics Criminal Justice Statistics quarterly: December 2019 (26 November 2020).



In the light of the above, it should be said, among legal clinics objectives, there is strengthening of national justice systems and that is in light with the United Nations statement on legal clinics that describe them as an effective model aimed to ensure an access to criminal justice<sup>14</sup>. Considering the matters and the figures stated above, the logical question is, whether it is reasonable for the legal clinics in Russia to hold out hope for an effective collaboration with institutions representing the Russian justice system? Furthermore, there is an also a question to pose, whether official representatives of the Russian justice system can be considered as reliable agents in passing and communicating legal knowledge and skills to law students?

*The lack of student time to join university legal clinic and dedicate energy to Pro Bono work in Russia*

Participation and work in legal clinics are an energy and time-consuming process for both academic staff members and students. Hence, student motivation to contribute to social justice and student wish to obtain legal skills is not necessarily enough for a student to join the university legal clinic; available time is something also important for any student to have to dedicate energy to Pro bono legal modules. The lack of available time from Russian students' perspective can be related to the relatively high number of Russian students who are also in full or part time employment. For

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<sup>14</sup> Clelia Bartoli, *Legal clinics in Europe: for a commitment of higher education in social justice* (Diritto & Questioni Pubbliche, 2016) 71.

example, in the year of 2014, 71 % of students in Russia were combining university studies with employment<sup>15</sup>, while the data of the same year in the UK represents the figure of 59 % working students<sup>16</sup>. Although it is also fair to note that the data representing the year 2022 is different, such as the percentage of working students in the UK testifies to a slightly higher figure, i.e., 62% of students in the UK have a part-time job<sup>17</sup>.

Turning back to comparison, in Russia common among students practice combining studies with work could be related to the unstable socio-economic situation the country had had during the last two decades. This in turn can be one of the reasons why often Russian students, who are heavily busy with academic work and job responsibilities, often cannot to find any available slot in their schedule to engage into clinical activities and contribute to Pro Bono work. On the contrary, a relatively low percentage of European Union university students who work while studying allow many of them to dedicate time to various volunteer projects, including work in university legal clinics<sup>18</sup>.

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<sup>15</sup> How many Russian students combine study with work (*The-Village.Ru*, 20 November 2014) <<https://www.the-village.ru/business/news/170267-students-work>> last accessed 01 May 2023.

<sup>16</sup> Natalie Gil, 'One in seven students work full-time while they study' (*TheGuardian.com*, 11 August 2014), <<https://www.theguardian.com/education/2014/aug/11/students-work-part-time-employability>>, last accessed 01 May 2023.

<sup>17</sup> Laura Brown, 'Student Money Survey 2022 – Results', 2022, < Student Money Survey 2022 – Results - Save the Student> , last accessed 01 May 2023.

<sup>18</sup>Combining studies and paid jobs, EUROSTUDENT, 2018, p. 15 <[https://www.eurostudent.eu/download\\_files/documents/TR\\_paid\\_jobs.pdf](https://www.eurostudent.eu/download_files/documents/TR_paid_jobs.pdf)>, last accessed 01 May 2023.

*From the Field*

Despite the existing barriers to effectively practice CLE in Russia, academic staff members at the Russian law schools have been doing all possible in their capacity to implement and run the university CLE modules. This has been allowing Russian law students to benefit from hands-on legal experience within a university setting.