

Editorial

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Welcome to our final edition of 2023. In this edition we begin with Anne Kotonya's article, "A Systematic Quantitative Review of Literature on Social Justice and Clinical Legal Education in Africa." Kotonya provides a comprehensive analysis of the development and research trends in the field of clinical legal education in Africa, with a particular focus on its social justice role. The article reviews 61 articles published in English language legal journals before 2020, thereby offering a coherent picture of research in this area, especially in Kenya and South Africa.

The study highlights how clinical legal education plays a crucial role in promoting access to justice, especially in countries with underperforming legal aid systems. This form of education not only imparts practical legal skills to students but also instils a sense of social responsibility, potentially influencing their career paths towards public interest law.

Kotonya's review identifies that a small number of highly prolific authors from specific countries, notably South Africa and Nigeria, dominate the scholarship in this field. It also notes the diversity of methodological approaches used in these studies and the prevalence of the topics covered in various legal education-focused journals. The findings reveal that while there is increasing interest in the social justice aspects of clinical legal education in Africa, the research is not systematic or sustained.

Additionally, there is a limited representation of African countries in global clinical scholarship.

The review provides valuable insights into the current state of research in clinical legal education in Africa, identifying gaps and suggesting potential areas for future research. It underscores the need for more diverse and collaborative research across the continent, beyond the dominant narratives from South Africa and Nigeria, to better understand and enhance the social justice impact of clinical legal education in Africa.

We continue with Jacqueline Weinberg and Jeff Giddings' article which examines the impact of the COVID-19 pandemic on Clinical Legal Education and the subsequent transition to virtual learning. They focus on the student perspective, highlighting the importance of effective, intentional, and explicit clinical supervision practices for productive learning experiences. Their research is based on the Monash Clinical Program in Melbourne, Australia, and is globally relevant.

Traditionally, Clinical Legal Education involves students having direct interaction with clients under the guidance of clinical supervisors, focusing on social justice and ethical legal practice. As many of our readers will have experienced, however, the pandemic necessitated a shift to remote learning, challenging this traditional model. Weinberg and Giddings argue that despite these challenges, remote delivery can be effective if supervision is adapted appropriately. To do so involves the re-design of Clinical Legal Education to accommodate remote learning, including utilising technology to maintain student-client interaction and supervision. The shift

to remote delivery required rethinking clinical pedagogy, emphasising the importance of technology in maintaining the quality of legal services and education.

Weinberg and Giddings underpin the conclusions drawn through empirical evidence gathered through a survey seeking to understand student experiences with remote Clinical Legal Education. Key themes emerged, including connection with supervisors, peer communication, and the role of technology in supervision. The findings indicate that students had positive experiences with remote learning, appreciating the support and guidance from their supervisors and the use of technology for communication and client interaction.

In the article the authors emphasise the need for supervisors to adapt their approaches to remote supervision, using technology effectively to support student learning and client service. This adaptation includes recognising the importance of explicit and intentional supervision where supervisors actively guide students through the learning process, rather than leaving them to learn by osmosis. They conclude that effective supervision in Clinical Legal Education, whether remote or in-person, requires a clear understanding of its objectives and a deliberate approach to student-teacher relationships. They argue for maintaining the elements of effective remote supervision in post-pandemic Clinics to enhance the learning experience and prepare students for future legal practice. This approach involves ongoing reflection, adaptation, and explicit focus on teaching and supervising students, ensuring that the principles of social justice and ethical practice remain central to Clinical Legal Education.

The article "Feeding Up and Feeding Back: Exploring the Value of Peer Learning Through a Law Clinic Setting" by Louise Hewitt and Lucy Yeatman focuses on the role of peer learning in legal education, particularly within the context of law clinics. The authors emphasise the importance of building trust and respect among students to facilitate meaningful peer review and learning. They argue that while peer review can improve academic outcomes and psychological well-being, it often faces resistance due to students' initial reluctance to engage in collaborative work and their scepticism about the value of peer contributions.

The authors first describe the clinical teaching approaches at Liverpool Law Clinic and the Innocence Project London, highlighting their focus on group work and peer review. The second section discusses the pedagogical rationale for peer learning, outlining its benefits and addressing common student resistance to collaborative work. The authors note particular challenges such as fear of criticism, feelings of inadequacy, and frustration with unequal contributions in group settings. The third section offers an examination of specific teaching strategies used by the authors to overcome these challenges and support peer learning - such as careful pedagogic design, clear communication about group work purposes, and structured roles to enable collaboration.

Hewitt and Yeatman reflect on surveys conducted with students at both clinical settings, revealing insights into students' perceptions of group work and peer learning. Despite initial apprehension, many students reported positive changes in their attitudes towards group work over a period of time, citing tutor support and

peer interaction as key factors. The authors conclude that well-structured group work, along with supportive teaching practices, can foster a collaborative learning environment that enhances student abilities to assess the quality of their own work and that of others, ultimately empowering lifelong learning.

We continue this edition with a practice report from Hannah Franz who critically examines the role of clinical legal education in Germany in promoting access to justice and human rights. Despite the significant potential of legal clinics to provide practical skills to law students and offer free legal advice to marginalised individuals, German law clinics are relatively underdeveloped and under-recognised within the country's legal education system.

Franz outlines how clinical legal education serves two main purposes: it supplements theoretical law studies with practical experience, and it provides free legal advice to marginalised groups. The effective combination of these approaches can significantly enhance access to justice. However, in Germany law clinics can struggle with limited recognition in academia and due to their financial instability. They are often viewed as extracurricular student activities rather than integral parts of legal education, and this may lead to a lack of institutional support and academic credit for clinic work.

This practice report provides a historical overview of the clinical movement in Germany, noting that until 2008 legal regulations severely restricted the provision of free legal advice, hampering the development of law clinics. Since then, progress has been made, particularly with the establishment of refugee law clinics, but these efforts

still face significant challenges. The clinics primarily operate on the margins of the academic environment with most being student-run and voluntary, and lacking in proper institutional anchoring.

Quality control and supervision are identified as crucial for the success of law clinics. Franz argues that effective legal and psychological supervision is needed to ensure high-quality student counselling and to protect the welfare of clients. She also suggests that integrating law clinics into the legal education curriculum could enhance their educational value and social impact.

To improve the access to justice impact of German law clinics, Franz recommends focusing on social justice as well as education, offering academic credit / formal recognition for clinic work, and better integrating clinics into law school operations. She emphasises the need for policy change to support these initiatives, including funding for qualified staff and the creation of stable academic positions for clinic educators. Franz concludes the practice report by noting that recognising the potential of legal clinics in advancing access to justice in Germany, the need for greater institutional support, recognition, and integration into the legal education system are all necessary to fully realise their potential.

We conclude this edition with a commentary by Andrea Todd, from the field, which explores the concept of "active citizenship" in the context of law students engaging in pro bono work and social justice. It begins by recognising that while law students often engage in pro bono activities as part of their clinical legal education, these experiences primarily teach them the skills for providing such services, rather

than the underlying reasons and societal importance of pro bono work. Todd argues that teaching such insight is essential not only to equip students with the ability to perform pro bono work but also to instil an understanding of why such work is necessary. The assertion is that such a critical understanding of the political and social context surrounding the need for pro bono advice can foster a genuine, long-lasting commitment to social justice.

This contribution reflects on the pilot year of a student-led module, "Law in Action," at the University of Chester. The module was designed to foster social responsibility and a strong sense of social justice, aiming for a lasting commitment to pro bono work among future lawyers. Todd discusses the concept of active citizenship, defined as individuals proactively shaping their rights and obligations in society through active participation. The module encouraged students to critically understand the role of pro bono initiatives in the legal landscape and provided them with opportunities to engage in in-depth analysis of social justice issues. Todd concludes that by actively engaging with the reasons behind pro bono work, students are more likely to carry a commitment to social justice into their legal careers, becoming not just good citizens but active ones who can drive change in the pro bono and social justice sphere.

This is a wonderful edition which raises important issues relating to clinic work across five separate jurisdictions. It offers insights based on policy, empirical evidence and scholarship, whilst providing historic and contemporary analyses. The authors

have provided a thoughtful collection which I am sure will offer valuable insights for all readers.

A SYSTEMATIC QUANTITATIVE REVIEW OF LITERATURE ON SOCIAL JUSTICE AND CLINICAL LEGAL EDUCATION IN AFRICA

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Abstract

The global spread of clinical legal education programs is punctuated by nuances in clinical practices. These result from the diverse priorities placed on clinic missions, the different legal frameworks and foci of educational curricula as well as variances in political and socio-economic realities among countries and regions. Some aspects of these features are reflected in the few existing systematic reviews of clinical scholarship which focus on clinic sustainability or the European continent. This article is a quantitative systematic review of 61 articles published before 2020 in English language legal journals. It contributes a coherent picture of the development and flow of research on the social justice role of clinical legal education in Africa generally and more specifically, in Kenya and South Africa. The results demonstrate that a small group of authors concentrated in particular countries are driving the publication of studies on particular topics in the continent, with diverse methodological approaches, in journals focused on legal education. They co-authored some publications and were highly prolific in their single-authored works. The results provide researchers exploring this topic with an evidence base to advance global scholarship and inform policy and practice on the social justice and pedagogical roles of clinical legal education.

Introduction

The social justice value of clinical legal education is utilised in promoting access to justice, especially in countries with under-functioning legal aid systems.¹ It positions law schools in the trajectory of the justice needs of disadvantaged persons in society.² University clinics participate in these national justice efforts through clinical legal education programs. Clinical legal education is ‘learning by doing,’ a method of teaching law in which students take the place of lawyers in offering legal services to indigent persons under close supervision.³ The social justice mission is attained in part when students working with indigent clients participate in resolving legal issues they present.⁴ This mission also presupposes that clinical engagement instils a sense of social responsibility that may influence law students towards careers in the public interest.⁵

Both the pedagogical and social justice missions confer on clinical legal education a global significance that is manifested in collaboration between clinics in

¹ David Mcquoid-Mason, Ernest Ojukwu and George Mukundi Wachira, ‘Clinical Legal Education in Africa: Legal Education and Community Service’ in Frank S Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press 2011) 34.

² Stephen Wizner, ‘The Law School Clinic: Legal Education in the Interests of Justice’ (2002) 70 *Fordham Law Review* 1929, 1936.

³ Richard J Wilson, ‘Legal Aid and Clinical Legal Education in Europe and the USA: Are They Compatible?’ in Ole Hammerslev and Olaf Halvorsen Ronning (eds), *Outsourcing Legal Aid in the Nordic Welfare States* (Palgrave Macmillan 2018) 265.

⁴ Neil Gold, ‘Legal Education, Law and Justice: The Clinical Experience’ (1979) 44 *Saskatchewan Law Review* 97, 119.

⁵ Donald Nicolson, ‘“Our Roots Began in (South) Africa”: Modelling Law Clinics to Maximise Social Justice Ends’ (2016) 23 *International Journal of Clinical Legal Education* 87, 94 <<http://www.northumbriajournals.co.uk/index.php/ijcle/article/download/532/922>>; Frank S Bloch, ‘Access to Justice and the Global Clinical Movement’ (2008) 28 *Washington University Journal of Law and Policy* 111, 112; R Wilson, ‘Training for Justice: The Global Reach of Clinical Legal Education’ (2004) 22 *Penn State International Law Review* 421, 423; Wizner (n 2) 1935.

different countries.⁶ The global spread of clinical legal education is punctuated by nuances in clinical practice experiences that are characterised by a diversity of missions, legal frameworks, political and socio-economic differences as well as educational priorities in the different counties and regions.⁷ In this context, South Africa is frequently presented as an exemplar of African clinical programs.⁸ Literature on the global distribution of clinical legal education primarily discusses African clinics in the context of clinics in South Africa and East Africa.⁹ In the instances where the continent is not confronted as a whole, mention is made of clinical legal education in multiple countries in the East, West and Southern regions.¹⁰ Researchers studying any of the latter regions could thereby hypothesise the heterogeneity of clinical experiences as well as the dearth of country-specific research on clinical education in the majority of the countries in the continent. Since this review preceded a study of clinical legal education in Kenya, literature from South Africa was of particular interest. This is because South Africa, with its comparative constitutional provisions on access to justice, has arguably the most robust social justice clinical programs in the continent.

This review complements the existing reviews by minding their thematic and jurisdictional gaps. The systematic review conducted by Dunn in 2017 focused on

⁶ Bloch (n 5) 115–116.

⁷ Wilson (n 5) 424.

⁸ Wilson (n 5) 425, 428.

⁹ Bloch (n 5) 127.

¹⁰ Mcquoid-Mason, Ojukwu and Wachira (n 1) 24; Samuel O Manteaw, 'Legal Education in Africa: What Type of Lawyer Does Africa Need?' (2008) 39 *McGeorge Law Review* 903, 925–930.

clinical legal education literature in Europe.¹¹ The one conducted by Mkwebu in 2015 examined the development, management and sustainability of law clinics.¹² These reviews were comprehensive in their own right and met the purpose for which they were conducted. Having been developed within a defined scope, they neither highlighted the twin missions of clinical legal education nor examined the literature on clinical education in Africa or Kenya specifically. This article focuses on the quantitative aspects of the literature search since the narrative aspects have been developed, synthesised and reported in a separate publication.¹³ It addresses the following specific questions: (i) How often is the social justice role of clinical legal education in Africa covered in literature? (ii) In which countries are studies on the social justice role of clinical legal education in Africa conducted? (iii) In what journals are these studies published? (iv) Which countries are the authors from? (v) What topics do the studies cover? (vi) What methodologies do the studies utilise? The review thereby generates evidence on the development of scholarship about the place of social justice in clinical legal education in African countries.

¹¹ Rachel Dunn, 'A Systematic Review of the Literature in Europe Relating to Clinical Legal Education' (2017) 24 *International Journal of Clinical Legal Education* 81.

¹² Tribe Mkwebu, 'A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship' (2015) 22 *International Journal of Clinical Legal Education* 238, 9 <<http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/415/857>>.

¹³ Anne Kotonya, 'A Review of the Social Justice Function of Clinical Legal Education in Africa' (2022) 14 *African Journal of Legal Studies* 93.

Methodology

The systematic quantitative review of research on the social justice role of clinical legal education in Africa was utilised because it reveals the trajectory of knowledge areas and gaps in the chosen field of research.¹⁴ This iterative process involves the use and documentation of various pre-identified search concepts to gather literature in answer to a research question.¹⁵ Such reviews are increasingly being employed in the social sciences because they are known to offer lower degrees of bias in the selection of literature by the very fact that the reviewer identifies literature based on pre-determined variables and not merely because the identified material supports the reviewer's position.¹⁶

Furthermore, the documentation of the search process makes it possible for other parties to verify and update the review by conducting a similar one themselves.¹⁷ Systematic reviews provide the big picture of literature available about a specific research question.¹⁸ These could either be peer-reviewed publications or 'grey literature' such as unpublished reports, theses or conference proceedings. Although

¹⁴ Catherine Pickering and others, 'Publishing Not Perishing: How Research Students Transition from Novice to Knowledgeable Using Systematic Quantitative Literature Reviews' (2015) 40 *Studies in Higher Education* 1756, 1761.

¹⁵ Mark Newman and David Gough, 'Systematic Reviews in Educational Research: Methodology, Perspectives and Application' in Olaf Zawacki-Richter and others (eds), *Systematic Reviews in Educational Research* (Springer VS 2020) vi.

¹⁶ Mark Petticrew and Helen Roberts, *Systematic Reviews in the Social Sciences: A Practical Guide* (Blackwell Publishing 2006) 9.

¹⁷ Newman and Gough (n 15) vi.

¹⁸ Catherine Pickering and Jason Byrne, 'The Benefits of Publishing Systematic Quantitative Literature Reviews for PhD Candidates and Other Early-Career Researchers' (2014) 33 *Higher Education Research and Development* 534, 538.

they are also the subjects of review, it is noteworthy that the latter are usually unavailable from databases of published materials.¹⁹

Nonetheless, even systematic reviews sometimes risk leaving out gaps in information, a phenomenon referred to as publication bias. This occurs when searches do not include smaller studies or literature that is not peer-reviewed or not published.²⁰ Dunn's experience is instructive in this regard because, despite her rigorous development and use of search criteria, it emerged that there was a lot of research about clinical legal education that was not available in the academic databases she had searched.²¹

A preliminary scoping search revealed that the exploratory theme 'the place of social justice in clinical legal education' was too broad. This was narrowed down to three research questions that would guide and identify priorities for the review.²² These were the three general questions that were formulated to guide the literature search: (1) What is the social justice experience of clinical legal education in South Africa and Kenya? (2) What is the social justice experience of clinical legal education in Africa? (3) What challenges exist in this endeavour and how have African countries overcome them?

¹⁹ Petticrew and Roberts (n 16) 90.

²⁰ Petticrew and Roberts (n 16) 235; Newman and Gough (n 15) 8.

²¹ Dunn (n 11) 110.

²² Andrew Booth and others, 'Formulating Questions to Explore Complex Interventions within Qualitative Evidence Synthesis' (2019) 4 *BMJ Global Health* e001107, 2 <https://gh.bmj.com/content/bmjgh/4/Suppl_1/e001107.full.pdf> accessed 30 November 2020.

The questions were developed using the setting-perspective-intervention-comparator-evaluation (SPICE) framework, identified from available question formulation frameworks generated from healthcare research where they are frequently applied.²³ Reliance was placed on the consideration that frameworks based on populations, interventions, settings or contexts are apt for literature searches based on interventions.²⁴ The more commonly used population-intervention-comparison-outcome (PICO) framework was deemed unsuitable because it does not consider the setting of the phenomena under study, a critical element of this particular systematic review. The SPICE framework was a good fit because its components allow a review to define its setting, the perspective it will take, the intervention under study, the comparator as well the objective that the intervention is being evaluated against.²⁵ These components rendered it feasible for exploring the social justice interventions of university clinics in the continent generally as well as in Kenya and South Africa.

Mapping the concepts

The three general questions formed the basis for mapping the key concepts for the search terms applied in the literature search. The key concepts for the search as identified from the research questions were social justice, clinical legal education, Africa, Kenya and challenges. These concepts were selected on the strength of their

²³ Booth and others (n 22) 3.

²⁴ Booth and others (n 22) 3, 6.

²⁵ Andrew Booth, 'Clear and Present Questions: Formulating Questions for Evidence Based Practice' (2006) 24 Library Hi Tech 355, 363
<<https://pdfs.semanticscholar.org/4701/0d3847f5cc2901466944717a6c430826317f.pdf>>.

association with the three research questions.²⁶ The process of making the search more inclusive entailed generating synonyms for the concepts. It was anticipated that the use of synonyms would yield more results because of the use of varying terms by different authors to refer to ideas such as clinical legal education. Therefore, the terms law clinic, legal aid clinic and legal clinic which are often used to refer to clinical legal education programs were also considered for inclusion as search terms. Challenges, problems and difficulties were likewise identified as synonyms. Since access to justice and social justice are sometimes used interchangeably in clinical legal education literature, these terms and their synonyms were considered for inclusion in the search. Ultimately, four key search queries were developed by linking these concepts that had been mapped for the research.

Searching clinical legal education databases

The search queries were applied to multiple databases beginning with Sabinet, a database that offers a wide collection of full-text online journals dating as far back as 1906 originating from or discussing issues about Africa.²⁷ Sabinet served as the main search database because it promised to yield research on African countries. With over 182 African journals, inclusive of the African Journal Archive, the collection guaranteed wide content available on a single platform.²⁸ This was germane to the research's focus on African literature on clinical legal education emanating from

²⁶ Pickering and Byrne (n 18) 539.

²⁷ 'Sabinet Website' <<https://www.sabinet.co.za>> accessed 15 October 2020.

²⁸ 'Sabinet Website' (n 27).

African countries or emphasising clinical legal education in African countries. Furthermore, the availability of dated articles capturing historical contexts of the access to justice role of clinical legal education endeared this database to the review process.

Although surpassing the scope of the review, the selection of this database was reinforced by some of the discourse on African research. This includes arguments that aspects of the research from the continent fails to reach popular legal databases because of prevailing global knowledge hegemonies and that the publication themes and priorities of African research are not often homogenous with those of the journals hosted in these popular databases.²⁹ Relatedly, there are political arguments made about the rejection and invisibility of articles from the global south whose resolution is presented in the realm of the decolonisation discourse.³⁰ The database selection acknowledges the controversial evaluations made regarding the probable existence of varying levels of academic rigour in journals from the global north and those from the global south.³¹ The recognition of this dynamic debate strengthened the selection of an Afro-centric database in the search for literature on the continent.

The search was then replicated in common databases that house legal journals to capture all pertinent material and ensure the comprehensiveness of the review.³²

²⁹ Eve Gray, 'Access to Africa's Research: Publishing Development Research and Measuring Value' [2010] *African Journal of Information and Communication* 1, 11.

³⁰ Sumaya Laher, Angelo Fynn and Sherianne Kramer, 'Trends in Social Science Research in Africa: Rigour, Relevance and Responsibility' in Sumaya Laher, Angelo Fynn and Sherianne Kramer (eds), *Transforming Research Methods in the Social Sciences: Case Studies From South Africa* (Wits University Press 2019).

³¹ Daniel Bonilla, 'Legal Clinics in the Global North and South: Between Equality and Subordination - An Essay' (2013) 16 *Yale Human Rights and Development Law Journal* 1, 7.

³² Pickering and Byrne (n 18) 543.

These are reflected as 'other databases' in the Prisma Flow Diagram documenting the search process. The databases were Scopus, HeinOnline and Sage.

Elsevier's Scopus was selected because it boasts 'a comprehensive overview of the world's research output' in the form of scientific journals, books and conference proceedings.³³ This database improved the chances of incorporating books and conference proceedings, which were not available on Sabinet. It allowed for the inclusion of publications about Africa that were available elsewhere. Additionally, it incorporated literature that was published but not limited to peer reviewed journals into the review. Worth noting was the significantly stronger subject area coverage of the sciences, technology and medicine than of the social sciences, arts and humanities.³⁴ This was considered a drawback that implied a somewhat limited scope of publications on clinical legal education.

The purpose of working with HeinOnline and SAGE was to widen the scope of the search and reduce the chances of omitting relevant articles. Branded 'gateway to world-class research journals,' SAGE avails journals in health science, material science and engineering, life and biomedical sciences as well as social sciences and humanities.³⁵ With its commitment to the social sciences, SAGE was selected as a persuasive compliment to Scopus. It increased the likelihood of finding recent journal articles, had these not been made available in the other databases.

³³ 'Elsevier' <<https://www.elsevier.com/en-xm/solutions/scopus>> accessed 15 October 2023.

³⁴ 'Elsevier' (n 33) 20–21.

³⁵ 'SAGE Journals' <<https://journals.sagepub.com/>> accessed 15 October 2020.

Since the subject of the systematic review falls within the discipline of law, it was essential to incorporate at least one legal database in the search. HeinOnline is frequently listed among legal research databases and is hailed for presenting an extensive collection of law reviews published by law schools.³⁶ This earned it a place in the review albeit with the caveat that the database had a more comprehensive coverage of European and American databases.³⁷

As previously indicated, a search on Google was conducted to draw in relevant unpublished material. The returns from this general Internet search mirrored what was available in the databases, with insignificant yields of relevant blogs, websites, theses and other grey literature.

The foregoing collection of databases together with the Google searches came with the drawback of multiple and repeated returns as well as the tedium involved in de-duplication and in screening the records to sort out which ones were appropriate based on their titles. Although the internet searches occasioned returns that were de-duplicated manually, de-duplication of the large number of records returned from the databases was facilitated by EndNote's de-duplication functionality.

Search limits

The types of literature sought were journal articles, theses, conference proceedings and book reviews. Since the language of research and publication in the countries

³⁶ Fred R. Shapiro and Michelle Pearse, 'The Most Cited Law Review Article of All Time' (2012) 110 Michigan Law Review 1483, 1486.

³⁷ 'HeinOnline Databases' <<https://home.heinonline.org/content/databases/>> accessed 13 January 2021.

under research is English, the search was limited to articles that were available in English. Although it was important to have articles as relevant and as current as possible to the year 2020 when the review was conducted, no time limitation was applied to articles. The open-ended start date was retained with the awareness that social justice clinics were the genesis of most pedagogical clinics and therefore often preceded them.³⁸ In terms of scope, the search was conducted in four databases that house legal journals in Africa and in the world generally, as well as in Google. These searches were limited to the subject area of law. The search queries were applied to the full text of the databases and not to titles or abstracts only. This yielded very many returns some of which were not relevant because the key terms had sometimes been picked out from the reference lists.

The search process

The first search query applied was clinical legal education AND Kenya. This was a search for literature about clinical legal education in Kenya. It sought to yield results that would address the first research question. Unfortunately, the results included literature about medical and health clinics. Therefore, the Boolean operator NOT was introduced to exclude results based on medical and health research. Unlike the previous search query without double quotation marks which yielded results with any of the three words clinical, legal or education, searching for the term “clinical legal

³⁸ Willem De Klerk, ‘University Law Clinics in South Africa’ (2005) 122 South African Law Journal 929, 930.

education” yielded results with the entire phrase. Consequently, the use of double quotation marks was also introduced.

The attempt to include the synonyms lengthened the Boolean string and returned results that were not related to the research questions. To avoid this, the search was again refocused on the key search concepts. The simpler the search query applied, the neater and more precise the search returns were. The search query was, therefore, presented as "clinical legal education" NOT (healthcare) AND “social justice” AND Kenya. Use of the Boolean operator NOT for the term healthcare in parenthesis served to lock out any medical or health related searches.

The second search query used was "clinical legal education" NOT (healthcare) AND “social justice” AND "South Africa" It also sought to yield results that would address the first research question.

The third search query applied was "clinical legal education" NOT (healthcare) “social justice” AND Africa. It sought to yield results that would address the second research question. There are fifty-four countries in the continent so it was not feasible to search for articles from individual countries in response to the first research question. However, the third search term was applied to Nigeria, Uganda and Ethiopia where clinical legal education is known to be practised to some degree. This was by modifying the search query in each case by replacing Africa with each of these countries.

The fourth search query was "clinical legal education" NOT (healthcare) AND "Africa" AND “social justice” AND Challeng*

It sought to yield results that would address the third research question. Truncation of the term challenge was to ensure that results containing varying forms of the term such as challenge, challenges and challenging were included. Owing to the large number of countries in the continent, it was not feasible to search for articles from individual countries in response to the third research question. However, this fourth search term was again applied to Nigeria, Uganda, Ethiopia and Kenya. A summary of the search queries is presented in Table 1.

Table 1: Summary of search queries

| Search query |
|---|
| 1. "clinical legal education" NOT (healthcare) AND "social justice" AND Kenya |
| 2. "clinical legal education" NOT (healthcare) AND "social justice" AND "South Africa" |
| 3. "clinical legal education" NOT (healthcare) "social justice" AND Africa |
| a. "clinical legal education" NOT (healthcare) "social justice" AND Nigeria |
| b. "clinical legal education" NOT (healthcare) "social justice" AND Uganda |
| c. "clinical legal education" NOT (healthcare) "social justice" AND Ethiopia |
| 4. "clinical legal education" NOT (healthcare) AND "Africa" AND "social justice" AND challeng* |
| a. "clinical legal education" NOT (healthcare) AND "Nigeria" AND "social justice" AND challeng* |

- b. "clinical legal education" NOT (healthcare) AND "Uganda" AND "social justice"
AND challeng*
- c. "clinical legal education" NOT (healthcare) AND "Ethiopia" AND "social
justice" AND challeng*
- d. "clinical legal education" NOT (healthcare) AND "Kenya" AND "social justice"
AND challeng*

Sabinet offered the possibility of conducting an advanced search because the database presented a menu that enabled the selection of the relevant Boolean operators and insertion of search terms to complete the search queries. Advanced searches on HeinOnline also presented a table where the relevant Boolean operators were available from the menu. Advanced searches on Sage likewise presented a similar menu. For Sage, there was no need to insert AND since the menu automatically factored this in. The subject area in all databases searched was law, except for Scopus which availed the broad category of social sciences, arts and humanities.

Documentation of the search process

A copy of the Prisma flow diagram was printed out and used alongside the searches to facilitate the documentation of the search process. For each database, each search query was entered individually. The queries included all the search concepts and truncation. The search concepts were blended in the different combinations using Boolean operators such as 'AND' or 'OR' as appropriate, yielding several records. This

was entered in the top right box of the Prisma flow chart for each database and then summed up to complete the total number in the Prisma flow diagram.

Initially, 3968 records were found in the search processes. To avoid reviewing duplicate records, any records that appeared more than once were removed using the Endnote de-duplication functionality to reduce the manual removal of duplicates among the large number of records retrieved. The number of records left after de-duplication was entered in the second box from the top of the Prisma flow diagram. The high number of duplicates is attributed to the use of multiple databases whose objective was to include as many articles as may be relevant. Having excluded duplicates, this screening process left only 61 records for assessment. This number affirmed the appropriateness of the quantitative systematic review, given that the resulting returns fell within the recommended range of 15 and 300 articles.³⁹ Subsequently, the 61 records were subjected to a three-stage test to assess their eligibility for inclusion in the synthesis. This is a process that is also referred to as screening.⁴⁰

Assessment of relevance

Having applied the search terms to journal articles, theses, book reviews and conference presentations, the resulting 61 records were either retained or rejected

³⁹ Pickering and Byrne (n 18) 543.

⁴⁰ Newman and Gough (n 15) 11.

based on the inclusion and exclusion criteria explained here. These were generated from the search concepts that had been extracted from the research questions.

The first inclusion criterion comprised articles with a focus on the social justice mission of clinical legal education. The second inclusion criterion focused on articles about the global clinical movement since clinical legal education in African countries is part of this movement. The third inclusion criterion consisted of articles detailing experiences that may include challenges in clinical legal education programs in African countries. The fourth inclusion criterion entailed publications discussing various aspects of university law clinics in South Africa. The fifth criterion sought articles on the role and mission of clinics and the clinician since the literature from the continent almost always bears a social justice component.

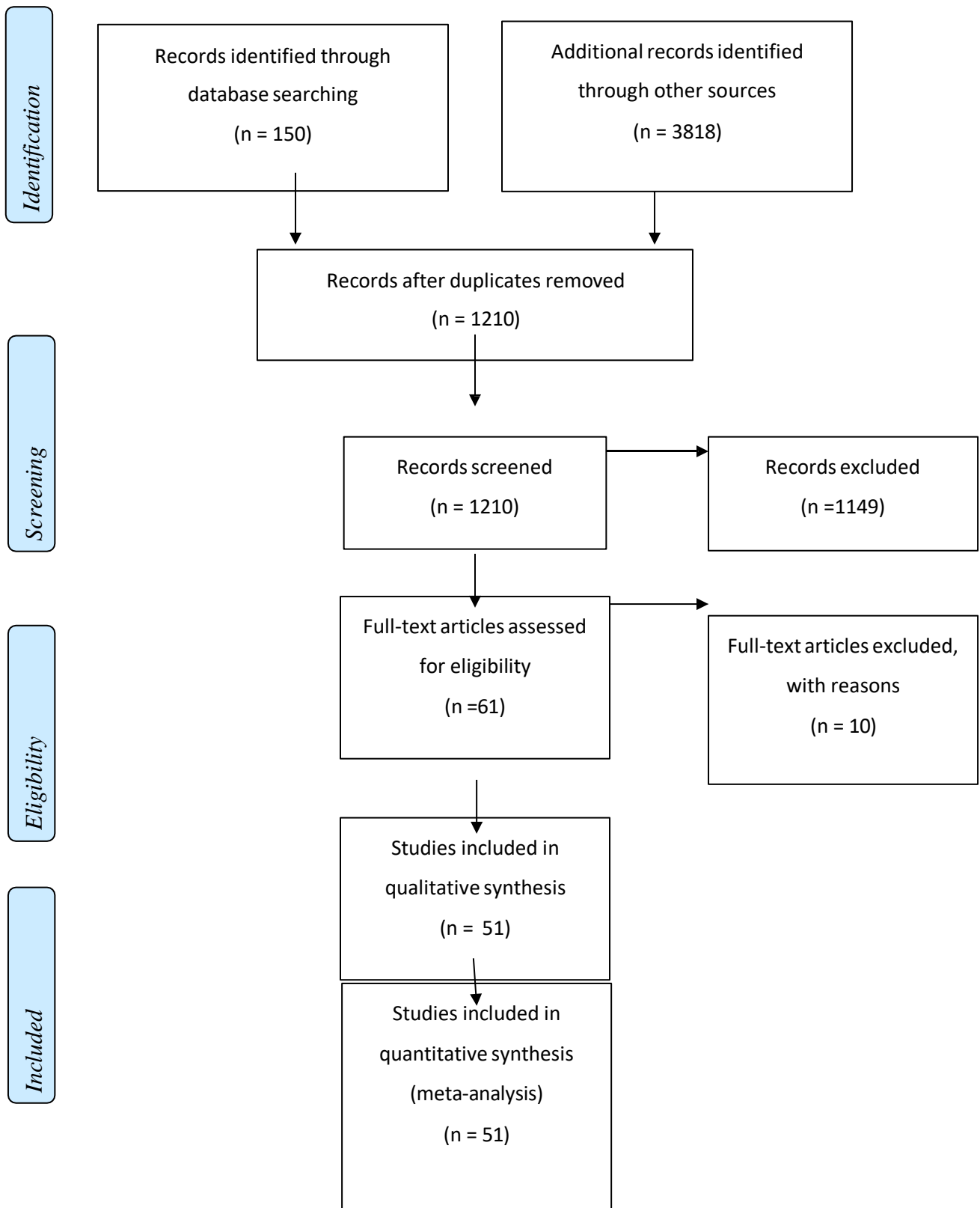
The exclusion criteria consisted of titles that had a particular emphasis on the pedagogical aspects of clinical legal education such as course design, curriculum development and student assessment. Also excluded were articles which concentrated on the training of lawyers for legal practice-unless it was on training lawyers to appreciate social justice in practice, studies of clinical legal education in non-African countries, articles on general aspects of legal education as well as articles in which social justice and clinical legal education was not the subject or focus. Since this systematic literature review of literature was informing a study that would entail an examination of legislative structures supporting social justice clinics, it was more helpful to retain articles based on current and not repealed legislation.

Given that the emphasis of the research was the social justice role of clinics among indigent communities, the number of citations or publication impact of the articles was not prioritised in the inclusion or exclusion criteria.

Testing the relevance of retrieved records

The first stage of screening was to examine the titles of the articles to see whether the retrieved records were relevant to the research by subjecting them to the exclusion and inclusion criteria. Titles that had limited information were included for further scrutiny. The second stage was to extract the records and read their abstracts against the inclusion and exclusion criteria. The assessment for eligibility entailed a final analysis of the remaining records. In this screening, 10 records were excluded leaving behind 51 records for critical review. The foregoing search process is summarised and presented in the Prisma Flow Diagram in Figure 1.

Figure 1: Prisma Flow Diagram documenting the search process



Critical review

The critical review consisted of extracting data, analysing and synthesising it. This entailed extracting data from the final set of literature on the basis of pre-identified themes. This data was evaluated in addressing the research questions and then synthesised in narrative form.⁴¹

Findings of the review

The findings of the quantitative aspects of the literature on the social justice role of clinical legal education in Africa are presented below. These are categorised into annual publications, authorships, journals, geographical spread of authors and studied countries, and the predominant research designs and topics.

How often is the social justice role of clinical legal education in Africa covered in literature?

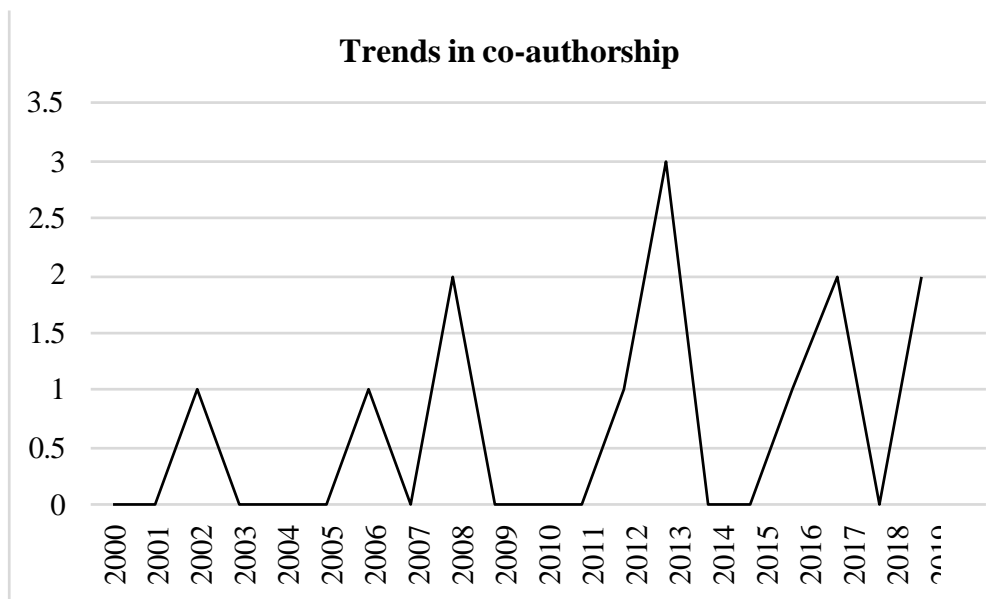
The trend in annual publications is illustrated in Figure 2. It shows cyclic rises in publications over the years 2000-2019.

⁴¹ Kotonya (n13).

Figure 2: Publication trend 2000-2019

The trend in co-authorships is presented in Figure 3. The majority of authors published only one article, with single authorships comprising 75 per cent of the articles. Articles published by two authors made up 12 per cent of the articles and only 2 per cent were published by three co-authors.

Figure 3: Trends in co-authorship 2000-2019



In what journals are these studies published?

The analysis yielded literature from 21 different publications emanating from all the continents across the globe. The spread of publications in these journals is shown in *Table 2*.

Table 2: Spread of Publications in Journals

Spread of Publications in Journals

| Journal | Frequency | Per cent |
|---|------------------|-----------------|
| African Human Rights Law Journal | 2 | 4% |
| Asian Journal of Legal Education | 7 | 14% |
| Beijing Law Review | 1 | 2% |
| De Jure | 7 | 14% |
| Fordham International Law Journal | 1 | 2% |
| Fundamina | 1 | 2% |
| Griffith Law Review | 2 | 4% |
| International Journal of Clinical Legal Education | 9 | 18% |
| Journal for Juridical Science | 6 | 12% |
| Journal of Ethiopian Law | 1 | 2% |
| Journal of Legal Education | 1 | 2% |
| Law Teacher | 1 | 2% |
| McGeorge Law Review | 1 | 2% |
| Mizan Law Review | 1 | 2% |

Reviewed Article

| | | |
|--|-----------|-------------|
| Nnamdi Azikiwe University Journal of International Law and Jurisprudence | 2 | 4% |
| Potchefstroom Electronic Law Journal | 2 | 4% |
| South African Law Journal | 2 | 4% |
| Strathmore Law Review | 1 | 2% |
| University of Ghana Law Journal | 1 | 2% |
| Washington University Journal of Law and Policy | 1 | 2% |
| Yale Human Rights and Development Law Journal | 1 | 2% |
| | 51 | 100% |

The journal with the highest concentration of these articles was the International Journal of Clinical Legal Education publishing 18 per cent of the total articles. This was followed by De Jure and the Asian Journal of Legal Education both publishing 14 per cent and the Journal for Juridical Science publishing 12 per cent of the total articles.

Which countries are the authors from?

The papers originated from 10 countries. These are South Africa 43 per cent ($n = 22$), Nigeria 29 per cent ($n = 15$), USA 8 per cent ($n = 4$), Ethiopia 4 per cent ($n = 2$), Ghana 4 per cent ($n = 2$), Kenya 4 per cent ($n = 2$), Bangladesh 2 per cent ($n = 1$), UK 2 per cent ($n = 1$) and USA/Botswana 2 per cent ($n = 1$). One paper emanated from the global south although the author's information did not specify the publishing country. South Africa and Nigeria highly dominated the clinical legal education field by contributing

72 per cent of the publications. The remaining 28 per cent consisted of contributions from 8 different countries including Ethiopia, Ghana, Kenya and Botswana.

In which countries are studies on the social justice role of clinical legal education in Africa conducted?

The articles depicted the experiences in the publishing countries, with each paper largely studying just one country. Overall, five main countries were studied with some articles studying these and wider regions in the continent. These were South Africa 45 per cent ($n = 23$), Nigeria 29 per cent ($n = 15$), Ethiopia 6 per cent ($n = 3$), Kenya 4 per cent ($n = 2$) and Ghana 2 per cent ($n = 1$). Multiple countries were the subject of 14 per cent ($n = 7$) of the articles.

What methodologies do the studies utilise?

There is considerable diversity in methodologies used in clinical legal education research as shown in *Table 3*. Articles documenting the experiences of the authors formed 71 per cent of the publications. These were in rare cases supplemented with some form of empirical research such as reviews of case files or interviews. Articles based exclusively on reviews of academic literature constituted 24 per cent of the publications, while the methodologies in the remaining 2 per cent remained unclear. The predominant methodology in the articles was qualitative research.

Table 3: Methodologies

Variety and Frequency of Methodology

| Methodology | Frequency | Per cent |
|---|------------------|-----------------|
| Author's Experience | 8 | 16% |
| Author's Experience and Empirical Research | 3 | 6% |
| Author's Experience and Interviews | 1 | 2% |
| Author's Experience and Review of Literature | 14 | 27% |
| Author's Experience and Review of Literature and Case Files | 1 | 2% |
| Author's Experience and Review of Case Files | 1 | 2% |
| Author's Experience and Comparative Study | 1 | 2% |
| Author's Experience and Review of Literature and Case Files | 1 | 2% |
| Book Review | 1 | 2% |
| Case Study | 1 | 2% |
| Case Study and Unstructured interview | 1 | 2% |
| Case Study and Author's experience | 1 | 2% |
| Case Study and Surveys using semi structured questionnaire | 1 | 2% |
| Questionnaires and Focus Group Discussions | 1 | 2% |
| Review of Literature | 12 | 24% |

| | | |
|---|-----------|-------------|
| Review of Literature and Empirical Research | 1 | 2% |
| Unclear | 2 | 4% |
| | 51 | 100% |

What topics do the studies cover?

The titles of the articles were categorised into the broader topics in which they fell.

These are presented in Table 4.

Table 4: Geographical Spread of Topics

| Topics | Geographical Spread | Frequency | | Per cent |
|--------------------|---------------------------------|-----------|-------|----------|
| | | | Total | |
| Access to justice | Nigeria | 4 | 12 | 24% |
| | South Africa | 4 | | |
| | Ethiopia | 2 | | |
| | Kenya | 1 | | |
| | South Africa, Global | 1 | | |
| Challenges | Nigeria | 3 | 6 | 12% |
| | Kenya, Uganda and other regions | 1 | | |
| | South Africa | 1 | | |
| | Global North and Global South | 1 | | |
| | | 1 | | |
| Clinic experiences | Kenya | 1 | 6 | 12% |

| | | | | |
|------------------------|---|---|---|-----|
| | Nigeria | 2 | | |
| | South Africa | 3 | | |
| Pedagogy | South Africa | 6 | 6 | 12% |
| Social justice | Nigeria | 3 | 5 | 10% |
| | South Africa | 1 | | |
| | USA | 1 | | |
| Clinic missions | South Africa | 3 | 3 | 6% |
| Legal education reform | Nigeria | 1 | 3 | 6% |
| | Africa | 1 | | |
| | Ethiopia | 1 | | |
| Clinic history | South Africa | 2 | 2 | 4% |
| Clinical movement | South Africa | 1 | 2 | 4% |
| | South Africa, Global North and Global South | 1 | | |
| The promise of clinic | Ghana | 1 | 2 | 4% |
| | Uganda, South Africa, Tanzania, Botswana, Lesotho and Swaziland | 1 | | |
| Clinician role | South Africa | 1 | 1 | 2% |
| Constitution | South Africa | 1 | 1 | 2% |
| Risks and benefits | Nigeria | 1 | 1 | 2% |

| | | | | |
|----------------|---------|---|-----------|-------------|
| Sustainability | Nigeria | 1 | 1 | 2% |
| | | | 51 | 100% |

The most prevalent topic was access to justice. This was covered in 24 per cent ($n=12$) of the articles from Nigeria ($n=4$), South Africa ($n=4$), Ethiopia ($n=2$), Kenya ($n=1$) as well as an unconfirmed country ($n=1$). Challenges in clinical legal education constituted 12 per cent of the articles ($n=6$). These were from Nigeria ($n=3$), Kenya/Uganda and others ($n=1$), South Africa ($n=1$) and the rest of the globe ($n=1$). The topic of clinical experiences constituted another 12 per cent ($n=6$) being from South Africa ($n=3$), Nigeria ($n=2$) and Kenya ($n=1$). Social justice followed at 10 per cent ($n=5$) with articles from Nigeria ($n=3$), South Africa ($n=1$) and USA ($n=1$). Clinical pedagogy took up 12 per cent ($n=6$) with papers from South Africa. Legal education reform was considered in 6 per cent ($n=3$) of the articles in papers from Nigeria ($n=1$), Africa generally ($n=1$) and Ethiopia ($n=1$). Papers from South Africa ($n=1$) and the globe ($n=1$) covered the topic of the clinical movement, constituting 4 per cent ($n=2$) of the articles. The promise of clinic was covered in 4 per cent ($n=2$) of the articles, these being from Ghana ($n=1$) and multiple African countries ($n=1$). Clinic sustainability ($n=1$) as well as their risks and benefits ($n=1$) each constituted 2 per cent of the articles all of which emanated from Nigeria. The remainder of the topics were the history of clinical legal education which was covered in 4 per cent ($n=2$) of the articles, the mission of clinics covered in 6 per cent ($n=3$) of the articles, constitutions and clinics in 2 per cent ($n=1$) of the articles and the role of clinicians in another 2 per cent ($n=1$) of the articles. These topics were studied in articles from South Africa. An

examination of the geographical spread of the topics revealed South Africa as the most studied country, having been the subject of 12 out of the 14 topics identified. This was followed by Nigeria, which was the focus of 7 topics.

Discussion

Clinical research and dissemination is beneficial for the entire body of legal scholarship because of its diversity of perspectives, impact on the world and role in stemming the theory-practice divide.⁴² This systematic review was conducted to map the development and flow of research on the social justice role of clinical legal education in Africa. The review sought to determine aspects of this theme that are already known, as well as those that are unknown or are under-researched with a view to comparing the clinical legal education experience in Kenya and South Africa. The research interest was clinical legal education in Kenya, thereby making it the country of focus in the review. South Africa was selected for comparison on the strength of scoping reviews. Such scoping reviews are recognised as valuable foundations for broader systematic reviews.⁴³ These revealed South Africa's clinical education movement as being robust and the most deep-rooted in the continent.⁴⁴

The article contributes to knowledge on the quantitative aspects of the analysis of the status of research on the social justice role of clinical legal education in Africa. It does this when it addresses the thematic and jurisdictional gaps of existing

⁴² Michele Gilman, 'The Future of Clinical Legal Scholarship' (2019) 26 *Clinical Law Review* 189, 186, 198, 201.

⁴³ Newman and Gough (n 15) 15.

⁴⁴ De Klerk (n 38) 932.

reviews.⁴⁵ As is expected of systematic reviews, the article also presents an extensive methodological section that may be utilised by future scholars who may wish to reproduce the study. The review contributes to the literature on clinical legal education by presenting an evidence-based representation of the development and flow of research on the social justice role of clinical legal education in Africa, Kenya and South Africa. The result is a quantitative demarcation of gaps and developments for researchers exploring this topic. The synthesis of the content, arguments and findings of the literature under study has been done in a separate article thereby serving to further fulfil the aim of the systematic review by delineating the gaps in knowledge as areas for research.

Limited scholarship on Africa

Being the continent of focus, the setting or context of the review was identified as Africa. Clinical legal education experiences were scrutinised from the perspectives of universities hosting clinical programs, clinic staff and students engaged in law clinics, persons benefiting from university law clinic services as well providers of legal aid to indigent communities. The scope of the setting was varied to the specific country of interest that is Kenya. The intervention or phenomenon of interest was clinical legal education in Africa. While remaining open to developments in other African countries, South Africa was identified for comparative purposes. Evaluation of clinical

⁴⁵ Dunn (n 11); Mkwebu (n 12).

legal education in Africa, South Africa and Kenya in the context of its social justice role showed a dearth of literature from Africa and from the study country Kenya. As shown in the subsequent discussion, South Africa was comparatively more prolific than the other countries and maintained its dominance in terms of authorships, collaborations and research topics.

The findings as depicted in Figure 2 are indicative of rises in annual publications peaking in 2008 and 2017. These show an increasing academic interest in research on the social justice role of clinical legal education in the continent. The cyclic pattern signifies the growing relevance of the topic 'social justice and clinical legal education' in a manner that is neither systematic nor sustained. Nevertheless, the low publication frequencies reveal a limited research interest and scholarship on clinical legal education in Africa.

Narrow spread of authorship

Three of the most prolific authors are based in South Africa and they are the same ones who prepared co-authored publications. In terms of geographical spread, South Africa generated the majority of the literature followed by Nigeria and these countries together dominated the review. These publications offered various perspectives on clinical legal education in the two countries. The highest frequency of authors also emanated from Nigeria and South Africa. This finding confirms the viability of South Africa for benchmarking clinical practice in the continent and suggests Nigeria as a

country in which clinical legal education is widespread. It is an indicator of the narrow spread of clinical authorship across the continent.

Potential for authorships and collaboration

The single authorships by Du Plessis, Mc-Quoid Mason, De Klerk and Nwedu contribute to their being the most prolific authors in the review subject. The percentages of the first three authors-Du Plessis, Mc-Quoid Mason and De Klerk are further increased by their co-authorships. The high number of articles authored and co-authored by the three suggests the review subject as their area of specialised research. This field has few published specialists given that there are a small number of authors who are highly prolific in their single authorships. The trends in co-authorship signify a pattern in co-authorships that is interspersed with years of single authorships. This unsteady trend in co-authorships is indicative of little collaborative research on social justice aspects of clinical legal education in the continent. It can also be considered a subject area with great potential for specialisation, authorships and research collaboration.

Few outlets for clinical scholarship

It is noteworthy that two of the journals with the greatest frequency of publications are legal education journals. That the articles are largely published in legal education journals is consistent with the application of clinical legal education as a pedagogical tool for legal education, rendering it particularly suited to legal education journals.

For instance, the International Journal of Clinical Legal Education having the highest number of publications is an indicator of the value of specialised journals for the spread of clinical scholarship. Since these appear to be the most receptive of manuscripts addressing clinical legal education, such journals would therefore be a priority for prospective authors. As this may be a rather limited publication avenue, this finding also highlights the role that special issues in journals or law reviews could play in availing a platform for the dissemination of clinical research.

Scarce African representation in social justice scholarship

Without specifying particular countries, there are articles that have studied Africa, clinical legal education from a global perspective, in the global north and south as well as in listed countries in East and Southern African regions. The widespread practice of clinical legal education in South Africa and Nigeria most likely motivated their selection for these studies, unlike other countries in the continent where clinical legal education was not as prevalent. Although the studies predominantly investigated access to justice and social justice, they also highlighted clinical experiences, challenges and some pedagogical aspects of clinical legal education. Again, the dominant countries studied in the different topics covered were South Africa followed by Nigeria. This finding exposes study gaps in other countries of the continent that operate clinical education programs and identifies them as a viable trajectory for research. Articles relevant to the study emerged from 10 countries only and these studied 5 countries and regions in the continent. This restricted scope was

accompanied by a dearth of publications emanating from the African countries themselves and specifically from the country of research interest that is Kenya. As such the continent can be viewed as under-represented in global clinical scholarship.

Methodological diversity

There is considerable diversity in methodologies used in clinical legal education research as shown in *Table 3*. It was noted that articles documenting the experiences of the authors formed 71 per cent of the publications. These were in rare cases supplemented with some form of empirical research such as reviews of case files or interviews. Articles based exclusively on reviews of academic literature constituted 24 per cent of the publications, while the methodologies in the remaining 2 per cent remained unclear. The predominant methodology in the articles was qualitative research.

The dominance of articles that are reflective of the authors' experiences confirms the operation of clinics in these countries from the perspectives of the clinicians. This documentation of clinical experiences is bolstered by the percentage of publications based purely on reviews of literature taking second place. It was noted that methodologies involving empirical research are barely applied in clinical legal education research. These methodologies may be helpful in reflecting the clinical experiences of other participants who have not documented their experiences as well as that of the beneficiaries of these clinical programs. They could also be applicable in researching the social justice interventions undertaken by clinics as well as

developments of clinical programs in jurisdictions that have little or no current published literature available.

Dearth of Topics

The result on topics under study is consistent with the scoping study, which established South Africa as a suitable choice for comparative study because of the abundance of publications about clinical legal education emanating from there. This finding reveals Nigeria as the second most studied country, reflecting that it is perhaps the second most active in clinical legal education in the continent after South Africa. The findings imply some level of clinical activity in Ethiopia, Uganda, Ghana, Uganda, South Africa, Tanzania, Botswana, Lesotho and Swaziland. Additionally, they point to a research gap in the identified topics, in the remainder of the African countries as well. Notable was Kenya, about which only 3 topics were discussed. These were clinics and access to justice, clinical experience and challenges of clinical legal education in the country. This dearth of articles corroborated the viability of Kenya's potential as a research interest in the subject.

Strengths, Limitations and Future Directions

The strengths of the review lie in the compliance with the systematic nature of question formulation, search and analysis of records. This draws the advantages of being both verifiable and replicable. The review provides a foundation for a qualitative synthesis delineating what is known and what is unknown about the social

justice role of clinical legal education in Africa. Synthesis of the resulting articles integrates information therein and addresses the research questions thereby contributing to knowledge.⁴⁶ This contribution includes broadening horizons for new research from which all the countries of the continent can benefit.⁴⁷

The systematic review encountered four limitations relating to search terms, alternative sources, English as the language of research and the timeline of articles. Since the search terms were applied to articles in databases, articles that did not contain any of the search terms were omitted. Thus, the thesis 'Critical Evaluation of the Practical Legal Studies Programme at the University of the Witwatersrand' would be omitted although it is about clinical legal education in South Africa. On the face of it, the phrase Practical Legal Studies may not immediately reflect a clinical programme or discussions on the social justice goal of clinical legal education. Thus, other articles or thesis with this phenomenon may have been inadvertently excluded during the screening.

The second limitation is that there is a lot written on clinical legal education that is not being published in the academic databases and some journals do not accept publications on themes relevant to clinical legal education. There are clinics that share them as blogs, brochures and websites. These sources are not captured in the databases searched during the systematic review since there are no methods to

⁴⁶ Newman and Gough (n 15) 14.

⁴⁷ Clinton Golding, Sharon Sharmini and Ayelet Lazarovitch, 'What Examiners Do: What Thesis Students Should Know' (2014) 2938 *Assessment and Evaluation in Higher Education* 571.

incorporate these in systematic reviews.⁴⁸ Given the technological advancements that are now enabling the sharing of research through more avenues than those previously utilised by researchers, the present systematic review concedes that such research could escape scrutiny for this reason. Additionally, there was an attempt to mitigate publication bias by applying the search queries on Google mainly yielded published articles that had already been obtained from the database search.

The third limitation is that the review focused on articles that were published in English only, leaving out any relevant material that may exist in other languages. The fourth limitation is that the review is limited to publications made before 2020 when the review for the PhD study for which it was conducted was carried out. It therefore does not include literature generated thereafter.

The discussion section underscores future directions in terms of research countries, topics, methodology, and individual and collaborative research. It reveals the returns as being replete with publications from and about both South Africa and Nigeria. Thus, all other countries of the continent that implement clinical programs stand out as rich possibilities for research. The gap in publications about these countries is a compelling factor towards methodologies and research designs that consider clinical experiences, perceptions, observations and documentation in a bid to arrive at holistic knowledge. Furthermore, the complexity, breadth of projects or the appreciation of research synergies may call for more collaborative research, which is

⁴⁸ Dunn (n 11) 114.

currently uncommon in this field. As earlier noted, the systematic nature of this review preserves possibilities of replication and updates in future. Complementary reviews could also be conducted on the second mission of clinical legal education, which is the pedagogical role of clinics.

Conclusion

This systematic review analysed the status of research on the social justice role of clinical legal education in the African continent before the year 2020. It sought literature addressing the social justice experience of clinical legal education in Africa, more specifically South Africa and Kenya, the challenges existing in this endeavour as well as how African countries have overcome them. It reviewed such publications in databases that publish research about African countries, given that their themes and priorities sometimes differ from mainstream databases thereby building on literature about social justice and clinical legal education in African countries. The review thereby generates evidence of the growth of scholarship about the place of social justice in clinical legal education in African countries. It complements systematic reviews that have been made that focus on clinical legal education in Europe and the sustainability of clinics globally. The findings confirm the selection of South Africa as a viable comparator, given that the majority of authorships and journals emanate from there. The review yields a broad research trajectory by highlighting topics for future research and countries where the research could be extended. It maps the need for the development of research within and beyond several topics including the clinical

movement, history of clinics, their mission, sustainability and promise, constitutions and clinics, the risks and benefits of clinics as well as the role of clinicians. The review reveals that the social justice role of clinical legal education is under-researched in the majority of the countries in the continent. It delineates the gaps in knowledge about the social justice aspects of clinical legal education in all countries beyond South Africa as areas for research. The scarcity of co-authored publications points to opportunity for the growth and nurturing of clinical scholars through collaborative research as well as the development of specialised publication outlets such as special issues of journals or law reviews. Since Kenya was identified as the focus country for the impending research, the systematic review confirms this area as a viable research gap. The overall conclusion with respect to the maturity level of research on social justice and clinical legal education is that there remains a broad unexplored field for both individual and collaborative research with respect to methodology, diversity, spread of countries and topics.

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LESSONS LEARNED FROM REMOTE DELIVERY: SUPERVISION AND THE STUDENT EXPERIENCE

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Introduction

This article considers the effect of the shift to virtual delivery of clinical legal education (CLE) that was necessitated by the Coronavirus Disease 2019 (COVID-19) pandemic on students and the lessons learned from students' perspectives, especially regarding supervision, for clinical best practice going forward. Much of the recent scholarship on the effects of the pandemic has focused on the clients of clinical programs and the challenges of responding to heightened client service needs at a time of economic dislocation and widespread movement restrictions.¹ This was a particular issue in the city of Melbourne, Australia, where residents faced some of the longest and most onerous lockdowns in the world.

This article focuses on students of clinical programs and the role of supervision practices in facilitating students' learning during this challenging period. In this article, we show that effective, intentional and explicit clinical supervision practices

¹ Jeff Giddings, 'Clinic in the times of COVID-19', (2020) 11(2) *Jindal Global Law Review* 229–249, Deborah Archer et al., 'Clinicians Reflect on COVID-19: Lessons Learned and Looking beyond' (2021) 28(1) *Clinical Law Review* 15.

are central to providing students with productive learning experiences. We argue that students respond positively to effective supervision but even more so to intentional and explicit supervision. This argument is informed by our experiences of the Monash Clinical Program (MCP) in which the supervisors used a clinical best-practices framework to supervise, mentor and guide students during the very challenging COVID-19 period.² During this time, we conducted research on the MCP to better understand how students experienced the changes and how clinicians pivoted their supervision and practice during the pandemic, particularly in response to heightened wellbeing concerns and the pressures placed on all parties (i.e., clients, students, staff and others). We present our analysis of the data we gathered to examine students' perspectives on remote delivery during the pandemic. In doing so, we show how the data on students' experiences continues to inform best practice in clinical delivery and to add value to educating students for their future roles as legal practitioners.

This research was undertaken at one Australian clinic program; however, we anticipate that it will resonate with clinical teachers elsewhere and have global relevance. The findings are intended to inform new, more productive approaches to CLE in Australia and internationally, contributing to improved clinical learning outcomes.

²Jeff Giddings, 'Clinic for All' in Matthew Atkinson & Ben Livings (eds.), *Contemporary Challenges in Clinical Legal Education: Role, Function and Future Directions* (2023) 1st ed, Routledge, Abingdon UK.

Adapting Traditional CLE Models

Traditionally, legal clinics and other forms of experiential legal education have sought to maintain dual areas of focus on the students they teach and the clients they serve. On any given day, students undertaking clinical units may find themselves providing legal advice to a variety of clients with diverse and pressing needs. The client service spectrum is broad; however, the underlying pedagogical principles remain focused on strong clinical supervision, student awareness of social justice and engagement in ethical and reflective legal practice. Before the onset of the COVID-19 pandemic, clinical units were typically delivered onsite, with students attending law clinic sites in person and interacting with their fellow students and supervisors face to face. However, during the COVID-19 pandemic, restrictions prevented students from attending law clinics onsite. Consequently, clinical programs had to be redesigned, developed and implemented in ways that continued to ensure best practices in supervision through fully remote delivery.

Evans et al. suggest that ‘in Australia, “CLE” generally refers to law school experiential learning that places students in the role of lawyers representing clients with legal issues and problems’.³ This is one of the key strengths of CLE, as ‘the personal responsibility of working with and being accountable to clients motivates students to perform to the best of their ability’.⁴ CLE is understood in similar terms in

³ Adrian Evans et al, *Australian Clinical Legal Education, Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 2017) 51.

⁴ *Ibid.*

other countries, recognising the potential for CLE to combine student learning and client service.

Models of CLE delivery have long placed a strong emphasis on service and access to justice. Students engage with real-life clients and manage their matters, developing their professional identity and practical legal skills under the supervision of qualified legal practitioners ('clinical supervisors').⁵ In addition, students learn about the various technical, ethical and procedural obligations lawyers must meet. The most clearly recognised model of CLE, known as the 'live-client' clinic model, involves working with real clients.⁶ The opportunities and complexities of working with real clients need to be acknowledged; such opportunities can take students beyond their previous experiences of the law and enable them to deepen understandings previously developed elsewhere in the curriculum.⁷ The 'live-client' clinic model has long been recognised for its usefulness in developing key understandings and skills (e.g., structuring and conducting interviews, preparing to negotiate and reflecting on personal performance) and enabling students to later extrapolate and generalise from these experiences.⁸

The COVID-19 pandemic reinforced the potential for the development of hybrid clinical models that vary the traditional model and can be tailored to suit

⁵ *Ibid.*

⁶ Monash University has adopted such a clinical model with three key sites, at Monash Law Clinics in the Melbourne CBD and at Clayton (previously Monash Oakleigh Legal Service) and South East Monash Legal Service (previously Springvale Monash Legal Service).

⁷ See Amanda Levendowski, *Teaching Doctrine for Justice Readiness*, 29 (2022) *Clinical Law Review* 111, Jeff Giddings, 'It's More than a Site: Supporting Social Justice Through Student Supervision Practices' in Chris Ashford and Paul McKeown (eds), *Social Justice and Legal Education* (2018) Cambridge Scholars Publishing, 43-64

⁸ *Ibid.* 79.

particular circumstances and contexts. In particular, the pandemic necessitated an exploration of ways to work with clients and students offsite. It became necessary to explore ways in which the embedded clinical pedagogy could be re-thought, re-designed and re-modelled to be transferred online. The aim was to retain and build on the principles underpinning the existing model to create a 'renewed model' that re-examined and re-thought what it means to be 'best practitioners'. As with clinical programs around the globe, COVID-19 compelled the MCP to harness technology expanding the scope for remote delivery while retaining the distinctive nature of clinic work and enabling student learning while serving communities that would otherwise miss out on services.⁹

Responding to COVID-19

In March 2020, all Monash clinical student and clients and many staff members were unable to attend campus due to the COVID-19 pandemic. This presented the MCP with the challenge of moving the legal service and clinical program offsite and online. In doing this, not only did the needs of clients have to be considered but a clinical program also had to be designed that ensured best practice in clinical delivery using remote technology.

Our previous experience in establishing a virtual legal clinic (VLC) in 2017 and developing technology-enabled international clinical collaborations facilitated a

⁹ See Bryan Horrigan, *Designing and Implementing an Enhanced Clinical Program in the Age of Disruption: Part Two: Clinical Activities*, 27 *International Journal of Clinical Legal Education* 204 (2020)

smooth transition. We knew how to provide legal services to clients who could not attend community services in person because they live in regional or remote areas or because of disadvantage and marginalisation.¹⁰ The VLC was established using technological platforms, such as Zoom and Teams, as well as telephone services, to provide clients with legal assistance. Additionally, the VLC provided opportunities for law students undertaking clinical placements to learn the skills needed to make the law available to people who would otherwise have no affordable sources of legal help.¹¹ The use of these technologies facilitated client access to legal assistance and user-focused services to address the needs of clients who would otherwise not be able to access justice.¹² Our team members tailored their communication to the situation and context of each client as part of a client-centred approach.¹³ In particular, they communicated in ways that enhanced their relationships with clients, using clarity to build trust where face-to-face interactions were not possible.¹⁴ The VLC, which offered a range of virtual forms of service delivery, enabled the clinical program to move to

¹⁰ Jacqueline Weinberg (2020, September). 'The Virtual Legal Clinic at Monash Law – providing online access to justice since 2017'. <https://acjiblog.wordpress.com/2020/09/23/the-virtual-legal-clinic-at-monash-law-providing-online-access-to-justice-since-2017/>

¹¹ See Jacqueline Weinberg and Jeffrey Giddings, 'Innovative opportunities in technology and the law: The virtual legal clinic' in Ann Thanaraj and Kris Gledhill (Eds), *Teaching Legal Education in the Digital Age*. (Routledge 2022). See also Jacqueline Weinberg, 'Preparing students for 21st-century practice: Enhancing social justice teaching in clinical legal education' (2021) 1 *International Journal of Clinical Legal Education* 1

Wizner, S. (2002). The law school clinic: Legal education in the interests of justice. *Fordham Law Review*, 70(5), 1929–1937. Evans et al (2017). *Australian clinical legal education: Designing and operating a best practice clinical program in an Australian law school*. ANU Press.

¹² Anna Cody & Schatz, B. (2011). Community law clinics: Teaching students, working with disadvantaged communities. In F. S. Bloch (Ed.), *The global clinical movement: Educating lawyers for social justice* (pp. 167–182). Oxford University Press.

¹³ Tania Sourdin (2015). Justice and Technological Innovation. *Journal of Judicial Administration*, 25(2), 96–105.

¹⁴ Richard Susskind & David Susskind, (2015). *The future of the professions: How technology will transform the work of human experts*. Oxford University Press 114.

remote forms of client service and student learning that did not involve face-to-face engagement.

Research

The re-design of the traditional method of onsite delivery of CLE presented opportunities to conduct research on clinical best practice and to consider how the lessons learned from remote unit delivery could be effectively used when returning onsite. This research sought to address how the cornerstones of best practice in CLE, especially supervision, might ensure the effective remote delivery of our clinical program. It also considered how remote delivery might present unique opportunities for increasing the scope of experiential legal education to bring excellence to client service while educating students on accessible justice.

Survey of the Student Experience

To better understand the students' perspectives on how they were experiencing the changes in the delivery of the clinics, we launched an online survey during the pandemic experience. We invited current undergraduate and postgraduate students enrolled in the clinical program to complete the survey. Due to COVID-19 restrictions, these students were working online in their homes as the basis for their clinical experience.

The online survey was conducted using the Qualtrics Insight Platform (a Monash University licensed software program).¹⁵ The survey was open from September 2020 to October 2021, and 91 responses were received. The survey comprised 15 questions and took 20–30 minutes to complete. Students' participation in the study was entirely voluntary, confidential and anonymous and based on sufficient information and an adequate understanding of the proposed objectives of the research. Students could choose not to answer any of the survey questions or withdraw from completing the survey at any time. There were no consequences if the students chose to withdraw from the survey.¹⁶

The primary focus of the survey was to gain information about and an understanding of the effectiveness of remote unit delivery in terms of the student experience. It was intended that the findings would inform future pedagogical strategy development for clinical programs. The data collected on students' attitudes to their remote clinic experience were analysed. Some focal questions included:

- Did students find the overall delivery of the remote clinic beneficial to their learning?
- Did technology enable closer connection with their peers and supervisors?
- Did students develop skills for communication via technology?
- Were students able to interact easily with their supervisor and fellow students?
- Did students feel that the remote clinic equipped them for future legal practice?

¹⁵ See: <https://www.qualtrics.com/au/>

¹⁶ Monash University Human Research Ethics approval for the project involving data collection via surveys was granted in July 2020 (project number 25028).

The survey revealed that the student participants regarded the overall delivery of the remote clinic unit as positive (97%); no students regarded it as negative. The findings were grouped into key themes, including (i) connection with supervisor, (ii) peer communication and (iii) how the use of technology affects supervision and the student experience.

Connection with Supervisor

Due to pandemic restrictions, clients, students and supervisors had to stay at home and could only engage through online platforms. Students interviewed clients on the telephone from their own homes, which meant that supervisors needed to do more to support student autonomy.

To ensure that students interviewing clients felt supported and not isolated, supervisors and other students listened in on the interview, either on conference call, MS Teams or Zoom. In response to the survey question asking whether they were able to interact easily with their supervisor, 79 of the 91 students responded positively, of whom 53 indicated that they 'strongly agreed' (58.24%) and 26 indicated that they 'agreed' (28.57%) with the statement. Specifically, some of the students noted that 'the use of Zoom and MS Teams and Google calendar invites enabled us to schedule meetings with ease', the 'video calls with the student team and the supervisor were of great help' and their 'supervisor regularly checked on [us] and gave [us] feedback and helped attune the outcome as per the expectations'. The student interviewers appreciated this support. One student noted:

While we were interviewing clients, our supervisor was paged in on the telephone call or listening on Zoom or MS Teams [and] this gave us guidance and support to be confident whilst giving us the tools to improve our communication skills.

Students also reported that their supervisors were 'approachable and contactable'. Another student stated that the supervisor was 'available with a Zoom link being open at all times, so it was easy to access [my] supervisor who was always there'. One student stated that 'having the supervisor available on Teams was a positive way of feeling connected to [her], even as [I] couldn't see her all day'. Another student stated that they felt supported, commenting that 'my supervisor was able to hear me and be present for the entirety of the client interview and provide feedback'.

Another student stated that they felt supported because 'the supervisor was listening into the interview on Teams and so was be [sic] present for the entirety of the client interview and afterwards, provide constructive feedback on how to talk to clients on the phone'. One student noted that:

this experience was different to face-to-face interaction and [they] were glad to have the opportunity to learn and improve in a very collaborative learning environment, where [they] were always invited to share their thoughts and ideas and reflect at the end of each day.

Overall, students reported that their supervisors were 'approachable', 'willing to answer questions and support [us] when needed', 'helpful and considerate' and 'available for interaction and able to answer questions'. Students valued supervisors

being 'easily contactable' and 'encouraging students to take initiative' and appreciated that their supervisors were 'very understanding of personal circumstances whilst also always pushing [me] and my groupmates to achieve our best' and 'promoting a very collaborative learning environment, where we were always invited to share our thoughts and ideas and reflect at the end of each seminar or client interview'.

Client Communication

Students reported that engaging with clients through technology necessitated a more 'centred and focused approach to clients and [required them] to work on recognising their own biases, assumptions and privileges'. As one student stated, 'The telephone interviews were very beneficial in the way I learned to engage with clients, [I] became much more confident with each call and learned to deal with clients at both professional and personal levels'. Another student observed that:

although the interviews were hard to conduct as social cues were hard to discern, as I did more interviews, and after discussing my issues with my supervisor, I was able to stick to the questions I wanted an answer to.

As the client interviews were conducted on the telephone, telephone interpreters were often needed to enable clients with little or no English to communicate with the students. A student described this as a 'learning experience', stating, 'I needed to learn communication skills to enable this service to take place'. Another student reported that:

the use of interpreters over the phone, and communicating with elderly clients remotely when they preferred face to face, took time to really develop; however, I feel that I learned better communication skills through the use of these different forums.

Other students stated, 'I had to learn to communicate in different ways by only being able to talk to clients over the phone'; 'the telephone interviews were very beneficial in that I became much more confident throughout the course of each call and learned to deal with clients at both a professional and personal level'; and 'in conducting all client interviews by phone, I was able to factor in technology in learning how to communicate with clients in the first place, which was incredibly helpful, given the changing legal landscape'. Other students noted that 'communicating online is different to communicating face to face due to the lack of body language and facial expression'. Another student stated, 'There was no choice but to learn to adapt to the use of technology when communicating with clients. You learn to adjust the tone and speed accordingly'.

Peer Communication

In response to the survey question on whether they were able to interact easily with their fellow students, 40 of the 91 survey respondents 'strongly agreed' (43.96%) and 36 'agreed' (39.56%) that they could interact easily with their student peers. A student reported that while some students were 'apprehensive about going into this placement [that was] being run fully remote[ly] ...there was a consistent effort in

getting to know one another, and [we] all tried our best to develop a professional and amicable relationship, which led to a collaborative and fun work environment'. Another student noted this was 'likely due to not just one individual's efforts, but the efforts made by all of us in the group'. Students recognised that the technology platforms facilitated the interaction. As one student reported, 'Teams made this happen'. Another student observed that 'without Teams I think it would not have been so good, especially for students who were shy to ask questions'.

Students emphasised the role that their supervisors played in providing opportunities for interaction between the students. As one student stated, 'My supervisor created a few ways which promoted interactions between everyone, for instance, the Monday morning meetings, mock interviews, private chat room and encouraging us to ask each other for help'. Another student reported that they felt 'supported by their peers' and focused on the support provided during the interviews, adding, 'I felt especially supported when we ran interviews together over Teams with one student conducting the interview and another buddying up and taking notes'. Another student appreciated their supervisor, who 'went above and beyond with connecting with our team, getting to know each of us individually, and promoting teamwork and team bonding'.

Students reported developing a collaborative mindset, significantly distinctive to other aspects of their law studies. As one student stated, 'The teamwork was different to how we have worked before in our studies; we asked each other for help when preparing for the interviews and the supervisor fostering this collegiality'.

Another student reported that they 'were all committed to helping each other, with debriefs at the end of the day, sharing experiences of our clients and staying connected on platforms'.

Using Technology to Enable Closer Connection

In response to the survey question on whether engaging in the clinic online enabled them to establish closer connections with other students and their supervisors, 32 of the 91 survey respondents 'strongly agreed' (35.16%) and 47 'agreed' with this statement (51.65%). One student reported that 'while initially, [I] felt hesitant and apprehensive about doing this placement online, meetings with [my] group and supervisor three times a week enabled [me] to communicate efficiently and develop an amicable and cooperative relationship with the other students'. Another student reported that 'even though I was working remotely, I was able to reach out to other students via emails or Teams whenever needed, and I received quick responses'. Another student found that 'the use of Zoom was great as I was able to schedule a meeting with [my] supervisor when [I] had an urgent matter to discuss'. One student reported that they 'developed that skill of using Sharepoint¹⁷ which made [them] more confident in using online cloud database systems for file work'. Another student noted her supervisor's support in guiding her with suggestions for communicating with her client, 'My supervisor was so generous with her time, she patiently took me through

¹⁷ See <https://www.microsoft.com/en-us/microsoft-365/sharepoint/collaboration>

the questions and I was able to develop my abilities in understanding how to best communicate with certain clients in different capacities online’.

Another student commented that ‘having all the sessions online, with the need to interact solely through technology, definitely assisted me in developing my skills for online communication’. A student added, ‘In conducting all client interviews by phone, I was able to factor in technology in learning how to communicate with clients in the first place, which was incredibly helpful, given the changing legal landscape’.

Overall, the students reported that the need to become familiar with technology to communicate with their fellow students and supervisors enhanced their learning. One student stated, ‘I became more confident with using these platforms and realised the benefits of doing so when face-to-face interaction was not possible’. Another student commented:

the clinic placement involved learning to communicate with clients, other parties, organisations, supervisors and colleagues via phone, email or letters, without the option of face-to-face interaction; I was placed in a position where my communication skills had to improve to communicate effectively via the means available. The whole placement was centred around communicating via technology. All phone calls were done through an online database and instant messaging other colleagues.

In response to the survey question on whether engaging in a remote unit had equipped them for future legal practice, 35 of the 91 survey respondents ‘strongly agreed’ (38.46%) and 42 ‘agreed’ (46.15%) that engaging in a remote unit had

equipped them for future legal practice. One student stated that 'learning how to use technology effectively is important for future legal practice as our society is moving rapidly towards a more digital era'. Another student reported:

I learned many other skills which you otherwise wouldn't even think about if physically in an office. For example, conversing with clients over the phone, managing online files and that working on an online forum demands a high level of organisation.

Scaffolded Supervision

One of the key threads that emerged from the survey findings on students' perspectives centred on the interactions and relationships established between the students and supervisors, which were facilitated by technology platforms when face-to-face interactions were not possible.

When the supervisors and students were compelled to engage online, the supervisors reshaped their understanding of the supervisory relationship, and the need to remodel supervision in best practice became increasingly important. The supervisors had to overcome technological barriers that were not apparent in traditional face-to-face supervision and strive to intentionally engage with students to ensure a constructive relationship was established.

Using Technology

The need for supervisors to embrace technology in their supervision of students is emphasised by Boonin and Herrera, who focus on the intersection of technology and clinical pedagogy, positing that ‘the thoughtful integration of technology within any clinic can reinforce the teaching goals and values that are the hallmark of clinical practice’.¹⁸ They further note that technology ‘can also implicate personal boundaries and student wellbeing’.¹⁹

The responses to our survey indicate that remote engagement assisted the students to explore the effects of technology on their multiple identities.²⁰ With their supervisors’ assistance, the students felt better prepared for an ongoing process of personal and professional redefinition in the digital age.²¹ The students’ use of technology to provide their clients with legal advice enabled them to explore issues of unequal access to technology and how innovation transforms clients’ experiences with legal information and processes for better or worse.²² The students discovered that technology can be disruptive, is ever-changing and is not always reliable.²³ Boonin and

¹⁸ Sarah R. Boonin and Luz E. Herrera, ‘From Pandemic to Pedagogy: Teaching the Technology of Lawyering in Law Clinics’ 2022 (1) 68, *Washington University Journal of Law and Policy* at 26

¹⁹ Ibid. See also Long, L.K. and P.A Meglich, ‘Preparing Students to Collaborate in the Virtual Work World (2013) 3(1), *Higher Education, Skills and Work-based Learning* 6–16.

²⁰ See Jacqueline Weinberg and Ross Hyams, ‘The Law Tech Clinic: Leading the Way in Entrepreneurial Law Clinics’ 2023 (1), *International Journal Of Clinical Legal Education*

²¹ Boonin n 18. See also Francina Cantatore et al, ‘A Comparative Study into Legal Education and Graduate Employability Skills in Law Students through Pro Bono Law Clinics’ (2021) *Law Teacher* 55(3) 315, Long, L.K. and P.A Meglich, ‘Preparing Students to Collaborate in the Virtual Work World (2013) 3(1), *Higher Education, Skills and Work-based Learning*, 6–16.

²² See Francina Cantatore, ‘New Frontiers in Clinical Legal Education: Harnessing Technology to Prepare Students for Practice and Facilitate Access to Justice’ (2019) 5(1) *Australian Journal for Clinical Education* 1, James E. Cabral et al, ‘Using Technology to Enhance Access to Justice’ (2012) (1) 26 *Harvard Journal of Law & Technology* 241–324.

²³ See Sarah R. Boonin and Luz E. Herrera, ‘From Pandemic to Pedagogy: Teaching the Technology of Lawyering in Law Clinics’ 2022 (1) 68, *Washington University Journal of Law and Policy* at 26, Ann Thanaraj, ‘The Proficient

Herrera encourage supervisors to view this as an educational opportunity, where ‘the technology of lawyering can be leveraged by clinicians to teach problem solving, flexibility and adaptation in real-life applications’.²⁴ These authors encourage clinicians to help students prepare for uncertainty and equip them to provide direction to clients who experience technical failures or face barriers to accessing technology’.²⁵ Making appropriate use of new technologies is also important in diversifying and deepening the student experience.²⁶

Students’ learning to engage with their supervisor or fellow students via technology necessitated the usual ‘modes of human interaction to be radically transformed’.²⁷ By using technology in practice, students had to learn new ways of making connections with clients, supervisors and others.²⁸ Supervisors engaged in reflective discussions with students both in groups and one to one, which helped them to reflect on how and why technology facilitates and hampers client relationships,

Lawyer: Identifying students’ perspectives on learning gained from working in a virtual law clinic’ (2017) 14(3) *US-China Law Review*, 137–167.

²⁴ Boonin and Herrera n 18.

²⁵ Ibid. See also Jacqueline Weinberg and Jeff Giddings ‘Innovative opportunities in technology and the law: The Virtual Legal Clinic’ in A. Thanaraj & K. Gledhill (Eds), *Teaching Legal Education in the Digital Age* (Routledge 2022), Ann Thanaraj, Paul Durston, and Sam Elkington, ‘A Blueprint for Designing Creativity into Learning Design’ in Ann Thanaraj and Kris Gledhill (Eds), *Teaching Legal Education in the Digital Age* (Routledge 2022).

²⁶ Jacqueline Weinberg, ‘Preparing Students for 21st-Century Practice: Enhancing Social Justice Teaching in Clinical Legal Education’ (2021) *International Journal of Clinical Legal Education*; Stephen Wizner, ‘Is Social Justice Still Relevant’ (2012) 32(2) *Boston College Journal of Law & Social Justice* 345, Stephen Wizner and Jane Aiken, ‘Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice’ (2004–2005) 73 *Fordham Law Review* 997.

²⁷ Boonin et al n 18, 28.

²⁸ See Jacqueline Weinberg and Ross Hyams, *The Law Tech Clinic: Leading the Way in Entrepreneurial Law Clinics* 2023 (1), *International Journal of Clinical Legal Education*, Jeff Giddings, ‘It’s More Than a Site: Supporting Social Justice Through Student Supervision Practices’ in Chris Ashford and Paul Mckeown (eds), *Social Justice and Legal Education* (Cambridge Scholars, 2018).

thereby offering new insights into client-centeredness and cultural competency.²⁹ By helping the students centre their perspectives and experiences of clients within technology, supervisors assisted students to recognise their own biases, assumptions and privileges.³⁰

Disorientation

It is well recognised that clinical settings can enable students to learn through disorienting events.³¹ The pandemic generated new forms of disorientation; the well-established notion of the necessity of supporting students during disorienting moments was prevalent. Supervisors assumed a critical role in guiding students to understand ‘the ramifications of the “disorienting moments” they encountered when a social justice-oriented clinical experience challenged their understandings, particularly the impact of laws on marginalised people’.³²

²⁹ See Jacqueline Weinberg, ‘Preparing students for 21st-century practice: Enhancing Social Justice Teaching in Clinical Legal Education’ (2021) *International Journal of Clinical Legal Education*, Stephen Wizner and Jane Aiken, ‘Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice’ (2004) 73 *Fordham Law Review* 997.

³⁰ See Michele Leering, ‘Encouraging Reflective Practice: Conceptualising Reflective Practice for Legal Professionals’ (2014) 23 *Journal of Law and Social Policy* 83, Rachel Spencer, ‘Holding up the Mirror: A Theoretical and Practical Analysis of the Role of Reflection in Clinical Legal Education’ (2012) 17 *International Journal of Clinical Legal Education* 181.

³¹ See Jeremy Cooper and Louise Trubek (eds), *Educating for Justice: Social Values and Legal Education* (Ashgate 1997); Stephen Wizner and Jane Aiken, ‘Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice’ (2004) 73 *Fordham Law Review* 997; Allyson Davys and Liz Beddoe, ‘The Context of Professional Supervision’ in Allyson Davys and Liz Beddoe (eds), *Best Practice in Professional Supervision: A Guide for the Helping Professions* (Jessica Kingsley, 2010) 18.

³² See Amanda Levendowski, Teaching Doctrine for Justice Readiness, 29 *Clinical L. Rev.* 111 (2022), Jane Aiken, ‘The Clinical Mission of Justice Readiness’ (2012) 32 *Boston College Journal of Law & Social Justice* 233. See also Jane Aiken, ‘Provocateurs for Justice’ (2001) 7 *Clinical Law Review* 294, Fran Quigley, ‘Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law Clinics’ (1995) 37 *Clinical Law Review* 2; Susan Brooks, ‘Using a Communication Perspective to Teach Relational Lawyering’ (2015) 15 *Nevada Law Journal* 477.

Taylor and Elias's definition of disorienting dilemmas can be extended to the disorientation occurring for students at this time, as 'experiences [that] illuminate and challenge heretofore invisible and unquestioned assumptions that determine how we know ourselves and the world around us', never clearer than during the pandemic.³³ The students, who may not have otherwise experienced these types of disorienting dilemmas directly, encountered vulnerable clients whose lives were affected by severe hardship and barriers with the added overlay of the impact of the pandemic.³⁴ The students felt disorientated and experienced self-doubt, as they found their understanding of these clients' circumstances inadequate.³⁵ It was difficult for these students to resolve such dilemmas simply by acquiring more information or enhancing their problem-solving skills.³⁶ Rather, they required a scaffolded learning process, supported by their supervisors, to transition from an 'unexamined way of thinking to a more critically reflective way of thinking'.³⁷

Students reported engaging in critical reflection with their supervisors and fellow students, which enabled them to acquire an understanding of the harsh effects of the circumstances of vulnerable clients.³⁸ In turn, students used this critical

³³ Edward W Taylor, 'The Theory and Practice of Transformative Learning' (1998) *A Critical Review* 5. See also Stevenson-Graf, Lindsey, 'Clinical Programs, Social Justice and Transformation through Student Learning' (2019) 44(3) *Alternative Law Journal*, Jack Mezirow et al, *Fostering Critical Reflection in Adulthood* (Jossey-Bass, 1990), Jack Mezirow, *Transformative Dimensions of Adult Learning* (Jossey-Bass, 1st ed, 1991).

³⁴ See Stevenson-Graf, Lindsey, 'Clinical Programs, Social Justice and Transformation through Student Learning' (2019) 44(3) *Alternative Law Journal*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ See Michael Christie et al, 'Jack Mezirow's Conceptualisation of Adult Transformative Learning: A Review' (2014) 20(1) *Journal of Adult and Continuing Education* 129.

³⁸ See Stevenson-Graf, Lindsey, 'Clinical Programs, Social Justice and Transformation through Student Learning' (2019) 44(3) *Alternative Law Journal*

³⁸ *Ibid.*

reflection to understand the disorienting dilemmas in light of their preconceived notions.³⁹ Supervisors encouraged the students to engage in such critical reflection by exploring and reflecting on the content of a problem or the premise upon which it was predicated.⁴⁰ Additionally, supervisors assisted students to realise that they were a source of knowledge and authority.⁴¹ By engaging in this transformative process, students were able to better adopt their own values, meanings and purposes rather than to act uncritically on those of others.⁴² The students' perspectives were transformed when they became aware of how and why their presuppositions had come to constrain the way they perceive, understand and feel about their world.⁴³

Giddings suggests that clinical supervision needs to be 'sufficient without being excessive, safeguarding the client while enabling the student to take responsibility for their actions and encouraging the student to reflect on and learn from their experience'.⁴⁴ During the pandemic, without clear guidance and support, students would have struggled to appreciate the complexities and practicalities of the environment in which they were working.⁴⁵ This was accentuated by the students having to deal with particularly challenging matters in their own homes and not in

³⁹ Ibid.

⁴⁰ Ibid 4-5.

⁴¹ See Jane Aiken, 'The Clinical Mission of Justice Readiness' (2012) 32 *Boston College Journal of Law & Social Justice* 233.

⁴² Ibid. See also Jack Mezirow, 'Transformative Learning: Theory to Practice' in Patricia Cranton (ed), *Transformative Learning in Action: Insights from Practice* (Jossey-Bass, 1997) 5.

⁴³ Ibid. See also Jack Mezirow, *Fostering Critical Reflection in Adulthood* (Jossey-Bass 1990).

⁴⁴ Jeff Giddings, 'It's More than a Site: Supporting Social Justice Through Student Supervision Practices' in Chris Ashford and Paul McKeown (eds), *Social Justice and Legal Education* (Cambridge Scholars, 2018).

⁴⁵ See Ross Hyams, Susan Campbell and Adrian Evans, *Practical Legal Skills* (Oxford University Press, 4th ed, 2014).

the usual supportive environment of the legal service.⁴⁶ The students became more aware that the clients might suffer if they failed to gather key information and address all the legal issues.⁴⁷ Clear and supportive supervision, with a substantial emphasis on feedback and demonstrating reflective practices, encouraged students to realise the value of becoming reflective practitioners who focus on their own self-fulfilment and wellbeing.⁴⁸

Self-Fulfilment and Wellbeing

An in-depth discussion on Deci and Ryan's Self-Determination Theory (SDT) is beyond the scope of this article; however, it is important to note that Deci and Ryan emphasise a focus on students' wellbeing and psychological health in enabling students' self-determination. Deci and Ryan describe three basic psychological needs (i.e., autonomy, competence and relatedness) as 'innate, essential and universal' to this.⁴⁹ SDT treats these as necessary for 'ongoing psychological growth, integrity and well-being'.⁵⁰

⁴⁶ Jeff Giddings and Michael McNamara, 'Preparing Future Generations of Lawyers for Legal Practice: What's Supervision Got To Do With It?' (2014) 37(3) *University of New South Wales Law Journal* 1242.

⁴⁷ See Margaret Barry, 'Reflections on Identifying and Mapping Learning Competencies and Outcomes: What Do We Want Law Students to Learn?' (2017) 62(1) *New York School Law Review* 131.

⁴⁸ Jeff Giddings and Michael McNamara, 'Preparing Future Generations of Lawyers for Legal Practice: What's Supervision Got To Do With It?' (2014) 37(3) *University of New South Wales Law Journal* 1242.

⁴⁹ *Ibid* 74.

⁵⁰ Edward L Deci and Richard M Ryan, 'The "What" and "Why" of Goal Pursuits: Human Needs and Self-Determination of Behavior' (2000) 11(4) *Psychological Inquiry* 227, 236 ('Human Needs and Self-Determination of Behavior') 229.

Autonomy, where 'behaviour ... is owned, enacted in a choiceful way and reflectively self-endorsed', has been described as a fundamental concept of SDT.⁵¹ It is considered 'critical' for facilitating intrinsic motivation or internalising extrinsic motivation and sustaining psychological health.⁵² *Competence* involves people feeling capable and effective at what they do within their relevant environment social context.⁵³ People are likely to experience feelings of competence if they have the freedom to develop their skills and are less likely to experience feelings of competence if they have less control within a particular situation.⁵⁴ *Relatedness* describes the feeling of having close and meaningful connections with other people and of relating and belonging.⁵⁵ This psychological need is associated with a 'willingness to trust and rely on others'.⁵⁶

Since Deci and Ryan's earlier research on SDT, it has been expanded and applied in a number of contexts. Notably, it has been used to understand and address student wellbeing and psychological health.⁵⁷ In the context of CLE, Evans et al. emphasise that the confidence that builds from being effectively supported and

⁵¹ Ibid 170.

⁵² Ibid 185.

⁵³ Kennon M Sheldon and Lawrence S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' 2007 33(6) *Personality and Social Psychology Bulletin* 883, 885 ('Understanding the Negative Effects of Legal Education on Law Students').

⁵⁴ Christopher P Niemiec, Richard M Ryan and Edward L Deci, 'Self-Determination Theory and the Relation of Autonomy to Self-Regulatory Processes and Personality Development' in Rick H Hoyle (ed), *Handbook of Personality and Self-Regulation* (Blackwell Publishing, 2010) 169, 176.

⁵⁵ Sheldon and Krieger, 'Understanding the Negative Effects of Legal Education on Law Students' (n 53) 885.

⁵⁶ Niemiec, Ryan and Deci (n 54) 176.

⁵⁷ Ibid 12. See also Kennon M Sheldon and Lawrence S Krieger, 'Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being' (2004) 22 *Behavioural Sciences and the Law* 261 ('Evaluating Changes in Motivation, Values and Well-Being'); Molly Townes O'Brien, Stephen Tang and Kath Hall (2011) 21(2) *Changing Our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum* 149.

appropriately challenged is also critical for clinic students' wellbeing and psychological health.⁵⁸ From a SDT perspective, Evans et al. hypothesise that 'clinic-based experiences' in legal education have the propensity to enhance the psychological wellbeing of law students because they are *autonomy supportive* environments that focus on teaching and mentoring (rather than controlling) students.⁵⁹ Specifically, Evans et al. argue that the 'developmental focus and emphasis on supervision and collaboration of clinical legal education has real potential to positively impact on student wellbeing'.⁶⁰

Supervisors can enhance students' self-determination by encouraging students to reflect on the issues apparent in their clients' matters that may be challenging for students to empathise with and understand.⁶¹ These supervisor/student interactions may include discussions on social justice issues that could affect clients' options for dispute resolution, such as societal concerns, equity, self-determination and social responsibility.⁶² Other considerations might include the clients' socio-economic circumstances and whether the clients are literate, speak English as a first language or require special communication methods, all of which will develop students'

⁵⁸ Adrian Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (Australian National University Press, 2017).

⁵⁹ *Ibid* 29.

⁶⁰ *Ibid* 29.

⁶¹ See Efron, Yael, What Is Learned in Clinical Learning? 29 (2023) *Clinical Law Review*, 259, Julia Lawton, 'The Imposition of Social Justice Morality in Legal Education' (2016) 4 *Indiana Journal of Law and Social Equality* 57.

⁶² Gary Bellow and Jeanne Kettleon, 'From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice in Lawyer's Ethics and the Pursuit of Social Justice' in Susan D Carle (ed), *Lawyers Ethics and The Pursuit of Social Justice* (New York University Press, 2005). See also Michelle S Jacobs, 'Pro Bono Work and Access to Justice for the Poor: Real Change or Imagined Change?' 48 *Florida Law Review* 509.

awareness of their clients' lack of access to justice and social inequality.⁶³ Overall, supervisors may engage with students on a level beyond skills training in discussions on the inequality of resources and encourage a sense of responsibility for using the law to challenge injustice and to provide options for their clients to access justice.⁶⁴ In so doing, supervisors provide students with a sound foundation for their learning and insights into values, including fairness, self-determination and neutrality, in preparation for their future as 21st-Century legal practitioners.⁶⁵

Where to from Here? A Framework for Supervision

The Best Practices Report, compiled by leading clinical legal educators in Australia to provide best-practice protocols for teaching in clinical settings, confirms that the strength of the supervision provided is a key indicator of the success of a clinic:

The effectiveness of a clinic will depend on the strength and sensitivity of the supervision provided. Clinical supervisors require a combination of legal practice backgrounds, a concern for improving access to justice and a deep interest in student learning.⁶⁶

⁶³ Daniel Solorzano and Tara Yosso, 'Maintaining Social Justice Hopes within Academic Realities: A Freirean Approach to Critical Race/LatCrit Pedagogy' (2000) 78(4) *Denver University Law Review* 595.

⁶⁴ Jacqueline Weinberg, 'Preparing students for 21st century practice- Enhancing ADR teaching and social justice learning in clinical legal education' (2021) *International Journal of Clinical Legal Education*, 1

⁶⁵ *Ibid.*

⁶⁶ Adrian Evans et al, *Best Practices: Australian Clinical Legal Education* (Report for Office of Teaching and Learning, 2013). It was later published as a reference book for clinical teachers, law school leaders and legal professionals with an interest in CLE: Adrian Evans et al, *Australian Clinical Legal Education, Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 2017).

The Report highlighted three key areas of proficiency that clinic supervisors need to maintain to not only ensure the best teaching outcomes for students and the highest standards for clients but also to safeguard the supervisors' own ongoing wellbeing in the demanding CLE context. The Report states that clinic supervisors should have:

extensive current general technical legal skills and knowledge of legal practice, expertise across the access to justice and social justice landscapes and a working knowledge of the large and complex body of higher education teaching and learning practice and research, locally, nationally and internationally.⁶⁷

Evans et al. stress that for supervisors to provide students with clear guidance, they need to be aware of the best methods for teaching particular skills and strategies.⁶⁸ The Best Practices Report provides a useful framework for this, including a comprehensive set of best-practice standards that can be used to guide the development of experiential learning opportunities.⁶⁹ Clinical pedagogy encourages clinical educators to focus on promoting those learning opportunities that are particularly well suited to clinical contexts, including ethics and values, skills development, legal problem-solving and reflective practice.⁷⁰ To promote structured learning, the clinical learning framework emphasises the importance of program design, particularly the

⁶⁷ Ibid.

⁶⁸ Ibid 124.

⁶⁹ Ibid 127.

⁷⁰ Ibid.

articulation of clear objectives and assessment criteria, along with the effective provision of feedback.⁷¹

Effective, Explicit, Intentional Supervision

Clinical best practice has long recognised the importance of ‘effective’ supervision to address the particular objectives of the clinical experience.⁷² Our research findings make it clearer that ‘effective’ supervision can be expanded to include ‘explicit’ and ‘intentional’ supervision. The concept of ‘explicit, intentional supervision’ echoes Hyams’ focus on the need to explicitly teach lawyering skills, such as professionalism, in the clinic.⁷³ Hyams suggests that many clinical teachers have an intrinsic belief that students will learn certain skills, including how to act professionally, merely by seeing real clients with legal problems and then having to find solutions to those problems ‘on the run’.⁷⁴ Hyams believes that many students can learn in this manner but warns that the concept of ‘learning by osmosis’ must be tested because it is not necessarily the best way to learn skills.⁷⁵ As Hyams suggests, this ‘hit-or-miss’ aspect of clinical work does not guarantee that skills will be acquired.⁷⁶ Instead, Hyams advocates for

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ross Hyams, ‘On Teaching Students to ‘Act Like a Lawyer’: What Sort of Lawyer?’ (2008) 13 *International Journal Clinical Legal Education* 25. See also Ross Hyams, Susan Campbell and Adrian Evans, *Practical Legal Skills* (Oxford University Press, 4th ed, 2014).

⁷⁴ See also Sylvester et al, ‘Problem-Based Learning and Clinical Legal Education: What Can Clinical Educators Learn from PBL?’ (2004) 4 *International Journal of Clinical Legal Education* 39; Stuckey et al (n 24) ch 5.

⁷⁵ Ross Hyams, ‘The Teaching of Skills: Rebuilding, Not Just Tinkering around the Edges’ (1995) 13(1) *Journal of Professional Legal Education* 21. See also A Evans and R Hyams, ‘Independent Evaluations of Clinical Legal Education Programs: Appropriate Objectives and Processes in an Australian Setting’ (2008) *Griffith Law Review* 52.

⁷⁶ Ross Hyams, ‘The Teaching of Skills: Rebuilding, Not Just Tinkering around the Edges’ (1995) 13(1) *Journal of Professional Legal Education* 21.

clinicians to explicitly provide students with a pedagogical basis for tackling issues more formally.⁷⁷ As Hyams further notes, 'In this way students are exposed to these issues in a pervasive and explicit way, rather than just hoping that students will simply absorb the important lessons of how to behave in a professional, ethical and responsible fashion'.⁷⁸

Similarly, Evans et al. stress that recognising the importance of quality supervision needs to be matched 'by a greater focus on what that means and how it can be fostered'.⁷⁹ These authors further posit that supervisors may require their own supervision and support and that 'such supervision should include training in education theories and skills as well as ongoing professional development in their area of law'.⁸⁰ In this way, not only will supervision be 'effective', but it will be 'explicit and intentional', supported by the design and implementation of objectives within the clinical program of what constitutes effective supervision.⁸¹

⁷⁷ Ibid 25.

⁷⁸ Ibid.

⁷⁹ Ibid 132. See also Fran Quigley, 'Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law Clinics' (1995) 2 *Clinical Law Review* 37.

⁸⁰ Adrian Evans et al, *Australian Clinical Legal Education, Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 2017) 140, especially refer to discussion: 'guidance for supervisors'. See also Robert Schehr, 'The Lord Speaks through Me: Moving beyond Conventional Law School Pedagogy and the Reasons for Doing So' (2009) 14 *International Journal of Clinical Legal Education* 23; Georgina Ledvinka, 'Reflection and Assessment in Clinical Legal Education: Do You See What I See?' (2006) 9 *International Journal of Clinical Legal Education* 36.

⁸¹ See also Jennifer Lyman, 'Getting Personal in Supervision: Looking for that Fine Line' (1995) 2 *Clinical Law Review* 211; Jenifer Gundlach, 'This is a Courtroom, Not a Classroom: So What Is the Role of the Clinical Supervisor?' (2006) 13 *Clinical Law Review* 279; Carolyn Grose, 'Flies on the Wall or in the Ointment—Some Thoughts on the Role of Clinic Supervisors at Initial Client Interviews' (2008) 14 *Clinical Law Review* 415.

Training in Supervision

It follows that if supervisors in clinical settings are going to be responsible for students' social justice learning, they may require more understanding of the processes and appropriate supervision techniques.⁸² Student awareness of social justice concerns is shaped by the subject matter, the clinic or placement site and the supervisor.⁸³ Sensitive supervision is critical to revealing inequities and challenges encountered in a wide range of legal work.⁸⁴ Supervision relies on trust and can create a relationship that is both intense and valuable, especially if it is well understood by each participant and effectively directed to achieving the desired objectives.⁸⁵ Those objectives often include a focus on revealing the social justice dimensions of the legal work being done.⁸⁶

Giddings and McNamara contend that legal supervision can usefully be informed by professions like social work and psychotherapy, where supervision is so important that it has emerged 'as a distinct area of study'.⁸⁷ They further argue that rather than 'being moulded by external factors, supervision needs to be restored to its

⁸² Jeff Giddings, 'It's More than a Site: Supporting Social Justice Through Student Supervision Practices' in Chris Ashford and Paul McKeown (eds), *Social Justice and Legal Education* (Cambridge Scholars, 2018).

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.* 1243.

⁸⁶ *Ibid.*

⁸⁷ Jeff Giddings and Michael McNamara, 'Preparing Future Generations of Lawyers for Legal Practice: What's Supervision Got To Do With It?' (2014) 37(3) *University of New South Wales Law Journal* 1242. See also Kenneth Kreiling, 'Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision' (1981) 40 *Maryland Law Review* 284.

rightful place as an interpersonal endeavour. At the very core of the supervisory process is a relationship between two legal practitioners'.⁸⁸

A starting point for improving supervisors' fostering of student awareness of social justice is to ensure that they appreciate their central role in helping students learn in a clinic or placement environment and in explaining the limitations of law and legal processes.⁸⁹ This may be facilitated by training workshops that place effective supervision at the forefront of experiential learning for supervisors and are a valuable opportunity for building relationships between law schools and the supervisors involved in their clinical and placement programs.⁹⁰ Such workshops challenge assumptions about the quality of supervision and emphasise the importance of effectively preparing students for the supervision relationship.⁹¹

Giddings and McNamara go further to add that due to the complexity of the supervisory process, the development of 'an accreditation scheme for supervisors, as a means for fostering effective supervision practices, is a matter worthy of future debate'.⁹² These authors focus on the supervisory training process in the legal profession; however, similar requirements for ongoing training in this area for clinical supervisors would foster effective practices.⁹³

⁸⁸ Jeff Giddings and Michael McNamara, 'Preparing Future Generations of Lawyers for Legal Practice: What's Supervision Got To Do With It?' (2014) 37(3).

⁸⁹ *Ibid* 63.

⁹⁰ *Ibid* 64.

⁹¹ *Ibid*.

⁹² *Ibid*.

⁹³ *Ibid*.

In her work on psychology supervision, Falender echoes these sentiments and suggests that supervision should be acknowledged as ‘a distinct professional competence that requires specific education and training’.⁹⁴ However, Falender warns that too often, supervision is ‘inadequately addressed or an entirely missing ingredient’.⁹⁵ Falender further emphasises the need for clinical supervision training following the shift to the competence movement that has occurred in psychology education, training and regulation generally and the need to embrace a systematic and intentional competence model.⁹⁶ In the United States of America, Falender designed a competencies framework as part of an intensive effort to upgrade supervision to a core professional activity. This framework consisted of knowledge (e.g., understanding supervision models and research), skills (e.g., the ability to give feedback effectively) and values (e.g., a respectful and empowering relationship). These were supported by attention to the social context of supervision (e.g., the ethical and legal issues), training in developing these competencies and the related competence assessment options (e.g., supervisee feedback).⁹⁷

Similarly, Brooks et al. call for a competency-based approach to the supervision of law students in clinics and externships.⁹⁸ Echoing Falender, these researchers draw significant guidance from the field of psychology, where there is an established track

⁹⁴ Carol Falender, Clinical Supervision-The Missing Ingredient, *American Psychologist*, 2018, Vol. 73, No. 9, 1240–1250. See also Carol Falender and Shafranske, Edward P. Competency-based Clinical Supervision: Status, Opportunities, Tensions, and the Future, *Australian Psychologist*, 2017, Vol.52 (2), p.86-93.

⁹⁵ Carol Falender n 94 1247.

⁹⁶ Ibid.

⁹⁷ Ibid 1248.

⁹⁸ Susan L. Brooks, Marjorie A. Silver, Sarah Fishel & Kellie Wiltsie, ‘Moving Towards A Competency-Base Model For Fostering Law Students’ Relational Skills’ *Clinical law Review* Vol 28 Number 2 (2022).

record of using a competency-based approach to supervise trainees.⁹⁹ Brooks et al. suggest that a focus on the importance of relational competencies in legal education will more effectively promote wellbeing among students, their current and future clients and the culture of the legal profession.¹⁰⁰ Ultimately, Brooks et al. call for a 'more holistic approach to legal professionals' licensing and ongoing supervision'.¹⁰¹

Clinical legal scholarship consistently demonstrates an increased interest in supervising law students around issues beyond the legal and factual analysis of legal matters or the performance of technical skills. However, Brooks et al. note the need for a relationally centred competency-based approach that adopts a more systematic approach to the supervision of clinical law students in relation to the knowledge, skills and values connected to relational competencies.¹⁰² The goal of this approach would be to encourage a more meaningful and intentional progression of personal growth on the part of the student, and rather than the supervisor playing an active role, both the student and supervisor would move towards a phase of co-equal collaboration to finally arrive at a stage at which the student could work without close supervision. According to Brooks et al., this approach would have widespread positive effects, including:

establishing a shared understanding of the identification and importance of relational competencies, developing greater consistency and quality control

⁹⁹ Ibid.

¹⁰⁰ Ibid 369.

¹⁰¹ Ibid 370.

¹⁰² Ibid.

around supervision in clinics and externships, and expanding the usage and usefulness of learning outcomes to include a greater focus on positive professional identity formation.¹⁰³

Through the use of competency benchmarks and specific illustrations from the field of psychology, clinical legal educators will have a solid guide for the supervision of law students in terms of the relational competencies that also builds on the well-established foundations and movements within legal scholarship identified earlier, including TJ, reflective practice, cross-cultural lawyering, trauma-informed practice, wellbeing, self-care and mindfulness.¹⁰⁴

Brooks et al. call for the legal profession to construct a comprehensive list of relational competencies to educate students through clinical legal supervision.¹⁰⁵ This competency-based model of professional training would focus on the supervised practice experiences already provided by every law school via externships and clinics with a heavy emphasis on teaching and assessing the relational competencies needed for effective lawyering. Brooks et al.'s work on relational lawyering, which uses the three fields of transformation (i.e., personal, interpersonal and systemic transformation) as organising categories, provides a useful starting point.¹⁰⁶ Law schools would need additional resources to support these colleagues to adopt a more systematic and comprehensive approach to 'relational supervision'. However, Brooks

¹⁰³ Ibid 372.

¹⁰⁴ Ibid 399.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid. See also Susan Brooks, 'Mindful Engagement and Relational Lawyering', *South Western University Law Review*, (2019) 267.

et al. posit that these efforts would ensure 'a healthier and happier legal profession, and one that provides better care for the wellbeing of its clients'.¹⁰⁷

In addition to supportive workshops and training, other clinicians have called for recognition that supervisors require support for a team environment. As Sage-Jacobson et al. suggest, 'navigating the professional exchanges that occur between students, teacher/supervisors, the supporting institution, and other legal professionals in a clinic can be highly complex and demanding'.¹⁰⁸ This is particularly so for supervisors, where all interactions with students and, just as crucially, between supervisors themselves may be viewed by students as role modelling appropriate behaviour between legal professionals.¹⁰⁹ Students benefit as they observe the positive professional relationships and teamwork integral to effective working environments.¹¹⁰ Supervisors should treat the development of a shared framework as a collaborative endeavour that is tailored to the context of their clinical program.

Sage-Jacobson et al. argue that the ontological value of this learning can pose challenges to supervisors, as they recognise their responsibilities as teachers of and models for student interns.¹¹¹ Regularly reflecting on and evaluating the nature of clinical supervision and the operation of supervisory teams is particularly important given the multi-layered nature of clinical education.¹¹²

¹⁰⁷ Ibid 409.

¹⁰⁸ Susannah Sage-Jacobson & Tania Leiman, Identifying Teaching and Learning Opportunities within Professional Relationships between Clinic Supervisors, 24 Legal Educ. Rev. 159 (2014).

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

Conclusion

In a law clinic within a university, students enrolled in clinical programs deepen their understanding of what lawyers do in practise and build frameworks for professional work.¹¹³ Clinical students are provided with the opportunity to gain practical legal experience working on real legal matters and putting their academic preparation into practice. If this is the aim of CLE, then it is important to ensure that clinical educators implement effective supervision to enable students to make the most of the learning opportunities presented by clinic-based experiences.¹¹⁴

Our research findings support the notion that students rely not only on effective supervision but also on an intentional and explicit supervisory approach to enable them to make the most of the learning opportunities presented by clinic-based experiences.¹¹⁵ Giddings posits that effective supervision is ‘integral to harnessing the rich learning potential of clinic experiences and as such plays a valuable role in providing students with a deeper understanding of social justice concepts and the complex nature of public policy debates’.¹¹⁶ Clinics are particularly well suited to

¹¹³ Jeff Giddings and Jacqueline Weinberg ‘Experiential legal education: Stepping Back to see the Future. In C. Denvir (Ed.), *Modernising legal education* (pp. 38–56) (Cambridge University Press 2020).

¹¹⁴ See Adrian Evans et al, *Australian Clinical Legal Education, Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 2017) 123. See also Jeff Giddings, ‘The Assumption of Responsibility: Supervision Practices in Experimental Legal Education’ in Mutaz Qafisheh and Stephen Rosenbaum (eds), *Global Legal Education Approaches: Special Reference to the Middle East* (Cambridge Scholars, 2012).

¹¹⁵ See Adrian Evans et al, *Australian Clinical Legal Education, Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 2017) 123.

¹¹⁶ Jeff Giddings, ‘It’s More Than a Site: Supporting Social Justice Through Student Supervision Practices’ in Chris Ashford and Paul Mckeown (eds), *Social Justice and Legal Education* (Cambridge Scholars, 2018).

generating discussions relating to concepts such as fairness, justice, due process and ethical awareness.¹¹⁷ Supervisors should make the most of this 'rich clinic environment to reveal the content and complexity of a range of concepts, linking them to the student's other studies'.¹¹⁸ Supervisors have a critical role in guiding students to understand 'the ramifications of the "disorienting moments" they encounter where a social justice-oriented clinical experience challenges student understandings, particularly the impact of laws on marginalised people'.¹¹⁹ As Davys and Beddoe posit, there is a need to focus on supervision as a 'reflective learning process rather than one of direction and audit'.¹²⁰ For them, supervision should involve a process of 'teaching a way of thinking rather than teaching a set of techniques'.¹²¹ Supervisors can use frameworks that recognise and address the social justice dimensions of both their supervisory role and the legal work in which they engage.¹²²

Well-defined principles for design informed by the student experience will support the supervision relationship. To ensure best practice in supervision, supervisors need to ensure certainty regarding their priorities focused on the missions of CLE; that is, social justice and education. This requires an intentional approach to the supervisor/student relationship working within a framework for responding to

¹¹⁷ Ibid.

¹¹⁸ Ibid 43.

¹¹⁹ Ibid. See also Fran Quigley, 'Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law Clinics' (1995) 37 *Clinical Law Review* 2; Susan Brooks, 'Using a Communication Perspective to Teach Relational Lawyering' (2015) 15 *Nevada Law Journal* 477.

¹²⁰ Allyson Davys and Liz Beddoe, 'The Context of Professional Supervision' in Allyson Davys and Liz Beddoe (eds), *Best Practice in Professional Supervision: A Guide for the Helping Professions* (Jessica Kingsley, 2010) 18.

¹²¹ Ibid 20.

¹²² Ibid.

externalities, prioritising the wellbeing of participants, including students, while recognising that this is essential to an enhanced student/supervisor relationship and reflective practice.

Our research showed that during the pandemic, students not only benefitted but appreciated their supervisors taking the time to provide them with the guidance and support they required at this extremely uncertain time. With many clinical programs now returning to onsite delivery, it is important to ensure that the supervisory process remains effective, intentional and explicit, empowering both clinicians and students to gain insights into their relationships and experiences. Doing so will ensure that supervision remains a valued and vitalising catalyst for a pedagogical relationship of integrity, steeped in best practice from the student perspective and leading to an exploration of further possibilities for future successful practice.

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FEEDING UP AND FEEDING BACK: EXPLORING THE VALUE OF PEER LEARNING THROUGH A LAW CLINIC SETTING

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Introduction

We have previously written together about our feedback practices in our respective law clinics,¹ identifying feedback as a form of communication that works best when it involves a series of conversations. We advocated the need to build relationships of trust and respect as an essential part of developing feedback literacy². We also recommended peer review as a way to embed more formative assessment and feedback into large group teaching.³ We contend, however, that without building relationships of trust between students, attempts at peer review can fail to develop meaningful interactions between students. By developing the skill of peer review, we aim to build a culture of peer learning, where students learn “from and with each other in both formal and informal ways”⁴ It is common in most law clinic settings for

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¹ L. Yeatman & L. Hewitt (2020). Feedback: a reflection on the use of Nicol and Macfarlane-Dick’s feedback principles to engage learners. *The Law Teacher*, 1-14. At page 14

² Yeatman & Hewitt (2020) n1.

³ Yeatman & Hewitt (2020) n1.

⁴ D. Boud, R. Cohen & J. Sampson (Eds.) (2014) *Peer learning in higher education: Learning from and with each other*. (Routledge)

students to work on client cases in small groups or pairs.⁵ In both our clinics, Liverpool Law Clinic (LLC) and Innocence Project London (IPL) our students work in groups and peer review is built into the learning process. That is not to say that group work is always straightforward or easy in a clinic setting. It is our contention that careful pedagogic design can overcome student resistance to collaborative working and help build relationships of trust that allow peer learning to flourish.

In the 2020-21 academic year, when the majority of learning took place online, students and lecturers alike were plunged into unexpected and new ways of communicating. We were both afraid that building relationships of trust between students may become an impossible task, so in the Spring of 2021 we both conducted separate surveys with our students to help us better understand their experiences of peer learning during the lockdowns.⁶ In this article we reflect on how we have designed our clinic teaching environments, in both the physical and virtual spaces to enable collaboration. We consider how pedagogic theory about peer learning has informed our practice as clinical legal educators. The survey responses are incorporated into our reflection to explore our students understanding of their own peer learning experiences. The article is divided into three sections. First, we describe our clinical teaching, which is linked by common themes. Secondly, we explore the

⁵ There is surprisingly very little literature on group work in Law Clinics. Anecdotally it is extremely common for students to be expected to work in pairs or small groups. Kerrigan et al in the *Student Guide to Clinical Legal Education and Pro Bono* (2011) include a section on groupwork stating "you are often positively encouraged to collaborate and work as part of a team with our fellow firm members". (at 96)

⁶ The full survey questions for each survey are set out on p. 3

pedagogical rationale for peer learning and why, despite the well-documented benefits, students will often resist efforts to engage them in collaborative work. The third section is an examination of the way in which our own teaching is designed with the explicit aim of overcoming resistance to group work and supporting peer learning.

The surveys

The surveys were designed to help us understand the students' experiences and to inform the development of some empirical research about peer learning in university law clinics using focus groups⁷. We had ethical approval from our respective institutions to conduct the surveys and use them to inform our teaching and to underpin research on peer learning in the future.

Of the 260 students who took part in the Clinic Module in Liverpool, only 19 completed the survey, but for those that did, the answers were illuminating and have been used throughout this article to illustrate the reflection. The students answered the following questions:

1. Can you describe how you felt about the idea of doing group work before you started the Clinic module?
2. Did those feelings about group work change over the course of the semester?
 - a. Can you give reasons for your answer?
3. What aspects of group work on the module did you enjoy?

⁷ It is beyond the scope of this article to report on the focus groups and the analysis of these will be published at a later date.

4. What aspects of group work on the module did you find difficult?
5. In tutorials you often participate in feedback discussions about work done by other students, for example looking at research records or letters. Did you find that this helped you to improve your own research and writing?
 - a. Can you give a reason for your answer?
6. At the start of the semester, how did you feel about the idea of giving peer feedback to other students about their work?
7. Did your feelings about peer feedback change during the semester?
 - a. Can you give reasons for your answer?
8. If you were going to give one piece of advice about groupwork to students starting the module, what would that advice be?

For the IPL, a survey was circulated to 35 students who had worked in the clinic for six months or more, meaning they would have experienced peer learning in the clinic environment. The survey had a response rate of 50%, where 70% were criminology students and 30% were law students. The longest period of time worked on the IPL by the respondents was 2.5 years and the shortest time was 6 months. The survey asked five free text questions:

1. What do you understand peer learning to be?
2. What do you think about peer learning?
3. Do you realise you have been doing this during your work on the Innocence Project London?

4. Can you provide one positive example of your experience of peer learning?
5. Can you provide one negative example of your experience of peer learning?

Different clinics – similar aims

Our joint interest in group work is focussed on exploring ways to encourage peer review and peer learning. One common aim is to enable students to engage in meaningful and constructive conversations about their work, so that peer review is embedded into their learning in a way that moves them beyond thinking about grades and right answers, to being able to explore ideas together and develop the skills and strategies needed to become lifelong learners.

The majority of students in Liverpool Law Clinic participate in clinical work by taking the module, Clinical Legal Skills. The module is a 15-credit final year option for students on both the LLB and combined law programmes. Up to 130 students take the module in each semester and it runs twice every academic year. The students work in small groups of six students and they are taught and supervised by one member of staff in weekly timetabled tutorial meetings. Each group of students assists four clients in the semester, they attend client interviews, research the law and draft letters of advice. The weekly tutorials are used to give feedback on research and to review and redraft advice letters. They are assessed on file management, letter writing and a piece of reflective writing. Each supervisor organises their groups in slightly different ways, but in all the groups on the module, all students have to contribute to the work done

on each client case and students are expected to have at least one team meeting every week without their supervisor.

The Innocence Project London (IPL) is a pro bono clinic where students deconstruct claims of innocence from individuals who have been convicted and have exhausted the criminal appeals process. Students from the faculty of Liberal Arts and Sciences work in small groups, alongside a practicing lawyer and academics. The practising lawyer provides practical advice on their enquiries and Louise Hewitt as academic Director, provides support in relation to points of evidence. The aim of the work is to submit an application to the Criminal Cases Review Commission (CCRC). The CCRC is an independent body which reviews possible miscarriages of justice in England and Wales.⁸ They have the ability to refer a case back to the Court of Appeal if they find a new piece of evidence or a new legal argument that was not put forward at the time of the trial, which would render the conviction unsafe in the context that it would have changed the decision of the jury had they had been aware of it. Students that work on the IPL predominantly do so voluntarily, but Criminology students can also choose it as part of a work placement module. Students learn through the process of clinical legal education which is rooted in David Kolb's model for reflective practice.⁹ The direct involvement with a case means the students learning continually evolves depending on the subject matter. The design of the employer/employee

⁸ Criminal Cases Review Commission <https://ccrc.gov.uk/about-us/> accessed 19 July 2023

⁹ D. Kolb (2014) *Experiential Learning: Experience as the Source of Learning and Development* (New Jersey: Pearson Education, 2nd Ed)

pedagogy¹⁰ creates an environment which encourages students to reflect on what they have learnt throughout the academic year. Students in their case work groups initially put together timelines of the defence and prosecution case to understand how the client was convicted. From there, they identify gaps in the evidence in the form of questions that require answers and examine the legal arguments as to whether the relevant directions were given to the jury on specific points of law. Teaching is designed to encourage meaningful interactions to take place between students working together on a case. Work on a case can continue over a few years and teams of students have to work together to manage the volume of information and detail needed to unpick and examine a case. They need to be able to prepare work to present to volunteer lawyers or experts with drafting and re-drafting a common occurrence.

Why peer learning?

Benefits of peer learning

There is extensive evidence that peer learning benefits students academically and supports their psychological well-being and self-esteem¹¹ across all social groups.¹²

“Mutual support between students helps develop a sense of belonging and group

¹⁰ L. Hewitt (2018) Learning by experience on the Innocence Project in London: the employer/employee environment. *Int'l J. Clinical Legal Educ.*, 25, p.173

¹¹ D.W. Johnson & R.T. Johnson (2009) An Educational Psychology Success Story: Social Interdependence Theory and Cooperative Learning, *Educational Researcher*, 38:5 365-379 at 372

¹² J.M. Hanson, T.L. Trolian, M.B. Paulsen & E.T. Pascarella (2016) Evaluating the influence of peer learning on psychological well-being, *Teaching in Higher Education*, 21:2, 191-206, at 204

identity and sharing of experiences can help motivate students.”¹³ This can then promote expectations for success, creative thinking and more engagement with learning.¹⁴

We use the term group work as an umbrella to cover co-operative learning, collaborative learning and peer learning.¹⁵ Group work covers a broad range of activities that involve students working together, and can include asking students to discuss a question in class or a much more structured group that works together throughout a course. Peer review or peer feedback is a process where students look at one another’s work and provide feedback. As with feedback from lecturers, peer review is more likely to be useful to students if a conversation or series of conversations take place that enable both giver and receiver to develop their ability to form a judgement about the quality of their own and their colleagues' work.¹⁶ We prefer the term peer review to peer feedback as it takes the emphasis away from identifying mistakes to a more inclusive and iterative process.

When students are asked to work in groups, the aim may be peer learning, or it may be to develop employability skills such as team work and time management. Some group work, such a peer mentoring scheme is designed to address well-being and develop a sense of community amongst students. In our teaching we aim to use

¹³ Y.F Luo, S.C. Yang, R. Gong, & C.M. Lu (2019). Learning performance of university students from the perspective of positive psychology. *Social Behavior and Personality: An international journal*, 47(3), e7595

¹⁴ D.W. Johnson & R.T. Johnson (2009) *Supra* n11 at 371

¹⁵ J.M. Hanson, T. L. Trolian, M. B. Paulsen & E.T. Pascarella (2016) Evaluating the influence of peer learning on psychological well-being, *Teaching in Higher Education*, 21:2, 191-206, at 192

¹⁶ Yeatman and Hewitt (2020) n1.

group work to enable peer learning. Boud has described peer learning as a way of “moving beyond independent to *interdependent* or mutual learning”.¹⁷ Studies that adopt this definition have identified positive effects on students’ achievements, and the development of generic skills linked to future employment that are promoted by learning practices where students work together.¹⁸

What has emerged from existing literature is the idea that peer review underpins peer learning¹⁹ where the skills involved in the former facilitate a two-way reciprocal learning activity.²⁰ This makes the relationship between peer review and peer learning intrinsic. It is recognised that peer review nurtures a range of other benefits than simply providing feedback.²¹ Students have to take an active role in managing their own learning: reflecting on their own work having been exposed to alternative perspectives,²² thinking critically about the work they have been asked to

¹⁷ D. Boud (1988) 'Moving towards autonomy', in D. Boud (ed). *Developing Student Autonomy in Learning*. (London: Kogan Page. 2nd Ed)

¹⁸ H. Riese, A. Samara & S.I. Lillejord (2012) Peer relations in peer learning, *International Journal of Qualitative Studies in Education*, 25:5, 601-624

¹⁹ R. Mulder, C. Baik, R. Naylor & J. Pearce (2014) How does students peer review influence perceptions, engagement and academic outcomes? A case study. *Assessment and Evaluation in Higher Education*, 39:6, 657-677

²⁰ D. Boud (2001). Making the move to peer learning. In D. Boud R. Cohen, & J. Sampson, (Eds.) (2001). *Peer Learning in Higher Education: Learning from and with each other*. (London: Kogan Page, Routledge)1-20

²¹ R. Mulder, C. Baik, R. Naylor & J. Pearce (2014) How does students peer review influence perceptions, engagement and academic outcomes? A case study. *Assessment and Evaluation in Higher Education*, 39:6, 657-677; K. Topping (1998) Peer Assessment between Students in College and Universities, *Review of Educational Research* 68 (3): 249-276; K. Lundstrum & W. Baker (2009) To Give is Better than to Receive: The Benefits of Peer Review to the Reviewer’s Own Writing. *Journal of Second Language Writing* 18 (1): 30-43

²² R. Mulder, C. Baik, R. Naylor & J. Pearce (2014) How does students peer review influence perceptions, engagement and academic outcomes? A case study. *Assessment and Evaluation in Higher Education*, 39:6, 657-677; D. Boud (2000) Sustainable Assessment: Rethinking Assessment for the Learning Society. *Studies in Continuing Education* 22 (2): 151-167

review²³, and also providing feedback in a diplomatic way, negotiating their position in the peer review process.²⁴ Previous studies suggest that the process of students critically reflecting on their own work appears to be triggered when feedback is given during the peer review process.²⁵ Having considered someone else's work, students then look at their own work more critically and undertake a process of self-evaluating their own writing in order to improve it. It is apparent however, that the cautionary tale that accompanies this benefit is that initially, at least, students don't see the value of peer review, because they do not think that their peers qualify to be able to provide the necessary standard of feedback that would otherwise be given by a teacher.²⁶ It is only when the peer review process is undertaken, that students start to see themselves and others as legitimate sources of knowledge²⁷ and a shift in this perception take place. This leads to peer learning where the process of meaningful interactions provides an exposure to new ideas and new perspectives.²⁸ The positive effects of this can be identified in student achievements, and the development of generic skills

²³ K. Topping (1998) Peer Assessment between Students in College and Universities, *Review of Educational Research* 68 (3)

²⁴ *ibid*

²⁵ P. Rollinson (2005). Using peer feedback in the ESL writing class, *ELT journal*, 59(1), 23-30:

K. Lundstrum & W. Baker (2009) To Give is Better than to Receive: The Benefits of Peer Review to the Reviewer's Own Writing. *Journal of Second Language Writing* 18 (1): 30-43

²⁶ P. Rollinson (2005). Using peer feedback in the ESL writing class. *ELT journal*, 59(1), 23-30; R. Mulder, C. Baik, R. Naylor & J. Pearce (2014) How does students peer review influence perceptions, engagement and academic outcomes? A case study. *Assessment and Evaluation in Higher Education*, 39:6, 657-677

²⁷ E.F. Gehringer, D.D. Chinn, M.A. Pérez-Quiñones & M.A. Ardis (2005) Using peer review in teaching computing. In *Proceedings of the 36th SIGCSE technical symposium on Computer science education* 321-322.

²⁸ K. Lundstrum & W. Baker (2009) To Give is Better than to Receive: The Benefits of Peer Review to the Reviewer's Own Writing. *Journal of Second Language Writing* 18 (1): 30-43

linked to future employment that are promoted by learning practices where students work together.²⁹

Resistance to peer learning

Despite the evidence of the benefits of peer learning, students will often resist group work and can hold very negative attitudes. Some of this comes from an epistemological belief which means they don't see their peers' contribution as having value. They want their lecturers to impart knowledge to them and they see themselves as passive receivers of that knowledge.³⁰ This can then be impounded by the feeling that engagement with peer review is superficial. Students may fear being criticised by their peers so give false praise to others in the hope that they will be praised in return.³¹ Students may also resist group work because of their own feelings of inadequacy and for fear of being judged.³²

Studies show that student dissatisfaction with group work is most commonly connected to frustration about 'free-riding' or social loafing;³³ the idea that not everyone in the team will pull their weight. Free-riders are often "presented as

²⁹ H. Riese, A. Samara & S.I. Lillejord (2012) Peer relations in peer learning, *International Journal of Qualitative Studies in Education*, 25:5, 601-624

³⁰ S. Stover & C. Holland, (2018) "Student Resistance to Collaborative Learning," *International Journal for the Scholarship of Teaching and Learning*: Vol. 12: No. 2, Art 8

³¹ I. Blau, and I.T. Shamir & O. Avediel, (2020) How does the pedagogical design of a technology-enhanced collaborative academic course promote digital literacies, self-regulation and perceived learning of students? *The Internet and Higher Education* 45, 100722 at 6

³² T.J. Nokes-Malach, J.E. Richey & S. Gadgil (2015) When Is It Better to Learn Together? Insights from Research on Collaborative Learning. *Educ Psychol Rev* 27, 645–656 at 649

³³ D. Hall & S. Buzwell (2013) The problem of free-riding in group projects: Looking beyond social loafing as reason for non-contribution. *Active Learning in Higher Education* 14(1):37-49 at 39

difficult students who need to be managed” but this is not in fact always the case³⁴ It is important to have an understanding of why ‘free-riding’ might happen when designing and planning any type of group activity. Despite our best efforts to build trust and prevent this problem, some students in both Greenwich and Liverpool identified this as a downside to groupwork – for example “Not everyone made an equal effort.”³⁵

Managing the social aspects of group work can completely dominate student experiences and they can be quick to stereotype their classmates as bossy, lazy, slacker and so on.³⁶ This type of stereotyping can lead to roles being assigned early in the formation of the group and a dominant member can contribute to the less confident member’s feelings of inadequacy. They become more hesitant about contributing and become labelled free-riders.³⁷ Lack of group structure and communication can exacerbate this problem with students who like to get work done early, taking over and then blaming other students for free-riding.³⁸

Environmental factors such as family commitments, race and gender prejudice, different cultural and class issues can impact on how students engage with one

³⁴ *ibid*

³⁵ Comment from the survey on students working on the Innocence Project London

³⁶ C. Hillyard, D. Gillespie & P. Littig (2010). University students’ attitudes about learning in small groups after frequent participation. *Active Learning in Higher Education*, 11(1), 9–20 at 10

³⁷ D. Hall & S. Buzwell (2013) *Supra* n33 at 45

³⁸ *ibid* at 39

another in small groups³⁹ and power dynamics can seriously impact on the way a small group functions.⁴⁰

Research into student resistance to group work frequently includes comments such as “I find groups assessments can be quite stressful with regards to organizing everyone and trying to make sure everyone pulls their weight.”⁴¹ This research echoes our experience of discussing group work with students and exploring with them why they feel apprehensive about working in groups. Anxiety, stress worry, lack of control are all common themes which can leave lecturers wondering how it is that group work is supposed to have a positive impact on students’ self-esteem and psychological well-being.

Pedagogic design and the learning environment

Careful pedagogical design needs to go into planning and structuring any group work. You cannot just put students in a group and expect them to work together harmoniously. This can lead to students experiencing stress or feeling marginalised and has been described by Chang et al as “magical thinking.”⁴² Making group work ‘work’ means designing conditions that allow positive interdependence takes place.⁴³

³⁹ S. Stover & C. Holland (2018) *Supra* n30

⁴⁰ I. Briskin (1998) Negotiating Power in the Classroom. The Example of Group Work *Canadian Woman Studies* 14: 4 23 – 28 at 23

⁴¹ G. Bramley (2020) There is no “I” in “a team of lawyers”: An evaluation of student perceptions of group assessment within legal higher education, *The Law Teacher*, 54:1, 55-68 at 65

⁴² H. Leopold & A Smith, Implementing Reflective Group Work Activities in a Large Chemistry Lab to Support Collaborative Learning. *Education Sciences*. 2020; 10(1):7

⁴³ D.W. Johnson & R.T. Johnson (2009) *Supra* n11 at 367

Positive interdependence requires both individual accountability and group accountability.⁴⁴ If work is structured and designed in a way that one student is unable to take over, or one student is unable to duck out of their work, some of the anxiety associated with 'free-riding' will disappear. The task needs to be complex enough to require group input, so that it is clear to the students why they need to work together. For example, asking students to work together in a group to answer a simple question that can be easily completed alone, can lead to more mental energy expended on discussing how to answer the question than in tackling the question itself.⁴⁵ Students also need to be told explicitly why they are doing group work.⁴⁶ They "need clarity about the type and purpose of group work and to feel that their peers are competent and prepared."⁴⁷

Assessment

When designing teaching that includes group work, it is important to consider how to assess. When part of the purpose of the group work is to develop transferable team work skills, some assessment of the group dynamic and functioning is appropriate.⁴⁸ Allocating a single mark to the whole group can exacerbate the anxiety around

⁴⁴ *ibid* at 368

⁴⁵ T.J Nokes-Malach, J.E Richey & S. Gadgil (2015) *Supra* n32 at 649

⁴⁶ S. Stover & C. Holland (2018) *Supra* n30

⁴⁷ C. Hillyard, D. Gillespie & P. Littig, (2010). *Supra* n36 at 18

⁴⁸ A. Hassanien (2006) Student Experience of Group Work and Group Assessment in Higher Education, *Journal of Teaching in Travel & Tourism*. 6:1, 17-39

fairness⁴⁹ and, “the ability to generate a fair, individualised mark, which recognises individual contributions, is key to underpinning a good group work assessment.”⁵⁰

In both the IPL and LLC the primary concern in group work is to develop trust to support constructive peer conversations and peer review, meaning that we do not assess the functioning of the groups itself, but nor do we directly assess work produced by the group with a joint graded mark. In the LLC, students have to work together on cases but the only aspect of the work that is jointly assessed is the file management, which only counts for 10% of the overall mark. It is also made clear to the students at the start of the semester that there is scope for a student to receive a different mark if they have not contributed to the file.

For the IPL, where students work voluntarily there is no assessment. For Criminology placement students, they undertake an extended essay which is part of the assessment for their module. The essay provides a platform for students as individuals to demonstrate some of the key skills they have learnt from their work, including identifying an issue closely linked to their case work. Students are encouraged to discuss their ideas about their essays with each other, because their ability to choose what they write about is an important aspect of their learning in the context of their engagement with the subject matter.⁵¹

⁴⁹ S. Clarke & M. Blissenden (2013) Assessing student group work: is there a right way to do it? *The Law Teacher*. 47:3, 368-381

⁵⁰ N. Francis, J. Thomas & M. Allen (2022) Using Group Work for Assessment – an academic’s Perspective. Guide Produced for Advance HE <https://www.advance-he.ac.uk/news-and-views/i-love-group-worksaid-no-student-ever> (last accessed 21st July 2023)

⁵¹ Hewitt (2018) n10 at 187

Individual accountability

Anxiety and stress about free-riding can be mitigated through making work visible. The work in both clinics is made visible through the case files. In the LLC all work has to be recorded on the client file in the case management system. This creates a culture of individual accountability⁵² and also facilitates communication as students and supervisors can all see what work has or has not been done.⁵³ It also helps with the group mark for the file management assessment. There is no need for students to “report” one another to the supervisor for lack of contribution as the supervisor can clearly see who has done what.

In the IPL, students are responsible for their casework and the activities allocated to them during casework meetings. Each student takes it in turn to write the minutes of each meeting which are then agreed by the group. Students are required to complete their actions on time and to then explain to the group what they did and what they found. Over the years it has become evident that this process underpins the pedagogy of learning on the IPL, providing space for the varied contexts in which people work.⁵⁴

⁵² D.W. Johnson & R.T. Johnson (2009) *Supra* n11 at 368

⁵³ D. Hall & S. Buzwell (2013) *Supra* n33 at 39

⁵⁴ G. Light, R. Cox, & S. Calkins, (2014) *Learning and Teaching in Higher Education. The Reflective Professional* (Sage: London, 2nd Ed) at 220

Explicit support and rationale for groupwork

Students need to be supported when they engage with group work. Support means providing them with the tools they need to treat one another with respect⁵⁵ and developing a culture of trust within the group.⁵⁶ In the LLC we approach this in stages, starting with “homework” in week one for the group to arrange a social meeting and report back in their second tutorial. Students are set reading from a study skills text book on group dynamics and reflect on how the group could improve collaboration after the first client. Activities in lectures and workshops early in the semester are used to discuss the benefits of group work and to encourage students to confront worries about equitable distribution of work. During the pandemic activities were adapted to remote working, and student groups met on Teams to get to know one another and build relationships.

Much of the anxiety about ‘free-riding’ arises from a lack of trust and poor communication. But when students trust each other and have a clear understanding of why they are working in groups and how to share the work, peer learning that supports students both academically and socially can happen. When the Liverpool

⁵⁵ D.W. Johnson & R.T. Johnson (2009) *Supra* n11 at 370

⁵⁶ See, for example the following for discussions regarding the need to provide explicit support with communication and group work skills: D.W. Johnson & R.T. Johnson (2009) An Educational Psychology Success Story: Social Interdependence Theory and Cooperative Learning, *Educational Researcher*, 38:5 365-379; A. Hassanien (2006) Student Experience of Group Work and Group Assessment in Higher Education, *Journal of Teaching in Travel & Tourism*; W.M. Davies, (2009) Groupwork as a Form of Assessment: Common Problems and Recommended Solutions. *Higher Education*, 58(4), 563–584; O. Rundle (2014) Creating a Healthy Group Work Learning Environment in Law Classes *QUT Law Review* 14:1; and E. Campbell (2015) Transferring Power: a reflective exploration of authentic student-centred small group work in clinical legal education International, *Journal of Clinical Legal Education* 22:2, 191 - 212

students were asked how they felt about group work at the start of the module, the majority admitted to feeling nervous or anxious, mainly because they were worried about work being shared out fairly, for example:

“I had only bad experiences with group work up until the clinic, I often felt that I had to carry my team.”

“Sometimes group work feels like the work isn’t always evenly distributed.”

“I was nervous as I am usually quite quiet in group work and let other people take over.”

All but one of the students who were apprehensive about group work before the module said that their feelings changed during the semester with a clear theme of tutor support and peer support making the difference:

“I really enjoyed group work at the clinic, I think the tutor helped a lot.”

“I felt like we were still supported to learn new things.”

“I felt comfortable within my group and my tutor made me feel more comfortable to be able to participate.”

Although the number of responses was low and therefore not fully representative of students’ experience on the module, they chime with the literature in that fear of ‘free-riding’ acted as an inhibitor to group work at the start of the semester⁴¹ while tutor support and structure played an important role in moving beyond this.⁴²

In the IPL, students have to work together in their casework groups to construct the defence and prosecution timelines that help them understand how their client was convicted. This process leads to the issues that could potentially identify a new legal argument or new evidence that could form the basis of an application to the CCRC. These issues require investigating and a few ways this is done include research into relevant case law or relevant legislation, or medical issues relating to expert evidence. Students have to work together to complete this work, and they do so knowing that it is for the benefit of their client. Students also write letters to their client and contact previous lawyers that may have worked on their client's case, all of this is done within the casework group.

The first survey question sought to determine what students working on the IPL understand peer learning to be, and the responses identified how peer learning manifests in the group work. Statements offered by respondents described "working with my peers" or "learning through interacting with my peers" which also meant "learning through teamwork." Other participants described what Zamberlan and Wilson⁵⁷ refer to as peer mentoring where "students help other students in the learning process" and "collaborate with other students to share knowledge and opinions and learn from each other." Budge⁵⁸ provides eight different definitions of

⁵⁷ L. Zamberlan & E.S. Wilson (2017). "Conversation leading to progress" Student perceptions of peer tutors' contribution to enhancing creativity and collaboration in a first year design studio. *Journal of Peer Learning*, 10, 59–75

⁵⁸ S. Budge (2006). Peer mentoring in post-secondary education: Implications for research and practice. *Journal of College Reading and Learning*, 37(1), 73–87

mentoring⁵⁹ all of which incorporate the idea of students helping or working with other students to learn. Eby and Lockwood⁶⁰ describe informal mentoring as a spontaneously developing relationship between two or more individuals, where one individual provides support, advice, and guidance to the other individual(s).⁶¹ Further, they suggest that peer mentoring is a form of peer learning, but the responses to this question suggest that peer mentoring results from peer learning.

The notion of peer learning deriving from group work was a strong response from three students who each said:

“The group work and support from my peers has been very beneficial and the highlight of my experience. I have learnt so much from my peers from the law department, it has made my experience easier.”

“Everyone has come from unique areas so everyone has something different to bring to the table, and perspective is important with casework. We are able to learn from each other, and not feel embarrassed that we do not know certain things.”

⁵⁹ (1) a more advanced or experienced individual guiding a less experienced individual; (2) an older individual guiding a younger individual; (3) a faculty member guiding a student; (4) an individual providing academic advising; (5) an individual who shares their experience with another individual; (6) an individual who actively interacts with another individual; (7) an experienced individual guiding a group of individuals; and (8) an experienced, older individual who guides a younger, less experienced individual via internet resources (at 79)

⁶⁰ L.T. Eby & A. Lockwood (2005). Protégés' and mentors' reactions to participating in formal mentoring programs: A qualitative investigation. *Journal of Vocational Behavior*, 67, 441–458.

⁶¹ Z. Zhang & J.G. Bayley (2019) Peer learning for university students' learning enrichment: Perspectives of undergraduate students, *Journal of Peer Learning*, 12, 61-74. Available at: <https://ro.uow.edu.au/ajpl/vol12/iss1/5>

“Open discussions with peers has sometimes led to a better overall understanding for me.”

The negative responses to peer learning from the students echoed those already outlined above in ‘Resistance to peer learning.’ What has been viewed as a positive aspect of peer learning in terms of students learning to “interact with a group of people that they may not generally work with and can engage in conversation even if it is outside of their comfort zone”⁶² is not everyone’s experience. Two students commented as to how difficult it can be to discuss the work “...if you don’t know each other.” The issue of dominance in group work was also identified by one student who described their experience of “sharing ideas to have someone override your opinion with their own, with the belief that their opinion is the right one.” Working closely with other people in any environment requires skill, and the pedagogy of learning on the IPL embraces this as an opportunity for students to develop these skills before they leave university.⁶³ Exposing students to different characters that they have to work closely with, encourages them to become aware of how they work in a group and also how they manage themselves in a group.⁶⁴ Each group is led and supported by the IPL Director who is aware of the various roles that can be adopted in a group

⁶² A. Wessel (2015). Peer learning strategies in the classroom. *Journal on Best Teaching Practices*, 2(1), 14-16.

⁶³ Hewitt (2018) n10 at 189

⁶⁴ J. Moon, Making Groups Work, HEA, Subject Centre for ESCalate. (2009) Available at: https://www.plymouth.ac.uk/uploads/production/document/path/2/2418/Making_groups_work.pdf

environment, especially the dominant personalities.⁶⁵ If motivation or commitment becomes an issue, the Director can facilitate the group and equalise it.⁶⁶

Common goal

In both clinics, the students have a common goal,⁶⁷ providing advice to the client, which helps motivate them.⁶⁸ In the LLC each group works on three client cases before they get their assessment case. In a different context students might think of these as formative assessments that don't "count", but in a clinic context they have the added incentive of providing high quality work for the client.

In the IPL, the common goal of helping the client is closely linked to the notion of students working together, which is reflected in the comments in response to the survey question about what students thought about peer learning. Students responded with the idea of shared experiences saying that the IPL provided, "...the ability to form mutual understandings, the ability to share experiences and educate myself," and it was a "...brilliant way to think about other perspectives and to learn from other people." This echoes the idea of learning communities where participants connect over similar areas of interest that enable with "...interaction, sharing,

⁶⁵ D. Jacques, (2003) Teaching Small Groups. *British Medical Journal* 2003, 326, 492-494 (online) available from <http://www.bmj.com/content/326/7387/492.1.full> accessed on 6 December 2015

⁶⁶ C. Lantz, (2009) Working with small groups, Higher Education Academy Psychology Network

⁶⁷ Teaching: the lessons of hope [Snyder, C R. Journal of Social and Clinical Psychology; New York Vol. 24, Iss. 1.](#) (Feb 2005): 72-84. At p. 78

⁶⁸ D.W. Johnson & R.T. Johnson (2009) *Supra* n11 at 368

dialoguing, and thinking together.”⁶⁹ Also identified as knowledge communities,⁷⁰ learning takes place in these environments because students are experts at not only being students but are also experts in their own experiences.⁷¹ Sharing these experiences and explaining them helps students engage with their learning.⁷²

Volume and pace of work

In both clinics, the volume of work with frequent short deadlines requires group effort⁷³. It is almost impossible for one student to take over and do all of the work. There is an incentive and benefit to collaborating and working together in order to get the work done.

Collaborative Spaces – both physical and virtual

Prior to March 2020, in both the IPL and LLC, students were required to do all client related work in spaces dedicated for the clinics. These rules were largely in place to protect client confidentiality. In our experience, anecdotal evidence tells us that it is common for university law clinics to have a dedicated space which may help to develop a sense of community within the law clinic. The global pandemic in 2020 – 21 forced us both to reconsider the significance of the physical space.

⁶⁹ G. Siemens (2003). *Learning ecology, communities, and networks: Extending the classroom*. Elearnspace

⁷⁰ E. Longfellow, S. May, L. Burke & D. Marks-Maran (2008). “They had a way of helping that actually helped”: A case study of a peer-assisted learning scheme. *Teaching in Higher Education*, 13(1), 93–105 at 95

⁷¹ Longfellow et al (2008) n 70.

⁷² D. Boud (1988) *Supra* n17.

⁷³ T.J Nokes-Malach, J.E. Richey & S.Gadgil (2015) n32

In the LLC Microsoft Teams was used to enable collaborative working with tutorial groups assigned to small private channels that allowed students to communicate, share documents and have online meetings. Tutorials with supervisors were also held on Teams. The online space of the Team became an important space for both learning and communicating. On the return to campus, the use of small private channels on Teams to allow some collaborative online working has been retained, alongside compulsory attendance in the Clinic building for most client related work. Reflecting on the pandemic we realised that the physicality of the Clinic space may be useful for developing community, but that it was not necessary. As one of the students attending remotely explained:

“I think the communication aspect makes the learning and experience better. This is because everything is online so I am facing the screen most of the time. Working and communicating in a group gave some human element which just makes me feel better.”

For the IPL, students undertook the same casework but in a virtual environment accessing files on a secure drive linked to their university email addresses. This meant that the previous face to face discussions took place in Microsoft Teams. Initially, the thought of running the IPL on-line was overwhelming but once underway, it was evident that running a law clinic remotely had its benefits.

One aspect that students adapted to quickly was the sound of virtual silence. Where the in-person process of flicking through case files in a folder would have been

accompanied by the noise of the paper, the viewing of files online was a silent exercise. The Director was initially concerned that working on-line would limit the meaningful interactions that lead to peer learning and on occasion this concern was founded. The turning on of the camera in casework meetings was not the norm, internet connectivity and workspace issues (home environments, shared rooms etc) being amongst the regular culprits. Once a discussion was started however, students did join in and participate using the functionality of whatever online meeting technology that was being used for example by indicating they wanted to speak by raising their 'virtual' hand. The group work environment in the traditional sense did change, and for some students this was not a positive experience as the response to the survey questions indicated "Meeting online was harder than had we been able to meet face to face" which was closely linked to "communicating online has been difficult." Yet, where students were unable to travel and were in their home countries such as Italy or Romania, meeting online meant they were still able to continue with their case work and feel fully included.

Scaffolding peer review and the role of the supervisor

In the IPL, the Director's role as facilitator of the group work underpins the learning environment helping to generate conversations and build the atmosphere of trust.⁷⁴ The survey has shown that the students peer learning results from peer mentoring,⁷⁵

⁷⁴ Yeatman and Hewitt (2020) n1.

⁷⁵ Z. Zhang & J.G. Bayley (2019) n61.

and the informal development of this process⁷⁶ was reinforced by one student who said, “It has happened quite naturally, so I wasn’t completely aware of it taking place but thinking back I can see that is what we have been doing.” The peer review process is embedded as part of the casework where the learning environment develops from student conversations about their clients’ situation. It is around the case in the context of solving problems and discussing issues that the students build relationships and ultimately learn from each other.⁷⁷

In the LLC, students are supported and trained to review one another’s work.⁷⁸ The two key pieces of work performed and reviewed throughout the module are research records and advice letters. The research needs to be relevant and accurate in order to write the advice letters. The semester starts with workshops that allow some practice using fictional scenarios. For example, for the practical legal research workshop, there are a series of pre-recorded lectures and tests on conducting practical legal research. Students then research the law needed to advise a fictional client. We share anonymised examples of student research records and discuss how they could be improved. With the letter drafting, students review examples of advice letters and match feedback comments to each letter. These are then discussed and student practice writing short paragraphs of advice in the workshops. The writing practice is done in pairs and shared without student names. Constructive feedback is modelled

⁷⁶ D. Boud (2001) n20

⁷⁷ G. Light, R. Cox & S. Calkins (2014) *Learning and Teaching in Higher Education. The Reflective Professional* (Sage: London: 2nd Ed) at 226

⁷⁸ N. Winstone & D. Carless (2020) *Designing Effective Feedback Processes in Higher Education* (Routledge)

and the emphasis is always on how to improve a piece of work, regardless of how good it already is. The aim is to shift their mindset away from the idea that feedback means criticism.

Clinic tutorials focus around tutor led reviews of student work on case files. This gives further opportunities to model constructive feedback and allow for dialogue on how to improve work. All of the Liverpool students who responded to the survey in 2021 agreed that they found these tutor-led discussions to be helpful because “We were able to learn from the work that other people had done and apply it to our own work” and “it allowed me to reflect on what I should be doing right.”

However, giving feedback on one another’s work outside the tutor led tutorial was still very difficult for some of them.

“I was uncomfortable and awkward to offer feedback” and “I still feel nervous about feedback because sometimes it can be interpreted the wrong way.”

The experience did improve during the module,

“If I have to give peer review now, I think I will do a better job.”

“I realised that it was much more important than I initially thought.”

The difficulties that students experienced with peer feedback were mainly linked to fear of offending and based on the assumption that feedback meant criticism

“I was worried I would offend anyone when critiquing their work.”

“I didn’t like the idea of peer feedback as I found it hard to be critical.”

A barrier to peer review is student perception of their own and colleagues' abilities, and also their own understanding of feedback⁴³. For example, two students from Liverpool who were "anxious" about and "didn't like" peer feedback described learning from one another as the most enjoyable aspect of groupwork on the module.

"Seeing how different people approach a task and learning from that."

"Writing the letter together as it was useful to take different perspectives on board."

Feedback is often difficult to both give and receive, but with support and guidance students can develop the skills needed to find the process constructive and meaningful.

Structured roles to enable collaboration

In the LLC individual supervisors in the Clinic have freedom to organise the way the groups work and there are different ways of doing this. Lucy Yeatman gives clearly assigned roles to students for each client using a jigsaw method.⁷⁹ This creates a structure that requires cooperation between students and regular conversations where they have to rely on one another's expertise in order to complete the work for the

⁷⁹ E. Aronson & S. Patnoe (2011) *Cooperation in the Classroom: The jigsaw method* (London: Pinter & Martin Ltd)

clients. For example, giving separate pieces of reading to each individual in the group means they have to ask one another questions in order to understand the whole topic.

Lucy has adapted the concept of the jigsaw method in the Clinic and assigns the students roles in pairs:

1. attending the client interview and team leadership which includes taking responsibility for the file including chairing team meetings and reporting to the supervisor on progress;
2. researching the relevant law;
3. drafting the advice letter.

These roles rotate with every client so that the students all have a turn in each role. This method mitigates against students dividing up the work in ways that mean they do not have to work together or understand the whole topic. Peer conversations begin to develop as the students have to rely on one another's research to draft their letters. They have to meet up to ask questions if the research is not clear. The researchers can review the letter as they understand the law and can see if the drafters understand it. The interviewers can review the letter as they can see whether it addresses the client's questions and is phrased in language and terminology that the client understands. The rotating role of team leader mitigates against one student taking over or one student stepping away from taking responsibility. The jigsaw is by no means "plain sailing" and it is often not until the third client case that the students work out how to

co-operate and communicate to get the most out of one another, but it does create a structure that requires collaboration.

Conclusion

We contend that peer review can be embedded into the students working practice in a way that enables meaningful interactions about their work. Shifting the focus from formal feedback with all the associated social and academic anxiety and instead placing emphasis on collaborative working practices that create opportunities for peer conversations allows students to develop the skills needed to judge the quality of their own and others' work. The informal process of peer mentoring can lead to peer learning.

Reflecting on how we view peer feedback in clinical legal education enabled us to realise that the structure of clinics lends itself naturally to a learning environment that enables positive interdependence for group work. Not only does this support students psychological well-being, it enables the type of communication that underpins peer review and peer learning. That is not to say that every student has a good experience of group work in all clinics. Spending time on designing a structure for group work and putting time into building trust is important in order to create a positive experience. Creating opportunities for peer conversations over a common purpose helps to generate meaningful interactions, not only between students but between students and staff. In clinic, the common aim is often easier to identify

because of the nature of case work, but in large group teaching this can be found in presentations, in projects, in debates etc.

Lockdown forced us both to consider the structures needed to create an environment conducive to peer learning. We were reminded that the physical space was by no means the most important factor. You can put six people in a physical room or a virtual room and leave them to it. If they don't know what it is they are supposed to do, or why, they may or may not work together. Alternatively, you can design a collaborative learning environment and adapt that design for online, hybrid or face to face teaching. We have a choice in our teaching. We can develop a culture where our students "are 'grade predators' who succeed in the context of vicious social comparisons and competitions with each other."⁸⁰ or we can design our teaching to foster a culture of community whereby students interact to explore ideas and develop skills together which ultimately empowers a lifetime of learning.

⁸⁰ C. Synder (2005) Teaching: the lessons of hope, *Journal of Social and Clinical Psychology* Vol. 24, Issue 1 (New York) 72-84 at 78

CLINICAL LEGAL EDUCATION AS AN INSTRUMENT TO ADDRESS ACCESS TO JUSTICE: A CRITICAL ANALYSIS OF THE CLINICAL MOVEMENT IN GERMANY

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Abstract

This report explores the role of clinical legal education in promoting Access to Justice and human rights. Legal clinics have the potential to provide practical skills to law students, sensitizing them to social challenges and Access to Justice issues while offering free legal advice to marginalized individuals. By effectively combining these approaches, legal clinics can contribute significantly to achieving greater Access to Justice. However, German law clinics take up a rather neglected role within German legal education. After highlighting the role of legal clinics within Access to Justice, the report assesses the movement of clinical legal education in Germany, providing a historic overview and discussing the current situation. The report then identifies the main challenges of the German clinical movement such as limited recognition in the academic environment and financial instability. In conclusion, institutional support, and recognition within the educational and academic fields are identified as crucial elements in enhancing Access to Justice through legal clinics in Germany.

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Introduction

Clinical legal education plays a prominent role in promoting human rights and Access to Justice. By providing justice education for future lawyers while enhancing Access to Justice for marginalized groups, legal clinics have the potential to have a great impact. However, in order to live up to their full potential, it is necessary for legal clinics to be acknowledged within (legal) society as a prominent and esteemed structure. This report critically analyses the clinical movement in Germany and develops ideas and strategies for increasing the benefit factor of legal clinics in Germany.

Potential of clinical legal education for Access to Justice

Clinical legal education mainly serves two goals: First, the theoretical studies of law are supplemented with practical experience, and value is added to the studies of law students. They will be equipped with practical skills that enable a smooth transition into the legal profession. Secondly, free legal advice can help marginalized groups of people access legal support.¹ When these two approaches are effectively combined,

¹ See also: *Gigimon/Nandwana*, Clinical Legal Education: A Virtual Mode Of Access To Justice, International Journal of Clinical Legal Education 04/2020, accessible at: <https://journals.northumbria.ac.uk/index.php/ijcle/article/view/1054> (last reviewed: 15.08.2022), p. 64; *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, pp. 1, 3; *Hilb/vom Felde*, Refugee Law Clinics in Deutschland – ein studentisches Modell für die Veränderung der juristischen Ausbildung?, Kritische Justiz, 02/2016, p. 221; *Lück*, Guter Rat zu teuer? Bestandsaufnahme zu studentischer Rechtsberatung und Überlegungen zu Qualitätssicherungsmaßnahmen in Law Clinics, Juristische Ausbildung 07/2020, p. 706; *Lewis*, Clinical Legal Education Revisited, accessible at: <http://orca.cf.ac.uk/27655/1/CLINICED.pdf> (last reviewed: 01.08.2022), p. 7; *Odigie-Emmanuel*, The role of legal clinics in promoting human rights: the experience of Nigeria Law School Yenagoa Law Clinic and the legal support and care centre at GD Goenka University School of Law Gurgaon India, International Journal of Clinical Legal Education 01/2023, accessible at: <https://northumbriajournals.co.uk/index.php/ijcle/article/view/1331> (last reviewed: 24.03.2023), p. 4; *Singer/Schimpf/Steinbach*, Die „Humboldt Consumer Law Clinic“ als Beispiel

legal clinics are a meaningful instrument to achieve greater Access to Justice. This report will outline the concept of Access to Justice, before analyzing in depth how legal clinics in particular can contribute to the social justice mission.

The basic understanding of Access to Justice

Being right does not always mean being proven right. As *Balmer* states: “The ability of people to protect their legal rights and hold others to their legal responsibilities is a prerequisite of the rule of law and underpins social justice.”²

Access to Justice is the term used to denote the institutional and social conditions for the realization of rights. It is multifaceted: Access to Justice is seen as equal access to the legal system but also enhances the justice quality of the relations and transactions in which people are engaged by creating a law that is value-neutral.³ The institutional, formal side of the realization of the law comprises access to a fair trial (procedural guarantees, sufficient number of courts, reasonable length of proceedings, education and training of judges), enforcement of judgments, and access

zivilgesellschaftlicher Stärkung von Verbraucherrechten, in: Hellmann/Klein/Baule (Ed.): Verbraucherpolitik von unten; Paradoxien, Perspektiven, Problematisierungen, p. 341; *Qafisheh*, The Role of Legal Clinics in Leading Legal Education: The Model from the Middle East, *Legal Education Review*, 01/2012, p. 186.

² *Balmer*, English and Welsh Civil and Social Justice Panel Survey: Wave 2, Legal Services Commission, 2013, accessible at: https://discovery.ucl.ac.uk/id/eprint/1575457/1/Balmer_Civil_Justice_England_Wales_Wave2.pdf (last reviewed 01.08.2022), p. 1.

³ *Kötter*, Besserer Zugang zum Recht (Access to Justice) durch staatliche Anerkennung informeller Justizsysteme? – Zur Relevanz rechtssoziologischer Forschung für die Außen- und Entwicklungspolitik, SFB-Governance Working Paper Series, 74/2018, accessible at: https://www.sfb-governance.de/publikationen/sfb-700-working_papers/wp74/WP74.pdf (last reviewed: 15.08.2022), p. 6; *Sandefur*, Access to What?, *Daedalus* the Journal of the American Academy of Arts and Sciences, 04/2019, accessible at: https://www.amacad.org/sites/default/files/publication/downloads/19_Winter_Daedalus_Sandefur.pdf (last reviewed: 15.08.2022), p. 50; *Whelan*, Grounding inside/out Professional Identity formation by developing wholehearted lawyers with therapeutic intent, *International Journal of Clinical Legal Education* 01/2022, accessible at: <https://northumbriajournals.co.uk/index.php/ijcle/article/view/1228> (last reviewed: 15.08.2022), p. 43.

to cost-effective legal assistance (pro bono work, legal aid, public attorneys).⁴ The material side of Access to Justice goes beyond this and asks for justice as it is expressed in the normative and social order of the respective community. It forms a normative ideal alongside the law.⁵

A significant number of people experiences legal problems. When considering that social, financial, health or economic problems often lead to legal problems, it becomes clear that disadvantaged people (especially the unemployed, indebted, disabled, chronically ill or people with mental illness, welfare recipients, lone parents, people suffering from substance abuse and migrants) are more susceptible to experiencing justiciable problems.⁶ This experienced social and financial vulnerability does not only have a bearing on the acquisition of legal problems but also on their response to legal problems.⁷ The more educated, affluent people are, the more aware they are of their rights and potential legal remedies to fight for these rights.⁸

⁴ Kötter, *Besserer Zugang zum Recht (Access to Justice) durch staatliche Anerkennung informeller Justizsysteme? – Zur Relevanz rechtssoziologischer Forschung für die Außen- und Entwicklungspolitik*, SFB-Governance Working Paper Series, 74/2018, p. 6; *Rass-Masson/Rouas*, *Effective Access to Justice*, Directorate-General for Internal Policies, European Parliament, 2017, accessible at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596818/IPOL_STU\(2017\)596818_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596818/IPOL_STU(2017)596818_EN.pdf) (last reviewed: 15.08.2022), pp. 23 ff.

⁵ Kötter, *Besserer Zugang zum Recht (Access to Justice) durch staatliche Anerkennung informeller Justizsysteme? – Zur Relevanz rechtssoziologischer Forschung für die Außen- und Entwicklungspolitik*, SFB-Governance Working Paper Series, 74/2018, p. 6.

⁶ *Drummond/McKeever*, *Access to Justice through University Law Clinics*, accessible at: https://www.ulster.ac.uk/data/assets/pdf_file/0003/132654/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf (last reviewed 01.08.2022), p. 9; *Hannemann/Dietlein*, *Studentische Rechtsberatung und Clinical Legal Education in Deutschland*, 2016, p. 10.

⁷ *Drummond/McKeever*, *Access to Justice through University Law Clinics*, p. 9.

⁸ *Balmer/Buck/Patel/Denvir/Pleasence*, *Knowledge, Capacity and the Experience of Rights Problems*, Legal Services Research Centre, 2010, p. 30; *Ponce*, *Global insights on Access to Justice – Findings from the World Justice Project General Population Poll in 101 Countries*, 2019, accessible at: <https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf> (last reviewed: 15.08.2022), p. 9.

Furthermore – particularly due to language or psychological barriers – marginalized groups seldom make use of counseling assistance. Therefore they have very limited access to legal advice and representation and in consequence cannot resolve their justice problems.⁹ One looming result of not using the judicial process is the disconnection between formal equality before the law and access to the law.¹⁰ Thus the main question when addressing Access to Justice is how to ensure access to the – at least partially existing – formal equality?

This question is not new: *Hannah Arendt* already pointed out many decades ago, that freedom and justice are rights of all citizens.¹¹ Since we are not born equal, we become equal as members of a group based on our decision to guarantee ourselves mutually equal rights.¹² A first step to building equality and justice within the group is to abandon privileges and prejudices and focus on the needs of the poor and downtrodden by creating laws and social structures that protect the rights of all people.¹³ Nonetheless, it has to be kept in mind, that the discrepancy between legality and justice can never be bridged because laws “are necessarily general and must be

⁹ *Hannemann/Dietlein*, *Studentische Rechtsberatung und Clinical Legal Education in Deutschland*, 2016, p. 10; *Rudolf*, *Rechte haben – Rechte bekommen: Das Menschenrecht auf Zugang zum Recht*, Deutsches Institut für Menschenrechte Essay 15/2014, accessible at: https://www.institut-fuer-menschenrechte.de/fileadmin/migrated/tx_commerce/Rechte_haben_Recht_bekommen_Das_Menschenrecht_auf_Zugang_zum_Recht.pdf (last reviewed: 15.08.2022), p. 13; *Task Force on Justice*, *Justice for All – The report of the Task Force on Justice*, 2019, accessible at: <https://www.justice.sdg16.plus/report-old2022> (last reviewed 01.08.2022), p. 3.

¹⁰ *Lück*, *Guter Rat zu teuer? Bestandsaufnahme zu studentischer Rechtsberatung und Überlegungen zu Qualitätssicherungsmaßnahmen in Law Clinics*, *Juristische Ausbildung*, 07/2020, p. 703; *Marx*, *Studentische Rechtsberatung vs. Beratungshilfe*, *German Journal of Legal Education*, 02/2015, p. 12.

¹¹ *Arendt*, *The Origins of Totalitarianism – New edition with added prefaces*, 1973, p. 296.

¹² *Arendt*, *The Origins of Totalitarianism – New edition with added prefaces*, 1973, p. 296.

¹³ *Arendt*, *The Origins of Totalitarianism – New edition with added prefaces*, 1973, p. 329; *Pati/Mohanty*, *Clinical Legal Education – A Bare Necessity in the Scientific Era*, in: *Asian Journal of Legal Education*, 03/2017, accessible at: <https://journals.sagepub.com/doi/abs/10.1177/2322005815607143> (last reviewed: 15.08.2022), pp. 118, 121, 122.

valid for countless and unpredictable number of cases so that each concrete individual case with its unrepeatable set of circumstances somehow escapes it.”¹⁴

So, in theory, there might be adequate laws to protect the rights of people of all cultural, ethnic, financial, economic, gender, and health backgrounds. However, there are numerous gaps in the enforcement of these rights. The challenge of achieving Access to Justice, therefore, constitutes the task of providing mechanisms that enable all people to defend their rights by reducing the hurdles of legal enforcement.¹⁵

Hence, political and social preconditions of legal awareness and knowledge (education, language) as well as affordable legal prosecution (legal aid, public lawyers, alternative dispute resolution, pro bono) should be provided.¹⁶ It is also important for people to have legal awareness, be informed about their rights, understand the law and get information on how to pursue these rights since the lack of relevant information is one of the causes of the enforcement deficits in law.¹⁷ Therefore, adequate information about (legal) options and possibilities is needed. Furthermore, in order to counteract the experienced psychological and language

¹⁴ *Arendt*, *The Origins of Totalitarianism – New edition with added prefaces*, 1973, p. 462.

¹⁵ *Rudolf*, *Rechte haben – Rechte bekommen: Das Menschenrecht auf Zugang zum Recht*, Deutsches Institut für Menschenrechte Essay 15/2014, p. 8; *Wrase/Thies/Behr/Stegemann*, *Gleicher Zugang zum Recht – (Menschen-)Rechtlicher Anspruch und Wirklichkeit*, *Apuz* 37/2021, p. 49

¹⁶ *Barendrecht*, *Legal Aid, Accessible Courts or Legal Information?*, *Global Jurist*, 11/2011, accessible at: https://pure.uvt.nl/ws/portalfiles/portal/1326528/Barendrecht_Legal_Aid_110420_full_text_bij_url_geen_toestemming.pdf (last reviewed: 15.08.2022), p. 1; *Kötter*, *Besserer Zugang zum Recht (Access to Justice) durch staatliche Anerkennung informeller Justizsysteme? – Zur Relevanz rechtssoziologischer Forschung für die Außen- und Entwicklungspolitik*, *SFB-Governance Working Paper Series*, 74/2018, p. 5.

¹⁷ *Barendrecht*, *Legal Aid, Accessible Courts or Legal Information?*, *Global Jurist*, 11/2011, p. 17; *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. 99; *Rudolf*, *Rechte haben – Rechte bekommen: Das Menschenrecht auf Zugang zum Recht*, Deutsches Institut für Menschenrechte Essay 15/2014, pp. 14, 21; *Singer/Schimpf/Steinbach*, *Die „Humboldt Consumer Law Clinic“ als Beispiel zivilgesellschaftlicher Stärkung von Verbraucherrechten*, in: *Hellmann/Klein/Baule (Ed.): Verbraucherpolitik von unten; Paradoxien, Perspektiven, Problematisierungen*, p. 360.

barriers of marginalized people, low threshold, empathetic support needs to be provided.¹⁸

The role of legal clinics in Promoting Access to Justice

The roles law clinics play in promoting Access to Justice are multifaceted.

a) Low threshold Access to Legal support by providing a low-cost, easily accessible, and low-cost counseling

Just by doing their groundwork (meaning providing a social, low-threshold possibility for underprivileged and underserved people seeking information and legal advice without financial risk), legal clinics have a social function and strengthen the enforcement of rights and therefore improve legal security and (access to) justice for our society.¹⁹

Also, law clinic students can take the time to examine, prepare and reflect on the cases and their surrounding circumstances, give further help outside the legal

¹⁸ *Davis*, Access and Justice, *Fordham Law Review*, 03/2004, accessible at: <https://ir.lawnet.fordham.edu/flr/vol73/iss3/5/> (last reviewed: 15.08.2022), pp. 916 ff.

¹⁹ *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 3; *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *Juristische Ausbildung* 06/2017, p. 460; *Kötter*, Besserer Zugang zum Recht (Access to Justice) durch staatliche Anerkennung informeller Justizsysteme? – Zur Relevanz rechtssoziologischer Forschung für die Außen- und Entwicklungspolitik, *SFB-Governance Working Paper Series*, 74/2018, p. 5; *Remmert*, Vorschlag für die Regulierung der Law Clinics als Dienstleistung, *AnwBl* 2017, p. 946; *Singer/Schimpf/Steinbach*, Die „Humboldt Consumer Law Clinic“ als Beispiel zivilgesellschaftlicher Stärkung von Verbraucherrechten, in: *Hellmann/Klein/Baule* (Ed.): *Verbraucherpolitik von unten; Paradoxien, Perspektiven, Problematisierungen*, pp. 341 f., 358, 365.

question, and therefore provide a more wholehearted service than many lawyers. This can be understood as a (not exclusively legal) community service.²⁰

Legal clinics can also emphasize human sensibility by providing a humanistic approach and offering multi-dimensional training that emphasizes morality, self-accountancy, fellow feeling, and compassion.²¹ Therefore, legal clinics provide an integrative opportunity for students to develop practical and theoretical skills and develop empathy values.²² This plays an important role in preparing them for providing legal advice as lawyers, convey good lawyer-client relationships, and reflect the law critically.

b) Sensitization for justice challenges

“A lawyer can only be as good as the system of legal education that preceded him. Legal education – academic as well as vocational – is a vital ingredient that affects the quality of our justice system and the role of lawyers in the political, economic and social development of our country.”²³

²⁰ *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.

²¹ *Pati/Mohanty*, Clinical Legal Education – A Bare Necessity in the Scientific Era, Asian Journal of Legal Education, 03/2016, pp. 118, 121, 122.

²² *Bücker/Woodruff*, The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences, German Law Journal 09/2008, p. 610; *Giddings*, Promoting Justice through Clinical Legal Education, Justice Press, 2013, pp. 3, 49; *Saban/Wittham/Lawton*, Do we want a human first, and a lawyer second? Developing law student empathy through clinical legal education, International Journal on Clinical Legal Education 01/2022, accessible at: <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/1227> (last reviewed: 15.08.2022), p. 6.

²³ *Onolaja*, Problem of Legal Education in Nigeria, accessible at: <https://alimiandco.com/wp-content/uploads/2021/10/ACCREDITATION-AND-LEGAL-EDUCATION-IN-NIGERIA.pdf> (last reviewed: 24.03.2023).

Therefore, legal education should be able to produce lawyers that have the necessary skills and capacity to meet the evolving needs of today's society. The question at hand is, how do we shape law students to be fit for the purpose of justice? What training is needed to promote justice and a general understanding of the rule of law?

Abstract knowledge alone is not sufficient. It can become a deceptive semblance of competence.²⁴ Therefore, legal education needs to incorporate both acquiring knowledge and gaining "on-the-job experiences" through interactive training. The latter also provides students with first-hand experiences on the justice problems of marginalized groups. Legal clinics can help sensitize future lawyers and lawmakers to the social challenges in our society as well as in our legal and political systems: Legal clinics encourage students to be more aware of the legal and social needs of marginalized groups and learn to mold the social fabric needed for a just society, promoting a culture of lawfulness through generating solutions to several social issues. Students learn to develop understandings and approaches that foster ethical and reflective practices. By being confronted with cases in which rights cannot be enforced to all extent, legal clinics create confusion regarding the morality or social utility of the legal system. As a result, this creates awareness for investigating the potential of the law to achieve justice.²⁵ This helps students evolve their professional

²⁴ *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *Juristische Ausbildung* 06/2017, p. 450; *Schneider*, *Juristische Rhetorik*, MDR 1997, 625 ff.

²⁵ *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; *Hathaway*, *Clinical Legal Education*, *Osgoodee Hall Law Journal*, 02/1987, p. 251; *Jacobs*, *Beziehungsweise Law Clinic*, *Kritische Justiz* 2021, p. 300; *Nicolson*, "Our roots began in (South) Africa": Modeling law clinics to maximise social justice ends, *International Journal on Clinical Legal Education* 03/2016, accessible at: <https://journals.northumbria.ac.uk/index.php/ijcle/article/view/532> (last reviewed 27.03.2023), p. 94.

identities and supports the development of their understanding of their purpose and the role they play as future lawyers and policymakers in advancing Access to Justice.²⁶

To be concrete, legal clinics help students to develop their sense of justice as they cannot handle the problems presented without an emotional response.²⁷ Since clinical legal education can help students focus on understanding the relationship between law and justice, it encourages the examination of the impacts of the application of the law. Legal clinics help students question the link between law and fairness.²⁸ They begin to develop their own perception and judgment and are sensitized to social justice issues through exposure to victims of social injustice.²⁹ Particularly this results in students understanding and reflecting on the impacts of laws on marginalized people.³⁰ This in turn results in an increased understanding of the structural barriers to accessing lawyers and the legal system and the imperative of reforming the legal system to redress those barriers.³¹

The more law students are trained that way, the more awareness there will be for the needs of marginalized groups and Access to Justice problems.

²⁶ See regarding this development in the USA: *Maranville/Lynch/Kay/Goldfarb/Engler*, Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering, University of Washington School of Law Research Paper, 19/2012, p. 521; *Whelan*, Grounding inside/out Professional Identity formation by developing wholehearted lawyers with therapeutic intent, International Journal on Clinical Legal Education 01/2022, p. 60.

²⁷ *Giddings*, Promoting Justice through Clinical Legal Education, Justice Press 2013, p. 61.

²⁸ *Hathaway*, Clinical Legal Education, Osgoodee Hall Law Journal 02/1987, p. 251.

²⁹ *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.

³⁰ *Giddings*, Promoting Justice through Clinical Legal Education, Justice Press, 2013, p. 61.

³¹ *Whelan*, Grounding inside/out Professional Identity formation by developing wholehearted lawyers with therapeutic intent, International Journal on Clinical Legal Education 01/2022, p. 40.

As Aiken/Wizner points out, clinical education (when done right):

“creates opportunities for law students to recognize the injustices in society and in the legal system, to appreciate the role they can play in challenging social injustice and in reforming the legal system, to make society and the legal system more just, and to inspire them to do just that. If we do that well, clinical legal education will have an even greater impact on promoting social justice than if we handle more cases. And to do that, we must all be both effective teachers and effective doers.”³²

Therefore, clinical legal education can result in good citizenship, improved policies, good governance, Access to Justice, and effective remedies.³³ In consequence, law schools have a unique opportunity and obligation to make Access to Justice a central social priority by implementing work in a legal clinic in the curriculum.

An Assessment of the Movement of clinical legal education in Germany

Historic overview

Whereas legal clinics have been developing in the US and Australia for over 40 years, they are a rather new development in Germany. Until 2004, legal professionals were not allowed to provide pro bono legal advice.³⁴ Until 2008, Art. 1 § 1

³² Aiken/Wizner, Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice, Fordham Law Review 03/2004, p. 1010.

³³ Odigie-Emmanuel, The role of legal clinics in promoting human rights: the experience of Nigeria Law School Yenagoa Law Clinic and the legal support and care centre at GD Goenka University School of Law Gurgaon India, International Journal of Clinical Legal Education 01/2023, p. 4

³⁴ BVerfG, Beschluss v. 29.07.2004 –1 BvR 737/00, NJW 2004, p. 2662.

Rechtsberatungsgesetz (*Legal Advice Act*) did not allow persons other than “persons who have been granted permission to do so by the competent authority” (meaning lawyers) to provide legal services to third parties. This regulation led *de facto* to a complete ban on free legal advice.³⁵ The “Rechtsberatungsgesetz” dates back to the time of the National Socialists and was intended to prevent Jewish lawyers, whose professional licenses had been revoked, from providing legal advice.³⁶ Until 1935 only the commercial provision of legal services to third parties was prohibited under sec. 3 Gewerbeordnung (*Industrial Code*) (old version).³⁷

Why such a regulation from the Nazi era lasted for so long, remains unclear. In the year 2008 the legislator recognized (following a decision of the German highest court³⁸) that the protective purposes of the “Rechtsberatungsgesetz” and the protections of the person seeking legal advice, would hardly be jeopardized by the provision of legal services free of charge by a lawyer with professional experience.³⁹ As a result, the “Rechtsdienstleistungsgesetz” (*Act on Out-of-Court Legal Services*) replaced the “Rechtsberatungsgesetz”. Even though there is no indication in the

³⁵ *Deckenbrock*, Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG, AnwBl 2017, p. 937; *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 16; *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, Juristische Ausbildung 06/2017, p. 450; *Lück*, Guter Rat zu teuer? Bestandsaufnahme zu studentischer Rechtsberatung und Überlegungen zu Qualitätssicherungsmaßnahmen in Law Clinics, Juristische Ausbildung 07/2020, pp. 703 f.; *Singer*, Studentische Rechtsberatung. Legal Clinical Education an der Humboldt-Universität, in: Barton/Hähnchen/Jost (Ed.), Anwaltsorientierung im Studium: Aktuelle Herausforderungen und neue Perspektiven, 2016, p. 94

³⁶ *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 16; *Lück*, Guter Rat zu teuer? Bestandsaufnahme zu studentischer Rechtsberatung und Überlegungen zu Qualitätssicherungsmaßnahmen in Law Clinics, Juristische Ausbildung 07/2020, pp. 703 f.

³⁷ *Kramer*, Die Entstehung des Rechtsberatungsgesetzes im NS-System und sein Fortwirken, Kritische Justiz 2000, p. 601; *Rücker*, Das Ende der Rechtsberatung durch jüdische Juristen – Zur Entrechtung der ab 1933 aus der Anwaltschaft ausgeschlossenen Juristen, AnwBl 2007, p. 804.

³⁸ BVerfG Beschl. 29.07.2004 – 1 BvR 737/00, NJW 2004, pp. 2662 ff.

³⁹ *Kramer*, Die Entstehung des Rechtsberatungsgesetzes im NS-System und sein Fortwirken, Kritische Justiz 2000, p. 601

legislative materials that the legislator had the phenomenon of law clinics in mind when reorganizing the area of legal services provided free of charge, the “Rechtsdienstleistungsgesetz” allowed legal clinics to open.⁴⁰

According to sec. 3 Rechtsdienstleistungsgesetz, law clinics require a permission standard for their activity. This is found in sec. 6. The standard declares legal services that are not related to a paid activity to be generally permissible. Outside of close personal relationships, the legal service provider must ensure, in accordance with sec. 6 (2), that the legal service is provided by a person who is permitted to provide this legal service for remuneration, by a person qualified to hold judicial office or under the guidance of such provision. Therefore, the law only allows for legal clinics to provide legal advice when the students are guided by a lawyer or other legal professional. This requires instruction and further training as well as cooperation in the provision of legal services. This is mainly provided by legal supervision (see more to this later).

Once the legal path was clear for the establishment of law clinics in Germany, the first clinics – mainly specializing in civil law – were founded by students.⁴¹ A catalyst for the German law clinic movement was the so-called “refugee crisis”, starting in 2014 when the number of asylum applications started to rise immensely.⁴²

⁴⁰ *Deckenbrock*, Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG, AnwBl 2017, p. 937; *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, pp. 1 f., 7; *Schmidt*, § 6 RDG, Krenzer (Ed.) Rechtsdienstleistungsgesetz Handkommentar, 2017, Rn. 69, 72.

⁴¹ *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, pp. 18 ff.

⁴² *Kilian/Wenzel*, Law Clinics in Deutschland: Zahlen, Typologien und Strukturen, AnwBl. 10/2017, p. 963; Statista - Anzahl der Asylanträge (insgesamt) in Deutschland von 1995 bis 2020; accessible at:

In the following years, numerous (refugee) law clinics opened all over Germany, focusing mainly on refugee law, and now shifting towards matters concerning the right of residence as well as labor and social law.⁴³ Currently, more than 38 refugee law clinics provide legal advice all over Germany.⁴⁴

Current situation

Most of the law clinics are tied closely to a university, with the university providing facilities and a professor supporting the clinic in their education program.

However, although numerous authors have pointed out the important didactic functions of law clinics for legal education and doctrine⁴⁵, almost all legal clinics in Germany lack, more than half a decade after their establishment, institutional anchoring.⁴⁶ The legal clinic is never part of the mandatory curriculum of legal studies in Germany.⁴⁷ Legal clinics in Germany are – with very few exceptions – student-run clinics where the organization of the consultations as well as the consultations themselves are done by students voluntarily.⁴⁸

<https://de.statista.com/statistik/daten/studie/76095/umfrage/asylantraege-insgesamt-in-deutschland-seit-1995/> (last reviewed: 01.08.2022).

⁴³ *Hilb/vom Felde*, Refugee Law Clinics in Deutschland – ein studentisches Modell für die Veränderung der juristischen Ausbildung?, *Kritische Justiz*, 02/2016, pp. 221 f.; *Kilian/Wenzel*, Law Clinics in Deutschland: Zahlen, Typologien und Strukturen, *AnwBl.* 10/2017, p. 963.

⁴⁴ <https://home.refugeelawclinics.de/2022/11/22/rlc-standorte/> (last reviewed: 27.03.2023).

⁴⁵ *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 1; *Riehm/Heiß*, Alternative Streitbeilegung in der studentischen Rechtsberatung, *German Journal of Legal Education*, 03/2016, p. 23; Wissenschaftsrat, (Ed.), *Perspektiven der Rechtswissenschaft in Deutschland. Situation Analysen, Empfehlungen 2012*, WR-Drs. 2558–12, p. 57 f.

⁴⁶ *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.

⁴⁷ *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 1; *Wenzel/Kilian*, Law Clinics in Deutschland, 2022, p. 27.

⁴⁸ *Wenzel/Kilian*, Law Clinics in Deutschland, 2022, p. 27.

This lack of institutional anchoring and the segregation of clinical methodology from the core curriculum leads to the disinterest of many law teachers in matters of educational theory and therefore a lack of appreciation in the academic environment.

⁴⁹ As a result, voluntary extracurricular work in a clinic mostly does not qualify in any way as academic work and therefore hardly any credits are offered for clinical work.⁵⁰ Accordingly, legal clinics are still largely the private passion of students or the extracurricular commitment of individual university teachers.⁵¹ Therefore German law clinics are highly dependent on these individuals.⁵² Even the transfer of a university professor to another university can cause a law clinic that has been painstakingly built up to totter or collapse.⁵³

As mentioned above, most legal clinics in Germany are refugee law clinics. However, refugee, migration, asylum, and residence law are not part of the legal curriculum. Therefore, most students do not have any knowledge in these areas of law and need to be taught before consultations can start.⁵⁴ Since legal clinics are – at best – at the margin of the academy, there is no room, no money, and no faculty to focus more deliberately on the pedagogical aspects of clinical legal education besides the mere legal information.

⁴⁹ *Wenzel/Kilian*, *Law Clinics in Deutschland*, 2022, p. 27.

⁵⁰ *Giddings*, *Promoting Justice through Clinical Legal Education*, Justice Press, 2013, p. 8; *Kilian/Wenzel*, *Law Clinics in Deutschland: Zahlen, Typologien und Strukturen*, *AnwBl. 10/2017*, pp. 964 f.

⁵¹ *Wenzel/Kilian*, *Law Clinics in Deutschland*, 2022, p. 27.

⁵² *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

⁵³ *Kilian/Wenzel*, *Law Clinics in Deutschland: Zahlen, Typologien und Strukturen*, *AnwBl. 10/2017*, p. 964; *Wenzel/Kilian*, *Law Clinics in Deutschland*, 2022, p. 27

⁵⁴ *Deckenbrock*, *Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG*, *AnwBl 2017*, p. 940.

Legal clinics have yet to be accepted as part of mainstream legal education and are at the moment isolated outposts of law schools. They are seen as a service for the poor for free legal advice instead of also valuing the concept for their educational benefits. As a result, German law schools and policymakers are hesitant in supporting legal clinics with the resources they require (funding, staff, organizational, and liability frameworks) and hesitate to integrate them into the curriculum. Clinical education is largely viewed as a perk, a somewhat exotic adjunct to the range of “hard law” courses taught in accordance with more traditional methodologies. As a result, although legal studies primarily aid in a practical legal profession, the studies are still quite theoretical.⁵⁵

Quality control and supervision

Without effective supervision, reflection, and the development of the social skills that give the clinical methodology its educational validity, the clinics suffer in several ways.⁵⁶ Quality control and adequate legal and psychological supervision have implications for both students (learning) and clients.

Protection seekers are in a situation that makes them particularly vulnerable due to their financial situation, language and cultural barriers, and the vital

⁵⁵ With the exception of a practical study period of three months, other practical training opportunities such as Moot Courts and legal clinics are purely optional: *Hannemann/Dietlein*, *Studentische Rechtsberatung und Clinical Legal Education in Deutschland*, 2016, pp. 5 f., 9.

⁵⁶ See already about this effect in Canada more than 30 years ago: *Hathaway*, *Clinical Legal Education*, *Osgoode Hall Law Journal*, 02/1987, accessible at: <https://digitalcommons.osgoode.yorku.ca/ohlj/vol25/iss2/1/> (last reviewed: 15.08.2022), p. 244.

importance of the asylum process. This must not be exploited by students “learning by doing” on the poor rather than for the poor.⁵⁷ Therefore, the framework and limits of student legal counseling must be clear: students must receive specialized training in order to provide high-quality counseling. They need to be instructed in the legal issues essential to their work so that they can grasp and process the typical case constellations in a legal manner largely independently.⁵⁸

They also need to learn basic skills in “client processing”. They need to learn how to conduct a client interview, how to ask the right questions, determine the facts of the case, identify possibilities of legal research, use negotiation techniques, find practical solutions as well as assist in drafting letters, contracts, and settlements.⁵⁹

The participation of a fully qualified lawyer is not always necessary during the consultation. Also, it is not necessary for a lawyer to approve every letter or every train of thought of the student.⁶⁰

Furthermore, regular mandatory legal supervision in which all cases are discussed with lawyers is an important component of a law clinic. The supervision

⁵⁷ *Nicolson*, “Our roots began in (South) Africa”: Modeling law clinics to maximise social justice ends, *International Journal on Clinical Legal Education* 03/2016, p. 99

⁵⁸ *Deckenbrock*, Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG, *AnwBl* 2017, 937, 940; *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *Juristische Ausbildung* 06/2017, p. 452; *Hilb/vom Felde*, Refugee Law Clinics – Aktuelle Entwicklungen, *NVwZ* 2017, 598, 599; BT-Drs. 16/3655, p. 58.

⁵⁹ *Deckenbrock*, Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG, *AnwBl* 2017, 937, 940; *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *Juristische Ausbildung* 06/2017, p. 452; *Hilb/vom Felde*, Refugee Law Clinics – Aktuelle Entwicklungen, *NVwZ* 2017, 598, 599.

⁶⁰ *Deckenbrock*, Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG, *AnwBl* 2017, 937, 940; *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *Juristische Ausbildung* 06/2017, p. 453.

prevents counseling errors and students learn by discussing cases with other students and lawyers.⁶¹

During consultations, students must make their own limitations transparent and must always avoid patronizing those seeking advice. The goal of counseling should be to inform clients as best as possible about their situation and legal options so that they can make an informed decision afterwards.⁶²

Besides legal supervision and education, law clinics should create framework conditions to minimize the personal burden for students. This includes clear contact persons who relieve students of the responsibility for decisions made during the consultations.

Furthermore, psychological supervision can play an important role in students wellbeing. Working in the field of asylum and migration law can be associated not only with many positive feelings, but also with sadness, anger, disappointment, and powerlessness. Working with those seeking advice creates closeness to people who are often not recognized by the legal system. The demand on the law for objectivity, neutrality, democracy, and security, which students develop in their legal education, can become cracked in the legal practice of asylum law. Doubts arise when the law in practice fails to live up to its own promises.⁶³ In order to strengthen students' psychological liability and the quality of their given advice, psychological supervision is highly relevant within clinical legal education.

⁶¹ *Hilb/vom Felde*, Refugee Law Clinics – Aktuelle Entwicklungen, NVwZ 2017, 598, 599.

⁶² *Hilb/vom Felde*, Refugee Law Clinics – Aktuelle Entwicklungen, NVwZ 2017, 598, 599.

⁶³ *Jacobs*, Beziehungsweise Law Clinic, Kritische Justiz 2021, pp. 299 f.

Optimizing the Access to Justice impact of German legal clinics?

Considering the mentioned potential Access to Justice impact of legal clinics and the still somewhat new clinic movement in Germany, it becomes clear, that German law clinics have not maximized their social impact yet. A comparative analysis with more established law clinic systems in the US and Australia will be undertaken to identify three possible variables in clinic organization that might help German law clinics to evolve further. These variables are not conclusive and share strong intersections.

Focus on social justice versus focus on education

In the starting phase, legal clinics in Australia and the US should fill evident gaps in legal protections for those in need.⁶⁴ By now, the fundamental concept of Anglo-American legal clinics is to limit the theoretical nature of legal studies by means of an extended practical part in teaching – clinical legal education. As a result, law clinics are far more common there than they are in Germany. By now, 185 American law schools have altogether 1521 law clinics, which are specialized in different areas of

⁶⁴ In Australia, the Henderson-Commission (Australian Government Commission of Inquiry into Poverty, Poverty in Australia: first main report (April 1975) Australian Government Publishing Service) aimed to fight poverty, which included facilitating access to the legal system for minor matters (*Dickson*, Clinical Legal Education in the 21st Century: Still Educating for Service?, Journal of Clinical Legal Education, 01/2000, accessible at: <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/129> (last reviewed: 15.08.2022), p. 39; *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. 102 f.). In the US, there was an immense need for lawyers to fulfill the right to criminal defense which was expanded by the US Supreme Court in 1963 and 1972 (*Gideon v Wainwright*, 372 US 335 (1963) and *Argersinger v Hamlin*, 407 US 25 (1972)). In the interest of meeting these needs, legal clinics were formed to support the persons in need (*Dickson*, Clinical Legal Education in the 21st Century: Still Educating for Service?, Journal of Clinical Legal Education, Nov. 2000, p. 38; *Maranville/Lynch/Kay/Goldfarb/Engler*, Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering, University of Washington School of Law Research, 19/2012, accessible at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1626568 (last reviewed: 15.08.2022), p. 521.).

law.⁶⁵ Since 1996, a law school's effort to get its students to participate in a pro bono program at the university has been one of the law school accreditation requirements by the American Bar Association.⁶⁶

Social justice and student education are not mutually exclusive alternatives. Students serving the community will automatically learn about the law, its (in)justices, and the way the law operates. In order to effectively serve the community and strengthen their sense of (access to) justice, students need to be taught legal skills as well as legal ethics.⁶⁷ Both can only be taught in the needed detail if legal clinics are not only seen as a social justice project but also as a part of legal education.

However, although the relevance of this assessment had been discussed within German research⁶⁸, it has not made its way into legal education politics. Therefore,

⁶⁵ *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 13; *Jacobs*, A Lexical Examination and (Unscientific) Survey of Expanded Clinical Experiences in U.S. Law Schools, *Tennessee Law Review*, 02/2008, accessible at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1136786 (last reviewed: 15.08.2022), p. 343; *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; *Kuehn/Reuter/Santacroce*, 2019-20 Survey of Applied Legal Education, accessible at: https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/628457fd9c25cc6c1457af4_Report%20on%202019-20%20CSALE%20Survey.Rev.5.2022.pdf (last reviewed: 01.08.2022), p. 6.

⁶⁶ See: American Bar Association Standards for approval of Law Schools, Standard 302 (a) (4) und 405 (c) from August 1996; by now: Standard 303 (b) from August 2014: „A law school shall provide substantial opportunities to students for: law clinics or field placement(s); and student participation in pro bono legal services, including law-related public service activities“ as well as Standard 405 (c) from August 2014: „A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

⁶⁷ *Nicolson*, Problematizing Competence in Clinical Legal Education: What do we Mean by Competence and How do we Assess Non-skill Competencies, *International Journal on Clinical Legal Education* 01/2016, p. 66 ff.

⁶⁸ *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *Juristische Ausbildung* 06/2017, p. 459; *Stephan*, *AnwBl* 1998, p. 92.

legal clinics are still merely seen as social service projects rather than education options in German legal education practice.

Compulsory versus voluntary involvement and academic credits

When law clinics are not only seen as a community service act but also as a part of legal education, the legal framework and the material operating conditions will automatically be taken over – at least to some extent – by the law school itself. This assumption is proven by clinics in the US and in Australia, where the provision of legal advice by students constitutes a separate legal matter. In that context, the legal clinics are built into academic clinical programs at the law schools where students are educated and supervised by professors and other academic staff of the law school. The work in the legal clinic is compulsory and academic credit is provided for it.⁶⁹

However, building legal clinics into the mandatory curriculum might also come along with some disadvantages. The number of students involved and the resulting level of community service and therefore Access to Justice will be reduced. The period of service in extra-curricular clinics will probably be longer than the usual curricular experience.⁷⁰ Providing a smaller group of students with a long-lasting

⁶⁹ For the USA: *Hannemann/Dietlein*, *Studentische Rechtsberatung und Clinical Legal Education in Deutschland*, 2016, p. 46; *Maranville/Lynch/Kay/Goldfarb/Engler*, *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, University of Washington School of Law Research Paper, 19/2012, pp. 521 f.; *Onoja/Sule*, *Clinical Legal Education in Nigeria and the United States: A Comparative Perspective*, *Public Law Research*, 2015, p. 10. For Australia: *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.

⁷⁰ *Nicolson*, “Our roots began in (South) Africa”: Modeling law clinics to maximise social justice ends, *International Journal on Clinical Legal Education* 03/2016, p. 104 f.

more in-depth experience will therefore probably have more of an impact than educating all students on clinical legal education.⁷¹ Another possible drawback to compulsory legal clinic activities is that this runs the risk of students not being as involved with cases and clients as they would be when they are working solely on their own accord or for gaining benefits instead of completing a mandatory class. Therefore, it seems optimal for legal clinics to allow for academic credit but still not be a mandatory part of the curriculum.

In Germany, however, legal clinics mostly do not allow for any academic credit to be given at all. This appears to be the worst option out of all. Students put in all the work and do not gain anything in return. Instead, the clinic work adds on to their already busy schedule, leaving them at make the daily choice of sacrificing their free time or letting their academic work slip.

Self-organized and financed clinics versus law school managed clinics

Strongly connected with the first two issues is the question of whether a clinic is staff- or student-managed. If a clinic is part of the legal education system at a law school and some kind of academic credit is provided, this often goes hand in hand with the law school providing at least some basic material conditions for law clinics to operate as well as the legal framework. If the law school provides funding for professionally qualified staff and allows for permanent employment of this staff, this helps to secure

⁷¹ *Nicolson*, "Our roots began in (South) Africa": Modeling law clinics to maximise social justice ends, *International Journal on Clinical Legal Education* 03/2016, p. 109.

qualified education and supervision of the students. Nevertheless, various (management) tasks can be taken over by students or shared between staff and students. This allows students to gain decision-making power, assume responsibility outside of the legal counseling and feel a sense of “psychological ownership” of the clinic which might encourage them to enhance their engagement in the clinic.⁷² They also gain knowledge within the policy and legal justice landscape and will improve their management skills.

However, since most students will only be involved in a clinic for a shorter period of time, tasks have to be shifted often which can lead to inefficiency within the organization of the clinic.⁷³ Also, having paid administrative and especially academic or clinical staff plays an important role in providing good and consistent education and supervision.

In Germany, acquiring funding for qualified supervision and education is mostly done by the students themselves. Having to deal with these topics takes students’ focus away from their actual mission of providing legal advice and learning in the field.

⁷² *Pierce/Kostova/Dirks*, Towards a Theory of Psychological Ownership in Organizations, *Academy of Management Review* 02/2001.

⁷³ See also: *Nicolson*, “Our roots began in (South) Africa”: Modeling law clinics to maximise social justice ends, *International Journal on Clinical Legal Education* 03/2016, p. 112.

Conclusion and Recommendation

Legal clinics consist of far more than students giving free legal advice to those in need.

Legal clinics are also a means of educating law students in the field and letting them gain experience with real cases. This not only generates substantial community benefits but at the same time promotes student awareness of social justice.

The students who have been educated within clinical legal education programs have the opportunity to learn about legal aspects, and acquire sufficient lawyering skills and values in order to appreciate the role of the law and law in society.⁷⁴ They 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 will also learn to critically analyze the law, its limits, and its rationales within the framework of Access to Justice.⁷⁵ 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.⁷⁶

⁷⁴ See also: *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.

⁷⁵ *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.

⁷⁶ *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.

However, in pursuance of providing social justice in a true sense, clinical programs need to go far beyond providing legal aid. There is a need for imparting value-based pragmatic legal education so as to make sure law students are competent enough to identify social problems in their future properly and to implement solutions and strategies to address and eradicate social evils like injustice, poverty, corruption, etc. rather than just focusing on analyzing the problem in theory.⁷⁷ Legal clinics are a great way to implement and strengthen these values and teach students to reflect on how the justice system (fails to) respond in specific cases. It is the task of the universities to provide a curriculum on clinical legal education that focuses on these aspects and to make sure to train wholehearted, skilled lawyers.⁷⁸

Whereas a lot of countries seem to be quite far along, Germany is just starting its journey of improving Access to Justice through legal clinics.⁷⁹ The first – much needed – step is the institutionalization of law clinics within the law schools that will go along with a more multi-perspectival, interdisciplinary approach to the clinical legal education program. In order to do so, legal policy will have to internalize that clinical legal training is always training and not free consultation to relieve the

⁷⁷ See also: *Bücker/Woodruff*, The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences, *German Law Journal* 09/2008, p. 615; *Pati/Mohanty*, Clinical Legal Education – A Bare Necessity in the Scientific Era, *Asian Journal of Legal Education*, 03/2016, p. 117.

⁷⁸ See also: *Whelan*, Grounding inside/out Professional Identity formation by developing wholehearted lawyers with therapeutic intent, *International Journal of Clinical Legal Education* 01/2022, p. 40.

⁷⁹ See also: *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, pp. 9, 50; *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *JA* 2017, 449. See for the advanced scope and stage of development of clinical legal education in general: *Bloch*, *The Global Clinical Movement: Educating Lawyers for Social Justice*, 2011.

treasury.⁸⁰ Education policy must not only provide for the legal framework but also create the material conditions for law clinics to operate. This requires not only adequate funding for professionally qualified staff but also, in particular, the possibility of permanent employment of appropriate staff. The German higher education system in its current structure is unsuitable for this purpose since there is practically no long-term academic middle class, which is the central pillar of clinical training concepts in other countries. The establishment of professional structures, in which law clinics in line with foreign models are more than volatile extracurricular activities of individual university lecturers and their staff, will not be possible without an impetus from outside.⁸¹

⁸⁰ *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. 955.

⁸¹ See also: *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. 955.

LAW STUDENTS AS ACTIVE CITIZENS: INSTILLING A CAREER-LONG COMMITMENT TO PRO BONO AND SOCIAL JUSTICE VIA THE CLE CURRICULUM

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Abstract

By engaging in pro bono work whilst at university, students demonstrate that they are good citizens. Students perform a valuable service for members of the local community, and the skills they learn enhance their ability to secure, and succeed in, a graduate role. But is this enough? Should we, as clinical legal educators, be doing more to facilitate students becoming active (and not just good) citizens, who know not only *how* to 'do' pro bono, but who also actively engage with the *why* of pro bono? Can facilitating a critical understanding of the political and social backdrop to the need for pro bono advice engender a genuine commitment to social justice which students can take with them into their working lives? This paper explores the drivers for an 'active citizenship' approach to pro bono learning and reflects on the pilot year of a student-led module aimed at fostering social responsibility and a strong sense of social justice to achieve a long-lasting commitment to pro bono in the lawyers of the future.

Introduction

It is generally accepted that students undertake Clinical Legal Education ‘to learn what lawyers do in practice’¹. Most pro bono modules within the undergraduate curriculum teach, and assess, the skills required to succeed within a clinic setting and in practice, from client interviewing to letter writing, research to reflection. Whilst these are of course vital components to making a capable and valuable contribution to clinic, the focus of such modules is on teaching students *how* to do pro bono, not *why* it needs to be done. By providing students with opportunities to engage in legal advice clinic and other community outreach activities, we, as clinical legal educators, are enabling students to become good citizens. But are we doing enough to encourage and enable students to become *active* citizens who know not only how to undertake pro bono activities, but also appreciate why pro bono work is necessary? Are we missing an opportunity to formally explore the importance of social justice as an overt part of the curriculum?

This paper explores the drivers for an ‘active citizenship’ approach to pro bono learning and reflects on the pilot year of a student-led module aimed at fostering social responsibility and a strong sense of social justice to achieve a long-lasting commitment to pro bono in the lawyers of the future.

The argument for active citizenship – and the link to social justice

¹Jacqueline Weinberg, Preparing Students For 21st Century Practice: Enhancing Social Justice Teaching In Clinical Legal Education, *International Journal of Clinical Legal Education*, Vol. 28 No. 1 (2021)

Whilst a 'contested concept'², citizenship - as expounded by Marshall³ in his seminal essay on the subject – is essentially concerned with what it means to be a member of society. Active citizenship is characterised by individuals being empowered, as 'proactive agents of change'⁴, to shape their rights and obligations within society through active, rather than passive, participation⁵. Crick⁷, whose report⁸ saw the introduction of Citizenship as a statutory National Curriculum foundation subject for secondary schools in England & Wales, identified that active citizenship has two key components: action and knowledge. His argument is that 'doing charitable work makes one a good citizen, but not an active one. An active citizen would also need the underlying knowledge behind why the social service was necessary'⁹.

Social justice, like citizenship, is 'a debated concept'¹⁰ with its meaning differing depending on the context¹¹. Whatever its exact definition, social justice means that

² Ruth Lister, *Citizenship: Feminist perspectives*, New York University Press (2003), p.14

³ Thomas Humphrey Marshall (1950) *Citizenship and Social Class*. Cambridge University Press, Cambridge.

⁴ Jenny Onyx, Sue Kenny, and Kevin Brown (2012). *Active Citizenship: An Empirical Investigation*. *Social Policy and Society*, 11(1), 55-66. doi:10.1017/S1474746411000406, p.56

⁵ Bryan S. Turner (2001) 'The erosion of citizenship', in *British Journal of Sociology*, Vol 52, pp 189 -210

⁶ Alain Touraine (2000) *Can we live together? Equality and difference*. Cambridge, Polity Press.

⁷ Bernard Crick (2007). *Citizenship: The political and the democratic*. *British Journal of Educational Studies*, 55(3), 235–248.

⁸ Advisory Group on Citizenship, *Education for Citizenship and the Teaching of Democracy in Schools*, London, Qualifications and Curriculum Authority, 1998

⁹ Perna Carroll, Simon Child, and Ellie Darlington (2015). *Assessing active citizenship: An international perspective*, *Research Matters: A Cambridge Assessment Publication*, 19, 14-19. P.15

¹⁰ Jacqueline Weinberg, *Preparing Students For 21st Century Practice: Enhancing Social Justice Teaching In Clinical Legal Education*, *International Journal of Clinical Legal Education*, Vol. 28 No. 1 (2021) p.10

¹¹ See, for example, David McQuoid-Mason, 'Teaching Social Justice to Law Students Through Clinical Legal Education and Community Service: A South African Experience' in Mutaz Qafisheh and Stephen Rosenbaum (eds), *Experimental Legal Education in a Globalised World: The Middle East and Beyond* (Cambridge Scholars, 2016); Julia Lawton, 'The Imposition of Social Justice Morality in Legal Education' (2016) 4 *Indiana Journal of Law and Social Equality* 57; Adrian Evans et al, *Best Practices: Australian Clinical Legal Education* (Report for Office of Teaching and Learning, 2013); Dakalo Singo & Alicia Raymond 'Clinical legal education and social justice — A perspective from the Wits Law Clinic' (2018) *Stellenbosch Law Review* Volume 29, Part 2 p. 295-313; Ibijoke Patricia Byron, 'The Relationship Between Social Justice and Clinical Legal Education: A Case Study of the Women's Law Clinic, Faculty of Law, University of Ibadan, Nigeria' (2014) 20 *International Journal of Clinical Legal Education* 563.

'able members of society should challenge political, economic, societal, legal and other structures that oppress the less advantaged'¹² and in seeking to instil this at law school 'students should be encouraged to be value-driven'¹³. McKeown and Hall recognise that this encouragement can be given by 'provid[ing] students with the framework to critique the world in which they live and strive to develop their own moral position'.¹⁴ The act of critiquing (by way of analysis and evaluation) cannot happen without knowledge. Providing students with a framework which allows them to be value-driven and appreciate the importance of social justice necessarily means, as a prerequisite, providing them with the knowledge to construct the framework. Knowledge will allow students to be active citizens: members of the pro bono community who know not only how pro bono is done, but also why.

There is a clear link between active citizenship and social justice education. Students volunteering in clinic are active in the sense that they carry out a variety of practical actions to progress a client's matter. However, it is arguable that by allowing students to spend their entire period of volunteering in clinic without actively thinking about why they are doing what they are doing, why pro bono services are necessary, and what would happen to their clients if these services were not offered, we are at the same time encouraging them to be passive participants within the pro bono landscape. Without a deliberate attempt at engaging students in understanding these issues,

¹² Weinberg (n3) p.13

¹³ Weinberg (n3) p.23

¹⁴ Paul McKeown and Elaine Hall, 'If We Could Instil Social Justice Values Through CL, Should We?' (2018) 5(1) *Journal of International and Comparative Law* 143, p.179

there is a danger that they can ‘go through the motions’ of providing pro bono advice, gaining valuable skills-based experience to propel them into legal roles, but without this experience really making a difference to them by shaping the sort of lawyer they wish to be in practice. ‘Sort of lawyer’ in this context is not to be taken to mean whether the student wishes to practice family or corporate law, or to work in a high street or international practice. It means the values by which the individual is driven, the extent to which they are well informed about the drivers behind pro bono, and thus the extent to which they can be genuinely committed to, and empowered to facilitate, social justice, regardless of practice area or type of firm.

Active citizens not only give back to the community, they also understand why their contribution is necessary. It is submitted that by engaging with the question of why pro bono services are needed (and not just how to deliver them) ‘active citizen’ students enhance their understanding of social justice as an essential part of a properly functioning society. It should follow that this greater understanding of pro bono’s place in delivering social justice increases the likelihood of students entering legal practice with a deeper, and continued, commitment to pro bono. This findings of this paper show this to be the case.

A new module addressing active citizenship

During the 2022-23 academic year, I facilitated a group of six students in devising the pilot iteration of Law in Action, a new final year credit-bearing¹⁵ module designed to provide students with academic credit for participating in pro bono activities. Following ethical approval from the University of Chester, I held a series of focus groups via which the students formulated the module's learning outcomes and developed the learning, teaching and assessment methods for the pilot year.

When discussing how they would frame the learning outcomes of the module, all students articulated their wish to understand the drivers behind pro bono provision, or 'where it all comes from' (focus group participant 1). This was expressed by one participant as follows:

'awareness [...] of why the clinic is needed, like legal aid cuts. I think if we did the wider context of "this is why this is in place. This is how it affects people. This is how it affects firms. It affects individuals"....It affects, you know, all these people' (focus group participant 2).

Following discussion, students agreed that this should be translated into the following learning outcome¹⁶:

'Critically evaluate the role of pro bono initiatives in today's legal landscape by applying a wide range of evidence to develop well-argued critiques and present valid conclusions'

¹⁵ The module attracts 20 credits and is optional. Going forward, the module must be chosen by a minimum of ten students for it to run.

¹⁶ This is one of the four modular learning outcomes devised by students. See further footnote 17 below.

With this decided, students set about devising an assessment task which would enable them to achieve this learning outcome.

The Assessment Task

The proposals for assessment were designed by the students and translated into assessment tasks by me as module leader in a facilitating role. The assessment relating to the learning outcome above accounts for 30% of the final module mark¹⁷ and the assessment brief invites students to choose one of the two projects below and then research, devise and deliver a persuasive oral presentation supported by a PowerPoint slide deck.

‘Project 1: Presentation to the Senior Management Team (SMT) of the University of Wessex.

The University of Wessex, a post-92 university based in the North-West of England, does not currently operate any pro bono initiatives within its Law School. Please prepare a 10-minute research-informed presentation to the University’s SMT designed to persuade them to invest in setting up a pro bono offering and outlining how this offering could be structured. You will be expected to back up your assertions with evidence.’

‘Project 2: Presentation to the Executive Board of Minster & Sharp Solicitors LLP.

¹⁷ The second assessment (worth 70% of the module mark) spoke to learning outcomes relating to how pro bono work prepares students for the world of legal practice, and involved an interview for a trainee solicitor role, during which the students were asked to articulate how the skills exercised in their pro bono endeavours translated to the work of junior lawyers. This is the subject of a further article.

The Executive Board of this medium-sized regional law firm does not currently promote pro bono work and as such its fee earners do not undertake any pro bono activity that is approved by the firm. Please prepare a 10-minute research-informed presentation to the Executive Board designed to persuade them to make a firm-wide commitment to pro bono and outlining how this commitment could be structured. You will be expected to back up your assertions with evidence.'

Approach to Delivery

The first two of the module's eight 90-minute workshops were dedicated to addressing this part of the module. Save for the opening lecture which served as an introduction to resources from which to commence relevant research, all sessions within the Law in Action module were delivered by students using the jigsaw method, which involves participants 'teaching' part of the module content to their peers and thus 'structuring student interdependence through the learning task'¹⁸.

To succeed in the assessment, students needed to appreciate the issues faced by those in need of pro bono legal advice, understand the impact of the Legal Aid Sentencing and Punishment of Offenders Act 2012¹⁹ ('LASPO') on access to justice in England and Wales²⁰, and critically appraise the various methods by which legal services are

¹⁸ Joel Moskowitz, Janet H. Malvin, Gary A. Schaeffer, Eric Schaps (1985). Evaluation of jigsaw, a cooperative learning technique. *Contemporary educational psychology*, 10(2), 104-112. [https://doi.org/10.1016/0361-476X\(85\)90011-6](https://doi.org/10.1016/0361-476X(85)90011-6) p.104

¹⁹ The Legal Aid, Sentencing and Punishment of Offenders Act 2012, <https://www.legislation.gov.uk/ukpga/2012/10/contents>, accessed 8 July 2023.

²⁰ LASPO dramatically cut the availability of Legal Aid in England & Wales and has been described as catastrophic (see, for example, <https://www.thejusticegap.com/legal-aid-cuts-catastrophic-review-cannot-come-soon-enough/> 17 January 2017, accessed 8 July 2023)

delivered by non-governmentally funded organisations in the aftermath of the LASPO reforms. For each of the first two workshops, each student was tasked with researching, devising, and delivering a 10-minute presentation to their peers, accompanied by a slide deck and a well-referenced Word document containing a detailed note of the research undertaken.

The aims of workshop 1 were to critically evaluate the impact of LASPO on access to justice, to critically analyse the need for pro bono from the perspective of clients within the communities pro bono initiatives seek to serve, and to understand the (business) case for pro bono from the perspective of students, universities, and law firms/chambers. Students were required to thoroughly research why pro bono initiatives are necessary and/or desirable from the perspective of their allocated group: the pro bono client; universities (and by extension, students); or law firms/chambers. Presenters were expected to back up their assertions with evidence in the form of statistics, case studies, reports and articles, given that the material they produced would be used as consolidation by both themselves and their peers.

For workshop 2, students were expected to critically analyse and evaluate, with reference to robust evidence, proposals designed to assist those who cannot afford legal advice and alleviate pressure on the current third sector provision of help.

Students were allocated to one proposal/concept from a list of six, comprising:

- mandatory pro bono at university;
- mandatory pro bono within the legal profession;

- pro bono as a replacement for legal aid (with the aim of enabling students to understand that pro bono can never be a replacement for governmentally funded access to justice);
- mandatory secondary specialisation;
- allowing non-legally qualified individuals rights of audience to assist those without funds; and
- using Public Legal Education to prevent litigation arising.

Again, students were expected to research, prepare and deliver a 10-minute presentation on their allocated project and were required to include the following:

- an introduction to, and definition of, the proposal/concept to a lay audience;
- critical evaluation of both the advantages and disadvantages of the proposal/concept (and to whom); and
- an innovative argument of their own to either support, undermine or take a new perspective on the topic at hand.

During each workshop, students asked questions of each presenter to ensure they had fully understood the subject matter and provided constructive feedback to their peers on the content and format of their presentations. Students were also provided with constructive feedback by me in open forum during the session as well as by way of voice-recorded feedback on their presentation skills, sent by email within 24 hours of the workshop, for private reflection after the session.

What the Students Thought

Following the first assessment, I asked students - by way of anonymous ethically-approved survey - how they had found the delivery and assessment experience for this element of the module. All students taking the module at that point responded²¹.

I have provided them with the following pseudonyms: Adi, Bob, Ceri, Derryn, Eli.

Students agreed that it was 'incredibly' (Adi, Bob) important, indeed 'essential [to] aspiring lawyers' (Eli) to have learned about why pro bono services are necessary in today's society. Students viewed this knowledge as 'helpful for our future legal roles' (Ceri) and valuable 'as it puts into perspective [...] the reasons as to why we are doing what we are doing and why it is needed' (Derryn). Bob summarises it thus:

'Whilst I participate in pro bono, I had no idea of the magnitude [of the need] or array in which it is offered. I think that without the understanding that I now have, I wouldn't go into practice as a future trainee with the idea of giving back.' (Bob)

Adi also recognises the importance of knowing why pro bono is offered in order to articulate their job applications for legal roles:

'I feel like this content was delivered at the right time and to the correct audience. As a third-year law student, who at the same time as studying this module has also been writing her training contract applications, I feel that this module has [...] allowed me to provide further depth into my responses within

²¹ By the first assessment, one of the six students had interrupted their studies for personal reasons.

the training contract applications in regards to pro bono, and my engagement with pro bono and why pro bono matters to me.' (Adi)

Finally, students were asked whether they felt having learned about the case for pro bono would impact their outlook when they enter the legal profession. All agreed that their views had changed as a result of their participation in the module, and all referred to continuing to engage with pro bono initiatives post-graduation. Adi and Bob succinctly expressed how the module would impact their future behaviour:

'Absolutely. When I become a solicitor, I am more inclined to give back to the community' (Bob)

'Most definitely. I have only applied to firms which have incorporated Pro Bono into their CSR policies!' (Adi)

These comments demonstrate that the module enabled students to actively engage in deliberate analysis and evaluation of the pro bono context in which they were working, rather than simply being passive participants in the university's pro bono system for skills development purposes.

Conclusion

Whilst only comprising a small sample in number, 100% of the students who were involved in co-creating and delivering the pilot year of this module felt that their outlook would be changed as a result of actively engaging with the question of why pro bono is necessary. In 'Preparing Students for 21st Century Practice', Alice Weinberg called for 'students engaging in clinical programs [...] to be provided with

opportunities to develop a sense of social responsibility.'²² It is clear that this module achieved this aim: all students said they were more inclined to engage in pro bono activity post-graduation.

Whilst this paper has identified a link between active citizenship and social justice, it is not the case, nor the aim, that all students who take a module encouraging active citizenship (or who engage in non-credit bearing activities by way of student conference or other activity during, for example, national pro bono week) will become social justice lawyers.²³ Rather, the aim ought to be to enhance the possibility that those who 'do' pro bono at university will think more deeply – indeed, possibly even think for the first time – about *why* they do it, why it is necessary, what needs to change, and how they can contribute to the furtherance of social justice, regardless of profession, post-graduation.

In this way, students are not only 'us[ing] their education for the benefit of society'²⁴ by participating, possibly in a passive manner, in clinic rota work, but also, by way of deliberate engagement with the 'why' behind pro bono, they are being 'imbued with a social and professional responsibility to pursue social justice in society.'²⁵ The former is crucial to meet immediate need, but it is the latter that is vital if a pro bono ethos is to be perpetuated by future generations of lawyers.

²² Weinberg (n3) p.24

²³ All five students who responded to the survey are seeking roles within commercial law firms.

²⁴ Byron (n4) 576

²⁵ Ibid

Students 'doing' pro bono are good citizens. But there is potential for them to be much more. By actively applying their minds and genuinely engaging with the importance of social justice and why pro bono services are crucial in today's legal landscape, students have the potential to become *active* citizens who thoughtfully, deliberately and actively 'make a commitment to justice in their lives as lawyers'²⁶. Taking an active citizenship approach to clinical legal education may set the fire that instills a career-long commitment to pro bono, and may even empower students to become changemakers in the pro bono and social justice sphere.

²⁶ Jane Aiken, 'The Clinical Mission of Justice Readiness' (2012) 32 Boston College Journal of Law & Social Justice 233, p.236