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*Editorial*

# Committed to examining our roles: clinic for communities and students

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Clinic has so many possibilities and while this is enticing and engaging for academics and students alike, it is clear that a naïve commitment to clinic can lead to unintended problems when the needs of various stakeholders come into conflict. All the papers in this edition contribute to the growing sophistication of our clinic discourse, critically examining the intents, processes and positions of the actors involved.

We begin with a perspective from sociology: Diana Pan's research enables us to explore the student experience of work and identity. This is not a paper specifically about clinic, nevertheless it offers us a wider view and her rich qualitative data and theoretical framing will have an impact on how we understand our students' engagement with clinic.

The needs of communities are both desperately sought and difficult to acquire: Shristi Banerjee, Raveena Rao Kallakuru, Ambedkar Bhavan, Yamini Kumar,

Maithili Pai, Nirmal Kumar Upreti and David Tushaus have a rich account of research design, community engagement and collaborative understanding of domestic violence across contexts that reflects both on practical and ethical issues.

In understanding what we do and why we do it, sometimes it is helpful to return to the beginning and in this issue we have both a narrative and an analysis based in South Africa from Donald Nicholson which teases out a number of elements in clinic design that *could be*, *have been* but perhaps, *need not* be in conflict with one another. This piece will be a reference point for our work on the intent and purpose of clinic and I happily foresee what the late Caroline Aherne dubbed 'heated debate'.

As a companion to this, Rebecca Grimes provides a vivid report from the Ed O'Brien Memorial Conference in South Africa, where the latest in Streetlaw from across the world was showcased. This will serve to whet your appetite for our practice reports: Michal Urban and Hana Draslarová bring us up to date with a long-running collaboration with the Roma community in the Czech Republic and Farzana Akter indicates the impact of influential work from India to Bangladesh.

My usual plug for upcoming events in the CLE world:

- In October the European Network for Clinical Legal Education (ENCLE) will host its 4th annual conference on 27th and 28th October 2016 (2 days Conference) at the Faculty of Law, University of Valencia, Valencia (Spain). The conference, entitled ***"Clinical Legal Education and Access to Justice for***

***all: from asylum seekers to excluded communities",*** aims to bring clinicians together from across Europe to discuss all aspects of teaching and learning, learn from each other and share best practices on how to improve the access to justice to, in particular, vulnerable persons, through clinical legal education. The ENCLE Conference will be - as usual - open to all kinds of CLE activity focuses. However, given the on-going influx of refugees in Europe and the fact that more and more law clinics are focusing their work on the support to refugees and asylum seekers, ENCLE is particularly encouraging papers dealing with CLE and access to justice for refugees and asylum seekers. Proposals for either paper presentations or workshops should be sent to encle.info@gmail.com by 31st August 2016.

Meanwhile I'm heading off to the IJCLE conference with the Association for Canadian Clinical Legal Education (ACCLE). The conference, which will be hosted by the University of Toronto from 10-12 July, is entitled ***The Risks and Rewards of Clinic*** and encourages participants to reflect on the balance between risk and reward for all the stakeholders in clinic. We have a fantastic range of papers, seminars and symposia and I'm delighted to announce that we have managed to secure Sarah Buhler and Adrian Evans as keynote speakers. Papers from this conference will be available on the Legal Education and Professional Skills Research Group website www.northumbria.ac.uk/leaps .

This will be followed by the ***International Legal Ethics Conference VII*** (ILEC VII), which Fordham Law School will host in New York City on July 14-16, 2016 focusing on legal education, ethics, technology, regulation, globalization and rule of law (www.law.fordham.edu/ilec2016). I look forward to catching up with many of you in the next week!

*Reviewed Article: Clinic, the University and Society*

# TO WORK OR NOT TO WORK… BEFORE LAW SCHOOL: APPREHENSION, CONFIDENCE, AND CYNICISM AMONG LAW STUDENTS

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**Abstract**

Most socio-legal scholarship does not examine pre-law school preparation, more specifically, work experience. The recent American economic recession brought many working adults back into the fold of school. With regard to legal education in particular, how might work experience before law school affect students' perceptions of the profession, themselves, and their career trajectories? And, how do these experiences vary between law schools, and among law students? Drawing on an ethnographic study at two divergently-ranked American law schools between 2009-2011 (the beginnings of the economic crisis), I argue that student work experiences (or lack thereof) before law school matter for their own perceptions of their school and overall career outlook. I typologize those students

[1] Diana Pan is Assistant Professor in the Department of Sociology at the City University of New York

who transitioned immediately from undergraduate to law school as "conventionals," and those with work experience prior to commencing legal education as "returnees." I find that overall, returnees are more confident about completing law school, yet cynical about legal education, while their conventional counterparts respect the pedagogy but remain apprehensive regarding their career outlook. In this respect, work experience provides a form of "capital." Notably, most immigrant students in this study are conventionals, and I provide some suggestions to better incorporate these students who already feel as if they are posturing in an unfamiliar cultural and professional environment.

Clara worked for three years between college and law school. When asked if she had advice for aspiring law students, she said: "I would encourage them to work for a while before they go to [law] school because I think it will give them some perspective on school so they won't get so stressed out about it… I think, it just makes you more of an asset to the school." Scott, who also returned to law school after working, suggests aspiring law students "do a little soul searching. And find out why you want to go to law school and what it really is you want to end up doing." Clara was a researcher before law school, and Scott, a banker. Students who worked before law school often see their pre-law school

experiences as strength and recommend their pathway to others. Most literature and representations of law students focus on those who immediately transition to law school after college graduation, which is the typical pathway. The experiences of students like Clara and Scott suggest that students like them, who may diverge from the so-called "modal" student, represent a fertile area for study.

Debates abound within the American legal profession as to the purpose of legal education, and the best course to educate law students.[2] Removed from the apprentice model, American law schools have become largely an intellectual exercise. Some literature speaks to the merits of apprenticeship and clinical courses during law school, but most focus on how students learn to "think like lawyers."[3] Further, most scholarship paints in broad strokes a generally homogenous experience for all law students.

[2] See Bethany Rubin Henderson, 'What is the Purpose of Law School?', 53 *J. Legal Education*, 48-79 (2003); Wayne S. Hyatt, 'A Lawyer's Lament: Law Schools and the Profession of Law', 60 *Vand. L. Rev*. 385 (2007).

[3] See Anthony G. Amsterdam, 'Clinical Legal Education – a 21st Century Perspective', 34 *J. Legal Education*, 612-618 (1984); Elliot S. Milstein, 'Clinical Legal Education in the United States: In-House Externships and Simulations', 51 *J. Legal Education*, 375 (2001); Kelly Terry, 'Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose', 59 *J. Legal Education*, 240-268 (2009).

Prior research has addressed divergent experiences of law students, particularly between those from differently ranked law schools. But these works do not necessarily engage the meaning and effect that personal backgrounds, such as age, race and ethnicity, socioeconomic history, and importantly, work experience have on students' perceptions of themselves – as law students and as aspiring attorneys. In this paper, I underscore how pre-law school work experience may serve as a primary influence, and personal background as secondary on student perceptions of the profession, themselves, and their career trajectories. In other words, the experience of working before law school serves as a form of capital. I also unpack student experiences by focusing on the conjoined role of school rank, immigrant background, and race. In particular, I find that the nonwhite students in this sample tend to not engage in pre-law school work experience, thus are deficient in this particular capital. The findings unveil a fresh understanding of the impact of various identities, and how a current change in American law student demographics requires creativity in defining these identities. The implications speak to legal career preparedness for law students, generally.

Drawing on an ethnographic study at two divergently ranked American law schools between 2009 and 2011, I argue that student experiences *before* legal education influence their approach to their schooling, attitude toward law

school, and career outlook. My findings suggest that work experience before law school seemingly produces better prepared law students, which may lead to more competent lawyers. However, it also appears select students—native born, white students— are more likely to work before law school and garner capital. Racialized immigrant students – in this case, Asian Americans and Latinos – do not as frequently reap these benefits.

I begin by situating this discussion within literature on professional education, social capital, and stereotype threat. I then briefly discuss the data and methods, followed by the findings. I offer a typology of pathways through law school, typologizing students who transitioned immediately to law school as "conventionals" and those who worked before returning to school as "returnees." Findings suggest returnees report more knowledge and comfort with the profession, express more cynicism toward law school, and are more excited about their forthcoming careers. Conventionals view law school as an intellectual exercise, yet are apprehensive about their schooling and career. I argue that returnees and conventionals think about law school differently; returnees are cynical experts, and conventionals are adoring imposters. Further, many of the Asian American and Latino law students transitioned immediately to law school after graduating from college. As conventionals, they are already

worried about their performance in law school, but race and immigrant background add another layer of anxiety. I provide some possible explanations for the differences, followed by analysis and discussion.

## LITERATURE REVIEW

### *Professional Education*

Social scientists' unwavering interest in professional education has produced voluminous scholarship examining the socialization of neophyte doctors, surgeons, and social workers among others.[4] Professional students learn the norms of their respective professions through rigorous education that prepares them academically, socially, and most of all, professionally for their careers. In addition to learning how to *do* professional school, these students must also assimilate the demeanor and cultural expectations within each profession.[5]

[4] See Howard S. Becker, Blanche Geer, Everett C. Hughes, and Anselm L. Strauss, *Boys in White: Student Culture in Medical School* (1961); Charles L. Bosk, *Forgive and Remember: Managing Medical Failure* (1979); Spencer E. Cahill, 'Emotional Capital and Professional Socialization: The Case of Mortuary Science Students (and Me)', 61 *Social Psychology Quarterly*, 101-116 (1999); Carrie Yang Costello, *Professional Identity Crisis: Race, Class, Gender, and Success at Professional Schools* (2005).

[5] Becker et al.'s seminal work (1976) on medical students finds that neophyte doctors, at the end of medical school, learn to become medical students.

An overriding institutional language and culture characterize legal education.[6] First year students adapt to expectations and assimilate norms of the profession, which favors the "modal" student. As Timothy Clydesdale describes,

> The typical (i.e. modal) first-year law student is a white male in his early twenties, who speaks English as his first language, attends law school full time, expresses high self-confidence, possesses no physical or learning disabilities, is neither married nor has children, plans 0-9 weekly hours of paid employment during the first year, and comes from an above-average socioeconomic background.[7]

There is no guarantee that this archetypal law student will perform well in law school, but these students possess advantages, especially the ability to identify with the established law school culture. Clydesdale's "modal" neophytes have one less script to learn than other students. For example, students from working class backgrounds often "fake it to make it" in law school by avoiding

[6] Howard Erlanger, Charles R. Epp, Mia Cahill, and Kathleen M. Haines, 'Law Student Idealism and Job Choice: Some New Data on an Old Question', 30 *Law and Society Rev*. 851-864 (1996); Robert Granfield, *Making Elite Lawyers: Visions of Law and Harvard and Beyond* (1992); Elizabeth Mertz, *The Language of Law School: Learning to "Think Like a Lawyer,"* (2007); Robert V. Stover, *Making It and Breaking It: The Fate of Public Interest Commitment during Law School* (1989).

[7] Timothy T. Clydesdale, 'A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age, and Related Gaps in Law School Performance and Bar Passage', 29 *Law and Social Inquiry*, 711-769 (2004).

conversations about their parents' jobs, and hide non-middle class speech patterns.[8]

Non-modal law students cannot escape what they perceive to be deficient from their backgrounds. And because of that, they carry with them apprehensions as they embark on their legal training. They, like their traditional peers, pore over outlines and study for exams. They learn how to dress for interviews, and use legal language. But students who deviate from the mold often feel as if they do not genuinely belong. While virtually all law students contend with anxiety at times, non-modal students engage with a different set of concerns. These students often do not have the social capital to navigate the established cultural scripts of law school.

### *The Qualitative Value of Social Capital*

Social capital invigorates individuals with a sense of well-being and familiarity. Known as "tastes," divergent signals of class and privilege persist in societal stratification.[9] In other words, knowhow for the purposes of socioeconomic mobility is an insidious characteristic of social capital. Mobility requires a certain

[8] Granfield, 1992

[9] See Pierre Bourdieu. *Distinction: A Social Critique of the Judgment of Taste* (1979).

type of social capital. Embedded in nuanced cultural practices, this "right" type of capital can lead to educational, social, and cultural rewards.[10]

How does this capital relate to lawyers and law students? In a study of Canadian lawyers, sociologists Fiona Kay and Jean Wallace find that although women junior attorneys had as many senior mentors as their male counterparts, they did not accrue the same types of professional benefits.[11] The authors conclude, "The social position of women within the legal profession does not afford them the strategic capacity to mobilize their social capital through mentoring relationships to secure coveted career outcomes, particularly in the forms of earnings and career advancement." [12] Junior attorneys all have access to mentors, but the qualitatively different outcomes between men and women necessitate an evaluation of the divergences in the *value* of social capital. Without the right type of capital, some individuals (i.e. those who are not male and not white) may

[10] Pamela E. Davis-Kean, 'The Influence of Parent Education and Family Income on Child Achievement: The Indirect Role of Parental Expectations and the Home Environment', 19 *J. of Family Psychology*, 294-204 (2005); Jacquelynne S. Eccles and Pamela E. Davis-Kean, 'Influence of Parents' Education on Their Children's Educational Attainments: the Role of Parent and Child Perceptions', 3 *London Review of Education*, 191-204 (2005); Robert Ream, 'Toward Understanding how Social Capital Mediates the Impact of Mobility on Mexican American Achievement', 84 *Social Forces*, 201-224 (2005).

[11] Fiona M. Kay and Jean E. Wallace, 'Mentors as Social Capital: Gender, Mentors, and Career Rewards in Law Practice', 79 *Sociological Inquiry*, 418-452 (2009).

[12] Kay and Wallace, 445, 2009.

experience anxiety about their social positions. Evidence suggests this concern begins in law school, and that managing stereotype threat is a key aspect of this concern among non-modal students.

### *Stereotype Threat Among Professional Students*

Students experience status anxiety when they feel as though they are imposters in an educational setting. Psychologists Pauline Rose Clance and Suzanne Innes first identified the "imposter phenomenon" among high-achieving women who "maintain a strong belief that they are not intelligent; in fact they are convinced that they have fooled anyone who thinks otherwise." [13] The imposter phenomenon directly relates to "stereotype threat" that negatively affects African American students' perceptions of their own academic abilities. [14] Stereotype threat can also characterize university professors' assessment of their teaching evaluations; [15] employees who feel undeserving of their jobs; [16] and

[13] Pauline Rose Clance and Suzanne Innes, 'The Imposter Phenomenon in High Achieving Women: Dynamics and Therapeutic Intervention', 15 *Psychotherapy Theory and Practice,* 1-8 (1978).
[14] Claude M. Steele, 'A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance', 52 *American Psychologist*, 613-629 (1997).
[15] Christine Brems, Michael R. Baldwin, Lisa Davis, and Lorraine Namyniuk, 'The Imposter Syndrome as Related to Teaching Evaluations and Advising Relationships of University Faculty Members', 65 *J. of Higher Education*, 183-193 (1994).
[16] William C. McDowell, Nancy G. Boyd, and W.M. Bowler, 'Overreward and the Impostor Phenomenon', 19 *J. of Managerial Issues* (2007).

professional students at elite institutions.[17] Studies on status anxiety and imposter syndrome among professional students often include the experiences of neophyte attorneys (as law students, and fledgling attorneys). Rigorous legal socialization creates a sense of under-preparation among these students as they aspire to join an elite profession.[18] At the same time, women and minority lawyers experience human capital barriers to their achievement,[19] including unequal secondary and collegiate education that hinder their professional success.[20]

The literature remains deficient however, in the divergent psychosocial outcomes of being an anomaly. American law students who transition to law school immediately following their undergraduate careers ostensibly appear to represent the modal law student. Students who took time off between law school and college appear non-modal, yet, unlike the nonwhite students in others' research, they reported more confidence about the pursuit of their Juris Doctorates than their modal counterparts. These findings do not correspond to

[17] Becker et al. 1976; Costello 2005; Debra J. Schleef, *Managing Elites: Professional Socialization in Law and Business Schools* (2006).
[18] Granfield 1992; Mertz 1997.
[19] Hilary Sommerlad and Peter Sanderson, *Gender, Choice, and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (1998).
[20] Hilary Sommerlad, Lisa Webley, Liz Duff, Daniel Muzio, and Jennifer Tomlinson, 'Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices', Legal Board – University of Westminster (2010).

current literature on stereotype threat, or professional socialization, yet may speak to a hidden benefit of a particular form of social capital. Rather than focusing on the "modal" versus "non-modal" descriptions of law students, I propose a new characterization that underscores the role of social capital. In this paper, I present the nuances of modality and social capital by focusing on the reported experiences of returnees and conventionals.

## DATA AND METHODS

Data derives from semi-structured interviews with 107 American law students, and nonparticipant observations of law student organizations between 2009 and 2011. Interview questions were the same for all respondents, regardless of race, gender, or law school attended (although some respondents chose to elaborate on their answers while others did not). Some interview questions included, "How would you describe your law school experience, thus far?" "Did you feel adequately prepared to attend law school?" and "Do you have friends, family, or relatives with law degrees?" The two field sites are on the West Coast of the United States, and consist of highly ranked Western Tier 1 (WT1), and lower-ranked Metro Tier 4 (MT4). These field sites were selected to capture divergent

student characteristics, and to also accentuate similarities among law students, more generally. Although there are some school-level differences, conventionals and returnees populate both law schools. Their status as *law students* do not qualitatively differ, despite difference in school rank. More of the MT4 group were returnees; the typical MT4 student in this sample spent at least two years working, and a good portion of those students worked as legal support staff. Those who embarked on their legal studies immediately following college were a minority, in contrast to the WT1 respondents.

I gained entrée with the administration through established contacts at each institution. I contacted student leaders from panethnic student organization websites at each campus, and observed, and recruited at meetings and orientations. I used an intentional snowball sampling method, asking respondents to refer me to friends from their small groups. I believe this method mitigated selectivity bias as law schools assigned the small groups at random, so they were racially, socioeconomically, and geographically heterogeneous. In the

end, my sample consisted of Asian Americans, Latinos, whites, and "others"[21] (refer to Table 1 for sample breakdown by race).

**Table 1. Sample by Panethnicity**

| | Asian American | Latino | White | Other |
|---|---|---|---|---|
| Western Tier 1 | 22 | 23 | 9 | 3 |
| Metro Tier 4 | 23 | 12 | 12 | 2 |
| *TOTAL* | *45* | *36* | *21* | *5* |

Table 1 shows the study sample by race and ethnicity and by law schools attended, consisting of 45 Asian Americans, 36 Latinos, 21 white Americans, and five law students who did not fall into these broad categories. Asian American and Latino law students are overrepresented in this study, and the other two combined racial categories serve as a control. This sampling anomaly thus may not be representative of American law school demographics where Asian

[21] Other racialized law students include black/African American, Persian, and one mixed-race, Latino/Asian student who identified as such. The other mixed-race students in this sample identified with a conventional racial category (Asian American, Latino, or white).

American and Latino law students represent 7.2 percent and 9.3 percent of the student body, respectively, as compared to this sample's 42 percent Asian Americans and 33.6 percent Latinos. The strategic oversampling however, allows us to direct attention to these particular populations' unique experiences in American law schools.[22]

The law students in the sample had one shared characteristic: they were all enrolled in law school during an extremely uncertain economic period. Graduate school can act as a shelter from career unknowns, and the U.S. "Great Recession" of 2007-2009 was no exception. Working adults went back to school in an effort to weather financial insecurity; many college graduates also found themselves transitioning immediately to graduate schools. As the data for this paper was collected between 2009 and 2011, the sample includes large numbers of both "traditional" and "nontraditional" law students, providing an ideal platform to understand how work (or lack thereof) before law school influences student experiences in law school.[23] Roughly 45.8 percent of the sample worked for two

[22] Oversampling is a method used to establish not only representation, but also reliability in the respondents' experiences. As sociolegal scholarship does not generally focus on Asian Americans and Latinos in particular, oversampling provides a more accurate representation of their experiences.

[23] Traditional students refer to those who transitioned immediately from college to law school, which is the common practice. Nontraditional students return to school at an older age, often to

or more years before returning to law school. Those who worked for less than one year often interned temporarily, or held hourly jobs, such as baristas, and were coded as conventionals. I conceptualize "work before law school" as a permanent or semi-permanent paying job that was, or could lead to an eventual career. Some examples are legal secretary, paralegal, banker, consultant, and counselor. Students who worked in the service industry for a long period of time, and tout gaining "life experiences" were also coded as returnees.

Interviews lasted between 45 minutes and two hours, and mostly took place on or near the law schools (with some exceptions at respondents' homes, or places of work). I took notes during the interviews, and also recorded the conversations. All interviews were transcribed and later coded. Initial thematic coding identified anxiety among respondents about entering an elite profession. I noted differences between students' work experiences before law school, and divided the sample into those who worked before law school (returnees), and those who entered law school immediately following college graduation, or held odd jobs for less than one year (conventionals). Overall, returnees were cynical about legal education, but they appeared confident in their legal and "real world"

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prepare for a second career, and are commonly known as OWLS – Older and Wiser Law Students.

knowledge when compared to their conventional peers. [24] Conventionals described having gained knowledge about law school from hearsay, and imagined difficult tests, copious amounts of reading, and responding to "cold calling." In contrast, most returnees garnered work experience from law-related jobs, and/or established mentor/mentee relationships with attorneys, and possessed expert knowledge about law school and the profession. Findings suggest students' lives after college and leading up to law school shape their educational experiences and career trajectories.

## FINDINGS – ADORATION VERSUS CYNICISM

Student experiences before law school influenced their learning of the law and the new language and decorum that accompanies it.

Table 2. Characteristics of Returnees and Conventionals

| Returnees | Conventionals |
|---|---|
| • Worked for two or more years between college and law school | • Transitioned immediately from college to law school, or worked |

[24] Two students in this sample worked for over 10 years in the service industry before returning to law school, and are coded as "returnees" because they mentioned garnering "life experiences."

| | |
|---|---|
| • Law school is a means to an end<br>• Possess a good idea of what to do with one's law degree<br>• See law school as a welcomed relief from work responsibilities<br>• Cynical toward pedagogy and competitive culture in law school | odd jobs in anticipation of attending law school<br>• Law school is an intellectual exercise<br>• A law degree *can* be versatile<br>• Often unsure of what to do with a law degree<br>• Open to second career after law school<br>• Optimistic about future |

Looking at Table 2, we see that returnees better understood the legal profession and had a clearer idea about the type of law they wished to practice than conventionals. Students who had work experience for two or more years between college and law school looked to applying their "real world" skills. They were however, cynical about the pedagogy and competitive culture among law students. Conventionals on the other hand, regarded law school as an intellectual exercise. They lauded the versatility of a law degree, and remained hopeful about their career options.

Without regard to race, the students who transitioned immediately to law school—conventionals—were not confident about their abilities to succeed in law school. But, they also overwhelmingly "loved" the experience. The majority of the returnees, brimming with confidence, considered themselves "experts," yet remained cynical about legal pedagogy. In the next section, I describe the characterization of imposter versus expert. Conventionals often aligned with an imposter identity where they felt underprepared to undertake law school. Returnees, on the other hand, asserted an expert identity bolstered by their previous work experience.

### *The Imposter and The Expert*

Ben is a white law student at MT4, and anticipated a career in law while he was pursuing a bachelor's degree in political science, and a master's in public policy. He worked as a paralegal for four years, to learn more about the profession before investing time, energy, and money in law school. Working as a paralegal affirmed his affinity for the profession, and kindled an interest in real estate law. Regarding whether he felt prepared for law school, Ben said, "I felt overly prepared. With four years of work in the legal profession, I felt I was [comfortable with] a lot of the material. … I had a pretty easy first year and it

was fun! I didn't have to work. I [have] pretty much had to work all my life, and it was the first time I could just do school." Ben's enthusiasm further translated into a sense of confidence. With regard to his first year classes Ben says, "Civil procedure – I mean civil procedure is so easy because I actually dealt with a couple of complaints and a couple of lawsuits from start to finish. I never went to trial or anything like that but I dealt with a majority of it, and it made application of the stuff I didn't know so well, easier."

Likewise, Spencer, another white MT4 law student also worked as a paralegal before law school, and found a smooth transition. He says he likes law school "a lot!" and credited his three years working as a paralegal: "I mean I worked with lawyers. Honestly, they just said if you keep up with all the reading, and take good notes, that it all worked out. … There's no secret to it. You work hard and then you will do well." This advice was reassuring to Spencer and freed him to enjoy law school.

Law students like Ben and Spencer espoused an *expert* identity. Working among attorneys as paralegal or secretary provided them with professional familiarity, which led to a boost in confidence—a belief that they will be able to succeed in law school. Further, professional interactions with attorneys assuaged their

anxieties about being able to face the challenges of law school. These students intimated they were less anxious about exams and answering questions in front of peers and professors than their peers.

Returnees who did not work in law-related fields also espoused confidence. While they did not claim expertise in topical matters, they approached law school with ease and comfort. When asked to compare college and law school, Clara, a white student from WT1 says, "I've been more confident [compared to college] and I know who I am more. I just like my relationship with school more now. … Just the fact that I'm more confident with who I am has made law school a lot better." Scott, a white student from MT4 reports,

> I don't really care about grades, which is another anomaly in law school. To me, an indicator of success in law school is feeling prepared to take the Bar [exam]. And feeling prepared to be successful in practice. I'm not too concerned with the day-to-day monotony of tests and grades... My primary concern is making sure that I'm prepared to substantively know what I need to know to practice law.

Scott could focus on the long-term aims of his career in a way that conventional students could not (i.e. short-term grades). Even without the "expert" legal knowledge of students like Ben and Spencer, these students were confident about their abilities to complete law school in a way that conventionals weren't.[25]

Esperanza, a Latina WT1 law student who followed the conventional route, was determined to become an immigration attorney. Esperanza describes her law school experience:

> A roller coaster, like a never-ending roller coaster. It's ups and downs. Constantly ups and downs. It's feeling really into it one day and feeling like "wow, I'm studying really hard and completely immersing myself in this, in this really hard experience, [this] legal program!" And then at other points, "I don't know what's going on, I don't know what I'm doing here. And, I don't know why they let me in. And maybe I need a career change, before I'm even a lawyer."

Esperanza feels like an imposter. She and others who feel this way seem as dedicated to becoming attorneys as their expert peers. After all, the

[25] Although returnees were also anxious about exams and found learning the new materials overwhelming, they were generally positive about the workload.

psychological, financial, and social costs of legal education are rather high. But, they espoused less confidence when they spoke about law school. To take another example, Marvin, an Asian American law student at WT1, said:

> The stress, it's natural. It's part of the territory when you come to a school like [WT1]. When you first start out, you always think everyone is smarter than you. Everyone has more experience than you. They come from a lot better schools… It puts a lot of pressure on you! And, you never know how you're going to do in class, just because you're surrounded by all these people.

Marvin also felt like he was posturing. Amid a sea of peers who attended American Ivy League institutions for college, conventionals at WT1 felt the sting of competition. Not only did they need to learn new material, and make friends, they were also status-conscious about their undergraduate alma maters. Brett, a white conventional student, summarizes this sentiment:

> I was terrified before my first exams because I came from a state school; I went to [a large public school], right? Most of my classmates, like Yuan for example, came from Yale and there were people from Harvard, and [WT1], right? Like great schools. …

> [T]hat anxiety of "how do I really stack up against the best of the best of my generation right now? How do I stack up against that?"

Because schools such as WT1 attract high achieving students, most of the sample assumed that their peers attended elite undergraduate institutions. WT1's entering class profile, which prominently lists the prestigious undergraduate institutions of admitted students, supports this assumption.[26] Nor did having attended elite schools prevent conventionals from experiencing anxiety about law school; Yuan had graduated from Yale but he expressed no less anxiety about law school than Brett who attended a public university for undergraduate.

Yuan is Asian American; findings reveal that Asian American and Latino law students in this sample – many of whom are first-generation college students (refer to Figures 1a, 1b, and 1c) – are particularly likely to feel marginalized and therefore feel like imposters. Akin to part-time law students in the United Kingdom—whose demographics deviate from their full-time peers—Asian American and Latino law students experience marginalization. Andrew W. Francis and Iain W. McDonald find that part-time law students' divergent backgrounds from their full-time peers disadvantages them toward successful

[26] Students are admitted from Yale, Harvard, University of Pennsylvania, etc. A quick Internet search readily yields this type of admissions information.

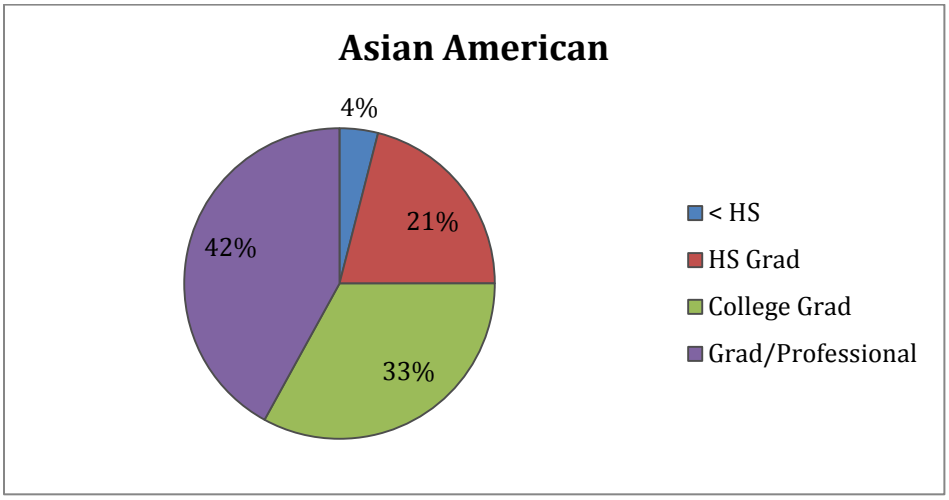
law school completion.[27] For one, part-time law students exist at the intersection of multiple disadvantages—they are typically older, ethnic/racial minorities, attended lower-ranked institutions, and earned less impressive grades. As suggested by the Francis and McDonald, unlike part-time students, full-time law students are advantaged by being a part of the normative representation: "the full time law student typically belongs to a broad tribe of students who have moved, relatively unproblematically, from A-levels to degree-level study—they share 'a feeling of inevitability'".[28] Part-time students do not possess the requisite experiences, or habitus, of their full-time counterparts. In the same vein, Asian American and Latino law students, most of whom are first-generation college students, also lack the habitus of the normative American law student. I will return to this discussion of racial disparities.

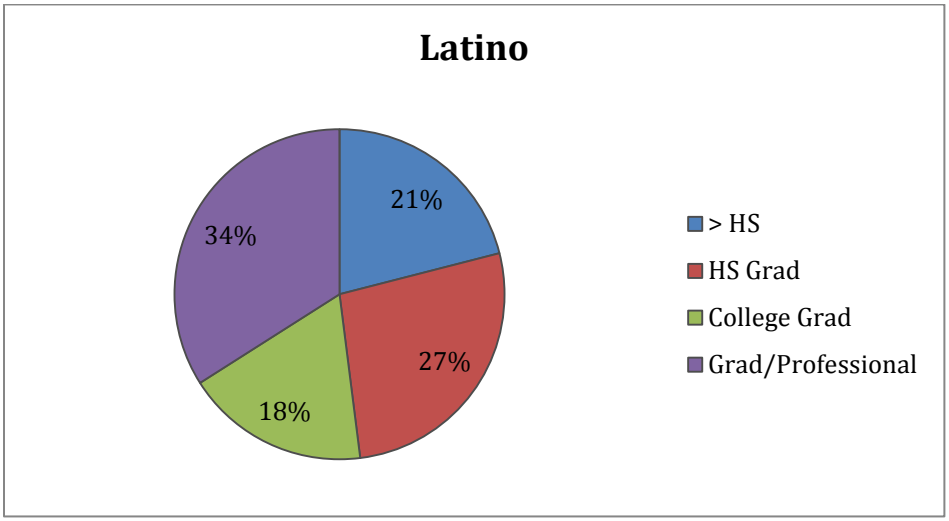
As Figure 1 suggests, the majority of the students in this sample hail from families where at least one parent is a college graduate. Beyond college however, we see that fewer than half of the Asian American and Latino students have even

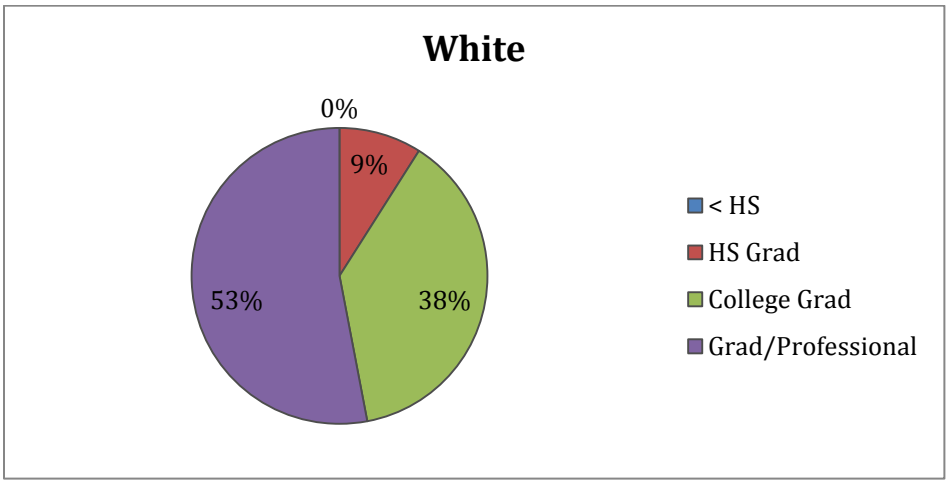
[27] Andrew W. Francis and Iain W. McDonald, 'Preferential Treatment, Social Justice, and the Part-Time Law Student', 33 *Journal of Law and Society*, 92-108 (2006).
[28] Andrew Francis and Iain McDonald, 'After Dark and Out in the Cold: Part-Time Law Students and the Myth of "Equivalency"', 36 *Journal of Law and Society* 220-247 (2009).

one parent who completed graduate or professional school, while more than half of white students do.

**Figure 1. Highest Degree Attained by One Parent among Asian American, Latino, and White Law Students in Sample**






All of the white students with parents who hold professional degrees, have at least one parent who possesses a JD.[29] Minority students tended to assume that their white peers have lawyer relatives or friends, an assumption the sample supported—35 percent of the white students without lawyer parents have relatives or close family friends with law degrees. In other words, the assumption, which increased Asian American and Latino law students' imposter syndrome, that white students have JD role models and networks, appears accurate.

***Falling in Love and Going Through the Motions.***

Law students have complex feelings about law school. The intellectual pursuit of law infatuates some. Others describe law school as a means to an end. As a rule,

[29] While this may be a sampling anomaly, it does not distract from the divergent experiences between conventionals and returnees.

conventionals "fall in love" with law school – its rigor, status as an elite profession, and the intellectual value attributed to complex language and puzzle-like problem solving – and returnees see it instrumentally.

*Conventionals' experiences of falling in love*

Bryn adores law school. An Asian American WT1 law student and a conventional, she is enamored by the intellectual pursuit of law. She says, "I have been really lucky to find professors that I love and respect. And, I have been lucky to find organizations that are socially conscious of dynamics – especially around race and gender." Conventionals from both schools admired their professors' intellect and appreciated like-minded peers. Their friends and the logic of learning the law was a source of excitement.

Natalia, a Latina student from WT1, also found law school exciting, albeit at times overwhelming. She said:

> What surprised me about law school is that it's a big exercise in reasoning, more so than being taught concrete information about the law. It's more general doctrines of the law rather than concrete, which is what I had expected prior to coming.

For students like Bryn and Natalia, social aspects are a large part of their schooling. Natalia distinguished the role of the Latino Law Students Organization, saying, "In terms of social experiences, it's better than what I expected. I have been able to make a lot of friends here."

Brandon, one of the conventional respondents at MT4, hails from the American Midwest. An Asian American student, he relocated to Metropolitan City to attend MT4. He connected his love for law school directly to its challenge:

> I do love it here, even when it gets really rough and I haven't slept anywhere close to enough, exams are coming up, I don't feel prepared for them... I think that everybody has worked harder than me, knows more than me and I feel like I'm constantly the underdog. Even though I know I'm not – I'm top ten percent of my class… So, I do think you have to love what you're doing in order to be able to keep pushing yourself like that. Because you are working almost every waking hour in law school, or at least you should be. … And, you can only do that if you really like what you're doing. Even if you don't like the subject matter. Real estate law, not the right thing for me to be doing. But, I love learning

> about the law and doing the law. So, even if I have to take an unpleasant class, it's part of an experience that I really want. So it keeps me going. And of course, I have had some wonderful and fantastic teachers. My first Property teacher, fantastic. Hence the future interest – wills, that stuff. I did really well there. My Criminal class, I loved Criminal Law, that was an amazing teacher. It was probably my best experience yet in law school. Fantastic.

As seen from his comments, Brandon enjoys law school. He acknowledges competition as a part of the law school experience, but he thrives in this environment. Moreover, Brandon enjoys his coursework because they are all related to the law.

Whitney, another Asian American student from MT 4, was raised in Metropolitan City, and grew up in an impoverished neighborhood, which prompted her interest in pursuing criminal law. She directly relates her difficulties in law school to her youth:

> I actually did really poorly my first semester. When I started law school, I was only twenty-years-old! So, I couldn't even drink the first week of school. … I was having a really hard time grasping

> some of the concepts, just because there were lots of archaic words and concepts I didn't get because of lack of experience in life, especially things to do with financial cases. Some of them [cases] talked about finances or business. My parents handled all that stuff for me [in my life]. So when I started law school, I had no idea what was going on with investing money or economics or any stock market. I had no idea! So that was really hard for me and I had to learn legal concepts, but I hadn't even learned the foundational aspects of it yet. Like, I had to learn more things than the other students because they already knew all that stuff!

In spite of these difficulties, Whitney notes, "It's been really good. The professors have been good." Yet she herself suggests that the returnee path might have been good for her, attributing her lack of understanding the legal language to her youth and deficient life experiences. Transitioning immediately to law school meant more than learning the legal language, or learning about the law. For Whitney, it also meant learning about finances and how to budget.

***Purposive schooling and a break from work***

Those returnees who seem to really enjoy law school frame it as a welcomed break, and an opportunity to seriously explore a new career. In general, they are cynical about law school pedagogy, but appreciate a respite from work. They also look forward to graduation. Supriya, an Asian American WT1 student, worked for three years on political campaigns in Washington D.C. She says, "law school is different. Just different than any other type of school I've ever been in. [It] took like the first semester to figure out how to read a case and how to study. It just takes more time than school's ever taken me before. But it's easier than working on a presidential campaign." Supriya appreciates law school. She describes remembering how to study as a task but not necessarily a difficult one.

Will, a white MT4 student who worked in record stores and restaurants for roughly 10 years before pursuing a law degree, described law school this way:

> I think I had the advantage in some ways because I did work all the way through undergrad. I was working forty hours a week and going to school full time. So as far as time management goes, I was pretty well prepared to face a whole lot of work. Because I wasn't

> working at all during the school year, in some ways I felt like I had more time than ever to do my [school] work.

For the first time in his academic life, Will is only focusing on his course work. The workload does not overwhelm him, and he credits his 10 years of work experience for this. Across the board, returnees described time management as their largest asset. Because returnees worked before law school, they espouse learning "life experiences." It is possible that the experiences are conflated with their older age—they are more mature and take more seriously their schooling and career development. Regardless, having worked (and maturing during the time of work) seems to affect how returnees perceived law school.

Returnees also didn't share conventional students' pleasure in law school's social scene. Cindy, a white student at WT1, was an engineer for several years before returning to school. She says:

> I was used to having a lot of responsibility at work and I felt like I fulfilled a purpose. And then coming to law school, your purposes are all very selfish. You're not doing good for other people or a company; you're doing good for yourself by getting good grades. And, I've never really given a crap about grades or differentiating

> myself on that basis. … And then also, I think that the way law schools teach is really inefficient. Just the methods – reading a casebook and the Socratic method. It's not the way I learn the best. So that was frustrating. Also, and this is perhaps the biggest thing, by and large, but there are very few people that I actively like in law school. And, I think it's just that I'm way too chill. And most people are all uppity and gunnerish. And like, I don't know, I find them irritating.

As a returnee who worked for several years, the pervasive "gunner" [30] atmosphere in law school disappointed Cindy. Further, she disliked the pedagogy and found the Socratic method to be inefficient. Her perceptions contrast sharply with the collegiality among peers by conventional students.

Similarly, Ricardo, a Latino MT4 student who, before law school, worked several years for insurance companies, had this to say:

[30] Respondents describe "gunners" as law students who will stop at nothing to achieve the best grades, and success. They are perceived as straining to answer professors' questions, tearing pages out of library casebooks, and compete with their peers to acquire the best internships. And, they boast about their accomplishments. These types of students are so pervasive (and disliked by some), that the tag "gunner" is in common usage by law students, including appearing on the popular legal blog, *Abovethelaw.com*.

> Honestly, I think [law school]'s fine. It's not *The Paper Chase*.[31] There are people that are super stressed out. But it's not that intellectually challenging. It just seems like at first, you have to learn how to go to law school. Once you know how to do law school, you just kind of use the same process with different subjects. … It is a different way of thinking, it is a different way of applying certain things with certain rules, right? You have your facts and you have your rules. And, you have to learn how they interact. And, once you learn that process, it's just a matter of learning new rules and new facts. Go through that process of how they interact. How to craft an argument or something like that, using those facts and rules and their interactions.

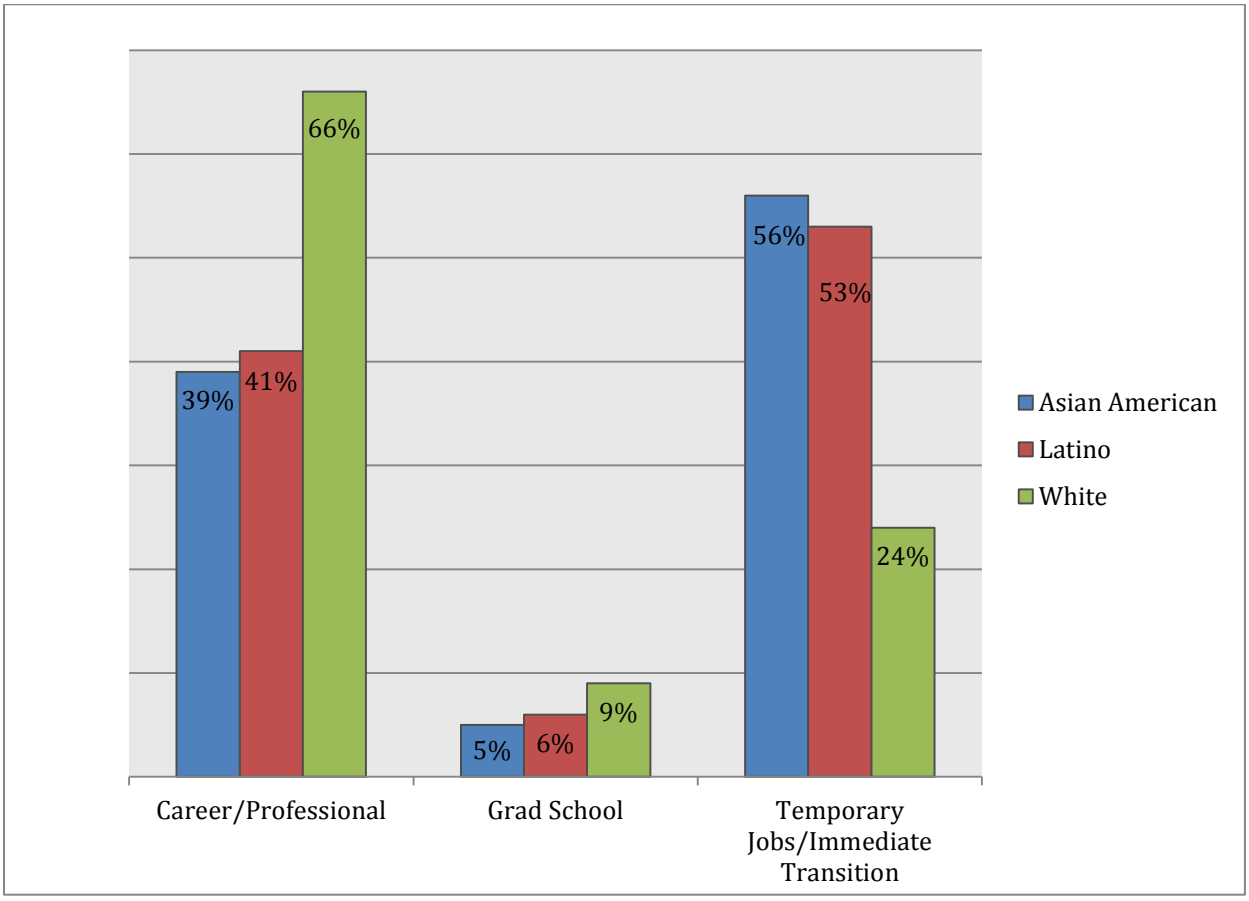
The intellectual experience that excited conventional students held few charms for returnees. This might suggest that returnees gain less from law school than conventionals. But the picture becomes more complicated when we take into consideration the students' panethnicity, or race.

### *Rac(e)ing Toward the JD*

[31] A 1973 film about an elite American law school, *The Paper Chase* stars actor John Houseman who plays unforgiving law professor, Charles W. Kingsfield Jr.

The conventional and returnee groups included students of all racial backgrounds, but the way students talk about their experiences signaled divergent expectations. Figure 2 presents pre-law school preparation by race and ethnicity.

**Figure 2. Pre Law School Preparation among Asian American, Latino, and White Law Students in Sample**



Only 24 percent of the white students transitioned immediately to law school from college, or held temporary jobs that were easy to quit; the remainder typically worked in career-building or professional positions prior to law school. Roughly 56 percent of Asian American and 53 percent of Latino respondents were conventionals, and the remainder typically worked as temporary interns or volunteers. Perhaps the Asian American and Latino students who hail from families with professional parents did not need to take time off between undergraduate and law school in order to earn money for law school expenditures, but this should also have prevented white students, who were more likely to have professional parents, from doing so. What we see instead is that roughly 66 percent of the white students from this sample did not transition immediately to law school. But, the opposite appears to be true for Asian American and Latino law students, which could signal a social capital effect.

The legal and professional role models in middle-class students' lives may be the source of information about the benefits of taking time off before starting law school. If that were the case, we would see a greater proportion of students from higher socioeconomic backgrounds, without regard to race or ethnicity, garnering work experience before law school. But, this was not apparent from this sample of Asian American and Latino law students.

The findings appear to support an *immigrant* effect (deficient capital) among the Asian American and Latino law students from higher socioeconomic backgrounds; over 80 percent of the Asian American and Latino law students from this study are second-generation immigrants, meaning their parents immigrated to the United States. Even the highly educated immigrant parents do not have the *cultural* capital to advise their children to take on meaningful work before enrolling in law school. Conceputalized by Pierre Bourdieu, cultural capital describes the attitudes and knowledge parents transmit to their children for educational success. Sociologist Annette Lareau further applied cultural capital to the understanding of educational stratification, taking into consideration class, race, and family factors. She characterises middle class families as using "concerted cultivation" to nurture their children's ability to perform in school through ideas about education, and involvement in extracurricular activities. Working class and poor parents do not have access to organized activities, and were more focused on letting their children experience "natural growth," not least because of the effort involved in providing basic support.

Lareau's findings on the intersection of race and class suggests that the parents of white, middle-class law students encouraged them to work before law school as

part of "concerted cultivation." It may be that immigrant parents, even middle class ones, do not recognize the benefits of avoiding burnout and/or gaining industry knowledge, versus transitioning immediately to professional school.

Alternatively, Asian American and Latino law students may have transitioned immediately to law school in an effort to climb the socioeconomic ladder, or to accelerate the immigrant adaptation process. Sociologists Alejandro Portes and Rubén G. Rumbaut's comprehensive studies on immigrants and their children find that first- and second-generation immigrants strive to ascend the socioeconomic ladder to actualize the American dream. Known as "immigrant optimism," this mindset contributes to the overall successful scholastic performance of second-generation immigrants, and it may shape the conventional path of Asian American and Latino law students in this study.[32]

It could also be that the concerted cultivation upper-middle class immigrants practice with their children does not compensate for the lack of attorney family members, relatives, or friends. The American legal profession has experienced, and continues to witness, an increase in the number of Asian American and Latino law students and lawyers, but this phenomenon has not yet spread to

[32] See Alejandro Portes and Rubén G. Rumbaut, *Immigrant America: A Portrait* (2006).

local panethnic communities. Perhaps, in one or two generations, a critical mass of panethnic attorneys will engage networks, supporting guidance and career advice. But, we do not see this trend yet. The fact that the few Asian American and Latino law students with attorney friends or siblings in the sample worked in law-related fields before enrolling in law school suggests it will be transformative.

## CONCLUSION, LIMITATIONS, AND IMPLICATIONS

As I suggest in this paper, both the returnee and the conventional paths have benefits and drawbacks. Returnees overall convey more ease in navigating law school, but are also cynical toward the pedagogy, and see law school as nothing more than a vehicle to a career. Conventionals experience status anxiety, yet report optimism about their legal training and impending career; they enjoy learning to think like a lawyer more than returnees. Students from lower ranked MT4 are typically returnees while WT1 has a greater proportion of conventionals. Panethnicity and immigrant background further complicate this picture. A majority of Asian American and Latino law students are conventionals, and their ethnic identities compound the anxiety of conventionals generally with additional dimensions of imposter syndrome. Asian American

and Latino law students in this study suspect that their white peers have attorney networks to turn toward when needed, whereas they do not have that available resource.

The divergence among students is both real and imagined. Asian American and Latino law students imagine their white peers receiving more guidance on surviving law school and becoming an attorney, and the data reveal that white respondents have the opportunity to seek such guidance from friends and family. Peer socioeconomic background thus further exacerbates the imposter syndrome among Asian American and Latino law students.

These nuanced findings challenge our current understandings of stereotype threat, social capital, and the modal law student. First, as demonstrated in this paper, a conventional is not necessarily the "modal" law student, or the most confident. Tellingly, returnees actually appear to be more confident. Although returnees take a more blasé attitude to law school, they espouse more confidence than their conventional counterparts. They do not fear divergence from their younger peers, but rather boast of their real world expertise (social capital). Conversely, conventionals felt the least prepared for law school, and feared competition with other high achievers. What we see is that nonwhite law

students appear to be mostly conventionals who transition immediately to law school, which challenges Timothy Clydesdales' description of "modal" law students. In some respects, conventional students embody the racial and socioeconomic disadvantages experienced by Andrew Francis and Iain McDonald's part-time students. Conventionals intimate more anxiety about law school, and are disproportionally nonwhite, second-generation immigrants. This study reveals that white law students appear to possess a hidden capital in that so many are returnees.

Theoretical implications notwithstanding, these findings also suggest practical steps to mitigate anxiety among students who transition immediately to law school, especially for nonwhite law students. For one, American law schools may consider placing added value on practical work experience. Lawrence Foster notes that the current teachings of American law schools focus too much on the theoretical components of law at the expense of practice application. Foster argues that the merits of clinics are that "law students represent real clients in real cases, under the close supervision of faculty."[33] In this way, students are not

[33] Lawrence Foster, 'The Impact of the Close Relationship Between American Law Schools and the Practicing Bar', 51 *The Journal of Legal Education*, 346-349 (2001).

only more confident in their abilities to work with clients, but they also garner "real world" experience.

Some law professors support this endeavor. Eric J. Gouvin argues that clinics are crucial for the successful understanding and practice of business law as most clinics use a "law firm" model where professors take on the role of partners, while students are the associates.[34] Gouvin impresses, "business clinics may help students better appreciate the challenges of business lawyering, which they sometimes misunderstand as merely a form of practice. By putting students in the middle of real transactions, they gain a deeper understanding of the subtleties of making a transaction come together."[35] Similarly, Amy L. Ziegler argues that clinics are instrumental for students interested in public interest work by enhancing their problem-solving skills on actual cases for which they are held accountable.[36]

These studies on clinics underscore the importance of work experience. Because clinics are expensive to administer, and most law schools in the United States do not appear to house many of them, it is thus important for law schools to

[34] Eric J. Gouvin, 'Learning Business Law by Doing It: Real Transactions in Law School Clinics', 14 *Business Law Today*, 52-55.
[35] Gouvin, 55, 2004.
[36] Amy L. Ziegler, 'A Law School Clinic and the Bar: Promoting Development', 2 *ABA Journal of Affordable Housing and Community Development Law*, 16-17 (1993).

consider other ways to nurture student confidence (and competence).[37] Perhaps then, American law schools may consider the role of work experience as a part of applications. Admitting mostly returnees could mean increasing the cynicism of the student body. But, the students would also direct their attention to learning the law and appreciating the applicability of their pre-law school work experience with a better eye toward their career trajectories. This model may mitigate some angst among non-modal law students more generally – in this case, Asian Americans and Latinos – who currently do not have widespread professional guidance, and who transition immediately from college in large numbers. A shift to prioritizing pre-law school experience could benefit all students, and the profession. Rather than being deficient in this hidden social capital, all students are aware of expectations for real world work prior to applying.

Affirmatively accepting law students based on a holistic evaluation of applications suggests commitment to a diverse student body. Admitting former paralegals, doctors, engineers, teachers, and others would no doubt enrich classroom discussions, and inject a "real world" element to the enterprise of legal

[37] See Elliot S. Milstein, 'Clinical Legal Education in the United States: In-House Externships and Simulations', 51 *J. of Legal Education*, 375 (2001) for discussion of the dearth of clinics in American law schools.

education. In the midst of debates surrounding Affirmative Action, law school diversity, bar passage rates, and post-law school careers, giving returnees preference in admission (and publicizing this on law school admissions sources) could serve as a step in the right direction.[38] While the long-term effects of such admissions policies are outside the scope of this paper, the findings presented here serve as a starting point for future research to interrogate the significance of work experience before enrolling in law school, as well as graduate programs, writ large.

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[38] See Richard H. Sander, 'A Systemic Analysis of Affirmative Action in American Law Schools', 57 *Stanford Law Review*, 367-483 (2004); Richard H. Sander and Kate L. Antonovics, 'Affirmative Action Bans and the "Chilling Effect"', 15 *American Law and Economics Review*, 252, (2013).

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*Reviewed Article: Clinic, the University and Society*

# CONDUCTING A COMMUNITY NEEDS ASSESSMENT: A STUDENT-CLIENT APPROACH TO CLINIC RESEARCH

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**Abstract**

This paper will discuss how to create a research team and conduct a community needs assessment. The focus will be primarily on the process of conducting such research. The process is adaptable to either an international team of academics, professionals and

[1] Please note that Dr. Bruce Moseley, U.S.A.; Advocate Sumit Kapoor, India; and Manju Gautam, Nepal contributed significantly to this article through their work on this project. Christina Clark, B.S. candidate in Criminal Justice with a concentration in Legal Studies, Missouri Western State University, helped edit this article.

students or it can be conducted by a clinic in its community without outside collaboration. Results of the research will be discussed on a minimal basis.

The goals of a law school legal aid clinic should include at least two things. One is to improve the education of students. The other is to provide access to justice for members of the community. These goals may be met in many ways and through many different projects. Forming a research team of academics, professionals and law students to study a legal issue, develop a survey and find out what the community needs are in terms of legal assistance provides many excellent learning tools for students.

Students develop research and writing skills over the course of a research project that includes conducting a literature review, interviewing skills when they survey the community, best practices in being client/community centered and presentation skills if they present their results at a conference as was the case in the study to be discussed here. We often think we know what is needed in our community, or by our client, from our experience; but best practices and professional responsibility point toward finding out what the community or client wants in order to serve their legal needs.

## INTRODUCTION

There are around four billion people excluded from the rule of law worldwide. This creates a great need to design legal aid systems where law students provide at least

some services. Part of this process is to determine those with the greatest need in a community and address those needs first.[2] That is where community needs assessments come in.

Community needs assessments are an integrated service learning tool. They provide students with a means to learn by doing, in the topic of study they are engaged in. Such service learning improves student analyses of issues, their perspectives on problem solving, and critical thinking skills.[3] Community needs assessments are different than the scholarly research typically done in the global clinical legal research movement.[4] Scholarly work has tended to focus on the creation and sustainability of clinical legal education programs. A majority of the articles have been by scholars in the U.S. and Europe, often about the clinics in those countries; but other countries as well.[5] Clinics can use research done to conduct community needs assessments in several ways that are not typically attainable with other kinds of research. For one, needs assessments have purposes similar to interviewing a client. You have to know what the problem is and how you can help before you can assist any client. Needs assessments model a

[2] Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, Rep. Vol. I. New York: Commission on Legal Empowerment of the Poor and United Nations Development Programme (2008) available at http://www.undp.org/legalempowerment/reports/concept2action.html

[3] Eyler, Janet & Giles, Dwight E., Jr. *Where's the Learning in Service-Learning?* (Jossey-Bass, 1999).

[4] *The Global Clinical Movement: Educating Lawyers for Social Justice* 313-16 (Frank S. Bloch ed., Oxford University Press 2011).

[5] Mkwebu, Tribe, 'A Systematic Review Of Literature On Clinical Legal Education: A Tool For Researchers In Responding To An Explosion Of Clinical Scholarship', 22 *International Journal of Clinical Legal Education* 3 (2015).

professionally responsible way to help a community, much like you would do research to help a client. Needs assessments help determine programs that can best address key problems, as well as the agencies in the community that a legal aid clinic or lawyer can collaborate with.[6] Needs assessments can also be used to document problems that the community needs to address. The documentation can then be used to advocate for reforms on a system-wide basis, either through legislative or court advocacy.[7]

Any law school legal aid clinic or research class can engage its students in conducting a community needs assessment. The study here was carried out by volunteer students and advocates with the law schools' permission; but not under any law school clinic or program. A needs assessment can be done on any one issue, several issues or can focus on community knowledge of legal rights and the community's legal aid clinic without a focus on a specific issue. In any case, with any topic, ethical considerations must be addressed from the start of the project.

## ETHICAL CONSIDERATIONS AND THE PROCESS

[6] *Access to Justice Assessment Tool: A Guide to Analyzing Access to Justice for Civil Society Organizations,* American Bar Association, page 2 (2012), http://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_roli_access_to_justice_assessment_manual_2012.authcheckdam.pdf.

[7] Ibid.

Whether a community needs assessment is done through a clinic or as a separate project, ethical considerations are very important. These considerations begin at the inception of the project. In this case, the sensitive nature of domestic violence created several ethical issues to be addressed. Project supervisors in India and Nepal were not clinical law professors; but they were already educated as attorneys and working in the field as professionals. They were aware of cultural and ethical considerations and other issues involved in conducting research and surveys on such a sensitive subject. Safety and security of students was a priority. Selection of students to volunteer for the project focused on students who had knowledge and experience with working on domestic violence issues.

The student volunteer selection process started with the circulation of a detailed advertisement highlighting the area of research in domestic violence and skills involved in carrying out the project, including research, communication and technology skills. The recruitment advertisement was drafted in a way to help students understand the subject and the requirement of community assessment research. Recruitment looked at potential volunteers' statement of purpose, their interest in the study and their resumé within the context of socio-economic issues around domestic violence.

A detailed analysis of applicants' statement of purpose and resumé was done to shortlist suitable candidates based on their interest and experience. A detailed

telephone interview of shortlisted candidates was conducted to judge their capabilities to examine their skills in conducting surveys. Candidates were questioned on the work they had done in the law and domestic violence; their ability to communicate in local languages effectively; their knowledge of the surrounding areas of the community and their ability to understand issues the community faces.

The team of four volunteer students selected in India had all worked on matters relating to domestic violence beforehand and were conversant with the issue. One volunteer had interned in Egypt and worked extensively on domestic violence. Another volunteer was actively involved in child rights and also had interned in this field. A third volunteer had written articles and was involved in human rights work. The fourth volunteer was a member of the Legal Aid Society and Clinic at the law school.

Once selected, the volunteers spent many sessions discussing the ethics of the surveys, how to conduct the surveys and what to say. Volunteers learned more about the issue through the literature review process. During the project the team[8] discussed the safety aspects of carrying out the questionnaire on multiple occasions. This influenced the team's decision to not include certain questions in the questionnaire about sexual violence. Supervisors went against the student team members' wishes to ask these

[8] The team consisted of four Indian students, Nepali students, one Nepali team leader who is an attorney and director of a NGO, one Indian team leader who is an attorney and two law professors in the United States.

questions for safety concerns. Regarding the possibility of harm, whenever a student surveyor felt she was going to an area that was less comfortable/familiar/safe, the student was required to be accompanied by another volunteer.

Practice surveys were conducted before going into the field. Advisories were developed regarding survey practices and safety. Real time monitoring was done by getting in touch with volunteers by telephone and instant messaging, as well as email for less critical communications.

## CHOOSING A TOPIC

As noted earlier, any access to justice topic is a legitimate focus of a community needs assessment. In the example to be discussed in this article, the team focused on domestic violence because it is a serious global problem, which is broadly defined to include all the acts of physical, sexual, psychological and economic violence. Both the lack of awareness and the problems in access to justice are a catalyst in the growth of domestic violence. While attempting to gain a cultural perspective, it is crucial to not encourage violence in our attempt to 'respect' culture. This is one of the greatest challenges of advocacy and policy work. Since both India and Nepal address similar issues of domestic violence with similar laws, which includes physical, sexual and economic

violence, our study was conducted in Kolkata and Kathmandu to explore the communities' knowledge and attitudes toward domestic violence.

When characteristics of domestic violence are defined, it is important to remember that these discussions are often influenced and sometimes tainted, by the conflicting political, cultural and social situations of various communities.[9] At the same time, we recognize this right to be free from violence as a universal right.[10] India's "Protection of Women from Domestic Violence Act" (PWDVA) and Nepal's "Domestic Violence (Offence and Punishment) Act" were adopted in the year 2005 and 2009 respectively. Like India, Nepal is predominantly Hindu. Nepal has its own cultural practices & values regarding the status of women and men. The Shrutis and Smriti, who influence some Nepalese attitudes, consider women as dependent on men, creating unequal status in the society[11]. Thus many families are male-dominated and treat women as commodities or child-producing machines. The Domestic Violence Act of Nepal[12] defines "Domestic Violence" as any form of physical, mental, sexual or economic harm perpetrated by a person against another person with whom he or she has a family relationship. This includes any acts of reprimand or emotional harm. The Act further

[9] See Elizabeth M. Zechenter, 'In the Name of Culture: Cultural Relativism and the Abuse of the Individual', 53 *J. of Anthropological Res*. (2011).
[10] UDHR Art. 3, ICCPR Art. 6, 9; CEDAW.
[11] According to Manusmirti, men are independent and women are dependent on men. Thus women are not even capable to take loans without consent of a husband or son. This was reflected in the "Nyayashastra" document brought by King Jayasthiti Malla in the 14th century to regulate society.
[12] Domestic Violence (Crime and Punishment Act) 2066 (2009).

defines "Domestic relationship" as a relationship between two or more persons who are living together in a shared household and are related by descent (consanguinity), marriage, adoption or are family members living together. The Indian Protection of Women from Domestic Violence Act (PWDVA) law is similar; but includes verbal abuse as a form of abuse for which a woman can seek protection from the courts.

A team of four students from the National University of Juridical Sciences, Kolkata was selected to conduct the Indian study under the guidance of Professor David Tushaus and Bruce Moseley in the United States. Advocate Nirmal Upreti, an attorney and NGO director in Nepal, agreed to conduct a parallel study in Kathmandu. The research project consisted of various stages: research, writing literature reviews, developing a survey, conducting surveys, field work, data collection and assimilation. Before the research was carried out three hypotheses were formed. The team of students predicted that people from the lower economic strata would be largely unaware that there is a legal recourse against domestic violence available to them. The team also thought they would find that the majority of domestic violence would take place amongst families who were uneducated or earned less, which is a common stereotype. Finally, the team wanted to see if a majority of men would find domestic violence acceptable in cases where the woman is disobedient, especially men who earned less or had minimal educational qualifications.

RESEARCH PROCESS

Research into the facts and law of a case must be done to develop an understanding of a client's legal problem. Similarly, a community needs assessment must be done to identify the social justice needs of the community before a clinic can know how to best serve the people in its community. Conducting research prior to doing the assessment is vital. The literature review will help the team to form the survey questions by researching on distinct topics. During the course of the project each student team member researched and wrote a literature review on a distinct topic. The topics that were covered included issues of domestic violence in India by the Indian team, and in Nepal by the Nepali team. Research was conducted on the laws relating to domestic violence, the effectiveness of these laws, and the remedies associated with overcoming the gaps in the law. The research material included scholarly articles, books, case laws, commentaries, newspaper articles, official reports, journals and other online sources. Below are some of the team's findings that helped inform the development of the surveys.

**The problem of domestic violence**

The problem of domestic violence, which is ubiquitous in society, includes dowry violence in India and Nepal. Dowry is a system where the bride's family pays some amount, in either cash or kind, to the groom's family. If there is a failure to meet the demands of the groom and his family at the time of the wedding, or sometimes afterwards, the bride is sometimes subjected to torture by the groom's family, with whom she traditionally goes to live. In the year 2013, a total of 8083 cases of dowry death were reported in India, of which the conviction rate was only 32.3%.[13] The problem of domestic violence is not limited to dowry related torture; but also escalates to wife battering, cruelty, rape and other types of violence. Ironically, marital rape is neither included within the definition of domestic violence in India nor is it punishable under any other law in India at this time.

In the context of Nepal, domestic violence is generally perceived as violence against women as most of the victims are women. Action arising from a number of NGOs and the government can be interpreted in this way.[14] The secrecy that surrounds domestic violence means that incidents are very rarely reported. Data shows that mostly women

[13] Crime in India 2013 Compendium, National Crime Records Bureau, Ministry of Home Affairs, available at http://ncrb.nic.in/CD-CII2013/compendium%202013.pdf

[14]Domestic Violence Act enacted by the government has been formulated from the perspective of women. Similarly, a unit has been created under the prime minister's office to control domestic violence against women. Almost all NGOs working to end domestic violence have predominantly focused on women like WOREC Nepal, INSEC etc.

seek legal assistance.[15] Domestic violence is a chronic and under-reported crime as illustrated by the Demographic Health Survey in Nepal.[16] It found that three quarters of women who had experienced physical or sexual violence at some point in their lives had not sought any help – and two thirds had never mentioned the violence to anyone. The problem of not seeking care was particularly acute among women who had experienced sexual violence – only 7% had reported the assault. Even when care is sought, it is rarely from the state sector – only 4% of Demographic Health Survey respondents who sought care had been to the police, and 3% to medical services. The majority of the care-seeking women had relied on friends and family for care and support.[17] These findings led the DHS authors to conclude that "despite the efforts of the Ministry of Women, Children, and Social Welfare and nongovernmental organizations to cater to victims of violence, the data suggest that few abused women are accessing these services".[18]

**Developing the Survey**

Developing the survey of community members is one of the most important parts of the project. The survey should result in the collection of a wide range of first hand quantitative data, qualitative data, demographics and valuable inputs through survey

[15] 'Fact on Violence Against Women' in Nepal available at www.worecnepal.org
[16] National Demographic Health Survey, 2011.
[17] Ibid.
[18] Ibid.

subjects' comments. It is important for the survey to be a collaborative process involving the entire team. Ideally, each student team member should develop questions the student thinks would be useful to find out from the community given what was found out in the student's literature review. Students are encouraged to review each other's aforementioned research, literature review and paper leading up to the survey; but offer questions suggested primarily from their own research. Access to all literature reviews is best accomplished through a secure, shared drive. In this case, the team used a Google, Educational Account through Professor Tushaus' University account. By using an educational account the Google drive is a more secure environment for the research project.[19]

Any survey team will bring to the process a point of view that will impact the topic and how it is studied. There may be some overlap of questions proposed for the survey; but the process should create a bank of questions for the team to work with and choose from, which will be impacted by the teams' preferences. The research team must then collaborate to edit these questions down to a manageable number that covers the demographics, knowledge and attitudes of the sample surveyed. In this research project, the team communicated with members from three different countries (Nepal,

[19] The Google educational account, with its enhanced features, is considered secure enough for the University to store student specific information, the privacy of which is protected by the Family Educational Rights and Privacy Act (FERPA), available at 20 U.S.C. § 1232g; 34 CFR Part 99.

India and the USA) via the internet to develop the survey. The literature review about domestic violence issues provided some different perspectives from Nepal and India. The team wanted the two surveys to be identical, or as similar as possible, so that the results could be compared with each other.

The India and Nepal team members in this project did not have a lot of experience with writing survey questions. One way to address this problem is to ask one or more team members to research the issue of writing survey questions. The team members who conduct the research, and their peers who they will inform, will benefit from learning about striking a balance between quantitative and qualitative questions, using a Likert scale[20] and including demographic questions. On this project, the team task was to keep the survey at a manageable length of two pages. The team wanted the survey to solicit sufficient data from each subject; but we did not want to have subjects refuse to do surveys or finish surveys because the surveys were too long or the subject became too sensitive. The entire team debated which questions were most important to include in the survey. The team must ultimately decide on how many demographic questions are necessary, which quantitative and qualitative questions are needed and whether any of the questions are too controversial. This is where the most conflict occurred in this

[20] A Likert scale is a popular rating system for survey research. Respondents can indicate the extent of their agreement or disagreement to a given statement in a survey using a five or seven-point scale. The scale usually ranges from "strongly disagree" to "strongly agree", which is what this research team used.

project. There was agreement on many issues, including keeping the survey relatively short at two pages. The basic demographic questions to ask, including age, education and household income were easily agreed to. However, when it came to some controversial issues there were disagreements.

The Kolkata law student team members wanted to include a specific question on sexual abuse in the survey. The student volunteers, all women, argued for inclusion in the survey of this question and issue. Team leaders in both India and the United States did not question the value of such an inquiry. Team leaders, however, were concerned about asking questions on sexual violence for two reasons. One, there was concern that the extra controversial nature of a question on sexual violence would result in subjects terminating interviews, resulting in incomplete surveys. The other reason was the concern that questions on sexual violence might put the survey team at greater risk.[21] The team engaged in healthy debate over this issue. A consensus was reached to avoid specific questions about sexual abuse; but open ended questions made it possible for subjects to volunteer information on this topic.

Engagement of all team members in the research process from the literature review to the development of the survey questionnaire made it easier to develop and conduct the

[21] Sensational reports of sexual abuse, especially the 2012 Delhi gang rape, heightened the concern for safety.

survey in both India and Nepal. In this case, the very first draft questions were framed by the professor as the team members did not have much experience with surveys, quantitative and qualitative data collection or Likert scales.[22] This issue was not anticipated, or one of the team members would have been tasked with researching survey development so that the student or students could take charge of survey development, as noted above. After Professor Tushaus developed a draft survey the team's inputs were invited to comment on the substance and format of the survey. These questions were framed to test people's awareness about the domestic violence laws, the existence of legal aid clinics, and victimization of people in domestic violence situations. These questions were just a framework that intended to cover the area of study. After debating over the questions, the team suggested to improve the survey by also inserting the age, gender, marital status, and income of the persons taking the survey. This ensured that the team kept track of whether it surveyed an almost equal number of people from different social backgrounds or the results might be skewed toward a particular group.

There was a lot of discussion regarding whether 'sexual abuse' should be listed as an option as a survey question when referring to the different forms of domestic violence.

[22] In a previous research project, some team members had experience in writing and conducting surveys and were able to develop their own survey questions quite well. The research team leader must be prepared to adjust to team strengths and weaknesses.

In light of India and Nepal being relatively conservative societies, it was an issue of concern for the mentor to allow a female surveyor to administer that type of question, which is considered to be taboo in Indian society. One Indian team member felt that having our student volunteers, who were all women, ask about issues of sexual violence, might be too risky. This was particularly a concern given that the goal was to conduct the survey with a broad spectrum of the population in terms of demographics. We expected our surveyors to encounter a relatively equal number of men and women from a variety of socioeconomic and educational backgrounds. The concern was that sexual violence may be too sensitive a topic and cause some respondents to terminate the interview or, worse, become aggressive toward the volunteer student surveyor. It was also agreed to introduce 'civil or criminal penalties' in the option where the surveyors were to select the type of penalty associated with domestic violence because it was believed that people may not be aware of the exact nature of penalties associated with the crime. We realized that there existed certain discrepancies with regards to who the perceived inflictor of the violence could be, who the victim was, and what the definition of 'violence' itself was.

It seemed rather shocking to team members from the United States that only 'women' could be victims of domestic violence under the law in the Indian and Nepal domestic violence protection order context. This was a matter of concern to members of the

research team from the United States. To understand the reasons behind this, it would require one to understand the complex historical, political and social contexts in India. Understanding this equips someone engaged in grass-roots level work to deal with the issue with a nuanced perspective. The implementation of India's and Nepal's domestic violence protection acts and people's understanding about domestic violence were important for the team to survey. In Nepal and India, where both countries are predominantly Hindu and have cultural practices indicative of a patriarchal value system, domestic violence is predominantly violence against women. So, the survey was developed to target results of domestic violence against women.

**Survey Training and Administration**

Everyone who conducts a survey must be trained in administering the survey. Confidentiality is an important aspect to conducting surveys, similar to practicing law. In this way, law students involved in a research project learn valuable lessons and practice confidentiality as if they are working in a law office. If the survey is to be administered orally, you must give the survey in a safe, confidential environment. Once paper surveys are completed, they are scanned by the surveyor and uploaded to a secure, educational account Google Drive folder dedicated to survey uploads. They will then be tabulated electronically, after which they should be destroyed. No names should be taken during the survey process, which is one of the few differences from a

law office environment. Survey volunteers should always conduct the survey in a safe environment. Much of the survey best practices relate to best practices in a law office. Surveyors, like law office personnel, should be trained to appropriately greet the interviewee, make that person feel comfortable, ask open-ended questions as well as close-ended questions, be organized and culturally aware and sensitive.[23]

Safety concerns are always something to address no matter what the survey topic may be. The United States team leaders laid down certain rules for the Nepal and the Indian team, which included not going to remote places alone and not entering houses of respondents alone. After arriving on a common framework an Institutional Review Board (IRB) proposal was developed and submitted by Professor Tushaus. Projects should involve the students in the IRB process to educate them on doing research and the ethical and professional responsibilities involved in conducting research, which are similar to those in the practice of law. The IRB process is designed to assure that the research being conducted protects the rights of human subjects participating in a research study. A key goal is to protect human subjects from physical or psychological harm. The process assesses the ethics of the research and its methods. It requires fully

[23] Stefan H. Krieger, Serge A. Martinez, 'Performance Isn't Everything: The Importance Of Conceptual Competence In Outcome Assessment Of Experiential Learning', 19 *Clinical L. Rev*. 251, 292; William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* 180-2 (Jossey-Bass, 2007).

informed and voluntary participation by prospective subjects capable of making such choices and seeks to maximize the safety of subjects.

It was agreed that the team would not survey people they knew personally. Abiding by all these conditions, the most important one being anonymity of the survey taker, the team agreed to try to survey a broad cross section of the community. In particular, at least four different groups of people were to be surveyed, including the wealthy and educated class, the middle-educated class, the lower class (predominately uneducated), and working women who were predominately uneducated and engaged in unskilled work.

**Response Problems with the Survey**

The survey was completed over a period of four weeks. From the team's experience, most people agreed to take the survey, but not without some hurdles. The goal was a sample size that would provide a significant sample, preferably close to 100 for Kathmandu, Nepal and about 100 for Kolkata, India. The team effectively reached its goal. The team noticed that some people, especially unskilled women who worked, were at first apprehensive about taking the survey. After learning that it was anonymous and of its purpose, they agreed to answer the questions. These women were unable to communicate in English, so the team decided to administer a parallel survey

in the subjects' language when required. Since most of these women were also unable to read their own language, the team decided to translate the questions orally from the English survey instrument as the student volunteers conducted the survey. This was accomplished because some of the team members were fluent in the respondents' language, which allowed for the survey to be translated orally while at the same time keeping uniformity. The ethical aspect of the survey was important to the team. The team kept the survey anonymous and no attempt was made to mold respondent opinions. Surveys included Likert scale quantitative questions as well as qualitative questions. A blank survey is available as Appendix 1.

As noted earlier, an area of concern that arises when researching and studying domestic violence is the engagement of legislation with society; specifically whether violence as defined in the legislation is reflective of the cultural situation of the country. For example, the Indian PWDVA includes 'sexual violence' within the ambit of violence.[24] However, while conducting the survey, we were confronted with simple problems such as explaining sexual violence to the respondent whom we surveyed. Those administering the survey must not only be aware of the law, but also the society in which the survey is being conducted. For example, given that the topic of sex itself is

[24] The Protection of Women from Domestic Violence Act, Section 3(a): "..harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse".

not discussed openly in most of Indian society, the Indian team members were aware that explaining the concept of sexual violence (domestic violence itself is not spoken about very openly), would be difficult in at least some interviews. To do this would require an understanding of the social context. Due to difficulties in obtaining data on a nationwide basis, statistical studies on domestic violence have been limited. Most of the data is available with the Indian National Crime Records Bureau. It was found that on a regional basis, a lot of literature existed on Domestic Violence in Uttar Pradesh, although no state-wide data was found to exist.

The Nepali team was able to get access and responses from NGOs. However the Indian team found that the Indian NGOs were not open to taking the surveys and quickly denied any engagement over the phone. The Indian volunteers were often asked questions by NGOs who were circumspect regarding the purpose of the study. The surveyors were often asked by the person answering the phone at the NGO to contact other people in the NGO who were the heads of the organization or were said to be more experienced. However, there were no responses to the follow-up phone calls or emails sent to schedule an interview.

While there were no clear reasons given for NGO refusals to answer surveys, it appeared to the team that breach of confidentiality was a concern, in spite of clarification that none of the questions required the NGO to reveal any personal or

confidential information. As a result of the unwillingness to cooperate on the part of NGOs, the Indian team was unable to carry out the NGO surveys as planned, which would have enriched the study and findings. Given the critical role played by NGOs in the legislative process,[25] and particularly the role played by Indian NGOs in passing the domestic violence legislation, the team was surprised by the lack of responsiveness of NGOs with regard to surveys that were specifically designed for NGOs working on domestic violence issues.

**Surveys as Community Education Outreach Opportunities**

A community needs assessment can provide an opportunity to conduct community education on a one to one basis. This turned out to be a bonus outcome for this project. After the survey was fully administered, a summary of the domestic violence laws was given to respondents. Since the team's educational institution had no provision for compilation of the survey data, the scanned copy of the survey documents were sent to the U.S. team leader's technology department to compile the survey data through a computer program.

[25] For examples of ways in which NGOs are effective in the legislative process see *Understanding the role of NGOs in the legislative process*, retrieved at http://www.endvawnow.org/en/articles/113-understanding-the-role-of-ngos-in-the-legislative-process.html

Team members in India and Nepal felt they were well orientated by the India, Nepal and United States team leaders before going out into the field to conduct the surveys. Indian surveyors met their respondents mostly in public and open places; however Nepali surveyors met their respondents mostly in their offices and homes. Linguistically, conducting the survey in Nepal was more convenient than in India because all the respondents and surveyors were able to communicate in the predominant Nepali language. However, in India due to the variance in respondents' educational level and language differences most of the surveyors and respondents needed help from a translator. The instructions for administering surveys also brought uniformity among surveyors. The systematic guidance and leadership within team members from professors to volunteers in the project helped to provide guidance to conduct the survey more effectively and efficiently. Bringing this diverse group together to collaborate through technology was critical. In order to remain informed about the progress the group communicated over different social networking websites.[26] It was much easier to transfer the data and compile the survey results using this technology.

**Survey Results**

[26] The team used mostly Google mail and documents in the premium, educational service with enhanced confidentiality to communicate across international boundaries, as noted above.

Survey results were compiled from each of the team members. Listed below is a breakdown of each of the team's results. Thorough studies of the results were compiled and it was found that the Indian team had surveyed 49% men and 51% women. The Nepal survey had a similar distribution. Most people who took the survey believed that domestic violence is limited to physical assault. The Protection Acts in both countries define domestic violence much more broadly to include emotional, economic and sexual abuse. Most people were also aware of the criminal penalties against offenders. While only a minority of the survey takers thought domestic violence is justified, clearly any percentage of acceptance cuts against national and international law. Most people seemed to personally know people who have suffered from domestic violence.

Out of the 80 Indian respondents surveyed regarding what constituted domestic violence, 75% believed that verbal abuse constituted domestic violence, 67.5% believed that emotional abuse constituted domestic violence, and 63.75% believed that economic abuse constituted domestic violence. The results were in line with our expectations since domestic violence is almost always associated with physical violence. On the contrary, in the Indian scenario, where often men are the only income-earning members of the family, and women are rarely financially independent, economic abuse is rarely seen as a form of 'domestic violence', although the Protective Orders Act recognizes such abuse as something that can be filed for protection against.

Regarding a question on whether violence was justified in certain circumstances, 75% of the surveyed respondents believed that violence was not justified under any circumstances. However, 8.75% of the surveyed respondents believed that violence is justified in cases where the woman is not obedient; reflecting on the fact that there are segments of Indian society where violence is considered acceptable. Perhaps more telling of the incidence of domestic violence is that 45% of the 80 surveyed respondents personally knew of somebody who had been a victim of domestic violence, and 3.75% had been victims of domestic violence themselves. There were 16.75% of those surveyed who knew of someone who had been victims of dowry violence. There were only 27.5% of respondents who claimed they did not know anybody who had been a victim of such a situation. Among those surveyed, people belonging to the higher income brackets of the community showed a widespread belief that incidents of violence were limited to the families belonging to lower classes.

Unfortunately, many of the respondents who had known of people who had been victims of domestic violence or been victims themselves, knew little about the procedure for seeking justice for a victim of domestic violence or the outcome of any complaint that had been filed. There was very little awareness regarding the specific protection mechanisms available under the Domestic Violence Act, 2005, that evolved as a response to the violence against women. However, some individuals who had been

involved in seeking justice were able to give an idea of various hurdles faced, pointing to the lack of implementation of the legislation. Few individuals who had been victims themselves opened up during the survey in order to understand avenues for seeking justice better, and with the hope of being able to get some form of legal aid.

Lastly, regarding the form of penalties available against offenders who commit domestic violence, most people believed there was some form of penalty, but were unaware of the exact penalty. Almost nobody was aware of the difference between civil and criminal penalties, and a majority of 72.5% of the surveyed respondents believed that a remedy for domestic violence would be criminal in nature. However, 11.5% of the respondents also believed that there is no remedy the law provides for a victim of domestic violence.

Most people surveyed believed that legal protections against domestic violence included criminal penalties as opposed to civil penalties. Perhaps this is a contributing factor as to why a minimal percentage of domestic violence cases are reported. Women may be of the opinion that serving a long sentence in jail is too harsh of a punishment for their family member. This shows a need to conduct community legal education programs on the relatively new civil protection laws. There is little awareness about the intricate details of the legal procedures or assistance that is available through legal remedies. While some people are willing to approach the authorities if family problems

are not solved amicably, numerous people view the legal system and even NGO's as formidable, unapproachable institutions. However, very few were well versed with how to use the legal system to protect them against domestic violence. These results suggest several needs for community education that law school legal aid clinics can engage in.

The prevalence of domestic violence is not the same across all states; the group of eighty people that were surveyed in Kolkata, India was generally aware of the problem of domestic violence and most were of the opinion that it is unacceptable. This does not mean the survey in other communities would get the same results. This is just another reason why each law school legal aid clinic should conduct community needs assessments in their own community and not rely on other studies to guide their institutions. Survey results indicated that a large percentage of people believed that physical and verbal violence was associated with the legal definition of 'domestic violence' as per Indian law, however a far smaller number of people believed that emotional or economic abuse was a form of domestic violence that they could seek legal protection from. Furthermore, a minority of those that answered the survey believed that sexual abuse was legally within the ambit of the meaning of domestic violence.

## WHAT WE CAN LEARN FROM THE RESEARCH PROJECT

Technology is important in spreading awareness about the problem of domestic violence through the work of legal aid clinics in India and Nepal. Unfortunately the effectiveness of technology is limited because many in the population do not have access to the internet.[27] The government and voluntary organizations are making efforts towards ending violence against women through enacting relevant legislation, issuing orders and launching various women welfare schemes. But there appear to be various gaps when it comes to implementation as lower level government functionaries are not gender sensitive and are not adequately trained to give this legislation its full effect.

The team observed how a community needs assessment is a useful tool in studying awareness of domestic legislation and the role legal aid clinics and NGOs might play in addressing a community need. There is a noticeable gap between the law as it appears on paper and how it is understood by and affects the lives of people. A well-intentioned, sensitive and well-drafted law will be ineffective as a tool of social justice unless people from every sector of society are educated and empowered to utilize it. An equally important factor is that the legal personnel must be well-educated and trained to implement the law. Lastly, any law will fail to cater to the needs of the people if they are not aware of the laws and of how to set the legal process in motion.

[27] Only about one-third of India's population has internet access in 2016. According to http://www.internetlivestats.com/internet-users/india/ Nepal usage is even lower. It was estimated to be 13 percent in 2012. See http://www.internetworldstats.com/asia/np.htm.

A community needs assessment helps us to better understand the law in a given area, to determine the gaps in the law, the awareness and effectiveness of these laws and whether they achieve their purpose as instruments of socio-legal change. A community needs assessment is a necessity for any legal aid clinic to determine what the requirements of the community are, which areas of legal aid should be focused on, and what the methods they adopt should be. Each community is different. A universal model for clinic programs will result in a waste of resources and fail to cater to the unique needs of the people in a given community. Thus a legal aid clinic must be streamlined through community needs assessments to suit the people it seeks to help. It becomes extremely important for an international audience of activists, social workers and lawyers to reflect upon shared experiences.[28]

The team presented its research project at the Global Alliance for Justice Education (GAJE) conference in Turkey in 2015. This involved an audience engaged in social and legal advocacy. This is another potential benefit of a community needs assessment research project. Students who go to present their research at professional conferences benefit in many ways. They must learn the topic well in order to present it. Presentation skills are developed in a real situation. Professionalism is practiced. Students must

[28] It might be 'violent' in certain communities to deny a woman money or prevent her from earning her own, i.e. it would qualify as economic abuse. This might be considered quite 'normal' in other communities. Even if considered 'wrong', it sometimes does not evoke the same response that physical violence would.

work together as a team for a common goal. They also get to meet many other professionals, possibly connecting with someone they can either work with in the future or pursue additional educational goals. Such discussions in a global context also broaden law students' view of social justice issues in the students' community and on a global basis. This is of greater importance, especially, when social workers and lawyers have to deal with clients from various cultures.

**The Future**

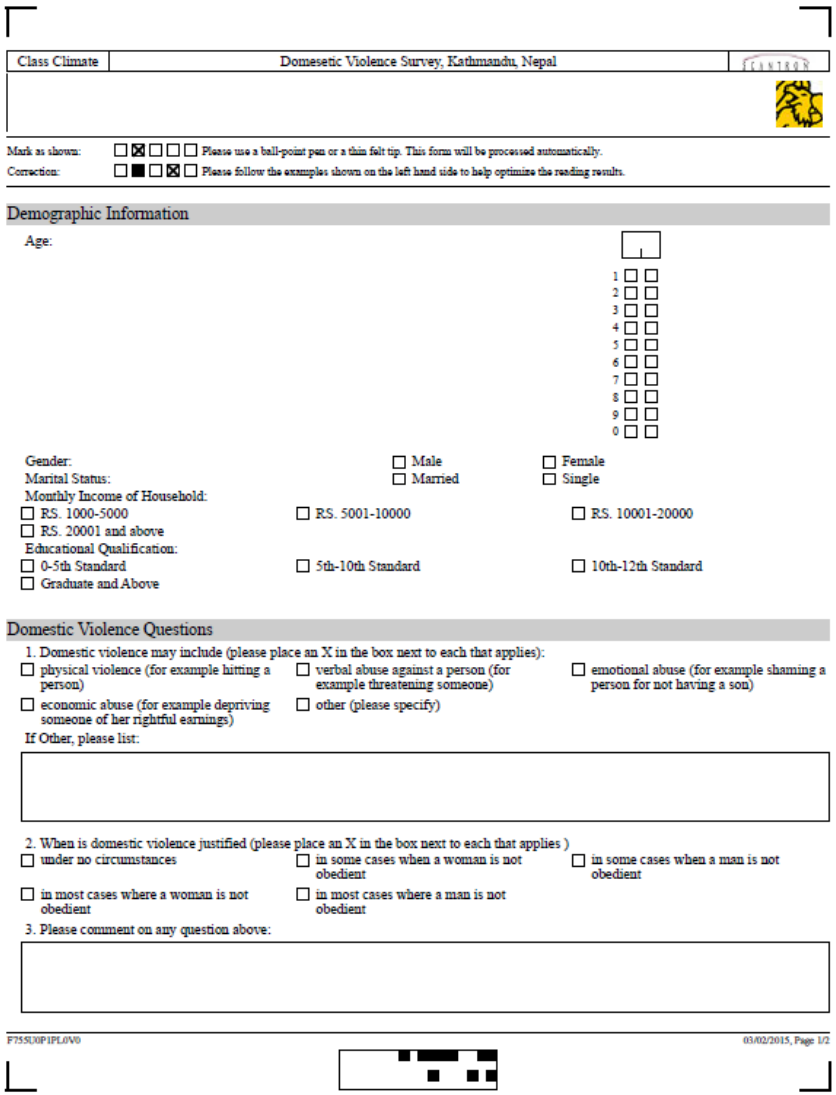
Before conducting the survey, the student team was under the impression that people from the lower economic strata would be largely unaware that there is legal recourse available to them. To the contrary, we found that similar numbers of people in all socio-economic categories were acquainted with the fact that laws exist to protect them, even if they were not educated in how to use them to their benefit. Looking back and comparing the results of the survey to what the team's hypothesis was before the survey gives a better understanding of how respondents view domestic violence. In the beginning the team expected the survey results to indicate that a majority of the domestic violence would take place amongst families who were uneducated or earned less. However, the team found that domestic violence for women is a common problem that transcends social classes. The team also thought that a majority of the men who would find domestic violence acceptable in cases where the woman is disobedient,

would belong to the bracket of people who earned less or had minimal educational qualifications. The team realized that this justification for abusing a woman was similarly prevalent even in the homes of educated professionals. The team had the chance to do fieldwork and research where we interacted first-hand with the people that we were surveying; this helped us to understand the problem involving access to legal mechanisms and analyze how legislation and legal aid clinics could change their approach in order to reach out to a larger base of people. Interviewing subjects also mirrored what we must learn to do with clients in practicing law, including observing confidentiality.

The survey had both quantitative and qualitative data; the latter is extremely useful in terms of indicating what problems people have faced while trying to take legal action or approach an NGO, what kind of legal aid they require and the extent of social stigma attached to domestic violence. The Kolkata research team members plan to collaborate with their Legal Aid Clinic in order to streamline some of their practices, keeping in mind what they learned during the survey. In terms of skills, the project has taught the volunteer students teamwork, leadership and communication with people from different parts of the world by effective use of technology. By virtue of a paper on the study being accepted at an international conference, the project helped sharpen team members' presentation skills and gave them confidence with regard to public speaking

– a strength which is extremely important to possess in the legal profession. Lastly, the reactions of people during the survey taught students how essential it is to be sensitive and tactful while questioning them about an issue like domestic violence, which is considered a social taboo in various parts of the country and rarely discussed openly.

## Appendix 1: blank survey



Class Climate | Domesetic Violence Survey, Kathmandu, Nepal | SCANTRON

Mark as shown: ☐☒☐☐☐ Please use a ball-point pen or a thin felt tip. This form will be processed automatically.
Correction: ☐■☐☒☐ Please follow the examples shown on the left hand side to help optimize the reading results.

**Demographic Information**

Age: ☐☐

1 ☐☐
2 ☐☐
3 ☐☐
4 ☐☐
5 ☐☐
6 ☐☐
7 ☐☐
8 ☐☐
9 ☐☐
0 ☐☐

Gender: ☐ Male ☐ Female
Marital Status: ☐ Married ☐ Single
Monthly Income of Household:
☐ RS. 1000-5000 ☐ RS. 5001-10000 ☐ RS. 10001-20000
☐ RS. 20001 and above
Educational Qualification:
☐ 0-5th Standard ☐ 5th-10th Standard ☐ 10th-12th Standard
☐ Graduate and Above

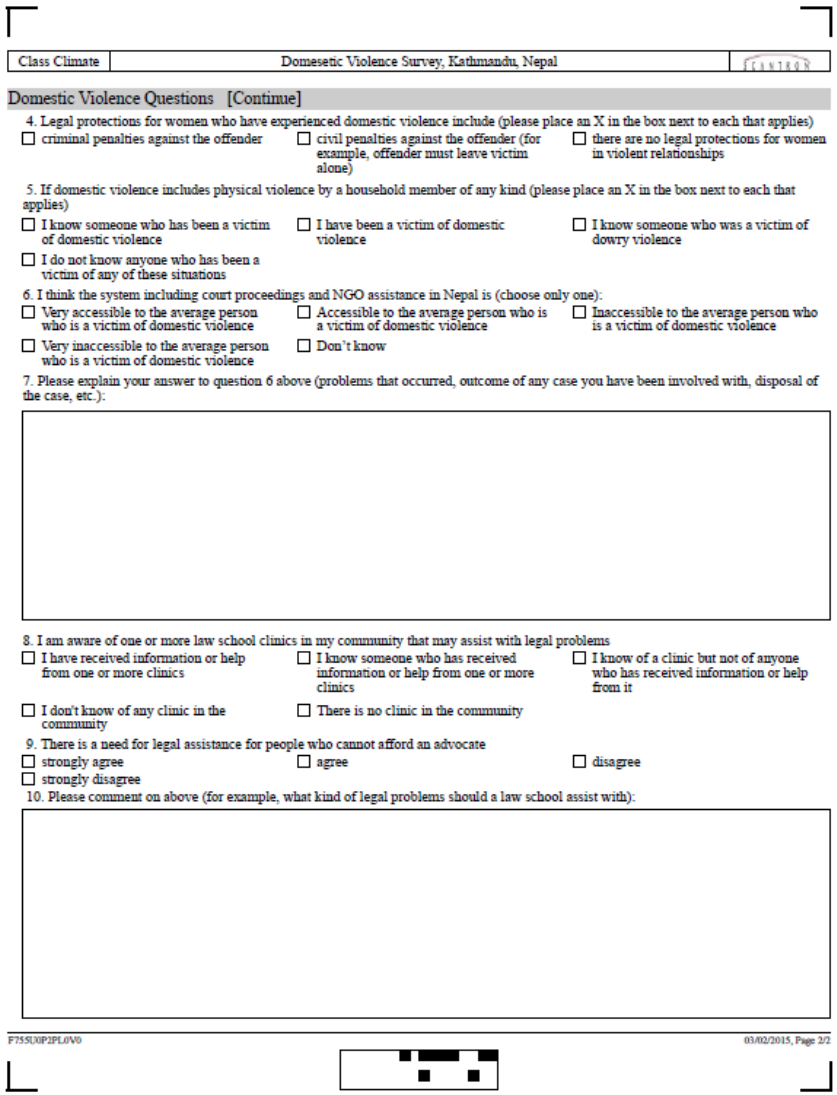
**Domestic Violence Questions**

1. Domestic violence may include (please place an X in the box next to each that applies):
☐ physical violence (for example hitting a person) ☐ verbal abuse against a person (for example threatening someone) ☐ emotional abuse (for example shaming a person for not having a son)
☐ economic abuse (for example depriving someone of her rightful earnings) ☐ other (please specify)
If Other, please list:

2. When is domestic violence justified (please place an X in the box next to each that applies )
☐ under no circumstances ☐ in some cases when a woman is not obedient ☐ in some cases when a man is not obedient
☐ in most cases where a woman is not obedient ☐ in most cases where a man is not obedient

3. Please comment on any question above:

F755U0P1PL0V0 03/02/2015, Page 1/2



Class Climate | Domesetic Violence Survey, Kathmandu, Nepal | SCANTRON

**Domestic Violence Questions [Continue]**

4. Legal protections for women who have experienced domestic violence include (please place an X in the box next to each that applies)
☐ criminal penalties against the offender ☐ civil penalties against the offender (for example, offender must leave victim alone) ☐ there are no legal protections for women in violent relationships

5. If domestic violence includes physical violence by a household member of any kind (please place an X in the box next to each that applies)
☐ I know someone who has been a victim of domestic violence ☐ I have been a victim of domestic violence ☐ I know someone who was a victim of dowry violence
☐ I do not know anyone who has been a victim of any of these situations

6. I think the system including court proceedings and NGO assistance in Nepal is (choose only one):
☐ Very accessible to the average person who is a victim of domestic violence ☐ Accessible to the average person who is a victim of domestic violence ☐ Inaccessible to the average person who is a victim of domestic violence
☐ Very inaccessible to the average person who is a victim of domestic violence ☐ Don't know

7. Please explain your answer to question 6 above (problems that occurred, outcome of any case you have been involved with, disposal of the case, etc.):

8. I am aware of one or more law school clinics in my community that may assist with legal problems
☐ I have received information or help from one or more clinics ☐ I know someone who has received information or help from one or more clinics ☐ I know of a clinic but not of anyone who has received information or help from it
☐ I don't know of any clinic in the community ☐ There is no clinic in the community

9. There is a need for legal assistance for people who cannot afford an advocate
☐ strongly agree ☐ agree ☐ disagree
☐ strongly disagree

10. Please comment on above (for example, what kind of legal problems should a law school assist with):

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## Appendix 2: advertisement

Title: *Access to Justice for Domestic Violence Victims: A Needs-Based Assessment.*

Date: 28th September, 2014

Domestic Violence is a global problem, which is now more broadly defined to include all the acts of physical, sexual, psychological and economic violence. Lack of awareness and problems in access to justice are a catalyst in the growth of domestic violence.

Prof. David W. Tushaus, Chairman, Department of Criminal Justice, Legal Studies and Social Work, Missouri Western State University, U.S.A and Sumit Kapoor, Advocate, High Court of Uttarakhand, India, wish to study domestic violence awareness among selected Indian and foreign communities to determine the effectiveness of support mechanisms available to domestic violence victims. Our goal is to determine whether law school legal aid clinics can play a role in providing education about domestic violence and increasing access to justice for victims of domestic violence. For this purpose we wish to create an Academic International research team to volunteer for the study.

Volunteer research teams will assist Prof. Tushaus and Mr. Kapoor in carrying out the study in each team's neighbouring community. Volunteers will coordinate through online means and create teams to study legislation and material available related to domestic violence in their country. Volunteer teams will be assembled to conduct surveys. Surveys will be developed to assess public knowledge of legal protections against domestic violence and the support network available to domestic violence victims. Surveys will be developed in conjunction with legal professionals who are knowledgeable about domestic violence and the importance of confidentiality in administering the surveys and tabulating the data. Volunteers will also interview individuals and NGO staff about domestic violence.

Volunteers will coordinate to discuss access to justice for domestic violence victims. The focus will be to study the following topics related to access to justice in domestic violence cases:

1. Legal Knowledge
2. Legal Awareness and Advice
3. Advice and Representation
4. Access to a Justice Institution
5. Fairness of Procedures
6. Enforceable solutions

Volunteers will also analyze the working of legal aid clinics in their law school with regard to domestic violence cases. Volunteers will be asked to write articles and reports to be published and presented as part of a study in various National and International conferences.

All interested Law Students who wish to volunteer for the research study may send their resume along with a statement of purpose (Maximum 500 words) explaining why they want to volunteer for the study by 6th October, 11:59 pm. Shortlisted applicants will be informed via e-mail by 10th October, 2014. Shortlisted candidates may be asked to appear for telephonic or skype interview on an agreed time and date.

Applicants can send their resume and statement of purpose to davidtushaus@gmail.com with cc to sumit.kapoor007@yahoo.co.in

Regards

Prof. David W. Tushaus
Department of Criminal Justice
Missouri Western State University, U.S.A

Mr. Sumit Kapoor
Advocate, High Court of Uttarakhand
India

*Reviewed Article: Clinic, the University and Society*

# "OUR ROOTS BEGAN IN (SOUTH) AFRICA[1]": MODELLING LAW CLINICS TO MAXIMISE SOCIAL JUSTICE ENDS

**Donald Nicolson***[2]

**University of Strathclyde, UK**

**Abstract**

This article explores the ways in which law clinics can be organised to maximise their impact on social justice in South Africa. Such impact can be both direct, in the form of the actual legal services offered to those in need, or indirect, in the form of encouraging law clinic students to commit to assisting those most in need of legal service after they graduate either through career choice or other forms of assistance. The article develops a decision-making matrix for clinic design around two dimensions, each with a number of variables. The first, "organisational" dimension relates to the way clinics are organised and run, and involves choices about whether: (1) clinics emphasise social justice or student learning; (2) student participation attracts academic credit or is extra-curricular; (3) participation is compulsory or

*I am grateful to Jobst Bodenstein, James Campbell, Rosaan Kruger and Helen Kruuse for their comments, advice and assistance with this article.

[1] With apologies to Pharoah Sanders (song title taken from *Message from Home* (Verve, 1996)).

[2] Donald Nicholson is Professor of Law and Director of Law Clinic School of Law, University of Strathclyde, Glasgow.

optional; (4) clinics are managed and run by staff or students; and (5) there is one "omnibus" clinic structure covering all clinic activities or a "cluster" of discrete clinics conducting different activities. The second, "activities" dimension involves choices about whether services are: (1) specialist or generalist; (2) exclusively legal or "holistic"; (3) provided only by students or qualified legal professionals; (4) located in community neighbourhoods or on campus; (5) provided by students working "in-house" in a university clinic or in external placements; (6) designed to benefit the wider community rather than just the individuals directly served; and (7) designed to remedy existing problems or educate the public on their legal rights and duties.

While not intending to set out a blueprint for existing law clinics, the article argues that, if South Africans are motivated to enhance their impact on social justice and level of community engagement, they can learn much from the first law clinic to be established in South Africa, at the University of Cape Town, which was entirely student-run, optional and solely focused on ensuring access to justice rather than educating students. Drawing on his experience in adapting this model for use in Scotland, the author looks at the advantages of combining the volunteerist and student-owned nature of this clinic with some formal teaching and staff involvement to maximize both the direct and indirect impact of clinics on social justice.

*Reviewed Article: Clinic, the University and Society*

## 1. INTRODUCTION

Twenty years after the advent of democracy in South Africa, it is clear that many of the benefits which might have been expected to flow from the defeat of apartheid have yet to materialise. While the state, NGOs and various elements of civil society will obviously play the biggest role in seeking to ensure social justice, university law clinics can play their part in increasing the number in society who are aware of and capable of enforcing their legal rights, thereby helping to equalise access to law and the benefits it may bring.[3]

In the light of this role, this paper seeks to explore how best to design clinics to promote social justice and respond to what are regarded as the two[4] biggest challenges facing university law clinics in South Africa (and indeed more widely), namely the precarious nature of funding, and the low academic status and employment conditions of clinical staff.[5] I will do so in terms of a decision-making matrix setting out the various choices about clinic organisation and activities which

[3] For an overview of problems of access to justice in South Africa, see David Holness, 'Improving Access to Justice Through Compulsory Student Work at University Law Clinics', 16 *Potchefstroom Elec. L.J.* 327, 332-33 (2013).

[4] Cf also Neels Swanepoel & Inez Bezuidenhout, 'The Institutionalisation of Community Service and Community Service Learning at South African Tertiary Institutions: With Specific Reference to the Role of the University Law Clinics', 45 *De Jure* 1 46, 55 (2012) (noting the limited time students have for clinical legal education).

[5] Peggy Maisel, 'Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa', 30 *Fordham Int'l L.J.* 374, 377, 388ff (2006-7), and on the second challenge: see also Willem De Klerk, 'Unity in Diversity: Reflections on Clinical Legal Education in South Africa', 12 *Int'l J. Clinical Legal Educ*. 95, 99-101 (2007); Philip F. Iya, 'Addressing the Challenges of Research into Clinical Legal Education Within the Context of the New South Africa', 112 *S. African L.J*. 265, 272-74 (1995).

clinics need to consider when deciding how to operate. While I will orient the discussion towards exploring how law clinics can be designed to maximise the goal of social justice, there is, however, no reason why the matrix cannot be used in relation to other goals which clinics choose to pursue.

In exploring how clinics can best be designed to serve social justice goals, I will draw upon my own clinic experiences. Indeed, it was my involvement with UCT [University of Cape Town] Legal Aid, which was entirely student-run and solely focused on ensuring access to justice, that inspired me to set up clinics along similar lines at the Universities of Bristol and Strathclyde. Admittedly, this model has been modified at the University of Strathclyde Law Clinic (henceforth, USLC) in that I, as a full-time academic, direct the clinic, four part-time solicitors supervise cases, and an optional Clinical LLB[6] allows students to integrate their training and experiences, and reflection on both throughout the standard LLB. Nevertheless, the USLC still prioritises social justice and is run jointly by staff and students. It is this model which has been replicated by most law clinics in Scotland – hence the title of this article – and on which I will draw as a possible example for South African law clinics motivated to expand their social justice mission.

[6] See at n 47 below.

In doing so, I am very mindful of the dangers of suggesting solutions for a country in which I no longer live.[7] While I have some contact with South African law clinics (including as a Visiting Professor at Rhodes University), I do not purport to be aware of all clinic activities pursued, nor their means of organisation, let alone the history and contextual factors affecting the choice of particular clinic models.[8] Nor am I suggesting that South African law clinics have not made the best choices for promoting social justice. In many ways, they compare very favourably with other jurisdictions, and are certainly more developed and better funded than those in the United Kingdom generally,[9] and particularly in Scotland. Instead, in order that the full implications of choices about clinic design for pursuing social justice may be appreciated, my aim is both to foreground such choices, some of which are often made unwittingly and many of which may have unforeseen knock-on effects for other aspects of clinic design and ultimately for their possible impact on social justice. In addition, I will suggest that clinics in South Africa (and indeed more widely) might benefit from exploring some aspects of the first law clinic to be established in that country.

[7] cf Richard J. Wilson, 'Beyond Legal Imperialism: US Clinical Legal Education and the New Law and Development', in *The Global Clinical Movement: Educating Lawyers for Social Justice* (Frank Bloch ed., 2011) esp. 144.
[8] For recent comprehensive accounts, see Maisel, note 4; Willem De Klerk, 'University Law Clinics in South Africa', 122 *S. African L.J.* 929, (2005).
[9] De Klerk, ibid, 932-35.

## 2. LAW CLINICS AND SOCIAL JUSTICE

Before doing so, it is useful to start with an idea of the potential impact law clinics might have on social justice. If we adopt the oft-quoted definition of social justice by David McQuoid-Mason, father of the South African clinical movement,[10] as involving "the fair distribution of health, housing, welfare, education and legal resources in society",[11] it is clear that access to legal assistance is important both as an aspect of social justice itself, but also in helping members of the community to benefit from whatever means law provides to achieve other public goods. Law clinics can most obviously play an important role in ensuring such access to justice, but, as we shall see, they can also engage in law reform activities, community legal projects and public legal education in order to help people gain the benefits provided by law and avoid the detriments or burdens that it may impose on them.

In addition to enhancing social justice in this direct manner, law clinics may also have an indirect effect by inspiring law students to go on to play some role in redressing social injustice after they graduate, whether through career choice, engaging in pro bono work or making donations, providing training or other forms of assistance to organisations which promote access to justice or social justice more

[10] See his pioneering *An Outline of Legal Aid in South Africa* (Butterworth, 1982).
[11] 'Teaching Social Justice to Law Students through Community Service', in *Transforming South African Universities – Capacity Building for Historically Black Universities* (Philip F. Iya, Nasila S. Rembe, & J. Baloro eds., 1999) 89.

widely.[12] Thus, drawing on educational theory, many clinicians claim that student exposure to clients may cause "disorienting moments"[13] whereby their pre-existing assumptions about the world clash with their observation of social deprivation, unequal access to justice and substantive legal injustice, especially when repeated exposure reveals that these problems are endemic rather than exceptional.[14] According to adult learning theory,[15] learning from experience rather than abstract teaching is likely to make these lessons particularly profound. And, when the experience is that of someone in dire need and it is realised that they may have no other source of assistance, knowledge may be transformed into empathetic care. Furthermore, Aristotelian theories of moral development[16] teach that satisfaction at helping others (or regret at not being able to do so), particularly if accompanied by guided reflection on experience and the example of positive role models, may convert knowledge about social injustice and empathetic concern for its victims into

[12] For similar analyses of this dual function, see Jon C. Dubin, 'Clinical Design for Social Justice Imperatives', 51 *S.M.U.L. Rev*. 1461 (1997-8); Lauren Carasik, 'Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission', 16 *S. Cal. Rev. L. & Soc. Just*. 23 (2006-7).

[13] Fran Quigley, 'Seizing the Disorientating Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics', 2 *Clinical L. Rev*. 37 (1995).

[14] e.g. Jane Harris Aiken, 'Striving To Teach "Justice, Fairness, And Morality" 4 Clinical L. Rev. 1 (1997); Stephen Wizner, Beyond Skills Training', 7 *Clinical L. Rev.* 327, 327-8 (2000-1); Donald Nicolson, 'Education, Education, Education: Legal, Moral and Clinical', 42 *Law Tchr*. 145 (2008); Juliet M. Brodie, 'Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics', 15 *Clinical L. Rev*. 333, 379-83 (2008-9).

[15] Quigley, note 12; Frank Bloch, 'The Andragogical Basis of Clinical Legal Education', 35 *Vanderbilt L. Rev*. 321 (1982).

[16] See e.g. R.S. Peters, *Moral Development and Moral Education* (1981), ch. 2; Joel Kupperman, *Character* (1991); Hubert. L. Dreyfus & Stuart. E. Dreyfus, 'What is Morality? A Phenomenological Account of the Development of Ethical Expertise' in David. Rasmussen (ed), *Universalism versus Communitarianism: Contemporary Debates in Ethics* (1990).

an ongoing commitment to contribute to social justice. If so, given that this may translate into years of pro bono or financial assistance or even a career devoted to helping those most in need, the indirect role of law clinics in promoting social justice may in the long run be even more important than their direct role.[17]

On the other hand, one can at least be certain when a clinic has enhanced social justice through providing legal services. By contrast, despite qualitative research supporting predictions about the impact of clinic on students' knowledge of social injustice, the development of empathy and a commitment to remedy social injustice, [18] and despite numerous anecdotal accounts from clinicians [19] and students,[20] only a few more quantitative empirical studies show clinics inspiring students to provide pro bono legal assistance or embark on a career which serves social justice.[21] Moreover, these studies were rather small-scale, and only suggestive

[17] Steven Wizner & Jane Aiken, 'Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice', 73 *Fordham L. Rev*. 997, 1005 (2004).
[18] Donald Nicolson, 'Learning in Justice: Ethical Education in an Extra-Curricular Law Clinic', in *The Ethics Project in Legal Education* (Michael Robertson, et al, eds., 2010), 171.
[19] See e.g. Quigley, note 12; Jobst Bodenstein, 'Access To Legal Aid In Rural South Africa: In Seeking A Coordinated Approach', *Obiter* 304, 310 (2005) Katherine R. Kruse, 'Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation', 8 *Clinical L. Rev*. 405, 443 (2001-2).
[20] See e.g. Frank Trinity, 'Homelessness and the Use of Reality to Enrich the Experience of Law School', 40 *Clev. St. L. Rev.* 513, 514 (1992); Donald Nicolson, 'Legal Education, Ethics And Access To Justice: Forging Warriors for Justice in a Neo-Liberal World', 22 *Int'l J. Legal Prof*. 1 (2015).
[21] Sally Maresh, 'The Impact of Clinical Legal Education on Decisions of Law Students to Practice Public Interest Law', in *Educating for Justice: Social Values and Legal Education* (Jeremy Cooper & Louise G. Trubek eds., 1997); Josephine Palermo & Adrian Evans, 'Almost There: Empirical Insights into Clinical Method and Ethics Courses in Climbing the Hill Towards Lawyers' Professionalism', 17 *Griffith L. Rev*. 252 (2008); Deborah A. Schmedemann, 'Priming for Pro Bono Publico: The Impact of the Law School on Pro Bono Participation in Practice', in *Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession* (Robert Granfield & Lynn Mather eds., 2009).

in not controlling for students' predispositions before entry to the clinic and/or tracking students into practice. Indeed, other more extensive studies show little or no impact by clinics or other law school programmes involving voluntary legal services[22] or at best that they sustain rather than develop a commitment to altruistic service.[23]

At the same time, however, even if clinics only sustain pre-existing commitments to serve social justice, such a role is in itself incredibly valuable given that studies show that legal education tends to have negative impact on student altruism and commitment to careers promoting social justice. While this research largely emanates from the US,[24] the apparently similar nature of legal education in South Africa[25] with its emphasis on 'thinking like a lawyer', the marginalisation of issues of ethics and justice, the dominance of law subjects devoted to the law of the rich and the dominant image of lawyers as advocates or corporate lawyers is likely to lead to

[22] Robert Granfield, 'Institutionalizing Public Service in Law School: Results on the Impact of Mandatory Pro Bono Programs', 54 *Buff. L. Rev*. 1355 (2007) (though see at 1379 and 1399-1341 noting that university pro bono experience influenced 34% of those surveyed in their career choice and had at least a marginal impact on the motivation to continue once in practice); Deborah L. Rhode, *Pro Bono in Principle and in Practice: Public Service and the Professions* (2005), ch. 7 (though see at 156 noting that 22% were encouraged by their law school experience to engage in pro bono after graduation, but 19% were discouraged from doing so).

[23] Rebecca Sandefur & Jeffrey Selbin, 'The Clinic Effect', 16 *Clinical L. Rev*. 57 (2009).

[24] Summarised in Robert Granfield & Philip Veliz, 'Good Lawyering and Lawyering for the Good: Lawyers' Reflections on Mandatory Pro Bono in Law School', in Granfield & Mather (eds.), note 20, 53-4, but see also Avrom Sherr & Julian Webb, 'Law Students, the Market and Socialisation: Do We Make Them Turn to the City', 16 *J. L. & Soc'y* 225 (1989).

[25] See eg Bodenstein, note 18; Lesley Greenbaum, 'Experiencing the South African Undergraduate Law Curriculum', 7 *De Jure* 104 (2012); Joel M. Modiri, 'Transformation, Tension and Transgression: Reflections on the Culture and Ideology of South African Legal Education', 24 *Stellenbosch L. Rev.* 455 (2013).

a similar dampening of students' enthusiasm for using their legal skills for the least privileged in society.[26] Certainly, such an education is not best calculated to inspire in students a desire to do so.

## 3. A MATRIX FOR MODELLING CLINICS

If law clinic students can play both a direct (and tangible) and indirect (but less tangible) role in contributing to social justice, the question then becomes how to maximise these two - as we shall see, often competing - means of doing so. The matrix which I will use to answer this question involves two broad dimensions, each with a number of different variables. The first dimension relates to the way clinics are organised and run, and the second to the activities it conducts.[27] And, while I will discuss the different variables as involving binary oppositions, it must be emphasised that in reality the design and activities of the vast majority of clinics fall somewhere on a spectrum between the various opposing poles. Moreover, at least in relation to clinics which pursue multiple activities, it is possible to have different

[26] See generally, on this "hidden" " latent" or "implicit" curriculum", Nicolson, note 13.
[27] For a similar discussion of some of the variables under the second dimension, see Frank Bloch & Mary Anne Noone, 'Legal Aid Origins of Clinical Legal Education', in Bloch (ed.), note 6.

emphases on one or other side of the binary opposition in relation to different activities.[28]

### 3.1 Clinic Organisation

The organisational dimension of the decision-making matrix involves choices about five variables, namely whether: (1) clinics emphasise social justice or student learning; (2) student participation attracts academic credit or is extra-curricular; (3) participation is compulsory or optional; (4) clinics are managed and run by staff or students; and (5) there is one "omnibus" clinic structure covering all clinic activities or a "cluster" of discrete clinics conducting different activities. While the organisational dimension is largely about how clinics are organised and run, much of this will be affected by their goals and hence I will start by exploring those aspects of clinic organisation which flow from choice of goals.

#### 3.1.1 *Social Justice Versus Educational Orientation*

In addition to the main goals of social justice and student education, many South African law clinics seek to assist in the transformation of the legal profession by

[28] e.g. public legal education might be conducted on a voluntary basis but case work attract academic credit.

employing candidate attorneys from previous disadvantaged groups.[29] Given that these posts are largely funded by the state and the profession itself,[30] and can be aligned with both social justice and educational goals, I shall concentrate on the question of which of the latter two goals should be prioritised.

Social justice and student education are not, of course, mutually exclusive alternatives. Students serving the community cannot help but learn about law, the way it operates and its justice, and about legal practice and legal ethics. Moreover, in order to be able to effectively serve the community, clinic students need to be taught legal skills and, in my view, also legal ethics;[31] neither of which currently form part of the typical South African law school curriculum. Conversely, when students learn about law, justice, legal practice, etc. in the context of a live-client law clinic, they are likely be serving members of the community most in need of legal services, not least because those who can afford a lawyer are unlikely to seek help from students.[32]

But, whereas all clinics inevitably serve both social justice and educational goals, choices must unavoidably be made as to which to prioritise. By contrast to many, if

[29] See e.g. De Klerk, note 7, 944-45; Maisel, note 4, 414; M.A. du Plessis, 'University Law Clinics Meeting Particular Student and Community Needs: A South African Perspective', 17 *Griffith L. Rev.* 121, 126 (2008).
[30] Maisel, ibid, 397.
[31] See Donald Nicolson, 'Problematizing Competence in Clinical Legal Education: What do we Mean by Competence and How do we Assess Non-skill Competencies?' 23 *Int'l J. Clinical Legal Educ*. 66
[32] Whereas EO clinics can choose to serve anyone who wants to use their services, SJO clinics are likely to want to confine services to those most in need and hence may means-test potential clients and/or refer them to other available services in order to optimise their social justice impact.

not most, South African law clinicians,[33] I have long believed[34] that the former should take precedence over the latter. Otherwise, they risk being seen as practising law on the poor rather than for the poor,[35] and implicitly conveying to students that their interests - now educational, later commercial - trump those of clients and the community.[36] It is true that universities are most obviously associated with educating students. However, they have also long sought to serve the general public through research and more recently by "knowledge exchange or transfer" whereby they share learning, ideas and experience with the community, and by other forms of community engagement.[37] This vision has particular resonance in South Africa given the community's desperate need for the knowledge and skills of its universities and indeed has now been explicitly adopted by South African universities.[38] Moreover, it can be argued that those who benefit from the public investment in educating lawyers and maintaining a legal system which guarantees

[33] e.g. De Klerk, note 4, esp 98; Willem de Klerk & Shaheda Mahomed, 'Specialisation at a University Law Clinic: The Wits Experience', 39 *De Jure* 2 306 (2006); M.A. Du Plessis, 'Closing the Gap between the Needs of the Students and the Community they Serve' 33 *J. for Jurid. Sci*. 1, 14 (2008); M.A. du Plessis & D. Dass, 'Defining the Role of The University Law Clinician', 130 *S. African L.J*. 2 390 (2013), esp. at 397 (claiming that this is the general view), but see *contra* Philip F. Iya, 'Fighting Africa's Poverty and Ignorance through Clinical Legal Education: Shared Experiences with New Initiatives for the 21st Century', 1 *Int'l J. Clinical Legal Educ*. 13 (2000).

[34] See above n 13; Donald Nicolson, 'Legal Education or Community Service? The Extra-Curricular Student Law Clinic' (2006) *Web Journal of Current Legal Issues* http://www.bailii.org/uk/other/journals/WebJCLI/2006/issue3/nicolson3.html (last visited June. 22, 2016)

[35] Margaret Thornton, *Privatising the Public University: The Case of Law* (2010) 83.

[36] See also Wizner & Aiken, note 16, 1007; Kruse, note 18, 423-44; Sameer M. Ashar, 'Law Clinics and Collective Mobilization', 14 *Clinical L. Rev*. 355, 387 (2007-8).

[37] See Thornton, note 34, ch. 5.

[38] See e.g. Louise Africa, 'IPF and Social Justice Initiatives in South Africa', in *Leadership for Social Justice in Higher Education* (Terance W. Bigalke & Mary S. Zurbuchen eds., 2014).

their often affluent livelihood have a duty to ensure that legal services are available to all in society rather than those fortunate enough to pay high lawyer fees or who qualify for legal aid. For law graduates, this involves contributing in some way to enhancing access to justice and for law schools it involves ensuring that law clinics maximise both the direct and indirect role they can play in enhancing access to justice and social justice more generally. Producing highly skilled and knowledgeable lawyers who go on to prioritise their own needs as lawyers over those who need them most is not just a wasted opportunity for law clinics, but is also likely to cause further social injustice when they defend the interests of the most powerful in society to the detriment of the most vulnerable in society.

If this preference for a social justice-oriented (henceforth SJO) over an educationally-oriented (EO) clinic is accepted, then it would seem obvious that such clinics will better serve social justice. Certainly, this is true of the extent of services offered. [39] Thus, in EO clinics the need for opportunities for regular reflection, the educational benefits of allowing students to make their own mistakes in their own time and the use of supervisor time to bring out the educational lessons of experience in real time mean that fewer cases are taken on and staff-student ratios are far lower than in SJO clinics. For instance, compared to staff-student ratios of between 1:6 to 1:10 in the

[39] A fact realised by some students despite benefitting from an EO clinic (Kruse, n. 18, 443-44); cf. also Jeff Giddings, 'Contemplating the Future of Clinical Legal Education', 17 *Griffith L. Rev*. 1, 17-19 (2008).

US,[40] the suggested 1:12 in the UK,[41] and an average of between 1:20-1:30 in South Africa,[42] the SULC has a ratio of around 1:150! Where supervision does take place, it is on a "final product" basis in terms of which students exercise considerable autonomy in their research but need to gain approval for letters, pleadings, etc, and experienced students play an important role in mentoring less experienced students and monitoring their work.[43] In this way, relatively meagre resources (around £100,000 a year) stretch far and there is the potential for more generous resources to stretch even further to maximise community service.

There are downsides to such a high volume clinic, most obviously in terms of the possibility that, even if students are given extensive training, the quantity of legal services is bought at the expense of quality. But if this is a concern – and here it can be noted that client goals are at least partially met in over 90% of USLC cases which go beyond advice – the balance between quantity and quality can be adjusted by providing for more hands-on supervision without making the students' educational interests predominant. However, less obviously, the indirect means of serving social justice may be undermined by the absence of opportunities for students to reflect, and read related literature, on how law operates in practice, problems of access to

[40] Marjorie Anne McDiarmid, 'What's Going on Down there in the Basement: In-House Clinics Expand their Beachhead', 35 *N. Y. L. Sch. L. Rev*. 239, 254-55 (1990).
[41] The Clinical Legal Education Organisation, *Model Standards in Clinical Legal Education - Live-Client Clinics* (1995), reproduced in Hugh Brayne, Nigel Duncan, & Richard Grimes, *Clinical Legal Education: Active Learning in Your Law School* (1998).
[42] De Klerk, note 7, 949 n.141.
[43] A practice also adopted in Yale: Wizner, note 13, 335-38 (describing its "tiered system").

justice and social injustice, and the lawyer's responsibility for these problems.[44] Thus, it is noticeable that, where in-house clinics and wider pro bono programmes involving externships have been shown to have a positive effect on students' commitment to enhancing access to justice, they have been combined with courses which provide for such educational opportunities.[45]

In other words, combining a SJO clinic with an educational programme may ensure the best of both worlds,[46] as long as the programme focuses primarily on making students "justice ready"[47] through exposing them to issues of social justice and the moral obligations of lawyers to remedy injustice rather than just practice ready through skills training and substantive law teaching. Thus, USLC students can take an optional Ethics and Justice class in their final year in which they reflect on their prior and current clinic activities in the light of reading and discussion on legal ethics and access to justice, or they can opt to take a Clinical LLB which integrates their clinic training and activities into the standard LLB and requires them to reflect inter alia on ethics and justice in journals and clinical essays throughout the

[44] Cynthia F. Adcock, 'Beyond Externships and Clinics: Integrating Access to Justice Education into the Curriculum', 62 *J. Legal Educ*. 566, 573-74 (2013).
[45] See Nicolson, note 17; Palermo & Evans, note 20, Schmedemann, note 20.
[46] see Nicolson, note 5.
[47] Jane H. Aiken, 'The Clinical Mission of Justice Readiness', 32 *B.C. J. L. & Soc. Just*. 231 (2012). See further Wizner & Aiken, note 16, 1008-10 on the importance of guided reflection to bring out the lessons of experience in delivering social justice, and Brodie, note 13, 365-67; Jane H. Aiken, 'Provocateurs for Justice' (2000-1) 7 *Clinical L. Rev.* 287 on how to exploit clinical experiences for social justice learning.

studies.[48] Indeed, even if students are directly taught skills and legal knowledge, they will not necessarily see clinic work as merely a means to their educational and vocational needs if they are also taught, their tutors model, and the prevailing clinic ethos emphasises that student needs can never take precedence over those who are served by the clinic. Thus, cases and other clinical work should be chosen not for their value in teaching skills and substantive law, but in terms of client and community needs or at least for the lessons they might bring about the dire state of access to justice and social injustice as well as the role of the legal profession and law in relation to both problems.

3.1.2. *Curricular Versus Extra-Curricular Activity*

The second organisational variable involves whether clinic students undertake work for academic credit[49] or on an extra-curricular basis. Prima facie there seems to be a natural fit, between curricular and EO clinics, on the one hand, and between extra-curricular and SJO clinics, on the other hand. However, while extra-curricular EO clinics seems unlikely,[50] as the ULSC and other clinics show,[51] it is possible to

[48] For details, see Nicolson, note 30, 81ff note 5, and Donald Nicolson, 'Calling, Character and Clinical Legal Education: A Cradle to Grave Approach to Inculcating a Love for Justice', 16 *Legal Ethics* 36, 51-55 (2013).

[49] As argued for by Holness, note 2, 342.

[50] Thus, if clinical experience is being used for learning experience, it seems logical for this to attract credit. On other hand, some activities within an EO clinic can be done without credit, such as getting students to act as receptionists before they can take a clinical class (as in some UK clinics).

[51] See JoNel Newman, 'Re-Conceptualizing Poverty Law Clinical Curriculum And Legal Services Practice: The Need For Generalists', 34 *Fordham Urb. L.J.* 1303 (2007); Malcolm M. Combe, 'Selling Intra-Curricular Clinical Legal Education', 48 *Law Tchr.* 281 (2014).

provide academic credit for work in a SJO clinic without undermining its social justice mission. What is more important than the formal question of whether students obtain credit or not, is whether the prevailing ethos and operational decision-making on matters like the number and types of cases undertaken prioritise serving the community rather than providing students with skills and knowledge. Moreover, given that the award of marks for a particular activity implicitly valorises that activity, it is important that academic credit is provided as much for commitment to community service and/or reflection on aspects of justice than for technical performance.

In other words, while a social justice orientation usually coincides with extra-curricular clinics, there is no necessary connection between volunteerism and prioritising community service over educational goals. Indeed, given that students are less likely to engage in the reading and reflection that is necessary to maximise their learning about social injustice and the lawyer's role in redressing injustice if they do not gain academic credit for doing so, there is a positive argument for at least some level of curricular activity in SJO clinics.

On the other hand, if all activity is curricular the number of students involved and resulting level of community service will be reduced. Like the close supervision of cases designed to enhance the development of skills and legal knowledge, running courses and evaluating student performance are time-consuming activities.

Moreover, not being tied to a particular class and being involved for longer than the usual curricular experience of one semester or at most a year, students in extra-curricular clinics may assist the community over a much longer period (up to four years in South Africa and five years in Scotland). Depending on how much time students are prepared to devote to their clinic work in addition to their formal classes[52] and the need to engage in part-time work to fund their studies,[53] this *may* allow for overall greater community service than the more intensive experience of students involved in clinical classes.[54] But even if overall levels of activity are roughly equivalent, I am inclined to think that the impact on student attitudes is likely to be more profound if students have as much time as is necessary to reflect on their experiences rather than being overwhelmed with case work and clinic teaching.

Another possible drawback to giving students credit for their clinic work is that this runs the risk that they might abandon clients or de-prioritise their needs once they have received the required credit for their work. On the other hand, worries about

[52] Here, it has to be admitted that Scottish law students attend fewer classes. However, short of rethinking the drive for coverage in the South African law curriculum, there are ways of building in academic credit for voluntary work without necessarily involving the problems of directly linking all clinic work to academic credit, such as providing students with academic credit in their final year for their voluntary work in early years (and preferably also reflection on such work).

[53] Another difference with Scotland is that a significant proportion of South African students might not be able to afford the time to engage in voluntary work, though it can be noted that virtually every student (at least at Strathclyde) engages in some level of part-time work and that, if South African universities are committed to both social justice and equity, they will need to think of ways of ensuring that opportunities for voluntary work are not confined to economically comfortable students. The difficulties in doing so and the associated danger that South African clinics become the preserve of privileged students is perhaps the most compelling argument for curricular clinics.

[54] e.g. more committed USLC students often undertake five or so cases a year, often alongside non-case work legal services. One student conducted 46 cases in just over three years.

loss of marks for letting down clients might be said to lead to students providing better client services than their volunteer counterparts. In response, however, psychologists suggest that attempting to ensure compliance through rewards and punishments is less effective than a personally felt intrinsic motivation to act virtuously, and may in fact undermine the development of such motivation.[55] If so, selecting students on their commitment to social justice and relying on a strong and internally socialised social justice may, as at the USLC, be as (if not more) effective in ensuring quality service to the community than the extrinsic motivation of academic credit. Indeed, it was this confidence in the strength of the ethos that led to the development of the Clinical LLB, which despite my concerns about associating clinical activity with academic credit, allows students admitted into USLC to opt for using their clinical experiences as an alternative form of assessment throughout the standard LLB. Revealingly, less than a third of every new USLC cohort opt to do so.

3.1.3. *Compulsory Versus Voluntary Involvement*

There is no logical connection between whether clinic involvement is curricular or extra-curricular and the independent variable of whether it is compulsory or voluntary. Although the idea of compulsory pro bono legal services may strike

[55] See eg David Carr, *Educating the Virtues: An Essay on the Philosophical Psychology of Moral Development and Education* (1991), 150-155; Alfie Kohn, 'How Not to Teach Values – A Critical Look at Character Education', 78 *Phi Delta Kappan* 6 428 (1997).

many as oxymoronic [56] many law schools make a certain number of pro bono hours compulsory and more than half of South African law schools require students to take a clinical class.[57] In other law schools, clinic involvement may be optional, whether it be for credit or on an extra-curricular basis.

From the perspective of promoting social justice, it is arguable that there is no clear benefit to making clinical involvement compulsory and possibly some disadvantages. It will not necessarily increase the number of students involved in a clinic at any one time and hence the level of community service. Clinics who take students for the duration of their studies may have as many as, if not more, participants than if final year students spend a year in the clinic.[58] And, as noted in the previous section, each student volunteer may undertake as much clinical work over the course of a degree than one taking a clinical class or undertaking pro bono legal services for a limited period. Moreover, without the discipline of working for academic credit, those forced to provide legal services may not display the same level of commitment to clients and the community as those who volunteer.

But even if compulsory clinical involvement enhances clinics' direct role in serving social justice, it might well weaken their indirect role. Inculcating in all students a long-standing commitment to serving justice is a very tall order. The legacy of

[56] cf. Rhode, note 21, 37.
[57] De Klerk, note 7, 932, and cf. Holness, note 2, 342-3 arguing for this to be extended.
[58] The USLC currently has approximately 50 more members than the average size of the final year of the University of Strathclyde LLB.

apartheid and the exclusion of many from the legal profession make it perfectly understandable for most of the population to want to use a law degree solely for personal and family advancement. Moreover, as we have seen,[59] research in the US shows that even those who enter law school with the desire to serve others tend to be funnelled into commercial and other non-justice oriented jobs by student debt, the dominance of commercial law firm recruiters, and the commercial and private law-bias of law school curricula. Although no equivalent research has been undertaken, it seems that this is unlikely to be very different in South Africa.[60] Consequently, law clinics will do well just to sustain the commitment to social justice of incoming law students. Falling between these two groups of students are those who study law simply because they want to keep their options open or, as many claim in UK surveys, because they think it will be interesting.[61] How likely are they to be transformed into justice activists by clinic involvement? The answer seems to depend on a combination of their underlying personality as either tending more toward altruism than egotism, various factors relating to the length, intensity and type of their clinic involvement (does it expose them directly to problems of those most in need and provide them with opportunities to gain satisfaction at what they achieve or regret at any failures),[62] and the extent to which their clinic experiences

[59] At note 23.

[60] See references in note 24.

[61] See Nicolson (2013) above note 47 , 41-42, and the other surveys cited.

[62] See sections 2.2.6. and 2.2.7. below in relation to retail and wholesale, and remedial and educative activities, respectively.

are accompanied by opportunities to learn about social injustice and the lawyers' responsibilities to redress it.

However, even with the best conditions possible, US research does not suggest that compulsory pro bono programmes have much success in creating a pro bono legacy.[63] A number of factors[64] combine to suggest mandatory clinical programmes are unlikely to transform many students into future justice warriors: the fact that the personality of incoming students is unlikely to be radically altered from one of egoism to altruism; the length of time which moral psychologists suggest is required for the development of deep-seated moral commitments; and the usual location of compulsory clinical programmes in the later years of study after students have been exposed to an education and law school experience which implicitly teaches them that they owe no particular responsibility to remedy social injustice. Providing a smaller group of students with a long-lasting clinical experience seems likely to have more of an impact, especially if generous clinic resources or a cost-effective clinical model allows a substantial portion of all law school students to have this experience[65] and especially if it is combined with classes highlighting issues of ethics and justice.

[63] Granfield, note 21; Rhode, *loc cit* note 21.
[64] See Nicolson, note 13, 156-62 passim.
[65] Around a third of all Strathclyde law students join the USLC.

If participation in a SJO clinic is to be optional, then it becomes necessary to decide whether all volunteers are to be admitted and, if demand outstrips the places available, what criteria should be used to select students. The goals of maximising social justice suggest that only those primarily motivated to serve the community (and who have certain minimum levels of competence) should be admitted. Otherwise, clinics risk exposing clients and other service users to inadequate services. On the other hand, if through training, supervision and informal means of socialisation, incoming students are confronted with a strong and hegemonic ethos of community service, SJO clinics may be able to cope with, and even transform, some students who are equally motivated by their own interests. The likelihood of this happening depends, inter alia, on the approach to the final two organisational variables, to which we now turn.

3.1.4. *Staff- Versus Student-Managed Clinics*

The first of these relates to whether clinics are run by staff or students. As with many variables, the distinction between staff- and student-managed clinics is one of degree. Clinics can be totally staff- or totally student-managed, but various management tasks can also be divided or shared between staff and students. For example, clinic direction can rest with a committee or management team involving both students and staff, who can have equal or weighted decision-making power. This mix can in turn vary from one area of responsibility to another. For example,

staff could (and should) have sole responsibility for finances and academic programmes, but students could control selection to extra-curricular aspects of the clinic and what type of community services to provide. Similarly, as in the USLC, day to day clinic management can be shared between: academic and clinical staff, who supervise case and run the educational programmes; paid administrative staff, who make client appointments and service committees; and students, who are responsible for fundraising, IT and publicity, and running (but not necessarily delivering) training. As the early years of UCT Legal Aid show, it is possible for students to be supervised by volunteer attorneys or even experienced students, at least where services provided are not particularly complicated. Indeed, using attorneys may become increasingly attractive if other South African law societies follow the example of the Cape Law Society which has made pro bono work compulsory.[66] Admittedly, most clinics will tend to prefer supervision by employed staff. It is also much more conceivable that clinics will involve staff leadership and students undertaking more mundane administrative tasks than follow the early UCT Legal Aid model and reverse this division of labour.

Probably because of the dominant desire to use clinics to educate students, the idea of students playing a central role in clinic direction and administration has fallen out of favour in South Africa. Certainly, there are a number of obvious disadvantages to

[66] De Klerk note 7, 945.

this option. First, students will usually lack experience and knowledge of the policy and legal justice landscape, and of university procedures and politics, as well as institutional memory of clinic policies and the reasons for them. Consequently, they might unwittingly cause problems with their universities, funders and other stakeholders. Secondly, it is inefficient to have a regular turn-over of students, each of whom will encounter a steep learning curve as regards their new area of responsibility. Thirdly, clinic management can suffer when academic work, casework and part-time jobs overburden students who, because they are volunteers, cannot be line-managed like paid employees. Finally, collaborative leadership and management between staff and students can lead to a problematic blurring of the status distinction between academic staff and students, especially when they are involved in a teaching relationship.

On the other hand, there any many, arguably overriding, advantages to student-led or mixed management clinics.[67] First and most obviously, using students to run clinics allows finances to stretch further.[68] This allows SJO clinics to expand the services provided and the number of students exposed to the potentially transformative experience of serving the community. Secondly, students learn valuable skills from the tasks they perform and their management roles, with a

[67] For a rare acknowledgment, see Robert A Solomon, 'Teaching Morality', 40 *Cleveland State Law Review* 507, 509 (1992).

[68] Relying on student volunteers to help run the USLC covers the cost of approximately one supervisor, who as we have seen (text following note 41) can supervise 150 students.

concomitant impact on social justice if they later use these skills to assist those most in need, rather than just those who are prepared to pay high fees. Thirdly, clinic management is less dependent on key staff members who, if they leave (as regularly occurs in South African law clinics),[69] cannot be easily replaced without disruption. By comparison, the impact of one or even a few students not fulfilling their obligations is far less damaging and more easily rectified.

Other advantages to student responsibility are more difficult to measure, but no less important. Thus, drawing on the ideas and experiences of a wide range of people – many of whom might be closer to the communities they serve than law clinic staff – may generate more innovative and effective ideas for enhancing social justice. Moreover, students responsible for running clinics are likely to feel a sense of "psychological ownership" in "their" clinic. According to empirical research,[70] this encourages them to go the extra mile in fulfilling their responsibilities, and as my experience confirms,[71] to use their initiative to enhance the means and effectiveness of serving the community, thus demonstrating that they can remedy social injustice without waiting for others to show them the way.

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[69] Maisel, note 4, 402-05.

[70] Jon L. Pierce, Tatiana Kostova, & Kurt T. Dirks, 'Toward a Theory of Psychological Ownership in Organizations', 26 *Academy of Management Review* 298 (2001); Michael P. O' Driscoll, Jon L. Pierce, & Ann-Marie Coghlan, 'The Psychology of Ownership: Work Environment Structure, Organizational Commitment, and Citizenship Behaviours', 31 *Group and Organization Management* 388 (2006).

[71] USLC students initiated and developed its public legal education work, its online advice system and a partnership with an HIV/AIDS organisation.

A final group of advantages relates to the transmission of values. Committee meetings and extended mentoring relationships between students (which can replace the more hands-on supervision of EO clinics), arguably provide a more effective process of values socialisation than that provided by a few staff members. While respected staff members may model a commitment to access to justice, the impact might be lessened if they are paid employees and their focus is on teaching. By contrast, students (and volunteer lawyers and academics) who give up their free time to run clinics act as powerful altruistic role models. Finally, long-standing involvement in a distinct organisation, with formalities like a constitution and elections or an appointment process for committee positions, creates conditions conducive to the development of a strong and cohesive ethos which can be transmitted through AGMs, committee meetings, supervision and mentoring, as well as social events and other opportunities for informal socialisation which arise when people are involved in working closely and forming friendships with like-minded colleagues.[72]

3.1.5. *"Cluster" Versus "Omnibus" Clinics*

The advantages of a cohesive student body creating an enduring ethos which is transmitted to each new cohort has implications for a final organisational variable.

[72] cf. e.g. Elton F. Jackson et al., 'Volunteering and Charitable Giving: Do Religious and Associational Ties Promote Helping Behaviour', 24 *Nonprofit and Voluntary Sector Quarterly* 59 (1995); E. Gil Clary et al., 'Understanding and Assessing the Motivations of Volunteers: A Functional Approach', 74 *Journal of Personality and Social Psychology* 6 1516, 1518 (1998).

Thus, a choice faces law schools whose clinics conduct multiple activities (case work, law reform, public legal education, etc.) or multiple specialisms (consumer cases, family law, etc.) or who act for more than one class of clients (refugees or domestic violence survivors, etc.). They can either set up separate clinics for each activity, specialism and/or client type, which are only loosely connected with each other – what can be called a cluster clinic – or they can conduct all activities within a single clinic with a uniform selection process, training, practice rules, etc. – what can be called an omnibus clinic.

While cluster clinics are often chosen in order to link clinical activity to substantive areas of law or legal practice for teaching purposes, it also enables a more intensive socialisation process through more personal relationships with staff. On the other hand, if – as is common in cluster clinics – students remain in a particular clinic for short periods their exposure to this process is limited. Furthermore, they cannot realistically engage in clinic management with all its benefits in terms of psychological ownership and role modelling. Omnibus clinics also have greater potential for inculcating a common social justice ethos over a longer period of time. Finally, they are efficient in not requiring separate student and induction training for each clinic, as well as allowing for other efficiencies of scale as regards publicity, fund-raising, etc.

**3.2 Clinic Activities**

Having looked at five organisational variables, we turn to seven variables relating to the activities dimension of the decision-making matrix, namely whether services are: (1) specialist or generalist; (2) exclusively legal or "holistic"; (3) provided only by students or qualified legal professionals; (4) located in community neighbourhoods or on campus; (5) provided by students working "in-house" in a university clinic or in external placements; (6) designed to benefit the wider community rather than just the individuals directly served; and (7) designed to remedy existing problems or educate the public on their legal rights and duties.

3.2.1. *Specialist Versus Generalist Services*

The first activity variable is closely linked to the last organisational variable. This is because opting to provide at least more than one specialist service often leads to law clinics adopting a cluster clinic. By contrast, omnibus clinics tend, at least when first established to provide generalist services to the community whereby clients or community groups are provided with whatever legal help they need. Such generalist service can be available to all (at least in a SJO if they fit means testing criteria) or only those from certain geographical areas or who fall within client or community groups (such as students or those with HIV/AIDS). However, there is no necessary connection between generalism and omnibus clinics on the one hand, or between specialism and cluster clinics on the other. Discrete generalist clinics can co-exist in

the same law school with specialist clinics under the cluster model,[73] and omnibus clinics can set up units focussing on specialist areas of practice or types of clients, and/or allow students to specialise within the clinic either for the duration of their involvement or at particular stages.

In terms of the benefit to clients and the community, specialist and generalist services have competing advantages. Specialist services allow clinics to target those seen as most in need (such as asylum seekers or domestic violence survivors). They also allow staff and students to develop greater expertise and experience in the areas of law practised, and clinics to foster cooperative relationships with institutional players and parallel organisations.[74] To the extent that client and community needs are confined to that area, specialist clinics or specialist units within omnibus clinics are likely to provide better services than generalist clinics. But where client needs cross areas of law - as they frequently do[75] - clients will have to be referred to other clinics or to external agencies, causing them inconvenience and possibly "referral fatigue" and the abandonment of their claims.[76] Specialist clinics have other drawbacks.[77] Students and staff who grow accustomed to working in a particular

[73] As at the University of Witwatersand: De Klerk & Mahomed, note 32.
[74] De Klerk & Mahomed, ibid. Other South African supporters include Du Plessis, note 32, 14-5; Holness, note 2, 340.
[75] See e.g. Hazel Genn & Alan Paterson, *Paths to Justice Scotland: What People in Scotland Think and Do about Going to Law* (2001) 44-48 on "problem clusters".
[76] See e.g. Hazel Genn, et al. *Understanding Advice Seeking Behaviour: Further Findings from the LSRC Survey of Justiciable Problems* (2004), 30-32.
[77] Newman, note 50; Antoinette Sedillo Lopez, 'Learning Through Service In A Clinical Setting: The Effect Of Specialization on Social Justice and Skills Training', 7 *Clinical L. Rev*. 307 (2000-2001).

legal area might not see the relevance of other areas and may also be less likely than those in generalist clinics to appreciate the frequently significant connection between legal and non-legal solutions to clients' needs,[78] especially where specialist clinics are designed to teach substantive law subjects.

As regards clinics' possible indirect impact on social justice, students who concentrate on one clinic activity, legal area or type of client are less likely to appreciate the full range of problems and injustices facing disadvantaged members of the community, and may not find that the particular clinic activity undertaken inspires them to a career serving social justice. On the other hand, where they are attracted to the work undertaken, their much greater immersion in it is likely to have a much deeper and longer-lasting impression than a fleeting exposure to a variety of activities. Given these competing advantages and disadvantages of both specialist and generalist services, clinics might be best advised to encourage, if not require, students to undertake a variety of specialisms during the course of their clinical involvement. Once again, this requires the longer student involvement associated with extra-curricular, as opposed to curricular, clinics.

3.2.2. *Holistic Versus Exclusively Legal Services*

Closely related to the question of whether services are specialist and generalist is the question of whether they draw only on the expertise of law staff and students to

[78] See section 3.2.2., below.

provide exclusively legal services, on the one hand, or whether law clinics enter into partnerships with professionals and/or students from other disciplines, or at least ensure that students are trained in such disciplines to provide "holistic" (or "wraparound") services to clients and the community, on the other hand. There is little question that the latter is far more beneficial to those receiving clinic services.[79] Thus, legal problems are often inextricably mixed with social, medical and economic problems,[80] making their resolution difficult without resolving one or more related non-legal issues, such as where clients have mental health problems or are heavily in debt. But even where issues can be compartmentalised, clients benefit from having all relevant types of help on hand, rather than having to do the rounds of different agencies in different locations, especially where they have transport and time restrictions. Similarly, multi-disciplinary approaches are often essential where clinics seek to improve the lives of community members through transactional work or litigation strategies, not least because law may not be the only, or indeed the most effective, way to empower communities or remedy problems.[81]

3.2.3. *"Professional" Versus "Amateur" Responsibility*

[79] See e.g. Dubin, note 11, 1491-93; Stephanie K. Boys, Carrie A. Hagan, & Valerie Voland, 'Lawyers are Counselors, Too: Social Workers can Train Lawyers to More Effectively Counsel Clients', 12 *Advances in Social Work* 241 (2011); Susan Mcgraugh, Carrie Hagan, & Lauren Choate, 'Shifting the Lens: A Primer for Incorporating Social Work Theory and Practice to Improve Outcomes for Clients with Mental Health Issues and the Law Students who Represent Them', 3 *Mental Health L. & Pol'y J.* 471 (2013-14).

[80] See again, Genn and Paterson, *loc cit* note 74.

[81] See the references in note 92 below; esp Ashar.

A second question involving who does what in clinics relates to the balance of responsibility between the students and relevant qualified professionals (whether they be paid or voluntary, legal or non-legal).[82] Are services provided by qualified professionals, with students learning from observation and engaging in discrete tasks like researching particular legal points or drafting routine letters, or alternatively by students acting entirely on their own? Between these two extremes lie what many[83] regard as the optimum "student ownership" educational model, whereby students act under supervision of clinic staff, or (less preferably) voluntary lawyers or those in in placement agencies.

Where particular clinics fit on this spectrum depends in part on how many paid staff can be afforded, the existence of agencies to host placements, the extent to which local lawyers will lend their assistance, and crucially in South Africa the extent to which law clinics wish to employ candidate attorneys. In addition, a major obstacle to South African law clinics fulfilling their social justice potential is the continuing prohibition on students appearing in court.[84] This means either that representation stops short of advocacy, thus giving opponents an advantage, or that, absent pro bono advocates, clinic staff have to take time out from supervision to appear in court. It also deprives students of the thrill of court advocacy and the potential sense

[82] cf. Giddings, note 38, 20-21.
[83] See e.g. April Land, ''Lawyering Beyond' Without Leaving Individual Clients Behind' (2011-2) 18 *Clinical L. Rev.* 47, esp. at 56.
[84] cf. David McQuoid-Mason, 'Whatever Happened to the Proposed South African Student Practice Rules?' (3) *De Jure* 591 (2008).

of achievement at satisfying legal victories which may help foster a life-long commitment to helping those in need.

To the extent that students can represent clients, the choice of how much autonomy they should have in SJO clinics will depend on whether one would prefer to ensure high quality services to a few by increasing professional involvement or to maximise the number of community members served (at least subject to guaranteeing minimum quality standards through training and "final product" supervision). It will also depend on what sort of work is involved. Some activities such as public legal education or help with legal form filling, require minimal or no supervision. Others, such as preparing test cases in the Constitutional Court, might be close to impossible without experienced lawyers.[85]

3.2.4. *Neighbourhood Versus Campus Law Clinics*

Turning from questions of who provides clinic services to those of their locality, it needs to be decided first whether clinics should be located in the community itself or on campus. Where clinics work with particular communities to ensure social change or law reform, locating themselves in the neighbourhood of the community is seen as essential.[86] Matters are less simple in relation to providing legal services to

[85] See e.g. Anna E. Carpenter, 'The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact', 20 *Clinical L. Rev.* 39 (2013-4).
[86] On the value of a neighbourhood location, see Brodie, supra note 13; Nancy Cook, 'Looking for Justice on a Two-Way Street', 20 *Wash. U. J.L & Pol'y* 169 (2006).

individual clients.[87] Neighbourhood law clinics[88] seem to be preferable in terms of ensuring ease of access and consequent expansion of the number of clients served, and in the signal they gives clients about their importance. But this requires accommodation in all relevant neighbourhood localities. Where this is not possible and the university is situated near a transport hub, a central campus clinic might make more sense in that it is likely to be cheaper and easier for those living in satellite areas to travel to the clinic, rather than making more than one journey from their own locality to another satellite area.[89]

Neighbourhood clinics also have advantages in terms of a desire to educate students about social justice in that they force students out of the comfort of the campus' "protective bubble"[90] and confront them first-hand with the social deprivation their clients encounter on a daily basis. However, in order to maximise learning experiences, it is desirable to have supervisors on hand either on site or shortly after the students' return to campus.

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[87] A further complication derives from the possibility of providing (as is done at USLC) online legal services (see e.g. Robert M. Bastress and Joseph D. Harbaugh, 'The 25th Anniversary of Gary Bellow's & Bea Moulton's The Lawyering Process: Taking The Lawyer's Craft Into Virtual Space: Computer-Mediated Interviewing, Counseling, And Negotiating', 10 *Clinical L. Rev.* 115 (2003)). However, while this has obvious advantages in resolving geographical problems of access to justice, insufficient numbers of South Africans most in need of legal services are likely to have easy access to online services or the necessary computer literacy to make this currently a viable alternative to face to face services.

[88] According to Iya, note 32, 27, these have mushroomed in South Africa.

[89] Travel to neighbourhood clinics might also pose problems for some students: Jobst Bodenstein, personal communication, 14 April 2015.

[90] Margaret Martin Barry et al., 'Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics', 18 *Clinical L. Rev*. 401, 444 (2011-2) (albeit making this point in relation to placements).

3.2.5. *In-House Versus External Placements*

Particularly if similar teaching arrangements are put in place,[91] a similar conscientising and educative effect may be achieved by placing students with external organisations providing advice and representation, running law reform campaigns or otherwise serving the community. This placement or externship model has the merit of enabling students to gain clinical experience usually under professional supervision at little or no cost, and thus might provide a useful means of extending student involvement beyond that which can be catered for in an in-house clinic.[92] On the other hand, to the extent that in-house clinics can be afforded, they have the benefit of enabling staff to have greater control over student activities.[93]

3.2.6. *"Retail" Versus "Wholesale" Legal Services*

Having in a sense cleared the ground by looking at the preceding activity variables, we turn to the final two, and perhaps most defining variables, of clinic activity, namely the scale and type of legal services provided. As regards scale, here one can distinguish between what can be called "retail" and "wholesale" services.[94] The

[91] Resulting in what Margaret Martin Barry, Jon C Dubin, & Peter A Joy, 'Clinical Education for this Millennium, The Third Wave', 7 *Clinical L. Rev*. 1, 7 (2000) call a hybrid in-house/externship program.
[92] e.g., those not selected for admission to the USLC are offered placements at advice agencies and an optional class on legal practice, ethics and access to justice.
[93] Henry Rose, 'Law Schools Should Be About Justice Too', 40 *Clev. St. L. Rev*. 443, 452 (1992).
[94] Like many other distinctions, there is a spectrum rather than a bright line between these poles. At one extreme are individual services, with unbundled services being the most individualised; at the

former category involves services provided to individuals with legal problems or other legal needs. Most obviously, retail services may involve the "bespoke" services of advice and representation, as well as transactional work such as that provided to non-profit organisations. It may also involve "unbundled" services, ranging in complexity from form-filling to writing letters and even drafting pleadings.[95] Wholesale services involve assistance to larger groups of people using efficiencies of scale. Thus clinics can provide workshops guiding groups of prospective claimants on how to mount particular types of legal claims or training those who provide services to others.[96] More commonly and more ambitiously, clinics can seek to improve the situation of large groups of people through various more direct means.[97] This may involve impact litigation, law reform campaigns, and educating the public about their legal rights, remedies and duties so that they can avoid legal problems before they arise or know how to resolve them when they do. Increasingly, clinics also engage in community empowerment projects where they work in

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other is impact work where the benefit of assisting an individual or group of individuals extends beyond the particular client or group; and somewhere between can be placed non-impact work for groups.

[95] For a critical analysis, see Mary Helen McNeal, 'Unbundling and Law School Clinics: Where's The Pedagogy?', 7 *Clinical L. Rev*. 341 (2000-1).

[96] See e.g. Peggy Maisel, 'The Consumer Indebtedness Crisis: Clinics as Laboratories for Generating Effective Legal Responses', 18 *Clinical L. Rev.* 133, 171-73 (2011-12) (describing activities of the University of Pretoria Law Clinic).

[97] See e.g. Maisel, ibid; Carasik, note 11, esp. 46ff; Kruse, note 18; Ashar, note 35; Peter Pitegoff, 'Law School Initiatives in Housing and Community Development', 4 *B. U. Pub. Int. L. J.* 275 (1994-5); Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic*, New York Law School Clinical Research Institute, Research Paper Series (No.10/11 #1), (2010); Praveen Kosuri, '"Impact" in 3D - Maximizing Impact Through Transactional Clinics', 18 *Clinical L. Rev*. 1 (2011-2012).

partnership with communities to bring about lasting changes to people's lives through, for example, economic empowerment, transactional support for community and political groups, and campaigns for living wages and basic community services. [98]

The choice between retail and wholesale service is one of the most difficult facing SJO clinics. On utilitarian grounds, the latter seem preferable in potentially having a far wider and longer-lasting impact. Wholesale services also seem likely to provide students with a better idea of the structural nature of social injustice, and effort and type of activity needed to redress it. Furthermore, the sense of personal achievement in making noticeable improvement to the lives of many may inspire some to engage in similar work once they qualify.[99] The fact that impact work takes time to achieve may also lead to continuing contact between different generations of students, replicating some of the benefits of omnibus clinics in terms of their socialising ethos. Finally, students who undertake long-term projects may continue their involvement after graduation and hopefully develop the habit of pro bono work.[100]

On the other hand, there is also no doubt that clinic clients "demand and appreciate the individual services they receive."[101] Aside from the material benefits provided,

[98] See e.g. Caraisik, ibid, passim; cf. also Paul R. Tremblay, 'Toward a Community-Based Ethic for Legal Services Practice' 37 *UCLA L. Rev*. 1101 (1989-1990).
[99] See Carasik, ibid, 69ff; Kruse, note 18, 411- 443 passim, 443; Ashar, note 35, passim; Pitegoff, note 94, 285, 288.
[100] Kosuri, note 96, 42.
[101] Brodie, note 13, 369.

there is something very valuable in students showing marginalised and underprivileged community members that they matter by taking time to listen to them and doing their best to resolve their problems. The impact on those who are usually subjected to, rather than protected by, law and lawyers may start a process of healing that is carried through to other aspects of their lives.[102] Moreover, compared to long-term involvement in impact litigation or law reform campaigns where students might not see the results of their hard work, meeting and assisting a wide variety of individual clients is likely to provide students with much greater exposure to the personal impact of social injustice and engender a sense of achievement in making a difference to their lives. As we have seen,[103] it is such exposure which is so important to the development of student empathy and to inspiring a life-long commitment to helping others.

One also needs to consider that obtaining positive outcomes is far less certain with long-term projects than with individual case work. This is largely because legal strategies designed to have wide-ranging consequence are more likely to be resisted by powerful opponents potentially adversely affected by such consequences. While they might succumb to small or self-contained claims because of their nuisance value, such opponents are likely to throw all available resources at preventing more permanent and wide-reaching consequences materialising.

[102] But see the scepticism of Ashar, note 35, 407 and 411.
[103] Notes 17-19 above and accompanying test; see also Land, note 82; Srikantiah & Koh, note 96, esp. 462-65 *passim*.

3.2.7. *Remedial Versus Educative Legal Services*

In discussing the previous variables, for reasons of clarity I have largely focussed on legal services aimed at making material changes to people's lives. These can be called remedial services in contrast with educative services which involve providing people with relevant legal knowledge to enable them to take advantage of their legal rights, avoid legally sanctioned harms or persuade them to respect those of others. Admittedly, there is a considerable overlap between these two categories. Thus, clinics can seek to remedy legal problems through educating people to help (and hence empower) themselves, for instance by running workshops on how to pursue existing legal claims or providing people with the necessary legal knowledge for when problems arise. Alternatively, other agencies can be educated to help others, such as the valuable training South African law clinics provide to para-legals working in rural areas.[104] However, public legal education is usually associated in South Africa and elsewhere with "street law" programmes in institutions likes schools or prisons involving various relevant areas of law and human rights.

Deciding whether social justice is better enhanced through prioritising remedial or educative services takes us into the realm of speculation, not least because there seems to be little hard evidence on the effect of street law. Research suggests that it

[104] De Klerk, note 7, 941 n. 92.

can reduce prisoner recidivism,[105] but as far as I can gather there is no evidence of street law helping its beneficiaries from avoiding future legal problems, acting more in accord with others' rights or generally furthering the goal - so important in South Africa - of developing a society which values and respects human rights, the rule of law and democracy. Street law has been shown to foster student skills and confidence, and to increase public awareness of the law, empower communities and create a sense of shared community.[106] But, while many of those who provide street law sessions on human rights and democracy may well themselves develop an enhanced commitment to these values, I am not aware of studies investigating whether street law programmes develop or reinforce a commitment in students to serve the community once they have graduated. Here, however, one might imagine that, by contrast to the satisfaction of personally helping others through remedial work even of a wholesale nature, the sense of satisfaction engendered by street law and workshop teaching is likely to be lessened by the prospective and uncertain nature of its impact.

Finally, comparing all forms of remedial and educative work with each other in terms of their ability to open students' eyes to the extent and structural nature of

[105] See David McQuoid-Mason, 'Street Law as a Clinical Program-The South African Experience with Particular Reference to the University of KwaZulu-Natal', 17 *Griffith Law Review* 27, 33, (2008), citing L. Arbetman et al., *Street Law: A Course in Practical Law* (4th ed, 1990).

[106] McQuoid-Mason, ibid, 46; Kamina A. Pinder, 'Street Law: Twenty-Five Years and Counting', 27 *J.L. & Educ*. 211, 225-31 (1998); Richard Grimes et al., 'Street Law and Social Justice Education', in Bloch (ed.), note 6; Ajay Pandey & Sheena Shukkur, 'Legal Literacy Projects: Clinical Experience of Empowering the Poor in India', in Bloch ibid.

social injustice and to provoke disorienting moments and empathy for the victims of social injustice is made fiendishly complicated by the fact that some forms of remedial and educative work do not involve contact with such victims or allow for an overview of the extent of social injustice. Consequently, one can only compare certain types of remedial with similar types of educative work, without being able to gain an overall picture of what to prioritise.

## 4. CONCLUSION

In fact, these problems are multiplied exponentially when considering whether remedial and educative work is conducted on a retail or wholesale basis, and whether it involves specialist or generalist services.[107] And then decision-making becomes vastly more difficult when one also factors in the dilemma over whether it is better to prioritise certain but less extensive positive impacts on social justice over more extensive impacts which are less likely to materialise. This dilemma came up frequently in the preceding discussion, but most notably in relation to comparing retail with wholesale services and, even more fundamentally, in exploring whether to prioritise direct or indirect means of enhancing social justice.

[107] Leading to eight possible configurations of services: specialist retail remedial; specialist retail educative; specialist wholesale remedial; specialist wholesale educative; generalist retail remedial; generalist retail educative; generalist wholesale remedial; generalist wholesale educative.

These complications and uncertainties do, however, suggest one conclusion that flows from the analysis of the activities domain of the decision-making matrix. This is that law clinics that seek to maximise their social justice impact might be advised to aim at providing as many different forms of legal service as is possible (specialist as well as generalist, wholesale as well as retail, and educative as well as remedial). Moreover, where choices have to be made within each type of service, they should choose those which will have the widest known impact and/or serve clients or community groups whose needs are most pressing. It would also seem sensible for clinics to work with other disciplines to provide holistic services in a locality most convenient to the communities they serve. Furthermore, in order to extend the level of services and student exposure to the potentially transformative impact of clinical experience, clinics should utilise external placements as well as in-house services and provide students with as much autonomy in the conduct of cases as is compatible with reasonable levels of quality services.

If these suggestions as regards the activities domain of the decision-making matrix are persuasive, this has implications for clinic organisation. Thus, instead of students becoming overwhelmed by competing deadlines and the disparate skills involved in all forms of services (retail and wholesale, remedial and educative, specialist and generalist),[108] their activities could be structured to involve a skills progression. For

[108] cf. Srikantiah & Koh, above note 96, 466.

example, incoming students could initially provide wholesale educational services and low-key or unbundled retail work (such as form-filling and possibly also litigation workshops). Later they could graduate to more intensive client-focussed work and more specialist educational work (such as the training of other agencies). Finally, they could engage in the high profile and high skill work involved in impact and community empowerment work, while also mentoring and, if properly trained, even supervising less experienced students in order to save valuable staff time.

While this progressive approach to clinic activity can be achieved in cluster clinics, it is easier to manage in omnibus clinics. Moreover, where clinical involvement is limited in duration, it is more difficult to expose all students to a variety of activities, and to maximise the potential to develop or at least sustain their commitment to redress social injustice, while simultaneously allowing them to gain the training and experience necessary to provide quality legal services. Thus, in addition to the reasons already given for not making clinic involvement compulsory and entirely curricular,[109] the value of a progressive approach to clinical activities (or indeed any other model which exposes students to a wide variety of activities) suggests that – absent substantial increases in clinic resources – clinical participation should be optional so that it can be spread over the course of the degree. Such long-term clinic involvement is particularly useful in meeting the problems of institutional memory

[109] See, respectively, sections 3.1.3. and 3.1.4, but note the discussion of the Clinical LLB at note 47, which does not however by any means give students credit for all their clinic activities.

as regards both impact work and maintaining ongoing relations with community leaders. But it is also essential if students are to have the necessary institutional knowledge and experience to help run clinics and ensure all the associated benefits.

However, while tentatively offering a number of suggestions as to how clinics might be designed to maximise their impact on social justice, this article is not intended to provide a blueprint for the redesign of existing South African clinics, even if clinicians were inclined to prioritise social justice to the extent argued for here and even if they were free of constraints imposed by local conditions, such as the absence of partners to host placements or the resources to afford neighbourhood clinics. Instead, my primary aim was to offer a decision-making matrix which makes clear the wide range of choices and their implications so that law schools and law clinics fully appreciate how decisions about clinic design and choice of activities impact on social justice. This, in turn, will allow them – to the extent desired and possible – to modify clinic organisation and activities to better serve social justice (and indeed other goals as well).

Thus, while some of these choices and their implications are well known, this article will have hopefully heightened awareness of less prominent variables (such as whether or not clinics are solely staff-run or only provide legal services). It should also now be clear that some choices involve exclusive binary oppositions, for instance as to whether clinical participation is voluntary or compulsory, and services

are exclusively legal or holistic. However, with many variables, both alternatives can be combined in various proportions in the same clinic. Thus we have seen that clinic can combine specialist with generalist services, retail with wholesale services, and remedial with educative services. Similarly, these services can be provided both in-house and through placements, and on campus and in neighbourhood premises. The possibility of combining alternatives also applies to organisational variables such as whether or not clinical involvement attracts academic credit. And, then again, other variables do not involve distinct binary oppositions but merely a spectrum between two poles. Most notably, all clinics are more or less rather than exclusively oriented towards social justice or education, but they can also involve greater or lesser degrees of student ownership of both the services provided and clinic management (and indeed different degrees in relation to different activities and management responsibilities).

This article should also make clear that, whereas some variables like the choice of locality for service provision, are *relatively* self-contained in their impact, many have significant consequences for other variables, making one or other option impossible or more difficult. For instance, curricular clinics preclude giving students sole or major responsibility for clinic direction and make an education orientation highly likely, whereas compulsory clinical involvement will prevent students participating in a wide range of remedial and educative activities unless there are very generous resources or minimal student involvement and/or supervision. Conversely, focusing

on impact work, whether involving litigation or transactional services, will necessitate much higher supervision levels and work better with extra-curricular student involvement which can be spread over a number of years.

However, this article was not simply intended to analyse how decisions about the different variables relevant to a law clinic's design and activities might in the abstract maximise its social justice impact. It was also intended to analyse their implications for responding to the two main obstacles facing South African law clinics. The first is the currently limited and always precarious nature of clinic resources. Here, we have seen that the much lower staff-student ratios of SJO clinics make them far more cost-effective, even when combined with teaching designed to ensure justice, rather than practice-readiness. For instance, the USLC currently has approximately 280 students who provide advice and representation in the lower courts and tribunals, run street law programmes in prisons and schools, engage in law reform activities, investigate alleged miscarriages of justice, assist destitute asylum seekers and survivors of gender violence, and run workshops to assist those with housing disputes and evening advice sessions staffed by pro bono lawyers. Yet the clinic only employs four part-time supervisors and one full-time administrator, whereas I devote less than half my time to clinic management and the Clinical LLB.

The other reason for the USLC's low costs is the role played by the students in its running. Even leaving aside the advantages of drawing on the energy, enthusiasm,

initiative and life experiences of a wide group of student volunteers to run a clinic, it is undeniable that involving students in running clinics enables more students providing more extensive activities. In South Africa, it would create a bulwark against the precarious nature of the current reliance on non-university funding.[110] Resources can also be made to go further if clinics prioritise social justice rather than teaching law and developing skills because of the lower staff-student ratios. This is so even if curricular opportunities for exploring issues of social justice are combined with largely voluntary student activity in either dedicated classes or something like the Clinical LLB. Such a model may offer a more effective alternative to responding to law clinics' ongoing funding problems by highlighting their educational benefits in order to persuade universities and others to increase clinic resources.[111]

A focus on social justice delivery and teaching may also be more effective in persuading law schools to accord clinicians the same status as other academics in terms of remuneration, promotion and working conditions. Teaching and writing on issues of social injustice and the means for their redress is more likely to be seen as aligning with prevailing conceptions of legal education and scholarship than the *perceived*[112] dumbed-down nature of teaching skills[113] and writing about clinical legal

[110] cf. De Klerk, note 7, 949.
[111] cf. ibid, 948.
[112] In fact, teaching and writing about issues relating to legal practice can be as intellectually demanding as other forms of legal education and scholarship, certainly that involved in expository teaching and black-letter scholarship.

education. Furthermore, universities in the new South Africa espouse a social justice mission which runs alongside that of teaching and scholarship,[114] and law clinics can justifiably claim to be the primary means of law schools fulfilling that mission. In leading the charge on behalf of their universities and law schools, law clinicians ought to be rewarded and law clinics expanded, not marginalised. Hopefully, my suggestion for a return to the roots of the South African law clinic movement with its emphasis on student activism and social justice can help ensure that law clinics achieve the funding and status they deserve.

[113] See Iya, note 4, 272-73, and for an example, see Stuart Woolman, Pam Watson & Nicholas Smith, 'Toto, I've a Feeling We're Not in Kansas Any More: A Reply to Professor Motala and Others on the Transformation of Legal Education in South Africa', 114 *S. African L.J.* 30 (1997).
[114] Africa, above n. 38.

*Conference Report*

# THE ED O'BRIEN STREET LAW AND LEGAL LITERACY INTERNATIONAL BEST PRACTICES CONFERENCE, DURBAN, SOUTH AFRICA , APRIL 2016

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## Background

South Africa has been the home of a vibrant public legal education (PLE) programme for many years[2]. Indeed its Street Law initiative has been described as one of the strategic responses to and a catalyst for change during the apartheid era[3]. The focus on democracy and human rights for all in the lead up to and following the 1994 election has aided the transition from the old regime to the new[4].

Ignorance of the law and legal process is of course a problem in many developing and developed countries[5] and an international conference was therefore planned last year to bring the ever-expanding international legal literacy scene to Durban in order to identify

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[2] The history of this and Street Law's wider international presence is set out in R. Grimes, E. O'Brien, D. McQuoid-Mason and J. Zimmer, 'Street Law and Social Justice Education', in *The Global Clinical Movement: Educating Lawyers for Social Justice,* F. Bloch (Ed.), OUP, 2010.
[3] See the Preface to *South Africa Street Law: Practical Law for South Africans,* L. Coetzee and D. McQuoid-Mason (Eds.), Juta Law 2004.
[4] At the beginning of 1994, Street Law South Africa and Street Law, Inc. published the *Democracy for All* manuals for learners and educators in time for the run-up to South Africa's first democratic elections in April.
[5] See Arthurs, Sean, G., 'Street Law: Creating Tomorrow's Citizens Today' (2015) *Lewis & Clark Law Review* Vol 19:4 925-960 for a recent US perspective on civic knowledge among high school students.

and share best practice - an attempt to promote and support a better understanding of rights and responsibilities under the law.

The untimely death of the Street Law co-founder, Ed O'Brien[6], in July 2015 gave the event even greater poignancy. The conference was not only a global sharing of experience but also an important reminder of how this movement began and of Ed's (and others') role in that process.

## INTRODUCTION

The conference took place from 1 to 3 April 2016 hosted by the School of Law University of KwaZulu-Natal (UKZN) and Street Law South Africa in Durban, South Africa and was preceded by a three-day Ed O'Brien memorial safari (29-31 March) at the Hluhluwe-Imfolozi game reserve. Those who attended will recall the tranquil surroundings, the many and varied game sightings (including the once near-extinct white rhinoceros) and, of course, the impromptu monkeys' picnic!

This was a conference to honour Ed O'Brien and celebrate the 30th anniversary of the first international Street Law programme established at the University of KwaZulu-Natal (formerly the University of Natal), South Africa.

The conference intended to provide a platform for the sharing of best practices in public legal education through Street Law and other legal literacy and community outreach

[6] Edward Lee O'Brien, 21 September 1945 – 2 July 2015. Former (and emeritus) CEO of Street Law Inc, Washington DC, USA.

programmes and was attended by law teachers, law clinicians, law educators, law school staff and NGO co-ordinators and representatives.

**CONFERENCE PROGRAMME/THEME**

The main theme of the conference was *best practice lessons*. The conference timetable was structured to incorporate a number of strands, based on this theme. They were:

- Street Law curriculum development
- Building capacity for Street Law programmes
- Youth-based Street Law programmes
- Using Street Law as a pathway to Law School
- Street Law and democracy education
- Street Law and human rights education
    - general human rights education
    - the protection of the rights of vulnerable groups
- Using Street Law to teach about commercial and labour law

The conference consisted of a series of sessions/workshops in which best practice approaches addressing these themes were presented. Delegates from over 25 countries were represented and interactive papers (many incorporating the interactive Street Law methodology[7]) were given looking at the design, delivery and evaluation of Street Law programmes worldwide.

[7] Street Law originated at Georgetown University, Washington DC in 1972 where groups of law students went into local schools to teach pupils about basic rights and responsibilities. The idea was that both the pupils and the students would learn in the process. A structured methodology now

## *Conference Report*

**Day one**

The start of the conference set the scene for the origins of Street Law and Ed O'Brien's unique contribution[8], the development and key contribution of Street Law in South Africa and subsequently the range of Street law programmes and PLE initiatives world-wide.

Presentations under 'curriculum development' provided delegates with an insight into a number of innovative established and proposed PLE initiatives spread across four continents.

The first[9] introduced the juvenile justice programme in the USA which has expanded from 94 youth courts in 1994 to more than 16,000 by 2015. These are voluntary process courts which involve young people, working with adults, to sentence their peers for a range of youth misconduct or juvenile offences. Sentences can include, inter alia, community service, jury duties in future youth courts and writing apologies to victims. The session highlighted how the widely accepted benefits of many Street Law programmes - active learning experiences that allow young people to: explore rights and responsibilities under the law; appreciate the legal system; confront and resolve disputes, and discuss and analyse public issues - are also acquired through youth court in a very real setting.

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exists that has been developed by Street Law Inc. also of Washington DC and the Street Law approach or adaptations of it is now being used in over 50 countries of the world to promote a better understanding of law, democracy and human rights.

[8] Ed's widow, May Gwynne O'Brien; Margaret Fisher, Seattle University School of Law (USA); Commissioner Mahomed Ameermia, South African Human Rights Commission (South Africa) and David McQuoid-Mason were amongst those who provided addresses and tributes.

[9] M. Fisher, Seattle University School of Law, *Youth delivering justice through restorative justice peer courts,* Street Law Conference, Durban 2016.

A vision for the Middle East followed which, if realised, would be a progressive achievement. This was to develop a Street Law programme that might potentially harmonize rules of Islamic law with human rights principles and tackle disputed or debated interpretation of the Quranic verses that could precipitate exploitation of young and vulnerable people.[10] This contrasted with the presentation of an embedded Street Law programme in a compulsory legal practice module that addressed the challenge of supervisor-student ratio in a live-client clinic. The developed structure allows a relatively large number of students to experience community engagement and providing a legal knowledge service in different settings over 2 semesters.[11] The penultimate workshop in this strand demonstrated part of a lesson incorporating an investigative crime approach and using a real-life murder case to introduce students to the criminal justice system and enhance reasoning and critical thinking skills.[12]

Based on the premise that it is assumed that raising public awareness and understanding of the law and legal system should arm and empower people to tackle legal problems and contribute to addressing existing inequalities, this strand concluded with a call for empirical research to substantiate anecdotal evidence that improving levels of legal literacy could enhance access to justice more generally. The workshop highlighted the need for and

[10] Mohamed Y. Mattar, Qatar University College of Law, *Utilizing the 'Street Law' mechanism in raising awareness about the true principles of Islamic Law*, Street Law Conference, Durban 2016.
[11] M. Welgemoed and D. David, Nelson Mandela Metropolitan University, *The incorporation of Street Law into the Legal Practice module at the Nelson Mandela Metropolitan University*, Street Law Conference, Durban 2016.
[12] J. Lunney, The Law Society of Ireland, *Dead bodies and live minds – the Michael Morton story: Street Law students as detectives*, Street Law Conference, Durban 2016.

challenges faced by this proposal as well as possible means of developing such an evidence base.[13]

A lively participatory presentation launched the 'building capacity' theme. This featured a history of establishing community legal education (Street Law) programmes across the Asia region utilising common interactive approaches[14]. A focus on methods and paths to monitoring and evaluating the programmes linked effectively to the previous session.

The first day concluded with a workshop looking at the role Street Law can play in assisting those whose focus it is to provide services to others such as law centres, advice agencies and varied community-based organizations from a UK perspective. The group proposed possible solutions or strategies to the challenges inherent in delivering PLE to professional audiences.[15]

**Day two**

Again, four continents were represented on the second day.

A local organization set off the youth-based Street Law programmes strand with a presentation focusing on an initiative that includes law students trained to facilitate lessons and other activities based on the South African Constitution for schools and other

[13] R. Grimes, University of York, *Developing and evidence base for measuring the outcomes of Street Law lessons*, Street Law Conference, Durban 2016.
[14] B. Lasky and W. Moorish, Bridges Across Borders South East Asia Community Legal Education (BABSEACLE), *Street Law and interactive teaching methods – the South East Asia model*, Street Law Conference, Durban 2016.
[15] R. Grimes, University of Northumbria, Newcastle, *Training the trainers – a lesson for capacity building*, Street Law Conference, Durban 2016.

community groups.[16] A main aim is to inspire and empower people to see and make use of the Constitution and move towards making its promises more of a reality in society in general.

The second and final workshop in this strand described a pilot project in community colleges in California designed to create a pathway to six of the state's most prestigious undergraduate institutions and their affiliated law schools intended particularly for groups traditionally under-represented in the legal profession. Each college is required to provide a 'Street Law-based' course as part of the core curriculum and a 'taster' Street Law lesson used as part of the initiative was demonstated.[17]

The first 'democracy education' workshop gave an insight into the key role of Street Law in preparing South African citizens to vote in the country's first democratic elections in 1994.[18] Delegates participated in one of the 'road to Democracy' exercises from the *Democracy for All* manual.[19] This contrasted with an interactive session highlighting the compulsory voting system in Australia and a lesson on democratic participation and the importance of voting delivered by students to schools and community groups.[20] The final interactive session in this stream focused on developing students' understanding of key democratic principles[21]

[16] C. Bruintjies, South African Constitutional Literacy and Service Initiative (CLASI), *Using law students as 'teaching fellows' to promote the South African Constitution*, Street Law Conference, Durban 2016.
[17] E. S. Quinlan, Saddleback College, California, *Using Street Law to create pathways to law school from community colleges*, Street Law Conference, Durban 2016.
[18] D. McQuoid-Mason, University of KwaZulu-Natal, *The genesis of the Democracy for All Street Law programme*, Street Law Conference, Durban 2016.
[19] See note 4.
[20] J. Giddings, Griffith University, *Democratic participation and making your vote count*, Street Law Conference, Durban 2016.
[21] L. Madlenakova, Palacky University, *Democratic Banana Republic*, Street Law Conference, Durban 2016.

once again demonstrating the value of Street Law in raising citizens' awareness of and promoting active participation in democratic institutions.

A number of varied and vibrant presentations reiterated and confirmed the vital part PLE and Street Law plays in promoting and developing human rights awareness and education world-wide often through law school engagement and particularly working with other organizations.

Some highlighted inherent challeges to student and lawyer participation in PLE programmes[22] and others the benefits students themselves derive from their own developed understanding of human rights in practice through working with sufferers of human rights violations.[23] Delegates were also introduced to Street Law programmes targeting specific marginalized and vulnerable groups and communities which provide both students and participants with understanding and empowerment. These included work with a range of people and human rights issues: disability groups;[24] gender-based violence[25] and violence against women and children.[26] Resources have also been developed to support the multi-

[22] A. S. Mizan, North South University, *Challenges of Street law in developing countries: lessons from Bangladesh on promoting human rights and legal literacy amongst common citizens*, Street Law Conference, Durban 2016.
[23] U. Aydin, K. Turani and E. B. Demirayak, Anadolu University, *How to start the first ever law clinic promoting human rights in a state university: lessons from Turkey*, Street Law Conference, Durban 2016.
[24] L. Ernst, University of Hong Kong, *Engaging persons with intellectual disabilities: transforming communities through Street Law*, Street Law Conference, Durban 2016.
[25] C. Ojiaka, Imo State University, *Gender-based violence outreach programme: Best practices*, Street Law Conference, Durban 2016.
[26] L. Coetzee, Nelson Mandela Metropolitan University, *The 'Crimes against Women and Children' Street Law programme*, Street Law Conference 2016.

disciplinary Street Law training programme (in South Africa) focused on effective evidence collecting in domestic violence cases.[27]

**Day three**

Following the conclusion of the human rights sessions, the final stream focused on how Street Law can be used in teaching about commercial and employment law through novel and exciting initiatives.

Delegates were introduced to one such programme in the UK that involves postgraduate law students providing classes to school pupils on law and entrepreneurship and associated legal issues with the opportunity to pitch their own technology or enterprise business ideas to a large technology law firm.[28] Another is aimed at supporting self-represented parties at employment tribunals by providing guidance on tribunal procedure. The programme also allows students to work with the tribunal service to try and address some of the effects on the justice system of cuts to public funding.[29] In the Carribean, the focus is on the development of a community project to inform ordinary citizens about basics of contract and commercial law that affect daily personal and business transactions and how this impacts on sustainable economic development.[30]

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[27] The training manuals are: *Crimes against Women and Children: A Medico-legal Guide* and *Forensic Medicine and Medical Law.*

[28] P. Cahill, Queen Mary College, University of London, *Teach Tech Law: An entrepreneurship Street Law programme in East London, UK*, Street Law Conference, Durban 2016.

[29] L. Thomas, University of Birmingham, *The Employment Tribunal procedure in England and Wales: Developing a Street Law programme to assist litigants in person in the wake of cuts to legal aid*, Street Law Conference 2016.

[30] C. Malcolm, Mona Law Institutes, University of the West Indies, *Taking law to the streets: Fostering a new form of engagement in support of economic development through community-centred legal education*, Street Law Conference, Durban 2016.

Overall, the sessions/workshops highlighted the range of ever-expanding[31] programmes and approaches and the power of public legal education in general and Street Law in particular in reaching many communities and groups in developing and developed countries who are unaware of their legal rights and responsibilities.

As well as the public benefit, it was also clearly shown that law students can be closely involved in preparing and delivering presentations/workshops and in doing so can gain considerably in terms of their own education, appreciating both substance and context. Knowledge, skills and wider ethical considerations can all be effectively studied through involvement in PLE in general and Street Law in particular. For all (the law student and the wider public) to realise that law involves not just individual rights and responsibilities but choices and values is, it is suggested, an important lesson.

PLE can, as demonstrated in South Africa, also see greater community involvement and empowerment in daily life, in the democratic process and in the shaping of law and policy.

**CONCLUSION & OUTCOMES**

Apart from the informative value of the 3-day conference it is anticipated that the event is likely to have longer term impact. A book is to be published setting out models for public legal education and practical guidance on the development of Street Law and other legal literacy programmes including best practice lessons[32]. A Street Law Global Network group has been set up for individuals involved in supporting Street Law or public/community

[31] For example, the Jamaican Street Law initiative is due to be launched by the Mona Law Institute in early June 2016.

[32] D. McQuoid-Mason (Ed.), *Street Law: best practice from around the world,* Juta Law, forthcoming, 2017.

legal education programmes across the globe to link up.[33] It is also planned that an international journal will also now follow to enable the sharing of ideas to continue into the future and to provide a conduit for serious discussion on the nature, role and impact of public legal education.

The legacy left by Ed O'Brien is profound and likely to have a lasting and positive effect.

Thanks are due to David McQuoid-Mason and his team at the University of KwaZulu-Natal and Street Law South Africa[34] for organising such an important event.

[33] For further information or to join the Network please contact: streetlawglobal@googlegroups.com
[34] In particular to Melanie Reddy, Melissa Murray, Eban van der Merwe & Lloyd Lotz.

*Practice Report: Clinic, the University and Society*

# STREET LAW FOR CZECH AND SLOVAK YOUNG ROMA MUSICIANS

**Michal Urban, Hana Draslarová**[1]

**Charles University, Czech Republic**

For almost seven years, Street Law has been a part of the curriculum of the Prague Law School.[2] Over the years, law students have taught law at public and private grammar schools, high schools, business schools and also some vocational schools, mostly located in the Prague region. They were all secondary schools and predominantly ethnically homogenous, since members of the largest Czech minority, the Roma, for various reasons hardly ever attend these schools.[3] Last summer, however, a group of Prague

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[2] For a closer description of the Street Law programme and its goals at Charles University in Prague, Faculty of Law, see Urban, M.: 'How to Discover Students' Talents and Turn Them into Teaching', (2011), vol 16, *IJCLE*, pp 144 – 153.

[3] Social exclusion of Roma community in the Czech Republic is a major problem. One of the consequences of the prejudices concerning Roma community is the problem of access to quality education, as for example described by Amnesty International in its report '*Must try harder: Ethnic discrimination of Romani children in Czech schools*', Amnesty International Ltd, 2015, also available online https://www.amnesty.org/en/documents/eur71/1353/2015/en/ - accessed 2016-03-08.

Law School students and recent graduates travelled to Eastern Slovakia to organize Street Law workshops for Roma teenagers. This text tells the story of their journey, reflects their teaching methodology and experience and offers a perspective of a law student participating in the workshops.

## SUMMER SCHOOL FOR YOUNG ROMA MUSICIANS

For almost two decades, a well-known singer of Czech and Roma origin, Ida Kelarová, has been organizing summer schools for young Roma from the Czech Republic and Slovakia. She has been gathering teenagers with musical talents and teaching them singing and dancing. They come from different socio-economic backgrounds, including many from socially very poor conditions. However, even those living in average families in terms of their income share the experience of being a member of a despised minority living in rather ethnically homogenous and intolerant countries. Over the years, Ida Kelarová's summer schools have become more professional and last year, the prestigious Czech Philharmonic[4] joined her project. Several members of the leading Czech (and European) orchestra attended the summer school, rehearsed with the Roma choir formed by the participants of the summer school and towards the end of the summer school participated in a series of joint concerts for several excluded Roma

[4] For more information about the orchestra, which was established in 1896, see http://www.ceskafilharmonie.cz/en/.

communities in Eastern Slovakia. As Ida Kelarová's web pages put it, the aim of this extraordinary project was to bring "*music and joy of music into places, which almost nobody wants to know about and which are symbols of social exclusion, poverty and life without any perspective*".[5]

Whereas the main goal of the summer schools is to provide gifted Roma children and youth from socially disadvantaged backgrounds an opportunity to develop their talents, the whole project also attempts to motivate them to continue with their studies and become concrete examples of educated, cultivated and successful Roma that may serve as good examples both for the Roma communities and the general population. Since due to historical and sociological circumstances the Roma communities in both countries tend to be rather neglected, undereducated and underdeveloped, society tends to look down on them and often treat Roma as secondary citizens.[6]

An important aspect in this regard is that the Czech society is ethnically and nationally rather homogenous.[7] The largest national minority are the Roma[8] and their tensions

[5] See: http://www.miret.cz/en/page.aspx?v=pageCollection-686.

[6] In this regard, it is important to point out the constant effort of the Open Society Foundation to improve the situation of Roma not only in the Czech Republic. For more information see: https://www.opensocietyfoundations.org/topics/roma.

[7] There are only about 4% foreigners, whereas in neighbouring Germany there were even before the refugee crisis 9%. See: 'How many foreigners are there really in your country?' *OneEurope* [online]. [28. 3. 2016]. Available at http://one-europe.info/eurographics/how-many-foreigners-are-there-really-in-your-country

with the majority population represent an important source of instability for the Czech Republic. In the dominantly white Czech population, for example ethnically and culturally very similar Slovaks tend to easily assimilate or generally fit well with the majority, while the visibly-different Roma stand out. During the last decade, the number of ghettoes in the Czech Republic doubled, and the majority of their inhabitants are the Roma.[9] At the same time, anti-Roma demonstrations and protests intensified, with peaks in 2011 in the Northern Czech Republic and in 2013 in the south of the country.

International human rights protection bodies have repeatedly expressed their concerns about this situation and stressed that although the state passed a number of strategic materials targeting the integration of the Roma minority, these documents in practice mostly fail to be implemented. The Czech Republic is being criticized for discrimination against the Roma in many areas of daily life, including housing, labour market, health care and education.[10]

[8] It is very hard to estimate the exact number of the Roma living in the Czech Republic, since they notoriously fail to reveal their nationality in census. However, their numbers are expected to be between 150,000 and 300,000 in the 10 million population of the Czech Republic.

[9] Refworld | Consideration of reports submitted by States parties under article 9 of the Convention, Tenth and eleventh periodic reports of States parties due in 2014 : Czech Republic. *Refworld* [online]. Available from: http://www.refworld.org/docid/55c081274.html, pp. 10-11.

[10] See E/C.12/CZE/CO/2.

Discrimination in the educational system is repeatedly being pointed out by the UN Committee on the Rights of the Child (disproportionate number of the Roma children are sent to specialized schools with limited curriculum, which reduces their future career opportunities).[11] The discriminatory nature of the Czech education system was also confirmed by the 2007 decision of the European Court of Human Rights, *D.H. and Others v. the Czech Republic*, where an indirect discrimination against the Roma children in access to education was stated.[12]

Despite this framework, Ida Kelarová and her team attempt to challenge these common prejudices towards Roma and through music and rich Roma culture give Roma children a chance to live a full life.[13] These aims of the Roma choir project perfectly meet the aims of Street Law programmes,[14] so it therefore seemed only logical to join the team of Ida Kelarová and prepare for her young musicians several workshops aimed at increasing their legal literacy.

Using Street Law to work with minorities and marginalized groups in society is of course not our invention. In fact, Street Law has always used interactive methodologies

[11] CRC/C/CZE/CO/3-4, [online]. Available from: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCZE%2fCO%2f3-4&Lang=en subsection 61.

[12] The decision from 13-11-2007, application No. 57325/00. Online, ECHR Hudoc. Available from: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256.

[13] See: http://www.miret.cz/en/page.aspx?v=pageCollection-6.

[14] For more on clinical education and access to justice see: Bloch, Frank S. *The global clinical movement: educating lawyers for social justice*. New York: Oxford University Press, 2011.

to increase legal literacy of ordinary people and members of various minorities in society in particular [15] and managed to spread throughout the world, being now offered as a course at over one hundred law schools worldwide. [16] In some countries, it has even contributed to local changes[17] or even wider social changes, such as the renowned Street Law programme in South Africa.[18]

In Central and Eastern European context, Street Law programmes and legal clinics in general had to deal with a legacy of authoritarian or totalitarian communist regimes.[19] Despite that, a number of legal clinics including Street Law programmes were opened, incorporated into law school curricula and in some countries (such as Poland, Ukraine, Russia and Bulgaria) legal clinics even became compulsory or recommended as a part of national legal education.[20]

[15] As for improving the legal literacy of Roma community, Street Law methods have been widely used for example in Hungary. See: Open Society Justice Initiative: *Community-based Paralegals: A Practitioner´s Guide.* Open Society Foundation, 2010. p. 28. Available from: https://www.opensocietyfoundations.org/sites/default/files/paralegal-guide-20101208.pdf and Tibbitts, F., *Roma Paralegal Training Project: Street Law Foundation, Hungary*, (case study prepared for Open Society Justice Initiative), 2005 (quoted from *Community-based Paralegals: A Practitioner´s Guide).*

[16] Grimes, R. H., McQuoid-Mason, D., O'Brien, E. & Zimmer, J., 2011, 'Street Law and Social Justice Education' in FS Bloch (ed.), *The global clinical movement: educating lawyers for social justice.* Oxford University Press, p.225.

[17] See e.g. case of improvement of a community in Northern England. Ibid, 236-7.

[18] Ibid, p. 228.

[19] M. Berbeck-Rostas, A. Gutnikov, B. Namyslowska-Gabrysiak. 'Clinical Legal Education in Central and Eastern Europe: Selected Case Studies' in Bloch, Frank S. *The global clinical movement: educating lawyers for social justice*. New York: Oxford University Press, 2011, p. 53.

[20] Ibid, pp. 55-67.

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METHODOLOGY OF OUR WORKSHOPS[21]

Didactically, to organize Street Law seminars at Roma summer school was a real challenge. We had to prepare our programme for a group of forty to fifty teenagers aged ten to twenty, who were coming from several communities, diverse socio-economic backgrounds and from two different jurisdictions.[22] We knew only little about their previous knowledge of law, though we presumed that they had rarely come across introduction to law in their schools. We were also warned that some of the children from Slovakia might not clearly understand our language (Czech and Slovak are fairly similar, though not identical languages) and that the average attention span of children will be rather low. To sum up, the group was rather large and extremely diverse.

Our team was lucky in two regards. Firstly, there were many of us. The team consisted of five current law students,[23] three recent graduates and one member of the faculty.[24] Secondly, we were able to join the summer school a couple of days before our

[21] The described methodology corresponds to the criteria set for Street Law programmes in Grimes, R. H., McQuoid-Mason, D., O'Brien, E. & Zimmer, J., 2011, 'Street Law and Social Justice Education', in F. S. Bloch (ed.), *The global clinical movement: educating lawyers for social justice.* Oxford University Press, pp. 233-8.

[22] Czech and Slovak Republic are separate countries with their own legal system, although they share a common legal history from the period prior to 1993, when they together formed Czechoslovakia.

[23] For them, it was a follow-up of a credit-bearing Prague Street Law programme they took in previous semesters. For the division of Street Law programmes, see Grimes, R. H., McQuoid-Mason, D., O'Brien, E. & Zimmer, J. 2011, 'Street Law and Social Justice Education', in F. S. Bloch (ed.), *The global clinical movement: educating lawyers for social justice.* Oxford University Press, pp. 230-1.

[24] He is the head of the Street Law programme at Prague Law School as well as the leading author of this paper.

workshops began. That allowed us to learn more about the participants of the summer school, their prior experience with law, expectations from the legal workshops as well as their personal histories and it equally helped us to become part of the summer school before we officially took over the role of teachers and thus significantly eased the process of creating an atmosphere of common workshop not so strictly divided into "we the teachers" and "you the students".

When reflecting on our preparation for the workshops and their realization at the summer school, there stand out several principles we tried to follow. Since our experience might be beneficial for the readers, we will describe the principles as well as our experience with adhering to them.

**1. Build the content of the workshops on the experience of the Roma participants.**

Prior to the workshops, we met with the organizers of the summer school, identified several typical situations, in which participants most commonly come across legal rules (entering a shop and being closely observed by the security, being denied access to a public disco bar, being refused service in a local restaurant), and built our workshop sessions around these scenarios. Moreover, we included in the workshops also examples of those common legal conducts in which there further exists a significant risk of discrimination (entering into a lease contract or a contract of employment, being

forced to vacate an apartment, searching for a job). Apart from these legal issues, we also prepared an activity aimed at improving their financial literacy, since financial difficulties are common among the Roma and often lead to consequent legal difficulties. We did not limit ourselves to situations which the teenagers are likely to encounter in the near future (e.g. renting an apartment), but included situations that their parents, relatives or neighbours might need to solve as well. In this regard, we followed the mission of the whole summer school, which is to educate future Roma elite, whose role will be to help not only themselves, but also the people around them.

Building the workshops around the concrete experience of the Roma participants with legal rules brought one anticipated, but still troublesome finding. In their everyday lives, they come across legal rules in a far more explicit and harsh way than we do. Whereas we typically realize concrete legal norms (apart from legal talk among lawyers or in legal classes) when we receive a speeding ticket, cross on the red light or forget to buy a public transport ticket and realize it only when on a bus, their contacts with the law include a number of different situations. They are being interrogated by the police or at least asked to show their ID, they are being threatened by security that they will call police to inspect their backpacks, they are being summoned by the court as witnesses. Encouraging them to share their experience with law during the workshops increased the authenticity of their content and motivation of the participants, but also placed us

into an inconvenient position of those who represent the legal order that proves to be vastly unfair. We were those who – at least in the eyes of the participants – knew the legal rules, we were as white as the policemen, we enjoy benefits of the world that discriminates against them.

However unpleasant this position was, we felt it was necessary not to hide from this reality and openly talk about our perception of the law. After all, we had neither designed the legal system nor were we uncritical advocates of it. We did, however, know more about the rights and duties that law gives to individual roles than the participants of the summer school and were better able to describe consequences of certain behaviours. In our experience it worked well to share our critical comments on the current way the legal system or its individual actors operate (e.g. racial behaviour of the police) and search together with the participants for the right way to handle the concrete situation, even though it might have involved an unfair policeman.[25]

**2. Be reasonable, not too ambitious.**

One might easily tend to overload the content with too much information and activities. After all, there are so many interesting things they should definitely hear from you!

[25] We deliberately stressed that even though a police officer might be exceeding their powers, the only right solution at that moment is to peacefully accept their orders, note the number of the police officer and only later protest against their behaviour, since emotive or even violent defence against the acts of the police mostly only gives the police more reasons for applying harder means.

However understandable this approach is, it needs to be avoided, since this diverse group will most probably learn more slowly than regular school classes. Moreover, as we encouraged the participants to share their own experience with law, that logically reduces the time for the teacher to introduce their own topics. The best strategy proved to be to identify only a few key elements in each session and be open to whatever else might happen during the session. Sometimes the group asked for further information or more time to go deeper into a certain issue, sometimes it made more sense to listen to the stories of the participants and make others comment on each other's experience. Be it as it was too much ambition from a teacher clearly proved counterproductive.

**3. Most of the work needs to happen in small groups.**

Recognising the difficulty of conducting a successful, interactive lesson even with a homogenous class that is used to working together, with a group as diverse as the one we encountered at the Roma summer school, it made even more sense to divide the participants for most of the time into smaller groups of five to seven members. It was important to always choose the right pattern to create the groups; while for some activities, as for example those based on competition, it was necessary to create mixed groups with equal chances to win, for others it was better to group students of similar age. This proved to work especially well during the series of workshops, when the groups were subsequently attending six different activities on various legal topics.

However, it also put higher demands on us, since these activities had to be adapted depending on the age of participants. We could not simply repeat the same workshop five times, since the group of young adults was able to explore the topics much deeper than a group of 14-year-old participants, to whom we still needed to make the topic useful and interesting, but in a much more simple way.

**4. Precise planning is a must.**

Eventually, it was not impossible to coordinate nine teachers running six activities for thirty children at one moment. However, it really paid off to schedule everything accurately, even though we had to anticipate that the plan could change any minute due to external causes. Since most of our workshops relied on precise timing, prior to each of them it was necessary to determine who will set and keep the precise time. For example when we were working with small groups in different locations, we always needed to set a precise time to be back in the main hall for the next part of the workshop, so we avoided the unpleasant situation where everybody would have been waiting for one last delayed group. It also turned out to be very beneficial to have one team member as a back-up for each workshop without a special task, supporting the others with their difficulties and keeping the time. Cooperation between team members during the whole time was crucial, since we only had two days to carry out our workshops and we wanted to use our limited time effectively.

**5. Be prepared to deviate from the programme we prepared.**

Although most of us were used to having their lesson plans carefully prepared and generally following them through, we were preparing ourselves for sudden changes that might happen at the summer school. And indeed, they did happen. Most of all, they involved rapid changes in the given time (mostly shortening of the time for one particular session) and the amount of participants (after first activity, about ten of the youngest participants left the group, and later we lost some individuals due to illness). We therefore designed our sessions so that they were mostly broken into smaller activities which might be easily skipped or added. For example, we rotated small groups of participants among various law students running 25-minute sessions on different legal topics. The more of these sessions each group of participants attended the better, but it was very easy to skip one or two when there was no time.

**6. Always start from the very concrete situation.**

Despite the general tendency of many lawyers to start almost every topic with a theoretical introduction, we tried our best to begin as concretely as possible. For example, straight after the beginning of one session we handed out several documents a court might send to teenagers (summons as a witness, order to pay money etc.) and let the students interpret them. Or we started with the concrete problem ("You want to

move into the flat of your boyfriend and terminate your current lease agreement. When can you legally do it?"), gave students necessary documents and let them work and then talked about the solutions they proposed. All of these activities worked well with our audience and brought sometimes abstract topics down-to-earth.

## ACTIVITIES THAT WORKED WELL WITH OUR PARTICIPANTS

Based on the principles stated above, we put together several activities. Some of them we knew from previous teaching, some we prepared especially for the Roma summer school. These are the activities that worked well with our audience:

1. **Which labour contract to enter into?** Participants were given three versions of a labour contract and asked to choose the contract that was best for them. All three contracts contained several changes (number of working hours, the amount of salary, duties) and were thus easily distinguishable. Participants worked in threes and their choice served as an opener for a discussion about a labour contract, its importance and necessary requirements.

2. **Which rights belong to me?** Participants were given a list of all of the human rights that the law guarantees them. After going through them and making sure everybody understood what each right means, they had to choose those rights that they believed that *they* were entitled to. Legally, all rights on the paper belonged to them, but the

difference between all the rights and those that they chose opened an inspirational space for discussion.

**3**. **Do I need to do anything?** Participants were given four documents a court or another official institution might send them (order to pay money, law suit, summons as a witness and a power of attorney) and had to decide a) who sent them the document, b) what the court or the other institution wanted from them, c) what would have happened if they had not reacted, and d) how many days they had for their reaction. Despite difficult authentic legal language, many of them were able to find at least basic pieces of information in the document. Moreover, we talked about alternative methods of making sense of any legal document, such as contacting an NGO that specializes in legal aid for socially disadvantaged clients.

**4. Role-plays from their lives.** We chose two different scenarios, both of them based on everyday experience of some of the participants. In one of them, a pair of Roma sits in a restaurant and is not served, although non-Roma customers are welcomed and served by the waiter. The waiter acts on the order of the manager of the place, who explains his logic to the Roma pair if they insist on calling him. In the other scenario, two Roma friends go shopping and the whole time they are closely observed by one member of security and when leaving the shop, they are asked to show the content of their bags. Unless they let the security search their bags, they would not be allowed to leave the

shop and would be threatened that the police might be called. Both scenarios worked really well, since the participants could pour their own experience, attitude and temperament into their roles and at the same time they were not too difficult to prepare and play. It served us as a good vehicle for talking about the feelings and goals of the characters in the stories and smoothly opened the topic of discrimination and legal powers of individual actors – a waiter, owner of the restaurant, security and the police.

**5**. **Extremes**. An activity during which participants express their opinion on certain issues by placing themselves on the line in between two extremes (e.g. the degree to which they approve or disapprove of capital punishment). Their position reveals their own unique view of the matter and makes them realize what they think about the issue. For us it was an important introductory activity which helped us to map the views and opinions of the participants (e.g. the frequency with which they experience discrimination, environment they come from and scope of their legal knowledge). It also worked as a good icebreaker, since all the organizers of the workshop played with the participants and revealed their own views. Moreover, it was interesting to observe that in a number of questions Roma and non-Roma were nicely mixed in their replies.

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HOW WAS THIS STREET LAW DIFFERENT FROM STREET LAW IN ORDINARY CLASSES? – LAW TEACHER'S PERSPECTIVE

Despite having taught for seven years at different secondary schools and high schools in Prague, teaching at Roma summer school has been a new and unique experience for me. It was different from other teaching I am used to for various reasons. Some of them were technical – there were no desks in the "classroom" (in fact, there was no classroom at all, we taught all over the location where the summer school was taking place – inside the building, in the corridors as well as in the garden), participants arrived from various cities from two countries and their familiarity with the legal language or even more elaborate common language was limited and I had to pay particular attention to the words I was using. I realized that I frequently use many fancy, long or sophisticated words that make my speech less understandable.

Apart from these technical differences, there were several more fundamental ones. Firstly, the character of the Roma's prior experience with the law, the police and instances of discrimination were very different from my previous experience from classrooms. With a little bit of simplification I may say that up to now, I have been teaching law mostly to the members of the majority.[26] This time, I had to adopt a truly

[26] I recall that there were several Vietnamese in some of my classes in Prague, but each time only one or two in one class.

different perspective, which was both more demanding and humiliating for me. Especially when in the process of preparing the workshop (e.g. searching for a theme of a role-play) I had to put myself in the place of somebody discriminated against and then meet the person face to face and hear that he truly experienced those horrible situations and feelings which I only imagined for the sake of designing my session. Many times during those two days of workshops I realized how unproblematic my life is in some regards, purely because I am a member of the majority and not of (especially Roma) ethnic minority.

Secondly, I realized that teaching law to the Roma minority felt different because law stands out for them as something even more important and dangerous than for the members of the majority in society. For most of the regular secondary school students, legal rules predominantly represent the way to understand the legal system and save time and money in the future, to avoid being fooled by deceitful dealers or unwilling workers in public offices. For the Roma, knowledge of the law might actually save them from far more serious troubles, including jail. However, it might work the other way round, since knowledge of the law and your rights might put you in a more challenging or dangerous situation, e.g. when standing out against an oppressor or the person who discriminates against you, referring to your rights, calling for a legal action. There is indeed some bliss in the ignorance and bitterness in knowledge.

Thirdly, the experience of Roma teenagers with law made me realize how complex and unclear the legal system is and how naive is the fiction that everybody has the duty to know the law.[27] Even lawyers frequently lose themselves in the web of legal rules and their amendments and most of them never had to deal with any of the troubles members of the Roma ethnic minority face on an everyday basis. Translating legal duties into an understandable language seems the least help that lawyers can give lay people, especially from minorities as underdeveloped as the Roma people in the Czech and Slovak republics.

## HOW WAS THIS STREET LAW DIFFERENT FROM STREET LAW IN ORDINARY CLASSES? – LAW STUDENT'S PERSPECTIVE

Since I really enjoyed the "classical" Prague Street Law programme, in which I taught at a good Prague public school, I took the opportunity to be a member of the team teaching at the Roma summer school, which was a rather different experience in many regards. The whole project was interesting and challenging from the very beginning and in the following paragraphs I would like to share my experience.

To begin with, the whole planning process was extraordinary and also partly complicated by the structure and size of our team. During my Street Law practice I was

[27] This legal principle is often described by Latin phrase *ignorantia iuris not excusat.*

only planning the lessons and teaching with one more law student. This time we had to harmonise the time, ideas and thoughts of nine people, which was not always easy. Moreover, we did not all know each other prior to coming to Slovakia (I have personally met most of the team members just twice before) and we were coming from different backgrounds. Some of us had more experience with teaching than others; some of us were younger students as opposed to some of us who have already been practicing law for a few years. Despite these handicaps, I am happy to conclude that the team work went very well.

As unsure as I was about the final success of our workshops prior to coming to Slovakia, I was eventually nicely surprised by the attitude of the participants of the summer school. They were all very friendly, polite, respectful, willing to cooperate and keen to learn. They were very open, which was both overwhelming (it brought special energy into the workshops) and puzzling (despite their openness, some of them tended not to admit that they were lost at the activity; we learned we needed to keep asking and making sure they were following the lesson). As easily as they got excited about some activity, just as easily they could lose interest in another activity, in which they were not successful. When lost, some of them blindly followed the others in their reactions. Therefore, it proved to be effective to give individual roles to everybody, which they could not copy. I believe it is important to remember this experience for the future.

What also proved to be efficient was a final reflection, when they were each supposed to say one thing they learned and one thing they would like to ask. Then they had to present it in small groups and we the law students were answering their questions. That gave us another chance to find out, what they were interested in, while they were revising at the same time.

Next to sharing my legal knowledge with the participants of the summer school, I myself learned a lot. Among others, the whole Slovak experience made me think again about the role and functioning of the legal system and justice. While teaching about discrimination, which included listening to the personal stories of the participants, I finally got to understand in a more plastic and alarming way, which I would not, had I only been reading about it in textbooks. Most of all, I got to reflect on how important it is to use legal tools to fight discrimination, both those which are available and those which could be created by new legislation. I had a chance to get to know these Roma children personally and see how clever, talented and nice they were. However, based on the colour of their skin, living in our society is much harder for them than for me. We might feel proud of living in a liberal society, where human rights are guaranteed by constitutions and many international treaties, but at the same time even a sixteen-year-old participant of the summer school has already been discriminated against when applying for a part-time job only due to a different skin colour. Moreover, other

children are experiencing bullying by security while shopping for groceries, or have been refused service in a restaurant. When trying to give concrete pieces of advice to them on how to react in these situations, I realised how hard it actually is to fight discrimination, despite all the legal instruments, which are available on paper and studied at law schools, but have very unclear results in reality.

Clearly, the social dimension of this project is enormous, as the content of the workshops can be really beneficial for the participants of the summer school and it is only fair to give them a chance to familiarise themselves with the basics of law. Therefore, I hope this project will continue in the future. I definitely used the basic didactical skills I learned in ordinary Street Law; on the other hand, I had to work in a larger team, which needed to be much more flexible, and in many regards I experienced a lot of new things, including the designing of the workshops and working with a diverse group of children, who were all members of a discriminated minority. It is hard to say who learned more from the workshops, whether us, or our students.

## CONCLUSION – IS IT WORTH CONTINUING STREET LAW AT ROMA SUMMER SCHOOL?

Organizing a two-day long Street Law course for young Roma musicians from the Czech and Slovak Republics has certainly been a powerful and enriching experience for all involved. It helped to increase legal awareness of the summer school participants and to an extent showed them that to know the basics of law and to be able to apply them might help them in various everyday situations. It is only fair to give the underprivileged members of society a chance to acquire basic legal knowledge and skills. Our aim was to make them realize that in many cases law is here to help and protect them and that following its rules is in many instances beneficial for them.

It also exposed both the teacher and students from Prague Law School to a very different audience with different experience with law than they had typically taught before. It made us think carefully not only about activities and methods that would work the best with the participants of the summer school, but also – and arguably more importantly – about the law and the legal system we live in and we tend to take for granted, especially since in many situations it works for our benefit as members of the majority. While during ordinary classes it is far too easy to teach only about the way the legal system is and works, the Slovak experience made us think much more deeply about how the law should work. We were forced to perceive law in a wider context and

from the perspective of those experiencing discrimination and lacking proper legal education.

Legal workshops, which we experienced at the Roma summer school, are in our view an experience that every law school student and teacher should have. Not because it would necessarily turn them into a Street Law advocate, but because it enriches an often limited picture of law and our society that our educational system typically produces – which both of us recognised in ourselves. In this regard, the experiences of the teacher as well as of the student perfectly correspond. Both of us equally believe that for all of the reasons provided in this text, it undoubtedly makes sense to organize similar workshops in the future – be it with a similar or different group of Prague Law School students.

*Practice Report: Teaching and Learning in Clinic*

# INTEGRATION OF LEGAL AID ACTIVITY IN LAW SCHOOL CURRICULUM: AN OVERVIEW OF BANGLADESH AND INDIA

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**Abstract**

If law students at the formative stage of their career are exposed to legal aid services, they become motivated to deliver the service when they enter into professional life. The purpose of the present article is to examine the current status of Bangladeshi legal education with regard to the integration of legal aid activity in law school curricula from an international human rights perspective. The article also compares the Bangladeshi legal education with the Indian practice. The article indicates that Bangladeshi students are not adequately motivated, through academic exercise, to use the law for the poor people. As a result, they learn to become mere lawyers to fight legal cases without acquiring adequate service-mindedness to serve the poor people of the community. The article finally recommends that legal education in Bangladesh is

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required to explore the potentials of clinical legal education with a compulsory component of legal aid programme. Moreover, Bangladesh can learn from the standard practices of the Indian law schools.

## 1. INTRODUCTION

Legal education is fundamental in any serious commitment to provide quality legal services to the poor.[1] In 2007, the Indian National Knowledge Commission reported that the purpose of legal education is to create professional lawyers as well as to provide justice-oriented education for upholding the values of the Constitution.[2] The justice transformation purpose of legal education, as Pande stated, "can happen only by underscoring the students' role in ensuring that the right of access to justice reaches the resourceless and the poor."[3] Narrowly, access to justice can be described as providing legal aid which makes judicial remedies available to those with inadequate financial resources by meeting the cost of lawyers and other incidental expenses of the

[1] D. L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* 185-186 (New York, Oxford University Press, 2000).

[2] K. P. C. Rao, 'Legal Education in India - How Far the Second Generation Reforms Will Meet the Global Challenges', 46 (9) *The Management Accountant* 794 (2011). It is also available at: http://kpcrao.com/images/kpcrao/articles/2011/Sep-11-2.pdf (accessed on 14 March 2016) at 102; Final Report of 3-member Committee on Reform of Legal education (2009) at 18. http://www.barcouncilofindia.org/wp-content/uploads/2010/06/3-member-Committee-Report-on-Legal-Education.pdf (accessed on 14 March 2016).

[3] B. B. Pande, 'Moral and Ethical Issues Confronting Students' Legal Aid Clinics in the Outreach of Legal Services to the Resource-less and the Poor', 1 *Journal of National Law University*, Delhi 48 (2013).

administration of justice.[4] Therefore, legal aid serves as the contact point between the law and people who are living in poverty and is crucial in ensuring access to justice.[5] The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems [6] (hereinafter the Principles and Guidelines) that provides the internationally agreed definition of the term 'legal aid'[7] requires States to establish a nationwide legal aid system involving a wide range of stakeholders as legal aid service providers in order to increase outreach, quality and impact, and facilitate access to legal aid in all parts of the country.[8] The Principles and Guidelines particularly mentions the establishment of legal aid clinics in the law department of a university[9]. Such schemes

[4] F. Francioni, 'The Development of Access to Justice in Customary Law', in: F. Francioni (ed.), *Access to Justice as Human Right 1* (Oxford, Oxford University Press, 2007). Also see, W. C. Vickrey, J. L. Dunn and J. C. Kelso, 'Access to justice: A Broader Perspective', 42 *Loyola of Los Angeles Law Review* 1153 (2009); G. Blasi, 'How Much Access? How Much Justice?' 73 *Fordham Law Review* 865 (2004).

[5] G. Knaul, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, A/HRC/23/43 (15 March 2013), paras. 27 and 35.
http://www.wave-network.org/sites/default/files/UN%20Special%20Rapporteur%20on%20the%20Independence%20of%20Judges%20and%20Lawyers.pdf (accessed on 2 March 2016).

[6] General Assembly Resolution, A/RES/67/187 (28 March 2013).
http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/187 (accessed on 1 March 2016).

[7] Supra, note 5 at para. 26. The Principles and Guidelines construes the term 'legal aid' to include "legal advice, assistance and representation for victims and for arrested, prosecuted and detained persons in the criminal justice process, provided free of charge for those without means or when the interests of justice so require". Furthermore, "legal aid is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes". Annex, Introduction, para. 8, the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.

[8] Annex, Introduction, paras. 9-10; Guideline 12, the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.

[9] Annex, Principle 14 and Guideline 16, the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.

enable students to provide free legal assistance, assist in the preparation of cases and even represent clients in court proceedings usually under the supervision of a qualified lawyer or faculty staff member. In this context, the present paper examines the current status of Bangladeshi legal education with regard to the integration of legal aid activity in law school curricula from an international human rights perspective. The author, therefore, first looks at the international human rights instruments elucidating such States' obligation. In analysing Bangladeshi legal education, the author compares the system with Indian legal education. There are reasons for choosing India's practice for the comparative analysis. India and Bangladesh share not only a similar historical background,[10] but also similar legal traditions – both countries follow the common law system. Moreover, there is commonality between the countries in terms of social and economic standards, and linguistic and cultural practices.[11] More importantly, both India and Bangladesh have established respective national legal aid systems in order to enable those living in poverty to access the formal court system. Thus Indian and

[10] Bangladesh and India both were under British colonial rule. By 1947, the British Empire in India expired. This created two separate States: India and Pakistan. The division was mainly founded along religious lines which constituted a Muslim majority in Pakistan and a Hindu majority in India. Pakistan was further divided into two parts in the east (East Bengal, which became Bangladesh in 1971) and in the west (western Punjab). I. Talbot and G. Singh, *The Partition of India* 1-4 (Cambridge, Cambridge University Press, 2009); W.V. Schendel, *A History of Bangladesh* 88-130 (Cambridge, Cambridge University Press, 2009); *The Road to Partition* 1939-47. http://www.nationalarchives.gov.uk/education/topics/the-road-to-partition.htm (accessed on 14 March 2016).

[11] India-Bangladesh Relations (January, 2013). http://www.mea.gov.in/Portal/ForeignRelation/Bangladesh_Brief.pdf (accessed on 14 March 2016).

Bangladeshi legal aid systems are functionally equivalent and it is relevant to look at Indian practice to see whether Bangladesh can learn from it.

## 2. OBLIGATION OF STATES TO INTEGRATE LEGAL AID ACTIVITY IN LAW SCHOOL CURRICULUM UNDER THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The structure of legal education represents a combination of the State's public policy as well as academic self-interest of the intending lawyers.[12] According to Jeeves and Macfarlane, the educational experience of the potential lawyers plays a significant role in his or her aims and expectations for future practice.[13] Therefore, legal education must mobilise the necessary legal personnel to serve a wider public and a broad range of interests on the one hand, and to improve the quality of legal services to the poor on the other.[14] Legal aid activity is integrated into law school curricula as a part of the clinical legal education programmes in order to cultivate professional skills and service orientation among the potential lawyers.[15] The purpose of clinical legal education,

[12] Supra note 1 at p. 187.
[13] M. Jeeves and J. Macfarlane, 'Rethinking Legal Education', in: J. Cooper and R. Dhaveen (eds.), *Public Interest Law* 394 (Oxford/New York, Basil Blackwell, 1986).
[14] Supra note 1 at pp. 185-86.
[15] A. Klijn, 'Dutch Legal Services Quality Incentives: The Allegedly "perverse" Effects of the 1994 Legal Aid Act', 33(2) *University of British Columbia Law Review* 438 (2000); V.R.K. Iyer, 'Law and the People' 115 (1972) cited in F. S. Bloch and I. S. Ishar, 'Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States', 12 *Michigan Journal of International Law* 98 (1990).

therefore, is to develop the perception, skills and sense of responsibility of the students for their professional life. [16] It enables law students to comprehend and assume the responsibility for the protection of individual rights, reform of the law, equitable distribution of legal services in society and for the protection of public interest.[17] Thus, clinical legal education provides the students opportunities not only for professional and intellectual development; it also prepares them to practise law as socially and professionally responsible lawyers.[18]

Wilson states that law students in clinics provide legal services to the poor, and it allows them to get in close contact with the problems of that segment of society.[19] This kind of exposure helps train the students to adequately respond to the needs of poor justice seekers[20] and to pursue careers of public interest.[21] Therefore, clinical legal

[16] S. P. Sarker, 'Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India', 19 *International Journal of Clinical Legal Education* 321 (2013); K. Archana, 'Practicability of Clinical Legal Education in India - An Overview', 4 (26) *Journal of Education and Practice* 157 (2013).

[17] N.R.M. Menon, *Clinical Legal Education: Concept and Concerns, A Handbook on Clinical Legal Education* 1 (Lucknow, Eastern Book Company, 1998).

[18] S. P. Sarker, supra note 16 at p. 321; K. Archana, supra note 16 at p. 157.

[19] R. J. Wilson, 'Training for Justice: The Global Reach of Clinical Legal Education', 22(3) *Penn State International Law Review* 423(2004).

[20] A. Klijn, supra note 15 at p. 438; S. P. Sarker, supra note 16 at p. 321; K. Archana, supra note 16 at p. 157; F. S. Bloch and I. S. Ishar, supra note 15 at p. 96.

[21] Barry has stated it more clearly, "Clinics expose students to the impact that the practice of law has on people. No one should pretend that they are prepared to practice without a sense of this impact and a constructive way to think about it… It is law schools that must foster a contextual understanding of what lawyers should do to meet the needs of the country. This means connecting students with communities and involving them in creative solutions that focus on the common good." M. Barry, 'Clinical Legal Education in the Law University: Goals and Challenges', 2007 *International Journal of Clinical Legal Education* 30 (2007).

education serves a two-fold purpose: first, it provides legal services to the poor and trains students to learn about the skills of lawyering, and second, it creates a public-minded legal profession in the future.[22] Moreover, as Pande states, students' involvement in various components of the legal aid programme that includes activities associated with the creation of legal awareness or legal literacy, paralegal work, and other law reform activities is crucial, and has a stronger impact on their successful operation.[23] States are, therefore, required to take appropriate measures, as part of a nationwide legal aid system to encourage the support and establishment of law clinics in universities as well as to provide incentives to allow students to practise in the court under the supervision of a senior lawyer or a law professor.[24]

The obligation concerning the integration of legal aid activity in the legal education of the country has been recognised in various international human rights instruments. These instruments consist of various United Nations (UN) documents involving UN General Assembly resolutions and standards of behavior. The UN documents are

[22] R. J. Wilson, supra note 19 at p. 424; According to Rhode, "If we want lawyers to see public service as a professional responsibility, that message must start in law school." D. L. Rhode, *Access to Justice* 19 (Oxford, Oxford University Press, 2004).

[23] B.B. Pande, supra note 3 at p. 41. Also see, Government of India and UNDP India, *A Study of Law School Based Legal Services Clinics* (2011) at 23. http://www.in.undp.org/content/dam/india/docs/a_study_of_law_school_based_legal_services_clinics.pdf (accessed on 12 March 2016).

[24] Guidelines 11, 12 and 16, the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.

considered the most authoritative and comprehensive in the respective fields.[25] They are important sources for interpreting and understanding States' international legal obligations. They also provide guidance or models for domestic laws that are able to assist policy makers to realise rights at the national level[26]. Among the above-mentioned documents, the *UN Draft Declaration on the Independence of Justice* (the Singhvi Declaration)[27] in its Article 78 stipulates that legal education is required to promote the awareness of the ideals and ethical duties of lawyers and of human rights and fundamental freedoms recognised by national and international law. As far as the responsibility of lawyers is concerned, the Declaration requires States to undertake legal education programmes that have regard to the social responsibilities of lawyers including co-operation in providing legal services to the poor.[28] The *Basic Principles on the Role of Lawyers*[29] acknowledges that lawyers have the obligation to uphold human rights and fundamental freedoms recognised by national and international law in

[25] Richard J. Wilson, 'Principles, Sources and Remedies for Violation of the Right to Legal Assistance in International Human Rights Law', in: *International Legal Aid and Defender System Development Manual* 21 (USA, National Legal Aid and Defender Association, 2010). http://www.nlada.org/Defender/Defender_Publications/International_Manual_2010 (accessed on 14 March 2016).

[26] C. Chinkin, 'Sources', in: D. Moeckli, S. Shah, S. Sivakumaran, D. Harris (eds.), *International Human Rights Law* 92 (Oxford, Oxford University Press, 2013).

[27] Resolution 1989/32, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. http://www.cristidanilet.ro/docs/Shingvi%20Declaration.pdf (accessed on 14 March 2016).

[28] Article 79, the *UN Draft Declaration on the Independence of Justice* (the Singhvi Declaration).

[29] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (27 August to 7 September 1990). http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx (accessed on 11 February 2016).

protecting the rights of their clients and in promoting the cause of justice.[30] It, therefore, requires the educational institutions to ensure that lawyers have appropriate education and training and are made aware of the ideals and ethical duties appropriate to them and of human rights and fundamental freedoms recognised by national and international law.[31] As regards ethical duty, it is commonly said that lawyers have a duty to render legal services to the poor.[32] However, such obligation is not restricted to the moral principle only; it also conjoins with the professional responsibility of lawyers. This is because access to legal services is considered a 'fundamental need'[33] and the legal profession enjoys a monopoly on the delivery of legal services.[34] In other words, the practice of law requires a distinct level of skill and training and lawyers possess such qualities. This imposes a special obligation on them to render legal services to the

[30] Principle 14, *Basic Principles on the Role of Lawyers*.

[31] Principle 9, *Basic Principles on the Role of Lawyers*.

[32] M. S. Jacobs,' Pro Bono Work and Access to Justice for the Poor: Real Change or Imagined Change?' 48 *Florida Law Review* 511-512 (1996); S. Bretz, 'Why Mandatory Pro Bono is a Bad Idea', 3 *Georgetown Journal of Legal Ethics* 623 (1990); L.S. Tudzin, 'Pro Bono Work: Should it be Mandatory or Voluntary', 12 *Journal of the Legal Profession* 112 (1987); S. B. Rosenfeld, 'Mandatory Pro Bono: Historical and Constitutional Perspectives', 2 *Cardozo Law Review* 257-259 (1981).

[33] D. L. Rhode (a), 'Pro Bono in Principle and in Practice', 53(3) *Journal of Legal Education* 430-431 (2003); D. L. Rhode (b), 'Cultures of Commitment: Pro bono for Lawyers and Law Students', 67(5) *Fordham Law Review* 2418 (1999).

[34] L. Sossin, 'The Public Interest, Professionalism and Pro bono Publico', 46 *Osgoode Hall Law Journal* 140, 147 (2008); D. L. Rhode (b), supra note 33 at p. 2419; M. S. Jacobs, Supra note 32 at p. 511; B. F. Christensen, 'The Lawyer's Pro Bono Publico Responsibility', 1981(1) *American Bar Foundation Research Journal* 15-16 (1981); J. Bitowt, 'The Pro Bono Debate', 9 *Student Lawyer* 38(1980).

poor.[35] Therefore, it is significant to include legal services in the law school curriculum in order to create a service-mindedness among the students towards legal aid work as well as to uphold their moral and professional obligation to provide legal services to the poor.[36]

The *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice* was adopted by the UN General Assembly consisting of all the UN Member States in December 2012. It has become a benchmark for access to justice because it is the first international instrument that absolutely concentrates on legal aid.[37] The *Principles and Guidelines* is drawn from international standards and recognised best practice, and presents a progressive,[38] complete and realistic model of legal aid that considers the great variety among legal systems and socioeconomic conditions.[39] It is, thus, comprehensive in nature and introduces a complete programme for an effective and fair

[35] D. L. Rhode (b), supra note 33 at p. 2419; J. Giddings**,** 'Legal Aid Services, Quality and Competence: Is Near Enough Good Enough and How Can We Tell What's What?' 1 *Newcastle Law Review* 67-68 (1996); Z. I. Macaluso, 'That's O.K., This One's on Me: A Discussion of the Responsibilities and Duties Owed by the Profession to Do Pro Pono Publico work', 26 *University of British Columbia Law Review* 65 (1992).
[36] M. J. Toll and J. L. Allison, 'Advocates for the Poor', 46 *Denver Law Journal* 85 (1969).
[37]A. Willems, 'The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems: A Step toward Global Assurance of Legal Aid?' 17(2) *New Criminal Law Review* 185 (2014).
[38] Open Society Justice Initiatives, Fact Sheet: UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.
http://www.opensocietyfoundations.org/sites/default/files/factsheet-un-principles-guidelines-20130213.pdf (accessed on 15 March 2016).
[39] Recital 10, the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.

legal aid scheme.[40] The *Principles and Guidelines* allows States to work with a wide range of legal aid service providers to increase outreach, quality and facilitate access to legal aid and therefore, has taken into consideration different models for the provision of legal aid. One of these models involves the establishment of law clinics in the law department of a university. As mentioned earlier, law clinics provide students an opportunity to get exposure to the problems of the poor and provide free legal assistance to them. This is an integrated approach between the government and other organisations and is able to ensure the maximum coverage of the legal aid beneficiaries. Therefore, as the *Principles and Guidelines* requires, States are responsible for taking appropriate measures to encourage the support and establishment of such clinics in university law departments and provide incentives to allow students to practise in court under the supervision of a senior lawyer or a law professor.[41]

In sum, international human rights norms acknowledge the role of law students in rendering legal aid to the poor. Therefore, integration of legal aid activity in the law school curriculum is crucial and is able to motivate prospective lawyers towards legal aid work. This ultimately can impact on the outreach and quality of the service.

[40] Supra note 37 at pp. 190,198.
[41] Guidelines 11, 12 and 16, the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.

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## 3. LEGAL AID ACTIVITY IN INDIAN LAW SCHOOLS

In 1976, the *Constitution (forty-second amendment) Act*[42] inserted Article 39-A in the Indian Constitution. Article 39A refers to a direct and express provision of legal aid as one of the Directive Principles of State policy and provides that States shall secure that the operation of the legal system promotes justice on the basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Articles 14[43] and 22(1)[44] also make it obligatory for the State to ensure equality before the law and a legal system which promotes justice on the basis of equal opportunity for all. In 1987, India established its national legal aid system with the adoption of the Legal Services Authorities Act (hereinafter LSAA).[45] The LSAA gives a statutory base to legal aid programmes throughout the country in a uniform pattern. For this, a nationwide network has been

[42] *The Constitution (forty-second amendment) Act*, 1976. http://india.gov.in/my-government/constitution-india/amendments/constitution-india-forty-second-amendment-act-1976 (accessed on 15 March 2016). To note, the Republic of India is governed in terms of the Constitution of India which was adopted by the Constituent Assembly on 26th November 1949 and came into force on 26th January 1950. http://india.gov.in/my-government/constitution-india (accessed on 15 March 2016).

[43] Article 14 reads, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

[44] Article 22(1) states, "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice".

[45] Act 39 of 1987.

envisaged under the Act for providing legal aid and assistance. The National Legal Services Authority (hereinafter NALSA) is the apex body constituted under Section 3 of the Act.

Legal aid activity has become part of the curriculum in Indian law schools through clinical legal education programmes. At present clinical legal education is a mandatory part of India's legal education that traces its origins to both the legal aid and legal education reform movements with a view to improving the quality of law practice as well as making lawyers aware of their professional and public responsibility.[46] The involvement of Law Colleges in legal aid activity commenced in India when the legal aid movement gained momentum in the 1960s. It was premised on the assumption that law schools could play a significant role in providing legal services and that would be possible through Legal Aid Clinics.[47] Moreover, most members of the Indian legal community including law teachers, the bar, the bench and legal aid experts have admitted that isolation or exclusion of law schools from legal aid programmes would

[46] S. P. Sarker, supra note 16 at p. 321; K. Archana, Supra note 16 at p. 157; F. S. Bloch and I. S. Ishar, supra note 15 at p. 96.

[47] F. S. Bloch and I. S. Ishar, supra note 15 at p. 96; F. S. Bloch and M. R. K. Prasad, 'Institutionalizing a Social Justice mission for Clinical Legal Education: Cross-national Currents from India and the United States', 13 *Clinical Law Review* 166 (2006); S. P. Sarker, supra note 16 at p. 321.

not serve to achieve the aim of the service, rather would be frustrating for legal aid, legal education, and the legal profession.[48]

Various reports of the Law Commission and the Ministry of Law and Justice of India have acknowledged the significance of legal education in establishing an effective legal aid system.[49] These reports have called upon law students to engage in public service while in law schools. In 1981, the government appointed the Committee for Implementing Legal Aid Schemes. The Committee insisted that court-oriented legal aid programmes alone are not adequate to provide social justice in India. It, therefore, placed more emphasis on other components of the legal aid system, for example, the promotion of legal literacy, the organisation of legal aid camps to carry legal services to people's doorsteps, training paralegals to support legal aid programmes, establishing legal aid clinics in law schools and universities, and bringing class actions through public interest litigation.[50]

[48] F. S. Bloch and I. S. Ishar, supra note 15 at p. 97; F. S. Bloch and M. R. K. Prasad, Supra note 48 at p. 166; Jethmalani, 'Objectives of Legal Education', in: S. K. Agrawala, S. P. Sathe and P. K. Irani (eds.), *Legal Education in India: Problems and Perspectives* 52, 56-57 (University of Poona, N. M. Tripathi, 1973).

[49] For instance, Fourteenth Report of the Law Commission of India (1958), 184th Report of the Law Commission of India on the Legal Education and Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956 (December 2002), Expert Committee on Legal Aid (1973) and Committee on National Juridicare: Equal Justice—Social Justice (1976).

[50] S. P. Sarker, supra note 16 at p. 325; F. S. Bloch and M. R. K. Prasad, supra note 48 at p. 175.

The Bar Council of India also plays a significant role in the integration of legal aid activity in law schools. In 1997, the Bar Council issued a circular[51] that makes legal aid activity an integral part of the academic curriculum since the academic year 1998-99.[52] To be more specific, the Bar Council has mandated for all Indian law schools four practical papers under the clinical component in the curriculum. One of these papers is specifically designed to provide various services to society including Lok Adalat, legal aid camps, legal literacy and paralegal training in order to involve the students with the community.[53] In 2008, the Council approved the rules on "Standards of Legal Education and Recognition of Degrees in Law".[54] The rules mandated all law colleges to "establish and run a legal aid clinic under the supervision of a senior faculty member".[55] In 2010, the Bar Council reiterated the same in its Inspection Manual 2010.[56] The National Legal

[51] Bar Council of India, Circular No. 4/1997 cited in F. S. Bloch and M. R. K. Prasad, supra note 48 at p. 180; *Promoting Clinical Legal Education in India: A Case Study of the Citizen Participation Clinic*, Joint Report-Cornell University Law School and Jindal Global Law School (2012) at 8. http://www.gaje.org/wp-content/uploads/2012/09/Cor-JGLS-web_low.pdf (accessed on 5 March 2016).

[52] S. P. Sarker, Supra note 16 at p. 326.

[53] S. P. Sarker, supra note 16 at p. 326; F. S. Bloch and M. R. K. Prasad, supra note 48 at p. 180; J. Schukoske and R. Adlakha, 'Enhancing Good Governance in India: Law Schools and Community-University Engagement', 3 *Journal of Indian Law and Society* 207 (2012). http://jils.ac.in/wp-content/uploads/2012/11/jane-roopali1.pdf (accessed on 4 March 2016).

[54] Department of Justice, Government of India and UNDP India, *Conference Report, International Conference on Equitable Access to Justice: Legal Aid and Legal Empowerment*, New Delhi, India (17 – 18 November 2012) at 21. http://www.in.undp.org/content/dam/india/docs/DG/equitable-access-to-justice-legal-empowerment-legal-aid-and-making-it-work-for-the-poor-and-marginalised.pdf (accessed on 15 March 2016).

[55] Ibid.

[56] The *Bar Council of India's Inspection Manual* (2010) at 35.

Services Authority (Legal Aid Clinics) Scheme, 2011[57] is also relevant and requires law colleges and law universities to set up permanent legal aid clinics attached to their institutions that function with the co-ordination of State Legal Service Authorities.[58]

Thus Indian legal education places considerable emphasis on clinical legal education so that students can learn the law while acquiring professional skills. As a component of this programme, students are expected to realise the role of legal aid in the society, its beneficiaries, and the nature of their problems. A study supported by the Government of India and UNDP Project on Access to Justice found that nearly 82 percent of the colleges have an assigned faculty to conduct legal aid activity. Yet it is not effective because legal aid activity is still a non-credit, extra-curricular activity in Indian law schools.[59] The study further revealed that several legal aid clinics were started merely to satisfy the mandatory requirement prescribed by the Bar Council. Clinics do not have appropriate functional structure or policy on the kind of services they would offer.[60]

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http://www.barcouncilofindia.org/wp-content/uploads/2010/06/Inspection-Manual.pdf (accessed on 5 March 2016).

[57] https://www.google.com.bd/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiejO3c0MLLAhWXjo4KHQuBDeYQFggaMAA&url=http%3A%2F%2Fnalsa.gov.in%2FSchemes%2FNALSA%2520LEGAL%2520AID%2520CLINICS%2520REGULATIONS%2C%25202011.doc&usg=AFQjCNH1cGM1l92fOTrCtWRFvcPGd7Binw&bvm=bv.116636494,d.c2E&cad=rja (accessed on 15 March 2016).

[58] Paras 24-26.

[59] Government of India and UNDP India, *A Study of Law School Based Legal Services Clinics* (2011) at 2, 45-47. http://www.in.undp.org/content/dam/india/docs/a_study_of_law_school_based_legal_services_clinics.pdf (accessed on 15 March 2016).

[60] Also see, B.B. Pande, Supra note 3 at p. 36.

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Most of the activities of the clinics are limited to organising a few Legal Literacy Camps.[61] It is also found that the law colleges do not make adequate effort to inform the community about their existence and the availability of services. As regards providing legal advice or participation in client interviewing, the performance of the colleges is far from the desired level.[62] The situation is similar in offering paralegal services and law reform. According to the above-mentioned study, one of the drawbacks in the clinical legal education of India is the inability of full-time law teachers and students to appear in court on behalf of legal aid clients.[63]

However, the same study also found standard practices in seven law schools that are engaged in a variety of legal aid activities.[64] For instance, V.M. Salgaocar College and Jindal Law School work on Rural Good Governance. Symbiosis Law School has been conducting a unique programme to provide legal aid in two ways: it has created a Legal Aid Fund and deployed a few lawyers to a selected village. Again the Indian Law Society, Pune established clinics both inside and outside its campus. Students of JSS Law College, Mysore conduct a huge legal literacy programme. Other activities by these colleges include paralegal services, public surveys, community empowerment

[61] Supra note 59 at 2, 45-47.
[62] Ibid.
[63] Ibid.
[64] Supra note 59 at 3, 47-57.

programmes, implementation of Social Welfare Programmes, Prison Clinics and Consumer Clinics.[65] The study, therefore, recommends that these exemplary practices should be adopted in different parts of the country.

In short, the Indian legal aid system provides law schools a unique opportunity to achieve the social justice mission of legal education. However, this mission has not yet been achieved due to various factors including the lack of adequate financial and logistical support, lack of skilled academic staff, and other related provisions. Despite these shortcomings, certain activities of particular Indian law schools have the potential of addressing the values of legal aid and of the social justice mission in the broad sense. These examples can be followed by other Indian states as well as other countries with similar socio-economic backgrounds in order to develop their legal education and the legal aid system.

## 4. LEGAL AID ACTIVITY IN BANGLADESHI LAW SCHOOLS

In Bangladesh, the right of equality before the law is guaranteed in Article 27 of the Constitution. The right to a fair trial is also ensured.[66] Yet the formal legal system is inaccessible to the poor due to a variety of factors – they include the enormous cost of

[65] Ibid.
[66] Article 33 of the Constitution of Bangladesh.

engaging a lawyer, cost for travelling long distances, paying court fees, collecting evidence and judgements, complexity of law and legal institutions and others.[67] According to Khair, the need for legal aid to the poor in Bangladesh has been strongly pursued over the years to enable them to access justice.[68] However, organised State intervention towards legal aid is not very old in the country.[69] The first initiative was taken in 1994 when the government introduced a legal aid fund to be distributed through the District and Sessions Judge of each district.[70] In 1997, the government established a National Legal Aid Committee according to a Resolution of the Ministry of Law, Justice and Parliamentary Affairs.[71] The committee was chaired by the Minister of the Ministry of Law, Justice and Parliamentary Affairs. The Resolution also involved District Committees that were to be chaired by the District and Sessions Judges. However, there is a lack of official data on the actual coverage of this mechanism.[72] In 2000, the government enacted the Legal Aid Services Act[73] (hereinafter LASA) to put the

[67] S. Khair, *Legal Empowerment for the Poor and the Disadvantaged: Strategies Achievements and Challenges. Experiences from Bangladesh* 43-51 (Dhaka, Department of Justice Canada's CIDA Legal Reform Project in Bangladesh, 2008).
[68] Ibid at p. 212.
[69] S. Muralidhar, Law, *Poverty and Legal Aid: Access to Criminal Justice* 357 (New Delhi, LexisNexis/Butterworth, 2004); S. Khair, Supra note 67 at p. 221.
[70] N. A. Chowdhury and S. Malik, 'Awareness on Rights and Legal Aid Facilities: The First Step to Ensuring Human Security', in: *Human Security in Bangladesh: In Search of Justice and Dignity* 42 (United Nations Development Programme /UNDP), Bangladesh, 2002).
[71] S.R.O .No. 74-Law/1997, dated 19 March 1997.
[72] N. A. Chowdhury and S. Malik, Supra note 70 at pp. 43-44.
[73] Aingoto Sohayota Prodan Ain, Act No. VI of 2000.

legal aid activities on a firm footing. The National Legal Aid Services Organization (hereinafter NLASO) was established for carrying out the purposes of the LASA in pursuance of its section 3(1).[74] Moreover, the LASA creates a nationwide network for the administration of legal aid services and therefore accommodates provisions for various Committees at the national and district level.

As far as the integration of legal aid activity in law school curricula is concerned, clinical legal education programmes are absent in Bangladesh. This prevents law schools from providing a unique opportunity to train prospective lawyers to approach the law with the commitment and skills to render justice to those living in poverty. However, in the early-1990s three major public universities[75] of Bangladesh launched clinical legal education programmes on an ad hoc basis with the sponsorship of the Ford Foundation.[76] The underlying purpose of these programmes was to train law

[74] S.R.O.No.146-Law/2000.

[75] S. Golub, 'From the Village to the University: Legal Activism in Bangladesh', in: M. McClymont and S. Golub (eds.), *Many Roads to Justice* 128, 144-145 (USA, the Ford Foundation, 2000); R. Hoque**,** 'Teaching Law for Development? Legal education: Needs major overhaul', *The Daily Star*, Dhaka, May 5, 2012. http://archive.thedailystar.net/law/2012/05/01/index.htm (accessed on 24 Feb 2016).

[76] Law Commission People's Republic of Bangladesh, *Review of Legal Education in Bangladesh, Final Report*, Dhaka 2006 at 41.
http://r.search.yahoo.com/_ylt=AwrTcc6ZIOhWPUMAOOknnIlQ;_ylu=X3oDMTEybDg3MTJ1BGNvbG8DZ3ExBHBvcwMxBHZ0aWQDQjE3MThfMQRzZWMDc3I-/RV=2/RE=1458082073/RO=10/RU=http%3a%2f%2fwww.lawcommissionbangladesh.org%2freports%2freport_84%2fFinal%2520Report%2fReview%2520of%2520Legal%2520Education%2520in%2520Bangladesh-Final%2520Report.doc/RK=0/RS=niiVruXv5jOuPwnldeNTwZnPUxo- (accessed on 15 March 2016).

graduates to get involved in the social and developmental causes of society.[77] In 2009, the Law Commission of Bangladesh recommended the government incorporate compulsory clinical legal education in law schools; the main purpose of this programme would be to render legal services to the poor.[78] However, there is a lack of substantial effort on the part of successive governments to put the recommendation into effect. At present only one university, University of Chittagong, offers clinical legal education as a component of its syllabus, but the clinic has confined its activities mostly to the organisation of various workshops and lectures and therefore has virtually disdained its clinical character.[79] In short, the combination of pro-justice and vocational orientations in the Bangladeshi legal education is currently absent.[80] In other words, the students are not adequately motivated, through academic exercise, to use the law for the poor people.[81] As a result, they learn to become mere lawyers to fight legal cases

[77] R. Hoque, Supra note 75.
[78] http://www.lawcommissionbangladesh.org/reports/92.pdf (accessed on 13 May 2014).
[79] R. Hoque, Supra note 75.
[80] Ibid.
[81] C. Farid, 'New Paths to Justice: A Tale of Social Justice Lawyering in Bangladesh', 31(3) *Wisconsin International Law Journal* 459 (2013-2014); R. Hoque, *Room for Improvement*.
http://www.dandc.eu/en/article/law-schools-must-do-much-better-job-bangladesh (accessed on 14 March 2016).

without acquiring adequate service-mindedness to serve the poor people of the community.[82] It also limits the coverage of legal aid activities in the country.

However, as discussed earlier, international human rights norms recognise that lawyers have the obligation to protect the rights of their clients and promote the cause of justice. As a result, they call on States to establish legal education programmes that include appropriate training and activities in developing a service-mindedness among prospective lawyers towards legal aid work. Particularly the *Principles and Guidelines* advances a collaborative approach between the government and law schools of the country. This collaboration is able to develop a sense of responsibility among the students to render legal services for the poor. It is also expected to increase the outreach and quality of the service. It has been further shown that the Bar Council of India has mandated legal aid activities within the academic curricula of law schools.[83] The NALSA has also made it obligatory for law schools to establish legal aid clinics by the adoption of the National Legal Services Authority (Legal Aid Clinics) Scheme, 2011. As a result, despite various drawbacks, some Indian law schools have established exemplary practices with regard to the establishment and conduct of effective legal aid

[82] L. B. Rahman, 'To improve legal education', *The Daily Star* (online), Dhaka, Bangladesh, February 17, 2015. http://www.thedailystar.net/law-and-our-rights/to-improve-legal-education-65253 (accessed on 18 February 2015).
[83] See section 3.

clinics. In Bangladesh, the LASA does not have any specific provision that requires legal aid services to be integrated into the legal education of the country in order to equip future lawyers with adequate service orientation and motivation. More specifically, the NLASO has not approached the Bar Council[84] or the University Grants Commission or issued any resolution to include the scheme of law clinics as a mandatory part of the academic curriculum. Therefore, it can be said that, as regards the integration of legal aid activity, the current standard of Indian legal education is more advanced than Bangladesh. However, the strategic plan of the NLASO includes that the organisation aims to work for the integration of legal aid activities in law school curricula. Although the plan is not clear as to how the current legal education system would be rearranged in order to contribute to legal services for the poor, the NLASO has started to cooperate with various student legal aid forums. It has organised workshops or seminars on different occasions.[85] This kind of initiative is commendable but the lack of provision in the LASA or the taking of concrete steps to incorporate legal aid clinics as a compulsory component is not able to produce any tangible and durable development in

[84] There are three bodies that regulate the legal profession in Bangladesh: the district Bar Association in each district, Supreme Court Bar Association in the Supreme Court and the central institution is the Bangladesh Bar Council. The Bar Council issues licenses to lawyers, and monitors the disciplinary and welfare activities of all lawyers.

[85] News of different events and activities of the NLASO and in general of the government legal aid services are posted in a Facebook group, 'National Legal Aid Forum.' Officials of the NLASO are actively involved in the administration of this group. The link to the group is- https://web.facebook.com/groups/173549189481223/ (accessed on 20 April 2016).

Bangladeshi legal education for providing legal aid to the poor. Therefore, the current provision of the LASA is not comprehensive with regard to the integration of legal aid activities in law school curricula as envisaged by international human rights standards. This requires the NLASO to take more vigilant initiatives so that law schools can be an effective avenue to render legal services to the poor.

## 5. CONCLUSION

Legal education builds the foundation of the service the legal community offers to any nation.[86] If law students at the formative stage of their career are exposed to legal aid services, they become motivated to deliver the service when they enter into professional life. International human rights norms have also recognised the role of legal education in creating a profession with sincere appreciation and commitment to the need to provide legal services to the poor. Legal education in Bangladesh, therefore, is required to explore the potential of clinical legal education with a compulsory component of legal aid programme as demonstrated by international human rights standards. The NLASO, University Grants Commission and Bar Council should make coordinated efforts to make this programme real and effective. In addition, Bangladesh should follow the standard practices of particular Indian law schools. However, given the

[86] R. Hoque, Supra note 81.

drawbacks in the Indian system, Bangladesh should take appropriate measures so that clinical legal education programmes become a credit-earning course for the students. Also, incentives should be provided to allow students to represent legal aid clients before the Courts under the supervision of a senior lawyer or a law professor. Law schools should undertake programmes to organise legal literacy camps and make adequate efforts for informing the community about their existence and the kind of services they offer. Thus, law schools and legal aid committees can complement each other in the conduct of the legal services programme in Bangladesh.