Editorial

Spring is here at last!

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Spring brings with it this year a blossoming of clinical ideas, linking across editions, continents and jurisdictions.

Continuing the conversation about Health Law started by Leslie Wolf and colleagues in the last edition, Elizabeth Curran, Isobel Ryder and Caroline Strevens provide an insight into the important collaboration between the study of health and law in a pilot interdisciplinary student clinic. They explore the potential for this kind of pedagogic innovation to challenge stereotypes and foster more holistic practices.

From Australia, Jacqueline Weinberg gives insight into the use of Alternative Dispute Resolution in clinic as a pedagogy that helps students to understand the role of litigation and adversarial techniques in a lawyer's arsenal, as well as providing an additional set of skills, knowledge and dispositions in negotiation and mediation.

Continuing our discussion of mediation, in his 'Proposal for an Italian Family Mediation Clinic', Andrea Gallinucci-Martinez argues the case for more clinic based learning for law students globally, and specifically the introduction of a family mediation clinic at Libera Università Maria SS. Assunta ("LUMSA") in Rome. He explores the potential for clinical legal education to fulfil commitments to social justice

through engagement with the community and the learning opportunities this presents for students.

Francina Cantatore contributes an important study into the development of professional skills during pro-bono student work. She urges Law Deans to create better infrastructure to support pro-bono legal clinics for the benefit of their students.

One potential model for this is explored by Louise Hewitt in her *Practice Report,* where she describes the creation of employer/employee environments in Innocence Projects in London which provide student 'employees' with an understanding of the real life application of law through pedagogy which combines work based and experiential learning.

In our *From the Field* section, Pat Heather Feast presents us with an argument for the incorporation of work based models of appraisal as effective methods for the assessment of students in clinical legal education using a case study from the University of Portsmouth. These methods motivate students through a process of long term and regular feedback which is both critical and supportive.

In our second *From the Field* piece, Cecilia Blengino provides a rich account of the synergies that support clinical work in prisons, based around the experiences of the innovative clinic at the University of Turin.

Turin will be hosting the upcoming 6th Conference of the European Network for Clinical Legal Education (ENCLE), entitled "Clinical Legal Education: Innovating

Legal Education In Europe.", on 20th and 21st September 2018 in cooperation with the Department of Law of the University of Turin (UNITO) and the International University College of Turin (IUC). The Call for Papers is now open!

While you are planning your clinical travels, another reminder of the next IJCLE conference hosted by Monash University in Melbourne, Australia on 28th-30th November 2018. The theme of the conference is ***'Adding Value – How Clinics Contribute to Communities, Students and the Legal Profession'*** follow this link for more details. It promises to be an excellent conference with the added bonus of the option to attend/submit a paper to the International Legal Ethics Conference (6-8th December) following shortly thereafter.

REFRAMING LEGAL PROBLEMS:

EDUCATING FUTURE PRACTITIONERS THROUGH AN

INTERDISCIPLINARY STUDENT CLINIC

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Abstract

This article introduces a pilot clinic that has been designed and implemented at Portsmouth Law School in partnership with the School of Health Sciences. The benefits and challenges of interdisciplinary team working identified in the health science and legal education literature will be discussed. It looks at the rationale for this innovative development and speculates on the potential for a new professional curriculum that may emerge.

The philosophy driving this pilot clinic is to contribute to breaking down silo thinking in professional students and build trust in the health and legal systems. This initiative will expose health professional and law students to holistic and therapeutic approaches to problem solving, teaching teamwork, collaboration and to breaking down the negative stereotypes of lawyers.

The proposed pilot clinic at the University of Portsmouth will provide new opportunities for students studying law and adult nursing to explore how interdisciplinary practice might build bonds of trust between professionals. It will also enable those involved to see potential networks, signposts and links, in order to improve client outcomes.

This new development, taking lessons from educational practice in health sciences, provides professional and teaching staff operating the clinic to build a new collaborative and dynamic joint curriculum.

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This new form of clinic, it is argued, provides an alternative to traditional perceptions of clinical teaching across multidisciplinary paradigms.

Introduction

The article will discuss why a pilot interdisciplinary student clinic (IDSC) has emerged as a potentially powerful way of educating better and more responsive future practitioners in nursing, law and allied health disciplines. This, we argue, has rich opportunities for improving the professional education and mutual understanding of the participating students and future practitioners. The potential community impacts of the IDSC will be discussed elsewhere.

The authors see a critical need in universities to better prepare the emerging professionals through meaningful interdisciplinary collaboration. The pilot IDSC at the University of Portsmouth will provide new opportunities for students studying law and adult nursing to explore how interdisciplinary practice might enhance bonds of trust between professionals and uncover a new collaborative and dynamic joint curriculum. In the longer term, the clinic could expand to include students of social work, pharmacy and dentistry in a joint learning environment. We anticipate that the IDSC environment will provide fertile ground for skill development in problem solving, relationship-building, communication and collaboration skills. Research suggests that skills of good client interviewing, triage, peer to peer learning are skills that different professional disciplines can share even though their roles may differ.[2]

[2] Harris MF, et al (2016) 'Inter-professional teamwork innovations for primary health care practices and practitioners: evidence from a comparison of reform in three countries' 9 *J Multidiscip Healthc*, 35–

There are likely to be many unforeseen learning opportunities which will emerge within the IDSC, which our evaluation will capture, including the possibility of increased appreciation of each other's roles, professional knowledge and ethical responsibilities. It is hoped that this may lead to the reduction of inter-professional conflict in the longer term.

Healthcare can tend to be defensive in nature, aiming to reduce patient claims for compensation for negligence. This article reports on an approach to education that is positive in nature and could influence students' thinking about their future professional practice.

Author one's studies have demonstrated that a significant barrier to team working exists between professionals of different disciplines. It has provided some evidence that this results from poor previous stereotypes of lawyers and the adversarial system and poor experiences of lawyers by non-legal professionals who will put their client risk of relapse first or resist referral because of such poor experiences.[3] The same

46, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4743635/ accessed 12 September 2017; Tobin Tyler, E (2008), 'Allies Not Adversaries: Teaching Collaboration to the next Generation of Doctors and Lawyers to Address Social Inequality', Roger Williams University School of Law Faculty Papers. Paper 17, 249. [Online] http://lsr.nellco.org/cgi/viewcontent.cgi?article=1017&context=rwu_fp accessed 14 May 2017; Author 1, Foley T 'Integrating Two Measures of Quality Practice into Clinical and Practical Legal Education Assessment: Good client interviewing and effective community legal education', *International Journal of Clinical Legal* Education, 21(1), 2014, pp. 69–92.

[3] Author 1 (2015) Final Evaluation Report for the Legal Services Board Victoria - 'Why Didn't You Ask?' - Evaluation of the Family Violence Project of the Loddon Campaspe Community Legal Centre (April 16, 2015) 64-72. <http://ssrn.com/abstract=2631378; Author 1, (2017) A Research and Evaluation Report for the Bendigo Health–Justice Partnership: A Partnership between Loddon Campaspe Community Legal Centre and Bendigo Community Health Services (October 31, 2016). Available at http://lcclc.org.au/wp-content/uploads/2017/11/Abridged-HJP-Final-Research-Report.pdf Chapter 11, 145-151 and 173

phenomenon has also emerged in a United States studies by Sandefur and Cunningham.[4] The University of Portsmouth IDSC seeks to provide a way of breaking down such stereotypes earlier and in undergraduate study, thus bringing about interdisciplinary cooperation that might be taken on into professional life.

This article's structure will frame the discussion under the following headings: Definition of terms; literature review; rationale; context; the development and evaluation of the IDSC; and conclusions.

Definition of terms

Different and often problematic nomenclature and understandings across the different literature, professions and pedagogy exists. The authors thought it might be useful to summarise existing terminology and then provide their own definitions, in order to avoid misunderstandings and to frame the article's discussion.

Clinical Legal Education

Clinical Legal Education is described as 'a premier method of learning and teaching. Its intensive, one-on-one or small group nature can allow students to apply legal theory and develop their lawyering skills to solve client legal problems. Its teaching pedagogy is distinguished by a system of self-critique and supervisory feedback

[4] Sandefur R (2014-15) 'Bridging the Gap: Rethinking Outreach for greater Access to Justice, 37 *UALR L. Rev.* 721 at 726; Cunningham CD (1990-1991) 'Evaluating Effective Lawyer- Client Communication: An International Project Moving from Research to Reform', *67 Fordham L. Rev*, 1959, 1962.

enabling law students to learn how to learn from their experiences'.[5] It is a form of experiential learning through engagement with the practice of law.[6] It aims to contextualise the study of law and draw on student learning in other courses to guide and support them in identifying, developing and applying ethical legal practice skills. But its scope is much wider than simply 'skills', it also aims to develop students' critical understanding of approaches to legal practice, to their understanding of the roles of lawyers in relation to individual clients and social justice issues and to encourage and to validate student aspirations to promote access to justice and equality through the law.[7]

Clinical Legal Education in the UK has grown rapidly over the last 20 years and now features as part of the curriculum in the majority of Law Schools.[8] The educational approach has been defined and discussed by many researchers. Kerrigan's definition, "learning through participation in real and realistic interactions coupled with reflection on this activity", fits with the model being discussed in this paper.[9]

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[5]Evans A, et al 'Best Practices in Clinical Legal Education', Australian Government Office for Learning and Teaching, September 2012, 4. (http://www.cald.asn.au/assets/lists/Resources/Best_Practices_Australian_Clinical_Legal_Education_Sept_2012.pdf) accessed 29/11/13.

[6] 'Clinical Legal Education Guide, Your Guide to Clinical Legal Education Courses Offered by Australian Universities in 2011 and 2013', University of New South Wales. (http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/doc/eBulletins/CLE_GUIDE_2011_12.pdf) accessed 2/12/13.

[7] Author 1, Foley T, (2014) 'Integrating Two Measures of Quality Practice into Clinical and Practical Legal Education Assessment: Good client interviewing and effective community legal education', *International Journal of Clinical Legal* Education, 21(1), 69–92.

[8] For a review commenting upon the implications of this growth see Dignan, F., Grimes, R., & Parker, R. (2017). 'Pro Bono and Clinical Work in Law Schools: Summary and Analysis'. *Asian Journal of Legal Education*, *4*(1), 1-16.

[9] Kevin Kerrigan and Victoria Murray, 'A Student Guide to Clinical Legal Education and Pro Bono'

The phrase clinical legal education is well-known in Law Schools and is the subject of this journal. There are a number of clinic models and these have been documented[10] in a recent review of the changing provision in UK Law Schools by Dignan et al. It describes a situation where law students provide free legal advice for members of the community, and this is how we use the term in this article. However, the term clinical would not be used in health literature even though Clinical Legal Education is a standard term in law. 'Clinics' in the health setting tend to be places where health services are delivered to members of the public which may, or may not, involve students working alongside the professionals. It also denotes a mode of practice informed research through 'clinical trials.' This has highlighted for the authors, the many differences even just in definition and application of language that exist in different professional discourse and the many opportunities for developing a rich new curriculum.

Interdisciplinary Student Clinic

The term interdisciplinary in this context, is borrowed from health, primary allied health and educational spheres and is not so common in legal language. Nacarrow notes, 'Terms such as interdisciplinary, inter-professional, multi-professional, and

(Basingstoke, Palgrave Macmillan, 2011 cited in Combe, M.M., 2014. Selling intra-curricular clinical legal education. *The Law Teacher*, *48*(3), pp.281-295.

[10] Dignan et al ibid n 9

multidisciplinary are often used interchangeably in the literature to refer to both different types of teams and different processes within them'[11]

Our definition, involves students in meaningful collaboration that promotes learning from different disciplines. In this case, it is applied within education and training pedagogies to describe studies that use methods and insights of several established disciplines or traditional fields of study. We propose to adopt the enhanced 'team model' posited by Weinberg and Harding[12]. Lerner and Talati describe an "experientially integrated team"[13] in which more than one discipline is represented in both the designers and delivers of the curriculum and in the students. Our proposed IDSC will have Nursing and Law staff working together to supervise students from these disciplines, as they provide information and support to members of the public. This novel learning environment provides an opportunity for reviewing and creating an innovative curriculum for Law and Nursing students so that students can learn from each other's disciplines. These ideas will be explained and justified in the next section.

[11] Nancarrow S A et al (2013). 'Ten principles of good interdisciplinary team work' Human Resources for Health , 11:19 Page 3 of 11 http://www.human-resources-health.com/content/11/1/19 accessed 12 September 2017. For a discussion of interdisciplinary practice and education with a legal context see Maharg P (2007) 'Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-first Century' Taylor & Francis Ltd.

[12] Weinberg A and Harding C, (2004) 'Interdisciplinary Teaching and Collaboration in Higher education: A Concept Whose Times Has Come' 14 WASH.U.JL& POL'y 15.19 cited in Alan Lerner and Erin Talati (2006) 'Teaching Law and Educating Lawyers: Closing the Gap through MD experiential learning' Vol 10 *International Journal of Clinical Legal Education*, at 110.

[13] Lerner A and Talati E (2006) 'Teaching Law and Educating Lawyers: Closing the Gap through MD experiential learning' Vol 10 International Journal of Clinical Legal Education, at 110.

Multi-Disciplinary Practice

The term Multi-disciplinary practice (MDP) is one used in legal circles for a professional practice model. It is a term used to describe commercial models of practice where lawyers work with accountants or financial advisers. It is defined by the Solicitors Regulation Authority as "A multi-disciplinary practice (MDP) is a licensed body that combines the delivery of reserved legal activities with other legal and other professional services. 'Reserved legal activity' and 'legal activity' have the meaning prescribed by s12 of the Legal Services Act 2007(LSA)."[14] MDP intends to provide clients with a raft of professionals co-located for an efficient client service. The term is not the most suitable to describe the clinic model evaluated in this article because the aim of the IDSC is not to adopt such a siloed approach. The pilot being delivered at Portsmouth Law School will consist of Nursing and Law students delivering services to clients as teams. There will be no system of referral by one professional discipline to another. For this reason, the term MDP has not been chosen.

Inter-professional Practice

Within health education, the terms multi-disciplinary, interdisciplinary and inter-professional have been used[15], and no consensus has been reached as to the most

[14] See http://www.sra.org.uk/sra/policy/policies/multi-disciplinary-practices-sept-2014.page

[15] Natalie L. Murdoch, Sheila Epp & Jeanette Vinek. (2017) Teaching and learning activities to educate nursing students for interprofessional collaboration: A scoping review. Journal of Interprofessional Care. Pages 744-753. Received 11 Jun 2016, Accepted 14 Jul 2017, Published online: 18 Sep 2017.
Erin Abu-Rish, Sara Kim, Lapio Choe, Lara Varpio, Elisabeth Malik, Andrew A White. (2012) 'Current trends in interprofessional education of health sciences students: A literature review Journal of Interprofessional Care'
Pages 444-451 | Received 16 Dec 2011, Accepted 21 Jul 2012, Published online: 27 Aug 2012

inclusive and appropriate term. In recent reviews of effectiveness of such education, the term "inter-professional education" has been adopted when students or registrants from different health professional groups learn or work collaboratively.

The term "interdisciplinary" has been chosen over and above inter-professional because it more accurately reflects the nature of the relationship that we seek to develop. The nature of professions can mean that they think and act in silos, which can disrupt effective teamwork. There is a danger that, using the term "inter-professional", we might discourage the students from identifying themselves as equal partners in a new professional paradigm. By removing the link to the professions, our philosophy is to influence the way that students begin to think about the "others" that they work with. Each discipline brings a unique perspective on the world and our pilot IDSC will encourage students to reflect on these different perspectives, to the benefit of clients.

Literature review

The Health Education literature, it is argued, has developed because of a need to reduce the risk of error[16] and is thus essentially negative in tone. The rationale behind

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Download citation https://doi.org/10.3109/13561820.2012.715604
M. Hammick, D. Freeth, I. Koppel, S. Reeves & H. Barr. (2009) 'A best evidence systematic review of interprofessional education: BEME Guide no. 9.' Medical Teacher. Pages 735-751 | Published online: 03 Jul 2009
Download citation https://doi.org/10.1080/01421590701682576

[16] Lennen N and Miller B. 'Introducing Interprofessional Education in Nursing Curricula. Teaching and Learning in Nursing'. Volume 12, Issue 1, January 2017, Pages 59-61
M. Hammick, D. Freeth, I. Koppel, S. Reeves & H. Barr. (2009)' A best evidence systematic review of interprofessional education: BEME Guide no. 9. Medical Teacher'. Pages 735-751 | Published online:

this new joint curriculum development is more positive, founded on notions taken from therapeutic jurisprudence[17]. Harris et al[18], note that the dynamic processes of teamwork and interdisciplinary practice (IP) have not been studied in-depth in the literature and their article explores this. Harris et al conclude that 'inter-professional team based care' has been demonstrated to improve quality of care outcomes in patients with chronic disease in primary care. The article notes that, based on their study such interdisciplinary care, if done well, can improve client outcomes including health, the quality of care, lead to earlier interventions, reduce duplication and hard navigability through improved coordination and referral and planning. Harris et al, also note that interdisciplinary practice can lead to improved relationships, changes in practice and increased job satisfaction and greater opportunity for collaboration.

There is substantial evidence to demonstrate that examples of poor care are evident where multi-professional teams have failed to function in the person's best interests (e.g. Mid-Staffordshire Inquiry, Winterbourne View). In their systematic review Keifenheim et al [19] suggest that a variety of approaches to teaching systematic history taking to medical students are beneficial, including workshops, in simulation and working with simulated patients. A recent search of health literature demonstrated

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03 Jul 2009. Download citation https://doi.org/10.1080/01421590701682576

[17] Therapeutic jurisprudence is defined by David Wexler as the study of the role of the law as a therapeutic agent. See Wexler, D. B. (1995). 'Reflections on the scope of therapeutic jurisprudence'. *Psychology, Public Policy, and Law, 1*(1), 220-236.

[18] Harris MF et al (2016) 'Inter-professional teamwork innovations for primary health care practices and practitioners: evidence from a comparison of reform in three countries' 9 *J Multidiscip Healthc*, 35–46, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4743635/ accessed 12 September 2017.

[19] Keifenham K.E. (2015) et al, 'Teaching history taking to medical students: a systematic review' 15:159 BMC Medical Education.

there is limited evidence of robust research evaluating which educational approach is best for non-medical health professionals.

The reported benefits of inter professional activities include improved knowledge and skills for team working, which could then improve patient safety, although there are no robust, longitudinal studies that demonstrate this. There is less evidence of such learning and working positively influencing attitudes and perceptions towards others (Hammick et al).[20] This suggests that it is vital to integrate meaningful learning activity, yielding positive results for patients/clients in such education, so that all participants can see positive benefits.

There are furthermore positive reasons to provide Nursing and other health professionals with experiential educational contexts. Some students lack the confidence and skills to manage inter-professional conflict in the work place[21] and increasing the opportunity to engage in co-learning and giving feedback, that the pilot IDSC will provide, may assist in developing these skills.

The legal setting differs from health, in this regard, as there is substantial work in health settings exploring teams, team dynamics and interdisciplinary working. Effective team work, according to Ellis and Bach[22] is regarded as a key pillar in providing a safe culture within which to provide healthcare.

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[20] Ibid note 15.

[21]Friend M et al, (2016) 'Critical care interprofessional education: exploring conflict and power – lessons learnt' 55:12 *Journal of Nursing Education* 696-700.

[22] EllisP., Bach S. (2015) 'Leadership, Management and Team Working in Nursing'. 2nd edition. Sage. Los Angeles.

The traditional view of clinical legal education in the United Kingdom (UK) does not include any element of interdisciplinarity, although joint initiatives do exist in other jurisdictions[23]. A recent analysis by Dignan et al of the 2014 survey of UK Law School clinic and pro bono provision makes no mention of an interdisciplinary approach[24]. Law Clinics, it is suggested, are seen as vehicles to enhance the learning of law in law students and to address legal problems of clients.[25] There is little literature to be found on initiatives to develop an interdisciplinary approach to law clinics in the UK. There is, however, literature on interdisciplinary learning and its benefits in Higher Education that provides us with a framework for our evaluation of this pilot.[26]

We are aware of other types of IDSC in the United States, UK and in Australia. Many of the 'interdisciplinary' or MDP student clinics under discussion in the literature and examined for this article, although often described as such, were not interdisciplinary in the sense of engaging students from different disciplines in joint learning. Often, they were in essence law student clinics either conducting research or providing legal advice under supervision in health, allied health or community settings and so these

[23] See Galowitz, P., 2012. 'The Opportunities and Challenges of an Interdisciplinary Clinic'. *-18 Int'l J. Clinical Legal Educ.*, *17*, p.165. For a discussion of the aims of law clinics in a variety of jurisdictions see Uyumaz, A. and Erdoğan, K., 2015. 'The Theory of Legal Clinic in Education of Law. *Procedia-Social and Behavioral Sciences'*, *174*, pp.2116-2122.

[24] Dignan, F., Grimes, R., & Parker, R. (2017). 'Pro Bono and Clinical Work in Law Schools: Summary and Analysis'. *Asian Journal of Legal Education*, *4*(1), 1-16.

[25] For a discussion as the which aim should take priority see Elaine Campbell & Victoria Murray, 'Mind the Gap: Clinic and the Access to Justice Dilemma', 2(3) *International Journal of Legal and Social Studies* 94 (2015).

[26] Elisabeth, J., Spelt, H., Harm, J., Biemans, A., Tobi, H., Luning, P.A. and Mulder, M., 2009. 'Teaching and Learning in Interdisciplinary Higher Education: A Systematic Review'. *Educational Psychology Review*, *21*(4), p.365.

are not discussed in detail in the context of this article. [27] Much of the literature does not describe the IDSC in the sense that the authors of this article envisage as inter-disciplinary undergraduate learning and advice giving with student practitioners from different disciplines working collaboratively, in an attempt to address the wider determinants of health for individuals in society. In the interests of ensuring a relevant and not overly lengthy article these are not discussed.

The idea of Health Justice partnerships is being explored in the literature.[28] In the United Kingdom, Hazel Genn is leading an evaluation of the University College London Advice Clinic. The UCL 'Integrated Legal Advice and Wellbeing Service' (iLAWS) centre offers free general advice and assistance for registered patients of the Liberty Bridge Road GP Practice in social welfare law issues. Based in the Guttmann Health and Wellbeing Centre in Stratford, the clinic offers users of the Liberty Bridge Road General Practice free face-to-face general legal advice on all aspects of social

[27] Olamola O and O Bamgbose O (2013) 'Collaborating with other disciplines: Best Practice for Legal Clinics: A case Study of the Women's Law Clinic, University of Ibadan, Nigeria' 19 *International Journal of Clinical Legal Education*, 355; Gunsalus CK, Beckett JS (2007-2008), 'Playing Doctor, Playing Lawyer: Interdisciplinary Simultations, 14 *Clinical L. Rev*, 439-463; Karin ML, Runge RR (2010-2011) 'Towards Integrated Law Clinics that Train Social Change Advocates,17 *Clinical L. Review*, 563; Trubek L, Farnham J (2000) 'Social justice collaboratives: multi-disciplinary practices for people', 7 *Clinical Law Review*, 227; Enos P and Kanter L (2002 -2003) 'Who's Listening? Introducing Students to Client-Centred, Client Empowering, and Multidisciplinary Problem Solving in a Clinical Setting', 9 *Clinical Law Review* discusses their Boston ID Clinic for DV which is law students learning about Domestic Violence, how to interview victims for research rather than practice although the authors note useful skills although are learned.

[28] For and American perspective see Trubek, L.G., Zabawa, B. and Galowitz, P., 2015. T'ransformations in Health Law Practice: The Intersections of Changes in Health Care and Legal Workplaces'. *Ind. Health L. Rev.*, *12*, p.183. Abd also Krishnamurthy, B., Hagins, S., Lawton, E. and Sandel, M., 2015. 'What We Know and Need to Know About Medical-Legal Partnership'. *SCL Rev.*, *67*, p.377.

welfare law including welfare benefits and housing. The UCL Legal Advice Clinic also provides the basis for a wide-ranging research agenda seeking answers to fundamental questions about the nature of legal needs and the links between legal and health problems.[29]

Hyams and Gertner run a IDSC in Melbourne at Monash Oakleigh Legal Service in Australia with mixed results. They note that students often report feelings of being inadequately prepared for practice.[30] MDP is about systems change and moving away from adversarial settings. In Australia, there is an emergence of more problem solving and therapeutic courts.[31] The authors note that this means a need to move from traditional law teaching to enable collaborations with other disciplines to work effectively in the new settings for justice.[32] Hyams and Gertner also note that lawyers were not seeing other client issues and were missing stuff. They note deficiency in law training to equip students for communication. The clinic revealed that the law students needed to adapt to different situations, but did not necessarily acknowledge the value of other disciplines as equal partners in this process.

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[29] See <https://www.ucl.ac.uk/laws/accesstojustice/legal-advice > accessed 30 August 2017

[30] Hyams R and Gertner F (2012) 'Multidisciplinary Clinics – broadening the Outlook or Clinical Learning' 17-18 *International Journal of Clinical Legal Education* 23.

[31] Vernon A, (2010) *Justice and Care: the use of restorative conflict management principles and practices in mental health governance and tribunals* (PhD, La Trobe University) (unpublished), <http://arrow.latrobe.edu.au:8080/vital/access/manager/Repository/latrobe:34007;jsessionid=EE708C69AD04B193825AFF81FB89B6A4; Morgan A et al (2012) 'Evaluation of alternative resolution initiative in the care and protection jurisdiction of the NSW Children's Court', Australian Institute of Criminology).

[32] Hyams R and Gertner F (2012) 'Multidisciplinary Clinics – broadening the Outlook or Clinical Learning' 17-18 *International Journal of Clinical Legal Education* 23, 25.

In the United States, Lerner and Talati, discuss their interdisciplinary advocacy setting, in a law clinic for children involved with child welfare setting. Their article discusses why students should be involved in interdisciplinary clinics – beyond merely academic training is what is needed.[33] In their study, they note the law students observed an initial reticence of non-legal professionals to talk to lawyers when the students were seeking to train them. It took time for students to break down poor perceptions. We hope that we will break down any such perceptions quickly in our clinic as the students adapt to using each other's language and ideas in their collaborative approach.

Lerner and Talati explore the history of how law is taught and are critical of this as preventing collaboration. Court case, statute based learning sees, law taught by teachers in the same way as their teachers taught, often by academics with little practice experience so devoid of reality and context. They argue that legal education is inadequate.[34] Low rates of law academics themselves involved in collaboration with other disciplines results in university law schools working in silos, in contrast to other fields. Similarly, Enos and Kanter discuss how traditional lawyering encourages hierarchy assuming the legal system knows all and alienates other professionals. They

[33] Lerner A and Talati E (2006) 'Teaching Law and Educating Lawyers: Closing the Gap through MD experiential learning') 'Teaching Law and Educating Lawyers: Closing the Gap through MD experiential learning' 10 *International Journal of Clinical Legal Education,* http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/80 accessed 14 September 2017, at 115

[34] Lerner A and Talati E (2006) 'Teaching Law and Educating Lawyers: Closing the Gap through MD experiential learning', 10 *International Journal of Clinical Legal Education,* at 103, http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/80 accessed 14 September 2017.

raise concern about paternalism and lawyers not allowing client involvement in decision-making meaning often wrong decisions.[35] At the University of Portsmouth IDSC, we will have students of Nursing and Law working together, under the supervision of academics who are also professionals in these fields".

Helpfully, the Lerner and Talati article discusses suggestions curriculum design, course structure and the benefits – learning different fields, facilitation of referrals. They observe that potential solutions increase when you have more than one mind set and different fields working on problems more creative and more client options emerge from this discourse, collaboration increases everyone's knowledge of each other, the work and avenues to help. This they conclude gets away from stagnation of ideas rigid thinking and many voices are heard.[36] Lerner and Talati note how collaborative learning opportunities build respect and how lawyers tend to make assumptions which are often not correct as they are based on only narrow legal technical information and miss critical information in narrowing things too much that might otherwise help clients. Emotional intelligence and engagement, team case planning and team work are taught in their model. They warn an important lesson is to make sure you consider who you partner with and have same values and are the right fit and also goes for client group to be served. The authors of this article, have

[35] Enos P and Kanter L (2002-2003) 'Who's Listening? Introducing Students to Client-Centred, Client Empowering, and MD Problem Solving in a Clinical Setting', 9 *Clinical Law Review*, 94.
[36] Lerner A and Talati E (2006) 'Teaching Law and Educating Lawyers: Closing the Gap through MD experiential learning', 10 *International Journal of Clinical Legal Education*, http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/80 accessed 14 September 2017110-112

considered this advice in the aims and design of the UoP IDSC as discussed later in this section and in the conclusion.

Tobin Tyler, has written extensively on IDSC and has much that is useful in both the impact of joint clinical education and learning opportunities for students and breaking down often high professional barriers earlier through cross training and fertilisation between different practitioners, students, supervisors and faculty.[37] Tobin Tyler describes the IDSC based in hospital, how it is taught, curriculum and some of the issues for faculty and students and how overcome. She lists a number of joint learning outcomes and the process of joint group work and assessment. She explores how team work is important for skills in both health professionals and lawyers.

St Joan has broken down elements of how to run an IDSC and the benefits to students. In her clinic, law students provide the services in non-legal settings and choices are made about side by side or hand in hand service provision with other professionals, depending on what may be appropriate and ethical.[38] Usefully for the authors, St Joan departs from her own law clinic and explains what an IDSC could look like. Her article includes a rationale for why IDC, how it might be done, course content, planning, types of assistance. Part Two of the article flags mandatory reporting challenges and

[37] Tyler-Tobin E (2008) 'Allies not Adversaries: Teaching Collaboration to the next Generation of Doctors and Lawyers to Address Social Inequality' Roger Williams University School of Law faculty papers Paper 17.

[38] St Joan J (2000-2001) 'Building Bridges, Building Walls: Collaboration Between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality' 7 *Clinical Law Review*, 403, 417- 410.

suggestions on ethical practice.[39] She notes such clinics would offer joint collaboration process for students and teachers,[40] broaden student experience.[41] She lists numerous benefits and suggestions.[42]

These other models, the reasons and rationales for their emergence and the benefits and challenges will inform the development of the new pilot IDSC at the University of Portsmouth. At this early stage our aim is for the clinic students to learn each other's language, context, ethical codes and norms, and perspectives. In so doing, as envisaged by Lerner and Talati[43], they might learn together to cross role boundaries. Law and Nursing students will reframe client issues in terms that go beyond the scope of legal problems and using each other's terminology. This may lead to trust and the reduction in the siloed nature of professional socialization in the future as these students become professionals. At present Legal practitioners instruct experts to advise and our aim would be to teach collaboration such that in the future professionals would instead work as a team where professional boundaries allow.

[39] St Joan J (2000-2001) 'Building Bridges, Building Walls: Collaboration Between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality' 7 *Clinical Law Review,* 405.
[40] St Joan J (2000-2001) 'Building Bridges, Building Walls: Collaboration Between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality' 7 *Clinical Law Review*, 413.
[41] St Joan J (2000-2001) 'Building Bridges, Building Walls: Collaboration Between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality' 7 *Clinical Law Review*, 415.
[42] J St Joan (2000-2001) 'Building Bridges, Building Walls: Collaboration Between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality' 7 *Clinical Law Review*, 419, 420-425 and 443-444.
[43] Lerner A and Talati E (2006) 'Teaching Law and Educating Lawyers: Closing the Gap through MD experiential learning', 10 *International Journal of Clinical Legal Education*, 96.

The Rationale for Interdisciplinary Student Clinic

In nursing in the UK, the curriculum increasingly integrates a person-centred approach, which fosters empowerment, promotes self-management and the promotion of health. This is because of the increased pressure on healthcare, which has typically focused on managing the care of people who are already ill, disabled or dying. As such, nurses encounter people who may be frightened and defensive, by virtue of their ill health and skills in managing such relationships are included in the nursing curriculum. By enhancing skills in building therapeutic relationships and advocacy, and by acting to support people to make informed decisions about their health and lifestyle, nursing seeks to change the dynamics in the nurse-patient/family relationship. Research skills are taught and undertaken by nursing students and they explore their role in participation in shaping health practice and policy[44].

As noted by Enos and Kanter, Learner and Talanti[45] earlier, legal education at undergraduate level often encourages thinking in silos and categories through the teaching of law in discrete problem areas such as contracts, tort or criminal law overlooking the contexts of problems and that problems can intersect and cascade.[46] As practitioner teachers, we also know that causes of legal problems can be situated

[44] International Council of Nurses. http://www.icn.ch/who-we-are/icn-definition-of-nursing/
[45] Enos P and Kanter L (2002-2003) 'Who's Listening? Introducing Students to Client-Centred, Client Empowering, and MD Problem Solving in a Clinical Setting', 9 *Clinical Law Review*; Learner A and Talati E (2006) 'Teaching Law and Educating Lawyers: Closing the Gap through MD experiential learning', 10 *International Journal of Clinical Legal Education*, 96.
[46] Moorhead, R, Robinson, M & Matrix Research and Consultancy (2006) *A trouble shared: legal problems clusters in solicitors' and advice agencies,* DCA research series, no. 8/2006, Department of Constitutional Affairs, London

in a context of other non-legal problems and may never be resolved unless the causes and interconnections are identified and worked through.[47] Many law courses teach law in isolation from contexts such as the social determinants of health and wellbeing. In fact, such contexts are rarely even acknowledged in the more traditional law courses and yet can be significant factors in comprehensive problem identification necessary before the client can be fully supported.

Context

In the health system in the United Kingdom, one in ten hospital admissions are associated with error [48] and half of these errors are avoidable according to the National Patient Safety Agency[49]. There are multiple examples where dysfunctional interdisciplinary team working has compromised people's safety (such as cases like Elaine Bromily, Daniel Pelka) or where medication errors occur, through prescribing or administration errors[50]. Vincent argues that there is a clear need and importance of learning from such errors and near misses in order to improve patient safety[51].

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[47] Author 1 (2005) 'Making Connections: the Benefits of Working Holistically to Resolve People's Legal Problems,' 12 E Law - *Murdoch University* Electronic Journal of Law; Author 1 (2008) 'Relieving Some of the Legal Burdens on Clients: legal Aid services working alongside Psychologists and other health and social service professionals', 20 *Australian Community Psychologist*, 47-56; Author 1 (2013) *The Strategic Approach to Legal Problem Solving problems –: Examples, processes & strategies*, Legal Workshop, Australian National University College of Law, Available at: http://www.plelearningexchange.ca/database/solving-problems-strategic-approach-examples-processes-strategies/ accessed 14 September 2017.

[48] Hogan H et al (2012) 'Preventable deaths due to problems in care in English acute hospitals: a retrospective case record review study'. BMJ *Qual Saf*, 21:737–745 doi 10.1136/bmjqs-2012-001159.

[49] National Patient Safety Agency (NPSA) 2007. Safety in doses: medication safety incidents in the UK'. NPSA.

[50] ibid

[51] Vincent C (2011) 'Patient safety'. Wiley-Blackwell. 2nd edition

Education, as to risk and possible earlier intervention to prevent poor health outcomes, may from a health point of view be enhanced with joint learning and legal education on risk and prevention through an IDSC such as the one at the University of Portsmouth.

There is an evolving reconfiguration of the health and care system in the United Kingdom, driven by the challenges of an ageing population, with increasing frailty and complexity and informed by recent reports, (Darzi Report 2008[52], Marmot Review 2010, Five Year Forward View 2014[53], Shape of Caring 2015[54]). This context has led to the development by Imison and Bohmer [55] of 'Sustainability and Transformation Plans' and recognition of the importance of increased emphasis on promotion of health, prevention of illness, self-management, the critical establishment of skills development in collaborative practice, and team based provision. It has also seen a move to increase the integration of health and care. As a consequence, the Nursing and Midwifery Council (NMC) are currently reviewing the standards for nursing, so that graduates are better prepared to deal with the health needs of the ageing UK population. The draft standards issued by the Nursing and Midwifery Council (NMC) in 2017[56] suggest that nurses will be expected to take a more active part in holistic and

[52] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228836/7432.pdf
[53] https://www.england.nhs.uk/wp-content/uploads/2014/10/5yfv-web.pdf
[54] https://www.hee.nhs.uk/sites/default/files/documents/2348-Shape-of-caring-review-FINAL.pdf
[55] ImisonC. & Bohmer R.? (2015). 'NHS health and social care workforce: meeting our needs now and in the future? 'The Kings Fund. London. See https://www.kingsfund.org.uk/sites/default/files/field/field_publication_file/perspectives-nhs-social-care-workforce-jul13.pdf accessed 16/10/17
[56] Nursing and Midwifery Council (NMC) (2017) Draft Standards of Proficiency for Registered Nurses. https://www.nmc.org.uk/globalassets/sitedocuments/edcons/ec7-draft-standards-of-

person-centred care, within increased skills in assessment, diagnostics and triage and this will inform future nursing curricula in the UK.

Xyrichis et al, [57] note interdisciplinary healthcare teams face challenges including: the contentious nature of sharing professional roles and expertise, effective planning, problematic funding and accountabilities for different programs adding to complexity, decision making, and delivering quality patient/client care within complex contexts. Although challenging, the authors see the opportunity for students to develop these skills through joint interdisciplinary learning as important, to better position and equip future practitioners for the changing world and the dilemmas they will face, as they offer care and advice services and support as practitioners in the wider community.

There is much empirical evidence to support a need for changes to legal education based on advice seeking behaviours of members of the public and the need to work towards solving a person's problems that may have broader dimensions than just the

proficiency-for-registered-nurses.pdf

[57] Xyrichis A and Lowton K (2007) 'What Fosters or Prevents Interprofessional Teamworking in Primary and Community Care? A Literature Review' *Int J Nurs Stud* 45 (1), 140-153. 2007 Mar 26.

legal problems.[58] Law like other disciplines[59], face challenges with technology and impacts on human expertise. This data and change in the world seems not to have resonated within much of legal academia, odd given universities are research as well as teaching institutions and research, one would think also ought to inform teaching pedagogy and vice versa.

Susskind notes the changing role of lawyers, and the court process itself will all provide a range of ways in which the citizen can be empowered to manage their own legal problems and 'embrace improvements not just to dispute resolution but also to…dispute containment, dispute avoidance and legal health promotion'. He also notes interdisciplinary study will be required with 'exposure to and understanding of traditional legal service should provide a valuable foundation upon which to build any new career in law.'[60] Cunningham has also explored the importance of a great exchange and interaction between lawyers and social scientists to form a shared

[58] Coumarelos C et al (2012)'Access to Justice and Legal Needs Legal Australia-Wide survey: legal need in Australia' (New South Wales Law and Justice Foundation, Sydney) http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf accessed 1 May 2017; Buck, A et al (2005) 'Social exclusion and civil law: experience of civil justice problems among vulnerable groups', *Social Policy & Administration*, vol. 39, no. 3, pp. 302–322; Pleasence, P et al, (2007) 'Mounting problems: further evidence of the social, economic and health consequences of civil justice problems', in P Pleasence, A Buck & NJ Balmer (eds), *Transforming lives: law and social process*, Stationery Office, London, pp. 67–92; Pascoe P et al, (2015) 'Reshaping legal assistance services: building on the evidence base' (Law and Justice Foundation of NSW, Sydney) http://www.lawfoundation.net.au/ljf/app/&id=D76E53BB842CB7B1CA257D7B000D5173 (accessed 21 April 2017).

[59] Tobin-Tyler, E (2008) 'Allies Not Adversaries: Teaching Collaboration to the Next Generation of Doctors and Lawyers to Address Social Inequality' 11 *Journal of Health Care Law and Policy,* 249-294.

[60] Susskind R, (2013) *Tomorrow's Lawyers: An Introduction To Your Future,* Oxford University Press, 2013, 85, 119. See also Maharg P (2007) Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-first Century, Taylor & Francis Ltd, United Kingdom.

approach to improving client communications, increasing self-awareness and communication skills.[61]

In addition, in the process of writing the conference paper on which this article is based, the authors realised that notions of 'client care' are taught differently in the social and health sciences to law. Nursing pedagogy sees client care as looking to the health and wellbeing of clients and patients and ensuring the patients feel safe, respected and are holistically supported to make evidence informed decisions about their care. In law, 'client care' is often taught in a context of ethics and often is limited to contexts of minimising risk (often to the lawyer), client confidentiality, and duties of loyalty and fiduciary duties. We realised we could all learn from each other in broadening concepts of client care in how the joint learning and IDSC are operationalised at the UoP. We agree with Lerner and Talati[62] that an understanding of the full social context is required if the legal professional is to support the rule of law and access to justice.

Although changing, traditionally students of law have not encouraged to reflect on their practice. Law is largely taught by case law and statutory interpretation and does not, in an integrated way across the whole curricula, teach reflective practice although

[61] Cunningham CD, (1990 -1991) 'Evaluating Effective Lawyer- Client Communication: An International Project Moving from Research to Reform', *67 Fordham L. Rev.* 1959, 1962.
[62] Lerner A and Talati E (2006) 'Teaching Law and Educating Lawyers: Closing the Gap through MD experiential learning', 10 *International Journal of Clinical Legal* Education 107.

it might be undertaken in clinical legal education and practical legal training it is rarely integrated throughout course content as it is in the health sciences.

Other than through clinical legal education supervision rarely are law students encouraged to partake in debriefing opportunities and structured supervision as in nursing, which focus on client care and approach, rather on the legal avenues for clients.

The IDSC aims to develop the students' ability to engage in critical understanding of the role, ethics and operation of the law in its political, economic and social contexts and most importantly, to enable them to explore how different disciplines can work collaboratively to improve social and health outcomes.

Development and evaluation of the University of Portsmouth IDSC

The Law student generalist advice clinic project at Portsmouth Law School is well established in the local community setting operating from Johns Pounds and Somerstown Community Hub. We are developing the project further for the IDSC as an interdisciplinary health justice partnership student clinic within a suitable health setting.

Authors two and three have planned three stages. The first stage currently has law students, dental health and nursing students in a community setting (John Pounds Centre, Portsea). This gives the potential for early and effective health and welfare advice, such as debt and access to benefits, general health promotion, to improve

health and wellbeing of the clinic's clients thereby reducing anxiety and stress, which lead to poor health outcomes. Authors two and three are seeking other community settings particularly a health setting as an additional location. At this first stage students will work in community settings to provide educational presentations and workshops but not tailored individualised advice.

The second stage envisages law and health professional students giving legal and public health advice to individuals under close supervision and in accordance with professional standards.

The final stage is the establishment of a health justice clinic staffed by a mixture of professionals, and students on the model of a teaching hospital but on a much smaller scale. The plan is to recruit final year Law students from September 2018. Law and Nursing students will present information to the public about common legal issues on crucial topics already identified by nursing staff and including Powers of Attorney, accommodation rights, and access to benefits in the elderly, in settings external to the University. We hope that by working with local NHS Trusts, we will be able to locate suitable venues in additional to our plans to visit Community Centres, Care homes, Schools and Colleges.

Students will be supervised by professionally qualified, legal and health academics during all contact with the public. There is insurance cover as this forms part of the hosting University's insurance cover. The clinic will form part of the curriculum and will be assessed for academic credit. It will be an extension of University of

Portsmouth's current law clinics and the University of Portsmouth will cover the costs involved of the curriculum activity.

The key challenges posed by collaborating with law students in UK Higher Education include the different philosophies within the two fields. In nursing, students are encouraged to see the person, not the disease and for these students the approach is broadly vocational, as well as academic. A further practical issue relates to timetabling conjoint activity, within already busy subject areas.

The authors seek to enhance the law student ability to conduct systematic case histories that incorporate a wider view (not just legal). Education about risk management, is interpreted as client care and yet legal expectations may assist nurses in managing some of the health risks outlined above earlier. By embedding interdisciplinary learning, we anticipate being able to use deliberate approaches to break down the hierarchical way in which law is taught (as the literature discussed earlier highlights) using judicial pronouncements, winners and losers, rather than being about people with problems. It is this use of language, we suspect may be a reason why there is community and professional reticence to engage with the legal profession. It is hoped that the participants in the IDSC will develop new language and start to break down these silos and such reticence by skills in interpersonal collaboration and communication.

The evaluation of the pilot study

There will be an ongoing evaluation as the authors are keen to enable good practice, share lessons learned and inform replicable models in other university settings. The evaluation will inform as to the project impacts on students and learning modes, academic staff, partner agencies and clients once the clinic reaches its final stage of operation.

We seek to measure the development of collaboration between disciplines, the use of each other's terminology and problem-solving approaches, mutual understanding and respect for differing professional rules, and the building of trusting relationships. At this early stage the ethical approval is limited to asking open questions in individual interview and focus groups.

Conclusion

This article has explored the rationale for the development of the IDSC at University of Portsmouth and discusses possible outcomes. This pilot aims to support students of law and nursing to challenge their evolving "professional" sphere of reference. The pilot provides an opportunity for them to explore the development of team working and trust.

Both Nursing and Law are service professionals and clients and patients are potentially the same person. We anticipate that law students can learn new approaches from Nursing. We take instructions. Nurses take histories that are much

more comprehensive. Nurses learn to give bad news. Lawyers may well experience giving bad news and learn an effective way to do so. Nurses are taught how to respond to error but do not understand the distinctions between civil and criminal responsibility or shared or vicarious liability. These are areas that the design of the clinic delivery has planned to address. Furthermore, we realise that there is a much more exciting jointly developed truly interdisciplinary curriculum that this clinics will uncover as it operates. The team at Portsmouth has secured ethical approval to collect data through focus groups of staff and students to ensure the unplanned outcomes are captured.

In exploring the development of joint interdisciplinary learning and an IDSC at University of Portsmouth , the authors discovered differences in philosophy, design and delivery of nursing and legal education. Some of these differences were surprising to the law teacher authors, in highlighting some of the deficiencies in legal education. Reflective Practice for example, although a key part of clinical legal education[63] is less integrated than in nursing where it informs almost all core subjects and student learning. Similarly, even though, as in nursing, in law a critical part of effective practice is a good client interview[64], little time in law is given to systematic assessment, history taking and triage to ensure full and comprehensive advice and problem

[63] Leering M (2014) 'Conceptualizing Reflective Practice for Legal Professionals' 23 *Journal of Law and Social Policy*, 83-106.

[64] Author 1 and Foley T, 'Integrating Two Measures of Quality Practice into Clinical and Practical Legal Education Assessment: Good Client Interviewing and Effective Community Legal Education' (2014) 21:1 *International Journal of Clinical Legal Education* 69.

identification, whereas in healthcare, this forms an essential component of holistic and person-centred healthcare [65]. Students of law are lucky if they receive any interview training and it often occurs only if they undertake a clinical legal education program or practical legal training course often just before they commence practice, if at all.

The IDSC is emerging as an important way of building better and more responsive future practitioners in health, law and allied health disciplines. Interdisciplinary practice is not new in health and allied health and social work spheres. What is different here is the idea having a Law Students as part of such a team including students of nursing. Later, we expect that dentistry, pharmacy and social work students will join the clinic. This subject of an interdisciplinary student clinic, which is not merely lawyer led, but involves students and cross faculty members and different fields of supervision is a subject on which, there is little literature.

As noted by Hyams and Gertner, there is probability that law students needed to acknowledge the value of other disciplines as equal partners in the interdisciplinary clinic process and indeed in their legal education more generally. Arguably, this is a weakness in the nature of professional education - we tend to teach professional students to think about problems from a single perspective. - the IDSC aims to get them to think in a collaborative way, evaluating how a more joined up approach might address the root cause of problems.

[65] Walsh M and Crumbie A (eds) (2007) '*Watson's clinical nursing and related sciences*,' Balliere Tindall. Edinburgh.

Spelt uses the term boundary-crossing in her systematic review of Interdisciplinarity in Higher Education.[66] She offers the following definition citing Boix Mansilla et al[67]

> "The capacity to integrate knowledge and modes of thinking in two or more disciplines or established areas of expertise to produce a cognitive advancement—such as explaining a phenomenon, solving a problem, or creating a product—in ways that would have been impossible or unlikely through single disciplinary means."

This neatly encapsulates our ambitions for this pilot interdisciplinary student clinic.

[66] Spelt, E.J., Biemans, H.J., Tobi, H., Luning, P.A. and Mulder, M., 2009. 'Teaching and learning in interdisciplinary higher education: A systematic review.' *Educational Psychology Review*, *21*(4), p.365.

[67] Boix Mansilla, V., Miller, W.C. and Gardner, H., 2000. 'On disciplinary lenses and interdisciplinary work' in *S. Wineburg & P. Grossman (Eds.), Interdisciplinary curriculum: Challenges of implementation. New York: Teachers College Press.* p 219

KEEPING UP WITH CHANGE: NO ALTERNATIVE TO TEACHING ADR IN CLINIC. AN AUSTRALIAN PERSPECTIVE

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INTRODUCTION

Over the last 30 years alternative dispute resolution (ADR) has become more prominent in Australian legal practice due to the need to reduce the cost of access to justice and to provide more expedient and informal alternatives to litigation. There is a shift away from adjudicative or determinative processes and towards more cooperative processes for dispute resolution.[1] The rigidity, complexity and cost of formal structures has meant that courts, tribunals and other rights-based structures are often inaccessible to all but a few in society.[2] The incapacity of these structures to resolve conflict, although they may determine rights, has been a relevant factor in the development of alternative options for dispute resolution.[3] Clearly, Australian legal practice is undergoing change. As legal educators, we need to ask: how should we be preparing law students entering practice for these changes? How can we ensure that once they become lawyers, our students will not rely entirely on litigious methods to

[1] Tania Sourdin, *Alternative Dispute Resolution* (LBC Thomsons, 5th ed, 2015) 13
[2] Ibid 12.
[3] Ibid.

assist their clients but instead look at alternatives for dispute resolution? According to Carrie Menkel-Meadow,[4] legal education is the most important site both for the development of approaches to conflict and for the construction of attitudes to ADR processes and, in particular, to the widely used options for negotiation and mediation for prospective lawyers.[5] In this paper, I argue that there is no alternative to teaching ADR in clinic in order to address client needs and to ensure that students engaged in clinical education are prepared for changes in legal practice today. I show that the increasing focus upon ADR in Australian legal practice represents a challenge for law schools, and that legal educators need to ensure they are educating students about ADR. More than this, however, law students who intend to go into legal practice would benefit from developing their skills with respect to ADR. Clinical legal education is a subset of legal education that focuses on educating law students about professional legal practice. Given its expressly practical focus, clinics represent one obvious setting in which practical ADR skills might be taught. I argue that it is important to determine whether ADR is being taught to students undertaking clinical legal education in ways that will enhance their preparation for legal practice. I will show that there is a need to explore: whether ADR is being taught within clinical legal education, the strengths and weaknesses of

[4] Carrie Menkel-Meadow, 'Ethics in Alternative Dispute Resolution: New Issues, No Answers from the Adversary Conception of Lawyers' Responsibilities' (1997) 38 *South Texas Law Review* 407.

[5] Ibid.

existing approaches, and how the teaching of ADR within clinics can be improved. Although the focus of this paper is upon ADR in the Australian clinical context, I will also argue that changes afoot internationally – including, in particular, the requirements of '21st century lawyering' – make these questions of relevance to a wider audience.

DEVELOPMENT OF ADR IN AUSTRALIAN LEGAL PRACTICE

The United States has been the front-runner in the contemporary use of ADR in legal and justice systems.[6] Australia has followed with the large-scale inclusion of ADR, primarily through mediation, in court-connected programs.[7] Ardagh and Cumes[8] suggest that in Australia the evolution of dispute resolution processes has proceeded through three distinct phases: the first being the predominance of adversarial processes in a traditional legal environment.[9] The second was a growth of a new phase in which ADR involving non-legal processes and outcomes was the subject of major legal reform.[10] The third stage is what Ardagh and Cumes refer to as a 'post-ADR period' where ADR methods have been accepted as a normal part of conflict resolution and have become more institutionalised, rather than 'alternative'.[11]

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[6] Hilary Astor and Christine Chinkin, *Dispute Resolution in Australia* (Lexis Nexis, Butterworths, 2nd ed, 2002) 5

[7] See for a discussion of the history and growth of ADR in Australia: Astor and Chinkin, above n 6

[8] A Ardagh and G Cumes, The legal profession post-ADR: from mediation to collaborative law (Australia) (2007) 18 *Alternative Dispute Resolution Journal* 205

[9] Ibid.

[10] Ibid.

[11] Ibid.

The development of a focus on ADR in Australia can be traced back at a federal level to the 1900's. Arbitration is mentioned in the 1901 Commonwealth Constitution alongside conciliation for use in preventing and settling interstate industrial disputes (Australian Constitution, s51(xxxv)). [12] In 1904, *The Commonwealth Conciliation and Arbitration Act* 1904 (Cth) created the Commonwealth Court of Conciliation and Arbitration. The new tribunal was not to be bound by legal forms of the rules of evidence. It was required to act in accordance with equity, good conscience and the substantial merits of the case.[13] Parties were strongly encouraged to come to an agreement (conciliation) and where they could not, a decision was made for them (arbitration).[14]

In the 1940s and 1950s, in the international arena and in Australia, negotiation and conflict theories continued to be used to assist with planning and strategy development and to manage more complex relationships that were becoming an increasing feature of modern business activities.[15] In the 1980s, negotiation theory achieved popularity and greater interest with the publication of Fisher and Ury's text *Getting to Yes* in 1981.[16] The Fisher and Ury model was viewed

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[12] as cited in M King, A Freiberg, B Batagol, R Hyams, *Non-Adversarial Justice* (The Federation Press, 2009) 116

[13] Ibid.

[14] Ibid, note: The court was abolished in 1956 following a decision of the High Court in the Boilermakers' case. The High Court held that the Court of Conciliation and Arbitration, as a tribunal exercising the non-judicial power of arbitration, could not also exercise judicial power as a Chapter III Court.

[15] Sourdin, above n 1, 14.

[16] Ibid citing R Fisher, W Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (Houghton Mifflin, Boston, 1981).

as a collaborative or co-operative model. The most important technique in this type of problem-solving negotiation is to distinguish between interests (or needs) and positions (desires, wants).[17] This model evolved from work completed in the late 1920s by the theorist Mary Parker Follett who developed and explored the model of constructive and integrative negotiation.[18] During the 1980s and 1990s, negotiation theorists continued to expand upon many of the notions contained in Follett's work and in the Fisher and Ury model of negotiation. In Australia, decisional models, in which a third party exercised either an advisory or determinative function, were most popular until the early 1970s.[19] Since then, focus has been less on third party interventions and more on providing support and assistance to disputants.[20]

In 1995, there was a significant development in ADR practice with the establishment of the National Alternative Dispute Resolution Advisory Council (NADRAC). NADRAC was established as an Australian independent body providing policy advice about ADR to the Attorney-General of Australia existing until the end of 2013. NADRAC closely examined definitions and descriptions of ADR processes.[21] NADRAC described ADR as an 'umbrella

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[17] Sourdin, above n 1, 45.

[18] Ibid citing M P Follett, Constructive Conflict, Conference Paper (presented at Bureau of Personnel Administration Conference, January 1925) reproduced in EM Fox and L Urwick (eds), *Dynamic Administration: The collected Papers of Mary Parker Follett* (Pittman, London, 1973)

[19] Sourdin, above n 1, 16.

[20] Ibid.

[21] Ibid 4.

term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them'.[22]

The focus on ADR in legal practice was enhanced in January 2008, when the *National Mediator Accreditation System and Standards* focused on enhancing consumer certainty and supporting mediation referral.[23] Alongside this system, a compulsory accreditation system for family dispute resolution practitioners was developed encouraging the practise of a mix of mediation, conciliation and advisory practice.[24] The dispute resolution process in Australia has been assisted by the creation and growth of various professional organisations such as LEADR[25] and IAMA.[26] The establishment of Community Justice Centres in New South Wales[27] and Dispute Resolution Centres in Queensland[28] in the early 1980s were attempts to promote the use of ADR to resolve community-based disputes and to support the notion that justice can exist outside the courts.[29] The Dispute Settlement Centre of Victoria adopted ADR as the preferred method of conflict resolution, promising both peaceful and consensual decision making without the controlling influence of professionals

[22] National Alternative Dispute Resolution Advisory Council (NADRAC), Dispute Resolution Terms (2003) as quoted in Sourdin above n 1 3

[23] Ibid.

[24] *Family Law (Family Dispute Practitioners) Regulations 2008*

[25] Leading Edge Alternative Dispute Resolvers (LEADR)

[26] Institute of Arbitrators and Mediators Australia (IAMA); among a range of other state-based organisations: Australian Commercial Disputes Centre (ACDC), Australian Dispute Resolution Association (ADRA). On 1 January 2015, LEADR and IAMA Combined to form the Resolution Institute

[27] *Community Justice Centres Act 1983* (NSW)

[28] *Dispute Resolution Centres Act 1990* (Qld)

[29] Sourdin, above n 1, 20.

and a faster and cheaper alternative to the court system, a more costly and lengthy option.[30] In addition, there has been a rise in the number of tribunals using ADR. In 1998, the Victorian Civil and Administrative Tribunal (VCAT) was established with a broad jurisdiction.[31] In 2009, Queensland introduced a similar tribunal, the Queensland Civil and Administrative Tribunal (QCAT).[32] These tribunals facilitate self-representation by litigants and provide opportunities for parties to attend mediation.[33]

There have also been a number of legislative initiatives to address the persistent adversarial frame of practice of Australian lawyers. For example, in Victoria there have been changes to civil procedure through the *Civil Procedure Act 2010* (Vic)(CPA). Section 22 of the CPA provides that lawyers and parties must use reasonable endeavours to resolve disputes by agreement between the persons in the dispute and these endeavours may include the use of ADR.[34] In light of these changes in Australia, the court systems have adopted ADR, primarily using mediation processes in case management to encourage swifter processes and higher rates of settlement of disputes. Susskind notes that alternative methods for dispute resolution is much needed as court systems are often

[30] Gutman, J, Fisher, T, Martens, E, Why teach alternative dispute resolution to law students? Part one: past and current practices and some unanswered questions, *Legal Education Review* (2006) 125

[31] See *Administrative Appeals Tribunal Act 1975* (Cth), *Administrative Decisions Tribunal Act 1997* (NSW), *Victorian Civil and Administrative Tribunal Act 1998* (Vic)

[32] *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

[33] Ibid.

[34] *Civil Procedure Act 2010* (Vic) s22

unaffordable, excessively time-consuming, unjustifiably combative, and inexplicably steeped in opaque procedure and language.[35] Therefore, for many policymakers, the idea of improving access to justice has come to mean improving the way disputes are resolved.[36]

Australian Federal government policy has also increasingly supported ADR. As early as 2009, the report, *A Strategic Framework to Justice in the Federal Civil Justice System*, recommended increased use of ADR and case management and the better education of lawyers in non-adversarial processes.[37] More recently, in 2016, the Victorian Government released the *Access to Justice Review (The Review),* which identified ways to help disadvantaged Victorians navigate the legal system and resolve everyday legal issues.[38] The review built on the Productivity Commission's 2014 *Access to Justice Arrangements: Inquiry* report, which found there were concerns across the country that the justice system was too slow, expensive and adversarial. The recommendations in *The Review* covered a wide range of areas, including: greater use of ADR for public bodies, including the courts and VCAT.[39] More specifically it was recommended that written guidelines be developed to aid decision-making, and promote transparency and consistency in relation to potential referrals to ADR.[40] *The*

[35] Susskind R, Tomorrow's Lawyers, 2013, Oxford University Press 85

[36] Ibid.

[37] Access to Justice Taskforce, A Strategic Framework for Justice in the Federal Civil Justice System, (2009) 3.

[38] Access to Justice Review Summary Report August 2016

[39] Ibid, Chp 4 Alternative Dispute Resolution Recommendation

[40] Ibid.

Review went further to recommend that the courts consider continuing to use judicial registrars to conduct mediation and judicial resolution conferences where resources permit.[41] To facilitate this process, the courts and VCAT are to consider developing a framework to facilitate communication regarding best practice in relation to ADR.[42] In addition, legislative changes may be suggested to the Victorian Government that would enhance the use of ADR.[43]*The Review* recommendations went further to include innovative online dispute resolution for civil claims which could provide a model for a more flexible and proportionate way of dealing with small civil claims, and could provide a model for efficiencies in other areas of law in the future, including minor criminal matters such as traffic offences.[44]

There has also been interest over the past decade in the creation of pre-litigation or pre-filing ADR obligations. [45] These obligations essentially require individuals or organisations to attempt to resolve their differences before commencing court or tribunal proceedings.[46] Some of the most comprehensive pre-litigation ADR requirements in Australia are evident in family law, via changes introduced in 2006. These changes included the introduction of a new hearing model in relation to children's matters (less adversarial trial (LAT)

[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] Ibid.
[45] Sourdin, above n 1, 420.
[46] Ibid.

model),[47] as well as implementing family dispute resolution (FDR), which is largely conducted outside the courts. These changes have resulted in a dramatic reduction in the filing of cases in the Family Court.[48] Amendments to the *Family Law Act (1975) (Cth)* in 2007 mean that if a party wishes to apply to the court for parenting orders under Pt VII of the Act, they first need to attend FDR. The process is outlined in the *Family Law Act (1975) (Cth)*, Ss 60I(7). Such changes to civil procedure and family law are evidence of the commitment of governments to encourage settlement prior to litigation through the use of ADR.[49] In addition, there has recently been a marked growth in industry-based, private, government and community-supported dispute resolution schemes.[50] The increasing emphasis on ADR represents a significant change to Australian legal practice. For law students, knowledge of these changes and an education as to ADR skills are essential for the effectiveness of the 'new lawyer' who will be entering legal practice.[51] Although the teaching of ADR need not be confined to clinical settings, I argue that these changes have an impact on how law students are taught in clinics and how they are prepared for the skills they will

[47] Sourdin, above n 1, 275 and Chapter 9

[48] Ibid 275.

[49] Tania Sourdin, 'Making an Attempt to Resolve Disputes Before Using Courts: We All Have Obligations' (2010) 21 *Australasian Journal of Dispute Resolution* 225.

[50] Sourdin above n 1 21 citing Ipsos Australia Pty ltd, Alternative Dispute Resolution in Victoria: Community Survey 2007 (Report, Department of Justice, State Government of Victoria, 2007); Ipsos Australia Pty Ltd, Alternative Dispute Resolution in Victoria: Small Business Survey 2007 (Report, Dept of Justice, State Government of Victoria, 2007)

[51] Macfarlane, J The New Lawyer: How Settlement is Transforming the Practice of Law (UBC Vancouver) 2008 23.

require in their future legal practice. As I explain in the next section, there are other reasons why an appreciation of ADR is increasingly essential for the next generation of lawyers.

The 'New Lawyer' and 'the 21st Century Lawyer'

Macfarlane and Susskind [52] refer to lawyers entering into practice in the 21st century as 'new lawyers' or '21st century lawyers'. According to these writers, most of the changes that have occurred in legal practice arise from the client's need to be involved in the legal process. This has resulted in the need for changes in the lawyers' approach and attitude towards their clients, their management of the matters and their professional relationship towards the court and other professionals. Susskind is of the view that the three main drivers of change: the 'more-for-less' challenge, liberalisation, and information technology essentially 'drive immense and irreversible change in the way that lawyers work.'[53] The 'more-for-less' challenge concerns the client's need for legal service at a lower cost. Clients of lawyers come in different forms. They may be individual citizens or large organisations, requiring a range of legal services. Although diverse in nature, what they all share is the desire for legal services to be delivered in an affordable way.[54] This, Susskind suggests, is one of the major challenges facing lawyers and clients today. How can lawyers

[52] Ibid & Susskind R, Tomorrow's Lawyers, 2013, Oxford University Press 135
[53] Ibid.
[54] Ibid.

deliver more legal services at a lower cost? [55]

Liberalisation, Susskind contends, concerns the flexibility that has arisen regarding who can be a lawyer. In the past, the practice of law has been strictly regulated with stipulations as to who can be a lawyer, who can run and own a legal business, and what services they can provide.[56] The justification for this, and rightly so, is the need to ensure that those providing legal advice be suitably trained and experienced. However, Susskind suggests, that while this is a valid argument, in reality, this 'closed community of legal specialists does not seem to offer sufficient choice to the consumer.'[57] As such, over the last few years, many have advocated for a relaxation of the regulations and laws that govern who can offer legal services and from what types of business. [58] Susskind emphasises that these developments are of 'profound significance and represent a major departure from conventional legal services.'[59] The idea behind this is to offer legal services in new, less costly, more client-friendly ways. The last of the three factors Susskind draws on is the impact of information technology on lawyers and courts. [60] New lawyers need to be familiar with the changes brought about by information technology and the connection between their social use of information technology and its

[55] Ibid.
[56] Ibid.
[57] Ibid.
[58] Ibid.
[59] Ibid.
[60] Ibid 10.

introduction and potential in their working lives.[61]

Supporting Susskind's views, Macfarlane focuses on the changes occurring in the lawyer-client relationship. She calls this the 'vanishing trial' phenomenon,[62] where there is a '98% civil settlement rate and the increasing use of negotiation, mediation, and collaboration in resolving lawsuits have dramatically altered the role of the lawyer.'[63] According to Macfarlane, 'the traditional conception of the lawyer as 'rights warrior' no longer satisfies client expectations, which center on value for money and practical problem solving rather than on expensive legal argument and arcane procedures.'[64] Macfarlane and Susskind share the view that most clients are no longer willing to allow the lawyer to 'run the matter'. In other words, clients need regular communication with their lawyer, and look for value for money in legal services.[65] Macfarlane sums up this trend by noting that clients are increasingly demanding a role in determining how much time, money, and emotional energy they invest, and in what type of resolution.[66] Macfarlane is of the view that 'both corporate and personal customers appear increasingly unwilling to passively foot the bill for a traditional, litigation-centered approach to legal services, preferring a more

[61] Ibid 12.
[62] Ibid 24.
[63] Julie Macfarlane The Evolution of the New Lawyer: How Lawyers are Reshaping the Practice of Law (2008) *Journal of Dispute Resolution* 62
[64] Ibid and R Susskind & D Susskind, *The Future of the Professions: How Technology Will Transform The Work of Human Experts* (Oxford University Press, 2015)
[65] Ibid.
[66] Ibid.

pragmatic, cost-conscious, and time-efficient approach to resolving legal problems.'[67]

Whatever alternatives to dispute resolution are coming to the fore, the essence of this change is the need for change within this system, mainly with respect to the attitudes and expectations of practising lawyers.[68] Macfarlane states that, 'Changes in procedure, voluntary initiatives, and changing client expectations are coming together to create a new role for counsel and a new model of client service.'[69] She speaks of the 'warrior lawyer', who provides narrow technical advice focusing on litigation and fighting, giving way to a more holistic, practical and efficient approach to conflict resolution.[70] Macfarlane sees this as a new model of lawyering with the 'new lawyer' building on the skills and knowledge of traditional legal practice, but different in critical ways.[71] Macfarlane suggests that there are three core dimensions to new lawyering: elevation of negotiation skills; communication skills; and skills to promote the lawyer client relationship.[72] According to Macfarlane, the new lawyer utilises all three core dimensions: communication, persuasion, and relationship building to develop the best possible outcome for the client.[73] It is crucial for the new lawyer to be adept at negotiation skills to be effective. There is now a

[67] Ibid.
[68] Ibid.
[69] Macfarlane, above n 63, 63.
[70] Ibid.
[71] Ibid.
[72] Macfarlane, above n 51, 23.
[73] Ibid.

greater reliance on problem-solving strategies and more effort to directly include the client in face-to-face negotiation.[74]

Communication strategies such as listening, explaining, questioning and establishing rapport and trust are tools for lawyers to focus on in their work with clients. According to Macfarlane, in the past these have been viewed as only part of the more specialised skills of advocacy and procedural requirements.[75] The new lawyer now focuses on these skills and gives them priority so that they become the primary vehicle for resolving conflict.[76] Macfarlane argues that this recognition of the importance of persuasive communication in conflict resolution also means a greater concentration on the needs and wants of the other side.[77] The third factor is the new lawyer's relationship with their client. This is where the new lawyer differs fundamentally from the traditional approach. According to Macfarlane, the new lawyer realises that a crucial part of their role is to assist clients to identify what they really need, while continuing to assess the risks and rewards as well as what they believe they 'deserve' in some abstract sense.[78] The client is regarded as a partner in problem solving, as far as is feasible. Macfarlane describes this as a 'mutuality of both purpose and action between lawyer and

[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Ibid.
[78] Ibid 24.

client.'[79] This approach moves the lawyer away from the traditional, narrow, adversarial-based model towards a more flexible, conciliatory trajectory.[80] In seeking the best possible outcome, the new lawyer looks for options for the client based on the client's needs and interests. As Macfarlane points out, 'the new lawyer practises from the basis that almost every contentious matter will settle without a full trial, and some will settle without a judicial hearing of any kind.'[81] Therefore, the lawyer's understanding of ADR affects the construction of their identity and influences the ways that they practise.[82]

Macfarlane advocates for law schools and clinics to embrace the changes taking place within the legal system.[83] These changes will prepare 'new lawyers' for the responsibilities and competencies that are desirable for an effective lawyer.[84] Taking from Macfarlane's proposition that law schools and clinics should embrace the changes in preparation for the alternatives to litigation that the new lawyer will offer the client, we can ask: has legal education recognised this?

ADR AND LEGAL EDUCATION

In Susskind's book, *Tomorrow's Lawyers*, he poses the question: What are we

[79] Ibid.
[80] Ibid.
[81] Ibid.
[82] Ibid, citing Carrie Menkel-Meadow, 'The Trouble with the Adversarial System in a Postmodern, Multicultural World' (1996) 38 *William and Mary Law Review* 5, 37-39.
[83] Macfarlane, above n 51, 2.
[84] Ibid.

training young lawyers to become?[85] Susskind asks, 'Are we training these lawyers to become traditional one-to-one practitioners specialising in black-letter law and charging by the hour or are we preparing the next generation of lawyers to be flexible, team-based, hybrid professionals?'[86] Susskind suggests that emphasis in law schools is on the former, with very little regard for the latter.[87] He is concerned that many legal educators and policymakers do not even know there is a second option, and that law schools are therefore training young lawyers to become '20th century lawyers' and not '21st century lawyers'.[88] Susskind is not suggesting that core legal subjects such as contract and constitutional law should be 'jettisoned', but that there is a need to focus on how best to prepare lawyers for legal practice in the coming decades.[89] Macfarlane echoes these concerns and concludes unequivocally that 'there is an urgent need for lawyers to modify and evolve their professional role from adversarial 'pit bull' to creative conflict resolver.'[90] She suggests that there needs to be 'a dramatic overhaul of legal education to prepare new graduates for the negotiation and dispute resolution challenges they will face in practice and for their new roles and new identities as 'problem solvers' in society.'[91]

As discussed previously in this paper, the emphasis for the 21st century lawyer

[85] Susskind, above n 35, 135.
[86] Ibid.
[87] Ibid.
[88] Ibid.
[89] Ibid.
[90] Macfarlane, above n 51, 16.
[91] Ibid.

is on how to approach the changes occurring within the legal system, and how to become a practitioner who can address the needs of the client and focus on their interests. There is a need to increase the skillset of aspiring lawyers in order to empower them to deal with the developing and changing legal system. For over two decades, legal educators in Australia have recognised the need to re-think our teaching approach. In 1995, for instance, Australian clinician Ross Hyams[92] advocated for utilising various methodologies of law teaching 'to make the legal system relevant for the students and to make the students relevant for the system'.[93] Hyams suggested that students be trained in the appropriate skills that they will need to survive in the professional environment.[94] Hyams argued that these reforms needed to go further than teaching students merely legal 'operations'.[95] Rather, interpersonal, ethical and communication skills which are integrated into each subject using various teaching methodologies can prepare students for their professional life, even if they do not choose to continue in the legal profession.[96]

TEACHING OF ADR IN AUSTRALIAN LEGAL EDUCATION

In early 2010, Kathy Douglas [97] investigated 12 law schools in Victoria and

[92] Ross Hyams, 'The Teaching of Skills: Rebuilding-Not Just Tinkering Around The Edges' (1995) 13 *Journal of Professional Legal Education* 63

[93] Ibid.

[94] Ibid.

[95] Ibid.

[96] Ibid 78.

[97] Douglas, K, 'The teaching of ADR in Australian law schools: Promoting non-adversarial practice in law', (2011) 22 *Australasian Dispute Resolution Journal* 55

Queensland and one in New South Wales. She found that ADR is taught as a compulsory stand-alone course, or combined with civil procedure or non-adversarial justice.[98] Douglas found that in some cases ADR was integrated into substantive law courses across the curriculum, with a later year stand-alone ADR elective available.[99] Douglas discovered that although those law courses included ADR in their curriculum, the place of ADR was sometimes uncertain.[100] Douglas argued that this was probably because ADR was not one of the compulsory knowledge areas for accreditation as an Australian lawyer. Law schools were free, in other words, to exclude ADR from their core offerings and not mandated to provide ADR as an elective.[101] Writers and educators such as King et al advocated strongly for ADR to be taught across the curriculum, so that students would not only develop a comprehensive understanding of ADR processes, but a desire to incorporate them into their future legal practice as appropriate and fundamental methods of dispute resolution.[102]

In 2008, the *Review of Australian Higher Education* (the Bradley Review)[103] was conducted to look at the quality of Australian higher education. According to the review, the standard of higher education in Australia had begun to lag

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[98] Ibid.
[99] Ibid.
[100] Ibid.
[101] Ibid.
[102] M King, A Freiberg, B Batagol, R Hyams, *Non-Adversarial Justice* (The Federation Press, 2009) 247
[103] Australian Government, Review of Australian Higher Education (2008) (the Bradley Report)

behind other Organisation for Economic Co-operation and Development (OECD) countries and Australia needed to increase funding, improve staff/student ratios and value teaching in universities and other providers.[104] In response to this report, the Australian Federal government introduced a new regulatory regime to ensure quality in the tertiary sector. This regime required all higher education providers to meet Threshold Standards in order to enter and remain in the sector.[105] Selected discipline areas were given articulated threshold learning outcomes (TLOs) including for the Bachelor of Laws, under the Federal Government Learning and Teaching Academic Standards project.[106] In 2010, funding was provided to develop benchmark standards in law, as part of a new Higher Education Quality and Regulatory Framework and these standards were completed in December 2010.[107] The Australian Qualifications Framework (AQF) provides a hierarchy of education qualification categories. For each qualification category, there are specified learning outcomes – that is, levels of attainment in defined areas of skills and knowledge that students are expected to achieve by completing the university course.[108] Since 1 July 2015, all university courses have been required to comply

[104] Ibid xi-xvi.

[105] Australian Government, Tertiary Education Quality and Standards Agency (TEQSA), About TEQSA http://www.teqsa.gov.au/about-teqsa at 3 January 2012.

[106] Australian Learning and Teaching Council (ALTC), 'Discipline Setting Standards' ALTC Newsletter 2010. http://www.altc.edu.au/standards at 3 January 2012.

[107] Australian Learning and Teaching Council, Learning and Teaching Academic Standards Project: Bachelor of Laws: Academic Standards Statement (December, 2010).

[108] See Sourdin, above n 1.

with the AQF.[109] Education providers are required to demonstrate student achievement of the AQF learning outcomes specified for the relevant qualification category. The Australian Learning and Teaching Council (ALTC) established discipline forums to develop standards that define the skills and knowledge required for particular discipline areas. The ALTC discipline forum for law developed the *Bachelor of Laws Learning and Teaching Academic Standards Statement* (the ALTC Standards), a statement of threshold learning outcomes for LLB courses offered by Australian universities.[110]

ADR can be seen as both theory and skills education and some scholars have suggested that this discipline area covers a number of learning outcomes that a law student should master as part of their studies.[111] ADR is relevant in four prime areas out of the six TLOS. These include TLO 1: knowledge, TLO 3: thinking skills, TLO 5: communication and collaboration and TLO 6: self-management. [112] What this means is that even though ADR is not currently mandated for admission as a lawyer in Australia, learning outcomes from ADR courses align with the requirements of contemporary legal education.[113] This initiative is seen as representing a significant increase in the status of ADR with many law schools likely to be influenced to include ADR in the compulsory

[109] Ibid.

[110] Australian Learning and Teaching Council (ALTC), *Learning and Teaching Academic Standards Project: Bachelor of Laws: Academic Standards Statement* (December, 2010)

[111] Ibid.

[112] Australian Learning and Teaching Council (ALTC), *Learning and Teaching Academic Standards Project: Bachelor of Laws: Academic Standards Statement* (December, 2010)

[113] Douglas, above n 97, 283.

curriculum, in some form, due to the TLOs.[114] Importantly, Douglas tempers these findings with a warning that despite the potential for TLOs to encourage a deeper focus on ADR, law schools may meet these new requirements but still not offer students a quality experience of ADR theory and practice.[115] Douglas cautions against including ADR as an add-on to core law subjects such as civil procedure. She argues that if this were to happen, students would experience ADR within a litigation framework (given the specific subject being studied), and as a cursory treatment of ADR in the learning and teaching design.[116] According to Douglas, this integrated approach to ADR may mean that ADR is taught as a module that fails to address theoretical concerns in depth, and is unlikely to be taught by an ADR 'expert', which may diminish the effectiveness of the learning and teaching design.[117]

Over the last 10 years, a number of Australian law schools have included ADR as a focus in the curricula. By way of example, La Trobe University Law School was the first Australian law school to incorporate a compulsory dispute resolution subject into its law curriculum. Since 2005, all law students in La Trobe's LLB program are required to enrol in the course, Dispute Resolution, which provides a general introduction to the theoretical and practical aspects of conflict and dispute resolution, including litigation.[118] More details of the

[114] Ibid.
[115] Ibid.
[116] Ibid.
[117] Ibid.
[118] Gutman, J and Riddle, M, 'ADR in legal education: Learning by doing' (2012)

structure of the course can be obtained[119], though it must be noted that processes of arbitration, conciliation, mediation and negotiation are described and evaluated in this course. Guest lecturers who are experienced practitioners in the field of mediation are used in a variety of areas including family law[120] Skills- based training in negotiation and mediation is a major and compulsory component of the course. It is noted by Gutman and Riddle that 'the 'learning by doing' teaching philosophy behind the program is the central point of teaching and learning in the subject.'[121] This is brought about by the exploration of theoretical concepts in lectures and discussing readings on the lecture topics in seminars. The seminars allow the students to develop fundamental skills such as communication, negotiation and mediation in a smaller environment.[122] According to Gutman and Riddle 'student evaluations of this course 'have been overwhelmingly positive'.'[123]

In 2016, Monash University incorporated ADR into the Civil Procedure Unit for LLB and JD students. The teaching approach to the Unit includes lectures conducted in lecture/seminar style with three tutorials supporting the student's learning. Students are given lectures on Introduction to the Civil Justice System and Alternative Dispute Resolution. In a tutorial focusing on ADR, a simulated

23 *Australasian Dispute Resolution Journal* 191

[119] Ibid.

[120] Ibid 191.

[121] Ibid.

[122] Ibid.

[123] Ibid 192.

dispute is given to the students and there is an online component to the ADR exercise, which must be completed prior to the tutorial. Students work in small groups to resolve the online dispute using negotiation and mediation strategies. The students then attend the tutorial and complete the mediation with face-to-face ADR. After completion of the activity, students are required to submit a short reflective journal about their experiences in the exercise.[124]

Both Monash University and Melbourne University offer postgraduate courses in ADR. Monash University offers a Masters of Dispute Resolution. The guidelines for this Course state that it provides a thorough theoretical and practical grounding in dispute resolution and develops the advanced professional skills and specialist knowledge required for working as a dispute resolution practitioner, including as an arbitrator, mediator or other dispute resolution practitioner. It is suitable for graduates interested in developing or enhancing specialist careers in dispute resolution.[125]

Melbourne University offers a Graduate Diploma in Dispute Resolution. According to the synopsis

> This specialisation in dispute resolution works from the principles that underpin dispute resolution and management. The subjects examine how these principles inform the theoretical and practical aspects of this rapidly changing area of law. This course is relevant to legal practitioners and will appeal to others working in the design, reform and practice of dispute resolution. Judges, legal practitioners and legal researchers teach a broad range

[124] Monash University Unit Guide for Civil Dispute Unit
[125] Monash University Unit Guide for Masters of Dispute Resolution

of subjects spanning litigation and alternative dispute resolution[126]

From this discussion it is clear that the teaching of ADR at law school has been recognised as adding value to students' legal education and so should have a key position in the legal curriculum. There have been some attempts to incorporate ADR into existing curricula at some Australian universities. In the next section I will look more closely at the place of ADR in Australian clinical legal education. I will focus on how the teaching of ADR can add value to students' clinical legal education and be brought in line with the integration of theory and practice.

ADR and CLINICAL LEGAL EDUCATION IN AUSTRALIA

In line with support for the notion of 'learning by doing' and the views of writers, academics and commentators that a legal education should also teach students what lawyers actually do in practice, a strong practice-oriented trend of legal education has developed in Australia.[127] According to the Best Practices

[126] Melbourne University Synopsis for Graduate Diploma in Dispute Resolution

[127] Gutman, J, Fisher, T, Martens, E, Why teach alternative dispute resolution to law students? Part one: past and current practices and some unanswered questions, *Legal Education Review* (2006) 125 This research is focused on clinical legal education in the Australian context, but it must be noted that clinical education is accepted, encouraged, taught, learned and researched internationally. Much writing exists on clinics in the international context some include: Margaret Barry, Clinical Legal Education in the Law University: Goals and Challenges (2007) 27 *International Journal Clinical Legal Education* p 30, for discussions on clinical legal education in India, and p33 Legal Education Reform in United States; James Marson, Adam Wilson and Mark Van Hoorebeek, The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective (2005)7 *International Journal of Legal Education* 29 for a discussion on clinical legal education in UK, Neil Gold, Clinic is the Basis for a Complete Legal Education: Quality Assurance, Learning Outcomes and the Clinical Method, (2015) 22 *International Journal of Clinical Legal Education* 1 for a overview on clinical legal education in Canada

Report[128] in Australia:

> 'Clinic' or clinical legal education (CLE) is a significant experiential method of learning and teaching. CLE places law students in close contact with the realities, demands and compromises of legal practice. In so doing, CLE provides students with real-life reference points for learning the law. CLE also invites students to see the wider context and everyday realities of accessing an imperfect legal system. Clinical pedagogy involves a system of self-critique and supervisory feedback so that law students may learn how to learn from their experiences of simulated environments, observation and, at its most effective level, personal responsibility for real clients and their legal problems. CLE is, in summary, a learning methodology for law students that compels them, through a constant reality check, to integrate their learning of substantive law with the justice or otherwise of its practical operation.[129]

Clinical legal education programs have grown in Australian university curricula, in keeping with the notion that law schools must teach more than theory.[130] The clinical model of legal education commenced in Australia in the early 1970s with the first Australian clinical program commencing at Monash University in 1975, followed by programs at La Trobe University (1978) and the University of New South Wales (UNSW)(1981).[131] This model embraced a strong emphasis on service and access to justice with the clinics at these universities being onsite live client clinics. Small clinical programs have since emerged in law schools around Australia. In recent years, there has been an

[128] Evans, A, Cody, A, Copeland A, Giddings, J, Noone M.A & Rice S, Best Practices Australian Clinical Legal Education Office of Teaching and Learning 2013

[129] Ibid 20.

[130] Noone M and Dickson J, 'Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers' (2004) 4 *Legal Ethics* 127.

[131] J Giddings, *Promoting Justice Through Clinical Legal Education*, Justice Press 2013, 9

increase in external clinical placements with some being incorporated into existing community and government agencies.[132] It is recognised that clinical methodologies provide a forum for student learning about the effects that laws and legal processes have on people, moving further from cases to considering issues that exist both before and after any formal legal processes.[133]

Dickson provides a view of clinical legal education in Australia as 'a legal practice based method of legal education in which students assume the role of a lawyer and are required to take on the responsibility, under supervision, for providing legal services to real clients.'[134] It is through this model of legal education that students learn fundamental practical skills recognised as of equal value to their comprehension of substantive law.[135] As Hyams et al emphasise, '…those learning the law at any stage of life as a law student, graduate or new lawyer are often a little surprised to realise that it's not just what they know about the law that matters, but also how they learn it and apply it.'[136]

The most clearly recognised model of clinical legal education known as the 'live

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[132] Ibid 10, with reference to clinics established at Deakin University (2003), the Australian National University (2004), Bond University (2004), Macquarie University (2004), University of Queensland and University of Sydney, see Giddings for detailed outline of clinical programs.

[133] Ibid 13.

[134] Judith Dickson, *25 Years of Clinical Legal Education at La Trobe Uni* (2004) 29 (1) *Alternative Law Journal* 41

[135] Ross Hyams, Susan Campbell, Adrian Evans, *Practical Legal Skills* (4th ed.) (Oxford University Press, 2014)

[136] Ibid 1.

client' clinic involves working with real clients.[137] According to Giddings, the complexities of working with real clients needs to be acknowledged as enabling students to deepen understandings already developed elsewhere in the curriculum.[138] The 'live client' clinic model is recognised as developing key understandings and skills (such as structuring and conducting an interview, preparing to negotiate and reflecting on personal performance) in order to then extrapolate and generalise from those experiences.[139] In the United States, a 2007 report by the Carnegie Foundation[140] into legal education emphasised the importance of legal skills. It was argued in this report that clinics 'can be a key setting for integrating all the elements of legal education, as students draw on and develop their doctrinal reasoning, lawyering skills, and ethical engagement, extending to contextual issues such as the policy environment'.[141] Giddings takes this further by stating that work with real clients in this context of learning provides particular opportunities for students to develop their understanding of the lawyer-client relationship and to refine their legal practice-related skills.[142] As such, these clinics are seen as enhancing 'the

[137] Monash University has adopted such a clinical model at Monash Oakleigh Legal Service and Springvale Monash Legal Service. See further discussion on 'live client' clinics and other clinic types in Australia in A Evans and R Hyams, Specialist Legal Clinics: Their Pedagogy, Risks and Payoffs as Externships, (2015) 22 *International Journal of Clinical Legal Education* 3

[138] Giddings, above n 131, 78.

[139] Ibid 79, also see Specialist Legal Clinics: Their Pedagogy, Risks and Payoffs as Externships, (2015) 22 *International Journal of Clinical Legal Education* 2

[140] Ibid citing Carnegie Report 2007

[141] Ibid, citing William Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Carnegie Report) (2007) 10.

[142] Giddings, above n 131, 95.

learning experience because of the way in which the student must interact with the client'.[143] The student is made acutely aware of the individuality of the relationship between lawyer and client and the need for the competent lawyer to respond to the particular set of facts that arise in each case.[144] Clinical legal education and pedagogy[145] lends itself to the 'interconnectedness of theory and practice'.[146] In the teaching of ADR, this connection can occur by shaping students' knowledge, skills and attitudes towards non- adversarial options for resolving clients' legal issues.[147]

Macfarlane states that debate over learning about law can be reframed within a realisation of the 'interconnectedness of theory and practice'.[148] It is important to explore whether this 'connectedness' between the teaching and practice of ADR is in fact happening in various clinics in Australia. Macfarlane strongly advocates for clinical legal education to be warned against becoming 'stuck' in a conception of social justice lawyering that is heavily dependent on rights-based strategies and traditional hierarchical conceptions of the lawyer/client relationship.[149] Macfarlane traces the history of early clinics, which she notes

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[143] Ibid.

[144] Ibid, citing John Boersig, James Marshall, and Georgia Seaton, 'Teaching Law and Legal Practice in a Live Client Clinic' (2002) 6(2) *Newcastle Law Review* 51,64.

[145] See Best Practices Australian Clinical legal Education Office of Teaching and Learning 2013 for discussion on CLE Course Design, including Learning Outcomes, Principles and Best Practices pp11-14

[146] Macfarlane, above n 51, 226.

[147] Ibid.

[148] Ibid.

[149] Julie Macfarlane, 'Bringing the Clinic into the 21st Century', (2009) 27 *Windsor Yearbook of Access to Justice* 35

were motivated by an 'ethos of public service and a desire to bring access to justice to underserved and marginalised groups within the community.'[150] In the process, Macfarlane notes, students would acquire important practical skills and skills teaching was seen as an effective answer to demands for competency that were gathering pace as a result of reports such as the MacCrate Report [151] in the US and the Marre Report [152] in the UK. According to Macfarlane:

> 'Clinics need to keep pace with the changing environment of legal service, and continue to capture the imagination of law students and funders, there needs to be a re-evaluation and modernisation of how we think about both the service and the educational goals of the law clinic.'[153]

Macfarlane suggests that clinics need to remain relevant and vital in their dual mission of legal education and justice. Clinics need to examine how far the ideology of a 'default to rights', and an assumption that the lawyer is 'in charge' in the professional relationship still drive their decision-making and sense of worth.[154] The challenge for clinics is to be willing to reevaluate how, in this new environment, they can fulfill their dual mission of education and service most effectively and with the greatest potential for transformation.[155] Legal clinics need to be brought into the 21st century and to revisit the 'sacred beliefs that

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[150] Ibid 36.

[151] Ibid citing Robert McCrate, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (New York Bar Association, 1992)

[152] ibid citing Marre Committee, *A Time for Change: Report of the Committee on the Future of the Legal Profession* (London: General Council of the Bar/ The Law Society, 1988).

[153] Ibid.

[154] Ibid.

[155] Ibid.

drive both the law school curriculum and the operation of the legal clinics.'[156] In order for legal clinics to prepare their students to be 21st century lawyers, there needs to be a move away from the 'default to rights'.[157] In other words, clinics need to move away from assuming a 'relentlessly normative view of conflict, in which one side is right and the other is wrong, and in which therefore there must always be a winner and a loser'.[158] An alternative and more beneficial approach would be for clinic clients to be advised of a range of options, including litigation, negotiation and dialogue, all with the overall commitment to practical problem solving.[159] Indeed, and as I explained earlier, there are some areas of law in which this is not only the *ideal*, but where it is also a legislative requirement. In the 21st century, there is a move towards 'wise and transparent bargaining…towards finding the best possible settlement, this is a better strategy and may more directly address client's needs, both legal and non-legal.'[160] It is interesting to note that in their research regarding ADR in clinical legal education programs in Australia, King et al observe that clinical supervisors will state that they have been teaching ADR for many years and that the type of law that they have been modeling and teaching students simply did not have the label of 'non-adversarial' until recently.[161] This view is based

[156] Ibid
[157] Ibid.
[158] Ibid 46.
[159] Ibid.
[160] Ibid.
[161] King et al, above n 102, 248.

on the fact that clinicians in these programs often attempt to resolve client problems without resorting to litigation, because most clients of clinics cannot afford the time or expense of court proceedings.[162] King et al. suggest that many clinicians would argue that there are overlaps between non-adversarial ideologies and clinical legal education and that these techniques have been an implicit part of clinical pedagogy for years.[163] They also argue that it is not sufficient for clinical legal educators to point to this holistic and client-centered way of lawyering and state that they are teaching ADR skills.[164] Instead, they suggest that the teaching of ADR needs to be explicit, rather than implicit. They go further to suggest that

> 'It is crucial for clinics to incorporate theories of non-adversarial justice not only in the practice of clinical legal education but in the scholarship and research, clinical legal education can provide students with more depth to their understanding of both practical legal skills and non-adversarial legal scholarship.' [165]

The issues raised by King et al have been echoed by experts in clinical legal education outside Australia. Frank Bloch, a leader in research on the global clinical movement, suggests that because ADR and clinical education share overlapping goals of advancing the interests of parties and addressing deficiencies in access to justice, ADR education and clinical legal education are

[162] Ibid.
[163] For further reading of this issue see King et al, above n 102, 249.
[164] Ibid.
[165] Ibid.

slowly integrating and advancing beyond the teaching and practice of basic negotiation skills that have been included in the clinical curriculum for many years.[166] Bloch has researched the impact that the integration of ADR into the clinical curriculum has had or might have had in law schools in India, South Africa and the United States. He found that clinical programs that teach and practice ADR can inform, improve, and reform not only legal education, but also, over time, the practice of law and the legal profession.[167]

Bloch reports that many law schools in the United States offer ADR courses, with a few schools requiring students to take at least one ADR course.[168] In addition, law schools, for example in South Africa, also offer Street Law programs in which law students provide peer mediation and conflict resolution training for school students.[169] Taking into account these contexts, we can see that some clinical educators are alive to these issues and ADR is starting to be dealt with in more explicit ways in clinical settings. Indeed, in the US, some law schools have established clinics dedicated to ADR. A growing number of schools have developed mediation and arbitration clinics and some law schools offer community lawyering clinics that include ADR components. According to Bloch, some law schools in the US offer ADR clinics, where students may assist in employment mediations and consumer arbitrations. Some of these

[166] Frank S. Bloch, *The Global Clinical Movement* (Oxford University Press, 2011) 254
[167] Ibid 260.
[168] Ibid.
[169] Ibid.

clinics are joined to court programs where litigants are offered an ADR option in place of a trial.[170] According to Bloch, 'it is in clinics that embrace ADR where law students develop their professional identity and fundamental lawyering skills and values as problem-solvers, conciliators, mediators and peacemakers'. [171] He concludes 'for these reasons, ADR has a unique contribution to make to clinical legal education around the world-as a richer way to teach and advance social justice.' [172]

The aforegoing discussion indicates that ADR has been recognised by clinicians in some clinical settings as an important aspect of lawyers' practice and therefore that ADR skills and processes, in particular, negotiation and mediation, are viewed as a pivotal focus in the education of lawyers. According to Evans et al, clinical legal education confronts law students with the realities, demands and compromises of legal practice.[173] In so doing, it provides students with real-life reference points for learning the law.[174] Clinical legal education also invites students to see the wider context and everyday realities of accessing an imperfect legal system, enabling them to integrate their learning of substantive law with justice implications of its practical operation.[175] Evans et

[170] Ibid.
[171] Ibid.
[172] Ibid.
[173] Evans, A, Cody, A, Copeland A, Giddings, J, Noone, M.A & Rice S above n 128
[174] Ibid.
[175] Ibid.

al, suggest that both the aims[176] and the 'learning outcomes'[177] are central to the clinical design of a course, which is 'designed to promote specified student learning outcomes'.[178] *Best Practices* [179] proposes possible learning outcomes for clinical legal education, which include 'an understanding, and appropriate use, of the dispute resolution continuum (negotiation, mediation, collaboration, arbitration and litigation)'.[180] A focus in clinical legal education on concepts of justice where the practice of mediation or forms of dispute resolution other than litigation are utilised, will enable students to question adversarial approaches to dispute resolution that are reinforced in their legal studies through a case method of teaching.[181] Students are encouraged to view the client's matter holistically and are provided with strategies and theoretical models to support their practice.[182] In this way, students will become aware that ADR is a fundamental part of the analysis of any case, in the same mode of taking instructions as to what is the cause of action that the putative litigant presents in clinic. This awareness for students is particularly apparent in the clinical context as most clinics are situated in community settings, offering clients access to justice, not available in private legal practice. As the clients in

[176] Ibid 78 seen effectively as a statement by the law school of why it is offering the course

[177] Ibid 78 a statement by the law school of what a student will be able to show they have learnt from a course

[178] Ibid.

[179] Ibid 81.

[180] Ibid.

[181] Ibid.

[182] Ibid.

the community setting do not have the means to litigate, it becomes all the more important for students to consider other options for resolution of disputes other than litigation. These options will need to be addressed according to the client's means.

Clinical legal education in Australia has many connections with social justice.[183] There is a longstanding relationship between clinical programs and community legal centres and this relationship has influenced the teaching of various aspects of social justice goals in Australian courses.[184] Evans et al suggest that situating clinical courses in community legal centres gives a particular context to teaching legal ethics and challenges concepts of value-neutral, objective lawyering.[185] As such teaching lawyering skills in community legal centres highlights the legal skills required in a social justice setting.[186]

When a clinic operates in a community legal centre setting, it is in the nature of the work that issues of access to justice arise daily, with almost every client who comes through the door.[187] This means that clinics offer students a powerful opportunity to analyse the 'justice' dimensions of law, ranging from the relationship between law and the perceived justice of its effect, to a lawyer's ethical obligations to achieve what a client wants as a 'just' result, to systemic

[183] Evans et al, *Australian Clinical Legal Education* (ANU Press, 2017) 97

[184] Ibid.

[185] Evans, A, Cody, A, Copeland A, Giddings, J, Noone M.A & Rice S, above n 128 40

[186] Ibid.

[187] Ibid 116.

questions about access to law and legal services.[188] These are especially rich opportunities for reflective practice.[189]

The role of the clinic as a service provider will itself raise systemic questions about access to justice, for example, about available alternative services (private, public, legal and non-legal), about accessibility (geography, physical, cultural, language, financial etc). Within the work of a clinic based in a community legal centre or legal aid organisation, questions of access to justice attach to almost every client, inviting students to reflect on, for example, why the legal needs of a client and a community are not being met, or how they can be better met.[190]

CONCLUSION

Despite this recognition, there is still uncertainty as to whether or how ADR, especially negotiation and mediation, is taught to students in clinical contexts. Researchers like Giddings recognise the educational value of the real client clinic in providing opportunities for students to develop skills relating to legal practice and an awareness of social justice.[191] The legal clinic is where students are provided with opportunities to develop a range of attitudes, skills and understandings associated with legal practice.[192] As such, if ADR is becoming

[188] Ibid.

[189] Ibid.

[190] Ibid 117.

[191] Ibid.

[192] Ibid.

recognised as a prominent component of legal practice, it follows that the connection between students' acquisition of knowledge in ADR and the application of this acquired knowledge to resolve client disputes should be a focus of clinical legal education.

The issue of where and how to ensure that ADR has a place in clinical legal education may extend further than creating ADR clinics, to a focus on legal service delivery in a social justice context. Students need to be taught to focus on client issues and how best to solve them. This may involve students being skilled up to actually learn about and start to think differently about using ADR frameworks in how they approach client matters and how they seek to resolve them. It may not be that the 'clinical learning outcome' is necessarily to teach students to become the best mediators or arbitrators but rather to provide students with holistic strategies, which they may use to negotiate for their clients in seeking alternatives for resolution of disputes.

In this paper I have argued that ADR processes are increasingly considered by legal practitioners to be an important aspect of lawyers' practice and by legal educators as a necessary ingredient of legal education. For the reasons I have explained, there is a need to ensure that clinical legal education is keeping up with changes in legal practice and legal education. Educators in the clinical legal education context should be providing students with sufficient knowledge of methods for dispute resolution to adequately prepare them for practice as '21st century lawyers'.

Susskind states that law schools cannot ignore future practice and law students should be provided with *options,* to study current and future trends in legal services and to learn some key 21st century legal skills that will support future law jobs.[193] ADR is a growing area of legal practice resulting in changes in models of client service and advocacy.[194] The issue then is how best to prepare young lawyers for these changes. According to Sourdin, legal academics (and law schools) play an essential role in the training and education of lawyers and in interpreting these changes.[195] Sourdin sees legal education and training as 'a continuum along which the skills and values of the competent lawyer are developed.'[196] There is a need to explore whether clinical legal education is taking these changes in legal practice on board and moving away from teaching traditional adversarial models towards teaching a more ADR skills based curriculum. There is a need to look more closely at whether the 'interconnect' between the teaching and practice of ADR is in fact happening in clinics; if so, how this teaching is happening including an examination of clinical curricula. If it is established that this teaching is taking place, then research needs to be done to determine the strengths and weaknesses of existing approaches to teaching ADR in the clinic, and to consider whether and in what ways this teaching can be enhanced. We may also need to investigate whether it is

[193] Ibid.
[194] Macfarlane, above n 51, 243.
[195] Sourdin, above 1, 5.
[196] Ibid.

sufficiently contributing to students' knowledge of non-adversarial approaches towards conflict resolution.

According to Sourdin,'changes to the law school education environment supporting ADR in a realistic, rather than marginal way should mean that there is a greater chance that law school education in Australia into the future will be both relevant and supportive of respectful dispute resolution in its traditional and alternative forms.' [197] Clinical scholars view clinical legal education as a method of learning and teaching law.[198] It includes teaching about skills as well as the broader legal system.[199] In this paper, I have shown that ADR has become a part of the legal system both in Australia and internationally. If clinical legal education is to teach students about the skills needed for practice then it follows that a focus on the teaching and learning of ADR skills is needed. Extensive research has shown that ADR has an important role in legal education. It places emphasis on a non-adversarial process of resolving conflict and provides lawyers with the knowledge and skills to engage with legal problems in a holistic manner. Law students engaged in clinics who understand and adopt these processes will become lawyers who focus first on client's needs and interests when problem solving and resort to adversarial practice only when necessary. In this way, clinical legal education

[197] Ibid.
[198] Evans, A, Cody, A, Copeland A, Giddings, J, Noone M.A & Rice S, above n 128 40
[199] Ibid 41.

can ensure that law students are well prepared for their roles as 'new lawyers' in 21st century legal practice, who will utilise their comprehensive knowledge of ADR options to assist their clients to gain access to justice in more timely and cost effective ways. One can argue that in both the wider legal practice context and in the clinical education setting, ADR has a prominent focus. As such, taking into consideration the arguments put across in this paper, to prepare law students for legal practice, there is no alternative but to teach ADR in clinic.

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PROPOSAL FOR AN ITALIAN FAMILY MEDIATION CLINIC

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Introduction

Before joining Columbia Law School's LL.M. program, my understanding of clinical legal education was very limited. Being the product of an Italian legal education, I was not even sure of what exactly a law school clinic was. Then, I took my first steps into this fascinating field with the help of Professor Alexandra Carter and Lecturer-In-Law Shawn Watts. I became impressed by the learning experience provided by the mediation clinic, and came to realise that clinical teaching could be incredibly beneficial

for law students all over the world and within each and every academic environment. For these reasons, I decided to focus my research on creating a framework for the introduction of a mediation clinic in Italy, via collaboration with Libera Università Maria SS. Assunta ("LUMSA") in Rome.[1]

In order to properly consider how a mediation clinic could be implemented in LUMSA, I had to learn about clinical education and how it developed. For this reason, section A of this paper discusses the historical evolution of clinical legal programs in the United States, the homeland of clinical legal education. Next, I discuss the current framework of Italian legal clinics, focusing on its American heritage and associated nuances.

After understanding the evolution of clinical legal education, I needed to understand how it is currently implemented, and how this model could be adapted in other settings. Section B considers why mediation would be particularly suitable for the creation of an Italian legal clinic, given the recent incentives created by the European

[1] For similar research in different contexts, see Schrag P., Constructing a Clinic, *3 Clinical Law Review 175* (1996); Broadhead P., A Model Program for Establishing a Criminal Appeals Clinic at Your School More Bang for the Buck, *75 Mississippi Law Journal 671* (2006); Jessup G., Symbiotic Relations: Clinical Methodology-Fostering New Paradigms in African Legal Education, *8 Clinical Law Review 377* (2002); Rosenbaum S., The Legal Clinic Is More Than a Sign on the Door: Transforming Law School Education in Revolutionary Egypt, *5 Berkeley Journal Middle East & Islamic Law 39* (2012); Wilson R., Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South, *8 Clinical Law Review 801* (2002); Zielińska E. et al., *The Legal Clinic: The Idea, Organization, Methodology*, The Legal Clinics Foundation – Warsaw (2005); Qafisheh M., Reforming Legal Education through Clinical Pedagogy: Legal Education in Palestine, *4(2) Asian Journal of Legal Education 146* (2017).

legislature to strengthen alternative dispute resolution. Then, taking advantage of the institutional knowledge of Professors Carol Liebman and Alexandra Carter, I describe the evolution of the Columbia Law School Mediation Clinic, from its beginning to the recent creation of an advanced clinic model. Finally, I describe how these insights can inform laying the foundations for an Italian mediation clinic at LUMSA.

Section C lays out baseline considerations and recommendations for creating a family mediation clinic at LUMSA. To this end, I analyse three different approaches to family and community mediation previously adopted in the context of clinical legal education: facilitative mediation, transformative mediation, and peacemaking circle. Then, I propose a model tailored to the cultural, legal, and educational needs of LUMSA and of the families the clinic hopes to serve. Finally, I provide sources and materials for the proposed curriculum, including a sample role-play that I created.

A. Clinical Legal Education

I. The Development of Clinical Legal Education in the United States

The evolution of clinical legal education in the United States starts in 1933 in New Haven, with the publication of a law review article called "Why Not a Clinical Lawyer-School?"[2] by Professor Jerome Frank, who referred to the law school curriculum as

[2] Frank J., Why Not a Clinical Lawyer-School?, *81 University of Pennsylvania Law Review 907* (1933). See, also, Frank J., What Constitutes a Good Legal Education?, *19 American Bar Association Journal 723*

inadequate and unreasonably abstract, because of the absence of any apprenticeship at all. [3] The article proposed that law schools should follow the example of medical schools and open clinics, staffed by faculty with practical experience that would offer legal services for a nominal fee.[4] This position was later reaffirmed by Karl Llewellyn, Professor at Columbia Law School, who did not believe, as Frank seemed to, in the complete substitution of theoretical instruction, but strongly advanced the idea that theoretical studies should be accompanied by practical complements.[5] Despite having different views on the extent to which practical activities should be incorporated in the law school curriculum, both Llewellyn and Frank were early advocates of clinical legal

(1933); Symposium, Law and the Modern Mind, *31 Columbia Law Review 82* (1931); Frank J., A Plea for Lawyer-Schools, *56 Yale Law Journal 1303* (1947). For a detailed analysis of the writings of Professor Frank, see Kruse K., Getting Real About Legal Realism, New Legal Realism and Clinical Legal Education, *Faculty Scholarship Paper 382* (2011).

[3] See, Frank Why Not a Clinical Lawyer-School? (1933), *supra*, p. 914-915 ("[t]he lawyer must learn the jargon of the courts, the art of judicial rhetoric. The exclusively book lawyer can perhaps best teach such 'library-law'. [Therefore,] 'library-law' teacher[s] should cease to dominate the schools … [but] [u]nfortunately, attempted reform of legal pedagogy is frequently in [their] hands.").

[4] See, Frank Why Not a Clinical Lawyer-School? (1933), *supra*, p. 917 ("… now we come to a point which the writer considers of major importance … law schools could learn much from the medical schools. Medical schools rely to a very large extent on the free medical clinics and dispensaries. … Suppose … that there were in each law school a legal clinic or dispensary. … The work of these clinics would be done for little or no charge. The teacher-clinicians would devote their full time to their teaching, including such clinical work, and would not engage in private practice."). See, also, Holland L., Invading the Ivory Tower: The History of Clinical Education at Yale Law School, *49 (4) Journal of Legal Education 504* (1999), p. 508-509.

[5] See, Llewellyn K., On What Is Wrong with So-Called Legal Education, *35 Columbia Law Review 651 (*1935), p. 675 (despite the fact that "law school is needlessly abstract, and needlessly removed from life … I do not believe, as Frank seems to, in the substitution of practice or clinic for theoretical instruction. But I believe with all my soul in the livening up, the making real, of the theoretical work by practical complement."). See, also, Llewellyn K., The Current Crisis in Legal Education, *1 Journal of Legal Education 211* (1948), which contains a critique of use of the case-method model in American law schools during the 1940s.

education, recognising that students must learn about the "law as a means to an end rather than as an end itself."[6]

The purpose of learning law through clinical legal education became more defined in the 1960s.[7] In the days of Watergate and of Vietnam, advocates of clinical education passionately believed that the clinical movement, which claimed to be sensitive, egalitarian, nonhierarchical, and open would revolutionise traditional legal education and lead to reform of the profession.[8] This social change revolution provided an opportunity to shift from "law school curricula … organised around the profit system," to a model that included "considerable clinical experience … directly concerned with the problems of the poor."[9] This altruistic cause was embraced and encouraged by the Ford Foundation, which donated several million dollars to law schools that agreed to

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[6] Barry M. et al., Clinical Education for this Millennium: The Third Wave, 7 *Clinical Law Review* 1 (2000), p. 12.

[7] See, Barry M. et al., *supra*, p. 12. See, MacCrate R., Educating a Changing Profession: From Clinic to Continuum, *64 Tennessee Law Review 1099* (1997), p. 1108 (despite the fact that in the late 1950s and early 1960's "law school clinics provided an insignificant part of the total legal aid work, the importance of the clinics' educational mission was gaining recognition in the bar at large, as well as in the legal aid community."). See, generally, Meltsner M. and Schrag P., Reflections on clinical legal education, Northeastern University Press – Boston (1998).

[8] See, Symposium: Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future, *36 Catholic University Law Review* 337 (1987), p. 341. See, also, Holland L., *supra*, p. 514 ("[t]he social and political movements of the 1960s called lawyers to become activist reformers. Law students heard the same call and sought out work that would make their theoretical study of law relevant to the social struggle that was going on outside the walls of the law school.")

[9] Ares C., Legal Education and the Problem of the Poor, *17 (3) Journal of Legal Education 307* (1965), p. 307-310. See, also, Feldman M., On the Margins of Legal Education, *13 N.Y.U. REV. L. & Soc. CHANCE 607* (1985), p.638 ("Even if the majority of our students go on to professional lives entirely unrelated to the lives of the poor and underrepresented, we should at the very least, impart to them an informed sense of what the legal system looks like to many Americans. If ignorance breeds intolerance, our teaching may be a potent antidote.").

introduce legal clinics devoted to serving the poor as a permanent feature of their curriculum.[10] The economic incentives offered by the Ford Foundation boosted the growth of clinical legal education exponentially throughout the United States[11] and consolidated the commitment to social justice, fairness and non-discrimination, which became crucial features in the development of clinical education[12] and are still fundamental in the outreach mission of law school clinics as we know them today.[13]

While the outward purpose of legal clinics was being shaped, an academic debate on the educational value of clinical programs arose within universities; conservative

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10 See, Grossman G., Clinical Legal Education: history and diagnosis, *Journal of Legal Education*, 26 (2) (1974), p. 173. See, also, MacCrate, *supra*, p. 1111 ("[i]n 1968 the Ford Foundation took a decisive step in support of the … clinical education movement [by providing] a funding commitment of approximately $12,000,000."); Wizner S., The Law School Clinic: Legal Education in the Interests of Justice, *Faculty Scholarship Series Paper 1843* (2002), p. 1933; Holland, *supra*, p. 513-517. See also the booklet Ford Foundation Grantees and the Pursuit of Justice, published by the Ford Foundation in 2000, which summarises the history and development of the foundation (available at https://www.fordfoundation.org/media/1707/2000-ford-foundation-grantees-and-the-pursuit-of-justice.pdf).

11 See, Wizner (2002), *supra*, p. 1933. See, also, Dubin J., Clinical Design for Social Justice Imperatives, *51 Southern Methodist University Law Review 1461* (1998), p. 1466 ([w]ithin a few years of [the formation of the Ford Foundation program] almost half of all law schools in the country had some type of a clinical program.").

12 See, Barry, *supra*, p. 55. Wizner S., Beyond Skills Training, *7 Clinical Law Review 327* (2001), p. 327 ("… the clinical approach to legal education has always been rooted in a social justice mission."). See, also, Dubin, *supra*, p. 1505 ("[a]s a widening gulf emerges between rich and poor in American society and access to legal services becomes further removed from subordinated communities, the importance of clinical legal education's historic commitment to social justice becomes manifest. The need for law schools and universities to share their considerable resources in the struggle for justice and human dignity has scarcely been greater.").

13 See, Dinerstein R., Clinical Scholarship and the Justice Mission, *40 Cleveland State Law Review 469* (1992), p. 470-471 ("[s]ome of the best clinical scholarship examines the manner in which indigent clients experience the welfare system, housing court, and other settings that exist far from the esoteric world of appellate cases. … By studying the settings in which legal services are provided to poor people, clinical scholars also contribute to our understanding of both the incredible hardships under which legal services lawyers function and the ways in which they unknowingly may hinder their clients' pursuit of justice.").

faculty members opposed assigning academic credits to clinical activities, threatening their growth.[14] In fact, without acknowledgement that clinical activities were a worthy copartner to traditional classroom work, students would have perceived clinical work "as no more than a therapeutic outlet."[15] This tension began to subside in the 1980s, after Professors Wizner and Curtis published the seminal article "Here's What We Do: Some Notes About Clinical Legal Education"[16], which laid out their theory of clinical education, gathering widespread consensus. In their view, the clinical method of teaching law educated students to represent clients effectively in light of the social, economic and political implications of advocacy, and encouraged development of critical views of the legal system via the study and application of legal doctrines, theories, rules, procedure, and ethics.[17] Coming full circle, their article invoked the writings of Professor Frank and articulated "the central belief … that professional education involves the constant

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14 See, Holland, *supra*, p. 524. See, also, Tushnet M., Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education, *52 George Washington Law Review 272* (1984), p. 273 ("[t]he impression of vulnerability [of clinical legal education] is strengthened by the presumption of many faculty members that clinical programs contain more unnecessary fat than do traditional classes."). See, Symposium: Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future, *supra*, p. 342 ("[f]or clinical education, the confrontation with the legal education establishment has taken its toll … [and] the clinical education movement is in the throes of a serious identity crisis.") and p. 344 ("skeptical faculty members demanded that clinicians offer students something more than they would learn in the first year of working in a law firm. 'Mere skills-training,' faculty members argued, had no place in a university.").

15 Stone A., Legal Education on the Couch, *Harvard Law Review* 85 (2) (1971), p. 427. See, also, Aiken J. and Wizner S., Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice, *73 Fordham Law Review 997* (2004) p. 999 ("[c]linicians were a different breed from their law professor counterparts. They were often housed in different spaces, not allowed to participate in faculty governance, and offered no job security.").

16 Wizner S. and Curtis D., Here's What We Do: Some Notes About Clinical Legal Education *29 Cleveland State Law Review 673* (1980).

17 See, Wizner (2002), *supra*, p. 1930.

interaction of the theoretical and the practical, not just in the classroom and the library, but also in the settings where the profession is actually practiced."[18]

Clinical legal education is arguably the most significant reform in American legal education since Christopher Langdell's invention of the case method.[19] Today, law school clinics are a permanent part of the law school curriculum and continue to provide future generations of lawyers with a practical and theoretical education in law.[20]

After having illustrated the most significant milestones in the American clinical legal education movement, in the next section I will investigate important historical reasons why clinical education did not thrive in continental Europe, specifically focusing on the Italian context. Then, I will analyze the current developmental patterns of Italian clinical legal education and illustrate the next steps towards widespread dissemination of clinical models in law schools.

II. The Current Framework of Italian Clinical Legal Education

In 1935, Professor Francesco Carnelutti started advocating for the introduction of practical components in Italian law schools' curricula. Similar to Professor Frank, he

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18 Holland, *supra*, p. 525.

19 See, Wizner (2002), *supra*, p. 1934.

20 See, Holland, *supra* , p. 533. See, Ellmann S. et al., Why Not a Clinical Lawyer-Journal., *1 Clinical Law Review* 1 (1994), which proclaimed the formation of the Clinical Law Review, a "peer-reviewed journal devoted to issues of lawyering theory and clinical legal education."

compared medical clinics with law clinics, but his attempt to revolutionise legal education fell flat.[21]

Professor Wilson investigated the reasons why clinical legal education did not find fertile grounds in European countries with a civil law tradition.[22] Among these reasons, Wilson included that civil law countries usually require mandatory periods of apprenticeship before entry into the legal profession. These traineeships are designed to accomplish the very goal of clinical legal education, which is to help students shift their focus from theory to practice just before becoming attorneys.[23] In Italy, for example, law school graduates have to complete an 18 month internship with an experienced attorney before sitting for the bar exam.

Further, European civil law universities have large size classes of student entering law school immediately after high school; conversely, in the United States law schools

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21 See, Carnelutti F., Clinica del Diritto, *1 Rivista di Diritto Processuale 12* (1935), available at http://www.romatreprisonlawclinic.it/images/articoli/carnelutticlinicadeldirittocompressed.pdf.

22 See, Wilson R., Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education, *10(7) German Law Journal 823* (2009), p. 831-836. Professor Wilson's research specifically considered the cases of Germany and France, but his findings can also be applied to Italy because of its comparable framework. For an analysis of how the movement towards uniformity in legal education that followed the Bologna Process of 1999 affected the development of clinical education in Germany, see Bücker A. and Woodruff W., The Bologna Process and German Legal Education: Developing Professional Competence Through Clinical Experiences, *9 German Law Journal 575* (2008). For a perspective on experiential learning in France, see Lempereur A., Negotiation and Mediation in France: The Challenge of Skill-Based Learning and Interdisciplinary Research in Legal Education, *3 Harvard Negotiation Law Review 151*, (1998). For a perspective on how the differences between civil and common law approaches impacted on the growth of clinical programs in Europe, see, also, Genty P. M., Overcoming Cultural Blindness in International Clinical Collaboration: the Divide between Civil and Common Law Cultures and its Implications for Clinical Education, *15 Clinical Law Review 131* (2008).

23 See, Wilson (2009), *supra*, p. 832.

are only open to applicants who have already graduated from college.[24] In addition, the elevated cost of legal education in the United States naturally limits the number of students that enroll. The clinical teaching model, which requires professors to closely supervise clinical participants, is generally better served by a small class size, favoring the American model.

Wilson also noted that the majority of European civil law attorneys practice in small law firms and/or as solo practitioners.[25] Pro bono clinics that offer legal services for a nominal fee have the potential to tremendously impact the capacity of attorneys to attract business from low income clients.[26] Therefore, the hostility of practicing attorneys towards the clinical movement might have also played a role in the lack of success of clinical legal education in continental Europe.[27]

As a result, the 20th century American debate on clinical legal education did not pervade Italian academia and discussions concerning clinical programs in Italy started

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24 See, Wilson (2009), *supra*, p. 834.

25 See, Wilson (2009), *supra*, p. 834-835.

26 See, Wilson (2009), supra, p. 834-835. See, also, Bartoli C., *Legal Clinics In Europe: for a Commitment of Higher Education in Social Justice*, Diritto & Questioni Pubbliche (2016), available at , http://www.dirittoequestionipubbliche.org/page/2016_nSE_Legal-clinics-in-Europe/DQ_2016_Legal-Clinics-in-Europe_specialissue.pdf, p. 94 ("bar association[s] …[are] often suspicious that clinics could steal the[ir] market.").

27 See, Wilson (2009), supra, p. 834-835.

developing mainly after the Bologna Process of 1999 via conferences, seminars and papers.[28]

According to a recent survey conducted by Bartoli, as of 2015, Italy had 21 legal clinics in 13 different towns.[29] Despite the fact that law school clinics are still very limited in number, it is possible to identify a developing Italian movement for clinical legal education, which is slowly and steadily increasing.[30] This evolution has recently experienced a boost thanks to the creation of the European Network for Clinical Legal Education (ENCLE) in 2013, whose goals include building a community of academics

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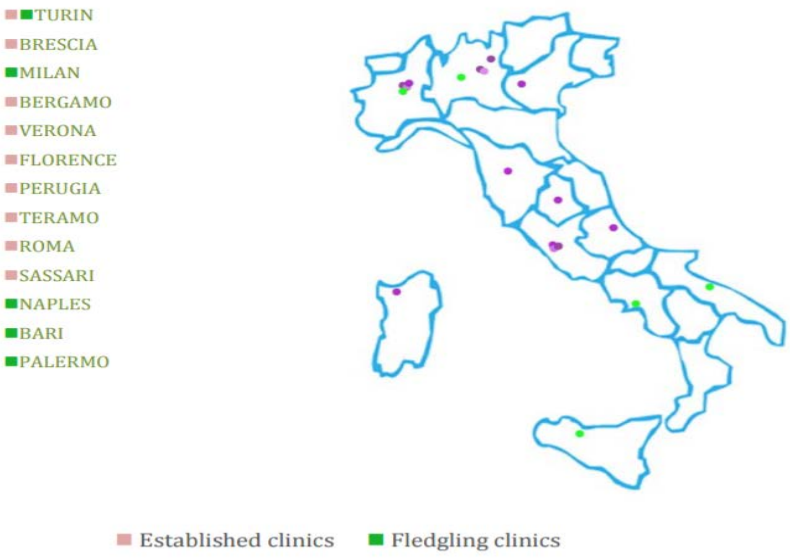
[28] The Bologna Process is a series of ministerial meetings and agreements between European countries to ensure comparability in the standards and quality of higher-education; see, Hovhannisian L., Clinical Legal Education and the Bologna Process, *2 Public Interest Law Initiative Papers 1* (2006), p. 4. See, also, Aksamovic D. and Genty P., An Examination of the Challenges, Successes and Setbacks for Clinical Legal Education in Eastern Europe, *20 International Journal of Clinical Legal Education 427* (2014), p. 438 ("… in the last 15 or 20 years [clinical legal education] spread across Central and Eastern Europe. … [Today] the concept of [clinical legal education] is not unknown any more to European legal educators."). Examples of reports, seminars and papers concerning Italian academia include Barbera M., The Making of a Civil Law Clinic, University of Brescia, available at file:///C:/Users/UTENTEPC/Downloads/gravity_forms_12_2011_08_Marzia%20Barbera%20-%20Brescia%20Legal%20Clinic%20-%20final-1%20(4).pdf; Smorto G. et al., *Clinica legale. Un manuale operativo*, Edizioni Next (2015), available at http://clinicalegale.it/wp-content/uploads/2015/03/clinica-legale-un-manuale-operativo.pdf; Cruciani L., «And Justice for all». Accesso alla giustizia e «law clinics» come beni comuni, *Rivista Critica del Diritto Privato 307* (2012); Winkler B., "Imparare facendo" Cosa sono le cliniche legali e perché vale la pena introdurle nelle facoltà di giurisprudenza, *Seminar Report*, University of Brescia (2010); Heritier P., "Vico e le Law and Humanities nella clinica legale della disabilità e della vulnerabilità", *Seminar on Law and Humanities* (2015); Carnevale G., "Law clinic. Lo sportello 'Diritti in carcere' promosso dal Dipartimento di Giurisprudenza dell'Università degli Studi di Roma Tre e da Antigone", *Report* (2016); Battelli E. et al., *Un sistema di giustizia a misura di minore: il ruolo delle Legal Clinics*, Aracne editrice S.r.l. (2012).

[29] See, Bartoli C., The Italian legal clinics movement: Data and prospects, *22(2) International Journal of Clinical Legal Education 213* (2015), p. 213, available at: http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/427/811.

[30] See, Bartoli (2015), *supra*, p. 214. See, also, Bartoli (2016), p. 59 ("[t]he data shows … that we are not simply in the presence of a proliferation of individual clinics, but the emergence of a new trend in academia should be conveyed.").

and practitioners involved in the promotion of justice and of quality of law teaching through clinical legal education.[31]

The current geographical distribution of law school clinics in Italy shows a greater presence in the northern areas (Universities of Turin, Brescia, Milan, Bergamo and Verona), a sporadic presence in the central territories (Universities of Florence, Perugia, Teramo and Rome), and few locations in the South and the islands (Universities of Naples, Bari, Sassari and Palermo).



Bartoli, C., The Italian legal clinics movement: Data and prospects, Fig. 3, p. 4.

[31] See, http://www.encle.org/about-encle. See, also, Tomoszek M., The Growth of Legal Clinics in Europe - Faith and Hope, or Evidence and Hard Work? 21 *International Journal of Clinical Legal Education* (2014), and The European Network of Clinical Legal Education: The Spring Workshop 2015, *22 International Journal of Clinical Legal Education* (2015).

As per the financial side of clinical education, "[m]oney is not the brightest aspect of this story."[32] In fact, in 88% of the cases, clinics' annual budgets range from zero to approximately 15,000 Euro, and in most instances, scholars work on clinical activities without additional economic benefits and are forced to allocate funds earmarked for their research to allow clinics to survive.[33] Moreover, the administrative staff usually works in the clinic for no pay.[34]

In addition, in Italy there is no public funding available for pro bono mediation programs. European funding exists but, as Bartoli noted, clinical programs face a highly selective process for limited resources, which makes obtaining European grants difficult and unlikely.[35] In fact, "only 6% of clinics benefits from European funds."[36]

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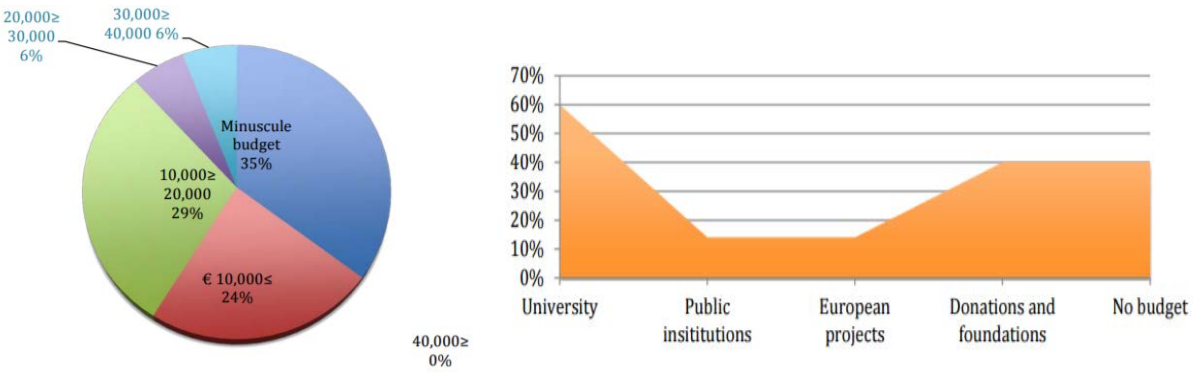
32 Bartoli (2015), *supra*, p. 216.

33 See, Bartoli (2015), *supra*, p. 217-218.

34 See, Bartoli (2015), *supra*, p. 217-218.

35 See, Bartoli (2016), *supra*, p. 16.

36 Bartoli (2016), *supra*, p. 49-50 (when asked "«Have you ever thought about participating in a European call for funding, in order to fund the activities of your legal clinic?» … less than 10% of the respondents [answered that they] are not interested in Union grants because they do not need them. The remainder would like to receive [European funding] but 25% have not tried because they believe that applying for European action grants is too complicated [given that] as many as 50% [of the programs] did not fit the right criteria. 10% submitted an application that had not been accepted [and] about 7% ha[d] applied and received funding.").



Bartoli, C., The Italian legal clinics movement: Data and prospects, Fig. 4 and 5, p. 5-6.

Given these economic constraints, Italian clinics must be creative and open to experimentation to succeed.[37] The absence of common standards and institutionalisation requires each clinical program to find its own unique solution to justify its place on the official law school curriculum. Some of the most adopted options include (i) an elective seminar with credits; (ii) an internship period required to become a qualified Italian lawyer after graduation; (iii) a post-degree course; (iv) pro bono activity.[38]

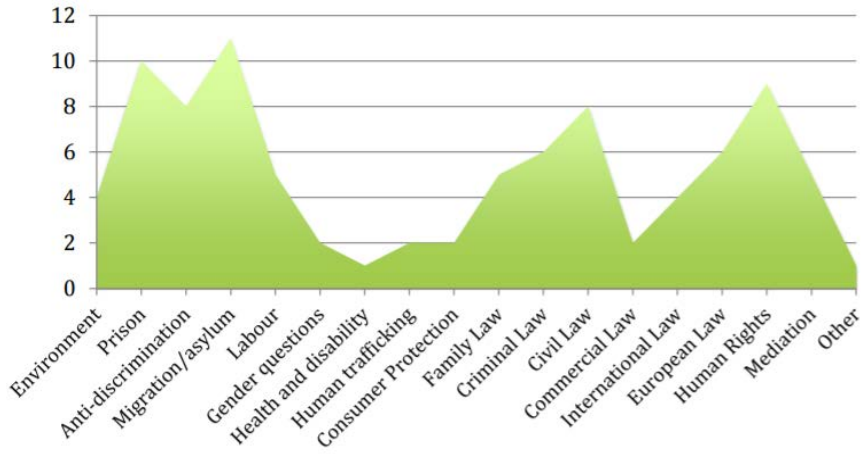
In this apparently precarious framework, it must be noted that a common educational methodology is shared among all the Italian law clinics.[39] This method consists of limiting lectures and favoring more interactive activities such as role-play, collaborative problem-solving, and above all, participation in the resolution of real cases in collaboration with lawyers.[40] Interestingly, and in contrast to the American experience,

37 See, Bartoli (2015), *supra*, p. 220.
38 See, Bartoli (2015), *supra*, p. 219.
39 See, Bartoli (2015), *supra*, p. 220.
40 See, Bartoli (2015), *supra*, p. 220. See, also, Smorto G. et al., *supra*, p. 14-16.

Bartoli noted that such a practical teaching style is promoted by the most theoretical members of the law faculty, who encourage and welcome a shift through a more practical and socially committed conception of law and of the profession.[41]

Finally, almost all Italian clinics show a strong vocation for social justice.[42] In particular:

i. Italian law school clinics mainly focus on matters concerning prisons, anti-discrimination, migration, asylum, and human rights.

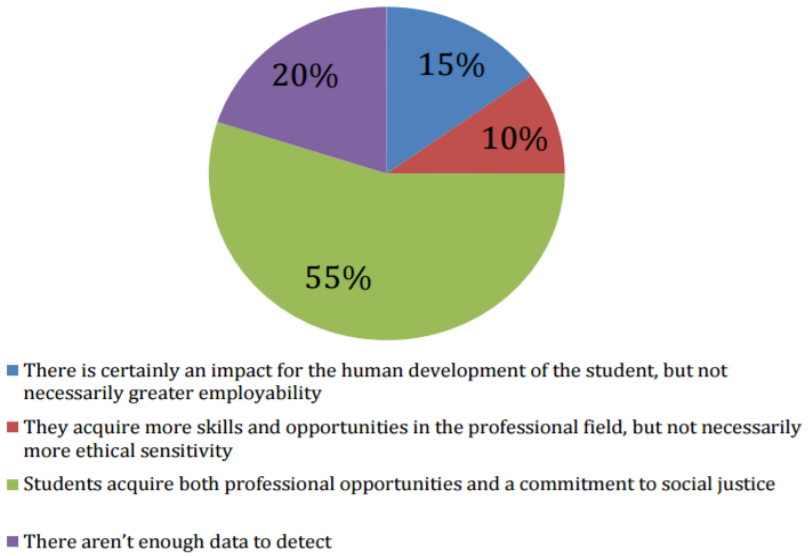


Bartoli, C., The Italian legal clinics movement: Data and prospects, Fig. 10, p. 10.

41 See, Bartoli (2015), *supra*, p. 214.

42 See, Bartoli (2015), *supra*, p. 222. For a perspective on the commitment to social justice and educational reform of the Immigration Law Clinic at the University of Roma Tre and the Health and Environmental Law Clinic at the University of Perugia, see Marella M.R. and Rigo E., Le cliniche legali, i beni comuni e la globalizzazione dei modelli di accesso alla giustizia e di lawyering, *33(4) Rivista Critica del Diritto Privato* (2015).

ii. Italian law students who participate in clinical activities develop a consistent commitment to social justice.



Bartoli, C., The Italian legal clinics movement: Data and prospects, Fig. 9, p. 9.

One possible explanation for this widespread commitment to social justice is that the educational framework originally developed in the United States was imported to Italy without modifications by Italian academics who studied in American law schools. Thus, it is possible that the social justice vow developed in the context of American law schools did not develop organically in Italy, and was internalised by default.

Finally, in relation to future developments in Italian clinical legal education, Bernardini argued that the goal of law school curricula should be to introduce students

to the clinical model, shaping a new generation of lawyers that can think critically about the legal system in light of societal needs.[43] The clinical legal education model, which Bernardini defined significantly unimplemented in Italian academia, can teach students how to effectively apply the knowledge acquired in the classroom to their practical experiences with the justice system.[44]

For these reasons, the next step in advancing clinical legal education is creating more legal clinics within Italian law schools. The following section discusses why mediation naturally lends itself to the development of an Italian legal clinic and discusses the experience of distinguished scholars in founding and evolving clinical programs on mediation.

B. Founding a Mediation Clinic

After having analysed the current framework of Italian legal clinical education, in this section I consider why mediation is particularly suited to being incorporated in a clinical program in Italy. Then, I discuss the history of the Columbia Law School Mediation Clinic through the words of its founder, Professor Carol Liebman, and analyse the framework and goals of the newly formed Columbia Law School Advanced

43 See, Bernardini M. G., Le Cliniche Legali e l'Identità del Giurista: Spunti per un Inquadramento Teorico, *27 Diritto & Questioni Pubbliche 437* (2017) p. 453-454.

44 See, Bernardini, *supra*, p. 453-454.

Mediation Clinic via an interview with the current director of the mediation clinics, my mentor Professor Alexandra Carter. The purpose of these interviews was to access institutional knowledge and experience to inform the founding of a clinic, as to not "reinvent the wheel." Finally, I describe the scope of the collaboration with Libera Università Maria SS. Assunta (LUMSA).

I. The Italian Legal Framework for Mediation

In recent years, the European legislature strongly promoted the use of mediation. In particular, Directive 2008/52/EC ("Directive") introduced a minimum legal framework applicable in all the Member States to harmonise fundamental rights and principles in relation to mediation in cross-border civil and commercial matters.[45]

The guidelines included in the Directive provide for a voluntary mediation model that leaves freedom to the parties to participate in and terminate the process at any time.[46] However, courts are allowed to set procedural time-limits to regulate the duration of the process, according to relevant national laws.[47] Moreover, courts are encouraged to draw

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45 See, in particular, recital 7 of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matter, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:En:PDF. See, generally, Birch E., The Historical Background to the EU Directive on Mediation, *72(1) Arbitration: The Journal of the Chartered Institute of Arbitrators 57* (2006) and Bleemer R., The Directive Is In: European Union Strongly Backs Cross-Border Mediation, *26(6) Alternatives to the High Cost of Litigation 119* (2008). Comparatively, in the United States there is no uniformity; every state is free to autonomously regulate the practice of mediation, and most states decided not to regulate the field.

46 See, recitals 13 and 14 of Directive 2008/52/EC.

47 See, recitals 13 and 14 of Directive 2008/52/EC.

parties' attention to mediation whenever appropriate and useful to achieve conflict resolution and national legislations might make the use of mediation compulsory or subject to incentives and/or sanctions, as long as such legislation does not hinder the parties' right of access to the judicial system.[48]

In implementing the guidelines, Member States should aim at preserving the flexibility of the mediation process and the self-determination of the parties, as well as at ensuring that the procedure is conducted in an effective, impartial and competent way.[49] Mediators should be made aware of the existence of the European Code of Conduct for Mediators, available to the general public on the Internet.[50] Additionally, under article 4 of the Directive, Member States shall encourage by any means which they consider appropriate the development of and adherence to voluntary codes of conduct by mediators and organisations that provide mediation services, as well as other effective quality control mechanisms.

Article 6 of the Directive provides that Member States shall ensure the possibility for the parties to request that the content of a written agreement resulting from mediation

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48 See, article 8 and recitals 13 and 14 of Directive 2008/52/EC.

49 See, recital 17 of Directive 2008/52/EC.

50 See, recital 17 of Directive 2008/52/EC. The European Code of Conduct for Mediators is available online at http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf. For an analysis of the limitations of the European Code of Conduct for Mediators, see Menkel-Meadow C., Regulation of Dispute Resolution in the United States of America: From the Formal to the Informal to the "Semi-formal", in Regulating Dispute Resolution: Adr and Access to Justice at the Crossroads: Steffek F. et al., Hart (2013), p. 426.

be made enforceable, unless either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability.[51] In addition, the content of an agreement resulting from mediation that has been made enforceable in a Member State should be recognised and declared enforceable in the other Member States, in accordance with applicable European or national provisions.[52]

Finally, mediation is intended to take place in a manner that respects confidentiality. In the absence of relevant exceptions contained in article 7 of the Directive or unless the parties agreed otherwise, Member States shall ensure that neither mediators nor those involved in the administration of the process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information shared during the mediation process.

The Italian legislature chose to implement most of the European guidelines even to its internal mediation process, as provided for by recital 8 of the Directive.[53] With article 60 of the law n. 69 of June 18, 2009 (*legge n. 69 del 18 giugno 2009*),[54] the Parliament

51 See, also, recital 19 Directive 2008/52/EC.

52 See, recital 20 of Directive 2008/52/EC.

53 For a detailed analysis of content of Directive 2008/52/EC and its internalisation into the Italian legal system, see , Trocker N. and De Luca A., *La mediazione civile alla luce della direttiva 2008/52/CE*, Firenze University Press (2011), p. 69-195; Reale M. C., La Mediazione Civile e l'Europa, *1 Sociologia del Diritto 95* (2014).

54 Available at: http://www.parlamento.it/parlam/leggi/09069l.htm.

authorised the Government to transpose the content of the Directive into one or more legislative decrees.[55] The Government exercised its power via legislative decree n. 28 of March 4, 2010 (*decreto legislativo n. 28 del 4 marzo 2010*),[56] which created a national framework for the regulation of mediation in civil and commercial matters.[57] Legislative decree n. 28 of March 4, 2010 ("Legislative Decree") did not merely replicate the content of the Directive, but included unique features and policy considerations that created an original model.[58]

Article 3 of the Legislative Decree requires organisations that offer mediation services to be part of a register maintained by the Ministry of Justice and to adopt codes of conduct and regulations that ensure impartiality, competency and confidentiality.[59] As further clarified by articles 9 and 10, confidentiality is strongly protected; it extends by default to everyone that participated in the proceedings in any capacity and prevents

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55 For a comprehensive analysis of the debate concerning the implementation of Directive 2008/52/EC in the Italian legal system, see De Palo G. and Keller L., The Italian Mediation Explosion: Lessons in Realpolitik, *28(2) Negotiation Journal 181* (2012), p. 190-193.

56 Available at: http://www.camera.it/parlam/leggi/deleghe/10028dl.htm.

57 In the Italian system, legislative decrees (*decreti legislativi*) are sanctioned by article 76 of the Constitution and are commonly used to implement the content of European Directives into national legislation. For a comprehensive analysis of the Italian framework, see Sorrentino, F., *Le fonti del diritto italiano*, CEDAM (2015). See, also, Lupo, N., Il ruolo normativo del Governo, Il Filangieri. Quaderno/Associazione per le ricerche e gli studi sulla rappresentanza politica nelle assemblee elettive (2010); Pizzorusso, A., L'ampliamento dei poteri normativi dell'esecutivo nei principali ordinamenti occidentali a cinquant'anni dal saggio di Enzo Cheli, in Lo Stato costituzionale la dimensione nazionale e la prospettiva internazionale: scritti in onore di Enzo Cheli, a cura di Paolo Caretti e Maria Cristina Grisolia, Il Mulino, Bologna (2010).

58 See, Canale G., Il Decreto Legislativo in Materia di Mediazione, *65(3) Rivista di Diritto Processuale 616* (2010) p. 618 (the Legislative Decree included significant modifications – "*significative modifiche*" – from the framework authorised by the Parliament, which reflected the content of the Directive).

59 See, also, article 16 of the Legislative Decree.

disclosure of information shared in mediation in the event the dispute is later brought to court. To guarantee self-determination, however, parties remain free to exclude any duty of confidentiality. To assure impartiality, article 14 charges mediators with a duty to sign a declaration of impartiality before taking on a case.

Article 4 imposes a duty on lawyers to inform their clients of the possibility of using mediation before litigating. In the event that lawyers fail to properly inform their client in writing, the contract of representation is voidable.[60] Article 5 of the Legislative Decree states that disputes involving landlords/tenants, rights in rem, inheritances, medical malpractice, defamation, damages caused by vehicles and boats, consumers and banks/insurances companies must go through mediation as a preliminary condition to access the court system. Thus, this provision effectively introduced mandatory mediation for selected disputes and gave the option to the parties to voluntarily select mediation for residual matters.[61]

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60 See, article 4 of the Legislative Decree.

61 See De Palo G. and Keller L., *supra*, p. 184 ("Italy used the need to implement the European mediation directive … [to introduce] mandated pretrial meditation for some civil and commercial disputes. [This was] a dramatic step … It was, however, a necessary step given that … Italian litigants have failed to embrace mediation and instead have continually chosen to bring their cases to the overburdened, slow, and inefficient judicial system."). The authors also note that in 2010 "the case backlog in Italy grew to 5.4 million cases with parties waiting an average of eight years for their day in court." (see, p. 183). For a different view on mandatory mediation see, Giuggioli P., La mediazione per la conciliazione: strumento utile se scelto liberamente dalle parti, *Quarto rapporto sulla diffusione della giustizia alternativa in Italia 147* (2011), p. 155. Giuggioli argues that only a non-mandatory mediation scheme can positively affect the backlog of pending civil cases and preserve the principle of self-determination of the parties. In 2012, the Italian Constitutional Court declared the unconstitutionality of certain provisions of the Legislative Decree concerning the introduction of mandatory mediation as a precondition to have access to the court system because the Government exceeded the mandate to legislate conferred upon it

Article 12 states that the agreement reached by the parties can be made enforceable by the court after a lightened scrutiny focused on certifying that the arrangements made are not contrary to public policy or against the law. The approved agreement is exempted from any fee when its value is under €50.000 and it represents valid legal title to obtain repossession and commence an attachment proceeding.[62]

The Legislative Decree also delegated to the Ministry of Justice the task of identifying detailed technical provisions concerning, in particular, educational requirements imposed on registered mediation service providers and costs of the proceedings.[63] Minister of Justice decree n. 180 of October 18, 2010 (*decreto del Ministro della Giustizia n. 180 del 18 ottobre 2010*)[64] completed the legal framework of Italian mediation, determining the criteria that educational institutions must follow in order to be included in the register for organisations qualified to educate mediation practitioners.[65]

by the Parliament (see, opinion of the Italian Constitutional Court n. 272 of December 6, 2012, available at: https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2012&numero=272).

62 See, article 12 of the Legislative Decree.

63 See, articles 16 n. 2 e 5 and 17 n. 4 of the Legislative Decree.

64 Available at: http://www.gazzettaufficiale.it/gunewsletter/dettaglio.jsp?service=1&datagu=2010-11-04&task=dettaglio&numgu=258&redaz=010G0203&tmstp=1289296032495.

65 Ministerial decree n. 180 of October 18, 2010 was partially modified by ministerial decree n. 145 of July 6, 2011 (*decreto ministeriale n. 145 del 6 luglio 2011*, available at: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.ministeriale:2011-07-06;145!vig=) to address limited reservations expressed by the State Attorney office (*Avvocatura dello Stato*).

As provided by article 18 of ministerial decree n. 180 of October 18, 2010 ("Ministerial Decree"), registered organisations must have a share capital of at least €10.000, a physical location, honorable members, a minimum of five competent and qualified educators, trainings of at least 50 hours on mediation theory, practice, and role-play for a maximum of 30 participants, a final test of 4 hours or more on both theory and practice. The trainings must focus on national, European and international mediation rules, facilitative and evaluative methodologies, contractual mediation clauses, form, content and effects of requests to mediate and mediation agreements, duties and responsibility of mediators. In addition, the institutions must organise advanced trainings of the duration of 18 hours every two years and provide for the online publication of information concerning its trainings. Educational institutions must also appoint an individual with a strong reputation and experience in the field of mediation as coordinator of their programs.

Shortly after the Ministerial Decree was introduced, it became clear that the adopted provisions were not sufficient to adequately address some controversial procedural and substantive issues. The Ministry of Justice then started adopting ministerial circulars and directives to remedy the emerged deficiencies.[66] To safeguard the quality of the process, Ministerial circular of June 13, 2011 (*circolare Ministero della*

[66] For a comprehensive summary of all the provisions concerning mediation in Italy, see https://www.giustizia.it/giustizia/prot/it/mg_1_8.wp?selectedNode=0_18.

giustizia del 13 giugno 2011)[67] restricted the practice of mediation to individuals who hold a three-year university degree or are registered with certain professional associations and limited the role of educators to practitioners who produced scientific publications on mediation in journals with nationwide diffusion. Ministerial circular of December 20, 2011 (*circolare Ministero della giustizia del 20 dicembre 2011*)[68] addressed problematic aspects concerning supervision and control over the registered mediation institutions, continued education, case assignment and conclusion of the proceedings. Ministerial circulars of November 27, 2013 (*circolare Ministero della giustizia del 27 novembre 2013*)[69] and of December 3, 2013 (*circolare Ministero della giustizia del 9 dicembre 2013*)[70] better defined the role of attorneys in the mediation process, stating that attorneys cannot act as mediators without being affiliated to a registered institution. Ministerial circulars of November 15, 2013 (*circolare Ministero della giustizia del 15 novembre 2013*)[71] and of October 22, 2014

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67 Available at: https://www.giustizia.it/giustizia/it/mg_1_8_1.page;jsessionid=nRbhAD2uQBJXqjHHQhjoXjt2?facetNode_1=1_1(2011)&facetNode_2=1_1(201106)&facetNode_3=0_10&contentId=SDC645583&previsiousPage=mg_1_8.

68 Available at: https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_18&contentId=SDC718215&previsiousPage=mg_1_8.

69 Available at: https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_18&contentId=SDC971358&previsiousPage=mg_1_8.

70 Available at: https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_18&contentId=SDC974986&previsiousPage=mg_1_8.

71 Available at: https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_18&contentId=SDC964753&previsiousPage=mg_1_8.

(*circolare Ministero della giustizia del 22 ottobre 2014*)[72] laid out the procedure that registered mediation service providers must follow to report statistical returns on their mediations.

In 2014, Minister of Justice decree n. 139 of August 4, 2014 (*decreto del Ministro della Giustizia n. 139 del 4 agosto 2014*)[73] modified the Ministerial Degree, adding article 14-bis on conflict of interest. In particular, the new provision declared that a mediator affiliated with an organisation cannot:

- be a party in a mediation administered by that organisation nor assist parties in relation to disputes that are pending;
- mediate a dispute in case she is personally related to, acquainted with or had a professional relationship in the past two years with any of the parties;
- maintain a professional relationship with any of the parties during the two years that follow resolution of a case.

Interestingly, article 14-bis expressly incorporates by reference the provisions of article 815 of the Italian Code of Civil Procedure, which lists the situations in which arbitrators must recuse themselves because of a conflict of interest. In applying the same conflict of interest rules to both arbitrators and mediators, the Italian Government

[72] Available at: https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_18&contentId=SDC1076192&previsiousPage=mg_1_8.

[73] Available at: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.ministeriale:2014-08-04;139!vig=.

decided to set a uniform standard. However, after the introduction of article 14-bis it remained unclear whether the principles of autonomy and self-determination allowed the parties to knowingly appoint a mediator with an apparent conflict of interest. Ministerial circular of July 14, 2015 (*circolare Ministero della giustizia del 14 luglio 2015*)[74] determined that the importance of preventing conflict of interest and guaranteeing that mediators are both neutral and impartial is such that the parties are prohibited from appointing a conflicted mediator.[75]

In April of 2016, however, the Regional Administrative Court of Latium (*Tribunale Amministrativo Regionale del Lazio*) annulled article 14-bis and the Ministerial circular of July 14, 2015 because the Government exceeded the authority conferred upon it by the Parliament.[76] In fact, the court noted that legislative decree n. 28 of March 4, 2010 did not confer upon the Government any power to regulate on mediators' conflict of interest.[77] The Court also observed that regulations and codes of conduct adopted by registered organizations assume a central role in the mediation process, including the function of

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74 Available at: https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_18&contentId=SDC1164399&previsiousPage=mg_1_8.

75 See, Perrotta G., Il conflitto di interessi tra la figura del mediatore civile e quella dell'avvocato: i chiarimenti del Ministero della Giustizia, *2(2) La Nuova Giustizia Civile 43* (2015), p. 46.

76 See, TAR Lazio Roma, sez. I, Judgment n. 3989 of April 1, 2016, available at: http://webcache.googleusercontent.com/search?q=cache:oTyVz6tPAFYJ:www.ordineavvocaticivitavecchia.it/wp-content/uploads/2015/10/Sentenza-TAR-Lazio-n.-3989-del-2016.docx+&cd=20&hl=en&ct=clnk&gl=us.

77 See, TAR Lazio Roma, sez. I, Judgment n. 3989 of April 1, 2016, *supra*.

exclusively stating the criteria that assure that mediators are substantially impartial and neutral.[78]

Since the appearance of the Directive in 2008 the Italian legal framework on mediation keeps evolving at a fast pace and often in a disjointed way, as demonstrated by the various governmental interventions that repeatedly clarified, corrected and modified previously obscure provisions. The normative patchwork adopted by the Government was capable of addressing only specific issues at a time, demonstrating obvious shortcomings in the regulation of mediation as a whole, and partially failed to survive the judicial scrutiny of the courts. Many controversial and difficult ethical, substantive and procedural questions posed by mediation remain left to the interpretation of individual practitioners and organisations.[79] This relativism certainly creates tensions that only an organic and structured development of mediation theory and practice can solve.

Despite this clear educational need, to this day very few Italian Law Schools include specific courses concerning the theory and practice of mediation. To solve this

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[78] See, TAR Lazio Roma, sez. I, Judgment n. 3989 of April 1, 2016, *supra*. Article 7(3) of the Minister of Justice decree n. 180 of October 18, 2010 states that the regulations adopted by registered mediation service providers must include provisions concerning mediators' conflict of interests.

[79] See, De Palo G. and Keller L., *supra*, p. 197 ("[w]hether the Italian mediation decree will ultimately be a successful measure for Italian dispute resolution is uncertain, and the practical and scholarly debates on the more controversial aspects of the law will continue.").

deficit and prepare future practitioners in the field of mediation, a clinical program focused on mediation would:

- comply with all the requirements imposed on mediation service providers for admission to the register maintained by the Ministry of Justice;[80]
- provide students with foundational skills and understanding of theory and practice of mediation;
- guarantee substantial opportunities to gather practical experience. Because mediation is a flexible and relatively expedite process within just a semester students would be able to observe the entire cycle of many disputes, from their inception to potential resolution;
- offer chances to practice mediation directly and under the supervision of experienced practitioners, fulfilling the learning-by-doing approach typical of clinical legal education;
- foster the social justice commitment of clinical education. The potential scope of mediation is limited only by the creativity of the people who practice it; mediation services can be provided at nominal or at even no fee in settings that range from two parties in conflict to large communities in disagreement, covering a wide spectrum of disputes;

[80] See, article 18 of the Legislative Decree, above.

- operate both in formal contexts, like a court room, and in more informal places, like the law school premises or private locations;
- interplay with many other courses in the law school curriculum, for example family law, civil law, international law, negotiation, etc.

After having illustrated the need for and potential of an Italian mediation clinic, I will dedicate the upcoming sections to the experiences of two great mediation scholars in founding, developing and advancing clinical programs on mediation in the United States. These sections are designed to share insightful knowledge and practical guidance that can inform the creation and growth of an Italian mediation clinic.

II. How to Create a Mediation Clinic: The Columbia Law School Example

Having observed the potential educational impact and benefits of a mediation clinical program, I will now discuss the steps necessary to set up a mediation clinic program, taking advantage of the institutional knowledge provided by Professor Carol Liebman, founder of the Columbia Law School Mediation Clinic.[81]

Professor Liebman's interest in mediation developed while representing the Massachusetts State Department of Correction in federal civil rights cases brought by

[81] As mentioned in the first paragraph of section B, above, the information that follows concerning Professors Liebman and Carter comes from a series of interviews that I personally conducted with them in 2016-2017.

prisoners. She understood that issues raised by inmates frequently did not amount to the civil rights violations they claimed; they mainly involved managerial problems that litigation could not properly address. In fact, litigation fell short in helping people to engage in dialogue and to understand interests and worries behind their respective positions. Professor Liebman saw a need to find mutually acceptable solutions that considered both parties' concerns, and realised that prison grievance panels which used a mediation approach were the most appropriate tool because they could achieve broader results than adjudicative dispute resolution methods, as well as satisfy various needs. In particular, mediation could empower parties to engage in a productive conversation in order to reach a solution that is satisfying, durable and flexible.

While teaching in the legal aid clinic, Professor Liebman continued to practice mediation as a volunteer mediator, attend conferences, and network with practitioners within the mediation community. During this time, the Dean of Boston College Law School asked her to run a simulation course on mediation. Her original curriculum included a day and a half training on basic skills and role plays, followed by weekly interactive classes, lectures and discussions concerning mediation theory, practice and policy issues.[82] When Liebman moved to Columbia Law School, she founded the

[82] Among the benefits of having interactive group conversations led by students, Professors Bryant and Milstein include that students "(1) … can immediately see relevance to their work; (2) … develop insights for contextual thinking, explore professional identity, and find support for stressful work; (3) … apply, test, and refine lawyering theory while simultaneously developing professional norms."; see,

mediation clinic.[83] The clinic year began with four days of intensive skills training spread over two weekends followed by closely supervised mediation of actual cases and weekly classes. In addition, students were required to write journals that analysed their mediation experiences. Journals created an opportunity for students to self-reflect; they had to review their practical conduct in light of the guidelines learned in class and through the assigned readings. Moreover, Professor Liebman committed to read all the journals and to provide students with prompt, regular, and tailored feedback.

Simultaneously, Professor Liebman had to perform extensive outreach work to identify suitable organisations to partner with in order to find a solid caseload capable of providing clinical students with opportunities to mediate on a weekly basis. This was one of the most challenging tasks; it required considerable time and effort to create and continuously nurture relationships with partner institutions. In addition, she used to personally supervise every mediation (up to five every week). Liebman later used teaching assistants to oversee some of the mediations, achieving two goals. First, Professor Liebman gained more freedom to perform other activities necessary to run the

Bryant S. and Milstein E., Rounds: A "Signature Pedagogy" for Clinical Education?, *14 Clinical Law Review 195* (2007), p. 206-207.

[83] For an analysis of the history and development of Columbia Law School's clinical programs given directly by the founding faculty members, see the video-conference "History in the Making: The Origins of Clinical Education at Columbia Law School", available at http://www.law.columbia.edu/clinics-celebration-2015/recap/videos#history.

clinic. Further, alumni of the clinic had the valuable opportunity to observe, advise, and coach other students, reinforcing their skills and gaining academic credits for their work.

After hearing about the development of the Columbia Law School Mediation Clinic, I asked Professor Liebman to recommend some best practices for creating a new mediation clinic. She suggested the adoption of a:

1. non-evaluative model, which gives inexperienced students freedom to learn the basic principles of mediation without providing legal advice; and

2. co-mediation system, which relieves individual students of some pressure, builds team collaboration, and helps understanding different individual mediation styles.

Lastly, she emphasised the importance of focusing on teaching the boundaries of confidentiality, clearly explaining its limits and exceptions.

After having described the development of the Columbia Law School mediation clinic, the next section will illustrate how the original educational framework recently evolved into an advanced model. This addition to the clinical programs at Columbia Law School was designed to provide students with the opportunity to enhance the lawyering skills internalized in the mediation clinic, to mentor other students and to encourage both creativity and responsibility via the creation of original educational content and management of the trainings.

III. The Columbia Law School Advanced Mediation Clinic

Before the creation of the Columbia Law School Advanced Mediation Clinic, Professor Alexandra Carter and Lecturer in Law Shawn Watts received various requests from outside organisations to develop projects and ad hoc mediation training sessions. They would either embark into these tasks individually or with selected students, but without being able to provide a continuous learning experience. This state of affairs changed in the summer of 2016, when the Mediation Clinic signed a partnership with the United Nations to provide a series of conflict resolution trainings that lie in the intersection of alternative dispute resolution and several of the United Nations' sustainable development goals. At that point, Carter and Watts had a solid source of work to develop a new generation of clinical education programing within Columbia Law School; students who showed commitment and performed well academically while in the Mediation Clinic had an opportunity to work closely with the clinical faculty, receiving insights on how to teach mediation, run a clinic, and advance the goals of the Advanced Mediation Clinic.

In particular, the Advanced Mediation Clinic's students are expected to help the faculty members to (i) promote the use of mediation across the country and internationally; (ii) discuss critical issues along the growth edge of mediation practice, like language barriers, generational gaps, cultural differences, ethical dilemmas; (iii) further their understanding of various styles of mediation; (iv) actively participate in

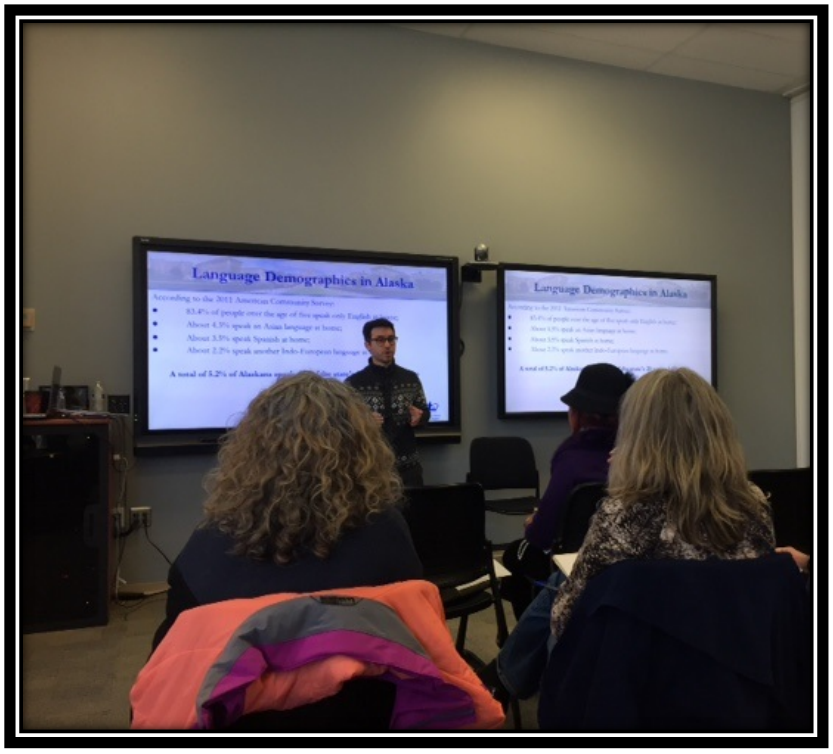
designing customised curricula concerning conflict resolution methods; (v) have direct interactions with clients; (vi) act as teaching assistants, coaching other students through discussion of common issues experienced; and (vii) assist in building a strong community of colleagues who support each other in pursuing individual interests concerning theory and practice of mediation.

In addition to the activities relating to the established partnership with the United Nations, the first year of the Advanced Mediation Clinic was characterised by the development of new projects initiated by graduates of the mediation clinic.

After a nationwide rise in political polarisation that followed the 2016 United States presidential election, an alumnus and current associate at Morrison and Foerster LLP approached the partnership and proposed teaming up with the Columbia Law School Advanced Mediation Clinic to create a conflict resolution training seeking to empower attorneys and staff with tools to safely deal with political and identity-related conflicts. A group of students created a custom-designed conflict de-escalation training that focused on best practices to approach micro-aggressions outside the work environment. The training was successfully run at the firm's San Francisco and New York offices, making Morrison and Foerster LLP the first major law firm to host such events.

In the spring of 2017, an alumna who was clerking for the Alaska Court of Appeal approached Professor Carter and Lecturer Watts to perform training on mediation skills

and ethics in Anchorage, Alaska. Students from the Advanced Mediation Clinic designed a tailored training focused on facilitative mediation, party self-determination, language, generational, and cultural barriers. The training was conducted before a crowd of Alaska state judges, mediators from local small claim courts, and lawyers of the Anchorage Bar Association, who actively engaged in the session and contributed to the success of this event.



Picture of the Author facilitating part of the mediation training in Anchorage, Alaska.

Not to mention, the Columbia Law School Advanced Mediation Clinic has other positive and ground breaking effects. First, it offers students opportunities to develop curricula, run trainings and learn how to teach, which are extremely beneficial skills for

students who want to pursue a career in academia, and usually lay outside most of law schools' academic offerings. Second, it generates revenue in the forms of donations, which help the clinic fund its other pro bono projects. Lastly, it keeps alumni connected with the mediation clinic community after graduation, helping them promoting mediation in different practice areas and countries.

In conclusion, Columbia Law School Advanced Mediation Clinic's first year was a great success. This model shows extraordinary potential for fostering the goals of clinical education and offers other law schools incentives to implement similar programs in their curricula.

Having described the evolution of Columbia Law School's mediation programs, I will now discuss the inception and evolution of the relationship with LUMSA and the dialogue that identified the mediation services that the clinic ought to offer.

IV. Vision for an Italian Mediation Clinic: The LUMSA Project

In the context of my activities both in Columbia Law School's Mediation Clinic and Advanced Mediation Clinic, I started advocating for the promotion of mediation in Italy, receiving great support from Professor Carter and Lecturer Watts, as well as from the law faculty of Libera Università Maria SS. Assunta (LUMSA) to pursue the ambitious goal of laying the foundations for an Italian mediation clinic.

In December 2016, I met in Rome with LUMSA Professor Emanuele Odorisio to discuss the scope of my research and how to implement it within LUMSA's curriculum. At that time, LUMSA was in the process of starting its first clinic on employment litigation and was thinking about other ways to expand its legal clinics programs. We wanted to identify the core structure of the proposed mediation clinic, mindful of the financial budget that LUMSA could invest in the creation and operation of the proposed clinic—which was in line with the majority of Italian law schools, as seen in paragraph A.II. In particular, we had to pinpoint what kind of mediation services the clinic would provide to the public and how to best assure a solid caseload.

During our dialogue, it emerged that LUMSA had long-lasting connections with Catholic communities and other nonprofit organisations in the Rome area that focus on helping families in need. We recognised in those connections a valuable opportunity to provide the clinic with a solid caseload and to pursue the social justice commitment that characterises clinical legal education.[84] We agreed to focus this research on introducing mediation via a clinical teaching model focused on family and community disputes, and decided to tailor the curriculum to both the legal and educational needs of the families and communities LUMSA and the clinic hopes to serve.

[84] For an analysis of the social justice commitment of clinical legal education, see sections A.I, A.II and B.I, above.

Having clarified scope and mission of the LUMSA clinic, the following section describes mediation and its models, focusing specifically on the evaluative vs. non-evaluative debate. Then, it analyses how various non-evaluative schemes have been implemented in family mediation programs.

C. Considerations and Recommendations for Creating a Family Mediation Clinic at LUMSA

I. Mediation: Understanding the Models

Mediation is a form of alternative dispute resolution (ADR) wherein "the parties meet with a mutually selected impartial and neutral person who assists them in the negotiation of their differences."[85] A general definition of mediation must necessarily remain broad and include only the distinctive features that distinguish mediation from other ADR methods. In fact, the majority of scholars agree that a single limiting definition of mediation does not exist because of different philosophies and styles embraced and adopted by mediators.[86]

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85 "Mediation Defined: What is Mediation?" JAMS Mediation Services, available at https://www.jamsadr.com/mediation-defined/.

86 See, Levin M., The Propriety of Evaluative Mediation: Concerns About the Nature and Quality of an Evaluative Opinion, *16 Ohio St. J. Disp. Resol. 267* (2000-2001), p. 267. See, also, Rubinson R., Of Grids and Gatekeepers: The Socioeconomics of Mediation, *17 Cardozo Journal of Conflict Resolution 837* (2016), p. 877 ("[t]here is no consensus" on a definition of mediation); Charkoudian L. et al., Mediation by Any Other Name Would Smell as Sweet—Or Would It? The Struggle to Define Mediation and Its Various Approaches, *26 Conflict Resolution Quarterly 293* (2009), p. 313 (there is no common definition of "approaches to mediation").

The first attempt to systematically define and categorize various approaches is attributed to Professor Leonard Riskin, who presented a diagram that became known as the Riskin's grid.[87] Riskin recognized that there was no comprehensive or widely accepted system for classifying mediator conduct. For this reason, he created a method to distinguish among various processes that were commonly called mediation.[88] Riskin's grid contains four quadrants illustrating the mediator's orientation. These quadrants "are based on two continuums. One continuum, concerning the mediators' activities, ranges from pure evaluative to pure facilitative mediation approaches. The second continuum, dealing with the goals of the mediator, measures the scope of the issues that mediation seeks to address or resolve."[89]

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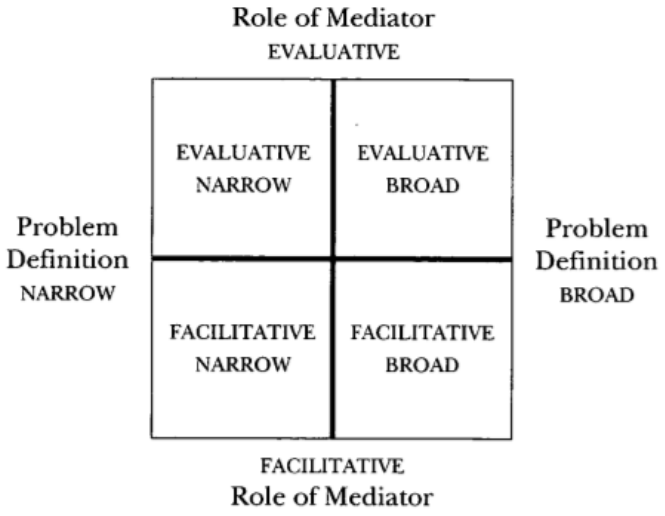
87 See, Riskin L., Mediator Orientations, Strategies and Techniques, *12 Alternatives To High Cost Litigation 111* (1994) and Riskin L., Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed, *1 Harvard Negotiation Law Review 7* (1996). Riskin then proposed two modified diagrams. The first, called "The New Old Grid", appeared in Riskin L., Who Decides What? Rethinking the Grid of Mediator Orientations, *Dispute Resolution Magazine* (2003), and Riskin L., Retiring and Replacing the Grid of Mediator Orientations, *21 Alternatives To High Cost Litigation 69* (2003). The second model, labeled "The New New Grid", is described in Riskin L., Decisionmaking in Mediation: The New Old Grid and the New New Grid System, *79 Notre Dame Law Review 1* (2003).

88 See, Riskin L., Decisionmaking in Mediation: The New Old Grid and the New New Grid System, *79 Notre Dame Law Review 1* (2003), p. 4.

89 McDermott, P. and Obar, R., "What's Going On" in Mediation: an Empirical Analysis of the Influence of a Mediator's Style on Party Satisfaction and Monetary Benefit, 9 *Harvard Negotiation Law Review 75* (2004), p. 76.



Riskin's original grid (1994-1996)

Riskin's grid generated the first major split in mediation models and fostered a fierce debate on non-evaluative and evaluative mediation and appropriate role and goals for mediators.[90] The approach adopted and the conduct assumed by the neutral are the distinctive features that differentiate these two major models.

[90] See, Love L. and Waldman E., The Hopes and Fears of All the Years: 30 Years behind and the Road Ahead for the Widespread Use of Mediation, *31 Ohio State Journal on Dispute Resolution 123* (2016), p. 138 ("Riskin's grid was the graphic representation of a field becoming confused about its primary focus and direction. The grid legitimized some of the evaluative practices that are now the norm in many venues. These practices moved us ever farther from the emphasis on understanding, problem-solving, and party engagement that animated mediation's original vision."). In relation to the debate on the facilitative-evaluative continuum, see, also, Kovach K. and Love L., Mapping Mediation: The Risks of Riskin's Grid, *3 Harvard Negotiation Law Review 71* (1998). See, also, Lowry R., Training Mediators For The 21st Century: To Evaluate or Not: That is Not the Question!, *38 Fam. & Conciliation Cts. Rev. 48* (2000); Alfini J. et al., Evaluative Versus Facilitative Mediation: A Discussion, *24 Fla. St. U. L. Rev. 919* (1997); Birke R., Evaluation and Facilitation: Moving Past Either/Or, *J. Disp. Resol. 309* (2000); Love L., The Top Ten Reasons Why Mediators Should Not Evaluate, *24 Fla. St. U. L. Rev. 937* (1997). The debate on the narrow-broad continuum has drawn less attention: the main critique comes from Riskin himself, who points out the structural problems of this classification (it obscures "the dynamic relationships between different problem-focuses, the approaches and strategies of the mediator, and the wishes and actions of

Evaluative mediators focus on identifying the parties' legal rights and obligations and on providing them with a knowledgeable and objective third-party assessment of the strengths of their respective claims. [91] Ultimately, these mediators are asked to prognosticate how a potential judge or jury is likely to adjudicate the case, so that the parties can decide the best course of action going forward.[92] This procedure requires discussing the difficulties of litigating a case, the shortcomings and weaknesses of the arguments proposed, as well as offering guidance concerning the substantive legal issues and the likelihood of success of each demand.[93] Parties are invited to formulate offers in line with the mediator's suggestions and to reach an agreement that considers the proposed recommendations.[94]

Conversely, non-evaluative mediators cherish the idea that the parties in a dispute are best situated to solve their own conflict.[95] The neutral acknowledges differences and commonalities between the parties, listening carefully for facts, interests, and feelings that can offer the basis to develop mutual understanding.[96] No evaluation concerning the

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the parties or their lawyers"); see Riskin L., Decisionmaking in Mediation: The New Old Grid and the New New Grid System, *79 Notre Dame L. Rev. 1* (2003), p. 22.

91 See, Levin, *supra*, p. 269.

92 See, Levin, supra, p. 269.

93 See, Levin, supra, p. 269.

94 See, Levin, supra, p. 269.

95 See, Levin, supra, p. 268.

96 See, Levin, supra, p. 268.

merits of a case or its potential outcome is offered; an agreement, if reached, is solely based on the solutions proposed and shaped by the parties.[97]

As Riskin noted, the continuum described in his grid was interpreted by scholars as a dichotomy between non-evaluative and evaluative approaches; such dualistic reading of the role of the mediator contributed to a polarization both in literature and practice.[98] However, some contemporary commentators argue that these two approaches are not running parallel to each other at the opposite side of the mediation spectrum, but can be blended together by mediators when appropriate during the course of the proceedings.[99] As the discourse on mediation evolves, additional styles and models continue to originate.

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[97] See, Levin, *supra,* p. 268. Riskin clarified that the terms facilitative and evaluative were originally designed to highlight the mediators' impact on parties' self-determination. In Riskin's view, the term "evaluate" included "a certain set of predictive or judgmental or directive behaviors by the mediator that tend (or by which the mediator means) to direct (or influence or incline) the parties toward particular views of their problems, toward a particular outcome, or toward settlement … such behaviors often or typically interfere with party self-determination. In contrast, the term 'facilitate' included a variety of actions by the mediator-not involving such influences-that tend … to help or allow the parties to find their own way and make their own choices based on their own understandings;" see, Riskin L., Decisionmaking in Mediation: The New Old Grid and the New New Grid System, *79 Notre Dame L. Rev. 1* (2003), p. 18-19.

[98] See, Riskin L., Decisionmaking in Mediation: The New Old Grid and the New New Grid System, *79 Notre Dame Law Review 1* (2003), footnote 44, p. 14. See, generally, Rubinson R., Of Grids and Gatekeepers: The Socioeconomics of Mediation, *17 Cardozo Journal of Conflict Resolution 837* (2016); Lande J., Toward More Sophisticated Mediation Theory, *Journal of Dispute Resolution 321* (2000); Birke, R., Evaluation and Facilitation: Moving Past Either/Or, *Journal of Dispute Resolution 309* (2000).

[99] See, Stempel, J., Identifying Real Dichotomies Underlying the False Dichotomy: Twenty-First Century Mediation in an Eclectic Regime, *Scholarly Works Paper 216* (2000), p. 376 ("… a mediator must operate under a legal regime that treats eclectic mediation as legitimate and that permits the mediator substantial discretion to do what he or she thinks best in each particular case."). For a similar point of view, see Yeo J., *Contemporary Issues in Mediation, Volume 1, Chapter three: The Facilitative-Evaluative Divide: Have We Lost Sight of What's Important?*, World Scientific (2016).

In the following paragraphs, I analyse three different non-evaluative approaches to family and community mediation that were previously adopted in the context of clinical legal education: facilitative mediation, transformative mediation, and circle process. Then, based upon my analysis, I propose a model tailored to the cultural, legal, and educational needs of LUMSA and of the families the clinic hopes to serve. Finally, I lay out sources and materials for the proposed curriculum, including an original role-play.

II. Facilitative Mediation

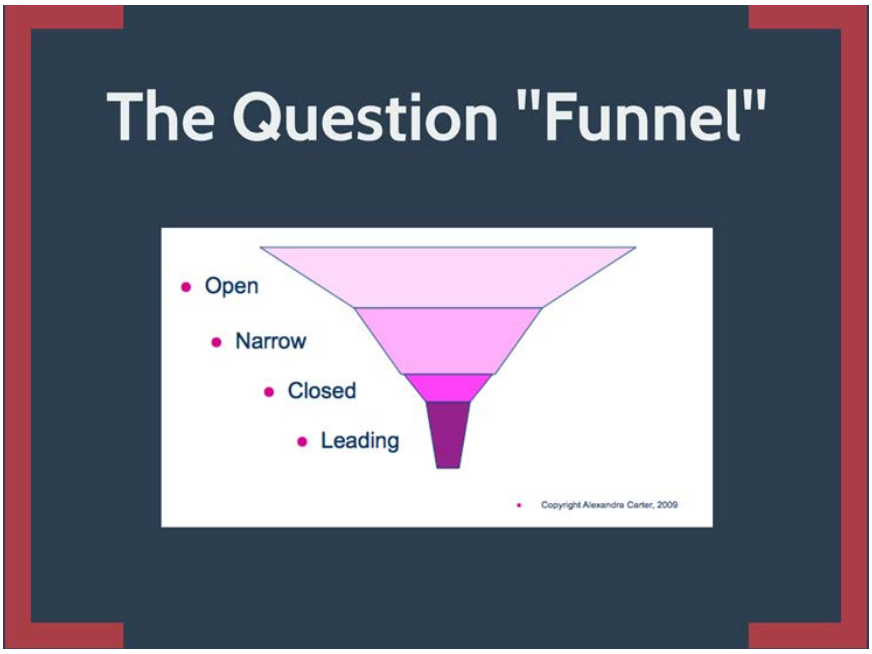
Facilitative mediation promotes a non-evaluative model based on active listening and question sequencing techniques that focus on recognition and acknowledgment of facts, interests, and feelings in a confidential setting. Issues that created conflict between the parties are approached comprehensively and impartially. The mediators' role is to empower the parties to self-determine the scope of their participation and reach a consensual agreement, if possible.[100]

Of particular interest and great practical effectiveness is the technique called "Question Funnel", which explains how to effectively use questions during the mediation

[100] See, Riskin (1996) *supra*, p. 24 ("[t]he mediator who facilitates assumes that the parties are intelligent, able to work with their counterparts, and capable of understanding their situations better than the mediator and, perhaps, better than their lawyers. Accordingly, the parties can create better solutions than any the mediator might create. Thus, the facilitative mediator assumes that his principal mission is to clarify and to enhance communication between the parties in order to help them decide what to do.").

process. This approach encourages mediators to start a session with simple open ended questions (for example, "what brought you here today?") to gather as much information as possible. Then, the inquiry should get progressively narrower ("tell me more about …"), directing the information gathering process towards previous positive events, interactions and experiences mutually shared by the parties—this is a particularly significant step in the context of family mediation, where previous relationships play a key role and rapport is fundamental.

After each party has answered a common open ended question, a joint summary should always follow. At this stage, it might be useful to help the parties setting up an agenda and channel their conversation toward the most important issues to discuss. Mediators are encouraged to take advantage of previously gathered information to identify and acknowledge parties' underlying feelings and interests. Often times, active listening, reflections, and summaries would be enough to make the parties feel understood, transforming their original positional behavior into a more productive and flexible approach to conflict resolution. When this positive shift happens and the parties move towards a potential agreement, mediators might ask closed questions to reality check durability and viability of the solution proposed by the parties.



Professor Alexandra Carter, Columbia Law School Mediation Clinic Training Material

In 2009, the University of Virginia School of Law created a pilot family ADR clinic, which adopted a facilitative approach.[101] Before mediating, students had the opportunity to meet with their supervisor to discuss their expectations and goals for the upcoming mediation; after the session, students wrote reflection papers analysing their conduct and performance in light of the practical lessons learned. This exercise fostered the students' ability to recognise their respective strength and weaknesses, and find ways to reinforce and improve their skills.[102] The program also included training sessions, seminars and

101 See, Emery K., Assisting Indigent Families in Conflict: A Pro Bono Test Drive for a Family Alternative Dispute Resolution (ADR) Clinic, *Journal of Law & Policy, Vol. 34:239* (2010), p. 249.

102 See, Emery, *supra*, p. 250.

class discussions organised in conjunction with the University's clinical psychology program, creating a very informative interdisciplinary learning opportunity.[103]

The combination of law and psychology forged strong interdisciplinary links that enhanced the quality of the service provided to the parties, especially in delicate situations such as educating clients on how to focus on the best interests of their children.[104] In conclusion, this flexible and innovative framework created incentives for students to go out of their comfort zone, structuring particularly complex issues "in terms of real people … rather [than] in terms of rules and principles,"[105] focusing on feelings and interests rather than facts and rules.

III. Transformative Mediation

The transformative mediation approach developed in the last two decades from the work of Professors Baruch-Bush and Folger.[106] According to the transformative view, conflict develops from a crisis in human interactions caused by two feelings: (i) weakness, which should be replaced by strength, and (ii) self-absorption, which should be substituted by responsiveness.[107] These feelings are a normal consequence of conflict and

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103 See, Emery, *supra*, p. 250.

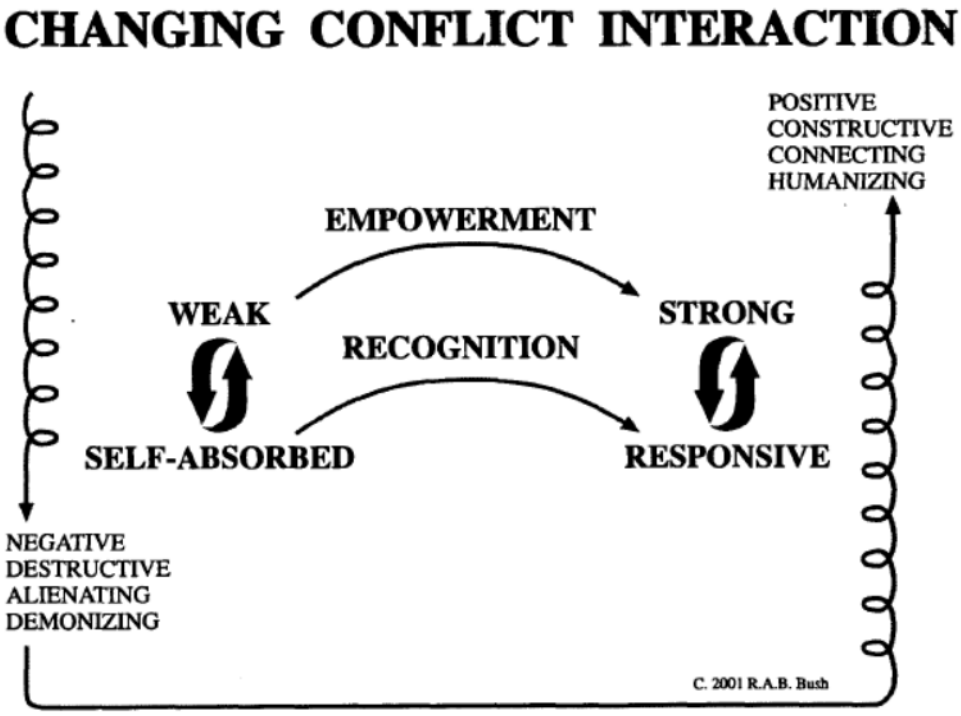
104 See, Emery, *supra*, p. 253.

105 See, Emery, *supra*, p. 253.

106 See, generally, Baruch-Bush R. and Folger J., *The promise of mediation. Responding to conflict through empowerment and recognition*, Jossey-Bass (1994); and Baruch-Bush R. and Folger J., *The promise of mediation: The transformative approach to conflict*, Jossey-Bass (2005).

107 See, Goodhart I. et al., Transformative Mediation: Assumptions and Practice, *11(2) Journal of Family Studies 317* (2005), p. 318.

affect how people experience themselves and others.[108] In the transformative process, the bridge from weakness to strength is empowerment, and the bridge from self-absorption to responsiveness is recognition.[109] This path to transformation and regeneration of the parties' relationship gradually creates a virtuous circle that shifts "negative, destructive, alienating and demonizing interaction[s] to … positive, constructive, connecting and humanising [ones,] even while conflict and disagreement are still continuing."[110]



108 See, Baruch-Bush R. and Ganong Pope S., Changing the Quality of Conflict Interaction: The Principles and Practice of Transformative Mediation, *3 Pepp. Disp. Resol. L.J. 67* (2002-2003), p. 74.

109 See, Goodhart et al., *supra*, p. 319.

110 Baruch-Bush and Ganong Pope, *supra*, p. 82.

Baruch-Bush R. and Ganong Pope S., Changing the Quality of Conflict Interaction: The Principles and Practice of Transformative Mediation, Fig. 2, p. 81

In order to create opportunities for empowerment and recognition mediators must know the language of conflict transformation,[111] which includes:

- *Close listening* and observation of changes in the body language of the parties as different messages are conveyed;[112]
- *Reflecting* what the mediator hears back to the parties, using their own words when possible, and especially when the language is strong, loud, negative or strongly expressive.[113] This technique's purpose is to give the parties an opportunity to "hear their own words in the same way as the other party has heard them, … enabling them to see and feel what it is like to be 'on the receiving end;'"[114]
- *Summarising* what has been said during the mediation, helping the parties making informed decisions about where they want the process to go.[115] In using this tool, mediators should remember that "[t]he summary is not an

111 See, Baruch-Bush and Ganong Pope, *supra*, p. 86-87.
112 See, Baruch-Bush and Ganong Pope, *supra*, p. 88.
113 See, Baruch-Bush and Ganong Pope, *supra*, p. 89.
114 Goodhart I., et al., *supra*, p. 320.
115 See, Baruch-Bush and Ganong Pope, *supra*, p. 89.

> educational monologue … and has no agenda or direction built into it. It is a powerful tool for supporting empowerment and recognition when it highlights the differences between the parties, and the choices they face;"[116]

- Regularly *checking-in* with the parties, preserving the voluntary nature of mediation and its self-determination purposes. Mediators can ask questions during the conversation to check their understanding of the parties' views; in particular, "[w]hen there is a fork in the road, it is helpful for the mediator to point it out and ask the parties which direction they want to take."[117]

Transformative mediators seek to support the family in the transition from destructive to constructive dialogue, focusing on self-determination and allowing the parties to be agents of their own change.[118] The ultimate goal of transformative mediation is not to offer a third-party solution, but to accompany the parties into their journey from weakness and self-absorption to strength and responsiveness.

The transformative mediation model was implemented in 2008 by Hofstra Law School's mediation clinic to help families in Nassau County, New York.[119] Students and social workers received a forty-hour training in transformative mediation, focused on

116 Baruch-Bush and Ganong Pope, *supra*, p. 89.
117 Baruch-Bush and Ganong Pope, *supra*, p. 90.
118 See, Baruch Bush R., et al., Supporting Family Strength: The Use Of Transformative Mediation In A Pins Mediation Clinic, *47(1) Family Court Review 148* (2009), p. 157.
119 See, Baruch Bush et al., *supra*, p. 158.

working with parents and teens. Then, over an average period of three months, each family involved in the program periodically received mediation sessions devoted to enhancing their communication skills, creating a better understanding of their situation, and making informed and collaborative decisions about the appropriate course of action.[120] In the first month, mediation sessions focused on increasing dialogue within the family, identifying the main areas of conflict, and eventually proposing solutions concerning day-to-day activities, like chores.[121] During the second month, families were asked to engage in mediation to evaluate impact and feasibility of their agreements in the long term, discuss their progress, detect if any potential new issues emerged, and decide whether to stay in the program.[122] The final month was focused on providing families with tools to approach conflict in a productive manner without external intervention, helping them to design tailored solutions to cope with future issues.[123]

During their experience in the clinic, students mediated real cases under the supervision of professors or certified mediators, adopting a co-mediation model and a transformative approach in which mediators (i) constantly reflected the parties verbal interactions, "capturing and uplifting their comments so that they can actually hear and listen to each other (and to themselves), as they express their views, feelings, and desires;"

120 See, Baruch Bush et al., *supra*, p. 158.
121 See, Baruch Bush et al., *supra*, p. 159.
122 See, Baruch Bush et al., *supra*, p. 159.
123 See, Baruch Bush et al., *supra*, p. 159.

and (ii) regularly summarised the content shared by the parties, as their conversation unfolded.[124] A social worker was also present at every meeting to guarantee the safety and feasibility of proposed agreements, preventing potential risks of foreseeable harm to minors.[125] In contrast to the circle process (analysed below), usually only immediate family members were invited to partake in mediation, but relatives, therapists, community members and other interested parties were allowed to join all or some of the sessions on a case-by-case basis when the interests of the family and/or the complexity of the issues so required.[126]

According to the Hofstra Law School faculty members involved, this program was a success, and the transformative approach represented the best option since it provided a clear and coherent theory underlying the practice of mediation that students could easily and readily learn.[127]

IV. Peacemaking Circle

The circle process is one of the most ancient forms of peaceful dispute resolution, which preceded the development of laws, courts, and judicial systems, emerging organically in almost all indigenous civilizations.[128] In the African continent, circles are

124 Baruch Bush et al., *supra*, p. 159.
125 See, Baruch Bush et al., *supra*, p. 160.
126 See, Baruch Bush et al., *supra*, p. 161.
127 See, Baruch Bush et al., *supra*, p. 162.
128 See, Daicoff S., Families in Circle Process: Restorative Justice in Family Law, *53(3) Family Court Review 427* (2015), p. 431.

often grounded in the concept of *ubuntu*, a collaborative approach to reconciliation and restoration of harmony within a community.[129] In general, these proceedings are informal, flexible, and anchored to the idea that peace is a communal matter that involves society at large.[130] In Ethiopia, Afar communities use a process called *maro*, in which elders, disputants, witnesses and observers sit in a circle under a tree to resolve conflict when disputes arise.[131] In New Zealand, the Maori population used to practice the *whanau conference*, which gathered extended families and clans of victims and offenders.[132] In Native American culture, circles have traditionally been used to settle disputes and make shared decisions concerning the community.[133] In this process, one or more individuals facilitate the conversation while a symbolic object is passed around in a circle, and the

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129 Daicoff, *supra*, p. 431.

130 See, Boniface E., African Style Mediation and Western-Style Divorce and Family Mediation: Reflections for the South African Context, *15(5) Potchefstroom Electronic Law Journal 378* (2012), p. 383-384. For a comprehensive explanation of the meaning of *ubuntu*, see McAllister, P., Ubuntu – Beyond Belief in Southern Africa, *6(1) Sites: New Series 1* (2009) and Murithi T., An African Perspective on Peace Education: Ubuntu Lessons in Reconciliation, *55(2-3) International Review of Education 221* (2009).

131 See, Gebre-Egziabher K. A., Dispute resolution mechanisms among the Afar People of Ethiopia and their contribution to the Development Process, *10(3) The Journal for Transdisciplinary Research in Southern Africa 152* (2014), p. 156-157. See, also, Morris D., Dispute resolution – an archaeological perspective with case studies from the South African Stone Age and San ethnography, *10(4) The Journal for Transdisciplinary Research in Southern Africa 120* (2014); this article offers an interesting archeological perspective on the development of peaceful dispute resolution practices in the South Africa.

132 See, Zernova M., *Restorative Justice: Ideals and Realities*, International and Comparative Criminal Justice Series, Routlege, 2016, p. 10.

133 See, Bradford W., Reclaiming Indigenous Legal Autonomy on the Path to Peaceful Coexistence: The Theory, Practice, and Limitations of Tribal Peacemaking in Indian Dispute Resolution, *76 North Dakota Law Review 551* (2000) p. 565 ("… disputes within the tribe were typically resolved … with the aid of respected elder members of the tribe who would guide the parties to a compromise restorative of the community."). In the traditional Navajo peacemaking process (called *hozhooji naat'aani*) members of the tribe sit in a circle and discuss their issues at length. The system is horizontal, which means that everyone is an equal, every opinion has the same authority and agreements are reached via consensus; see, Yazzie R., "Hozho Nahasdlii" -- We Are Now in Good Relations: Navajo Restorative Justice , *9 St. Thomas Law Review 117* (1996), p 122.

person who holds it has an opportunity to speak without interruption; members are usually gathered in plain view of one another and "the power of the talking circle group resides within the group, not with an individual member."[134]

The above mentioned methods, despite obvious differences from one another, are rooted on the same core principles: inclusion, participation, and accountability. The fact that an entire community can be present when the conflict is approached, have a voice in the solutions, support families in keeping agreements, and promote post-dispute relationships generates mutual respect, equality, dignity, tolerance, collaboration and a sense of interconnectedness that make the circle process particularly suitable for family law.[135]

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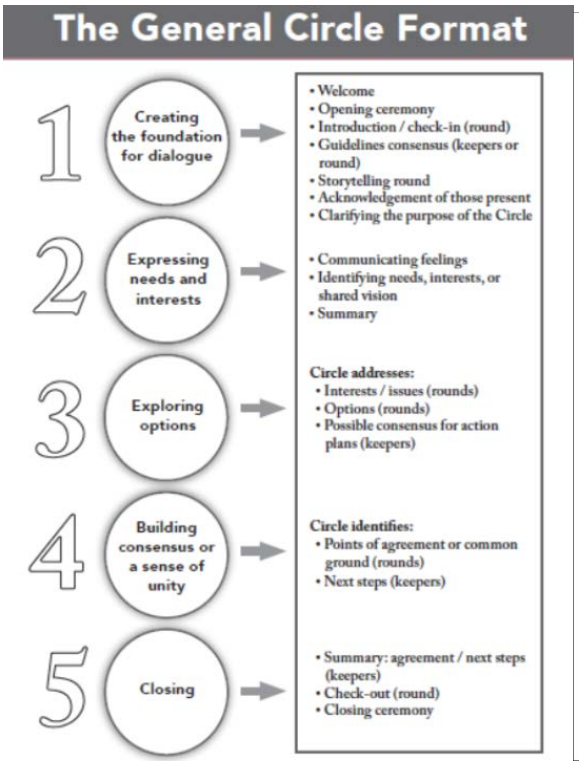
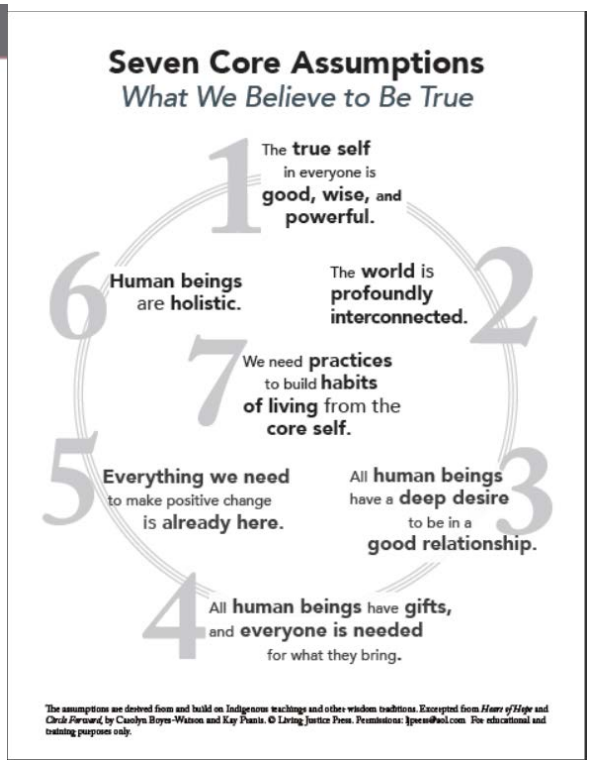
134 Jennings L. et al., Using the Native American Talking Circle: Experiential learning on ethnic and cultural diversity of Southern California, *25(1) Groupwork 58* (2015), p. 59. For an extensive discussion of how certain debilitating addictions that threaten families and communities can be cured via therapeutic jurisprudence and wellness courts, see Flies-Away J.T. and Garrow C., Healing To Wellness Courts: Therapeutic Jurisprudence, *2013 Michigan State Law Review 403* (2014).

135 See, Daicoff, *supra*, p. 430.





Living Justice Press; see, http://www.livingjusticepress.org/index.asp?Type=B_BASIC&SEC={B158346E-2E21-48C6-94DC-A71301BE3D0F}.

This framework was tested in 2008, when the Cook County Parentage and Child Support Court in Illinois partnered with DePaul College of Law to create a free program devoted to the promotion of peacemaking circles within families in disagreement. Feedback from the families involved in the program showed that the circle experience had a positive and enduring impact on communication in conflict situations.[136] In particular, "[t]he restorative process helped to create … better dialogue … encourag[ing] accountability and responsibility of the parents to their children and for their children."[137]

After having considered the main features of facilitative, transformative and peacemaking approaches and having described notable examples of their implementation in family mediation programs across the United States, the following section will analyse how these models can be tailored to the family mediation services that the LUMSA clinic will offer. This inquiry will consider how specific cultural beliefs and societal norms that inform Italian catholic communities play a role in determining the best approach to conflict resolution. In addition, the following section will identify role and mission of the clinic within the law school curriculum and discuss important guidelines to consider in order to provide prospective students with a meaningful and productive learning experience.

136 See, Daicoff, *supra*, p. 434.

137 Daicoff, *supra*, p. 434.

V. Tailored model for LUMSA Family Mediation Clinic

The first step in shaping the LUMSA model is to articulate the role and mission of the clinic within the law school curriculum.

Professor Wilson indicated the five components that define his "ideal model of clinical legal education."[138] Wilson's model requires that: (1) academic credit is granted to students for participation in the clinic; (2) actual clients with real legal problems are represented within a framework permitted by local statute, bar or court rules permitting limited student practice, advice or other legal services; (3) clients served by the program are legally indigent and/or come from traditionally disadvantaged, marginal or otherwise underserved communities; (4) students are closely supervised by attorneys and/or professors who share the pedagogical objectives of clinical legal education; (5) case-work by students is preceded or accompanied by a law school course on the skills, ethics and values of practice.[139]

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138 Wilson (2009), *supra*, p. 829. Originally, in Wilson R., Training for Justice: The Global Reach of Clinical Legal Education, *22 Penn State International Law Review 421* (2004), the author indicated six components, but later decided to reduce the number to five because he combined two components into one.

139 See, Wilson (2009), *supra*, p. 829-830. Those components are very similar to the ones originally adopted by Professor Liebman and still used by the Columbia Law School Mediation Clinic; see paragraph B.II, above.

LUMSA Family Mediation Clinic should include all the components listed by Professor Wilson, in order to provide a structured, meaningful and effective learning experience for its participants. In particular, the clinic should:

- award academic credit for students that successfully partake in clinical activities;
- comply with the provisions listed in section B.I and be listed in the Ministry of Justice's register;
- work with low income and disadvantaged families and communities;
- offer academic supervision by faculty members who share the pedagogical objectives of clinical legal education; and
- include basic skills trainings, interactive classes, role-play activities, lectures and group discussions concerning mediation theory, practice, ethics and policy issues.

Further, the different mediation models analyzed in the foregoing sections B.II-B.IV provide interesting options for the proposed Italian mediation clinic. Peacemaking circles have the perk of involving entire communities in conversations devoted to solving family conflicts, offering a variety of views concerning issues and solutions. Moreover, sincere and productive help from community members could generate great support to the parties in maintaining their commitments. However, this model does not seem to fit

appropriately into Italian culture, which values privacy as a fundamental principle when it comes to family conflicts. One of the most widespread and ancient Italian saying goes *i panni sporchi si lavano in casa* (dirty clothes are washed inside the house), which means that private unflattering conflicts that rise within the family shall be resolved by family members, without external intervention. Moreover, this view is strongly followed by Catholic families like the ones that LUMSA Mediation Clinic would mainly serve. For this very simple yet decisive cultural reason, the circle process does not seem to be a feasible option; most families would probably feel embarrassed and/or reluctant to discuss family matters before other members of their community, diminishing the effectiveness of this method.

The above mentioned privacy concerns still play a role in transformative and facilitative approaches; however, mediators have more leeway to manage this cultural privacy tension. People who partake in mediation can be limited according to the needs of each specific case, ranging from immediate family members to relatives, therapists, and social workers. In addition, confidentiality can be assured via a confidentiality agreement. Transformative and facilitative mediation have many other positive features in common; they wish to transform conflict into a productive dialogue, relying heavily on the use of (i) active listening skills, (ii) various techniques to filter, reframe, and reflect the words said by the parties, and (iii) regular summaries of the information shared by the parties during the mediation. The main substantial difference between these two

approaches lays in how mediators interpret their role and goals. The facilitative style focuses on resolving issues emerged during the mediation; the transformative approach goes further; it wishes to tackle family dynamics that cause conflict, improving the parties' relationship as a whole.[140] In practice, however, these distinctions tend to fade; each mediator can – to a certain extent – tailor her style to specific cases' needs, assessing the complexity and gravity of the disagreement and determining the level of resolution required.

For all these reasons and in light of Professor Liebman's suggestions (see paragraph B.II), LUMSA family mediation clinic should adopt facilitative mediation, with transformative tendencies when family conflicts seem rooted, serious, and repetitive to require a much deeper inquiry into reasons and dynamics that create disagreement within the family and threaten the underlying relationships. The learning experience should start with an intensive course focused on teaching students foundational conflict resolution tools (active listening, reflecting, summarising, and checking in), illustrated in paragraph C.III, and the "The Question Funnel" technique, analysed in paragraph C.II. The clinic should implement a co-mediation structure. Professors should pair students in light of their effectiveness as a team during the role-play activities performed during the intensive course. The co-mediation scheme should promote collaboration among clinical

140 See, Boulle L. J. et al., *Mediation: Skills and techniques*, LexisNexis (2008), p. 12-13.

students and make it easier for beginners to approach real-life disputes without being overwhelmed. After the initial intensive training, students should start mediating real cases under the supervision of faculty members and/or experienced mediators, having interactive classes, lectures and discussions and write short weekly reflection papers (from 3 to 5 pages) based on the analysis of the readings assigned and of the practice of mediation.

The following section will complement the foregoing analysis with seminal resources and materials that will constitute the backbone of the LUMSA clinic's curriculum. In addition, I will include an original role-play that touches upon family disputes with elder care.

VI. The Curriculum: Resources, Materials, and Role-Play

My proposed resources for LUMSA family mediation clinic's curriculum are mainly based on the materials assigned by the Columbia Law School Mediation Clinic. In particular, I would recommend adopting the book "Difficult Conversations: How to Discuss What Matters Most" by Douglas Stone, Bruce Patton and Sheila Heen; chapters 4, 5, and 6 of "The Practice of Mediation" by Douglas Frenkel and James Stark; and some exercises included in "Conquer Your Critical Inner Voice: A Revolutionary Program to Counter Negative Thoughts and Live Free from Imagined Limitations" by Robert Firestone, Lisa Firestone, Joyce Catlett, and Pat Love. Unfortunately, these materials have

not yet been translated into Italian. However, this task can be performed by students under the supervision of LUMSA professors, with permission from the authors, when necessary.

Moreover, following the University of Virginia School of Law's footsteps (see paragraph C.II), it would be incredibly useful to supplement this material with specific content provided by experts in child psychology and sociologists specialising in family conflict. This interplay between law and psychology would be beneficial both to students and families involved in the clinical program to reach agreements that are mindful of the delicate issues faced in family mediation.

Finally, I include a sample role-play that concerns elderly care and family conflict. The role-play is called "The Decision" and requires three participants and two co-mediators.

THE DECISION ROLE-PLAY

General information for the mediators and the parties

Veronica is a 77 year-old widow. Her husband died when she was 40 years-old, causing her great emotional suffering. Five years after his death, while visiting her sister in a summer location far from her town, Veronica met Vincenzo, a widower. They started

a relationship, and eventually moved in together in Vincenzo's house, in a city far away from Veronica's family.

The relationship by all measures was a success; they have lived happily together for many years. However, two years ago Vincenzo (then, 82 years old) started losing his memory, and was diagnosed with Alzheimer and dementia. Unfortunately, as result of the disease, Vincenzo's memory continued to deteriorate, but Veronica stood by his side despite all the difficulties. Recently, Vincenzo's disease has diminished his memory and cognitive abilities to the point that he often confuses Veronica for his deceased wife and has trouble recognising his sons.

About two months ago, Vincenzo fell from a chair, breaking his thighbone, and was hospitalised. Around the same time, Veronica started suffering from a severe and persistent stomach ache. Further medical examinations showed the presence of a mass in her stomach, which required further testing. It was clear that Vincenzo's sons, already busy assisting Vincenzo at the hospital, could offer Veronica little support with her newly discovered medical condition. They promptly informed Veronica's three daughters Anna, Lisa, and Iolanda (today's parties) of the situation. Veronica's daughters decided to take some time off from work to go visit their mother. Realising that her condition could be serious and considering Vincenzo's sons' limited availability, they decided to temporarily take Veronica back to their hometown with them.

Since then, the newly performed tests on Veronica's stomach showed that the mass was a very aggressive cancer, and that Veronica's chances of surviving are close to none. The doctors consulted with Anna, Lisa, and Iolanda to assess how to proceed. The daughters strongly disagreed on how, if at all, to convey the difficult and sensitive information to Veronica, and decided to try mediation.

Unaware of the severity of her medical condition, Veronica planned a trip to visit her beloved Vincenzo. This trip could be the last opportunity for Veronica to see Vincenzo before her health makes it impossible. Thus, time is of the essence to decide whether and to what extent to inform Veronica about her cancer.

THE DECISION ROLE-PLAY

Confidential information for Anna

Your mother never shared with you or your sisters her wishes in case something like this happened.

You are extremely worried about your mother and blame Vincenzo's sons for not having paid attention to the signals of Veronica's illness. If they were more attentive, they could have realized that something was wrong with her, and act when her chances of surviving were better.

Also, you know your mother better than anybody else. Being the oldest daughter, you comforted her when your father passed away, creating a very strong bond. You also developed a very deep relationship with your sisters, and became their mentor when your mother left.

You think that by telling her the truth about her disease she would start feeling extremely sad, to the point that she might even refuse medication and blow her already minimal chances of surviving. However, you know how much she loves Vincenzo, and do not want to prevent her from going to see him for what might be the last time. You are devastated by the idea that she might not know that the upcoming visit to Vincenzo could represent the last time she sees him. Despite that, you still think that not telling her of the whole truth is preferable since it would give her hope.

Even though you have very specific ideas on what is best for your mother, ultimately you want whatever decision that is made to be one that you and your sisters can all agree to and feel comfortable with despite your different opinions.

THE DECISION ROLE-PLAY

Confidential information for Lisa

Growing up, you never forgave your mother for prioritizing her relationship with Vincenzo over the one with you. In fact, your relationship has never been the same again

since she moved in with Vincenzo, but you still deeply care about her, and the news about her cancer devastated you. You never met Vincenzo or his family before the occurrence of these sad events.

You want to make sure to make the best decision for Veronica, but unfortunately your mother never shared with you or your sisters her wishes in case something like this happened.

You are unsure about what to do, and feel extremely lost. You want to hear what both of your sisters have to say before making up your mind. Ultimately you want whatever decision that is made to be one that you and your sisters can all agree to and feel comfortable with despite your different opinions.

THE DECISION ROLE-PLAY

<u>Confidential information for Iolanda</u>

You are the youngest sister in the family. At the beginning you had a hard time accepting your mother's decision to leave, but with time you came to terms with it. You also had many opportunities to meet with Vincenzo and his sons, and really like them and the way they treat your mother.

Despite the fact that your mother never shared with you or your sisters her wishes in case something like this happened, you believe she would like to know about her

condition. You also believe that her knowledge would definitely affect her decision to see and interact with Vincenzo. You believe she deserves to know the truth and make an informed decision about her future, including how to approach the upcoming meeting with Vincenzo.

Even though you have very specific ideas on what is best for your mother, ultimately you want whatever decision that is made to be one that you and your sisters can all agree to and feel comfortable with despite your different opinions.

Conclusions

First, the organisational structure of LUMSA Mediation Clinic should comply with all the provisions analysed in section B.I above and seek admission to the register maintained by the Ministry of Justice. This is a fundamental step to ensure that all the activities of the clinic are carried on in compliance with the law.

Then, given the cultural background of Italy and most of the families that will be serviced by the clinic, I believe that the best mediation model to implement at LUMSA is the facilitative approach, with transformative tendencies as needed, as described in section C.V. Furthermore, the legal clinic should adopt a co-mediation structure, and assign students weekly reflection papers.

While many resources already exist in English, the mediation clinic may find it useful and worthwhile to look into what needs to be done to translate the seminal texts included in section C.VI. To expand the available educational material, the clinic should also design and rely on role-plays that are similar to the disputes that students may face in the field and reflect cultural knowledge of the community, like the sample role-play included in section C.VI. In addition, the clinic should consider having an interdisciplinary approach that might better address all the complex needs that arise in family disputes.

In relation to funding, the clinic should rely on the direct investment of LUMSA and indirect patronage, especially in the form of donations. Moreover, despite the foreseeable difficulties illustrated in the preceding section A.II, the clinic should apply for European grants. In the future, once LUMSA family mediation clinic becomes a structured and well-established reality, it may be advisable to create an advance clinic model capable of furthering students' learning experiences and generating revenues, for example in the form of trainings that assign professional and ethics credits to Italian qualified lawyers and practitioners.

THE IMPACT OF PRO BONO LAW CLINICS ON EMPLOYABILITY AND WORK READINESS IN LAW STUDENTS

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Abstract

The benefits of involving law students in practical learning exercises and clinical experience have been well documented. Undeniably the implementation of law clinics in university law schools has significant advantages for students, including practice-based learning, general skills improvement and preparation for the workplace. It has become more important than ever to prepare law students for practice, and employability initiatives have become the focus of many law schools. One of the ways in which student employability can be boosted is through a pro bono law clinic. Not only do law students entering the competitive work environment benefit significantly from practical work experience gained during the course of their law degree, but there is evidence that it could also increase self-confidence, practical knowledge and, consequently, employability in students. However, there has been little empirical research interrogating the connection between graduate skills development and clinical experience. This article continues the discourse on the link between graduate employability skills and law clinics. It focuses, first, on the benefits of pro bono law clinics for students in the context of work readiness; second, it examines the results of a survey administered to law students pre- and post- law clinic training within the theoretic grounding of the Graduate Employability Indicators prepared by Oliver et al. (2011); and in conclusion, it considers the future implications for law schools and the need for further research in this area.

Keywords

Graduate employability; GEI; clinical education; legal education; pro bono law clinic

Introduction

A pivotal role of law schools is to prepare students for their future roles as legal practitioners, which will require a wide range of skills, not all readily accessible through traditional classroom education. It has been noted that there is significant agreement on the broad categories of desirable graduate capabilities cited by institutions, employers and industry bodies, including what are often referred to as the 'generic' or 'soft' skills, such as communication skills, teamwork, critical thinking, problem-solving, self-management, digital literacy and global citizenship (Jorre de St Jorre & Oliver, 2017; Hajkowicz et al., 2016).

In a previous article the author enumerated the benefits of involving law students in a pro bono law clinic, acknowledging the differences between Clinical Legal Education ('CLE') and purely voluntary pro bono clinics. Aside from the well documented benefits of clinical education (Evans et al., 2012) it was found that pro bono experience – like clinical experience obtained for academic credit – can also be of significant benefit to students as it promotes characteristics of altruism, community service and enhanced work ethic, in addition to developing practical workplace skills, communication skills and increased self confidence (Cantatore, 2015). However, it was acknowledged that further research was necessary in this area to determine whether students leave their clinic experience with enhanced workplace skills.

To this end a pilot study has been undertaken with a group of law students pre- and post- clinical experience in a pro bono teaching clinic, based on a survey utilising the

Graduate Employability Indicators ('GEI') (Oliver et al., 2011). A widely-accepted definition of graduate employability is the achievement of 'the skills, understandings and personal attributes that make an individual more likely to secure employment and be successful in their chosen occupations to the benefit of themselves, the workforce, the community and the economy' (Yorke, 2006, p. 8). In this article the author sets out to explore whether previous findings and the anecdotal evidence provided in earlier research (Cantatore, 2015) are supported by empirical research findings derived from the Graduate Employability Survey ('the survey') (Oliver et al., 2011). The article will consider, first, how students may benefit from involvement in pro bono law clinics in the context of work readiness; second, it contextualises and examines the findings of the survey, as compared with results from a control group of law students at an equivalent point in their law degree; and finally, it will conclude by noting the future implications and challenges for law schools, as well as the need for future research in this area.

The Pro Bono Law Clinic and Employability Skills

A pro bono teaching clinic can provide a secure and nurturing environment within which students can hone their practical work skills. This pre-supposes that adequate controls and supervision are in place to ensure that the experience is a worthwhile one for both students and clients attending the clinic. At the university law clinic which is the subject of this research study ('the Law Clinic') all students are supervised by experienced legal practitioners, as well as academic staff (when conducted at the

university), and client appointments are screened and scheduled in advance of clinic times.[1]

The [Law Clinic Program]

The [Law Clinic Program] consists of four clinics, namely the Commercial Law Clinic, the Community Law Clinic, the Human Rights Clinic, and the Criminal Law Clinic. All of these clinics - which are the subject matter of this research - are pro bono clinics, i.e. not for academic credit. In previous research the author focussed on the Commercial Law Clinic and discussed the numerous advantages of faculty run clinics. Not only do such clinics provide the faculty with experiential learning opportunities for students at a low cost, but they also offer pro bono work opportunities for local legal practitioners, as well as render a valuable community service. Other benefits to students include: interaction with 'real' clients and cases; development of social responsibility, empathy and interpersonal skills; networking and integrating with legal professionals; and promotion of ethical behaviour in students (Cantatore, 2015).

It was acknowledged that a distinction can be made between CLE and pro bono programs, as they have generally been regarded as 'separate and distinct entities' (McCrimmon, 2003, p. 76). Although there is significant overlap, the main

[1] The Law Clinic has been operating since September 2013 and provides free legal advice for small businesses and not-for-profit organisations. It has serviced approximately 430 clients as at the date of this article. The clinic runs every semester (three semesters per year) on a bi-weekly basis over a period of 12 weeks. To date more than 100 students have volunteered at the clinic, and overall, more than 250 students have participated in all the clinics offered by the program.

distinguishing factors between the two models lie in the following characteristics (Cantatore, 2015, p. 148):

a) CLE programs attract academic credit (Evans et al., 2012, p. 23), as opposed to purely voluntary non-academic reward arrangements for pro bono students;

b) 'Pro bono' is voluntary work done out of a sense of professional responsibility, where the primary motivation for the work is a concern for justice or reasons of kinship or friendship, as opposed to securing gain (Corker, 2005, p. 5);

c) CLE programs have a *teaching* focus whereas pro bono programs have a *community service* focus (Corker, 2005, p. 6);

d) Usually pro bono programs are at no financial cost to students as opposed to academic fees being payable for CLE programs; and

e) CLE programs are required to have formal assessment procedures to produce specific learning and teaching outcomes whereas pro bono programs generally implement informal feedback and reflective practices.

Student pro bono work has been described as a situation where students, without fee, reward or academic credit provide or assist in the provision of services to enhance access to justice for low income and disadvantaged people or for non-profit organisations that work on behalf of members of the community who are disadvantaged or marginalised, or that work for the public good (National Pro Bono Resource Centre, 2004, p. 8). However, although pro bono programs intrinsically have

a community focus and imply that volunteers are altruistically motivated, or are participating out of a sense of justice, it is clear that the benefits of such participation are more far-reaching. In addition to gaining practical work experience, pro bono clinics also help students acquire fundamental professional values, as opposed to merely focusing on the acquisition of legal knowledge (Booth, 2004). Ethical behaviour and understanding of social and cultural interaction with clients also become part and parcel of the student experience in the pro bono clinic. Corker (2005, p.7) identifies the following objectives of pro bono clinics (in addition to the social justice aspects): to introduce law students to the workings of the legal profession and to meet, observe and work with practising lawyers involved in public interest work; to assist students to develop interpersonal skills in a professional environment; and to provide students with practical experience in research, writing and advocacy in a legal environment.

All of these skills contribute to the student's maturity and employability when he/she enters the workplace. In a recent study conducted by Trina Jorre de St Jorre and Beverley Oliver (2017, p. 9) it was also found that students value the involvement of employers, industry representatives or professionals in the design and delivery of their learning. It was noted by the authors that students also spoke highly of work-integrated learning and professional networking opportunities. They identified strategies such as work placements, internships or volunteering as effective ways of engaging in skills development:

> 'Internships are great for developing these kinds of skills but they are highly selective. Volunteering is a great way for other students to develop skills that employers want'.

The interaction between students and legal professionals in the clinic is therefore conducive to developing practice skills, which would not have been accessible to students in a traditional classroom context.

Previously, it has been acknowledged that there is merit in both CLE and pro bono clinics – the CLE model which is for academic credit, and the more informal pro bono program without formal academic credit - but that a 'hybrid' model incorporating both pro bono work and specific learning and teaching outcomes provides students with an optimum practice-based learning experience. Furthermore, if such a program is conducted at the university faculty premises, rather than externally, the benefits are enhanced due to the interaction of students, lawyers and academics in the Law Faculty environment (Cantatore, 2015, p. 162). It was then demonstrated that the Commercial Law Clinic had the attributes of such a hybrid clinic, in providing a pro bono opportunity for volunteers, with the concomitant benefits of experiential learning derived from interviewing real clients under supervision by experienced legal practitioners, researching the law, and drafting advice, which is signed off by supervising lawyers. Thus, this clinic model incorporated elements of community service together with the development of employability skills in students. In addition, as a Commercial Law Clinic, the clinic was an initiative that challenged existing

models of CLE programs and pro bono services, by merging pro bono service and experiential learning in a *commercial law* context.

The remaining three clinics consist mainly of off-campus volunteering with law firms and institutions on pro bono matters but they share the following characteristics with the Commercial Law Clinic:

a) All clinics constitute volunteer activities which involve community service elements;

b) None of the clinics are for academic credit;

c) All clinics promote access to justice (whether for individuals, small businesses or not-for-profits); and

d) All clinics offer students experiential learning opportunities through interviewing, drafting and preparing advices or briefs.

Thus, even though they may serve different purposes from a community service perspective and the clinic models differ in some respects, all of these clinics under the [Law Clinic] Program share common goals and objectives, which include developing students' real-world employment skills. The research discussed below attempts to determine whether these objectives are realised – and if so, to what extent – in respect of developing employment skills through students' pro bono clinic experience.

The Research Project

Theoretical Grounding

The research project underlying this article was conducted within the theoretic grounding of the GEI set out by Oliver et al. (2011) for an Australian Learning and Teaching Council Report. The Report relied on seven clusters of attributes identified by universities including: written and oral communication; critical and analytical (and sometimes creative and reflective) thinking; problem-solving (including generating ideas and innovative solutions); information literacy, often associated with technology; learning and working independently; learning and working collaboratively; and ethical and inclusive engagement with communities, cultures and nations.

Based on these attributes, the survey included in the Report allows for the systematic collection of evidence of stakeholders' views of graduate achievement of employability skills (Oliver et al., 2011, p. 8). The survey expands the list of attributes mentioned above further, by focussing on fourteen attributes, skills and personal qualities drawn from a number of related surveys (Kuh, 2001; Coates, 2009a). The GEI can be used to determine the effectiveness of courses in preparing students for the workplace, by administering a survey to various stakeholder groups.

In this pilot study the GEI survey has been applied in the context of law students attending a pro bono teaching clinic over the course of a semester, by measuring their perception of competency against a control group. Students typically volunteer in the

clinic for a semester, without academic credit, and are appointed based on their academic record, curriculum vitae and an application letter. The experience exposes students to the realities of a job application, real client contact and interacting with their peers and supervising lawyers. In the survey students were instructed to indicate their level of competence in respect of each attribute rated from 0 – 100. A copy of the GEI survey is attached as Annexure A.

Methodology

The research project involved the collection of both quantitative and qualitative data, from the survey as well as discrete qualitative survey feedback received from students post semester through Survey Monkey. In conducting this pilot study, the established model proposed by the GEI was used to survey the law clinic student stakeholder group ('Group 1') over the course of two semesters in 2016, and compare the results of the survey with those of a control group of students ('Group 2') over a similar period in 2017. Participant students of both groups were in the third to fourth semester of their law degree. Group 1 consisted of students attending one of four pro bono clinics, whereas Group 2 consisted of students with no clinical experience. The group numbers were fairly evenly balanced, with 33 and 34 participants respectively. Qualitative data was collected from Group 1 students to provide additional insight into their law clinic experience and perceived employability skills enhancement through their experience.

The Survey

Table 1: GEI Survey Content

Abbreviated title	**Full text in the GEI**
1. Knowledge	*Work related knowledge and skills*
2. Writing	*Writing clearly and effectively*
3. Speaking	*Speaking clearly and effectively*
4. Thinking	*Thinking critically and analytically*
5. Quantitative	*Analysing quantitative problems*
6. Using ICT	*Using computing and information technology*
7. Teamwork	*Working effectively with others*
8. Independent Learning	*Learning effectively on your own*
9. Intercultural Understanding	*Understanding people of other racial and ethnic backgrounds*
10. Problem-solving	*Solving complex, real-world problems*
11. Values & Ethics	*Developing a personal code of values and ethics*
12. Community Engagement	*Contributing to the welfare of your community*
13. Industry awareness	*Developing general industry awareness*
14. Social contexts	*Understanding different social contexts*

Contents of the Survey: As noted above, the survey listed fourteen attributes, skills and personal qualities on the instrument in abbreviated form, set out below, and students were instructed to indicate their level of competence in respect of each attribute rated from 0 – 100 (Oliver et al., 2011, p. 10).[2]

[2] Instructions on the survey stated: "For each of the 14 points add a dot to indicate how competent you would feel in each if hired today as a legal practitioner (0=not at all competent, 100=absolutely competent).

Participants and process: The representation of clinic participants in the survey is set out in Tables 2 and 3 below:

Table 2: Group 1

Student group	**Number of participants**
Commercial Law Clinic	19
Community Law Clinic	5
Human Rights Clinic	4
Criminal Law Clinic	5
Total number	33

Table 3: Group 2

Student group	**Number of participants**
Non-clinic law students	34
Total number	34

To provide consistency, the same survey was administered to both groups in weeks four and 12 of the semester, thereby recording students' responses early in the semester (for Group 1, at the start of their clinic experience) and late in the semester (for Group 1, at the end of their clinic experience). The Group 2 control students were engaged by sending an email to law students, which provided an opportunity to win a mini-iPad. A copy of the email invitation is attached as Annexure B. Following the email invitation, 34 usable responses were received from students (i.e. where both the first and second surveys were completed, and students were non-clinic students.)

Group 1 surveys were distributed to clinic students at the beginning and end of semester by an administrator who collected and stored the surveys securely. Student

identification numbers were obtained instead of names in order to (a) allow for 'blind' viewing of data; and (b) enable collation of the second survey data with the initial survey. For Group 2 surveys it was necessary to obtain an email address in order to distribute the second (end of semester) survey to participants. This procedure was consistent with the ethics approvals acquired prior to commencing the study, with no identification of participants in the research findings.

General findings:

a) *Group 1:* Overall, the 33 pro bono law clinic students reported an average 13% increase in their graduate skills from beginning to end of semester. More than 42% of students showed an overall increase of over 10%, and approximately 15% reported a more than 20% increase in their competency. The most significant increase reported was a 44% increase by one participant. Broken down further by individual clinic, Commercial Law Clinic students showed an average increase of 16% as opposed to the Community Law Clinic and Human Rights Clinic (both 10%) and the Criminal Law Clinic (6%). Only one Criminal Law Clinic participant reported a perceived overall *decrease* of 2% in their competency.

b) *Group 2:* In comparison, the control group of non law clinic students showed a perceived overall increase in their graduate skills of 2.7%, with 17.6% of students indicating an increase in competency above 10%. Only one participant reported an increase of 13%, which was the maximum increase

reported. Significantly, more than 26% of students reported a perceived decrease (ranging from 1% - 14%) in their competency in these skills.

Discussion of findings: In comparing the findings for both groups, the following observations can be made:

a) There was a significant difference between the perceived average increase in competency in the two groups, with Group 1 students showing an overall average increase of 13%, as compared with Group 2 students with an overall average increase of 2.7%, i.e. a difference of 10.3%.
b) The Commercial Law Clinic students attested to a higher average increase in competency than other law clinic students Significantly, 74% of Commercial Law Clinic students were above the total Group 1 average increase percentage, indicating a perception of elevated competency in skills in these students.
c) Surprisingly, the control group (Group 2) results showed that a significant number (26%) of students reported a decrease in their perceived competency in graduate skills by the end of semester.

Whilst it could be argued that other factors may play a role in the low increase in Group 2, such as pre-exam stress at end of semester, the same stress would apply to Group 1 students (arguably perhaps more so with the additional time commitment to volunteering). Further, the control group responded to an email with the possibility of winning an iPad mini, which had the potential for them to inflate their increase in competency in case it would be a factor in choosing the winner (which it was not).

However, from the lower results reported, it seemed evident that, overall, participants in Group 2 did not inflate their increase in competency. It must also be noted that many students in the second group reported a high competency level in the attributes to start out with, and then maintained that level by end of semester, or decreased slightly. It should be noted that, in the Group 1 students, many also started off with high competency levels but these generally increased by the second survey. Another observation in relation to the Group 2 students is the possibility that they may also have been engaging in part time legal work (whether paid or unpaid) as many students do. It would be interesting to know if this was the case, yet they still continued to report lower levels of competency. If so, it could be because the Bond Law Clinic environment is more nurturing and supportive (thus engendering a sense of self-confidence) as compared to law firms where students may often feel quite inadequate as a clerk or paralegal. In the clinic students can enjoy the satisfaction of actually servicing a client with tangible needs and be involved from start to finish, whereas in a law firm students often work on a very small part of the matter, their work is often more administrative than legal, and they sometimes do not get to see the final product they contributed to. As a result, it may be difficult for students to build up their confidence during work experience to ask for more challenging work. Asking what extracurricular or employment activities the control students are involved in might provide an interesting point of comparison in a future study.

Group 1 students showed a marked overall increase in their perceived competency level, with Commercial Law Clinic students reporting significant improvements over the course of the semester. One may observe, as an aside, that an important characteristic acquired in the clinic appears to be a sense of improved self-confidence, which is reflected in their perception of increased general competency. Whilst it is difficult to say with certainty whether the skill levels reported by the students are later manifested in the workplace without feedback from future employers, it is evident that clinic participants have, at a minimum, an increased sense of competency in the GEI set out in the survey.

Group 1 Qualitative Feedback: In order to further explore the pro bono student experience, additional feedback was obtained from students in the Commercial Law Clinic.[3] The qualitative data obtained through this additional survey – while not representative of all the pro bono clinics discussed here – provides some insight into the student experience and benefits derived from volunteering. It also highlights student perceptions of how the clinic experience affected employability skills.

There has previously been anecdotal evidence to support the success of the student experience in a pro bono commercial law clinic (Cantatore, 2015, pp. 168-169), where several students commented on their increased confidence and improved communication skills, as well as the clinic's role in helping them to obtain

[3] By way of a Survey Monkey survey sent to students by email post-clinic experience.

employment.[4] Additionally, supervising lawyers in the clinic provided positive feedback about the work readiness value of the clinic, with comments such as:

> 'The more experience a student has with real life cases and client interaction the better. Further, to be accepted into the program is also evidence of the student's excellence in their studies, initiative to apply, ambition to further their education by volunteering their time and willingness to learn from and make connections with legal professionals in practice.'

and

> 'Employability often goes hand in hand with confidence and personality. The more experience the student has the more practice ready they will be, because their confidence in different legal situations with actual clients is increased by their experiences at [the Law Clinic].' (Cantatore, 2015, p. 170)

In the present study discussed in this article, it was found that students expressed similar sentiments to the previous clinic volunteers, as set out above. A brief discussion of their comments follows below.

[4] Examples of comments from students:
"*The [Law Clinic] was crucial to giving me the confidence in interviews to demonstrate I have had practical experience outside the classroom. It provided a level of comfort for me to attack and approach a client's case because of the different challenges I faced with the clinic. Interviewing clients, writing letters of advice and doing legal research, were all key components which I felt were beneficial for my current position.*" (email from Law Graduate); "*I am currently undertaking an internship as a paralegal and also secured three clerkships with three different top tier law firms. The [Law Clinic] a significant role in enabling me to obtain all of these things*" (email communication from Law Graduate): Cantatore, 2015, pp. 168-169

Survey Monkey Feedback of Participants: In the post semester survey administered as a matter of course to pro bono clinic students, they were given the opportunity to rate their clinic experience and to provide detailed feedback if they chose to do so. All responses were anonymous. Responses included the following comments by students where the practical benefits of the clinic were highlighted:

In relation to "real world" experience:

> 'The Clinic provided me with a fantastic insight into the real legal world. It allowed me to get first-hand experience dealing with clients and their files, as well as giving me experience in writing fact sheets which are then published and used in the Clinic.' (Survey Monkey, April 26, 2016);

In respect of putting theory into practice whilst providing a community service:

> '[The Law Clinic] gives students the opportunity to dive into practical legal advice. As a student advisor, you think on your feet and get a practical context for the concepts you've learned about in class. Being exposed to highly competent lawyers, learning from their client interaction and how they convey legal advice, is an invaluable experience you can't get from a textbook. On top of all that, you're making a difference in the community and helping real people solve real problems. Why wouldn't you do it?!' (Survey Monkey, April 22, 2016);

In providing a memorable learning experience:

> '[The Law Clinic] provided the opportunity to apply applicable course content to real clients. The learning curve is steep, and the potential for skill development is present. It was fascinating to not just learn about the law in its everyday application, but to also learn about the people involved with the specific legal issues. [The Law Clinic] was a fantastic experience.' (Survey Monkey, April 21, 2016);

By developing drafting skills and interacting with real clients:

> '[The Law Clinic] is a great experience for any law student. I learned practical skills in both client interviewing and drafting letters of advice that I haven't learned in the classroom. In addition, it was a great opportunity to interact with real clients and to help choose what type of commercial law I want to practice after graduation. I would highly recommend volunteering here.' (Survey Monkey, August 26, 2016);
>
> and

By building students' self-confidence

> '[The Law Clinic] provides students with an excellent opportunity to apply their knowledge to real problems. Meeting with clients and assisting them in answering their questions builds confidence and skill.' (Survey Monkey, August 26, 2016).

Another law student communicated her feedback by email, describing her journey in the law clinic experience:

> 'My first day at the [Community Legal Centre], I was thrown into the deep end, facilitating client entry interviews and drafting letters of advice for clients with a vast array of legal problems. Such an intense practical experience fosters the most rapid and effective development of the leadership and communication skills that all future lawyers should build upon early in their degree. Taking part in the [Community Law Clinic] has broadened my outlook towards legal practice and the skills needed to be a successful advocate for clients. I would absolutely recommend participation in this outstanding program; I have grown so much not only as a student of law, but as a member of the [university community].' (personal communication, May 10, 2016).

Some of the perceived benefits derived from the students' clinic experience and recorded in this research are set out in Table 4:

Table 4: Perceived benefits of the Law Clinic experience

Student comment	**Skills**
Improved client interviewing and legal drafting skills.	Speaking, writing
I believe my client interviewing and writing have improved since beginning the Clinic.	Speaking, writing
I have gained a better understanding of general legal efficacy, interacting with clients and how to approach a broad range of commercial matters.	Knowledge, thinking, speaking, industry awareness, problem-solving, social contexts
I have learnt to look at problems from a less strict legal sense and a more commercial sense. I have also enhanced my client interviewing skills.	Knowledge, thinking, speaking, problem-solving, social contexts
I've learnt so much from participating in the clinic and it has been great experience.	Knowledge, problem-solving
I feel a lot more comfortable with writing letters of advice now that I've had to write several.	Writing, problem-solving
Improved real world application of the skills from classroom and how to implement these in a legal practice.	Knowledge, industry awareness, problem-solving
It gave me the opportunity to see first-hand how client interviewing works and I found my ability to draft legal advice developed throughout the weeks.	Knowledge, speaking, writing, problem-solving
I feel more confident communicating with clients on commercial law matters, providing summaries to the supervising lawyers, and drafting advice.	Knowledge, speaking, writing, problem-solving, social contexts

It appeared from this research that students specifically recognised an increase in their knowledge, speaking, writing, problem-solving and industry awareness skills. However, the development of these skills is also underpinned by quantitative problem-solving skills (individual clients' problems), community engagement, and

the values and ethics associated with the legal profession. As students work closely with supervising lawyers, all of these skills are strengthened simultaneously. It can also be noted that other skills such as teamwork and intercultural understanding are inter-related with the skills mentioned, as students work in team situations and deal with a variety of clients during their clinic experience.

Conclusion

Despite the fact that pro bono clinics are generally regarded as having a primary focus of community service (Corker, 2005, p. 6), and instilling future graduates with a community and public service rooted mentality (Booth, 2004, p. 280), they present considerable learning opportunities for students. It has been shown that the habits of mind, work ethic, behaviours and professional identity learners develop through experiential opportunities in higher education are critical to their graduate employability (Yorke & Knight, 2006). Pro bono law clinics offer such experiential prospects. This research shows a significant average increase of 13% in perceptions of competency in students after attending a semester long pro bono law clinic. In a faculty run clinic such as the Commercial Law Clinic, students reported even larger average improvements in their graduate capabilities of 16%. These results were supported by qualitative data collected in follow-up surveys, where students mentioned amplified levels of skill in attributes such as knowledge, writing, speaking and problem-solving. In comparison the control group showed only a minimal

increase of 2.7% in competency, with a number of students experiencing a decrease in their competency.

Whether the results of the surveys are borne out by students' future career success can only be established through further research and more extensive studies, which would involve employers and continue into the graduate lawyer's working life. Oliver et al. (2011, p. 7) set out guidelines for conducting such research, and comment that there is no routine and systemic collection of evidence of other stakeholders' views of graduates' achievement of employability skills in Australian higher education, even though reports suggest that employers are often less than satisfied with graduate skills.

This may be as a result of the constraints in conducting such research. It is acknowledged here that employers are an independent voice who can provide highly valuable feedback on graduate outcomes (Coates, 2009b), however, there are challenges associated with such further research, for example: the length of the research phase and funding considerations (as the research would need to be conducted over a considerable time period to assess a group of students during and after their law degree); close monitoring of the migration of participants (keeping track of their whereabouts over an extended period); and – as acknowledged by Oliver et al. (2011, p. 7) – the difficulty of engaging respondents in surveys. Nevertheless, such further research would show whether the employability skills obtained during their clinic experience helped graduates in the real-life workplace, how the skills assisted the graduates, and whether the graduates' personal perceptions were borne

out by their future employers. It would also assist higher education institutions to re-evaluate learning and teaching outcomes, and implement programs which promote graduate employment skills. In the absence of such data, and based on the results of this pilot research, it seems clear that there are definite skills benefits associated with a pro bono law clinic, provided that it is structured appropriately, managed effectively and that students enjoy constant professional supervision.

From a law school perspective, it has been noted that there are a number of challenges involved with establishing and running pro bono clinics to promote employability skills, such as: securing enough pro bono lawyers for supervision in the clinic; engaging external organisations; involving academic staff with already heavy workloads in pro bono activities; administration of the clinic; qualification of applicants; insurance and risk considerations; and ongoing student engagement and management (Cantatore, 2015, p. 165). However, the benefits derived from running a pro bono clinic, for both the community and for law students, and the opportunities for networking and engagement with the profession, validate the additional efforts of progressive law schools in equipping their students for the workplace. What is needed is a proactive commitment from Law Deans to support and encourage pro bono initiatives and to provide the infrastructure for these clinics to operate effectively.

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LEARNING BY EXPERIENCE ON THE INNOCENCE PROJECT IN LONDON: THE EMPLOYER/ EMPLOYEE ENVIRONMENT

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Introduction

The Innocence Project London is a *pro bono* project dedicated to investigating wrongful convictions in the context of individuals who claim actual innocence i.e. they did not commit the crime for which they have been convicted.[1] Law students undertake work on the cases of convicted individuals who have maintained their innocence but have exhausted the criminal appeals process. The only avenue available to these individuals is to make an application to the Criminal Cases Review Commission (CCRC), which was set up to investigate the cases of people who believe they have been wrongfully convicted.[2] The CCRC has the power to refer a case back to the Court of Appeal but requires new evidence or a new legal argument not identified at the time of the trial, which might have changed the whole outcome of the trial had the jury had been given a chance to consider it.

Innocence projects were developed in the United States of America (USA) and they have now spread globally, to include the Netherlands, Japan and Canada as well as in the United Kingdom. As such, Innocence Projects which meet the necessary criteria can apply to become members of the Innocence Network, which is based in New York. At present the Innocence Project London is the only UK project that it a member of this network.

[1] The distinction between wrongful convictions and miscarriages of justice in the context of an innocence project is articulated in Michael Naughton, 'Wrongful Convictions and Innocence projects in the UK: Help, Hope and Education", (2006) *Web Journal of Current Legal Issues.* The term wrongful conviction has however, been used in the context of the conviction of an individual secured as a material legal error where the individual concerned may not be innocent. Actual innocence typically means that the individual did not commit the crime of which he has been convicted. The discussion over the use of actual innocence is not the focus of this paper.

[2] Criminal Cases Review Commission https://ccrc.gov.uk/about-us/what-we-do/

Whilst the notion of innocence projects has been much debated in literature[3] the purpose of this paper is to present the pedagogy of the Innocence Project London (hereinafter IPL) and the meaningful learning opportunity it provides to students. The pedagogy combines experiential learning with elements of work based learning to create an employer/ employee environment. Law students are 'employed' to work on the IPL where the employment process starts with a two-stage application. The clinical learning model on an innocence project is distinct from the traditional clinic approach, in that students start work at the end of a case rather than at the beginning. The problem-solving therefore is developed in the context of critical judgement based on what happened when the case was decided in court as opposed to how the case should be presented in court. The learning for the students has been significant.

1. The IPL Pedagogy

The pedagogy of any innocence project, by virtue of the nature of the work, is underpinned by the experiential learning model from clinical legal education,[4] but it provides a very different learning process for the student.[5] As distinct from the law clinic model which requires an understanding of what facts are presented as agreed or considered insignificant,[6] cases accepted by the IPL have already been decided and appealed. Students are required to disentangle them through an extensive

[3] Some interesting perspectives can be found in: Margaret Raymond, The problem with innocence, (2001) 49 *Clev.St.L.Rev*. 449: Jan Stiglitz, Justin Brooks, & Tara Shulman, (2002) "The Hurricane Meets the Paper Chase: Innocence Projects New Emerging Role in Clinical Legal Education", 38 *CAL. W. L. REV*. 413: Daniel S. Medwed, (2003) "Actual Innocents: Considerations in Selecting Cases for a New Innocence Project", 81 *NEB. L. REV*. 1097. For a UK perspective see Stephanie Roberts and Lynne Weathered, "Assisting the factually innocence: The contradictions and Compatibility of Innocence Projects and the Criminal Cases Review Commission", (2008) *Oxford Journal of Legal Studies*, pp 1-28 and Hannah Quirk, "Identifying miscarriages of justice: Why innocence in the UK is not the answer", (2007) 70 (5) *MLR* 759-777

[4] For a full outline of what Clinical Legal Education is see Richard J Wilson, "Training for Justice: The Global Research of Clinical Legal Education", *Penn State International Law Review*: 22 (3), Article 5 at Part I

[5] Keith A. Findley, "The Pedagogy of Innocence: Reflections on the Role of Innocence Projects in Clinical Legal Education", *Clinical Law Review*, (Fall 2006), 13, 1101at 1105

[6] Findley, "The Pedagogy of Innocence: Reflections on the Role of Innocence Projects in Clinical Legal Education"

investigation of fact alongside research into substantive law, to understand how and why their client was convicted. The students work is supervised by both an academic and a practising lawyer. The former provides support and advice on learning the law, whilst the latter provides practical advice and experience on how a court would consider any new evidence or legal arguments. There are two ways a student can work on the IPL, as a volunteer case worker or by selecting it as a third-year optional course.

1.1 Learning by experience

Rather than being taught in a passive style through a dissemination of information from the lecturer to the student, learning on the IPL is as a result of direct involvement with the case. The cases on the IPL place emphasis on the importance of facts, the value of being detailed, but also of being sceptical.[7] Employees/students approach the facts of a case in order to tell the story, and then examine the facts in order to determine what went wrong and what new evidence or new legal argument might be used to prove innocence. There is great value in this process, where the employee/student learn how to be thorough, learn how to keep going when one area of investigation reaches a dead-end, and learn how to creatively approach a complex problem.[8] These are skills which can only be developed by learning through experience,[9] which draws upon the clinical legal model that is rooted in David Kolb's cyclical learning model for reflective practice.[10] The four stages; concrete experience, reflective observations, abstract conceptualisation, and active experimentation are all part of the process that students go through on the IPL when they analyse and problem solve in what is an unstructured situation.[11]

[7] Findley, "The Pedagogy of Innocence" 1111
[8] Findley, "The Pedagogy of Innocence" 1109
[9] R. J Sternberg and L.F Zhang, eds, *Perspectives in cognitive, learning and thinking styles, in Experiential Learning Theory: Previous Research and New Directions*, (NJ: Lawrence Erlbaum, 2000).
[10] D Kolb, (2014) *Experiential Learning: Experience as the Source of Learning and Development*, 2nd ed, (New Jersey: Pearson Education)
[11] Findley, "The Pedagogy of Innocence" 1106

It is unstructured because each case is unique as to the substantive and sometimes procedural law students have to research and learn, and the legal issues which go beyond the law undergraduate curriculum.[12] For employees/students on the IPL, their experience as part of that learning cycle[13] continually evolves depending on the subject matter of the cases that are accepted. For example, a current IPL case is one of murder, but the students had to consider a number of issues that went beyond the offence for which the client had been convicted. This included medical evidence concerning the injuries of the victim and the medical history of the client who was registered disabled, the latter had not been considered in court at all. Another case has required students to consider expert evidence which meant researching this area of law to identify how an expert is defined by the law and the parameters in which they can give evidence. The learning that derived from these issues provided a good opportunity for students to start understanding about the importance of finding and proving facts, as well as legal analysis.[14] Where the students start their work after the trial and appeal have been decided, they are given a platform on which to critically reflect on how the criminal justice system has worked, and how it might work differently and more effectively.[15] This also includes the limits of the court, solicitors and barristers.[16]

The different subject matter of the cases and their lack of obvious direction can also present a challenge to the supervision of the IPL. Unlike legal clinics which normally offer services in specific areas of law, the unpredictable nature of the subject matter makes it difficult to apply a consistent case management strategy.[17] Aside from putting together timelines for the prosecution and defence which need to be done for

[12] Daniel S. Medwed, "Actual Innocents: Considerations in Selecting Cases for a New Innocence Project", (2003) 81 *NEB. L. REV*. 1097

[13] Kolb, *Experiential Learning.*The Kolb Learning Cycle operates in four stages; concrete experience, reflective observation, abstract conceptualisation and active experimentation

[14] Findley, "The Pedagogy of Innocence" 1132

[15] Jan Stiglitz, Justin Brooks, & Tara Shulman, (2002) *The Hurricane Meets the Paper Chase: Innocence Projects New Emerging Role in Clinical Legal Education*, 38 CAL. W. L. REV. 413

[16] Findley, "The Pedagogy of Innocence" 1132

[17] Medwed, "Actual Innocents" 1097

every case, resolving any issues will depend on the offence that has been committed and the evidence that was adduced. There is however, much to draw on that provides a sound basis for the development of transferable skills which students can take with them when they graduate. [18] These include: effective time management, the importance of finding and proving facts, good organisation, and exposure to the people they will come across in their professional legal careers such as supervisors, clients, barristers and solicitors.[19] They also develop skills that meet the benchmark standards in law, which include, but are not limited to: the ability to recognise ambiguity and deal with uncertainty in law, the ability to communicate orally and in writing in relation to legal matters, to engage with their own personal and professional development, the ability to work collaboratively, the ability to use feedback effectively and the ability to conduct self-directed research.[20]

1.3 The employer/employee environment

Underpinning the experiential learning pedagogy, the IPL has incorporated aspects of work based learning (WBL).[21] The purpose of which has been to stimulate an environment where learning is not only acquired through experience, but where it develops in response to workplace issues.[22] Some of the issues students experience in the context of the legal workplace include putting together bundles under the

[18] Many of these skills are in the recommendations from the Legal Education and Training Review, "Setting Standards, The Future of Legal Services Education and Training in England and Wales," June 2013

[19] Stiglitz, Brooks, & Shulman, "The Hurricane Meets the Paper Chase" 413

[20] QAA, Subject Benchmark Statement Law, Part A: Setting and maintaining academic standards, July 2015

[21] J Flanagan, S Baldwin and D Clarke, (2000) Works-based learning as a means of developing and assessing nursing competence, *Journal of Clinical Nursing*, Vol 9, 3, 360-368. See also "all and any learning that is situated in the workplace and arises directly out of workplace concerns" per Brian Stanley Lester and Carol Costley, (2010) Work-based learning at higher education level: value, practice and critique. *Studies in Higher Education*, 35 (5). pp 561-575

[22] J. Gear, A. McIntosh, & G. Squires, (1994) *Informal learning in the professions.* Kingston-upon-Hull: University of Hull Department of Adult Education; M. Eraut, S. Steadman, F. Maillardet, C. Miller, A. Ali, C. Blackman, J. Furner J. & C. Caballero (2005) *Learning during the first three years of postgraduate employment.* Swindon: Economic and Social Research Council (Project LINEA); M. Eraut, & W. Hirsh, (2007) *The Significance of Workplace Learning for Individuals, Groups and Organisations.* Oxford: University of Oxford (SKOPE Monograph 6).

constraints of time, researching areas of the law they have not yet learnt, drafting directions to experts and sorting through case files. This has been particularly effective in enabling them to engage critically and reflectively with their learning,[23] whilst providing them with a sense of personal value for the input they have in the case. The elements of WBL which manifest in the project[24] and will be examined in greater detail include performance related tasks such as writing reports and carrying out research; solving problems in the context of finding new evidence or a new legal argument to take to the CCRC; the employees/students learning from their work activities which can include a new aspect of substantive law (previous examples include bad character and hearsay evidence); the employees have to work as part of a team, which requires effective cooperation, patience and finding ways to work with different characters and different expertise; the enhancement of performance, where the employees are encouraged to be altruistic in the development of their skills in academic writing and referencing and the detail required for research.[25] Some of these skills, whilst unique to the practice of law, do help to increase the student's employability when they graduate.

Although the learning does not take place in the offices of a law firm, the IPL office is considered by students to be akin to that space. The students understand that they are employees working for the IPL, and the skills and attitudes they develop encourage them to take responsibility for their own learning.[26] This forces them to adopt a deeper approach to their learning because they become actively interested in the content of the case.[27] A number of students draw upon their own experiences to understand the

[23]Brian Stanley Lester and Carol Costley, (2010) Work-based learning at higher education level: value, practice and critique. *Studies in Higher Education*, 35 (5). pp. 561-575

[24]E Foster, (1996) Comparable But Different: Work Based Learning for a Learning Society, WBL Project, Final Report University of Leeds 1994-96 at pp 20-21

[25] JB Biggs, K Collis, (1982) *Evaluating the Quality of Learning. The SOLO Taxonomy* (New York: Academic Press)

[26] Chapman and E Hawkins (2003) Work-based learning: making a difference in practice. *Nursing Standard* 17(34), 39-42

[27] N Entwistle, (2005) 'Contrasting perspectives on learning, in F Marton et al, eds *The Experience of Learning* originally published Edinburgh: Scottish Academic Press.

subject matter in a way that is personally meaningful, leading to an interactive process where you can see them trying to understand ideas for themselves.[28] This process also encourages the employees/students to question their assumptions about the law or legal practice, which is an important part of conceptualizing their knowledge.[29] The role of the project manager represents that of the employer in the context of facilitating learning and encouraging a more self-directed approach[30] by nurturing the student's sense of responsibility. A skill which is essential to developing professional ethics. The role of the solicitor or barrister (working pro- bono with the IPL) is one of directing and mentoring the employees to undertake tasks as they would in a law firm, but which are directly relevant to the needs of the case. The use of the employer/employee relationship is a way of integrating the experience and expertise associated with WBL with the concept of learning by experience. By embedding it within a discipline context it has been effective in providing opportunities for students to develop their legal skills.

Combining theory with practice has not been without its challenges. The balance between the needs of the client and the educational requirements of the students is consistently under scrutiny. The volunteer employees/students have to prioritise their academic studies, whilst the employees/students who choose the IPL as an option have to balance their work with the other courses they have chosen. The needs of the client however, can become a competing priority, especially as the employees/students develop their knowledge and understanding of the case. Instilling professionalism through the employer/employee relationship has required careful management. The notion of the employees/students constructing identity and

[28] G Light, R Cox and Calkins, (2014) Learning and Teaching in Higher Education. The Reflective Professional, 2nd ed (Sage Publications) at chapter 2

[29] Joseph Raelin, A Model of Work -Based Learning, *Organisational Science*, Vol 8, Nos. 6 (Nov-Dec 1997), 563-578 at 564

[30] Foster E. (1996) Comparable but Different: Work Based Learning for a Learning Society, WBL Project, Final Report 1994–96, University of Leeds at pp20-21

meaning in their work[31] develops quicker in some than others, as do details such as time keeping and organisation. The project manager has to ensure that students have time to reflect on what professionalism means to them, so that they identify what they have learnt in this context. Working in small groups has and will continue to be a challenge to the students that requires consistent facilitation. As random groups[32] it is inevitable that there will be behaviours which require managing in order that they do not damage the group work. The project manager as a facilitator also needs to ensure their behaviour does not damage the group work.[33] This requires effective communication and reflection on how any issues should be dealt with, or could be dealt with better.

2. Features of work-based learning

The following features of WBL are those that form part of the pedagogy of the IPL, where self- knowledge and expertise derived from the work place are brought together alongside knowledge gained through academic study. [34] This underpins the four stages of the experiential learning model.

2.1 Performance related tasks

The employees/students carry out tasks that could arise in legal practice, which, provide them with a particular experience to extrapolate learning from. This begins with the two-stage application process for all students who wish to work on the IPL.[35] The application to work on the IPL is similar to one that could be experienced when applying for a job. In the first stage, the students are asked to write a personal statement, and investigate and write a report on an area of law that they have not been

[31] E Hoyle, (1995) Changing conceptions of a profession, in H. Busher and R Saran (Eds) *Managing teachers and professionals in schools* (London, Kogan Page)

[32] P Race, Making small-group teaching work, in P Race, (2006) *The Lecturer's Toolkit*, (3rd Ed: London: Routledge)

[33] Race, Making small-group teaching work, in *The Lecturer's Toolkit*

[34] J Flanagan, S Baldwin and D Clarke, (2000) Work-Based Learning as a means of developing and assessing nursing competence, *Journal of Clinical Nursing*, 9 (3) pages 360–368 at 363

[35] Both students who wish to volunteer in their second and third year and students who want to choose the IPL as a third- year optional course.

taught. This is used to assess writing and research skills and the ability to follow instructions, a process that is considered good practice by the Innocence Network.[36] Applicants who are deemed successful at stage one against the relevant criteria[37] then progress to stage two for an interview with the IPL Project Manager and Director where they also present their investigation. The previous approach had been to ask applicants to write an essay based on a set question, but this limited how well the students could articulate their own thoughts. The notion of writing a report based on having to research and investigate a point of law limits the possibility of students drafting directly from websites or articles, and demands that they have to think critically about what they are doing and how they present it. With the two-stage process, the students have to work to understand what is being asked of them, and by virtue of the two stages they demonstrate a commitment to want to be part of the project.

Other work based related tasks include writing. This normally starts with the employees/students identifying how the client was convicted of the offence(s), breaking it down into elements and showing what evidence would be required to prove each one, before moving on to how the prosecution proved the offence. When an area of interest has been identified, for instance the use of expert witnesses, the employees/students will set out the substantive law and determine how it has been applied in the case, including the necessary judicial directions. These have to provide a precise and comprehensive analysis, and they are a good exercise that proves fruitful in the development that students show over the course of the academic year.

For all cases, employees/students are required to develop a timeline for both the defence and the prosecution, separately at first, before merging them into one. This

[36] Justin Brooks (Californian Innocence Project) Seth Miller (Florida Innocence Project) and Joe Bodenhamer (Wrongful Conviction Project, Ohio). "Creating and Maintaining and Innocence Organisation," Innocence Network Conference, March 2017

[37] These include correct referencing, a good standard of academic writing and following the instructions set out for stage one.

activity is normally carried out in the first 3-4 weeks because it helps to provide an understanding of the facts in the case and how the client was convicted. The employees/students have reflected on how useful the process of case management, putting together a bundle and producing the timelines has been to them, not only because they can start to understand the sheer volume of material that solicitors and barristers have to work with, but because they start to become familiar with the detail and facts of the case. Eventually the employees/students are asked to set out the history and background of the case in the format of a legal submission. This process not only enables the employees/students to use the timelines they have put together, but to cross reference them with the relevant case files, such as the defence statement, the prosecution case summary, the agreed facts etc. This will eventually be used in the application to the CCRC so they have to be written and set out clearly. This work is indicative of the standards required in legal practice, but it also balances the need for academic knowledge with professional competence.[38]

The project manager has the responsibility of balancing the requirements of completing these tasks to the standard required, against the employees/student's other academic studies. From experience the required 4 to 6 hours of work on the IPL can be managed alongside preparation for lectures and seminars. Evaluations indicate that students understand in some weeks they will need to work the full 6 hours or more in some instances, to ensure the required tasks are completed, yet in other weeks their tasks can be completed in less time. When, however, coursework deadlines start to loom, the employees/students have felt the pressure of the additional workload. One solution to this has been for the project manager to map out coursework deadlines for each group of employees/students and to give consideration to them when setting work. This has been proven to minimise the tension between meeting academic deadlines and fulfilling the tasks for the case. Once the employees/students meet their

[38] QAA (2010) Employer-responsive provision survey: A reflective report. The Quality Assurance Agency for Higher Education

client, which they do shortly after completing the defence and prosecution timelines, the importance of the work they are undertaking starts to become a reality. It is at this point, that the employees/students often start to take ownership of their work and identify with what they are doing, in the context of the client being the recipient of their efforts.[39] Whilst the employees/students become invigorated, the project manager needs to ensure this enthusiasm does not overtake any academic requirements from other courses. Regular meetings with each group, alongside consistent monitoring of the work being done are just two ways in which this can be achieved.

Where the Subject Benchmark Statement for Law is now predominantly skills based, these tasks directly support the employees/student's development in researching and retrieving accurate, current and relevant information from a range of sources, alongside their ability to communicate in writing.[40] Tasks directed by the solicitor or barrister have involved drafting directions to an expert to review evidence and putting together bundles containing the evidence to be reviewed. The employees/students have had to research the experts they wish to approach to conduct the review *pro bono*, by identifying individuals whose field of expertise is most relevant to the evidence to be reviewed. This process has exposed the employees/students to understanding how to identify gaps in their own knowledge and subsequently acquire new knowledge, a skill which is highlighted in the Subject Benchmark Statement for Law.[41]

[39] S Chandler and P Robotham (2006), Extending the Comfort Zones: Loosening the Clinical Straight Jacket, *International Journal of Clinical Legal Education Conference*. London Institute of Advanced Legal Studies

[40] Subject Benchmark Statement, Law, July 2015
http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf

[41] Subject Benchmark Statement Law, July 2015
http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf

2.2 Solving Problems

Problem-solving requires the employees/students to actively experiment with their knowledge. They need to work together and co-operate with each other embracing the different skills and expertise each have, which, in turn leads to new skills being developed and shared expertise.[42] The regular meetings between the teams of employee/students helps everyone to participate in joint problem solving. The problem at the forefront of the learning process is the substance of the application to the CCRC. In much the same way as problem- based learning the knowledge and skills are acquired, rather than communicated.[43] The employees/students have to find, frame and analyse the issues themselves, enabling self-directed learning and the time to understand the material more deeply.[44]

Initially the employees/students are often faced with smaller problems such as a mass of case files, much of which they have never seen before. If they are lucky the files are ordered and indexed, but more often than not they arrive in disarray. This requires them to go through every document and ascertain what they have and then index it for the purpose of the IPL case management system. At the same time, the solicitor or barrister working *pro bono* on the case may require them to produce a bundle of all the essential documents. This begins the development of organisation and time management, which is an important lesson for their legal careers. Their academic lives are scheduled around lectures and seminars and dates for final exams, but legal practice is not so neatly arranged. As a solicitor or barrister, they could start the week expecting to work on one case, but end up not opening that file because of a new client or emergency in an existing case.[45]

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[42] J Flanagan, S Baldwin and D Clarke, (2000) Work-Based Learning as a means of developing and assessing nursing competence, *Journal of Clinical Nursing*, 9 (3) pp 360–368 at 364

[43] R Batty, (2013) Well There's Your Problem- The Case for Using PBL to Teach Law to Business Students, 47 *Law Teacher*, 243

[44] J Macfarlane and J Manwaring, (1998) Using Problem-Based Learning to Teach First Year Contracts 16 *Journal of Professional Legal Education*, pp 271-298 at 272-274

[45] Stiglitz, Brooks, & Shulman, "The Hurricane Meets the Paper Chase" 413

It is during the process of problem-solving that the employees/students experiment using their conceptual knowledge. Theory-based classroom experiences sometimes present solving problems as neat packages.[46] The reality of case work on the IPL removes this impression. The knowledge invariably has to be modified in order to adapt it to the specific problem they face, meaning that the employees/students have to change their approach in mid-stream, negotiate and think independently.[47] Many cases do not follow an obvious trajectory,[48] so the problems can range in their complexity depending on the facts of the case, the evidence adduced at trial and the judicial directions required for the jury. The students have to consider how the law has been applied and whether it was done so correctly, and whether it could be applied differently. Thus, the relationship between academic theory and the practice of law can be demonstrated. Previous thinking outside the box has included drafting a new legal argument concerning eye -witness identification based on the use of the *Turnball* judicial directions.[49] Another example has been identifying what to ask an expert in order to rule out the possible circumstances in which a body could end up in a well almost upright, with no signs from the post-mortem of it having been lowered using a rope.

2.3 Learning from work activities/Reflective practice

The process of reviewing transcripts, police reports, witness statements and talking to the client requires students to impose their critical judgement on what they are reviewing and to form a plan as to how best to solve the issues. It is through these activities that the employees/students conceptualise their knowledge. These activities all encourage the employees/students to work autonomously, and to take

[46] Joseph Raelin, A Model of Work -Based Learning, *Organisational Science*, Vol 8, Nos. 6 (Nov-Dec 1997), 563-578 at 566

[47] Raelin, "A Model of Work -Based Learning" 566

[48] Medwed, "Actual Innocents" 1035

[49] T*urnbull* [1977] QB 224, where the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused – which the defence alleges to be mistaken – the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification.

responsibility for their learning which can take place without direct instruction. They manage their own learning in the context that together the employees/students develop confidence to ask questions in order to understand what they need to do. By adopting the approach of an employer within an academic course, it has created a safe learning environment which encourages the development of students as independent learners.

The activity that produces a significant amount of learning for the employees/students is visiting their client in prison, seeing first -hand the security procedures and the environment that they live in. They start to empathise with the impact that being in custody can have on an individual, whilst at the same time they begin to understand the significance of their work. These visits are often done at the start of the case, but not until they have understood the facts as presented in the case files. This is because of the need to ask the client questions about facts that don't make sense, or to ask for information that is missing and this cannot be done without having a sufficient understanding of the case. The employees/students are expected to come up with questions they would like the client to answer on the legal visit. The students undertake training with the project manager and their solicitor or barrister on the use of open questions, how to approach sensitive questions and how to phrase a question. During the visit the employees/students are encouraged to lead the questioning but they are supported either by the project manager or the lawyer who accompanies them. A note of the meeting is circulated to the other team members which is then used to reflect on the answers given by the client. It is at this point that the employees/students often start to conceptualise their theories as well as consider new questions.

Whilst only those students who choose the IPL as an option in their final year are assessed in terms of passing the course, all employees/students are encouraged to reflect on what they have learnt. The use of work-based learning can only be successful if the work environment supports the process of reflection, and encourages

the employees/students to understand and respond to their own learning.[50] Reflection is the thread that draws together both the volunteers and option employees/students.

The activities undertaken as part of working on a case can be described as formative where they aid development, improvement and learning. The means of summative assessment are a portfolio of work and an extended essay, the topic of which can be connected to the case the employees/students have been working on or on an issue connected to wrongful convictions or miscarriages of justice. The scope is intentionally broad, to allow for a range of choice and variety. These means of assessment offer an opportunity for employees/students to not only use the skills developed whilst working on the IPL, but to also identify them. This helps them to realise their own learning and then articulate this for future employment.

The extended essay provides a platform to demonstrate some of the key skills that have been developed whilst working on the IPL, that of research, identifying an issue or question that needs answering, academic writing to a good standard, accurate referencing, and the ability to set out complex issues clearly and concisely. The ability of the employees/students to choose what they write about is important for them as independent learners and their engagement with the subject matter.

Over the years, it has become evident that the portfolio underpins the pedagogy of the IPL, providing respect for individual differences and the varied contexts in which people work. [51] The portfolio allows for the employees/students to showcase the work they have done on the IPL, for example research into the offence, directions to an expert, a comparison of medical reports, the defence and prosecution timeline. This list is not exhaustive.[52] The notion that the employees/students can build up a picture

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[50] Greg Light, Roy Cox, Susanna Calkins, (2014) *Learning and Teaching in Higher Education. The Reflective Professional*, 2nd Ed (Sage: London) p226

[51] Greg Light, Roy Cox, Susanna Calkins, (2014) *Learning and Teaching in Higher Education. The Reflective Professional*, 2nd Ed (Sage: London) p220

[52] C P White (2004) Student portfolios: an alternative way of encouraging and evaluating student learning, *New Directions for Teaching and Learnin*g, 100, pp 37-42

of their experience on the IPL, underpins their learning through practice and the sense of responsibility they have shaped towards that learning.[53] In the same way they are encouraged to take ownership of the case they work on, they have to take responsibility for what they include in their portfolio.

Reflecting on an experience can be complex and is a skill that also needs to be developed. On the IPL, it is undertaken in group discussions, often as part of the regular meeting where the employees/students are asked to identify what they learnt through a recent activity and what they have learnt about themselves whilst carrying out that activity. In addition, workshops also support the development of writing in a reflective rather than descriptive manner. Employees/students are provided with an opportunity to discuss feedback given in response to a particular task or piece of work and to reflect on their learning. They are asked to answer the following questions concerning that feedback:

1) How did it make you feel when you received this feedback?
2) Did you understand why this piece of feedback had been given to you?
3) Did you understand how to use this piece of feedback and if no did you ask questions in order to understand?
4) Have you been able to use this piece of feedback since it was given to you in other work or tasks you have done?

The employees/students are put into pairs with someone who they do not work with, and they are asked to tell each other the feedback they received, and then discuss it using the five questions. The project manager listens to what is being said between each employee/student and joins in the discussion where relevant. The employees/students are then brought back into a larger group discussion where they are asked to think about the exercise that has just taken place and what they learnt

[53] R Cox (1996) Teaching. Learning and assessment in higher education, *Anthropology in Action* 3(2)

from it. At this point the employees/students realise that feedback can evoke feelings of disappointment that their work was not up to the standard required, that understanding how to use the feedback in other tasks or work requires some thought, and that not questioning feedback in order to understand it is common.

The employees/students then return to work in their pairs and interrogate the task that led to the feedback in order to probe a deeper level of reflection.[54] In reflecting about the event, the employees/students are asked to think about the 'else factor'. [55] This helps the students move away from simply describing the task and to expand on what happened, encouraging a deeper awareness of not only their own learning, but also the learning about themselves reflecting about how they have become able to demonstrate evidence of their own achievement. [56] For example, an employee/student who was given feedback from the task of putting together a bundle for their pro-bono solicitor would think about what else was going on at the time they carried out that task, what else happened when they carried out that task, and how else could they achieve that work. By answering these questions, the employee/student starts to understand how external influences can affect their work, whether they fully understood what they needed to do when putting the bundle together and whether they were giving their full attention to the task, and what, if anything they would do differently.

2.4 Work teams[57]

Working closely with other people in any environment requires skill, and the employees/students on the IPL are fortunate enough to have the opportunity to learn those skills before they leave university. It is also where the process of reflection can support group, as well as individual learning.[58] Being exposed to working in a small

[54] P Race, (2010) *Making Learning Happen* 2nd Ed (Sage: London) at 224-225
[55] Race *Making Learning Happen* at 225
[56] Race *Making Learning Happen* at 225
[57] Medwed, "Actual Innocents" 1148, "work teams" are a fixture of legal practice
[58] Raelin, "A Model of Work -Based Learning" 568

group with students they may not know has sometimes been more of a challenge than learning the law. Learning how to be patient with someone who takes longer to read a document and think about its contents can take time and does not come easily for some. Working together to achieve the same goal, especially when under time constraints requires flexibility and cooperation. Students are exposed to this on their legal skills course where they often collaborate outside of the classroom to get work finished. In an employer environment however, they may not get the luxury of being able to finish the work outside of the work place, where more often than not, the work will be time dependent. By exposing the employees/students to different characters that they have to work closely with, they become aware of how they work in a group and also how they manage themselves in a group.[59] The process of working in a small group does not however, always run smoothly. The most common factors that have affected small-group working include employees/students not doing their part to prepare for group meetings, balancing dominant learners with passive learners in the group, and the project manager achieving a balance in the learning experience across all participants in the group. [60]

Where employees/students have not prepared for a group meeting, the allocation of individual actions has been successful in overcoming this issue. This allows for the learning outcomes to be clearly set out so the employee/student knows what they need to do, and what they should produce for a particular task. The option of leaving it to someone else to do is not available. This approach encourages a greater degree of involvement and also enables the project manager to remind the group of the benefit of equal participation.[61] On the occasion where employees/students have continued not to prepare, the reason has been unconnected to their learning on the IPL leading to other support being instigated. Giving individual and group actions also helps

[59]J. Moon, Making Groups Work, HEA, Subject Centre for ESCalate. (2009) Available at https://www.plymouth.ac.uk/uploads/production/document/path/2/2418/Making_groups_work.pdf
[60] P Race, (2010) *Making Learning Happen* 2nd Ed (Sage: London) at 174
[61] P Race, (2006) *The Lecturer's Toolkit* (Routledge: London) per Chapter 4

support those employees/students who are passive in the group environment and do not want to risk being more involved in case what they suggest or do is wrong.[62] By giving them ownership of a particular piece of work or task, they have an opportunity to demonstrate their development alongside supporting the group. Where there is a dominant personality or personalities in a group, the process of getting all the employees/students to reflect on how the group is working, who took the lead, who spoke to most, and whether everyone agreed with the ideas being put forward, can highlight that this element exists. It can cause the dominant individual to reflect on their assertive behaviour, but also lead to the other group members recognising assertive behaviour and subsequently reducing the opportunity for one person to dominate for too long.[63]

Whilst small group work has been criticised as resource intensive,[64] in the IPL context it has worked well despite the need for consistent facilitation. Just as employee/student behaviour can damage group work so can the behaviour of the project manager. Preparing adequately for a group meeting is essential in ensuring that the group feels their work is being taken seriously.[65] Keeping adequate records of the meetings and the relevant actions also helps to support each group. There is a fine balance between being too controlling over the employees/students work and ensuring the actions have been completed. It can be more beneficial to help the group work productively towards their goals rather than specify how they have to reach them. Some groups have required more support than others in the process of working together, but every group on the IPL has gone through the storming phase.[66] The storming phase can occur at any time during the life of the group and some groups

[62] Race, *The Lecturer's Toolkit*
[63] Race, *The Lecturer's Toolkit*
[64] K Heycox, N Bolzan, Applying problem based learning in first year social work, in D Boud, G Feletti, eds, *The Challenge of problem-based learning*, (London: Kogan Page, 1991)
[65] Race, *The Lecturer's Toolkit*
[66] BW Tuckman (1965) 'Development sequence in small groups' *Psychological Bulletin*, 63: 384-99 (re-printed in 2001 in *Group Facilitation: A Research and Applications Journal*, 3:66-81)

experience only a mild version.[67] The hostility in one group did lead to it breaking down. Fortunately this was towards the end of the academic year and the employees/students were in their final year, so the conflict ended when they graduated. The issues manifested from external influences concerning the friendship of two of the group members. As a result regular group reflection as described above, was introduced alongside regular informal discussions with individual group members, which has prevented such a situation from arising again. Equalising any small group requires a consistent approach and a degree of commitment, which can be time consuming.[68] It is, however, an entirely worthwhile exercise when the students begin to realise their potential, and start to perform in the context of constructive activity and function maturely and productively.[69]

The facilitation of the small groups on the IPL is one of ongoing refection into what works and what does not. It is unrealistic to think that changes could not be made in the future, depending on the cases being worked on and the employees/students that are working on them.

2.5 Enhancing performance

The employees/students are encouraged to be altruistic with the skills that they develop whilst working on the IPL, and actively use them on their other courses, whether that is in the second year or final year of their law degrees. This will only work however, if the employers/students are motivated to learn from the experiences that they have engaged with.[70] They also need to learn within their own capability in

[67] Greg Light, Roy Cox, Susanna Calkins, (2014) *Learning and Teaching in Higher Education. The Reflective Professional*, 2nd Ed (Sage: London) p36

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

[69] BW Tuckman (1965) 'Development sequence in small groups' *Psychological Bulletin*, 63: 384-99 (re-printed in 2001 in *Group Facilitation: A Research and Applications Journal*, 3:66-81)

[70] P. Askham, (1997) Workplace learning: removing the barriers. In *Flexible Learning in Action, Case Studies in Higher Education* in eds Hudson R, A Maslin-Prothero and L Oates , (Guildford: Kogan Page Ltd) pp 67-72

order for the experience to be positive and effective.[71] The activities on the IPL are geared towards achieving this. In particular, the number of corrections in reports greatly reduce because students understand the standard of work that is required of them and they strive to meet those standards. The amount of direction required for them to research areas of the law reduces because the employees/students have developed the skills to identify the research themselves. The confidence to ask questions in order to get clarity increases because they know that without doing so, they won't be able to proceed quickly and effectively. The ability of the employees/students to critically reflect on how to use the law against the facts of a case also greatly improves. The skills they have developed in legal writing, drafting, referencing, research and so on, can be used for all their courses on an undergraduate law degree as well as for their future employer.

Every aspect of the work the employees/students undertake on the IPL helps to instil aspects of professionalism. Work based learning has been found to be an effective vehicle for personal and professional growth[72] and certainly that is evident from the pedagogy employed here. Evaluations of the IPL suggest that the employees/students have developed an increased confidence in areas such as public speaking, speaking in meetings, the ability to take on greater responsibility, and their ability to produce a good standard or written work and research. A number of employees/students have also suggested that they have an increased belief in themselves which has led to them having the confidence to challenge their own views. The employees/students have also highlighted their improved time management as a common area in which they have changed their way of working or studying for the better, making better and more effective use of their time. Everyone who has worked on the IPL has actively realised they are not only are able to reflect upon what they have learnt and find evidence of

[71] G Gibbs, (1992) *Improving the Quality of Student Learning*, Development of Adult Education, UDACE London

[72] Brian Stanley Lester and Carol Costley (2010) Work-based learning at higher education level: value, practice and critique. Studies in Higher Education, 35 (5). pp. 561-575 at 567

that learning, but can also identify how they have used that learning in others areas of the academic or personal lives. Some have realised this has happened unconsciously, whilst others have made a conscious effort to put into practice the feedback they have received. This demonstrates not only the positive response to the pedagogy, but also the impact that the employer/employee environment has had on law students in preparing them to become independent professionals.

Conclusion

The combination of experiential learning and elements of WBL has produced a positive employer/employee environment. The unique starting point for the learning cycle, at the end of the criminal justice process enables the employees/students to critically reflect not only on what has been done, but what could have been done better. The conscious decision to start the employer/employee relationship with the application process indicates the standard expected from those who work on the project. This is borne out in the development the students show throughout the year because of how they engage with the work on the project. The skills they develop, whilst they meet some of the subject benchmark standards are not only academic. The ability to communicate orally and in writing, to self-manage a workload and to develop personally and professionally are also life skills. The significant learning opportunities include visiting the client in prison and seeing the impact that being in custody can have. To then be able to interview the client and reflect on how their answers impact on the investigation into the case provides an experience that the undergraduate curriculum cannot give. The incorporation of reflecting on the skills and experience support the prospect of translating the learning into legal practice as well as others areas of work.

The learning is not only for the employee/students working on the project. The project manager consistently reflects on what has worked and what could be improved. The different subject matter of the cases and the evolution of employees/students provides an opportunity to build on the existing foundations and to modify them where

necessary. The challenges posed by this pedagogy are outweighed by working with dedicated and enthusiastic employees/students.

Whilst the elements of WBL are not used in a physical workplace environment, this does not distract from the way they manifest in the learning on the project, which has had a positive effect on the employees/students overall. Their feedback has included an increased confidence to ask questions, the confidence to speak to lawyers, having developed better analytical skills and attention to detail, working confidently as part of a team and developing client interviewing skills. The employees/students leave the IPL, and where third-year students are concerned leave the university, with a better understanding of how "the law is applied in real life,"[73] in addition to having had a "unique and rewarding experience.".[74]

[73] As provided in feedback by a 3rd year LLB student and Student Case Worker Innocence Project London 2016-2017

[74] As provided in feedback by a 3rd year LLB student and Student Case Worker Innocence Project London 2016-2017

APPRAISAL AS AN EFFECTIVE MEANS OF ASSESSING STUDENT PERFORMANCE IN CLINICAL LEGAL EDUCATION AT THE UNIVERSITY OF PORTSMOUTH

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The aim of this paper is to advance the notion that using the workplace model of appraisal is an effective method of assessing students who undertake clinical legal education (CLE). It is the belief of the team working in the law clinics at the University of Portsmouth that appraisal provides students with both praise and constructive criticism and the necessary information to enable them to improve their performance while working in the University of Portsmouth clinics. Giving feedback on a regular basis via the appraisal system motivates the students to strive for improvement and helps them to meet the challenges of achieving excellence. At the University of Portsmouth, staff, students and, in some cases, the representatives of our partner organisations work together in our appraisal system to tackle any barriers to student success within our CLE progammes.

Keywords: clinical legal education; appraisal; assessment and feedback

Introduction

Changes in legislation brought about by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) have resulted in an increased demand for free legal advice in many areas of the law, including social welfare law. University law clinics are one means of meeting some of that demand. In the 2013 Consultation paper 'Transforming Legal Aid', Chris Grayling, the then Lord Chancellor and Secretary of State for Justice, stated that "[i]n the past decade our legal aid bill has risen [and] is now one of the highest in the world, costing the taxpayer nearly £2bn each year [and] reforms should deliver savings of some £320m p.a. in 2014-15".[1] Response from the not for profit sector to the reform was swift and research on the impact of budget reductions across the sector have resulted in the prediction of some particularly gloomy outcomes, including stagnation in the legal process due to the question of "how case law will be made"?[2]

At a recent Association of Law Teachers Conference, a colleague and I presented a paper which investigated the role of Clinical Legal Education (CLE) activities in universities within the wider legal landscape.[3] After an examination of whether universities are 'filling the gap' left by reductions in legal aid or whether

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[1] Ministry of Justice, *Transforming Legal Aid: delivering a more credible and efficient system* (Ministry of Justice Consultation Paper CP14/2013).
[2] Bill Sargent Trust, Counting the cost: advice services and the public spending reductions, 2013, p. 48
[3] P. Feast and V. Brown, "Filling the Gap" (ALT Annual Conference, Portsmouth, April 2017).

using accepted pedagogic theories of experiential learning CLE simply meets universities strategic aims of education and employability it was clear that university clinical activities are to a large extent having an impact on both. Whether the gradual increase in the number of law schools across the UK[4] who offer students the opportunity of providing free legal advice to the local community via advice clinics is a response to legislative changes or whether universities see CLE as a positive educational tool to aid employability is still a matter for debate. Regardless of the reason however they certainly offer a useful service to the public. Their primary purpose as far as the University of Portsmouth is concerned is to meet the University's Education Strategy[5] of providing intellectual challenge, enhance skills acquisition and embody academic excellence through courses that are practice informed and that engage students in research and innovation and to ensure that every student participates in career enhancing activities to learn through experience and to strengthen their personal development and to act as a vehicle for students to acquire professional legal skills. At the fore of CLE is the development of professional, academic and social skills relating to interviewing, problem-solving, team-working, legal

[4] See e.g. D. Carney, F. Dignan, R. Grimes, G. Kelly and R. Parker, 'The LawWorks Law School Pro Bono and Clinic Report 2014' Available at https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf (accessed 1 June 2017).

[5] University of Portsmouth Education Strategy 2016-2020

research and legal writing. This process is enhanced by a reflective analysis of the clients' cases and by discussions with supervisors and fellow students. The experience is similar to that of a solicitor advising his or her client but, since the primary aim of any clinic activity is student education, time is generally structured to enable students to fully learn from the experience. At the University of Portsmouth, clinics are generally supervised by a practising solicitor who ensures that any advice given is equivalent to that of a professional solicitor.

CLE at University of Portsmouth

Having undertaken an academic year of training, the students working on Portsmouth's assessed CLE programmes are fully equipped to engage in activities which would otherwise be prohibitive under the constraints of a traditional degree where the emphasis is on coursework and examination. Portsmouth's CLE programmes enable students to experience legal casework and undertake legal analysis within a structured framework, overseen (albeit from a distance) by an experienced member of staff who is also a practising solicitor. The 'light touch' supervision reduces the reliance on staff for an immediate answer and places responsibility on the student to apply knowledge previously gained, thus providing continuous opportunities for reflection.[6]

[6] R. Grimes and J. Gibbons, "Assessing Experiential Learning – Us, them and the Others" (2016) 23 *International Journal of Clinical Legal Education* 114.

Role of the Supervisor

As Ziegler suggests,

> [a]s 'expert', the clinical supervisor gives students authoritative information without necessarily demonstrating the thought processes or skills used to obtain them. As 'model' the teacher demonstrates the skills and thought processes of a good clinician providing an 'open book' that learners may watch and imitate. As a 'facilitator', the teacher guides the student in doing the actual work while focusing on helping the student to acquire and analyse information.[7]

The role of the Supervisor as 'expert' at Portsmouth is to support students as they research information for their client. The supervisor, who is a practising solicitor, checks the results of research for accuracy and relevance and gives direction for further study. Observation provides the student with an opportunity to learn how to ascertain key facts and how to come to a conclusion which can be given to the client with confidence. As 'model', the supervisor shares this best practice across the group. As 'facilitator', the supervisor stands back and allows students to learn from their own experiences, giving guidance in a supported environment without fear of repercussions. At Portsmouth, the role of the clinic supervisor is probably more closely linked to the role identified here as 'facilitator'. The aim is

[7] A. Ziegler, "Developing a System of Evaluation in Clinical Legal Education" (1992) 42 *Journal of Legal Education* 575, 583.

to encourage students to identify theoretical models and to use these in a practical setting which as Ziegler suggests "guides the student in doing the actual work while focusing on helping the student to acquire and analyse information".[8]

The model adopted at Portsmouth also resembles that propounded by Ziegler in that it focuses on student involvement and participation and that by facilitating learning rather than teaching, the supervisor encourages the student to be confident in his or her interaction with the client. Supervision will gradually be reduced to a point where the supervisor will only check to evaluate the advice and information for accuracy before it is delivered to the client.

Assessment

What must be acknowledged is that assessment in higher education must not only provide certification but must also support student learning.[9] Such assessment can, of course, be in the traditional format, i.e. examinations or coursework and as CLE programmes at the University of Portsmouth are part of the curriculum it is vital that assessment is rigorous and in line with University of Portsmouth regulations. However, the team working on the programmes felt we needed to go further than this as in our view, students should be viewed as

[8] Ibid.

[9] D. Bouod, D and N. Falchikov, "Redesigning assessment for learning beyond higher education" in *Higher education in a changing world*: *Proceedings of the 28th HERDSA Annual Conference, Sydney, 3-6th July*, 34-41.

future employees rather than students studying how to become a lawyer and that CLE provides an opportunity to consider assessment more closely aligned to the type of work undertaken. Once a student enters the interview room with a member of the public that student is, for all intents and purposes, a lawyer and the client sitting in front of them expects (and why should he or she not) that the information and advice he or she is given is reliable because that lawyer is trained to act in this capacity.

As Sylvester appreciates, "[c]linic is a constructivist teaching methodology – it can deliver discipline and procedural legal knowledge but more often its role is emphasised in terms of teaching legal and intellectual skills and as a method of inculcating professional values and ethics through its traditional involvement in social justice".[10] Assessing these skills, values and ethics necessitates the use of a different assessment model which emphasises the practical element of this assessed unit.

Assessing students on their individual performance as they interact with clients is however not reliable as each client may bring to the clinic either very complex or very straightforward issues and therefore like for like skills are not being tested. The challenge for the team in assessing how well a student has performed/is performing in this environment was how to assess achievement

[10] C. Sylvester, "Through a Glass Darkly: Assessment of Real Client, Compulsory Clinic in an Undergraduate Law Programme" (2016) 23 *International Journal of Clinical Legal Education* 32, 37.

when trying to replicate a dynamic and realistic working environment. For this reason the team decided to introduce appraisal as a means of assessing student achievement and a comparison to its use in the workplace is useful here.

Appraisal has the dual purpose of appraising performance and achievement and providing guidance for future activity and therefore appraising performance can become an accurate and effective assessment tool. In the workplace, an appraisal is a meeting where the manager/supervisor assesses the performance of the individual against a set of pre-agreed targets. There is a great deal to be gained from a well conducted appraisal as it can be a celebration of achievement, help to identify good performance and focus on areas for improvement. In the workplace it can also help to make decisions about career progression by discussing the individual's aspirations for the coming year. Writing on the Job.ac.uk website, Neil Harris poses the question 'Why do we need Appraisal?' Harris states "[a]ccording to the Chartered Institute of Personnel and Development (CIPD), 87% of employers use some form of individual annual appraisals, 27% do them twice a year and 10% more often than that".[11] These figures suggest that employers view appraisals as a key element of performance management, encouraging employees to link their performance to the objectives of the organisation, helping them to respond to changes within the

[11] See http://www.jobs.ac.uk/careers-advice/careers-advice/1349/why-do-we-need-an-appraisal (accessed 2 June 2017).

industry. From the employee's perspective it is an opportunity to consider their role within the organisation and to debate whether they are achieving objectives and goals previously set.

As is evident, appraisal is common in the workplace. The appraisal process requires employees to consider what their objectives might be and asks them to identify what they think they might achieve and whether any support or additional resources are necessary to help them achieve set targets. As students are not in the workplace, the team considered other ways of setting objectives/targets to be achieved which would directly benefit students and which would involve them in not only looking forward but help them to reflect on their experience. The team decided that setting SMART targets (targets which are Specific, Measurable, Achievable, Realistic and Time bound) would be useful for our purposes as, introduced in the way we did, would enable students to look beyond the 'now' and therefore help them with self-development and career planning.[12]

Adapting Workplace Appraisal to CLE

At the University of Portsmouth, in an attempt to (as far as possible) replicate the work place, the team has adopted appraisal as part of the assessment process.

[12] M. Morrison, 'History of SMART Objectives' https://rapidbi.com/history-of-smart-objectives (accessed on 7 June 2017).

From the Field

The appraisal is made up of three elements: we ask students to set their own objectives; we encourage them to reflect on the year; and we ask them to look forward, taking their learning into the workplace.

Setting Objectives

In the same way as employees discuss objectives with their manager for the year ahead, at the beginning of the autumn term CLE students are asked to consider their own objectives (student equivalent of SMART targets) for the coming year. Areas often identified by students relate to improvement of one or more of the skills groups discussed above such as assertiveness or case management as well as strategies to deal with prejudice. Students are asked to identify four objectives relating to areas upon which they wish to improve over the coming year. Supervisors ensure that the objectives are all of a similar value in relation to their complexity and the student's ability to achieve them, however, these are the student's own objectives and it is therefore important that they are not contrived. In monthly student/supervisor meetings, supervisors monitor these objectives and students are encouraged to discuss any barriers they may face in achieving their objectives. The meeting provides an opportunity for the students to reflect on the work they are undertaking. Hoping to replicate the working environment discussions related to how the student objectives link to other clinic related activities are held. These discussions help to reinforce in the student's mind the contribution they are making to their own progression and development in the

From the Field

CLE units and the value both the unit and the assessment method has in preparing them for the workplace. Having discussed and monitored the objectives during the year, these form the basis of the appraisal interview which occurs towards the end of the academic year and students are required to provide evidence that the objectives they set themselves have been achieved or that they are working towards their achievement. Evidence takes many forms, for example, if a student has initially identified that they feel they need to be more focused in case management, they may bring to the appraisal examples of how the skill has improved during the year. Of course the supervisor has been observing the student's progress throughout the year and their notes reinforce the student's own evidence.

Reflection

Just as in workplace appraisal, the year as a whole is reviewed at the appraisal meeting with students discussing the challenges they have faced. Reflection is an important part of the assessment. CLE provides a safe environment in which students are able to 'test' their skills and reflecting on the experience provides a platform for future development.

Forward Reflection

Forward reflection allows students to consider how they might do things differently in the future. This is a much deeper level of learning and has been referred to as transformative learning.[13] A student may reflect on choices made and, now at the end of the experience, review those choices in the context of any future goals, assessing how the experience has shaped their future decisions. Reflecting forward helps students to consider the impact that this practical method of learning has had on their intellectual, personal or ethical development and enables them to build and develop an action plan in order to support their personal ambitions.

Feedback from students suggests that appraisal is a worthwhile aspect of the CLE experience and that it is effective in encouraging them to focus on self-development.[14] In terms of its reliability as an assessment tool, from experience it has become clear that when self-selected objectives are set, students take ownership of these and strive towards their achievement. It could be argued that there is a tension in what the team is trying to achieve by focusing on student contribution and achievement as, when used in an employment situation,

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[13] King K P, 'A journey of transformation: A model of educators' learning experiences in educational technology' in Pettit JM & Francis RP (eds) *Proceedings of the 43rd Annual Adult Education Research Conference* (2002), pp. 195- 200. Available: <https://www.researchgate.net/publication/266332610_A_Journey_of_Transformation_A_Model_of_Educators%27_Learning_Experiences_in_Educational_Technology>.

[14] Information taken from University annual student unit feedback survey May 2016

appraisal is often target driven. It is the team's belief however, that by encouraging contribution and by the student taking ownership of setting and monitoring their own targets by way of self-set objectives and discussing these throughout the process, students are empowered to fulfil their potential using a quasi-workplace model.

Student Satisfaction

Although at the time of writing 2017 results are not yet available, end of year results from University of Portsmouth Student Satisfaction survey 2016 indicated that of those surveyed 96% of students agreed to the statement 'the unit makes a positive contribution to my overall course' and overall satisfaction with the unit was 100%.[15] The team takes this as confirmation that the students are satisfied with the approach taken and comments on these forms clearly demonstrate that appraisal plays a large part in contributing to student satisfaction, achievement and success.

Conclusion

The number of clients seeking help from the University of Portsmouth clinics and the increase in the number of students who wish to participate in CLE activities increases year on year which in itself poses a challenge. This coupled with the

[15] ibid.

fact that in April 2017 in its consultation paper[16] the Solicitors Regulation Authority announced that the requirement for the successful completion of a Legal Practice Certificate prior to qualifying as a solicitor will disappear will have an impact on the way law students are taught and assessed. Under the proposals, as well as undertaking a new Solicitor's Qualification Examination, individuals will be required to undertake work experience. At the time of writing no fixed time period for this is given, however it is thought that this is likely to be between 18 months and 2 years. If these changes do go ahead as proposed, not only will CLE become an increasing challenge/opportunity for universities but the assessment of such programmes will need to be carefully considered. The use of appraisals in University of Portsmouth CLE programmes has become very effective as an assessment tool and it is the team's aspiration that this quasi work related method to assess student achievement in CLE can be continued.

[16] https://www.sra.org.uk/sra/consultations (accessed 2nd June 2017)

INTERDISCIPLINARITY AND CLINICAL LEGAL EDUCATION: HOW SYNERGIES CAN IMPROVE ACCESS TO RIGHTS IN PRISON

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1. Clinical legal education in Italy: a fledgling movement at the crossroads of choice

From the outset, law clinics triggered a paradigm shift (Kuhn, 1970) involving foremost the issue of law education itself, and later, educational method. Indeed, Jerome Frank's appeal was not confined to the process of professionalization, but rather directed at the capability of this educational tool to oppose a dogmatic and artificial attitude towards law education, to integrate the teaching of law with social sciences, and to enable students to understand and to fill in the gaps and contradictions between law in books and law in action by means of the interaction of the law practice with society and everyday life (Frank, 1933, p.921).

His remarks are consequential to the ongoing process of development of the fledgling legal clinical movement in Italy. The establishment of the first legal clinics in Italy[1] has been characterized from the outset by an awareness of its potential to combine a practical approach with theoretical considerations, research, education and action (Barbera, 2011;

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[1] The three years from 2009 to 2012 witnessed the rise of an awareness of the educational potential of clinic teaching in the training of jurists, and the start of the first experimental clinical legal education projects at the University of Brescia, the University of Turin, the International University College of Turin, and the University of Rome III. The synergies that emerged from these independently developed projects have created numerous opportunities for debate and common reflection. The implementation of training for trainers, mostly by the University of Brescia, has given rise to in-depth theoretical and methodological analysis and exchange among professionals.

Blengino, 2015, Marella and Rigo 2015; Blengino, 2018). However, the lack of experience of the clinical movement and its sudden growth are simultaneously an opportunity as well as a risk.

Legal clinics are an unprecedented opportunity to overcome the historical diffidence of Italian law faculties towards a practical dimension of education – often postponed until postgraduate training – and in particular towards the humanities and the idea of interdisciplinarity. Less than ten years ago, Richard Wilson (2009) pointed out the substantial lack of legal clinics in the continental countries of Western Europe when compared with its global spread elsewhere[2]. Nowadays, the scenario described by Wilson has certainly changed and the current development of legal clinics have reached a point that was unthinkable just a short time ago[3].

Among the many reasons for Italy's obstinacy to the innovative surge of the global clinical movement (Bloch, 2011) is mainly the opposition of law faculties with a legal positivist approach characterizing the civil law tradition (Wilson, 2009, p. 828) to challenge the legal educational model based on exegetic methods. Besides confining practice to a minor role, the educational model resulting from the primacy of statute law over other law sources has favoured the progressive affirmation of law as a self-contained technical subject. This model supports the concept of neutrality and the non-political nature of law, marginalising any

[2] The development and expansion of the clinical legal education model and its local characterizations are described in detail in the contributions collected by Bloch (2011).

[3] A quite recent survey showed that fourteen legal clinics were already operational in Italy in 2015 and six were being implemented (Bartoli, 2015). Today, these figures have increased with the establishment of several other clinics.

understanding of how living law (Ehrlich, [1913] 2017) operates in its practical application and in courts, law firms, institutions and public offices.

Over the years, this dogmatic approach to education has held out against the most authoritative attempts to question it[4]. For this reason, the innovations brought about by the clinical movement in continental Western Europe have been greeted by lecturers with a sound law and society approach as a new opportunity to develop an anti-formalist educational course. The main purpose of the learning-by-doing method is to introduce students to law in context and force them out of "*the artificial world of the law in books and expose them to the complex and variegated world of the law in action*" (Kruse, 2011, p.295).

The European Higher Education Area process, initiated with the Bologna Process, is a unique opportunity and a source of motivation for steering educational methods towards the need for giving law students practical experience, and to enhance the social commitment of universities to society and their territories. However, this process also includes ambiguities that might scale down its potential to inspire critical thinking. For example, legal clinics risk being limited to the simple fulfilling of objectives that respond merely to the vocational trends that characterize competitive universities in today's societies (De Sousa Santos, 2012; De Sousa Santos, 2016).

The choice that the newly-born Italian CLE movement now faces is the option to either become a new socio-legal epistemology of law in action (Perelman, 2014; Brooks and

[4] An initial attempt to start a debate on the introduction of legal clinics in the Italian faculties of law as an educational tool can be traced back to the proposal made in the 1930s by, Franco Carnelutti, one of the most authoritative Italian jurists (1935).

Madden, 2011) and a social change-maker, or to ascribe to a simple restyling of legal education to include certain practical activities aimed at introducing students to the profession. The future of the movement will depend on whether the rapid increase in the number of clinics will be matched by appropriate reflection on "*how clinics might be consciously designed around exposing students to gaps between the law in books and the law in action*"[5].

Although credit must be given to new contributions on theoretical reflection on clinics in Italy, these do not assess their experiential approach. On the other hand, those practicing clinical legal education are compelled to process, assess and organize the material that is available to them. This helps foster empirically-based theoretical reflection on the epistemological, educational and social significance of clinical experience.

"*Clinicians*" as Kruse says, "*are naturally situated to answer*" the "*call for embedded research, which fits closely with the social justice goals and reflective practice methods that have developed within clinical legal education since Jarome Frank*" (2011, p. 297). Legal clinics are a natural laboratory to observe how law can integrate field research and interdisciplinarity to include stakeholders and factors that are not normally part of traditional academic knowledge. This combination of education and research can generate initiatives from the bottom up in order to promote rights as a direct consequence of the social engagement of scholars and students

[5] As a matter of fact, similar problems also occur in milieus where CLE is more consolidated. As Kruse notes "*although clinical scholars have grappled with the complexities of implementing the dual goals of pedagogy of lawyering skills and social justice mission"* there has been *"relatively little analysis of how clinics might be consciously designed around exposing students to gaps between the law in books and the law in action*" (2011, p. 297).

who have experienced the gaps that divide law in action from law in books and have consequently identified the correct strategy of action.

The development of clinical pedagogy in Italy is aligned with the progress of the Italian Access to Justice movement that emerged in the 70s. The movement was echoing the call of Mauro Cappelletti (1979) for an understanding of how the rigid apparatus of formal justice was inadequate in responding to unequal opportunities in terms of access to rights. His commitment was to act to overcome economic, social and cultural impediments that prevented certain people from fully enjoying their rights[6].

From the Access to Justice movement, CLE also derives its awareness that the multiplicity of issues preventing full access to justice for all require different strategies. The traditional resolution of disputes in court is not always the most effective way to safeguard an individual's rights (Cappelletti, 1981). Clients' issues "*are not typically only legal in nature*" (Galowitz, 2012, p. 166) and the growing recognition within CLE that legal problems arise in larger contexts that require additional services beyond legal ones favours the open approach of legal clinics to interdisciplinary cooperation among law students, students of other disciplines, and other professionals (Galowitz, 1999; Golick and Lessem, 2004; Janus and Hackett, 2004; Galowitz, 2012).

The measures to effectively respond to a multidimensional issue such as that of obtaining equal access to justice often imply interdisciplinary action. The combination of this awareness and the aspiration of CLE to guide law students in understanding the reality of

[6] It is no coincidence that the first clinical experiments in Italy started in the field of human rights and social rights, and were addressed to immigrants, asylum seekers, detainees and vulnerable persons.

legal professions opens up interesting scenarios. Law students are encouraged to move to deeper levels of complexity and become aware that a good lawyer cannot settle for merely studying the law but rather must be able to relate to other professionals and different disciplines on a daily basis.

> *"Each of the professions in an interdisciplinary collaboration has its own culture, values and definitions of roles that impact effective collaboration. Exposing students to these different professional cultures can create opportunities for improved, more complete service for our clients and for students to develop into more reflective practitioners as they use the other professions' approaches as a mirror to deepen reflections on their own professional role. The clinics also provide opportunities for clients/patients to be part of the collaborative team"* (Galowitz, 2012, p.165).

2. Clinical legal education and Italian prisons: why and how

Although it is a newly emerging reality, the Italian clinical movement already contains the conditions to begin developing empirically-based considerations while critically questioning the capability of the methods and models currently in use to respond to CLE aspirations. The intent is to develop the critical capacities of students, to promote a pedagogy of lawyering skills and to carry out a mission of social justice through experiencing the actual difficulties of vulnerable persons in accessing their rights.

The intention of this paper is to stimulate a reflection based on our six years of experience in the application of clinical educational methods in prisons. The considerations that we are making in this paper retrace the path that led us to think, plan, achieve and revise the implementation of a legal clinic in a specific situation, such as the complex environment of a prison. An experience where the interdisciplinary cooperation between law and

architecture students aimed at the renovation and upgrading of prison buildings has unexpectedly proven to be one of the most effective tools for accomplishing the diversified objectives of clinical legal education and responding to the wide-ranging needs of students and inmates.

Prisons in Italy are both an exceedingly interesting context as well as a challenge for the work of legal clinics, since the entire Italian penitentiary system is undoubtedly one of the contexts where law in books and law in action are very distant from one another.

The Italian Constitution states that punishment cannot be inhumane and must be aimed at the inmates' rehabilitation[7]. Current legislation aspires to the principles of humanizing the sentence and formally tends toward the individualization of the inmate's rehabilitation treatment[8]. The execution of the sentence must occur in conditions that are suitable to these objectives. For this reason, law dictates that prisons be equipped with suitable sleeping quarters and appropriate areas for carrying out common activities. The inmate's treatment must primarily take place through educational and work experiences along with cultural, recreational and athletic activities. The inmate must also be facilitated in his/her contact with the outside world and in his/her family relationships[9].

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[7] Article 27 Italian Constitution.

[8] Italian penitentiary law was significantly reformed in the 70s, according to the solicitations from international organizations (United Nations, Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955 adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 30 August 1955, and Council of Europe, Committee of Ministers, Resolution (73) 5 Standard Minimum Rules for the Treatment of Prisoners, 19 January 1973). It is important to note that the Reform Law n. 354 of 26 July 1975 in which Italy ended the justice system from the fascist period, which was based on a system of punishment primarily based on atonement, was approved almost thirty years after the democratic Constitution of 1948.

[9] The execution of criminal sentences in Italy is managed entirely by state administration, and the penitentiary administration is tasked with guaranteeing and fostering the rights that the prison system recognizes for inmates. The duty to work toward the reintroduction of detainees into society is elaborated through the fact

However, despite the law in books, the Italian prison system in action presents numerous problems.

Over the years, the chronic shortage of public resources allocated to the prison system needed to carry out prison activities and the political tendency to increase the number of police staff at the expense of pedagogical staff have seriously hindered the achievement of the objectives of rehabilitation foreseen by the law.

The oppressive and inhumane conditions of the Italian prison system came to light in 2013 when the European Court on Human Rights cited Italy for violation of art. 3 ECHR[10]. This sentence stated that the structural conditions of Italian prisons represent a case of "State-torture", and made clear that the overcrowding, poor functioning, and large number of detainees awaiting trial transformed prisoner sentences into a "*punishment that is above the inevitable level of distress inherent to detention*".

Despite the effort made by the Italian government to ensure compliance of the penitentiary system with the principles of safeguarding humanity and human rights, the situation of prisons in Italy remains intolerable (Aranda, 2015). This necessitates urgent action to ensure that detainees can have access to those rights that - although formally granted by law - are regularly denied. It is likewise crucial to raise awareness of the issue of detention conditions

that the prison staff is composed of a variety of professional roles. In fact, law dictates that prison staff must be made up of more than just police personnel, but also educational prison officials, social workers and psychologists. These figures are entrusted with carrying out inmate rehabilitation. Within the national legal framework, each prison is managed by a warden who is a state official, and penal treatment is organised through institutional regulations, which should take into account the needs of the groups and the type of detainees that are found in a given prison.

[10] Torreggiani and Others v Italy 43517/09 (ECHR, 8 January 2013).

in Italy in society and in the universities. The relationship between legal clinics and prisons provides a significant opportunity for action for students who would normally have no access to the reality of prison life due to a lack of interest shown in the traditional curricula of law degree courses and of the insular approach that characterises the total institution[11].

Such opportunities require appropriate methods for the achievement of experiential learning that combines theoretical knowledge and a practical approach as well as for the achievement of CLE objectives, including a full understanding of the Italian penitentiary system, the acquisition of critical faculties, the acquisition of lawyering skills, and a true accomplishment in providing real assistance to detainees that allows them to gain access to their rights.

The establishment of an educational project that is capable of combining all these objectives is a demanding task given the characteristics of the institutions themselves and those of the detainees.

The insular nature and the internal dynamics of the total institutions strongly impact on the implementation of laws and access to rights. Prisons remove societal awareness, making the average person disinterested in what happens within the walls by preventing the entry and movement of information. The lack of communication channels for information that might ensure the awareness and understanding of legal rules and proceedings adds to additional reclusion and difficulties that are not law-related, hindering the understanding and

[11] According to Goffman's concept, total institution "*may be defined as a place of residence and work where a large number of like-situated individuals cut off from the wider society for an appreciable period of time together lead an enclosed formally administered round of life*" (2007, p. 11).

implementation of fundamental rights such as those connected to health, family, work and a multitude of others.

As segregationist institutions, prisons are characterized by an internal conflict (Garfinkel, 1956; Hester and Eglin, 1992; Goffman, 2007) that is not limited solely to the obvious one between the prisons and the detainees but also prison staff themselves in relation to their various tasks and objectives, such as penitentiary police personnel, educators and social workers. This conflict, which is complex and difficult to understand from the outside and often related to power-relationships, accounts for the fact that the caged communities in prisons give rise to rather independent social systems where unwritten rules overlap formal rights.

The relevance of "detainees' subcultures" and "inmate' codes" (Hester and Eglin, 1992) as regulatory systems that compete with law, is another hindrance to the understanding and safeguarding of rights in prisons. In addition to a general diffidence shown by the detainees towards the institutions and their representatives, we must also be aware of the prisonisation and infantilisation effects produced by imprisonment (Clemmer, 1958), as they prevent independent action on the part of detainees aimed at pursuing the enforcement of their rights. In Italian prisons, these effects are further strengthened by the presence of a large number of foreigners that, due to language issues and different "legal consciousness" (Ewick and Silbey, 1998), experience even greater frustration in the attempt to access their rights.

Succeeding in working within prisons therefore becomes an interesting opportunity and an imperative prerequisite for students in order for them to confront a misunderstood reality and to realize how far law truly is from being a well-ordered set of verbal formulations (Kruse, 2011).

The creation of a model of legal clinics able to meet this requirement while also effectively supporting the pursuit of full access to rights on the part of detainees is no simple task.

The legal aid model can address individual cases in which a person requires legal assistance in prison. However, its practical application has shown certain issues and shortcomings in responding to actual student learning requirements and inmate needs.

Legal aid clinics have to account for the fact that - according to the Italian legal system - many inmates in Italian prisons are already formally assisted by a lawyer[12], although in reality these individuals are in great need of legal advice as they have but formal and sporadic contact with their lawyers. This makes it difficult for a clinic to take any action.

The risk that this experience of gaining access to prisons is limited is twofold.

From an educational point of view, one peculiarity in the development of legal clinics in Italy is that graduates from Italian law schools are not only future lawyers[13]. Therefore,

[12] One of the main problems in the functioning of the Italian prison system can be seen in the high number of detainees awaiting trial. These detainees, which constitute more than a third of overall numbers (Fairtrial, 2016), are legally guaranteed a lawyer of their choosing or assigned one by the state. Italian law guarantees free legal representation at the State's expense for those with low income. Although the income threshold to access this service limits the efficacy of the institution, impeding numerous individuals who indeed require it, many detainees satisfy the requirements and thus can avail themselves of free legal representation. It is also not rare that these detainees maintain a relationship of trust with their lawyers after the process is concluded.

[13] Traditionally, Italian schools of law have implemented a common curriculum aimed at training different legal professionals such as lawyers, judges, public prosecutors, public officers, etc. Practice and apprenticeship for access to these professions are left to post-graduation. The feedback delivered by the Bologna Process has

clinics can also address other types of law professionals[14] with a consideration of the critical role that these figures play in the promotion of access to justice, although in different ways than providing legal aid.

The second limitation on the effectiveness of legal aid clinics is related to their social justice mission. Most issues that remain unresolved in Italian prisons are inherent to how the punishment actually translates into prisoners' everyday life. They relate to accessibility to information and the lack of knowledge on how to exercise their rights to health and work, social rights, religious rights, and how to deal with visitations and contact with their families. A useful strategy to enable students to operate effectively in prisons is to cooperate with NGOs and with prison ombudsmen[15] collecting claims from inmates and involving various public authorities to provide solutions.

These issues are sometimes best addressed by street law clinical programs (Grimes *et al*., 2011) or community lawyering programs. Students can participate in gatherings, deliver presentations, seminars and training courses to inmates on specific subjects. They can also

partially modified this trend and curricula have been supplemented with legal courses aimed at training specialized professionals, like penitentiary and law enforcement officers, work advisors, public officers or mediators. Practical experience for students is expected from all degree courses.

[14] Examples of this type of legal clinics are the legal clinic of the University of Brescia for the training of work advisors, the clinic of the University of Florence, where students work with public prosecutors in the review of asylum applications, the legal clinic of the University of Turin where students work in local authority offices providing services to immigrants and victims of trafficking, and in local ombudsmen's offices.

[15] Prison ombudsmen are quite a new figure in the Italian penitentiary system. At a national level, the National Prison Ombudsman has been established by the Law n. 10 of 21 February 2014 as a non-jurisdictional actor tasked both with the power to visit prisons and enforces assessment and surveillance on prisons and other places where freedom is deprived. Many regions and municipalities have also established regional and local prison ombudsmen. These figures meet prisoners and receive reports on failures to comply with prison legislation, and address the competent authorities for clarifications or explanations, demanding the necessary steps or actions.

produce informational materials aimed at explaining the rules in a way that is easily understandable to the intended recipients, keeping their cultural and linguistic backgrounds in mind (Tokarz *et al*., 2008).

As the author has personally experienced, this working strategy can prove especially useful when detainees are involved in meetings and interviews both at the stage of claims collection and in the process of devising suitable solutions. Unlike the legal aid model, community lawyering benefits from the fact that the interaction time of students with detainees is sufficient to gain an understanding of the milieu and of real needs. New opportunities for interdisciplinarity are provided: interviews can be conducted by law students together with other professionals such as psychologists or social workers. Informational guides can be produced with the help of students from communication sciences or cultural mediation. However, we must be clear on the limitations that these actions have in actually addressing real needs. This is a paradoxical consequence of prison organization that is rooted in the dynamics of the total institution and in the boundaries imposed by it: inmates eligible for the interviews are chosen by the institution on the basis of motivations that do not necessarily pertain to their needs. For example – due to safety reasons or because of special conditions of detention[16], or due to work organization for prison workers – not all prisoners are admitted to the seminars or classes. Neither the interviews nor the written reports issued by clinical students can reach certain groups of detainees when language or social barriers or the psychological vulnerability of the

[16] For example, due to the crimes committed and the consequent detention regime, certain prisoners are not allowed to meet people from the outside or to meet other prisoners.

prisoners are too high, though these are the cases where assistance in gaining access to justice is most needed.

The effectiveness of this type of street law clinics can also be undermined by the lack of real commitment on the part of prison authorities tasked with ensuring that the students' work is made available to all detainees. Regrettably, this variable is beyond the control of legal clinics as it pertains to the internal organization of the penitentiary institution[17]. The risk is that this action will never produce any positive social effects, even though students benefit from the opportunity to understand and observe the milieu, to acquire communication and writing skills and to promote social awareness.

3. Law and architecture: an unexpected way to promote rights

The ascending alchemy (Perelman, 2014, p.135) resulting from studying the penitentiary system from within the walls of a prison, and carefully observing the use of space and the relationship dynamics at play among detainees and operators, can dramatically improve a student's capacity to envision the actions that are capable of substantially promoting access to justice by endorsing radical changes of perspective (Cappelletti, 1979).

The objective to build a learning experience entirely based on the needs of detainees that were empirically collected by the students – and thus capable of responding to such needs – has elicited the reconsideration of the traditional tools used for access to rights, improving realization on the part of lecturers and students of the weakness of self-referential legal

[17] Among others, local penitentiary regulation governs the access of people and materials from the outside. If, when and how material such as books and brochures can circulate among prisoners ultimately depends on the will of the prison management.

knowledge. Due to their multidimensional nature, problems must be addressed by resorting to interdisciplinarity (Galowitz, 2012).

A unique experiment of the interdisciplinary legal clinic in prisons has developed through a bottom-up process where a team of architecture students and a team of law students have unexpectedly joined forces as a result of shared feelings of shock in viewing the reality of detention.

When entering a prison, students are confronted with the state of severe deterioration of most of the buildings. The inhumane living conditions of detainees for which Italy has been condemned are not only related to overcrowding but also to the structural conditions of state prisons. This situation prevents penal institutes from performing their function of rehabilitation as provided for in Art. 27 of the Italian Constitution, and it deprives detainees of their right to spend the daytime outside their cells as provided by Italian law. All the activities guaranteed by law – such as working, studying, meeting families, exercising religious rights - are precluded de facto or seriously limited by the lack of space or the deterioration and mismanagement of those spaces.

The sentence against Italy for not granting a minimum surface of 3 square-meters per prisoner has notoriously made it widely known that detainees in Italian prisons are living in undignified conditions, in promiscuity and in the total absence of privacy. Cells are typically occupied by a number of persons that exceeds the regulations of law, and often double as bedrooms and toilets. However, when entering a prison, one immediately realizes that the irrational and intolerable situation of detention space far exceeds what a law student

can envisage from reading the formal motivations of the sentence. Besides the personal surface space available within the cells, it is also important to consider the existence of and opportunity that inmates have to access other spaces, such as common areas for socialisation and spaces for rehabilitation activities. A large portion of prison space is in fact precluded to detainees entirely – as areas reserved to prison staff – or in part – as corridors, common areas, or green areas with strictly controlled access. This means that a prison that complies with the requirements of square footage per prisoner does not always make common spaces available to the detainee during the day. Guaranteeing access, usability and suitability of common areas thus becomes an issue of crucial importance.

The commitment to changing detention spaces to comply with the provisions of the law is a motivating challenge for a legal clinic. Clinics meet the requirement of endowing students with practical skills and provide a systematic approach to the solution of real problems, as indicated by the claims collected from the detainees. The development of a suitable tool to achieve these objectives has given rise to an innovative educational method that brings together community lawyering with the architectural theory of self-made architecture[18]. These models share several common points: the merging of theory and practice through a learning-by-doing approach, the aspiration to respond to the social needs of marginalised communities, and the involvement of members of such communities. This common ground has brought together the objectives of law students to understand and enforce the law for social purposes, and those of architecture students to practise as future architects in a real

[18] Unfortunately, this is not the place to elaborate on this theoretical approach. For that theory see Oppenheimer and Hursey (2002) and Bruni (2016,2017) among others.

physical space. As the basic principle of self-made architecture is to work in deprived urban areas, any chance for concrete intervention in a real physical space like that of a prison is an ideal opportunity.

The internal spaces dedicated to socialising, visitations, study and work, and infirmaries are those most requiring renovation and redefinition. The aim is to enable detainees to exercise their rights.

An indispensable prerequisite for any architectural modification is the involvement of prison wardens who are in a position to request and authorize such interventions. This may cause a certain degree of ambiguity between contractors and users. Although the final users are the detainees, the project must be commissioned by the warden and be in line with the requirements of the penitentiary administration.

However, such complexity – characterising the adversarial relationships at play in total institutions – is an excellent occasion for students to practice the professional skills that are essential when it comes to working in complex organizations: problem-solving and mediation among different viewpoints, relating with professionals and clients, and learning how to account for a multitude of variables that affect the completion of a task.

One of the rights that the law guarantees to all detainees – with the exclusion of certain exceptional cases – is that of maintaining family relationships. Prison visitations play a primary role in the treatment of detainees and are a critical issue, especially when underage children are involved. Visitations require dedicated spaces and suitable conduct in consideration of the impact that a child meeting his or her parents in a prison could have.

Regrettably, most penal institutions in Italy do not have dedicated spaces for this use: visitations take place in noisy rooms crowded with other families and visitors. The green areas that the Italian judicial system envisages for the detainees to meet their minor children are often unused or abandoned.

Our first occasion to experience interdisciplinary cooperation was in the prison of Turin, where a green area formally designated for visitations was deteriorated and entirely unusable (Figure 1 and 2), and the prison warden, although willing to refurbish it into an appropriate visiting area, did not have the financial means to do so[19].

[19] This inability on the part of the director to access the necessary resources to refurbish the prison directly likely requires a certain clarification on the inner workings of the Italian penitentiary system. More than any sector, the penitentiary administration has suffered the reduction in public spending that has plagued Italy in recent years. The scarce resources that the State gives to individual prison institutions are insufficient for wardens to face even the normal expenses for the upkeep and running of the prison, and therefore it is impossible for wardens to make use of funds to carry out extraordinary interventions. The situation here described is a fundamental example of the engagement of a network of numerous wardens and partnerships aimed at establishing collaboration among public and private people and institutions, such as local institutions, associations, volunteers and local businesses.

Figure 1 (photo Spaziviolenti)

Figure 2 (photo Spaziviolenti)

These were the premises needed to draw up a project for refurbishing this area[20], while reconciling technical and legal issues.

This experience is the tangible outcome of a bottom-up process in which – following the initial incentive from an interdisciplinary team of lecturers – all steps were entirely managed by the students themselves under the supervision of the lecturers and with the involvement of both penitentiary staff and inmates[18].

The redesigning and implementation of this visiting area mirrored the procedures that typically apply to architectural interventions in real life: feasibility studies, preliminary designs, presentations and discussions with the contractor, the final design and implementation.

From fundraising[19] to the actual work, this project was entirely managed by the students. In accordance with the principles of self-made architecture, works were carried out by recycling materials and turning to the skills and abilities made available by the prison community. This outstanding co-working experience involving students, inmates and penitentiary officers was

[20] We are referring a common initiative promoted by the Architecture Department of the Turin Polytechnic and the Law Department of the University of Turin in order to reflect on and to rethink the urban spaces of marginalization, such as prisons. The name of the project is Spaziviolenti (https://spaziviolenti.wordpress.com/) which in Italian means "violent spaces", as they consider spaces characterized by physical or social barriers that marginalise vulnerable people and groups. What we are describing in this issue is the output of the 2014- 2015 edition of the project.

[18] https://spaziviolenti.wordpress.com/chi-siamo/. The team of supervisors involves Valeria Bruni, Polo Mellano and Marco Vaudetti (Architecture Department of the Turin Polytechnic), Claudio Sarzotti, Cecilia Blengino, Silvia Mondino and Michele Miravalle (Law Department of the University of Turin).

[19] The funds required for land reclamation and for the procurement of construction materials were entirely raised by the students through a call for tender by the local polytechnic university to support student initiatives. Students had to prepare a project proposal, including the estimation of completion time and costs. These were entirely novel tasks that do not belong to the curricula of law or architecture courses.

extremely interesting in the perspective of social architecture and was the subject of thoughtful consideration[20].

In particular, this paper wishes to emphasise the role that law students played in the development of this project and how this experience has affected their educational path.

The collaboration of architecture students and law students was of the utmost importance in the preliminary design stage as the architectural project could not be approved by the warden unless it was fully compliant with specific provisions of the law governing penitentiary institutions. As architecture students were lacking in this competence, the necessary legal framework was provided by the law students. This involved supplying information on health, safety and security regulations, public works and penitentiary rules. For example, law students undertook to explain the specific restrictions imposed on technical design by security regulations and by the requirement to guarantee non-invasive surveillance of visitations. Similarly, compliance with safety regulations in terms of construction materials was required when designing a children's playground, as well as the general provisions of the law regarding parental rights and children's rights. This task proved particularly useful from a didactic perspective as law students were compelled to study the law from a problem-solving perspective and to develop the communication skills required to deliver legal advice to other professionals who were entirely unfamiliar with the language of rights.

A clear understanding of the legal framework was essential to the feasibility study as well. Law students delivered indispensable notions to the future architects concerning the

[20] These aspects together with a technical description of the project and an explanation of architectural solutions and the reasons behind the choice of materials have been investigated by Bruni (2016, 2017).

rehabilitation function inherent to sentencing and further explained the detailed set of rules regulating prison visitation. A thorough description of the various roles of penitentiary officers was necessary for enabling architecture students to operate within a penitentiary institution with a competent understanding of internal conflictual relationships. In another perspective, this experiment also helped law students to directly experience the gap between practice and law in books.

Specific socio-legal research tools – interviews and focus groups – were used to involve both inmates and penitentiary staff in the process of collecting complaints and claims. This helped maintain focus on all issues at stake.

The preparation of a preliminary project and its presentation to the warden came after the students engaged in intensive training where they were grouped in mixed-proficiency teams. These teams debated specific issues under the supervision of lecturers in both law and architecture, and in this way they acquired the necessary competences to discuss their proposals with the warden and his staff. For law students, a public presentation of the project was a unique occasion to practice communication with clients, and an opportunity to critically consider how – as indicated by the concerns and issues raised by some of the penitentiary staff – the cultural attitude of prison operators is generally oriented toward enforcing the repressive side of the sentence rather than ensuring access to rights.

During the debate with the contracting authority, the students accepted some of the notions put forth by the contractor while also defending their original proposals on other occasions.

In this way they practised debate skills that would not normally have been part of their customary learning process.

Finally, after breaking ground at the worksite, legal advice proved necessary to assist architects in solving certain issues that arose during work in relation to prison rules, formal roles and practice.

One year later, this unique collective process involving students, inmates and prison operators has led to the creation of a renovated and upgraded green area that is currently used in good weather by the detainees while meeting their children (Figure 3)[21].

Figure 3 (photo Spaziviolenti)

[21] All of the technical aspects of the project and its material construction were carried out by the architecture students of the Spaziviolenti working group.

4. What we learned

At the conclusion of this initial interdisciplinary clinic experiment we have reconsidered the extent to which we have achieved our original objectives, i.e. enhancing learning by means of new practical skills, providing law students with an insight into the functioning and contradictions of penitentiary law in real life, and pursuing a mission of social justice.

The experiment has proven particularly challenging for the students, but perhaps the supervisors had to deal with even more complex issues. Interdisciplinary collaboration has given rise to new debate on consolidated outlooks and well-established teaching models in their respective contexts and brought about the need to share vocabulary, perspectives and concepts through constant interaction. In light of a problem-based learning approach (Grimes, 2015), working for the common goal of achieving a dignified environment for detainees to meet their children was particularly helpful. Other requirements inherent in the experiment, such as the need to meet deadlines established by contractors, or budget restrictions, added a number of variables that students do not normally face but nonetheless make up the vicissitudes of their real life professional situation. Problem-solving learning helped students to cooperate, become organized and respond to unexpected events. Studying with the realistic purpose to deliver much-needed legal advice for architectural design enhanced their ability to learn law regulations for practical application. Interacting with other professionals, contractors and users has helped students to develop the communications skills needed to deliver legal advice to different recipients.

The need to collect complaints from the users and claims from other stakeholders in the feasibility study compelled students to use the typical methods of social research such as

interviews and focus groups with inmates and operators. Our intervention was thus based on empirical data that was regularly collected by the students rather than on a theoretical set of requirements.

There is no doubt that entering a prison with the aim of implementing concrete action has provided the opportunity to observe and investigate internal dynamics as no other experience could. During the experiment, students visited the prison several times, each time interacting with different penitentiary operators – the warden, police officers and social workers - to understand their attitudes and operating methods. Informal discussions with inmates allowed students to understand various nuances of what life in prison is like and helped them move beyond a stereotypical vision of detainees and allow them to assess their proposals accordingly. Students had to face bureaucratic apathy and realized the difficulty of working within institutions. They were also faced with the diffidence and reticence of certain operators, who were apparently concerned about the impact that opening the new space would have on the organization of their work.

In spite of all the difficulties, our experience of interdisciplinary learning has achieved important objectives in the realm of social justice.

The significant difference between architectural interventions and legal aid or street law programs in the promotion of access to rights in prisons is related to the potential of physical work to positively and permanently change a situation in which rights are denied, and actually affect prisoners' life. Due to the visibility of this type of intervention, the resulting effects are meant to last in time and are not confined to sporadic actions. As for the

community of users, this intervention affects a larger number of detainees than legal advice delivered to individuals, or any other action that the author has so far undertaken.

As a result of the interaction between CLE and the principles of self-made architecture, detainees actively participated in the works. For some of them, this was an opportunity to put their skills as carpenters, construction workers, plumbers, or electricians into practice, and for others to learn new skills that might be put to use both inside and outside the prison.

In light of these considerations, this model of social justice aimed at learning-by-doing has proven both effective and reproducible.

Typically, the feasibility of experiential learning is faced with the difficulty of identifying physical spaces suitable for intervention. This is often linked to legal restrictions, the goodwill of authorities and the availability of funds. This last point is critical in the case of penitentiary administrations that cannot count on their own financial resources[22]. However, new opportunities are emerging as a result of the social impact of this type of intervention and its ability to attract media interest, thus fostering the involvement of a variety of public stakeholders and local private entities. The inauguration of the new visitation space is a case in point, as it has drawn the attention of the municipality, which donated a fountain and some trees. Thanks to the interest of other prison wardens, this project will be replicated in another prison with the contribution of private funds and, in all likelihood, of private sponsors. Addressing this type of issue is a valuable occasion for students to deal with real life scenarios and enhance their planning skills.

[22] For this reason, student funding was used to support our first experiment.

A new episode of this experiment has already begun in a prison whose warden has commissioned a new multipurpose space. This space shall comply with the provisions of the law that involve so-called "dynamic security"[23] according to which detainees should remain in prison cells only overnight and then spend the daytime engaging in various activities outside. This is a condition that is often prevented in Italy due to the lack of suitable spaces.

However, this experience has highlighted the potential for interdisciplinary cooperation between CLE and self-made architecture. It could be replicated in different environments, such as deteriorated urban areas, with the involvement of marginalised and disadvantaged communities. This is a scenario that offers a variety of opportunities, allowing for the experimentation of a synergy between legal and technical competencies that are likely to lead to concrete outcomes in terms of social impact. The extension of this experiment to other stakeholders in local communities is a huge challenge and a great opportunity for the future.

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