

***Editorial***

***Clinical Legal Education: Innovating Legal Education in Europe***

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How often do we attend a conference, listen intently as various colleagues from around the world share their thoughts, their experiences, their ideas? How often, following the delivery of a paper, is the room electrified with discussion as clinical colleagues are energized with their own thoughts and ideas based upon what they have just heard. We take these thoughts and ideas, we debate them, we test them, we adapt them and we implement them into our own practice. The aim is to enrich and enhance our field. There is a problem however. Often, those thoughts and ideas, the content of the discussions remains with the people who attended that particular session of the conference. Many clinical colleagues may not have been able to attend the conference; those who did may have been attending a different session. As such, they have not been able to participate in the discussion.

The European Network for Clinical Legal Education held its 6<sup>th</sup> Conference in Turin on 20<sup>th</sup> and 21<sup>st</sup> September 2018. We wanted to share some of the thoughts, ideas and experiences discussed throughout the course of the conference to open up the debate

beyond those who were able to attend. This special edition brings together a selection of papers delivered at the conference. Read, enjoy, discuss, and learn...

## Legal Education in the Next Future

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### *Abstract*

*The legal profession is facing a new working environment marked by increasing globalisation, competition, technological advances and deregulation. Furthermore, the economic perspective imposed by the European Union – which leads us to consider lawyers as business as well as professionals – is having a profound impact on national regulations. Nobody would doubt that the intellectual professions have experienced a deep transformation whereas competition rules – originally addressing more traditionally commercial ventures – have begun to penetrate in this different area. In this time of changes, the ‘qualitative entry restrictions’ – taking the form of minimum periods of education (and related educational standards), post-university vocational training and professional examinations – are maintaining a key role: ensuring that only practitioners with appropriate qualifications and competence can supply their legal services in the internal market. The first part of this paper is devoted to analysis of the evolution and changes involving legal education in European countries, adopting a comparative and historical perspective. Member states have the right to regulate professional services, and they have the primary responsibility of defining the framework in which professionals operate; therefore, regulation of legal education is, first and foremost, a national matter. Nevertheless, a historical overview of the different systems shows that*

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*even if the starting points of the different traditions are very distant, sometimes even opposite, there are some common trends in the evolution that are going to create a harmonization in the field of legal education. In particular, every system is going to create a pathway to enter in the legal profession that ensures both academic studies and professional training, combining the theoretical knowledge with practical aspects.*

*The second part of the paper focuses on the new role embraced by the law schools, arguing that the new mission of law schools is, at least in part, to contribute to the creation of legal practitioners. In fact, it seems that the division between exclusively academic theoretical study and post-university vocational training is today unsustainable. Considering the law schools' new obligation to create both 'theoretic and practical' scholarship and the consequent shift towards more skills-based legal education, the second part of the paper will be devoted, in particular, to the analysis of the fundamental role that clinical legal education should play in this process of reform.*

**Summary:** *1. European approach towards professionals: competition and better regulation; 2. Entry restrictions and their justification: ensuring the quality of legal services; 3. National legal educational models: a case of fragmentation?; 4. A comparative analysis: there is room for harmonization?; 5. Current criticisms and progressive trends in legal education; 6. The role of legal clinics in the present and future educational system*

## **1. European approach towards professionals: competition and better regulation**

The legal profession is facing a new working environment marked by increasing globalisation, technological advances, competition and deregulation.<sup>2</sup> Nobody would doubt that, in the last fifteen years, the European Union's approach towards the intellectual professions has constituted a leading force in the transformation of the legal market and profession in Europe. In particular, the European Union (EU), starting with the Lisbon Strategy, recognizing the crucial role played by professionals in the internal market,<sup>3</sup> has begun to advocate the application of competition law even in the professional sector.<sup>4</sup> In

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<sup>2</sup> See also G. PASCUZZI, 'Verso l'Avvocatura e il Notariato', in B. PASCIUTA & L. LOSCHIAVO (eds.), *La formazione del giurista. Contributi ad una riflessione* (Roma TrePress, 2018), p 83: 'quattro fenomeni verificatisi negli ultimi decenni che stanno cambiando le professioni legali: la rivoluzione digitale, l'internazionalizzazione del lavoro, le istanze tese a 'liberalizzare le professioni', il favore con il quale il legislatore guarda alle alternative al contenzioso'.

<sup>3</sup> See Council of the European Union, European Council Presidency Conclusions, 22–23 March 2005, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/84335.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/84335.pdf); European Parliament, *Follow-up to the Report on Competition in Professional Services*, P6\_TA(2006)0418, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2006-0418+0+DOC+PDF+V0//EN>; European Parliament, *Resolution on Market Regulations and Competition Rules for the Liberal Professions*, 2004 OJ (C 91E) 126, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+B5-2003-0432+0+DOC+PDF+V0//EN>; Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *Professional Services—Scope for more reform—Follow-up to the Report on Competition in Professional Services*, COM(2004) 83 of 9 February 2004 (SEC(2005) 1064): COM/2005/0405 final, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52005DC0405>; Commission Communication, *Report on Competition in Professional Services*, COM/2004/0083 final, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52004DC0083>.

<sup>4</sup> Concerning the European attempt to apply competition law to professional services, see: Report on the Economic Impact of Liberal Professionals in Different Member States, Invitation to Tender, Open Procedure, 2001; I. PATERSON, M. FINK & A. OGUS, *Economic Impact of Regulation in the Field of the Liberal Professions*; European Commission, DG Competition, *Stocktaking Exercise on Regulation of Professional Service: Overview of Regulation in the New EU Member States*, COMP/D3/MK/D(2004), [http://ec.europa.eu/competition/sectors/professional\\_services/studies/overview\\_of\\_regulation\\_in\\_the\\_eu\\_professionals.pdf](http://ec.europa.eu/competition/sectors/professional_services/studies/overview_of_regulation_in_the_eu_professionals.pdf); European Commission, DG Competition, *Invitation to Comment: Regulation in Liberal Professions and Its Effects: Summary of Responses*, 2003, [http://ec.europa.eu/competition/sectors/professional\\_services/studies/summary\\_of\\_consultation\\_responses.pdf](http://ec.europa.eu/competition/sectors/professional_services/studies/summary_of_consultation_responses.pdf); Commission Communication, *Report on Competition in Professional Services*; Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Upgrading the Single Market: More Opportunities for People and Business*, COM(2015)550 final; see also the European Parliament's intervention 2015/2354(INI); Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Reform, *Recommendations for Regulation in Professional Services*, {SWD(2016) 436 final}, COM(2016)820 final, <http://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteId=1&year=2016&number=820&version=ALL&language=en>; Communication from the Commission to the European Parliament, the Council, and the European Economic and Social Committee, *Evaluating national regulations on access to profession*, COM(2013)676, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013DC0676>; European

order to justify this economic approach, the professions have been classified by European jurisprudence and by Commission decisions as undertakings. In fact, the EU has adopted a broad definition of undertaking, encompassing any entity that carries out economic activity – consisting of providing services on the market – regardless of the particular status of the entity and the way in which it is financed.<sup>5</sup> As a consequence, the peculiar attributes which characterize the intellectual professions (e.g. the intellectual, technical or specialized nature and the personal and direct basis on which the services are delivered),<sup>6</sup> as well as the circumstance that they are classified as regulated profession in several member states, cannot be deemed as obstacles to classifying lawyers as business. In accordance with this innovative view, the EU Commission has introduced rigorous discussions about the justifications for professional national regulation, affecting both entry requirements and the exercise of the service, and member states have been required to revisit their professional

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Commission, *Proposal for a directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions*, COM(2016) 822, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:0822:FIN>; Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions, in *GU L 173 9.7.2018*, pp 25–34, [https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2018%3A173%3ATOC&uri=uriserv%3AOJ.L\\_.2018.173.01.0025.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2018%3A173%3ATOC&uri=uriserv%3AOJ.L_.2018.173.01.0025.01.ENG).

A similar trend towards deregulation was first endorsed in other jurisdictions, such as the US and Australia and, at the international level, by the Organisation for Economic Co-operation and Development (OECD). Cf. OECD, *Competition Policy and the Professions*, 1985; OECD, *Competition in Professional Services*, DAF/CLP(2000)2, <http://www.oecd.org/regreform/sectors/1920231.pdf>; OECD, DAF/COMP(2007)39. With regards to the US experience: *Goldfarb v. State Bar of Virginia*, 421 U.S. 773 (1975); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); C.J. GAWLEY, ‘Protecting Professionals from Competition: The Necessity of a Limited Antitrust Exemption for Professionals’, in 47. *S.D. L. Rev. (South Dakota Law Review)* 2002, p 233; D. VÁZQUEZ ALBERT, ‘Competition Law and Professional Practice’, in 11. *ILSA J. Int’l & Comp. L. (ILSA Journal of International & Comparative Law)* 2005, p 555. More generally, see L.S. TERRY, ‘The European Commission Project Regarding Competition in Professional Services’, in *Northwestern Journal of International Law & Business* 2009, p 1.

<sup>5</sup> Case C-41/90, *Höfner ed Elser c. Macrotron*, ECLI:EU:C:1991:161; Case 118/85, *Commissione c. Italia*, ECLI:EU:C:2002:36. L. SCUDIERO, *La nozione di impresa nella giurisprudenza della Corte di Giustizia*, in IV. *Foro it. (Foro italiano)* 1994, p 113; V. AFFERNI, ‘La nozione di impresa comunitaria’, in F. GALGANO, *Trattato di diritto commerciale e diritto pubblico dell’economia, II* (Padova: CEDAM 1978), p 134.

<sup>6</sup> 95/188/EC: Commission Decision of 30 January 1995 relating to a proceeding under Art. 85 of the EC Treaty (IV/33.686 – Coapi) OJ L 122, 02/06/1995, 0037–0050.

rules, according to the so-called ‘proportionality test’, in order to maintain only restrictions that are justified on public interest grounds. The European call for ‘*better regulation*’ has revitalized the economic theories surrounding professional regulation, and the idea that some pro-competitive mechanisms can be implemented without detriment to the quality of professional services, even if in some cases the protection of clients and collectively as well as the good governance of the profession may impose the maintenance of some traditional restrictive rules. In fact, according to *public interest theory*, certain forms of regulation might be considered as a remedy for market failures arising from the particular features of the legal service markets. In particular, the lawyer-client relationship is often characterized by information asymmetry:<sup>7</sup> the professional is always aware of the quality of the service being proposed or delivered; the client, however, has to rely on the professional’s judgement due to his/her inability to ascertain the quality of the legal service and its correspondence to his/her legal needs. In fact, most professional services are considered as ‘credence goods’: as a result, it is often not possible for the client to evaluate the quality of the service, either before or after purchasing the service itself.

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<sup>7</sup> B. ARRUNADA, ‘The Economics of Notaries’, in 3. *Eur. J. Law Econ. (European Journal of Law and Economics)* 1996, p 5; Robert G. EVANS & Michael J. TREBILCOCK, *Lawyers and the Consumer Interest* (Toronto: Butterworths 1982); M. FAURE, J. FINSINGER, J. SIEGERS & R. VAN DEN BERGH (eds.), *Regulation of Professions* (Antwerpen: Maklu 1993); R. C.O. MATTHEWS, ‘The Economics of Professional Ethics: Should the Professions Be More Like Businesses?’, in 101. *Econ. J. (Economic Journal)* 1991, p 737; F. H. STEPHEN, ‘The Market Failure Justification for the Regulation of Professional Service Markets and the Characteristics of Consumers’ and R. VAN DEN BERGH, ‘Towards Efficient Self-Regulation in Markets for Professional Services’ in C.D. EHLERMANN and I. ATANASIU, *European Competition Law Annual 2004: The Relationship Between Competition Law and the (Liberal) Professions* (Oxford and Portland, Oregon: Hart Publishing 2006), p 143 & p 155.

As a consequence, the information asymmetry may give rise to quality deterioration resulting from *adverse selection*:<sup>8</sup> if clients cannot judge the different value of professionals' services, their willingness to pay might be hampered; conversely, if lower fees become the 'average prices' of legal performance, the most qualified lawyers are encouraged to leave the market, as long as their behavioural traits and their efforts are not recognized and properly remunerated. Moreover, the information gap might lead to professionals' opportunistic behaviours, including the overvaluing of services in order to charge higher fees, the delivery of services at higher prices, as well as the provision of additional or totally unneeded services (the so-called 'moral hazard' problem).<sup>9</sup>

In addition, legal services serve public goals such as the good administration of justice and a well-functioning judicial system; for this reason, the quality of the legal performance might have a severe impact, not only on the single client situation, but also on society as a whole: on the one hand, legal services of insufficient quality might generate negative externalities, damaging both clients and third parties involved in the justice system; on the other hand, good-quality legal services generate positive externalities, contributing to ensure the protection of the client's rights, as well as to safeguard the correct administration

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<sup>8</sup> G. AKERLOF, 'The Market for Lemons: Quality Uncertainty and the Market Mechanism', in *Q. J. Econ (The Quarterly Journal of Economics)* 1970, p 488; I. PATERSON, M. FINK & A. OGUS, *Economic Impact of Regulation in the Field of the Liberal Professions in Different Member States: Regulation of Professional Services* (European Network Of Economic Policy Research Institutes Working Paper 52/February 2007), p 17, <https://www.ceps.eu/system/files/book/1455.pdf>; R. SPIGLER, 'The Market for Quacks', in 76. *Rev. Econ. Stud. (The Review of Economic Studies)* 2006, p 1113; H. E. LELAND, 'Quacks, Lemons, and Licensing: A Theory of Minimum Quality Standards', in 87. *Journal of Political Economy* 1979, p 1328.

<sup>9</sup> F. H. STEPHEN & J. H. LOVE, 'Regulation of the Legal Profession' in B. BOUCKAERT & G. DE GEEST (eds.), *Encyclopedia of Law and Economics, Volume III: The Regulation of Contracts* (Cheltenham: Edward Elgar 2000), p 989; R. VAN DEN BERGH & Y. MONTANGIE, 'Competition in Professional Services Markets: Are Latin Notaries Different?', in 2. *Journal of Competition Law & Economics* 2006, p (189) at 193–194; E. SHINNICK, F. BRUINSMA & C. PARKER, 'Aspects of Regulatory Reform in the Legal Profession: Australia, Ireland and the Netherlands', in 10. *Int'l J. Legal Prof. (International Journal of the Legal Profession)* 2003, p 237.



of justice in the interest of the community. As a result, among the rationales of professional regulation, there is the need to avoid negative externalities while protecting the positive ones.<sup>10</sup>

The public interest explanations may constitute, therefore, the premise and the justification for the maintenance of a number of professional regulations at the national level. Nevertheless, not all the restrictive rules may be justified on the basis of the public interest arguments.<sup>11</sup> The *equilibrium* between the preservation of traditional restrictive rules and the introduction of pro-competition mechanisms is not always easy to find.

## **2. Entry restrictions and their justification: ensuring the quality of legal services**

Qualification and entry requirements (encompassing academic education and training as well as professional examinations) are a basic component of the regulation of lawyers. This is not surprising, considering the fact that the legal profession is classified as a regulated profession in almost all member states.<sup>12</sup> Nevertheless, according to the Commission, with

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<sup>10</sup> R.I N.M. GRAHAM, *Legal Ethics: Theories, Cases, and Professional Regulation* (3rd edn., Toronto: Emond Publishing 2014).

<sup>11</sup> Moreover, the ‘public interest theories of regulation are challenged by private interest theories’ (R. VAN DEN BERGH, *Towards Better Regulation of the Legal Professions in the European Union* (RILE Working Paper Series n. 2008/7 2007)). Several economists are skeptical about the benefits of professional restrictive rules, arguing that professional regulation is used to serve mainly the interests of the legal profession and can be better explained by rent-seeking behavior, effective lobbying and regulatory capture. See J. A. KAY, ‘The Forms of Regulation’, in A. SELDON (ed.), *Financial Regulation or Over-Regulation* (London: Institute for Economic Affairs 1988), p 3342. The origin of this approach may be traced in Smith’s view, who defined self-regulatory occupational groups as natural institutions for ‘conspiracy against the public’ and ‘contrivance to raise prices’. See, also, A. SMITH, ‘Of Wages and Profit in the Different Employments of Labour and Stock, Part II: Inequalities Occasioned by the Policy of Europe’, in A. SMITH, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776 – New York: MetaLibri 2007), p 97.

<sup>12</sup> As it is stated in Article 3.1., lett. a, 2005/36/CE, the regulated profession is a ‘professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit. Where the first sentence of this definition does not apply, a profession referred to in paragraph 2 shall be treated as a

the recent initiatives aiming at giving an economic perspective to the regulation of the liberal professions, the justification of this kind of restriction has been questioned, in order to determine whether the qualitative entry restrictions are effectively justified in the name of public interest, consumer protection and quality of service or, contrariwise, may excessively restrict competition, promoting only lawyers' interests without yielding corresponding benefits to the society.

Even if empirical evidence on this aspect is limited and fragmentary,<sup>13</sup> it has been argued that *ex ante* or input regulation could be a valuable tool to guarantee a high level of quality of legal services, in the clients' and the public's interest. When a profession is regulated, only professionals who meet certain requirements and possess the appropriate qualifications are allowed to offer their services in the market.

As has been noted elsewhere, 'Licensing thus attempts to influence the quality of the service before its provision (*ex ante*) and controls the input (mainly education and/or training) rather than the output. The underlying assumption is that there is a strong complementary relationship between investments in human capital (input) and the quality of the service provided.'<sup>14</sup> As a consequence, when professionals who do not have the required qualifications and competence are excluded from the market, the overall quality of the legal services performed will of necessity be higher. For this reason, the input or *ex ante* regulation

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regulated profession' (Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the Recognition of Professional Qualifications, in *Official Journal of the European Union*, L 255, 30.9.2005, p 22–142).

<sup>13</sup> See F. H. STEPHEN & J. H. LOVE, 'Regulation of the Legal Profession', cit., p 989; R. VAN DEN BERGH & Y. MONTANGIE, 'Competition in Professional Services Markets: Are Latin Notaries Different?', cit., p 193–194.

<sup>14</sup> T. HEREMANS, *Professional Services in the EU Internal Market: Quality Regulation and Self-Regulation* (Hart Publishing, 2012), spec. p 4.

might be considered proportionate to the goal of ensuring professional quality: it is justified by public interest arguments, working both as a remedy for market failures<sup>15</sup> and as a deterrence to moral hazard.<sup>16</sup>

### **3. National legal educational models: a case of fragmentation?**

Member states have the right to regulate professional services and the primary responsibility of defining the framework in which professionals operate; therefore, the regulation of legal education is also, first and foremost, a national matter. For that reason, it is not surprising to find many differences among the national legal education models existing in Europe: each member state has its own education and training pathway to be followed in order to become a lawyer, and this pathway varies from one country to another. This heterogeneous situation can turn into a potential obstacle to having a common level of the quality of services offered in the internal market.

Among the main criteria differing from member state to member state, there are: a) the duration of the licensing procedure, with a range from around six to almost nine years (like in Slovenia);<sup>17</sup> b) the intensity of the entry controls: some member states impose an ‘incoming and outgoing’ selection in order to become a lawyer. In particular, in order to start vocational training in law, graduates may be required to pass an exam at the end of

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<sup>15</sup> See H. E. LELAND, ‘Quacks, Lemons, and Licensing: A Theory of Minimum Quality Standards’, cit.

<sup>16</sup> C. SHAPIRO, ‘Investment, Moral Hazard, and Occupational Licensing’, 53. *The Review of Economic Studies* 1986, p 843.

<sup>17</sup> Art. 25 of the Bar Act, The Official Gazette of the Republic of Slovenia, No. 18-817/1993, dated 9 April 1993, Official Gazette of the Republic of Slovenia, No. 24-1465/1996, 10 May 1996; Decision by the Constitutional Court, Official Gazette of the Republic of Slovenia, No. 24-1455/2001, 5 April 2001, Official Gazette of the Republic of Slovenia, No. 54/08, 2 June 2008, Official Gazette of the Republic of Slovenia, No. 35/09, 8 May 2009.

their university studies, and a second exam has to be taken at the end of the traineeship for becoming a lawyer. For example, a dual bar exam is required by the German regulation,<sup>18</sup> as well as by the Polish one.<sup>19</sup> On the other side, some other member states, like Italy, impose one single entry selection, i.e. an exam at the end of the traineeship. In some cases the examination is taken before the end of the training (this is, for example, the case of Belgian regulation). In some jurisdictions, periodic exams during the training are compulsory (like in Poland). In some other member states, before or during the professional traineeship, additional training, vocational courses, notably on matters not covered at all in the university curriculum, such as professional ethics, are required; c) the connection with the educational system imposed for other legal professions: the English and the German systems might be seen as the two extremes – on one side, the UK imposes separate educational and professional paths to the two branches of the legal profession, i.e. barrister and solicitors; on the other side, the German model requires a common education for all the traditional juridical professions in order to create the so-called *Einheitsjurist*, a jurist who is able to work as a judge as well as a lawyer; d) the importance reserved to the continuous professional development: although it is mandatory in the majority of member states, in some of them it remains on voluntary basis.<sup>20</sup>

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<sup>18</sup> For more information concerning the licensing procedure in Germany, see *Bundesrechtsanwaltsordnung* (BRAO), arts. 4–17; see also the *Gesetz zur Reform der Juristenausbildung vom 11.07.2002*, Bundesgesetzblatt 2002 Teil I Nr. 48, 2592; J. RIEDEL, ‘The Reform of Legal Education in Germany’, in 0. *Eur. J. Legal Educ. (European Journal of Legal Education)* 2001, p (3) at 3–10; A. KEILMANN, ‘The Einheitsjurist: A German Phenomenon’, in 7. *Germ. Law Jour. (German Law Journal)* 2006, p (293) at 297–298.

<sup>19</sup> For more information concerning the Polish formal requirement to be admitted to the Bar, see A. BODNAR & D. BYCHAWSKA, *The Legal Profession in Poland*, 2009, <https://www.osce.org/odihr/36308?download=true>.

<sup>20</sup> This is the case, for example, in the Czech Republic, Greece, Malta, Slovakia, Slovenia and Spain.

This brief *excursus* on the main traits of the actual national educational models leads us to the conclusion that it is not possible to infer the existence of a common European model of delivering legal education and training. However, a historical comparative analysis can offer a different point of view on this topic that allows us to see an increasing convergence in legal education in Europe, especially as regards the continental civil law tradition.

#### **4. A comparative analysis: is there room for harmonization?**

Legal education in continental Europe has long since been associated with university education.<sup>21</sup> The Italian tradition might be taken as a paradigm. Legal education has its origin in the Middle Ages, when the first university was founded in Bologna. The didactic method forged by the School of Bologna in 1088 was designed for legal scholars who needed to find and teach the ‘right’ solutions.<sup>22</sup> Law was taught as a model or structure, completely cut off from any practical consideration – such as the needs of the client or the means of resolving disputes. Such a conception has influenced both the nature of the teaching of law, giving it a theory-based and conceptual character, and the essence of European continental law itself.

During the Napoleonic period this framework shifted a little in favour of the professionalization of a ‘legal class’ and ‘a new socialization based upon competency’.<sup>23</sup>

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<sup>21</sup> *‘L’università fu la base comune del poderoso ceto internazionale dei giuristi’*: P. G. MONATERI & A. SOMMA, ‘Il modello di civil law’, in A. PROCIDA MIRABELLI DI LAURO (ed.), *Sistemi Giuridici Comparati* (Torino, 2009), p 33.

<sup>22</sup> See D. RENÉ & J. SPINOSI CAMILLE, *I grandi sistemi giuridici contemporanei* (5 ed, CEDAM 2004), p 33: ‘*The Law, as the Moral, is a “Sollen” (what we should do) and not a “Sein” (what we do in practice)*’.

<sup>23</sup> See M. MALATESTA, ‘L’Ordine professionale, ovvero l’espansione del paradigma avvocatizio’, in 3. *Parolechiave* 1995, p 270. See also S. PARINI VINCENTI, ‘*Ad Auxilium Vocatus*. Studi sul praticantato da Napoleone alla Legge professionale del 1874: l’esperienza normativa’, in A. PADOA SCHIOPPA (ed.), *Avvocati e*

During the eighteenth century, training courses and examinations were gradually established. Furthermore, successive law reforms introduced post-university traineeships and exams as requirements for entry to the legal professions. At the end of the nineteenth century, the legal education system started to be articulated in the law degree, a period of training followed by a final test. It has been said that 'the application of the law to practical cases requires a very particular ability that can only be gained through practice'.<sup>24</sup>

As a consequence, in continental Europe, and in the civil law tradition, despite the specifically academic roots, we have seen over the centuries the emergence and consolidation of a process of professionalization that has ensured that professional bodies retain ultimate regulatory control over access to professional titles.

Contrary to the continental tradition, English legal education and training was born as a product of the legal profession and the Inns of Court.<sup>25</sup> In the beginning, university legal education in England was almost inexistent. As a matter of fact, the modern legal education system in England and Wales has been shaped in part by a series of reforms that began only by the mid-nineteenth century. From the mid-twentieth century, some government reports<sup>26</sup>

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*avvocatura nell'Italia dell'Ottocento* (Bologna, 2009), p 59 ff.

<sup>24</sup> See A. BIANCHI, *Sull'esercizio delle professioni di avvocato e procuratore. Testo e commento della legge 8 giugno 1874* (Torino, 1886), p 99.

<sup>25</sup> Concerning the evolution of legal education in UK, see: C. N. GREGORY, 'A Movement in English Legal Education', in 10 *Harvard Law Review* 1897, p 418 ff.; R. M. STEIN, 'The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction', in 57. *Chi. Kent L. Rev.* 1981, p 429; A. BOON & J. WEBB, 'Legal Education and Training in England and Wales: Back to the Future?', in 58. *Journal of Legal Education* 2008, p 79; N. PICARDI and R. MARTINO (eds.), *L'educazione giuridica* (Bari, 2008) and G. MORLEY, 'Legal Education in England and Wales', in N. PICARDI & R. MARTINO (eds.), *L'educazione giuridica*, cit., 365 ss.

<sup>26</sup> See, in particular: Report of the Legal Education Committee, Cmd. 4663 (London, HMSO, 1934) ('Atkin Committee'); Report of the Committee Appointed by the Prime Minister under the Chairmanship of Lord Robbins, Cmnd. 2154 (London, HMSO, 1963) ('Robbins Report'); Report of the Committee on Legal Education, Cmnd. 4595 (London, HMSO, 1971) ('Ormrod Report'); Royal Commission on Legal Services, Final Report, Cm. 7648 (London, HMSO, 1979) ('Benson Report'); 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) ('Marre Committee'); Lord Chancellor's Advisory Committee on Legal Education and Conduct, First Report on Legal Education and Training (London,

started to criticize the state of legal education, warning of the poor standards in legal education, recognizing the inefficiency of the system, the need for reform of legal education and the possibility of introducing an entry method that would evaluate not only the practical training but also the university studies. In 1971, the Ormrod report<sup>27</sup> advocated the introduction of a three-stage model of legal education: an academic stage, a professional stage and a continuing stage. The normal academic stage has become the law degree, or its equivalent. In the wake of the Ormrod report, the law degree was confirmed as the standard mode of entry into the profession also by the reports that followed<sup>28</sup> (almost until the solicitors qualifying exam (SQE) announced reform – see *infra*).

As a consequence, in the common law tradition, we have witnessed an opposite evolution compared to the civil law tradition, with the emergence and consolidation of law as an academic discipline, despite its origins being essentially anchored to the professional world. The historical evolution of the different macro-traditions of legal education gives evidence that even if the starting points are very distant, even opposite, there are some common trends in the evolution that harmonize European legal education. In particular, every system has created over the centuries a pathway to enter the legal profession that ensures both the academic education and the professional training/practical experience, combining the theoretical knowledge with practical aspects. Moreover, these profound changes of the

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ACLEC, 1996) ('ACLEC'); Review of the Regulatory Framework for Legal Services in England and Wales, 2004 ('Clementi Report'); Legal Education and Training Review, The Future of Legal Services Education and Training Regulation in England and Wales, June 2013, <http://www.lettr.org.uk/the-report>.

<sup>27</sup> Report of the Committee on Legal Education, cit.

<sup>28</sup> See Legal Education and Training Review, The Future of Legal Services Education and Training Regulation in England and Wales, cit., p xiv: 'A number of recommendations are made in respect of the *Qualifying Law Degree (QLD)* and *Graduate Diploma in Law (GDL)*. These continue to provide an important pathway into the legal services sector for a range of authorised persons, and thus constitute an important foundation for professional training.'

educational systems have led, in civil law as well as in the common law tradition, to the construction of different stages of education and training which have created distinct spheres of influence for the different stakeholders. Usually law schools, as liberal institutions, retain as primary goals the promotion and production of legal culture, the transmission of legal knowledge and the development of students' analytical and critical reasoning skills.<sup>29</sup> On the other hand, bar associations have the mission to equip graduates with the understanding and acquisition of practical legal skills and competence, and potentially legal ethics, throughout vocational stages, traineeship and/or exam(s).

### **5. Current criticisms and progressive trends in legal education**

Nevertheless, as history explains, the relationship among different stakeholders is not a stable one, and also, the three-stage model – university degree / vocational stage and training/exam(s) – is just an artificial division. What is more constant are the critics of the legal educational system, the rethinking of approaches to teaching and learning law, in theory and in practice, and ways to test knowledge, skills and competence, also taking into consideration the ongoing changes involving the legal profession.<sup>30</sup> As recently noted,

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<sup>29</sup> Even if the freedom of universities sometimes encountered some constraints, as in the case of the several core subjects of the English GDL imposed by the professional bodies.

<sup>30</sup> See S. CASSESE, 'Legal Education under Fire', in 1. *European Review of Private Law (Eur. rev. priv. law.)* 2017, p (143) at 144 and 145: the author considering the French model underlined that: 'Teaching methods and materials are criticized as being too dogmatic and doctrinal, closed to the social sciences, and oriented towards the study of law as set out in books rather than to the study of law in action' (C. JAMIN, 'L'enseignement du droit à Sciences Po: autour de la polémique suscitée par l'arrêté du 21 mars 2007', in *Jurisprudence: Revue critique* 2010, p 125 ff.; C. JAMIN, *La cuisine du droit: L'École de Droit de Sciences Po: une expérimentation française* (Paris: L.G.D.J. 2012); M. VOGLIOTTI, 'L'urgence de la question pédagogique pour le droit postmoderne', 72. *Revue Interdisciplinaire d'Études Juridiques (RIEJ)* 2014, p 73 ff.; C. JAMIN & M. XIFARAS, 'De la vocation des facultés de droit (françaises) de notre temps pour la science et l'enseignement', *RIEJ* 2014, p 107 ff.; C. JAMIN & M. XIFARAS, 'Retour sur la "critique intellectuelle" des facultés de droit', 4. *La Semaine Juridique (SJ)* 2015, p 155 ff.; R. SEFTON-GREEN, 'Démoulages': Du carcan de l'enseignement du droit vers une éducation juridique, Société de législation comparée, Paris 2015); referring to the situation of legal education in Germany affirmed that: 'German experts too complain that doctrinal subjects are central in legal education, that legal education does not focus sufficiently on the application, active creation and implementation of the law, that law teaching does not pay enough attention to the European legal order and to the comparative approach, that academic reflection



‘Legal education has come under fire from all quarters, almost everywhere in the world.

Legal education is criticized in many different contexts, by a variety of actors, and for a great number of reasons.’<sup>31</sup>

This sense of dissatisfaction with the way in which legal education is structured and delivered has led in England and Wales to the shocking announcement by the Solicitors Regulation Authority (hereafter SRA) that it is going to revise the pathway to qualify as a solicitor. Currently, would-be solicitors are required to complete a qualifying law degree (QLD) or law conversion course at university (GDL), a one-year vocational course, the Legal Practice Course (LPC) and, finally, two years of supervised training (*training contract*) in order to qualify as a solicitor. The three-stage structure is similar to the educational model designed for the would-be barrister: graduates (with a QLD or a GDL) are required to join one of the Inns of Court, undertake one-year full-time course, the Bar Professional Training Course, be called to the Bar and complete a recognized period of training under the supervision of an experienced barrister, the Pupillage.<sup>32</sup>

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prevails over practice-oriented studies, and that there is not enough interdisciplinary cooperation’ (Wissenschaftsrat, Prospects of Legal Scholarship in Germany. Current Situation, Analyses, Recommendations, Hamburg 9 November 2012). See also A. VON BOGDANDY, ‘Le sfide della scienza giuridica nello spazio giuridico europeo,’ 2. Il diritto dell’Unione Europea 2012, p 22). Concerning the critics of the English system, the author, referring to the LETR report, recalled as main reasons for critique: ‘insufficient assurance of a consistent quality of outcomes and standards of assessment; limits on the acceptable forms of professional training; knowledge and skills gaps in respect of legal values and professional ethics, communication, management skills and equality and diversity awareness; limits on horizontal and vertical mobility; increasing cost barriers affecting access to academic, professional and workplace training, particularly for solicitors and barristers in non-commercial practice; and the existence of limitations on the capacity for coherent evidence-based policymaking’ (Legal Education and Training Review, The Future of Legal Services Education and Training Regulation in England and Wales, cit.).

<sup>31</sup> See S. CASSESE, ‘Legal Education under Fire’, cit., p 143.

<sup>32</sup> New training requirements for the Bar are expected to come into effect in early 2019 (subject to Legal Services Board approval); nevertheless, the three components of education and training (the academic component, the vocational component and the work-based learning component) will be maintained, even if delivered through one of four approved training pathways; for more information on the *Future Bar Training* (FBT), see <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-requirements/>; Bar Standards Board, ‘BSB

Nevertheless, the SRA has announced that from 2021, as part of a new approach to qualifying as a solicitor in England and Wales, it will abandon the qualifying law degree (QLD) and the Legal Practice Course (LPC), in favour of a centralized examinations system, the Solicitors Qualifying Exam (SQE).<sup>33</sup> In particular, the announced SQE reform will require would-be solicitors to undergo a centralized exam regulated by the SRA, consisting of two parts: the first one, testing legal knowledge through multiple-choice questions; the second one, consisting of skills assessments. The candidates will also have to undertake 24 months of practical training (qualifying work experience – QWE).

The radical changes announced by the SRA, which undermined the validity of the traditional three-stage model, are expected to have a profound effect on the entire English

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Policy Statement on Bar Training’ (2017) [www.barstandardsboard.org.uk/media/1825162/032317\\_fbt\\_-\\_policy\\_statement\\_version\\_for\\_publication.pdf](http://www.barstandardsboard.org.uk/media/1825162/032317_fbt_-_policy_statement_version_for_publication.pdf)

For more information concerning the Legal education System in England and Wales: A. BOON & J. WEBB, ‘Legal Education and Training in England and Wales: Back to the Future?’, cit., p 79; D. NITTI, ‘La professione forense in Inghilterra’, in A. BERLINGUER, *La professione forense. Modelli a Confronto* (Milano, 2008), p 97 ff.; C. GILLIGAN, *La formazione dell'avvocato in Inghilterra e Galles: qualità professionale, deontologia e mercato*, in G. ALPA and A. MARIANI MARINI (eds.), *La formazione dell'avvocato in Europa* (Pisa, 2009), p 113 ff; B. NASCIBENE, *La professione forense nell'unione europea* (Milano 2010), p 233 ff; R. M. STEIN, *The Path of Legal Education from Edward I to Langdell: a History of Insular Reaction*, cit., p 429; D. NITTI, ‘Come cambia la professione forense inglese: spunti per una comparazione’, in *Contratto e Impresa/Europa* 2006, p 280 ff.; R. CRESPI, ‘Le professioni legali in Inghilterra e Galles da Edoardo I al Court and Legal Service Act’, in *Le carte e la Storia*, 2005, p 126; P. PURPIDGE, ‘La formazione professionale in Inghilterra e nel Galles’, in *Rass. Forense* 1995, p 399.

<sup>33</sup> See SRA, *Statement of Solicitors Competence* (March 2015), <https://www.sra.org.uk/solicitors/competence-statement.page>; SRA, *Training for Tomorrow: Assessing Competence, Consultation Paper* (7 December 2015), <https://www.sra.org.uk/sra/consultations/t4t-assessing-competence.page>; SRA, *A New Route to Qualification: The Solicitors Qualifying Examination, Consultation Paper* (25 April 2017), <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>; SRA, *A New Route to Qualification: New Regulations, Consultation Paper* (15 November 2017), <https://www.sra.org.uk/sra/consultations/new-regulations.page>.

For comments on the SRA initiative, see R. FLETCHER, ‘Legal education and proposed regulation of the legal profession in England and Wales: a transformation or a tragedy?’, in 50. *The Law Teacher* 2016, p 371; E. HALL, ‘Notes on the SRA report of the consultation on the Solicitors Qualifying Exam: “Comment is free, but facts are sacred”’, in 51. *The Law Teacher* 2017, p 364; E. FRY & R. WAKEFORD, ‘Can we really have confidence in a centralised Solicitors Qualifying Exam? The example of the Qualified Lawyers Transfer Scheme’, in 51. *The Law Teacher* 2017, p 98; C. JAMES & J. KOO, ‘The EU law “core” module: surviving the perfect storm of Brexit and the SQE’, in 52. *The Law Teacher* 2018, p 68; J. GIBBONS, ‘Policy recontextualisation: the proposed introduction of a multiple-choice test for the entry-level assessment of the legal knowledge of prospective solicitors in England and Wales, and the potential effect on university-level legal education’, in 24 *International Journal of the Legal Profession* 2017, p 227; M. DAVIES, ‘Changes to the training of English and Welsh lawyers: implications for the future of university law schools’ in 52. *The Law Teacher* 2018, p 100.

model of legal education. Because a law degree will not be mandatory in order to sit the SQE, the only choice for the law schools will be between opting in or opting out of SQE preparation. They could, in other words, keep a distance from the interest of the legal profession and provide a more liberal and theoretical education; or – on the contrary – they might move further on, in the direction of professional and vocational courses, in order to reach the standards required to embrace the SQE.<sup>34</sup> Both choices have potentially significant and obvious consequences. The replacement pathway to qualify as a solicitor in England and Wales offered by the SRA, which totally underestimates the role of university and pushes towards a pure apprenticeship model, seems to remove the English system from the harmonized model of legal education described before.<sup>35</sup>

In continental Europe, the criticisms concerning the current educational system, as well as the innovations involving the professions in the recent years, are still generating some significant changes (even if the impact is not comparable with the English one).

Over the past century, despite the growing professionalization of the legal class and the increased importance of the bar association in the legal educational process, continental law

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<sup>34</sup> ‘With regard to the demise of QLDs and GDLs, for law schools which choose to continue to offer degree courses or similar which prepare students for the SQE, this will be the first time for most that they have faced an externally devised syllabus and externally set and marked assessments with regard to this aspect of their activity. For those institutions which choose to opt out and, perhaps, use the introduction of the SQE as an opportunity to move their law degrees away from their current professional accreditation focus, this will be the first time in decades that they have faced a significant market test to determine how many students will choose to study law without a professional accreditation attractor’: M. DAVIES, ‘Changes to the training of English and Welsh lawyers: implications for the future of university law schools’, cit., p (100) at 101.

<sup>35</sup> Even if the law degree maintains its validity with reference to the pathway to qualify as a barrister in England and Wales, it is well known that the percentage of graduates who become barristers is very low compared to the percentage of the students who qualify as solicitors. In 2017, the total barristers in practice were 16,435 (See Bar Standards Board, Practising barrister statistics, <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/>); while ‘at 31 July 2017, there were 139,624 solicitors with practising certificates (PC) and 181,968 individuals in total on the roll of solicitors’ (see The Law Society, *Annual Statistics Report 2017*, <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2017/>).

schools, reaffirming their own role, have continued to uphold as their exclusive aims the promotion and production of legal culture, maintaining in conformity with such objectives an essentially theoretic teaching methodology.<sup>36</sup> Nevertheless, a number of harsh criticisms levelled against academia consistently over the past 100 years are signs of a disconnect between the law school and the wider society. Is there a need for an education that insists on keeping theory and practice apart?

Such criticism is still echoed today in university classrooms and, although it does not appear sufficiently supported, in an 'atmosphere of dated paralysis'<sup>37</sup> that has perhaps always characterized academia and other institutions under pressure to change, it seems to dictate current (and increasingly noticeable) progressive trends. Recently, in fact there have been attempts directed at integrating practical components into the curricula, such as some law school initiatives targeted at introducing legal skills courses and legal clinics.<sup>38</sup> Whilst far

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<sup>36</sup> See M. CAPPELLETTI, J. H. MERRYMAN & J. M. PERILLO, *The Italian Legal System: An Introduction* (Stanford, 1967), p 89: the authors, referring to Italian academia, affirmed that law schools 'are not concerned with techniques of problem-solving, but with the inculcation of fundamental concepts and principles'.

<sup>37</sup> See L. CAIANI, *Problemi dell'Università italiana* (Milano, 1955), p 7.

<sup>38</sup> In relation to the recent development of Clinical Legal Education in Western Europe, defined as "the last holdout in the worldwide acceptance of clinical legal education" (R. WILSON, 'Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education – Part I/II', in 10. *German Law Journal* 2009, pp 823–846), see C. BARTOLI, 'Legal clinics in Europe: for a commitment of higher education in social justice', in 1. *Diritto e Questioni Pubbliche* 2016; Id., 'The Italian legal clinics movement: Data and prospects', in 2. *International Journal of Clinical Legal Education* 2015, p 22; D. BLAZQUEZ-MARTIN, 'The Bologna Process and the Future of Clinical Education in Europe: A View from Spain' in F.S. BLOCH (ed.), *The Global Clinical Movement. Educating Lawyers for Social Justice* (Oxford, 2011) 121; H. OLASOLO, 'Legal Clinics in Continental Western Europe: The Approach of the Utrecht Legal Clinic on Conflict, Human Rights, and International Justice', in 104. *American Society of International Law* 2010, p 98; Jan-Gero Alexander HANNEMANN & F. CZERNICKI, 'Eine rechtsvergleichende Analyse der "Clinical Legal Education" – studentische Rechtsberatung in Polen und Deutschland', in 2. *German Journal of Legal Education* 2015, p 27. With regards to the Brescia Legal Clinic, see C. AMATO, 'Developing strategies for academic and financial sustainability: the Brescia legal clinic's experience', in E. POILLOT (ed.), *L'enseignement clinic du droit: Expériences Croisées et perspective pratique* (Luxembourg: Larcier, 2014). In relation to the recent development of clinical legal education in Central and Eastern Europe, see, above all, M. BERBEC-ROSTAS, A. GUTNIKOV & B. MAMYSLOSWSKA-GABRYSIK, 'Clinical Legal Education in Central and Eastern Europe: Selected Case Studies' in F.S. Bloch (ed.), *The Global Clinical Movement. Educating Lawyers for Social Justice*, cit., p 53.

from the norm, such developments are on the increase across continental Europe. The creation of the clinic network ENCLE (European Network for Clinical Legal Education) evidences that.<sup>39</sup> One may speculate as to the driving forces, but almost certainly this includes the aim of developing a student's knowledge and practical skills, both of which are required of a professional.<sup>40</sup>

## **6. The role of clinical legal education in the present and future educational system**

In spite of cultural differences among different national models of legal education on the continent, the specific requirements imposed by the national law curricula and the different relationship between universities and the relevant professional bodies, a new harmonized trend is emerging in continental Europe: a common and renewed approach to legal education begs a rethink of the curriculum content, embracing knowledge, skills and values.<sup>41</sup>

In this latest process of reform, the mission of law schools and the mission of post-university training associations (bar associations, professional schools and in some instances universities), while maintaining their own specificities, tend to converge: they each provide

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<sup>39</sup> See: [www.encle.org](http://www.encle.org).

<sup>40</sup> The legal studies in several civil law jurisdictions have come under criticism thus their exclusive theoretical nature and the need for more practical elements in the curricula has been suggested; consequently, they have had similar legal studies' development, even maintaining their traditional and historical features; see, as an example, the Czech Republic experience: 'The Czech Republic, which can be perceived as a bridge between Western and Eastern Europe and shares many common features with countries from both parts of Europe. The legal education was traditionally very theoretical, with occasional discussions about the lack of practical elements. In the 1990s, there were several clinical projects taking place at different law schools, but none of them was particularly successful (...). I have the impression that the recent intensive development of legal clinics in the Czech Republic (and also in other European countries) derives from understanding that traditional legal education was inefficient and did not focus enough on skills and professional values': M. TOMOSZEK, 'The Growth of Legal Clinics in Europe – Faith and Hope, or Evidence and Hard Work?', in 21. *International Journal of Clinical Legal Education* 2014, p 99.

<sup>41</sup> 'Sapere, Saper fare e Saper essere: è questa la trilogia sulla quale si struttura il mestiere dell'avvocato': G. PASCUZZI, 'How to Become Lawyers and Able to Do So: Teaching the Ethics of the Legal Profession through Narrative', Research Paper no. 11, 2012, [http://eprints.biblio.unitn.it/4003/1/11.\\_Pascuzzi.pdf](http://eprints.biblio.unitn.it/4003/1/11._Pascuzzi.pdf).

knowledge, skills, competences, ability for a defined market; students are required to master theoretical legal concepts as well as to meet standards of technical competency, in order to understand law in its operational context and aspire to be future ethical and competent professionals.

Experiential learning, in general, and clinical legal education, in particular, may constitute valuable tools for tackling the challenges and meet the needs of the current and renewed educational context.

Firstly, clinical legal education is a pedagogical means that permits the application of theory to real or realistic (in case of simulation) cases in order to understand the law in practice: students gain the opportunity to discover the law in its operational context, to discuss the meaning of the rules, to question the needs of reform as well as to appreciate the role of the law in society.<sup>42</sup>

Moreover, the clinical method provides the understanding and acquisition of lawyering skills (such as fact-finding, clients interviewing, legal drafting, ADR methods and so on) as well as of the development of professional responsibility and wider ethical values. Students are required to work as legal professionals; in other words, they have to act with competence and ability in the interest of the client and become aware of the social relevance of their role, acting accordingly, assuming responsibility for their behaviour and facing the consequences of their actions.

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<sup>42</sup> C. AMATO, 'Experiential Learning from the Continental Viewpoint: If the Cap Fits...', in R. Grimes (ed.), *Rethinking Legal Education Under the Civil and Common Law: A Road Map for Constructive Change* (Routledge, 2017).

Furthermore, unlike what happens in real life, universities are a 'place where the learning can be guided, can be structured, can be taught rather than merely learned'.<sup>43</sup> Law schools represent a privileged context in which, under the competent supervision of academics and professionals, students can experience the power of reflective learning. Students are required to move between action and reflection, visit and revisit the experience, thinking about what has been done, deepening the reasons underpinning actions, wondering how else they could have acted, trying to act differently if needed and appreciate the new consequences. In this way, the reflection also serves as a serious practice of learning.

Secondly, clinical legal education constitutes a unique opportunity to build links with the practicing profession and empower the dialogue between law schools and professional bar associations. For instance, the University of Brescia's Law Clinic<sup>44</sup> (the clinic in which I have the privilege of working) has created over the years a strong collaboration with the local bar association and lawyers: the local bar association is permanently involved in the organization of the course and present in the academic committee; moreover, approximately ten local lawyers with significant professional experience are regularly involved in the program as students' supervisors as well as experts in specific fields (such as legal ethics and ADR).

Finally, through clinical legal education, academia draws closer to society: law schools, through a creative reinterpretation of their role, open their doors to vulnerable individuals

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<sup>43</sup> J. E. MOLITERNO, 'Experience and Legal Ethics Teaching', Faculty Publications. Paper 930, 2001, <http://scholarship.law.wm.edu/facpubs/930>.

<sup>44</sup> For more information concerning the Brescia model, see C. Amato, 'Developing Strategies for Academic and Financial Sustainability: The Brescia Legal Clinic's Experience', *cit.*, p 141 ff.

and excluded communities by providing legal services. Universities, through legal clinics, have the possibility to tackle unmet legal needs, helping the most vulnerable, who often have very limited access to legal services for financial, logistical or cultural reasons and who have more limited possibilities for enforcing or defending their rights. Therefore, clinical legal education represents a valuable tool to enhance access to justice and to foster social change. The law schools, taking advantage of the clinical model of education, gain the chance, through the pursuit of their primary educational mission, to advance social justice and, ultimately, to give the public more confidence in the solicitors' profession.



## **Pro Bono Legal Work: The disconnect between saying you'll do it and doing it**

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### **Abstract:**

Pro bono is a significant component of one of the many professional obligations a lawyer has to fulfil for the public good. It is evident that this is acknowledged by not only those who practice law, but those who are training to be a lawyer and by the professional bodies. Despite this acknowledgement there is a clear disconnect between the importance placed on delivering pro bono services and the actual delivery of the same. There have been previous suggestions that in order to increase the commitment to pro bono work, there is a need to mandate its delivery. However, the notion of mandatory pro bono work has always been dismissed and therefore it is now appropriate to consider other ways in which a commitment could be encouraged and adopted.

This paper will consider the reasons why the profession, at all stages, considers pro bono to be such an important social function and whether such motivations are sufficient to sustain a commitment throughout a lawyer's career. Such considerations

will be made from the perspective of a solicitor in England and Wales, as this is connected to the author's own pro bono experience. The paper will also consider why there is a disconnect, and what the rationale is for non-participation in pro bono work once in practice. It will consider the key barriers to full participation and recommend action that ought to be taken in order to develop a pro bono culture and therefore commitment.

**Key Words:**

Pro Bono

Solicitors

Professional Obligations

Public Service

**Introduction**

Pro bono is considered to be an important element of being a lawyer, it sets the profession apart from others and it is acknowledged that lawyers have a professional obligation to support and deliver pro bono services. It is understood that '... lawyers have reasonable moral duties to employ their specialised legal knowledge and skills to help people who need but lack access to the law'.<sup>1</sup> At a time where public funding

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<sup>1</sup> Reed Elizabeth Loder, 'Tending the Generous Heart: Mandatory Pro Bono and Moral Development' (2001) 14 GJLE 459, 463

is ever decreasing the importance that pro bono plays in providing access to justice is increasing. However, pro bono is not considered as a replacement to government funding and intervention, and rightly so. Currently pro bono work is delivered on a voluntary basis,<sup>2</sup> in an ad hoc manner and it is unclear the extent to which such services are being delivered. What is clear is that throughout the various stages of legal practice, from student to retirement, there is an understanding that lawyers should provide pro bono services.

Despite this understanding, there seems to be a disconnect between the assertion of pro bono work as an important contribution to society that lawyers ought to provide, and the reality of such provision. It is suggested that if we continue to have a purely aspirational approach to pro bono obligations, as is currently the case, there will be insufficient participation as a result.<sup>3</sup> Statistics demonstrate that commitment to pro bono work amongst the profession remains low.<sup>4</sup> This paper will explore the tension between this disconnect. It will consider the motivations of higher education in exposing students to pro bono work, and the impact that this may have on the student's future commitment to such work. It will also highlight the approach taken

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<sup>2</sup> It is considered as voluntary on the basis that there are no statutory requirements to undertake pro bono work, as there is in the US. However, it is noted that for some undergraduate law degrees students are required to undertake a clinical legal education module, which may incorporate pro bono work, and as such they are 'required' to undertake the same.

<sup>3</sup> Rima Sirota, 'Making CLE voluntary and Pro bono Mandatory: A Law Faculty Test Case' (2018) 78 L Law Rev 547-595, 567

<sup>4</sup> LawWorks, 'LawWorks Clinics Network Report April 2016 – March 2017' (Dec 2017) < <https://www.lawworks.org.uk/sites/default/files/LawWorks%20Clinics%20Report%202016-17.pdf> > date accessed 21 November 2018

by the professional bodies, namely the Law Society of England & Wales, suggesting that there is a significant push to encourage the profession to increase contributions. The paper will then consider the actual contribution by the profession, namely practising solicitors, and what barriers may exist that could prevent participation. Finally, it will provide recommendations of the steps that need to be taken in order to begin to address the disconnect. Such recommendations include widening the definition of pro bono so as to include the actual perceptions by the profession of what pro bono might entail; introduce a requirement of mandatory reporting of contributions to pro bono work by the profession; and to commence a cultural change in the view taken by the profession as a whole to pro bono work versus billable hours.

### **The Impact of Defining Pro Bono**

It is commonly understood that *pro bono publico* means for the public good and by extension it is viewed as ‘... the provision of free legal advice for the public good’.<sup>5</sup> The Joint Pro Bono Protocol for Legal Work (Joint Protocol) states that ‘pro bono work means legal advice or representation provided by lawyers in the public interest, including ... [to those] ... who cannot afford to pay and where alternative means of funding are not available’.<sup>6</sup> This definition has been endorsed by the Law Society of

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<sup>5</sup> Law Society of England & Wales, *The Pro Bono Charter* (2017) 1

<sup>6</sup> Law Society, *Pro Bono Manual A Practical Guide and Resource Kit for Solicitors* (Nov 2016) 8

England & Wales, the Bar Council of England and the Chartered Institute of Legal Executives.

This definition appears to have been adopted by some of the larger firms operating within England & Wales such as DLA Piper and Shoosmiths, who have incorporated the definition in the Joint Protocol within their own policies.<sup>7</sup> However, research undertaken in 1998 suggested that there were various other interpretations of what pro bono could entail. Although this research was undertaken twenty years ago, and before the Joint Protocol was introduced, it could be argued that some of these alternative definitions are still prevalent today. Such alternative definitions include:

- ‘... the provision of free first interviews ...’
- ‘... charitable work ... even though this could cover non-legal activity, including fundraising for a local charity ...’
- For legal aid lawyers, pro bono also includes ‘... finishing legal aid cases for free when funding had run out or providing representation outside the scheme.’<sup>8</sup>

In addition to having a variety of domestic definitions, there is also variation in definitions based upon jurisdiction. We are familiar with the mandatory requirements

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<sup>7</sup> DLA Piper, Pro Bono Guidance <[www.dlapiperwin.com/export/sites/win/downloads/WIN\\_Pro\\_Bono\\_Guidance.pdf](http://www.dlapiperwin.com/export/sites/win/downloads/WIN_Pro_Bono_Guidance.pdf)> date accessed 31 August 2018 and Shoosmiths, Pro Bono Policy Statement < [www.shoosmiths.co.uk/about-us/pro-bono-policy-statement-13361.aspx](http://www.shoosmiths.co.uk/about-us/pro-bono-policy-statement-13361.aspx) > date accessed 31 August 2018

<sup>8</sup> Lisa Webley, ‘Pro Bono and Young Solicitors: Views from the Front Line’ 3(2) LE 152-168, 154

of pro bono activity in the US, and so in the American Bar Association's Model Rule 6.1 pro bono is defined as '... the provision of a minimum of 50 hours of legal services to persons of limited means ... contributions to law reform as well as voluntary financial contributions to organisations which support disadvantaged members of society'.<sup>9</sup> Within this requirement it is stated that an activity will not be considered as pro bono if a student has gained academic credit. In this instance it would largely decimate contributions to pro bono by students in England & Wales where the opportunity to take part in pro bono activities are within a law school legal clinic, where pro bono is embedded into the curriculum and academic credit is awarded.

In light of the above, it is important to appreciate that despite the formalised definition in the Joint Protocol individuals will have their own interpretations. This has a significant impact upon the perception of the opportunities available to participate in pro bono activities once in practice. It may therefore be the case that a large proportion of the legal profession contribute their time to undertake pro bono work which is not formally recognised. Furthermore, the variations in definitions also make it difficult to compare between jurisdictions and so lessons learnt in a different jurisdiction is not directly applicable to any other. This is supported by Mcleay<sup>10</sup> who suggests that it is difficult to compare the volume of pro bono work around the world because of the

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<sup>9</sup> Alpheran Babacan and Hurriyet Babacan, 'Enhancing civic consciousness through student pro bono in legal education' (2017) 22(6) *THE* 672-689, 672-673

<sup>10</sup> Fiona Mcleay, 'The legal profession's beautiful myth: surveying the justifications for the lawyer's obligation to perform pro bono work' (2008) 15(3) *IJLP* 249-271, 251

variations in definitions and the lack of consistent reporting of such work. Nevertheless, this paper will draw on experiences in the US and Australia for illustrative purposes.

### **Professional Bodies Standpoint**

Tewksbury and Pedro state that ‘... what characterizes all pro bono legal work is a commitment and professional obligation to provide legal services for the betterment of society’.<sup>11</sup> This is supported by the Law Society of England Wales who within their Pro Bono Policy (the Policy) state that pro bono work is an ‘... exceptionally important contribution to society ...’<sup>12</sup> The provision of pro bono services is therefore considered to be a professional obligation, which is endorsed by the professional bodies in England and Wales. In particular, the Law Society have developed significant guidance to promote pro bono amongst the legal profession (namely solicitors). They have created The Pro Bono Charter (the Charter), they have contributed to the Pro Bono Joint Protocol on Legal Work and have implemented a Pro Bono Policy (the Policy). It is therefore clear that the professional bodies value and encourage individuals to undertake pro bono work.

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<sup>11</sup> Richard Tewksbury and Elizabeth Pedro, ‘Giving back and helping others: Pro bono legal work by young attorneys’ (2000) 12(4) CJS 409-422, 410

<sup>12</sup> Law Society of England and Wales, Pro Bono Policy (undated) < <https://www.lawsociety.org.uk/Support-services/Practice-management/Pro-bono/Pro-bono-policy/> > date accessed 14 November 2018

Within the Policy it states that the objectives of the Law Society<sup>13</sup> in encouraging pro bono activities include: to promote the social contribution made by the profession; to improve access to justice and to meet unmet legal needs; to support solicitors to undertake pro bono work; and to strengthen existing networks to enable a collective response to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.<sup>14</sup> Under the Charter the Law Society recognises that ‘... at all stages throughout their career, solicitors have the capacity to use their professional expertise to help those with legal needs and [they] will strive to encourage a commitment to pro bono throughout the solicitor profession’.<sup>15</sup> This commitment is reflected in the Joint Protocol, which highlights that ‘commitment to the delivery of pro bono work is encouraged throughout a lawyer’s professional life, as a student and in practice, through to and including retirement’.<sup>16</sup> For this to be supported it is suggested that pro bono champions are required through all stages of the profession so as to ensure appropriate role models exist for the promotion of pro bono work.<sup>17</sup>

Although the guidance makes it clear that pro bono is not a replacement to legal aid, it does focus significantly on the commitment to improve access to justice, and to meet unmet legal need. Abbey and Boon go as far as to suggest that ‘if government cannot

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<sup>13</sup> Law Society of England and Wales. Thereafter any reference to the Law Society is that of the Law Society of England and Wales.

<sup>14</sup> Pro Bono Policy (n12)

<sup>15</sup> The Pro Bono Charter (n5)

<sup>16</sup> Joint Pro Bono Protocol for Legal Work < <https://www.lawsociety.org.uk/Support-services/Practice-management/Pro-bono/The-pro-bono-protocol/> > date accessed 14 November 2018

<sup>17</sup> Loder (n1) 500



or will not guarantee [access to justice], a profession which controls access has a social responsibility which it should not seek to evade.<sup>18</sup> There is therefore a tension between the professional bodies' objectives to promote pro bono work, which by extension includes access to justice, and the views of the profession, who become resentful of having to fill the justice gap that ought to be addressed by the government. Certainly in the US it has been argued that the professional bodies' approach to the delivery of pro bono work is aspirational, and as such actual participation remains low.<sup>19</sup> That could apply to England & Wales, particularly when consideration is made to the actual hours contributed to pro bono by the profession.

### **The Attitude of the Profession**

Sossin suggests that 'if access to justice includes as one of its components access to lawyers, then it is appropriate to look to the legal profession for leadership in advancing access to justice in this sense'.<sup>20</sup> The profession does not appear to be in dispute with the premise that the provision of pro bono work is a professional obligation. This obligation is articulated by Hoffman, who confirms that 'Because access to legal services is important, and the position of lawyers is quite privileged, some conclude that the legal profession has an obligation to ensure that everyone has

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<sup>18</sup> Robert Abbey and Andy Boon, 'The provision of free legal services by solicitors: a review of the report of the Law Society's Pro Bono Working Party' (1995) 2 IJLP 261-280, 277

<sup>19</sup> Sirota (n3) 567

<sup>20</sup> Sossin referred to in Francesca Bartlett and Monica Taylor, 'Pro Bono Lawyering: personal motives and institutionalised practice' (2016) 19(2) LE 260-280, 267

access to the legal system'.<sup>21</sup> The commonality in the arguments put forward for the justification for delivering pro bono work therefore seems to be that in order to facilitate access to justice, lawyers should make themselves accessible whether this be charging for their services, or providing it free of charge. This perception is perhaps as a result of the historical viewpoint of what a lawyer is and their standing in the community. Lawyers were once seen as serving for the public good and given their monopoly in providing legal services they are best placed to provide assistance where required.<sup>22</sup> As a result of this privileged position, it is strongly felt amongst the profession that lawyers should not be allowed to escape this professional/ethical responsibility.<sup>23</sup>

However, it could be argued that the traditional concept of a lawyer is no longer applicable. It is questionable as to whether the practice of law is still considered as a profession, or whether it has transformed into a business. There has been an increase in the deregulation of lawyers, the Solicitors Regulation Authority (SRA) have shifted to an outcomes focused approach and the onus is very much on the individual to comply with their professional obligations. In addition, and more significantly, there has been an increase in the areas of law that is no longer considered to be a regulated activity, which requires supervision by the SRA. For example, there are licensed

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<sup>21</sup> Elizabeth Hoffman, 'Legal education and early career mentoring: mid-career attorneys' pro bono commitment' (2007) 14(1) *IJLP* 81-96, 83

<sup>22</sup> Mcleay (n10) 254

<sup>23</sup> Abbey & Boon (n18) 277

conveyancers; there has been an increase in will writing companies; and with the introduction of alternative business structures there are a number of companies that offer legal services (such as the Co-op). Further to this, there are an increasing number of in-house legal departments.<sup>24</sup> Mcleay also highlights that '... the heterogeneity of lawyers as a group and the shrinking of many of their associated monopolistic practices makes their pivotal role as the holders of keys to the justice system less secure ...'<sup>25</sup> To say that it is only the 'legal profession' that offer legal services is no longer the case, and therefore it raises the question of whether it should be the sole responsibility of the legal profession to provide access to justice in the way that has been identified above.

The notion of legal services being a business is also supported by academics and employers who emphasis commercial awareness as a key graduate attribute. Understanding how a law firm or barrister chambers work as a business is highly regarded by employers. This further contributes to the debate as to whether the profession should in fact be the sole provider of pro bono services. If operating purely as a business, it is clearly not a profitable activity to undertake work free of charge. When compared to other professions such as accountants, there are no equivalent obligations (although the argument regarding access to justice remains, for which there is perhaps no equivalent in many other professions). Some argue that 'the

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<sup>24</sup> Abbey & Boon (n18) 261-263

<sup>25</sup> Mcleay (n10) 263

responsibility of ensuring access to justice [should rest] with government and that the profession's acceptance of an ethical responsibility to do pro bono may weaken the state's obligation to make adequate provision'.<sup>26</sup> However, others view pro bono work as enabling the individual to reconnect with the professional elements of the role of being a lawyer as a profession, rather than as a business.<sup>27</sup>

Irrespective of whether it is the sole responsibility of lawyers to provide pro bono services, many still consider it to be an important element of being a lawyer. It is acknowledged that there are many benefits to undertaking pro bono work, not only to the individual receiving the assistance, and the local community, but to the lawyer providing that service. Indeed '... pro bono legal work is seen as a valued and valuable component of a career by the majority of young lawyers'.<sup>28</sup> Rhodes 'describes many positive personal impacts that pro bono participation may have on lawyers, including alleviating depression and reviving sagging professional morale'.<sup>29</sup> Davis also suggests that in addition to receiving emotional benefits from undertaking pro bono work, '... the experiences associated with doing pro bono work can re-shape their political attitudes'.<sup>30</sup> The more cynical view is that undertaking pro bono work is for self-promotion, particularly by firms who wish to demonstrate their compliance with

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<sup>26</sup> Abbey & Boon (n18) 265

<sup>27</sup> Mcleay (n10) 254

<sup>28</sup> Tewksbury & Pedro (n11) 417

<sup>29</sup> Rhodes referred to in Martha Davis, 'Access and Justice: The Transformative Potential of Pro Bono Work' (2004) 73 *F Law Review* 903, 907

<sup>30</sup> Davis (n47) 908

social responsibility. In particular criticisms suggest that firms undertake pro bono work in order to improve their image, to help retain high quality staff, and to recruit high achievers.<sup>31</sup> Indeed it has been reported that firms use pro bono to market themselves to graduates, perhaps on the basis that they believe that graduates value the delivery of pro bono work. However, within the job description and attributes, a commitment to pro bono is not a criteria, inferring that employers are not concerned as to whether or not a candidate is in fact committed to pro bono work.<sup>32</sup>

Many law firms do, however, see the benefit of their staff undertaking pro bono activities. In Australia, it has been suggested that the increase in the number of much larger firms has shifted the obligation from the individual to the firm.<sup>33</sup> This shift in responsibility can be seen in England & Wales, where the top 10 firms<sup>34</sup> have dedicated pro bono initiatives and have integrated pro bono work within their day-to-day activities. However, it is also the case that although participation in pro bono work may be increasing and becoming more widespread, the actual time spent delivering pro bono work is relatively low.<sup>35</sup> McKeown argues that ‘... at a time when demand, or at least a need, for pro bono legal services is increasing, the percentage of solicitors

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<sup>31</sup> Mcleay (n10) 251

<sup>32</sup> Linden Thomas, ‘It Puts the Law They’ve Learnt in Theory into Practice: Exploring Employer Understandings of Clinical Legal Education’ in L Thomas, S Vaughan, B Malkani and T Lynch (eds), *Reimagining Clinical Legal Education* (Hart 2018) 138

<sup>33</sup> Mcleay (n10) 250

<sup>34</sup> According to The Lawyer UK 200 2017 and based on annual turnover < <https://www.prospects.ac.uk/jobs-and-work-experience/job-sectors/law-sector/top-uk-law-firms> > date accessed 21 November 2018

<sup>35</sup> Mcleay (n10) 251

providing such services is decreasing'.<sup>36</sup> There are some stark statistics that reveal the actual, reported, contribution to pro bono work by the profession. Webley identified that 'Twenty-seven percent ... of the pro bono active profession carried out less than 2 hours' *pro bono* work a month ...'.<sup>37</sup> In their 2016-2017 report LawWorks confirmed that 'Last year 6,000 individuals volunteered across the LawWorks Clinics Network, a 24% increase on the previous year'.<sup>38</sup> This may be so, but given that there are currently 146,625 practising solicitors in England & Wales,<sup>39</sup> that only represents approximately 5% of the population of practising solicitors. It should perhaps be noted that these statistics are reflective of activities that are reported, and based on an earlier discussion, not all pro bono work is therefore being reported. Nevertheless, it does demonstrate a disconnect between the importance of pro bono work advocated by the profession, and the commitment given to pro bono work.

If students value undertaking pro bono work within their undergraduate degree (discussed below); if the professional bodies encourage individuals to participate throughout their legal career; and if employers say they believe it to be a professional obligation why is there a lack of commitment from qualified solicitors? Reasons cited for not undertaking pro bono work whilst in practice include: lack of

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<sup>36</sup> Paul McKeown, 'Pro Bono: What's in it for law students? The students' perspective' (2017 24(2) IJCLE 43-80, 47

<sup>37</sup> Webley (n8) 159

<sup>38</sup> LawWorks (n4)

<sup>39</sup> Solicitors Regulation Authority < [https://www.sra.org.uk/sra/how-we-work/reports/data/population\\_solicitors.page](https://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page) > date accessed 21 November 2018

experience/knowledge in the law, lack of time, limitations imposed by regulation, and not being aware of the opportunities available.<sup>40</sup> It is the case that regulations may restrict, even prevent, participation. In particular the Joint Protocol states the following:

2.5 The pro bono legal work should only be undertaken by a lawyer who is adequately trained, has appropriate knowledge, skills and experience and, where necessary, is adequately supervised for the work in question.

2.6 ... minimum level of legal expertise and experience as would be required if that particular work in question was paid for.

2.9 Pro bono legal work must not be undertaken without appropriate insurance.

Whilst it is clear that these measures are required to protect the client/consumer, it is also understandable that they can form a barrier to participation by lawyers who lack support from their firm to undertake such work. Those in this position often dedicate their personal time and funds to providing pro bono services, and are aware that such dedication will not be rewarded by their employer.<sup>41</sup> Therefore, to dedicate additional

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<sup>40</sup> These appear to be the overriding reasons for lack of participation, which have been identified in numerous studies including McKeown (n16) 45 and Tewksbury & Pedro (n29) 417

<sup>41</sup> Webley (n8) 277-278

hours outside of the standard contractual obligations requires a significant commitment. Therefore, the lack of participation in pro bono work can be attributed to the prioritisation afforded by the employer to such work.<sup>42</sup> This is highlighted by Bartlett & Taylor who identified that although 'Our junior respondents were ... inculcated with the spirit of pro bono, they knew they must carefully manage their hours with an eye to the corporate imperatives of their employers'.<sup>43</sup>

There seems to be a general sense that pro bono work is not valued as the equivalent to billable hours, and although the profession considers pro bono work to be important, yet again it does not appear to reflect the reality. It is suggested that in order to increase a commitment to pro bono work by practising solicitors, firms need to be willing to '... view *pro bono* as a partnership between themselves and their staff, if they allow them time, provide them with supervisory support and offer sufficient recognition for their efforts'.<sup>44</sup> This viewpoint is reflected in a response within the study undertaken by Bartlett & Taylor, where a respondent commented as follows:

I think the bottom line is, it has to be work which has a value, that people aren't being punished for doing, and by that I mean if you're in a firm and the structure in the way in which lawyers are assessed is they write down things

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<sup>42</sup> Tewksbury & Pedro (n11) 147

<sup>43</sup> Bartlett & Taylor (n20) 276

<sup>44</sup> Webley (n8) 168



on a time sheet, pro bono has to be part of that, it's got to be treated as real work ... it's got to be actually seen as being part of someone's day to day practice as opposed to some special added extra that you're meant to do when all the other work is finished.<sup>45</sup>

This would potentially be difficult for small-medium sized firms whose profit margin is prioritised. As identified earlier, the current top 10 firms in England & Wales are already integrating pro bono within the day to day activities of their solicitors. However, the opportunity or ability to undertake pro bono work is dependent on the ethos and commitment of the firm itself. Where there is a '... non-existent programme or the [lack of a] time recording system [it] meant pro bono work was hard to undertake and was not encouraged by the employer'.<sup>46</sup> Furthermore, Webley argues that 'High street practitioners were more likely to receive a strong signal from their firm, either being encouraged to carry out *pro bono* legal services ... or discouraged from doing so ...'.<sup>47</sup> Despite the barriers placed on practitioners there is a sense that given the opportunity to do so solicitors do want to take part in pro bono work.<sup>48</sup> There is therefore scope to increase and develop commitment to pro bono work that is reflective of the importance placed on undertaking the same.

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<sup>45</sup> Bartlett & Taylor (n20) 274

<sup>46</sup> Bartlett & Taylor (n20) 277

<sup>47</sup> Webley (n8) 157

<sup>48</sup> Tewksbury & Pedro (n11) 419

## **Legal Education and Pro Bono**

If there is scope to develop a pro bono commitment, this may well need to start at the beginning of an individual's legal career. It is therefore prudent to ascertain whether such a commitment could be taught, or inculcated within an undergraduate law degree.

### Contribution by Law Schools

Higher Education institutions often place great emphasis on the provision of clinical legal education (CLE) within which pro bono is featured. There is an argument suggesting that there is a distinction between CLE and pro bono work, whereby the former is embedded into the curriculum and focuses on the development of skills and the teaching of professional obligations.<sup>49</sup> Although the intricacies of defining CLE and pro bono is beyond the scope of this paper, it is acknowledged that differences in definitions generally exist. Nevertheless, there are some overlaps between CLE and pro bono activities offered in law schools, and so this paper will consider, in the more general sense, students providing a legal service free of charge to the general public.

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<sup>49</sup> Babacan (n9) 676

Grimes and Musgrove suggest that pro bono enables students to ‘... develop their commitment to, and understanding of, professional values, which should in turn lead to their active involvement in pro bono work later in their professional lives’.<sup>50</sup> Participation in such activities is multi-faceted. Not only does it provide students with an opportunity to enhance their employability skills but also enables them to contribute to access to justice through the provision of legal services. It is the first stage to legal training and therefore it also introduces professional practice to students, allowing them to ‘try before they buy’. Dignan and others identify the increase in the number of law schools offering students pro bono and clinical work within the undergraduate law degree, confirming that in 2014 ‘over 70% of UK-based law schools have clinics’.<sup>51</sup> There is therefore great potential for the desired outcome, referred to above, to be realised. There is plenty of opportunity for law students to be exposed to the harsh realities of life and to appreciate the struggles experienced by others when trying to access the law. As such, there are numerous opportunities for students to develop altruism, which they can continue to develop in their professional careers, and which motivates them to continue to participate in pro bono work.

However, this idealistic impact of pro bono work upon an undergraduate student is perhaps unrealistic. Not only are law schools motivated to provide these

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<sup>50</sup> Grimes and Musgrove quoted in Babacan (n9) 673

<sup>51</sup> Frank Dignan, Richard Grimes and Rebecca Parker, ‘Pro Bono and Clinical Work in Law Schools: Summary and Analysis’ (2017) 4(1) AJLE 1–16, 1

opportunities for reasons of access to justice, but also for reasons of ‘... the consumerization of legal education, the employability (or otherwise) of graduates entering a competitive job market and, possibly, an increasing recognition that effective learning requires an active engagement by students in the educational process’.<sup>52</sup> These factors impact upon the provision of pro bono work, which could either be voluntary or compulsory (as an academic credit bearing module); it could be ad hoc depending on the demands of the local community, or sustained as part of a student legal clinic; and it could be focused on social justice or simply exposing students to legal work experience. The conclusions drawn by Babacan and Babacan in 2017 was that ‘... unstructured experiences in student pro bono is not likely to result in the social transformation necessary to instil a commitment to providing access to justice and service to disadvantaged groups following graduation’.<sup>53</sup> McKeown further argues that having pro bono in a legal clinic as an assessed component of a degree leads to extrinsic motivation and as such it will not lead to an inherent desire to continue to undertake pro bono work once the ‘reward’ of the grade has been given.<sup>54</sup> The ideal also relies on academics, who are potentially seen as mentors, actively encouraging students to build a pro bono ethic. For this to occur there are several assumptions that have to be made, including; that the academic is/was a practitioner, that they actively take part in pro bono activities themselves and that

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<sup>52</sup> Dignan (n51) 1

<sup>53</sup> Babacan (n9) 673

<sup>54</sup> McKeown (n36) 51

whilst in practice they had a positive experience of pro bono work. If this is present, students could potentially mirror this behaviour and develop a pro bono ethic to take forward to their professional lives. Hoffman suggests that 'Having a group of teachers and/or mentors who confirm the importance of pro bono might be critical in attorney's continued commitment to pro bono work'.<sup>55</sup> Therefore, although law schools appreciate the importance of pro bono work, beyond graduation, there are no incentives for a law school to ensure that a student continues to undertake pro bono work.

### Student Motivations

There have been several studies that consider student motivations in undertaking pro bono work.<sup>56</sup> In a study conducted by Rhodes, and cited by McKeown, 'Only 31% of the respondents indicated a desire to promote social justice ...'<sup>57</sup> as being a reason for undertaking the same. In McKeown's study, it was reported that 'respondents ... valued the skills development and enhanced employment prospects rather than the altruistic benefits of carrying out such work'.<sup>58</sup> This therefore suggests that students are motivated by personal gain, and view their pro bono experiences at undergraduate level as a form of work experience. Given the current job market, it is understandable

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<sup>55</sup> Hoffman (n21) 85

<sup>56</sup> An example of which is Paul McKeown, 'Law student attitudes towards pro bono and voluntary work: The experience at Northumbria University' (2015) 22(1) IJCLE 22

<sup>57</sup> McKeown (n36) 11

<sup>58</sup> McKeown (n36) 22

that students want to ensure that they provide themselves the best opportunity to gain employment once they have graduated. This, in part, is ensuring that they have the requisite skills to be 'job ready', something which employers have expressed concerns about. Hoffman argues that although law schools encourage students to appreciate pro bono work '... law students hear not only the words within the classroom, but also the external pressures of the job market, their student debt, and the stress of billable hour minimums'.<sup>59</sup> This is understandable, however, it does little to contribute to a commitment to pro bono work.

In essence, a student may undertake pro bono work for practical reasons, whereby they wish to develop their skills and enhance employability. Alternatively, they can be motivated by tactical reasons, where they see the benefit of promoting the image of lawyers and the institution that they attend; or for ethical reasons where they feel that it is the profession's moral obligation to provide such services.<sup>60</sup> The latter is somewhat reflective of the profession's attitude towards pro bono work, as previously discussed. Despite these differing motivating factors, it is also the case that students do appreciate the importance of pro bono work within the profession and the need to provide a public service.<sup>61</sup> Yet again, the importance of pro bono is emphasised, but research (as highlighted) suggests that the number of individuals that are committed

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<sup>59</sup> Hoffman (n21) 84

<sup>60</sup> McKeown (n36) 49

<sup>61</sup> McKeown (n36) 58-60

to pro bono on a long-term basis is low. It is perhaps limited to those that had entered Higher Education with a desire to undertake such work, or to those who '... originally become exposed to pro bono work because it is mandated, or they wish to achieve a good grade, [where pro bono is embedded within the curriculum, who] ... may then experience the intrinsic value of the work itself thus shifting their own values',<sup>62</sup> which supports continuation of pro bono work once qualified. In a study conducted by Bartlett and Taylor,<sup>63</sup> a respondent suggested that their motivation to undertake pro bono work once in practice stemmed from the fact that rather than having to pay tuition fees, they had received a grant. On this basis, they felt that as society had paid for their education, it was appropriate for them to give back to society by providing pro bono services. Presumably, the introduction of tuition fees will have had an impact on students perception of what they feel they owe society, or what society owes to them.

Student attitudes to pro bono work can be demonstrated from the reflections of students in the Birmingham Law School Pro Bono Group (the Group).<sup>64</sup> Following activities undertaken in the 2017 National Pro Bono Week four students reflected on their involvement within the Group and the activities they had been involved in. They commented upon the practical legal experience that pro bono work provides to

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<sup>62</sup> McKeown (n36) 53

<sup>63</sup> Bartlett & Taylor (n20) 270-271

<sup>64</sup> Gurpreet Ballagun, Emerald Hutton, Jasmine Lalli and Catherine Ruta , Reflections on participation in the Birmingham Law School Pro Bono Group (2017) < <http://epapers.bham.ac.uk/3068/> > date accessed 14 November 2018

students. They also identified that pro bono work enables them to network with the profession, presumably for future employability purposes, and that they could learn and develop their skillset further. However, they also recognised that their involvement in the Group contributed positively to the local community who had nowhere else to access such assistance. Although they were able to identify the positive impact of pro bono work, whether their involvement in the Group instilled a long-term commitment to pro bono work is open to question. Nevertheless, students who undertake pro bono work as part of their undergraduate law degree often comment upon their experiences positively, and those students tend to express '... a stronger opinion that students should undertake pro bono work as a mandatory part of their programme of study ...'<sup>65</sup> Mandating pro bono work at undergraduate level may not have the desired effect of instilling a long term commitment to pro bono. Loder<sup>66</sup> suggests that students who have a predisposition to pro bono work will not be adversely affected if they are required to do pro bono work on a mandatory basis. However, where a student did not have this pre-existing desire to do pro bono work, they are more likely to feel resentment towards such work, which can have a negative effect on building a pro bono culture and/or long-term commitment.

Thus, at the legal education stage emphasis is placed on the importance of pro bono work as a means to develop a student's understanding of the law and professional

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<sup>65</sup> McKeown (n56) 29

<sup>66</sup> Loder (n1) 475-476



practice. The positive by-product of this is the contribution made to access to justice to the local community upon which the law school serves. It is not in dispute that law schools and law students value the importance of pro bono work, identifying it as a professional obligation. However, as has been demonstrated above, beyond graduation there is a lack of a consistent and systematic approach to actively encourage students to commit to pro bono work on a long-term basis.

### **Recommendations for Developing a Pro Bono Commitment**

As has been identified the significance of undertaking pro bono work is understood throughout a lawyer's career, as a student through to retirement and is both supported and encouraged by the professional bodies. The reality is that there are lawyers who dedicate a considerable amount of time and effort to delivering pro bono services, whether this be for personal, professional or ethical reasons. Such efforts should be commended as an '... exceptionally important contribution to society'.<sup>67</sup>

The de-regulation of the profession has brought into question where the responsibility for providing pro bono services should lie. In particular, the question is whether it should be the sole responsibility of lawyers. Irrespective of this, it is acknowledged that those who do provide legal services are in a privileged position, as specialist

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<sup>67</sup> Pro Bono Policy (n12)

training enables them to negotiate complex legal rules which the general populace would be unable to successfully do without assistance. In light of this, it is perhaps fair to suggest that if lawyers hold the key, they should be prepared to use it to let others through the door.

The concern therefore is not whether the profession considers pro bono an important social function, but the level of commitment and dedication shown by the majority of practising solicitors. Looking to the LawWorks statistics from their 2016-2017 report, less than 5% of solicitors with a practising certificate were noted as having volunteered in that year, whilst in that same year the number of enquiries to clinics within the network were 58,511. This would seem to be disproportionate<sup>68</sup> and not reflective of the significance placed on the role of pro bono in society. It is perhaps also not reflective of people's desire to undertake pro bono work but for the perceived lack of opportunities available.

It is argued that there is an abundance of opportunities, but this is highly dependent on the definition of pro bono that is being used. The first recommendation would therefore be to re-define pro bono, or at least widen the scope. The definition in the section above highlights that it is essentially the provision of free legal advice or representation for which the lawyer is not receiving payment in exchange. Some of

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<sup>68</sup> LawWorks (n4)

the alternative definitions identified would clearly fall within this definition, the provision of a free first interview with a client is the provision of legal advice, for which the lawyer receives no payment for. It is appreciated that the intention is for the client to subsequently instruct the lawyer, however, this is not guaranteed and the time spent discussing the matter and providing limited advice still falls within the definition of pro bono (albeit might not be directed at someone who cannot afford to pay). In addition, representing a client outside the scope of a legal aid certificate, is still the provision of legal representation for which no payment is made for the services, and again, clearly also falls within the definition. The research undertaken to obtain these alternative definitions was conducted some twenty years ago, and it is perhaps important to ascertain what the profession currently considers to be the provision of free legal advice and representation. A dialogue needs to be opened with the profession so that the definition can be widened, and the opportunities made clear to those who perhaps already undertake pro bono work.

Once an expanded definition has been established it would be appropriate to formally record the activities undertaken, which demographic undertake such activities and the number of hours delivered. It would then be possible to draw conclusions on the balance between what is said, and what is done. A clear picture could then be formed as to whether the profession are delivering the services that they profess to be of such importance and significance in society. Previous studies have attempted to record these issues so that such conclusions can be drawn. However, given that there are

currently 146,625 practising solicitors a larger scale study would be in order. The second recommendation would therefore be that there should be mandatory reporting of pro bono activities. Even if the return is nil, it reminds the individual of their professional obligations and the professional bodies desire to encourage and promote pro bono activities. The practicalities of mandatory reporting would require some thought. At the time of renewing a practising certificate, the solicitor needs to confirm that they have completed their reflection of practice and undertaken all relevant activities to ensure they remain abreast of current practices. Therefore, it is possible that at that time of renewal a tick box exercise could be completed for the type of pro bono activity that the solicitor has been involved with, with a corresponding number of hours recorded, even if this is nil. The results can then be published by the SRA alongside their regulation population statistics.

Although lack of opportunities is cited as a reason for not undertaking pro bono work, of significant impact on the individual's commitment is the attitude to pro bono work by their employer. Employers need to send a clear message that pro bono is morally and professionally valued and that firms will not only support but also encourage their solicitors to participate.<sup>69</sup> The third and final recommendation, which is aspirational, is that there needs to be a cultural change within the profession of how pro bono is viewed by the majority. There is a need for firms (not just individuals) to

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<sup>69</sup> Hoffman (n21) 93

show a commitment to pro bono work, which they regard as an important part of being a lawyer. This would therefore require pro bono hours to be considered as worthy as billable hours, with their own targets and contributing to career progression. Firms need to demonstrate their willingness to make a positive contribution to society and act as role models for their employees to emulate. In the current economic climate, where profit margins and sustainability are key concerns for firms (particularly the smaller firms) it may be difficult to effect such a cultural change. Therefore, having gone full circle, we need to look to students to carry the flag for pro bono work. Although students cannot be taught altruism, undertaking pro bono work within an undergraduate degree can have an impact upon them, particularly where they are taught and supervised by pro bono champions. Momentum is needed throughout the lawyer's career for such a commitment to be sustainable.

## **Reflective Practice: Connecting Assessment and Socio-Legal Research in Clinical Legal Education**

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### **Introduction**

Reflective practice represents a core feature of Clinical Legal Education (CLE) and has been one of CLE's most important and innovative contributions to legal education. The importance of reflective practice tools in teaching and assessing student learning is well known among clinical legal educators. Nevertheless, this field has not fully explored the ways in which reflective practice allows students to investigate legal proceedings and other aspects of law and legal processes. Without this research-oriented focus on reflection, clinical legal education risks being reduced solely to skills acquisition, and therefore failing to realize its potential as a vehicle for meaningful and positive social change. Focusing on investigating these broader social and institutional dimensions of reflective practice can greatly enrich the ability of legal clinics simultaneously to provide a laboratory for learning law in action, a fertile ground for research, and an instrument for the promotion of rights. Yet another dimension of this exploration is the opportunity for clinical law teachers to

evaluate our teaching effectiveness and gain insights into ourselves and our immediate and long-term professional goals.

This paper shares some initial attempts to investigate the socio-legal dimensions of reflective practice in a sampling of clinical programs across several jurisdictions in Europe and elsewhere. These preliminary findings were presented at the most recent ENCLE Conference, which took place in Turin, Italy in September of 2018. For some time now, our ‘transnational team’ --comprised of clinical teachers from US, France, Spain and Italy<sup>1</sup> --has been exploring<sup>2</sup> our common interest in researching the multiple roles reflective writing can play as a tool for assessing student learning and as an instrument for socio-legal research. During the session, the team members who were present shared and discussed some possible uses of reflective writing of various sorts, identifying their impact on learning, teaching, and research. This line of inquiry can potentially assist the clinical legal education community to reflect about the reasons for choosing particular tools for reflective practice in our clinical programs. Discussion and feedback from participants contributed important input to deepen our exploration and will assist us in developing further theoretical understandings in the future.

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<sup>1</sup> This work is the outcome of the sharing among professor from different countries: Susan L. Brooks (Drexel University Kline School of Law, US), Josè Antonio Garcia (Universitat the Valencia, ES), Cecilia Blengino (Università di Torino, IT), Silvia Mondino (Università di Torino, IT) and Marie Deramat (Université de Bordeaux, FR). We presented the session Reflective Practice: Connecting Assessment and Socio-Legal Research in Clinical Legal Education at the 6Th ENCLE Conference “Clinical Legal Education: Innovating Legal Education In Europe” held in Turin (Italy), 20-21th September 2018. The paper is the result of shared reflections inside our team. Only in organizing writing, Cecilia Blengino wrote the Introduction and par.1; Susan L. Brooks wrote par. 2.1; Cecilia Blengino and Silvia Mondino wrote par. 2.2; Marie Deramat wrote par. 2.3; Silvia Mondino wrote par. 3; Susan L. Brooks and Cecilia Blengino wrote par. 4. Conclusions are written by Susan L. Brooks.

<sup>2</sup> This collaboration originated through exchanges during various international clinical legal education-related meetings and workshops over the past several years, such as the ones organized by ENCLE and GAJE.

## **1. Reflective practice and the epistemology of practice**

Reflective practice can be defined as method that helps individuals and groups think intentionally and systematically about their experiences and actions in order to engage in a process of continuous learning. Clinical legal educators view reflective practice “*as fundamental to effective lawyering and the professional identity formation of lawyers, including the pursuit of core values, social justice, and personal growth*” (Balsam *et al.* 2017-18, p.46). Reflective practice undoubtedly is more established and well-accepted in U.S. clinical legal education than in European legal clinics. In the European context, clinicians need to continue their efforts to expand awareness as well as deepen their understanding and further develop the meanings of reflective practice. While our group reflects a range of different contexts and also levels of experience in clinical legal education, most importantly, we share a common socio-legal framework. That theoretical perspective has led us to highlight the crucial role played by reflective practice tools and methods, which can help improve how we and our colleagues teach critical thinking and can support our efforts to overcome a legal positivistic approach to the law.

The role of reflective practice is often connected to the assessment of student learning processes by their teachers. This focus undoubtedly promotes the objectives of improving both teachers’ evaluations of students and students’ self-evaluations. Further, given that learning is a “*the process whereby knowledge is created through the transformation of experience*”



(Kolb, 1984, p. 38), it is easy to understand how reflective practice can also dramatically amplify the capability of CLE to provide an alternative to the somewhat dogmatic and artificial attitude toward legal education that unfortunately still prevails in many law faculties, especially in Continental Europe. Operating in a real-world context, clinical legal education allows teachers and students to understand and to experience the great extent to which the exercise of rights is linked to praxis in the daily interpretation of the law, as well as cultural, economic, and social variables.

With respect to learning, reflective writing allows students to understand the gap between law in the books and law in action. It also provides a meaningful opportunity for students to evaluate themselves *ex post*. With respect to teaching, journals and other reflective writing represent a tool to assess our teaching methods and our ability to achieve our teaching goals. With respect to research, reflective journals and other reflective writing represent a kind of analytical auto-ethnography that permit faculty to discover new roads of research using a grounded theory approach. In this way students can become part of the research enterprise.

Far from being solely a way of introducing practical concerns into legal studies, clinical legal education represents a real-time laboratory for active learning. The integration of clinical training into students' legal education enables them to take an active role in their learning through a process of **reflection on the process itself** (Garcia Anon, 2014, p. 158). In this sense, we can approach the clinical experience as a socio-legal epistemology of law in action, where we recognize the distinctness of theory and practice while conceiving law as a *phenomenon*

*which is revealed through practice* (Perelman, 2014, p. 133 ff.; Brooks & Madden, 2011-12). As stated by Kruse, clinicians *“are naturally situated to answer the call for embedded research, which fits closely with [the] social justice goals and reflective practice methods...”* (Kruse, 2011-12, p. 298). In fact, situating students *“in the heart of law in action”* places them in circumstances in which they *“daily encounter the gaps between what the law says, what it aspires to be, and what legal officials actually do, and are therefore poised to engage questions about the role of law in society.”* (Kruse, 2011-2012, p. 317-318).

In the field of legal studies, reflective practice thus represents a powerful *“antidote to the technical/positivist nature of legal education”* (Evans *et al.*, 2017, p. 162), because of its capability to respond both to the need to improve students’ critical thinking and to orient our work toward the application of social research methods. A number of scholars have offered different articulations of this approach, including considering critical reflection itself as a research method (Fook, 2011), emphasizing that reflective practice introduces action research into the study of law (Lewin 1946, Leicht and Day, 2000) and noting that reflective practice offers the chance for a study of law based on grounded theory (Glaser and Strauss, 1967; Charmaz and Briant, 2007).

Reflective practice enhances our awareness of learning as a socially situated iterative process. As pointed out by Donald Schön, *“[e]veryday problems... are not simply pre-defined, but are constructed through our engagement with the ‘intermediate zone of practice,’ which, typically, is characterized by uncertainty, uniqueness, and value conflict.”* (Schön, 1983, p. 6). Moreover,

reflective practice is a collective process that involves both students and teachers who become inquirers into their own practices (Leicht and Day, 2000, p. 183) and therefore have the opportunity to interrogate the legal issues they face from a socio-legal perspective. Through the use of reflective practice tools, such as reflective diaries and reports, teachers can identify and assess what their students have learned, and also can use their students' reflections to guide their planning toward future teaching efforts. Students also benefit directly from this process because reflective practice enriches their attitude towards deep learning

To underline the relevance of using the tools offered by reflective practice in understanding law, we note the distinction between reflection *in* action and reflection *on* action theorized by Donald Schön. Reflection *in* action is a process that occurs simultaneously with the legal practitioner's actual conduct, while reflection *on* action is a process that occurs after the conduct has taken place. As Schon articulated through his epistemology of practice, the professional nucleus of the reflective practitioner is formed by these two distinct processes: reflection *in* action and reflection *on* action (1983, p. 49).

Reflection in action takes place through quick processing and its accompanying actions. Given that reflection-in-action requires a high level of self-awareness and ingrained habits of reflection, we believe the clinical experience offers meaningful opportunities to improve students' capability to begin to develop this skill set by making decisions and resolving issues in real time. Creating the conditions to support students in cultivating this form of

reflective practice is all the more critical because reflection *in* action by definition remains largely unconscious. Reflective practice helps to support reflection *in* action through reflection *on* action, that is, a systematic and documented reflection after events have taken place, involving reviewing conduct with the aim to identify strengths and challenges, and consequently to develop different options for future conduct...Reflection *on* action enables recognition of the paradigms that shape our thinking and action, made up of all of our implicit assumptions, frameworks, and patterns of thought and behavior. Reflective practice facilitates the deconstruction of these component assumptions, allowing students – as reflective practitioners - to assess critically their own conduct, analyze, and inform their future practices, and ultimately, to contribute positively to their developing professional identities.

## **2. How do we use reflective practice in our legal clinics?**

### *2.1. Experience and aims at Drexel University*

We teach reflective practice in our clinical program in two distinct ways. First, each of the clinical faculty members teaches reflective practice with their own groups of (usually eight) students as a part of their day-to-day supervision of the students and also within a small group seminar format. The teaching of reflective practice at this level would resemble many law school based legal clinics across the U.S. and in many parts of the world.

A second, perhaps more unusual and distinctive forum for teaching reflective practice is what we call the Justice Lawyering Seminar (JLS), which is a course in which all of our clinic students are enrolled together. Unlike the individual clinic seminars, in which a portion of the classroom time would likely be devoted to didactic teaching of the substantive law and practice skills related to the clinic's subject matter, JLS is devoted entirely to the goal of teaching reflective practice.

The topics typically covered in JLS include: considering questions such as 'who is the client?' and 'what is our role,' engaging clients effectively, navigating cultural difference, discussing making mistakes and other ethical concerns, exploring work/life balance and wellbeing, identifying different models of lawyering, and defining access to justice. Usually also there is also some form of "case rounds," with the important caveat that students can only discuss clients and cases without identifying or private information being shared, as they are not part of the same law firm.

The main reflective writing in the course consists of two graded "reflective analysis" essays, as we now refer to them. We have been using the term reflective analysis for several years (adopted from non-law school colleagues on campus), to emphasize the critical reflection component of these papers and the idea that this is serious work and is part of building a skill set that is as essential to effective lawyering as understanding legal doctrine, reasoning, and analysis. The detailed description of the reflective analysis assignments and assessment rubric is attached as Appendix I.

The first of the two papers is modeled after a well-known type of assignment given to medical students called a “critical incident report.” Students are asked to identify a particular situation or relationship that they have experienced as deeply challenging and disorienting, and to use it as the basis for their reflective analysis. The assignment contains a series of prompts, including:

- Identify a critical incident;
- Interpret it from multiple perspectives;
- Evaluate and explain its impact on you;
- Evaluate and appraise how you dealt with it;
- Examine, assess, and evaluate what you have learned from the incident; and
- Formulate and defend a plan of how you will approach similar incidents in the future.

The purpose of using this detailed structure is to give the students a template for doing reflective analysis that they can carry forward into a second, more openly structured reflective analysis paper. In the most recent version of this assignment, we specifically asked the students to reflect on the integration of personal, interpersonal, and systemic/social dimensions of what they have identified as a challenging situation or relationship. This prompt is an effort to help students ‘connect the dots’ between and among their own micro-level experiences and macro-level concerns related to access to justice and social justice more broadly, or as it has been articulated earlier in this paper, “to understand and to experience

the great extent to which the exercise of rights is linked to praxis in the daily interpretation of the law, as well as cultural, economic, and social variables.”

With respect to assessment of the students’ reflective writing, two key criteria that have surfaced are their demonstration of their ability to question their own judgments and assumptions, and also demonstration of their ability to view a situation from multiple perspectives. These two as well as other important criteria are included in a rubric that is shared and discussed with the students in advance. They also have the opportunity to receive and to process written feedback they receive on their first paper prior to the deadline for submitting the second paper.

## *2.2. Experience and aims at Bordeaux University*

Reflective practice has always been integrated into the live client law clinic in Bordeaux University, although our methodology has deeply progressed since 2013, when our live client clinic opened its doors. At first, we integrated post-interview debriefing with each team of students to exchange feedback with them about their experiences. This exchange provided a first moment of reflexive practice, essentially on their professional practice and position in relation to others persons. It also offered a place and space for other expressions, for example releasing tensions and working on team conflicts. We decided, however, that we did not have sufficient time to exchange feedback with our students on the social or systemic aspects of cases they dealt with in the law clinic. In particular, all of the discussions

were focused on the immediate legal solutions rather than on other important issues that could be identified from these cases or on fundamentally questioning the law regarding its functioning, its impact, its core institutions and processes. As a result of these concerns, we decided to create a separate course devoted to reflective practice for participants in the law clinic.

Currently we have developed a specific course on reflective practice to integrate simultaneously the self-reflective practice aspect and reflection on rights. First, each student team is asked to work on an analysis of its legal aid case, explaining its interest at different levels: legal, sociological, socio-economic, human, and the difficulties the team has encountered during the experience. Based on whatever may be happening in the present moment, the teams are also asked to present a rapid response plan on how to deepen this case, including outside resources to contact to learn more about it. All students participate in a vote to select two cases for in-depth analysis. Seminars are then organized by the students on the selected cases, including inviting other actors to discuss them as well. It is important to note that the actors include professionals from other disciplines as well as legal professionals. The course ends with each team writing a report called "Beyond the Case." The teams are expected to discuss the implications of the law in an inter-disciplinary analysis and to identify possible changes. One part of the report is a personal reflective report, describing and analyzing one personal aspect of their experience (Appendix II). They are expected to determine the competencies they have acquired at that point as well as ones



they need to improve. This report forms the basis for the final evaluation of the law clinic students.

### *2.3. Experience and aims at the University of Turin*

In the legal clinics on prisoners and human trafficking, both of which are run by the University of Turin, we view reflective practice tools as essential for students' learning and other activities. The clinic on prisoners allows students to conduct interviews with people who are incarcerated inside the prison, which is a very particular and closed context (Goffman, 1968). In this clinic, students assist the prisoners' local ombudsmen in carrying out their institutional function of interviewing prisoners. The clinical law teacher is not always able to be present and observe the specific interview dynamics, and therefore it is critically important to create an effective tool for supervision. The legal clinic for victims in human trafficking presents some similar conditions, since students work at the sites of non-governmental organizations (NGOs) and local institutions assisting their staff in interviewing victims/survivors. In both situations one of the most challenging aspects of the clinical activity is how the presence or absence of the teacher during the interviews of vulnerable subjects is received by the students. It is also important to define the way in which to supervise the students during the activities carried out in the absence of the teacher at the prison or NGO.

In responding to these different situations, the clinical faculty has a common focus on close supervision of the students' experience. In the context of the prisoners' clinic, a grid of questions is given to the students before their first visit to the prison (Appendix III). The questions posed on this form help direct the students' attention to what to observe. In this way the students are not overwhelmed by the wide range of stimuli and are able to concentrate on issues considered central by the teacher. The grid of questions for the students working in the prison is extremely useful because it allows them to pay attention to the individual roles of the different subjects connected to the legal field, which helps them to grasp the relational dynamics. Once the visit is done, the teachers ask the students to fill out the form and submit it within a few days, to avoid the loss of important information. The students' responses are discussed together with the teachers and an expert criminologist in a subsequent meeting at the university, highlighting and addressing salient and recurring issues.

The grids provided in advance of the visits are oriented toward the students' own empirical research, guiding them in paying attention to important aspects of a local penitentiary especially during their first entry into the prison where they will be working. In addition to the grids, students also complete reflective practice reports (Appendix IV). The reports are additional reflective practice tools that are used to supervise the activities of the students working in the prison, governmental institutions, or NGOs in the absence of their clinical teachers. Throughout the time students are participating in a clinic, they are asked to reflect systematically on what they have encountered. The reports thus guide our students in

addressing the tasks they have been given more effectively in a problem solving direction. We have found that encouraging our students to divide the situations they face into conceptual and chronologically related segments helps them to deepen their ability to learn from those situations and also actively to find ways to resolve challenging tasks. The reports thus serve to improve students' critical thinking as well as being used as instruments for the teacher to supervise their work.

Gaining confidence with these tools has not been not easy for our students, who initially perceived them mostly as a way to communicate their emotions and in particular their discomfort to the teacher, rather than as an opportunity to rethink what they had done during the meeting with the client. In response to this situation, we decided to combine all the reports from the first meetings and offer our comments together with the entire group of clinic students. By reading them in class we have encouraged students to try to deepen their insights into the potential reasons for their perceptions of powerlessness, discomfort, etc., with the added value of peer sharing. It is important to emphasize that the role of the clinical faculty in this classroom discussion is distinct from that of psychologists or psychotherapists. For instance, when a given operator seems to refuse the students' offer of collaboration, and this situation gives rise to the students' feeling of powerlessness, the teachers have the students consider the range of potential reasons that person may have acted in that manner, including how he interprets his role and which legal resources could be useful to him. The teachers' response is therefore engaging the students in reflective practice rather than offering psychological counseling or psychotherapy. Following such a

classroom discussion, an approach that works very well is inviting students to revisit their original responses to the questions, highlighting the parts they were able to reflect on with new perspectives.

In general, the working method in this clinic is based on a first step of guided observation of the context, analysis, and description, followed by shared feedback and reflection, and then new analysis. The initial objective of the reflective practice reports was to have a tool to surface the legal questions from the students' meetings with those seeking legal assistance, that is, helping the students identify the elements that needed to be considered from a legal point of view and also those that needed to be set aside or referred to other professionals. At the same time, the reports served to reassure the students during the practical activity, knowing that they could address and receive guidance from the teachers through the reports. In time, what emerged very clearly was that the reflective reports could be used to highlight the dynamics of power between the various actors and, above all, to analyze the gap between law in action and law in the books.

Through careful analysis of a significant number of reports, we have been able to draw further meaningful insights: the students' ability to gaze inside of some of these realities has allowed them to investigate "shadowing," thus highlighting some new lines of research through the grounded theory methodology. So the students have found themselves, almost by chance, to have a very useful tool also for socio-legal research.

### **3. Models for reflective practice reports**

During their activities the clinical students need to be encouraged to develop knowledge and skills that allow them to experiment in a certain field. And yet, they also need to be supported in that process. Reflective reports represent an important tool to help guide and direct students in their learning process. In this section, we consider four of the main models to promote reflective practice: (1) the Kolb cycle (1984); (2) the Gibbs cycle (1988); the Atkins and Murphy model (1993); and (4) the Mezirow model (2000). Using an actual situation that occurred during one of our clinic's activities as a sample may facilitate a richer understanding of these models, as well as their teaching aims and potential. The case deals with legal aid offered by law students to assist inmates. The clinical teachers proposed that some inmates who are also students--meaning they study law in that prison-- join the clinical students to carry out the consultancy activity. During this time it turned out that no other inmates ever showed up, and so the 'expert' inmates remained to talk with the students for three hours. The law students struggled a great deal with this situation and how to integrate it into their learning. For us as clinical teachers, it helped to highlight the point that we need to provide our students with more adequate tools to allow them to address issues and unpredictable events more effectively and to reflect on such situations in order to learn from them.

The Kolb Cycle (1984) proposes a four-point scheme: plan, do, reflect, and integrate lessons learned into future planning. First, a concrete situation needs to be planned, and second,

experienced. Third, it is necessary to reflect on the experience, to try to extract the concepts and to learn from the experience. Finally, it is necessary to plan and bring out what has been learned. This model, which seems very simple, in reality requires from students a great deal of self-directedness in defining what has been learned. In an experience like the legal clinic where there are many and varied stimuli, this can be very complicated. Students can reflect on the experience using the Kolb cycle. However, they may interpret a situation like the one just described simplistically; based on that one instance, they may decide that the inmates do not really need a help desk in the prison to provide legal advice, and therefore, the clinic's resources could be better utilized elsewhere.

The Gibbs model (1984) presents six precise questions that specify a very clear path for reflection, and may help the students to deepen their reflective capacities so they can go beyond their initial impressions. Students are asked to answer to the following questions:

(1) **Description:** What happened? What, where, and when? Who did/said what? What did you do/read/see hear? In what order did things happen? What were the circumstances?

What were you responsible for?

(2) **Feelings:** What were you thinking about? What was your initial gut reaction, and what does this tell you? Did your feelings change? What were you thinking?

(3) **Evaluation:** What was good or bad about the experience? What pleased, interested or was important to you? What difficulties were there? Who/what was unhelpful? Why? What needs improvement?

(4) **Analysis:** What sense can you make of the situation? Compare theory and practice. What similarities or differences are there between this experience and other experiences? Think about what actually happened. What choices did you make and what effect did they have?

(5) **Conclusion:** What else could you have done? What have you learned for the future?

(6) **Action Plan:** What will you do next time? If a similar situation arose again, what would you do?

The advantage of this model is that it provides a structure for an “enactive” approach to teaching. Enactment theory is taken from the studies of Maturana and Varela (1984), who shift the idea of scientific research from strictly biological observations to concepts of value also other contexts of human life. In the foundations of this epistemological theory, P. G. Rossi (2011) recognizes and appropriately refers to the field of human learning and added concepts of embodied cognition, learning by doing, and research-based teaching, all of which form the basis for a new and more modern didactics. Rossi explains how the enactive model can be applied consistently to the teaching/learning relationship, considering all the agents, not individually, but rather in the structural whole they create by growing together. When contrasted with the constructivist approach to teaching, the main differences are related to enactivism’s greater attention to the relationship between subject and environment rather than the structures within the individual, along with the use of the body, perception, gestures, empathy, and the use of technology.

In the Gibbs model, peoples' gestures and sensations assume importance. In this sense it offers the opportunity to pay attention to the "third dimension" of the law"--the approach shared by "rebellious lawyers" (White, 1988, pp. 760-762) that emphasizes the need for "translating felt experience into understandings and actions that increase the power of vulnerable people." In this manner, the Gibbs model can help students compare law in action and law in the books. The students waiting for the inmates who didn't arrive at the counter experienced feelings of frustration. In evaluating the benefits and challenges of this experience, significant weight can be given to the unexpected extended interview of the "expert" inmates, who offered the law students their vision of important unmet needs within the prison. By analyzing the situation in this manner, students may well be able to recognize and value their experience differently, to the extent that that they have received important information that can be shared with the larger population of inmates and revisited with them during a future visit.

The Atkins and Murphy model (1993) proposes five steps for reflection:

- (1) Become aware of discomfort, or action/experience;
- (2) Describe the situation, including salient, feelings, thoughts, events, or features;
- (3) Analyze feelings and knowledge. Identify and challenge assumptions. Imagine and explore alternatives;
- (4) Evaluate the relevance of knowledge. Does it help to explain/resolve problems? How was your use of knowledge?
- (5) Identify any learning that has occurred.



With respect to this model, one of the central aspects is the attention to possible alternatives and the way in which to use one's own knowledge.

Turning back to our example, law students could use this model to analyze and reflect critically on their role and adapt their approach in order to take advantage of the changing situation. What emerged from the extended conversation with the student inmates was a strong concern about many difficulties connected to the path of exiting the prison and social reintegration. Through more conscious reflection using steps three through five of this model, the law students could shift their focus to working collaboratively with the student inmates to come up with ideas for addressing their concern about reintegration, drawing upon the legal knowledge of both groups

Finally the model of transformational learning of Mezirow (2000) offers additional guidance for improving clinic students' ability to engage in reflective practice. While the first steps of this model resemble the previous two models, it is distinctive in terms of its heightened focus on the moment of sharing, the potentially transformative nature of the process, the different roles and dynamics that can be imagined, and finally the ability to view the situation from a new and different perspective.

Returning to the example, by sharing and reflecting upon their immediate reactions, the students can identify their own progression, from the narrow lens through which they initially approached the situation and needs within the prison to their realization, reached

through deeper engagement with the student inmates, that the help desk is not the appropriate resource to offer help with the challenges of reintegration. After then working to imagine different ways in which both groups could collaborate, beyond from those initially conceived, the students and student inmates have created a physical resource kit containing a set of materials in which there are essential tools (a bus ticket, a map, a list of dorms or places to have lunch for free) and also a virtual one in which there is legal information regarding issues to keep in mind for reintegration into communities. This information includes, for example, how to check that you still have certain benefits in place, how to find a residence, and how to find a doctor.

Reflective reports can be the tool for new projects, and also, most importantly, for new lines of research. Indeed, the analysis of situations, the dynamics between the different actors, and the gap between the law in action and the law in the books can lead to the development of new research questions. As a result clinical students can go beyond the traditional horizons of “pure research” and carry out research into the reality within which they are acting, which can also allow them to grasp the transformational nature of the process of knowledge and the potentially dynamic and reciprocal relationship between researchers and subjects.

#### **4. Reflective Practice in Action: feedback from our session using a case study**

We began the session by providing an overview of our shared socio-legal perspective regarding the significance and value of reflective practice in clinical legal education. Each presenter then briefly discussed the reflective teaching and assessment tools they use in their own clinical teaching context. Next, we engaged participants in a group discussion around the various opportunities and challenges offered by such educational tools using an actual case study from one of our clinics. For this purpose we chose a reflective writing report submitted by a student in the Turin Legal Clinic. In the report the student used the Gibbs model as a guide for reflection following an interview with a person who was seeking asylum as an alleged victim of human trafficking. Below we reproduce some excerpts of the student's report to demonstrate how it can be a helpful reflective practice tool, and also offer some of the feedback we received and our responses.

In the session we framed the discussion with the following questions for participants:

What should or could be the goals of a reflective practice report following this type of interview? What elements of reflective practice arise from such a report? As teachers, what can we learn from such reports and how can we respond to deepen and develop our students' reflections?

In the case we examined, when asked about "what happened," a student wrote that:

*"...the second interview in preparation for the Territorial Commission [...] lasted about an hour and a half and we were present, my colleague, a Nigerian mediator and the legal operator. In the first part of the interview we explained again to the asylum seekers (then a.s.) what was said in the previous*

*meeting about the committee hearing. She seemed more relaxed than the last time. The appearance of the a.s. changed to the first "real" question about her past: she became visibly more insecure and agitated [...] The interview moves very slowly. The a.s. said several times "I do not know" [...]: once she was invited to deepen she didn't understand the question, sometimes told something more, while others explains "I can not remember, maybe next time I will succeed." She was nervous and cried several times. [...] She found herself in Libia, she was locked up in a prison where food and water were missing. Some of the other prisoners, both men and women, died. At one point she managed to free herself, but she couldn't remember".*

Aside from stating what concretely happened, the structure of the report guides the student to identify the different legal actors who were present, and to describe the asylum seeker's emotions as they shifted during the interview. This student's entry thus offers the teacher a meaningful opportunity to improve the student's critical reflection on a number of levels. For instance, the teacher could highlight the gap between legal procedures in books and in action, by inviting the student to think more deeply about the roles the "Nigerian mediator" and the "legal operator" could play in preparing this asylum seeker for the hearing before the Territorial Commission. The teacher could also asking the student to reflect more on the emotions expressed by the asylum seeker and how the student responded to them, as well as the role emotions play in an interview of this nature and in asylum proceedings more generally.

If this student had simply been asked to describe what happened, most likely he would have reported that the interview was unsuccessful, as it was not possible to collect all of the data needed by the clinic from the asylum seeker at this stage. Inviting the student to engage in a more systematic and careful review of the different aspects of the interview and the ways it took shape allowed the student to recognize key elements: the slowness of the meeting, the silence and the reticence of the asylum seeker, and her tears, all are potential indicators of being in front of a victim who still needs to be helped and removed from the influence of her enslaver, who may well still be nearby.

When asked about the evaluation, that is, what was good or bad about the experience? (What pleased, interested or was important to you? What difficulties were there? Who/what was unhelpful? Why? What needs improvement? The student response included the following reflection.

*....Always at the end of the interview, we discussed the psychological status of the a.s. The operator was very confused, because she did not understand how afraid she was to tell certain things and / or great suffering in doing so. We talked about tears and what seemed to us a palpable suffering. Also in this case the mediator told us that tears can be fake and they do not have to be taken into consideration. Clearly, I do not want to question the work of a mediator who has been doing this work for years. In the specific case, however, they seemed counterproductive: more silences, more attention to the a.s. and even less "freedom" than the legal operator. Post-interview we were confronted with the legal operator on the role of the mediator and she was also perplexed about some choices made....*

The importance of self-reflection emerges here from the capacity of this student to identify the key role played by emotions and other important “extra-legal” elements such as the client’s suffering and her tears. Further the student has been able to bring a critical perspective to his analysis of this part of the legal proceeding, especially regarding of the capacity or incapacity of the operator to manage it and the “counterproductive” role assumed by the cultural mediator.

During the discussion that took place in our session, double-layered critical observations emerged. The structure and specific prompts in the report enable the student both to reflect on how useful an empathic approach could have been in this situation to support the client’s ability to be more open in telling her story, and to reflect in depth on the gaps that the actions of certain actors, such as the mediator, demonstrate between legal procedures in the books and in action. From this perspective, students are simultaneously critically observing difficulties that have occurred in real time to inform their future actions, and they are also participating in a kind of empirical research on legal procedures and praxis.

It was clear during the discussion among participants that the use of this report offers a range of different stimuli for reflection, which can be collected by the teacher and can help shape future clinical teaching/learning objectives. The discussion served to highlight the multiple roles and meanings of reflective practice reports and the different aims they can serve for us as clinical legal educators as well as our students.

The teaching and learning objectives participants identified using the example presented during the session were wide ranging and featured the following:

- Assessing the learning process;
- Involving students in the learning process;
- Reflecting on challenges posed by the law in action;
- Becoming more aware of justice issues and systemic issues; Reflecting on the lawyer's role.

Finally, a very interesting point shared among presenters and participants is the importance of being more transparent and explicit with our students about the roles and meanings of reflective practice. Nearly all of the presenters—even those of us who expressed confidence about the use of reflective practice in our clinics—admitted that we often use these tools for reflection in our students' learning process without explaining our full scope of our aims for using reflective practice, including its role as grounded research.

## **5. Conclusions and next steps**

This collaboration has demonstrated the value of dialogue and sharing around reflective practice among clinical law teachers from different countries and contexts. All of us have gained new insights as well as new tools for teaching and assessing our students as reflective practitioners. We hope to continue this exploration together, particularly around how reflective practice can serve as a vehicle for socio-legal research. We invite our clinical colleagues and future readers to share their materials and case examples with us to deepen

and enrich our collective understanding and to help us to make more of a positive difference in the lives of our students, our clinic clients, and the vulnerable communities we aim to serve.



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Appendix I. Assignments and Assessment (Justice Lawyering Seminar, Drexel University)

**Assignments and Assessment Materials-Spring 2018**

**Reflective Analysis Paper Guidelines and Evaluation Criteria:**

Each student is required to submit two (2) reflective analysis papers. The first paper is expected to be 2-4 pages in length, and the second paper is expected to be 3-5 pages. Each reflective analysis paper needs to be written in the form of a reflective essay, including various elements we will discuss in class. Students need to demonstrate the use of appropriate sources as well as the ability to question your own assumptions and explore an issue from different perspectives. In-depth research or extensive citations to sources are *not* required. Appropriate sources can include: course readings, TED talks, in-class and blog discussions, relevant outside sources, and anything connected to your pro bono placements and experiences.

**Paper #1: Engagement with the Spheres of Transformation**

- In this class, we are addressing three spheres of transformation: personal, interpersonal, and systemic. Identify a way you have engaged thus far in some level of a transformative experience connected to [at least] *one* of these three spheres. The basis for your reflection can include experiences in this class, your pro bono placement, your field observation, or in some other outside experience connected to or inspired by this class.
- It may be transformative because:
  - you learned something from it;
  - it helped you identify an area of law where you now think you would like to work or not like to work;
  - it helped you identify an aspect of law practice you now want to seek out or avoid;
  - it led you to question important beliefs or assumptions;
  - it excited you or surprised you;
  - it has influenced you in some way;
- Interpret the experience, taking into account the perspectives of everyone directly and indirectly affected by it.
- Discuss how this experience has affected you at the personal, interpersonal, and systemic level, including some discussion of the particular sphere(s) of transformation involved.
- Discuss how you dealt with the experience and how you are dealing with its effects on you.
- Discuss what you've learned from the experience.
- Formulate and discuss a plan for how you might approach similar experiences in the future.

Appendix I. Assignments and Assessment (Justice Lawyering Seminar, Drexel University)

**Paper #2: Reflective Analysis of a Topic of Your Choice**

**The following are some suggested topic areas:**

- A reflective analysis of an ethical issue that has arisen within your placement.
- A reflective analysis of an access to justice or law reform issue that has arisen within your placement.
- A reflective analysis of a client related practice issue that arose within your placement.
- A reflective analysis of a client interview.
- A reflective analysis of your view of the role of lawyers in society in the context of your placement experience(s).
- A reflective analysis of your personal goals for the class and/or your pro bono experience, and the extent to which you are achieving those goals, or perhaps have changed the goals as the semester has progressed..

The **organization** of your papers should generally include the following:

- (a) **a title and appropriate subheadings** throughout
- (b) **an introductory paragraph or short section**, which identifies the topic/issues, and any important themes. This section needs to inform the reader about what led you to want to discuss this topic;
- (c) **a background section**, which provides the necessary groundwork or foundation for your exploration of the topic;
- (d) **a section in which you provide a detailed analysis of the theme/issue(s)**, including your own well-reasoned perspective or viewpoint. You can feel free to borrow ideas from others, with proper attribution, although this section needs to include your adaptation and integration of those ideas. In addition, it is important that you demonstrate your ability to question your own assumptions and to articulate and explain other perspectives, also with appropriate attribution. This section also needs to include issues or ideas you recognize are worthy of further exploration.
- (e) a brief concluding paragraph, in which you highlight what you think are one or two of the most salient points and future-oriented ideas, and/or to suggest one or two broader implications of your analysis. These can be lingering questions or issues you intend to work on or explore further.

Appendix I. Assignments and Assessment (Justice Lawyering Seminar, Drexel University)

**Assessment of Content of Reflective Analysis Papers<sup>1</sup>**

**Dimension 1: Clarity of the topic**

- Is it clear what triggered the reflection? What is the writer's dilemma or puzzle?

**Dimension 2: Consideration of Relevant Alternative Perspectives**

- Does the writer include all relevant perspectives, including his or her own?
- Are the perspectives justified by data?
- Are they explored in a way that promotes additional reflection?

**Dimension 3: Expressions of Engagement in Reflection**

- Is the writer engaging in deep, analytical reflection?
- Is there evidence of personal struggle on intellectual/cognitive and emotional levels?
- Is there evidence the writer is willing to question assumptions?
- Does the writer make it apparent how he or she came to choose the topic for reflection?
- What's at stake for the writer?

**Dimension 4: Lessons Learned**

- Is there an explicit statement of what was learned?
- Is there evidence of movement from previously held or deepening of beliefs?
- Is there a plan for action or a commitment toward personal or systemic change?

The overall criteria for evaluation/grading will be as follows:

(a) Organization (30%)

- completeness
- flow/clarity
- presentation

(b) Content (60%)

- articulation and analysis of themes
- depth of reflection and ability to integrate other perspectives

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<sup>1</sup> Rachel Spencer, *Holding Up the Mirror: A Theoretical and Practical Analysis of the Role of Reflection in Clinical Legal Education*, 18 INT'L J. CLINICAL LEGAL EDUC 181 (Appendix B, quoting Michael J. Devlin, Andrew Mutnick, Dorene Balmer & Boyd F. Richards, *Clerkship-Based Reflective Writing: A Rubric for Feedback*, in MEDICAL EDUCATION 2010, 1117-1147, at 1143).

Appendix I. Assignments and Assessment (Justice Lawyering Seminar, Drexel University)

- appropriateness and accuracy of references
- originality of thought and/or critique and adaptation

(c) Overall Impression (10%)

- choice of topic
- timeliness, grammar, spelling, typos, etc.

**Assessment Continuum for Reflective Analysis Papers<sup>2</sup>**

	Describing	Understanding	Reflecting	Transforming
<b>Nature of the account</b>	Account is descriptive, with little or no reflection. A story is told, but mainly or entirely from one viewpoint. Ideas or recollections of events are linked by sequence rather than meaning.	Account is descriptive and signals points for possible reflection. Events are treated as though they might raise an important question or questions to be asked and answered. There may be reference to another viewpoint.	Account is descriptive and accents points for actual reflection. There are references to other viewpoints and external ideas, and analysis of the actions of self or others. There is some standing back from events in an effort to recognize the effect of events on the self.	Description serves the reflective process. Account recognizes that the frame of reference for an event can change. Events are understood in a historical, social or psychological context that influences reactions to them—in other words, multiple viewpoints are considered.
<b>Emotional reactions</b>	There are no references to emotional reactions, or if there are, they do not get explored or related to behavior of self or others.	Emotional reactions of self or others are mentioned or clearly influence the writing. Such influences are noted and questioned.	Emotional reactions are recognized and their influence is questioned. An attempt is made to consider their role in analyzing behavior of self or others.	Emotional reactions are recognized, both in the sense of shaping ideas and in considering how they can frame the account in different ways. Reactions may trigger or support a change in perspective.

<sup>2</sup> Adapted from the work of John Kleefeld & Michaela Keet, University of Saskatchewan School of Law. Inspired by JENNIFER MOON, *LEARNING JOURNALS: A HANDBOOK FOR REFLECTIVE PRACTICE AND PROFESSIONAL DEVELOPMENT* (2d ed., 2006), and David Kember et al., *A four-category scheme for coding and assessing the level of reflection in written work*, 33 *ASSESSMENT & EVALUATION IN HIGHER EDUCATION* 369 (2008). The categories here have been chosen to simplify and track a developmental continuum that can be used to characterize reflective analysis. The dimensions are distilled chiefly from Moon's work on learning journals for the professions.

Appendix I. Assignments and Assessment (Justice Lawyering Seminar, Drexel University)

<p><b>Reference to literature or theory</b></p>	<p>There are no references to theory, or if there are, they are made without apparently trying to understand them or form a view on them.</p>	<p>There is some reference to theory, with an attempt to understand it. Concepts are treated solely as theory, without being related to personal experiences or practical situations.</p>	<p>There are references to theory, showing both an understanding and an application of it. Concepts are interpreted in relation to personal experiences, or situations encountered in practice are considered and discussed in relation to theory.</p>	<p>There are references to theory, showing understanding and application as well as a questioning stance. Theory helps to trigger a transformation of perspective—a review of presuppositions from prior conscious or unconscious learning.</p>
<p><b>Reference to experience or future practice</b></p>	<p>There are no references to prior experience or lessons to be learned for future practice. The description may, though, form a basis for such learning.</p>	<p>There is some attempt to connect events to prior experience and a sense that events could lead to lessons for future practice. However, the reflection needs to be deeper to enable the learning to begin to occur.</p>	<p>There are references both to prior experience and lessons for future practice. There is an attempt to use events to analyze progress in attaining learning goals.</p>	<p>There is recognition of how prior experiences—of self and others—influence current behavior. Points for learning are noted and may be revisited in later accounts. The journal shows growth over a course of study.</p>



Appendix II. Reflective report on Law Clinic case, University of Bourdeaux

**Reflexive report on Law Clinic case**

The structure of this report is orientative. You can if you need use the structure of your choice

**SUMMARY**

Part 1: Law Clinic case: Description and Answer proposed

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Part 2: Perception of this case

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- **2.1 Cases's difficulties**
  - Technical and juridical difficulties
  - Others difficulties (relation with client, with other colleagues, organization, etc.)
  
- **2.2 Case's interests**
  - Technical interest
  - Social interest and or economical one
  - Sociological interest
  - Interest toward clients relations
  - Others

Part 3 : To go further / What do I learn from this case?

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- **On the juridical level**

*Is there a problem of source of law? What about fundamental rights? Is there a discrepancy between rule and reality? Is there any procedural problems? What about judiciary strategy? About the articulation with other legal disciplines?*

- **On others aspects**

What do I learn on others disciplines (psychology, sociology, economics, philosophy, health and medicine, etc.)

Partie 4 : Personal feedback

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Reflexive essay on an aspect of your law clinic experience.

Appendix III. Observation grid for students visiting the prison (Legal Clinic Prison and Rights I, University of Turin)

### **VISIT TO THE PRISON**

#### **PRACTICAL NOTE:**

Please remember that inside the prison it is not possible to bring mobile phones, bags, usb sticks: they must be left at the entrance. We also want to remind you to bring your identity card and be very punctual to respect the time of other people.

### **OBSERVATION GRID LEGAL CLINIC PRISON AND RIGHTS I – UNIVERSITY OF TURIN**

In order to better understand the penitentiary life conditions and the prisoners' legal needs, attention must be paid to some sensitive aspects during the visits to these institutions. The life inside the prison, in fact, is made up of relationships with people with different roles, of routines, of relationships, albeit mediated, with the outside world. Norms and practices regulate these aspects and we must keep them in mind when we move about within.

We ask you to read these points before the visit and keep them in mind.

In the evening or at the latest in the morning after your visit, (in order to have a "hot" reading) we ask you to answer and send the teacher the completed form: we remind you that the legal clinic works to the extent that each participant is committed to making it work.

Tutors can direct the next meeting on the more "critical" or less clear points identified through these grids. You will probably not be able to answer all the questions: do not worry. It is not an exam. We ask you to try to answer within the limits of what you have seen and heard. The aim of this tool is to offer you a grid in which to insert the many stimuli that you will receive and then help you to reflect in a "guided" way.

#### **1. METHODOLOGICAL NOTE**

Try to describe the path made during the visit in the prison, the modalities with which it was carried out, its duration, the operators encountered (paying particular attention to their respective roles and relationship dynamics), the relationships that have been established with the direction or with other operators, any difficulties encountered, the climate in which the visit took place.

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#### **2. CHARACTERISTICS OF PRISON POPULATION**

What is the approximate percentage of foreign inmates, women, prisoners pending final sentence, or under special incarceration?

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#### **3. TYPICAL DAY OF THE DETAINEES PERSON**

What is the temporal scan of a prisoner's typical day? How many hours can the prisoner spend outside his / her cell in social and outdoor spaces? Doing what?

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Appendix III. Observation grid for students visiting the prison (Legal Clinic Prison and Rights I, University of Turin)

#### 4. COMPLAINTS

What are the tools with which prisoners can communicate their requests to the prison management?

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#### 5. TREATMENT ACTIVITIES AND SOCIAL REINTEGRATION

Prisoners enjoy an individualized social reintegration project? How often the interviews with the educators and social workers are frequent?

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##### 5.1 CULTURAL ACTIVITIES

What are the main cultural and recreational activities organized within the institute? (This definition includes the sports activities that inmates can practice within the institution. Cultural activities also include the library service that must be present in all institutions and to which it is necessary to verify its use by the detained population and its degree of accessibility).

Is there a newspaper of prisoners (or similar initiatives)?

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##### 5.2 JOB

This theme involves two different issues: 1) What are the internal works of the institute directly managed by the prison administration; 2) What are the works contracted outside to private bodies?

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##### 5.3 PROFESSIONAL TRAINING

Are there any professional training courses? Professional training refers to those initiatives that seek to provide the detainees with professional knowledge that will allow them to be more easily reintegrated (or inserted) into the labor market.

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##### 5.4 INSTRUCTION

What are the school courses (of all types and levels) activated inside the prison?

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INDIVIDUAL REPORT TO BE COMPLETED AFTER THE MEETING

Please give answer to these questions:

WHO IS HE/SHE? (Who did I deal with? Not the name, but the type of story of the person...)

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HOW? (How did he/she relate to me/us? What impression did I have?)

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WHAT? (What did he/she ask me directly? But what does he/she expect indirectly?)

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WHY? (Why did he/she ask me this question?)

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WHEN? (When does he/she expect my answer? Based on this data I have to give me deadlines: to study, to look for sources, to share with the group, with the teachers...)

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## **“Representing the Other: A Case for Interdisciplinary Clinical Legal Education: Example of the Human Rights and Migration Law Clinic”**

**Jovana Bogićević, University of Palermo, Italy** <sup>1</sup>

*From January 2018 until late July of the same year, I had an opportunity to participate in the Human Rights and Migration Law Clinic (hereafter HRMLC or ‘the Clinic’) in Torino, where I got a chance to experience working with the asylum seekers, interviewing them, writing their Legal Memo as well as preparing them for the hearing in front of the Territorial Commission (Italian First Board Commissions). An important aspect of the Clinic in question is the fact that it is conducted in cooperation with the Department of Anthropology and it involves anthropology students in the work with the asylum seekers. From the very beginning, it was apparent to me why they have opted for the involvement of anthropologists. I was surprised to see how much anthropological training in recognizing and being aware of Eurocentric (or any other kind of) presuppositions can be useful in recognizing and understanding cultural misunderstandings that happen on a daily basis in the asylum claiming process, as it is now in Italy. Even so, the idea for this paper became clear to me only when I attended the first meeting anthropology students had with their supervisor, Professor Beneduce. The feedback students gave to their professor and in turn, his observations made me inspired to write the paper that is before you. It will consist out of two main and mutually connected parts.*

First of all, a short insight into the way the Clinic is organized will be provided, with the main focus on its interdisciplinary character. The main argument will be that this kind of

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clinical education is potentially of equal value for both students of social sciences as well as for students of law (who are traditionally the ones that get to take part in it).

Starting from there, my own experience, as well as the reflections anthropology students had regarding their involvement with the Clinic will be used to argue that the field of asylum represents a potentially fruitful field for collaboration between law and anthropology, while the self-professed experience of the students will be understood as an indicator of the main issues that would arise as a consequence of potential implementation of anthropology in the asylum system as it exists today in Italy.

Although from the beginning unintentionally, the paper is a product of a participant-observer method, as I was at the same time participating in the work of the Clinic, but also conducting interviews with the students and staff.

### **I. Human Rights and Migration Law Clinic: Origins**

The Human Rights and Migration Law Clinic was established in 2011 through collaboration between Ulrich Stege and Maurizio Veglio, as the first legal clinic in Piedmont region and one of the first law clinics in Italy; It is closely connected to the masters program at the International University College of Turin and mainly financed through funding dedicated to this institution (Stege and Veglio 2018, 1).<sup>2</sup> Besides the IUC, it is conducted with the cooperation and support of Departments of Law of the Universities of Turin and Eastern Piedmont, with the participation of students from all three faculties.

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<sup>2</sup> All the information is based on my own experience with the Clinic, the interview I have conducted with Maurizio Veglio on 28.07.2018. as well as on information provided in the article written by Stege and Veglio (2018).

The students' backgrounds are various and they come from all levels of higher education (except for the Ph.D.) which gives a general variety, multidisciplinary and international character to the entire experience.<sup>3</sup>

According to its founders, the Clinic represented a response to a particular situation in Italy when the country experienced significant increase in number of migrants and asylum seekers; According to Stege and Veglio:

*“All this created, in a very short time, the need for quick legal, social and political responses, for which authorities were not entirely prepared. In addition, Italy lacked and still lacks well-prepared professionals, who are capable of dealing with such situations, and is a significant deficit of targeted educational programs”* (Stege and Veglio 2018, 6).

It is therefore that the Clinic was conceived as a response to two separate needs: one of students to “experience gaps between the law in the books and its implementation in practice, especially in the context of human rights and migration law practice” and the one that existed in the broader social context, where an increasing number of asylum seekers was in need of legal assistance with the support of the governmental institutions being insufficient (Stege and Veglio 2018, 2-6).

It was in 2015 that HRMLC established a collaboration with Turin University's Department of Anthropology when students from this discipline became involved in the work of the Clinic, with the main role of “supporting clinical students in interviewing asylum seekers and researching relevant Country of Origin Information” (Stege and Veglio 2018, 11). It is on this aspect of the Clinic that the special emphasis will be made later in the paper.

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<sup>3</sup> As the IUC students are mostly coming from foreign countries. More about the IUC: [www.iuctorino.it](http://www.iuctorino.it)

*Educational structure*

The Clinic consisted of three semesters; the first one is dedicated to the theoretical lectures about International and European migration law, together with preparation for practical activities that take place in the second and third semester. Especially in the latter part, it was apparent how the different backgrounds students had added and enriched the problem-solving process, in which we were all invited to take part in and actively contribute to.

In the academic year of 2018, the offered practical activities consisted of Refugee Law Clinic, Strategic Litigation, Human Trafficking Clinic and ILO/access to work and social protection for migrants. For the purpose of this paper, the focus will be on the Refugee Law Clinic, since it is the one I participated in and also the one in which the presence of anthropologists is highlighted the most.

Students taking part in the Refugee Law Clinic were divided into five pairs and each of them has been assigned one of the anthropology students. During two semesters, each group had been given a case of an asylum seeker and a supervising ASGI lawyer.<sup>4</sup> Their task was to conduct interviews with the asylum claimers, prepare them for the hearing in front of the Territorial Commission and then write a Legal Memo that would, after being reviewed by the lawyer, be presented to the Territorial Commission. The way they divided work amongst themselves was left to them to decide.

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<sup>4</sup> Associazione per gli Studi Giuridici sull'Immigrazione, an Italian network of legal professional working in the area of asylum and migration. For more information: <http://www.asgi.it/>



## **II. Interdisciplinarity and Clinical Legal Education: Refugee Law Clinic as a meeting point**

In the past decades the idea of interdisciplinary education has become exceedingly popular. Scholars have observed emergence of new ‘hybrid fields’, comparative studies and holistic perspectives that are challenging traditional division of knowledge or as Clifford Geertz noticed, “there is something happening with the way we think about the way we think” (Thompson Klein 1990, 11).

Although the importance and potential of interdisciplinary education have been recognized, the consensus about what it actually represents and what is the proper way to be achieved is still lacking. As Harvey Graff states,

*“Interdisciplinarity’s proponents and critics talk past each other. Seldom do they seek common terms; typically, they mean very different approaches when they refer to interdisciplinarity. They erroneously dichotomize disciplines and interdisciplines, confuse specialization and synthesis, and misconstrue “integration” (Graff 2016, 1).*

Even though it is apparent that there is still a ‘general confusion’ about what the interdisciplinarity is, educators still employ this approach in order to deal with range of issues with some of the examples being:

*“to answer complex questions,  
address broad issues,  
explore professional and interdisciplinary relations,  
to solve problems that are beyond the scope of any one discipline,  
to achieve unity of knowledge whether on a limited or grand scale”*

(Thomson Klein 1990, 11).

Whatever the definition we choose to employ might be, the proponents of interdisciplinarity recognize a need for a more holistic approach that will surpass the traditional division among disciplines. The way this will be achieved, as we have seen, is still undecided which leaves space for experimentation. However, what seems important is not to limit the scopes of interdisciplinarity just on 'theoretical' domain in which practitioners of two or more disciplines would work together, but also to transfer it into the field of practice, where, through mutual engagement, interdisciplinarity would be naturally achieved. Legal clinics, I believe, have potential for such endeavor.

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### *Clinical Legal Education*

As much as I have gained insight into legal clinics, firstly by taking part in one and then by attending a conference organized by the European Network for Clinical Legal Education (Torino, September of 2018), it would seem that this form of education has a similar status as the concept of interdisciplinarity. Its benefits are widely acknowledged, but a general consensus about how they should be organized, as well as a well-defined framework in which they should operate is still missing.

Even so, European countries have experienced an increase in numbers of such clinics in the past decade and as the driving reason could be perceived inadequacy of the usual model of legal education (Stege and Veglio 2018, 8). As the same authors observe, this comes down to the separation of education on theoretical and practical part, and maybe consequently, to the fact that "both law students and new generations of law teachers are unsatisfied with the way law is traditionally taught and how they are prepared for their professional career" (Stege and Veglio 2018, 8).

When it comes to context of Italy, clinics represent a relatively new occurrence in legal education, with the first one being established at the University of Brescia in 2009, and first CLE program dedicated to migration and asylum conducted at University Roma Tre in 2011 (Stege and Veglio 2018, 6).

For comparison, the situation is similar in Germany where, until 2008, Clinics were not allowed by law but now represent “a fast developing field within German jurisdiction” (Hannermann and Dietlein 2018, 2).

With the big influx of asylum seekers entering Europe in recent years and with a great many of them finding themselves in a completely alien situation, where they require help not just with some common issues such as finding their way in an unknown environment, but also often need legal assistance, Refugee law clinics have emerged as new type of legal clinic, with potential of breaching the gap between the actual need for different legal services asylum seekers have and the capacities of the authorities to provide them (Hannemann and Dietlein 2018).

Especially because beneficiaries of these kind of Clinics do not require just legal but also more general type of help, Refugee Law Clinics represent a good setting for involvement of students or professional practitioners of other disciplines.

In the example of the Refugee clinic of the HRMLC I would like to demonstrate how interdisciplinarity within the legal clinics could show potential and need for broader collaboration between disciplines; in this instance, I will try to demonstrate how the asylum system on a larger scale could potentially benefit from the mutual collaboration between law and anthropology. Furthermore, I will argue that the Human Rights and Migration Law Clinic’s

practice has already shown a potential for such an endeavor and will try to analyze how to expand this practice further.

### **III. Anthropologists and the Clinic: A Way of Doing Ethnography**

Apart from attending the supervision meetings of anthropologists and listening to their discussions, I have also conducted interviews with some of the students for the purpose of determining their opinion and overall experience of the Clinic. What will follow, therefore, represents my understanding and observation of their involvement in the entire process.

#### *Supervision meeting notes*

Since the first meeting it has become apparent to me that the experience anthropology students had was significantly different from my own, but, in a way, very 'anthropological' in nature. The main concerns they have expressed came down to reflecting on their own role within the Clinic, the purpose and usefulness of their anthropological knowledge, their role in 'discovering the truth' (in terms of truthfulness of asylum seeker's narratives) as well as reflecting on the asylum system on a larger level. It is in these meetings that I started to realize how much the experience of the Clinic is valuable for them as anthropologists, as it provides them with the opportunity to apply the knowledge they are acquiring in the course of their studies, but also experience some of the main, primarily methodological and ethical, issues that exist within the discipline. In order to better understand the doubts and struggles anthropology students had, it is useful to have an insight into two major parts of 'doing anthropology': fieldwork and the issue of representation.

### *Fieldwork*

Fieldwork is one of the most important parts of anthropological research and it could be said that it is the discipline's distinguishing characteristic. As Orin Starn in 'Writing Cultures and Life of Anthropology' states: "...the premise that fieldwork is our distinguishing bedrock remains as powerful as ever a century now since its original mythical character in Malinowski's sweaty, disgruntled, libidinous Trobriand tenting" (Starn 2015, 5).

Traditionally, an anthropologist would go to 'exotic', non-western countries and do the ethnography there. At the time existed a prevailing idea that it is possible to understand and describe a 'character' of the non-Western populations. This could be observed just by reading titles of classical anthropological monographs, such are: "Coming of Age at Samoa: A Psychological Study of Primitive Adolescence for Western Civilization", "Balinese Character: A Photo Analysis" and maybe most famously "Argonauts of the Western Pacific: An account of native enterprise and adventure in the Archipelagoes of Melanesian New Guinea".<sup>5</sup> The produced ethnography would always as an audience have Westerners; it could be argued, therefore, that what anthropological work at the time came down to was speaking in the name of their 'exotic' informants (who did not have a voice of their own) and representing them to the Western public, which in that historical moment practically meant acknowledging their existence (see: Clifford and Marcus 1986).

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<sup>5</sup> In the order in which they have been listed: Mead (1928), Batson and Mead (1942) and Malinowski (1922).



Bronislaw Malinowski is considered to be a pioneer of the participant observant method; The photo was taken during his fieldwork in the Trobriand Island.<sup>6</sup>

### *The crisis of representation*

*“Representation and the epistemological problems inherent to it are key anthropological problems of the twenty-first century. Local people everywhere feel betrayed by anthropology. Instead of studying identifiable, rooted communities, anthropologists have turned their attention to the theoretical construction underpinning the very ideas and practices sustaining the experiences of rootedness” (Vargas-Cetina 2013, 3).*

A big turning point, however, happened with the process of decolonization that took place in the second part of the 20<sup>th</sup> century; people anthropologists used to see as their informants started getting their own voice and speaking for themselves; it seemed there was no more

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<sup>6</sup> Source: <https://www.ecosia.org/images?q=bronislaw+malinowski#id=FE953759F605F29C2E6EC00946CF967A755A465E>

need for anthropologists to “act as representatives” (Vargas-Cetina 2013, 4). Apart from that, they have started voicing their opinion on the way they have been represented so far and making way to what is going to be known as ‘postcolonial critique’. This period of time has left a huge impact on anthropology as a discipline, as its traditional fieldwork has become out of reach and a large part of its body of knowledge has become compromised. It is during this time that the discipline experiences the so called ‘crisis of representation’. Anthropologists prompted by postcolonial critique started questioning the power relations within their field, examining their own standing point. As Vargas-Cetina explains,

*“The representation crisis turned out to be more a moment of reflection (and, yes, a very important one) than a true crisis of the discipline. It has now resulted in new representation standards, self-monitoring practices, a higher awareness of the diversity of perspectives within anthropology, and the understanding of the ethnographers as themselves cultural beings, whose views are always colored by personal and epistemological circumstances”* (Vargas Cetina 2013, 4).

Having this background in mind, I came to believe that the reflections the students have shared about their own experience with the Clinic represent, in a way, textbook examples of the impact the above-mentioned crisis and the postmodernism have left on anthropology as a whole, and have continued to shape the generations of anthropologists years ahead. It is also what made me understand how authentic experience of conducting interviews with the anthropologist’s ‘traditional subjects’ (coming from radically different cultural backgrounds) Clinic represents for them, with the main difference that before anthropologists would be the ones going to overseas countries and conducting their fieldwork there, while now the informants are coming to us, but we are still, in a way, the ones who are representing them.

As introduction to the next chapter it is important to stress that I understood my role in the Clinic as twofold; I had an anthropological background, but I was involved in the process as an IUC student that got a certain amount of training in International and European migration law; The work with asylum seekers I approached from this perspective, which might be the reason why I did not experience the Clinic as other anthropologists did. I believe that this 'dual position' enabled me to experience both legal and anthropological approach, which in turn made me realize the existence of similarities between the two disciplines when compared in the context of asylum system.

What I would like to argue, therefore, is that the work legal professionals are doing with the asylum seekers (coming from the non-Western countries) has certain similarities to the one anthropologists were traditionally conducting, and comes down to 'representing the Other'.

#### **IV. Representing the Other<sup>7</sup>: Legal versus anthropological approach**

*Represent-* (used with a verb)-

1. *to serve, to express, designate, stand for, or denote, as a word, symbol;*
2. *to stand or act in the place of, as a substitute, proxy or agent does;*
3. *to speak and act for by delegated authority<sup>8</sup>*

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<sup>7</sup> The concept of the Other in this instance should be understood as twofold: 1) in relation to the fact that a great number of asylum seekers today is coming from non-Western countries and has radically different socio-cultural background from the European one; 2) In terms of Edward Said who uses the opposition between Orient and Occident to describe the power relations in which the West is superior and the East inferior. The concept of the Other, similarly, is connected to the idea of rationality of the West and irrationality and the general inferiority of the East (Shahinaj 2012).

<sup>8</sup> Retrieved from an online dictionary available at: <https://www.dictionary.com/browse/representing>



The notion of representation bears significantly different connotation within law as compared to the one we saw it has in anthropology. Within the legal field, to represent someone carries a certain well-established set of rules, obligations and protocols that all have legal consequences. When signing a Power of Attorney, a person gives his or her consent to another to speak or act in their name, again, within the defined set of rules. Anthropological version of representation, as we have seen, carries a somewhat less strict code of conduct and it is more symbolic in terms that it is not legally abiding. Another difference could be that in the first instance, lawyers are usually not concerned with cultural dimension in which the representation is taking place, whereas anthropologists, in order to make their 'traditional exotic subjects' understandable to their (western) audience need to make a certain amount of cultural translation, however loosely we understand the term.

Where anthropological and legal representation come in line is, I believe, in the very context of the asylum system, where the majority of asylum seekers is coming from non-Western countries and is trying to get international protection based on western legal concepts (Veglio 2017).

It is then, I will argue, that lawyers intentionally or not need to make a certain amount of adjustments to the original narrative or story they get from their clients in order for it to fit the legal context and be more comprehensible to the Territorial Commission.

Based on my experience with the Clinic, I will shortly outline the main similarities and differences that I have experienced through my above-mentioned 'dual role' in conducting interviews with the asylum seekers and producing a legal memo.

*Interview*

The feeling of conducting interviews with asylum seekers versus doing the same as a part of anthropological research comes with the main difference, which is the purpose. While talking with the asylum seekers I remember clearly trying to focus on the elements of the story that will be useful in relation to the principles of international protection. The questions that I have chosen to pose were the ones I considered important in determining the basis on which the protection could be potentially claimed. In other words, although the asylum seekers did get the chance to tell their story the way they chose to, we have been focusing on the elements that are in line with the legal requirements. On the other hand, the approach I used to employ while conducting anthropological research was somewhat different. I knew the topic that I was interested in, but the level of my interference with the narrative was less apparent; I would leave bigger freedom to the informant to choose what he or she considers important and relevant answer to the posed question.

This becomes even more apparent in relation to the fact of how we use the given information. In the case of anthropological research, the outcome can be more than one, but what usually happens is that ethnographic material will be used to produce a paper or a book. The goal should be to stay truthful to the original narrative that has been acquired during the interview. On the other hand, in the asylum process there is already fixed form that needs to be respected. The legal memo, although until certain extent left to lawyers to decide how it will be conceptualized, represents already given framework in which the narrative needs to be situated. What is happening essentially is that the life story of the asylum seeker, that has been shaped in a context completely different from our own, needs to be adjusted in order to fit the western legal framework. One of the telling examples that we have experienced is that the asylum seekers do not think chronologically as it is expected in European context, or they do not give the same significance to years. In order for the claim to be credible (which is the key word in the asylum application), the story needs to

be coherent and linear; It is in this instance that I see the legal representation encompassing its boundaries and crossing into the field of cultural translation. In order to represent their client justly, the lawyers need to be sensitive to cultural backgrounds they are coming from, as well as to the way their story will be received and interpreted by the Territorial Commission, who, despite its presumed training, is thinking in European terms. Therefore, while trying to make the narrative the most credible they might end up inevitably changing it.

Based on my observations during the work with the asylum seekers, I would like to demonstrate that there is a space within the Asylum system that can be explored in two ways: one is in terms of role that anthropologists could play within it; and the other in terms of potential collaboration between anthropological and legal approach in rethinking the process of asylum application.

## **V. Asylum System in Metamorphosis: The (potential) role of Anthropologists**

If the Asylum system is going through a change then what could be a potential role that anthropologists could play in it? I believe that the practice of this Clinic has pointed out several directions in which the discipline could contribute to creating a system that is more comprehensible and appropriate for the seekers coming from different cultural backgrounds. In this case, I will just shortly outline the main ways I see this potential use of anthropology could happen:

### *Country of Origin Information*

*'For claims under the 1951 Convention to be fairly evaluated, applicants' stories must be placed within their cultural, socio-economic, and historical contexts.'*

(UNHCR 1992: ¶42; Barsky 2000: 58)

In the setting of the modern asylum system in which, as it has been already mentioned, a great number of asylum seekers are coming from the non-Western and, to the decision makers unknown cultural systems, the COI is one of the pivotal elements to the just assessment of the asylum claim, as it helps to contextualize the asylum seekers story (see: Good 2006). In countries with common law systems, such are the UK, Australia and Canada, there are some instances of anthropologists being employed as “country of origin experts”, but this is limited in scope, as it mainly refers to the judicial part in which they are invited to “testify” as experts (Kalin 1986, 230).

When it comes to the broader European context (mainly the Common European Asylum System), the COI is considered as equally important and usually provided (by combining and systematizing already existing rapports) by different governmental institutions, or by several existing NGO’s that provide systematized country of origin information to the relevant governmental bodies.<sup>9</sup> What they have in common, however, is that their rapports are very general and focus on certain key points considered as relevant for the asylum seeking process (human rights climate, detention procedures, conflict etc) which leads to there reports being limited in scope, and sometimes, hardly connectable to the asylum seekers individual life story.<sup>10</sup>

Anthropology as a discipline that has been historically involved in studying, understanding and comparing diverse cultural systems has built a significant body of knowledge as well as methodologies that could be potentially used within the asylum system today. The

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<sup>9</sup> Researching Country of Origin Information: Training Manual. ACCORD, 2013. p 11.

<sup>10</sup> Additional limitations of the country of origin information that is produces in this manner is that “the evidence is often inconclusive, often too generic or doesn’t exist at all.” For more information: Researching Country of Origin Information: Training Manual. ACCORD, 2013. p 11.

biggest potential applicability of anthropology in this instance could be regarding the research of the “country of origin information”, as one of the basic principles on which the discipline is postulated presupposes conducting the fieldwork and creating a more specific and usually descriptive body of knowledge, that could be used to encompass the perceived limitations of the current COI system.

In practical terms, one of the ways in which this could be achieved is either by anthropologists becoming ‘specialized’ for certain countries from which a large number of asylum seekers is coming from (by conducting a fieldwork there) or by using already existing body of knowledge that can account more for different cultural aspects that could be relevant in determining the *credibility* of specific asylum applications.

#### *Cultural expertise and mediation*

*An interest for cultural expertise in legal proceedings comes in the time when academic community is expressing deeper interest in the study of law and culture (Holden 2011, xvii). The book “Cultural Expertise and Litigation” edited by Dr Livia Holden shows examples of several first hand experiences of anthropologists taking part in civil as well as criminal proceedings, with the focus on interaction that is taking place “between the legal practitioners, the people involved in the case and the expert or cultural mediator” (Holden 2011, xviii). At this moment, Dr Holden is supervising a European level research project titled “Cultural expertise in Europe-what is it useful for?” which aims to assess the use and impact of cultural expertise in fourteen European countries, with the aim of creating an “integrated concept of cultural expertise by adopting a historiographical perspective which opens up anthropological and socio-legal discussions”.<sup>11</sup>*

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<sup>11</sup> See: <https://www.law.ox.ac.uk/research-and-subject-groups/cultural-expertise-europe-what-useful>

Even closer to our area of interest is the research conducted by Anthony Good within the UK, that investigated “legal process of claiming asylum from anthropological perspective” (Good 2006, 2). His book titled “Anthropology and Expertise in Asylum Courts”, based on field observation of more than 300 asylum hearings, provides an insight into the way anthropologists could contribute, apart from the above mentioned role in providing expertise on ‘country of origin information’ (Good 2006). As he states,

*“even though anthropologists are, according to one very influential view, first and foremost interpreters of cultures (Geertz 1973), the instructions they receive are usually concerned more with exploring the histories and politics of applicants’ countries of origin than with eliciting insights into their particular cultural backgrounds. By contrast, virtually every asylum hearing requires interpretation in a narrower and more literal sense” (Good 2006, 153).*

In the asylum hearings in which the asylum seeker is speaking language different from the one of the Commission, interpreters are also present; what is very often happening, however, is that these interpreters need to take upon roles of cultural mediators as well, in the cases when they observe there is a misunderstanding between the participants in the hearings (Good 2006, 153-188). However, as official guidelines on this kind of mediation do not exist, interpreters involvement in such mediation is left to their own assessment as well as actual expertise, which might not be adequate and can lead up to making bigger confusion (Good 2006, 171).

Although, as Good remarks, “This is an area where one might expect anthropologists to come fully into their own, their role is normally limited to commenting on any such matters...” Further he claims, “Even if they attend hearings to give oral evidence, the exigencies of procedure may prevent them from addressing fully, if at all, any cultural misunderstandings arising during the hearing itself” (Good 2006, 170). Consequently, by creating space

for anthropologists within asylum hearings, the perceived cultural misunderstandings could be potentially reduced.

### *Academia*

Finally, anthropologists and other practitioners of social sciences do not need to necessarily become involved in the very system of asylum in order to improve it and/or change it. Academic work still represents an area through which social change can occur, although this seems to be difficult without the existence of political will. Also, knowledge and insights produced through academic work do not necessarily need to be applied in order to be valuable, and the current 'refugee crisis' provides great potential for different theoretical and intellectual endeavors.

In any case, with the popularity of the topic, the body of knowledge related to it continues to grow. For instance, some approaches being already employed by anthropologists go in line with describing "politics of trauma within political asylum system" (see: Das 2007), assessing narratives of the asylum seekers (Beneduce 2015) or imagining space for anthropology within asylum proceedings (Sorgoni 2015), just to mention few examples of a very diverse area.

More ambitiously, if broader geopolitical context ever allows for rethinking and changing the basis of the international protection as it exists today (as there is an opinion that its cornerstone, the Geneva Convention Related to Status of Refugees, needs to account more for different reasons people would need or seek international protection), using anthropological, as well as input of other social sciences, that are already producing knowledge about the field, could contribute to creating more just and appropriate system.

## **VI. Anthropology and Law - Expanding the scopes of interdisciplinarity: A proposal**

At first hand, the connection between law and anthropology does not seem obvious; however, as Good observes, many of the ‘first’ anthropologists were lawyers by profession, “Lewis Henry Morgan, Henry Maine, John McLennan – and there is an obvious overlap between law and an anthropological interest in ‘custom’” (Good 2006, 15). Moreover, the area of comparative law, for example, could be argued is very close to the anthropological field (see: Frankenberg 2016).

The long history, therefore, that law and anthropology had, has created a broad and interesting area that can still be explored and expanded (see: Good 2006, 15-14; Frankenberg 2016).

However, the perspective for which we will be interested in here concerns the legal and anthropological representation or the anthropological analysis of legal representation. Apart from my own reflection on the process of providing legal services to the asylum seekers that has been outlined in the fourth part of this paper, there are also some academic papers written about the same issue.

Dr. David Zammit, from the University of Malta, for example, has conducted his doctoral research on the “daily practice of Maltese lawyers and the representation occurring in courts” (Zammit 1998, 13). As he states,

*“studying legal representation means looking at the relationships and activities through which the stories initially told by clients to lawyers are translated to ‘facts’ during litigation”*

(Zammit 1998, 13).

Moreover, he claims that,



*“Lawyers can be seen to occupy a culturally intermediate position between their clients and the courts and their legal representation as the attempt to symbolically mediate between these two charged pools. This is, in short, the zone of intersection and confrontation, where legal rules produce their social effects and social processes animate and reinterpret legal rules”*  
(Zammit 1998, 14).

It is in the scope of this perceived mediation that I would like to situate a proposal for a new practice within the Clinic, as I believe that this observed mediation that lawyers are doing is even more apparent in the area of asylum system and that the Clinic could be used as a means of testing how much legal representation in this field is similar to the anthropological one.

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Interdisciplinary work, so much discussed these days, is not about confronting already constituted disciplines (none of which, in fact, is willing to let itself go). To do something interdisciplinary, it is not enough just to choose a subject (a theme) and gather around it two or three sciences. Interdisciplinarity consists of creating a new object that belongs to no one.

The way the HRMLC is organized now already represents a step in the right direction in terms of interdisciplinarity. Recognizing the need for cultural mediation organizers have decided to involve the students of anthropology. However, I believe this involvement could be extended and expanded, and the potential of this should be exploited further.

Anthropologists in the Clinic already reflect on their own role and examine in a way the power relations that exist with the representation of this kind. It has been argued that their way of thinking is part of anthropological training that is, in turn, a product of a specific

period in the development of the discipline. It is in this instance, that this thought could be explored further.

The way it is postulated now, the Clinic does leave a lot of space for reflections of different kinds. Each group has had several supervising meetings during the course of their activities in which they could elaborate on their experience, and talk about eventual difficulties they would encounter. Anthropologists, as it has been already mentioned, had separate meetings with their professor; if I did not decide to attend them, I probably would not have an insight into their experience as I do now. And it is my impression that it is the same with the rest of the students. Interdisciplinarity exists, but the students still in a way stay in their own 'lanes' and do not try to explore each other viewpoints and approaches to the same issue.

It is, therefore, that I would suggest creating a special group or a type of supervision in which both students of law and anthropology would participate. They would be encouraged to reflect on the way each of their disciplines is approaching the work with the asylum seekers and to try to understand and embrace the viewpoint of the other. It could be expected that, for example, students of law become more aware of the cultural representation that they are maybe unaware doing an anthropologist to get a certain structure and limit their thinking within a certain scope.

The main goal would be to try and test the two above-mentioned hypothesis: first of all, that this kind of interdisciplinarity is beneficial for students with both backgrounds (by assessing, for example, how much students of law feel the contribution of anthropologists, and if). And secondly, maybe more ambitiously but potentially more rewarding, to get the students to work together, to delete the division between them and to really put in practice

the above-mentioned opinion that the asylum system could potentially benefit from a collaboration between law and anthropology. The students could be encouraged to try and think about the way in which their approaches could be merged into one and to see how they can benefit from each other.

Without trying to be overly ambitious, this kind of endeavor could be a good next step in the Clinic's practice. It could show how interdisciplinarity can be achieved, not just through theoretical, but also practical engagement and maybe read some new and interesting insight into the way we approach work with the asylum seekers. The proposed meetings should be monitored and final rapport should be made, indicating whether this kind of engagement can have a positive impact on students as well as, potentially, offer an alternative way for approaching work with asylum seekers within Refugee Law Clinics.

## **VII. Concluding Remarks**

The idea that this paper tried to convey is twofold: First of all that traditionally understood clinical legal education should not be reserved just for students of law, but should also involve students and practitioners of other disciplines; this kind of practice can yield positive result for all parties involved and also benefit the entire performance of the Clinic in question.

Secondly, the paper was based on the particular example of the Human Rights and Migration Law Clinic of Torino, that employs interdisciplinary approach and involves students with different backgrounds. The special emphasis was put on the fact that it is conducted in cooperation with the Anthropology department of the University of Turin, and that anthropology students also play part in the work. The reflection students had, as well as my own experience of working with asylum seekers within the Clinic, have made me realize

the potential that exists within the system for a more systematic involvement of anthropologists, which I have shortly outlined. Moreover, based on my dual role within the Clinic, I have tried to convey the idea that legal and anthropological representation have certain common elements, especially when it comes to working with clients/informants coming from different cultural systems. Finally, a proposal for expanding and exploring further this kind of interdisciplinarity was made, with the overall goal of providing students with the opportunity to broaden their experience and while doing so, potentially participate in creating a new approach that would encompass traditionally divided disciplines and cross into the domain of true interdisciplinarity.

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**THE ‘SECOND WAVE’ OF SPANISH CLINICAL LEGAL EDUCATION:  
EMPIRICAL, PEDAGOGICAL, AND INSTITUTIONAL LESSONS FOR A PILOT  
COURSE AND PROGRAM AT THE UNIVERSITY OF GRANADA**

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*Spanish clinicians today benefit from the ‘first wave’ of early adopters. We also benefit from decades of clinical scholarship—most recently about the Western European and global clinical legal education movements—and empirical data on what lawyers actually do and need in practice. In this article, the authors summarize key empirical, pedagogical, and institutional lessons to ground the creation of a pilot course and program at the University of Granada.*

## **I. Introduction**

The benefit of being a later adopter is that we learn from our predecessors. Having blazed the trail, the founders of Spanish clinical legal education—the “first wave” of clinicians—have provided important lessons for those of us now embarking on the project of creating a clinical course and program at the University of Granada. Our nascent endeavor also benefits from the broader European experience, from the clinical legal education movement internationally, and from studies of present-day lawyering. No longer do we proceed from conviction but, apropos of our project, now proven experience.

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At the 2018 European Network for Clinical Legal Education Conference in Turin, Laura Scomparin called for a “deeper theoretical framework” for the integration of clinical methodology into the entire European legal curriculum.<sup>1</sup> In this article, we offer a modest response to this call by describing the project to create a clinical course at the University of Granada—the first of its kind at the University and hopefully the precursor of a program—that we ground in three sets of lessons: the empirical, the pedagogical, and the institutional. Empirically, we draw from actual law practice, in particular studies of what lawyers need in their day-to-day work—especially during their first years after graduation—and the use of such data to reverse-engineer a modern legal curriculum. Pedagogically, we draw from what is now an international canon on clinical legal education. And institutionally, we draw lessons from Spanish clinicians who have successfully translated personal interest into institutional commitment.

## **II. Spanish Clinical Legal Education: Innovation in the Context of the European, U.S., and Global Movements**

We begin with a brief history of Spanish clinical legal education. Unlike our counterparts in Central and Eastern Europe—which, during the mid-1990s, received considerable financial and training resources for the creation of legal clinics in that region<sup>2</sup>—clinical

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<sup>1</sup> Conference notes on file with authors.

<sup>2</sup> A brief description of this financial aid can be found in ALBERTO ALEMANNINO & LAMIN KHADAR, *REINVENTING LEGAL EDUCATION: HOW CLINICAL EDUCATION IS REFORMING LAW TEACHING AND PRACTICE IN EUROPE*, 9 (Cambridge Univ. Press 2018) [hereinafter ALEMANNINO & KHADAR].



legal education arrived in Spain during the first decade of the 21st century, with no such help other than the influence of and contacts with Latin American and U.S. clinicians. Until then, the Spanish academy had been focused on “what to teach” rather than on “how to teach” law students.

It has been common in European clinical literature to point to the Bologna Process as the catalyst for the creation of legal clinics in that period.<sup>3</sup> This is so because the Bologna Process concerned itself in part with how to teach and learn law.<sup>4</sup> In Spain, in addition, the public debate caused by the Bologna Declaration of 1998 made it possible to update, in 2010, a curriculum that had not undergone any significant reform since the end of the Franco dictatorship in 1975. Alberto Alemanno and Lamin Khadar cite other concurrent factors that may have caused such a development and that occurred simultaneously with the implementation of the Bologna Declaration; they include:

the internationalisation and Europeanisation of domestic legal fields; the emergence of supranational and international jurisdictions and tribunals; the emergence of a European and a global market for legal education; increasing demands for relevance in law school education; the emergence of CSR/Service learning/community engagement ethic within European higher education institutions; increased focus on innovation and practical-skill-based education within European higher education institutions.<sup>5</sup>

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<sup>3</sup> See, e.g., DIEGO BLÁZQUEZ-MARTÍN, *THE BOLOGNA PROCESS AND THE FUTURE OF CLINICAL EDUCATION IN EUROPE: A VIEW FROM SPAIN*, in FRANK S. BLOCH, *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* 125 (Oxford Univ. Press 2010).

<sup>4</sup> *Id.*

<sup>5</sup> ALEMANNO & KHADAR *supra* note 2, at 17.

Spain was in the vanguard of the clinical movement in Western continental Europe, but was quickly followed by Italy, France, and Germany. What is now known as the “first wave” of Spanish clinical legal education refers to the four universities that initiated the clinical movement in Spain during the process of reforming the law curriculum to adapt it to the European Higher Education Area: the Rovira i Virgili University in Tarragona, the pioneer, with its establishment of a penitentiary clinic in 2002; Carlos III University of Madrid (2005); the University of Barcelona (2005); and the University of Valencia (2006).<sup>6</sup>

Since then, the Spanish clinical legal education movement has grown and consolidated slowly. It has taken time to introduce clinical legal education to both universities and professors, an introduction that has occurred mainly through the exchange of experiences in conferences focused on innovative law teaching.<sup>7</sup> Another factor influencing the development of the clinical legal education movement has been specific national meetings of legal clinics, at times during the Congress on Teaching Innovation in Legal Studies. These initiatives have bolstered the clinical movement and led to the creation of

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<sup>6</sup> See PILAR FERNÁNDEZ ARTIACH, JOSE GARCÍA AÑÓN & RUTH MESTRE I MESTRE, *THE BIRTH, GROWTH AND REPRODUCTION OF CLINICAL LEGAL EDUCATION IN SPAIN*, in RICHARD GRIMES, *RE-THINKING LEGAL EDUCATION UNDER THE CIVIL AND COMMON LAW: A ROAD MAP FOR CONSTRUCTIVE CHANGE* 148 (Routledge ed., Taylor & Francis Group 2018).

<sup>7</sup> Notable among these conferences was the II National Congress held in Malaga in 2007—considered the place and time of the official birth of the Spanish clinical movement, see BLÁZQUEZ-MARTÍN *supra* note 4, at 129, and the V National Congress held at the University of Valencia in 2013, which featured panels exclusively devoted to clinical legal education and the presence of foreign professors who specialized in the subject.

the Spanish Network of Legal Clinics.<sup>8</sup> To date, the Network has a registry of 26 legal clinics.<sup>9</sup> A final, no less important, factor is the participation of Spanish clinicians as active members in European and international networks.<sup>10</sup> The last meeting of the Network, in October 2018, saw the approval of the so-called “Declaration of Salamanca,” which, among other content, pledged the promotion of the clinical legal education in Spain.<sup>11</sup>

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<sup>8</sup> The network was established through different meetings held in 2007 at the Universitat Rovira i Virgili, in Tarragona; in 2010, 2013, and 2016 at the University of Valencia; in 2014 at the Carlos III University, in Madrid; in 2017 at the University of Alcalá in Madrid; and in 2018 at the University of Salamanca.

<sup>9</sup> RED ESPAÑOLA DE CLÍNICAS JURÍDICAS, Quienes Somos, <http://clnicas-juridicas.blogspot.com/p/quienes-somos.html> (last visited January 7, 2019).

<sup>10</sup> In this regard, there are Spanish professors appointed as members of the Board of Directors of the European Network for Clinical Legal Education (ENCLE) and members of the Steering Committee of the Global Alliance for Justice Education (GAJE); meetings or conferences of these networks have been organized in Spain, specifically at the University of Valencia, where Spanish clinicians actively participate as panelists or lecturers.

<sup>11</sup> The text of the Declaration reads, “DECLARATION OF SALAMANCA LEGAL CLINICS AND UNIVERSITY SOCIAL RESPONSIBILITY (October 19, 2018). Members of the Spanish University Network of Legal Clinics, gathered in Salamanca on October 19, 2018, in the context of the 7<sup>th</sup> National Meeting of Legal Clinics and the 8<sup>th</sup> centenary of the University of Salamanca, joining the European and global movement that defends the relevance and necessity of clinical legal education, and considering:

That society needs professionals who, in addition to having solid technical knowledge, exhibit and deploy a critical thinking for the defense and guarantee of our system of rights and freedoms.

That the need to train professionals with an open and creative mind should be vindicated to address the new challenges that contemporary societies face, with special attention to the situation of the most vulnerable groups.

That the clinical legal method promotes the acquisition of skills, abilities and competences that are essential for a rigorous and committed performance of the legal profession.

That the University, for the sake of its social responsibility, may and should contribute to building a more equitable and just society, in which the principles and values associated with the social and democratic State of Law inform its action.

We proclaim the following commitments:

First: To promote and improve active and experiential learning and practical training of students, through clinical legal education.

Second: To contribute to the training of critical of the system professionals and sensitive to the idea of social justice in the current socio-political context, linking learning to social needs existing in the vicinity.

Third: To promote the defense of the rights of persons and less favored groups, at risk of social exclusion, in a situation of special vulnerability, or who have been subjected to some form of inhuman or degrading treatment or discrimination.

Fourth: To promote in students the social conscience, ethical values and commitment in the defense of human rights and the Rule of Law in the local, state and international context.

Fifth: To promote the creation of joint knowledge, between civil society and the University, as well as to promote the transfer of knowledge and research generated at the University.

Sixth: To contribute to the development of university social responsibility as a strategic factor for the involvement of the University in society and the presence of society in the University.

Currently, the main challenge for the Network is the signing of a framework agreement for collaboration between it and the General Council of the Legal Profession,<sup>12</sup> so that legal clinics can use the agreement as a referent with regional bar associations, in case there are no specific agreements in this regard. According to the agreement's provisional content, the parties' aim is to reinforce the teaching of values and social responsibility to undergraduate and postgraduate students of law and facilitate practical training of students through participation in socially responsible activities and pro bono cases related to persons and groups in vulnerable situations, supervised by volunteer lawyers and professors.

Since clinics (as yet) do not have legal status and, therefore, cannot participate directly in the signing of the agreement, the Conference of Rectors of Spanish Universities (CRUE) has been the elected delegate to represent them. The text of the agreement, which is awaiting final signature, includes, among other issues, the collaborative working commitments assumed by clinics and bar associations—it regulates cases in which non-profit entities participate, the voluntary nature of all activities, and the confidentiality of information handled and developed during the collaborative work.

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Seventh: To promote the networking and collaborative work of the Legal Clinics in the state, European and international context, encouraging new Universities to join the clinical legal movement and sharing experiences and knowledge.” (The translation are the authors’.)

<sup>12</sup> In Spanish, *Consejo General de la Abogacía Española*, a body similar to a national bar association.

### **III. Empirical, Pedagogical, and Institutional Lessons for Second-Wave Spanish Clinicians**

#### **A. Empirical Data: Lawyering and Modern European Practice—What Do Spanish Lawyers Actually Do?**

For the clinical legal education movement, the motivating question always has been: what are we preparing students *for*? This threshold question ought to define curricular content—and is the reason we are intent on reforming Spanish legal education. In Spain, as elsewhere, a chasm continues to exist between what and how law students are taught and what and how they are expected to be able to do upon graduation. Global as the clinical legal education movement has become, the law school curriculum remains mired internationally in doctrinal instruction. In the U.S., the case-dialogue method conducted in the large lecture class continues to dominate the first year of law school. The same is true in Spain.

In contrast, actual lawyering and, in particular, empirical studies of actual law practice, repeatedly and consistently have emphasized the need for law students to develop professional skills and values. In the U.S., these studies date at least as far back as 1914, when the Carnegie Foundation published a study of the Socratic method.<sup>13</sup> That study

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<sup>13</sup> See WILLIAM M. SULLIVAN, AFTER TEN YEARS: THE CARNEGIE REPORT AND CONTEMPORARY LEGAL EDUCATION, 14 Univ. of St. Thomas L.J. 331, 332-33 (2018) (discussing *inter alia* 1914 and 1921 Carnegie Reports).

was followed by Alfred Reed's seven-year examination of the legal curriculum, which was published in 1921.<sup>14</sup> More recently and influentially among these studies are the 1992 MacCrate Report, the 2007 Carnegie Report, and Roy Stuckey's 2007 book on "Best Practices for Legal Education."<sup>15</sup>

Richard Wilson summarized four recent sets of supporting data in his recent book on the global clinical legal education movement:<sup>16</sup> the 2008 Shultz-Zedeck study, which interviewed hundreds of lawyers, law faculty, law students, judges and clients;<sup>17</sup> the 2012 National Conference of Bar Examiners study, which looked at the work of more than 1,500 lawyers in practice from one to three years;<sup>18</sup> the 2016 Institute for the Advancement of the American Legal System (IAALS) study, which examined the work of 24,000 attorneys representing all 50 states;<sup>19</sup> and a 2013 University of Dayton law school study, which analyzed a focus group of 19 Dayton-area practitioners.<sup>20</sup> Like findings before them, these studies show that knowledge of legal doctrine or theory is only one among numerous other competencies required for able practice. For example, the Shultz-Zedeck

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<sup>14</sup> *Id.*

<sup>15</sup> See also DEBORAH MARANVILLE, LISA RADTKE BLISS, CAROLYN WILKES KAAS & ANTOINETTE SEDILLO LOPEZ, BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (Carolina Academic Press eds., 2015).

<sup>16</sup> RICHARD J. WILSON, THE GLOBAL EVOLUTION OF CLINICAL LEGAL EDUCATION (Cambridge Univ. Press 2018) [hereinafter WILSON].

<sup>17</sup> *Id.* at 18-19; see MARJORIE M. SHULTZ & SHELDON ZEDECK, FINAL REPORT: IDENTIFICATION, DEVELOPMENT, AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING, 24-25, (Sept., 2008), <https://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf> [hereinafter SHULTZ & ZEDECK].

<sup>18</sup> *Id.* at 20.

<sup>19</sup> *Id.* at 21.

<sup>20</sup> *Id.* at 21-22.

study identified eight categories of “effectiveness factors” that, in addition to the doctrinal knowledge—which they grouped under the “intellectual and cognitive”—includes “research and information gathering,” “communications,” “planning and organizing,” “conflict resolution,” “client and business relations,” “working with others,” and “character”.<sup>21</sup>

These findings are nearly identical to those of a similar studies of lawyering in Europe. In 2005, for example, the Law Society of England and Wales developed a list of “core general characteristics and abilities that solicitors should have on day one in practice.”<sup>22</sup> These characteristics include the ability to: “effectively use current technologies and strategies to store, retrieve and analyze information,” “apply techniques to communicate effectively with clients, colleagues and members of other professions,” “manage their personal workload and manage efficiently and concurrently a number of client matters,” “effectively approach problem-solving,” “recognize clients’ financial, commercial, and personal constraints and priorities,” “demonstrate the capacity to deal sensitively and effectively with clients, colleagues and others from a range of social, economic and ethnic

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<sup>21</sup> SHULTZ & ZEDECK, *supra* note 17.

<sup>22</sup> ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 53-54 (Clinical Legal Education Association 1st eds. 2007) at [http://www.cleaweb.org/Resources/Documents/best\\_practices-full.pdf](http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf), citing THE LAW SOCIETY, SECOND CONSULTATION ON A NEW TRAINING FRAMEWORK FOR SOLICITORS, § 4, ¶ 46 (2003) [hereinafter STUCKEY].

backgrounds,” and “demonstrate appropriate behavior and integrity in a range of situations.”<sup>23</sup>

Most notable from this data is that doctrinal knowledge ranks *below* the other competencies required of the new lawyer. For example, the central question the IAALS study asked was “what do attorneys need right out of law school to succeed?”<sup>24</sup> Alli Gerkman and Zachariah DeMeola found that new lawyers needed three types of foundational skills, competencies, and characteristics: legal skills, cross-vocational professional competencies, and characteristics such as integrity and trustworthiness.<sup>25</sup> It is worth quoting their findings with respect to doctrinal knowledge at length:

[S]urvey results suggest that it is not the granular, practical knowledge or knowledge of substantive law that new lawyers need to have in hand immediately. In fact, foundations that fell into the legal skills type made up only 16 of the 77 foundations identified as being necessary for practice right out of law school—by far the lowest among the three foundation types. Moreover, of the legal skills that practitioners believed new lawyers need to be successful, maintaining core knowledge of substantive and procedural law in the relevant focus area(s) was low on the list. Only 50.7% of respondents believed that maintaining core knowledge of the substantive and procedural law was necessary right out of law school. Indeed, that foundation barely made the list of 77 foundations that are necessary out of law school.<sup>26</sup>

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<sup>23</sup> *Id.* at 52-53. See also GOLD, MACKIE, & TWINING, W. (EDS.), *LEARNING LAWYERS' SKILLS* (Butterworths: London 1988); CAROLINE MAUGHAN & JULIAN WEBB, *LAWYERING SKILLS & THE LEGAL PROCESS* (Cambridge Univ. Press 2005).

<sup>24</sup> ALLI GERKMAN & ZACHARIAH DEMEOLOA, *THE BAR EXAMINER: FOUNDATIONS FOR PRACTICE*, 17 (Summer ed. 2018), [http://www.ncbex.org/assets/media\\_files/Bar-Examiner/issues/BE-870218-Online.pdf](http://www.ncbex.org/assets/media_files/Bar-Examiner/issues/BE-870218-Online.pdf) [hereinafter GERKMAN & DEMEOLOA].

<sup>25</sup> *Id.* at 18.

<sup>26</sup> *Id.* at 25.



Such knowledge becomes even less important when we consider how it is taught—i.e., impractically or abstractly, and passively, usually, as mentioned, through lectures in large classes. In other words, the data on actual practice make clear the irrelevance of most legal instruction—a finding stunning in its absurdity and consistency.

The empirical data also call into question not just how we teach but what we teach. As Alemanno and Khadar observed, European lawyering is undergoing internationalization and Europeanization. No longer is practice defined by national boundaries. Instead:

any lawyer, regardless of the geographical scope of her practice, is increasingly expected to work and research across countries and regions with differing legal traditions ... it is no longer possible to teach consumer law, tax law, or environmental law, to name just a few, without at least some basic notions of international law. Yet the progressive internationalization of law has not been followed up by a parallel internationalization of legal education. In other words, the traditional legal curriculum has not been denationalized.<sup>27</sup>

According to Alemanno and Khadar, internationalization and Europeanization have come alongside the proliferation of other professional roles<sup>28</sup> and the emergence of a European and global market for legal education.<sup>29</sup>

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<sup>27</sup> ALEMANNINO & KHADAR, *supra* note 2 at 13.

<sup>28</sup> “The new legal professions include compliance officers, regularly affairs specialists, and in-house lawyers, as well as policy-makers and legal consultants (e.g. tax experts, lobbyists, regulatory affairs).” *Id.* at 15.

<sup>29</sup> *Id.* at 17-23.

Actual practice demands training equal to these challenges. Empirical data must be the bases upon which any reform of legal study ought to come. Hence, there are two lessons here: first the need to study the actual practice of Spanish lawyers and, second, to use such data to reform legal education—at least on the master’s level—to better prepare lawyers for such actual practice. We need a concrete understanding of what modern law practice looks like in order to reform curricula accordingly. What do lawyers actually do? What substantive knowledge do they need? What skills? What values? How should we equip them—particularly in light of the current historical moment?

### **B. Pedagogical Theory**

In the U.S., as mentioned, critics have long criticized American law schools for not sufficiently preparing students for the practice of law. As Roy Stuckey observed:

Since the 1970’s, numerous groups of leaders of the legal profession and groups of distinguished lawyers, judges, and academics have studied [American] legal education and have universally concluded that most [United States] law school graduates lack the minimum competencies required to provide effective and responsible legal services.<sup>30</sup>

In addition, a consensus has emerged from these assessments that the best way to prepare U.S. law students for practice is through experiential learning in clinics or field placements.<sup>31</sup> Participation in experiential learning has been associated with many

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<sup>30</sup> STUCKEY, *supra* note 22.

<sup>31</sup> *Id.*; see also GERKMAN & DEMEOLA, *supra* note 24.

positive educational outcomes. For example, “[e]xperiential education gives students opportunities to be actively involved in their own education, and it has positive effects on their motivation, attitudes toward the course, willingness to participate in class, ability to ask insightful questions, and acquisition of knowledge and skills.”<sup>32</sup> More importantly, clinical education has been identified as critical to “responsible professional training.”<sup>33</sup> As the Carnegie Report noted, experiential learning is “the law school’s primary means of teaching students how to connect the abstract thinking formed by legal categories and procedures with fuller human contexts.”<sup>34</sup>

In response to these insights, the American Bar Association—the body responsible for establishing U.S. law school accreditation standards—has recently adopted a requirement that all U.S. law students must receive some experiential learning and that law schools must provide “substantial opportunities” for students to participate in law clinics and field placements.<sup>35</sup>

According to the ABA standards, to be considered a field placement or a clinic, a course must satisfy ten requirements. The field placement course must (1) be “primarily

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<sup>32</sup> *Id.* at 122.

<sup>33</sup> *Id.* at 123 *citing* WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS 98 (Draft July, 2006).

<sup>34</sup> *Id.* at 123.

<sup>35</sup> ABA STANDARD AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2018-2019, 16 (2018) [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2018-2019](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019).

experiential;” (2) be integrated in teaching legal knowledge, skills, and values; (3) theorize skills instruction; (4) provide “substantial lawyering experience;” (5) provide “multiple opportunities” for student performance; (6) be directly supervised by a faculty member and placement staff attorney; (7) be accompanied by a seminar or tutorial; (8) have formative and summative assessment ; (9) include student self-reflection; and (10) be “sufficient[ly] control[led]” to ensure quality.<sup>36</sup>

These requirements serve to distinguish clinical learning from classroom education and to emphasize that clinics and field placements—or externships—engage students in actual law practice under the supervision of a licensed practicing attorney and a faculty member. Because students are engaged in the actual practice of law, a clinic or externship necessarily integrates the teaching of substantive knowledge (legal doctrine), professional skills, and professional identity, values, and ethics,. A clinical course is not just about the law but also about lawyering, in particular, skills and ethics, and how these competencies interrelate in a practitioner’s day-to-day work.

As Stuckey noted in Best Practices, the primary value of field placements and clinics is to assist students to “adjust to their roles as professionals, become better legal problem-solvers, develop interpersonal and professional skills, and learn how to learn from

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<sup>36</sup> *Id.* at 17.

experience.”<sup>37</sup> These are the fundamental competencies needed to successfully practice law. Clinics and field placements, therefore, help students obtain “minimum competencies required to provide effective and responsible legal services.”<sup>38</sup>

### **C. Institutional Support**

Today, first and foremost on the Spanish clinical legal education movement agenda is institutionalization.<sup>39</sup> As our predecessors have found, personal commitment is not enough to sustain a program of legal education.<sup>40</sup> Maria Marques-Banque has observed that “[a]t a time in which law teachers are compelled to focus on research and the resources available are scarce, the creation of legal clinics cannot rely on the initiative of those personally committed to the idea of educating lawyers for social justice. Again, what is required is an institutional approach to expanding [clinical legal education].”<sup>41</sup>

Institutionalization has at least five pillars. First, As Marques-Banque and others suggest, second-wave Spanish clinicians should tie their projects to their institutions’ missions: How does clinical legal education fit into a school’s and University’s strategic plan and social responsibility mission? The Bologna Process provided the impetus for this second

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<sup>37</sup> STUCKEY *supra* note 22, at 124.

<sup>38</sup> *Id.* at 1.

<sup>39</sup> MARIA MARQUÈS I BANQUÉ, *TOWARDS THE INSTITUTIONALIZATION OF LEGAL CLINICS IN SPAIN*, in ALEMANNO & KHADAR, *supra* note 2.

<sup>40</sup> See, e.g., WILSON, *supra* note 16.

<sup>41</sup> BANQUE *supra* note 39, at 98.

clinical wave.<sup>42</sup> How do we follow through with this agenda? Second, faculty interest and support are key; without them, any program is doomed to failure. Third, support from bar associations—as well as from intermediary organizations—is also key, hence the Network’s current effort on executing and implementing a framework agreement. The bar needs to be assured that clinics are not a market threat but rather are a means of supplementing services, promoting *pro bono publico* service, and ensuring graduates better able to practice. Fourth, these self-same lawyers and organizations are sources of both external clinic placements and co-instructors. As externship clinicians long have found, broad and deep relationships with lawyers and offices in the community are mutually beneficial: they enrich students’ education, address gaps in legal assistance, and forge a closer relationship between law schools and the bar. Fifth and finally, the services provided by the clinic ought to be based on community need. Addressing community need reinforces all the other pillars of institutionalization: it discharges the school’s and university’s social responsibility mission, orients faculty to important social issues, serves those marginalized by the legal market, and fuses the university with the broader community.

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<sup>42</sup> FRANK S. BLOCH, *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* (Oxford Scholarship Online 2011).

#### **IV. 'Proceso Administrativo' at Universidad de Granada**

Again, as others have observed, "European lawyering is undergoing internationalization ... yet the progressive internationalization of law has not been followed up by a parallel internationalization of legal education."<sup>43</sup> Aware of this deficiency at the University of Granada, the dean asked a few years ago for faculty to collaborate on introducing English as the working language in a number of courses. As a member of the dean's team at that time, and vice-dean for international relations, Professor Lopez Sako obliged. As a result, he began teaching a course in English in the academic year 2015-2016. Only one other professor would be willing to do likewise. As a result, there are just two English taught courses in the Faculty of Law at the moment. The course our project is "clinicalizing" is one of them. Thus, to the novelty of using English as a vehicular language we are going to add another challenge that will hopefully contribute to addressing the internationalization of legal education.

Along with internationalization, we also plan to add another aspect of legal training that the Bologna Process addresses: socialization. Public university students in Spain have an added obligation or duty to return to society something in exchange for what they have gotten almost free compared to other countries (the tuition fee for one year of study at

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<sup>43</sup> ALEMANN & KHADAR, *supra* note 2, at 13.

the Faculty of Law is less than 1,000 euros). In this context, turning a course into a clinical one or introducing at least some clinical component into a course allows students to give something back to society, which promotes justice. As well, increasing the practical side of legal training has been a long-asked-for request or desire from the majority of our undergraduate law students, as the current study load consisting of practical activities in the undergraduate degree is embarrassingly low.

“Proceso Administrativo” may be translated into “Administrative Court Procedure” or “Judicial Review Procedure.” As the object of study is Spanish national law (civil law system), it is sometimes difficult to produce a reliable translation into English (common law system). Nonetheless, the course, which is offered in the spring, contemplates a study of four months. Its current syllabus is as follows:

- LESSON I: THE ‘CONTENTIOUS-ADMINISTRATIVE’ JURISDICTION (JURISDICTION FOR JUDICIAL REVIEW).
  - 1) Historical evolution. The system in Spain and other European countries. The legal reform of 1998.
  - 2) The judicial review of the activity of public Administration.
  - 3) The scope of judicial review.
  - 4) The judicial bodies in the Administrative jurisdiction.
- LESSON II: THE APPEAL FOR JUDICIAL REVIEW.
  - 1) Introduction.
  - 2) The parties to the court proceedings.
  - 3) The object of the appeal.
- LESSON III: THE JUDICIAL REVIEW PROCEDURE.
  - 1) The ordinary procedure.
  - 2) The short procedure.
- LESSON IV: THE SPECIAL PROCEDURES.
  - 1) Procedure for the protection of fundamental personal rights.



- 2) Questions of illegality.
  - 3) Procedure in cases of prior administrative suspension of resolutions.
  - 4) Procedure to ensure market unity.
  - 5) Procedure for a court order extinguishing a political party.
- LESSON V: THE APPEALS AGAINST PROCEDURAL DECISIONS.
    - 1) Appeals against writs and orders.
    - 2) Ordinary appeals to the next higher court.
    - 3) Appeals to the Supreme Court.
    - 4) Review of a final judgment.
    - 5) Appeals against decisions issued by the court clerk.
  - LESSON VI: THE EXECUTION OF RULINGS.
    - 1) The obligation to execute.
    - 2) Execution modes.
    - 3) Voluntary execution (compliance).
    - 4) Forced execution (enforcement).
  - LESSON VII: THE PRECAUTIONARY (INTERIM) MEASURES.

As currently taught, apart from being almost entirely in English, it is mainly based on the traditional teaching method of master classes together with some supplementary practical activities such as: small group preparation of certain specific issues and subsequent presentation of the results and debate in the classroom; individual elaboration of diagrams and/or summaries; reading and discussion of rulings; and group preparation and presentation of mini lessons to their classmates. These clearly are not enough, on the one hand, for the student's training in skills and abilities to perform as future lawyers and, on the other hand, for gaining consciousness of their training as a meaningful activity within and for society.

**A. Introducing a clinical approach: preliminary considerations**

There are a number of preliminary issues that need to be addressed prior to the introduction of a clinical course in a Spanish university. Many of these concerns have been gleaned from the experience of the “first wave” clinicians. In order to be successful, a clinic needs institutional support, should have a narrow practice focus, needs protection against malpractice, supervision by practicing attorneys, and qualified students. Each of these considerations will be addressed in turn.

Changing the content of any mandatory or elective course of a degree program in a Spanish university is not an easy task; it has to undergo and overcome several bureaucratic requirements starting—after all the preparatory work of designing the changes to be introduced to the course—from the approval by the faculty board (*junta de centro*), which may be the first (and hopefully not) insurmountable barrier. And even if you have the approval by the faculty board, the subsequent support of the rectorate is necessary. The dean of the faculty of law of the Public University of Navarra, for example, tried to implement a legal clinic in his faculty (he already supposedly had the approval of the faculty board), but could not go any further due to the lack of support from the rector of the university.

Aside from the formal requirements and conditions that are to be met, the choice of the approach to be given to the clinic is fundamental. As mentioned, there are quite a few legal clinics functioning in Spain. Some of them are more successful than others. Success depends, mainly, on the scope that has been pursued in each case; the clinics that work best are those that do not have a general character but rather focus on a specific object—as an example, environmental law (Rovira i Virgili in Tarragona) or human rights (University of Valencia). But the main challenge seems to be the lack of institutional support and the lack of commitment of teaching staff (faculty members).

It seems essential, as well, to have some other institution different from the university that can act as an intermediary between the university and larger community: for example, a foundation linked to a law firm, a non-governmental organization, the ombudsman, the city council, or the autonomous communities. Having this intermediate institutional support helps to solve one of the most challenging problems that arise: the responsibility in the face of possible unsound advice; this institution would be accountable and not the University. On the other hand, the involvement of the bar association may be key to success; as mentioned above, to reach an agreement with the bar associations so that they do not see the clinics as a threat but as a collaboration with the university. Legal clinics in Spain do not provide actual representation and legal defense in courts. Rather, they are limited to consultation and advice. It can even be

pointed out that the academic advisor could recommend the subsequent advice of a lawyer.

As for the teaching staff (which is not easy to secure, as our experience in implementing English as vehicular language in our Faculty of law tells us), the ideal is to have teachers with practical experience and to whom this experience would be useful, either because the time devoted to clinical activity counts as normal teaching time for them or because they have some type of economic supplement or incentive. It would also be advisable to have a practicing attorney teach with a faculty member, as is the practice in externships. But all this takes money and an open mind on the part of the decision-making bodies to accept the extra cost and consider it as a forward-looking investment for the future.

The selection of students who can participate in a future clinic or clinical activity is another important question. In the Faculty of Law at the University of Granada the number of undergraduate students enrolling in the law degree every year is very high: about 500. And the number of students admitted to each group is also very high; in *Proceso Administrativo* during the spring semester of 2018 there were nearly 90 students enrolled in the English-taught group (there's another group in which the vehicular language is Spanish). Providing clinical opportunities for each and every student may be complicated if there is no support from the rectorate in terms of hiring new teaching

staff in order to be able to split current groups into smaller, more manageable ones. In this regard, the selection of just a few students within the group to participate in a given clinical activity may be necessary. But how to select them if there's a larger number of students wanting to participate?

As well, in Spain, law studies are divided into undergraduate and postgraduate degrees. Even though we inevitably intend to focus on the latter, it is worth asking: is it better for the training of law students to have some kind of clinical experience during their undergraduate studies or is it better to wait until they are at the graduate level? From the point of view of fulfilling the needs of society, it may be too challenging for undergraduate students, at least in their first or second year; but from the point of view of their training, a more practical approach is something that most students feel is lacking from the very beginning in their current undergraduate program. At the University of Granada, it's not until their fourth and last year of undergraduate studies that students have their first—and only—practical experience with the mandatory course *prácticas externas* (or externships), which are only three weeks long.

### **B. 'Clinicalizing' *Proceso Administrativo***

To establish this clinical foothold at the University of Granada, among the threshold questions we need to answer are: do we want to start right away even though we have to

make do with a modest beginning and develop a more complete and definitive plan on later, based on the results of first experiences? Or is it better to have an ideal plan, very well-defined and designed from the beginning, and stick to it even though the conditions to make it possible are not in place for a long time (or maybe forever!)? If we pursue the second option some further questions are appropriate: what do (administrative) lawyers actually do? What parts of the syllabus are best taught experientially? Or from another point of view, what does the community need? If we opt for the first alternative, the questions to be made in the beginning are quite different: what *can* be done to start with? What is feasible right now taking into account the human and material resources available? Further development, of course, would require answering the other questions, but that could be done at a later stage.

Since turning *Proceso Administrativo* into a clinical course needs the initial approval of the decision-making bodies of the university and having some previous positive experience would help convince these bodies, introducing some clinical component to the course as it is now, just by changing one or some of the current practical activities into an activity or activities with a clinical approach, would allow us to start right away with little effort and to ensure positive results (for example, in the form of students' or external institutions' opinions) thanks to the limited and easily manageable scope of the

experience. We decided, therefore, that the first step would be just an individual decision with no institutional involvement or commitment.

Given these initial considerations and constraints, a “street law” model may be most appropriate here at the outset. There’s a good example of this model in Spain in the University of Oviedo.<sup>44</sup> The model aims to teach law in a practical way to non-lawyers, so that it can be useful in daily experience—i.e., “in the street.” In this model, law students (under- or post-graduate) supervised by their teacher turn into educators, trainers or disseminators with respect to a certain social group in a given subject matter while they reinforce the theoretical and practical training they have just acquired at the law school by presenting what they have learned in a clear and pedagogical way to an audience with little or no legal knowledge.<sup>45</sup>

The street law model adopted by the University of Oviedo is aimed at high school students, as would our clinical activity in *Proceso Administrativo*. But some important differences may be found between the experience in the University of Oviedo and the

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<sup>44</sup> 8 MIGUEL ÁNGEL PRESNO LINERA, UN PROYECTO DE INNOVACIÓN DOCENTE Y DE TRANSFORMACIÓN SOCIAL: LA CLÍNICA DEL MÁSTER EN PROTECCIÓN JURÍDICA DE LAS PERSONAS Y LOS GRUPOS VULNERABLES DE LA UNIVERSIDAD DE OVIEDO (A TEACHING INNOVATION AND SOCIAL TRANSFORMATION PROJECT: THE CLINIC OF THE MASTER ON LEGAL PROTECTION OF VULNERABLE PEOPLE AND GROUPS FROM OVIEDO UNIVERSITY) (Oñati Socio-legal Series 2018) <http://ssrn.com/abstract=3126178>

<sup>45</sup> *Id.* at 3-4.

one we intend to develop: in the case of the University of Oviedo the participants are postgraduate students of the “master on legal protection of vulnerable people and groups” with different academic backgrounds (not law graduates, but from social work, psychology, pedagogy, education, labor relations, etc.). In ours, they are undergraduate law students in an elective course—*Proceso Administrativo*; in Oviedo, the language in which the classes are taught is Spanish, in our case it is English (which may make it difficult for the students to communicate what they learn in a different language); the master course of Oviedo has a duration of one year (which they consider to be a short time), in *Proceso Administrativo* it is even shorter – only four months.

The first difference implies that our students are less academically prepared in general, but they also are more specifically trained in legal matters. It also may be more difficult to attract the interest and attention of high school students as the content of *Proceso Administrativo* is probably much less attractive to them than the protection of vulnerable groups. That means we’ll have to focus on the preparation of the presentations so as to be able to capture the attention of high school students in the usefulness of administrative law, which is a subject law students themselves usually need to know and to be aware of (though they tend to think of administrative law as a boring and not practical subject). Thus, the handicap is turned into an incentive.



The language of instruction is another important issue. *Proceso Administrativo* is taught almost entirely in English, but the presentations to the high school students must be done in Spanish as their level of English is not enough to understand a topic which is difficult enough for them even in their mother tongue. That poses a further complication and a greater challenge. On the other hand, it may serve as a way to check our law students' level of understanding—in Spanish—of some difficult-to-translate legal terms and concepts that are taught directly in English. Again, in the face of this difficulty, the clinical activity favors a positive outcome.

The short duration of *Proceso Administrativo* compared to Oviedo's master course has to be taken into account as well. The shorter duration is a strong reason to choose the street law model, since other clinical activities require longer dedication and follow-up. But the effective organization of the preparation, execution, and assessment of the sessions becomes paramount. In Oviedo, in the first two weeks, the students enrolled in the master course are informed of the existence of the clinic, its objectives, functioning rules, and activities. When they are about to finish the classes corresponding to the elective modules of the course (mid-January), they are reminded again about the clinic and asked for their collaboration. At the end of January, once the number of students willing to participate is known, an intensive session with students and teachers is conducted to explain the organizational and operational details. During the month of February the

groups (which consist of a teacher and several students) are formed based on the different topics (gender violence, asylum and refuge, school bullying, gender equality in labor relations, poverty and social exclusion, and disabled persons' situation). During the months of February and March the groups and their respective teachers, together with the coordinator of the clinic, establish ongoing contacts with one or more high school teachers in order to select the audiences of the presentations, outline the topics, and organize the sessions—as many as 13 in the master course's second edition. Between February and April, the teacher of each group guides the students in the realization of content and supervises the preparation of teaching materials for the sessions at the high schools. Finally, during the months of May and June, the planned presentation sessions are carried out.

Obviously, in *Proceso Administrativo*, the timeline, although very similar in content and sequence, must be shortened and some changes must be introduced in order to start the clinical component: the initial information about the clinical activity would be given in the first instructional day; during the month of February, the group or groups (the topics for the presentations, at least at first, should be limited to the first and second lessons of the syllabus), depending on the number of students interested in participating, should be prepared and then formed and the organizational and operational details explained in one single session before the end of February; the contacts with the high school teacher/s

would be established as soon as possible after the previous explanatory session; at the same time, the teacher (the only one, in our case) will start guiding and supervising the students in the preparation of the presentations at the high schools; finally, at the end of April or, at most, in the first week of May the presentation session/s should be carried out as the term (instructional period) finishes on May 14, 2019.

### **C. Assessing the Pilot**

We plan on implementing these changes in the spring term of 2019. And to further our goal of institutionalization, or at least sustainability, we of course plan on assessing how we meet all our goals.<sup>46</sup>

Among such assessments will have to be surveys of all the stakeholders: our law students in the first place, high school students, high school teachers, and other professionals who may occasionally collaborate. In line with best practices, we will also assess whether students have achieved their learning outcomes—from there, their instructors', and third-party perspectives. As is done in Oviedo: "Once the activities are carried out in each high school, they are assessed by collecting the opinions of the participants in the group that made the presentation, of the teacher of the Clinic that accompanied them and of the high

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<sup>46</sup> See JOSE GARCIA AÑON, *HOW DO WE ASSESS IN CLINICAL LEGAL EDUCATION: A REFLECTION ABOUT REFLECTIVE LEARNING*, 23 INT'L J. CLINICAL LEGAL EDUC. 48 (2016).

school teachers that attended the presentation, who may also provide us with the impressions of the [high school] students.”<sup>47</sup> We also will need to assess institutional outcomes, that is, whether we’ve progressed on convincing our law and wider university colleagues of the importance of clinical teaching. Among other measures, this would be concretized by actual support—financial and otherwise—from the law school, the university, the bar, and the wider community.

## **V. Conclusion**

We have a ways to go at the University of Granada. But we have a deep well from which to draw, empirically, pedagogically, and institutionally. We have empirical consensus on what it takes to be a competent practitioner. We have scholarly consensus on how to teach competence. And we have consensus on an institutional agenda. Above all, perhaps, we have a network of active Spanish—and European, U.S., and other international—clinicians as comrades. We’ve attempted to sketch a plan for the University of Granada in this article. With this solid grounding, we are hopeful in taking the first step.

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<sup>47</sup> See *N.44*.

## **Clinical Legal Education in Malta: Learning from experience and identifying the challenges**

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### **Abstract**

This paper introduces the reader to clinical legal education in Malta by: 1) outlining how the internal hybridity of the Maltese legal system and the juxtaposition of English and Continental models in Maltese legal education have influenced the development of the Law Clinic at the University of Malta; 2) describing how the Maltese clinical model operates currently; 3) reviewing the experiences of students involved in clinical work.

### **Delineating the Maltese Legal System**

Situated some 81 km south of Sicily and nearly 300 km to the north of Libya in the middle of the Mediterranean sea and with a population of less than 500,000 individuals concentrated in a geographical area of a little over 300 square km, the Republic of Malta is nevertheless a self-governing state with its own distinct legal system and University and is simultaneously a member of the European Union and the British Commonwealth. Its legal system is technically considered as a mixed legal system; reflecting its long colonial history; in which the Maltese archipelago was governed for close to three hundred years by the Hospitaller Knights of Saint

John and subsequently came into the hands of the British; who governed it between 1800 and 1964 (Donlan S. P., Ando' B., Zammit D. 2012, pp.181-191).

The Maltese legal system bears the traces of its colonial past in various ways; not least in the way its Constitution conforms to the Westminster model and in the persistence of a narrow positivist way of interpreting human rights legislation which tends to avoid invoking human dignity as an underlying free-standing value (Zammit, D. & Muscat M. 2019, pp.25-29) The language of the laws is English and Maltese; while court practice and judgments are written almost exclusively in a dialect of Maltese which relies heavily on Italian terminology; testifying to the reliance upon Italian as the official language of the Maltese courts and legislation until the mid-1930's. British colonial rule also introduced a break with the Civilian legal tradition insofar as public law in general is concerned and Maltese public law is now anchored within the British Common law; whereas private law continues to be anchored in the Civilian tradition; particularly due to the existence of five codifications, dating back to the colonial period: the Maltese Civil Code, Criminal Code, Commercial Code, Code of Organisation and Civil Procedure and the Code of Criminal Procedure (Andò, Aquilina, Scerri-Diacono & Zammit, 2012, p.532). This notwithstanding, Malta's entry into the EU in 2004 and its development of a large financial services industry, e-gaming and ship registration facilities have further reinforced the Common law influence and commercial and I.T. law is heavily reliant upon Common law sources.

The Maltese legal system is thus characterized by a high degree of internal hybridity; expressed very clearly in an overarching division between private law; primarily based upon the Civilian

legal tradition and a public law which reflects Common law. Unlike other small jurisdictions, the level of mixing within the Maltese system is so high that it is impossible to identify a single ‘Big Brother’ jurisdiction; with a hegemonic role in shaping Maltese law. Indeed:

“An inclination towards one or another external cultural and legal influences—Britain or Italian—has a long genealogy in the context of Maltese state building.” (Donlan S. P., Marrani D., Twomey M. & Zammit D.E., 2017, p.193)

Ultimately it was only EU membership which helped the Maltese population and its legal class come to terms with and accept the various cultural and legal influences which have shaped its legal system:

“This was achieved in 2004. Membership is seen, consistent with this history, as compatible with the exercise of Maltese sovereignty. Moreover, EU membership reconciled the various loyalties—British, Italian, and Maltese—adhered to in Malta. As a result, it was possible to be all three at once.” (Donlan S. P., Marrani D., Twomey M. & Zammit D.E., 2017, p.194)

The way in which Maltese jurists have responded to these various influences has been by developing a view of the legal system as: “composed of a number of clearly distinguished compartments” (Ganado, J. 1996, p. 247). This approach is combined with a ‘pragmatic purism’ (Andò, Aquilina, Scerri-Diacono & Zammit, 2012, p.563-568) on their part; which while accepting a high degree of mixing at the level of the system as a whole; nevertheless insists that within each compartment there must be cultural consistency between sources and interpretation.

### **Situating the Law Clinic within Maltese Legal Education**

In Malta, legal education has long represented a compromise between the English model - which envisages a process where the undergraduate study of law at University is followed by professional legal study at one of the Inns of Court- and the Continental model; which traditionally envisages the postgraduate study of law at University as the next step in the formation of an advocate following undergraduate study. Until the early 1990's, the LL.D. degree -awarded after 6 years of *undergraduate* study at the University of Malta and incorporating the completion of a final dissertation- was the primary requirement which needed to be satisfied in order to be granted the warrant allowing its holder to practice the profession of advocate in Malta. A pass in the warrant exam organized by the State following a year of professional apprenticeship after graduating was the secondary prerequisite. While this might appear to come close to the Continental law model, in practice it diverges significantly from it because: (1) English is the language of University teaching of law, meaning that English language texts are becoming the primary medium through which important legal concepts are transmitted, (2) doctrinal texts on Maltese law are few and often outdated; meaning that the study of court judgments written in the Maltese language often takes the place of a more purely scholarly study of academic texts (Donlan S. P., Ando' B., Zammit D., pp.194-195), (3) Maltese law-teaching was until recently almost completely dominated by part-timers, who are practicing advocates and who tend to present the process of 'becoming' a lawyer as:



“consisting of two phases. In the first six years, the University degree is obtained. In the following two to three year period of 'prattika' (i.e. practice) a law graduate attaches himself to an established lawyer as a glorified office-boy. In return for helping with the more mundane tasks of lawyering, he gains the opportunity to observe his lawyer-patron advising clients, drafting judicial acts and engaging in litigation in court. A rigid demarcation is maintained between the two phases and only those law graduates who undergo the second phase begin to earn the right to be considered as 'real' lawyers by members of the profession. Law students are constantly told that 'il-prattika kollox' (legal practice is what counts), and that: 'meta tohrog mil-universita tkun ghadek ma taf xejn' (when you emerge from University, you as yet know nothing)” (Zammit, D. 1993, pp.60-61).

The dominance of practitioners in Maltese law-teaching thus combines with the tendency to view the jurisdiction in compartmentalized terms; resulting in a rigid opposition between 'theory' and 'practice'; in which the former is devalued, while the latter is valorized. This compartmentalized approach is also reflected in the syllabus, with subjects like Civil law taught primarily through the medium of Maltese jurisprudence and Italian textbooks, side by side with subjects like Constitutional law, taught primarily through English language books. The dominance of practitioners in law teaching, the lack of a single dominant 'Big Brother' jurisdiction and the broad and eclectic variety of foreign sources which are tapped in the process of constructing the syllabus for Maltese legal education also means that:

“educators do not perceive legal education as the wholesale adoption of a particular pedagogical model rooted in a homogenous understanding of law characterising a single dominant (external) legal tradition. Instead, they understand Maltese legal education as the elaboration of an indigenous model through selective borrowing from various sources, feeling empowered to draw selectively on foreign models.” (Donlan S. P., Marrani D., Twomey M. & Zammit D.E., 2017, p.196)

### **Developing the Maltese law clinic**

The Maltese law clinic developed in a way which adapted and tried to respond to the above noted characteristics of Maltese legal education. The initial impetus for institutional change in law teaching came about as a result of increased pressure from University authorities to rationalize the structure of the law course. This pressure was itself partly justified in terms of the need to align legal education with the Bologna process; by ensuring that the undergraduate teaching of law would not take more than three or four years and that the overall duration of the course would not extend beyond five years in all. At the same time, the creative syncretic response of the Law Faculty reveals that they saw themselves as “actors of legal globalization and not its victims.” (Donlan S. P., Marrani D., Twomey M. & Zammit D.E., 2017, p.196)

From the 2017/18 academic year onwards, the overall duration of law studies was reduced to five years; consisting of a four-year long undergraduate LL.B. degree meant to cover all the substantive law that a ‘general practitioner’ advocate needs to know followed by a one-year long Masters course in Advocacy. The Masters in Advocacy was initially envisaged as a course

which combines the academic teaching of procedural law and other practice-related academic subjects, with a new 30-credit study unit called 'Professional Practice' and consisting of lectures in Advocacy Skills, Professional Ethics and related practical skills; together with role plays and simulations of client interviews, moot courts and other real practical scenarios. However, as from the 2018/19 academic year, all law students were also expected to assist real clients by means of supervised pro bono work in the framework of 'The Law Clinic'. This institution had been formally set up around three years previously by means of a memorandum signed by the Rector of the University, the President of the Chamber of Advocates (the Maltese Bar Association) and is hosted by the Cottonera Resource Centre; a branch of the University which seeks to bring it closer to people of the Cottonera region; a region characterized by relative socio-economic deprivation compared to other parts of Malta. Through the development of the postgraduate Masters in Advocacy course, Maltese legal education continued to reflect Continental trends since students are required to study law at *both* undergraduate and postgraduate levels in order to qualify academically to practice as advocates. At the same time, by inserting the mandatory requirement that all law students undertake supervised law practice in the context of the law clinic as an integral part of this Masters, the course as a whole was *also* brought closer to English legal education inasmuch as the requirement of an additional period of professional legal study was also integrated within the University postgraduate course itself.

Key characteristics of the Maltese clinical model must also be understood as an adaptive response to the specific challenges presented by Maltese legal education. In particular the

categorical division between theory and practice poses particular problems to the law clinic, which attempts to link theory and practice together in a mutually beneficial way.

### **The Maltese Clinical Model**

The Law Clinic at the University of Malta is a free, student-led legal service in Malta, which started to operate in 2007. As its name implies, from a pedagogical perspective, the Law Clinic falls under the broad umbrella of the Faculty of Laws at the University of Malta (further- UoM) based at the Cottenera Resource Center.

The Clinic has two main objectives: it serves as a channel through which marginalized categories may obtain access to justice, learn about their rights and seek remedies to rectify the injustices that they suffer from. And since the main providers of free legal service to the vulnerable population are students, the Clinic also serves as a learning platform raising professionals that are more socially-conscious and socially - oriented. By making the knowledge and expertise available *pro bono* to people whose access to justice is limited, Law Clinic places students, who are pursuing a law degree, in touch with the central meaning of the legal profession which is the vocation to pursue justice through law.

The Law Clinic at the UoM is a part of global movement, which responds to the need for incorporating experiential and transformative learning into legal education in the higher education setting. It embodies the practical dimension of the legal course that helps the students to perceive the law differently by working on real cases under the supervision of qualified practicing advocates - the members of the Chamber of Advocates.

From the standpoint of its academic structure, the Law Clinic operates within the Advocacy Skills component of the Professional Practice Course, which aims to train students in using the skills and methods required in order to assist clients; particularly through helping them prepare and present a legal case. Structurally the course also includes lectures on client interviewing, case planning, fact investigation, case theory, witness examination and writing a legal brief. The final grade is based partly on oral and written exercises carried out in the classroom context (including a first client interview role play and a moot court) and partly on a portfolio prepared and defended by each student-team of two students; documenting their performance in the course of the practical pro bono work performed in relation to a client.

Each student team is allocated a practical supervisor, who must be a warranted practicing advocate and who takes legal responsibility for all decisions taken in the case and students are advised that they must consult with their supervisor and obtain his or her authorization before taking any practical steps in relation to their clients. Furthermore, each student team is given academic supervision by means of supervised case rounds, coupled with lectures focusing on the practical skills students need to deploy in order to adequately assist their clients. This academic supervision is provided to small groups of up to 20 students in the context of the University by academics who are also warranted advocates. Thus this system of dual supervision is intended to overcome the theory-practice dichotomy by encouraging student teams to take initiatives on the assumption that the client's case depends on them; while ensuring that legal responsibility is carried by a practicing advocate.

The operational side of the Law Clinic is the following: a potential client calls to the Cottenera Resource Center (further - CRC) and talks to its administrator about an existing legal problem. CRC's administrator calls to Dr Kurt Xerri who is a manager of the Law Clinic and together with Dr David E. Zammit will allocate a student team to every existing case, taking into account the type of dispute and students' interests stated beforehand. The student team will meet the client for a first interview, which is solely dedicated to information gathering and developing a relationship with the client. Then the student team sends Dr Xerri the minutes of their meeting and on the basis of those minutes Dr Zammit and Dr Xerri will allocate a practical supervisor to the team.

The relationship between students, clients and supervisors is structured in such a way that mostly it is the duty and responsibility of the students to keep direct contact with clients. Practical supervisors will only intervene in the student-client relationship if there is a real need for it. However, students are supposed to meet their practical supervisors ideally once a week to ask questions they are interested in and to receive necessary recommendations. In addition, it is important to note that students lead the cases only to the certain point (in most cases without leading them to the court) and then they refer the case to three possible instances: an NGO working on the issues concerning the type of a dispute, the legal aid lawyers, or a private lawyer contacted by the client.

## **Reviewing the experiences of students**

Over the years that the Clinic has existed, no one has yet investigated the UoM Law Clinic's impact on students' personal and professional skills, attitudes, beliefs. Therefore, in May 2017, it was decided to conduct an evaluation process by means of a small-scale research on this matter. *The main aim* of the evaluation process was to reveal the impact students' involvement in the Law Clinic work had on their personal and professional development. Due to the fact that the evaluation process was conducted through a small-scale research that requires to be correlated with the literature on the relevant topic, the aim of the research was much broader than just impact evaluation. *The overall aim of the research* was to explore to what extent transformative and experiential learning is happening through clinical legal education in Malta.

## **Methodology**

According to Leedy and Ormrod (2005), methodology "dictates the particular tools the researcher selects" (p. 12). In order to choose the most appropriate tools to be adopted, it is necessary to look at the nature of the research aim and questions.

Our study aimed to explore transformative and experiential learning in clinical legal education in Malta while studying the perspectives of students who experience these learning types. Geertz (1973) stated that topics such "as how people are experiencing an event, a series of events, and/or a condition" (p.6) indicate that a qualitative study should be employed. This, in turn, implies the use of qualitative methods and tools (Morrow, 2005).

A questionnaire consisting of a set of open-ended questions was selected as the most appropriate tool to tackle the research question and to achieve the research aim, because open-ended questions are asked to give participants more options for responding (Creswell, 2012). Moreover, taking into account a relatively large population size, a mailed questionnaire was used to enhance the feasibility of the research design by collecting data in the relatively quick and inexpensive manner that according to Bell (1999) this questionnaire distribution type is appropriate for. Moreover, as suggested by Creswell, (2012) to encourage a high response rate it was also decided to employ a three-step procedure, by including “a follow-up procedure” within the data collection stage (p. 391). In order to have more uniform and accurate data, students’ replies were obtained anonymously; which according to Seligerand & Shohamy (2000) encourages respondents to be honest.

The questionnaire that was used as a data collection instrument for this study is presented below (see Appendix).

### **Recruitment and profile of participants**

All prospective participants were involved (in their past or present time) in the Law Clinic activities that serve as the main platform where students obtain hands-on experience while studying law at the University of Malta. In order to recruit students to participate in the research, email addresses were obtained with the assistance of the Clinic's administration staff. Then students were directly contacted by a researcher through emails with an offer to take part



in the research. From 20 randomly invited students, eight students responded positively to the invitation.

Thus, below there is the analysis of the data obtained from eight students (two current and six former students), who participated in a small scale research aiming to explore to what extent transformative and experiential learning is happening through clinical legal education in Malta while evaluating the impact students' involvement in the Law Clinic work had on students' personal and professional development.

#### *Data analysis*

In order to achieve the aims of the evaluation process and the study, within which this process is employed, the data obtained from questionnaires was analysed using the following steps: coding and memorizing, identification of themes and categories, displaying and reporting, and concluding the results (Lichtman, 2013; Punch & Oancea, 2014). Thematic analysis was chosen as the most beneficial type of analysis due to two main reasons. Being free from its theoretical framework, the thematic analysis gives the researcher an opportunity for a flexible data analysis that has the power to provide a detailed and complex account of data (Braun & Clarke, 2006). Secondly, it provides a systematic approach for identifying and analysing recurring patterns across the dataset thanks to that major themes and sub-themes are getting formed (Braun & Clarke, 2006). The data were analysed inductively to assure the validity of the research findings (Cohen *et al.*, 2018). The codes from students' questionnaires data were gathered into categories and crosschecked with previously-defined topics. As a result, the

categories were clustered into two major themes with various sub-themes: (1) students' perception of the Clinic and/or learning that takes place there; (2) the impact of the students' involvement in the Law Clinic work.

*Research findings and discussion*

**1. Students' perception of the Clinic and/or learning that takes place there.**

Although there were no direct questions in the data collection instrument that aimed at finding how students perceive learning obtained in the clinic, during the data analysis process information relevant to this issue was nevertheless revealed. As a result, primary data containing some information on this matter was after the analysis structured into two sub-themes.

1.1. *The Clinic served as a continuation of the learning obtained in the classroom and helped to put theory into practice.*

Four out of eight students declared that they found experiential learning and the information received in the Clinic as a continuation of their classroom learning. It was stated by the students as part of their answer to the question about potential differences students perceive between the nature and an application of law in the framework of Law Clinic and in the classroom environment. Below there are statements made by two different students which most effectively communicated this idea:

*“Most of the time I was able to fully rely on my lecture notes when handling the various clients that we had, so the lecturers do explain the law in a way that allows us to easily apply it”;*

*“Experiences like this help balance the huge academic materials we must study and the more crude methodology we must use, as academic learning and practice are in no way mutually exclusive but in actual fact very complimentary”.*

These ideas are highly connected with the students’ perceptions of the Clinic as the one that helped them to put theory into practice. Taking into account that students first learned legal theory in the classroom setting and later on, applied it within the clinical setting, it portrays the Clinic as the extension of the learning students acquired in the classroom. There are two students’ excerpts below that directly refer to this:

*“The clinic bridges the theory to the practice”;*

*“The law clinic gave me an opportunity to put theory to practice”.*

This is in direct correlation with the mechanism of the experiential learning cycle that as Kolb and Lewis (1986) state, makes abstract concepts ‘real’ as the learner can see examples and applications of concepts occurring in their experience (p. 100).

Moreover, “to test legal theories in practice” is the opportunity presented by Romano *et al.* (2017) that the clinical form of legal education is intended to provide (p. 277), that is, in its turn, a means to experience abstract legal learning content (Burke, 2007).

1.2. *The Clinic’s staff was supportive, helpful and provided enough guidelines.*

In response to the direct question about the information and/ or assistance from the staff of the Law Clinic that students were provided with, all students reported that during their involvement in the clinical work they received quite a sufficient amount of support and assistance from the Clinic's staff. The following words came from students:

*“Our supervisor has all the necessary expertise and offered all the help we needed in preparation, during and after the interviews”;*

*“Supervisors were always available to guide us and give constructive criticism”.*

The characteristics of the Law Clinic's staff and its assistance reported by students are similar to the characteristics the transformative learning facilitator is required to have. Taylor (1998) states that being “trusting, empathetic, caring, authentic, sincere, and demonstrating a high degree of integrity” (as cited in Guthrie, 2004, p. 412) are the characteristics a transformative learning facilitator is supposed to possess and that contribute into the creation of safe and supportive learning space.

2. *The impact of the students' involvement in the Law Clinic work.*

Due to the fact that the main aim of this evaluation process was to explore the impact students' involvement in the Law Clinic work had on their personal and professional attitudes, belief and skills, at the data collection stage the greatest attention was given to reveal this impact. As a result, primary data consisted of the rich information on this matter; that after the analysis was structured in four sub-themes.

2.1. *The Clinic developed certain student's skills (professional /general).*

The study helped to reveal a list of new skills students developed while being involved in Law Clinic's work. It was decided to split them into two groups: professional skills and general skills. Among the skills that might be useful for a lawyer and that students perceived as being developed through the Clinic, the greatest attention was given to interviewing skills. Five out of eight students mentioned in their replies this type of new skills acquired and developed through the Clinic:

*"It was useful in developing client interviewing skills";*

*"Learned interviewing skills".*

*In relation to general skills and abilities, two students pointed out the increased level of self-confidence:*

*"Helped me to come out of my introverted shell and to speak easily with clients";*

*"Clinic helped me to gain a certain amount of confidence".*

Kolb (1986) and Burke (2007) suggest that a significant learning outcome of the hands-on experience obtained at the university clinics is the increase in students' self-confidence. Improvements of communication skills are considered by students and legal educators as one of the reasons for gaining self-confidence (Turner *et al.*, 2016). In this regard, our findings not only show that both students' capacities were developed as a result of the hands-on experience

obtained at the Clinic but also prove that a direct correlation indeed exists between gaining self-confidence and improvements in communication skills.

Since, according to Virgil (2016), only work-based learning is capable to build students' professional technical skills, it would not be possible to develop the ability not to be under stress while interviewing a client and to ask an appropriate set of questions if students were not exposed to the real work setting.

Moreover, there are some other significant inputs different students mentioned as being produced by the Clinic:

*“Helped me to make professional contacts”;*

*“Raised an understanding that it is important not to stereotype”.*

The last student's statement is in line with Burke's (2007) idea that work-based learning enhances critical thinking of students. This may be attributed to the way work-based learning allows students to encounter broader social issues that at the same time definitely contribute towards broadening student's sources of information and social networks (Virgil, 2016).

## *2.2. The Clinic expanded the students' understanding of law (legal complexity).*

The overwhelming majority of the students confirmed that their experiences in the Law Clinic expanded their understanding of law. Once they got the chance to participate in a real legal process, they realised that law is broader, more complex and much more versatile than they

originally anticipated. There are two students' statements below representing this finding most clearly:

*"In the classroom, things are usually pretty straightforward and the scenarios are black or white.*

*In real life, things become more diverse and broad";*

*"We learned the utopian perspective of law in class, cause while working with the client we realised that many of the principles we learned about are ignored in practice".*

The changes described in students' understanding of the subject studied are in line with the impact experiential learning usually has on the way students learn particular subjects. Turner, *et al.* (2016) state that, due to the opportunity to test legal theories in practice provided by experiential learning, students experience legal complexity and understand the law better. The words students used to characterise the changes that occurred in their understanding of law are diverse, such as 'more diverse and broad', or 'more complex', but all of them highlight the legal complexity experienced by the students. An overall enhancement of students' understanding of course content is, as Burke (2007) states, also one of the learning outcomes of the experiential learning approach employed in the academic environment.

2.3. *The Clinic helped students to see a social justice dimension to law and to the legal profession.*

Six out of eight students who participated in the evaluation process of their clinical experience attested that it helped them to see a different role of law and of a legal professional; that is a social justice role. Despite the fact that every student expressed this idea by describing a

different aspect of this social justice process, most of them acknowledged the importance that this aspect of the law and the legal profession be exercised. These are some of the students' statements connected with social justice ideas:

*"It gave me a new perspective of how law can be of service to the least advantaged";*

*"My perception of the legal profession was influenced dramatically as I was exposed to the harsh realities of clients from different social strata. The Legal Clinic was a challenge for us as students to try to bridge that gap and provide help not only as budding lawyers, but as humble young people with a vocation towards Law as a public service";*

*"I realised that money is not that much important than the happiness felt when helping those in need".*

In connection with this, it is worth stating that many academics and practitioners suggest that work-based learning, being a part of the academic program curriculum, goes further than just enhancing students' skills and knowledge (Santalucia & Johnson, 2010). The words of Mezirow (1991) can serve as evidence that, "...the workplace is an ideal environment which can provide cognitive tools (e.g. theories, ideas, practices, concepts) to enable students to not only gain knowledge and skills but also shape their ideas, perspectives and meanings" (as cited in Babacan & Babacan, 2015, p.173). The lack of opportunity to be engaged in the work-based learning "limits an understanding of the social context in which the special discipline operates" (Babacan & Babacan, 2015). According to Freire (1970, as cited in Babacan & Babacan, 2015, p. 172), preventing students from being attributed civic responsibility during the educational



process, prevents them from becoming active society members. So-called “engaged citizenship” can be promoted only through the clinic’s or field placement’s activities. (Burke, 2007, p. 8).

2.4. *The Clinic helped students to realise the importance of other needs (non-legal advisory) clients might also have.*

The vast majority of students reported on the importance of other needs (not legal advisory) that clients have, while coming to a lawyer for a legal help. Among these students mentioned various needs, and some of them are presented below:

*“Most importantly it helped me realise that our role as legal professionals sometimes entails going beyond the purely legal and actually acknowledging and validating people’s emotions”;*

*“Clients might also need other things: to listen and guide them”;*

*“I also learned it is also important to client that they have someone to listen to them, and that many times that matters to them as much as winning the case”;*

*“Helped me understand that a lawyer can make a real difference to a client, not just with their legal knowledge and skills, but also, and in equal measure, with their compassion and willingness to listen”.*

Pointing out different aspects, every student acknowledged to a certain degree that working in the Clinic, while helping them to realise the things described above, transformed the initial belief they possessed in the importance of a particular legal need clients have, as this was

proved (by their clinical work) not to be true. One of the main work-based learning outcomes is the change in attitudes, beliefs and values occurring in a student's mind after he or she "encounters a perspective that is at odds with his or her current perspective" (Kroth & Cranton, 2014, p.3). The terms 'attitudes, beliefs and values', as Mezirow (2000, as cited in Santalucia and Johnson, 2010, p.2) states, are united by one definition, "a frame of reference". This, following the transformative learning approach, is to be challenged by theories of practice (Guthrie, 2010).

### **Conclusions**

In conclusion, this study demonstrates the active use of transformative and experiential learning and its particular elements within the Law Clinic at the University of Malta. The findings drawn from the modest data obtained from eight students, serve as a source of information on the mostly positive students' perceptions of the learning happening in the Law Clinic and the positive impacts it brings. The Clinic, while serving as a continuation of the learning obtained in the classroom, helped students to put theory into practice; bridging the theory/practice divide which is problematic in Malta. The Clinic's staff played a positive role in the learning process by being supportive and helpful and by providing enough guidelines to students, that, according to Mezirow (2003, as cited in Babacan & Babacan, 2015, p. 172), are "necessary prerequisites for a deep transformation of personal values, attitudes and beliefs". The involvement in the Law Clinic work had various positive impacts on students, that are in line with the transformative and experiential learning objectives, as such reinforced students'

understanding of a study subject (that is the law); changed beliefs; developed certain student's skills and promoted "engaged citizenship".

### **Limitations**

There exist a number of limitations to the evaluation conducted through this study. The research was conducted on a small scale due to limited time allocated to it and this restricts the findings' depth. The study provides information on students' learning experiences obtained within the University of Malta Law Clinic and various impacts they had on students. However, as the research focuses on a very small sample, more comprehensive data could be gathered by distributing more questionnaires among students. Analysis of secondary data such as empirical and conceptual papers in clinical legal education field that present various critical perspectives on transformative and experiential learning should also be taken into account.

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Appendix A

Questionnaire for the University of Malta Law Clinic Students

*Many thanks for your participation. Your answers will be used anonymously.*

1. Are you a former or current student involved in Clinic's practice?

2. How long have you been participating as a student in the Law Clinic's activities?

Less than 1 semester	1 semester- 1 year	1 or more years

3. Please state whether your experience in the Law Clinic has influenced your perception of a legal profession.

4. Please state whether your experience in the Law Clinic has influenced your personal development.

5. Please state whether your experience in the Law Clinic has influenced your legal career.

6. Have you noticed any difference between the nature and an application of law in the framework of Law Clinic and the same issues explored in the classroom environment?  
Please provide reasons for your answer.
7. How can you assess the level of help which was provided to you by supervisors or any other administrative staff during your involvement in the Law Clinic.
8. What are the most important things you have learned or skills you have developed while participating in the Law Clinic's activities as a student?
9. While participating in the Law Clinic's activities you have interacted with the Maltese justice system directly or indirectly. Please describe how this system (especially the Chamber of Advocacy, Ombudsmen, Courts) affects implementation of work you proceed and provide any ideas for improvement.



## **Ten years of Prague Street Law: Lessons to learn from our first decade**

**Michal Urban and Tomáš Friedel<sup>1</sup>, Charles University, Czech Republic**

### **1. Being a 10 year old**

Prague Street Law programme has been, at least to our knowledge, the longest, still running, Street law programme in the post-soviet area.<sup>2</sup> In comparison with Street Law programmes in other parts of the world, passing a ten-year post may not appear that impressive.<sup>3</sup> For an eastern and continental European legal literacy clinic it, however, represents an important landmark and an opportunity to stop, reflect and reconsider – and celebrate, too. Even though we have not yet perhaps come of age, there might be a younger programme interested in an older sibling's experience, or indeed an older sibling interested in how their younger mate is doing. Our paper offers a brief description of the current programme, followed by a discussion of what we believe are 'good' practices that helped us to build up and sustain the programme. We also identify aspects that are better avoided. Briefly, we also share our current concerns and

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<sup>1</sup> We are truly thankful for all Street Law inspiration, cooperation of all sorts as well as concrete comments to this paper by our lovely colleagues – Rick Roe, Richard Grimes, Sean Arthurs and Hana Draslarová. Michal Urban (urban@prf.cuni.cz) is a Senior Lecturer at Charles University in Prague, Faculty of Law, Czech Republic.. In 2009, he founded Prague Street Law programme and has lead it since then. He briefly met Street Law while being a law school student at Charles University, when a Czech NGO Partners Czech was searching for volunteers to teach at schools with the help of adapted materials from Street Law Inc. He did not go through a training, though. Several years later, he found more information about Georgetown Street Law programme in Washington, D.C. When establishing Prague Street Law programme, he made an extensive use of his teaching experience from his master studies at Faculty of Education at Charles University. Soon after founding the programme, he joined the international clinical community with the help of IJCLE and GAJE conferences. Tomáš Friedel (friedel@prf.cuni.cz) is a Junior Lecturer at Charles University in Prague, Faculty of Law. He went through Prague Street Law in 2010 and has stayed with the programme ever since.

<sup>2</sup> We encourage any reader who knows about a longer still running Street Law programme in this part of the world, to let us know.

<sup>3</sup> Especially if we compare with our Street Law friends from Georgetown in Washington, D.C. See Kamila A. Pinder, *Streer Law: Twenty-Five Years and Counting*. *Journal of Law & Education*, Vol 27, No 2, 1998. In three years Georgetown will be in his 50s!

struggles. We hope that the paper will serve as an inspiration for those who are considering starting or expanding their own Street Law programme.<sup>4</sup> It is no doubt a tribute to all those who helped us along our path.

## **2. Brief description of the Prague Street Law programme**

We founded our Street Law programme in order to provide legal education to laypersons while also stimulating professional development in our law students.<sup>5</sup>

These two main aims have always been interconnected, representing an important characteristic and strength of legal literacy clinics in general. These related goals might be prioritized differently; we as faculty of law teachers consider the professional development of law students as our principal aim, although both we and many of our law students are attracted to Street Law primarily because it helps non-lawyers to understand basic legal rights and responsibilities.

To be honest, there was no specific plan regarding how Street Law curricular as well as extracurricular activities should develop. From the very beginning in 2009 it was the teacher (at that time just one) looking for Street Law graduates to help him to run

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<sup>4</sup> In the last couple of years, we started receiving questions from our Czech as well as foreign colleagues on our Street Law know-how, especially concerning sustainability and ever-expanding nature of our programme. This paper is an attempt to sincerely and at length answer their inquiries.

<sup>5</sup> For further information on content and development of the term Street Law see Seán G. Arthurs, Street Law: Creating Tomorrow's Citizens Today. *Lewis & Clark Law Review*. Vol 19, No 4, 2015, pp 943-947. However, the main value of the paper lies in the fact that through quantitative analysis of the effects of participation in a Georgetown Street Law Clinic on high-school students proves actual impact of Street Law. For similar reasons see Seán Arthurs, Melinda Cooperman, Jessica Gallagher, Freda Grealy, John Lunney, Rob Marrs, Richard Roe, From zero to 60: Building belief, capacity and community in Street Law instructors in one weekend. *International Journal of Clinical Legal Education*. Vol 24, No 2, 2017, pp 123-168. For more information on our programme, see Tereza Krupová and Marek Zima, Street Law and Legal Clinics as Civic Projects: Situation in the Czech Republic. *Oñati Socio-Legal Series*, Vol 7, No 8, 2017, pp 1653-1655 and for the description of the programme after its first two years of existence: Michal Urban, How to Discover Students' Talents and Turn Them into Teaching. *International Journal of Clinical Legal Education*. Vol 16, 2011. pp 144-153.

the programme. Assistance has taken the form of preparing basic hand-outs and related lesson plans, preparing a Street Law text book to helping with teaching and,<sup>6</sup> of course, planning and delivering the sessions themselves. In addition, young lawyers were drawn into teaching and many could stay linked with the law school even after formal graduation. Several of them have gone on to begin Ph.D. studies – a great way to maintain the close connection with the Street Law programme. Some have even gone on to join the faculty as teaching staff. Within years, the Street Law team had grown to a core of five, taking care of the programme. Apart from them, there were more Street Law graduates running individual small Street Law projects, mostly based on cooperation with the programme leader.

A major development happened after the summer of 2015 when the Street Law team agreed to prepare legal workshops for Roma children in Eastern Slovakia.<sup>7</sup> Two days of intensive work with thirty extraordinarily energetic young Roma, as well as fighting with our own prejudices and understanding of pedagogy,<sup>8</sup> and several other days of staying at their summer school, observing them singing and dancing and then accompanying them to their concerts served as unplanned, but remarkably powerful

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<sup>6</sup> See See Michal Urban, Street Law aneb jak učit právo na středních školách <<http://streetlaw.eu/soubory/dokumenty/street-law-aneb-jak-ucit-pravo-na-strednich-skolach.pdf>>, accessed 17 January 2019.

<sup>7</sup> Invitation to join the summer school of the Roma choir came from their manager and main leader thanks to the recommendation from our friends at Czech Philharmonic Orchestra, which cooperates with the choir. The intention was to offer the children at their summer schools more than music.

<sup>8</sup> For many of us, this summer school was the first true opportunity to meet and start to understand members of the Roma minority. Together with observation of a very rigid educational approach of their leaders, teaching them – against their public image – strict discipline, created countless opportunities for deep discussions about our, their and common values, and allowed us to experience deep emotions (when being confronted with values and the beauty and power of their music). This all no doubt added to the remarkable impact of this event on our programme.

teambuilding event, which had the effect of expanding our ranks. Several team members until then only loosely connected with the team started taking Street Law very seriously and moved into its core. After this summer, the core team expanded to the current around 15 active members and allowed us undertake numerous new projects and reach new groups.<sup>9</sup>

They are run by the Street Law team/community, which we considered an important and kind of special feature of our programme that gives our programme great strength. The Street Law team members are mostly Street Law I graduates (or graduates of others Street Law credit-awarded courses), who are devoted to participating in our programme predominantly on voluntary bases. Over the years, there were about 70 students who joined our team (as opposed to almost 300 who graduated from a Street Law accredited course – see the section 2.1). We will now describe, through various groups we have been working with, the current form of our programme.

### **2.1. Law school students and high school students**

In 2009, Street Law in Prague began with a voluntary weekly seminar at the faculty lasting one semester (4 months roughly) and was called Street Law I. This programme still exists. First, law students are taught to teach, and then they are sent to high schools to actually do some law-related teaching, usually in one class. The area of law they are

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<sup>9</sup> It should be noted that this extracurricular expansion of the programme did not change the nature of the Street Law programme – primarily providing faculty students with the their own legal education and skills development and pedagogical assistance.

expected to teach depends on high school teacher's demand – it varies from constitutional law and human rights to labour or criminal law. This is followed by a group evaluation of the law students' experiences. The students spend around 10 – 12 hours on each part of the programme. Additionally, those who complete this first course are offered further and more intensive teaching experience (Street Law II). Their task – again – is to teach at a high school and the students are asked to teach for at least 40 hours, which is approximately for around half of a the high school year. Both of these courses carry academic credit and form the gate of Prague Street Law programme. Since 2009, 288 law students have 'graduated' from Street Law I and 14 have 'graduated' from Street Law II (which started 6 years ago).

The most recent accredited extension of Street Law in Prague has been the introduction of the Street Law III and the Street Law – A course on consumer literacy. The structure of the latter is similar to Street Law I, but it focuses exclusively on consumer law, which is usually not covered at high schools. Street Law III, by contrast, differs from previous courses. It was established for law faculty students who have already experienced extensive teaching. Its curriculum varies according to the demand from secondary schools: students might be required to teach couple of lessons or organize mock trials (and make use of our experience with more than 120 mock trials we have organized so far) at different high schools, arrange visits to real court hearings or design and try out fresh lessons. After four years of operation, 68 students graduated who attended the Street Law – A course on consumer literacy seminar and 12 students Street Law III.

These four courses are the only credit awarded activities in the Prague Street Law programme. In our accredited courses, we offer high schoolers interactive workshops on topics by their choice, mock trials at our law school's court room and participation in national moot court competition among different high school teams.

Apart from high school students, which were our first audience (and more than 5000 high school students have participated in our sessions so far) we gradually developed closer cooperation with Romany people, senior citizens, prisoners, young people from children's homes, scouts leaders and even with high school teachers. Each group inevitably has its own specific needs and demands. It is, for example, relatively easy to organize Street Law at high schools. Law students receive credits for their teaching<sup>10</sup> and typically teach in pairs, high schools are usually flexible and willing to cooperate with the law faculty, which many have been doing for several years. On the other hand cooperation with some others groups is far less formalized and sometimes heavily dependent on factors beyond the control of the Street Law team (e.g. workshops for prisoners – because of their nature – can be stopped just by a decision of prison staff.). For reasons of brevity we will now attempt to summarize the issues we have found when working with particular groups.

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<sup>10</sup> The credits are awarded for active participation on Street Law I seminars at the faculty, at least 10 hours of teaching at a high school and creation of final portfolio (comprised of all used lesson plans, reflections of the lessons etc.).

## **2.2. Romany people**

We work primarily with a Romany children's choir Čhavorengé.<sup>11</sup> It consists of approximately 60 children from 8 to 18 years of age from the Czech and Slovak Republics. Čhavorengé has been operating for several years and organizes its own events, which we are now invited to join. For several years, we have participated at their annual summer schools and off-site concerts and organize legal workshops for them in between their singing commitments. The fact that most of these events lasted couple of days represented a great opportunity for integrating legal literacy work. Apart from the benefit of being in a closer contact with the children, participation in summer schools and concerts worked as a deep teambuilding for the Street Law team itself.<sup>12</sup> We have participated in four such events so far.<sup>13</sup>

## **2.3. Senior citizens**

We have, to date, entered into partnerships with numerous local day care centres for elderly people, community centres and libraries, responding, where we have the capacity, to demand. One-off seminars and workshops are offered focusing on the important themes for elderly people (for example inheritance law; consumer protection law; family law; patient's rights; domestic violence; protection of privacy

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<sup>11</sup> For more information, see International Initiative for Development for Ethnic Art, Project Čhavorengé <<http://www.miret.cz/en/page.aspx?v=pageCollection-13>> accessed 17 January 2019.

<sup>12</sup> See section 3.3.

<sup>13</sup> For more information see Hana Drašlarová and Michal Urban, Street law for Czech and Slovak young Roma musicians. *International Journal of Clinical Legal Education*, Vol 23, No 3, 2016, pp 148-171.

and neighbour issues). An estimated 700 seniors have participated in these programmes to date.

In 2018 a new course was established in cooperation with The University of the Third Age at Charles University. Traditionally, in this programme, seniors are introduced to the basics of various law areas and topics through lectures of law school staff. Street Law organized a set of mock trials for them, which participants welcomed with extraordinary gratitude and everything suggest that our involvement in the programme will continue.

#### **2.4 Prisoners**

Our experience with prisons and prisoners is still relatively limited. So far, the team members have organized two series of seminars for 25 inmates, who were about to be released from prison and enter civilian life again. Based on the demand of the prisoners and in coordination with prison officials, the seminars focus primarily on debt and loss of property.<sup>14</sup>

Based on the encouraging feedback received from the inmates and following positive responses from prison officials, we have decided to continue with this programme and have started our third prison 'season'.

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<sup>14</sup> One of the biggest issues for former prisoners in the Czech Republic is indebtedness. Prisoners often come out of a prison with high debts, which in fact often means exclusion from certain aspects of civil life due to existing legal provisions. For instance, high debts usually mean high wage assignments for debtor that leaves him only with minimum resources. For such a debtor it is more advantageous to earn his living elsewhere than in a legal job.



## **2.5. Young people from children's homes**

As a follow-up to our work with Čhavorenge choir, we have run two weekend workshops for children from care homes. Two groups of 15 participated: one consisted of younger children (10 to 15), the other of 15 to 18 years-old. These workshops allowed us to put together a programme that might be used for other similar workshops in the future. There are currently two Street Law members preparing new workshops, which will hopefully establish a more conceptual and institutionalized cooperation with various children's homes.

## **2.6. Scouts leaders**

For scouts, their leaders and other young people connected with them, we hold periodic interactive talks. These cover topics that are of interest to young people – for example getting a job, finding a home and claiming state benefits. The cooperation with them actually started because they provided us their clubhouse for some of our meetings and we agreed that instead of paying rent, we would organize several talks for them.

## **2.7. High school teachers**

Street Law students come and go and they usually cover only several school lessons. High school teachers, in contrast, remain in schools for several years or even decades. Hence, another part of what we do is that we offer a special law courses for teachers. We offer 6 different courses. The first focuses on pedagogy of law teaching, the second on civil law and the third on public law. The fourth looks at human rights, the fifth on

moot courts (or mock trials more precisely) and the sixth on utilising of Street Law methods in the classroom. Courses last for 5 hours and take place at the law school in Prague.

In addition, we have an open database of law lessons on our website, which teachers can use as a resource. The law students prepare this material and a lawyer checks the content to make sure it is accurate and appropriate.<sup>15</sup>

We also provide another service connecting students and teachers with judges who are willing to welcome them into court. This is of great interest to the teachers and pupils and many judges that understand the importance of public trust in judiciary and for that reason welcome a class in their courtrooms and even find time to talk to the class before and after the trial and answer their questions.

Last but not least it should be mentioned that couple of years ago we started offering our own seminars at Faculty of Education of Charles University to future teachers of civics. We concentrate both on the didactics of law and legal issues that teachers might not be familiar with or find particularly challenging. We believe that these courses give teachers both knowledge and confidence helping them both in future study, classroom preparation and delivery.<sup>16</sup>

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<sup>15</sup> See Street Law (Prague) < <http://streetlaw.livepreview.cz/lekce>> accessed 17 January 2019.

<sup>16</sup> The high school teachers are as a group Prague Street Law programme is focused on. For reasons why we devote so much of our attention to this group, see subsection 3.6.

### **3. 'Good practice' and the Prague Street Law programme<sup>17</sup>**

During the ten years of our Street Law programme, we have identified the following beneficial practices that may prove inspirational for others.

#### **3.1. Easy does it!**

Let the new Street Law students start in a relatively easy way. Instead of sending them to teach at more demanding facilities (such as prisons or particularly challenging schools), the first experience of our students tends to come from upper-secondary schools where discipline, behaviour and the teaching context tends to be both predictable and manageable. With many of these schools we have been cooperating for years and know the teachers, in whose classes our young lawyers will be having their first teaching experience. Our law students receive training in both legal theory (through other courses at the faculty) and teaching practice (through Street Law courses) before they enter the school classroom.<sup>18</sup> Moreover, they can make use of help from both the secondary-school teacher and faculty staff and use teaching materials that were put together by teachers or previous students of the Street Law course. Before teaching their first lesson, they need to observe the pupils they will be working with alongside the regular school/class teacher. Usually they discuss their lesson plans before they try them out and have a practice lesson in a safe law school environment

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<sup>17</sup> Compare to David McQuoid-Mason, *Street Law as a Clinical Program: The South African Experience with Particular Reference to the University of KwaZulu-Natal*. *Griffith Law Review*. Vol 17, No 1, 2008, pp 31 and following, pp 47-48.

<sup>18</sup> Topics are selected mostly by secondary-school teachers and depend on the schools' curricula. Apart from the Czech constitution and human rights, our students typically teach the basics of civil, criminal, labour and/or family law.

where they receive the feedback from the teachers and their peers. Although we do not want to keep our law students on a lead, certainly not a very short one, we consider teaching practice at a relatively good school as sufficiently demanding and challenging – certainly to start with. While we do want to challenge our students, at the same time we want them to succeed in their teaching practice and a regular class at a relatively good secondary school serves well enough. Of course we also feel responsible for secondary school pupils who will spend ten lessons with our law students. Once they finish this first, normally positive experience, there comes time for more demanding activities with different audiences. Those, who did not enjoy the “safe” teaching, do not feel the need to continue with the more challenging options and are not joining our Street Law community.

### **3.2. More demanding teaching for interested students.**

Once our law students successfully finish their first Street law semester, they can continue with teaching on the next stage of the Street Law programme and become a member of Street Law team. Our offer is open to everybody, but we prioritise those who have proven to be effective teachers and who obviously enjoyed it. For every 20 students enrolled into the Street Law I course each semester, some 3 or 4 decide to try the more demanding teaching options we have available. Either they can start teaching one class for the whole semester or two, or they can test their skills in a more demanding teaching environment – teaching young Roma, senior citizens, school classes arriving at law school for mock trials or groups of Prague prisoners. It does not

matter so much which part of our Street Law programme they join, what matters is that they do a professional job and hopefully stay with and become part of our Street Law community. After they complete the Street Law I programme we offer them the chance to stay with Street Law in the medium and perhaps long term if they wish and challenge themselves on various Street Law projects. From time to time we organize seminars aimed at personal and professional development of team members (e.g. workshops on time-management, presentation skills, or new teaching methods). However time-consuming and difficult it is for those of us who run the programme, we attempt to make our members feel that we care for their development as well as serving public legal education needs.

### **3.3. Build a Street Law team – a community of students, teachers and graduates of the law school.**

As seen above, Prague Street Law programme started as a one-semester course – a small group of 15 law students and one teacher. Within a couple of years, it developed into a programme of four different accredited courses<sup>19</sup> taught by three teachers and with many young lawyers-to-be trained in the Street Law method and ready to teach almost any law-related subject. The programme has expanded beyond the boundaries

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<sup>19</sup> They vary according to the length of teaching experience (from 10 lessons up to the whole year of teaching), the type of activities involved (teaching regular lessons, organizing mock trials or coaching secondary school students' mock trial teams) and the intensity of supervision required (more closely-supervised for Street Law beginners and more independent but still monitored work for the more experienced). See section 2.1 for further information.

of faculty courses and consists of many activities that are not accredited courses – because they involve more demanding teaching (e.g. teaching secondary school teachers and Roma children), consist of non-teaching tasks (running our website, presenting Street Law activities at various events etc.), or because they are performed by students and graduates who have already finished Street Law courses offered by the law school.<sup>20</sup> Over the years, we managed to build a group of devoted students, teachers and graduates of the law school, who all share a common interest in promoting legal literacy, thus they form a Street Law team. There is now a clear commitment to pro bono work and growing belief in cultivation of non-lawyers' (as well as their own) legal awareness. Around 15 people meet monthly to plan or evaluate Street Law activities. Over the years we learned that regular meetings of the whole team – teachers, lawyers and students – are necessary to keep the community running and thriving. Beyond that, we spend occasional weekends together, even watch movies or go for a concert or beer – i.e. we do what friends or good colleagues typically do. The group consists of the more involved (almost addicted) members as well as those who join us less often, and the team gradually change its composition as new students arrive and others are drawn into legal practice or other working commitments. The core of the team represents a de facto Street Law student union and is able to monitor, develop and sustain the programme. To keep the community in a

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<sup>20</sup> The list of accredited courses may, of course, expand even further and include some of the above-mentioned teaching activities. However, since they are typically taken mostly only by a handful of students every year and since our students may already gather a substantive amount of credits through Street Law, we are currently not thinking of introducing a new course.

good shape and organize its various activities takes time and effort of the programme leaders and other team members, but we regard this communal responsibility as crucial and a key characteristic of the Prague Street Law programme. A team of friends who study, do Street Law activities and spend their free time together (if there is any for them) proves to be also a very effective way of running the programme. Moreover, it allows the leaders of the programme to observe, supervise and foster further personal and professional development of all participants, which never ceases to be one of the major Street Law goals.

#### **3.4. Let the team members develop their own ideas.**

Unlike some perhaps more rigidly and structured Street Law programmes, our Prague offering welcomes students' initiative and, subject to resources, is always willing to consider new projects. After students successfully finish some of the Street Law seminars, they are – in our eyes – prepared for building up their own initiative. They must, of course, serve the general Street Law mission and not undermine our ability to meet other existing commitments, but once a student or more typically a group brings an idea to the table, they have, in practice, a realistic chance to see it come to fruition. If adopted we will include it in the activities run under our name, consult with students and make sure they have the resources and planning skills to put it into action. We will even try to support it financially. It is up to students to do most of the work and enjoy the joy of success afterwards, of course. Some of these projects end well and turn into a more permanent part of our programme (e.g. the High School

Mock Trial Competition, a competition of secondary-school teams coached by law students, and cooperation with a prison), some take place only once or are eventually not realized at all or with limited success.<sup>21</sup> As far as they do not tarnish the Street Law reputation, we try to accept these projects as we respect our student's capacity for innovation and their energy and commitment. The result is, after all, not always important as long as students are learning in the process and the audience is not hurt in whatever way. Through such innovation and inclusiveness the current Street Law participants become the natural leaders of future Street Law activity.

### **3.5. No rush to leave the law school.**

It may be tempting, especially for older graduates of Street Law programmes, to find reasons for establishing an independent Street Law association, under which all Street Law activities – probably with the exception of accredited courses – would run. After all, being part of a law school may require consultation with faculty management that often slows down the development of individual projects. Moreover, it can be quite confusing that a group providing legal education does not have a legal entity itself. However, unless the law school limits the programme in some unreasonable way it is in our view highly beneficial for the long-term development of Street Law programmes to stay under the law school 'wing'. The name, resources and overall reputation of the law school can automatically open many doors and enhances the

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<sup>21</sup> They may easily become a regular and permanent part of our programme led by one of more experienced students (typically the one who realized it at the very beginning) and supervised by programme leaders and other senior programme members either through common meetings of project leaders, or individual consultations.



programme in the eyes of general as well as legal public, not to mention specifically in relation to secondary schools. Various law school grants manage to cover some of the expenses of running Street Law courses and accredited courses count towards the overall workload of the staff concerned.<sup>22</sup> But most importantly: being integrated into the curriculum of the law school and run – at least to some degree – by faculty members or PhD students is the best safeguard for the continuity and sustainability of the programme. As enthusiastic and energetic as students often are, their interests and availability typically change, especially after graduating, which can leave Street Law programmes run for example by a NGOs, student unions or independent associations with an uneasy task of finding new volunteers. Being part of a law school and run as an (or indeed several) accredited course provides a solid base for teaching and supervision through faculty staff and an invaluable source of new students who join the Street Law programme from semester to semester. When thinking in decades rather than months or years, close connection with the law school has proven to be a good option. Therefore, we work hard to ensure that our programme retains its good name not only among the non-lawyers and partners we work with, but also with the students and teachers of our faculty. We regularly inform faculty stakeholders about our activities, experiences and successes both online (on our Facebook page and faculty website) and offline (on an old-fashioned notice board in the law school

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<sup>22</sup> Prague law school teachers typically run courses that the faculty requires them to teach and then are expected to develop other courses reflecting their interest and expertise as well as doing other academic activity (e.g. writing papers and books). From the beginning teachers could include Street Law courses into their workload. Similarly, PhD students co-teaching Street Law classes can count time spent as part of their study-related faculty activity.

building, during information and orientation days and at various faculty forums and academic events such as round tables and conferences). Additionally, we accept invitations to present our programme in the media (newspaper, journals, radio and television) and make sure that the name of the law school is mentioned in connection with it. All of this, and two recent awards for pro bono and pedagogic work that we received in 2017 helps to gain respect and support from Prague law school and render the whole initiative more sustainable. However, it is fair to add that not every faculty member views Street Law in bright colours. For some, Street Law is just a non-scientific free-time activity that should be extracurricular at best. Needless to say that we are patiently trying to change their minds by continuing with our work and mentioning benefits of Street Law at various occasions.<sup>23</sup>

### **3.6. Street Law for school teachers.**

However active our Street Law programme was in its first decade, its overall direct impact on legal literacy of general public inevitably remains relatively small. We have no doubts that it influences several hundreds of people each year, some of them profoundly, but overall legal literacy of the wider public is a huge challenge and there

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<sup>23</sup> Apart from either staying as an integrated part of the law school, or having an independent legal entity running all Street Law activities, there is a middle position available: run accredited courses at the law school and all other activities, which we in this text describe as activities done by our Street Law community, by an independent association. As clever as this option seems, since it promises to combine advantages of both models, it opens the danger of departing of the two halves of the programme from each other. Once they will be directed by different people or groups of people, which they soon or later will, they will most probably start seeing things slightly (or more importantly) differently, having other programme priorities, working with programme members differently. All that is not necessarily bad, sometimes it might even bring mutual inspiration and possibly healthy competition, but only on one condition: that the programmes and people running them would remain frequently talking together and discussing all important matters. Once this is lost, and there are many examples from the world of NGOs as well as politics that it may happen rather quickly, problems necessarily arise. This represents one of the strongest reasons why Prague Street Law has not established any independent entity, although some programme members would wish so.

are many in our country who remain ignorant of many matters of a legal nature. Therefore, for many years one of our priorities has been to educate teachers especially at secondary schools both in law and efficient ways of teaching it, including organizing mock trials and teaching them how to run them themselves.<sup>24</sup> Their impact as future teachers of law across a range of high schools could be much more profound than that of a small group of law teachers and students. This is often termed 'training of trainers'. While law students teach couple of lessons a year or month at maximum, these teachers spend with their pupils 20 or more lessons every week and might well continue doing so for several decades to come. For years we have therefore offered school teachers seminars and workshops in which to develop their understanding of law and the legal process, equip them with well-tried and tested teaching methods and encourage them to use more interactive teaching, reducing time spent on the 'one-way' lecture. Seminars naturally serve as a platform through which they share their experience, best practices and often their enthusiasm (many of our course teachers are truly great teachers). Apart from sharing our Street Law experience and materials (textbooks and online database of lessons), as learning is a two-way process, we also gain a lot from the teachers, allowing us to further enrich our future courses for teachers and other Street Law activities. Some of the teachers come regularly; some invite law students for teaching practices or travel with their classes to our law school for mock trials in our courtroom. Generally, they are very grateful for our care and

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<sup>24</sup> See similar idea of "training the trainers" in David McQuoid-Mason, *ibid.* In South Africa Street Law lessons for teachers were demanded by teachers and supported by local greatest teachers union.

come to our sessions very motivated. For the same reasons, for several years we have been running seminars at Charles University Faculty of Education for future lower and upper- secondary school teachers of social sciences. Most of them will be teaching the basics of law and political science, which are compulsory parts of Czech secondary school curriculum.

Law students going through Street Law programmes typically do not change their careers and swap law for teaching in schools. Some of them, however, want to carry on with some teaching alongside their legal careers (and some actually do so). To ease their way into schools, we established in cooperation with Charles University Faculty of Arts a pedagogical course, which provides an official qualification to teach at secondary schools. Without it, some school directors might be reluctant to employ law school graduates and prefer qualified teachers with only basic knowledge of law.

### **3.7. Successful and sustainable project management.**

Ten years of running our programme has taught us many lessons in successful and sustainable project management. As our team of two or three started to expand and gradually reached current figures of around 15 active members and number of other participants of our community, many things needed to change. Sometimes we were able to anticipate the necessary changes, sometimes we needed to experience a project-based crisis or have an open (and sometimes not necessarily pleasant) discussion with team members to find out what is lacking in a programme and how it can be improved.

We now find, after 10 years of implementation that we tend to follow a set pattern of design, review and implementation. Each project or Street Law initiative will have its own coordinator who is responsible for it. It is their task to deal with everyday agenda, longer-term planning and establishing their team from the pool of our Street Law students and graduates. Heads of projects meet once a month to discuss necessary everyday agenda, planning and coordination of projects and long-term goals of the whole Street Law programme. Typically, every two years,<sup>25</sup> we meet for a strategic planning meeting and discuss and decide upon our long-term goals. Even though sometimes we “merely” come to the conclusion that our goals remain the same, these meetings play an important role in uniting the team, building a shared vision, enabling us to talk through troubling issues, misunderstandings and different views of running the programme. We now intend to hold such meetings every autumn and every following June to reflect on how much we managed to achieve our goals and priorities. The extended team, consisting of heads of projects and all other Street Law members, meets monthly (with the exception of summer vacation) with the aim of introducing individual projects and their current state of development to Street Law beginners, inviting them to join the project of their choice.

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<sup>25</sup> Our recent experience makes us believe that in fact a strategic planning should happen on the beginning of every school year and be followed by a reflective meeting towards the end of the school year. Our reluctance to organize these meetings annually originated in the presumption that to add two more meetings to already full Street Law schedule (not to mention other school and work duties our Street Law members have) would be met with disinterest or tendency to arrive to these meetings only from the sense of duty. Contrary to that, our members seem to like these meetings and consider them important parts of building our Street Law programme and community.

Understandably, some students and Street Law graduates are very active and take part at many events, whereas others come to relatively few meetings or stick to just one project. This naturally creates a core of the team, who have a far bigger impact on the programme and are far more socially integrated into the team than those who play a lesser (but still important) role. Everybody can move between these two groups according to their availability and preferences. Apart from the meeting of head of projects, the rest of the meetings and events are open to every Street Law member. To keep everybody informed, we established a Street Law Google calendar available to all Street Law members, where minutes of meetings are circulated and team-building exercises organised.

#### **4. Lessons learnt in Prague that might be best avoided**

##### **4.1. Taking in too many students – quantity over quality.**

The overall law student interest in signing up for the basic course Street Law I often exceeds our true capacity. In the past we have experienced semesters where there were as many as 30 students enrolled in one seminar. Despite our efforts to break the group into smaller units for many activities, having two teachers and teaching interactively, we realised that such a group size was sub-standard, mainly due to shared impression of 'over-population' of the seminar. Both students and teachers felt that in a group of 30 – and despite all efforts – it is much easier to become a free-rider. Additionally, a smaller group automatically creates a notion of exclusivity, especially at a faculty

where usual number of students in seminars exceeds 30. If there were more students willing to take the course, we have come to the conclusion that it is better to run two parallel seminars, each for 15 students. Typically, we accept 15-20 students every semester and might enrol even two or three students over this limit, since we know from experience that some will drop out from the course. To have 15 motivated law students makes the seminars working at an optimal level and allows the teachers to consult individually with students details of their teaching practice. A greater number presents a range of problems including motivational issues and supervisory problems.

#### **4.2. Not-meeting regularly with the Street Law team.**

When projects run smoothly, or so it appears, it is easy to stop meeting with members of the team individually and not talking with them about the programme and especially its shortcoming. Likewise, the urge to organize strategic meetings decreases. In the long run, however, it has always proved to be a wrong decision to cancel these meeting in the “time of peace”. Even though many times strategic meetings “only” approve our current practice and confirm that the programme is running well, they typically also bring interesting insights into the operation of the programme and suggestions for improvements. Many inherent features of the programme have indeed in the past come from dissatisfaction of some team members. The time and energy that might be tempting to put directly into concrete projects may rather be better spent, at least in part, in reflecting on existing activities and dynamics of the team. Having a well-oiled team used to providing instant feedback is in our experience a far greater

asset when taking a broader perspective. Members of the team are, after all, still relatively young men and women who are gathering experience with teaching and teamwork and their own personal development. The role of programme leaders is to support and facilitate this learning, even though team members may not be students anymore and work instead as junior lawyers at various institutions. The fact that the programme supports this continuous education of young lawyers represents a great strength and not a weakness of the programme, even though it might limit the maximum number of events we organize.

To give one concrete example, we have been struggling for years with the question whether to establish an independent legal entity for Street Law and run it outside of the faculty.<sup>26</sup> After debating the issue thoroughly we found out that what was one part of our team actually calling for was transparent division of powers and responsibilities in the team. Therefore, we introduced heads of projects and their regular meetings and the issue of independent legal entity and all the emotions arising around it lost its urgency.<sup>27</sup>

#### **4.3. Underestimate the value of praise.**

Most of our team are volunteers, who work for Street Law in their free time. Occasionally, we manage to gain funding for some projects, which allows us to cover

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<sup>26</sup> For more information on this matter, please see section 3.5. above.

<sup>27</sup> It has not, however, died out. It reappears every now and then and requires another discussion considering the pluses and minuses of establishing an independent Street Law entity and looking at what other motivations might lie behind the proposal for more independence from the law school.



project costs, but generally, our activities are run by our beliefs rather than money. People stay with Street Law because they want to help, to try something new, to learn or practice skills or because they want to remain a part of the Street Law community. Disregarding their motivation, they all deserve acknowledgement for the time, energy and sometimes the resources they put into their teaching. The attention and words of programme leaders possess extraordinary power in this context. When praise is not forthcoming, or not as often as a team member would expect, it raises doubt: 'Am I doing my work properly?', 'Is the project I'm working on good enough, as the Street Law leaders do not seem to really appreciate it compared to other projects?', 'Do "they" actually want me in the Street Law team?'. These doubts and the emotions attached to them might easily poison the atmosphere in the team and cause objections to the programme and its management – often of course very distant from the actual problem, i.e. lack of acknowledgement of the value of a particular Street Law project or the merits of individuals' work. Preventing such misunderstandings and perceptions can save many hours of talks, team meetings and agonizing – there is no doubt as the saying goes that 'prevention is better than cure'.

The fact that Prague Street Law works as a community does have – apart from the benefits suggested above – its downsides. A friendly atmosphere in the team creates a notion that everybody's opinion is taken by others as equal and equally appreciated. It might work in some situations (when for example designing a new seminar), but generally are the opinions of programme leaders taken more seriously, sometimes

even oversensitively: even a minor comment on the quality of a project might lead to a disproportionate feeling of praise or criticism by those who work on the project. As if the attention of the programme leaders for the concrete project was more important than the project itself, its quality and benefits it brings to the audience. It was important for us who run the programme to realize that we tend to forget a decade of age difference (and correspondent difference in experience and authority) between us and older Street Law members. The traditionally formal relationship between a teacher and a student still exists, at least to an extent and especially on the part of a student. Our experience tells that it is far easier for a teacher to start taking their formal students as colleagues and peers, or even as friends.

## **5. What do we currently struggle with?**

Apart from the 'good practice' described above and the advice (born out of experience) that we hope others might follow to avoid or better manage problems, there are also issues we are still dealing with and to which we have not yet found a definitive answer.

### **5.1. We are constantly searching for a better way of organising and conducting our team meetings.**

How often should our team meet? On the one hand, we want team members to have enough information about the whole programme and not to focus just on the project they are involved with, on the other hand we do not want to bore them with long or overly-frequent meetings that might deal with things they are not concerned with. Individual projects must be coordinated, which is the main responsibility of

programme leaders, but to what extent should also other Street Law members and especially heads of project know the finer details about other projects? And to which extent are the together meetings only saving the time of the programme leaders, who are getting information easier from them, as they do not need to meet with the project leaders individually, and to which extent do they really help the programme as such? Our current model distinguishes three different types of meeting. First, there are monthly meetings of project heads, where detailed planning as well as long-term decisions are considered and everybody is informed briefly about development in other parts of the programme. Secondly, monthly meetings of the whole Street Law team are held, which are designed to attract newcomers as well as exiting participants. These meetings introduce the individual Street Law project and help the new members to get involved. Thirdly, we have the yearly strategic planning meetings where the direction of the whole programme is debated and planned. The system is still developing, as the programme is expanding, which constantly changes the dynamics of the team and the needs for regular meetings.

## **5.2. Who should make final decisions?**

Should it be the head of the programme, after discussing it with senior and other team members, or should it be the collective or a body delegated with such tasks as the meeting of the head of projects? Should there be different decision-making bodies or people for different types of decision, for example when considering the spending of grant money? In the past, there were e.g. doubts about the extent to which financial

support from Prague Street Law should be spent on a moot court competition organized by another Czech law school.

### **5.3. Should we establish a separate legal entity or not?**

We have discussed this above.

### **5.4. What are the best ways to integrate newcomers into our Street Law team?**

They typically come to their first Street Law meetings after going through Street Law I, but then many of them stop coming, often without telling us why. We introduced an older team member responsible for being in touch with them and making sure they feel comfortable among us. We encourage heads of projects to actively approach newcomers and offer them concrete roles in individual projects. It pays off, but we are far from being satisfied. Colleagues of ours advised us to assign every newcomer a mentor from the established Street Law team allowing more intensive and personalized contact, to become more authoritative at assigning first tasks to newcomers instead of waiting until they make their minds and make sure we meet with those who stop coming to Street Law meetings and find out what they are missing in the programme and what would help them to stay (happily) on the team. They are all great suggestions we will gradually try out.

### **5.5. Graduates of basic Street Law course come and stay in our team/community in waves**

Over the years we have observed that graduates of basic Street Law course come and stay in our team/community in waves, even though we invite approximately 3-6 of students (graduates of Street Law I) every semester. They therefore naturally form generations, layers of the team which joined in around the same time. This brings synergy in the team, motivate other team members and encourage developing closer relationships among team members, but also generates problems: especially when such a generation graduates and starts to withdraw from the programme. How should we bridge the gap it leaves in the programme? What other roles can we offer to experienced members who now have less time for our activities because of their work constraints? Some stay as project heads and concentrate more on coordinating work rather than doing it themselves, some withdraw and come to meetings and events irregularly and sometimes rather unpredictably. We are using their experience for concrete tasks, especially short-term ones.

### **5.6. How to work effectively with Street Law alumni?**

Every year, some fifty law students graduate from our Street Law I programme and around ten of them join our team. We continue to work with those who join our community in the ways described earlier in this paper. However, we have found no way so far to work systematically with the rest of our alumni, even though we know

that many enjoyed Street Law I course and have given positive feedback.<sup>28</sup> Should we concentrate our energy on the majority of our alumni, since they might – often already in the roles of (trainee) attorneys, public prosecutors and judges – bring fresh experience, know-how and prestige back to our programme? Street Law might continue inspiring them to do pro bono work at their own institutions or through our programme, which would certainly increase the level of our events for the target audiences.

## **6. Conclusions**

Since the first Street Law came into existence almost half a century ago, Street Law programmes have spread around the globe and are proving to be viable, sustainable and beneficial platforms for increasing legal literacy amongst members of the public as well as developing the knowledge, skills and professional responsibility of law students. Every programme is necessarily a unique mix of audience, teachers, students, projects, priorities and strategies. Approaching the end of the first decade of Prague Street Law, the reflection of our experience and its comparison with other programmes we have visited, heard of or read about,<sup>29</sup> brings us to realization of key characteristics of our own programme.

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<sup>28</sup> See Hana Draslarová, Street Law as a unique learning method: What do students themselves actually find to be its benefits? Answers from the Czech Republic. *International Journal of Public Legal Education*, forth coming, 2019.

<sup>29</sup> For example Georgetown Street Law <<https://www.law.georgetown.edu/experiential-learning/clinics/dc-street-law-program/>>, Centre for Socio-Legal Studies, University of KwaZulu-Natal <<https://namati.org/network/organization/centre-for-socio-legal-studies-university-of-kwazulu-natal-south-africa/>>, University of Warsaw <<http://en.uw.edu.pl/tag/faculty-of-law-and-administration/>>, BPP University <<https://www.bpp.com/insights/bpp-streetlaw>>, Palacký University in Olomouc

First of all, we have a large team of Street Law graduates volunteering in their free time and staying with the programme even after finishing accredited Street Law courses – we have referred to them in this text as Street Law team or community. Secondly, the programme is led in a less directive way than many such initiatives, students are encouraged to propose and realize their own projects and have influence on what the whole programme looks like. Thirdly, the first experiences students in our programme gather are from relatively easy environments and only gradually do we allow them to gain experience with more demanding teaching (such as training of trainers groups, the Roma minority and prisoners). Fourthly, we offer our graduates accredited pedagogical courses that carry qualification for teaching at secondary schools and ease their future way into public education in the role of teachers. Finally, we intentionally and for the long-term benefit educate secondary school teachers and students of Prague Faculty of Education in law and interactive ways of teaching it, since we believe that they, as teachers, are key elements of change in the perception in and understanding of law and society. None of these features are, of course, unique. Many other programmes do similar work (and much more!) and certainly work as our inspiration. The above-described characteristics only show the current mix of specific elements of our programme.

How will our programme develop in its second decade? There are of course many variables in the play, but our Street Law dream is as follows: in ten years, Prague Street

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<<http://lawforlife.upol.cz/klicove-aktivita-2/program-pravo-pro-kazy-den-street-law/>> and Masaryk University in Brno <<http://udvis.law.muni.cz/streetlaw.html>> all accessed 17 January 2019.

Law will become a semi-professional programme integrating generations of its graduates with Prague law school students of all years. It will be run by a team of staff members, supported by a paid assistant handling most of the administrative work, and it will be offering high quality, entertaining and yet enriching seminars, workshops, mock trials, weekend programmes and summer schools for different groups of members of the public. There will be extended open online database for good teaching materials and number of textbooks published by the Street Law team. The brand Street Law will be opening the doors of Czech schools, the professional as well as general public will know about it and our voice will be heard and taken seriously in discussions around school reform, educating future teachers and legal literacy more generally. And we will of course help with preserving what is Street Law globally famous for: openness to new ideas, not shying away from discussing legal values and constant readiness to cooperate and, if necessary, offer a helping hand to other Street Law programmes.



*“Networking: A (Un)Necessary Evil in an Unsettled Market?”*

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**Introduction**

Clinical Legal Education (CLE) involves training the solicitors of tomorrow to be the best they can be whilst acting ethically and with integrity. As educators, one of the ways we do this is by simulating the professional environment for our students as much as possible, for example by using real-life scenarios in our teaching and by encouraging participation in pro bono legal clinics.

However, when our students leave higher education and join the workforce, a key skill they will be expected to have attained by employers is that of networking. This is because, in the current marketplace, it is no longer enough for lawyers to be able to understand and apply the law to complex situations. They also need to be able to get along with clients, colleagues and other lawyers – and help their employers win and retain business.

Networking can be an unpopular concept, and an anxious prospect for many of our students. Yet the very act of working with peers under the guidance of legal

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practitioners as part of CLE is, technically, networking. Student engagement with our various workshops, competitions, pro bono offerings and social events fall into the same category.

Since so much of CLE therefore involves networking, and since it is highly valued by employers, is networking any different from the other vital skills taught in CLE, such as drafting or advocacy? Seen in this light, are we doing our students a disservice if we *don't* teach them how to network properly?

And if networking is something that *ought* to be taught, what teaching methodology/ies should we employ in doing so?

To explore this theme, we will consider the role that networking plays in the Diploma in Professional Legal Practice (DPLP) at the University of Glasgow. The DPLP is a one year, vocational postgraduate course regulated by the Law Society of Scotland and designed to prepare Scots Law students for legal practice, and our student numbers at the University of Glasgow range from 150 to 200 each academic year. Our students go on to complete a two year traineeship either in-house or in a private law firm.

We will examine networking in the context of the Scottish legal community. This community is relatively small and so, given many of our practitioners are actively involved in CLE in one way or another, how students network can have a huge impact on their career in a short timeframe. We will also examine networking in the context of an unsettled market and political climate.

## **What is “networking”?**

Networking is an amorphous concept. Some studies suggest that it originated in Britain during the industrial revolution in the late 18<sup>th</sup> and 19<sup>th</sup> centuries, as businesses could expand more rapidly and it was “not enough to develop a few partners and customers then work with them for the rest of your life, as often happened with simple artisans and craftspeople”<sup>2</sup>. Its original focus was on capitalising on existing business relationships and building new ones, but in the 21st century the meaning has expanded to include research peers meeting each other to exchange ideas, parents meeting to share child-rearing tips... there are endless permutations. Indeed, the Oxford English Dictionary defines a “network” as “a group of people who exchange information and contacts for professional or social purposes”. A colleague, however, once described it as “the worst part about being a lawyer...”!

Our interpretation of “networking” in the context of CLE simply means students meeting with each other, their tutors and other legal professionals, and beginning to grow relationships that will (hopefully) assist and advance their career.

## **Why does networking matter?**

As well as networking being an opportunity for students to build professional links that should stand them in good stead in their personal careers, it is also one of the tools students need to enable them to maintain and even help grow their firm’s

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<sup>2</sup> [http://changingminds.org/disciplines/networking/networking\\_history.htm](http://changingminds.org/disciplines/networking/networking_history.htm)

business when they join the legal profession. The ability to speak to people, be interested in them (and come across as such), ask questions, hold conversations, is (or should be) at the heart of what lawyers do because law is, essentially, a “people business”. People do business with people, and clients want lawyers who are not only excellent at the legal element of their job but who are decent and personable. Particularly in an uncertain market in which law firms are increasingly competitive on price, it is strong lawyer-client relationships that can make or break a pitch or fee negotiation, and can encourage a client to stay or to take their business to a different firm. The ability to forming solid relationships with clients as early and as effortlessly as possible therefore sets trainees apart from their peers and pegs them as “ones to watch”.

In addition, there’s never a guarantee that a trainee will be kept on by their training firm or organisation, a particular issue in Scotland where there are more qualified solicitors than there are jobs. Skill in networking directly leads to client popularity, and by honing this skill early on, students are making themselves that bit more indispensable to their employers through helping them maintain and grow their client base.

The aforementioned uncertain Scottish legal market, driven by our current political and financial climate, provides additional context for student networking:

***Brexit v globalisation***

At the time of writing, it is anybody's guess how Brexit is going to impact on the legal market long-term – but what is certain is that the short-term uncertainty is unsettling, for law firms and their clients.

In contrast to the UK's exit from the EU, we are seeing increasing globalisation, as one by one Scotland's oldest law firms are absorbed by larger international firms. In 2014, only 5 years after celebrating 250 years in business, renowned Scottish law firm Dundas & Wilson merged with international firm CMS Cameron McKenna. Similarly, McGrigor Donald became part of Pinsent Masons in 2012, and most recently, Maclay Murray & Spens merged with Dentons in 2017. Further, the recent recession has resulted in fewer job opportunities in-house, whether in government departments, large businesses or financial institutions.

Whilst the future of what is left of Scotland's independent law firms will be interesting to watch in light of this trend, what is certain is that tomorrow's lawyers will need to be adaptable, flexible and resilient – and will need to be able to build strong relationships quickly with people (peers, clients, potential employers) the world over. What is that, if not networking?

### ***Scottish independence***

Scotland voted to remain in the UK in its 2014 referendum. Despite this, and largely due to how Scotland voted in the Brexit referendum when the results are considered from a geographical perspective, a second independence referendum cannot be ruled out at some point in the (near) future. Whatever the views of Scottish lawyers on Scottish independence, there can be little doubt that a further referendum would result in further uncertainty. Again, though, it is the lawyers who can build and maintain strong client relationships that will be better able to withstand whatever the result may be.

### ***Changes to qualification route in England***

A major CLE issue south of the border is the forthcoming change to the route to legal qualification in England and Wales. The Solicitors Regulation Authority (SRA) is introducing a new, centralised assessment for all prospective solicitors. This new approach involves an overhaul of the current system, which more closely mirrors the Scottish system (law degree, Diploma, two year traineeship). Prospective solicitors in England and Wales will no longer be obliged to study particular courses or subjects and, instead, will simply have to pass what the SRA suggests will be a rigorous assessment. The Law Society of Scotland, our SRA equivalent, has said that it has no current plans to follow the SRA's approach, but is nevertheless watching with interest – as are Scottish legal educators and practitioners. And where our English counterparts go, we sometimes follow.

## **Networking: our approach on the DPLP**

Networking has always played a large part in the DPLP at the University of Glasgow. Since we joined as Directors relatively recently (2016/17), we have retained a focus on networking, but approached it from a more informal perspective in an attempt to make it slightly less intimidating for students and to encourage participation. Below are examples of this change of approach, as well as statistics on its success, gleaned directly from student feedback.

### *Introductory Week*

At the beginning of the academic year, our students join us for an intensive week of workshops aimed at helping them transition from the academic undergraduate law degree to the vocational, practical DPLP – a transition that can, understandably, be slightly intimidating for some. In addition, our students come from Universities across Scotland, therefore many of them have not only moved to a new city but have left their existing friendship groups behind. To help our students not only feel at home at the University of Glasgow (and in Glasgow more widely) but to begin to make new friendships – and therefore to begin to build their network – from day one, we have incorporated the following changes into Introductory Week:

- in 2017/18, we introduced a drinks event at the end of Introductory Week, giving students a chance to get to know each other and the DPLP team;
- also in 2017/18, we created a “treasure hunt”, putting students into teams of 12, with each team containing students from all home institutions. Teams had

until the end of Introductory Week to follow clues and complete challenges around the University and local area, with a mock “awards ceremony” held at the closing drinks event; and

- in 2018/19, we adopted a conference-style approach and held the morning of Introductory Week, when all our students are together for the first time, in a local hotel. This allowed us to seat students in their treasure hunt teams, facilitating introductions and encouraging networking at the earliest stage possible – which we had found was more difficult to achieve in the usual classroom / lecture theatre setting in 2017/18.

We surveyed our students at the end of the academic year in 2017/18, and found that 65% felt the networking during Introductory Week was useful. We still have some way to go, but hope that the additional changes made in September 2018 for the 2018/19 cohort will lead to even more positive feedback.

### *Glasgow Legal Network*

The Glasgow Legal Network (GLN) is a network of Scottish legal professionals from all areas of practice and at all levels of qualification, from trainee to partner, in-house lawyer to judge. The practitioners involved not only have an interest in CLE, but are passionate about student development and fully support students being given the opportunity to practise their networking skills with them. As such, we invite all members of the GLN to come and meet our students over drinks and canapés once per semester. Although always an excellent initiative, we have recently relaxed the



DPLP's approach to the GLN as follows, with the aim of making it more appealing to students:

- attendance is no longer compulsory;
- we no longer enforce a dress code or require our students to wear name badges; and
- we schedule GLN events on days when the majority of the cohort are on campus for classes, making attendance more convenient.

These changes have had a positive effect. In the past, when attendance, business dress and name badges were compulsory, some students would simply turn up for two minutes to sign in, look uncomfortable and leave! Having relaxed the approach, feedback suggests that more students are willing to attend, given the more laid-back environment. Indeed, numbers increased (which is surprising, given it was supposed to be "compulsory" in previous years!). One student said that they "attended the first event and thought it was fantastic - was able to mingle and meet great contacts", while another suggested it was "good fun and a useful way to meet legal professionals".

### ***Mentoring***

We have introduced a mentoring scheme, whereby we connect students with legal professionals in their chosen field of interest. Once we have facilitated these connections, it is over to the student and their mentor to arrange whatever suits them, ranging from phone conversations or meetings over coffee, to CV advice, to work shadowing. This works best when students (and the mentors) put in effort. One

student said that the scheme was “insightful” and that they “gained a good contact for the future”.

### ***Competitions***

We participate in the International Client Consultation Competition (ICCC) and the International Negotiation Competition, running heats for DPLP students and coaching our own finalists for the Scottish and, when successful, international finals. In April 2018, the University of Glasgow’s DPLP team came second in the international final of the ICCC – a phenomenal opportunity for our finalists to meet and network with peers from all over the world, as well as the judges and organisers of the competition.

Building on this success and to further enhance student opportunities for skills development, including in relation to networking, we entered the UK Mediation Competition in 2018/19. We were delighted to take joint first place and will be hosting the 2019/20 event, another excellent chance for our students to put their networking skills to good use.

### ***Pro bono***

Pro bono work, such as legal clinics, obviously has innumerable benefits for students and for the community they serve. Specifically considering the networking perspective, it is clear that working for “clients” under the supervision of qualified

legal practitioners is an invaluable opportunity for students to practice their networking skills.

At the University of Glasgow, we do not run a “traditional” law clinic. However, we have a number of initiatives under the umbrella of Glasgow Open Justice or “GO Justice”. Opportunities include placements and work experience opportunities with charitable partners, e.g. Shelter Scotland or the Citizens Advice Bureau. DPLP students also have the option to take part in our Corporate Law Advisory Support Project (“CLASP”). CLASP allows DPLP students to provide advice to student start-up businesses. The University of Glasgow has a flourishing Business School, where numerous students are entrepreneurs and keen to set up new businesses. Our students, under the supervision of qualified solicitors, meet with these clients and offer support and advice, making them “lawyer-ready”. General queries involve which business vehicle to use and clarification on the business’s intellectual property rights. We have plans to expand CLASP to include advice on employment law, as many of the clients require support in that area.

Feedback from students who have taken part in CLASP is positive. From a networking perspective, our students gain huge benefits from their involvement.

### ***Tutors and peers***

All DPLP teaching is carried out by qualified, practising Scottish solicitors. Class sizes are limited to 12 students per tutor, and the practical nature of DPLP teaching means that each of our students has the chance to not only learn from, but to get to know,

experts in a variety of legal fields. Each year, at least one student is offered work experience by a tutor, and often this converts into a two year traineeship – opportunities that would not have arisen for these students if it weren't for the strong relationships they had built with their tutors.

Similarly, students network from day one on the DPLP, working with their peers on a daily basis and building strong relationships from the outset. There are also a number of committees with which our students can get involved. Some are student-only (e.g. our Social Committee and Social Media Committee) and some involve staff (e.g. our DPLP Committee and Staff Student Liaison Committee), but all provide an opportunity for students to extend their networks.

Given the changes implemented, we are keen to obtain feedback from students on a regular basis. We were delighted to note that 86% found Diploma networking events useful in general in 2017/18 – an increase of 45% on 2016/17.

Given the positive feedback our networking-focused initiatives are receiving from students, and the impact they are therefore having on the student experience, we will be continuing to develop these initiatives as well as new ones, and continuing our informal approach, for future cohorts.

### **Pedagogical perspective**

As demonstrated above, networking is an integral part of the DPLP and, we would argue, CLE more broadly. But this begs the question: can networking be taught?

Should it be? If it should, then *how* should it be taught? And taking this one step further: can, and should, networking be assessed as part of CLE?

We raised these questions at the 6<sup>th</sup> ENCLE Conference, *Clinical Legal Education: Innovating Legal Education in Europe*. They inspired many of our peers at that conference to discuss their approaches to student networking with us, and engendered healthy debate on best practice.

The consensus seemed to be that whilst there is certainly a place for networking in CLE, whether it can actually be *taught* is less clear.

### ***Teaching networking?***

From our perspective on the DPLP at the University of Glasgow, we *are* teaching networking – but our students don't necessarily realise that this is the case. Networking is embedded on the DPLP. Our students start to build their network from their very first day with us, and develop it throughout the course through group and class work, involvement in competitions and committees, and attendance at our networking events. However, we do not provide any lectures or workshops on "How to Network". Nor is there any coercion to attend networking events, meaning there is little resentment from students. Instead, we foster a safe, non-judgmental environment and, from there, encourage networking skills to develop naturally through the various opportunities we present daily to students for practising them. This is because we believe that best practice on a vocational, professional course such as the DPLP must always be that the best way to learn is by doing – and it is no

different with networking. We further believe that our informal approach, and the environment we create, enables even our more introverted students to begin to embrace networking.

### ***Assessing networking?***

The DPLP requires all students to be assessed on their in-class participation, as well as their professionalism in their relationships with peers and tutors. Does this mean that we are assessing networking? In some respects, we are assessing it indirectly. However, we do not necessarily believe that networking should be directly, formally assessed as part of any CLE programme. It is difficult to imagine introducing an assessment whereby we create a mock networking event, hire actors to play “clients” and then grade our students on how well they get on with them. Our view – based on what has been a success for us on the DPLP – is that it is better to wrap any assessment of networking into a broader assessment of student participation in the subject matter and professionalism towards others.

### **Conclusion**

Our experience, and our discussions with our peers at the 6<sup>th</sup> ENCLE Conference, leads us to the view that networking *is* a necessary evil from a CLE perspective. However, that does not mean it has to be an intimidating chore for students – and we believe we can avoid it being so by adopting the DPLP’s model of encouraging students to practise networking skills in a relaxed, non-judgmental environment.