

Editorial

REFLECTING ON THE 'POWER' OF CLINICAL LEGAL EDUCATION

Elaine Hall

elaine.hall@northumbria.ac.uk

In this issue contributors from across the world have been reflecting critically on the implications of clinic in different academic and geographical settings. In particular, how student's experiences of clinic within the university impacts their work outside the university. The flow of skills, knowledge and values between the university and the community invites us to look beyond the classroom and consider the multifaceted impacts of clinical legal education.

Firstly, Melanie Walker asks us to think about epistemic justice and the role of legal educators in shaping public good professionals go on to use their skills for the benefit of others. Using critical theory she draws out the ways in which legal educators and students must engage with epistemic inequalities in legal knowledge making. These elements are encapsulated perfectly in the closing quote from Nelson Mandela; "to be free [is] to live in a way that respects and enhances the freedoms of others".

Claudia Man-yiu Tam's study of student perceptions of clinical legal education at Hong Kong University indicates a successful integration of experiential legal education in Hong Kong. She finds that students feel that working in the clinic

enriches their understanding of the law and injustices in society more broadly and that they take this with them outside of academic spaces.

In Australia, Francia Cantatore explores the effects of clinic experience during university on student's approaches to pro-bono work post-graduation. She draws together data from the Law Alumni and Clinic Client surveys to illustrate the ongoing commitments of law graduates to pro-bono work based on altruistic motives and the deep appreciation that recipients of these services feel. The benefits of clinic are shown here to extend outwards into the community as students move into professional work.

Louise Whitehouse's illuminating pilot study of research based clinical legal education at the University of Hull assesses the impact of clinic work to address the information deficit in housing possession cases. The student clinic alongside other services such as the Citizens Advice Bureau acted to give occupiers in housing possession cases a raft of information to help them engage effectively with the judges. Here students contributed to a joined up service addressing a lack of knowledge and legal empowerment amongst the public.

In contrast to the work on the benefits of clinic for students, clients and the community Alex Nicholson and Alireza Pakgohar turn our attention to addressing the workload strains that clinic can put on university staff. Their article applies the principles of "lean" management to the design of clinical programs at Sheffield Hallam University in order to make them more efficient and ease the burden of ongoing assessment and the demands of experiential learning on legal educators.

Moreover, in Part II of Bryan Horrigan's detailed piece on the design and implementation of an enhanced clinical program in the "age of disruption" he addresses the macro-level challenges of today's world. He stresses the need to react to ever-changing technology, and the effects and trends of globalisation and democratisation to ensure that clinical programs work well for everyone.

Finally, we have two From the Field Reports. Jennifer Lindstrom provides an informative and detailed summary of the IJCLE conference at Monash in November 2018, so for anyone who could not attend be sure to give that a read. Malcolm Combe also gives us an insight into the University of Coventry and Clinical Legal Education Organisations' event "Clinics and SQE – What Next?". Many important questions were asked and issues raised by members of various universities and professional bodies including The Law Society. Combe concisely covers some of the implications of the Solicitor's Qualifying Exam in England, Wales and perhaps further afield.

I am also excited to share this video on the power of clinic produced by the Law School at the University of Bergamo and shared by Angelo Maestroni. It's a great watch and you can find it here; <https://www.youtube.com/watch?v=1nNyqP4j5as>

In other news, the GAJE (Global Alliance for Justice Education) conference which ran from the 4th-10th December 2019 in Bandung was a great success.

We are very much looking forward to the IJCLE conference which this year is happening in Dublin from the 13th-15th July. For more information and instructions for submitting a proposal follow this link; <https://www.northumbria.ac.uk/about-us/news-events/events/2020/07/ijcle-dublin-2020/>

Last but not least, I would like to wish everyone Seasons Greetings and hope that you all find time to rest and enjoy the festive period.

WHY LAWYERS AND LEGAL EDUCATORS SHOULD CARE ABOUT (EPISTEMIC) JUSTICE

Melanie Walker, Higher Education & Human Development Research Group, University of the Free State, South Africa¹

INTRODUCTION

Society shapes the law and the law, we hope, might shape society for the better in turn. Legal traditions and practices therefore surely ought to secure for all citizens the prerequisites of a life worthy of human dignity. In a speech to the Routledge-Modise Law School in Johannesburg in September 2008, Justice Kate O'Regan² drew on Antony Kronman's theory that one of the main characteristics identifying the practice of Law is that it is directly concerned with the public good. Lawyers have a responsibility to foster the legal system and the rule of law; at times, this might require them to suggest new laws or legislation; at other times, it might require them to criticize judgments which may not

¹ Melanie Walker is a Professor at the University of the Free State, South Africa. (walkermj@ufs.ac.za)

² O'Regan, K. 'Lawyering in Our New Constitutional Order.' (2009). *UCT News Alumni Magazine* cited in Walker, M. *Higher Education Pedagogies*. (2016) Maidenhead: Open University Press & SRHE

appear correct; at other times, they may need to protect the rule of law itself.

Yet many in the profession - who are working for social justice - perceive there to be a lack of such an orientation in lawyers in current times. The former chairperson of the South African Human Rights Commission has thus said that “there is a growing perception that in spite of South Africa's having one of the best Constitutions in the world; its legal practitioners are losing their social consciences”³ reminds us, lawyers should have a public calling and obligation for public service to foster the legal system on behalf of the marginalized, strengthening constitutional democracy and also changing individual lives. This role in strengthening democracy seems of some importance, given that it appears that democracy is fragile nearly everywhere. Delivering the Nelson Mandela annual lecture in Johannesburg in July 2018⁴, Barack Obama relayed his concerns regarding the subversion of free media, the use of social media as a vehicle for hatred and propaganda, as well as how some politicians openly lie and discard facts for their own needs. His lecture sought to defend democracy and civil rights as “the better story to tell” and to resist the potential “undoing”⁵ of democracy in current times.

This leads me to ask how legal education might contribute to addressing this urgent

³ Cited in Sarkin, J. ‘Promoting Access to Justice in South Africa: Should the Legal Profession have a Voluntary or Mandatory Role in Providing Legal Services to the Poor?’ (2002). *South African Journal on Human Rights*, 18 (4), 630-644

⁴ Marrian, N. and Quintal, G. ‘Obama: resist politics of fear and resentment.’ (2018). *Business Day*, 18 July:1

⁵ Ibid, (n.4)

challenge. Here is my claim that follows: epistemic justice and injustice are deeply relevant to a just legal system, its practitioners, to clinical practice learning, and hence to legal educators in universities like yourselves. I acknowledge, nonetheless, that universities and clinical practice settings may act in contradictory ways, with the potential to empower, co-existing with the potential to oppress and marginalize. We need to work for more of the first and less of the second for justice in a non-ideal world⁶.

Epistemic injustice, on which I elaborate later, refers to those forms of unfair treatment that relate to issue of knowledge, understanding and participation in communicative practices. Put simply, if you are in a disadvantaged position to influence discourse you are subject to epistemic injustice and reduced epistemic agency⁷. That is, you are wronged specifically in your capacity as a knower; you do not have a voice that is recognized, and you are placed at an epistemic disadvantage.

I hope thus to make a persuasive case for adding an epistemic justice-facing capability to the eight multi-dimensional, intersecting public-good professional capabilities identified by Monica McLean and myself⁸. We arrived at these both theoretically and empirically

⁶ Sen, A. *The Idea of Justice*. (2009) London: Allen Lane

⁷ Kidd, I., Medina, J, and Pohlhaus, G. Jr. 'Introduction' (2017); in Kidd, I., Medina, J, and Pohlhaus, G. Jr (Eds.). *The Routledge Handbook of Epistemic Injustice*. (2017) London & New York: Routledge

⁸ Walker, M., & McLean, M. *Professional education, capabilities and contributions to the public good*. (2013). London: Routledge.

using five professional education case studies, including law, at three South African universities. The details of the method and the cases can be found in the book⁹.

CAPABILITIES

First, a brief outline of what I mean by ‘capabilities’.

The capability approach¹⁰ is a broad normative framework rooted in a philosophical tradition that values individual freedoms, and is used for the evaluation and assessment of individual wellbeing, social arrangements and the design of policies and proposals about social change. The approach conceptualises “good” development as freedom constituted by “human capabilities”, rather than only as national income or people’s subjective preferences. Income does not tell us who has the money or what it is used for, while preferences may be subject to adaptations in the light of poor living, such that one comes to accommodate limited opportunities and reduce aspirations for the future. The core focus of the approach is on the effective opportunities people have to be and to do what they have reason to value. It highlights substantive freedoms (‘capabilities’), and

⁹ See Walker, M., & McLean, M. *Professional education, capabilities and contributions to the public good*. (2013). London: Routledge.

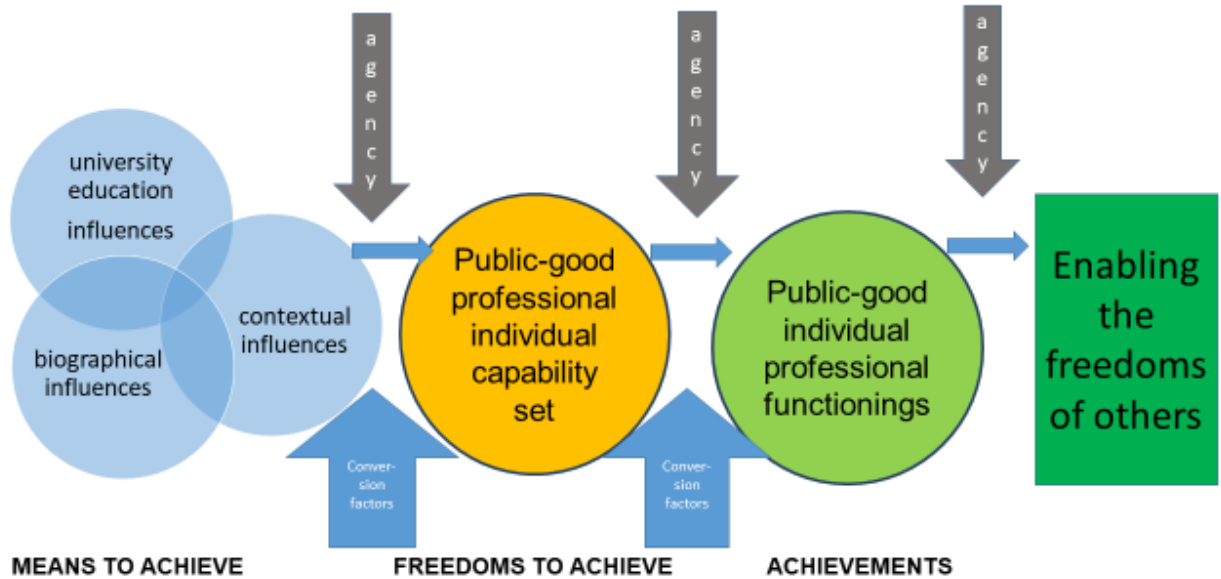
¹⁰ See Sen, A. *Development as Freedom*. (1999). Oxford: Oxford University Press. and Sen, A. *The Idea of Justice*. (2009). London: Allen Lane. See also Nussbaum, M. *Women and Human Development*. (2000). Cambridge: Cambridge University Press

outcomes or what is actually achieved ('functionings'). Professional 'beings and doings' that are valuable to the professionals who emerge from higher education would be 'functionings'; such 'functionings' would be proxies for 'professional capabilities'. Importantly, with capability also comes responsibility for what we do, and the obligations we owe to others¹¹. The capability approach further takes into account intersecting 'conversion factors', that is the personal, social and environmental factors that shape our ability to transform our means to achieve into capabilities and functionings. This includes, in my view, structures of inequality such as race, class, gender, and so on. Finally, agency is significant for Sen; we are not passive spectators in our own development but active agents who makes choices, albeit under specific contextual circumstances¹².

¹¹Sen, A. *The Idea of Justice*. (2009). London: Allen Lane.

¹² Ibid (n.11)

Figure 1: Formation of public-good functionings



The approach can be used as a normative framework to tell us what information we should look at - do people have valuable capabilities and who has them - if we are to judge how well someone's life is going. More broadly it can be used as an evaluative framework to conceptualise, measure and evaluate human wellbeing¹³. What matters in arriving at these assessments, for Sen¹⁴ is the lives that people can actually live – what they are able to do and to be (such as having access to legal services and being treated fairly).

¹³ Crocker, D. A., & Robeyns, I. 'Capability and Agency', (2010), in Morris, C. W. Ethics and economics. (2010). *Amartya Sen*, 40-59.

¹⁴ Sen, A. *The Idea of Justice*. (2009). London: Allen Lane.

It also provides a framework for an examination and understanding of the purposes of universities and hence of legal education settings, including the clinical, because it encourages us to consider individual opportunities for wellbeing achievement and agency in and through higher education. Through a capabilities lens, higher education is not solely a means for individuals to achieve economic gains through acquiring knowledge and skills for employment. Instead, the approach asks us how higher education is contributing to human development¹⁵, by recognising an expansion of the capabilities and functionings that people have reason to value. Thus, various higher education studies have explored the approach's theoretical richness in conceptualizing and articulating the changes that need to take place in universities if they are to contribute to human development and social justice¹⁶.


To recap the existing eight public-good professional capabilities on mine and Monica's list (see table 1), these were: informed vision; knowledge and skills; affiliation; resilience; social and collective struggle; emotional reflexivity; integrity; and, confidence and

¹⁵ Haq, ul M. 'The human development paradigm' (2003), in S. Fukuda-Parr and A.V. Kumar (Eds) *Readings in Human Development*. Oxford: Oxford University Press, 17-34

¹⁶ See for example Walker, M. *Higher Education Pedagogies*. (2006). Maidenhead: Open University Press & SRHE and Boni, S. And Walker, M. *Higher Education and Global Human Development*. (2016). London and New York: Routledge. among others.

assurance¹⁷. All the capabilities are important and any trade-offs would need careful and wide deliberation.

Table 1: Public-good professional capabilities extrapolated from empirical functionings, Walker and McLean, 2013

Examples of Functionings		Professional capability
Understanding how the profession is shaped by historical and current socio-economic, political context nationally and globally; understanding how structures shape individual lives; being able to imagine alternative futures.	1. Informed vision	
Care and respect for diverse people; communicating professional knowledge in an accessible way/courtesy and patience.	2. Affiliation (solidarity)	
Perseverance in difficult circumstances.	3. Resilience	
Promoting human rights; identifying	4. Social and collective struggle	

¹⁷ Walker, M., & McLean, M. *Professional education, capabilities and contributions to the public good*. (2013). London: Routledge.

spaces for social change to reduce
injustice.

Empathy/narrative imagination; 5. Emotions (emotional reflexivity after
compassion. July 2012)

Acting ethically. 6. Integrity

Having confidence in the worthwhileness 7. Assurance and confidence
of one's professional work; having
confidence to act for change.

Having a firm, critical grounding in 8. Knowledge and skills
disciplinary, academic knowledge; being
enquiring, critical, evaluative,
imaginative, creative and flexible.

In our South Africa law case study, functionings included: being self-aware and reflexive; being conscious of what a person wants to achieve as a professional and one's values; and, being able to decide which career direction to move in. Students identified that it is important to have a sense of self-belief and self-confidence in yourself as a lawyer. Most felt it important that each individual is able to choose their career path autonomously. For many, being a lawyer in itself was inherently tied up with acting in the public good.

Rohan, a lecturer, saw law as a profession that intrinsically involves acting in the interest of others, who lack the legal skills to defend their own interests. In other words, he said, “there is value in the training of the attorney in that it’s a profession in the interest of other persons”¹⁸.

Our eight professional capabilities are open to debate and to changes, and we welcome this. Moreover, we did not claim that these capabilities are universal. They were developed in the specific context of transformation seeking but highly unequal post-apartheid South Africa so that the list was understood to be the capabilities that would equip future professionals to act for the public good. However, we did argue that a normative capability set, such as the one proposed, can reveal injustices and also possibilities for working towards non-ideal justice in practice settings, and this argument would be widely relevant.

Can we, should we, then make space for a distinctively epistemic capability – beyond knowledge and skills - on the list?

¹⁸ Walker, M., McLean, M., Dison, A. and Vaughan, R. ‘Higher Education and Poverty Reduction: The Formation of Public Good’ (2010)., *Unpublished paper. School of Education: University of Nottingham.* pp.138

WHY EPISTEMIC JUSTICE MATTERS FOR JUSTICE

Here is my argument for epistemic justice and a corresponding capability. In making my case, bear in mind that I take for granted that what is required for fairness is a foundation of proficiency in technical legal reasoning, knowledge of law, and the constraints of procedure – they play a central role in working with clients and supply the bounds within which epistemic justice must work.

My claim is that legal educators, lawyers and other legal professionals should care about epistemic justice and care about doing epistemic justice in their own practice actions across all branches of the law, whether the injustices generate micro or macro exclusions. Access to equality and fairness before the law for all, and, understanding the law in more mundane and more dramatic contexts matters in a just society. Legal educators – including but not confined to clinical legal educators - train and educate future legal practitioners so what they do matters too for a just society and for a legal system which is oriented to the public good of all and not just the few. How then might our own epistemic conduct be more just in the face of the discrimination arising when unfair biases cause people to underestimate the credibility of certain individuals and groups, often socially disadvantaged groups or those different from ourselves. Such prejudices can occur in a great diversity of communicative exchanges and can negatively impact on decision-making in legal contexts.

FRICKER'S 'FAILURE FIRST' METHOD

Specific attention to epistemic injustice can alert us to justice gaps and blind spots; it is what philosopher Miranda Fricker¹⁹ calls a methodological approach of 'failure first'²⁰. She explains that it is often revealing to start with the negative, to begin with a picture of how things will tend, under the relevant socio-historical circumstances, to go wrong. Epistemic justice is then best conceived as always sustained under tension, she says. Of course, these tensions will differ from society to society and we should each consider the claims and argument in relation to the specificity of our own contexts.

The context for my first illustrative example is apartheid South Africa in May 1976 just six weeks before the history-changing Soweto student resistance erupted. The occasion is the lengthy Supreme Court trial of nine student leaders from the Black People's Convention (BPC) and the South African Students' Organization (SASO). The banning orders of charismatic black consciousness activist, Steve Biko, were relaxed so that he could testify on their behalf.²¹ In the example, Biko is giving evidence before white,

¹⁹ Fricker, M. 'Epistemic Contribution as a Central Human Capability'. (2015). In G. Hull (Ed.) *The Equal Society*. Cape Town: UCT Press, 73-90

²⁰ Ibid, 2015, pp.3

²¹ The nine were found guilty under the Terrorism Act and sentenced to periods of imprisonment on Robben Island. Eighteen months later Biko himself would die of injuries sustained during interrogation. His death stunned and shocked the world. But not Jimmy Kruger, the then Minister of all things - Justice, who stated that Biko's death "left him cold".

Afrikaner Judge Boshoff, a man clearly skeptical of the epistemic capabilities of Africans and their ability to understand democracy or the concept of one person one vote. There is epistemic injustice at work here in the judge's prejudiced refusal to accept black Africans as credible knowers. After an exchange as to whether or not there are any examples of one man [sic] one vote in any African country, Boshoff asserts (and the irony would not be lost on anyone with some knowledge of apartheid): "Yes but democracy is really only a success if the people who have the right to vote can intelligently and honestly apply a vote... I mean surely you must know who you are voting for, what you are voting about. Assuming that they vote on foreign investment, what does a peasant know about foreign investment?". And later, "if we have to debate whether this government should go on the gold standard or go off the gold standard will you feel you know enough about it to be able to cast an intelligent vote about that... such that the government should be based on that vote?"²². For the judge, black South Africans simply cannot be credible as knowers or tellers about democracy locked as he is into a decades long belief that blacks were inferior, "unable to formulate their thoughts without white guidance" as Biko²³ wrote. This is a vivid example of failing to accept someone's testimony because of racial prejudice, and hence a failure to recognize black South Africans as capable of transmitting

²² Biko, S. *I Write What I Like*. (1978). Northlands: Picador Press, pp.145

²³ *Ibid*, (1978), pp.98

knowledge about their own situation and coming to their own judgements about a different way of doing things.

Here is a further example of epistemic failure. Some of you may recall the murder of black teenager Stephen Lawrence in London²⁴, one night in 1993, while waiting with his friend Duwayne Brooks for a bus to get home. Brooks saw a group of five or six white youths on the opposite side of the street, moving towards them. Brooks claimed that he heard one of Lawrence's assailants saying, "what, what, nigger?" as they all quickly crossed the road and "engulfed" Lawrence. As the attackers forced Lawrence down and stabbed him, Brooks began running, and shouted for his friend to run with him. They both ran, but Lawrence collapsed and bled to death after 130 yards. For a whole generation, Brooks said, the effect of the case was seismic, a moment when many lost trust in the police, the judiciary and politicians. In the wake of the murder, the police embarked on a campaign of harassment – not of the alleged perpetrators- but astonishingly of Brooks. The campaign would go on for years. At first they tried to discredit his evidence, then attempted to ruin him personally. There were regular arrests, the charges either quietly dropped or defeated. The point here is that Duwayne Brooks – who was there – was discounted as a credible witness simply because he was young, male and black. He was

²⁴ Bowling, B. 'Stephen Lawrence: his death changed British law forever but trust in police has yet to recover.' (2018). Available at <https://theconversation.com/stephen-lawrence-his-death-changed-british-law-forever-but-trust-in-police-has-yet-to-recover-95091>

wronged and undermined specifically in his capacity and credibility as a knower because of prejudice on the part of the police and others. Systemic and individual racial prejudice triumphed over the evidence of Duwayne Brooks and over justice for Stephen Lawrence because of these epistemic wrongs.

Here is one final example. In Rochdale, England in the 2000s²⁵, police launched an investigation into the town's sex gangs. Yet, despite powerful evidence against them, their child victims were written off as 'unreliable witnesses' who, according to the Crown Prosecution Service, had made 'lifestyle choices' to become 'prostitutes'. The police hadn't interviewed Amber one of the victims. Instead, they had arrested her — on suspicion of procuring a child into prostitution. Her crime? Accompanying a friend who was four months younger to the kebab shop where some of the abusers hung out. Yet at 15, she was an under-age victim herself, meanwhile, her sister, Ruby, had been raped by a married Asian man at the age of 12, and subsequently had an abortion. Or the senior officer who said to Maggie Oliver²⁶ "Maggie, let's be honest about this. What are these kids ever going to contribute to society?" he said. "In my opinion, they should have just been drowned at birth."

²⁵ See Oliver, M. *One Brave Detective's Battle To Expose The Rochdale Child Abuse Scandal*. (2019). London: John Blake. for powerful account of the case.

²⁶ Ibid, (2019).

These are all dramatic examples, but they are also real, not made up scenarios. They serve to alert us to the potential and actual consequences of epistemic failures in societies. Readers could no doubt think of many more examples of the law at work, which are more or less epistemically fair and just, more or less every day.

MIRANDA FRICKER'S "EPISTEMIC CONTRIBUTION CAPABILITY" AND THE FUNCTIONING OF BECOMING AND BEING AN EPISTEMIC CONTRIBUTOR

Fricker²⁷ argues that the capability for epistemic contribution - and I would add the functioning of being an epistemic contributor, too - should be a central capability on any list. It is fundamental to human flourishing to have the opportunity and freedom to give and receive information and understanding, to be a credible knower and teller in society, and to participate in society's meaning-making, an opportunity denied to Steve Biko, Duwayne Brooks and Tom Robinson. Two forms of epistemic materials contribute: informational (including evidence, doubt, hypothesis, and argumentation), and interpretational (making sense, alternative ways of seeing). To this end, Fricker outlines two forms of epistemic injustice: testimonial (not listened to because of who you are) and

²⁷ Fricker, M. 'Epistemic Contribution as a Central Human Capability'. (2015). In G. Hull (Ed.) *The Equal Society*. Cape Town: UCT Press, 73-90

hermeneutical (not having the means to communicate intelligibly to others about something and hence not being an equal participant in the generation of shared meaning).

Hermeneutical injustice is structural (as in the Lawrence case which later revealed structural racism in the police force). It is evident in attempts to contribute and participate in social meaning-making and hence in attempts to make an experience intelligible to oneself or to someone else, for example, experiences of racism or sexual harassment before there was a social understanding to understand this form of harassment and other social exclusions. Another example might be that of post-traumatic stress disorder experienced by soldiers (and others). Before we had a name for this, persons suffering this form of trauma were labelled as cowards, or depressed, or even malingering – there was no name to communicate or acknowledge their suffering.

Hermeneutical injustice also arises when the injustice is understood by the powerless (such as among black South Africans under apartheid) but is still not communicable to those with power because they will not or cannot hear because the person speaking may be a single mother on benefits, a migrant, working class, and so on. Experiences that are outside of what is marked out as the norm are not heard or acknowledged, and hence not cared about. This unequal participation in generating social meanings generates structural hermeneutic marginalization of a person or group in the absence of non-distorted discursive resources among the dominant. There are compelling examples of

thus under apartheid in Miriam Tlali's 1968 novel (republished in 2004), *Between Two Worlds*²⁸, based on her own experiences. For example, she reveals the epistemic obtuseness of her white colleagues with regard to the accepted narrative of South African society. Thus, one remarks that, "the critics overseas are ill-informed about the true situation. They only receive false information. South Africa is a most peaceful country. People are free to go where they like, and say what they feel"²⁹. For Mrs Stein – and others like her there is a closed hermeneutic loop.

In both cases of hermeneutic injustice people are denied epistemic functionings; they cannot be epistemic contributors.

The second form, testimonial injustice³⁰, arises through a deficit of credibility owing to prejudice in the hearer's judgment about the speaker (Duwayne Brooks was not believed because of who he was). Philosopher Michael Sullivan³¹ explains that in the case of criminal law, opportunities for epistemic injustice abound because practices in the legal system are unable to understand the experiences of others in difficult situations of which the legal practitioners may have no knowledge. We may also find disparities in

²⁸ Tlali, M. *Between two worlds*. (2004). Broadview Press.

²⁹ Tlali, M. *Between two worlds*. (2004). Broadview Press., pp.207

³⁰ Fricker, M. *Epistemic Injustice. Power and the Ethics of Knowing*. (2007). Oxford; Oxford University Press

³¹ Sullivan, M. 'Epistemic Justice and the Law' (2017). in Kidd, I., Medina, J, and Pohlhaus, G. Jr (Eds.). *The Routledge Handbook of Epistemic Injustice*. (2017) London & New York: Routledge

sentencing for similar offences and these, he says, are not unrelated to social power and epistemic authority. These are real practical effects and consequences.

It may also take pre-emptive form, when, for example a lecturer does not call on a student to respond, to enter the debate and so on because they are assumed – even before they can speak – not to be credible about the subject under discussion. Hookway describes this as “the participant perspective”³² where someone is not recognized as competent to participate in activities whose content is intrinsically epistemic – they are not invited to contribute, or their contributions may be disregarded in furthering the discussion. He points out that if we come to lack confidence in our ability to contribute, this eventually attacks “also our ability to properly participate in epistemic activities at all”³³. In higher education, students from working class or migrant backgrounds may lack confidence and may be made to feel inadequate. In this case students would be both non-knowers and non-participants and subject to pedagogic injustices as a secondary effect. A further example might be in court where a judge overrules all attempts by a defence lawyer who attempts to portray his client to the jury on the basis that for the judge the client is simply not credible and his or her story may be simply not allowed to be heard. Jose Medina thus

³² Hookway, C. ‘Some Varieties of Epistemic Injustice: Reflections on Fricker’. (2010). *Episteme: A Journal of Social Epistemology*, 7 (2):151-163

³³ Ibid, 2010

stresses that epistemic injustice is interactive and performative, it is made in communicative spaces³⁴.

In both hermeneutical and testimonial injustice, the primary exclusion is being wronged as a knower. But – as noted - this gives rise to secondary wrongs in practice, for example not being believed by a judge, jury or a magistrate or ignored in a university classroom. Both hermeneutical and testimonial forms also work together in practice. As Medina explains, “testimonial insensitivities and hermeneutical insensitivities converge and feed each other”³⁵. Both forms are also iterative so that repetitions secure the injustices. If a person is repeatedly not taken seriously as a knower, they lose confidence in their own ability. The capability for epistemic contribution is frustrated by not appreciating or mistrusting people as knowers and is indicative of wider structures of inequality. Localized prejudices and injustices may be utterly disastrous for the subject, especially if they are repeated frequently so that the injustice is persistent. As she further explains being wronged in one’s capacity as a giver of knowledge “can cut deep”³⁶.

The strength and reach of Fricker’s approach is the way she identifies intrinsically

³⁴ Medina, J. ‘Varieties of Hermeneutical Injustice 1’ (2017). in Kidd, I., Medina, J, and Pohlhaus, G. Jr (Eds.). *The Routledge Handbook of Epistemic Injustice*. (2017). London & New York: Routledge

³⁵ Medina, J. ‘Hermeneutical Injustice and Polyphonic Contextualism: Social Silences and Shared Hermeneutical Responsibilities.’ (2012). *Social Epistemology*, 26 (2), 201-220, pp.206

³⁶ Medina, J. ‘Varieties of Hermeneutical Injustice 1’ (2017). in Kidd, I., Medina, J, and Pohlhaus, G. Jr (Eds.). *The Routledge Handbook of Epistemic Injustice*. (2017). London & New York: Routledge

epistemic forms of injustice – wrongs done to someone as a knower; yet egalitarian epistemic contributions are fundamental to human well-being and, she argues, to political freedoms. Fricker explains that in any cultural context, the question of who gets to contribute epistemically to shared knowledge and/or shared social understandings in any given practical context, is a matter of epistemic equality or inequality. It is also fundamentally relational in its process, practices and effects. We flourish (not or) as epistemic contributors in relationships with and through others. In oppressive contexts (racism, sexism, classism etc.) the powerful undermine others with less power in their epistemic capacity, undermining them in their humanness and dignity. It is humiliating and demeaning and reduces confidence and, Fricker says, the development of intellectual courage. We end up not being at all sure of what we think ourselves and our personhood is diminished.

To be sure, those who hold political and social power, whether in the broader society or in higher education institutions (or both), also wield epistemic power. Anticipating many of the current debates on epistemic justice, in 1978 Biko wrote, “that the most potent weapon in the hands of the oppressor is the mind of the oppressed”³⁷. Even earlier, in 1767 French lawyer, Joseph Servan, explained that, “when you have thus formed the chain of ideas in the heads of your citizens, you will then be able to pride yourselves on

³⁷ Biko, S. *I Write What I Like*. (1978). Northlands: Picador Press, pp.49

guiding them and being their masters.... [on] the habitual union of ideas...on the soft fibres of the brain, is founded the unshakeable base of the soundest empires”^{38,39}

At stake is that our epistemic lives whether in higher education or elsewhere are not abstractions but active, practical and relational, done well or less well⁴⁰. Fricker’s epistemic contribution capability is fundamental for accessing critical knowledge and requires pedagogical and other conditions for critical reasoning and dialogue to achieve “the epistemically multi-perspectival context in which citizens may come to believe truths in the mode of knowledge”⁴¹. Ideas and knowledge matter for participation in inclusive meaning-making (and hence to politics, education, the professions, and so on) so that who has access to these epistemic goods at various layers of society is then a matter of justice.

³⁸ Servan, J.M.A, *Discours sur l’administration de la justice criminelle*. (1767) cited in Foucault, M. *Discipline and Punish*. (1977). London: Penguin Books., pp.102-103

³⁹ This includes the impact of colonization on knowledge and whose knowledge and knowledge contributions are regarded as credible. See, for example, De Sousa Santos’s (2015) decoloniality argument for inclusive “ecology of knowledges”, for global cognitive justice, and for a more expansive and generous ways of seeing, thinking and knowing in universities and elsewhere.

⁴⁰ Barker S.R., Crerar C. and Goetze, T. ‘Harms and wrongs in epistemic practice.’ (2018). In: Barker S.R., Crerar C. and Goetze T., (eds.) *Harms and Wrongs in Epistemic Practice*. (2018). Royal Institute of Philosophy Supplements, 84. Cambridge University Press, Cambridge, UK., pp. 1-21.

⁴¹ Fricker, M. ‘Epistemic Contribution as a Central Human Capability’. (2015). In G. Hull (Ed.) *The Equal Society*. (2015). Cape Town: UCT Press, 73-90., pp.15

Fricker⁴² asserts her basic claim that any epistemic injustice (including exclusions from access to and being understood in the context of the law and also in legal professional education) wrongs someone both as a giver of knowledge and as a credible informant so that a person is prevented from becoming fully who they are. Epistemic oppression would constitute a “persistent epistemic exclusion that hinders one’s contribution to knowledge production, an unwarranted infringement on the epistemic agency of knowers”⁴³. Her capability is quite simply, she argues, universally essential to human flourishing and hence an egalitarian value because one of our most basic human needs, is to use our reason, to sift and evaluate information, to make interpretations and sense of our shared lives. All persons should then be able to make epistemic contributions and to have such contributions taken up socially, neither rejected nor under-rated – whether we are black or white, rich or poor, migrant or citizen, man or women, able-bodied or differently-abled, young or old, and so on. Epistemic justice fosters the contestation of ideas in the public sphere, and this in turn requires struggling both for personal change and conditions and structures of epistemic justice. Importantly, epistemic justice can be contested so that epistemic failure is seldom complete, and structural possibility seldom entirely open. In short and to reiterate, ‘thick’ epistemic contributions are fundamental to human flourishing; this is important for everyone.

⁴² Fricker, M. *Epistemic Injustice. Power and the Ethics of Knowing*. (2007). Oxford; Oxford University Press

⁴³ Dotson, K., ‘Conceptualizing epistemic oppression’. (2014). *Social Epistemology* 28 (2): 115-138

THE CASE FOR ADDING A NEW PUBLIC-GOOD PROFESSIONAL CAPABILITY

Wolff and De-Shalit's two law-oriented capabilities on their own list⁴⁴, adapted from that of Martha Nussbaum, might be subsets of the epistemic contribution capability⁴⁵. These are: 1) living in a law-abiding fashion - the possibility of being able to live within the law; not to be forced to break the law, cheat, or to deceive other people or institutions; and, 2) understanding the law - having a general comprehension of the law, its demands, and the opportunities it offers to individuals, not standing perplexed before the legal system or perplexed in front of a legal practitioner. As one of the legal NGO workers interviewed for our South Africa law case study explained: "having a general comprehension of the law, I think that's critical. That informs the relations that we have in society and our obligations and the state's obligations. It's the glue that keeps it together - and yet people don't understand the law. They don't understand their rights at an absolute basic level – not understanding their rights it means they can't respect those rights and they can't access those rights"⁴⁶. For access to the law, one of our case study students supported Wolff and De-Shalit in highlighting the importance of lawyers being able to relate to and properly communicate with their clients because the legal world can be very alien for

⁴⁴ Wolff, J., & De-Shalit, A. *Disadvantage*. (2007). Oxford University Press on Demand.

⁴⁵ Nussbaum, M. *Women and Human Development*. (2000). Cambridge: Cambridge University Press

⁴⁶ Walker, M., McLean, M., Dison, A. and Vaughan, R. 'Higher Education and Poverty Reduction: The Formation of Public Good'. (2010). *Unpublished paper. School of Education: University of Nottingham*. pp.139

people from different backgrounds⁴⁷: “my clients said that they go to court and then they don’t understand what the magistrate is saying, so they come here to the legal aid clinic. When I see them, they’re looking for someone to represent them and be able to speak the language, the law language. Even if they don’t understand it, they trust us to know ‘Ok, what you’re saying is correct’. They’re looking for someone to speak in a different language on their behalf”⁴⁸.

In many ways, this mode of communication is related to seeing clients as human and respecting them. Thus another student stated: “What is important is that you don’t indulge in this legal jargon with indigent clients, stick to the basic language and that’s how you respect them as well...you don’t make them feel that ‘I’m superior and you’re inferior’, you speak to them, you maintain that professionalism but you try to communicate with them on an equal basis, so that they open up”⁴⁹. A third remarked that, ‘Each client should be treated with dignity, not making them feel inferior: “you are a person, you are special, you have your dignity, hold onto that, you’re not the person he [your husband] says you are”⁵⁰. It is then important to make the law accessible - not expecting people to understand legal terms and processes. As the then Dean of the Law Faculty commented,

⁴⁷ Wolff, J., & De-Shalit, A. (2007). *Disadvantage*. Oxford University Press on Demand.

⁴⁸ Walker, M., McLean, M., Dison, A. and Vaughan, R. 2010. Higher Education and Poverty Reduction: The Formation of Public Good, *Unpublished paper. School of Education: University of Nottingham.*, pp.141

⁴⁹ *Ibid*, (2010)., pp.141

⁵⁰ *Ibid*, (2010).

“You can’t really do much with a lawyer who can understand the most arcane and complicated statute...but can’t even translate that into plain English for a client”⁵¹.

In short, the legal system should not unfairly prejudice the vulnerable. As one lawyer told us, “people in low-income areas [or it could be under conditions of a lack of democratic freedoms as in apartheid South Africa] do not have an understanding of their rights...I think we as a profession have a duty there”⁵². Another lawyer working for an NGO felt that knowledge about your own society was possibly as significant as the knowledge of the law itself, “knowledge of not only the theory but also, and maybe more importantly, a knowledge of what’s happening in society, and to be aware of what, and how the rules of society operate and how those rules can be used creatively to find solutions to society’s problems”⁵³. A third, who worked for a legal professional standards body, felt it was important for professionals to be aware of the effect they can have through their work, “I think professionals can play a role. I think lawyers, urban planners, engineers, and so on, when they do the kind of work they do, should have in mind the makeup of society and plan and engineer in accordance with that. So I firmly believe that professionals must always be aware of their role in society at all times”⁵⁴. Finally, one of

⁵¹ Ibid, (2010).

⁵² Walker, M., McLean, M., Dison, A. and Vaughan, R. 2010. Higher Education and Poverty Reduction: The Formation of Public Good, *Unpublished paper. School of Education: University of Nottingham.*,pp.139

⁵³ Ibid, (2010)., pp.139

⁵⁴ Ibid, (2010)., pp.139

the students remarked that professionals can enable people's access to justice, "for them to actually know that there is a way out...you don't have to sit in that same situation"⁵⁵.

In other words, everyone ought to be enabled and respected as an epistemic contributor, and the law has a part to play in enabling this capability.

In arguing for adding a new public-good professional capability, there are two intersecting levels in play (see figure 1): 1) the level of general capabilities – that is our freedoms to be and do in ways we have reason to value for well-being in the general population and, arising from that, the specific capabilities that would enable legal practitioners professionally to foster law specific capabilities such as those of Wolff and De-Shalit⁵⁶ and to advance epistemic justice. If some but not others are unable to access or understand the framework of human rights and legal rights - or even everyday legal processes governing the purchase and sale of property or rental agreements, or divorce law, or family law affecting the rights of children, or even corporate law - that obtain in a society, then we have reason to ask how fair the law or legal processes and outcomes are. 2) The second level is that of legal professionals who themselves needs access to the capability in order to value it, understand it, and foster it for others, and clinical legal education in particular can play a significant role in advancing this capability and

⁵⁵ Ibid, (2010)., pp.139

⁵⁶ Wolff, J., & De-Shalit, A. *Disadvantage*. (2007). Oxford University Press (On Demand).

functioning. The advance or constraint of the epistemic contribution capability – both generally and specifically for legal professionals - then offers a tool to identify injustices and think about how to move towards a fair and inclusive legal system and society.

I therefore argue for adding another professional capability - that of epistemic contribution - to be fostered in law students through an appropriate curriculum and pedagogical arrangements and - through legal practitioners enabled and made available to the public at large. It is a capability which seems especially important in clinical legal education in universities and in practicing law for the public good.

EDUCATION AND DEVELOPING THE CAPABILITY

Fricker's conceptualization requires educational work⁵⁷. Epistemic justice fosters the contestation of ideas in the public sphere (this could be a university or on a micro level, a university classroom) and this in turn requires fostering pedagogical conditions of epistemic justice. Epistemic injustice not only blocks the flow of knowledge but also the flow of evidence, doubts, critical ideas and other epistemic inputs. Epistemic injustice may preclude some people from speaking for themselves or formulating their own knowledge claims. Our capability for epistemic contribution, Fricker explains, is

⁵⁷ Fricker, M. *Epistemic Injustice. Power and the Ethics of Knowing*. (2007). Oxford; Oxford University Press

developed through all kinds of social (pedagogical) encounters which involve sharing information and forms of social understanding, and in which we are both givers and receivers in the project of making meaning; it requires (relational) “epistemic reciprocity”, such that we are all recognized as knowers across higher education and professional settings⁵⁸. By way of contrast, epistemic injustice in university classrooms and clinical practice settings might include silencing, having less status in the communicative practices, being marginalized, being discriminated against, and so on⁵⁹. Thus, epistemic justice and injustice processes are central to our lives in education.

Higher education is demonstrably a space where epistemic justice matters; it is after all where being a knower and being able to act as a knower to gain epistemic access and develop epistemic agency is rather important. In the context of higher education testimonial injustice can include, as noted earlier in citing Hookway, the asking of questions which are ignored because of prejudice against the speaker⁶⁰. As Fricker explains, it extends to cases where a speaker (for example, a student) “expresses a personal opinion to a hearer, or airs a value judgment or tries out a new idea or

⁵⁸ Fricker, M. *Epistemic Injustice. Power and the Ethics of Knowing*. (2007). Oxford; Oxford University Press

⁵⁹ Kidd, I., Medina, J, and Pohlhaus, G. Jr. ‘Introduction’ (2017).; in Kidd, I., Medina, J, and Pohlhaus, G. Jr (Eds.). *The Routledge Handbook of Epistemic Injustice*. (2017). London & New York: Routledge.

⁶⁰ Hookway, C. ‘Some Varieties of Epistemic Injustice: Reflections on Fricker’. (2010)., *Episteme: A Journal of Social Epistemology*, 7 (2):151-163

hypothesis on a given audience”⁶¹. The asking or contributing of questions is then, says Fricker, potentially vulnerable to a prejudicial credibility deficit. This may be exacerbated where the student’s communicative performance – either or both their expressive style or confidence in English - is also in play⁶². The point is that the credibility judgment includes, says Fricker, both what is said and the speaker. Such pedagogic “failure first”⁶³ exposes dependence on social uptake so that, while some are enabled by just conditions to make their epistemic contributions, others find their capability ‘thins’ or disappears altogether in some contexts. In the pedagogical context epistemic injustice, and especially prejudice-based testimonial injustice, thus unfairly increases academic and communicative labour for those whose epistemic contributions are filtered when students come together pedagogically, such that this can be identified also as an agency injustice.

Thus, Fricker suggests that societies (including education institutions) train our sensibilities in ways which are flawed, given the prejudices that exist⁶⁴. The virtue

⁶¹ Fricker, M. ‘Epistemic Injustice and the Preservation of Ignorance.’ (2016). In: Peels, R. and Blaauw, M., (eds) *The Epistemic Dimensions of Ignorance*. (2016). Cambridge: Cambridge University Press, 144-159., pp.148

⁶² Medina, J. ‘Varieties of Hermeneutical Injustice 1.’ (2017). in Kidd, I., Medina, J, and Pohlhaus, G. Jr (Eds.). *The Routledge Handbook of Epistemic Injustice*. (2017). London & New York: Routledge.

⁶³ Fricker, M. ‘Epistemic Contribution as a Central Human Capability’ (2015). In G. Hull (Ed.) *The Equal Society*. (2015). Cape Town: UCT Press, 73-90

⁶⁴ Fricker, M. *Epistemic Injustice. Power and the Ethics of Knowing*. (2007). Oxford; Oxford University Press

required she proposes, is “reflexive critical awareness”⁶⁵ in order to identify how far our suspected prejudices have influenced our judgment. We can learn to become virtuous hearers through ethical reflection where we are put in a position to know better and reflexive critical awareness is placed pedagogically within our reach; it must constitute part of the conditions of educational possibility. Privileged hearers needs to learn how consciously to revise their epistemic judgements upwards.

Pedagogical conditions would need to enable processes for the epistemic capability to take the shape of supportive opportunities for developing the virtue: co-operation, taking pleasure in the achievements [learning] of others, judging others to have dignity, compassion, respect and recognition, and so on, would characterize pedagogy and ethical learning to advance the capability. Bohman highlights students being placed in a position to learn the skill of initiating dialogue or making a proposal about an issue⁶⁶. Secondly, he notes learning the ability to engage productively in argument and counter-argument (in ways that are respectful of and value all identities). Thirdly, students need skills in finding ways to harmonize all proposals on the table, that is, in coming to agreement. Finally, students need to learn how to persuade in debate but not to manipulate. Pedagogical conditions would need to provide the freedom processes for the epistemic capability to take the shape of actual opportunities: co-operation, taking pleasure in the

⁶⁵ Ibid, (2007)., pp.91

⁶⁶ Bohman, J. *Public Deliberation: Pluralism, Complexity and Democracy*. (1997) Cambridge, MA: MIT Press

achievements [learning] of others, judging others to have dignity, compassion, respect and recognition, and so on, would characterize pedagogy and ethical learning to advance the capability. I think therefore that the form of education and training that will foster public-good professional values is a form of praxis pedagogy which is transformative, critical, and attentive both to knowledge and to responsible action in society⁶⁷. Praxis is understood here to involve both the integration of academic knowledge (acquired at university) and practical knowledge about how one lives as a professional, as a citizen and as a human being.

According to Fricker, if supportive conditions are in place, no one with relevant epistemic materials to offer would be prevented from doing so for “epistemically irrelevant” reasons, for example, because they were poor, or a migrant, or different in some way⁶⁸. All students then ought to be able “to contribute to the common cognitive store [knowledge and understanding] in this pedagogical way, and thereby enjoy the mutual regard and trust that go with epistemic reciprocity”⁶⁹. Students would need themselves to develop, and be supported pedagogically in developing, virtues of being confident, inquiring, curious, probing and engaged. Pedagogical processes would need to be

⁶⁷ See Walker, M., & McLean, M. *Professional education, capabilities and contributions to the public good*. (2013) London: Routledge.

⁶⁸ Fricker, M. ‘Epistemic Contribution as a Central Human Capability’. (2015). In G. Hull (Ed.) *The Equal Society*. (2015). Cape Town: UCT Press, 73-90, 2015, pp.12

⁶⁹ *Ibid*, (2015)., pp.22

enabling of the learning of all students, creating spaces both to acquire and contribute to knowledge in the classroom, and searching for meaning and making judgements about trustworthy knowledge.

We need, I think, a measure of education-facing optimism that there are epistemic spaces of possibility if we cultivate the appropriate virtues. Plurality (for example diversity among students and among who gets to be a lawyer) – potentially if not guaranteed - offers possibility for epistemic dissidence by means of a diversity of interpretative resources and practices and the inclusion and consideration of as many positional objectivities as possible. Plurality is of special importance to universities where scholars, teachers and students require inclusive epistemic freedoms in order to “to inquire, to question and probe established views and new visions without fear of retribution or silencing”⁷⁰. Free and open exchanges in university classrooms and public spaces are ‘a necessary condition for the pursuit of knowledge’ and for developing our epistemic capabilities.

If we agree with Stefan Collini that, whatever else they might do, universities are dedicated to the pursuit of understanding through open-ended inquiry, then even at this minimalist level, we must foster the epistemic contribution capability for all students as

⁷⁰ Ben-Porath, S. *Free Speech on Campus*. (2017). Philadelphia: University of Pennsylvania Press

future professionals⁷¹.

Nonetheless, Fricker arguably, and we ourselves, may underestimate the social difficulty in developing such virtues. Students from advantaged backgrounds may fail to see or understand suffering and deprivation, or to know it exists but be indifferent if there is no impact on their own lives and careers (especially making money). Simply thinking about the problem or having access to rational knowledge (such as through digital stories) is important, but may not always be enough to the moral shifts required. Experiential learning may then be especially powerful and have the potential to change the way we see or think about the world in ways that abstract debates including rational deliberation about justice for all may fail to do⁷².

We might place, say, before, say a group of middle class English students, statistics and stories which demonstrate income and class-based inequalities in an area in a community in which legal clinic outreach operates that they can deliberate, coolly and rationally and reach articulate agreement that the situation is morally wrong - but yet find them unchanged at the level of moral conduct. There are numerous instances of people with apparently liberal views who are “viscerally prejudiced”⁷³ in practice, even though at an

⁷¹ Collini, S. *What Are Universities For?* (2012). London: Penguin Books

⁷² Arpaly, N. *Unprincipled Virtue: An Inquiry Into Moral Agency*. (2003). Oxford: Oxford University Press

⁷³ Arpaly, N. *Unprincipled Virtue: An Inquiry Into Moral Agency*. *2003). Oxford: Oxford University Press, pp.10

abstract level they would acknowledge that such prejudice (of race, class, gender, religion, nation, and so on) is morally wrong. Equally, we may find a student suddenly confronted with interactions with a real person, who embodies his or her fears of the other, responding in a morally good way. An example from history is provided by David Brion Davis by Drew Gilpin Faust of his third book in a trilogy on the history of slavery in the U.S. Davis's overarching interest is in how ideas are refracted through real human problems in the everyday world⁷⁴. For example, his concern with how a human being can come to deny and obliterate the humanity of others. For Davis slavery came to be a vehicle for examining how humans shape and are shaped by moral dilemmas and how their ideas come to influence their society and world. His own epiphany occurred while serving in the U.S. army towards the end of World War 2. On a troopship headed for Germany and ordered to descend into the hold and enforce the prohibition against gambling he discovered hundreds of black soldiers whom he had not even known were on board- segregated in slave like conditions. Gilpin Faust suggests that these army experiences introduced him to the realities of racial prejudice and cruelty that he had never imagined still existed⁷⁵. The point is we *can* act morally without deliberation⁷⁶, so we cannot assume that rational deliberation will enable a transparent awareness of

⁷⁴ See Faust, D.G. 'The Scholar Who Shaped History'. (2014). New York Review of Books, 20 March 2014. Available at <https://www.nybooks.com/articles/2014/03/20/scholar-who-shaped-history/>

⁷⁵ Ibid, (2014).

⁷⁶ Arpaly, N. *Unprincipled Virtue: An Inquiry Into Moral Agency*. (2003). Oxford: Oxford University Press

actions and reasons for action and necessarily lead to moral action, although of course it may, especially if combined with particular kinds of experiences which trigger moral awareness. Higher education should probably offer both abstract deliberation (a core function of higher learning), but combine this with the potential power of experiential learning. It may then be that Nussbaum's "narrative imagination"⁷⁷- being able to understand the world from the perspective of someone different from oneself - is a crucial aspect of the justice-facing epistemic contribution capability

'Combined capabilities'

Because the person is understood as a social being, shaped by and involved in structures, processes and relationships in her society, 'combined capabilities' are of special concern⁷⁸. These consist in "internal capabilities" that is, "developed states of the person him/herself that are, so far as the person herself is concerned, sufficient conditions for the exercise of the requisite functions"⁷⁹. To achieve a functioning requires both the internal capability (ability, aspirations, and so forth) and supportive uptake conditions for the actual exercise of a functioning (actually doing it and not only being able to do it) - these become combined capabilities. Claassen comments that "only the latter are full capabilities,

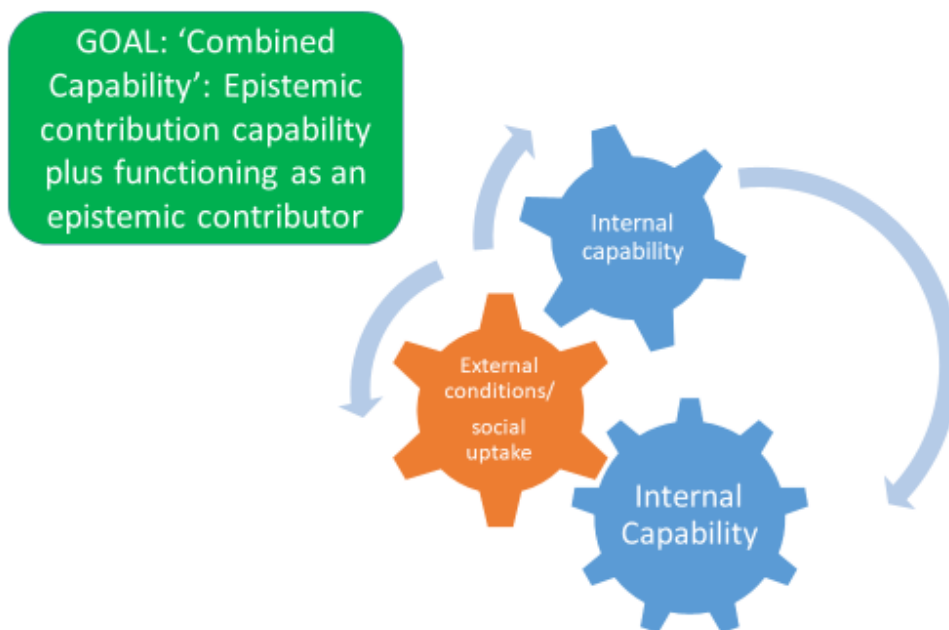
⁷⁷ Nussbaum, M. *Cultivating Humanity: A Classical Defense of reform in Liberal Education*. (1997). Cambridge, MA: Harvard University Press, pp.390

⁷⁸ Ibid, (2000).

⁷⁹ Ibid, (2000)., pp.84

providing us with effective freedom, with the real opportunities to do or be something”⁸⁰. Of course, social conditions also shape the development of internal capabilities, for example, in the case of aspirations having access to teachers or family or significant others to foster the capability. Without suitable opportunities, an internal capability may not develop well, or it may develop but not be achieved.

Figure 2: Combined capabilities



It is then combined capabilities that matter for assessments of justice and for students and others having the freedoms to shape their own lives. Thus, the epistemic contribution capability would need to be one such combined capability and hence to be achievable as

⁸⁰ Claassen, R. *Capabilities in a Just Society*. (2018). Cambridge: Cambridge University Press, pp.54

a functioning for legal students, legal practitioners and wider publics. Indeed, all the capabilities on mine and Monica's list would be combined capabilities so that both the capability and its achievement would be important in assessments of epistemic justice in professional education processes and outcomes⁸¹.

CONCLUDING THOUGHTS

By doing particular kinds of educational things universities educate particular kinds of professionals. These particular kinds of things ought to be to educate public-good professionals, with the capabilities to act responsibly towards others. In the arena of professional, including clinical legal education, this ought to translate into human development in which students learn not only knowledge and skills but the difference between simply having a professional skill on one hand, and on the other having the commitment to use that skill to the benefit of others and to continue questioning and extending expert knowledge and its applications.

In our project, Monica McLean and I were concerned with the education of professionals who are, ethical professional agents who act to remove injustice, who are able to see more

⁸¹ also see Walker, M. *Higher Education Pedagogies*. (2006). Maidenhead: Open University Press & SRHE for the capabilities vs functionings argument for higher education

humanely; our personal choices matter for social justice. We then all need to accept responsibility for which epistemic practices enable and which constrain. Agents – that is ourselves and others- produce and reproduce cultures and the unequal power relations which benefit the already advantaged. The assertion of responsibility for (epistemic) justice does not allow any group, which complies with, or assists in constructing structures of domination, or fails to work with others to ameliorate conditions, to get a ‘free pass’, and this seems important everywhere. Thus Iris Marion Young advances a “social connection” model of responsibility, which “finds that all those who contribute by their actions to structural processes with some unjust outcomes share responsibility for the injustice”⁸² - we ought to be held responsible and obligated to work towards removing this as integral to our professional ethics if we continue to be part of our society. Epistemic ignorance (or blindness) is then not excusable if the tools exist to enable us to see differently and see better and a person or group nonetheless refuses to embrace the conceptual resources that would allow full understanding of domination and epistemic inequalities. Moreover, in this way effectively to reduce or destroy the epistemic resources people need to make sense of their own lives and to communicate these lives to others is to deny participation in a shared way of life.

⁸² Young, I. M. *Responsibility for Justice*. (2011). Oxford: Oxford University Press

I hope I have shown that epistemic justice matters for its effects not only on the epistemic but for the wider impact exclusions can have on individual lives and structures, and hence that the epistemic contribution capability merits a place on any list of professional capabilities. It may require some rethinking of the eight capabilities in Walker and McLean (2013)⁸³. My argument has been that epistemic freedoms matter for our flourishing lives as citizens, as educators, as professionals. Thus, for equality all students (and their future clients) ought to have access to the capability and to have such contributions taken up socially - neither rejected nor under-rated.

Of course, there are other points of view. For example, a study by the Carnegie Foundation of Law schools in the US and Canada found that students there were discouraged from relating legal cases to the complexity of real-life cases, or to think through the social consequences or ethical aspects of conclusions⁸⁴. The report concluded that, "in their all-consuming first year, students are told to set aside their desire for justice. They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses. This warning does help students escape the grip of misconceptions about how the law works as they hone their analytic skills"⁸⁵. Yet, as

⁸³ Walker, M., & McLean, M. *Professional education, capabilities and contributions to the public good*. (2013). London: Routledge.

⁸⁴ Sullivan, W., Colby, A., Wegner, J.W., Bond, L. and Sulman, L.S. 'Educating Lawyers'. (2007). Available at http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf

⁸⁵ Ibid, (2007)., pp.6

Sullivan warns, “when the misconceptions are not addressed directly, students have no way of learning when and how their moral concerns may be relevant to their work as lawyers and when these concerns could throw them off track”⁸⁶.

Finally, then, my basic position is that a critical theory – in this case of an epistemic public-good professional capability - is premised on the idea that there is no better way of knowing the world than by anticipating a better world⁸⁷. Gramsci poses the challenge in this way: “How can the present be welded to the future, so that while satisfying the urgent necessities we may work effectively to create and ‘anticipate’ the other”⁸⁸. For this we need intellectual instruments, imagination and agency to struggle towards that world against the waste of social experiences and distorted and distorting power relations, including the epistemic⁸⁹. Of course, a good critical theory is also profoundly practical and it is the practical challenges of professional capabilities that can be answered only by what legal educators and their allies will do, now and in the future and under what conditions of possibility. In such practical efforts we are reminded by Nelson Mandela (himself a trained lawyer before his incarceration) in what might be considered capabilities language, that, “to be free [is] to live in a way that respects and enhances the

⁸⁶ Ibid, (2007).

⁸⁷ De Sousa Santos, B. *Epistemologies of the South: Justice against Epistemicide*. (2015). London and New York: Routledge.

⁸⁸ Gramsci, A. *Selections From Political Writings (1910-1920)*. (1977). London: Lawrence Wishart., pp.201

⁸⁹ De Sousa Santos, B. *Epistemologies of the South: Justice against Epistemicide*. (2015). London and New York: Routledge.

freedoms of others”⁹⁰.

ACKNOWLEDGEMENTS

A version of this paper was first presented as a keynote address to the annual INCLE/ENCLE conference in Bratislava, 3-5 July 2019. My thanks to the organisers for inviting me and to conference participants for helpful ideas. The current higher education research work on which the paper draws is funded by NRF grant 86540 for my research chair. Previous work on professional capabilities with Monica McLean was funded by ESRC Grant RES- 167-25-0302. My especial thanks to Monica Mclean for so many stimulating conversations and generative collaborations over the years.

⁹⁰ Mandela, N. *Long Walk to Freedom: The Autobiography of Nelson Mandela*, (1995). London: Abacus., pp.290

MEASURING LAW STUDENTS' ATTITUDES TOWARDS AND EXPERIENCES OF CLINICAL LEGAL EDUCATION AT THE UNIVERSITY OF HONG KONG

Claudia Man-yiu Tam, The University of Hong Kong¹

Abstract

As law schools in Hong Kong begin to integrate experiential learning into their educational models, clinical legal education (CLE) has symbiotically gained traction as an effective way for students to apply their legal knowledge in a skills-based and client-centered environment. This empirical study is the first of its kind to evaluate the impacts of CLE at The University of Hong Kong (HKU) over the past ten years, by analyzing the survey responses provided by 125 law students regarding their attitudes towards and experiences of CLE. The article traces the birth and development of CLE at HKU, turning first to its theoretical basis to make the case for its importance, and placing emphasis on the ability of CLE's teaching-service pedagogy to alleviate the public interest law deficit and supplement passive learning as an engaging instructional method in the Hong Kong context. The survey results are then discussed in light of the doctrinal analysis to illustrate that clinic and non-clinic students alike are generally satisfied that HKU's CLE program

¹ Claudia Man-yiu Tam is from The University of Hong Kong

has achieved its skills, cognitive, and civic aims, and notably, that clinic students had a statistically significant higher intention to participate in pro bono work after graduation than non-clinic students or students engaged in volunteering.

Keywords: Clinical legal education; experiential learning; pro bono; teaching-service pedagogy

INTRODUCTION

Since its proliferation in response to the early 20th century legal aid access to justice movement in the United States (US)², clinical legal education (CLE) has been lauded as a transformative experiential learning model, bridging the gap between teaching law students black letter law and professional skills and advancing law clinicians' social justice and service mission.³ The successful introduction of CLE at The University of

² Bloch, S.F. (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (OUP 2011), pp.156-158; Wilson, J.R. *The Global Evolution of Clinical Legal Education: More than a Method* (CUP 2017), pp.93-94; Robert Granfield, R. 'Institutionalizing Public Service in Law School: Results on the Impact of Mandatory Pro Bono Programs'. (2007). 54 *Buffalo Law Review* 1355, 1364-1373; Spiegel, M. 'Theory and Practice in Legal Education: An Essay on Clinical Education'. (1987). 34 *UCLA Law Review* 577, 577-595.

³ Shanahan, F.C., Selbin, J. & Mark, A. et al., 'Measuring Law School Clinics'. (2018). 92 *Tulane Law Review* 547, 550; Evans, A., Cody, A. & Copeland, A. et al., *Australian clinical legal education: Designing and operating a best practice clinical program in an Australian law school* .(2017). ANU Press, pp.40-76; Rhode, L.D 'Cultures of Commitment: Pro Bono for Lawyers and Law Students' (1999) 67 *Fordham Law Review* 2415, 2435.

Hong Kong (HKU) in 2009⁴ was a testament to its international reach and pedagogical value. While there is a rich body of literature on its purported objectives and benefits, empirical research capturing law students' perspectives on CLE is sparse⁵, particularly in the Hong Kong context with few, if any, prior publications on this subject. In a modest attempt to begin to fill this knowledge gap and identify areas for further research, this quantitative study, which drew heavily on McKeown's survey⁶, sought to measure law students' attitudes towards and experiences of CLE, volunteering, and pro bono work at HKU. Two main research questions were formulated as follows: "What are law students' attitudes towards CLE and pro bono work? Are there differences in these attitudes when comparing students who have undertaken or are undertaking CLE (clinic students) and students who have not taken CLE (non-clinic students)?" To this end, an online survey⁷ was administered to 809 first- to fifth-year HKU undergraduate law students enrolled in three compulsory law courses, of which there were 125 respondents in total.

The data suggested that both clinic and non-clinic students' attitudes towards CLE at HKU are positive. The vast majority of students agreed with statements saying that their

⁴ 'HKU-HKRAC Clinical Legal Education Programme' (*Human Rights Portal*) <<http://www.law.hku.hk/hrportal/asylum/hku-hkrac-clinical-legal-education-programme>> accessed 24.03.2019 (HKU-HKRAC).

⁵ Shanahan (n.3).

⁶ McKeown, P. 'Law student attitudes towards pro bono and voluntary work: The experience at Northumbria University'. (2015). 22 *International Journal of Clinical Legal Education* 6.

⁷ See Appendix A.

CLE experience improved their legal skills and increased their awareness and changed their perception of social and economic issues. They also agreed that CLE encouraged them to participate in pro bono work after graduation and played an important role in supporting the wider community. The findings were particularly evident among clinic students. A comparison between the mean attitudes of clinic and non-clinic students using a two-sample unequal variance (independent) t-test revealed a statistically significant higher level of agreement towards these statements. The analysis also indicated that clinic students had a statistically significant higher intention to engage in pro bono work after graduation than non-clinic students. Moreover, using the Pearson product-moment correlation coefficient, there was a stronger positive correlation between clinic students and their intention to do pro bono work, as compared to students who had participated or were participating in volunteering (student volunteers). The study therefore suggested that, in general, CLE is viewed positively by HKU law students and especially among clinic students. Clinic students are more amenable to pro bono work, in comparison to their non-clinic and student volunteer counterparts, although this is not indicative of a causal relationship between CLE and pro bono work.

THEORETICAL FRAMEWORK

Defining Clinical Legal Education

Clinical legal education (CLE) is a form of experiential learning which requires law students to solve complex, concrete, and unrefined 'problems that lawyers might confront in practice' in role.⁸ CLE serves clients who are typically from 'disadvantaged, underserved, or marginal' community groups and are unable to access justice, whether due to financial constraints, lack of accessibility, or education or language barriers.⁹ Clinic students are given 'ownership of the case', as they bear the sole responsibility of understanding and analyzing their client's problems, formulating possible solutions, and planning and executing suitable courses of action.¹⁰ The experiential component of CLE is usually accompanied by a classroom component. Integrated lessons are delivered by clinical faculty to facilitate and contextualize the students' practical learning experience. These lessons may cover substantive legal theories and doctrines, professional ethics and values, and lawyering skills.¹¹ CLE includes a central element of self-reflection and critical

⁸ Amsterdam, G.A. 'Clinical Legal Education - A 21st Century Perspective'. (1984). 34 *Journal of Legal Education* 612, 616; Caplow, S. 'Clinical Legal Education in Hong Kong: A Time to Move Forward'. (2006). 36 *Hong Kong Law Journal* 229,230.

⁹ Wilson, J.R 'Training for Justice: The Global Reach of Clinical Legal Education'. (2004). 22 *Penn State International Law Review* 421, 423.

¹⁰ Amsterdam (n.8) 616; Caplow (n.8) 233; Redlich, N. 'Moral Value of Clinical Legal Education: A Reply'. (1983). 33 *The Journal of Legal Education* 613, 616.

¹¹ Wilson, *Global Evolution of Clinical Legal Education* (n.2), pp.423; Evans, Cody, Copeland et al (n 3), pp.110.

review - for instance through directed questions, reflective discussions, or reflective essays - such that each student's individual thoughts and behavior within and outside the clinic becomes the central focus of their own study.¹² This reflective practice is the "minimum standard" required of CLE, in order to "[help] students learn how to learn from experience" and actively reevaluate their preconceived notions of the role of law and lawyers in empowering members of society.¹³

The basic models of CLE are in-house live-client clinics, externships, simulations, and community legal education or street law.¹⁴ An in-house live-client clinic is based in a law office, normally located on the university campus. It provides students with the chance to handle legal matters on behalf of real clients. In some jurisdictions, law students in clinics can directly represent clients in court, negotiate with opposing counsel, and write opinion letters providing substantive legal advice to their clients.¹⁵ However, because regulations prohibit law students in Hong Kong from doing so, their work revolves around other important tasks aiding access to justice, such as taking instructions from clients, preparing case summaries and research memorandums, and assisting legal aid lawyers in delivering legal advice to clients.

¹² Amsterdam (n.8), pp.616-617.

¹³ Evans, Cody, Copeland et al. (n.3), pp.153-160.

¹⁴ Milstein, E.S 'Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations' (2001) 51 *Journal of Legal Education* 375, 376.

¹⁵ *Ibid*, (2001).

In an externship, students are assigned to external law offices either within government agencies, non-governmental organizations (NGOs), or private law firms to work on their cases, primarily under the supervision of their staff. As part of the classroom component to supplement live-client clinics and externships or as a standalone course, simulations place law students into simulated lawyer roles through conducting role plays. Students are given a hypothetical situation that may be modeled on a real-world legal problem and are asked to react as a lawyer would. Another model often included within CLE is street law¹⁶, which gives law students the opportunity to teach a segment of the community about their legal rights using interactive pedagogical methods.¹⁷ Which of these four models is ultimately adopted may depend on cost, resources, timing, restrictions on student practice, and staffing.¹⁸

¹⁶ Wilson, *Global Evolution of Clinical Legal Education* (n.2), pp.423.

¹⁷ Barry, M.M., Camp, R.A., Johnson, E.M., et al. 'Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics'. (2012). 18 *Clinical Law Review* 401, 404-407.

¹⁸ Wizner, S. & Curtis, D. 'Here's What We Do: Some Notes about Clinical Legal Education'. (1980). 29 *Cleveland State Law Review* 673, 681; Grossman, S.G. 'Clinical Legal Education: History and Diagnosis'. (1973). 26 *Journal of Legal Education* 162, 182-184; Rhode (n.3), pp.2443.

FROM VISION TO REALITY: BIRTH AND GROWTH OF CLINICAL LEGAL EDUCATION IN HONG KONG

The concept of CLE was ushered into Hong Kong in 2001, as a result of the publication of the Report on Legal Education and Training in Hong Kong: Preliminary Review (Redmond-Roper Report).¹⁹ The Law Society of Hong Kong commissioned the Redmond-Roper Report to evaluate the strengths and weaknesses of legal pedagogy at universities and to provide recommendations on how to better equip law students for legal practice. The Report found that the prevailing form of teaching was composed of lectures and tutorials, which troublingly rarely involved active student participation.²⁰ It also observed a public interest law deficit, as Hong Kong's legal profession lacked a culture of volunteerism and pro bono work, which in turn exacerbated the societal problem of providing insufficient legal assistance to citizens.²¹ Despite the majority of students entering law school with altruistic ideals of promoting social justice through their future legal practice, only the few who maintained contact with a "public interest subculture" throughout their studies - either through public interest internships or pre-existing community service engagements - kept that commitment.²²

¹⁹ The Steering Committee on the Review of Legal Education and Training in Hong Kong, *Report on Legal Education and Training in Hong Kong: Preliminary Review* (The Law Society of Hong Kong 2001) <http://www.hklawsoc.org.hk/pub_e/news/societyupdates/20010813a.asp> accessed 24.03.2019 (Redmond-Roper Report); Wilson, *Global Evolution of Clinical Legal Education* (n 2), pp.250.

²⁰ Wilson, (n.3) (2004). para 7.6.2.

²¹ Ibid, (2004). para 14.1.2.

²² Ibid, (2004). para 14.3.3.

In response to these problems, the Report recommended for law schools to integrate CLE into its curriculum. CLE could cultivate students' commitment to public service and pro bono work, expose them to "the legal problems of the poor"²³ and the realities of professional practice, and facilitate their understanding of the human impact of law beyond the four classroom walls.²⁴ Notably, the Report suggested that the three Hong Kong law schools - HKU, The Chinese University of Hong Kong (CUHK), and City University of Hong Kong - could operate a joint legal clinic.²⁵ If this was not possible, these law schools could create externships, supervised by external agencies engaged in legal service provision, supplemented with accompanying seminars to support students' reflection and development of lawyering skills.²⁶

The capacity of HKU to instigate CLE as suggested by the Redmond-Roper Report was further considered by Caplow, who concluded in her seminal work that the "basic requisites" for CLE were present in Hong Kong.²⁷ She explicated the potential of CLE to meet Hong Kong citizens' unmet legal needs, for instance, by providing assistance to the "sandwich class" who are not caught by the net of legal aid or to litigants in person who,

²³ Ibid, (2004). para 7.6.6.

²⁴ Ibid, (2004).

²⁵ Ibid, (2004), pp.355.

²⁶ Wilson, (n.3) (2004), pp.364.

²⁷ Caplow, (n.8) (2006), pp.258.

for whatever reason, are refused legal aid.²⁸ Seeing few existing CLE opportunities at HKU²⁹, she proposed a range of possible directions for CLE to develop. She suggested establishing a live-client clinic, where students would provide one-off legal advice to clients, or offering law firm or NGO externships, where students would work alongside pro bono lawyers on legal problems or execute policy and research projects. She also proposed running street law programs to communicate legal ideas to community groups and adding simulations to inject life into curriculums.³⁰

The Report and Caplow's CLE vision materialized in January 2009, when HKU's Center for Comparative and Public Law (CCPL), in conjunction with the Hong Kong Refugee Advice Center (HKRAC), pioneered the first credit-bearing elective CLE program in Hong Kong.³¹ The HKU-HKRAC CLE Program (Refugee Clinic) familiarized HKU students with the theory and practice of refugee law in an experiential learning environment. Following a two-day intensive training weekend, students worked under the direct supervision of HKRAC's staff to first observe and then perform client registration and intake interviews, write client testimony and legal briefs, and conduct country of origin information research. Due to the special nature of the United Nations

²⁸ Ibid, (2006), pp.245-246.

²⁹ Ibid, (2006), pp.239.

³⁰ Ibid, (2006), pp. 246.

³¹ HKU-HKRAC (n.4).

High Commissioner for Refugees (UNHCR) process, students took ownership over client cases and directly practiced international law. Through exposing HKU students to ethical dilemmas, the Refugee Clinic aimed to encourage them to evaluate a legal practitioner's professional and ethical responsibilities in a practical setting, reflect on the power and knowledge asymmetry and trust involved in a lawyer-client relationship, and serve the community while developing interviewing, advocacy, negotiation, investigation, and legal research and writing skills. Students also attended weekly seminars, where they discussed the casework with their supervisor and did theoretical and practical exercises to consolidate their understanding.

This Clinic was followed shortly in 2010 by the initiation of HKU's live-client CLE Program, which remains as part of the Hong Kong Duty Lawyer Service Free Legal Advice Scheme (FLAS).³² By conducting intake interviews and assisting lawyers in providing preliminary legal advice to clients, FLAS allows students to contextualize their textbook knowledge in real-world cases and understand the significant impact a conscientious and client-centered lawyer can make on a client's experience with the legal

³² 'HKU's Live-Client Clinical Legal Education ("CLE") Programme' (*Hong Kong Lawyer*, November 2015) <<http://www.hk-lawyer.org/content/hku's-live-client-clinical-legal-education-“cle”-programme>> accessed 24.03.2019; 'Free Legal Advice Scheme on HKU Campus' (*Free Legal Advice Scheme on HKU Campus, Faculty of Law, The University of Hong Kong*) <<http://www.law.hku.hk/cle/>> accessed 24.03.2019.

system, while filling the service gaps in the Hong Kong community.³³ The classroom component consists of weekly meetings where students meet with clinical faculty to debrief their casework. To facilitate reflection, students are required to keep up to date their reflection portfolios.³⁴ Similarly, HKRAC provided an external clinic for CUHK in 2009, which was later moved internally as the Clinic for Public Interest Advocacy in 2014.³⁵

Subsequently, CLE at HKU proliferated. Three new CLE elective courses were introduced in addition to the existing Refugee Clinic and FLAS, namely Human Rights in Practice in 2015, followed by Global Migration Legal Clinic in 2018, and most recently in 2019, Disability Rights Clinic. Human Rights in Practice engages HKU students in street law under the supervision of clinical faculty and pro bono lawyers, with students planning, testing, and delivering at least three teaching sessions in collaboration with community partners. Students are supported by extensive pedagogical training and opportunities for self-reflection during weekly seminars.³⁶ In Global Migration Legal

³³ 'Scheme Poster (January 2019 semester)' (*Free Legal Advice Scheme on HKU Campus, Faculty of Law, The University of Hong Kong*) <https://www.law.hku.hk/cle/?page_id=23> accessed 24.03.2019.

³⁴ 'LLAW3148 Clinical Legal Education' <<https://www.law.hku.hk/course/llaw3148-clinical-legal-education/>> accessed 25.03.2019.

³⁵ Marsh, L. & Ramsden, M. 'Fostering Civic Engagement in Legal Education: Observations from Hong Kong'. (2014). 1 *Asian Journal of Legal Education* 1; Marsh, L. & Ramsden, M. 'Developments in Hong Kong Legal Education'. (2016). 3 *Asian Journal of Legal Education* 2.

³⁶ 'LLAW3222 Human Rights in Practice' <<https://www.law.hku.hk/course/llaw3222-human-rights-in-practice/>> accessed 24.03.2019.

Clinic, students work with fieldworkers and NGOs to brainstorm and implement holistic and innovative solutions to ameliorate specific labor problems faced by migrant domestic workers in Hong Kong.³⁷ Disability Rights Clinic partner with disability rights groups to give students experiential learning opportunities, such as drafting legal documents, developing client care techniques, and implementing community legal education curricula, alongside weekly seminars on substantive disability rights and theory.³⁸ These courses all have elements of self-reflection.

Why Clinical Legal Education Matters

The value of CLE lies in its seamless integration of a dualistic teaching-service model, which bridges the gap between legal knowledge and practice³⁹, while simultaneously transforming law schools into “centers of social justice”.⁴⁰ Turning first to its teaching model, CLE is crucial for skills-based learning, because it alleviates the shortcomings of legal education in training students for legal practice. While the Socratic method adopted by most law schools teach law students analytical reasoning or how to “[think] like a lawyer” (cognitive dimension), it fails to teach students the skills required to act like a lawyer, including performing basic practical tasks (skills dimension) and conducting

³⁷ ‘LLAW3252 The Global Migration Legal Clinic’ <<https://www.law.hku.hk/course/llaw3252-the-global-migration-legal-clinic/>> accessed 24.03.2019.

³⁸ ‘LLAW3246 Disability rights clinic’ <<https://www.law.hku.hk/course/llaw3246-disability-rights-clinic/>> accessed 24.03.2019.

³⁹ Rhode (n.3).

⁴⁰ Ashar, S. ‘Law Clinics and Collective Mobilization’. (2008) 14 *Clinical Law Review* 355, pp.357.

themselves with professional, moral, and ethical responsibility (civic dimension).⁴¹ The Carnegie Report, a report conducted in the US akin to the Redmond-Roper Report, refers to these dimensions as “three aspects of legal apprenticeship” in legal education.⁴² Particularly in Hong Kong, apart from the problem of passive rote learning, the division between the academic stage of learning (a four-year Bachelor of Laws degree), followed by the vocational stage (a one-year Postgraduate Certificate in Laws) created a legal education system that “[lacked] theoretical coherences, clear direction, and [relevant] material”.⁴³

As a solution, CLE effectively amalgamates these three cognitive, skills, and civic dimensions into its symbiotic teaching model. The skills learned by doing include client interviewing and counseling, fact gathering and sifting, legal research and drafting, decision-making on alternative strategies, negotiation, and advocacy.⁴⁴ Critics of skills training argue that law schools should only be performing “intelligence functions” and teaching students the “how to of thinking”, while others point out that students may pursue alternative careers besides law.⁴⁵ However, these arguments misinterpret CLE as

⁴¹ Sandefur, R. & Selbin, J. ‘The Clinic Effect’. (2009). 16 *Clinical Law Review* 57, pp.61.

⁴² Sullivan, W.M, Colby, A. & Welch, J. et al. *Educating Lawyers: Preparation for the Profession of Law*. (2007). Jossey-Bass, pp.191.

⁴³ Redmond-Roper Report (n.19) para 7.4.6.

⁴⁴ Grossman, (1973) (n.18), pp.187-188.

⁴⁵ *Ibid*, (1973) pp.189-191.

purely being a legal skills training exercise. In fact, skills development is the critical foundation of self-directed theoretical insight and interdisciplinary study.⁴⁶ The crux of CLE is to prompt students' "intellectual penetration of the processes in which practical skills are but surface manifestations"⁴⁷, thereby deepening their cognitive understanding of society as a whole. For example, client interactions can provoke a student's critical thinking of the impact of a client's background and current situation on their reaction to the law and official discretion⁴⁸ and how this might play into pre-existing biases or generate misunderstanding. This may subsequently encourage the student to embark on deeper normative reasoning about what the law should be, as opposed to what it currently is.

These cognitive processes are supported by the classroom component, which not only acquaints students with black letter substantive law and the wider socio-economic context, but also feeds back into the skills development to prompt lines of thought about the "lawyering process" and the "problems of role, personal interaction, purpose, perception, and communication" raised.⁴⁹ CLE also serves a wider civic and academic function within the university, as it changes conversations between students to include

⁴⁶ Ibid, (1973), pp.192.

⁴⁷ Ibid, (1973)

⁴⁸ Ibid, (1973)

⁴⁹ Bellow, G. & Johnson, E. 'Reflections on the University of Southern California Clinical Semester'. (1971). 44 *Southern California Law Review* 664, pp.673.

social issues through sharing their service experiences with others.⁵⁰ The thinking processes practiced - testing hypotheses, making generalizations, reflection, and self-critique - are transferable across most, if not all, occupations, so CLE is still relevant for students seeking alternative careers.

Concurrently, the service model “humanizes the educational process”⁵¹ and exposes students to the human impact of law, which is especially needed in Hong Kong where the volunteering and pro bono culture is lacking.⁵² CLE is often a student’s first exposure to people from different social and economic demographics⁵³, which may raise fresh queries for them about the intersectionality of systemic legal and social problems and how this impacts access to justice. For example, in teaching street law to people with intellectual differences for the first time, a student may reflect on entrenched discriminatory attitudes and practices which cause a systematic exclusion of people with disabilities from society, and how this in turn, may obstruct their access to justice and other human rights. In providing individualized legal services to disadvantaged client groups, students add to their learning experience “a feeling for humanity and decency”⁵⁴,

⁵⁰ Lesnick, H. ‘Why Pro Bono in Law Schools’. (1994). 13 *Law & Inequality: A Journal of Theory and Practice* 25, pp.37.

⁵¹ Pincus, W. ‘The Clinical Component in University Professional Education’. (1971). 32 *Ohio State Law Journal* 283, pp.286.

⁵² Redmond-Roper Report (n.19) para 14.1.2.

⁵³ Wilson, *Global Evolution of Clinical Legal Education* (n 2), pp.423.

⁵⁴ Caplow (n.8) 246; Redlich (n.10), pp.617-618.

discover the dire need for pro bono work, and explore their own potential to be an “empowering force in the lives of poor clients”⁵⁵, all of which may inculcate in them an interest in pro bono work or a public interest career. Not only does this improve the societal distribution of justice, it also influences students to reject the neutrality of the law and adopt the role of a community lawyer that interacts collaboratively with community members in a multi-faceted manner.⁵⁶ On a wider scale within the university, CLE can serve as “symbols and models of justice in action”, encouraging law schools to claim ownership over educating students on their responsibility to ameliorate injustices.⁵⁷

MEASURING THE CLINIC EFFECT

Despite extensive literature on the aims and theories of CLE, sparse empirical research has been done on the attitudes and experiences of students towards CLE.⁵⁸ Of the limited studies conducted, McKeown’s work concluded that although clinic students at Northumbria University believed that their legal skills, awareness of social and economic issues, and employability improved, their CLE experience was primarily motivated by

⁵⁵ Barry, Camp, Johnson et al. (n.17), pp.408.

⁵⁶ Barnhizer, D. ‘The University Ideal and Clinical Legal Education’. (1990). 35 *New York Law School Law Review* 87, pp.106-113; Evans, Cody, Copeland et al. (n.3), pp.111-116; Seielstad, A.M. ‘Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education’. (2002). 8 *Clinical Law Review* 445, pp.451-456.

⁵⁷ Seielstad (n.56)

⁵⁸ Krieger, S.H. ‘The Effect of Clinical Education on Law Student Reasoning: An Empirical Study’. (2008). 35 *William Mitchell Law Review* 359, 362.

personal benefit and did not translate into a desire to undertake pro bono work following graduation.⁵⁹ Adewumi and Bamgbose's work at the University of Ibadan showed that student attitudes towards CLE were very positive, with 91.9% of students preferring it to lectures, 90.3% attesting that CLE prepared them for real-life cases and created a culture of identifying with less privileged people, and 88.7% agreeing that CLE helped them to acquire more knowledge.⁶⁰ However, their work did not investigate whether CLE led to increased participation in pro bono work, nor did they study student motivations for doing CLE. In a slightly different vein, other empirical studies have considered whether clinic students' problem-solving and reasoning⁶¹ and client representation skills⁶² have improved, by for example, comparing student responses to hypothetical situations with lawyers' model responses.

METHODOLOGY

The model of CLE at HKU appears to capture the essence of the aforementioned teaching-service pedagogy. It allows students to concomitantly acquire practical skills, theoretical knowledge, and a habit of service, through delivering legal assistance and street law

⁵⁹ McKeown (n.5), pp.28-36.

⁶⁰ Adewumi, A.A and Bamgbose, O.A. 'Attitude of Students to Clinical Legal Education: A Case Study of Faculty of Law, University of Ibadan' (2016) 3 Asian Journal of Legal Education 106, 111-115.

⁶¹ Shanahan (n.3).

⁶² Barnhizer (n.56).

sessions to community partners and partaking in a self-reflective practice, while under the guidance of clinical faculty and pro bono lawyers. As such, how students view and experience CLE at HKU and whether their attitudes towards CLE change depending on clinic participation remains to be seen. To measure this empirically, the survey⁶³, which largely replicated McKeown's survey⁶⁴, was designed to elicit students' attitudes towards CLE, volunteering, and pro bono work. Specifically, the survey aimed to compare clinic and non-clinic student attitudes towards this tripartite of themes and identify any relationships present.

In the context of the survey, the terms CLE, volunteering, and pro bono work were each given a basic working definition, in order to ensure that respondents based their answers on a shared understanding, since it was conceivable that some respondents, particularly those in the lower years, might not have had any exposure to CLE, volunteering, or pro bono work at all. For these purposes, CLE was defined as "an experiential learning course where 'students are exposed to problems that lawyers might confront in practice'".⁶⁵ Volunteering was defined as "any activity that involves spending time, unpaid, doing something that aims to benefit the environment or someone (individuals or groups) other

⁶³ See Appendix A.

⁶⁴ McKeown (n.6).

⁶⁵ Caplow (n.8).

than, or in addition to, close relatives”.⁶⁶ Pro bono work was defined as “free, voluntary legal advice or representation provided by lawyers to individuals, charities, and community groups who cannot afford to pay for that advice or representation”.⁶⁷ Likert scales from “Strongly disagree” to “Strongly agree” with an “I am unfamiliar” option, tick boxes, and free text boxes were used to obtain attitudinal responses. This survey received ethical approval from the HKU Human Research Ethics Committee.

As one of two universities in Hong Kong that continued to implement CLE and with a comparatively larger law student population, HKU undergraduate law students were selected as the survey population. The survey was distributed in three compulsory law courses, with roughly the same number of students from discrete first- to fifth-year classes, to minimize non-response and selection biases and to ensure the sample size was an accurate and fair representation of the population. These courses were Law and Society with a total of 267 first-year students, Legal Research and Writing II with 254 second-year students, and Commercial Law with 288 third- to fifth-year students. The survey was administered at a ten-minute interval during the lectures, in which students were invited to complete the survey via a QR code or hyperlink. The format of an online

⁶⁶ ‘Volunteering’ (NCVO) <<https://www.ncvo.org.uk/policy-and-research/volunteering-policy>> accessed 25.03.2019.

⁶⁷ ‘The Joint Pro Bono Protocol for Legal Work’ (*The Law Society*) <<https://www.lawsociety.org.uk/support-services/practice-management/pro-bono/the-pro-bono-protocol/>> accessed 25.03.2019.

survey was selected, because it could be easily accessed from the student's computer during the lecture. Out of a total of 809 students surveyed, 125 responses were returned, which was a 15% response rate. Table 1 shows the demographic profile of the 125 respondents.

Table 1. *Demographic characteristics of survey respondents*

Variable	Category	Frequency (n=125)	Percentage (%)
Gender	Male	41	32.8%
	Female	83	66.4%
	Prefer not to say	1	0.8%
Age	<18 years old	1	0.8%
	18-22 years old	118	94.4%
	23-26 years old	5	4.0%
	Prefer not to say	1	0.8%
Year	1	29	23.2%
	2	49	39.2%
	3	28	22.4%
	4	15	12.0%
	5	4	3.2%
Degree program	Bachelor of Laws (LLB)	51	40.8%
	Bachelor of Business Administration and Bachelor of Laws (BBA(Law)&LLB)*	29	23.3%
	Bachelor of Social Sciences (Government and Laws) and Bachelor of Laws (BSocSc(GL)&LLB)*	30	24.0%
	Bachelor of Arts and Bachelor of Laws (BA&LLB)*	15	12.0%

* Integrated double degree course of 5 years' duration

Table 2 breaks down the demographic profile of the survey respondents by clinic participation, into clinic and non-clinic students respectively.

Table 2. Demographic characteristics of survey respondents broken down by clinic participation

Clinic participation	Variable	Category	Frequency	Percentage (%)
Clinic students	Total		12	100.0%
	Gender	Male	3	25.0%
		Female	9	75.0%
		Prefer not to say	0	0.0%
	Age	<18 years old	0	0%
		18-22 years old	10	83.3%
		23-26 years old	2	16.7%
		Prefer not to say	0	0.0%
	Year	1	0	0.0%
		2	0	0.0%
		3	6	50.0%
		4	4	33.3%
		5	2	16.7%
	Degree program	LLB	6	50.0%
BBA(Law)&LLB		0	0.0%	
BSocSc(GL)&LLB		4	33.3%	
BA&LLB		2	16.7%	
Non-clinic students	Total		113	100.0%
	Gender	Male	38	33.6%
		Female	74	65.5%
		Prefer not to say	1	0.9%
	Age	<18 years old	1	0.9%
		18-22 years old	108	95.6%
		23-26 years old	3	2.7%
		Prefer not to say	1	0.9%
	Year	1	29	25.7%
		2	49	43.4%
		3	22	19.5%
		4	11	9.7%
		5	2	1.8%
	Degree program	LLB	45	39.8%
BBA(Law)&LLB		29	25.7%	
BSocSc(GL)&LLB		26	23.0%	
BA&LLB		13	11.5%	

Descriptive and inferential data analysis methods, including Pearson product-moment correlation coefficients and two-sample unequal variance (independent) t-tests, were

used to analyze the quantitative data collected, in order to find relationships between the multiple variables of CLE, volunteering, and pro bono work. Data analysis was performed using STATA and Microsoft Excel. Qualitative responses regarding students' motivations for undertaking or intending to undertake clinics were categorized according to the cognitive, skills, and civic dimension framework and key themes were identified for analysis.

DISCUSSION OF RESEARCH FINDINGS

Major Findings of the Study

Canvassing Students' Positive Attitudes Towards Clinical Legal Education

The respondents had largely positive views towards CLE at HKU in terms of its educational value and its ability to encourage altruistic behavior after graduation. As shown in Figures 1 to 4, the majority selected "agree" or "strongly agree" on a Likert scale in response to statements relating to the civic dimension and service model of CLE, namely "Clinical work is important to support the wider community" (Figure 1), "Clinical work changes my perception of social and economic issues" (Figure 2), "Clinical work encourages me to engage in pro bono work after graduation" (Figure 3), and "Students who undertake clinical work are more likely to undertake pro bono work after graduation" (Figure 4). This may suggest that clinic and non-clinic students alike are aware of the positive social impact that CLE has on the community in aiding access to

justice and are optimistic that exposure to CLE will encourage a pro bono culture to develop, although it cannot be deduced why this is so. It is important to bear in mind that the respondents are a self-selecting group, so may tend to consist of students who are more aware of CLE to begin with.

One interesting observation to note is that there was a stronger positive response towards the blanket statement “*Students* who undertake clinical work are more likely to undertake pro bono work after graduation (emphasis added)” with 39.2% agreeing and 24.8% strongly agreeing with the statement, as compared to the self-directed statement “Clinical work encourages *me* to engage in pro bono work after graduation (emphasis added)” with 34.4% and 24% respectively. A likely explanation for this is that most respondents have not participated in CLE, and so are not as confident in CLE’s ability to impact them personally, although they still agreed in the abstract on CLE’s ability to encourage students as a whole to engage in pro bono work. Indeed, the majority of clinic students (7 out of 12) answered “strongly agree” to the statement “Clinical work encourages me to engage in pro bono work after graduation”, which suggests that students with personal CLE experience are inclined to do pro bono work as a result of CLE, possibly due to the commitment to social justice instilled in them through the service model.

Figure 1. The frequency of clinic and non-clinic students' responses on a Likert scale to the statement "Clinical work is important to support the wider community"

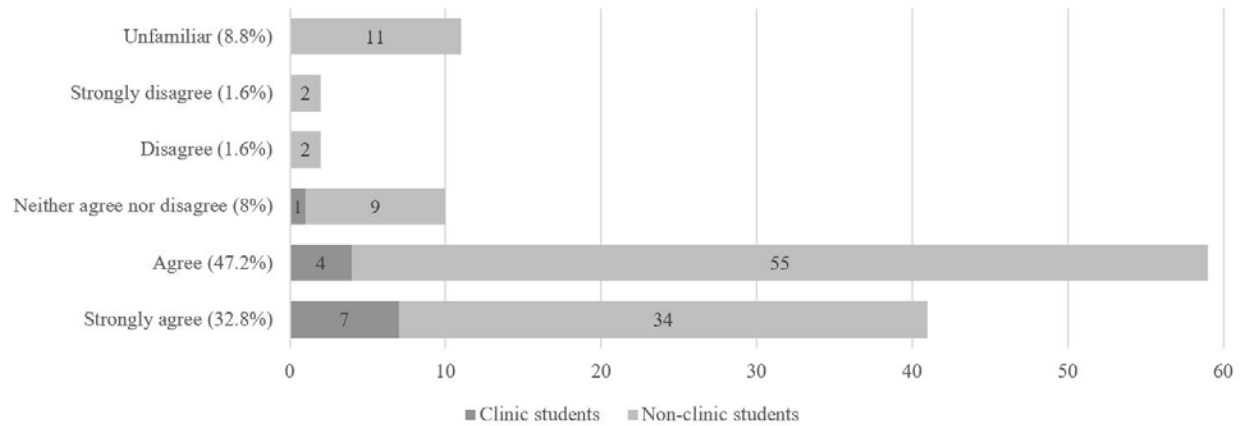


Figure 2. The frequency of clinic and non-clinic students' responses on a Likert scale to the statement "Clinical work changes my perception of social and economic issues"

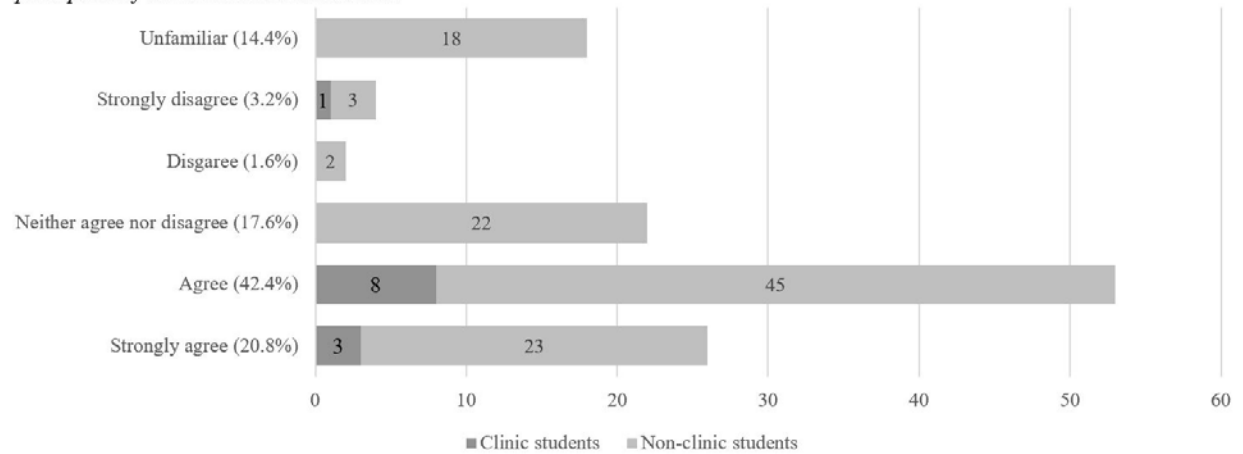


Figure 3. The frequency of clinic and non-clinic students' responses on a Likert scale to the statement "Clinical work encourages me to engage in pro bono work after graduation"

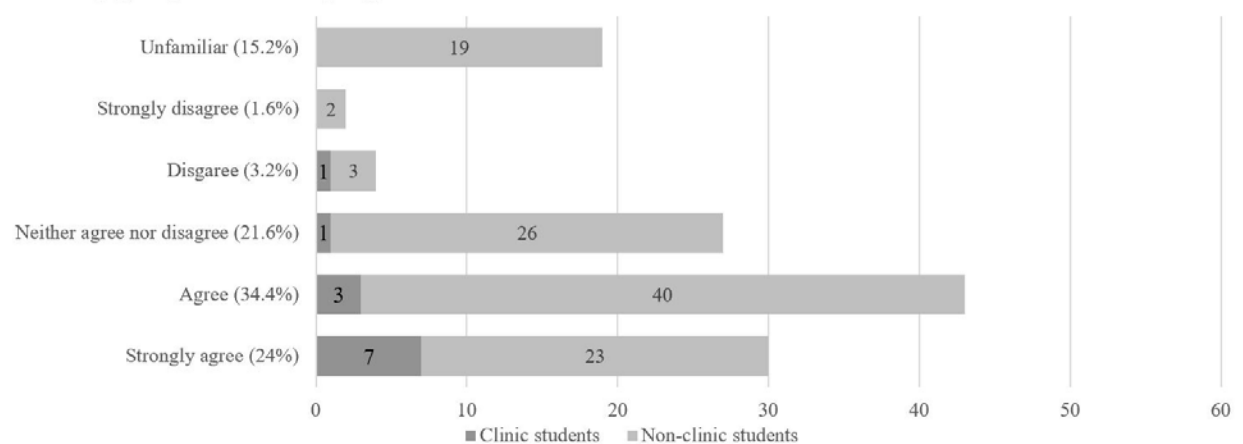
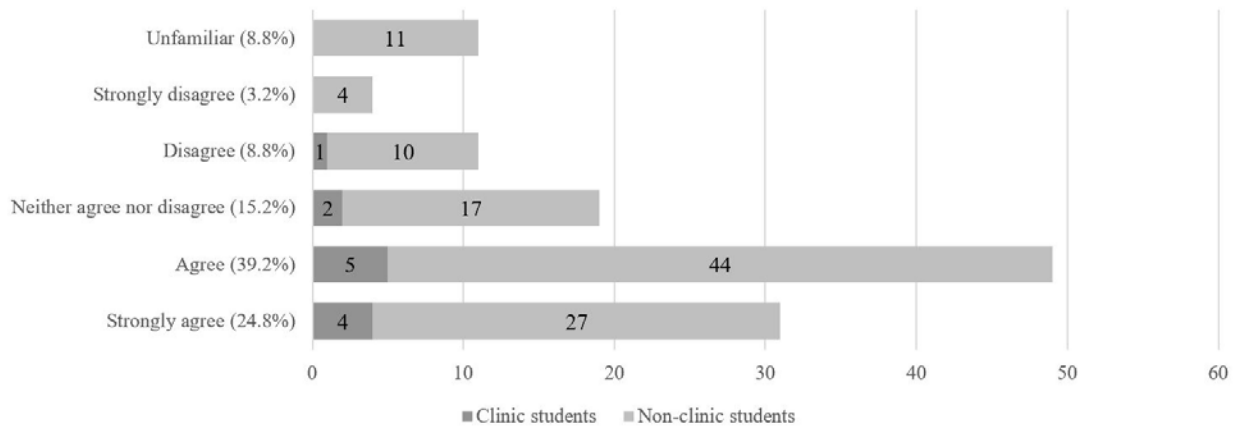


Figure 4. The frequency of clinic and non-clinic students' responses on a Likert scale to the statement "Students who undertake clinical work are more likely to undertake pro bono work after graduation"



As for the cognitive dimension, the majority of respondents agreed or strongly agreed with the statement "Clinical work increases my awareness of social and economic issues" (Figure 5). This links to the civic dimension, so that ideally, the socio-economic knowledge students gain through CLE challenges their preconceived biases and changes perceptions. However, the majority responded "neither agree nor disagree" to the statement "Clinical work improves my academic performance" (Figure 6). One plausible explanation is that respondents interpreted "academic performance" narrowly to mean "grades", as opposed to the intended meaning of an improved ability to meet academic standards and the development of critical thinking processes.

Figure 5. The frequency of clinic and non-clinic students' responses on a Likert scale to the statement "Clinical work increases my awareness of social and economic issues"

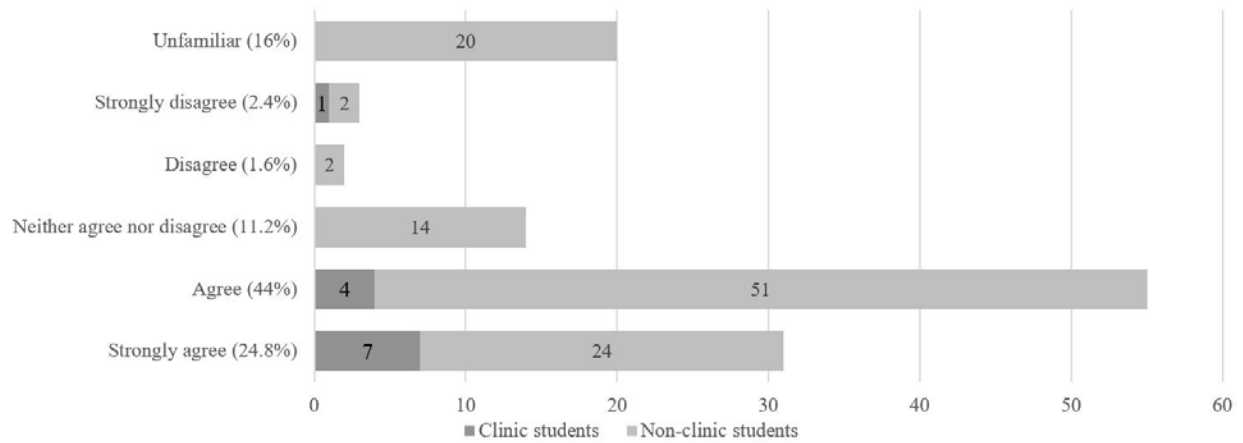
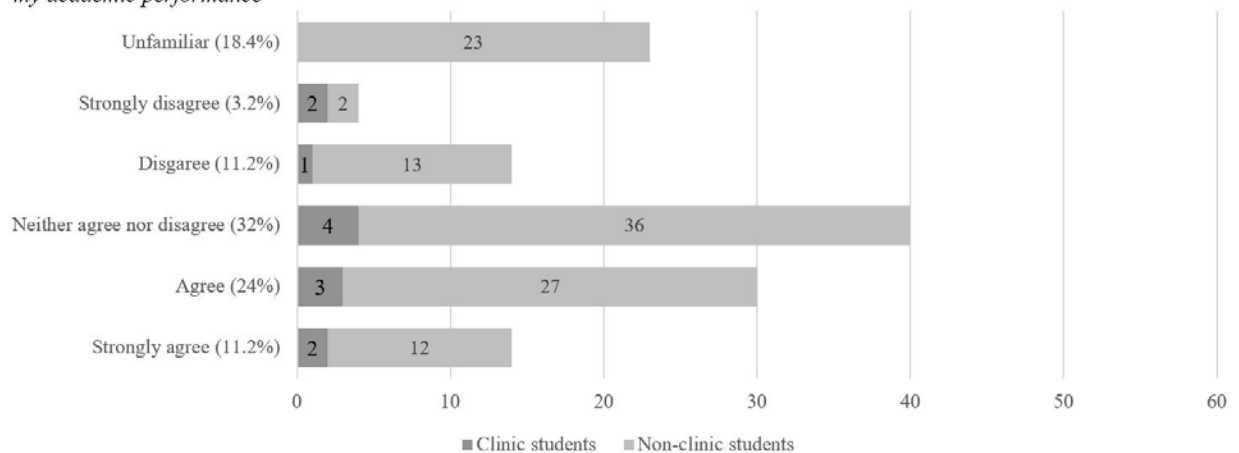


Figure 6. The frequency of clinic and non-clinic students' responses on a Likert scale to the statement "Clinical work improves my academic performance"



Regarding the skills dimension, the majority of respondents agreed or strongly agreed with the statement "Clinical work improves my legal skills" (Figure 7), which might suggest that both clinic and non-clinic students think CLE has the potential to constructively train their legal skills using its learning by doing teaching model. Relatedly, the majority also agreed with the statement "Clinical work assists me in obtaining employment" (Figure 8). One possible explanation is that students believe the

practical legal skills and work experience gained through direct client interaction in CLE is valuable to employers, as it equips them to become more effective lawyers.

Figure 7. The frequency of clinic and non-clinic students' responses on a Likert scale to the statement "Clinical work improves my legal skills"

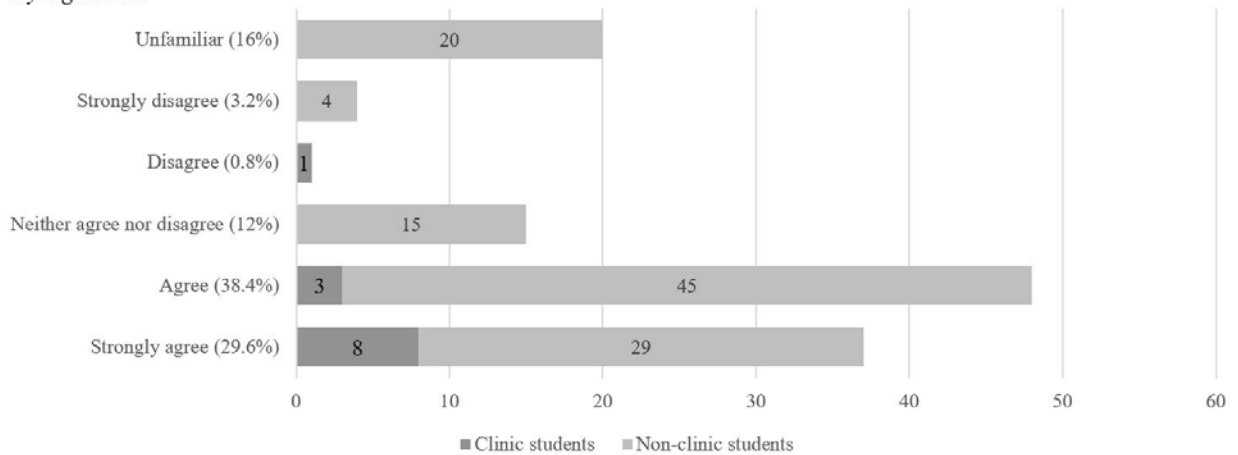
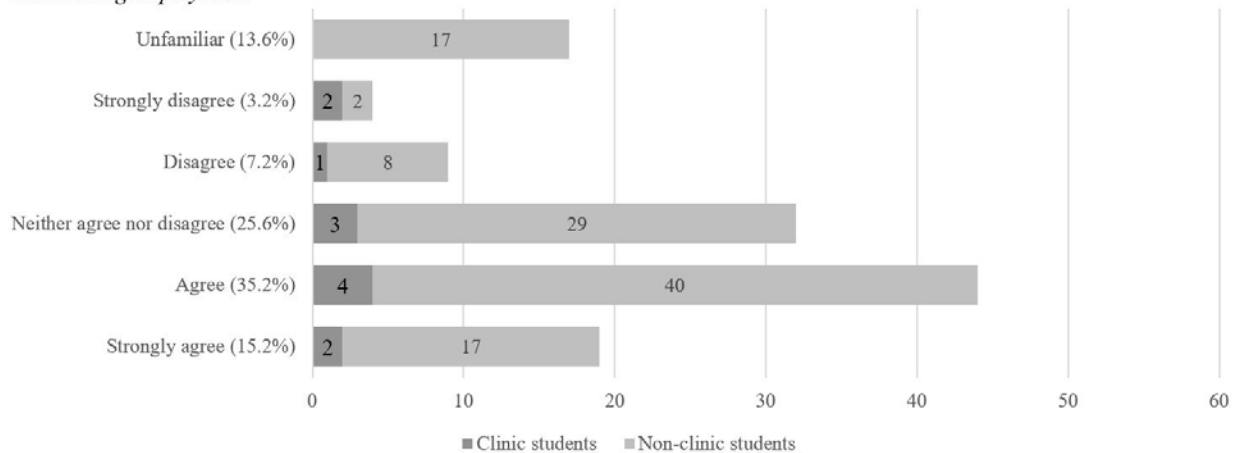


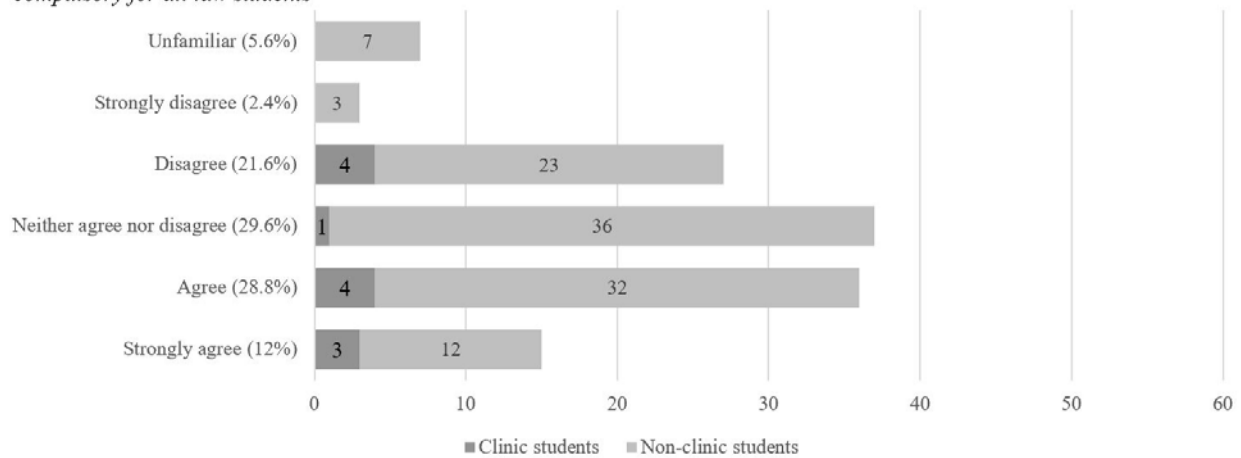
Figure 8. The frequency of clinic and non-clinic students' responses on a Likert scale to the statement "Clinical work assists me in obtaining employment"



Despite their positive attitudes on CLE, the majority of respondents (29.6%) answered "neither agree nor disagree" to the statement "Clinical work should be compulsory for all law students" (Figure 9). This may reflect that while the majority of students can see

the advantages of CLE, they wish to retain their choice on whether or not to pursue CLE as an elective. One reason for this may be because the number of electives which students are allowed to take are already limited, and students might not want increased restrictions on their choice if a compulsory CLE course were to be introduced.

Figure 9. The frequency of clinic and non-clinic students' responses on a Likert scale to the statement "Clinical work should be compulsory for all law students"



Students' Motivations for Participating in Clinical Legal Education

"Learning more", "getting practical experience", and "helping people" naturally emerged as key themes from the qualitative data analysis. Thus, students' motivations for undertaking CLE were conveniently grouped into three categories mirroring the cognitive, skills, and civic dimensions, noting any overlaps. While the majority of clinic student respondents (54.5%) cited the civic dimension of CLE as their primary motivating factor for choosing to undertake CLE (Table 3), non-clinic students who intended to do

CLE in the future (prospective clinic students) were slightly more drawn to the skills dimension (36%) than the civic dimension (32%) (Table 4).

This may be because clinic students who are currently undertaking or have already undertaken CLE are more strongly impressed by the civic dimension of their experience. Additionally, clinic students are exclusively Year 3 to 5 students who may already have gained work experience from internships and vacation schemes, making it a lesser priority in their minds, whereas most prospective clinic students are Year 1 and 2 students who may have had few, if any, chances to do internships, and thus are more keen to get practical experience through CLE. Interestingly, the cognitive dimension was the least compelling reason for both clinic and prospective clinic students to undertake CLE. This may suggest that students do not expect to learn black letter law in a clinical course, as the substantive material has largely been covered in core classes, and instead want to develop practical legal skills while helping the community.

Table 3. *Clinic students' reasons for choosing to undertake a clinic*

Dimension	Frequency (n=11)	Percentage (%)	Responses of Clinic Students
Civic	6	54.5%	I love helping people Wanted to help people Use my legal knowledge to help lay clients To serve the community Good to contribute to the society I thought it would be meaningful and rewarding
Civic and Skills	2	18.2%	Practical and meaningful More practical experience, understand the legal needs of that particular group
Skills	2	18.2%	Get experience in client facing work Interested in problem-solving
Cognitive	1	9.1%	To learn more about disability rights/human rights framework in Hong Kong

Table 4. Prospective clinic students' reasons for intending to undertake a clinic in the future

Dimension	Frequency (n=25)	Percentage (%)	Responses of Prospective Clinic Students
Civic	8	32.0%	Serve the community, promote access to justice Make my free time more meaningful Sounds fun and helping It would be meaningful to help people in need I believe equality and representation are worth fighting for and helping others for. Underprotected group in HK, lack of exposure to area of law without taking this It's meaningful and can give something back to the society Covers issues I am interested in/ want to help out with
Civic and skills	2	8.0%	To gain more experience and learn in a more hands-on method while still helping those in need. To gain some hands-on/ practical experience, and to use my legal knowledge to help others
Civic and cognitive	2	8.0%	It was very fun, allowed me to learn a lot of new things, actively participate in helping the community and gaining wider exposure to real life issues at hand. Because for me it is a good opportunity to learn from professors and legal practitioners. I am always passionate about pro bono work.
Skills	9	36.0%	To gain some experience in law Gain some experience Practical knowledge and experience To gain experience Gain exposure to legal career Seems necessary to become a good practitioner In-depth experience It's a exposure and we can learn afterall Soft skills
Cognitive	6	24.0%	Expand my knowledge! I have interest in development of the above areas As a way to learn Want to explore more

Contrasting Clinic and Non-clinic Students' Attitudes

Statistically significant differences (p -value < 0.05) were found between the attitudes of clinic and non-clinic students towards CLE (Figure 10). In essence, clinic students had significantly more positive views towards clinical work improving their legal skills ($p = 0.001$), increasing their awareness ($p = 0.012$) and changing their perception ($p = 0.043$) of social and economic issues, encouraging them to engage in pro bono after graduation ($p = 0.002$), and being important to support the wider community ($p = 0.004$). Clinic students were also significantly more agreeable towards doing pro bono work after graduation ($p = 0.007$) and tended more to consider a firm's pro bono work when choosing their

prospective employers ($p = 0.028$) (Figure 11). There were no significant differences in the attitudes of clinic and non-clinic students towards clinical work being compulsory for all law students, clinical work increasing students' likelihood to undertake pro bono work after graduation, clinical work assisting in obtaining employment, and clinical work improving academic performance.

Figure 10. T-tests comparing the means of clinic and non-clinic students' attitudes towards clinical legal education

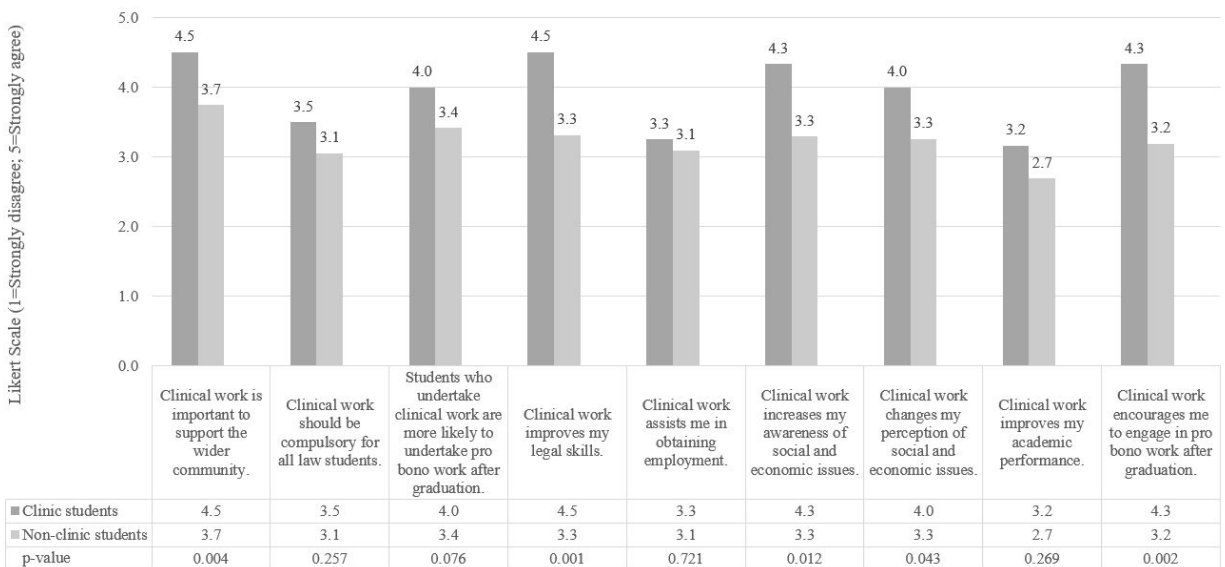
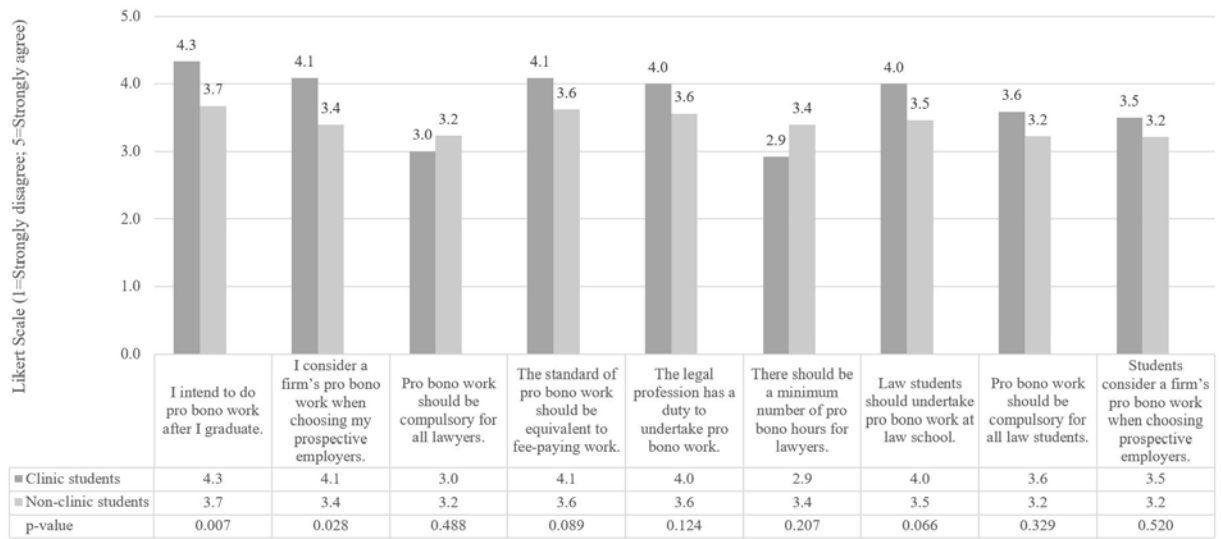


Figure 11. T-tests comparing the means of clinic and non-clinic students' attitudes towards pro bono work



A likely explanation for this is that by virtue of enrolling in a CLE elective, of which one key objective is to provide legal assistance to a vulnerable client, clinic students inherently tend to be more interested in advancing social justice and doing pro bono work than their non-clinic peers. This is reflected in the primary motivation stated by clinic students for undertaking CLE, which is to help the community. Along the same lines, clinic students might be more likely to value the experiential learning methods of CLE in developing their legal skills and increasing or changing their understanding of socio-economic issues, otherwise they would opt for the traditional lecture-based public interest law or human rights electives. However, clinic students might not be significantly more agreeable than their non-clinic peers about CLE's ability to assist them in obtaining employment and

improving academic performance, as these might not have been considerations compelling them to do CLE in the first place.

Comparing Clinic Students' and Student Volunteers' Attitudes

An intriguing comparison is drawn between clinic students' and student volunteers' attitudes towards CLE (Table 5). Volunteering is a form of altruism which many law students (102 out of 125 respondents) engage in, so it is arguably interchangeable with CLE. Consistently, there are stronger positive correlations between clinic participation and having positive attitudes towards clinics than volunteering participation. Clinic students' enthusiasm towards CLE may be linked to the choice to self-select as a clinic student, as reasoned above. Contrastingly, student volunteers who do not do CLE may be unfamiliar with CLE, thus have comparatively less positive views.

Table 5. Correlation matrix of clinic participation, volunteering participation, and attitudes towards clinical legal education

	Clinic participation	Volunteering participation	Clinical work is important to support the wider community.	Clinical work should be compulsory for all law students.	Students who undertake clinical work are more likely to undertake pro bono work after graduation.	Clinical work improves my legal skills.	Clinical work assists me in obtaining employment.	Clinical work increases my awareness of social and economic issues.	Clinical work changes my perception of social and economic issues.	Clinical work improves my academic performance.	Clinical work encourages me to engage in pro bono work after graduation.
Clinic participation	1										
Volunteering participation	0.1547	1									
Clinical work is important to support the wider community.	0.1580	0.0698	1								
Clinical work should be compulsory for all law students.	0.1049	0.0692	0.5116	1							
Students who undertake clinical work are more likely to undertake pro bono work after graduation.	0.1168	-0.0861	0.5962	0.5512	1						
Clinical work improves my legal skills.	0.2037	0.0930	0.6052	0.4218	0.4543	1					
Clinical work assists me in obtaining employment.	0.0292	-0.0325	0.4919	0.5036	0.5410	0.7244	1				
Clinical work increases my awareness of social and economic issues.	0.1823	0.0370	0.6338	0.4558	0.4613	0.7160	0.7149	1			
Clinical work changes my perception of social and economic issues.	0.1361	0.0711	0.4989	0.4956	0.4985	0.6256	0.6762	0.7417	1		
Clinical work improves my academic performance.	0.0885	0.0121	0.4039	0.4992	0.4644	0.5480	0.6149	0.5396	0.7050	1	
Clinical work encourages me to engage in pro bono work after graduation.	0.2051	-0.0632	0.5304	0.4613	0.5348	0.6985	0.6884	0.6893	0.7677	0.7558	1

There is also a strong positive linear relationship ($r > 0.7$) between respondents who agreed that clinical work assisted them in obtaining employment and respondents who agreed that clinical work improved their legal skills and increased their awareness of socio-economic issues. This suggests respondents believe the improved skills and awareness gained from CLE will appear favorable in the eyes of potential employers.

Another interesting comparison is between clinic students' and student volunteers' attitudes towards pro bono work (Table 6). Although it could be argued that volunteering might also create a commitment to pro bono work after graduation, this does not appear to be the case, as there is a stronger positive relationship between clinic participation and

having an intention to do pro bono work after graduation ($r = 0.1688$) than volunteering participation ($r = 0.0882$). This may be explained by the fact that most student volunteers engage in non-legal volunteering work ($n = 74$; 72.5%), as opposed to legal ($n = 9$; 8.8%) or both legal and non-legal volunteering work ($n = 20$; 19.6%), and therefore, they might not be exposed to legal problems and recognize the dire need for pro bono work through volunteering as a clinic student would through CLE.

Table 6. Correlation matrix of clinic participation, volunteering participation, and attitudes towards pro bono work

	Clinic participation	Volunteering participation	I intend to do pro bono work after I graduate.	I consider a firm's pro bono work when choosing my prospective employers.	Pro bono work should be compulsory for all lawyers.	The standard of pro bono work should be equivalent to fee-paying work.	The legal profession has a duty to undertake pro bono work.	There should be a minimum number of pro bono hours for lawyers.	Law students should undertake pro bono work at law school.	Pro bono work should be compulsory for all law students.	Students consider a firm's pro bono work when choosing prospective employers.
Clinic participation	1										
Volunteering participation	0.1547	1									
I intend to do pro bono work after I graduate.	0.1688	0.0882	1								
I consider a firm's pro bono work when choosing my prospective employers.	0.1612	0.0079	0.7277	1							
Pro bono work should be compulsory for all lawyers.	-0.0552	-0.0541	0.5470	0.6273	1						
The standard of pro bono work should be equivalent to fee-paying work.	0.1121	0.0385	0.7787	0.7871	0.6128	1					
The legal profession has a duty to undertake pro bono work.	0.1080	-0.0034	0.6886	0.8146	0.6769	0.8383	1				
There should be a minimum number of pro bono hours for lawyers.	-0.1084	-0.0175	0.5851	0.6552	0.7406	0.7174	0.7753	1			
Law students should undertake pro bono work at law school.	0.1247	0.0288	0.6631	0.6769	0.5705	0.6611	0.7259	0.6008	1		
Pro bono work should be compulsory for all law students.	0.0831	0.0626	0.5159	0.6117	0.7225	0.5509	0.6035	0.6359	0.7365	1	
Students consider a firm's pro bono work when choosing prospective employers.	0.0640	-0.0855	0.5186	0.7263	0.6289	0.6500	0.6815	0.6388	0.5911	0.6424	1

It may be worth noting that respondents who agreed that they considered a firm's pro bono work when choosing their prospective employer also tended to agreed that the legal profession had a duty to undertake pro bono work ($r = 0.8146$) and that the standard of

pro bono work should be equivalent to fee-paying work ($r = 0.7871$). These were two of the strongest positive linear relationships present, which may indicate that students with a strong inclination towards pro bono work intended to act on such convictions by looking for law firms which emphasized their pro bono services. There was also a strong positive correlation between respondents who agreed that pro bono work should be compulsory for all lawyers and respondents who agreed that there should be a minimum number of pro bono hours for lawyers ($r = 0.7406$).

Comparison with Previous Empirical Research

The most cognate comparison with this study would be McKeown's work.⁶⁸ The findings are consistent with McKeown's to the extent that respondents appreciated the skills development and enhanced employability aspects of CLE, which he coined as being "a personal benefit".⁶⁹ However, unlike McKeown's study which found that there was only "marginally more appreciation of social and economic issues" as a result of CLE⁷⁰, both clinic and non-clinic students at HKU are more evidently appreciative of CLE's ability to increase their understanding of socio-economic issues. As shown above, the majority of respondents agreed (44%) or strongly agreed (24.8%) with clinical work increasing their

⁶⁸ McKeown (n.6).

⁶⁹ Ibid, (2015), pp.31.

⁷⁰ Ibid, (2015), pp.30.

awareness and changing their perception of social and economic issues, and statistically significant differences were identified between clinic and non-clinic students views towards the same statements.

Furthermore, while McKeown's study found that "it is the personal benefits of [CLE] and pro bono work that students value more than any social benefit"⁷¹, this is only partially reflected by the survey data at HKU. HKU students agreed that CLE improves their legal skills and assists them in obtaining employment, which would fall within McKeown's interpretation of "personal benefit". However, HKU clinic students were largely motivated by altruistic reasons to undertake a clinic. Respondents stated that they chose to undertake CLE in order to "help people", "serve the community", and "contribute to society". Even prospective clinic students at HKU were only slightly more interested in the skills dimension (36%) than the civic dimension (32%), with respondents commenting that CLE was "meaningful" and that they wanted to "promote access to justice" and "give something back to society".

Finally, although McKeown's study concluded that "respondents, whether having carried out [CLE] or not at law school, were neutral...as to whether they would carry out

⁷¹ Ibid, (2015), pp.34.

pro bono work following graduation”⁷², both clinic and non-clinic students at HKU agreed or strongly agreed with the statement that clinical work encourages them personally and students as a whole to undertake pro bono work after graduation. The difference between clinic and non-clinic students on the statement “Clinical work encourages me to engage in pro bono work after graduation” was statistically significant. Although causation cannot be inferred, as the data only captures students’ attitudes at one instance in time, the data suggests that clinic students are significantly more agreeable towards doing pro bono work and so are distinct in this aspect from their peers.

Theoretical and Practical Implications

The respondents’ attitudes aligned with the theoretical framework above, which implies clinic and non-clinic students alike believed that HKU has effectively put into practice the CLE teaching-service pedagogy. The practical implications for HKU law students are that, although each student’s experience of CLE is inevitably unique, students are generally satisfied that CLE achieves certain pedagogical aims. In terms of the teaching model, most respondents, and especially clinic students, agreed with statements to the effect that CLE led to personal development in the cognitive, skills, and civic dimensions. Similarly, under the service model, the majority, and especially clinic students, agreed

⁷² Ibid, (2015).

with the statement that CLE encouraged their participation in pro bono work after graduation. These may be persuasive factors for prospective clinic students in deciding whether or not to take a CLE elective, and so may be of interest to upper-year law students.

For clinical faculty, the practical implications of this study may depend on what they aim to achieve through their clinics. If, for example, clinical faculty aspire to generate long-term, sustainable pro bono participation as a result of CLE, the survey data is inconclusive as to whether this has been achieved. While students largely agree that clinical work encourages them to engage in pro bono work after graduation, the correlation analysis reveals only a weak positive correlation ($r = 0.1688$) between respondents' clinic participation and intention to do pro bono work after graduation. Whether the respondents' intentions to do pro bono work will translate into any concrete actions, for instance, by taking up pro bono assignments during their professional practice, is another matter entirely and may be gauged by surveying former clinic students who are now practitioners.⁷³ Nonetheless, the survey results indicate that CLE is an encouraging first step in the path to alleviating Hong Kong's public interest law deficit, as it exposes clinic

⁷³ Skrodzka, M., Chia, J. & Bruce-Jones, E. 'The Next Step Forward - The Development of Clinical Legal Education in Poland through a Clinical Pilot Program in Bialystok' (2008) 2 Columbia Journal of East European Law 56, 84.

students to pro bono work at an early stage of their legal careers and may in the least encourage students to set the intention to engage in pro bono work after graduation.

This study may yield practical implications for law firms. It suggests that students are increasingly aware of and interested in their prospective firms' pro bono work. Recruiters that want to attract students who intend to do pro bono work after graduation may consider capitalizing on the pro bono work that their firm has done to meet their corporate social responsibility duties and emphasizing their belief that the standard of pro bono work should be equivalent to fee-paying work. Recruiters may also refer to clinic students' CLE experience as an impactful learning experience, which generally speaking might have improved their legal skills and increased their awareness and changed their perception of social and economic issues, as well as potentially being an indication of their intention to do pro bono work at their firm.

Limitations of the Study

One limitation of this study is the short time frame in which the study was done. The short time frame affects the validity of the data, because the responses can only provide a snapshot of student attitudes at a specific point in time. Therefore, the data collected does not take into account the fact that students' answers to the same questions may change over time as they are exposed to different viewpoints. Only correlation can be

established from the data, since correlation does not imply causation, as opposed to a longitudinal study where causation may be deduced. Within the survey, most questions asked only for a response on a Likert scale, in order to maintain its simplicity and accessibility to the target population. This meant that the reasons for the students' responses could not be identified concretely, and at most could only be given possible interpretations based on CLE theories.

A further limitation is the response rate of 15%. Applying the "liberal conditions" (10% sampling error, 80% confidence level) to a class of around 750 to 1,000 students, the response rate of 15% would easily satisfy the required response rate of 3%.⁷⁴ To this end, the responses would be a representative sample of student attitudes as a whole. However, the "stringent conditions" (3% sampling error; 95% confidence level) would require a response rate of 48%, which is much higher than what was achieved.

A final limitation is that the study relates only to the target survey population of first- to fifth-year HKU undergraduate law students. The claims made cannot and do not attempt to be generalized to apply to other students or universities, since each university has its own individual approach towards CLE. It is also difficult to generalize the results across

⁷⁴ Nulty, D.D. 'The adequacy of response rates to online and paper surveys: what can be done?' (2008) 33 *Assessment & Evaluation in Higher Education* 301, 310.

all HKU law students in the various programs, as every cohort may have divergent views and experiences towards CLE.

Recommendations and Directions for Further Study

It is recommended that a longitudinal survey could be administered to students at a minimum of two intervals at the beginning and end of the semester, which would mitigate against the problems of having a short time frame and would determine whether CLE had potentially caused any attitudinal changes for clinic students. Focus groups could also be introduced in order to better understand the reasons behind the respondent's answers. Alternatively, free text boxes could be used within the survey to illicit justifications for answers to questions of particular interest, but this may not be preferred as it could lead to increased survey fatigue and decreased response rates.

This study could be extended to CUHK which also runs CLE courses, so as to gain a complete understanding of the effects of CLE in Hong Kong following the Redmond-Roper Report. A comparative study could be conducted to compare whether the impact of CLE is different in CUHK, and if so, how and why it is different from HKU. The study could also test whether there is a need or the capacity to implement Caplow's suggestion of a joint clinic and consider other possible methods of cooperation.

Another direction for extension would be to investigate the impact of a particular format of CLE, for instance, whether CLE has the same impact in the format of street law as opposed to a live-client clinic. The role of different stakeholders could also be considered. For example, whilst this survey focused solely on students' attitudes towards CLE, an interesting question could be whether CLE improves access to justice for the target communities and improves their understanding of the law. Another extension could be to survey clinical faculty to depict the challenges and successes of CLE from their point of view.⁷⁵ The data collected with regards to volunteering and pro bono work could also be analyzed closely and be used to inform further research on law students' altruistic inclinations beyond CLE.

CONCLUSION

To mark ten years of CLE at HKU, the study shows that CLE has been a fruitful pursuit. Both clinic and non-clinic students think that CLE improves legal skills, enhances employability, increases their awareness and changes their perception of socio-economic issues, encourages participation in pro bono work after graduation, and is important to support the wider community. The qualitative responses indicate that CLE gives students the meaningful opportunity to serve the community, while also developing practical

⁷⁵ Skrodzka, Chia, and Bruce-Jones (n.73).

legal skills. From the students' perspective, the teaching-service model has been successfully integrated at HKU, realizing the vision of the Redmond-Roper Report and Caplow's vision from more than a decade ago.

It remains to be seen how CLE will continue to develop in the years to come as universities place greater emphasis on experiential learning and whether CLE will manifest itself in any positive impacts on the development of a rich pro bono culture in the legal community in Hong Kong. It is hoped that CLE will continue to serve as a vehicle to strengthen existing partnerships between law students, pro bono lawyers, and community groups, in order to grow a culture of service which seeks to empower members of the community and support both their legal and non-legal movements for change. As clinic students progress through their careers and take on leadership roles in various sectors of Hong Kong society, there is enormous potential for the socio-economic awareness and community-driven mindset gained through CLE to influence their decision-making and play a role in ameliorating injustices.

Appendix A: Survey

Clinical legal education, volunteering, and pro bono work

We invite you to participate in a research study: "HKU law student attitudes towards clinical legal education, volunteering, and pro bono work".

The purpose of the study is to better understand HKU student attitudes towards clinical legal education, volunteering, and pro bono work.

The online survey (below) will only take you about 7 minutes to complete. Your participation is completely voluntary. You can choose not to answer any of the questions, and you can choose to terminate the survey at any time without negative consequences. All information collected will remain strictly confidential. Individual details will not be disclosed or identifiable from this survey.

If you have any questions about the research, please feel free to contact _____ principal investigator _____ or _____ student investigator _____

If you have questions about your rights as a research participant, please contact the Human Research Ethics Committee, HKU (2241-5267).

* Required

1. I understand the procedures described above and agree to participate in this study. *

Mark only one oval.

I agree

Basic information

2. Please state your intended career aspirations before you entered law school. *

Mark only one oval.

Lawyer

Non-lawyer

3. If you answered "lawyer" to Q.1, what was your intended area of practice? (Tick all that apply):

Check all that apply.

Private corporate/commercial solicitor

Private criminal solicitor

Government lawyer

Barrister

In-house counsel

Human rights lawyer

Other: _____

4. Have your career aspirations changed? *

Mark only one oval.

- Yes
- No

5. If you answered "yes" to Q.3, why did your intended career aspirations change?

6. If you answered "yes" to Q.3, please state your current career aspirations.

Mark only one oval.

- Lawyer
- Non-lawyer

7. If you answered "lawyer" to Q.5, what is your intended area of practice? (Tick all that apply):

Check all that apply.

- Private corporate/commercial solicitor
- Private criminal solicitor
- Government lawyer
- Barrister
- In-house counsel
- Human rights lawyer
- Other: _____

8. How do you identify your gender? (Please tick one or more boxes.) *

Check all that apply.

- Male
- Female
- Prefer not to say
- Other: _____

9. How old are you? *

Mark only one oval.

- Under 18 years old
- 18-22 years old
- 23-26 years old
- 27-38 years old
- 39 or older
- Prefer not to say

10. What is your program of study? *

Mark only one oval.

- LLB
- BBA(Law)&LLB
- BSS(G&L)&LLB
- BA&LLB
- Exchange
- Other: _____

11. Which year are you in? *

Mark only one oval.

- Year 1
- Year 2
- Year 3
- Year 4
- Year 5
- Other: _____

12. Which secondary school curriculum did you study?

Mark only one oval.

- DSE
- IB Diploma
- A-levels
- Other: _____

Clinical legal education

A clinic is an experiential learning course where “students are exposed to problems that lawyers might confront in practice” (Caplow, 2006). Activities undertaken in a clinic may include: Collaborating with NGOs on projects, designing and implementing interactive legal teaching curricula, advising unrepresented individuals or groups, etc. A clinic does NOT include internships, vacation schemes, or other work experience.

13. Have you undertaken, or are you currently undertaking, any clinic(s) at HKU? *

Mark only one oval.

Yes

No

14. If you answered "yes" to Q.12, please state which clinic(s).

15. If you answered "yes" to Q.12, please state why you chose to undertake the clinic(s).

16. Do you intend to take any clinics in the future? *

Mark only one oval.

Yes

No

17. If you answered "yes" to Q.15, please state which clinic(s).

18. If you answered "yes" to Q.15, please state why you intend to undertake the clinic(s).

19. Please state whether you agree or disagree with the following statements. *

Mark only one oval per row.

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	I am unfamiliar with clinical work
Clinical work is important to support the wider community.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clinical work should be compulsory for all law students.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Students who undertake clinical work are more likely to undertake pro bono work after graduation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clinical work improves my legal skills	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clinical work assists me in obtaining employment.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clinical work increases my awareness of social and economic issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clinical work changes my perception of social and economic issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clinical work improves my academic performance.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clinical work encourages me to engage in pro bono work after graduation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

20. Complete the following sentence (Tick all that apply): A lawyer's role should be... *

Check all that apply.

- To be committed to creating a just, fair, and moral society
- To solve the client's legal problems
- To work collaboratively with lawyers to understand the client's legal problems
- To empower the client to pursue their legal rights independently of a lawyer
- To make choices for the client
- To enhance the skills and knowledge base of the client
- To solve the client's non-legal problems or problems unable to be redressed by the law
- To work collaboratively with lawyers and non-lawyers to understand the client's social and economic problems
- To educate the client about their choices and leave the client autonomous to decide which choice to make
- Other: _____

21. Have you undertaken, or are you currently undertaking, any of the courses listed below? (Tick all that apply):

Check all that apply.

- Social justice summer internship (LLAW2011)
- Clinical legal education programme – general stream (LLAW3148)
- Clinical legal education programme - refugee stream (LLAW3210)
- Human rights in practice (LLAW3222)
- Disability rights clinic (LLAW3246)
- Ethical lawyering for public interest (LLAW3247)
- The global migration legal clinic (LLAW3252)

Volunteering

Volunteering is "any activity that involves spending time, unpaid, doing something that aims to benefit the environment or someone (individuals or groups) other than, or in addition to, close relatives" (The National Council for Voluntary Organisations, 2019).

22. Outside your program of study, do you undertake or have you previously undertaken any volunteering? *

Mark only one oval.

- Yes
- No

23. If you answered "yes" to Q.21, what type of volunteering do you undertake?

Mark only one oval.

- Legal
- Non-legal
- Both
- Other: _____

24. If you answered "yes" to Q.21, please state why you undertake volunteering.

25. Please state whether you agree or disagree with the following statements. *

Mark only one oval per row.

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	I am unfamiliar with volunteering
Students who undertake volunteering are more likely to undertake pro bono work after graduation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I am likely to volunteer after I graduate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Volunteering is important to support the wider community.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Volunteering improves my legal skills.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Volunteering assists me in obtaining employment.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Volunteering increases my awareness of social and economic issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Volunteering changes my perception of social and economic issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Volunteering encourages me to engage in pro bono work after graduation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Pro bono work

Pro bono work is free, voluntary legal advice or representation provided by lawyers to individuals, charities, and community groups who cannot afford to pay for that advice or representation (Law Society UK, 2019).

26. Please state whether you agree or disagree with the following statements. *

Mark only one oval per row.

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	I am unfamiliar with pro bono work
I intend to do pro bono work after I graduate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I consider a firm's pro bono work when choosing my prospective employers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro bono work should be compulsory for all lawyers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The standard of pro bono work should be equivalent to fee-paying work.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The legal profession has a duty to undertake pro bono work.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There should be a minimum number of pro bono hours for lawyers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Law students should undertake pro bono work at law school.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro bono work should be compulsory for all law students.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Students consider a firm's pro bono work when choosing prospective employers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

27. Have you been or are you currently part of a student-run group? *


Mark only one oval.

- Yes
- No

28. If you answered "yes" to Q.26, please state which group (or groups) and your role within the group.

Thank you for your response.

Thank you for completing this survey. Please note that by clicking the 'submit' button, you consent to the data that you have provided being used by the University of Hong Kong in accordance with the information on the first page of this survey.

Powered by
 Google Forms

PRO BONO IN LAW SCHOOLS: TRACKING THE EFFECT OF PRO BONO SERVICE IN AN AUSTRALIAN UNIVERSITY LAW CLINIC

Francina Cantatore, Bond University¹

ABSTRACT

It has been widely acknowledged that pro bono service in law clinics and university access to justice initiatives have a positive impact on students, especially in relation to increasing their graduate employability skills. However, little empirical evidence exists in respect of the extended benefits of pro bono service during students' studies in relation to the students themselves once they enter the workforce, as well as data on the perceived benefits by recipients of the pro bono services. This article explores the impact of pro bono service by university students in a university law clinic from two perspectives, namely that of the graduates themselves after they enter legal practice; and that of the community members who are clients of the pro bono clinics. In the context of a pilot project dealing with these two issues, the author investigates: first, the incidence of continuing pro bono service once law graduates enter legal practice, and the motivating factors for their ongoing involvement in pro bono (or lack

¹ Francina Cantatore (PhD MA BA LLB (Hons) GDLP) is an Associate Professor at Bond University, Queensland, Australia.

thereof), by surveying a group of clinic alumni of a Commercial Law Clinic held at Bond University; and second, the perceived benefits reported by clients of the same law clinic over a period of approximately five years.

I INTRODUCTION

Despite all the reported benefits which university pro bono² law clinics provide for law students, such as experiential learning opportunities and a demonstrated increase in employability skills,³ there is a lack of empirical data in relation to the extended benefits of pro bono service during students' studies in relation to the students themselves, as well as perceived benefits by the recipients of the pro bono service. Whether early career pro bono work encourages students to undertake pro bono service once they enter into legal practice, and their motivations for doing so, remains an unexplored area of legal practice research in Australia. An article by Bartlett and Taylor examined the personal values and private motivations of legal practitioners who engage in the provision of legal services pro bono publico,⁴ by analysing the results of a 2014 empirical study of lawyers in Queensland, Australia, who regularly

² In defining 'pro bono' the study applies the definition of "the provision of legal services on a free or significantly reduced basis" (See 'Information on Pro Bono', *Australian Pro Bono Centre* (Web Page) <<https://www.probonocentre.org.au/information-on-pro-bono/>>), which includes pro bono law clinics held on a university campus, where students volunteer under the supervision of qualified legal practitioners in the provision of free legal services to disadvantaged or vulnerable clients. The Bond Law Clinic held at Bond University fits the description of a pro bono law clinic in this context.

³ See 2018 study by Cantatore, F. 'The Impact of Pro Bono Law Clinics on Employability and Work-Readiness in Law Students' (2018). 25(1) *International Journal of Clinical Legal Education* 147-72.

⁴ Bartlett, F. & Taylor, M. 'Pro Bono Lawyering: Personal Motives and Institutionalised Practice.' (2016). *Legal Ethics*, 19(2): 260-280 <<https://doi.org/10.1080/1460728x.2016.1247632>>.

undertook pro bono work. The findings suggested strong moral and professional motivations for engaging in pro bono legal practice, as well as a distinct 'community of practice' of large law firms in forming and sharing sophisticated structures and approaches to addressing social justice needs.⁵ In contrast, a 2015 UK study by McKeown found that most law student respondents undertook pro bono service for their personal benefit, valued skills development and their employability more than altruistic benefits of the work.⁶ He subsequently acknowledged that,⁷ whilst some studies show that there is little or no impact of clinical and pro bono programs on students' desire to continue to provide pro bono services upon graduation, there are other studies that suggest the experience can have a positive impact on students and their willingness to partake in public service work.⁸

There is equally little data available on the perceived benefits of university pro bono clinics by their clients. In Australia, the Australian Pro Bono Centre (APBC) tracks the pro bono hours spent by signatories to an 'aspirational target' of 35 hours per lawyer per year but does not provide any data on the clients serviced. In FY 2018 there were approximately 12,000 signatory lawyers and law firms to the target, who reported undertaking slightly less than 415,000 hours of 'pro bono legal services', down by

⁵ Ibid, (2016) (n.4), pp.260.

⁶ McKeown, P. 'Law Student Attitudes towards Pro Bono and Voluntary Work: The Experience at Northumbria University' (2015). *International Journal of Clinical Legal Education* 22(1): vi.

⁷ McKeown, P. 'Pro Bono: What's in it for Law Students?' (2017). 24(2) *International Journal of Clinical Legal Education* 43 ('Pro Bono').

⁸ Ibid, (2015)., pp.48-9.

5379.6 pro bono hours (1.28%) from FY 2017.⁹ The APBC acknowledges in its report that more research on “identifying and developing the necessary framework/s for evaluating pro bono legal work” is needed to “inform and support the Centre’s policy development and advocacy.”¹⁰

This pilot project firstly tracks the impact of pro bono service by university students in a university law clinic after they enter practice. This is done by examining the experience of a group of alumni of Bond University in relation to their university based pro bono legal experience in a Commercial Law Clinic, and their continuing interest (or lack thereof) in undertaking pro bono work once in practice, by investigating their motivation for involvement once in practice. Secondly, it considers the perceived benefits by members of the community who received assistance from the clinic, over a period of approximately five years. In conclusion, it considers, through the empirical and qualitative data obtained through online surveys, the perceived benefits and effects of pro bono services delivered in the context of a university law clinic.

⁹ Australian Pro Bono Centre (APBC), *Annual Report 2017-2018* (Report, 2018) 17
<https://www.probonocentre.org.au/wp-content/uploads/2018/12/APB_AnnualReport-2018-FINAL-interactive-1.pdf>.

¹⁰ *Ibid*, (2018), pp.33.

II THE STUDENT PRO BONO EXPERIENCE IN CONTEXT

Pro Bono in Law Schools

In discussing the student pro bono experience it is important to draw a distinction between the concepts of clinical legal education (CLE) and pro bono,¹¹ acknowledging that not all university CLE experience is pro bono related, and conversely that not all pro bono experience is conducted within the ambits of CLE. It has previously been noted that although there is some overlap between CLE and pro bono programs, they have generally been regarded as “separate and distinct entities”.¹² The Australian Law Reform Commission (ALRC) has defined pro bono work as “legal services provided in the public interest by lawyers for free or for a substantially reduced fee”.¹³ The APBC similarly applies the definition of “the provision of legal services on a free or significantly reduced basis”.¹⁴ However, it has been argued that pro bono initiatives need not exclude a strong learning and teaching focus, and that practical legal skills and ethics, as well as social responsibility, can be taught effectively within a pro bono teaching clinic with a commercial law focus.¹⁵ Moreover, there sometimes exists an

¹¹ See McCrimmon, L. ‘Mandating a Culture of Service: Pro Bono in the Law School Curriculum’ (2003). *14(1) Legal Education Review* 53, 54–7.

¹² *Ibid*, (2003).

¹³ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, 17 February 2000) 304 <<https://www.alrc.gov.au/report-89>>.

¹⁴ APBC, *Australian Pro Bono Centre* (Web Page) <<https://www.probonocentre.org.au/information-on-pro-bono/>>.

¹⁵ Cantatore, F. ‘Boosting Graduate Employability: Using a Pro Bono Teaching Clinic to Facilitate Experiential Learning in Commercial Law Subjects’ (2015). *25(1) Legal Education Review* 147-172 (‘Boosting Graduate Employability’).

overlap in instances where both enrolled students and student volunteers are accommodated as interns.¹⁶ In such cases, enrolled students will generally be required to meet course requirements for academic credit whereas volunteers do not have the same obligations.

It may be argued that, regardless of whether students engage in pro bono work for academic credit or on a volunteer basis, they are generally engaged in real client contact with disadvantaged or marginalised members of the community who qualify for pro bono advice, and thus are engaging in a pro bono initiative. In the context of this article, the pilot study focuses on a university law clinic which applies the accepted APBC definition of pro bono,¹⁷ and facilitates personal contact between students and qualifying small business and non-for-profit clients on a volunteer basis (i.e., not for academic credit).

This approach is in line with the key objectives in promoting pro bono engagement by law students, identified by Corker, namely:

- To develop and nurture a commitment in law students to practice law in a way that promotes justice and fairness for all, particularly the poor and disadvantaged members of society.

¹⁶ Such as the Flinders Legal Advice Clinic at Flinders University, see <<https://fusa.edu.au/legal-clinic/>>.

¹⁷ APBC, *Australian Pro Bono Centre* (Web Page) <<https://www.probonocentre.org.au/information-on-pro-bono/>>

- To provide legal services that benefit poor and disadvantaged members of society.
- To introduce law students to the workings of the legal profession and to meet, observe and work with practising lawyers involved in public interest work.
- To assist students to develop interpersonal skills in a professional environment.
- To provide students with practical experience in research, writing and advocacy in a legal environment.¹⁸

There are studies evidencing the increase of practice-based skills in law clinic students, such as the ability to engage with and interview ‘real clients’ and deal with ‘real cases’, thereby developing their self-confidence and professional communication skills.¹⁹ A 2014 UK study showed that pro bono and law clinic work are increasingly becoming part of the legal curriculum in law schools.²⁰ Similarly, in the US, Canada and Australia there has been a long history of CLE, including pro bono clinics,²¹ which have focused on practice-based skills development in students. A recent study by

¹⁸ Corker, J. ‘How Does Pro Bono Students Australia (PBSA) Fit with Clinical Legal Education in Australia?’ (2005). (*Conference Paper, International Journal of Clinical Legal Education Conference and Australian Clinical Legal Education Conference, 13–15 July 2005*) 7 <<https://probonocentre.org.au/wp-content/uploads/2015/09/HowdoesPBSAfitwithCLEinAustralia.pdf>>.

¹⁹ Cantatore, F., ‘The Impact of Pro Bono Law Clinics on Employability and Work-Readiness in Law Students’ (2018) 25(1) *International Journal of Clinical Legal Education* 147-72., pp.162.

²⁰ Dignan, F., Grimes, R. & Parker, R. ‘Pro Bono and Clinical Work in Law Schools: Summary and Analysis’ (2017). 4(1) *Asian Journal of Legal Education* 1, 10.

²¹ *Ibid*, (2017)., pp.14.

Blandy,²² carried out at the University of Sheffield School of Law, on employability and pro bono participation by students found that out of the alumni respondents, 86% indicated that the pro bono work had assisted them in securing either a placement, employment or promotion.²³

The development of 'soft skills' such as emotional intelligence, collaboration and communication, has gained importance in a changing employment landscape as the use of technology redefines the future needs of the workplace.²⁴ Law clinics provide students with opportunities to foster these attributes.²⁵

Another desirable outcome of active participation in pro bono work undertaken in law clinics is that it will cultivate a sense of altruism in law graduates, which would ideally be carried over into their work ethic as lawyers.²⁶ However, McCrimmon cautions against the expectation that empathy will necessarily follow through into the work environment.²⁷ Similarly, Babacan and Babacan recognise that undertaking pro bono work can enhance lawyering skills, but caution that it does not necessarily

²² Blandy, S. 'Enhancing Employability Through Student Engagement in Pro Bono Projects' (2019). 26(1) *International Journal of Clinical Legal Education* 7.

²³ *Ibid*, (2019), pp.33.

²⁴ Davey, T. et al (eds.). *Future of Universities Thoughtbook* (2018). pp.67.<<http://futureuniversities.com/>>.

²⁵ Cantatore, F., 'The Impact of Pro Bono Law Clinics on Employability and Work-Readiness in Law Students' (2018) 25(1) *International Journal of Clinical Legal Education* 147-72., pp.168.

²⁶ Cantatore, F. 'Boosting Graduate Employability: Using a Pro Bono Teaching Clinic to Facilitate Experiential Learning in Commercial Law Subjects' (2015) 25(1) *Legal Education Review* 147-172., pp.155.

²⁷ McCrimmon, L. 'Mandating a Culture of Service: Pro Bono in the Law School Curriculum' (2003) 14(1) *Legal Education Review* 53, pp.68.

translate into a long-term commitment to providing pro bono services after graduating.²⁸ They attribute this to the fact that there are generally little or no mechanisms after doing pro bono work during law school to reflect on the experience, nor is it effectively integrated into law school, in the same way as CLE is integrated.²⁹ Significantly, only one out of five Birmingham student publications,³⁰ reflecting on participation in the Birmingham Law School Pro Bono Group, cited involvement in “access to justice” and “social justice” as the most compelling rewards of her pro bono experience. The other four students perceived other benefits, which included “the guidance of experienced solicitors”, “building emotional intelligence”, “being exposed to clients from different walks of life” and employability as the most rewarding aspects of their pro bono service.³¹ In contrast, an Australian study by Taylor and Cappa highlights social justice considerations in pro bono,³² and argues that pro bono work by law students is a form of service learning as it places them in

²⁸ Babacan, A. & Babacan, H., ‘Enhancing Civic Consciousness Through Student Pro Bono in Legal Education’ (2017). 22(6) *Teaching in Higher Education* 672, pp.688-9.

²⁹ Ibid, (2017)., pp.688-9.

³⁰ See Johnson, B. ‘Five Benefits I Got from Doing Pro Bono’ (2016). (Working Paper Series 04/2016, Centre for Professional Legal Education and Research, November 2015)

<epapers.bham.ac.uk/2171/1/cepler_working_paper_4_2016.pdf>; and Ballagun, G., et al., ‘Reflections on Participation in the Birmingham Law School Pro Bono Group’ (2017). (Working Paper Series 04/2017, Centre for Professional Legal Education and Research) <epapers.bham.ac.uk/3068/1/cepler_working_paper_4_2017.pdf>.

³¹ Ibid, (2017).

³² Taylor, M. & Cappa, C. ‘Student Pro Bono and Its Role in Contemporary Australian Law Schools’ (2016). 41(2) *Alternative Law Journal* 121.

relationships of service to their communities, which increases a sense of social responsibility.³³

As previously noted,³⁴ the Information Paper of the Australian National Pro Bono Resource Centre found that, in 2004, pro bono or other volunteering activities for students “were organised or facilitated either through the law school faculty or law student society/association” in 16 of the 29 law schools surveyed (i.e. 55%).³⁵ There has been little organised research into the types of activities in which these students engage; however, it is apparent that pro bono activities usually involve free legal advice on a number of topics to individuals who cannot afford legal assistance, or pro bono activities where students work on projects for community organisations.³⁶ It is not inconceivable that a greater emphasis on student pro bono engagement will foster a culture of social responsibility in law graduates,³⁷ and it has been asserted that “voluntary pro bono service during students’ law degrees undeniably, at the very

³³ Ibid, (2016), pp.122.

³⁴ Cantatore, F. ‘Boosting Graduate Employability: Using a Pro Bono Teaching Clinic to Facilitate Experiential Learning in Commercial Law Subjects’ (2015) 25(1) *Legal Education Review* 147-172pp.156.

³⁵ National Pro Bono Resource Centre, *Pro Bono and Clinical Legal Education Programs in Australian Law Schools* (2004). (Information Paper, August 2004), pp.8.

<http://www.nationalprobono.org.au/publications/documents/PUBLISHEDVERSION_000.doc>. The study also found that “[c]linical legal education programs are available at 23 of the 28 law schools (82%)”.

³⁶ See e.g., National Pro Bono Resource Centre <<https://www.probonocentre.org.au/provide-probono/law-student/university/>>.

³⁷ Rosas, C. ‘Mandatory Pro Bono Publico for Law Students: The Right Place to Start’ (2002). 30(3) *Hofstra Law Review* 1069, pp.1078.

least, acquaints and familiarises them with the concept of community service, and with the benefits resulting from such experience".³⁸

Overall, for law students, the benefits of pro bono work may include a sense of personal satisfaction, practice-based learning opportunities and sense of achievement through real client contact, an opportunity to improve their employability skills in general, benefit from mentoring by experienced practitioners and build valuable networks.³⁹

Furthermore, whether there is a continued motivation to engage in pro bono service once they enter practice, is an under-researched area of the law. Bartlett and Taylor acknowledge that despite "the voluminous empirical work conducted in the US to date, there has been little empirical research either in Australia or elsewhere into the personal values and private motivations of legal practitioners who engage in the provision of [pro bono legal services]".⁴⁰ In Bartlett and Taylor's article, they record the findings of an empirical study conducted by the University of Queensland Pro Bono Centre with a group of 55 legal practitioners and reported largely internal or intrinsic motivations for undertaking pro bono lawyering.⁴¹ 'Access to justice' was

³⁸ Cantatore, F. 'Boosting Graduate Employability: Using a Pro Bono Teaching Clinic to Facilitate Experiential Learning in Commercial Law Subjects' (2015) 25(1) *Legal Education Review* 147-172pp.158.

³⁹ Cantatore, F. 'The Impact of Pro Bono Law Clinics on Employability and Work-Readiness in Law Students' (2018) 25(1) *International Journal of Clinical Legal Education* 147-72. pp.158.

⁴⁰ Bartlett, F. & Taylor, M., Pro Bono Lawyering: Personal Motives and Institutionalised Practice' (2016) 19(2) *Legal Ethics* 260-280, pp.260-1.

⁴¹ *Ibid*, pp.269.

identified as a recurring theme for many respondents and was a strong professional driver to undertake pro bono work.⁴² Other personal and moral beliefs included a sense that it was 'the right thing to do' and empathetic reasons.⁴³ They also interrogated the motivations for the participants' pro bono work against the backdrop of the type of law firm they were associated with and context of their pro bono service. However, the present article will focus on the relationship between practitioners' past attitudes to pro bono whilst at university, their current motivations for undertaking pro bono service, and consider the connection between the two experiences. In addition, the article will consider the feedback from clinic clients in relation to their clinic experience.

Pro Bono Service in Australia

In the USA, some universities mandate a certain number of pro bono hours for law students as a prerequisite to graduation,⁴⁴ and some States have imposed compulsory pro bono requirements for law graduates. For example, the New York State Bar

⁴² Bartlett, F. & Taylor, M., Pro Bono Lawyering: Personal Motives and Institutionalised Practice' (2016) 19(2) *Legal Ethics* 260-280, pp.270.

⁴³ Ibid, (2016), pp.271-2.

⁴⁴ See 'Pro Bono Publico', *American Bar Association* (Web Page, 26 July 2018)

<<http://www.americanbar.org>

/groups/legal education/resources/pro_bono.html>. Generally, work undertaken as part of a clinical subject may count towards the US pro bono requirement. See e.g., 'New York State Bar Pro Bono Requirement (Web Page, 2019)

<http://www.law.nyu.edu/sites/default/files/upload_documents/NewProBonoInfo.pdf>, which explains that pro bono work in law clinics may be counted at NYU.

requires that law graduates complete at least 50 hours of voluntary legal work before being admitted to the legal profession.⁴⁵ In the USA, at least 39 law schools require students to engage in pro bono or public service as a condition of graduation.⁴⁶ The Association of American Law Schools has stated that “the most important single function of pro bono projects is to open students’ eyes to the ethical responsibility of lawyers to contribute their services.”⁴⁷

In contrast, in Australia there is currently no requirement for law graduates to complete pro bono work as a requirement for admission, although some have suggested that it should be the case.⁴⁸ Detailed arguments have been made for and

⁴⁵ See the ‘Mandatory 50-Hour Pro Bono Requirement’, *New York State Board of Law Examiners*, (Web Page) <<http://www.nybarexam.org/MPB.html>>, which explains that since 1 January 2015 candidates seeking admission to the New York Bar have to provide evidence showing that they have completed 50 hours of qualifying pro bono work, as required by Rule 520.16 of the Rules of the Court of Appeals. The approaches differ from State to State, see e.g., Florida International University, *Pro Bono Brochure* (August 2014) <https://law.fiu.edu/wp-content/uploads/sites/21/2014/09/2014-2015ProBono_BrochurerevisedAug2014.pdf>, which states that law students in Florida are required to complete 30 pro bono hours.

⁴⁶ See American Bar Association (2018); See also, ‘Pro Bono Graduation Requirement’, *Harvard Law School* (Web Page, 2019) <<http://law.harvard.edu/academics/clinical/pro-bono/index.html>>, which states that Harvard Law School Juris Doctor students are required to complete 50 hours of pro bono work (which may include clinical subjects) before graduating.

⁴⁷ McCrimmon, L. ‘Mandating a Culture of Service: Pro Bono in the Law School Curriculum’ (2003) 14(1) *Legal Education Review* 53, 54–7, pp.58, citing Association of American Law Schools Commission on Pro Bono And Public Service Opportunities, *Learning to Serve: A Summary of the Findings and Recommendations of the AALS Commission on Pro Bono and Public Service Opportunities* (Report, 1999) <<http://www.aals.org/probono/report.html>>.

⁴⁸ See Corker, J. ‘Pro Bono Partnerships: The State of Pro Bono Service Delivery in Australia’ (Speech, National Pro Bono Resource Centre, 13 May 2013), pp.8 <<https://probonocentre.org.au/wp-content/uploads/2013/06/Pro-Bono-Partnerships-The-State-of-Pro-Bono-Service-Delivery-in-Australia-Brisbane-May-2013.pdf>>.

against imposing mandatory pro bono requirements in law schools.⁴⁹ As noted above, there is a lack of evidence-based research of the value and effects of pro bono services which needs to be addressed in order to ascertain the sustainability and ultimate value of pro bono service to the legal profession and the community. In order to justify a mandatory pro bono requirement in Australian law schools, further research would be required to establish the projected value and impact of such pro bono services, the cost of pro bono initiatives to government, students and law schools, and the underlying concerns of equity and diverse student cohorts.⁵⁰

Corker and Legg have cautioned against the imposition of mandatory pro bono requirements in law schools, stating that “[t]o make it compulsory for an aspiring lawyer may dilute the honourable aspect of the pro bono ethos. Pro bono may become more about counting hours and minimum compliance than a genuine commitment to helping others in need”.⁵¹

However, Corker acknowledged the views of the Commonwealth Attorney-General in 2013, when he supported the US pro bono position by stating that:

...innovations such as compulsory pro bono requirements for students to be admitted as lawyers would enhance the sense of social justice in aspiring

⁴⁹ McCrimmon, L. ‘Mandating a Culture of Service: Pro Bono in the Law School Curriculum’ (2003) 14(1) *Legal Education Review* 53, 54–7, pp.61.

⁵⁰ Cantatore, F. , ‘Boosting Graduate Employability: Using a Pro Bono Teaching Clinic to Facilitate Experiential Learning in Commercial Law Subjects’ (2015) 25(1) *Legal Education Review* 147-172, pp.157.

⁵¹ Corker, J.& Legg, M. ‘Take Care in Pushing Student Pro Bono’, *UNSW Newsroom* (online, 26 April 2013) <<http://newsroom.unsw.edu.au/news/law/take-care-pushing-student-pro-bono>>.

lawyers in universities around Australia, and help foster a pro bono culture, whilst also providing very valuable and practical legal experience.⁵²

Thus, although there is a general perception that pro bono services are desirable, even necessary, to address access to justice issues in the community, it is conceded that the imposition of mandatory pro bono service in Australia would require much deeper and sustained investigation. In this context, this pilot projects provides insights into the perceived value of pro bono service by practitioners and recipients of these services.

III THE PRO BONO IN LAW SCHOOLS PILOT PROJECT

Overview

To provide insight into the perceived benefits of pro bono service by providers (the 'Law Alumni') and recipients (the 'Clinic Clients') of these services, this article focuses on a pilot study of data obtained from two discrete surveys undertaken at the Bond Law Clinic at Bond University.⁵³ The findings are based on the results of: firstly, a survey conducted with law alumni who had previously engaged in university pro bono activities during their studies (The Law Alumni Survey); and secondly, clinic client surveys conducted over a period of approximately five years (The Clinic Client

⁵² See Corker 'Pro Bono Partnerships: The State of Pro Bono Service Delivery in Australia' (Speech, National Pro Bono Resource Centre, 13 May 2013),pp.8, quoting The Honourable M Dreyfus QC.

⁵³ A pro bono clinics program conducted at Bond University since 2013, which is run on a strictly volunteering basis (i.e., not for academic credit).

Surveys).⁵⁴ The purpose of the research has been to record and gain insight into the perceptions and motivations of participants in pro bono initiatives after they have graduated, and the views and experiences of the recipients of pro bono services, respectively. From the available data, recurring themes and findings will be sought and extracted in relation to participants' observations.

The two surveys and corresponding findings are discussed in turn below.

THE LAW ALUMNI SURVEY

Methodology and Participants

The survey involved the collection of both quantitative and qualitative data through a Qualtrics⁵⁵ survey instrument.⁵⁶ A group of Law Alumni were surveyed over the course of one semester in 2019 through the Alumni and Development Office by way of an email, inviting recipients to participate in an anonymous survey relating to their past Pro Bono service experience during their law degree. Recipients of the survey were all Law Alumni who had participated in the Bond Law Clinic program. Twenty-two responses were received in response to 107 emails sent, a response rate of slightly in excess of 20%. Although not a statistically significant sample, the qualitative and

⁵⁴ Specifically, from January 2014 to April 2019.

⁵⁵ An online survey platform utilised by a number of Australian universities <<https://www.qualtrics.com/about/>>.

⁵⁶ See Appendix A: The Law Alumni Survey.

quantitative data recorded provided valuable insight into the motivations and experiences of the Law Alumni respondents.

The Law Alumni Survey is attached marked '**Appendix A**'. The anonymous survey consisted of seventeen questions,⁵⁷ in both multiple choice and open-ended form. It firstly sought to establish the current job description of participants and whether they were presently undertaking pro bono work, as well as their motivation/s for doing so (or alternatively, the reasons for their failure to engage in pro bono work). Additionally, it investigated the time spent on pro bono work, the type of pro bono work involved (e.g., Commercial Law, Criminal law, Family Law), and which aspects of pro bono work they enjoyed. The survey then proceeded to question which type of pro bono work participants had engaged in during their law degree, and whether they had gained any benefits from their pro bono experience. It went on to investigate what they perceived to be the most satisfying aspects of their pro bono service and whether they would recommend pro bono service to law students. Finally, the survey questioned whether pro bono service during their law degree had had any effect on their present attitudes towards pro bono work, whether they were in favour of lawyers undertaking pro bono work and why. None of the survey questions were peremptory and participants could skip questions if they chose to do so, or withdraw from the survey at any time. Despite these available options, most of the participants

⁵⁷ See Appendix A: The Law Alumni Survey.

completed all questions asked, and none withdrew their responses during or after the survey.

General findings

The Participants (the Law Alumni')

Respondents provided a number of different responses to the first question: 'What is your current job description?' A summary of the representation of Law Alumni in the survey is set out in Table 1 below.

Table 1

What is your current job description?	Number of Responses
Lawyer	10
Law Graduate/Legal Profession (not admitted)	5
Government	2
Student	1
Migration Agent	1
Other (Self-employed; Business Analyst; Customer Service)	3
Total	22

It is apparent that over 68% of respondents identified as working in the legal profession, which would have impacted the total respondents' ability (and

opportunities) to engage in pro bono work in their chosen profession. The focus of the survey was on Law Alumni who had previously engaged in university pro bono activities, and it would have been expected that many may not have entered legal practice; however, it can be observed that there may be opportunities for pro bono service within other professions such as that of the “migration agent”.⁵⁸

More than 77% of respondents had been employed in their positions for less than three years, although 41% had been in their current job for more than a year, while 14% had been working for less than 6 months. Only 19% of the Law Alumni respondents had been in their positions for more than three years.

Participants’ current pro bono work

Approximately 60% of respondents claimed to be undertaking pro bono work in their present position, mostly on behalf of their firm. When questioned whether they were personally motivated to engage in pro bono service, or whether they did so to meet their firm’s expectations, unsurprisingly more than half of the respondents (approximately 55%) stated that both factors influenced them to undertake pro bono work. Approximately 30% said they did pro bono work because they were personally

⁵⁸ For example, in the Immigration Law Clinic at Bond University, legal practitioners as well as registered migration agents are engaged in pro bono activities such as advising persons on refugee visas or other disadvantaged members of the community with immigration related issues.

motivated, while only 15% stated that they engaged in these activities “because (their) firm expects (them) to”.⁵⁹

Most respondents reported that they spent between 25 – 100 hours per annum on pro bono service. Only 15% spent more than 100 hours, and the same amount spent less than 25 hours on pro bono work. When questioned on the area of law in which they undertook pro bono work, the Law Alumni represented diverse practice areas. More than half of respondents in this group noted ‘Commercial Law’, while 20% respectively cited ‘Family Law’ and ‘Humanitarian Law’. One respondent was engaged in ‘Criminal Law’ and another in ‘Employment Law’.

When questioned about what they enjoyed most about their pro bono work, providing access to justice appeared to be a main motivator, with “access to justice” or “helping others” accounting for nearly 62% of participants’ gratification. Other satisfying aspects mentioned were “having full responsibility”, “interesting work”, “working with a charity” and “keeping legal skills active”.

The survey also questioned the approximately 40% of respondents who did not engage in pro bono work about their reasons for not participating. More than 65% of this group stated that they were not in the legal profession or did not have any opportunities for engaging in pro bono work. The remainder of respondents cited “no time” or a failure to seek out opportunities for pro bono work.

⁵⁹ See Appendix A: Law Alumni Survey, Question 5.

Participants' University pro bono experience

As noted, all Law Alumni had previously participated in the Bond Law Clinic. Nearly 70% had undertaken commercial law work, while 18% had volunteered at a community legal centre, and the remainder had volunteered at Youth Advocacy Centre and Indigenous Affairs. All participants reported positive benefits from their pro bono experience at university. Many respondents identified multiple benefits, but all of the positive respondents acknowledged the practical experience that their involvement provided in either dealing with clients or enhancing their legal skills, or both. A better understanding of access to justice issues (12%) as well as networking opportunities with lawyers (nearly 42%) were also acknowledged as positive benefits.

When asked about 'the most satisfying aspect of pro bono activities at university', by far the most cited reward was "helping people" – which nearly 77% of respondents reported. Approximately 12% regarded the practical experience as the most satisfying aspect, while two respondents cited "a sense of achievement" and "building confidence" as the most rewarding aspect of their pro bono involvement.

More than 88% of respondents who engaged in university pro bono activities said they would recommend participation in pro bono activities to law students. Cautions expressed by participants included: the need to gain other work experience; not providing an opinion on the spot if uncertain; fully committing to reap the benefits; and ensuring the clinic is properly organised. Approximately 50% of these respondents acknowledged that university pro bono experienced made them aware

of access to justice issues; however, the remainder reported that the experience had no impact on their attitude towards pro bono, mostly because they already had an understanding of the importance or value of pro bono service.

In response to the final survey question, approximately 78% of respondents were in favour of lawyers undertaking pro bono work. The most important reason mentioned was assisting with access to justice (55%), while some respondents cited the opportunities for learning (23%) and keeping lawyers “grounded” (18%) as relevant considerations.

Discussion of findings

Although only 60% of respondents claimed to be involved in pro bono work, it should be observed that of the remaining 40%, most of them were either not working in the legal profession or did not have any opportunities for engaging in pro bono work. In real terms, only 2 of the respondents actively declined to do pro bono work.

From a motivational perspective, it is noteworthy that approximately 85% of respondents cited personal motivation as their reason for engaging in pro bono work, either being entirely self-motivated (30%), or being self-motivated as well as complying with their firm’s pro bono practices (55%). Only 15% did not participate of their own volition.

In parallel with their current motivations as practitioners, it is significant that nearly 77% of alumni respondents reported altruistic motives such as “helping people” as their prime reason for previously undertaking pro bono at university. While there were other considerations such as “the practical experience” and “a sense of achievement”, these were not regarded as chief considerations.

These pervasive sentiments were also reflected in the final question, which saw approximately 78% of respondents being in favour of lawyers undertaking pro bono work. Unsurprisingly, the most important reason mentioned for this viewpoint was assisting with access to justice (55%), which resonated with their reported altruistic motives.

Whilst the study was admittedly limited in its reach as only 20% of the contacted alumni responded, it is evident that most respondents exhibited an overwhelmingly positive approach towards ongoing pro bono service and a tendency to be self-motivated in engaging in these activities.

The results of this pilot study are in direct contrast to a 2015 study undertaken by McKeown’s in the UK, which recorded data from 44 student survey responses.⁶⁰ In that study, only 26% of respondents who provided a reason for undertaking voluntary work, reported that it was not for personal benefit (e.g., “giving something back”). The data showed that respondents would generally have a desire to attain some

⁶⁰ McKeown, P. Law Student Attitudes towards Pro Bono and Voluntary Work: The Experience at Northumbria University’ (2015) 22(1) *International Journal of Clinical Legal Education* 1, pp.23.

personal gain for their altruistic actions.⁶¹ However, the data did indicate that while undertaking pro bono work did not necessarily influence their commitment to social justice, it did increase their awareness of social or economic issues.⁶² McKeown further observed that "...the empirical evidence to date suggests that pro bono and clinical legal education does not instil a sense of public service or altruism within law students..."⁶³

In another UK initiative, law students at Northumbria University were invited to enter an essay competition entitled "Pro Bono: What's in it for Law Students?"⁶⁴ The essays indicated that students generally understood that pro bono was an important aspect of the legal profession and involved working for the benefit of vulnerable and indigent clients. The broad categories of reasons provided by students as reasons for undertaking pro bono included public service, skills, employability, networking, experience and satisfaction.⁶⁵

⁶¹ Ibid, (2015).

⁶² Ibid, (2015), pp.28.

⁶³ Ibid, (2015), pp.18-9.

⁶⁴ McKeown, P. 'Pro Bono: What's in it for Law Students? Student's Perspective (2017) 24(2) *International Journal of Clinical Legal Education* 43, pp.56-7.

⁶⁵ McKeown, P. 'Pro Bono: What's in it for Law Students? Student's Perspective (2017) 24(2) *International Journal of Clinical Legal Education* 43

THE CLIENT SURVEYS

Methodology and Participants

The Clinic Client survey involved the collection of both quantitative and qualitative data through a Survey Monkey⁶⁶ survey instrument.⁶⁷ Clients of the Bond Commercial Law Clinic were surveyed over the course of approximately five years by way of a post-service email from the clinic, inviting recipients to participate in an anonymous survey relating to their overall experience with the clinic. One hundred and twenty-nine (129) responses were received in response to approximately 450 emails sent, a response rate of slightly in excess of 28%. The qualitative and quantitative data recorded from the client feedback provided insight into the experience of, and perceived benefits received by the Clinic Clients.

The Client Survey is attached marked '**Appendix B**'. In summary, the short anonymous survey consisted of seven questions, in both multiple choice and open-ended form. It firstly sought to establish whether clients were an owner of a small business, someone who was thinking about starting a small business, or a person involved with a not-for-profit organisation. It went on to record where they had heard about the clinic's services and the type of matter they had sought advice on during their appointment.

⁶⁶ An online survey platform: See <<https://www.surveymonkey.com/mp/australia/>>.

⁶⁷ See Appendix B: Clinic Client Survey.

The remaining four questions dealt with the quality of their experience with the clinic, whether they would recommend its services to business associates and friends, and finally, they were able to provide comments and a brief testimonial of their experience, should they choose to do so.

General findings

The Participants and Matter Types

More than 80% of the respondents were the owners of small businesses, nearly 11% were thinking of starting a business and approximately 8.5% were involved with not-for-profit organisations. Table 2 (below) sets out the representative numbers of participants.

Table 2

You are?	Number of Responses
The owner of a small business	104
Thinking of starting a business/entrepreneur	14
Involved in a not-for-profit organisation	11
Total	129

In the comment section it transpired, however, that a few of those identifying as “owner of a small business” were in fact either partners in a small business or had previously owned a small business. No distinction was made between these participants. Also, one ‘not-for-profit’ respondent indicated that they were thinking about starting a not-for-profit organisation – again no distinction was made here.

In respect of the types of matters on which clients consulted the clinic, a list of legal matter types was provided in Question 3 of the Clinic Client Survey,⁶⁸ and participants were asked to tick the relevant boxes that applied. Several respondents ticked more than one box. By far the most common type of advice sought related to ‘Disputes’, which over 30% of respondents indicated as their matter type. Another frequent problem which arose were contractual matters – over 23% of participants reported ‘Contracts’ as their type of matter.

Other relatively frequently recurring issues involved advice or assistance with: “Business structures” (nearly 18%); “Debt recovery” (nearly 17%), and “Intellectual Property, e.g., Trademarks and Copyright” matters (slightly over 15%). “Risk management and insurance” accounted for just under 10% of enquiries, and “Consumer protection and Competition regulation” and “Leasing” each were approximately 8% of enquiries. The remaining issues – “Franchising”, “Licensing”

⁶⁸ See Appendix B: Clinic Client Survey.

and “Human resources management and Industrial relations” – occurred infrequently, accounting for only around 5% of enquiries collectively.

The Client Experience

The main focus of the Clinic Client Survey was to record clients’ impressions and feedback on the clinic and the advice provided, as well as their level of satisfaction with the service provided. Questions 4, 5, 6 and 7 of the survey accordingly dealt with aspects of the clients’ experience of clinic services, including: the quality of the advice received; practicality of the advice received; professionalism of the clinic administrator; professionalism of the Bond Law Clinic reception staff; professionalism of the lawyer who advised them; and professionalism of the students who assisted the lawyer.

In respect of Question 5: ‘Overall, how would rate the quality of your experience at the Bond Law Clinic?’, the response was overwhelmingly positive. 70% of respondents reported their experience to be “Excellent”, 17% indicated that it was “Very good”, and 4% ticked “Acceptable”. Only 2% of respondents indicated that they would rate their experience as “Poor”.

Unsurprisingly, in view of the positive responses above, 124 (97%) of the 129 respondents stated in Question 6 that they would recommend the clinic to business associates and friends, with only 3% asserting the contrary.

A significant number of respondents (76 of the 129) took the opportunity to comment and to provide testimonials in response to the last survey question, Question 7. By far the most frequently mentioned perceptions of their clinic experience were (in order of incidence): They reported being “appreciative” or “appreciated” the service (30 comments); they saw the clinic staff and volunteers as “helpful” or “friendly” (22 comments); they thought the advice provided was “good” or “relevant” (21 comments); and they perceived the clinic and volunteers as “professional” (20 comments).

Other comments which were repeated by a number of respondents related to: their satisfaction and the excellent quality of the service (14 comments) and their intention to recommend clinic services to others (13 comments). Other adjectives used to describe their clinic experience were: “fantastic”, “beyond expectations” and one respondent referred to volunteer lawyers as “easy to talk to”.

There were only three negative comments by clients, which related to: the lack of follow-up representation, as the clinic does not represent clients but only provides legal advice (one comment); and the lack of time available for consultation, as appointments in the clinic typically last thirty to thirty-five minutes each (two comments).

Some responses were very detailed and dealt with the positive resolutions or outcomes provided by the clinic; for example, one client commented:

As a not for profit and recently incorporated community service organisation we needed guidance in establishing a constitution. We realised we required the assistance of a legal adviser but could not afford to pay for the advice but knew of the University's commitment to the community. From my first contact to the interview with the leader and student I could not have felt more confident that I would be looked after. How I was looked after was well beyond my expectations. Professional, courteous and prompt are the words that come to mind in describing the outcome of my visit.⁶⁹

A number of respondents mentioned the high cost of legal advice, and one client expressed their appreciation as follows:

It was good to chat to professionals about my query and be satisfied that I was on the right path instead of being bullied by a wealthier outside company with its demands. To be offered reassurance from a professional team at no cost was really appreciated, as when in small business, some of these incidences that are sent to challenge us, really blow the budget - and we don't have the budget to spend on legal advice. I would highly recommend any other business friends to seek advice from the Bond Law Clinic if they needed assistance, and also I am happy to see that a lot of law mentors offer their

⁶⁹ Response to Clinic Client Survey, Appendix B (2018).

valuable time to assist graduates and sit in on the meetings to offer their professional advice.⁷⁰

Another client stated, with regards to the cost of legal advice:

I run a small business, with costs left right and centre. Until you grow it's hard to afford legal advice and sometimes feel like giving up. This service is incredible as far as I'm concerned, and finally launched the product in question with the help of The Clinic. I was happy with the service, but more importantly felt confident with the advice.⁷¹

Some clients commented on the need for access to justice, for example:

This is an excellent community service initiative by the Law Faculty, Bond University. Legal advice is generally considered very costly and some needy people might miss out on getting justice. This service is particularly helpful for such people. In my free 30-minute session, none of the staff had rushed me and listened to my requirements with great patience. The end result (as a final draft of the terms & conditions) that they delivered has filled all the gaps after just 1 consultation! :) Thank you all who are involved in this initiative!⁷²

Several clients were appreciative of the follow-up advice, as in this case:

⁷⁰ Response to Clinic Client Survey, Appendix B (2018).

⁷¹ Response to Clinic Client Survey, Appendix B (2018).

⁷² Response to Clinic Client Survey, Appendix B (2018).

While the in-clinic experience was excellent, it is the follow up email with links, documents and other helpful tips that really was above and beyond. The Bond Law Clinic offered us more for free than we now get from paid legal services. Cannot recommend them highly enough. Thank you.⁷³

None of the respondents expressed any concerns or dissatisfaction about the presence of students in the interviews; to the contrary, at least seven respondents commented positively on the value of the clinic experience for students and the attitudes of the volunteer students involved.

Discussion of findings

Client feedback on the clinic experience was overwhelmingly positive, with 87% of Clinic Clients perceiving the quality of their clinic experience to be either “excellent” or “very good”. Unsurprisingly, given the positive responses, nearly all (97%) of the respondents said they would recommend the clinic to business associates and friends. Whilst the reported positive outcomes by clients can be regarded as anecdotal rather than of any statistical relevance, they provide valuable insight into the client experience and perceived benefits of the pro bono clinic.

Significantly, most clients expressed appreciation and gratitude for the services provided, with only three negative comments overall. One of these comments noted

⁷³ Response to Clinic Client Survey, Appendix B (2018).

the lack of follow-up representation – however, this could be due to the structure of the clinic, which provides for legal consultations rather than ongoing legal representation. Considering that all lawyers volunteer in the clinic after a full day at work, it could be argued that the clinic services are appropriately limited to a manageable scope. Furthermore, many other clients reported their gratitude for the additional benefit of receiving follow-up written advice after their appointments.

It may be observed that the clinic differs from similar CLE models which are for academic credit where there may be a full-time solicitor providing advice or client representation. The comments exhibited an understanding by clients of the alternate purpose of the clinic, which was to provide students with a learning experience. Comments such as “Win! Win!” and “this must be a great education benefit to the law students, having mentors with real experience” were used to describe the perceived benefits to students.⁷⁴

IV CONCLUSION

This article investigated two aspects of a pro bono clinic, namely, the factors surrounding continuing pro bono service once a group of law graduates entered legal practice, and the perceived benefits reported by clients of the same law clinic over a period of approximately five years. Although this pilot project provided some

⁷⁴ Responses to Clinic Client Survey, Appendix B (2018).

valuable insights in relation to these issues, a comprehensive national survey of pro bono initiatives would be required to provide persuasive data on the topics examined here.

The survey findings in respect of the Law Alumni support the contention that most of the participants surveyed appeared to be self-motivated and committed to the cause of providing access to justice, an attitude that had presumably carried over from their student days. This was evident from most participants' comments that 'helping people' had been the most satisfying aspect of their student pro bono experience. Thus, altruistic motives featured significantly in the surveyed group, both in their student experience as well as their current pro bono service.

The findings in relation to practitioners' current motivations resonate with the 2016 survey findings of Bartlett and Taylor, which identified "access to justice" as a major motivator in the provision of pro bono service by respondents, and their finding that motivations for undertaking pro bono lawyering were largely internal or intrinsic.⁷⁵

These findings diverge from the perceptions of the UK survey participants discussed by McKeown, where only 26% of respondents reported that their volunteering was not for personal benefits.⁷⁶ He pointed out that extrinsic motivations had been criticised within education because it was less likely that students would partake in

⁷⁵ Bartlett, F. & Taylor, M. 'Pro Bono Lawyering: Personal Motives and Institutionalised Practice' (2016) 19(2) *Legal Ethics* 260-280, pp.269.

⁷⁶ McKeown, P. 'Law Student Attitudes towards Pro Bono and Voluntary Work: The Experience at Northumbria University' (2015) 22(1) *International Journal of Clinical Legal Education* 1, pp.27.

something without a reward. He pointed out, however, that studies also showed that students' attitudes could be affected by their pro bono experience, even if originally done for extrinsic factors, because it opened their eyes to the situation of real-life people.⁷⁷

Due to the lack of comprehensive data on these issues in both the UK and Australia it would be unwise to generalise and make sweeping statements unsupported by empirical evidence; however, both of the Australian surveys discussed above point to a tendency by Australian practitioners involved in pro bono service to be personally or intrinsically motivated to do so. Additionally, "access to justice" or "helping people" can be identified as the strongest motivating factor emerging in both of the research findings.

In respect of the Clinic Client surveys undertaken, it was evident that the responses were almost entirely and persuasively positive, with negligible complaints. This pointed towards a deep appreciation by members of the community — in this case small business owners and people associated with not-for-profit organisations — for the free legal services provided to them. Admittedly, it may be difficult to measure the outcomes of pro bono services in general, due to their diversity and range of objectives, and whether or not clients had achieved a successful resolution of their matters. However, factors such as the effective delivery of access to justice and client

⁷⁷ McKeown, 'Pro Bono: What's in it for Law Students? Student's Perspective (2017) 24(2) *International Journal of Clinical Legal Education* 43, pp.77-8.

satisfaction, are arguably convincing barometers by which to measure the success of a clinic, and a compelling endorsement for the ongoing provision of pro bono services.

RESEARCH-BASED CLINICAL LEGAL EDUCATION: A CONTRADICTION IN TERMS OR A WIN-WIN? LESSONS FROM A UK PILOT STUDY.*

Lisa Whitehouse, University of Hull¹

INTRODUCTION

This article provides an account of a project (funded by the Ferens Education Trust) which is designed to enhance clinical legal education (CLE) provision within my own institution, develop networks with local stakeholders, promote civic engagement, supplement over-stretched advice provision and elicit valuable research data. The intention in providing a ‘warts and all’ account of how this project developed is to offer an insight into the trials and tribulations of setting up such a scheme, to offer comfort to those who, like me, are new to this kind of task and, to assist in efforts to avoid reinventing the wheel. Perhaps more importantly, it aims also to highlight the potential for CLE schemes to facilitate research.

It would seem that in many UK law schools, CLE is perceived as being beneficial for students, communities and stakeholders but rarely is it expected to give rise to substantive research. This has the potential to ghettoize CLE, to make it the preserve

* Thanks are due to the anonymous reviewer for their helpful comments on an earlier version of this article.

¹ Dr. Lisa Whitehouse is a Reader in Law at the University of Hull

of non-research active colleagues and a task separate (often physically and metaphorically) from the rest of the academic community. In an effort to broaden interest in and thereby increase the provision of CLE, with all its associated benefits² this article offers a case study of how CLE can derive from and give rise to research in all its forms (i.e., data, outputs and 'impact').³

The project in question focuses on the issue of housing possession and derives from my earlier research which suggested that a high percentage of possession cases are adjourned for reasons including unresolved housing benefit claims,⁴ and that, due to a lack of accessible legal advice, occupiers may be missing out on measures designed to protect them against eviction.⁵ The aim therefore was to find a way of addressing these issues by drawing on available resources, most notably, the student cohort. The initial idea was to better prepare occupiers threatened with loss of home for

² For an account of the benefits of CLE see, for example, Marson, J., Wilson, A. & Van Hoorebeek, M. 'The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective' (2005) 7 *Int'l J. Clinical Legal Educ.* 29 and Thanaraj, A. 'Understanding How a Law Clinic Can Contribute towards Students' Development of Professional Responsibility', (2016) 23 *Int'l J. Clinical Legal Educ.* 89.

³ Research impact is defined as "... an effect on, change or benefit to the economy, society, culture, public policy or services, health, the environment or quality of life, beyond academia." REF2021, *Draft Guidance on Submissions*, REF 2018/01 (July 2018), Annexe C, para. 4.

⁴ See, for example, Whitehouse, L., Bright, S. & Dhami, M. K. 'Improving Procedural Fairness in Housing Possession Cases', (2019) 38:3 *CJQ* 351 and Whitehouse L., Bright, S., Dhami, M. K. & Connor Desai, S. *Judicial Decision-Making in Housing Possession Cases*, https://www.law.ox.ac.uk/sites/files/oxlaw/judicial_decision-making_bulletin.pdf.

⁵ See, for example, Bright, S. & Whitehouse, L. *Information, Advice and Representation in Housing Possession Cases*, (April 2014) available at https://www.law.ox.ac.uk/sites/files/oxlaw/housing_possession_report_april2014.pdf and Bright, S. & Whitehouse, L. 'Does the current housing possession process provide effective access to justice?' (2014) 164.7611 *New Law Journal* 16-17.

their court hearing through the provision of a regular 'Clinic on Evictions and Repossessions' (the CLEAR).

While CLE remains an emerging feature of UK law schools,⁶ it was possible to draw on the experience of similar projects undertaken at other institutions, including the University of Sheffield (where students participate in the local court's Personal Support Unit)⁷ and UCL's Integrated Legal Advice Clinic based in Stratford.⁸ The original plan was to staff the CLEAR with Hull Law School students (particularly those involved in the Law School's 'Legal Advice Centre'),⁹ representatives of local advice agencies, mental health support workers and representatives of the Housing Possession Court Duty Scheme (HPCDS). The aim being to inform, support and advise occupiers so that they could engage fully with the legal process and, where possible, assist them in avoiding loss of home.

In addition, the project was designed to gather quantitative data on the impact of the CLEAR (including the number of hearings and the outcomes arising from them both before and after the introduction of the CLEAR) and qualitative data on the experience of occupiers of the arrears and possession process (through the completion of a questionnaire and/or interviews). Ultimately, the hope was that the CLEAR would enhance access to justice for occupiers by offering them free multi-

⁶ See, for example, Marson, et al. (n.2), pp.29.

⁷ See <https://www.sheffield.ac.uk/law/about/psu>.

⁸ See <https://www.ucl.ac.uk/access-to-justice/what-we-do/ucl-integrated-legal-advice-clinic-ucl-ilac>.

⁹ See <https://www.hull.ac.uk/faculties/fblp/slp/more/legal-advice-centre.aspx>.

agency advice while ensuring the more effective use of judicial time by, for example, avoiding the holding of hearings that were certain to lead to an adjournment. This scheme seemed particularly timely given that moves to simplify access to the legal system through the proposed “Online Court” will not apply to possession hearings,¹⁰ the specialist “housing court” proposed by the Government is still in the embryonic stage,¹¹ and the “Breathing Space” initiative (designed to give individuals in debt more time to resolve their financial difficulties) will not apply to “ongoing liabilities” such as rent or mortgage payments.¹² Also, with 21.9% of its population “struggling with debt”,¹³ the recent and continuing closure of advice providers such as the Community Legal Advice Centre (which closed in March 2013),¹⁴ and the roll out of Universal Credit, Hull seemed a particularly apt locality for this project.

In offering evidence of the potential for CLE initiatives to serve not only the interests of students and the public but also researchers, this article begins by establishing the

¹⁰ Lord Justice Briggs, ‘Civil Courts Structure Review: Final Report’ (2016), para. 6.95., <https://www.judiciary.gov.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf>.

¹¹ See <https://www.conservatives.com/sharethefacts/2017/10/sajid-javid-fixing-injustices-in-our-housing-market> and Smith, D. ‘We need a Housing Court’, *Law Society Gazette* (26.02.2018) at <https://www.lawgazette.co.uk/practice-points/we-need-a-housing-court/5064909.article>.

¹² HM Treasury, Breathing space scheme: response to policy proposal, June 2019, para. 3.31, see https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810058/____17June_CLEAN_response.pdf

¹³ Money Advice Service, ‘Press Release: One in six adults struggling with debt worries’, (10.03.2016), <https://www.moneyadviceservice.org.uk/en/corporate/one-in-six-adults-struggling-with-debt-worries>.

¹⁴ See <https://www.lawgazette.co.uk/law/laa-acts-after-firms-withdrawal-leaves-legal-aid-gap-in-hull/5054621.article>.

context of the project and how my previous research identified issues within housing possession cases that could potentially be 'solved' through the introduction of a CLE scheme. This is followed by a chronological exposition of the background, aims and methodology of the project and the progress made to date. In particular, it focuses on how the information gathered during the initial stages of the project impacted on thoughts regarding the viability and potential usefulness of the CLEAR. The article concludes by arguing that CLE should no longer be viewed as a largely non-research based activity but rather as the means by which we can generate substantial and significant research data.

THE 'PROBLEM' – INFORMATION DEFICITS IN HOUSING POSSESSION CASES

A summary of the legal process of housing possession

In 2018 there were 19,508 claims for possession issued by mortgagees, 23,422 by private landlords and 74,980 by social landlords in England and Wales.¹⁵ While possession may be sought for a number of reasons, the vast majority of these cases will arise as a result of missed mortgage or rent payments.¹⁶ The procedures and

¹⁵ Ministry of Justice, 'Mortgage and Landlord Possession Statistical Tables: January to March 2019'.

¹⁶ See, for example, Whitehouse, et al., (n.4), pp.353. A postal survey of social landlords in 2002/3 found that almost 98% of actions entered in court were due to rent arrears, see Pawson, H., Sosenko, F., Cowan, D., Croft, J., Cole, M. & Hunter, C. *The Use of Possession Actions and Evictions by Social*

rules that apply to these cases vary depending on the type of claimant involved. When a mortgagee is seeking possession, which they must now do via a court order,¹⁷ the court may adjourn, suspend or postpone possession if the mortgagor is likely to be able to pay any sums due under the mortgage within a reasonable period.¹⁸ If not, immediate possession must be ordered, which means possession typically within 28 days.

If the claimant is a social landlord then the court has discretion to make an order for possession “if it considers it reasonable”, provided there is unpaid rent,¹⁹ or (for housing associations) if “some rent lawfully due is unpaid” or “the tenant has persistently delayed paying rent”.²⁰ If the judge decides that possession may be appropriate there is also discretion as to whether to order outright possession or to postpone or suspend it, and, if so, upon what terms.²¹ Housing Associations can claim possession under a mandatory ground if there are at least eight weeks rent arrears,²² but the use of Ground 8 is controversial and many housing associations

Landlords (London: ODPM, 2005), pp.40. See also Neuberger, J. *House Keeping: Preventing homelessness through tackling rent arrears in social housing* (London: Shelter, 2003), pp.12.

¹⁷ Consumer Credit Act 1974, s 126.

¹⁸ Administration of Justice Act 1970, s 36.

¹⁹ Housing Act 1985, Sched 2, Ground 1 (local authority) and Housing Act 1988 Sched 2, Part II, Ground 10 (Housing Association).

²⁰ Housing Act 1988, Sched 2, Part II, Grounds 10 and 11

²¹ Housing Act 1985, s 85 (local authority) and Housing Act 1988, s 9 (housing associations).

²² Housing Act 1988, Sched 2, Part II, Ground 8 – the 8 weeks applies to weekly or fortnightly tenancies.

appear not to use it.²³ They may also use the accelerated possession procedure under s. 21 of the Housing Act 1988 (HA 1988) in order to recover possession of an “assured shorthold tenancy” (provided that there was a written tenancy agreement and two months’ notice was given and has expired). However, it seems that many social landlords choose not to use this process, with Shelter noting that “this procedure is almost exclusively used in the private rented sector, although a small proportion of social tenancies may also be dealt with in this way.”²⁴

It is private landlords therefore who tend to make use of this opportunity to obtain an order for possession without the parties having to attend court and have a hearing. In effect, possession is automatic under s. 21 of the HA 1988 if it is an assured shorthold tenancy that has been in effect for at least six months, any fixed contractual term has expired, and the correct notice has been given (neither default nor rent arrears are necessary). While there are moves to reform the s. 21 procedure, it will take time for those changes to be implemented.²⁵

²³ A study in 2005 found that about one-third of housing associations, and one-half of London based housing associations, were making some use of Ground 8, see Pawson, et al, (n.17), pp.40, ch.5.

²⁴ Shelter, *Eviction Risk Monitor*, (December 2012), pp.5. See https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/eviction_risk_monitor_2012.

²⁵ See for example, Cross, M. ‘Government promises private tenancy law reform - but does not say when’, *Law Society Gazette* (15.04.2019) available at <https://www.lawgazette.co.uk/law/government-promises-private-tenancy-law-reform-but-does-not-say-when-/5069991.article> and Ministry of Housing, Communities & Local Government, ‘Government announces end to unfair evictions’ Press Release 15.04.2019, available at <https://www.gov.uk/government/news/government-announces-end-to-unfair-evictions>.

Defences to a possession claim

Defences to a claim for possession are relatively rare given that they are limited to situations in which the mortgage contract can be shown to be unlawful or unenforceable, for example, where fraud or undue influence was used to secure the agreement of the mortgagor. The position is different, however, in relation to the Equality Act 2010 (EA 2010), European Convention on Human Rights (ECHR) and the Human Rights Act 1998 (HRA 1998). Claims arising under these provisions do constitute a defence to possession for the reason that, as Lord Bingham of Cornhill explains, “Parliament has enacted that discriminatory acts... are unlawful. The courts cannot be required to give legal effect to acts proscribed as unlawful. But I would not expect such a defence, in this field, to be made out very often.”²⁶

Similarly, in respect of social landlords, an Article 8 defence under the HRA 1998 (requiring a right to respect for the home) or a defence under the EA 2010 (e.g. a disabled person facing eviction because of something arising in consequence of his or her disability)²⁷ requires the court to consider the ‘proportionality’ of ordering possession.²⁸ According to *Manchester City Council v Pinnock & Ors* [2010] UKSC 45,

²⁶ *Lewisham LBC v Malcolm* [2008] UKHL 43 at 19. See also *Akerman-Livingstone v Aster Communities Ltd* [2015] UKSC 15 at 17 per Lady Hale.

²⁷ Equality Act 2010, ss 15 and 35. Proportionality may also need to be considered if a defence under Article 8 of the Human Rights Act 1998 is raised and found to be seriously arguable: *Hounslow LBC v Powell* [2011] 2 AC 186.

²⁸ See, for example, *Aster Communities Ltd v Akerman-Livingstone* [2015] 2 A.C. 1399.

Article 8 need only be considered by the court if it is raised by or on behalf of the defendant.

The importance of information

This very brief summary of the legal rules relating to possession claims highlights a particular theme within housing possession cases which is that, in many cases, judges have discretion to delay or deny possession but only where they have information sufficient to enable them to exercise that discretion. That information must be relevant to the decision which, in relation to mortgage cases, must relate to the mortgagor's ability to repay the arrears within a reasonable period, and in relation to social landlord cases it should relate to "all relevant factors".²⁹ In relation to the latter this might, for example, include the length of occupancy, the age of the tenant and any health difficulties.³⁰

The occupier has two opportunities to supply this type of information to the court: through the completion of the defence form,³¹ which can be submitted online,³² or by

²⁹ *Bracknell Forest BC v Green* [2009] EWCA Civ 238 [22] and *Holt v Reading BC* [2013] EWCA Civ 641 [18].

³⁰ *Woodspring DC v Taylor* [1982] 4 HLR 95.

³¹ For social landlord cases this is N11R available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/688414/n11r-eng.pdf and for mortgage cases it is N11M available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702924/n11m-eng.pdf.

attending the hearing. Empirical studies into the practical operation of the housing possession process, while still relatively small in number and scale, have found evidence that gives rise to concerns regarding the extent to which occupiers take advantage of these opportunities.³³ As regards the submission of information via the defence form, while the Ministry of Justice (MOJ) produces statistics on the number and type of possession claims there is no published data on the number and quality of defence forms submitted. Reference to the small number of empirical studies available on this issue, however, suggest that the proportion of occupiers who file defence forms is low.³⁴ Nixon et al, for example, found that defence forms were completed in fewer than 25% of cases,³⁵ Bright and Whitehouse found that fewer

³² CPR, Part 55 – Possession Claims, 55(14)(1)(b).

³³ See for example, Bright and Whitehouse, (n.5); Burns, A. & Hadfield, T. 'A qualitative research investigation of the factors influencing the progress, timescales and outcomes of housing cases in county courts' (London: MHCLG, Nov 2018); Nixon, J., Hunter, C., Smith, Y. & Wishart, B. 'Housing Cases in County Courts' (Bristol: The Policy Press, 1996); Blandy, S., Hunter, C., Lister, D., Naylor, L. & Nixon, J. 'Housing Possession Cases in the County Court: Perceptions and Experiences of Black and Minority Ethnic Defendants' (London: Department for Constitutional Affairs 11/02, 2002); and Hunter, C. Blandy, S. Cowan, D., Nixon, J., Hitchings, E., Pantazis, C. & Parr, S. 'The Exercise of Judicial Discretion in Rent Arrears Cases' (London: Department for Constitutional Affairs, Research Series 6/05, October 2005).

³⁴ The 2018 Burns and Hadfield study suggests that "in most cases, the tenants do not submit a defence or attend the hearing" see Burns and Hadfield, (n.33), para. 3.1.2.10. Similarly, the 1996 Nixon study found that only 22% of defendants (borrowers and tenants in arrears cases) used the Right of Reply Form, and a further 14% made other written submissions, see Nixon, et al, (n.33), pp.20. The 2005 Hunter Study reports that 3% used *only* written submissions as their form of participation; a further 8% used a written response in addition to attending, Hunter, et al, (n.33), pp.17.

³⁵ Nixon, et al, (n.33), pp.20.

than half of defendants filed a defence form,³⁶ while Whitehouse et al found that forms were submitted in only 15% of the cases they studied.³⁷

Even if the occupier does not submit a defence form in advance of the hearing, they still have the opportunity to inform the judge of their circumstances through attendance at the hearing. Evidence suggests once again, however, that attendance rates are low. Findings published by the MOJ, for example, suggest that “the defendant is often absent on the day of the hearing: evidence from recent court visits suggests that only 50% of tenants attend rent arrears hearings... Consequently, the majority of cases are decided without any defence being presented.”³⁸ These findings were supported by the preliminary report for the Jackson review which described the proportion of tenants attending possession hearings as “depressingly low”.³⁹ Beyond this, official data regarding the number of defendants who attend and whether they are represented is not available. Nixon et al, however, found that only 33% of tenants actively participated in the court proceedings they studied,⁴⁰ while Whitehouse et al found that tenants were present in 41% of the cases they studied.⁴¹

³⁶ Bright and Whitehouse, (n.5), pp.39.

³⁷ Whitehouse, et al, (n.5).

³⁸ Ministry of Justice, *Solving disputes in the county courts: creating a simpler, quicker and more proportionate system*, March 2011, CP6/2011, Cm 8045, para 98. For other studies reporting attendance rates, see Hunter, et al, (n.33), and references therein 16-17 and 24-25.

³⁹ Ministry of Justice, *Review of Civil Litigation Costs, Preliminary Report, Vol 1*, (May 2009), ch.31 para 2.12.

⁴⁰ Nixon, et al, (n.33), pp.18.

⁴¹ Whitehouse, et al, (n.3).

While anecdotal, an Income Officer from a local social landlord recently told me that there is approximately a 50% attendance rate in Hull.

The importance of participation

The question that arises here is whether the completion of the defence form or attendance at the hearing would supply the court with information relevant to the decision. Taking the defence form, for example, there is little in the way of 'joined up thinking'⁴² here for it fails to elicit information that might be crucial to the question of ordering possession. There is, for example, no mention of whether the defendant has a disability or other protected characteristic (which may give rise to a defence under the EA 2010).⁴³ As many occupiers will not have sought legal advice prior to the hearing,⁴⁴ it is highly unlikely that they will be aware of the type of information that they would need to include within the defence form in order to assist them in avoiding possession.

⁴² See Bright and Whitehouse, (n.4), pp.3.

⁴³ See the illuminating account of such a case in practice, albeit based on a mandatory ground for possession, by Loveland, I. "'Human rights' Defences in Residential Possession Proceedings: A Cautionary Tale' (2017) 28 *Kings LJ* 130.

⁴⁴ For an account of the decline in housing work starts since the introduction of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 see Ministry of Justice and Legal Aid Agency, *Legal Aid Statistics quarterly, England and Wales, July to September 2017*, 7-8 and Bright and Whitehouse, (n.5), Ch.4 and pp.66-67.

As regards attendance, several studies suggest that it has potential to impact significantly on the outcome of the case.⁴⁵ The importance of attendance may derive from the ability on the part of the tenant to access free legal advice and representation at the court from the HPCDS.⁴⁶ The changes to legal aid implemented by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012) mean that for many occupiers, attendance at the court on the day of their hearing may be their first and only encounter with a legal advice provider. Described as “catastrophic”⁴⁷ and “a denial of justice”,⁴⁸ LASPO 2012 removed several areas from the scope of legal aid, including welfare benefits, debt (unless it relates to housing debt and the home is at immediate risk), and housing law disrepair.⁴⁹ Households threatened with a court order for possession remain eligible to apply for legal aid under the debt category,⁵⁰ but access to early advice on matters such as managing debt has been severely curtailed.⁵¹ Prior to April 2013, occupiers who qualified for

⁴⁵ See, for example, Bright and Whitehouse, (n.5), pp.46-48; Blandy, et al, (n.33); Ford, J. Kempson, E. & Wilson, M. ‘Mortgage Arrears and Possessions; Perspectives from Borrowers, Lenders and the Courts’ (London: HMSO, 1995); Hunter, et al, (n.33); Nixon, et al, (n.33) ; and Whitehouse, L. ‘A Longitudinal Analysis of the Mortgage Repossession Process 1995-2010: Stability, Regulation and Reform’ in Bright, S. (ed) *Modern Studies in Property Law* (Oxford: Hart Publishing, 2011), pp.151-174.

⁴⁶ For an account of the HPCDS see Bright and Whitehouse, (n.4), pp.59-68.

⁴⁷ Cleghorn, M. ‘LASPO 2012 and Housing Law’ (17 December 2012) Garden Court North Chambers, Housing law resources.

⁴⁸ Civil Justice Council, ‘Written evidence from the Civil Justice Council - LAS 80’ (April 2014), para 19, at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/laspo/?type=Written#pnlPublicationFilter>.

⁴⁹ LASPO, Sched 1, Parts 1 and 2.

⁵⁰ LASPO, Sched 1, Part 1, para 33(1).

⁵¹ See evidence from Citizens Advice Bureaux, Civil Justice Council and Shelter at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/laspo/?type=Written#pnlPublicationFilter>.

legal aid could access civil representation from Law Centres,⁵² or solicitors that held legal aid contracts. There has, however, been a downward trend in the number of these providers. Evidence to the Justice Select Committee on the impact of LASPO reported that in the first year since its introduction, ten Law Centres closed,⁵³ and there was a downsizing of solicitor's firms doing legal aid work⁵⁴ leading to a growth in "advice deserts".⁵⁵ The inability of occupiers to access legally aided advice prior to their court hearing is likely to undermine their ability to identify and access defences to possession. An Article 8 defence on the grounds of lack of proportionality, for example, must be pleaded and sufficiently particularised to show that it reaches the high threshold of being seriously arguable.⁵⁶ It is unlikely, in the few minutes that HPCDS representatives have during busy possession lists⁵⁷ that they will be able to elicit information from the occupier sufficient to enable them to identify a potential defence.

⁵² For more information on Law Centres see <http://www.lawcentres.org.uk/>.

⁵³ Law Centres Network, 'Review legal aid to ensure access to justice: our response to JSC report', (12.03.2015), available at <http://www.lawcentres.org.uk/policy/news/news/review-legal-aid-to-ensure-access-to-justice-our-response-to-jsc-report>.

⁵⁴ Sandbach, J. 'Justice Select Committee evidence on LASPO impacts' (16.05.2014) *Legal Voice*, available at <http://perma.cc/V5ZC-WCGU>.

⁵⁵ Citizens Advice, 'Geography of Advice: An Overview of the Challenges Facing the Community Legal Service' (London: Citizens Advice, 2004), para. 1.6 and Law Society, 'Lack of housing legal aid services is leading to nationwide advice deserts', (27.07.2016).

⁵⁶ *Thurrock Borough Council v West* [2012] EWCA Civ 1435.

⁵⁷ For an account of the manner in which possession cases are listed see Bright and Whitehouse, (n.5), pp.40-45 and Hunter, et al., (n.33), pp.29.

Attendance is significant also for the reason that it provides an opportunity for the occupier to inform the judge about his or her personal situation. As a quote from a judge taken from Bright and Whitehouse's report makes clear, the circumstances of the occupier are,

... absolutely essential... it goes to the issue of reasonableness at the end of the day, what somebody's personal circumstances are, if they've had an awful situation with one of their kids being taken into care, or they've got problems that one of their children has mental health issues. I mean, mental health issues are a big issue because then it's very difficult for people to manage their affairs at all. So yes, I think they are very important.⁵⁸

The concern therefore is that the low level of participation by occupiers coupled with their inability to access legal advice prior to their hearing means that they might not be accessing the full range of protective measures available to them.

In terms of trying to understand why occupiers do not engage in this process, evidence is relatively scant. For some occupiers, acknowledging the problems they are experiencing (which can include not only debt but also bereavement, unemployment, relationship breakdown, mental health issues, etc.)⁵⁹ can prove

⁵⁸ Bright and Whitehouse, (n.5), pp.32.

⁵⁹ Paths to Justice research has found that justiciable problems tend to come in clusters so that occupiers with financial problems are also likely to be experiencing relationship breakdown,

difficult, resulting in a failure to respond to their landlord or lender's attempts at communication. The MOJ observes that "individuals in debt are a group that is difficult to access, and they behave in unpredictable ways; they rarely seek advice and information from the sources that can help"⁶⁰. Some describe this as the "ostrich effect"⁶¹, with a Shelter/YouGov survey finding that 18% of those surveyed said they would not open their post in case it was a bill or a late payment reminder⁶².

Adjournments

In addition to the apparent non-engagement of a large number of occupiers in housing possession cases there is also evidence to suggest that a large number of hearings are adjourned.⁶³ Whitehouse et al.'s recent study, for example, found that 37% of the cases they studied resulted in an adjournment.⁶⁴ This suggests that a considerable amount of time and resources, for the judiciary, parties, court staff, and

consumer problems and ill health. See, for example, Genn, H. *Paths to Justice: What People Do and Think About Going to Law* (Oxford: Hart Publishing, 1999) and Pleasence, P., Balmer, N. J., & Sandefur, R. L. 'Paths to Justice: A Past, Present and Future Roadmap' (London: UCL Centre for Empirical Legal Studies, 2013), pp.36-37.

⁶⁰ Ministry of Justice, 'Solving disputes in the county courts: creating a simpler, quicker and more proportionate system', Cm 8045, para 100.

⁶¹ Shelter/YouGov, 'One in 11 Brits worry they can't pay the rent or mortgage this January' (Shelter/YouGov Survey, 6 January 2014), available at <<http://perma.cc/R8R2-Z6RY>>.

⁶² Shelter/YouGov, '1.4 million Britons falling behind with the rent or mortgage' (Shelter/YouGov Survey, 4 January 2013) available at http://england.shelter.org.uk/news/january_2013/1.4_million_britons_falling_behind_with_the_rent_or_mortgage.

⁶³ See, for example, Whitehouse, et al, (n.4) above; Nixon, et al, (n.33), pp.52-53 and Hunter, et al. (n.33), Table 5, pp.18.

⁶⁴ Whitehouse, et al. (n.4)

representatives, may be being spent on cases that are not resolved. As regards the reasons for adjournments, Hunter et al found that they related to unresolved housing benefit issues;⁶⁵ tenant representation;⁶⁶ a strategy to gain more time for decision-making (in particular to obtain further evidence);⁶⁷ and as a 'standard order' in preference to a suspended possession order, perhaps to support an agreement made between the landlord and the tenant.⁶⁸ Whitehouse et al found that the most common reason related to the issue of housing benefit.⁶⁹ The question arises therefore as to whether the resolution of information deficits prior to the first hearing could avoid the need for a hearing that is very likely to be adjourned.

The themes underlying this evidence are summarised in this quote from a housing advice representative, "Some judges are... becoming frustrated by repeat adjournments, by an increase in litigants in person, and by the inability of defendants to access help before they attend court"⁷⁰. It is these issues that are the driving force behind the CLEAR project and it is these questions in particular that it seeks to answer:

1. Why do occupiers threatened with loss of home not engage with their lender or landlord?

⁶⁵ Hunter, et al. (n.33), pp.18.

⁶⁶ Ibid, (2005).

⁶⁷ Ibid, (2005), pp.106.

⁶⁸ Ibid, (2005), pp.18-19.

⁶⁹ Whitehouse, et al, (n.4).

⁷⁰ Bright and Whitehouse, (n.5), pp.67.

2. Why do occupiers threatened with loss of home not engage in the legal process?
3. What measures might encourage them to engage or to resolve information deficits?

THE 'SOLUTION'?

Initial thoughts

In order to answer the questions posed above and in particular to test whether earlier access to information and support might enhance access to justice, this project aimed initially to offer occupiers attending Hull Combined Court a “one stop shop” of information with the opportunity to talk to Law students, duty solicitors and a range of other relevant agencies, for example, the local Citizens Advice Bureau (CAB) and mental health support workers. The hope was that the CLEAR would identify issues that could usefully be addressed or resolved prior to the hearing and allow occupiers, supported by duty solicitors, to present the judge with the information he or she needs in order to make a fully informed decision. This was intended to lead to the more effective use of judicial time and enhance access to justice for occupiers by offering them free and confidential multi-agency advice.

METHODOLOGY

The project is being implemented in three stages. The first was the feasibility stage (September 2017-September 2018). The second involved the implementation of a pilot study designed to test the viability and effectiveness of the CLEAR (September – October 2018). The third will involve the implementation of a full-scale version of the CLEAR and its adoption within the curriculum during the 2020/21 academic session. This article offers an account of the first two stages.

As regards the research methodology to be adopted, the intention was to gather qualitative data (in respect of why occupiers do not participate in the legal process) through the distribution of a questionnaire and/or interviews. Occupiers attending the CLEAR would be asked to complete a questionnaire (in writing or online) or to participate in an interview (e.g. immediately after their interaction with the CLEAR or via a telephone interview at a later date).

It was the intention also to gather quantitative data regarding the impact of the CLEAR on the number and outcome of possession cases. The plan was to access data on cases heard at Hull Combined Court prior to the introduction of the CLEAR and those heard during and following its implementation. Information received from the MOJ indicates that while the number and outcome of possession claims is publicly

available,⁷¹ other relevant data (e.g. did the occupier attend, were they represented, what was the level of arrears, what was the reason for the outcome including adjournments, etc.) is only available in the court file. It will be necessary therefore to complete a Data Collection and Research application and submit it to the MOJ in order to obtain permission to access the court records. As regards the monitoring of the impact of the CLEAR on cases during its implementation, the possibility of judges completing a very short pro-forma (in writing or possibly online) and submitting that to the research team at the end of each possession list is being explored.

PROGRESSING THE PROJECT

The project began with the appointment of a research assistant (Dr Rachel Dixon, her help has proved invaluable throughout). During the first six months of the project, a number of meetings and observations were conducted including meetings with representatives of the CAB (who run an advice service at Hull court), Registered Social Landlords (RSLs), a High Court Enforcement Officer, a member of the Residential Landlords Association and local judges and court employees. The research team was also able to observe a possession list at Hull Combined Court and the CAB helpdesk held at the court. I was also able to gain valuable guidance on the

⁷¹ Ministry of Justice, 'Mortgage and Landlord Possession Statistics' available at <https://www.gov.uk/government/collections/mortgage-and-landlord-possession-statistics>.

project as a result of a number of presentations at conferences attended by academics and legal practitioners⁷². The insights, information and advice offered during these events proved invaluable in highlighting and addressing the various strengths, weaknesses, opportunities and threats relating to this project. Arising out of these meetings and observations were a number of recurrent themes including: engagement, timing and 'added value', explored in more detail below.

THEMES AND CHALLENGES

How do we get occupiers to engage with the project?

Of the various challenges posed by this project, accessing occupiers who are unable or unwilling to engage with their lender, landlord or the legal process poses perhaps one of the greatest. Solutions to this might have included marketing material designed to entice occupiers to make contact with the CLEAR. This could have been promoted in locations frequented by those in debt or with other issues that tend to be associated with debt such as mental health issues⁷³, e.g. food banks, GPs surgeries

⁷² Including a presentation at Oxford University, see <https://www.law.ox.ac.uk/events/beyond-ivory-tower-case-study-housing>.

⁷³ See for example, Libman, K., Fields, D. & Saegert, S. 'Housing and Health: A Social Ecological Perspective on the US Foreclosure Crisis' (2012) 29.1 *Housing, Theory and Society* 1; Nettleton, S. and Burrows, R. 'When a Capital Investment Becomes an Emotional Loss: The Health Consequences of the Experience of Mortgage Possession in England' (2000) 15:3 *Housing Studies* 463; Royal College of Psychiatrists, 'Debt and Mental Health: What Do We Know? What Should We Do?' (2010) 3, 8; and StepChange, 'Locked Out: How Problem Debt Affects People's Housing Situations', November 2018 available at <https://www.stepchange.org/policy-and-research/locked-out-debt-and-housing.aspx>

(the local CAB offers advice services in GP surgeries which we might have utilised for the purpose of promoting our initiative), debt advice centres, etc. Alternatively, some RSLs indicated a willingness to send material relating to the CLEAR to their tenants in arrears which would have ensured a more targeted campaign that might have encouraged some tenants threatened with eviction to approach the CLEAR.

Ethical considerations

Stage 1 of the project involved general discussions with or observations of members of the “elite” (e.g. judges) and other professionals in respect of their roles and how the CLEAR might add value to the arrears and evictions process. Ethical considerations were therefore relatively minimal at this stage. Stages 2 and 3 however involve students (supervised by a member of the Law School in a manner similar to the Legal Advice Centre) dealing directly with members of the local community who seek support from the CLEAR. This gave rise to more substantial ethical considerations which were addressed as part of the University of Hull’s ethics process (ethics approval was received early in the process). As part of that process, issues relating to accessing people in arrears, data protection, the role of students in the CLEAR, ensuring confidentiality and anonymity, and whether there is the potential for ‘harm’ to students, researchers and participants were discussed. It was decided that provided measures were put in place (e.g. storing data securely,

ensuring that the students receive appropriate training and are adequately supervised, etc.) no significant ethical issues were raised by this project.

We were aware that students would not be able to give legal advice (neither they nor their supervisors held practice certificates or a legal aid contract). They would instead gather information from those who contacted the CLEAR so that the clients could be directed to relevant agencies or provided with targeted information. Insurance was also a further issue which was resolved by linking it to the Legal Advice Centre policy.

Timing

Perhaps one of the most vexing issues concerned the timing of the 'intervention'. The initial thought was that we would hold the CLEAR in the court building on the day of possession hearings. The issue with this is that it would require the court to reschedule its lists so that they are held in the afternoon and it may not be possible to fit all the hearings into this session. Second, for some occupiers this will be too late in the process (e.g. arrears may have accumulated to such an extent that possession is inevitable). Third, the hearing will have already been scheduled and claimants will be entitled to say that they want their 5 minutes⁷⁴ in court, particularly given the fee

⁷⁴ Bright and Whitehouse, (n.5), pp.40-45 and Hunter, et al. (n.33), pp.29.

they will have paid. One local RSL indicated that they pay £325 for every court hearing so once a hearing has been initiated, they would not want to halt the proceedings. Therefore, even if the CLEAR identified cases that were very likely to lead to an adjournment, they would still be heard in any event and even if the hearing is avoided, the occupier will still have endured the 'threat' of court action for several weeks prior to the hearing.

Early intervention therefore seems to be key in preventing 'unnecessary' hearings but as one judge explained it is often only the threat of court action that encourages some occupiers to engage. The question therefore comes back to how do we (with the resources we have) encourage occupiers to engage with us *before* a possession claim is initiated in the court? One RSL did indicate a willingness to send material relating to the CLEAR to their tenants prior to or at the time of serving a 'notice seeking possession'⁷⁵ (the court date is then usually set about six to eight weeks after this).

⁷⁵ For more information see Citizens Advice at <https://www.citizensadvice.org.uk/debt-and-money/rent-arrears/you-are-taken-to-court-for-rent-arrears/#h-notice-to-leave-your-home> and Ministry of Justice at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/806818/Form_6A_INTERACTIVE.pdf

Civic Engagement and adding value?

Another key challenge of this project related to how we 'add value' to the provision already being made by advice services in the locality. If we are attempting to offer advice to occupiers before a claim for possession is initiated, how does that differ from what agencies such as the CAB and charities are already offering? What resources can we draw on that would allow us to offer something of value to current provision? In answering these questions we kept returning to the thought that our 'unique selling point' derived from our students. The students' ability to assist members of the local community by offering them free independent information and support (supervised and supported by appropriate academic colleagues) seemed to be a valuable contribution to the much under-resourced and over-stretched advice providers in Hull. It might also, in particular, enable the students, given their legal knowledge, to identify evidence which would support a defence to possession. As regards the potential benefit to the students, the ability to contribute to and enhance their CLE by offering them a unique opportunity to participate in real cases seemed like an opportunity not to be missed. As Marson et al note, "Clinical legal education... provides numerous advantages to the student cohort and establishes an opportunity for the students to gain important practical experience, whilst enabling them to offer a valuable service to the local community"⁷⁶.

⁷⁶ Marson, et al., (n.2), pp.29.

The benefits of CLE, however, are enjoyed not only by the students taking part and the clients who benefit from their support but by others as part of a symbiotic relationship in which “diverse groups are coming together where there is mutual gain”⁷⁷. In respect of this study, there is the potential for under-resourced advice providers to benefit from the transference of workload away from them and towards the CLEAR. Additionally, this study has the potential to benefit researchers, a point explored in greater detail below.

Location

An important issue in terms of encouraging occupiers to engage with advice providers and the legal process concerned the location of the CLEAR. The original plan to hold it in the court building was rejected for the reason that it was likely to prove daunting for some. Similarly, holding it in a location that required clients to travel might also deter those who cannot afford the time or the additional cost of transport. We could have held the CLEAR at the University which is relatively central to some of the areas that give rise to the largest number of tenant evictions but it might still have proven too daunting for some. We could perhaps have held the CLEAR on a peripatetic basis (e.g. a community space, a supermarket, doctors’

⁷⁷ Boothby, C. ‘Duty Bound - Court Possession Schemes and Clinical Education’, 7 *Int’l J. Clinical Legal Educ.* 58 (2005), pp.59.

surgeries, etc) but this would have involved logistical issues including cost, privacy, security and so on.

THE PILOT STUDY

Following the feasibility study during which these issues were considered, a pilot version of the CLEAR was implemented during September and October 2018. It was decided that the most effective option in terms of the locality of the CLEAR was to offer a 'remote' clinic. This would give occupiers the opportunity to phone or use technology such as Skype to provide information to the students staffing the CLEAR. The students could then direct the occupiers to a relevant agency for advice or provide (under supervision) information and support directly to the occupier. This also allowed students to monitor and respond to CLEAR correspondence remotely, a useful aspect given that the pilot ran outwith semester time.

In order to run the CLEAR on a remote basis it was necessary to obtain two mobile phones, one for the students to use in order to access and respond to answer phone messages and texts left by clients. The other was for the 'supervisor' so that they could be contacted by the students during office hours. It was also necessary to set up a secure storage facility for documents, both physically and online. This was achieved using lockable filing drawers in the CLEAR office and through FileStream,

a password protected online storage facility accessible only by using a University of Hull imaged computer or laptop.

We were fortunate enough to secure the participation of two of the largest providers of social housing in the region. They distributed a leaflet advertising the CLEAR to their tenants who were in receipt of a notice seeking possession (up to a maximum of 100 tenants). This ensured that only those tenants in arrears were made aware of the CLEAR. We deliberately kept the numbers small as we wanted to ensure that we had the resources necessary to meet demand. The social landlords also referred clients to the CLEAR using a 'letter of authorisation' which we drew up stating that:

“I authorise the Clinic on Evictions and Repossession (the CLEAR), University of Hull, to make enquiries and correspond on my behalf. The CLEAR can receive information relating to my circumstances including computer generated information which may be disclosed to third parties. I request that a copy of all correspondence in connection with my case, be forwarded to them also. I agree to my case file being used for the purpose of audit checks with [social landlord].”

My research assistant, one of our CAB trained students and myself monitored the CLEAR email, landline and mobile phones on a rota basis for 8 weeks. Following contact by a client, we phoned them back within three working days and asked them

a set list of questions including, “What are the reasons for the arrears?”, “Are you in receipt of benefits?”. We then met as a team to discuss the information and support we could provide and sent this in writing to the client (using a template letter) within 3 working days. We then contacted the client again two weeks later to follow up on any outstanding issues (e.g. “have your Universal Credit payments started?”) and to offer additional support where appropriate.

Having taken some time to analyse the development and progress of the pilot study, it seems that the process arrived at offers a workable means of offering support to the local community and has the potential to be extended to all occupants in Hull and the East Riding (e.g. advertised generally rather than limited to some social tenants). The plan is to initiate Stage 3 of the project by integrating the CLEAR into the curriculum as a credit bearing module for the 2020/21 academic session. This is to be combined with a family mediation pathway and a Legal Advice Centre pathway so that the students can, in essence, experience working in general legal practice. Assessment will include a mix of self-reflection and observation of their CLE skills, e.g. talking to clients on the phone, researching information and support, letter writing, etc.⁷⁸

⁷⁸ For an insight into how we might assess CLE see Anon, J. G. ‘How Do We Assess in Clinical Legal Education: A Reflection about Reflective Learning’, *23 Int’l J. Clinical Legal Educ.* 48 (2016).

To this extent, I would argue that this scheme does qualify as CLE. Taking Boone et al's definition, it is "a curriculum-based learning experience, requiring students in role, interacting with others in role, to take responsibility for the resolution of a potentially dynamic problem"⁷⁹. In particular, it involves (i) active participation on the part of students (they are not passive observers); (ii) interaction in role (as a support worker); (iii) dynamic nature of the problem (the clients' circumstances are not known in advance nor can they be predicted); (iv) student responsibility for outcome (the students take responsibility for researching the information needed to support their client); and (v) relation to the curriculum (the assessment process offers a formal opportunity for reflection and analysis).⁸⁰ In addition to qualifying as CLE, however, the scheme is designed also to serve research aims.

Gathering research data

CLE has given rise to substantial research for many years.⁸¹ That research, however, has tended to focus on CLE as the subject of analysis, questioning, for example, the

⁷⁹ Boone, A., Jeeves M. & MacFarlane, J. 'Clinical Anatomy: Towards a Working Definition of Clinical Legal Education', 21 *Law Tchr.* 61 (1987), pp.68

⁸⁰ *Ibid.*, (n.79), pp.65-68.

⁸¹ See, for example, Binder, D. A. & Bergman, P. B. (2003) 'Taking Lawyering Skills Training Seriously' *Clinical Law Review* Vol. 10, Fall 301; & MacCrate, R. (2004) 'Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development' *Clinical Law Review*. Vol. 10, Spring.

methods used and their usefulness.⁸² Unusually, this scheme was not intended to be the subject of research but rather to facilitate the collection of substantive research data as the basis for research outputs. The hypothesis underlying the research aspect of this project is that meaningful communication between households and housing providers early in the arrears process reduces the likelihood of court proceedings and eviction. This hypothesis will be tested through the implementation of three broad approaches: exploratory, descriptive and causal. Given that little is known about the experience of occupiers of the arrears process, the work will, by its very nature, be exploratory. The gathering of data on this issue is intended to offer a robust description of the causes of housing debt, how occupiers experience arrears and the threat of eviction and whether there is a causal relationship between early engagement and the avoidance of court action and eviction.

The research project, while employing a mixed-methods⁸³ research approach (with the secondary analysis of social science material and available data being supplemented by the collection of unique primary data, both quantitative and qualitative) focuses mainly on the collection of qualitative data from occupiers. In

⁸² See for example, Blandy, S. 'Enhancing Employability through Student Engagement in Pro Bono Projects', 26 *Int'l J. Clinical Legal Educ.* 7 (2019), and Yackee, J. W. 'Does Experiential Learning Improve JD Employment Outcomes?' (2015) *Wis. L. Rev.* 601.

⁸³ See, for example, Leavy, P. (ed), *The Oxford Handbook of Qualitative Research* (Oxford: OUP, 2014) and Nielsen, L.B. 'The Need for Multi-Method Approaches in Empirical Legal Research' in Cane, P. & Kritzer, H. M. (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, Oxford, 2010), pp.951-975.

order to elicit both quantitative (e.g. age, socio-economic status, ethnicity, etc.) and qualitative (e.g. the impact of Universal Credit) data via random voluntary sampling,⁸⁴ a regional online survey will be distributed. This brings to the fore the difficulties associated with obtaining a sufficient sample size. No incentives or benefits will be offered but efforts will be made to encourage potential respondents to complete the survey through general marketing activities (e.g. posters in food banks, GP's surgeries, etc.) as well as targeted campaigns with relevant agencies (e.g. debt advice agencies, charities, legal practitioners, etc.). The intention is to obtain a minimum of 50 responses. Concerns regarding this form of data collection (e.g. item non-response and measurement error) have been addressed through the careful design of the online questionnaire.⁸⁵

In addition to the regional online survey, the aim is to conduct a degree of "purposeful sampling"⁸⁶ by requesting data from occupiers who approach the CLEAR. This generates specific ethical considerations including ensuring that potential participants are aware of the research element of the project, are able to offer fully informed consent before taking part and do not feel compelled or obliged

⁸⁴ See, for example, Murairwa, S. 'Voluntary Sampling Design' (2015) 4:2 *International Journal of Advanced Research in Management and Social Sciences* 185-200.

⁸⁵ See, for example, Kuha, J. et al, 'Latent variable modelling with non-ignorable item non-response: multigroup response propensity models for cross-national analysis', (2018) 181:4 *Journal of the Royal Statistical Society: Statistics in Society, Series A*, 1169.

⁸⁶ See, for example, Emmel, N. *Sampling and Choosing Cases in Qualitative Research: A Realist Approach* (London: Sage, 2013), Chapter 2.

to participate. In particular it is necessary to ensure that the support offered by the CLEAR is not perceived as being dependent upon the clients' participation in the research. The CLEAR is in essence simply a means of making contact with a hard to reach demographic. In order to make potential clients aware of the research element of the project, a Participant Information Sheet and Consent Form have been designed in such a way as to ensure that consent is freely given and fully informed. In addition, the CLEAR leaflet includes the following statement:

"The CLEAR is a new service run by students and staff at the University of Hull. We are not able to provide legal or debt advice but we can provide other means of support such as helping you to fill in forms. In order to help us understand more about the experience of tenants in arrears, we will ask you to answer a few questions as part of a research project. This is entirely voluntary and refusal to take part in it or to withdraw from it at a later date will involve no penalty or loss. Any information you provide will be kept entirely confidential."

In deciding how best to gather the research data from CLEAR clients, the original plan, to hold interviews immediately after a client visited the CLEAR, became untenable following the decision to hold a remote CLEAR. It was decided instead to request a telephone interview at a time to suit the client or to request that they complete an online survey, with the link to be sent to clients after the follow up correspondence checking on the progress of their case.

The questions posed during the interview and in the questionnaire relate to the occupier's circumstances (e.g. age, ethnicity, income, etc.), their housing (e.g. private landlord, public landlord or mortgagor) and their experience of the arrears process (e.g. level of arrears, did they engage with their lender or landlord and if so at what point and by what means, if not, why not and so on). The hope is that in combination, the regional and CLEAR online surveys will generate responses sufficient to give rise to credible data on the experience of occupiers in arrears.

CONCLUSIONS

This paper has detailed the background to and progress of a pilot study designed to enhance access to justice for occupiers threatened with loss of home. I hope you will forgive the 'thinking aloud' and chronological nature of the commentary but I think it useful to offer an insight into how projects of this kind develop. The funding kindly provided by the Ferens Education Trust allowed us precious time to investigate how best to achieve the aims of this project. The hope is that this article serves as evidence of the potential for schemes designed to enhance the CLE of students to also give rise to benefits in terms of both civic engagement and research. Given the current push towards 'research impact', such schemes must surely be a win-win for all concerned.

LEAN THINKING IN A UK UNIVERSITY LAW CLINIC: A REFLECTIVE CASE STUDY

Alex Nicholson & Dr. Alireza Pakgohar, Sheffield Hallam University¹.

Abstract

A law clinic typically involves staff and students in a range of complex processes that are highly resource-intensive and which have the potential to detract from core value-adding activities. This paper aims to highlight the challenges associated with resourcing a university law clinic, and evaluate the extent to which lean management is able to provide solutions. It is submitted that proactive and deliberate application of lean management philosophies to law clinic process design has the potential to both reduce resource intensity and enhance value. A literature review was conducted in order to identify lean management principles and methodologies that might be applicable. A case study approach was then used to evaluate key resourcing challenges faced by a UK university law clinic and to explore the extent to which lean thinking might help to overcome them. There is very little literature which discusses the application of lean thinking in the higher education sector, and none which considers the university law clinic context

¹ Alex Nicholson is a Principal Lecturer and Deputy Head of Law at Sheffield Hallam University. Dr Alireza Pakgohar is a Senior Lecturer In Business Operations And Systems at Sheffield Hallam University.

specifically. This paper will provide law school leaders with a resource that will enable them to evaluate and design their clinic processes more effectively, improving the wellbeing of clinic staff and enhancing the pedagogical value of clinic work for students. It will also contribute to the emerging body of literature which highlights the benefits of lean thinking within the higher education sector.

I INTRODUCTION

About the Law Clinic at Sheffield Hallam University

The law clinic at Sheffield Hallam University (the '**Clinic**') exists within the Helena Kennedy Centre for International Justice (**HKC**) and is underpinned by the HKC values, which include: access to justice; human rights; ethical practice; and equality². It is regulated by the Solicitors Regulation Authority (which ultimately ensures the quality of the Clinic's advice and associated procedures) and operates on a purely *pro bono* basis, offering legal advice to staff, students and members of the public, across a range of areas of law.

Case work in the Clinic is conducted by undergraduate law students, under the supervision of academic staff who are typically also qualified solicitors. This work includes: interviewing clients; conducting legal research; drafting letters; and operating case management software. For client confidentiality reasons, the Clinic

² Helena Kennedy Centre. Helena Kennedy Centre for International Justice. (2019). Retrieved from: <https://www.shu.ac.uk/about-us/academic-departments/law-and-criminology/the-helena-kennedy-centre-for-international-justice>.

operates within a locked-down space comprising: a reception area; five meeting/teaching rooms; and an open-plan area in which students can complete case work.

The Clinic is currently an optional, 20 credit module for final year undergraduate law students at the university; there are 40 places in each academic year, which are offered on a first-come, first-served basis. Students are organised into 'firms' of six students and assigned a 'firm supervisor', who is both an academic member of staff and an experienced practitioner; many of the firm supervisors are qualified solicitors and retain their practising certificate. The supervisor's responsibility is to lead their firm(s) in taking on and acting for a number of clients over the course of the academic year, whilst at the same time ensuring that the pedagogical value of its activities for the students is maximised throughout. In recent years the Clinic has operated across a wide range of discipline areas, including: wills, family, small claims, company and property. Students gain academic credit for their work by compiling and submitting an individual portfolio, which is formally graded at the end of the academic year.

Background

The Law subject group at Sheffield Hallam University ('**Subject Group**') has a strong reputation for the applied nature of its courses, and in that sense is highly

aligned to its wider organisational strategy³. However, the applied curriculum is becoming a highly competitive space within the market. Whilst the Subject Group was one of the first in the UK to offer its students the opportunity to take part in a law clinic - some 25 years ago - today most university law schools now offer some form of clinic or *pro bono* experience; what was once an "augmented deliverable" for the Subject Group is now an "expected deliverable" within the sector⁴. Therefore, in order to maintain its competitive advantage, the Subject Group has recently established its own fully functioning legal practice, SHU Law Limited ('SHU Law') (a move only made possible in recent years as a result of deregulation within the legal services sector under the Legal Services Act 2007, making it possible for non-lawyers and their organisations to own and manage a legal practice known as an "alternative business structure" or "ABS"), in order to facilitate a significant upscaling of its clinical provision both in terms of student numbers and the time spent by those students within a live-client environment.

The rationale for moving from a university law clinic to an ABS teaching law firm is two-fold. Firstly, this will expand the range of legal activities that can be undertaken, and secondly it will expand the number of students who can participate in clinical activities as part of their studies. It is the second of these two objectives that is the

³ Sheffield Hallam University. *Transforming Lives*. (2017). Retrieved from: <https://www.shu.ac.uk/~media/home/campaigns/files/transforming-lives.pdf>.

⁴ Levitt, T. 'Marketing Success Through Differentiation-of Anything'. (1980). *Harvard Business Review*, 58(1), 83-91

focus of this paper. The intention is to move from 40 students undertaking 20 credits of clinical study in their final year, to *all* students undertaking clinical study, across *all* three years of their programme. Once fully operational, approximately 750-900 law students will be studying within SHU Law at any one time, many of whom will be spending up to three times more of their time engaged in clinical activities than has historically been the case.

The move to SHU Law therefore represents a vast upscaling of the current clinical provision offered by the Clinic. However - as is common within the sector⁵ - the learning and teaching process that operates in the Clinic is resource intensive, and this presents certain challenges that risk being compounded by the planned upscaling.

Given the increasing focus on employability within the higher education ('HE') sector (as evidenced by its key role in the assessment of teaching quality in the UK; see Office for Students, 2018), the value of clinical legal education as a means of preparing students for employment⁶, and the potential for such activities to count as qualifying work experience under the new framework for qualification as a solicitor

⁵ Bilgin, A. A., Rowe, A. D., & Clark, L. 'Academic workload implications of assessing student learning in work-integrated learning'. (2017). *Asia-Pacific Journal of Cooperative Education*, 18(2), 167-183.

⁶ Bleadsdale-Hill, L., & Wragg, P. 'Models of Clinic and Their Value to Students, Universities and the Community in the post-2012 Fees Era'. (2013). *International Journal of Clinical Legal Education*, 19, 257-270.

in England and Wales⁷, it seems likely that many other law schools will also seek to expand their clinical activities in the coming months and years. Using the Clinic as a case study, this paper explores the extent to which lean management principles and methodologies are able to support the development of new and/or revised processes that might assist law clinics - both in the UK and internationally - to enhance their effectiveness, efficiency, scalability, and long-term sustainability.

The paper is organised in six parts. The next section reviews the lean management literature in general and that which relates to HE in particular. Research methodology is discussed in Section 3. A case study analysis of existing Clinic practices and discussion of findings with resultant proposals and recommendations for law clinic process design are then outlined in Section 4. The main conclusions are then presented in Section 5, together with a summary of limitations and suggestions for future research.

II LEAN MANAGEMENT IN THEORY: A VIEW FROM THE LITERATURE

Within operations and process management, 'lean' is a multifaceted and evolving concept, encompassing a collection of related ideas and methodologies, and a range of almost synonymous terms. Its origins can be found in the Toyota Production System which rose to international fame in the mid-twentieth century for its high

⁷ Dunn R., Roper V., & Kennedy, V. 'Clinical legal education as qualifying work experience for solicitors'. (2018). *The Law Teacher*, 52(4), 439-452.

quality and efficient approach to automobile manufacturing and logistics⁸, and then in the seminal work of Krafcik who coined the phrase "lean production"⁹ to describe manufacturing processes and systems that were designed to eliminate wastes (or "muda") and maximise both quality and continuous flow. Krafcik found that such lean management policies had significant potential to enhance both productivity *and* quality. Initially 'lean' was considered to be a purely manufacturing concept, but today it is accepted that lean principles have broader application to operations more generally¹⁰.

Lean production can be divided into five distinct phases that have the potential to assist organisations across the world in all industries to improve their processes and to eliminate their wastes: (1) identify precisely what customers value; (2) establish precisely how that value is delivered by the organisation, and eliminate activities that do not add value; (3) ensure that products and/or information flow(s) seamlessly through the value process; (4) deliver only what is demanded by the customer; and (5) strive for perfection in process design¹¹. Within each of these phases, a myriad of scientific tools and techniques exist that can be utilised to

⁸ see Ohno, T. *Toyota Production System: Beyond Large-Scale Production*, (1988). Cambridge, USA: Productivity Press. (Original work published 1978).

⁹ Krafcik, J. F. 'Triumph of the Lean Production System. Sloan Management'. (1988). *Review*, 30(1), 41-52.

¹⁰ Slack, N., Brandon-Jones, A., Johnston, R., & Betts, A. *Operations and Process Management* (2015). (4th ed). Harlow: Pearson., pp. 364

¹¹ Womack, J. P., & Jones, D. T. *Lean Thinking*. (2003). (2nd ed). London: Simon & Schuster.

analyse existing processes, identify muda, and devise process improvement solutions.

The application of lean thinking in manufacturing has been extensively studied¹². The application of lean principles in the service sector has also been studied for several years¹³. In their study, Piercy & Rich¹⁴ argued that a lean approach can be relatively easy to apply with a minimal investment in training, producing significant improvement across an organisation's activities.

¹² Forza, C. 'Work Organization in Lean Production and Traditional Plants: What Are the Differences?'. (1996). *International Journal of Operations & Production Management*, 16(2), 42–62.; Motwani, J. 'A Business Process Change Framework for Examining Lean Manufacturing: A Case Study'. (2003). *Industrial Management & Data Systems*, 103(5), 339–346.; Kumar, M., Antony, J. Singh, R. K., Tiwari, M. K., & Perry, D. 'Implementing the Lean Sigma framework in an Indian SME: a case study'. (2006). *Production Planning and Control*, 17(4), 407-423.; Pattanaik, L.N., & Sharma, B.P. 'Implementing lean manufacturing with cellular layout: a case study'. (2009). *International Journal of Advanced Manufacturing Technology*, 42(7), 772-779.; Vinodh, S., Gautham, S.G. & Anesh Ramiya R. 'Implementing lean sigma framework in an Indian automotive valves manufacturing organisation: a case study'. (2011). *Production Planning & Control*, 22(7), 708-722.; Forno, A., Pereira, F., & Forcellini, F. 'Value Stream Mapping: a study about the problems and challenges found in the literature from the past 15 years about application of Lean tools'. (2014). *The International Journal of Advanced Manufacturing Technology*, 72(5-8), 779–790.; Bevilacqua, M., Ciarapica, F. E. & Paciarotti, C. 'Implementing lean information management: the case study of an automotive company'. (2015). *Production Planning & Control*, 26(10), 753-768.; Johansson, P. E., & Osterman, C. 'Conceptions and operational use of value and waste in lean manufacturing – an interpretivist approach'. (2017). *International Journal of Production Research*, 55(23), 6903-6915.; Dadashnejad, A., & Valmohammadi, C. 'Investigating the effect of value stream mapping on overall equipment effectiveness: a case study'. (2019). *Total Quality Management & Business Excellence*, 30(3-4), 466-482.

¹³ Womack, J. P., & Jones, D. T. *Lean Thinking* (2003). (2nd ed). London: Simon & Schuster.; Atkinson, P. 'Creating and implementing lean strategies'. (2004). *Management Services*, 48(2), 18-33.; Abdi, F., Shavarini, S. & Hoseini, S. 'Glean lean: how to use lean approach in services industries?' (2006). *Journal of Services Research*, 6, 191-206.; Piercy, N., & Rich, N. Lean transformation in the pure service environment: the case of the call service centre. (2009). *International Journal of Operations & Production Management*, 29(1), 54 - 76.; Leyer, M., Vogel, L., & Moormann, J., 'Twenty years research on lean management in services: results from a meta-review'. (2015). *International Journal of Services and Operations Management*, 21(4), 389-419.

¹⁴ Piercy and Rich, (2009).

As lean thinking in practice has moved beyond the manufacturing context, so too has the literature. However, there are still many industries/sectors in relation to which the applicability and benefits of lean thinking remain under-researched, and recent comprehensive and influential literature reviews call for the implementation of lean thinking in a wider range of fields¹⁵.

In response to these calls, very recent studies have begun to evaluate the utility of lean thinking within public sector¹⁶ and even education contexts¹⁷, but its explicit application within HE has thus far been relatively limited¹⁸. Some research has emerged which specifically evidences the benefits of lean thinking for the sector, although it typically relates to central university functions¹⁹ rather than curriculum

¹⁵ Marodin, G. A., & Saurin, T. A. 'Implementing lean production systems: research areas and opportunities for future studies'. (2013). *International Journal of Production Research*, 51(22), 6663-6680.; Jasti, N. V. K., & Kodali, R. 'Lean production: literature review and trends'. (2015). *International Journal of Production Research*, 53(3), 867-885.

¹⁶ Kregel, I., & Coners, A. 'Introducing Lean Six Sigma to a German municipality: an action research report'. (2018). *International Journal of Lean Six Sigma*, 9(2), 221-237.

¹⁷ Sfakianaki, E., & Kakouris, A. 'Lean thinking for education: development and validation of an instrument'. (2019). *International Journal of Quality & Reliability Management*.

¹⁸ Hess, J.D., & Benjamin, B. A. 'Applying Lean Six Sigma within the university: opportunities for process improvement and cultural change.' (2015). *International Journal of Lean Six Sigma*, 6(3), 249-262.;

Thomas, A., Antony, J., Francis, M., & Fisher, R. 'A comparative study of Lean implementation in higher and further education institutions in the UK'. (2015). *International Journal of Quality & Reliability Management*, 32(9), 982-996.; Narayanamurthy, G., Gurumurthy, A., and Chockalingam, R. 'Applying lean thinking in an educational institute – an action research'. (2017). *International Journal of Productivity and Performance Management*, 66(5), 598-629.

¹⁹ see for example: Balzer, W. K., Brodke, M. H., & Kizhakethalackal, E. T. 'Lean higher education: successes, challenges, and realizing potential'. (2015). *International Journal of Quality & Reliability Management*, 32(9), 924-933.

design. Particularly at a time when the value of university education is being closely scrutinised²⁰ there is both scope for and need of greater utilisation of lean management methodologies within faculties and at a course level²¹.

In HE and university settings, lean principles could be utilised to improve processes in: curriculum delivery; business and auxiliary services; admissions and enrolment management; and research²². However, some caution here is appropriate. Whilst the potential benefits of lean management are well established, its application to complex services may attract opposition from professionals who object to apparent attempts to break down their work into simplified and measurable, discrete processes²³. This argument is particularly likely to arise within a HE context as many academics may view 'efficiency' as a commercial aim that directly threatens the educational aims of the university - care must be taken to ensure that employees involved in any lean management intervention understand how any changes will result in enhancements rather than compromising the value delivered to students.

²⁰ Department for Education. *Review of Post-18 Education and Funding: Terms of Reference*. (2018).

Retrieved from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682348/Post_18_review_-_ToR.pdf; Nicholson, A. 'The value of a law degree.' (2019). *The Law Teacher*, DOI: 10.1080/03069400.2019.1633117.9

²¹ Emiliani, M. L. 'Engaging faculty in Lean teaching'. (2015). *International Journal of Lean Six Sigma*, 6(1).

²² Hess, J.D., & Benjamin, B. A. 'Applying Lean Six Sigma within the university: opportunities for process improvement and cultural change'. (2015). *International Journal of Lean Six Sigma*, 6(3), 249-262

²³ Slack, N., Brandon-Jones, A., Johnston, R., & Betts, A. *Operations and Process Management* (2015). (4th ed). Harlow: Pearson, pp. 26

There are some articles about the successful application of lean thinking in HE: Emiliani²⁴ deployed a popular continuous improvement methodology to enhance the processes for ten courses contained in a part-time executive master's degree program in management; Stratton, Rudy, Sauer, Perman and Jennings²⁵ used lean thinking philosophies to improve medical education processes; and Doman²⁶ utilised lean management tools to improve university grade change processes, involving students in the process.

Thomas et al.²⁷ conducted an investigation in the UK into the differences that exist between HE Institutions ('HEI') and Further Education Institutions ('FEI') in the methods and practices deployed in their development and implementation of lean initiatives. The research revealed that UK FEIs have used lean principles over a longer period and gained more experience of its applications than their HE counterparts, though typically this has been achieved through consultancy-based projects, rather than by being embedded into organisational culture. By contrast, lean initiatives in UK HEIs have been conducted in a more systematic and holistic

²⁴ Emiliani, M.L. 'Using "kaizen" to improve graduate business school degree programs'. (2005). *Quality Assurance in Education*, 13(1), 37-52.

²⁵ Stratton, T.D., Rudy, D.W., Sauer, M.J., Perman, J.A., & Jennings, C.D. 'Lessons from industry: one school's transformation toward 'lean' curricular governance'. (2007). *Academic Medicine*, 82(4), 331-340.

²⁶ Doman, M.S. 'A new lean paradigm in higher education: a case study'. (2011). *Quality Assurance in Education*, 19(3), 248-262.

²⁷ Thomas, A., Antony, J., Francis, M., & Fisher, R. 'A comparative study of Lean implementation in higher and further education institutions in the UK'. (2015). *International Journal of Quality & Reliability Management*, 32(9), 982-996.

manner across the organisations, albeit these are mostly still in the early stages of implementation.

Narayanamurthy et al.²⁸ proposed a structured procedure for the implementation of lean thinking in an educational institute in India. They compared performance measures such as absenteeism, utilisation, and learning before and after implementation of lean solutions to prove the effectiveness thereof.

The application of lean thinking in legal practice is a neglected area in academic journal papers. To the best of the authors' knowledge, Henderson²⁹ is the only published paper that looks at the lean law concept as an alternative approach for larger law firms. However, this study did not address any specific application of lean thinking in a law firm as a case study. Moreover, the authors were not able to find a paper which considers the application of lean methodologies to a law clinic context. So this paper will contribute to lean management literature in the areas of legal practice and legal education.

²⁸ Narayanamurthy, G., Gurumurthy, A., and Chockalingam, R. Applying lean thinking in an educational institute – an action research. (2017). *International Journal of Productivity and Performance Management*, 66(5), 598-629.

²⁹ Henderson, W. 'From Big Law to Lean Law'. (2014). *International Review of Law and Economics*, 38, 5–16.

III RESEARCH METHODOLOGY

The aim of this study is to address the challenges associated with resourcing in a university law clinic, and to evaluate the extent to which lean management tools and techniques may be able to provide solutions. To achieve this, a case study approach was adopted to investigate the applicability of lean management tools to the Clinic's operational activities.

The utilised case study strategy in this paper is in line with many other research papers in lean management studies³⁰. A good case study reveals how a problem can be dealt with³¹.

The lead researcher is an academic from within the Subject Group, with first-hand experience of and leadership responsibility for the Clinic's processes. This role is important both to facilitate data collection, but also since leadership commitment is a key factor of success in any lean management initiatives³². The second researcher is

³⁰ Seth, D., & Gupta, V. 'Application of value stream mapping for lean operations and cycle time reduction: an Indian case study'. (2005). *Production, Planning & Control*, 16(1), 44-59.; Doman, M.S. 'A new lean paradigm in higher education: a case study'. (2011). *Quality Assurance in Education*, 19(3), 248-262.; Bevilacqua, M., Ciarapica, F. E. & Paciarotti, C. 'Implementing lean information management: the case study of an automotive company'. (2015). *Production Planning & Control*, 26(10), 753-768.; Narayanamurthy, G., Gurumurthy, A., and Chockalingam, R. 'Applying lean thinking in an educational institute – an action research'. (2017). *International Journal of Productivity and Performance Management*, 66(5), 598-629.

³¹ Childe, S. 'Case studies in the management of operations'. (2017). *Production Planning & Control*, 28(1), 1-1.

³² Alefari, M., Salonitis, k., & Xu, Y. 'The role of leadership in implementing lean manufacturing'. (2017). *Procedia CIRP*, 63, 756–761.

an academic from outside of the Subject Group, but with particular expertise in lean management; this researcher is able to bring a degree of objectivity to the study.

The roles and responsibilities of the research team enabled a participative approach to tackling the objectives of the study. Various lean tools have been deployed to understand their applicability to the current clinic context.

The researchers had access to all relevant documentation such as university procedures and regulations, minutes of meetings and other related archives³³. Data were also collected through personal observations and communication with current Clinic staff.

IV. CASE STUDY ANALYSIS

IV.I USING LEAN TOOLS TO IDENTIFY CURRENT ISSUES WITH CLINIC PROCESS

Pareto Analysis

Key to the success of any lean management intervention is an assessment of the current state, followed by effective communication of the impetus for change to relevant parts of the organisation³⁴. To achieve this, diagnostic tools can be useful

³³ Yin, R.K. *Case study research and applications: Design and Methods*. (2018). Los Angeles: SAGE.

³⁴ Feld, W. M. *Lean Manufacturing: Tools, Techniques and How to Use Them*. (2001). Boca Raton: CRC Press., pp.7

not only in identifying what the current issues are, but also in illustrating/explaining those issues to colleagues/employees³⁵.

The reported experience of teaching staff within the Clinic was that they spent vastly more working hours supervising students in this context, than the university is able to award them as part of its academic work planning process. The authors therefore initially conducted a Pareto analysis with Clinic staff (see Figure 1) in order to ascertain where academic time was predominantly being spent. A Pareto analysis plots time engaged against process activities in a graphical form, with the aim of identifying which of those activities dominate. A common finding is that a majority (often as much as 80%) of process time is spent on a minority (often as little as 20%) of process activity; a phenomenon commonly referred to as the "Pareto Principle"³⁶. Such an analysis provides a useful focus for process improvement.

As the Pareto analysis at Figure 1 illustrates: academics working in the Clinic report that, as much as 50% of their total time spent working in the Clinic or on Clinic related activities is being spent on marking formative work produced by students on an almost daily basis, and providing feedback on that work.

³⁵ see Slack, N., Brandon-Jones, A., Johnston, R., & Betts, A. *Operations and Process Management* (2015). (4th ed). Harlow: Pearson., pp. 459-463

³⁶ Doyle, C. 'Pareto Principle.' In *A Dictionary of Marketing* (2016). (4th ed.). Oxford: Oxford University Press.

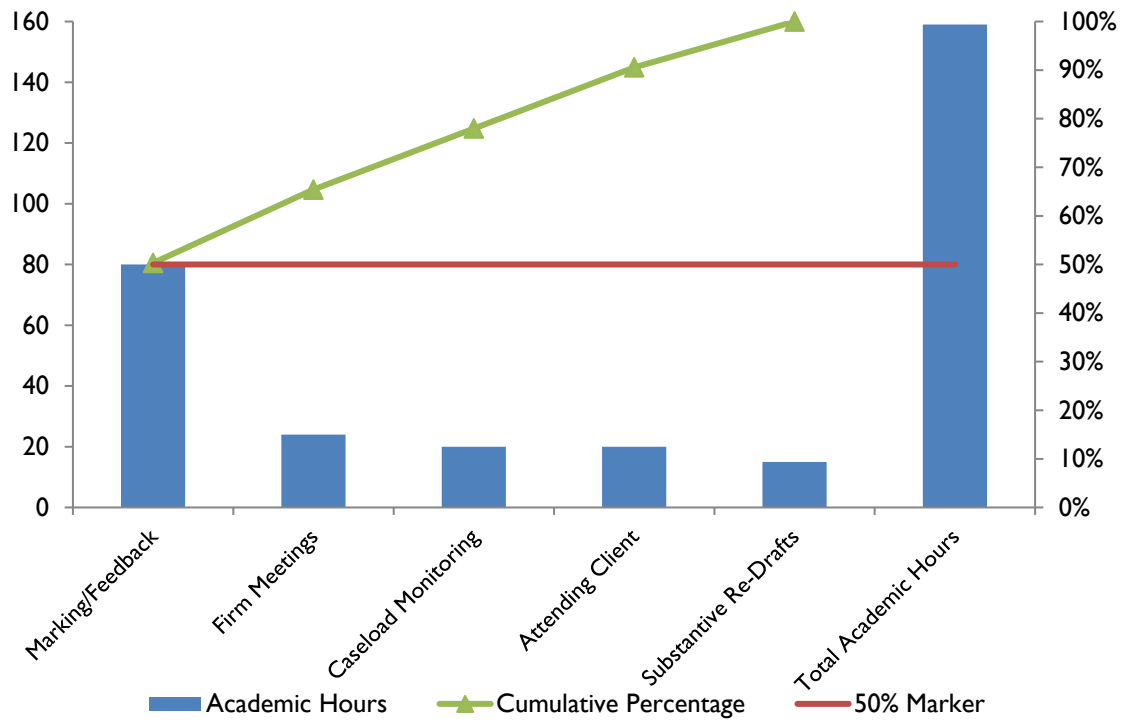


Fig. 1: Pareto Analysis of Clinic Supervisor Workload

Cause and Effect Analysis

Next, the authors mapped out the cited reasons for work overloading into an Ishikawa (or "fishbone") diagram, which serves to highlight possible cause and effect relationships that might be worthy of further investigation and/or process improvement initiatives. The resultant diagram at Figure 2 illustrates some of the reasons why members of Clinic staff believed that they were overloaded. It is evident from these wide ranging factors that there are a range of inherent and systemic issues with the Clinic process design which would benefit from a thorough examination.

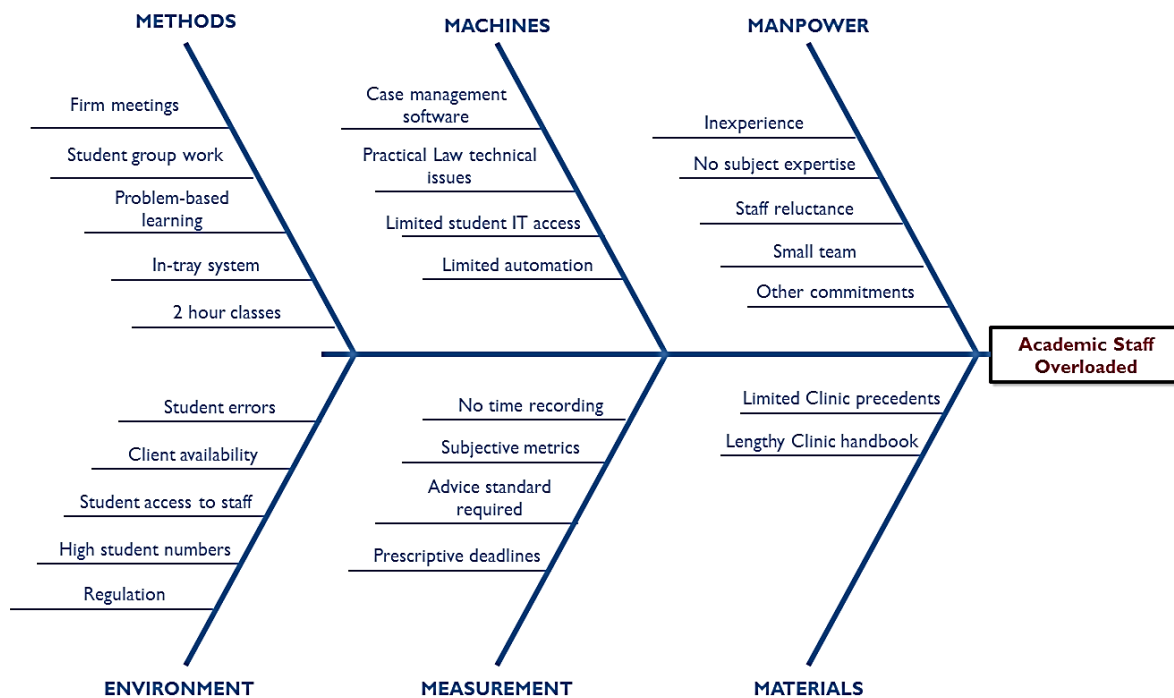


Fig. 2: Cause and effect analysis

It is important to remember that the focus of any such review must not be on efficiency alone, as this risks merely redesigning and improving outdated processes that may no longer be fit for purpose, and potentially missing opportunities to completely reengineer the way that value is delivered, which might both reduce cost *and* increase quality³⁷. Certain historic assumptions within the Subject Group currently underpin the way that processes are designed and evaluated, for example: members of staff are either clinical or academic; clinical members of staff have practice experience and/or practising certificates; 'clinical' modules involve regular marking and feedback whilst 'academic' modules do not; and firm supervisors must

³⁷ Hammer, M. 'Reengineering work: don't automate, obliterate'. (1990). *Harvard Business Review*, 68(4), 103-112.

ensure the accuracy and quality of client advice. If the Subject Group is to maintain its competitive edge in the face of vastly changing market demands, and to deliver on its commitment to offer all students, at all levels, employability-enhancing work experience in SHU Law, it is essential that assumptions such as these are not allowed to dictate the limits of what is possible.

Value Stream Mapping ('VSM')

Some lean management techniques serve both a diagnostic and future planning function - value stream mapping is one such technique, which can be used to illustrate both the current and future states of a value process³⁸. Womack and Jones³⁹ argue that value stream mapping enables managers to distinguish between those activities which create value (or which are simply unavoidable), from muda: those which are wasteful and avoidable. In a service context, examples of muda might include: excessive quality, delay, under-utilised resources, duplication and/or a lack of standardisation⁴⁰.

³⁸ Forno, A., Pereira, F., & Forcellini, F. 'Value Stream Mapping: a study about the problems and challenges found in the literature from the past 15 years about application of Lean tools'. (2014). *The International Journal of Advanced Manufacturing Technology*, 72(5-8), 779–790.

³⁹ Womack, J. P., & Jones, D. T. *Lean Thinking* (2003). (2nd ed). London: Simon & Schuster., pp.20

⁴⁰ Andrés-López, E., González-Requena, I., & Sanz-Lobera, A. 'Lean Service: Reassessment of Lean Manufacturing for Service Activities'. (2015). *Procedia Engineering*, 132, 23–30

Figure 3 shows a value stream map of the current learning and teaching process in the Clinic; it highlights the flow of information between process participants at each stage of the Clinic process

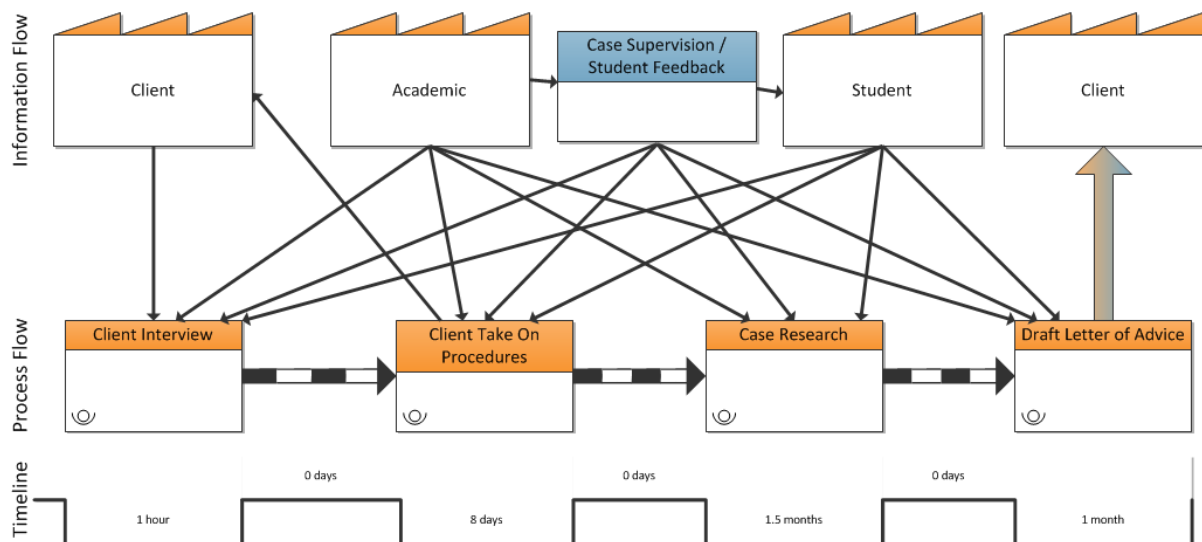


Fig. 3: Current VSM

This value stream map illustrates that the current process comprises a highly complex, multipartite and continuous exchange of information between academics and students. Not only is the academic supervisor themselves directly involved at all stages of the Clinic process, but so too is each and every student, albeit to a greater or lesser extent from time to time. Most significantly, at each and every step in the process the supervisor strives to simultaneously fulfil a dual function, ensuring both that: (1) (in their capacity as a practitioner) the particular step is successfully completed for the benefit of the client; and (2) (in their capacity as an educator) the full pedagogical value of completing that step is delivered for the benefit of each

student involved in that task. Once this is scaled up to reflect a particular supervisor's responsibility for multiple clients and any significant numbers of students - recognising also that individual cases each have their own unique features and timelines - the challenge is clear: current Clinic process design necessitates significant and inherent duplication of client work, accompanied by substantial bespoke student feedback. Although many of these interactions are necessary - and others do of themselves create value for students - others may represent avoidable waste.

Ohno⁴¹ famously identified seven different categories of waste. Whilst these are difficult to translate into a professional services context, subsequent literature has also referred to 'service wastes' and 'new wastes', and these have included: "excessive information and communication"; "waste of knowledge"; "waste of time"; and "duplication"⁴², and examples of these can be seen in the present context.

For example, the current process results in a very lengthy cycle time - meaning that clients have to wait up to three months for advice; this in turn restricts both the quality and quantity of the legal work that the Clinic can attract, impacting upon value for the students. Similarly, the complexity of the working environment means

⁴¹ Ohno, T. *Toyota Production System: Beyond Large-Scale Production*, (1988). Cambridge, USA: Productivity Press. (Original work published 1978).

⁴² Bicheno, J., & Holweg, M. *The Lean Toolbox: The Essential Guide to Lean Transformation* (2009). (4th ed.) Buckingham: PICSIE Books., pp. 25-26

that students necessarily spend a significant amount of time getting up to speed with these working processes, time that could arguably be spent on more pedagogically 'valuable' learning activities⁴³.

IV.II PROPOSALS AND RECOMMENDATIONS FOR LAW CLINIC PROCESS DESIGN

Towards a New Value Stream Map

As noted above, the prevailing challenge with the current Clinic process appears to be the volume, variety and frequency of information exchange between clients, academics and students in relation to case work and student feedback. Essentially, the same individuals are involved in the vast majority of the processes, and there is significant duplication; both academics and students work on almost every aspect of a client's case. This raises the question whether, by separating out the processes involved, it might be possible to enhance the value of those processes. Figure 4 illustrates just one way in which this might be achieved. In this example, specific solicitors are tasked to take responsibility for managing the cases, and simply delegate discrete tasks for students to complete, with the support of a wider group of academics. This approach has the advantage of preserving the quality of student feedback (and thus pedagogical value) that can be provided through the Clinic,

⁴³ Nicholson, A. 'Research-informed teaching: a clinical approach'. (2017). *The Law Teacher*, 51(1), 40-55., pp. 50

whilst at the same time limiting substantially the range and scope of activities that any single member of staff or student is responsible for at any one time.

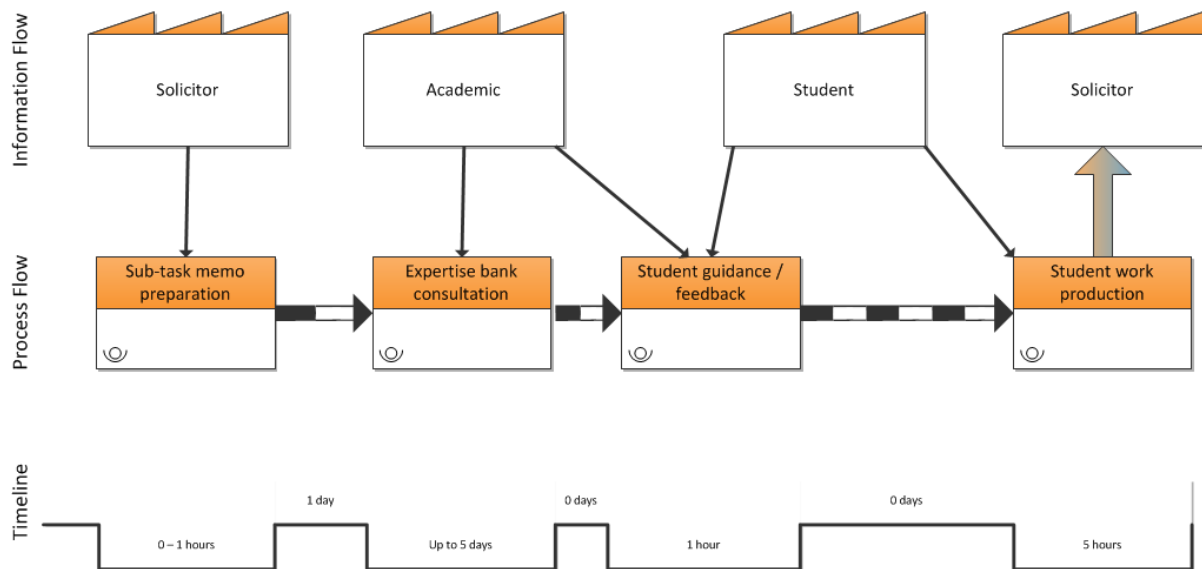


Fig. 4: Future VSM

Whilst this map may itself represent a slight oversimplification (since academics may in reality look at student work more than once during different stages of its production) the vastly reduced complexity of the process is nevertheless very evident. The value stream mapping process makes it possible to evaluate at a glance the complexity, speed and value of the process and here each of those elements are vastly improved in the new approach. Clients stand to benefit from faster turnaround times and student time would be spent exclusively on activities designed to maximise the educational value of their Clinic experience. Whilst there is undoubtedly some pedagogical value in students learning how to comply with

office procedure, the new approach ensures that this does not become the focus of the experience, particularly given that office processes and procedures will vary significantly between legal practices.

As noted above, under the current structure (see Section 4) academics working within the Clinic fulfil a dual function in that they each take responsibility for delivery of their cases for the benefit of their clients (in their capacity as practitioners) whilst *simultaneously* working to ensure that maximum pedagogical value is delivered at every stage for the benefit of their students. The key differences between the current and future VSMs are: (1) a degree of separation between solicitors running the cases (who would take on only such cases as fall squarely within their own expertise) and academics supervising students; and (2) the creation of an 'expertise bank': a pool of academic and/or practitioner 'experts' that the academic supervisor can draw on for advice (and thereby expedite any research/professional updating that might be required in order to support students to complete a particular task), either in relation to the relevant law or in relation to more practice-based skills such as drafting.

This division of labour not only reduces duplication, but it enables each participant in the process (solicitor, academic and student) to focus almost exclusively on the aspects of Clinic process that are most useful/appropriate to their needs and expertise, thus potentially enhancing the overall value delivered through that

process to client and student stakeholders, widening the group of academics who would be able to supervise students in the Clinic, and raising satisfaction amongst all stakeholder groups. In that sense it is also conceivable that these changes might benefit staff wellbeing, beyond merely the effect of a reduction in workload.

Process Design

The value stream mapping process naturally raises more detailed questions about process design. At a macro level, the current learning and teaching process is low volume, high variety, high variation, and high visibility, and these factors make it a high-cost⁴⁴, 'professional service' process that can be difficult to evaluate and improve⁴⁵. Whilst it is unlikely that this process could ever be sufficiently broken down to be credibly categorised as a more efficient 'service shop' process (for example such as those employed in restaurants, banks and other similar consumer contexts), the value stream mapping exercise clearly indicates that it should be possible to remove some activities from the core process. There are some clear risks of dividing up tasks in this way - for example, it may create more monotonous tasks and reduce flexibility⁴⁶. However, the present overloading and the need for expansion necessitate some action in this area, and these are risks that can be managed.

⁴⁴ Slack, N., Brandon-Jones, A., Johnston, R., & Betts, A. *Operations and Process Management* (2015). (4th ed). Harlow: Pearson., pp. 24

⁴⁵ Ibid, (2015), pp.124

⁴⁶ Ibid, (2015)., pp.135

Taking account of the value stream mapping process and the further process design considerations outlined here, Figure 5 illustrates a possible learning and teaching process. This is presented in a swim lane diagram format, which has the advantage of showing how and when the different participants in the process engage with it.

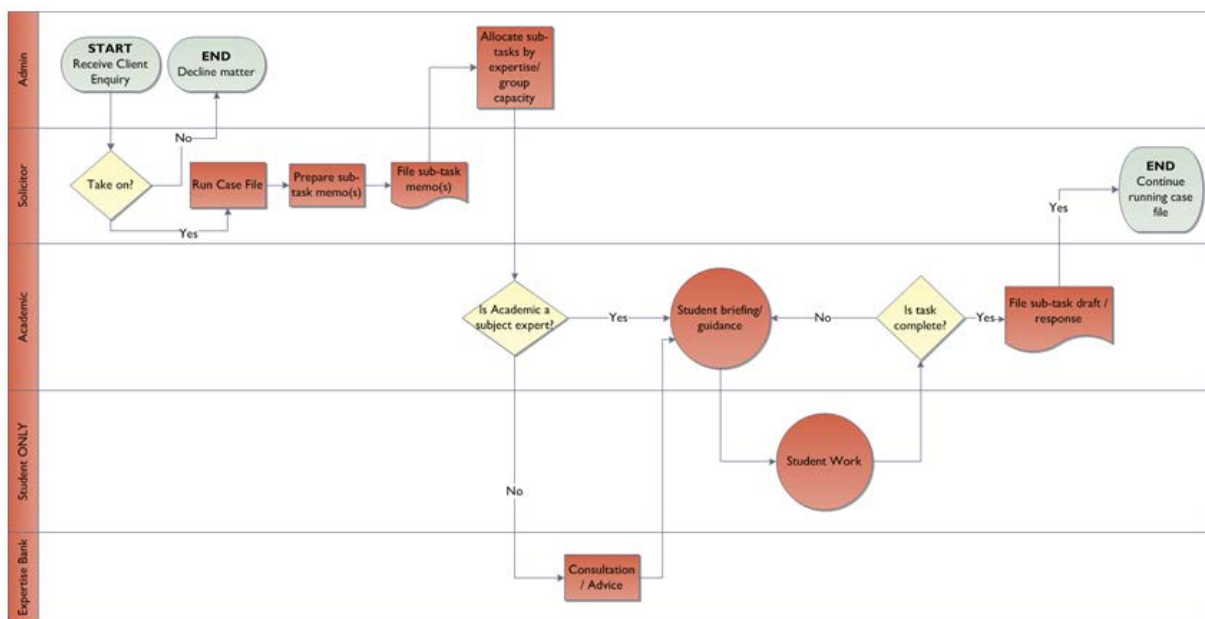


Fig. 5: Proposed Process Map

As can be seen from this process map, each process participant has a well-defined and tightly controlled remit, which enables them to focus exclusively on their own value-adding activity: solicitors are responsible for running the cases, meeting deadlines, and protecting the best interests of the client (ultimately signing off - and where necessary completing - all client work); academic supervisors are tasked with developing students' knowledge, understanding and skills in relation to clinical tasks; academics from within the 'Expertise Bank' are on hand to provide efficient,

subject-specific guidance to academic supervisors as required from time to time; and students are given discrete delegated tasks (together with appropriate context) and high quality feedback, which facilitate maximum learning gain. Such a process would both resemble (in relation to the nature of and approach to delegation) and potentially improve upon (in relation to the quality of feedback) the learning and teaching process typically experienced by trainee solicitors in practice⁴⁷.

Continuous Improvement

A strong feature of 'lean' is its association with the concept of 'continuous improvement' - as Bicheno and Holweg put it "mistakes are seen as 'opportunities to improve', not as something that needs to be monitored and punished"⁴⁸. For that reason - if implemented - this new process should not be the end of the matter. To truly achieve lean practice within a law clinic context, there must also be processes of performance measurement and management; such processes enable an organisation to regularly identify where it is, confirm where it wants to be, and then communicate that trajectory to stakeholders, driving progress in the right direction⁴⁹.

Particularly in a not-for-profit context such as a university, the most important measurable outcome has to be quality. Before seeking to measure quality, it is

⁴⁷ Nicholson, A. 'Research-informed teaching: a clinical approach'. (2017). *The Law Teacher*, 51(1), 40-55.

⁴⁸ Bicheno, J., & Holweg, M. *The Lean Toolbox: The Essential Guide to Lean Transformation* (2009). (4th ed.) Buckingham: PICSIE Books., pp.9

⁴⁹ Neely, A. D. *Measuring Business Performance*. (1998). London: Profile Books.

essential to define what we mean - different conceptions of 'quality' within the organisation will pull its employees in different directions. The definition and accurate measurement of quality within service sectors is difficult, not least because of the highly subjective and arguably unreliable nature of common metrics such as customer (or in the present case: client and/or student) satisfaction. Gronroos (1988) acknowledges this challenge, and argues that it is the customers' definition of quality that counts; he proposes six criteria of good perceived service quality, four of which relate not to the technical aspects of the service being provided, but to the so-called 'functional quality dimension', i.e. the way in which an organisation's employees interact with customers whilst the service outcomes are being delivered⁵⁰. Further support for this idea can be found in the work of Parasuraman, Zeithaml and Berry⁵¹, who identified 10 "determinants of service quality"; only three of these ("competence", "credibility" and "tangibles") relate to traditional 'technical' aspects of quality, whilst the remainder are concerned with the *way* in which the customer experiences the core elements of the service.

These findings suggest that, whilst 'technical' aspects - such as the reputation and knowledge of the academics teaching on a particular course - are important, the broader 'functional' aspects of quality heavily impact student satisfaction levels and

⁵⁰ Gronroos, C. 'Service Quality: The Six Criteria Of Good Perceived Service Quality'. (1988). *Review of Business*, 9(3), 10-13.

⁵¹ Parasuraman, A., Zeithaml, V.A., & Berry, L.L. 'A Conceptual Model of Service Quality and Its Implications for Future Research'. (1985). *Journal of Marketing*, 49(4), 41-50.

therefore arguably perceptions of quality⁵². A lean approach therefore suggests that the focus of continuous improvement should be the quality of the student experience, which very much includes the quality of the learning and teaching process itself.

In measuring and managing customer orientation and value, a fundamental choice is which metrics to use. Kaplan and Norton famously claimed that “[w]hat you measure is what you get”, and devised a ‘balanced scorecard’ which would enable businesses to measure performance from different perspectives⁵³. Within the commercial context for their work, the ‘balanced scorecard’ was designed to measure performance beyond merely the financial (e.g. customer satisfaction, wider strategic objectives etc.), but this concept has utility within HE also. In an age of consumerism and significant emphasis on student satisfaction as a measure of teaching quality, there is a risk that courses are shaped solely to ensure satisfaction which risks undermining the true purposes of HE⁵⁴. A ‘balanced scorecard’ approach may help the Clinic to ensure that it is achieving its strategic objectives and transforming students' lives; students may be ‘satisfied’ with their experience, but

⁵² see for example: Smimou, K., & Dahl, D. W. ‘On the Relationship Between Students' Perceptions of Teaching Quality, Methods of Assessment, and Satisfaction’. (2012). *Journal of Education for Business*, 87(1), 22-35.

; and Xiao, J., & Wilkins, S. ‘The effects of lecturer commitment on student perceptions of teaching quality and student satisfaction in Chinese higher education’. (2015). *Journal of Higher Education Policy and Management*, 37(1), 98-110.

⁵³ Kaplan, R. S., & Norton, D. P. ‘The Balanced Scorecard - Measures That Drive Performance’. (1992). *Harvard Business Review*, 70(1), 71-79.

⁵⁴ Naidoo, R., Shankar, A., & Veer, E. ‘The consumerist turn in higher education: Policy aspirations and outcomes’. (2011). *Journal of Marketing Management*, 27(11-12), 1142-1162.

the real question is whether it has transformed their ability to lead fulfilling and prosperous lives that benefit both themselves and the wider societies that they inhabit.

Since quality is about customer value, a balanced scorecard approach may enable the Subject Group to better measure and manage performance improvement by ensuring that the focus remains on maximising consumer value - continuously - in all processes, and eliminating processes/steps which do not deliver that consumer value.

V CONCLUSIONS

To the extent that lean management is seen merely as the use of scientific methods in solving business problems, its benefits are incontrovertible. The application of lean management principles and methodologies to existing Clinic processes has revealed potential opportunities to dramatically increase the Subject Group's clinical capacity whilst enhancing customer value. The proposed new learning and teaching process above eliminates and/or simplifies those activities that constitute 'waste', maximising the resources available for high value learning activities. The results may prove useful not only to other law clinic operators, but to the entire HE sector more widely as they demonstrate the applicability and usefulness of lean thinking in that context.

However, this definition and its focus on ‘methods’ is potentially misleading; it fails to warn readers that: where the tools of lean are utilised merely as ad hoc interventions to deal with specific issues they are effective only to a limited extent and can result in measures and metrics that are internally focused, rather than customer focused⁵⁵. As Seth and Gupta⁵⁶ put it: “[t]here is a difference between *doing* lean and *being* lean”. Indeed, of those organisations that currently utilise lean principles/techniques, only a very small minority manage to realise the true potential and results of a lean culture⁵⁷.

Accordingly, whilst the measures outlined above do have significant potential to improve the quality and efficiency of clinical teaching within the Subject Group, the greatest potential lies in measures that might support a much needed cultural shift towards a lean philosophy, whereby all academic members of staff share a common vision to see the lives of students transformed with minimal waste, and the maximum flow of valuable pedagogical experiences.

⁵⁵ Radnor, Z. J., Bateman, N., Esain, A., Kumar, M., Williams, S. J., & Upton, D. M. *Public Service Operations Management: A research handbook*. (2016). New York: Routledge., pp. 69

⁵⁶ Seth, D., & Gupta, V. ‘Application of value stream mapping for lean operations and cycle time reduction: an Indian case study’. (2005). *Production, Planning & Control*, 16(1), 44-59., pp.57

⁵⁷ Hogg, D. P. E. ‘Lean in a Changed World’. (2011). *Manufacturing Engineering*, 147(3), 102-113., pp. 104

Implications

The benefits of clinical legal education ('CLE') are well documented⁵⁸, as are the merits of integrating such activity into the curriculum⁵⁹; Chemerinsky⁶⁰ even went so far as to argue that it was the most useful preparation that an aspiring solicitor could undertake. Furthermore, the forthcoming regulatory changes to qualification requirements for solicitors in England and Wales may expand these benefits even further, since various forms of CLE offered by universities might potentially count towards the 'qualifying work experience' that will be needed⁶¹.

However, as this case study shows, there are potentially significant resourcing issues associated with this teaching methodology, and this position is endorsed by the literature. For example - as compared with traditional academic modules - the holistic and evolving nature of assessment in clinical modules has been shown to intensify workloads for the staff involved⁶².

⁵⁸ See Brayne, H., Duncan, N., & Grimes, R. *Clinical Legal Education: Active Learning in Your Law School*. (1998). London: Blackstone Press.; Bloch, F. S. (Ed.) *The Global Clinical Movement: Education Lawyers for Social Justice*. (2011). Oxford: OUP.

⁵⁹ Combe, M. M. 'Selling intra-curricular clinical legal education'. (2014). *The Law Teacher*, 48(3), 281-295.

⁶⁰ Chemerinsky, E. "'Why not clinical education?'" (2009). *Clinical Law Review*, Vol. 16., pp. 35-41.

⁶¹ Dunn R., Roper V., & Kennedy, V. 'Clinical legal education as qualifying work experience for solicitors'. (2018). *The Law Teacher*, 52(4), 439-452.

⁶² Bilgin, A. A., Rowe, A. D., & Clark, L. 'Academic workload implications of assessing student learning in work-integrated learning'. (2017). *Asia-Pacific Journal of Cooperative Education*, 18(2), 167-183.

The development of work planning processes that operate equitably across a wide range of very diverse activities is a long running challenge faced by HE institutions⁶³, but research suggests that this is most likely to be achieved where such workload allocation processes are developed in consultation with the academic staff involved⁶⁴. The present case study has highlighted some of the pressure points for academic workloads in university law clinics and - using lean management methodologies - has identified a proposed solution. To the extent that the proposed process delivers any efficiency improvement at all, it will represent an important step in supporting much needed sustainability of what is quickly becoming an essential component of any law programme.

Limitations and opportunities for further research

This paper summarised the initial stages of a long journey toward lean thinking within the Subject Group and as such is the first attempt in legal education. Since this research comprises only a single case study, its generalisability may be limited to law clinics/law schools with similar structures and/or challenges, and further thought and/or investigation may be needed in order to apply its findings within other law schools. As a follow-up study, the authors intend to monitor the results of

⁶³ see Burgess, T. F., Lewis, H. A., & Mobbs, T. 'Academic workload planning revisited'. (2003). *Higher Education*, 46(2), 215-233.

⁶⁴ Kenny, J. D. J., & Fluck, A. E. 'The effectiveness of academic workload models in an institution: a staff perspective'. (2014). *Journal of Higher Education Policy and Management*, 36(6), 585-602.

the process revisions articulated in this paper, and compare the aforementioned performance measurements after full implementation of the proposed process model. In addition, the authors would welcome further empirical research which strengthens the evidence for the utility of lean thinking within the law clinic and within legal practice more generally.

DESIGNING AND IMPLEMENTING AN ENHANCED CLINICAL PROGRAM IN THE AGE OF DISRUPTION.

Part Two: Clinical Activities¹

Professor Bryan Horrigan²

INTRODUCTION

Part One of this article addressed key institutional challenges in designing and implementing an enhanced clinical program, informed by a law dean's perspective on the various institutional and individual interests involved. Part Two of this article engages with some of the key controversies and disruptions with which an enhanced clinical program needs to engage in the 21st century, one way or another. The underlying theme in this concluding part of the article is the repositioning of legal clinical programs and legal clinicians within their broader and fluid surrounding environments.

¹ For Part One: see Horrigan, B. 'Designing and Implementing an Enhanced Clinical Program in the Age of Disruption. Part One: The Environment for Clinic.' *International Journal of Clinical Legal Education* 26.2 (2019): 75-104.

² Bryan Horrigan BA, LLB (Hons) (Qld), DPhil (Oxon); is the Dean of the Faculty of Law at Monash University, Melbourne, Australia. I am grateful to Emeritus Professor Adrian Evans for comments, Jarryd Shaw for research assistance, and the editors and anonymous peer reviewers for comments, and assistance with the diagram. All responsibility is mine.

TESTING THE OUTER LIMITS AND PURPOSES OF LEGAL CLINICS

One key disruption for legal clinical programs concerns challenges from reconceptualising them in the context of the changing landscape around them. Many clinics in many law schools in many countries adhere to a model that is predicated upon providing free legal advice and assistance to the most vulnerable, marginalised, and disadvantaged people in society. In the first section of this part of the article, I accept as a 'given' that this model will continue to have a central role in CLE programs. However, I question whether the *context* for the evolution of *that* model to meet *that* societal need conclusively determines the only or best model for CLE programs from here onwards. Moreover, even where that traditional model dominates, it relies upon premises and assumptions whose own contingencies are worth re-examination.

Is it inherent and integral to the notion of a legal clinic that it operates outside the private sector and serves only a social justice constituency and only for free? Increasingly, the 21st century answer to that question is likely to be 'no', or at least 'not always'.

That answer is controversial and arouses strong views on all sides of the fundamental questions addressed and amongst the various stake-holding interests implicated. A few elements of that answer therefore warrant further and discrete unpacking, as follows.

First, the areas of socio-economic need encompassed by access to justice are neither confined neatly to non-commercial areas of law (e.g. residential tenancy is a commercial matter, as is consumer mistreatment by banks) nor experienced only by those who are poor, vulnerable, or disadvantaged individuals. For example, small businesses and franchises (which are often family-run businesses) are also suitable subjects of socio-economic justice, and can be just as exploited as other constituencies needing access to justice. Even relatively well-resourced NGOs and multi-stakeholder coalitions need support to achieve better access to justice outcomes by holding multinational corporations and governments to account for human rights abuses through stakeholder lobbying, shareholder activism, and third-party interventions (where permitted) in commercial arbitration.

Secondly, many areas of traditional clinical focus can now be characterised simultaneously in more than one way, cutting across boundaries between sectors, departments of law, and areas of legal practice. For example, human rights are no longer a matter primarily for international and public law and of concern mainly to governments and civil society groups, in an era of transnational 'hard' and 'soft' law concerning the responsibilities of multinational corporations and other business enterprises (including law firms and law schools, for this purpose) in protecting and enhancing people's human rights. Similarly, victims of human rights abuses are not the only worthy stakeholders in need of clinic-amenable assistance and advice when engaging with companies about their approach to corporate social responsibility

(CSR), in an era when everyone from human rights advocacy groups to institutional investors wants companies to engage better with environmental, social, and governance (ESG) considerations in business and finance.³

Thirdly, those who argue that a clinic must always be free and reserved for those who cannot afford a lawyer and who do not otherwise qualify for publicly funded legal aid must go on to confront other conditions in maintaining that claim. Governmental policy decisions to reduce areas of publicly funded legal aid cannot be the sole arbiter of who is worthy of clinical support. Even people of moderate income find it extraordinarily costly when left with no real choice other than to engage with the legal system to try to achieve some kind of justice, often with their families and livelihoods at risk. This reality in no way diminishes the equal need for well-resourced clinics focused upon poverty-related law; it simply extends the definition of unmet, contemporary legal need.

Nor is the funding of a clinic an irrelevant consideration, because all clinics need resourcing of one kind or another, and their resourcing is hard enough in an era of reduced university and public funding without setting up distinctions based on direct and indirect sources of funding. Just as other aspects of a law school's income-generation and other funding can cross-subsidise a clinical program, so too some parts of a clinical program potentially might cross-subsidise others. For example, in a

³ For more on this topic by the author, see: 'Boards Brace for a Perfect Storm', *The Australian*, (25 April 2019), pp.30; and *Corporate Social Responsibility in the 21st Century*, (2010) Edward Elgar, UK.

landmark and future-looking assessment of changes in the legal profession, the Law Institute of Victoria's then President (Katie Miller) authored a report that included the following recommendation:⁴

If you manage or are on the board of a CLC, discuss and consider with your board opportunities for using paid services to cross-subsidise your regular services. Consult widely (including with current funders); discuss concerns; and, if you decide to proceed, design a service that manages those concerns.

Fourthly, law firms and other organisations can be suitable partners for clinics of one kind or another. What makes clinical partnership with some arms of the legal profession (e.g. courts/tribunals, governmental departments and agencies, CLCs, and NGOs, for example) inherently more worthy than other arms of the legal profession (e.g. commercial law firms, commercial bars, and in-house corporate legal departments, for example), at least in clinical and 'access to justice' terms? Any difference is not readily explainable simply on the grounds of the 'public-private' divide, area of legal work, or source of funding support.

Partnering family law firms in clinics to achieve social justice for families can be less controversial in some clinical quarters than developing clinics with commercial law firms, but many commercial law firms do pro bono work too. So, it is not self-evident

⁴ Miller, K. *Disruption, Innovation and Change: The Future of the Legal Profession* (Report, December 2015) 20.

that having a clinic for pro bono clients of a law firm is any less worthy a contribution to access to justice than clinics with non-commercial law firms, even if the pro bono work assists the commercial law firm in tangential ways, such as helping its lawyers meet professionally mandated hours of pro bono service to maintain professional accreditation or even helping a law firm to meet pro bono targets that qualify it to be on panels for governmental legal services work.

Finally, to the extent that clinics provide benefits for students as well as clients, giving the former exposure to the full range of legal services work and organisational contexts is a legitimate objective of CLE. It also informs and tests their aptitude for commercial or non-commercial legal careers, if they head towards careers in the legal profession. The client-focused orientations and skills acquired in clinics are transferable to graduate positions even in commercial law firms, regardless of the context in which they were acquired.⁵

So, students who work in family law assistance clinics, human rights clinics, and tenancy dispute clinics, for example, develop interpersonal, team-based, administrative, and other skills that are equally valuable to early careers in commercial law firms. Conversely, even if a student is destined for legal or non-legal careers in community activism, NGOs, and public advocacy, experience from the inside of a commercial law firm (and acting for multinational corporations, financial

⁵ The author acknowledges instructive discussions on this point with the Monash University Faculty of Law's External Professional Advisory Committee.

institutions, and governmental regulators) can be invaluable when representing clients or organisations on the other side of the fence.

DISRUPTIVE TECHNOLOGIES, DIGITAL LITERACY, ARTIFICIAL INTELLIGENCE (AI), AND CLE

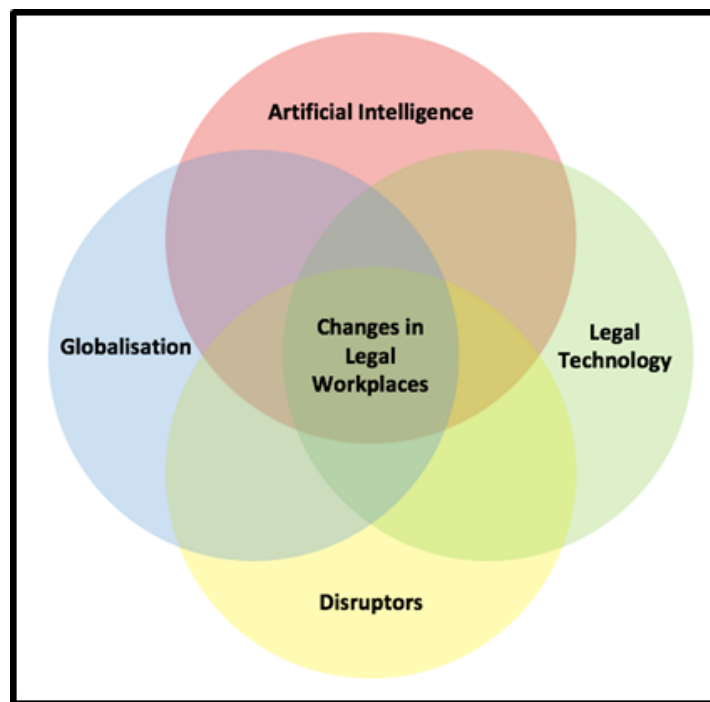
A second major challenge to conventional CLE stems from disruptive technologies. University legal education generally and CLE in particular are as susceptible to disruption as other parts of the tertiary education and legal services industries. Few law schools today can remain immune from considering legal technological advances in terms of areas of taught law in the curriculum (eg innovation law and privacy, smart contracts, blockchain etc), modes of teaching delivery (eg online resources supplementing 'flipped' classrooms), co-curricular student experiences (eg student involvement in legal technology hackathons), and emerging career possibilities for students (eg legal technologists, AI-analysts etc). CLE is not immune from that disruptive influence, in terms of the subject matter of clinics (eg clinics about start-ups), the tools and analytics available to service clinical clients (e.g. online legal assistance and AI-assisted research on client-related matters), the modes by which clinical students might interact with a range of participants (e.g. transnational clinics involving two clinical groups from two law schools in online collaboration), and familiarity with technological resources used by organisations partnering with law

schools in delivering clinics (e.g. legal research and documentary analysis technologies).

The classic clinical model is under pressure. It relies heavily upon point-in-time physical visits by clients to meet an available community lawyer in a face-to-face meeting in a law school-supported clinic or other CLC to identify what (if any) legal problem they face and what (if any) free expert legal assistance might be provided for them there or on referral elsewhere. Digital and technological disruption of that model is already happening, and many law schools and their clinicians and students are adapting accordingly.⁶ Virtual clinics, clinical apps and bots, smart online clinical ‘triage’ assessments, client and CLC match-making systems, and other technological innovations are already here, with more on the horizon.

Changes in all legal workplaces (including courts and law schools) are being influenced by a key number of overlapping drivers in the fourth industrial era (i.e. from industrialisation and electrification to digitalisation and interconnectivity [i.e./ ‘the Internet of things’]). The volume and impact of change is compounded exponentially where AI, other legal technology, globalisation, and other disruptors all converge, as illustrated in the following diagram:

⁶ Eg A. Thanaraj and M. Sales, ‘Lawyering in a Digital Age: A Practice Report Introducing the Virtual Law Clinic at Cumbria’ (2015) 22 *International Journal of Clinical Legal Education* [ci].



Judges and other lawyers in practice have already coped in recent decades with transitions from physical evidence to DNA-tested evidence, physical courtroom appearance to video-linked courtroom proceedings, fax to email, print-based research to online and even computer-assisted research, and manual dictation to digital voice recognition. It is not too great a distance for them to adapt to ongoing transitions from individualised personal profiling to mass facial recognition technology, delayed print-based court transcripts to instantaneous computer-assisted transcription, handwritten judges' notebooks to e-handbooks and other digital courtroom tools and software, wholly judge-directed physical case management to online case management, physical jury evidence to jury technology-enabled evidence, and paper-based courtrooms to paperless courtrooms and virtual courts.

To be sure, those innovations might not test fully the moral, empathic, creative, or adjudicative capacities that some (perhaps many) doubt that AI can reach, at least anytime soon.⁷ However, there are dangers in anthropomorphising AI and assuming that such human qualities completely define lawyerly professionalism.⁸ On this crucial point, two much-cited legal futurologists sound a sobering warning for academics, judges, and other legal practitioners alike; on a prudential view, this means that the jury is still out on the extent to which AI will replace the ‘decomposed’ segments of what academics, judges, and other lawyers actually do:⁹

The main themes of our book, *The Future of the Professions*, can be put simply: machines are becoming increasingly capable and so are taking on more and more tasks. ... It is indeed hard to imagine a machine thinking with the clarity of a judge, empathising in the manner of a psychoanalyst, extracting a molar with the dexterity of a dental surgeon, or taking a view on the ethics of a tax-avoidance scheme.

... But there is a danger of being excessively human-centric. In contemplating the potential of future machines to outperform professionals, what really matters is not *how* the systems operate but whether, in terms of the outcome, the end product is superior. In other

⁷ Susskind, R. & Susskind, D. ‘Robots v Experts: Are Any Human Professions Safe from Automation?’, *The Guardian* (online), (uploaded 28 March 2017).

⁸ *Ibid*, (2017).

⁹ *Ibid*, (2017).

words, whether or not machines will replace human professionals is not down to the capacity of systems to perform tasks as people do. It is whether systems can out-perform human beings. And in many fields, they already can.

In other fora, the Susskinds reinforce the point that expert lawyers (including judges and academics) cannot be too complacent about how AI and technology might affect, change, or rival at least some of what they currently do.¹⁰ While accepting that judicial handling of “complex issues of principle, policy, and morality is well beyond the capabilities of current and foreseeable computer systems”, Richard Susskind argues that there is “no compelling argument against analysing and dividing judicial work into separate parts and, where appropriate, finding alternative and more efficient ways of undertaking some of these tasks”.¹¹

In “decomposing” judicial work in much the same way as he decomposes modern law firm practice, he recommends greater use by judges of standardisation tools, document assembly technology, computerised research, e-filing and e-submissions, computer-assisted transcription and real-time judicial annotation, document display systems, electronic and visual evidence presentation, online dispute resolution, and “virtual” courts.¹² The correlative disruption of traditional clinical models and the

¹⁰ Approaches to numerically-based ethics assessment regimes for lawyers are already being canvassed; see, for example: Evans, A. *Assessing Lawyers' Ethics*, (2011). Cambridge University Press

¹¹ Susskind, R. ‘Tomorrow’s Lawyers: A Virtual Judiciary – Extract’, *The Guardian* online, (uploaded 29 January 2013).

¹² *Ibid*, (2013).

decomposition of clinical work into its various components, with a re-imagined alignment between clinics, enabling technology, and access to justice are no longer distant points on the horizon.

The future of AI, technology, and law is only one aspect of the future of the legal profession explored in recent reports by legal industry peak bodies and publishers.¹³

The relationship between AI and robotics, law, and workplaces is now a subject of study by the International Bar Association (IBA).¹⁴ The Australian Human Rights Commission is also focused upon the human rights implications of AI and other new technologies.¹⁵

Regulating AI forms another strand of the classic 'is-ought' dilemma: just because we *can* do something does not automatically mean that we *should* do it. Hence, we need adequate socio-ethical, legal, and regulatory frameworks for AI and technology. Many early attempts at developing frames of reference for this work focus upon developing broad principles of practice¹⁶ and other fundamental frames of reference.¹⁷

¹³ *Disruption, Innovation and Change: The Future of the Legal Profession*, Law Institute of Victoria, (2015); *FLIP: The Future of Law and Innovation in the Profession*, Law Society of New South Wales, (2017); and LexisNexis, Lawyers. "Robots." *Conversations around the Future of the Legal Industry* 3 (2017).

¹⁴ IBA Global Employment Institute *Artificial Intelligence and Robotics and Their Impact on the Workplace*, (2017).

¹⁵ *Human Rights and Technology Issues Paper*, (2018), AHRC.

¹⁶ Boden, M. 'Principles of Robotics: Regulating Robots in the Real World' (2017) 29 *Connection Science* 124; and *Statement on Artificial Intelligence, Robotics and 'Autonomous' Systems*, European Group on Ethics in Science and New Technologies, European Commission, (2018).

¹⁷ Leenes, R. et al., 'Regulatory Challenges of Robotics: Some Guidelines for Addressing Legal and Ethical Issues' (2017) 9 *Law, Innovation and Technology* 1.

Much of the literature is concerned with the ‘nightmare’ of the world that AI might unleash in terms of human liability and irrelevance, as distinct from the ‘noble dream’ of its potential and opportunities for human benefit.¹⁸ Groups of multi-disciplinary scholars are combining to explore accountability in the design and use of AI in legal and regulatory contexts involving compliance and responsibility,¹⁹ with particular reference to regulating data-creation and data flows that pass through multiple hands in numerous application contexts.²⁰

In the legal world, the growing literature makes sobering reading for law-makers, regulators, courts, legal practitioners, and legal academics. Some themes are as follows. All law is simply data, at least in terms of AI analytics. All such data can be analysed – everything from the words in judgments, legislation, and contracts to commentaries, texts, and social media mentions. Beyond law itself, human beings regularly create or consent to the creation of data about themselves that is captured, replicated, and analysed digitally, often being generated initially in commercial dealings.

¹⁸ Buranyi, S. ‘Rise of the Racist Robots – How AI is Learning All Our Worst Impulses’; *The Guardian* (online), (uploaded 8 August 2017); Sodhani, S. ‘A Summary of Concrete Problems in AI Safety’, *Future of Life Institute*, (uploaded 26 June 2018); ‘Franken-Algorithms: The Deadly Consequences of Unpredictable Code’, *The Guardian* online, (uploaded 1 September 2018). The ‘nightmare’ and ‘noble’ dream’ contrast uses HLA Hart’s famous description of two competing visions about the nature of law and adjudication.

¹⁹ Eyers, D. et al., ‘Towards Accountable Systems’. (2018). Report from Dagstuhl Seminar 18181.

²⁰ Pasquier, T. et al., ‘Data Provenance to Audit Compliance with Privacy Policy in the Internet of Things’ (2018) 22 *Pers Ubiquit Comput* 333.

In analysing all such data, non-human intelligence can potentially reach levels, identify patterns, run simulations, model alternative scenarios, and do a vast range of other things faster, longer, more accurately, more completely, more connectively, and more currently than individual human intelligence can. When the use of non-human intelligence is added to endless data flows and passages through various systems in their application, the usual rules of privacy and other rights, strict and vicarious liability, causation and remoteness of damage, ownership of responsibility, *and* broader implications for access to justice for all are tested at or beyond their limits.

At that point, for example, the usual and borderless means of creating informed consent for legal purposes – ie clicking on ‘I agree’ to conditions that are largely unread as a means to access the next clickable webpage item – are also exposed as being inadequate, as are our conventional socio-ethical, legal, and regulatory frames of reference in dealing with them. Sooner or later, all courts and lawyers will have to deal with these implications as they arise in matters before them, whatever else AI might do in changing the systems and processes by which courts and lawyers conduct legal business. The issues sketched briefly above are new frontiers and battlegrounds for access to justice.

What does all of this mean for CLE in law schools, CLCs, and associated clinical partners? First, digital disruption of CLE is already here. At the 2018 Global Legal Hackathon, for example, a team from Monash University that included law students with clinical experience developed a winning proposal of how technology might be

used to address a legal need, centred upon online communication and analytical tools to overcome the problem of too many worthy CLC clients, too few available lawyers, and unduly onerous transaction costs of a 'triage' model based upon solely upon in-person appointments between lawyers and clients up front. The team – named ANIKALegal – ultimately came second in the world in their category.²¹

Secondly, both law firm involvement in clinics and the range of problems for clients of clinics are apt to expose students to an emerging need for digital literacy in clinical work. Some examples of new areas of societal need in delivering access to justice with which clinical supervisors and students increasingly must become familiar include: (i) digital fraud and theft of personal identities; (ii) online dispute resolution; (iii) problems emerging from smart contracts; (iv) victims of robo-trading and market-affecting algorithms; (v) victims of computer-generated letters from official agencies to householders; (vi) discriminatory use of facial recognition technology; (vii) familiarity with jury technology in criminal trials; (viii) unpacking inherent human biases in sentencing and other algorithms that result in miscarriages of justice; (ix) AI-assisted analysis of successful legal and constitutional arguments across jurisdictions in death penalty cases; and (xi) web-based engagement with royal commissions and public inquiries seeking information and case studies from victims. Indeed, at least

²¹ ANIKALegal later won an industry start-up award and a governmental financial grant. A second Monash-affiliated team from the 2019 Global Legal Hackathon (CYNAPSE) also reached the global final of the competition in New York. The imperative to use technology in designing and delivering a solution to a legal problem creates opportunities to address social injustices at scale.

some staff and students will need to become involved clinically in public advocacy and research-based submissions about law reform that protects individual privacy and other human rights in the digital age.

Thirdly, the nature and delivery of clinics has potential for evolution in the digital age. Virtual clinics already offer an established example of clinics using technology. The Monash Law Moot Court, for example, is a multi-million-dollar, technologically enabled, and multi-functional facility that we use for clinical purposes too, with potential to bring together academics, clinicians, students, and key experts and stakeholders for dialogue and collaboration in real time, regardless of their location in the world. Given what CLE offers to our understanding of ethics and professionalism in lawyering, digital literacy for lawyers also touches upon broader questions of how lawyers do and should conduct lawyering through technology, with opportunities to expose clinicians and students to such questions and experiences too.²²

Finally, suitable ethical and legal frameworks are yet to be developed for dealing systematically and globally with the issues of fairness and justice implicated in advances in legal technology and AI-assisted analysis. These fundamental questions are suitable areas of focus in a clinical context about the future of access to justice, particularly to ensure that its ideals are secured and not compromised by advances in systems and processes through technology. Indeed, given the capacity for AI-assisted

²² See, for example, Thanaraj, A. & Sales, M. 'Lawyering in a Digital Age: A Practice Report Introducing the Virtual Law Clinic at Cumbria' (2015) 22 *International Journal of Clinical Legal Education* [ci].

analysis to replicate in-built human biases and errors at mass scale (e.g. discriminatory racial profiling in criminal investigations and sentencing), if not identified and corrected at an appropriate stage in the decision-making chain, new issues of access to justice are also generated by the digital age.

Toby Walsh's *2062: The World that AI Made* quotes a 2017 AI conference comment that is a good touchstone as we look ahead to what AI will mean for all arms of the legal profession: 'Anyone making confident predictions about anything having to do with the future of Artificial Intelligence is either kidding you or kidding themselves'.²³ Despite that sobering warning against AI predictions, we know enough now to agree on the following high-level propositions with some degree of confidence:

1. Digital enabling and disruption is real and will become the new normal in time, with all arms of the legal profession being fundamentally challenged and changed by it;
2. The challenges of AI require appropriate socio-ethical, legal, and regulatory frameworks;²⁴

²³McAfee, A. quoted in Walsh, T. *2062: The World that AI Made* (2018). La Trobe University Press, pp.34.

²⁴ See, for example, Tasioulas, J. 'First Steps Towards an Ethics of Robots and Artificial Intelligence', (Paper, 2018). Available at SSRN: <https://ssrn.com/abstract=3172840> or <http://dx.doi.org/10.2139/ssrn.3172840>.

3. In developing those frameworks, we need technologists and AI-specialists to know a little bit more about law and ethics, and we need lawyers (including judges) and ethicists to know a little bit more about technology and AI;
4. All legal workplaces need to equip themselves and their staff with digital, technological, and AI literacy as part of their organisational DNA, and so all organisational leaders across all arms of the profession have an individual and collective stake in cultivating this new form of literacy as a core workplace skill;
5. Given that much legal work can now be automated or computerised, what law graduates need to be work-ready is different from what sufficed in the recent past;
6. Given that computer algorithms can replicate erroneous human assumptions and biases at scale, most lawyers will need to know enough about AI to assess and translate its inputs and outputs in using AI-assisted analytics, and some lawyers and service providers to lawyers (eg legal technologists) will need to know coding as a core skill; and
7. Access to justice and its instruments – from courts, barristers’ chambers, and law firms, to publicly funded legal aid, CLCs, and others in the social services sector - are not immune from being challenged and disrupted, on one hand, and either enabled or harmed, on the other, by AI, technology, and the digital revolution.

In short, everyone in the CLE business will eventually need some degree of digital and/or AI literacy too. This is because students will be familiar with it, graduates will

work in organisations where they need it, clinical partnering organisations will use it in client-related work to which clinical students are exposed, the needs of access to justice for clients will demand it, and advocacy in service to contemporary democracy will be left behind without it.

LAW SCHOOLS AND THE 'ACCESS TO JUSTICE' COMMUNITY IN THE NEW DEMOCRATIC PROJECT

The disruptions for CLE programs and providers from the forces of globalisation and digitalisation have a flip side. The promise of borderless mass connectivity also creates new opportunities for partnering and networking for law schools as one arm of their local and global legal professions, in pursuit of the realisation of access to justice under the rule of law. The next section of this part of the article repositions CLE programs in law schools within a broader and transnational democratic project. In that sense, disruptive challenges for CLE programs and clinicians are driven by the combined forces of digitalisation, globalisation, and democratisation.

What are the roles of CLE-supportive law schools and CLCs as actors in evolving accounts of democracy in an age of globalised and digitalised interconnectivity? On a broader level, law schools and their members join with other governmental and non-governmental parties as part of a network of oversight and accountability for the use and abuse of political and legal power in the continuously evolving democratic

system. As we move from focusing solely upon the formal institutions of democratic government (such as free elections and law-making by majority vote in legislatures) and curbs on their abuse (such as institutional protection of fundamental human rights, including through judicial review) as *exclusively* defining the features (as distinct from the formalities) of democracy, there is a new focus upon multi-order and multi-constituency accountability for all exercises of public power over others under 21st century conditions of what is variously called 'participatory', 'deliberative', and 'monitory' democracy.²⁵

Under this re-imagining of democracy and its participants and their interactions, the organs and actors of government are exposed to enhanced standards of public 'contestability', 'deliberation', and 'justification' in their official decisions and reasons for action, including courts, tribunals, legislative committees, public sector agencies, and others with whom CLCs and law school-supported clinics engage on behalf of clients and in other forms of advocacy in the pursuit of improved access to justice.²⁶ Conversely, policy or funding constraints upon the capacity of non-governmental actors to exercise oversight on the use and abuse of official power also affects the system of checks and balances in this evolving form of democratic engagement. If equal access to justice under the rule of law involves action and advocacy to ensure

²⁵ Keane, J. *The Life and Death of Democracy* (2009). W W Norton and Company, New York; and Gutman, A. & Thompson, D. *Why Deliberative Democracy?* (2004). Princeton University Press, Princeton.

²⁶ *Ibid*, (2004).

that the non-value-neutral impact of leasing, taxation, and other laws upon poor, vulnerable, and disadvantaged people is addressed, for example, then enabling non-government parties to represent and give a voice to such people in policy-making, law-making, and law reform processes is just as valid an object of clinical work, law school endeavours, and multi-dimensional contemporary democracy as any other.

Under such a conception of democracy, governments might still remain at the centre of multi-stakeholder networks, standard-setting initiatives, and essential law-making and policy-making, but with other participants meaningfully involved systemically as well. For example, various arms of the legal profession and other community stakeholders can become engaged in the public goods of law-making, the administration of justice, access to justice, and the rule of law. The legal academy does so by various means, some of which leverage or flow from others, such as:

- a) submissions to public and parliamentary inquiries;
- b) public advocacy and thought leadership on social justice issues;
- c) evidence-based research that informs public policy development and law reform;
- d) contracted research and consultancies for parliamentary and other governmental bodies;
- e) expertise-based membership of ministerial and other advisory committees;
- f) appointment as commissioners in regulatory and law reform agencies;

- g) authoring of amicus curiae briefs, community advocacy programs, and targeted (or strategic) public interest litigation, through research centres, student clinics, and partner CLCs;
- h) partners with other arms of the legal profession, the institutions of government, and the private and community sectors in collaborative research grant projects on social justice;
- i) multi-stakeholder enterprises across geographical and sectoral boundaries;
- j) being an independent knowledge-broker, relationship-builder, expertise-sharer, and resource-provider with governmental, professional, and community organisations tackling social justice problems; and
- k) collaborative endeavours that serve public goods as well as institutional and societal needs, such as law school involvement in CLE through CLCs and joint enterprises (eg the Monash Law Faculty's involvement in VicBar's pro bono assistance to self-represented litigants in appeals before the Victorian Court of Appeal).

In these ways and others, law schools are active participants in the systems for securing both democracy and access to justice, in the broader senses in which they are used in this article. In other words, there are increasingly important connections to be drawn between democracy, the rule of law, and access to justice, on one hand, and CLCs, CLE, and law schools, on the other.

Of course, the institutional capacity (from a decanal or other senior management perspective) and personal capacity (from an individual academic's or clinical group's perspective) to pursue such activities as part of broader democratic engagement must again be exercised within the usual strategic and operational parameters of the business of running law schools and universities (and they *are* businesses, on at least some levels). As with other option explored in each part of this article, questions of choice and filters for making those choices inevitably arise. The point worth reiterating is that while some of those choices might involve trade-offs in time, focus, and effort between the various options identified, not all of them do. In most cases, there are smart ways to create alignment between institutional needs and individual preferences, and the trick lies in identifying and navigating such journeys.

In doing so, individual academics and clinical groups can leverage most (if not all) of the items listed to individual and institutional advantage. In an Anglo-Australian tertiary sector regulatory landscape in which research excellence is increasingly measured and ranked (although not necessarily funded) in terms of research quality, impact, and engagement, research-based advocacy in the form of submissions to public inquiries, legislative committees, and law reform agencies by reference to evidence-based work and research with 'access to justice' constituencies have a place in both institutional concerns and individual career development, even if such publications do not necessarily count in terms of 'high quality' publications in 'high quality' publication outlets for the purpose of institutional research activity and

performance standards. In other words, the question is how they count, not whether they count, and those variables change as institutional environments change. At the same time, academics must also confront the reality that they cannot necessarily make such things count for all purposes institutionally. Institutional priorities and individual choices can align but they are not always co-extensive.

At the same time, nothing presented here from a decanal standpoint about institutional leverage and alignment of individual and group choices for strategic advantage and smart career navigation in clinical domains should be mistaken as a conservative call to conform rather than challenge the institutional status quo. The point simply is that the two are not mutually incompatible across the board, and that more clinicians and clinical groups could do more to take advantage of the opportunities that such leverage and alignment present in institutional contexts.

In those and other ways, values are implicated in clinical commitment to speaking truth to power, facilitating access to justice, remedying socio-economic justice (reconceived broadly, as advocated in this article), and fully realising the rule of law. Are there also ways in which lawyerly responsibility across all arms of the legal profession as participants in systems governed by the rule generates ancillary responsibility towards access to justice for the poorest and most vulnerable people in society?

In a recent International Bar Association (IBA) forum, I advanced twin and inter-related claims that the rule of law is necessarily diminished (or imperfectly realised)

in any place where poverty remains and that, as a result, true lawyerly commitment to the rule of law means that all lawyers have individual and collective responsibility (on some level and in some form) to join the legal war against poverty.²⁷ These two claims might be surprising and even confronting for many judges and other lawyers. They have direct implications for lawyers across the public, private, and community sectors in their commitment to the rule of law through engagement with law schools and other partners in combatting poverty by enhancing access to justice, especially at the intersection of the societal responsibility of legal organisations, CLEs and CLCs, and community legal assistance for those people who are impoverished or otherwise in need.

Access to justice is a fundamental element of the rule of law, on any view of the rule of law. In this incarnation, access to justice is a broad concept, extending beyond free expert assistance in litigation for anyone who needs it, to embrace access to advocacy and other levers of power in influencing laws that adversely impact upon poor people. On this view, the rule of law falls short of the ideal at best and is fatally compromised at worst whenever and wherever meaningful access to justice is less than optimal.

The conditions of poverty undermine all essential elements of the rule of law and consequently limit the access to justice and engagement of poor people in the legal and political systems. The rule of law is therefore diminished and imperfectly realised

²⁷ Horrigan, B. 'The War Against Poverty is Not Optional for Lawyers', (2015) accessible via the IBA website for the Poverty, Empowerment, and Rule of Law Working Group, available at this link: <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=f9ce20d3-15f9-417e-a9d8-59198ea304b2>.

in any jurisdiction where (and to the extent that) poverty is tolerated. In that sense, lawyerly fidelity to the rule of law is integrally implicated and itself limited by any acceptance of poverty as an unpreventable reality in the localities where lawyers conduct business and wield influence. The priority given to eradicating poverty and otherwise achieving social justice in various cross-sectoral goals within the global Sustainable Development Goals (SDGs) further reinforces exploration of the connection between poverty, access to justice, and the rule of law. Once the reality of global climate change and its impact upon accomplishment of many or all SDGs are brought into focus, there is no better time to integrate law schools' traditional and CLE programs to greater effect in securing access to justice locally and globally.

In that sense, the responsibility of lawyers towards the legal conditions of poor people and flowing from true fidelity to the rule of law therefore encompasses lawyerly responsibility towards access to justice as part of the rule of law. Is that really such an outrageous claim, in an era of modern slavery reporting requirements, 'social licence to operate' requirements in corporate governance standards, 'social' dimensions of environmental, social, and governance (ESG) considerations in investment decision-making, UN and IBA guidelines for lawyers on business and human rights, and sustainable development goals (SDGs) that prioritise both eradication of poverty and access to justice?

CONCLUSION

In light of the analysis above, all CLE programs are nested in a series of co-extensive and socially significant identities and functions. They are located in law schools, which operate in broader university and professional environments, or in CLCs, which (along with law schools) also have roles as part of an access to justice constituency, as actors within contemporary democracy under the rule of law, and as participants in a global legal profession owing fidelity to full realisation of the rule of law. Their success in the future turns, at least in part, on how well they respond and adapt to disruption through technology, globalisation, and democratisation. Successfully pitching, designing, resourcing, and implementing something like Monash Law's Clinical Guarantee can only be done with due sensitivity towards all of those dynamics.

In that important sense, the macro-level considerations canvassed in the second part of this article, about how enhanced clinical programs relate to their external environments, dovetail with the micro-level considerations canvassed in the first part of this article, about how designing and delivering enhanced clinical programs navigates internal institutional environments for law schools and their clinicians. Making CLE part of the DNA of a law school increasingly requires nothing less.

**THE INTERNATIONAL JOURNAL OF CLINICAL AND LEGAL EDUCATION
CONFERENCE NOVEMBER 2018**

Jennifer Lindstrom, Monash University.¹

From 28 to 30 November 2018, over 130 clinical legal educators, researchers and education partners from around the globe gathered at Monash University in Melbourne, Australia for the annual International Journal of Clinical Legal Education ('IJCLE') conference. The theme in 2018 was "Adding Value: How Clinics Contribute to Communities, Students and the Legal Profession".

Led by Professor Jeff Giddings in conjunction with Associate Pro Vice-Chancellor Johnny Hall and Professor Elaine Hall from Northumbria University, the team designed a program for Australian and International delegates to gather and share learnings from clinical legal education. As a new clinician, I was excited to attend my first IJCLE conference as a member of the clinical legal education team at Monash University. The conference was hosted at our Law Faculty in the Central Business District and Melbourne's legal precinct.

¹ Jennifer Lindstrom is a Senior Lecturer in Law and Experiential Education at Monash University, Melbourne, Australia

From the Field Report

The program began with a pre-conference workshop at Monash University's campus in Clayton. Delegates visited the Law Faculty's Moot Court then attended the workshop in the new Learning and Teaching building. The workshop titled "Reflective Practice and Assessment in Clinical Legal Education" was conducted by Associate Professors Rachel Spencer and Ross Hyams from Monash University. Victoria Roper from Northumbria University subsequently published a paper titled "Reflecting on Reflective Practices in Clinical Legal Education" on highlights of the workshop.²

Wednesday 28 November was the first day of the conference. Bryan Walker of Monash University welcomed the delegates with a welcome to country, followed by the opening address by the Dean of the Faculty of Law at Monash University, Professor Bryan Horrigan. Earlier in the day, Associate Professor Kate Seear hosted a "Festschrift" for now Emeritus Professor Adrian Evans. Colleagues and former students spoke about the impact of his dedication and paid tribute through speeches and original songs. This event was well attended by clinical educators from around Australia as well as by international guests who have collaborated with Professor Evans over his long career in education and clinical legal education. A special issue on the Festschrift has now been published by IJCLE.³

² Roper, V. 'Reflecting on Reflective Practices in Clinical Legal Education' (2019) 26(1) *International Journal of Clinical Legal Education* 216.

³ *International Journal of Clinical Legal Education*, (2019). 26(2).

Over the next two days of the conference, clinical educators presented papers in the format of six parallel streams with up to three speakers in each stream. The first morning consisted of two series of parallel sessions on developing interdisciplinary clinics, online externship and learning opportunities, whether law clinics need trigger warnings,⁴ supervision, and introduction to developing clinics around the world. In sessions exploring clinics around the world, delegates shared examples of developing clinics in the United Kingdom and Indonesia. From the UK, Alan East spoke about Coventry University's partnership with local charity provides opportunities to students to prepare and present cases in the social entitlement tribunal before a judge or doctor for welfare benefit appeals. Cate Sumner and Nani Zulminarni discussed various projects in Indonesia, the highlight being how law students and paralegals from PEKKA (Female-Headed Household Empowerment Program) provided free legal services to more than 190,000 to individuals in 2016.⁵ In 2015, Monash student Jazmine Elmolla visited Indonesia on exchange and said "I observed that the process of conducting student legal clinics... was the same as at Monash University but carried out with fewer resources and support" and that "the PEKKA paralegals were very organized. After every clinic the paralegals had a debrief session on the cases that has

⁴ See Seear, K. 'Do Law Clinics Need Trigger Warnings? Philosophical, Pedagogical and Practical Concerns.' (2019). *Legal Education Review*, 29(1).

⁵ Sumner, C. & Zulminarni, N. 'The Second Decade - Looking Back, Looking Forward: Women's Access to the Religious Courts of Indonesia' (2018). (*Report No 16*)

https://law.unimelb.edu.au/_data/assets/pdf_file/0008/2777759/Policy-Paper_Sumner-Zulminarni.pdf.

come to the clinic that day. I was struck by how the clients were facing the same difficulties as clients at the Monash clinics”.

In the afternoon, parallel sessions were held on reflective practice, engaging with Aboriginal Communities, a poverty law clinic in Canada, clinical legal education in South Africa and Kenya, and the Clinical Guarantee at Monash University. Monash University established its clinical legal education program in 1975⁶ and now guarantees each law student the opportunity to participate in clinical legal education program for credit towards their degree. Students gain practical legal experience through placements at Monash Law Clinics, Springvale Monash Legal Service, Anti-Death Penalty Clinic, Climate Defence Clinic, Innovation & Start-Up Clinic, Modern Slavery Clinic and Trade Lab Clinic.

The conference dinner was held on the middle evening at the Melbourne Zoo. Participants were transported to the forests of Asia and dined amongst the sounds of elephants and birds.

On the final day, 19 sessions throughout the day included two plenary sessions. The first plenary in the morning consisted of a panel discussion and interactive exercises on supporting students to act consistently with their values. Papers were then presented on establishing a climate defence clinic,⁷ achieving excellence in external

⁶ Giddings, J., ‘Clinical Legal Education in Australia: A Historical Perspective’ (2003). 3, *Journal of Clinical Legal Education* 7.

⁷ A new clinic to be established by Monash Law Clinics led by Emeritus Professor Adrian Evans in 2019.

clinical legal education opportunities,⁸ creating a chatbot in a clinic setting,⁹ how law schools can teach empathy, and the importance of student well-being in clinical programs.¹⁰

The IJCLE conference utilised technology to engage with participants. Delegates actively engaged with sessions and colleagues via twitter. In the session on teaching empathy, the Honourable Judge Michelle Christopher presented a paper from Her Honour's chambers in Canada. Delegates addressed benefits and challenges in rising use of technology in papers such as Peter Joy's discussions on "Client Confidentiality and the Digital Realm", using Robots (iPads on wheels) for students to attend hearings remotely¹¹ and Monash Law Clinic's initiatives on establishing virtual clinics for clients who cannot attend clinic offices due to various barriers.¹² Matthew Atkinson and Margaret Castles discussed the use of contemporary methods such as blogging by students about clinical experiences. The conference ended in a final plenary session where delegates formed collaboration groups to explore themes which emerged from the conference.

The post-conference event was an excursion to the Dandenong Ranges for bird watching. A family of kangaroos did not disappoint and made an appearance for

⁸ Presented by Lisa Bliss from Georgia State University College of Law, Kate Fischer Doherty from Melbourne Law School and Su Robertson from Westjustice.

⁹ Flinders Legal Advice Clinic.

¹⁰ A project focussing on student wellbeing supervised by Associate Professor Rachel Spencer and Lecturer Jackie Weinberg at Monash Law Clinics with undergraduate law students.

¹¹ Alan East's session on "Advocacy in clinical legal education: presenting cases in tribunals".

¹² Project by Jackie Weinberg, Lecturer from the Faculty of Law at Monash University.

From the Field Report

photo opportunities for our international guests. The excursion concluded at a winery in the Yarra Valley.

The next conference will take place in Bratislava at the Comenius University from 3-5 July 2019. The theme this year is “Improving the Future: Using Clinical Legal Education to educate lawyers for a Just Society.” Information, links to papers, conference presentations from 2018 can be found [here](#).

**FROM THE FIELD: SOME NOTES ON THE ‘CLINICS AND SQE – WHAT NEXT?’
CONFERENCE ABOUT THE NEW ROUTE TO QUALIFYING AS A SOLICITOR
IN ENGLAND AND WALES**

Malcolm M Combe¹, University of Strathclyde²

On 5 June 2019, Coventry University and the Clinical Legal Education Organisation hosted an event entitled ‘Clinics and SQE – what next?’³.

To the uninitiated, at least two questions flow from that title. First, what is SQE? Second, whatever it is, what does it mean for law clinics?

SQE stands for ‘Solicitors Qualifying Exam’.⁴ SQE is a big deal for any readers in England and Wales who are concerned with legal education. Two quickfire clarifications. 1) For ease I’ll just say ‘England’ rather than ‘England and Wales’ as shorthand from now on, but stay tuned for another Welsh-interest point. 2) The phrase ‘concerned with legal education’ can be used broadly: naturally there are those who *provide* education, which might be thought of as my main interest, but of course there are also those who *participate* in legal education, and also those who want to *benefit*

¹ Malcolm Combe is a Senior Lecturer in Scots private law at the University of Strathclyde.

² Thanks to the School of Law at the University of Aberdeen (my former employer) for facilitating my attendance at the event that forms the basis of this note.

³ See <https://www.eventbrite.co.uk/e/clinics-and-sqe-what-next-tickets-60520905658#> accessed 28.06.2019.

⁴ See <https://www.sra.org.uk/sqe/> accessed 28.06.2019.

from educated individuals (i.e. employers, but also society more generally). For this note I will pay more attention to the educators though, and particularly clinicians.

SQE 1 and SQE 2 are two separate assessment exercises which will soon – it seems – be playing a gatekeeper role for access to the legal profession in England, albeit it will operate with the additional requirements of having a certain amount of eligible experience undertaking legal activity in a verifiable way (this being known as ‘qualifying work experience’), and also the requirements of probity expected of solicitors, namely to be an ethical and professionally aware soul (the ‘character and suitability requirements’). There was an initial proposed roll out date of 2020, but this has slipped back to 2021. SQE 1 and SQE 2 – taken together as SQE – will assume the gatekeeper role that is currently by the Legal Practice Course (LPC) qualification, whilst also rendering the Graduate Diploma in Law (GDL) conversion route from one degree to another otiose.

Much more could be written about all of this. For now, it can be noted that some remain sceptical about the SQE on its own merits, with various points relating to this being touched on below. Others seem firmly of the view that the SQE train is coming and it is a bit late to try to stop it outright. Depending on when you are reading this and what has actually happened, this description might already seem dated or simplistic, but I suppose that is an inherent risk in notes such as this. This note will simply proceed by accepting that appointed timeline and the necessity of adapting to

SQE quickly, with a side order of an explanation as to why a Scot might be interested in all of this.

Why else was a Scot interested in the event? The functional reason for my attendance was that one of the representative bodies for law clinics – the Clinical Legal Education Organisation (CLEO)⁵ – had its AGM at Coventry on the day of the conference. I am a trustee of CLEO, and there was also a trustee meeting. On the assumption that the fine detail of the governance of CLEO is not something that will engage readers too much, I will forgo discussion about that and instead take the opportunity in this note to set out some of the discussions about the acronym that is gloriously monosyllabically rendered as the phonetic ‘*squee*’ (which sounds like the kind of noise a child would emit whilst having lots of fun in an Enid Blyton-esque way, before drinking lashings of ginger beer).

Before doing that, I’ll briefly explain what this might mean to a Scot, and indeed to this Scottish writer. A first point is that several Scottish law schools offer English law qualifications. Another point is that what happens in the larger jurisdiction of England might have an impact or at least an influence on the direction of legal education and training in Scotland. Don’t get me wrong, this is an issue that periodically arises in Scotland anyway – with discussions being instigated either by the

⁵ See <http://www.cleo-uk.org/> accessed 28.06.2019.

regulatory/professional body (2017),⁶ by politicians (2018),⁷ or as part of wider review of legal services triggered by government (the Robertson Review, 2018).⁸ It's just that whenever the biggest jurisdiction in the UK does something this can have a ripple effect elsewhere, in terms of copying what is seen to work or being cautious over what does not work. A further point is that what the (larger) clinic sector does in England is of more than passing interest to the (smaller) jurisdiction of Scotland, and if the clinic sector down south is moving and innovating, the question of whether Scotland should also innovate is almost entirely independent to the reason for England's innovation. In the meantime, though, and for the purposes of this note, I suppose the writer's Scottish perspective might offer a chance to offer a relatively detached perspective on what is happening with SQE now.

Returning to the question I omitted from the above, what does it mean for clinics? A few things, and that was the central theme of the conference. Here comes the main thrust of this note accordingly, with the following largely representing my conference notes in roughly chronological order in a polished form. That is a disclaimer in itself, but please also note the further disclaimers that no firm conclusions are reached here, and also that I might be horribly parsing or paraphrasing other people's views here.

⁶ See <https://www.lawscot.org.uk/news-and-events/news/do-we-need-alternative-routes-to-the-profession-in-scotland/> accessed 28.06.2019.

⁷ See <https://digitalpublications.parliament.scot/Committees/Report/I/2018/9/23/Training-the-next-generation-of-lawyers--professional-legal-education-in-Scotland#Introduction> accessed 28.06.2019.

⁸ Robertson Review, (2018). Available at: <https://www.gov.scot/news/report-of-the-independent-review-of-legal-services/> accessed 28.06.2019.

CLINICS AND SQE – WHAT HAPPENED?

Panel 1 – SQE, Law Schools and the role of clinics in legal education

Before setting out what was discussed, I will offer one point on the title of the panel. No criticism of that title is intended, I stress, which was absolutely fit for the purpose of the day, it is just that it might be worth noting that there is a healthy amount of literature on what role law clinics can play in legal education *anyway*, not least in this open access journal, and also in my 2014 article in *The Law Teacher*⁹ and a more recent analysis by Stephan van der Merwe in the *Stellenbosch Law Review*.¹⁰ It can also be noted that the potential to use clinical work as part of qualifying work experience has also been subject to some academic analysis.¹¹ Such scholarship notwithstanding, the event (and in turn this note) uses SQE as both the springboard and the setting for the discussion.

We were welcomed to the conference by Stephen Hardy (Head of Coventry Law School), who began with the wistful observation that clinic had developed somewhat to what it was when he was younger, namely something that you did on a Wednesday afternoon if you were rubbish at sport. He introduced a panel of Julie Brannan (from

⁹ Combe, M. 'Selling intra-curricular clinical legal education'. (2014) *The Law Teacher* 48(3) 281.

¹⁰ van der Merwe, S. 'A Case Study in Advocating for Expanded Clinical Legal Education: The University of Stellenbosch Module' (2017) *Stell LR* 28(3) 679.

¹¹ Dunn, R., Roper, V. & Kennedy, V. 'Clinical legal education as qualifying work experience for solicitors'. (2018). *The Law Teacher* 52(4) 439.

the Solicitors Regulation Authority, aka the SRA¹²), I. Stephanie Boyce (from The Law Society [of England and Wales], but speaking on the day as a consultant), and Professor Elaine Hall (Northumbria University). Stephen played chair for that session and was ably supported on the day by Alan East (also Coventry) and Lucy Yeatman (Liverpool). It was also observed early in proceedings, I think by Stephen, that external changes to the curriculum are not necessarily a bad thing, and that they could properly be designed to change and challenge us.

The first panel member to speak was Julie from the SRA. For non-English readers, it is worth recalling that there is a regulatory and professional representation split in England: the SRA is in charge of regulating the profession, and the role of representing the profession falls on the Law Society¹³. Different approaches are available: for example, in Scotland the Law of Society of Scotland¹⁴ retains the regulatory role, whilst also representing the profession.

The SRA is pushing for route to the profession reforms in principle and is now seeking implementation in good time. Julie noted the new system envisages everyone who qualifies must have a degree or equivalent, then SQE 1 (knowledge) and SQE 2 (skills), mixed with two years of qualifying work experience (represented by the acronym QWE, gloriously phonetically rendered as 'quee', details of which can be found in the

¹² See <https://www.sra.org.uk/home/home>

¹³ See <https://www.lawsociety.org.uk/>

¹⁴ See <https://www.lawscot.org.uk/>

regulations available online¹⁵), and satisfaction of the character requirements. She stressed there was no particular order (so you could do SQE 1 *after* SQE 2, a point that was clarified in the Q&A); all that mattered was that students had all of those by the time they applied to get a practising certificate and on the roll of solicitors.

Why was this reform being brought in? The main reason, which was returned to a couple of times, was a hope to remove some of the barriers in the current system, in terms of cost and availability of training contracts. Regarding the cost, it was noted SQE might weigh in at £3000 – £4,500.

Another related point was the conversion rate of the present route to qualification, which involves the vocational qualification the Legal Practice Course. Apparently where a candidate is financed through the LPC by a law firm, this brought a conversion to solicitor of 95%. When trying another route (such as support from the ‘Bank of Mum and Dad’), the conversion rate was 70% or so. The gamble of doing the LPC without having a contract was raised.

What would the new qualification route mean for clinics? Julie noted working in a law clinic *might* be within the umbrella of what can contribute to qualifying work experience – i.e. under the supervision of a solicitor (that is to say a solicitor on the roll, not necessarily in practice). It was also noted that QWE could be built up in ‘no more than four organisations’ – and a law clinic could be an overarching single

¹⁵ See <https://www.sra.org.uk/sra/policy/future/resources.page#resources>

organisation (that is to say, you might also include within that law clinic allocation some placements led by the university, meaning you do not use up another one of the four).

The second speaker, Stephanie, mentioned a concern for the Law Society of England and *Wales*, namely that Welsh language resources for the assessment might not be available in good time, which is pretty important as there is a legal need for this to be the case. As someone with an interest in minority languages, this was more than a bit interesting to me – any remaining doubts about the SQE aside, it would be quite something if provision of materials in Welsh slows the SQE roll out down.¹⁶

Elaine was the third speaker, and she noted that she remained of the view the SQE was not a good idea, and that she had not given up on the idea of stalling or perhaps even scrapping it. I am conscious I don't want to put words into anyone's mouth, so please count this as paraphrasing. Anyway, as part of her presentation, she took some figures from the SRA website (a website that she noted was lovely and thanked the SRA for that), and basically noted that with ~192,000 solicitors on the roll, of which ~147,000 are practising, where were all the current law students going to fit into this irrespective of the SQE? Based on figures from the Law Society, 2017/18 saw 18,850

¹⁶ See Mac Síthigh, D. 'Official Status of Languages in the UK and Ireland' (2018). *Common Law World Review*, 47(1), 77-102. And for a flavour of my own interest, see this post on my WordPress blog: Combe, M. 'Scots Gaelic, Scots law and Scots attitudes' (2015). <https://basedrones.wordpress.com/2015/09/04/scots-gaelic-scots-law-and-scots-attitudes/> accessed 28.06.2019.

UK students enrolled on undergraduate courses, and then there are roughly 6,000-7,000 new members coming on to the roll in a year, so there might well be fewer law-type jobs than that. (Fewer than half of law graduates will have even a law-related job, never mind be a barrister or solicitor.)

Returning to the SQE, Elaine then channelled Tolkien as a means to critique the cult around the new expected journey: one exam to rule them all, one exam to find them, one exam to bring them all, and in the darkness bind them. (It works better when 'ring' and 'bring' rhyme and scan, but kudos to Elaine as I geekily enjoyed this.) She also wondered whether all the problems with the present system that were cited really were problems, and, wondered if we were spending lots of time and money to replace something that is basically working.

That broadside towards SQE aside, what about SQE and law clinics? In her view, [qualifying] work experience in clinics cannot just be aimed towards ticking SQE boxes, clinical work should also be about making people better, more self-aware, more ethical, and so on. That is to say, clinic experience should be a more holistic affair, and not ousted by technical QWE requirements.

If they can align though, all well and good, but how much in the way of clinical experience could be given over a three or indeed four-year degree programme? Taking two years' experience as 3,248 hours (although Julie stressed this number was *not* regulated by SRA – this being the two years FTE equivalent from the UK

Government, and the SRA says they won't count hours), how much could be done? Taking her amazing, lovely university with its developed clinic and also including potential summer work and everything else students might do for a clinic in their free time, Elaine reckoned students could still only realistically get to 50% of the hours. Someone would still need, for example, a handy uncle with a handy law firm to top up the hours. She also feared that promising loads of hours could open universities/clinics up to advertising problems, and the last thing she wanted was for the Advertising Standards Authority to be after her for promising more hours than might be delivered. Julie did respond by noting the hours requirement was permissive rather than directory, and then the session opened up into a Q&A discussion.

One big question was 'How will this system actually differ?' It was speculated that people coming to the legal profession from other professions might do things more quickly than they would under the current system.

On what the system will mean for supervisors (and clinicians), it was asked whether barristers could sign off, and the answer was 'no'. Why? Because the SRA cannot regulate barristers, so barristers making any kind of dishonest declaration could not be chased by the SRA.

What does a solicitor need to do (in relation to QWE)? A solicitor needs to make an honest declaration, and *not* necessarily make a statement about reaching a certain

From the Field Report

competency. The supervising solicitor simply says they have had the *OPPORTUNITY* to reach those standards, and those standards would be finally signed off by SQE 2.

The solicitors in the room asked for further details: if it is not an exact hours issues, and not a competency point, when will a signing off solicitor be pulled up by the regulator? The example given was a solicitor saying (for example) a student has done three months instead of one.

What else might allow for QWE to be topped up? a) A formal training contract for a year. b) Acting as a paralegal. c) Involvement with suitable unregulated services.

This being so, the point that was returned to is that there will still only be 6,000 or so jobs for people navigating the system, notwithstanding these changes. Another point was raised about whether Magic Circle [big London] firms would even be interested in what is happening at Clinic, or indeed QWE as a whole: would they not just put people through their own training regardless?

Returning to clinics as a whole, one delegate noted SQE doesn't harm what clinics are or should be doing, so whilst people may still have wider reservations Clinic still can have a role. Another delegate later in the day stressed SQE would not change her clinic's focus on access to justice. That being said, the potential danger of a university and its clinic(s) coming a cropper in terms of marketing was returned to, and there was a point made about the huge burden of record keeping that could/would emerge.

One point that would be relevant for many clinics though was that SQE 1's knowledge

requirements did not cover some key clinic subjects: for example, there was no social security law or family law in SQE 1 (with 'company and commercial' being the only topic that is a non-reserved¹⁷ solicitor area which SQE 1 covers). This *might* have the danger of skewing clinic activities in some cases.

In terms of other comments made as this panel concluded, one person rather pessimistically noted they felt the new route was but a 'paint job with a new name' and was not actually about increasing access to the profession, with it also being noted that the whole SQE innovation brings together the worst stuff of the LPC and/or the Law Society finals. That being the case, another noted the SQE was never going to be able to solve everything, so maybe people were being a bit too downbeat. A final point that was made here is that this SQE system is but the starting point, and it might be tweaked in future. That brought the morning session to a close.

Panel 2 – Social Justice and SQE

The afternoon featured another panel discussion, with three clinicians and one consultant. The one SQE-er, so to speak, in this case was not so much someone who had been sent out to bat for SQE on the day, but rather someone who had been involved with its planning yet was not involved in its implementation. This was Crispin Passmore, a consultant who knows the legal market well and who previously

¹⁷ That is to say, the specific legal services activities that only those who are authorised (or exempt) can carry on, per section 12 of the Legal Services Act 2007.

ran a successful law centre in Coventry, albeit he is not a lawyer himself. Katherine King (Central England Law Centre), Stephanie Jones (University of Central Lancashire) and Elizabeth Fisher-Frank (Essex Law Clinic) brought current pro bono perspectives to bear on this discussion. They spoke variously about:

- outreach work in particularly deprived areas (including areas where the clients could not even afford to get to a university campus);
- the potential for a commercial law clinic (and how, despite potential criticisms that this could be a distraction from 'at the coalface' access to justice activities, it in fact perpetuates access to justice by sustaining the economy at a local level, plus also providing opportunities to three student interns with 10-month positions, who in turn provided client continuity over their period of office);
and
- placement models (linking Coventry with the Central England Law Centre, with a connected course featuring a reflective diary).

With those situations in mind, one of my favourite observations of the day was made: clinics help students to think like clients rather than like lawyers. That is to say, when someone presents with a situation that boils down to 'I have X legal problem', do not just tell them what the law says about X, rather tell them what they need to do.

What about funding for clinics? In the brave new SQE world, there may be a need to come up with further justifications for a clinic's existence. Sure, budgets might get

squeezed but teaching still needs done, and clinics can be part of that. That said, returning to a theme from earlier in the day, would students be driven to complete clinic tasks that are covered in the SQE 2 test (i.e. those within the reserved activities or 'company and commercial matters), with pressure from (for example) the market on universities to facilitate that? Once again, a response to this proposed incarnation was this is still a pilot phase, so it could still be possible to make a case to tweak this in the near future.

Returning to the overall clinic point, how does the clinic sector convince people 'we need more not less' in terms of clinic? Can the views of employers play a role here? Can the importance of clinics be stressed to university administrators? Then came a pretty interesting question, namely: 'would clinics end up competing against each other?' I suppose this might happen when QWE in one clinic ticks boxes and seems sexier than QWE in another, but this can quickly be countered by the fact this is probably unlikely to be so much of an issue in and of itself where demand outstrips supply, and that does seem to be the case in (parts of) England at the moment. There was also brief discussion along the lines of whether there might be scope to offer commercial advice to people who might even pay a bit for that, and then feeding back proceeds into social welfare law work.

Other than a quick discussion about the confidentiality of clinic work in the context of QWE (which most delegates thought would be manageable) plus some later

workshopping about clinics and QWE, that was the end of the main SQE chat on the day.

There was then some further discussion about what clinics can do more generally, with action in relation to climate challenges being a possible focal point. On this, one delegate (Brontie Ansell) noted the possibility of helping community groups who try to bring in local food solutions or recycle old furniture, I recalled some discussion at the 2017 IJCLE conference in Northumbria about students taking action in relation to a local emitter, and I also made a quick reference to a partnership of Scottish universities and the Development Trusts Association for Scotland's Scottish University Land Unit (SULU) initiative¹⁸ in terms of helping local communities overcome land-based barriers to sustainable activities, and wondering if there might be an equivalent down south relating to the Localism Act 2011 and its assets of community value. Such steps might seem small in the overall climate challenge that we face at the moment, but the words of Patrick Geddes seem appropriate here: "think global, act local".

Conclusion

Although this note has been drawn together by one author, it has very much been a team effort drawing together the thoughts of many people much more *au fait* with

¹⁸ See <https://dtascommunityownership.org.uk/community/community-asset-transfer/build-land-law-law/scottish-university-land-unit-sulu> accessed 28.06.2019.

SQE and English law clinics than I am. As such, it seems fitting to once again borrow from someone else to offer some edited highlights from the event in an attempt at a conclusion.

After the event, Lucy Yeatman drew together various headline points and circulated them to the CLEO network. On SQE, and from Julie Brannan's contribution from the SRA in particular, the following headlines were noted:

- Only a solicitor can sign off the qualifying work experience. This is because the SRA need to be able to take action against anyone who falsely certifies that qualifying work experience has taken place.
- The SRA has no definition of 'full-time'. They do not plan to count the hours that a potential solicitor has undertaken in their work placement. It is up to the solicitor certifying that the work has been done to decide what full time looks like.
- The regulations have been drafted to allow an 'umbrella' organisation to sign off work, so that a law clinic student who has volunteered in the CAB and done more than one project in an internal clinic and bundle this together as one of their four pieces of work experience. It is the professional responsibility of the person signing off the work to be satisfied that it has taken place.
- There is no need to comment of the standard achieved in the work. The SQE 1 and SQE 2 are the tests of competence. The requirement of the qualifying work

experience is only that the prospective solicitor has had opportunities to develop skills and knowledge needed to be a solicitor.

Thereafter, there were some small group discussions and the feedback from them was that guidance on qualifying work experience in law clinics would be helpful, with that help potentially entailing:

- Guidance clarifying the points above so that law clinics planning to certify experience as part of the qualifying work experience are clear about what is involved.
- A template or document for students to use as a reflective diary linked to the competency statement demonstrating how they have developed the skills and knowledge needed to be a solicitor.
- Support on training students to talk about their experience without breaching confidentiality.

By way of final conclusion, I should note a 'well done' to Coventry and the team at CLEO for putting on such a useful event. I certainly left the day better informed, and in turn I hope this note might play a part in bringing you up to speed with the important changes that are on the horizon.