

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

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Abstract

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

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹² Weinberg (n3) p.13

¹³ Weinberg (n3) p.23

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

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

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

A new module addressing active citizenship

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

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

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

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

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

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

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

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

The Assessment Task

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

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

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

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

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

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

Approach to Delivery

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

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

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

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

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

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

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

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

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

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

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

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

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

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

What the Students Thought

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

²² Weinberg (n3) p.24

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

²⁴ Byron (n4) 576

²⁵ Ibid

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

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