

“Irish Clinical Legal Education *Ab Initio*: Challenges and Opportunities”

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I. Introduction

This article details the incipient efforts of one Irish university law school, the National University of Ireland, Galway (NUI Galway), in the field of clinical legal education. While clinical legal education, which began in the United States some fifty years ago, has made significant advances throughout the rest of the common law world, it remains at a very early stage in Ireland.¹ In fact, Irish efforts in the field to date more closely resemble what is known in the United States as the “externship model” of legal education, rather than what are commonly identified as law clinics in other jurisdictions.² And for a variety of reasons that will be touched upon later in this article, the law school clinic is unlikely to develop here to the same extent it has elsewhere. As such, this article explores what *Irish* clinical legal education currently looks like and what it might look like in the future.

It begins with some background on and consideration of legal education in Ireland, then, using NUI Galway as a case study, details the emergence of skills teaching in the curriculum and the consequential increase in participation in moot court competitions and in student scholarly output. The article next examines the establishment, organisation and maintenance of a placement programme for final year law students. In so doing, it reflects on what has worked and what has not at NUI Galway from the perspectives of the clinical director, placement supervisors and students. The article concludes with some realistic, yet sanguine, observations as to what future clinical legal education has in Ireland.

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1 NUI Galway and University College Cork are the sole universities who have a dedicated “clinical person” and the University of Limerick has an internship programme for all of its students, not just those studying law.

2 See Elliott Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 *Journal of Legal Education* 375 at 380 (2001).

II. Irish Legal Education: Historically and Today

Unlike other jurisdictions such as the United States, law is taught as an undergraduate subject at Irish universities.³ This, of course, has myriad consequences for its teachers and students. For students, “[L]aw is not a particularly difficult subject (apart, perhaps, from the rule against perpetuities!), but its study benefits greatly from maturity and some experience of the world. Even the brightest seventeen-year old – and many of those who study law at University are the brightest students in the country – will find it difficult to grasp the broader social and economic contexts of judicial decision-making.”⁴ Generally speaking, teachers simply cannot expect the same level of interest, participation and passion from undergraduate law students and their approach to teaching is likely to reflect that.⁵ The pros and cons of both models have been discussed previously and the question of which is superior is open to debate.⁶ Suffice it to say that the undergraduate model of legal education utilised in most of the common law world is as unlikely to change as the American regime of postgraduate legal education. Moreover, proliferation in the different types of Irish law degree programmes (law and business, law and language, etc.) and the fact that one needn’t necessarily undertake a university law degree to become a lawyer militate against a “one size fits all” system and allow for a good deal of flexibility.⁷

Traditionally, Irish university law schools employed practitioners, as well as full-time academics, to teach substantive law modules to students.⁸ This has long been a prominent feature of legal education in the United States, where even the top law schools recognise the value of bringing in sitting judges and practising lawyers to teach their students.⁹ These courses often prove the most popular and well-rated offerings among students. As of late, however, the Irish universities have moved away from employing part-time or adjunct lecturers.¹⁰ In hiring new personnel, there seems to be little or no merit seen in practice experience; the letters Ph.D. behind a candidate’s name tend to trump all other considerations. An evaluation of the wisdom behind this move (though quite dubious in this author’s mind) lies beyond the scope of this piece, but one of its inherent

3 See Paul O’Connor, *Legal Education in Ireland*, 80 Michigan Bar Journal 78 at 78 (2001).

4 See William Binchy, *The Irish Legal System*, 29 International Journal of Legal Information 201 at 216 (2001).

5 See Brook Baker, *Teaching Legal Skills in South Africa: A Transition from Cross-Cultural Collaboration to International HIV/AIDS Solidarity*, 9 Legal Writing: The Journal of the Legal Writing Institute 145 at 147, 149 (2003) (“students took a regime of full-year, huge lecture courses (200-500 students in a class) in which they passively took notes”).

6 See William Twining, *Rethinking Law Schools*, 21 Law and Social Inquiry 1007 at 1009–1012 (1996) (describing the strengths and weaknesses of undergraduate and postgraduate legal education).

7 See William Binchy, *The Irish Legal System*, 29 International Journal of Legal Information 201 at 216–217 (2001).

8 See Paul O’Connor, *Legal Education in Ireland*, 80 Michigan Bar Journal 78 at 78 (2001).

9 See David Hricik, *Life in Dark Waters: A Survey of Ethical and Malpractice Issues Confronting Adjunct Law Professors*, 42 South Texas Law Review 379 at 382 (2001) (“Current American Bar Association (“ABA”) accreditation standards encourage law schools to ‘include experienced practicing lawyers and judges as teaching resources to enrich the educational program.’”). See also James Stewart, *The Moonlighters – Extracurricular Work by Law Professors Is Source of Controversy*, The Wall Street Journal, 1 March 1984 (noting that Harvard Law School employs both practitioners and scholars as teachers).

10 See Paul O’Connor, *Legal Education in Ireland*, 80 Michigan Bar Journal 78 at 78 (2001).

consequences is that the emphasis in the teaching of substantive law modules has veered very much toward the theoretical.¹¹

Yet at the same time, a cognisance of the need for “early intervention” practical skills education has emerged in the Irish university law schools. Competition, first for entry and then for employment as either a solicitor or barrister, is extremely difficult and law graduates are now expected to have well-developed practical skills in addition to theoretical knowledge.¹² To this end, all the universities now offer some form of formalised training in legal analysis, research and writing; whether as a stand alone module, in a legal systems course or as a part of a substantive law offering.

The university law schools are eschewing the practical and embracing the academic in their hiring practices. The professions and the students are crying out for more of the former.¹³ It is in the context of these two incongruous trends that clinical legal education is developing in Ireland.

III. The Clinical Experience at NUI Galway as a Case Study

A. Practical Legal Skills Module

Much to the credit of the Faculty of Law at NUI Galway and largely at the urging of senior academics who had been exposed to legal education practice in other jurisdictions, a Visiting Fellow from the United States was invited annually to teach a one semester (12 week) module in legal analysis, research and writing to all students starting in the early 1990s. Naturally, the Visiting Fellow’s legal ability and capacities for teaching and cross-cultural engagement varied from year to year, as did the learning experience for the students. To ensure that students would have a consistent experience, after two successful years as a Visiting Fellow, I was appointed in a permanent capacity.

The module, entitled Legal Methods & Research, focuses on developing the *sine qua non* lawyering skills: how to read, analyse and interpret case law and statutes; how to find relevant primary and secondary legal sources, using both traditional and computer-assisted research methodologies; and how to write clear, concise and sophisticated prose. The module’s overarching purpose, inextricably intertwined with all facets of skill development, is to expand each student’s capacity for critical thought, i.e., to make her think like a lawyer. It is a required subject for all students studying law at NUI Galway.

11 *Ibid.* at 79 (“In Ireland, the primary objective of academic legal education is intellectual formation in the law through the acquisition of analytical and research skills while professional legal education is more vocational and directed toward practice issues. This is not to suggest an overly rigid dichotomy, but rather a difference in ethos and emphasis.”). See generally James Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 California Western Law Review 219 (2007) (discussing a similar trend in the United States).

12 See John O’Keeffe, *Why Our Barristers Are Just Like Taxi Drivers*, *The Irish Independent*, 6 April 2008 (noting the barriers to entry and real competition in the legal profession).

13 See James Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 California Western Law Review 219 at 241–242 (2007) (“But while the professorate may be quite happy with the academic slant in law school, students are not. Students come to law school to be trained as lawyers, not as academics. On a personal level, I frequently hear from my students about the irrelevance of what they learn, especially in the third year. Many express a deep desire for more practical skills such as how to handle clients, how to draft basic transactional documents, and how to operate a law office.”). Many of my students who have been through the clinical placement programme at NUI Galway make very similar comments. See *infra*.

The module is akin to, though far less rigorous than, the required research and writing course for all first year law students in the United States. It is examined by means of continuous assessment. A series of brief, discrete assignments testing students’ writing, analytical, research and citation abilities culminates in a longer written project in which students are required to integrate the skills the module seeks to engender. The module, traditionally taught over the course of one semester, has now been expanded to a full year for students in the Bachelor of Civil Law (B.C.L.) degree programme, i.e., our flagship law programme from which most graduates seek entry into the professions.

The module has proven quite successful in that the students who engage with it fully develop solid research, writing and analytical skills which inure to their benefit immediately on exams and essays in substantive law subjects. The two central problems with it, however, are: 1) some students feel that it is not a “real” law subject and, perhaps even more troubling, their sentiments are, to some extent, shared by colleagues; and 2) from a teaching and correcting perspective, it is extremely labour intensive, especially in a university setting where the premium is on research and publication output. Despite these issues, the vast majority of our students emerge well versed in practical legal skills. Successful completion of Legal Methods & Research is an absolute requirement for further participation in our clinical programme and my own informal, empirical research indicates that those who perform best in the module are typically the students who have contributed to the initial successes of our clinical legal education programme.

B. Moot Court Participation and Student Scholarship

An immediate consequence of this emphasis on developing practical skills for our students has been expanded participation in moot court competitions – in individual modules, in intra-university competitions, national competitions and international competitions. For the first time, first year students in two of our law degree programmes (the LL.B. and B.C.L.) now have mooted exercises as assessed components of one of their modules. Moreover, the student law society now elects a moot court officer who, with the support of various members of academic staff, fosters and encourages the participation outside the course curriculum of students in a wide variety of moot court competitions within the university and in a national competition among the universities, Blackhall Place (trainee solicitors) and King’s Inns (erstwhile barristers). NUI Galway students also compete annually in a national moot court competition conducted in the Irish language.

Individual staff members work with teams of students who have participated successfully in moot court competitions at European and international levels as well. In addition to traditional mooted, these competitions also require that students perform extensive legal research and draft lengthy legal memoranda in support of their position. As such, they have proven extremely valuable learning experiences for participants.

Another welcome result of our efforts in skills training, though perhaps not a traditional component of the clinical experience, has been a substantial and heretofore unseen growth in student scholarship. While participation in a student law review or journal has long been a prized feature of the American law student experience, it has only recently come into prominence on this side of the Atlantic. The *Galway Student Law Review* has become a vibrant outlet for our students’ scholarly interests and is available not only on our own dedicated website, but also on the fully searchable database of the prestigious American online legal publisher, Hein on Line, with whom

we recently contracted.¹⁴ Additionally, our students – both undergraduates and postgraduates – have had a number of articles published in peer-reviewed national and international law reviews and journals.¹⁵ Again, while not technically under the rubric of clinical legal education, this proliferation of student scholarship is a particularly noteworthy development, given that a number of our graduates do not go into the legal professions, but pursue careers in which the independent initiative, critical thinking capacity and research and writing ability they have demonstrated in becoming published authors are invariably prized traits.

While the benefits of moot court competitions and student publications are manifest, some challenges remain. As for the former, it remains a relatively small number of students who participate in various competitions. An increase in the involvement of academic staff and an allocation of academic credit for those students spending long hours preparing for and taking part in moot court competitions might go some way toward increasing the number of participants. A somewhat converse weakness afflicts the realm of student scholarship. The editorship of the *Galway Student Law Review* remains almost entirely the responsibility of its faculty advisors. It would be highly desirable for much of this task to devolve to students working to produce the Review, similar to the American model. They should then be entitled to academic credit for the extensive time and effort this would entail. But the long term sustainability of undergraduate editorial control remains open to question and the quality of the finished product would almost certainly fluctuate from year to year depending upon interest and ability levels.

3. Clinical Placement

Having advanced classroom skills teaching and increased participation in extracurricular legal activities, I began to examine the feasibility of a clinical placement programme for our students in academic year 2005–2006 with the aid of a funding grant from the Centre for Excellence in Learning and Teaching at NUI Galway. While colleagues were generally receptive to the possibility, it took some time to clear administrative hurdles and to develop potential placement opportunities for our students. Fortunately, the administrative hurdles were easily surmounted and the “system” was able to accept the new module, despite the fact that there were to be no formal lectures or assessments.

The next task was to find suitable placement opportunities. Based on lengthy consultation with people involved in clinical legal education in the United States and with academics from other disciplines, it was decided that the best way to facilitate placement opportunities for students was to use the wide ranging contacts of my law colleagues. A personal approach, as opposed to “cold calling,” while not as far-reaching, seemed far more likely to elicit a response. And fortunately, our experience to date has proven that we were right. Moreover, we were determined that our clinical legal education programme would be consistent with the lofty aims and greatest successes of

14 Volumes 1, 2 and 3 are available at <http://www.nuigalway.ie/law/GSLR/>. Volume 4 is in production at the time of writing.

15 See, e.g., James Jeffers, *The Representative and Impartial Jury in the Criminal Trial: An Achievable Reality in Ireland Today?*, (2008) 18(2) *Irish Criminal Law Journal* 34; Emma Storan, *Section 117 of the Succession Act 1965: Another Means for the Courts to*

Rewrite a Will?, (2006) 11(4) *Conveyancing & Property Law Journal* 82; Emma Storan, *et al.*, *The Regulation of Genetic Testing in Insurance and Employment – Avoiding the Legal Minefield*, (2006) 13(1) *Commercial Law Practitioner* 12; Mary Drennan, *Duty of Care to the Intoxicated: The Irish Approach?*, 4 *San Diego International Law Journal* 423 (2004).

clinical programmes elsewhere, on the one hand, and, on the other, with the strong public interest orientation of legal education at NUI Galway.¹⁶ Simply stated, we wanted our students to utilise their knowledge and skills, wherever possible, for the benefit of marginalised in society and to see how law can be an effective instrument for social change.¹⁷

The optional module, *Clinical Placement*, has been available to final year students on our B.C.L. degree programme for the past two years. Its description is as follows:

This optional one-semester module requires that students utilise their legal training in suitable work placements for ten weeks. Students should generally expect to work for 8–10 hours each week (i.e., the equivalent of two ½ days or one full day). It is preferable that students be engaged to the extent possible in substantive work (i.e., legal research, working with case files, observing court proceedings, etc.) as opposed to more mundane tasks. The module will open with an introductory seminar, in which students will be informed generically as to the nature and scope of their responsibilities, and close with an interactive seminar, in which students will share their individual experiences. Assessments will be predicated on a final reflection paper. Also, satisfactory written evaluations from supervisors are a prerequisite to successfully completing the module. In the event that the number of students desiring to take the module exceeds the limited number of available placements, a selection process incorporating a number of relevant factors, such as results in other modules, interest level and related experience, will determine entry.

Students have been placed with the quasi-governmental bodies like the Equality Authority, the National Federation of Voluntary Bodies, and the Rape Crisis Network Ireland. They have worked with non-governmental organisations, with academics on public policy research projects and with practitioners throughout Ireland. Their experiences typically involve research and writing and, accordingly, their work can be done remotely. This has enabled students to take on placements in Dublin and elsewhere without being disadvantaged by our somewhat isolated position in the west of Ireland. Students placed with practitioners have been more heavily engaged with clients and court procedure and typically are “on site” more often than students placed with quasi- or non-governmental bodies. Generally, students are placed according to their own interests and tentative career objectives. Some of their revealing feedback follows.

The students placed with practitioners have experienced first hand how theory operates, or does not operate, in practice. One student observed:

“The solicitors seemed to welcome the possibility of an e-conveyancing system and regarded its introduction as inevitable. There was some concern, however, that older members of the profession would find the change difficult. My experience with computers and skills I learned in the Legal Methods & Research course were of great assistance in this area. Given continuing modernisation in legal practice, I believe that a bigger emphasis on this type of training would be beneficial in preparing students for dealing with the realities of practice.”¹⁸

16 See generally Robert Greenwald, *The Role of Community-Based Clinical Legal Education in Supporting Public Interest Lawyering*, 42 *Harvard Civil Rights-Civil Liberties Law Review* 569 (2007).

17 See Peter Joy, *Political Interference in Clinical Programs: Lessons from the U.S. Experience*, (2005) 8 *International Journal of Clinical Legal Education*

83 at 87 (noting that foremost among the objectives of students, educators and students who pioneered clinical legal education was “to expand access to justice by representing poor and unpopular clients and causes...”).

18 Student Reflective Essay (on file with author).

Another student's frank assessment of his experience on placement demonstrates that the emphasis in university legal training is quite theoretical in nature. This student is not alone in regarding this as a shortcoming in his education.

*"Leave theory to the academics and legislators. The primary duty of the solicitor is to serve his client, not the law. As an aspiring solicitor, I'm glad I came to recognise this reality sooner rather than later and offer more by way of my skills rather than my opinions. Journal articles are the appropriate forum to propose law reform, not the law office. The firm was client-centred, and naturally so, as the solicitors in the office wished to retain the custom of the numerous clients. I think that this aspect of the law is too often forgotten in university courses and the clinical placement gave me valuable experience in this regard."*¹⁹

And it is in filling this gap that clinical legal education, as it has in many other jurisdictions across the globe, can potentially play such a vital role in Ireland.

Feedback from students placed with quasi- or non-governmental organisations has tended to be more philosophical in nature.

*"The placement demonstrated to me the limits of the law and how, within its confines, there is very little place for the vulnerable and the victimised. The person is sometimes invisible. The law can only extend so far and what is needed is much greater correlation between the different spheres: social work, policy makers and the law."*²⁰

Other students in similar placements have "gained many valuable skills and insights and learnt so much about how the law can meaningfully impact on society" and found that the placement "made me question my own personal attitudes and values as I was placed on an immense learning curve."²¹ Again, the value of the placement experience is manifest.

Fortunately, placement supervisors have been equally enthused and impressed with the quality of students they've worked with. One practitioner observed that:

*"I usually find that having students in the office can be a hindrance, but she has changed my opinion on that. I found myself looking forward to her placement days and setting aside tasks for her alone to deal with on the placement."*²²

A supervisor at a quasi-governmental organisation who had two students working on a rather complicated and time-consuming project voiced a similarly high opinion of their work product.

*"The task set for these students was challenging and demanding, involving a legal analysis of a complex EU Directive. They approached their task with enthusiasm and tenacity, and produced concrete conclusions, which are very helpful in addressing significant information deficits which exist in relation to this topic. I am very happy to commend both women for the high quality product which they produced."*²³

These comments are only a representative sampling. Many students and supervisors have been equally enthusiastic and a number of students have found that the placement gave them an advantage in pursuing employment after graduation or, equally importantly, helped to redefine a

19 *Ibid.*

20 *Ibid.*

21 *Ibid.*

22 Placement Supervisor Evaluation (on file with author).

23 *Ibid.*

career path. So to date, the experiences of all parties involved have been very positive on the whole. That is not to say, however, that there have not been failings – some of which can be ameliorated, others which remain likely to persist.

Some practical problems with the programme have surfaced over the past two years. The experiences of students, placement supervisors and the clinical director – both across placements and from year to year – have been inconsistent. Because we are dealing with the outside world, there are inevitably issues beyond our control. Some placements, for a myriad of different reasons, just cannot provide as good or enriching a learning experience as others. When I place students, at times, I know this, but can only hope that they “make the best of it.” One year, a practitioner might have a slew of interesting cases and can give the student a great deal of work, but she might have little work the next. A quasi-governmental organisation might be at the forefront of a volatile legal or political issue one year, but relatively dormant the next. Illnesses occur. These very mundane, yet no less troublesome, problems can and are being addressed on an ongoing basis by imposing stricter quality controls and by requiring full, frank disclosures from all parties to the placement at the start of each academic year.

But there are even larger obstacles in the way of clinical legal education’s further development in Ireland. First and foremost, money is scarce. The breadth of resources and the innovative uses those resources have been put to by clinicians from around the globe confounded this attendee at the Sixth *International Journal of Clinical Legal Education* Conference. Given that our students do not pay fees, that our alumni networks have not been tapped for donations the way they have elsewhere in the world and that the Irish government now finds itself facing a significant budgetary shortfall reminiscent of the 1980s malaise, it is hard to see when we will get similar funds. Expanding clinical programmes is impossible without adequate monetary resources. Second, the establishment of legal clinics, similar to those in the United States, the United Kingdom *et al.*, is likely to meet with significant opposition from the professions, who fear any diminutions in their slices of the pie. Notably, I suspect that free legal aid centres, fearful of what the government might do to their budgets in the event that universities opened law clinics serving indigent clients, might prove among the most vociferous opponents. And lastly, from the perspective of one within the university, the undeniable emphasis in hiring and in promotion on more esoteric academic scholarship and the inevitable devaluing of practical experience or innovative approaches to teaching is a great disincentive to devoting a career exclusively to clinical legal education. As the great successes of clinical legal education around the globe demonstrate, that full-time commitment is what is required.

IV. Conclusion

So, whither Irish clinical legal education? Despite the despondency of the forgoing sentiments, it is not likely to wither anytime soon. The programme here at NUI Galway, due in large part to the enthusiasm of students, placement supervisors and academic staff, is thriving and attracting notice from a broad audience. University College Cork has its own clinical programme and moves are afoot at the University of Limerick. Perhaps most promisingly on the horizon, a newcomer to the field, University College Dublin, has plans for a Clinical Legal Education Centre in its new, purpose-built law school building, scheduled for completion in 2011.²⁴

²⁴ Sarah Neville, *Young Legal Eagles Will Get To Spread Their Wings in Mock Court as part of New University Project*, The Evening Herald, 2 August 2008.

In the end, those of us involved in the development of clinical legal education here in Ireland must remember that we are, to an extent unprecedented in the history of Irish university legal education, equipping some of our students with practical know-how and a cognisance that law can be used to achieve the greater good. We must keep plotting away at our work, mindful of the obstacles that still confront us, but always aware of the opportunities for continued, steady expansion by increments and ever hopeful that something great might be around the next corner.