

Editorial

“HOW DO THE STUDENTS’ THINK?”: DESIGNING CLINICAL LEGAL EDUCATION FOR STUDENT DEVELOPMENT

Professor Elaine Hall

elaine.hall@northumbria.ac.uk

In this Issue authors have been using student perspectives to think critically about how best to design Clinical Legal Education (CLE) to shape students’ development and engagement with both the clinic and the legal world beyond. We have a collection of insights from Australia, Hong Kong and the UK which pinpoint crucial areas for student development, from communication skills to self-reflection, that can be nurtured through experiential learning in clinic.

Firstly, Alexandra Grey presents student perspectives on CLE in a non-university context. She addresses the lack of insider perspectives and investigation into non-western examples of CLE in her case study of a novel English-Mandarin bilingual clinical legal education program in China. Using student voice data to conduct an “indigenous” study she disrupts the dominant model of clinic in the Global North – as something conducted within the institution. The students’ perspectives shed light on new more flexible models of CLE which bridge the gap between the institution and the community.

Rachel Dunn, Lyndsey Bengtsson and Siobhan McConnell explore the ways that clinic can offer a way for students to engage with law policy and reform alongside of client work through creating a hybrid model of CLE. Their pilot Policy Clinic gave students the opportunity to conduct empirical legal research with the goal of influencing policy and law reform. Working with external organisations and academic staff students were encouraged to cultivate a different kind of understanding of the law as well as pursuing their own research. Recognising that not all law students will proceed to practice informs an innovative way to present other career opportunities and paths within research whilst developing students' insight and skills.

Furthermore, Lyndsey Bengtsson's analysis of client newsletter writing modules integrated into CLE indicates the benefit of students expanding their perspectives of the law beyond the walls of the clinic. Using data gathered through focus groups with students she demonstrates the way that letter writing develops students' understanding of how law firms maintain relationships with clients as well as fostering responsibility and teamwork between participating students.

On the other hand, Lucy Blackburn's calls for us to look to the benefits of *ephebagogy* focusses on the law student's learning experience. She argues that adopting *ephebagogy*, instead of *pedagogy* or *andragogy*, presents a way to tailor CLE to the needs of undergraduate students as learners. She illustrates how the facets of CLE lend themselves well to teaching undergraduate students in a way which compliments their stage in life. As part of developing a creative curriculum, legal educational

practitioners can look to *ephebagogy*, as a philosophy of learning, and design their courses in ways which nurture students and effectively respond to their position as neither child nor adult learners.

The importance of student reflection for effective learning and development as practitioners within the clinic is explored by Matthew Atkinson and Margaret Castle. Their study gathers and analyses their students' perspectives on the reflective assignments and practices as part of CLE at the University of South Australia and the University of Adelaide. Acknowledging that their students have diverse learning styles and their lived experiences as younger people Atkinson and Castle use the student responses to compare journaling and blogging as reflective activities. The results illuminate the force of online community spaces for the students as they develop through Clinic.

Finally Doris Bozin DB, Allison Ballard, Vicki de Prazer guide us through the benefits of developing psychological resilience in clinic students to combat the high levels of mental distress amongst law students and legal professionals in the field. Their pilot programme integrating psychological support and awareness into the Health Law Clinic at the University of Canberra had extremely promising results with students feeling more supported and confident working with psychological issues within the law and in their personal lives.

I would like to acknowledge that this is a scary and uncertain time for many of us. I hope that everyone is keeping well, and I am looking forward to future times where we may all come together again.

THE VALUE OF PARTICIPANT FEEDBACK: INSIGHTS FROM LEARNERS IN A NOVEL, NON-UNIVERSITY CLE SETTING IN CHINA

Dr Alexandra Grey*

Introduction

In the scholarship on Clinical Legal Education (CLE), there is relatively little attention to “insider” (participant) perspectives,¹ a skew towards Global North CLE studies, and little exploration of innovations that may take CLE beyond the setting of formal tertiary education. Taking these critical observations as its starting point, and seeking to extend the scholarship in these regards, this paper explores data from 72 feedback questionnaires completed in 2011 and 2012 by participants over two courses of a semester-long, English-Mandarin bilingual a novel legal education program in the People’s Republic of China (China). The program was called the Yilian Advocacy Training Tournament (义联杯“公益倡导竞技性训练项目”; YATT), and it was run by a

* Dr Alexandra Grey is a Postdoctoral Fellow at the University of Sydney Law School; contact alexandra.grey@sydney.edu.au. The author gratefully acknowledges the input of the peer reviewer, Professor Simon Rice and colleagues in the Sydney Law School ‘Feedback Club’ during revisions.

¹ Although a recent study from Hong Kong does take up the method of exploring participant perspectives in a CLE context: Tam, C. M. (2020) ‘Measuring Law Students’ Attitudes towards and Experiences of Clinical Legal Education at The University of Hong Kong.’ *International Journal of Legal Education* 27(1), pp.47-100; and a much older study about participants’ motivations at a Tsinghua University legal clinic in Beijing offered a path for such studies: Gibson, F. (2002) ‘Chinese Clinical Legal Education in The Year of The Horse – A Visit to Tsinghua University.’ *Newcastle Law Review* 6(2), pp.33-38.

legal aid centre called Beijing Yilian Legal Aid and Study Centre for Labour (北京义联劳动法援助与研究中心; Yilian Centre).²

What makes YATT worth studying is its atypical context: this is a Global South, civil-society-led,³ publicly interested, practical legal education program for university students. YATT thus provides a case for investigating important questions as to how novel forms of legal education are experienced and evaluated by participants, and whether civil-society-led legal education can extend our ideas of alternative CLE forms, especially forms that may be adapted to contexts beyond the Global North. As the Literature Review elaborates, the majority of CLE programs in China and worldwide either take place wholly within law schools or are externships supervised by law school staff at public legal service agencies.⁴ The article refers to this as “university-led CLE”. Whether this is a tautology, because all CLE *must* be university-led, is a subject to which the article will return, but the article does not turn on definitions of CLE. Rather, the focus is on that which this study’s method, and this

² Yilian Legal Aid and Study Centre For Labor. History and Context. (2012), from <<http://english.yilianlabor.cn/>>.

³ Here, it suffices to say that the term “civil society” is contentious but used in the Chinese context, e.g. Cai, Y. and Pottenger, J. L. (2010) ‘The “Chinese Characteristics” of Clinical Legal Education’, Ch 6: pp.97-101 in Bloch, F.S. (2010) *The Global Clinical Movement: Educating Lawyers for Social Justice*, OUP, p.89.

⁴ Spencer, R. (2012) ‘Holding up the mirror: a theoretical and practical analysis of the role of reflection in clinical legal education.’ *International Journal of Clinical and Legal Education*, 18, pp.181-216, p.182; the Malaysian CLE projects described by Lasky and Nazeri are examples already available in the literature of university led CLE projects working with, but leading, non-university organisations: Lasky, B. A. and Nazeri, N. M. (2011) ‘The development and expansion of university based community/CLE programs in Malaysia: means, methods, strategies.’ *International Journal of Clinical and Legal Education* 15, pp.59-74.

study's findings, can prompt in terms of innovation in CLE, both within the university context and in terms of civil- society led alternatives to it.

The prompt for this case study is the argument in the CLE literature, present for some time now, that it is important to create more "indigenous" and "culturally specific" varieties of CLE, especially in China, and that this may mean moving away from the Global North university-led CLE paradigm.⁵ Notable within this literature is Wortham's still-relevant call for greater diversity in CLE studies, inspired by the insufficient academic analysis of CLE outside the USA.⁶ As Dowdle argues, expanding the forms of CLE in practice will require scholarship 'promoting discovery of the indigenous developmental implications and possibilities inherent in the domestic environment'; he calls this the 'pragmatic strategy' for developing CLE in an era of globalisation.⁷ This article is such scholarship. It showcases and analyses a civil-society-led legal education initiative that centres on practical, problem-based legal learning but is neither a classical form of CLE, because it is not university-led, nor necessarily the other key kind of practical legal education known in CLE literature, practical legal training (PLT), because it is not part of a legal qualification requirements and because of its a strong public interest focus. YATT is a novel hybrid;

⁵ Respectively, references to Dowdle, M. W. (2000) 'Preserving indigenous paradigms in an age of globalization: pragmatic strategies for the development of clinical legal aid in China.' *Fordham Journal of International Law*, 24, s56-s82.; Burg, E. M. (1977) 'Law and development: a review of the literature & a critique of "scholars in self-estrangement"'. *American Journal of Comparative Law*, 25, p.529.

⁶ Wortham, L. (2006) 'Aiding clinical education abroad: what can be gained and the learning curve on how to do so effectively.' *Clinical Law Review*, 12, 615-685, p.617 and p.674.

⁷ Dowdle, above n5.

it arose through adaption to the Chinese context but, as this article will argue, is relevant beyond that context. As the article explains, university-led CLE in China has faced constraints which civil-society legal assistance organisations have not, and so the space for increasing CLE opportunities and developing a publicly interested culture of legal practice is not necessarily within law schools. However, those civil society organisations face their own constraints. This is why showcasing novel CLE is useful: it models flexible adaptations to local conditions.

Overall, this article illustrates what pragmatically indigenising CLE could mean: stepping back and seeing the university context as a feature that can be innovatively transformed, rather than a paradigmatic essential of CLE. The article uses the feedback of YATT's participants to investigate the program from an internal, or "emic" perspective rather than trying to impose onto it existing typologies from the literature. It thus complements the literature, which primarily analyses CLE programs from the external perspectives of the facilitators/clinicians. The article aims to achieve something more useful than "proving" that YATT is CLE according to the CLE definitions designed for typical university contexts: it aims to expose what was valuable and meaningful to this programs' participants in order to show that innovations to the roles of universities and civil society organisations can expand our ideas of how to offer publicly-interested practical legal education to university students.

In this respect, the article acknowledges, but puts aside, the long-standing debate as to whether CLE is separate from, or overlapping with, PLT.⁸ I begin from the premise that the strict distinction is a heuristic. This heuristic derives from the regulation of admission to legal practice in some countries, with PLT referring to the prescribed vocational training.⁹ A related division is made by some scholars - and contested by others - between “real” clinical work as CLE and scenario/simulation-based practical legal education at PLT.¹⁰ However, this strict division does not necessarily serve the global expansion and indigenisation of CLE. The YATT participants’ experiences reveal that strict separations between CLE and PLT, and between university and non-university CLE, are heuristics not necessarily shared with, or meaningful to, participants. Moreover, neither CLE nor PLT perfectly describes YATT, yet we may lose relevant knowledge if we exclude this study from either. I therefore urge readers to put aside the CLE definitional debates and accept Dowdle’s pragmatic outlook: hybrid, indigenised innovations like YATT can serve real needs, especially in national contexts and legal cultures that otherwise inhibit the provision of canonical university-led CLE and the development of a culture of public interest lawyering. Moreover, as this case study will show, an unprecedented form of practical legal

⁸ See Evans, A., Cody, A., Copeland, A., Giddings, J., Joy, P., Noone, M. A. and Rice, S. (2017) *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School*, ANU Press, p.43.

⁹ For example, in England and many Commonwealth countries, but not all common law countries: Burke, J. and Zillmann, H. (2018) ‘Creating a Gold Standard for Practical Legal Training in Common Law Countries.’ *Journal of International and Comparative Law* 5(1) 9-41, p.29.

¹⁰ Evans et al., n8, pp.43-46.

education (to use an intentionally category-blurring term) can nevertheless share goals, as well as challenges and solutions, with CLE in more typical university contexts.

Based on the analysis of YATT feedback data, the study finds that participants' feedback echoes characteristic features and purposes of CLE; participants experienced YATT as a CLE variety. Moreover, the feedback analysis shows the many aspects that motivated students, beyond university grades and course credits, making non-university-led CLE a more viable prospect. These findings in turn support the broader arguments that simulations embedded in real contexts, and civil society organisations taking the initiative to expand the provision of practical legal education serving the public interest, may both be useful adaptations of CLE, especially in contexts where university-led and more classically recognisable CLE programs are in short supply.

Finally, the article makes an argument relevant to CLE in all contexts, including at Global North universities: that we may be able to improve CLE programs by inquiring more often into that which participants value. In this case study, such an inquiry uncovered the high value participants placed on learning to use language like lawyers do, through practical pedagogy. This leads me to propose that language and communication skills should be considered more explicitly as integral in CLE scholarship and in actual CLE design, and not only in contexts where CLE involves second language learning, as YATT did.

By way of contextualising this study, the following sub-sections will explain the format of the YATT program, the characteristics and purposes of CLE in the literature and the study's methods, before I proceed to analyse the data itself in Section 2 and critically discuss key findings in Section 3.

Overview of YATT activities and participants

University-led clinical legal education programs, as well as government-sponsored and civil-society-led legal assistance organisations, began appearing in China in the 1980s and then proliferated.¹¹ Phan argues that China's global integration increased "pressure to conform to international legal norms" and that this translated into increased CLE in Chinese law schools.¹² This was contemporaneous with a push for Chinese higher education reform which the CLE literature describes.¹³ The *Harvard Law Review*¹⁴ identified three types of legal education in China which emerged, linking universities to the legal profession: students involved in litigation coordinated by

¹¹ My former Yilian Centre intern, Lee, gives an overview of the history of legal aid and university legal clinics in China: Lee, J. (2011) 'Can China's Fledgling NGOs Leave The Nest?' *Journal of Undergraduate International Studies*, 11(FALL), 25-31. See also: Gibson above n1; Pottenger, J. (2004) 'The role of [clinical] legal education in legal reform in the People's Republic of China: chicken, egg – or fox?' *Journal of Clinical Legal Education*. 4. 65-80, p.69; Liu, X. (2015) 'Clinical Education in China and The Issue of Locus Standi in Criminal Defense.' *Williamette Journal of International Law and Dispute Resolution* 23(1). 93-114.

¹² Phan, P. N. (2005) 'Clinical Legal Education in China: In Pursuit of A Culture of Law and A Mission of Social Justice.' *Yale Human Rights & Development Law Journal*. 8. 117-152, p.117.

¹³ Mao. L. (2007) 'Clinical legal Education and The Reform of The Higher Legal Education System in China.' *Fordham International Law Journal* 30. 421-434, p.432.

¹⁴ Anon. (2007) 'Note: adopting and adapting: CLE and access to justice in China.' *Harvard Law Review*, 120(8), 2134-2155.

university professors; direct cooperation between the government and students to draft laws protecting disadvantaged groups; and community-level engagement where students are taken to rural communities to do litigation, legislative drafting, civic education, process analysis, and survey-based research. All were dubbed 'Innovative, indigenous adaptations of CLE'.¹⁵ By 2004, Pottenger reported that there were a dozen legal clinics run by Chinese law schools.¹⁶ A national CLE coordination body (the Committee of Chinese Clinical Legal Educators: CCCLE) was established around this time (2002) and '[b]y October 2009, membership in the CCCLE had expanded to include a total of 115 institutions, 76 of which have formally integrated clinical education into their law school curricula'.¹⁷ (For this article, is it relevant to note that the CCCLE is only comprised of academics and law school members, not civil society lawyers or organisations.¹⁸) Also by 2009, i.e. just before YATT began, civil society organisations providing legal aid, legal research, and law reform were performing 32% of legal aid work in China.¹⁹ University CLE programs and legal assistance civil society organisations together have nevertheless still struggled to meet demand,²⁰ even more so as changes in government regulations and practice since 2012

¹⁵ *Ibid*, p.2148.

¹⁶ Pottenger, n11, p.67.

¹⁷ Cai and Pottenger, n3, p.93.

¹⁸ Barry, M. M., Czernicki, F., Kras'Nicka, I. and Mao, L. (2010) 'The Role Of National and Regional Clinical Organizations in the Global Clinical Movement.' Ch 19: pp.286-288 in Bloch, F. S. (2010) *The Global Clinical Movement*, OUP.

¹⁹ Ministry Of Justice, The People's Republic of China (2009) 'Legal Aid in China'. Retrieved 20th February 2014, from <http://www.legalinfo.gov.cn/english/legal-aid/node_7619.htm>.

²⁰ See Mao, n13, p.421; Cai and Pottenger, n3, pp.97-101.

have reduced civil society-based legal assistance.²¹ Further, university-based legal clinics in China have always been constrained in the type and sensitivity of public interest casework they can take on, because of public universities' government affiliations.²²

YATT was run twice by the Yilian Centre, commencing first in 2011 and run again in 2012. The Yilian Centre is a local Chinese civil society organisation whose staff, including the author, designed YATT. (In the Chinese context, such organisations are sometimes referred to as government-organised non-government organisations, GONGOs.) As with the types of CLE identified by the *Harvard Law Review*, YATT linked university students and legal academics to the legal profession, but the members of the profession included public interest lawyers in addition to private lawyers, to ensure that the real-world role of civil society organisations as legal advocates would be integrated into the education. And YATT involved multiple

²¹ N.B. Yilian Center remains open at the time of writing in 2020, but, see reports by Branigan, T. (2009) *The Guardian*. Retrieved 25th March 2020, from <<https://www.theguardian.com/world/2009/jul/18/china-shuts-legal-aid-centre>>; Ford, M (2016) *The Atlantic*. Retrieved 25th March 2020, from <<https://www.theatlantic.com/international/archive/2016/01/china-lawyer-crackdown-arrest/424005/>>, and Gan, N. (2017) *The Business and Human Rights Resource Centre*. Retrieved 25th March 2020, from <<https://www.business-humanrights.org/en/china-more-than-300-rights-lawyers-detained-in-nationwide-crackdown-including-lawyers-who-handled-cases-on-corporate-abuses-at-least-5-face-formal-charges>>.

²² For example, The Centre for Women's Law Studies and Legal Services of Peking University had to dissociate itself from the university and was later shut down, in 2016: Tatlow, D. K. (2016) *The New York Times*. Retrieved 25th March 2020 from <<https://www.nytimes.com/2016/01/30/world/asia/beijing-women-legal-aid-guo-jianmei.html>>. See also comments by Cai and Pottenger, n3, p.96, on the demise of Tsinghua University's clinic for social and civil rights matters.

universities once, taking the lead in designing and running the project. YATT was offered by Yilian Centre to voluntarily participating students from universities in Beijing. Each course of the program took about one semester and involved five activities: mock trial, impromptu public speaking, mock client interviewing, mock labour negotiation and debate. Each activity was undertaken twice by the participants, first in a practice round and then in an assessed round. Their scores were accumulated over the rounds. The activities were scenario-style CLE (on scenario CLE, see further 'Literature review: The purposes of clinical legal education, generally and in China', below), all original to YATT and all designed for experiential learning. Each scenario's design and its training materials were based on Yilian Centre's own case files (mainly labour class actions and criminal matters), its survey-based research and its research into trends in case law. For each round, there were professional volunteers to give feedback and evaluate/score the students. Each activity's preparation, running, scoring and feedback discussions were facilitated by Yilian staff who had been involved in the YATT curriculum and activity design, some of whom also had university teaching experience. After the five rounds of activities, there was a grand final activity in which selected participants delivered a prepared speech on law and policy reform, again based on Yilian Centre's research and actual cases. These speeches were delivered to a judging panel comprising selected professional volunteers and an audience comprising the other students and professional volunteers, as well as other associates of Yilian Centre. These volunteers included legal academics from various universities and Renmin University Law School was a

key partner for the provisions of activity space. Activities often took place within the Yilian Centre, where participants sometimes informally met actual clients and Yilian staff, or in Renmin's classrooms on weekends.

The learners in YATT were Chinese university students from several universities in Beijing, participating together in the same program. They were predominantly law students, with a small number of undergraduate students from other disciplines who intended to study postgraduate law in the future. There were about 25 students in the YATT cohort each year, with a smaller group for the first activity then increasing numbers, as word of mouth spread. Each activity was offered in a Mandarin-medium and an English-medium version, with students able to elect their language preference. Yilian Centre staff prepared original, bilingual education materials tailored for the students, which were provided to them ahead of each training activity to assist them prepare. These included instructions, role allocations, fact scenarios and a glossary of key terms.

Each YATT activity also involved practicing Chinese and foreign lawyers, advocates, legal academics or other professionals in applied legal work, as volunteers. These professional volunteers acted in an adjudication and mentoring role in each YATT activity, undertaking brief training, providing written scores, completing feedback forms about the students' performance, and providing oral feedback in discussions with the students right after each activity. Some professional volunteers assisted many times, while others assisted just once or twice. There was a corps of about 20

professional volunteers each year, plus about five Yilian staff who regularly facilitated and judged the activities. Because YATT's CLE activities were in scenario form, in some activities these volunteers also played a scenario role, in addition to their pedagogic role of assessing and giving feedback. For example, they acted as judges in mock trial courtrooms. A version of Yilian Centre's original preparatory education materials tailored for the professional volunteers was provided to them ahead of each training activity. General updates on YATT, photos and schedules were also provided periodically to the professional volunteers via email bulletins.

A reason for both YATT and this case study of it is CLE is not widely reported in China in the literature and,²³ in the author's experience, was not common on the mainland nor in Hong Kong. (Tam reports that CLE has increased at Hong Kong's leading law school in the last decade;²⁴ this trend may permeate the mainland but the culture of experiential legal education both at and after law school is different in Hong Kong, owing to its closer ties to the international common law culture of education and practice.) A shortage of CLE has been seen as a contributing factor in the underdevelopment of a public interest culture of legal practice, but the lack of this culture has also inhibited the development of CLE at Chinese universities, as Cai and Pottenger point out.²⁵ Lee suggested that 'Legal aid and research NGOs have the potential to fill gaps in the state legal aid system by building a commitment to public

²³ Cai and Pottenger, n3, p.90 explain why practice-based learning is limited at Chinese law schools.

²⁴ Tam, n1, p.47.

²⁵ Cai and Pottenger, n3, p.100.

interest work among lawyers'. YATT's organisers understood YATT as an attempt to fill the gap in university CLE and as an effort to build a commitment to public interest legal work amongst future lawyers by seeding a culture amongst law students.

Moreover, the Global Network for Public Interest Law's China Fellows consider legal aid, non-government advocacy and engaging the private sector through *pro bono* as the means of advancing the interests of the public which all need to happen at once.²⁶

However, situations in China where such organisations could all work together on one joint endeavour were rare when the YATT project was initiated. In this climate, the drivers behind the YATT were pragmatic; it was conceived as a project to strengthen the Yilian Centre's network while responding to unmet needs in terms of local CLE and career progression into, or awareness of, public interest advocacy. Moreover, YATT was intended to be unlike most Chinese legal education in order to foster public interest legal skills – namely critical debate and speaking on behalf of others – which were perceived to be largely absent from conventional Chinese schooling.²⁷

Literature review: The purposes of clinical legal education, generally and in China

²⁶ Global Network for Public Interest Law (2013) *Three Ways Are Better Than One: Building Public Interest Law in China*.

²⁷ Ye, M. (26 February 2014). [email correspondence with Research Director Of Beijing Yilian Legal Aid and Study Centre For Labour, who was also a university lecturer].

The role of the literature review in this study is twofold. First, it informed the study's directed content analysis of feedback data by identifying key themes to look for in that data, through a review directed to establishing what are widely held to be the purposes and key characteristics of CLE. These external "benchmark" purposes and characteristics are crucial to the analysis of the feedback survey results, as the study's key question is whether the participants' feedback on YATT aligns with these externally derived purposes and characteristics of CLE. A second goal of the literature review was to understand the current state of CLE in China. This makes apparent the need for contributions, such as this one, exploring alternative CLE models in China, and indeed the general need for more literature on Global South CLE.

In reviewing literature about the varieties of CLE around the world, some common purposes become apparent. Taking this global approach is appropriate, particularly in light of Chinese CLE expert Michael Dowdle's argument that although Chinese CLE has developed differently from American CLE, global CLE is converging, not so much in the sense of adopting a single, universal structure for the delivery of clinical legal education or legal aid, but in the more general sense of ... adopting a shared cognitive understanding of what both these devices can be all about.²⁸

²⁸ Dowdle, M. W. (2008) 'Completing Teubner: Foreign Irritants in China's Clinical Legal Education System and the 'Convergence' of Imaginations.' Ch 6 in Nicholson, P. and Bidduph, S. (2008) *Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia*, BRILL p. 189. See also Hannemann, J-G. A. and Lampe, J. H. (2015) "Clinical Legal Education' – Observing, Comparing and Analyzing the Differences in Germany and China for each other's Respective Advantages.' *Asian Journal of Legal Education* 2(2) 157–169, p.157.

Likewise, Bloch argues for taking a 'global perspective' on CLE, because of CLE's worldwide establishment, the international interactions between CLE educators, and a shared 'commitment to legal education and legal system reform – to socially relevant legal education'.²⁹ Burke and Zillmann make almost the same argument about the globalisation of legal practice and PLT.³⁰ Moreover, this literature review shows that studies about CLE in China converge on the same core purposes as the other CLE literature.

Practical legal education

One of the purposes of CLE presented in the literature as well as in CLE providers' self-descriptions include instilling an 'ethic of preparation, practicing ethical lawyering and developing critical thinking' in students³¹; 'teach[ing] students how to learn from experience'³²; 'to help students learn from their own experience and from their reflection on that experience'³³; 'us[ing] experiential learning methods that place students in the role of a lawyer';³⁴ 'expos[ing] students to practical aspects of legal

²⁹ Bloch, F. S. (2011) 'A Global Perspective on Clinical Legal Education.' *Education and Law Review*, 4. 1-7, p.2; For an example of an uptake of this in a Global South (South Africa, China, India) CLE study, see Sarker, S. P. 'The Underprivileged: The Social Justice Mission For Clinical Legal Education In India.' *International Journal of Clinical Legal Education*, 19. 321-339.

³⁰ Above n9, p.41.

³¹ Murdoch University, *Clinical Legal Education*, Clinical Courses Offered. Retrieved 27th January 2014 from <<http://www.murdoch.edu.au/School-of-Law/Clinical-Legal-Education-SCALES/Clinical-Legal-Education/>>.

³² *Ibid.*

³³ *Ibid.*

³⁴ Bloch, n29, p.1.

workplaces',³⁵ and offering a 'study of law and lawyering in context'³⁶ as opposed to the study which is offered in doctrinal lectures and examinations, to cite a few representative statements. These different expressions of purpose reveal a shared theme: to provide learning through practical and active experiences of legal work. Recognising this, Jeff Giddings, in one of the more recent theoretical discussions of what constitutes CLE, contends that active or experiential learning – as practice-based learning is referred to in pedagogy – is a core feature of CLE.³⁷ 'Active learning' is an umbrella term,³⁸ meaning learning that involves both doing and thinking of a high order i.e. analytic, synthetic and evaluative thinking, and experiential learning is an important mode of active learning.³⁹ An overlapping term used in CLE studies is 'problem-based learning'.⁴⁰

This purpose of practical learning shapes the formal characteristics of CLE (and, for that matter, PLT). There must be practical tasks, there must be learning "by doing".

³⁵ Evans et al. n8, p.42.

³⁶ Columbia University, *Columbia Law School, Clinics*. Retrieved 27th January 2014 from <<http://web.law.columbia.edu/clinics>>.

³⁷ Giddings, J. (2013) 'Clinical legal education: learning by doing and reflecting.' Ch. 1 in *Promoting Justice through Clinical Legal Education*, Justice Press, p.14.

³⁸ Bonwell, C., & Eison, J. (1991) 'Active Learning: Creating Excitement In The Classroom'. *AEHE-ERI"C" HIGHER EDUCATION REPORT NO. 1*. (Washington, DC: Jossey-Bass).

³⁹ Marton, F., & Saljo, R., above n2; and Marton, F., & Saljo, R. (1976). 'On qualitative differences in learning – II Outcome as a function of the learner's conception of the task.' *British Journal of Educational Psychology*, 46, 115-127.

⁴⁰ Sylvester, C., Hall, J. and Hall, E. (2004) 'Problem-Based Learning and CLE: What Can Clinical Educators Learn From PBL?' *Journal of Clinical Legal Education*, 4, 39-63, p.44: they define problem-based learning: 'problem-based courses start with problems rather than the exposition of disciplinary knowledge. They move students towards the acquisition of knowledge and skills through a staged sequence of problems presented in context, together with associated learning materials and support from teachers.'

Practical learning also features in variations where CLE is not focused on doing casework but on legislative drafting or law reform advocacy: examples in the literature include the Legislation Clinic at China's Northwest University of Political Science and Law⁴¹ and the Legal Policy Clinic at Whittier Law School in the USA.⁴² Moreover, the literature shows that not all CLE programs base their practical learning activities on advising actual clients or proposing redrafting of actual legislation, even in China.⁴³ Rather, there are variations of CLE which use "realistic but not real" scenario/simulation-based clinical activities. Indeed, Chavkin claims simulations are *often* included in clinical legal courses,⁴⁴ although scenario-based CLE is still debated and Evans et al contend that CLE is the sub-type of 'simulated practical legal training' defined by its use of 'real legal problems'.⁴⁵ Scenario-based CLE is nevertheless focused on learning by doing, and can be a practice-based variation of the exposition-application pedagogy used more generally in legal studies. This study is premised on a view that splitting hairs between "real" practical legal education (CLE on its narrow definition) and scenario-based practical legal training (CLE on a broader definition) is unhelpful in achieving the aim of sharing relevant knowledge and experience from around the world, and exploring potentially useful innovations and alternatives.

⁴¹ Anon., n14; also, in Pottenger, n11, p.69.

⁴² Patton, W. W. (2011) 'Getting back to the sandbox: designing a legal policy clinic.' *International Journal of Clinical Legal Education*, 16. 96-128.

⁴³ See the *Harvard Law Review's* descriptions of CLE models in China, in the Introduction and n14.

⁴⁴ Chavkin, D. F. (2002) *Excerpt from Clinical Legal Education Textbook for Law School Clinical Programs*: Pilnet Section B.6.

⁴⁵ Evans et al., n8, p.40, see also p.43.

There are many examples of usage of a more inclusive definition of CLE. For example, in the literature, Landsberg describes CLE students working on scenarios based on real client interactions at the China University of Political Science and Law.⁴⁶ These examples include some from China, showing that a precedent for scenario-based CLE exists there. In the CLE self-description discourses, it can be seen also. For example, the University of Southern California notes that hypothetical and actual casework both comprise its 'clinical' legal education: 'The USC Gould School of Law offers two types of clinical training: classroom courses that include simulated exercises, and supervised casework with actual clients'.⁴⁷

In any case, the examples from the literature and law schools themselves affirm Giddings' contention that learning by doing is central to CLE. Moreover, Giddings' definition emphasises not only that students of CLE must be exposed to practical situations from which to learn, but that their learning must incorporate and foster reflection.⁴⁸ This has been more recently re-emphasised by Giddings with co-authors: 'Optimal clinical legal education involves a circular sequence of experience, reflection, theory, practice, and then further reflection'.⁴⁹ Similarly, Chavkin claims that the pedagogic goal of clinical legal education is to create 'reflective practitioners'⁵⁰ and

⁴⁶ Landsberg, B. (2011) "'Walking on two legs in Chinese law schools": A Chinese / U.S. program in experiential legal education.' *International Journal of Clinical Legal Education* 15. 38-57.

⁴⁷ USC Gould School of Law, *Why USC Law, Clinical Programs*, Retrieved 27th January 2014 from <<http://weblaw.usc.edu/why/academics/clinics/>>.

⁴⁸ Giddings, n37.

⁴⁹ Evans et al, n8, p.7.

⁵⁰ Chavkin, n44, Section A.

Spencer notes that written reflection is important in addition to debriefing in clinical legal education.⁵¹ Reflective learning has also been emphasised in studies of PLT: for example, Burke and Zillmann note a recent report on PLT in Hong Kong recommended “greater emphasis ... on the development of reflective learning habits”.⁵² Giddings’, Chavkin’s, Spencer’s, and Burke and Zillmann’s emphasis on reflection accords with the pedagogic literature: reflection is a central component of active/experiential learning, necessary to transform doing into learning by doing: UNESCO explains that ‘[r]eflection is the key to learning from experience because it consciously focuses our attention on what we have learnt and thus consolidates it’.⁵³

In addition to reflection, experiential/active learning methods include discussion over materials, debate, role-playing and collaboration. The use of simulated real-world events typifies active learning in Stewart-Wingfield and Black’s study.⁵⁴ This sort of learning is not necessarily better than passive learning in all contexts,⁵⁵ but ‘active course designs, specifically, an experiential design, result in students perceiving their learning to be more meaningful to their future jobs’, as Stewart-Wingfield and Black’s

⁵¹ Spencer, n4, p.183.

⁵² Burke and Zillmann, n9, p.34

⁵³ UNESCO. (2010) ‘Analysing the Experiential Learning Process: Teaching and Learning for a Sustainable Future’ Retrieved 21st February 2014, 2014, from <www.unesco.org/education/tlsf/mods/theme_d/mod20.html?panel=3#top>.

⁵⁴ Stewart-Wingfield, S., & Black, G. S. (2005) ‘Active versus Passive Course Designs: The Impact on Student Outcomes.’ *Journal of Education for Business*, 81(2), 119-125. DOI:10.3200/joeb.81.2.119-128.

⁵⁵ Michel, N., Carter III, J., & Varela, O. (2009) ‘Active Versus Passive Teaching Styles: An Empirical Study Of Student Learning Outcomes.’ *Human Resource Development Quarterly* 20(4, WINTER), 397-418, p.413.

study of business students found.⁵⁶ Legal education is analogously vocational, and therefore law students are also likely to perceive experiential learning to be more meaningful than passive learning to future jobs. Because experiential learning is integral to the purpose of CLE (and PLT), key characteristics of CLE activities include (but are not limited to) the following characteristics:

- (a) learning activities that allow for **experiential learning**, especially a real or hypothetical client/audience with a problem to be overcome;
- (b) **feedback from a more experienced person**; and
- (c) **reflection** on the experiences and the feedback.

And what of the university setting as a characteristic? Notably, a leading CLE scholar, Giddings does not define a specific or leading role for universities in CLE, while emphasising its active learning nature:

‘Clinical legal education involves an intensive small group or solo learning experience in which each student takes responsibility for legal or law-related work for a client (whether real or simulated) in collaboration with a supervisor. Structures enable each student to receive feedback on their contribution and to take the opportunity to learn from their experiences through reflecting on matters’⁵⁷.

⁵⁶ Stewart-Wingfield & Black, n54, p.123.

⁵⁷ Giddings, above n37.

However, the studies and actual clinics about which Giddings is writing are university based, so perhaps he does not feel the need to explicitly state that universities are an essential feature of CLE. However, the path for innovation being explored here is alternatives that may satisfy the experiential legal learning elements of Giddings' definition even without a university in charge; they should also share CLE's ultimate purposes.

The ultimate purposes of practical legal education

If we consider experiential learning as a means to an end, not an end itself, we can shift our gaze to the ultimate purposes of CLE. In many cases in the literature, an intermediate purpose of experiential learning couples neatly with either or both of two further purposes, the vocational preparation of lawyers, and providing legal services in the public interest. In looking at these emergent, shared purposes, rather than definitions, we also see that the CLE/PLT division is blurred such that maintaining that division for this study is not useful. To begin, vocational training is unequivocally a purpose of PLT⁵⁸ but also a stated purpose for many CLE providers: the Law School of China's Central University of Finance and Economics, for example, now boasts of its 'special emphasis on case teaching and the "legal clinics" education [sic] ... for all-round development and vocational education' to distinguishing it from

⁵⁸ See e.g. Burke and Zillmann, n9; Evans et al., n8, p.43.

most Chinese law schools.⁵⁹ Moreover, a clear, shared purpose that emerges from the scholarship and from CLE providers' own discourses is that which I will summarily call a public interest purpose. This is expressed variously scholars and educators as providing 'service learning'⁶⁰; 'justice access'⁶¹; 'social justice'⁶²; or 'support[ing] the wider and more fundamental task of maintaining the rule of law'⁶³. An ambition of seeding a culture of public interest lawyering amongst lawyers of the future lies behind many Anglo-American law schools' CLE programs, and behind the more recent emergence of CLE in Europe;⁶⁴ a related, public service mindset has likewise driven CLE in the former Soviet states.⁶⁵ In the Chinese context, Tam takes a public interest purpose as an essential purpose of CLE in Hong Kong,⁶⁶ and Phan argues it is an important purpose in Mainland China (and elsewhere in the world) because CLE is part of changing the legal culture.⁶⁷ Often, this public interest purpose is met in the design of CLE tasks by having students advise people who face hurdles accessing the justice system: there are examples of this around the world, including from China,

⁵⁹ 'The Introduction to the Law School of CUFU', <http://law.cufe.edu.cn/en/>, updated 22nd January 2016, accessed 8 August 2017.

⁶⁰ Evans et al, n8, p.2 and 42.

⁶¹ Spencer, above n4, pp.181-182.

⁶² Examples throughout Ashford, C. and Mckeown, P. (eds) (2018) *Social Justice and Legal Education*. Cambridge Scholars Publishing.

⁶³ Evans et al, n8, p.2 and 42.

⁶⁴ Global Network for Public Interest Law. (2012) 'Pilnet Welcomes the European Network for CLE' Retrieved 28th February 2014, from <<http://www.pilnet.org/project-updates/166-pilnet-welcomes-the-european-network-for-clinical-education.html>>.

⁶⁵ Wortham, above n6, p.622.

⁶⁶ Tam, n1.

⁶⁷ Phan, n12, pp.150-152. For a similar argument about CLE, social justice and legal culture reform elsewhere, see Ch14 by O. M. Osinibi and Ch15 by M. Grimes in Ashford and Mckeown (eds) n62.

such as Tsinghua University Law School's legal clinics.⁶⁸ But the point of public interest CLE is not simply to use student labour to increase the public's access to the justice system and legal advice. Rather, the purpose of having students take on lawyers' roles is so that they can learn more broadly the social impact of the laws they are studying and of the role of legal rights, legal illiteracy and inequality in their society. That is, the experiential learning achieves the purpose of serving the public interest not only because it provides assistance to specific clients in need but because, through experiencing the public interest element of lawyering in a social context, students are socialised into a publicly interested culture of legal practice, which nourishes that culture for the future.

For some, this public interest purpose defines CLE. In their leading recent book, Evans et al. maintain that CLE is different from other practical legal learning (e.g. PLT or work-integrated learning) in that only CLE 'is intended to develop a critical and analytical consciousness of law', going beyond a "'how to" approach' and 'strengthening the academic phase of legal education in the interests of students and clients'⁶⁹. That is, of the various practically based forms of legal education, only CLE provides a social service and targets the maintenance of a socially aware, publicly-interested legal culture. However, others frame this sort of public service as integral to the legal vocation and therefore integral to vocational legal training, not only to

⁶⁸ Pottenger, n11, p.71.

⁶⁹ Evans et al., n8, p.43.

CLE: for example, Burke and Zillmann argue that imbuing ‘public service’ values is are part of the ‘gold standard’ for common law PLT⁷⁰. This challenges CLE’s monopoly on publicly interested practical legal education. Even more importantly, in the context of this case study, and the wider exploration of civil-society-led CLE to which it contributes, the distinction between CLE and other forms of practical legal education without a public interest orientation falls away, because civil society organisations are often – arguably by definition – publicly interested. Specifically, here, Yilian Center was deliberately trying to increase social service lawyering by developing a critical consciousness of law amongst both student and professional participants in order to increase their interest in, and skills for public interest advocacy, within a legal culture weak in those respects. Akin to classical CLE program, it sought to strengthen legal education during the academic phase in the ultimate interest of not only students but clients and other beneficiaries of public interest advocacy in China, but in a radically different way that did not rely on university leadership or backing.

In light of the literature, this study therefore takes experiential legal education to be characteristic of CLE, dovetailing with either/both of a vocational preparation and a public interest purpose. Additional characteristics of CLE, in its typical university context, are the assessment resources of formal education: grades and course credits.

⁷⁰ Burke and Zillmann, n9, p.41

University based characteristics of CLE: assessment and motivation

In university led CLE, formal assessment (including pass/fail grading) is ever-present as one kind of motivational resource but this does not mean that formal assessment needs to be an essential component of CLE; few CLE educators would posit grades as the only reason they offer their courses, or the only reason students take them; actually, many of China's earliest university-led legal clinics gave students 'no academic credit for their work'⁷¹. In looking to expand CLE beyond universities we must confront the fact that these motivational resources may not be available at all. In designing YATT, therefore, care was taken to create motivation which could stand in place of the academic grades and credits which are characteristic rewards in formal tertiary education.

In educational theory, learner motivation can be analysed within a framework of various learner orientations and their corresponding interests, aims and concerns. Such a framework is represented here in Figure 1, which is from tertiary education teacher training materials.⁷² This framework is based on the studies of Taylor and of Beaty, Gibbs & Morgan, foundational educational science literature which theorises that students concurrently have some or all of four orientations to learning: Vocational; Academic; Personal; and Social.⁷³ This literature also theorises that certain

⁷¹ Gibson, n1, p.34.

⁷² Macquarie University Learning and Teaching Centre, *Module 1: Learners and Learning*, FOUNDATIONS IN LEARNING AND TEACHING COURSE MATERIALS (2015), p.5.

⁷³ Taylor, E. (1983). *Orientations to Study: A Longitudinal Interview Investigation of Students on Two Human Studies Degree Courses at Surrey University*. Unpublished Ph.D. thesis, University of Surrey;

intrinsic and extrinsic interests correspond to these orientations.⁷⁴ Thus, pedagogic theory – chiefly this and related learner orientation models – predicts that for an educational activity to work well, it should motivate students and/or respond to their existing motivations. Better activities will respond to multiple learner orientations, and to both the intrinsic and extrinsic interests corresponding to those orientations, because learners have varied combinations of orientations.

This theory predicts that the kind of formal grading and accreditation which a university led CLE can offer (but which civil-society-led activities cannot offer) will likely motivate learners' because it caters to learners' vocational, academic and personal orientations. Specifically, as represented in Figure 1, formal CLE course accreditation is part of attaining a qualification, which is theorised as an extrinsic interest within a vocational orientation; formal accreditation is part of educational progression, which is theorised an extrinsic interest within an academic orientation; and the grades for a CLE course (and any feedback offered) are forms of compensation for learning and proof of new capability, which are theorised as extrinsic interests within a personal orientation to learning.

Beatty, L. Gibbs, G. & Morgan, A. (2005). 'Learning Orientations and Study Contracts' in Marton, F, Hounsell, D & Entwistle, N (Eds) (2005) *The Experience of Learning: Implications for Teaching and Studying in Higher Education, 3rd Edition (Online)*. Edinburgh: University of Edinburgh, Centre for Teaching, Learning and Assessment, 72-86. Retrieved 9th July 2007 from <http://www.tla.ed.ac.uk/resources/EoL.html>.

⁷⁴ *Ibid.*

Orientation	Interest	Aims	Concerns (examples)
Vocational	Intrinsic	Training	Relevance to course or future career
	Extrinsic	Qualification	Recognition of the qualification's worth
Academic	Intrinsic	Intellectual interest	Choosing stimulating lectures
	Extrinsic	Educational progression	Grades and academic progress
Personal	Intrinsic	Broadening or self-improvement	Challenging, interesting material
	Extrinsic	Compensation or proof of capability	Feedback and passing the course
Social	Extrinsic	Having a good time	Facilities for social activities, sport etc

Figure 1. *Orientations to Learning.*

A challenge for non-university led CLE in general, then, and specifically for YATT, is to build extrinsic motivators into the educational activity without relying on formal assessment and accreditation. The aim of the YATT designers was to do so by

structuring the module as a competition, with scores and rewards in the form of recognition in the bulletin and in selection for the grand final activity. The winners received additional rewards (publication and internship opportunities through Yilian Centre.) We also made sure we provided a certificate of participation to all students in a ceremony at the final activity in order that they could have proof of their learning in future contexts (e.g. job or postgraduate course applications). We built in feedback as a core element of each activity, and, provided guidance to the professional volunteers on how to give feedback, which provides a form of extrinsic, personal motivation other than passing the CLE course. We also tried to emphasise the intrinsic motivations in YATT, knowing that we could not rely as heavily as a university can on extrinsic motivation. For example, amongst other measures, we explicitly communicated the training elements of YATT and the activities links with the Centre's real work, to spark an intrinsic vocational interest, and the facilitators aimed to create an enjoyable and friend-making environment at all activities to create a social motivation. We built in motivators and rewards for the professional volunteers, also.

In this case study, the Yilian Centre sought to take on the role of running a public interest practical legal education program. Because YATT was designed to meet a need for more public interest lawyering and for more experiential learning of law, it appeared then (and still appears) to the author and others organising and designing YATT as similar in some fundamental ways to university led CLE. The key question to examine, however, is whether the purposes and characteristic components of CLE

(derived externally from this literature) were present in the experience of the participants: did the students and professional volunteers experience YATT as akin to a CLE course; did they evaluate this alternative positively; and what motivated them to participate if not university grades and credits? The next section explains the method of investigating these questions by applying themes identified through this literature review in an analysis of feedback survey data.

Methodology

Overall, I undertook two forms of qualitative analysis (recurrent thematic and directed content analysis) of free-text responses in 72 completed feedback questionnaires held by Yilian Centre after having been returned by the participants of the 2011 and 2012 YATT cohorts, as well as a simple quantitative analysis of the multiple choice responses on these same 72 questionnaires. These questionnaires were designed to assist Yilian Centre reflect on the program during its implementation; they were not designed for statistical research purposes. As such, this study does not rely on a deep quantitative analysis. In particular, the surveys were not designed for regression analysis and the overall number of possible respondents can be estimated (see below) but not verified, because no count of their distribution was recorded. Responding was not obligatory but the utility of the feedback was explained to participants and responding to the survey was requested; the author observed very high rates of response at activities. Given the relatively sparsity of experiential CLE in

China, and the relatively sparsity of non-university led CLE the world over, I determined it was nevertheless important to contribute this case study to the international literature in order to develop the literature, and the practice, of alternative models of CLE. This study was therefore designed so that it was not essential to count precisely how many questionnaires were completed as a proportion of those distributed. With about 50 participants in each YATT cohort (including students and professional volunteers), and with some professional volunteers participating in both 2011 and 2012, these 72 responses represent a majority of YATT's estimated 80-100 participants.

Moreover, the feedback surveys are a dataset well-suited to allowing for insight into participants' views on this unusual CLE, and participants' views are rare in the CLE literature. The author therefore turned to the more suitable method of directed content analysis in order to make a worthwhile study of this data; this analysis "mines" the questionnaire responses as an extant source of discursive feedback data, and for simple quantitative indicators. The steps of data processing and the various analyses are detailed below. Together they were used to reveal key themes in the discourses produced by the participants, to see how participants saw YATT and what they felt were its advantages and benefits (if any).

This study's emphasis on qualitative analysis is adapted to the available data, and follows Cho's argument that '[t]he nature of qualitative research – pragmatic, interpretive, and grounded in the lived experiences of people – enables the researcher

to understand people through whom to interpret a particular social phenomenon⁷⁵. The phenomena here, of course, is the development of CLE and public interest lawyering in China.

These feedback questionnaires were provided in hard copy to the students and volunteer participants after three activities in the first YATT program (mock trial, public speaking and client interviewing) and after two activities in the second YATT program (mock trial and public speaking). The questionnaires – which were provided in both Mandarin and English – did not ask for names, but they did ask whether the participant was a student or professional volunteer, and then they asked a series of multiple choice and open-answer questions seeking feedback about both that day's activity and YATT overall. The full questions are presented along with the responses, below. The questions were changed slightly from 2011 to 2012 to improve the clarity of feedback. The 2012 version of the questionnaire also asked the language of the activity and the date of participation, to better record which groups of participants had provided feedback. The collected responses were then kept by Yilian Centre.

To process the data, the author translated all the Mandarin responses into English. Feedback from both students and professional volunteers had also been provided to Yilian Centre in informal discussions, emails and public testimonials from participants and audience members at the first YATT Grand Final. These additional

⁷⁵ Cho, J. (2017) *English Language Ideologies in Korea: Interpreting the Past and Present*, Springer, s1.4.1 (non-paginated online edition); original citing Marshall, C. & Rossman, G. B. (2006) *Designing Quantitative Research*. Sage 2006, p.6.

forms of feedback are worth noting from a program design perspective, as they were a means for both improving the program and building a sense of community amongst participants and the broader network of the host organisation. These forms of feedback, however, were not systematically recorded so they have not been included in this analysis.

To further prepare the questionnaire response data for analysis, the 72 responses were then divided by activity (mock trial, public speaking or client interviewing) and by year (2011 or 2012). There were 43 responses in 2011 and 29 in 2012, most of which were from the mock trial (see Figure 2). I then the tabulated the multiple-choice answers for a quantitative analysis of feedback.

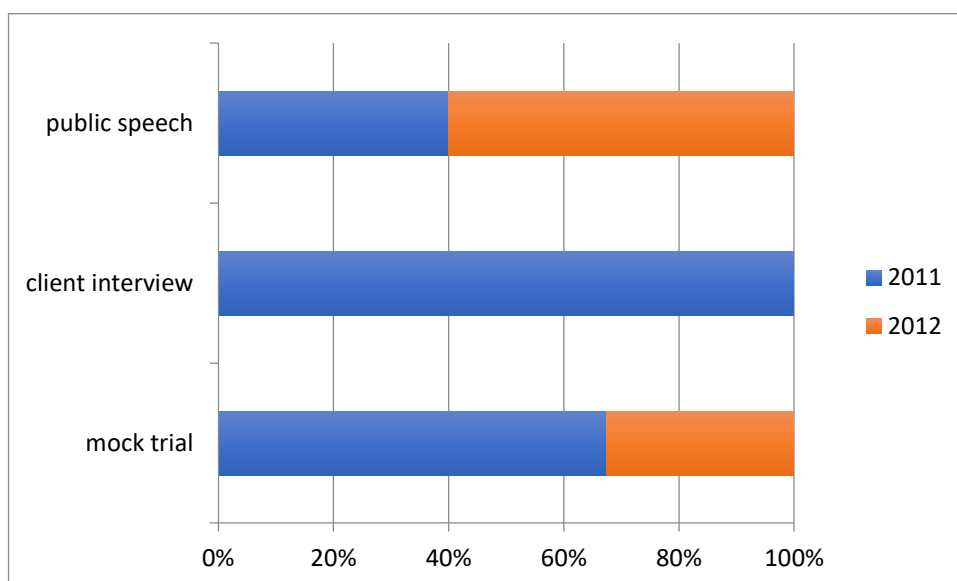


Figure 2. Overview of each year's feedback questionnaire responses, by activity, as a percentage of total questionnaire responses.

For the next step, the analysis of the free-response questions, I listed all the responses, grouped similar responses under themes, assigned short-hand code names to these themes, and counted how many of each theme of responses appeared. This is a recurrent thematic analysis⁷⁶ and standard practice in it is to discount one-off (i.e. non-recurrent) themes. Shared themes, some more prominent and some less, thus emerged from the responses. This method sits within the reflexive ethnographic approach.⁷⁷

Finally, a 'directed content analysis'⁷⁸ was coupled with the recurrent thematic analysis of the emergent themes. For this, the data responses were analysed for comments aligning with theme labels (codes) representing content directed by the literature review. There were codes representing the experiential learning purpose and ultimate purposes of CLE identified in the literature review – **Practical Learning; Experiential Learning; Feedback from Experienced Person; Reflection; Vocational Legal Training; Public Interest** – and codes representing the learner motivation themes, namely the seven aims listed in Figure 1: **Training; Qualification; Intellectual Interest; Educational Progression; Broadening Or Self-Improvement; Compensation or Proof of Capability; and Having A Good Time**. This directed content analysis was not looking to match exact expressions in the literature with

⁷⁶ Lincoln, Y. S., & Guba, E. G. (1985) *Naturalistic Inquiry*, Sage.

⁷⁷ Burawoy, M. (1991) *Ethnography Unbound: Power and Resistance in the Modern Metropolis*, University of California Press.

⁷⁸ Hsieh, H.-F., & Shannon, S. (2005) 'Three approaches to qualitative content analysis.' *Qualitative Health Research*, 15(9), 1277-1288.

those in the feedback, but to identify alignment between the feedback and the literature on learning and, specifically, on learning through CLE.

Results and critical analysis of participants' feedback

This section reports the results and critically analyses participants' views on five aspects of YATT which we explicitly asked about in the surveys: the most valued aspects of the YATT activities (analysed below in the first subsection); training materials (second subsection); skills development (third subsection); negative aspects of YATT (fourth subsection); and the YATT project overall (last subsection). In analysing the responses from each of these five parts of the survey, I first quantitatively examine the multiple-choice responses, followed by the qualitative analyses of the free-response feedback. I then critically analyse the five subsections' most unexpected findings in Section 3's discussion, and their implications for the field are noted in Conclusions and Contributions (Section 4). Before proceeding with these layers of analysis, some preliminary observations about patterns in the responses will set the scene.

Overall, in both 2011 and 2012, most participants provided positive responses about most of the aspects of YATT covered in the multiple choice questions. Most respondents found the training and preparatory materials 'appropriate and helpful'. Most said they 'developed activity-specific skills' through the activities. In addition, most respondents 'enjoyed' the activities. What they enjoyed most was practical

learning and feedback, as the free-response questions and an additional multiple-choice question in 2012 showed. Building on this, the thematic analysis of the free-response feedback shows that participants identified various legal skills as the primary activity-specific skills that they had developed, but also linguistic/communicative skills.

Overall, four prominent themes emerge, and I coded them as **Learning; Professionalism of the Activity; Positive Experience;** and **Negative Experience.**

Within these major themes, multiple sub-themes were often found, as shown in Appendix A.

The sub-themes associated with Learning were especially strong across the dataset, meaning they were present in a particularly high number of responses. Comments relating to the sub-theme Practice-Based Learning were so dominant that no non-practical learning emerged as a theme. Thus, the recurrent themes aligned with the content directed theme of Practical Learning from the literature. Practice-Based Learning sub-divided into responses on the themes of Practice-Based Legal Learning and Practice-Based Language Learning. This latter theme may be a surprise to readers, as is not widely identified as a component of CLE in the literature however, I have analysed it as a form of alignment with the directed theme of Vocational Legal Training; we will return to this point in Section 3's critical discussion. Classed within each of the sub-themes Practice-Based Legal Learning and Practice-Based Language Learning are more specific (although not unique) responses. Thus, for example,

participants commented on Practice-Based Legal Learning either generally or in relation to specific aspects of participating in YATT such as defence, applying knowledge to facts, building trust, court procedure and understanding laws and legal processes.

The reader will see that these specific themes appear under Practice Based Legal Learning in the Appendix A table alongside another specific theme marked in italics: 'more practice time needed**'. In this table, italics represent a negative evaluation in the feedback, whereas plain text represents positive feedback. The asterisks show that this theme could equally be classed under another theme; the asterisks show us where this theme is repeated in an alternative location within the table.

Overall, the most recurrent sub-theme was Feedback from Professional Volunteers. Responses relating to this theme were either positive, and about getting feedback from the professional volunteers, or negative and about wanting more feedback from the professional volunteers. Feedback from Professional Volunteers was an emergent rather than directed theme. However, learner orientation theory (visualised in Figure 1) explicitly relates feedback to Compensation or Proof of Capability, which is one of the directed themes of analysis. In a practical learning context, feedback is arguably also part of Training, Educational Progression and Self-Improvement, all aims identified in the literature review which became directed themes for this analysis. Thus, another alignment between the two types of thematic analysis of the response data appeared, strengthening the finding that participants' perceptions of YATT

Reviewed Article

aligned with one of CLE's core characteristic, practical learning, with the purpose of vocational legal training, and with educational theory on learner motivations and aims. As the detailed analysis below progresses through the questions, I will draw attention to the building evidence for this finding of alignment.

Feedback on valued aspects of activities

The questionnaires began with multiple choice questions enquiring into which aspects of YATT the participants themselves had valued (Set 1). In relation to that day's activity, participants were asked:

'What was your feeling about the [Mock Trial/Impromptu Speaking/Client Interviewing/Labour Negotiation/Debate] activity?

A. I enjoyed it very much;

B. I somewhat enjoyed the activity;

C. I somewhat did not like the activity;

D. I did not like the activity at all.'

The responses were very positive, for example with all 29 of 2011's mock trial respondents answering "A" or "B". This was consistent with the smaller batches of responses from the public speaking and client interviewing activities that year: all 10 public speaking respondents and all four client interviewing respondents answered

“A” or “B”. Similarly, in 2012, 27 of 29 mock trial and public speaking respondents answered “A” or “B”.

Some students who completed feedback questionnaires in 2011 on the mock trial had also participated in the debate activity that week, and six of these students nominated debating as their favourite aspect of the week’s activities, over mock trial. These responses indicate a positive reception for the debating activity, however, there are no questionnaire responses for the debate or labour negotiation activities. Overall, these multiple-choice responses about enjoyment suggest that participants’ experiences were aligned with ‘Having a Good Time’, theorised as an interest factor for socially oriented learners (see ‘Literature review: The purposes of clinical legal education, generally and in China’, above).

Set 1’s free-response question allowed us to explore with more specificity what aspects of YATT the participants, and to find emergent themes aligning to the content-directed theme Having A Good Time. Participants were asked what aspect of that day’s activity they enjoyed. Feedback from Professional Volunteers was a theme that recurred often as an aspect enjoyed by the participants across the mock trial, public speaking and client interview activities (see Figure 3).

Aspect nominated as that most enjoyed <i>Activity and number of respondents</i>	Professional volunteers' feedback	Professionalism of the Activity (including professionalism of having professional volunteers acting as judges).
2011 Mock Trial (n=29)	8	10
2011 Public Speaking (n=10)	4	-
2011 Client Interviewing (n=4)	3	-
2012 Mock Trial (n=10)	4	-

Figure 3. Activities for which professional volunteers featured in Set 1 free-response feedback, counted by coded theme.

Figure 3 shows that the free-responses in Set 1 particularly valued the professional volunteers' contributions to YATT, including their feedback, their specialized knowledge and the professionalism they added to activities. That so many responses prioritised the feedback available is especially telling. It indicates that both extrinsic and intrinsic personal interests (see Figure 1) were being served.

Because receiving feedback featured strongly as a valued aspect in the 2011 responses, the organisers included a question specifically about professional volunteers' feedback in the 2012 questionnaires: this first appeared in the 2012 public speaking questionnaires. Respondents were asked whether they thought the feedback from the

judges, who were the professional volunteers, was useful and helped them improve,⁷⁹ with the multiple-choice answers being:

A. Very much;

B. A lot;

C. Not much;

D. None at all.

The majority of the 2012 public speaking participants (eight of 15) responded “A” (Very much), with another 5 responding “B” (A lot), and only 1 responding negatively (with “C” Not much), and one not responding. These responses were consistent with the dominance of the theme of professional volunteer’s feedback being valuable across the 2011 responses. (The professional volunteers’ contributions did not emerge strongly in 2012’s public speaking free-responses, perhaps because participants’ views on that were covered in this new multiple-choice question.)

A response similar to nominating feedback, but sufficiently different to warrant coding under a separate theme in the recurrent thematic analysis, was the nomination of ‘learning’ as the most enjoyable aspect of an activity. In 2011, three of the 29 mock trial respondents nominated ‘learning’ (including one who further explained that learning was important as he/she was not a law major and therefore could not otherwise access such learning). The theme of Learning also featured strongly in the

⁷⁹ The question posed was: ‘你认为评委给你的反馈有用并且帮助你提高演讲技巧吗?’

responses for public speaking in 2011, so too did having an opportunity to actually do public speaking and to practice public speaking skills. responses about doing/practicing public speaking are coded under the Learning sub-theme Practice-based Language Learning.

This theme's prominence was again illustrated in the 2012 public speaking responses, with 'learning through the experience' being nominated by two respondents, coded as Practice-based Learning. Practical aspects of English-language learning were nominated by three of the 2012 public speaking participants, and these were coded as Practice-based Language Learning. Specifically, the language learning aspects nominated in the 2012 public speaking responses included that the activity helped the students' English in general; that participants learnt what was needed for an English public speech; and that providing the topic bilingually was more helpful than providing a monolingual topic.

Feedback on training materials

In Set 2 of the questionnaire we asked all 2011 respondents, for all activities:

Consider the preparation materials/training sessions you were provided with before the activity. Were they:

A. Very appropriate and helpful;

B. Somewhat appropriate and helpful;

C. Somewhat inappropriate and unhelpful;

D. Not very appropriate or helpful?

In 2012, the same question was asked but without reference to training sessions i.e. participants were asked to consider preparation materials only.

Broken down by activity, the responses remain generally positive across each activity in 2011 and 2012. Of the 43 responses from 2011, the vast majority (39 participants) answered "A" or "B" (25/29 responses about mock trial, 10/10 responses about public speaking and 4/4 responses about client interviewing). Similarly, the second cohort of students (2012) were positive, overall, about the activity materials. Of their 29 responses about the mock trials, 24 answered "A" or "B", and of their 15 responses about public speaking, *all* answered "A" or "B".

In 2012, but not in 2011, respondents were additionally asked another question about the materials: how suitable the public speaking topics were. The multiple-choice answers were:

A. Very suitable;

B. Basically suitable;

C. Basically unsuitable;

D. No suitable.⁸⁰

⁸⁰ Originally, 'a. 非常合适; b. 基本合适; c. 基本步合适; d. 不合适'.

Reviewed Article

Three respondents chose “A” (Very suitable) and 11 chose “B” (Basically suitable), with no negative responses; topic design, an aspect of the training materials, therefore appears to have been functional.

Thus, the multiple-choice feedback in Set 2 of the questionnaire provides an indication that the YATT educational materials were helpful and appropriate, at least for mock trial, public speaking and client interviewing. While these multiple choice answers do not directly tell us whether YATT was seen as having the purposes of CLE, it nevertheless establishes YATT was experienced as an educational experience; the participants were satisfied that they were being provided training and/or materials which prepared them to try new tasks. Moreover, this response data indicates – without being able to compressively establish – that for most respondents the motivational aim of Training (theorised as an aim of vocationally-oriented learners: Figure 1) was provided. The feedback on developing skills through YATT, dealt with in the following section, adds further weight to this supposition.

Feedback on developing skills

In 2011, students – but not professional volunteers – were asked this Set 3 question about developing skills:

To what degree do you feel that you have developed effective activity- specific skills?

A. A great deal;

B. Quite a lot;

C. Not a lot;

D. Not at all.

The single biggest cohort of respondents were from the mock trial activity, and the majority (n=19/29) of them answered “A” (n=6) or “B” (n=13), as Figure 4 visualises. That is, the majority of students felt they had developed some level of skill specific to the mock trial activity. The majority of public speaking and client interviewing students, too, felt they had developed some level of skill specific to those activities.

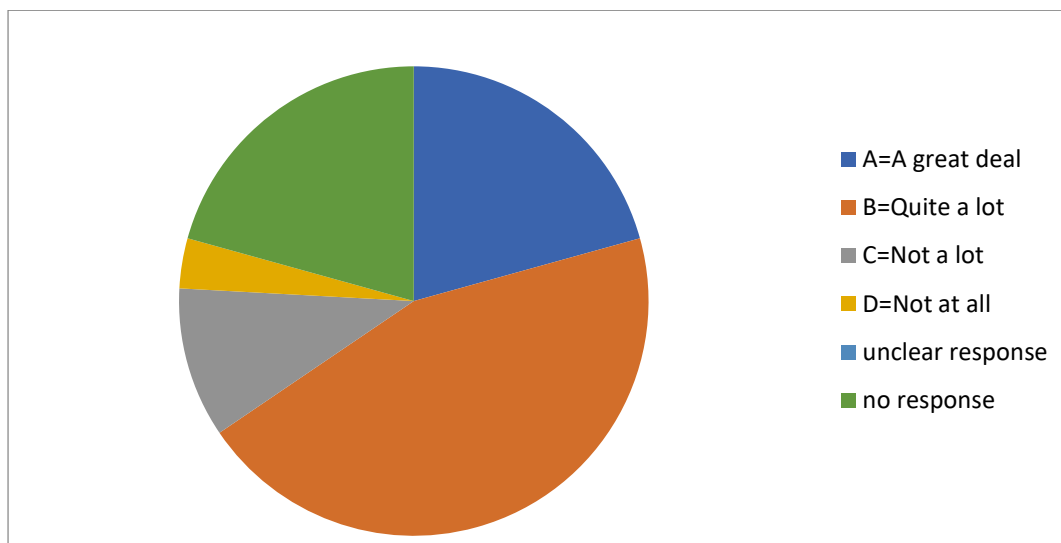


Figure 4. 2011 Mock Trial Feedback Questionnaires: Question 5 assessing mock trial-specific skills.

A rephrased version of this question was used in the 2012 questionnaires:

How much did your [mock trial/impromptu speech] skills improve?⁸¹

A. A great deal;

B. Quite a lot;

C. Not a lot;

D. Not at all.

The responses were, like in 2011, mainly positive for mock trial (14/14 responding “A” or “B”), but, contrasting with the other data, less positive for public speaking. Six of 2012’s 15 public speaking students responded “A” (n=5) or “B” (n=1), but five answered “C” (Not very much), two gave no response, and two responses did not select from the multiple choice options but gave a free response. These two wrote that they needed more practice to improve their skills. This was included in the thematic analysis, and, coded as ‘more practice needed’. The questionnaire invited those answering “C” or “D” to provide further details; unfortunately, all but one declined to provide further details. One who had responded “C” (Not very much) wrote that it was because he or she had studied the content before.

Even with the comparatively less positive results for 2012’s public speaking, the multiple choice responses overall affirm that participants felt that activity-specific skills were developed. This supports the argument that YATT was experienced as

⁸¹ ‘你觉得你演讲的技巧提高有多少？ a. 非常多；b. 很多；c. 不太多；d. 一点也没有。’

practical learning. Set 3's free-response analysis, below, clarifies that this was an experience of practical *legal* learning.

In both years, the students were then asked to freely nominate which activity-specific skills they had developed. In relation to the mock trials across both years, the most prominent skills in the responses were legal practice skills including defence, applying legal knowledge to facts and court procedure. In 2011's client interviewing, other similar skills emerged, such as building trust and understanding the law and legal processes (all coded as Practice-based Legal Learning). Specifically looking at the responses identifying applying legal knowledge, this is 'exposition-application' pedagogy,⁸² and it is characteristic of legal education (not just CLE) as well as legal practice. These responses indicate YATT was experienced as legal education.

The second most prominent set of mock-trial-specific skills students nominated were language skills, including expression and organising language. Confidence and logical reasoning also featured in a few responses. These fall within the theme of Practice-based Language Learning. Public speaking students' feedback was also about developing language skills as well as legal skills. In 2011, in the responses about the impromptu public speaking, students nominated as the activity-specific skills they had developed: oratory skills including speaking clearly; organising ideas; responding quickly; and adapting to being on stage. In addition to these skills, one 2011 public speaking student and four 2012 public speaking students specified their

⁸² Chavkin, n44.

Reviewed Article

foreign language skills as an area that had improved through the activity, noting their ability to express themselves improved, and listing improvements in speaking speed and rhythm, communicating through facial expression and gestures, speaking with feeling, and language use. In 2012's impromptu public speaking, a number of respondents nominated their general 'public speaking skills' as a skill that improved and nominated the specific skills of thinking up content; applying legal knowledge to a problem; improved confidence/skills for dealing with nerves; and improved speaking style.

Thus, the themes of Practice-based Legal Learning and Practice-based Language Learning both emerge for the same activities, and their interrelationship emerges also. Moreover, recalling that Practice-based Learning is a theme that emerged strongly in the feedback responses on valuable and enjoyable aspects of YATT (Set 1) and the Set 2's multiple choice responses suggested the training elements of YATT were experienced as education, Set 3's feedback analysis reveals consistency. These detailed results are a building picture of YATT as experienced primarily as practical legal education.

Negative feedback

In both years, the questionnaires also asked which aspect of the activity the participants did not enjoy (Set 4). Most of the disliked aspects of mock trial, public speaking and client interview activities were nominated uniquely (only by one

respondent) and therefore could not be thematically analysed. However, one aspect which multiple participants did not enjoy in the 2011 mock trials was that the fact scenarios were not sufficiently detailed. In 2012, in relation to impromptu public speaking, common negatives included not having enough preparation time; not having enough opportunity to practice and thereby improve; wanting more feedback from the professional volunteers; and wanting Mandarin-language feedback for English-language speeches in order to understand the feedback better.

Some of these negative aspects – especially not getting enough practice – certainly suggest that YATT failed to fully realise practice-based learning, but they also suggest these participants thought YATT *should* be practice-based. Taken together with the positive responses to the questions analysed above, it is clear that YATT was not seen as devoid of practice-based learning, just not always practical *enough*.

Further, as noted in the section on ‘Feedback on valued aspects of activities’, above, feedback is theorised as fuelling an interest in learning for personally oriented learners (see Figure 1). While YATT course designed included written and oral, quantitative and qualitative feedback, satisfying more students’ expectations as to feedback could have further motivated students.

Feedback on the overall project

Rounding out the questionnaire, Set 5 asked respondents for their overall, free-response impressions of YATT.⁸³ Across all activities, the majority expressed a very positive sentiment (e.g. 'great!'), and a smaller group expressed a mildly positive sentiment (e.g. 'it's ok'). Students again expressed happiness to have practiced legal skills and some expressed gratitude for the opportunity. A sizable minority took this question as an opportunity to express a positive attitude to the professionalism and specialisation of the volunteers, adding to the positive evaluations of the feedback from the volunteers which came through in the earlier responses (see 'Feedback on valued aspects of activities'). Participants also commented that the program was well organised.

It was only at this point that two participants noted that the public interest aspect of Yilian Centre's work (its 'non-profitable' work, as one mock trial student put it) had left an impression on them. These were the only feedback data coded under the literature review directed Public Interest theme. While YATT may nevertheless have actually served the public interest, the feedback data indicate that, to the participants, YATT was not closely associated with the public interest purpose that the literature holds as significant for CLE.

⁸³ Set 5 separately asked if participants had suggestions for improving YATT and how to improve YATT's publicity: those responses are not reported here. Respondents were also asked about the suitability of the scheduling of YATT activities; likewise, those responses are not canvassed in this paper.

Finally, common negative comments in the overall impressions included that the materials were not detailed enough, that the number of student participants could be increased, and that students wanted more opportunities to interact (formally) in the activities. Making such changes would likely assist YATT, or projects modelled on it, to better motivate students, particularly to foster the interest of socially orientated learners. However, these responses do not suggest that YATT was unmotivating; indeed, wanting more detailed materials suggests interested learners!

Let us now turn to a discussion of the most significant, transferable findings, including the analyses' most unexpected finding, that practice-based *language* learning emerged explicitly and recurrently as a theme of participants' feedback on their YATT experiences.

Discussion of findings

This section offers a critical discussion of the transferable findings which arose across the analysis of the five sets of feedback, namely findings in relation the non-university nature of the YATT, learner motivators other than university grades, and language learning in CLE.

CLE in civil society

Non-university led CLE is novel (and even controversial), as the Literature Review explained. This study did not ask whether YATT “counted” as CLE by being the same as existing models, but whether, in the eyes of its participants, it offered learning and values that echo the way scholars and clinicians define and describe CLE. In revealing what is meaningful, and valued, to participants, we can be provided with additional ideas to enrich the range of CLE structures, participants and activities, and particularly the range of ideas for indigenising CLE to better meet varied local conditions.

I derived a number of characteristics of CLE from the literature assess the feedback questionnaire data against in the directed content and recurrent thematic analysis. These included CLE’s essential, intermediate purpose of practical learning and the important (but not universally present) ultimate purposes of vocational legal training and serving a public interest. Because CLE’s core form is experiential learning, I looked for responses about characteristic elements of experiential learning including feedback from and experienced person and reflection, as well as about the more general topic of experiential learning itself. The analysis of the 72 feedback questionnaire responses, above, has found that students and professional volunteers who participated in YATT in 2011 and 2012 perceived it not only as educational, but as practical and legally relevant education incorporating real-world activities and personnel. This practical learning was what the participants valued most about YATT.

In addition, the questionnaire responses show that the professional volunteers fulfilled the role of experienced personnel giving feedback to students, as per the characteristics of active learning which the literature review presented as integral to CLE. The data analysis revealed the strong recurrence of feedback as a theme, mainly with a positive value placed by participants on the feedback from the volunteering professionals. There was demand for even more feedback, which would have heightened YATT's active learning. The analysis did not, however, find reflection emerging as a theme in the feedback (although the 72 completed feedback questionnaires are themselves evidence of participants reflecting, echoing Spencer's direction that written reflection is important in addition to debriefing in CLE.⁸⁴). Nevertheless, the public speaking and grand final speaking topics, in particular, were designed to prompt students to critically reflect on aspects on labour law and public interest advocacy in China. Thus, participants' perspectives on experiential legal learning as central to YATT align with the literature's perspectives on experiential learning as central to CLE, but the alignment was stronger in some respects than others: feedback was present and appreciated but reflection needed further incorporation into activities. Moreover, a vocational learning purpose was apparent to YATT's participants – aligning with CLE – but a public interest purpose was not as apparent (in the feedback discourse, at least) – showing an aspect in which YATT failed to strongly align with CLE.

⁸⁴ Spencer, above n4, p.183.

However, looking beyond the explicit feedback data, YATT's speaking activity topics prompted students to engage with the public interest purpose of YATT. For example, public speaking topics included:

- *Imagine you are a workers' leader speaking at a government law reform consultation session. Tell them why you think that Labour-dispatch workers 'dispatched' to a company should be entitled to the same pay for the same work as fellow workers directly employed by the company.*
- *Imagine you are the leader of your university's law student body, which is trying to encourage more students to volunteer. Give a speech to your fellow students on why they should volunteer at local not-for-profit community centres.*

Thus, although the public interest purpose was largely not commented upon in the data (save for two responses), meaning the data cannot support a finding that YATT was perceived as public interest CLE by the students, we do not need to interpret the data as showing that public interest was absent from YATT.

Bringing the results together, from this internal perspective, YATT displayed key characteristics of CLE. This case study is one way of revealing that significant purposes and norms of CLE can be recognised by organisations other than universities who, at least in some cases, are in a position to act on that recognition in an attempt to increase the provision, and the impact, of CLE. Universities are the tried and tested leaders of CLE, but thus not the only providers we could think about, and support, in

future expansions of CLE. However, YATT is not a perfect alternative model: the study highlights that YATT had only limited success in prompting students to explicitly identify or value the public interest nature of the program in their feedback. It was also limited in terms of formally including reflection activities to aid the development of reflective legal practitioners. CLE adaptations learning from YATT should address these shortfalls.

Motivations

The study also enquired into what motivated the participants, given that university-based motivational resources were unavailable to YATT, it being run by a civil society organisation. The finding is that, from participants' perspectives, YATT aligned with many learner orientations and interests theorised in the literature, despite being in a radically different setting. It was in relation to the feedback on feedback that we could most clearly see what interest/motivation had been experienced by participants, as well as in their feedback on the training and skills development they perceived themselves to have undergone. Looking at the results from a theoretical point of view, YATT seems therefore to have motivated personally- and vocationally- oriented learners because feedback and training are theorised to correspond, respectively, to those orientations: see Figure 1. The (far less prevalent) negative feedback calling for more social interaction within YATT suggests some participants were socially-oriented and that their motivation could have been better catered to; however, the

strongly positive feedback in the multiple choice questions, especially in the question on enjoyment of activities, shows that socially-orientated learner motivation was fostered in other ways.

My argument is not that CLE must always motivate students in the ways YATT did; probably, many university CLE courses already do so, in addition to motivating learners through grades and course credits. The key angle to discuss is that these participant responses are not all from students, but also from professional volunteers involved in YATT. YATT was unusual in many ways, but not in demanding active participation from specialists/professionals/practitioners. Such participants also need to be and to stay motivated to make the active learning of CLE happen in university contexts. Indeed, Wortham has argued that CLE initiatives should build long-term, personal, collaborative connections.⁸⁵ This aspect of the study suggests a path for future research on how the crucial, non-student participants in CLE projects experience learning, and can be motivated and rewarded by the form of their participation and by their own learning, throughout their involvement, to build-up stronger collaborative connections.

⁸⁵ Wortham, n6, p.677.

Language learning in CLE

Finally, the finding of the strong recurrence of the theme Practice-based Language Learning – about as strong as Practice-Based Legal Learning – warrants further discussion. It was an emergent theme rather than one directed by the literature and it reveals the importance of communicative and linguistic aspects of vocational legal training, at least to participants. The emphasis on this theme in the participant responses highlights the value of seeking insider (i.e. participant) perspectives on CLE; without the dual methods of thematic analysis this aspect of YATT might have been overlooked, as the literature on CLE rarely foregrounds language learning as a significant and deliberate part of CLE (that is why there was no corresponding content-directed theme).

Let us turn back to the skills that participants nominated as having been developed, in response to the Set 3 questions. In analysing that Set, I noted that legal and language learning were emerging together and as interrelated. Some of the skills nominated may appear at first blush to be language rather than legal skills, such as speaking with both style and confidence, speaking clearly, organising ideas, responding quickly, using facial expressions and gestures, and adapting to being on stage/nervous. But lawyers (especially advocates) also rely heavily on these skills, in whichever language they use. It appears that YATT participants were particularly attuned to noticing improvements in these skills and providing feedback about them, perhaps because YATT was offered bilingually and, for many, undertaken in their second language.

With our focus sharpened by these results, perhaps we can see better that integrating communication skills with legal skills is one way most CLE already goes beyond lecture-based legal education. This feedback serves as a reminder that legal practice is in many ways about communication, not only legal know-how, and furthermore that language and communication skills are a facet of a legal education that practice-based learning, more than doctrinal learning, can develop. Learning to communicate appropriately is at the basis of practical legal training because communication practices are embedded in lawyering in “real world” contexts. An improved ability to express one’s thoughts, to be confident (authoritative, even), clear and quick off the mark, to effectively emphasise or clarify a message through body language and many of the other language skills these YATT students noted are “soft skills” law students should hope to develop even if CLE is undertaken in their first language, in order to improve their ability to work with various clients and in court.

The relative invisibility of language and communication skills in CLE theory is not necessarily because these are unimportant in reality. I suggest, rather, that the relative invisibility is the product of a disposition well-known in sociolinguistic literature, namely, that non-linguists often mistakenly regard language as something that is simply there and “naturally” learnt. Indeed, many existing legal educators may already hope that CLE students learn to speak and write and communicate like lawyers, and this finding helps bring that aspiration to the fore. Especially in non-Anglophone countries, English language may be an important feature of CLE task

design as a vehicle for importing foreign conceptions of lawyering or preparing students for international/transnational legal practice. Moreover, other languages of practice can also be developed through practical legal education: in one of the rare, explicit references to language learning in the literature, Burke and Zillmann note that Hong Kong's recent inquiry on PLT recommended providing students with "greater proficiency in legal Putonghua [i.e. national standard Mandarin]".⁸⁶

In addition, for scholars writing about or running CLE, even in university settings, another transferable lesson here is that CLE programs should not be designed or evaluated only against criteria developed by clinicians and scholars. We may be able to improve our CLE programs by learning what participants, especially students, value most about CLE and open-mindedly working towards goals we had not presaged.

Conclusions and contributions

YATT was a putative CLE initiative from outside the university context, and outside the Anglophone and common law contexts. Given the innovative form of YATT and the need to develop the literature, and the practice, of alternative models of CLE, it was important to work with the data available in the form of feedback survey

⁸⁶ Burke and Zillmann, n9, p.34.

responses despite their limited utility for quantitative analysis. The qualitative, thematic analysis of participant perspectives is, itself, a contribution to CLE literature.

Along with the quantitative analysis of the multiple-choice feedback, the qualitative analysis found evidence that the practical learning and vocational legal training purposes of CLE were seen to be present in YATT by those participating in it. The students and professional volunteers who participated in YATT in 2011 and 2012 perceived it not only as educational, but as practical and legally relevant education incorporating real-world activities and personnel. The practical learning was what the participants valued most about YATT. However, the another common (but not necessarily universal) purpose of CLE, serving a public interest, was largely not commented upon in the data, so the data do not strongly support a finding that YATT was perceived by participants as public interest oriented practical legal education. A critical discussion of these findings in Section 3 contributed to debates in the literature about whether CLE must engage with real, current matters or may be simulation-based, taking the latter position, and encouraged further exploration of the yet-small field of civil-society-led and alternative CLE. In explorations of civil-society-led CLE, we must question the distinction made between CLE and other forms of practical legal education based on a public interest orientation, because civil society organisations are often publicly interested; Yilian Centre certainly was, both overall and specifically in offering its own version of practical legal education, in a radically novel version that did not rely on university leadership or backing.

The study thus contributes to destabilising the distinctions between real problem-based and simulation-based CLE or, on an even stricter view, between CLE as real and PLT as only simulations. As canvassed at the start of this article, there are diverse views on these divisions in the literature. There is nothing in the participant feedback data to suggest that YATT was perceived as inauthentic or lacking in educational or vocational relevance, despite being simulation-based. The point for discussion, arising out of these findings, is whether we need to police the boundaries of CLE so strictly when simulation-based legal education can be experienced as valuable by participants, as it was in this case, and moreover whether we need to police the boundaries of CLE so as to exclude innovations that cede leadership to civil society organisations or engage multiple universities' students at once, to note some of the atypical features of YATT. These questions are worth considering in further studies, especially if other, more real and/or more traditional CLE opportunities are not sufficiently widely available, as in YATT's case.

Further, building upon the thematic analysis results and the critical discussion in Section 3, this article argues that practice-based *language* learning be recognised and researched as an important part of experiential legal education and vocational legal training generally, and specifically of CLE. Communicative and linguistic skills are surely key aspects that educators hope students learn through interacting and doing lawyering (for real or mocked-up) in CLE, all the more because these skills are not studied or practiced much in the law school classroom. Nevertheless, I noted that the

literature does not foreground this aspect of CLE, whereas the internal perspective examined in this study does. The communication skills which the participants felt they had beneficially practiced in YATT were recognisable as the stock in trade of good legal advocates and advisers. One implication of this finding is that, in countries where a common second language is used at law school and by professional lawyers (typically, this is English), CLE course design should emphasise the learning of law-related second language and communication skills. Educators can even use this aspect of CLE as an additional motivator to pique academically oriented students' intellectual interest and personally oriented students' self-development (see Interests in Figure 1). A second implication, for Anglophone contexts, is to do the same. Even in Anglophone nations, legal education could benefit from more explicit recognition of language and communication skills as integral, and CLE – given its practical and oftentimes interactive nature – is especially suited to developing them.

Finally, the study illustrated, empirically, that this atypical, non-university led CLE responded to a range of the orientations, intrinsic and extrinsic interests, and aims of learners which are theorised in educational sciences. Moreover, although certain sources of extrinsic motivation, including a desire to obtain a vocational qualification or academic grades, could never be met by this program, the feedback did not reveal significant dissatisfaction about this incapacity. Rather, this case study shows that civil-society-led innovations in CLE can be motivating, enjoyable, and educationally rewarding in the eyes of participants. This can embolden others to further explore

alternative and atypical ways of achieving the purposes of CLE outside of the university context. This may be especially warranted where the socio-legal context is distinct from the Global North, Anglophonic contexts on which the majority of CLE research focuses and within which the more typical university led CLE model developed.

Appendix A: Overview of themes

Theme:	Learning			Professionalism of the activity				Positive experience	Negative experience		
Sub-theme:	Practice-based learning			-	Feedback from professional volunteers			-	Insufficiencies		
Lower sub-theme:	Practice-based legal learning		Practice-based language learning	-	Getting feedback from profess. volunteers	Insufficient feedback*	-	Activities	Students	Insufficient Feedback*	
Specific themes:	Defence	More practice time needed*	Expression	Speaking style	Professional / specialised volunteers		More feedback wanted	Good/ great overall	Facts not detailed enough	More students	
	Applying knowledge to facts	Court procedure	Speaking clearly	Responding quickly	Well organised***		Feedback wanted in Mandarin for English - medium activities	Well organised***	More practice time needed**	Organise more interaction between students	
	Building trust	Understanding laws and legal processes	Organising ideas / logical reasoning	Organising language				Public interest	Prep time too short		
			Confidence and dealing with nerves	Public speaking skills							

**THE POLICY CLINIC AT NORTHUMBRIA UNIVERSITY: INFLUENCING
POLICY/LAW REFORM AS AN EFFECTIVE EDUCATIONAL TOOL FOR
STUDENTS**

**Rachel Dunn, Lyndsey Bengtsson and Siobhan McConnell, Northumbria
University, UK¹**

Introduction

The Student Law Office (SLO) at Northumbria University has recently incorporated a Policy Clinic (PC) into its existing, and well established, clinical legal education (CLE) programme. There are two models of PC within the SLO; the first is a hybrid model whereby the students carry out PC work alongside live client work and the second is a stand-alone model whereby the students solely undertake PC work. In the PC, students conduct empirical legal research for external organisations and other members of academic staff, with the ultimate aim of influencing policy and/or law reform. This innovative PC model was introduced in the last academic year (2018-2019) in order to broaden the reach of the CLE programme, appealing to those students who want to focus on law reform and/or who are unsure about whether they wish to enter the legal profession. This teaching method aims to deepen a student's understanding of the law as they learn not just about the legal framework but also how

¹ Rachel Dunn, Lyndsey Bengtsson and Siobhan McConnell are Senior Lecturers in the School of Law at Northumbria University

laws are actually made and influenced². Students may also be more interested and engaged in the work as they see it 'may have a positive impact in generating change'³ and thus develop a social justice ethos. Furthermore, whilst they develop professional skills and identities in the standard live client model, this is similar in the PC, but perhaps in a different way and from a different perspective. This will be explored throughout the article.

Although PCs are not a new concept in CLE,⁴ there has been little research conducted as to the pedagogical benefits of carrying out PC work alongside live client work.⁵ A pilot study was undertaken in the last academic year (2018-2019) in order to explore what pedagogical benefits the PC brings. This article therefore will firstly explain the key features of the hybrid model of PC in the SLO. The second part of the article will set out the methodology that was adopted for the pilot study. The third part of the article will set out the results of the pilot study and discuss the themes that have

² Curran, L. (2007) 'University Law Clinics and their value in undertaking client-centred law reform to provide a voice for clients' experiences' *International Journal of Clinical Legal Education Volume 12*, pp.105-130.

³ Ibid pp.107-108.

⁴ There are examples of policy and law reform clinics around the world, see for example at Australian National University (ANU), Stanford Law School's Law and Policy Lab and Whittier Law School. See Patton, W.W. (2011) 'Getting Back to the Sandbox: Designing a legal policy clinic' *16 International Journal of Clinical Legal Education*, p.116; Coper, M. (2007-2008) 'Law Reform and Legal Education: Uniting Separate Worlds' *39 University of Toledo Law Review*, p.233.

⁵ Although there is a significant amount of research on clinical legal education generally; see Cantatore, F. (2018) 'The impact of Pro Bono Law Clinics on Employability and Work Readiness in Law Students' *International Journal of Clinical Legal Education Volume 25*, pp.147-172; Dignan, F. (2011) 'Bridging the Academic/Vocational Divide: The Creation of a Law Clinic in an Academic Law School' *International Journal of Clinical Legal Education Volume 16*, pp. 75-84; Hymans, R. (2008) 'On teaching students to "act like a lawyer": What sort of lawyer?' *International Journal of Clinical Legal Education Volume 13*, pp21-32.

emerged. The final part of the article will discuss the limitations of the study and make recommendations for future research.

The PC Clinic at Northumbria University – The Hybrid Model

Students undertaking work in a PC is not a new concept. Indeed, the use of such clinics is expanding throughout university law schools as the pedagogical and community value becomes more and more recognised.⁶ Just like there are different models of CLE⁷, there are different models of PCs. For example, the model can be freestanding student society or module,⁸ or integrated into an already established law clinic.⁹ However, the authors are unaware of any other university clinic that allows the students to conduct empirical legal research for external organisations as their client.

⁶ Dunn, R. and Glancey, R. (2019) 'Using legal policy and law reform as assessment.', pp.139-163, In Bone, A. and Maharg, P. (Eds) *Critical Perspectives on the Scholarship of Assessment and Learning in Law*. ANU Press; Curran, L. (2007) 'University Law Clinics and their value in undertaking client-centred law reform to provide a voice for clients' experiences' *International Journal of Clinical Legal Education Volume 12*, pp.105-130.

⁷ For example, see Speed, A. and Bengtsson, L. (2018) 'A case study approach: Legal Outreach Clinics at Northumbria University' *International Journal of Clinical Legal Education Volume 26 No 1*, pp.179-215; Batt, C. (2015) 'A Practice Continuum: Integrating Experiential Education into the Curriculum' (2015) *Elon Law Review Volume 7*, p.119; Kerrigan, K. and Murray, V. (2011) *A Student Guide to Clinical Legal Education and Pro Bono*, Palgrave MacMillan; Bucker, A. and Woodruff, W. (2008) 'The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences' *German Law Journal Volume 9*, pp.575-617.

⁸ Dunn, R. and Glancey, R. (2019) 'Using legal policy and law reform as assessment.', pp.139-163, In Bone, A. and Maharg, P. (Eds) *Critical Perspectives on the Scholarship of Assessment and Learning in Law*. ANU Press

⁹ For example, please see Curran, L. (2004) 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change' *International Journal of Clinical Legal Education, Volume 6*, pp.162-176.

The PC within the SLO at Northumbria University is incorporated into a well-established live client clinic that has been providing pro-bono legal advice to members of the public for over 20 years. In the SLO the students undertake legal work in 'firms' of up to eight, under the supervision of a solicitor, barrister or caseworker. There are 20 members of staff who supervise around 200 students each academic year.¹⁰ The SLO operates a full representation model, meaning that students provide initial legal advice and may also advise and represent clients during any court or tribunal process where appropriate. As stated above, in the PC the students are involved in empirical research for external organisation clients and members of academic staff with the ultimate aim of influencing policy or law reform. Just like the live client work, students work in firms of up to eight however, they can be supervised by any member of staff, regardless of whether they are a practising solicitor or not, with an interest in the particular research area.

The supervisor identifies what research projects the students will work on and approaches contacts in the community, academic colleagues and/or external organisations to offer the services of the PC. The suitability of a research project involves a consideration of whether it involves sufficient work for the students, together with a consideration as to whether the data collection and (ideally) the completion of the research coincides with the academic year. The PC utilises the SLO

¹⁰ Information about the Student Law Office can be accessed at: <https://www.northumbria.ac.uk/about-us/academicdepartments/northumbria-law-school/study/student-law-office/> (accessed 25th September 2019).

procedures and systems, for example, the internal electronic network and storage facility. Furthermore, any participants are anonymised and steps are taken to ensure confidentiality throughout.

Some students within the SLO conduct PC work alongside their live client work and other students work solely within the PC. The former model therefore provides a combined teaching model, engaging the students in both empirical legal research and advising clients in the clinic (a hybrid of the two). The live client work and the PC are in no way linked, meaning the students can provide advice to a client on an area of, for example, employment law, but undertake PC work in another area such as criminal law. However, this is not to suggest that in the future the PC cannot undertake empirical legal research in an area of concern raised by a client case, which has happened at other institutions.¹¹

The SLO operates as a compulsory year long module that is worth 60 credit points, which represents the expected time commitment and workload within the module. Although it is worth a high percentage of a student's overall mark, the authors were nevertheless conscious of the workload in undertaking PC work alongside live client work. It was therefore felt by the authors that those students who undertake this

¹¹ For example Carolin, J. (2014) 'When Law Reform is Not Enough: A Case Study on social Change and the Role that Lawyers and Legal Clinics Ought to Play' *Journal of Law and Social Policy* Volume 23, pp.107-135; Curran, L. (2004) 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change' *International Journal of Clinical Legal Education*, Volume 6, pp.162-176.

hybrid model should be allocated one client case (as opposed to the usual two cases) over the course of the academic year.

In the hybrid PC students volunteer to work both in the live client clinic and the PC. They undertake a wide range of activities on behalf of their clients. The type of work the students undertake in the PC involves some, or all of, the following:

- Undertaking a literature review of the relevant area of law in order to explore the background and to appreciate the importance of the research.
- Designing the methodology for the research. The students gain an understanding of what research methods are available, the benefits and drawbacks of each method and establish what method is most appropriate for their research question.
- Drafting the ethical approval form in order to gain an understanding of the ethical issues involved in empirical research.
- Undertaking the research (for example assisting in the data collection).
- Analysing the data collected. The students gain the experience of working with raw data and deciding on how to code that data in order to report on their findings.
- Presenting their research by way of a PowerPoint presentation to fellow students and staff at the end of the academic year.
- Writing up their research findings in an evaluation report for their client which includes their recommendations for law and/or policy reform.

At the end of the module, the students are assessed by way of a portfolio and reflection. The portfolio contains all drafts of both their PC work and live client work undertaken throughout the year. The same assessment criteria are applied for both the PC work and live client work. The reflective element is assessed by way of a 10-minute reflective presentation on their experience. Reflection is a key component of the clinical programme in the SLO as the clinical supervisors aim to develop reflective practitioners and lifelong learners.¹²

Considerations underpinning the Hybrid PC

The incorporation of the hybrid PC into the SLO was underpinned by the following pedagogical, institutional and wider public considerations:

1. Firstly, enlarging the benefits of the SLO, by enabling the students to develop their professional skills in a different context and from a different perspective.

Whilst the students develop a similar skill set in the PC to that of live client work, the authors considered that their experience of undertaking both would enhance their skills and foster a deeper reflection as they could compare and contrast the two experiences. It has already been demonstrated that live client clinics can develop both hard and soft skills with students,¹³ such as analysis,

¹² Thomson, C., Bengtsson, L. and Mkwebu, T. (2019) 'The Hall of Mirrors: a teaching team talking about talking about reflection' *The Law Teacher Volume 53 Number 4*, pp.513-523; Milstein, E. (2001) 'Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations' *Journal of Legal Education Volume 51*, pp.375-380.

¹³ Dunn, R. (2017). *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them*. Doctoral thesis, Northumbria University.

written skills, empathy, teamwork and organisation. The authors assert that the PC work can also do this, and, develop some skills differently than that of live client work some of which are only developed during PC work. For example, whilst the students develop their interviewing skills in preparing and conducting their live client advice interview, the skills utilised in the PC can bring a very different learning experience. The students may be faced with preparing for (or conducting) a focus group with a number of professionals, who may have equal knowledge about the law or the system which the students are exploring. Thus, the students must have a comprehensive knowledge of the subject matter prior to interviews taking place, including the design of them, before collecting any empirical data.

2. Secondly, the PC may provide additional career opportunities as there is more diversity of work available in the clinic. One of the key benefits of CLE is that students gain the experience and an appreciation of what it is really like to be a legal practitioner, and this helps them to decide whether this is the career that they want.¹⁴ By giving the students more choices within CLE opens up a realm of other career paths. As Curran highlights, this exposure means that students *'have more choices about the areas of law they may want to practice in and if they decide*

¹⁴ Childs, P. Firth, N. and Rijke, H.D. (2014) 'The gap between law student career aspirations and employment opportunities' *The Law Teacher Volume 48 Issue 1*, pp.51-68; Marson, J. Wilson, A. and Van Hoorebeek, M. (2005) 'The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective' *International Journal of Clinical Legal Education Volume 7*, pp. 29-43.

not to practice they realise there is a whole realm of activities that a law degree will give them opportunities in.¹⁵ As the employment market becomes more competitive (particularly in the legal sector), it becomes all the more important that students gain experience and professional skills in a way that may makes them stand out and gives them that competitive edge.¹⁶ Involvement in a PC can help students “stand out” from other graduates and enhance their employability. Ensuring that students are employable is a key part of the role of any university. Employers expect “work-ready” graduates; students expect to have the knowledge and skills necessary to enter the graduate marketplace. Saunders & Zuzel recognised that one of the main reasons students invest in a university education is to enhance their employment prospects.¹⁷ With the expansion of the Higher Education sector and 1movements in the graduate recruitment market, employability is ‘a critical issue for both government and Higher Education Institutions’.¹⁸ Equipping our students with the right employability skills is now more of an issue than ever given the Teaching Excellence and Student Outcomes Framework (TEF) and its emphasis on post-graduate employment¹⁹.

¹⁵ Curren, L. (2004) ‘Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change’ *International Journal of Clinical Legal Education* Volume 6, p.174.

¹⁶ Alexander, J. and Boothby, C. (2019) ‘Stakeholder perceptions of clinical legal education within an employability context’ *International Journal of Clinical Legal Education* Volume 25 Issue 3, pp.53-84.

¹⁷ Saunders, V. and Zuzel, K. (2010) ‘Evaluating Employability Skills: Employer and Student Perceptions’, *Bioscience Education* Volume 15 Issue 1, pp.1-15.

¹⁸ Ibid, p.1

¹⁹ One of the six main metrics used to rate universities for the TEF is the proportion of graduates in employment or further study six months after graduation

3. Thirdly, a PC can give the students a transformative experience. A social justice ethos can be instilled in the students by increasing their understanding of the important role that lawyers can play in not just applying the law but also shaping the law. As MacCrimmon and Santow highlight *'while it is crucial for students to learn how to identify and apply legal rules, this should not be the sum total of their skills set.'*²⁰ The students gain first-hand experience on the laws affecting society and the crucial role a lawyer can play in recommending and influencing law reform for the greater public good. The importance of instilling this social justice ethos in our students is that, as future lawyers they may not just apply the law in a vacuum but go one step further and challenge any issues in order to influence change. Indeed, as Coper highlights *'legal education with an ethos of law reform and social justice would give a more altruistic focus to the pursuit of law as a career, and inspire more graduates to use their knowledge and skills to give something back to the society they serve.'*²¹ We don't wish to only teach our students what the law is, but how they can influence change and reform during their practice.

²⁰ McCrimmon, L. and Santow, E. (2010) 'Justice Education, Law Reform and the Clinical Method' in Bloch, F.S. (2010) *The Global Clinical Movement: Educating Lawyers for Social Justice*, Oxford University Press.

²¹ Coper, M. (2007-2008) 'Law Reform and Legal Education: Uniting Separate Worlds' *University of Toledo Law Review* Volume 39, p.247.

4. Finally, clinical supervisors in a PC do not need to be legally qualified or hold a practising certificate. Therefore, any member of academic staff who is able to supervise on research methods can be brought into the clinic environment to supervise. This also has the benefit of linking research activity with research rich learning which is becoming all the more important with REF (Research Excellence Framework) requirements and other research demands across universities globally.²² Another added benefit is that it may bridge any divide between doctrinal and clinical work in a law school, as research suggests that there is a '*conflict between theory and practice.*'²³ Integrating academic staff into the clinic will increase their understanding of the demands of clinical work and enable academic and clinical staff to come together in a way which is not previously reported. Further, it can help to encourage research, collaborating with clinical members of staff who do not traditionally engage with research.

Further to the reasons set out above, the appreciation and need for this kind of education is highlighted in various legal education reports. It was stated in the

²² For example, see Martin-Sardesai A. Tooley, S. and Guthrie, J. (2017) 'Accounting for Research: Academic Responses to Research Performance Demands in an Australian University' *Australian Accounting Review Volume 27 Issue 3*, p.329; Leathwood, C. and Read, B. (2013) 'Research policy and academic performativity: compliance, contestation and complicity' *Studies in Higher Education Volume 38 Issue 8*, p.1162; Thornton, M. (2009) 'Academic un-freedom in the new knowledge economy' in Brew, A. (ed) (2009) *Academic Research and Researchers*, McGraw-Hill Education.

²³ Bloch, F. (2004) 'The case for clinical *scholarship*' *International Journal of Clinical Legal Education Volume 4*, pp.7-21; McKeown, P. and Dunn, R. (2015) 'The European Network of Clinical Legal Education: The Spring Workshop' *International Journal of Clinical Legal Education volume 22 Issue 3*, p.312.

ORMROD Report (1971) that it is necessary to '*cultivate a critical approach to existing law, an appreciation of its social consequences, and an interest in, and positive attitude to, appropriate development and change.*'²⁴ The ACLEC Report (1996) emphasised the need for "*legal education as an all-round preparation for a wide range of occupational destinations.*"²⁵ At the time this report was published, CLE was becoming more popular in the UK and some clinics were in operation.²⁶ There were not, however, any known PCs. It was hoped that traditional education was sufficient at introducing students to law reform and policy issues, but the authors cannot be certain of this.

We argue that the PC at Northumbria, both the full or hybrid models, do just this, and prepare students for multiple occupational destinations, within the legal sphere and outside of it. ACLEC also acknowledged that legal education should develop '*intellectual integrity and independence of mind: to be able to formulate and evaluate alternative possibilities, and to give comprehensible reasons for what one is doing or saying.*'²⁷

This is something which is usually provided through legal education, when discussing and debating with students in the classroom the issues with various legal areas and how they could be improved. The PC takes this one step further, however, by enabling students to collect and analyse data to help form their opinions and put forward

²⁴ *Report of the Committee on Legal Education*, Cmnd. No. 4595 (1971), para 100

²⁵ Lord Chancellor's Advisory Committee on Legal Education and Conduct, *First Report on Legal Education and Training*, (1996) Hereinafter the ACLEC Report paragraph 2.2

²⁶ Grimes, R (1995) 'Research Reports on Legal Education, Number Two: Legal Skills and Clinical Legal Education,' *Web Journal of Current Legal Issues Volume 3*.

²⁷ *Ibid*, paragraph 2.4

alternative possibilities. These possibilities are not hypothetical, but, provided by the lived experience of the participants and what is realistic for all those operating in a particular system.

The more current legal education reports, such as the Legal Education and Training Review (LETR), do not give special emphasis to law reform work as in ORMROD or ACLEC, nor do they mention law reform as an area to develop with students. The skills that LETR advocates for in its professional competencies dimension and attribute table²⁸ are seen in the work of the PC, however. For example, applying knowledge to real world situations is one of the main functions of the PC, but it is furthered by acquiring more knowledge as to how systems and policies can be improved for the betterment of the real world. Additionally, students are required to manage their uncertainty, particularly during the data collection stage where participants can rearrange, be difficult, or bring up areas of discussion not previously identified by the research team. These are just two examples, but this kind of work feeds into affective/moral dimension of social responsibility, which the authors believe includes the ability to use empirical data and advocate for law reform, both in the court room and through other channels.

Lady Hale has recently described the importance of her work undertaken in the Law Commission, prior to her becoming a judge, as '*excellent preparation for serving on the*

²⁸ Webb, J. et al (2013) *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (The Legal Education and Training Review [LETR]), p.140. Accessed at <http://letr.org.uk/the-report/index.html> (accessed 21.10.19).

*Supreme Court of the United Kingdom.*²⁹ Lady Hale provides four main lessons which make the kind of work undertaken at the Law Commission (and, the authors argue, in the PC) a good idea, including an appreciation of doctrinal and empirical research in understanding the law, how it works and the policy implications of changing it.³⁰ There need not be such a divide between doctrinal or empirical research and how the law is developed through the common law, and academic work can often influence decisions made in court. The PC allows for students to work with and foster an understanding of reliable empirical research which can influence the development of the law. There are a few ways to do this, but, collecting data or working on law reform projects is most definitely one of them.

Lastly, the QAA Benchmark for Law defines what can be expected of a law graduate by the end of their studies.³¹ Like ACLEC, the Benchmark states that a law degree will prepare students for a range of careers in, '*for example, business, finance, education, public policy, public service, social services in the UK and internationally.*'³² The PC helps students to develop the skills needed for public policy and public service particularly, and provides them with the experience needed for applications. Further, a variety of skills

²⁹ Lady Hale, President of the Supreme Court of the United Kingdom, (11th June 2019) Impact in the Courts. *Impact and Law Reform Conference 2019* (Institute of Advanced Legal Studies, London), p.1

³⁰ Ibid

³¹ The Quality Assurance Agency for Higher Education, *UK Quality Code for Higher Education, Part A: Setting and Maintaining Academic Standards – Subject Benchmark Statement: Law*, July 2015, p.1. Accessed at: <http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf> (accessed 22nd October 2019)

³² Ibid, p.6

and qualities of mind, which are expected of a law graduate (with honours) are provided, of which many are potentially developed through PC. For example, that a law student will have demonstrated an *'ability to ask and answer cogent questions about law and legal systems... engage in critical analysis and evaluation'* and *'ability to produce a synthesis of relevant doctrinal and policy issues, presentation of a reasoned choice between alternative solutions and critical judgement of the merit of particular arguments.'*³³ These are just two examples of how the PC meets the requirements under the Benchmark, but also extends this experience in a way, which may not be possible when studying doctrinal law or working with a live client. For example, students will be able to use empirical data, analyse it and use it to form well-reasoned arguments and sensible alternative solutions. Whilst students may be encouraged to read reports which have been empirically produced during their legal education, they will most likely not have worked with actual data themselves, understanding the process of research and what makes a study robust and reliable. Thus, our PC students should not only meet the Benchmark requirements but exceed them.

It has been set out above why the PC is important, in terms of individual skills development, but also as a necessary social justice ethos and additional training for striving for change when in practice. What the authors have provided, however, is anecdotal evidence from our experience. The next part of this article will discuss the evidence we have collected and analysed as to the pedagogical benefits of the PC.

³³ Ibid, p.7

Methodology

In this pilot study, one focus group was used to examine the views of students who had undertaken work in the PC in the SLO. A sample was selected of 19 students who had worked across three different research projects and under three different clinical supervisors. Three students participated in one focus group which lasted approximately one hour. The authors appreciate a small sample size cannot be generalised and is not representative of other PCs in the world. As an explanation, the focus group was conducted after the course had finished, and some students were not able to attend. The date of the focus group has been modified for future research to engage more participants. Further, the authors do not know of other PCs operating in the UK in this way, to gather more data to compare and add to this work. The authors would like to encourage others working in this field to contact us and collaborate on future research projects. As a small sample size may be considered a problem and affects the quality of the study for some,³⁴ in some studies this cannot be helped. With CLE an emerging field in terms of reliable empirical data, small studies are inevitable, until law schools join forces to provide evidence which can be generalised. What we can argue is generalisation through contextual similarity, as explored by Larsson, also

³⁴ Marshall, B. et al (2013) 'Does Sample Size Matter in Qualitative Research?: A Review of the Qualitative Interviews in IS Research' *Journal of Computer Information Systems Volume 54 Issue 1*, p. 11

known as transferability.³⁵ It is argued that any other hybrid PCs operating in a similar way, as described above, can transfer these results to their own work.

The authors were cognisant of their status as clinical supervisors and in using students as participants, they may feel obliged to participate in the study. To eliminate this risk, the students were asked by the moderator to sign an informed consent form at the beginning of the focus group. This consent form assured anonymity and confidentiality, so, their supervisor would not know who had participated in the study. The consent form reminded them that their participation in the study was voluntary and they could withdraw at any time. They were also asked to read an information about research document, which made clear that their participation would not affect any aspect of their programme of study and was in no way linked to their grade within the SLO.

The focus group was audio recorded and subsequently transcribed. A framework of questions was used as the main tool for data collection; however, the moderator could ask questions beyond it. The authors developed the framework of questions by reading literature on policy/law reform clinics and on their potential benefits. The participants gave permission for the focus group to be recorded. The tape was transcribed by an independent third-party organisation and reviewed by the

³⁵ Larsson, S. (2009) 'A pluralist view of generalization in qualitative research' *International Journal of Research and Method in Education* Volume 32 Issue 1, p.13.

moderator to ensure that the participants' names were not mentioned before the transcript was received by the authors.

Thematic analysis was adopted for the data analysis. This method for analysis has been described as '*an independent qualitative descriptive approach*'³⁶ and '*is a method for identifying, analysing and reporting patterns (themes) with data.*'³⁷ It was considered that the results of the thematic analysis would be critical in revealing important aspects arising from the data concerning the pedagogical benefits. The authors independently conducted the thematic analysis and then met afterwards to agree the patterns that emerged in order to validate the codes, and organise the codes into themes.

A limitation of this study is that it is a small-scale pilot focus group, however, the qualitative data it gives does open a window to the students' views and the value of PC as an educational tool within a well-established legal clinic. As Barbour³⁸ and Vogt et al³⁹ highlight, the goal of focus group research is "transferability" (applicability, fittingness, meaning to others, decided to each reader for their own use) rather than statistical generalisability. We appreciate that this sample size was small, but the team

³⁶ Vaismoradi, M. Turunen, H. and Bondas, T. (2013) 'Content analysis and thematic analysis: Implications for conducting a qualitative descriptive study' *Nursing and Health Sciences Volume 15 Issue 3*, pp. 398-400.

³⁷ Braun, V. and Clarke, V. (2006) 'Using thematic analysis in psychology' *Qualitative Research in Psychology Volume 3 issue 3*, p. 5 accessed at: http://eprints.uwe.ac.uk/11735/2/thematic_analysis_revised... (accessed 15th December 2015).

³⁸ Barbour, R.S. (2005) 'Making sense of focus groups' *Medical Journal Volume 39 No 7*, pp.742-50.

³⁹ Vogt, D. King, D.W. and King, L.A. (2004) 'Focus groups in psychological assessment: enhancing content validity by consulting members of the target population' *Psychological Assessment Volume 16 No 3*, pp.231-43.

Reviewed Article

wanted to explore the area and see if there were any themes emerging from the data which were worth pursuing. We plan for a larger, longitudinal study both qualitative (further focus groups) and quantitative (survey), and feel it is needed to provide an insight into the PC over a few years. It would also be of interest to obtain data on what employers' views are on their prospective trainees undertaking PC work during their University degree.

The next part of the article will report on the results of the pilot study, taking each theme in turn. Not all codes will be discussed within each theme, but those which raised important and consistent concepts.

Results and Discussion of the Pilot Study

The thematic analysis resulted in six major themes:

1. Skills/Attributes
2. Difference in terms of both the curriculum and the live client work.
3. Employability
4. Motivation
5. Supervisor Relationship
6. Impact

The themes and codes are displayed in the diagram:

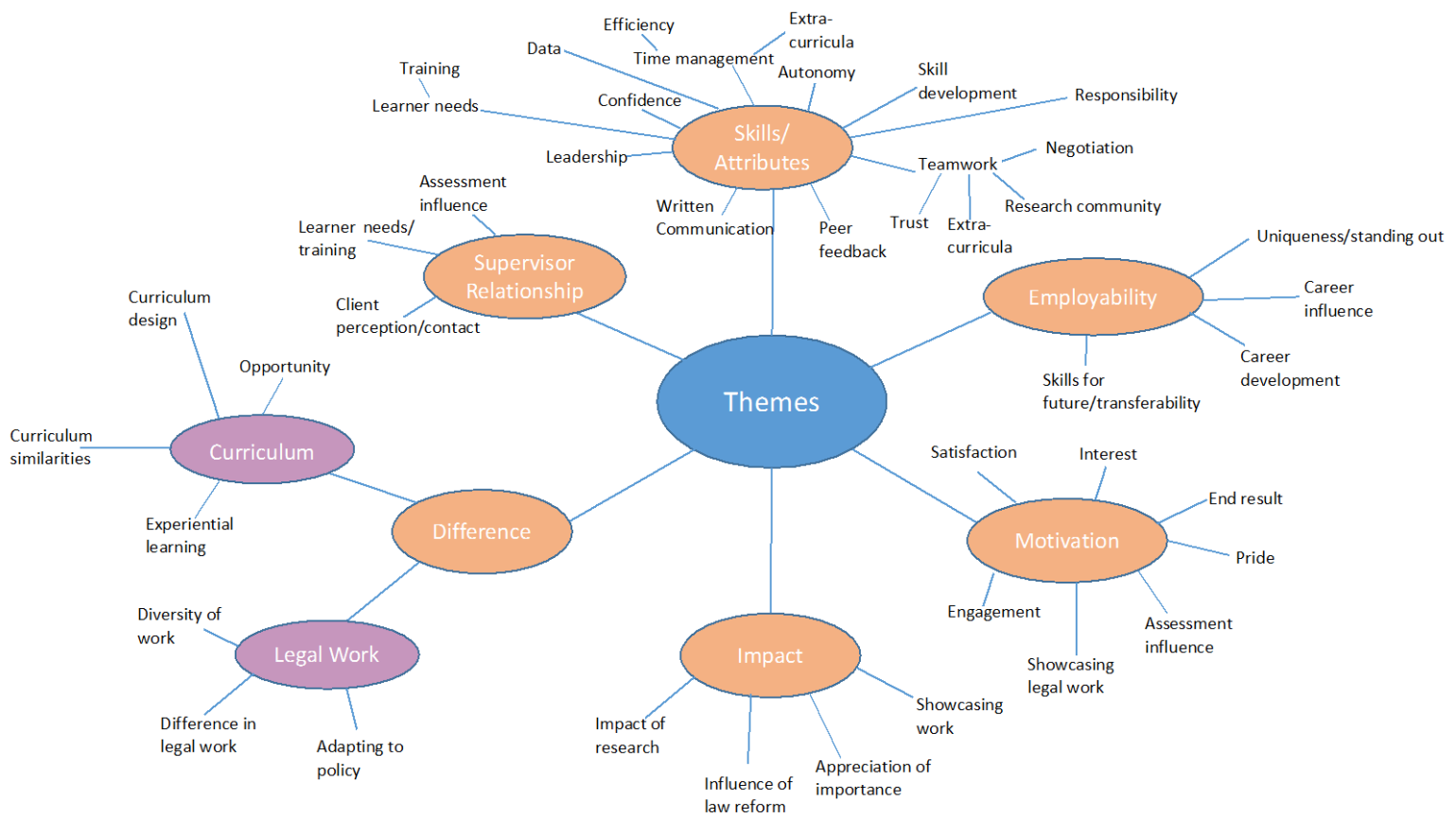


Diagram 1: Codes Organised into Themes

(a) Theme 1 “Skills/Attributes”

There was a consensus amongst the students that the PC had allowed them to develop a broad range of skills and attributes. Their experiences had led to the development of both hard and soft skills. Written communication skills had been ‘*really put to the test*’ and developed, as had their research, teamwork, time management, analytical skills and confidence that they can adapt to new situations.

The students felt very strongly that PC work had allowed them to develop their ability to work effectively as part of a team. Initially the students reported that this was the skill they most struggled with, that the PC tested one *'so much in terms of their ability to work with others.'* In the PC work there was larger group of students (six students in total) however in the client work they usually worked in pairs. By the end of the module teamwork was a skill that the students felt they had developed the most. Interestingly, it appeared that a real research community emerged whereby the students really valued the ability to work with each other and *'bounce ideas'* off one another. They supported one another and ultimately got into the *'swing of it.'* Therefore, what presented as a challenge to begin with (working with peers) ended up giving the students a valuable opportunity to develop their teamwork skills.

Working as a team in the PC led to the development of their time management, negotiation and leadership skills. The project developed their time management skills, ensuring the work was completed by each deadline. In achieving this, however, the students reported that they negotiated with the other students with regards to who did what and when. This became all the more necessary in light of the students' different working styles, their other University workload and extra-curricular activities. For one student negotiation *'was definitely key'* in the PC. There was recognition that some students stepped up to occupy more of a leadership role, taking control over the project and ensuring that the work was completed on time. Rather than question those who took this leadership role, one student commented that he had

'complete faith' in those who had stepped up. This suggests that within the group of students, there were some who developed leadership qualities including instilling confidence in the group, commitment to a task, the ability to make a decision, the ability to communicate effectively and the ability to delegate tasks to maximise efficiency. A previous study by Dunn into the skills developed during live client work highlights that leadership skills are only really developed when in practice and become more prominent as a lawyer progresses through their career.⁴⁰ Some students therefore have been given the opportunity to develop a skill in the PC that they may not have developed in live client work, providing further opportunities for our students to expand their employability skills.

Within the research community that developed, there was a general consensus that the students were eager to demonstrate to their supervisor that they were working autonomously. As one student said:

We wanted to show that we really had a grip on it. Obviously, we did communicate with her if we were really stuck or just needed some direction. But I think, yeah. We just wanted to really not rely on her.

With another adding,

Yeah, I think as well, we know that it's assessed... we know that is [autonomy] one of the marking criteria

⁴⁰ Dunn, R. (2017). *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them*. Doctoral thesis, Northumbria University

Many of the skills discussed by the students, for example, written and oral communication, research, teamwork, efficiency and time management, are explicitly mentioned in the SLO assessment criteria, in the SLO handbook and in the module descriptor. However, it was interesting to note that certain skills which might be expected to be developed within a CLE environment were absent from the focus group discussion. Some of these are skills that students might not normally associate with CLE for example, commercial awareness and numeracy. However, the omission of some other skills, such as an understanding of ethics and ethical procedures, critical engagement/analysis, attention to detail, statutory interpretation and problem-solving, was notable.⁴¹ Not all of these skills (for example commercial awareness, numeracy and attention to detail) are explicitly mentioned in the assessment criteria or handbook but are skills that could and may be developed in a PC. It was surprising that ethics was not mentioned. Firm meetings had been used to discuss research ethics, applications for ethics clearance and associated issues. The focus on research ethics contrasts with the “usual” ethical issues encountered in live client clinics and discussed in undergraduate law degrees. Further, there was no discussion of if and how the broader concept of professionalism had been developed through the PC experience. Dagilyte and Coe consider professionalism *‘in the wider sense: as skills,*

⁴¹ In relation to the statutory interpretation and problem solving being developed through policy work see Kruse, K. (2001-2002) ‘Biting Off What They Can Chew: Strategies for Involving Students in Problem Solving Beyond Individual Client Representation’ 8 *Clinical L. Rev.*, p.405.

*personal attitudes and values that guide one's behaviour when providing legal advice'*⁴² and that professionalism is critical to being ready for employment, in the legal profession and in any other graduate role. Further, one of the key recommendations of the LETR was to '*strengthen requirements for legal education and training in legal ethics, values and professionalism.*'⁴³ Whilst it is clear that students considered themselves to be developing skills which form the building blocks for professionalism, it is of interest that there was no explicit acknowledgement by them of their development of professionalism within the PC. It appears that it would be of benefit to students for supervisors to be more explicit in their direction to students as to what skills are being developed i.e. skills specifically mentioned in the module descriptor/assessment criteria and any which fall outside of those documents.

(b) Theme 2 "Difference in terms of both the curriculum and the live client work"

Another theme that emerged was the contrast students felt between the PC work and both the curriculum and the live client work. The students initially struggled to adapt to the PC work. It was alien to them, as one student put it '*It's almost like we're not*

⁴² Dagilyte, E. and Coe, P. (2014) 'Professionalism in higher education: important not only for lawyers' *The Law Teacher Volume 48 Issue 1*, pp. 33-50

⁴³ LETR at ix

entitled to an opinion normally, and then all of a sudden we're allowed to interpret data.' This is unsurprising considering the PC is unlike anything they have ever done before. The students study law throughout their degree and are taught how to apply the legal framework to various scenarios and then *'All of a sudden the question is so broad and there isn't an answer you can just look up. You've got to look through data and find it.'* However, the students did adapt, and their perception was that it all came together by the end of the project. One student commented, *'we...don't have a clue what we're doing. But very quickly, I mean, we did adapt, and it has been really interesting...it was definitely a learning curve.'*

Students in a live client clinic develop a number of professional skills; including research, oral and written skills.⁴⁴ However, in terms of their skill development in PC and how it is different to live client work, the students felt that they have developed their professional skills in a completely different way. One student observed:

...even though it's the same sort (of skills) ...it's just completely different because you're taking it from a different angle of this person said this, and this could suggest this, and this is backed up by this. Whereas you wouldn't do that in client work.

The students really valued the diversity of doing both live client work and PC work. For one student it was *'refreshing to just be able to do different things.'* Another student commented that they have *'enjoyed that it's been two – in one module, it - it's been two*

⁴⁴ Dunn, R. (2017). *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them.* Doctoral thesis, Northumbria University

different things.' When probed as to whether they would have chosen to do PC work if it was a stand-alone model there were mixed views. For some students they would not have chosen to do a module that focussed solely on PC work, however one student commented that he would choose to do a stand-alone PC module but only if he had already undertaken live client work during his law degree.

(c) Theme 3 "Employability"

Employability was another key theme that emerged from this research. Employability as a concept covers a range skills and attributes. Yorke stated that it is '*a set of achievements – skills, understandings and personal attributes – that makes graduates more likely to gain employment and be successful in their chosen occupations, which benefits themselves, the workforce, the community and the economy.*'⁴⁵ Whilst some of these skills are obvious to employer, employee and educator, for example, subject knowledge, other skills can be more difficult for students to develop and demonstrate. CLE (and PCs) provide another way to develop many of the skills and attributes linked to employability, in a way that both contrasts with and complements more traditional methods of teaching within Law Schools. Marson, Wilson and Van Hoorebeek note that CLE allows students to practise the skills expected of lawyers, stressing that doing

⁴⁵ Yorke, M. (2006) 'Employability in Higher Education: What it is – what it is not' *Higher Education Academy*

so at an early stage *'is likely to produce better equipped and more successful law graduates.'*⁴⁶

As noted earlier in Theme 1, there were several skills that the students thought they had developed during their clinic experience, for example, communication, teamwork, negotiation, leadership, time management and analysis⁴⁷. Such skills are commonly noted by employers as being desirable skills for any graduate, not just those who are planning to work in the legal profession.⁴⁸ As noted earlier, students may need more explicit guidance from supervisors on what relevant skills and attributes they are developing in the PC. This will enable students to put those skills into context when applying for and being interviewed for graduate roles. Small, Shadlock and Marchant⁴⁹ note that employability covers more than just the possession of knowledge, skills and attributes but also *'the capability of individuals to use and present knowledge, skills and attributes to employers'*⁵⁰. Students must be able to demonstrate their skills as well as possessing them and as legal educators, it is our role to enable students to contextualise and articulate those skills at key points of the recruitment process.

⁴⁶ Marson, J. Wilson, A. & Van Hoorebeek, M. (n 11), pp.32

⁴⁷ See Foundations for Practice, The Whole Lawyer and The Character Quotient, Institute for the Advancement of the American Legal System, 2016, for an American view of the skills, competencies and characteristics required of new lawyers.

⁴⁸ Helping the UK Thrive, CBI/Pearson Education and Skills Survey 2017. Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales 2013 (n 31)

⁴⁹ Small, L. Shacklock, K. and Marchant, T. (2018) 'Employability: a contemporary review for higher education stakeholders' *Journal of Vocational Education & Training*, p.148

⁵⁰ *Ibid*, p.150.

During the focus group, students noted the impact the PC experience would have on them in a variety of ways. Their ability to *'stand out'* from other graduates was recognised as was the impact of their work on career influence and career development. When asked how they would use the PC experience to stand out at an interview, the students identified themselves as offering something different to other applicants. One student's view was that *'we're in a really unique position...as...quasi-undergraduate students conducting qualitative research in law...everyone I've spoken to, that's unheard of'*. The same student identified how he would use the experience at an interview *'I'd be like, 'well, I've got all this experience of your traditional law student, but when all of those avenues are exhausted and there's raw data in from of me, I can get an answer from that''*. Students could clearly identify and were prepared to advocate for the *'additionality'* that the PC experience had provided. Another student again perceived the difference the PC experience would give in comparison to others, stating *'I think it does set you apart from other people because you might have the same skills as other people but you've used them in a different way. And that's so valuable.'* They even considered how an employer might view them and the different perspective they would bring. This "setting apart" from other law students and in fact from other CLE students appeared to be identified by the students as a key benefit of the PC experience.

One student noted the decline in the number of students in the Law School between first and fourth year and that so few of them would have had the PC experience – seeing it as an additional aspect that they are able to adapt to. This idea of setting

themselves apart is intrinsic to a student's development on their journey to employability. The recognition that a degree alone is not enough is the starting point and the need to offer something different is part of that journey. Tomlinson⁵¹ notes the high levels of personal investment needed to improve a student's employability with the recognition that having graduate-level credentials '*no longer warrants access to sought-after employment, if only because so many other graduates share similar educational and pre-work profiles*'⁵². Francis highlights the need for students to understand the importance of distinguishing themselves from other students, CLE being one way in which students could enhance their employability. It was clear that the students in the PC were able to see that they could use their experience to differentiate themselves from other graduates seeking employment. However, employer buy-in is needed and, as Francis notes, the value of the experience will depend on the profession's willingness to see the additional benefits CLE, and now PCs, bring.

Students were able to think about how to use the PC experience in the short-term for job applications and interviews. One student, who already has a training contract, was able to look further ahead to see how they would use the experience on qualification and when looking for post-qualification employment '*I think, well I hope*

⁵¹ Tomlinson, M. (2012) 'Graduate Employability: A Review of Conceptual and Empirical Themes.' *Higher Education Policy* Volume 25 Number 4, pp. 407–431.

⁵² Francis, A. (2015) 'Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience' *Journal of Law and Society* 42, 2, pp.173-201

I get the opportunity within my traineeship to develop those law reform skills so that when I come to interview...I can say, "well actually started before I worked here."

Interestingly, for one student the PC was a transformative experience, realising that a career as a lawyer was no longer for him. Therefore, this research suggests that PC opens the door to alternative careers for law students. He said:

I think it's a bit of an anomaly that actually this experience has made me decide that I don't think legal practice is for me at all, that I think the law reform side of it is a lot more interesting...So in nine years' time, I hope that this is what I'll be doing entirely...I find it more personally rewarding to fix the larger problems with the law.

This is consistent with previous statements made in research, particularly by Curran who argues that PC and law reform work gives students opportunities to decide if an alternative to legal practice is more preferable and what those alternatives are.⁵³

Another student had already identified that they did not want to go into practice as a solicitor but recognised that the skills they had learnt would be of use in another role *'the actual personal skills that we manage to develop are something that obviously...you can't take away.'*

It appears that, as with "traditional" CLE work, the students in the PC were using the experience to confirm that they did not want to enter the legal profession.⁵⁴ More

⁵³ Curran, L. (2004) 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change' *International Journal of Clinical Legal Education* Volume 6, p. 174

⁵⁴ Childs, P. Firth, N. and Rijke, H.D. (2014) 'The gap between law student career aspirations and employment opportunities' *The Law Teacher* Volume 48 Issue 1, pp. 51-68, p.60

generally, the students could also see the benefit of using the PC skills they had gained in the future and how transferable those skills might be *'I'd like to hope that some of the skills I've learned, teamwork and working and pressure and...research that...goes behind us being able to give recommendations, I hope I'll be able to do that in the future.'*

(d) Themes 4 & 5 "Motivation" and "Supervisor Relationship"

Another theme that emerged was motivation, more specifically why the students were initially motivated to work in the PC and how their motivation was maintained throughout the academic year. This linked to another theme – the student-supervisor relationship. Initially the students did not fully appreciate the importance of their work in the context of having a positive impact in generating change. Rather than being motivated by the opportunity to influence policy or law reform, the initial motivators appeared to be volunteering to work in the PC in order to *"impress"* their supervisor and to add work to their portfolio for assessment. The motivator of impressing the supervisor is unsurprising given that commitment and enthusiasm forms part of the assessment criteria for the SLO.⁵⁵ Therefore, although the nature of the research and its importance to the client and wider community was emphasised at the beginning of the academic year, the students appeared to be initially motivated by their assessment and final grade. However, as the module progressed the students

⁵⁵ One of the assessment criteria for the module is commitment to clients and to the SLO. For example, in order to achieve a 2:1 for this criterion the student must demonstrate a very good level of commitment and/or enthusiasm for achieving the best outcome for clients. They must also complete tasks with a very good degree of diligence and show pride in their work and a willingness to help further.

became more and more aware of the wider implications. This is consistent with previous research by Dunn, whereby at the start of the clinic students were somewhat obsessed with their final grade. This motivation did not disappear at the end of their clinical experience, but is something which was hovering in the background when considering what was important to practice and future employability.⁵⁶ It seems as though working with live clients, whether in a legal or policy setting, can shift a student's focus from the internal motivations to external motivations, but where a clinic is assessed this may always be a driving factor for students.

Linked to this realisation of the wider implications of the PC, the students spoke enthusiastically about their experience in the PC and the pride they have felt in being part of impactful research. One student commented *'I think for me, it's been a lot more rewarding than live client work. ... this is a massive problem that's affecting (society as a whole).'* The students really valued the opportunity to showcase their research in a conference setting at the end of the module to their peers, their supervisor and another member of staff. They felt that they had *'really accomplished something'* and *'it was a benefit because all of our work came together.'* Due to this, the research team have been awarded university funding, to provide a large-scale conference at the end of academic year 2019/20, for all PC students to present their work. We want all students to feel this satisfaction and sense of accomplishment, and an event to celebrate and

⁵⁶ Dunn, R. (2017). *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them*. Doctoral thesis, Northumbria University

share their work felt necessary to the research team. This presentation will go in their portfolios and be used to assess their oral communication skills.

(e) Theme 6 "Impact"

The research suggests that the PC benefitted the students not just with skills training and helping them *'stand out'*, but also helped instil a social justice ethos and appreciation as to why this kind of work is important for society. The students highlighted that they hadn't expected what policy work would entail, but at the end had *'understood the importance of doing things like focus groups and the interviews.'* As stated above, students do not have this opportunity elsewhere on the programme to participate in empirical research, and, may not have realised what it entailed or the difference it can make without this experience. Another student affirmed this conclusion, stating that they had not thought in depth about law reform and the impact it can have, but they were *'grateful for the opportunity... because we don't, you know, get that opportunity every day.'*

Whilst we do encourage students to think about law reform during their doctrinal learning, we do not often provide an avenue of how to take that further and try to implement change. One student stated that their learning which focused on reform had been very much *'Well, this person thinks this isn't very good for this reason'* but by the end they could say *'make it better by doing this'*, and making recommendations, which amusing one joked *'I surely can't be qualified to say this.'* This work gave students a voice and the ability to understand the contribution they can make to law reform,

something which they may have felt powerless or underqualified to do prior to their policy experience. They all discussed wanting to continue this work in the future in some way, and it seems as though this experience has given them the means to do so.

The students appreciated that the issue they were working on affected many people throughout the country, and, had the very romantic notion all new researchers have, that *'This is what you can do to make their lives better.'* This is not to say that research cannot make change, but sometimes this can take time. It was refreshing that students considered the bigger picture of their research and the potential impact it can have on society. When working with a live client, students can make their client's life better, but when doing empirical research, they appreciated the wider impact it can have.

By conducting empirical research and suggesting ways in which the law can be reformed, the students appreciated the importance of the work, particularly near the end of the year when they showcased their work in a conference setting. As stated above, this made the students feel as though they had *'really accomplished something.'* They liked seeing all of their work come together.

Conclusion

PCs play a valuable role in developing a student's professional skills and preparedness for practice and also by providing a transformative and rewarding experience. PCs simultaneously play a valuable role in shaping law and policy reform, contributing to

the greater public good. This article has outlined a hybrid PC model operated by Northumbria University through CLE and has sought to provide an insight into the students' views on the pedagogical benefits that involvement in the PC brings. From a student perspective, the value of the hybrid PC lies not only in the development of professional skills and competencies from a completely different perspective but also in engaging with the mechanisms of the law and the role they can play in influencing change. The students gain an appreciation of future career paths available to them. Taking into account the themes emerging from this pilot study, together with the authors' experience in supervising in the PC, the authors would recommend further research in this area in order to create a body of work demonstrating the benefits of students undertaking a PC and best practice for those teaching in a PC.

CLIENT NEWSLETTERS WITHIN CLINICAL LEGAL EDUCATION AND THEIR VALUE TO THE STUDENT PARTICIPANTS

*Lyndsey Bengtsson*¹

Abstract

The employment law client newsletter project (the Project) runs during each academic year within the Student Law Office (SLO) at Northumbria University. Under the supervision of their clinical supervisor the students research and design a newsletter for distribution to HR professionals employed by an external organisation. The students participate in the Project alongside their live client work. The aim of the Project is to enrich the students' clinical experience and develop their skills whilst at the same time update and educate the client recipient. Through a pilot study the value of participating in the Project is explored. The findings of the study suggest that the students develop their professional skills from a different perspective, increase their employment law knowledge, gain the commercial awareness of the importance of a well drafted newsletter in practice, and really value the experience.

Key Words: Client Newsletter, Employment Law Updates, Clinical Legal Education, Legal Education

¹ Lyndsey Bengtsson is a Senior Lecturer at Northumbria University Law School

Introduction

Client newsletters are often used by law firms to attract clients and retain existing ones by going that extra mile and show that they provide that added value service.² Recently, an employment law client newsletter project (the Project) has been introduced into the employment law clinic within the well-established Student Law Office (SLO) at Northumbria University. The SLO provides full representation assistance to members of the public, giving students the ideal opportunity to develop their professional skills and preparedness for practice.³ The Project was introduced with the dual aim of enriching a law student's educational experience whilst simultaneously updating and educating the client recipient of the newsletter with topical and up to date areas of employment law. The students, under supervision, conduct the research and write a monthly newsletter for distribution to a third-party client organisation. In doing this, the students are exposed to key changes in employment law and they develop an understanding of how to tailor a newsletter, so it is relevant to the recipient and offers practical guidance on legal compliance.

² Zwicker, M.W. (1987) 'Successful Law Firm Newsletters' *Legal Economics Vol 13* p.56; Pribek, J. (2011) 'The Firm: Law firm newsletters still alive and kicking' accessed at the webpage <http://www.legalnews.com/ingham/908264> (accessed 18th September 2019).

³ Sylvester, C. Hall, J. and Hall, E. (2014) 'Problem-based learning and clinical legal education: What can clinical educators learn from PBL?' *International Journal of Clinical Legal Education Vol 4*, p.39; Dunn, R. (2017). 'The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them' Doctoral thesis, Northumbria University; Cantatore, F. (2018) 'The Impact of Pro Bono Law Clinics on Employability and Work Readiness in Law Students' *International Journal of Clinical Legal Education, Vol 25, No 1*, p.147.

Reviewed Article

A pilot empirical study was undertaken in the academic year (2018-2019) in order to explore the pedagogical value of the Project to the students. Firstly, this article will provide background, including the considerations underpinning the Project and explain how it was introduced as part of a clinical legal education (CLE) module. Secondly, this article will set out the methodology that was adopted to explore the educational value to the students. Thirdly, this article will present findings from the study. Finally, this article will discuss the lessons learnt from the Project.

Background

The Student Law Office

All students enrolled on the four-year M Law Exempting law degree⁴ at Northumbria University undertake a year long assessed clinical module in the SLO. In the SLO they provide free legal advice to members of the public. The SLO has been providing pro-bono legal advice to members of the public for over 20 years and has secured over £1 million in compensation for clients in this time.⁵

⁴ This is a programme which combines the undergraduate law degree with the requirements of the Legal Practice Course or Bar Practitioner Training Course.

⁵ Information about the Student Law Office can be accessed at:

<https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office/> (accessed 21st July 2019).

All work is carried out under the supervision of qualified practitioners and around 200 students work in the clinic each academic year. Students are allocated to a group of around eight, referred to as 'firms'. Students specialise in their supervisor's area of expertise, such as employment law, family law, housing law, welfare benefits and civil litigation. Each year sixteen students undertake clinical work in employment law under the author's supervision, offering a range of advice and assistance to both employers and employees. Typical employment law enquiries include requests for advice concerning the fairness of a dismissal, non-payment of wages, discrimination and drafting contracts of employment. The work ranges from initial advice to full representation at an employment tribunal hearing.

The SLO continually looks for ways in which the students clinical experience can be enhanced. For example, blog articles have been successfully introduced in the SLO⁶ and an innovative Policy Clinic has been incorporated.⁷ In order to enrich the student's experience within the employment law firms, the Project was introduced in autumn 2017. The Project was incorporated in addition to their live client casework and utilises the SLO procedures and systems, for example the storage facility and electronic networks.

⁶ See Roper, V. (2018) 'Blogs as Teaching Tool and Method of Public Legal Education: A Case Study' *International Journal of Public Legal Education* Vol 2, No1, p. 46.

⁷ In the Policy Clinic, the students undertake empirical research under the supervision of their supervisor and for a third-party client with the ultimate aim of contributing to law and policy reform. The Policy Clinic is designed to develop the students' skills in an alternative way, and from a different perspective to that of the live client model.

Client Newsletters in CLE

Although there is extensive literature on the educational value of the use of CLE,⁸ there is a dearth of literature on the use of client newsletters in CLE. There is some literature, which sets out the educational benefit and marketing advantage of newsletters to law firms and businesses more generally.⁹ There are also online examples of law firm newsletters, which are available to the public.¹⁰ As Bitas comments 'legal training must bear a relationship to legal practice....as the contours of the latter change, so, too must the former.'¹¹ Therefore, if law firms are using newsletters as a means of connecting with their clients and educating the public; then law students are likely to find themselves, one day, contributing to their firm's newsletter. By gaining

⁸ Alexander, J. and Boothby, C. (2019) 'Stakeholder perceptions of clinical legal education within an employability context' *International Journal of Clinical Legal Education* Vol 25, No 3 p. 53; Thanaraj, A. (2016) 'Understanding how a law clinic can contribute towards students' development of professional responsibility' *International Journal of Clinical Legal Education* Vol 23, No 4 p. 89; Hall, J. and Kerrigan, K. (2011) 'Clinic and the Wider Law Curriculum' *International Journal of Clinical Legal Education*, Vol 15, pp.25; Giddings, J. (2008) 'Contemplating the future of Clinical Legal Education' *Griffith Law Review* Vol 17, Issue 1, pp.1; Marson, J. Wilson, A. and Hoorebeek, M.V. (2005) 'The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective' *International Journal of Clinical Legal Education*, Vol 29, No 7, p.29; Grimes, R. (1995) 'Legal Skills and Clinical Legal Education' *Web Journal of Current Legal Issues*, Vol 3.

⁹ Zwicker, M.W. (1987) 'Successful Law Firm Newsletters' Volume 13 *Legal Economics*, p.57; Pribek, J (2011) 'The Firm: Law firm newsletters still alive and kicking' accessed at the webpage <http://www.legalnews.com/ingham/908264> (accessed 18th September 2019); Thomas, A. Darroch, J. and Galvin, W. (1999) 'Client Newsletter Use by New Zealand Law Firms' *Journal of Professional Services Marketing* Vol 19, Issue 2, p.51.

¹⁰ See, for example, there are Brexit updates provided by law firm Womble Bond Dickinson accessed at the website <https://www.womblebonddickinson.com/uk/insights/timelines/brexit-countdown> (accessed 24th September 2019). Burges Salmon provide employment law updates for employers, HR professionals and in-house lawyers on their website <https://www.burges-salmon.com/news-and-insight/legal-updates/employment-law-updates/> (accessed 24th September 2019).

¹¹ Bitas, B. (2012) 'Comparative Law and 21st Century Legal Practice – An Evolving Nexus' *The Singapore Academy of Law Journal* Vol 24, p.319, p.331.

Reviewed Article

experience of preparing newsletters for clients in the clinical environment, they are therefore developing legal research and writing skills in this context and are better prepared for similar tasks they may face in practice. They are also being equipped with the commercial awareness of the importance of newsletters. From the author's own experience of legal practice, law firms frequently use client newsletters and client feedback was that they found them helpful in understanding a particular area of law. The client newsletters also kept the law firm in the forefront of their minds should they ever need legal assistance again in the future.

It is acknowledged that not all law students wish to enter legal practice. However, by being involved in the Project it is hoped that the students nevertheless develop the professional skills that they will need for the world of work (teamwork and written communication to name a couple).

The Project

During the first year of the Project, there were 14 participating students and in the second year this number increased to 16. The newsletters are produced by the students for circulation to an HR department of an external organisation. The author approached this external organisation to offer the service of the Project before it began. The author considered that HR advisors were ideal client recipients as their day-to-day role involves understanding and applying employment law in respect of a wide range of key issues such as managing disciplinary action, grievances and employee

health issues. They must keep up to date with the law and ensure that their employer organisation is legally compliant. The author was also conscious that many enquiries into the SLO are from employees, therefore giving the students the experience of doing newsletters from an employer viewpoint would offer them a different client perspective. The newsletters were read by a total of 20 HR and Senior Managers within the external organisation during the 2018/2019 academic year. Given the SLO advises many employees, the author was concerned of the need to identify potential conflicts of interest in producing the newsletters. To alleviate this concern, an email was sent to all SLO supervisors to inform them of the Project and to request that they notify the author to discuss all enquiries against this third-party organisation. This would ensure that any potential conflicts are identified by the SLO team.

The students are the content creators; therefore, they write the newsletters with the intention of them being read by the HR individuals external to the university. The students are divided into small groups of three or four and each group of students produces one newsletter between the months of November to April. Consequently at least four newsletters are produced throughout the academic year. The remaining two newsletters during this time period are created by student volunteers from within the employment law firms. Each student therefore has the opportunity to contribute to at least one newsletter.

In line with the constructivism theory that students learn best when they are given the opportunity to build their knowledge,¹² the students are asked to decide on the topics of each newsletter and to write the newsletter without any significant guidance from their supervisor. Therefore, they act on their own initiative without their supervisor suggesting what topics to cover. The supervisor then approves the draft of the newsletter by ensuring that the legal content is correct and more generally that the written communication is clear and free from spelling and grammatical errors. Before the students begin their newsletter, they are informed (by their supervisor) that they should tailor the content to suit the recipient's needs and to avoid legalese. In order to avoid duplication of content and ensure sufficient variety, each group circulates a list to the other students of what they will cover in their newsletter at the beginning of the month and a final version of the newsletter at the end.

Client newsletters are a flexible tool and can be easily adapted to suit the recipient's requirements. Topics students have chosen to write about include the following: what constitutes a reasonable adjustment for disabled workers,¹³ managing long and short-

¹² Exley, K. and Dennick, R. (2004) *Small Group Teaching: Tutorials, Seminars and Beyond*, London, Routledge, p.5.

¹³ The students gave guidance on the duty under the Equality Act 2010 upon employers to make reasonable adjustments for employees who have a disability and factors to consider when assessing if a potential adjustment is reasonable or not.

term sickness absence,¹⁴ legal obligations in respect of breastfeeding mothers¹⁵ and the Government's Good Work Plan.¹⁶ Each newsletter typically covers around four to five updates on different topics. As well as covering legal updates, students also include talks and seminars that are being held at Northumbria University which may be of interest to the recipients. The newsletters summarise legal developments and provide some practical guidance on how to ensure legal compliance. The newsletters also signpost readers to sources of reliable online guidance they can look to for further information.

Being mindful that the newsletters could not (and should not) be a substitute for advice from a qualified legal professional, each newsletter contains a statement confirming that it is intended for general information only and that legal advice must be obtained. The client value in the newsletters lies in providing legal updates, informing recipients on legal responsibilities, and more generally, identifying issues that may need considering further either by way of further research or by obtaining bespoke legal advice.

¹⁴ The students explained the decision of a recent European case and set out what this decision meant in respect of carrying out risk assessments for breastfeeding workers.

¹⁵ The students summarised the legal position of employees who may be absent or current whereabouts are unknown and gave general guidance on how to deal practically with such a situation.

¹⁶ The students set out the policy and legislative changes from the Government paper published in December 2018, focussing on areas that would most benefit the recipient such as the additional obligations placed upon employers.

At the end of the module, the newsletter forms part of their assessment. In the SLO the students are assessed on a wide range of activities undertaken throughout the year (including written communication, teamwork and personal contribution to the SLO and to their clients). Their practical work is evidenced by a portfolio and accounts for 70% of their overall mark.¹⁷ Their contribution to the newsletter forms part of their portfolio and this mark. The students are also assessed on two reflective¹⁸ essays worth 30% of their overall mark.¹⁹ On introducing the Project, the author hoped that it would also assist in their reflection of the module as they could compare and contrast their different experiences of live client work and employment law newsletters. The usefulness of the Project for assessment may also expand to the students reflecting from their peers' experiences given that they all take turns to produce a newsletter.

¹⁷ The assessment criteria for the portfolio is divided into 10 descriptors: autonomy and efficiency, knowledge and understanding of the law/legal practice, oral communication skills, written communication skills, research skills, commitment to clients and the Student Law Office, case management and strategising, time and case management, teamwork and contribution to firm meetings and understanding of client care and professional conduct. However, in the current academic year this has changed to 9 descriptors as the students are no longer directly assessed on autonomy and efficiency. Although autonomy and efficiency does permeate throughout the other grade descriptors.

¹⁸ Reflection is a tool that clinicians use to help students learn how to learn from their clinic experience. See Ogilvy, J. P., and Stuckey, R. T. (2007). *Best Practices for Legal Education: A Vision and a Road Map*, Clinical Legal Education Association.

¹⁹ In the current academic year this has changed to a reflective presentation to encourage deeper reflection. See Thomson, C. and Others (2019) 'The hall of mirrors: a teaching team talking about talking about reflection' *The Law Teacher Vol 43 Issue 4*, p.513.

Considerations underpinning the Project

The incorporation of the Project was underpinned by the following considerations. Firstly, the author hoped that it would have pedagogic value by developing the students professional skills. The Project could encourage the development of hard skills and soft skills.²⁰ For example the students work as a team in order to carry out the legal research and analyse and interpret case law and legislation. The students gain the opportunity to enhance their research skills because they are exposed to not just to an area of law from the viewpoint of a single client, but a holistic viewpoint of all recent developments in employment law. They can identify recent developments and practical implications, areas of law that in the day-to-day role of HR may be problematic and more generally, what legal changes are on the horizon. It may also drive their appreciation of the need to keep developing their knowledge of the law in future practice. The interaction between the casework and the Project also improves their general performance in the SLO, as it leads to an increase in their legal knowledge and engages the student in the wider operation of the legal system.²¹

²⁰ Soft skills are growing in importance for legal professionals. See Kiser, R. (2017) *Soft skills for the effective lawyer* Cambridge University Press; Future of Law Blog (2015) 'Taking soft skills seriously' accessed at the webpage <https://www.lexisnexis.co.uk/blog/future-of-law/taking-soft-skills-seriously> (accessed 18th September 2019).

²¹ Liz Curran has noted the positive results in respect of the interaction between policy clinic and casework and the general student performance, see Curran, L. (2007) 'University Law Clinics and their value in undertaking client-centred law reform to provide a voice for clients' experiences' *International Journal of Clinical Legal Education*, Vol 12, pp.107-108.

The skills the LETR (Legal Education and Training Review) sets out in its professional competencies dimension and attribute table,²² would be developed in the Project. The LETR sets out the importance of commercial awareness.²³ Commercial awareness is described in the LETR as a 'composite concept'²⁴ and includes an appreciation of marketing and networking within a law firm. Like every other aspect of pro bono work, the newsletter promotes the image of not just the students but also Northumbria University and the legal profession as a whole.²⁵ By tailoring the newsletter to fit the audience, the students would gain an appreciation of the commercial importance of maintaining a good image that a well drafted newsletter would bring and the role it can play in marketing when entering the world of work.²⁶ Linked to this, the student's gain the appreciation of what it is really like to be a legal practitioner, as contributing to newsletters may be part of their role in practice.²⁷ As highlighted, it is the author's own experience as a solicitor that newsletters are often used in legal practice, particularly with a focus on employment law as this area of law constantly changes.

²² Webb, J., *et al.*, (2013) 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales' *The Legal Education and Training Review (LETR)* (2013), p.140. Available at: <http://letr.org.uk/the-report/index.html> (accessed 21.10.19).

²³ *Ibid*, p.35.

²⁴ *Ibid*.

²⁵ Parker, S. (2001) 'Why Lawyers Should Do Pro Bono Work' *Law in Context: A Socio Legal Journal*, Vol 19, p.5.

²⁶ Pribek, J. (2011) 'The Firm: Law firm newsletters still alive and kicking' *Wisconsin Law Journal Blogs*, accessed at the webpage <http://www.legalnews.com/ingham/908264> (accessed 18th September 2019); Thomas, A. Darroch, J. and Galvin, W. (1999) 'Client Newsletter Use by New Zealand Law Firms' *Journal of Professional Services Marketing*, Vol 19(2), p. 51.

²⁷ Indeed, this was part of the author's role as solicitor in a local law firm.

Secondly, the author hoped that the newsletter would provide general information to third party recipients on employment law issues. Newsletters can easily be tailored to intended recipients. Therefore, for example, they can be adapted to suit the educational and occupational needs of HR advisors, those in the legal profession and to particular clients including employers or employees.²⁸ By identifying HR advisors (and their employer organisation) as the target audience, the newsletter could meet their needs and specialised information could be provided which should be of more educational and occupational benefit.

At the end of the Project, all of the recipient feedback has been positive. One recipient commented as follows:

May I express our appreciation of the very helpful updates provided by your students and yourself in these newsletters. They are always very relevant and apposite in addressing the sorts of employment law issues we often encounter in practice and the level of information provided is at the perfect level for busy practitioners, explaining the case law and providing helpful comment on its practical application. You clearly have a cohort of articulate and astute lawyers to be. I hope also that this is a helpful exercise for your students – it certainly is a valuable service to us.

²⁸ For example the Law Society produces a number of regular newsletters including a monthly update on international legal news and developments and a junior lawyers update see website <https://www.lawsociety.org.uk/news/newsletters/> (accessed 13th September 2019).

Another recipient added:

The newsletter is a most helpful contribution to professionals keeping up to date with latest case law and developments

The next part of this article will discuss the methodology that was adopted in the research.

Methodology

One focus group was used to examine the views of students who had participated in the Project. All students (sixteen in total) who were involved in the Project in the academic year 2018-2019 were invited to attend the focus group. Ten students attended the focus group which lasted approximately one hour. The focus group was recorded and subsequently transcribed. A topic guide, prepared by the author, was used by an independent moderator in the focus group. The aim of this topic guide was to give the focus group some structure to explore the key research area of skill development to facilitate discussion.²⁹ However, the moderator could ask questions beyond this list of questions.

The author was cognisant of her status as a clinical supervisor using students as participants and that they may feel obliged to take part in the focus group. To

²⁹ The topic guide had a general question asking the students about how they felt about their experience of doing the newsletters and their skill development.

eliminate this risk, the students were asked by the moderator to sign an informed consent form at the beginning of the focus group, which assured anonymity and confidentiality.³⁰ The consent form reminded them that their participation was voluntary and they could withdraw at any time. The students were also asked to read an information document before they agreed to participate. In this document, the purpose of the focus group was explained, and the author made clear that their participation would not affect any aspect of their programme of study and was in no way linked to their grade within the SLO. The document also explained that the focus group would be independently moderated so that there was no tutor influence and the author would not know who had taken part in the study. The moderator running the focus group was active in ensuring that all participants voiced their comments. The participants each gave permission for the focus group to be recorded. The transcript was transcribed by an independent third-party organisation and reviewed by the moderator to ensure that the participants' names were not mentioned before being received by the author. The tape recording (and consent forms) were securely retained by the moderator.

Once the transcript was received by the author, the data was then analysed. Thematic analysis was adopted for the data analysis. This has been described as '*an independent*

³⁰ They were assured therefore that their supervisor would not know who had participated in this study and no names would be mentioned in the focus group transcription.

qualitative descriptive approach'³¹ which 'is a method for identifying, analysing and reporting patterns (themes) with data.'³² It was considered the results of the thematic analysis would be important in revealing key aspects arising from the qualitative data concerning the pedagogical benefits to the students.

It is acknowledged that this is a small-scale study; however, the data does provide an insight into the students' views and the educational value of client newsletters to the participants in an established legal clinic. A larger, longitudinal qualitative and quantitative study is needed to provide an insight into the Project over a number of years from both a student and recipient perspective. To obtain data concerning the educational and occupational value to the recipients an online questionnaire will be used.³³ Online questionnaires are regarded as an appropriate method to test people's attitudes, views and opinions in relation to a particular topic.³⁴ The benefit of using an online questionnaire is that it will be quick and relatively simple to design.³⁵ However,

³¹ Vaismoradi, M. Turunen, H. and Bondas, T. (2013) 'Content analysis and thematic analysis: Implications for conducting a qualitative descriptive study' *Nursing and Health Sciences Vol 15, Issue 3*, pp.398-400.

³² Braun, V. and Clarke, V. (2006) 'Using thematic analysis in psychology' *Qualitative Research in Psychology*, Vol 3, p.77 accessed at the website http://eprints.uwe.ac.uk/11735/2/thematic_analysis_revised... (accessed 15th December 2015).

³³ The questionnaire will be free to design although a subscription is paid to Bristol Online's services by Northumbria University. Bristol Online also assists with the data analysis as it can report responses to statistical software packages such as SAS and SPSS. The questionnaire will be sent to the entire research population and therefore the data has the potential to be representative of the project recipients.

³⁴ McConville, M. and Chui, W. (2007) *Research Methods for Law*, Edinburgh University Press.

³⁵ Wright, K.B. (2005) 'Researching Internet – Based Populations: Advantages and Disadvantages of Online Survey Research, Online Questionnaire Authoring Software Packages and Web Survey Services'

there are drawbacks of using this method. Notably, a low response rate and a lack of detail regarding why a respondent has a particular view are risks associated with this method.³⁶

The next part of the article will report on the results of the pilot focus group study, taking each theme in turn. Not all codes will be discussed, only those which raised consistent concepts.

Results and Discussion

The thematic analysis of the focus group data resulted in the following themes:

- Skill development
- Increase in knowledge of employment law and legal practice
- Comparison with live client work
- Impact of the Project
- Satisfaction

Skill development

The development of legal skills was a key theme that emerged from the study. Whilst the students develop an array of skills in their live client work (for example research,

Journal of Computer Mediated Communication, Vol 10, Issue 3 accessed at the website <https://doi.org/10.1111/j.1083-6101.2005.tb00259.x> (accessed 19th September 2019).

³⁶ Denscombe, M. (2011) *The Good Research Guide for Small Scale Social Research Projects*: 4th edition, Open University Press.

oral, written and time management),³⁷ the students felt that the Project allowed them to develop their skillset from a different perspective and with a different purpose. The different perspective being the viewpoint of the employer, in light of the fact that the participants in the study often had employee clients in the live client clinic. The different purpose being to update the recipients on topical employment law issues that may be relevant to them and giving practical guidance on legal compliance, as opposed to applying the law to the facts of a client's case. One student commented:

I think it's good as well because you're doing it for HR people.... you're considering the practical implications of it, rather than just writing up the legal side of it because you've got to consider how it would affect them. So, I think it does expand your knowledge a lot more that way as well.

The students acknowledged that they had developed both hard and soft skills throughout the Project (including teamwork, research, written communication, confidence, time management and autonomy). The students felt that their research skills improved, as they had to focus on areas of employment law of relevance to the particular recipient and in doing so they were required to consider a wide variety of sources, not just legal databases. One student highlighted:

³⁷ Grimes, R. (1995) 'Legal Skills and Clinical Legal Education' *Web Journal of Current Legal Issues* Vol. 3; Hall, J. and Kerrigan, K. (2011) 'Clinic and the Wider Law Curriculum' *International Journal of Clinical Legal Education*, Vol.15.

It gets you to look at other sources as well, it is not just cases and legislation, you go on government reports, and I think that helps look at how it has actually been put into practice.

The students relished the opportunity to do research for themselves, finding the topics without prompts by their supervisor and choosing what they wished to focus on. The students discussed how the Project enabled them to be more independent, by coming up with ideas on what to include in the newsletter and making the decision as to what is most appropriate for the recipient. This was, for some, not something they had been able to demonstrate in their live client file work as the urgent timescales that come with employment law prevented them from feeling that they could fully showcase their autonomy. The student perception on autonomy in casework supports the point that it is not always possible to allow the student to have ultimate control over the sequence and pace of the legal advice, leading to the supervisor often needing to *'take the oars and do more than just encourage the student, lest the client's interests are compromised.'*³⁸

When asked whether they would feel comfortable picking topics for newsletters in the future, the multiple response was that they would. The experience has therefore made

³⁸ Campbell, E. (2015) 'Transferring Power: a reflective exploration of authentic student-centred small group work in clinical legal education' *International Journal of Clinical Legal Education*, Vol 22, No 2, p.1, at p.6.

them more confident in their own abilities. A positive response was received by multiple students that they would now feel more comfortable in the workplace if they were asked to do a newsletter or anything similar. One student compared the newsletter to an internal memo that she would send a manager in order to update them on legal or other developments. In doing this, she explained how the Project has developed her confidence that she can utilise her transferable skills in such a situation.

With regards to how newsletters should be written, the students felt that they had learnt how to strike the right balance between ensuring the newsletter was concise (given the newsletter was often around 4-6 pages long) but also covering each topic in sufficient detail to effectively explain the update and the implications for the organisation. A theme in the SLO is that the students experience difficulties in adjusting their written communication so that it is clear and free from legalese.³⁹ The Project gave them a valuable stepping-stone in honing this skill. One student explained:

I think you develop skills in terms of making your own communication quite concise, because you had...it was quite a short newsletter, so you had to keep your articles fairly short. So, it was a lot about picking what is relevant and making it concise and clear.

³⁹ Roper, V. (2018) 'Blogs as Teaching Tool and Method of Public Legal Education: A Case Study' 2(1) *International Journal of Public Legal Education*, p. 46.

During the focus group, the students spoke of the way in which they effectively established a collaborative working environment, working as a team in order to ensure that the newsletter was prepared by the deadline set by their supervisor. They all had live client work alongside their newsletter; however, some had cases that were more active, and the students had different exam commitments throughout the year. For one student '*to relieve the pressure on the people*' who had a heavier workload, they did more of the initial legal research into potential topics. They also felt the Project allowed them to further demonstrate their time management skills to their supervisor, given that the Project was in addition to their live client work.

In order to improve the Project going forward, the students felt that it would be useful to not just circulate the newsletter but also give a presentation on the contents. This presentation could be to the recipients or even to the rest of their SLO firm. It was felt that this could further develop their oral communication skills:

And not to make more work for us in the SLO because especially in the employment (firm) we don't really need it, but if we'd had maybe the opportunity to present on the information that we found, afterwards, it would probably have demonstrated a different skill

The students explained that if they were given the opportunity to present the information and allow the other students to ask questions afterwards, this would reinforce their knowledge and learning. The added level of responsibility that comes

with presenting to the recipients or to their peers, and answering questions, would provide them with a sound understanding of the issues. It would also benefit the recipients and other students listening to the presentation, as they learn a topic in greater depth than a client newsletter would inevitably bring and allow them to explore the issues in more detail through their questioning.

Increase in knowledge of employment law and legal practice

There was a consensus that the Project gave the students a broader knowledge of employment law and practice. They came across topics that they did not expect before they entered the SLO, with one student commenting:

I think it's a really good way of looking into different areas that you might not encounter in the SLO as well, because I know when I was doing the newsletter for the month that we did it, I ended up writing three different articles, so I was looking into three different areas. So, it really like expanded my knowledge beyond the types of cases that we'd see in the SLO.

When asked whether the Project helped them become aware of topical employment law issues, the multiple response was that it had done. One student commented '*I've definitely learnt more than anticipated.*' Another student commented:

I think as well you became more aware of wider topical issues. Like more than what you were doing in the SLO... So, I think in the workplace when we go into practice, we'll be more aware of seeing if things are wrong or how they could be improved based on research for the newsletter.

The students felt that this experience also taught them how to keep up to date with employment law and the importance of doing so. They learnt how quickly employment law can change and how regular research is a significant part of their continuing professional development. One student explained that *'It kept you up to date with the law as well, like it was learning as you were going, it wasn't just like using precedents that we're taught in a module.'*

Comparison with live client work

Another theme that emerged was the comparison with the live client work. During the course of the academic year, the students in the employment law firms usually gain the opportunity to advise two clients. The client can be either an employer or an employee, depending on the nature of the enquiries that come into the SLO. However, in the author's experience, enquiries from employees are more frequent. The students welcomed the Project from the viewpoint of giving them that different perspective and they commented how the Project gave them a more diverse experience of work. For those students who had employee clients and advised them on how to bring claims to the employment tribunal, it was refreshing for them to be able to work from

Reviewed Article

an employer viewpoint and consider things that are important for employers to consider in order to avoid and minimise the risk of facing employment tribunal claims.

One student explained:

I think I sort of came in and expected to just be working with obviously employees that they've had unfair dismissal or discrimination or whatever, and I think that the newsletters help you to provide that other perspective, like looking at it from an employer's point of view as well.

The students also made the point that the diversity of work helped them with their endpoint reflection assessment. By giving them the newsletters in addition to their live client work one student highlighted that it gave her '*another perspective*' when it came to her reflection on legal writing. Another student added:

So, in terms of looking at it from the wider [perspective], like trying to get the grade and to do all the reflections, it's another thing to add and a different way that you're writing.

Impact of the Project

During the focus group, the students noted the Project impact in a variety of ways. The students appreciated the importance of a well-drafted and professional newsletter and the impact of this. They understood that this would impact upon not just their

reputation but also upon their supervisor, future students and the University as a whole. One student commented that *'It is our reputation at the end of the day...it is more than just our good grade for our assessment.'* There was a consensus that if the newsletter included incorrect information or grammatical errors then it would not *'sell'* the SLO as a legal clinic and recipients would not come back for any future assistance. Thinking about the other students they were keen to ensure that this *'...opportunity carries on further for the next year and the year after that.'* One student felt that, for a law firm, the newsletter is *'really key to their client relationships'* and maintaining the solicitor client relationship. The students acknowledged that a badly drafted newsletter could lead to the firm losing clients given how unprofessional it would look. It is clear therefore that the students felt that the Project developed their awareness of commercial awareness and professionalism, thereby supporting a key recommendation of the Legal Education and Training Review.⁴⁰

The students also appreciated the positive impact of the Project from a public legal education viewpoint. There was a consensus that reading the newsletter may save the recipients time in researching employment law updates and would educate them on areas that they may need to take legal advice on and more generally, increase their understanding on when they should use legal services. They therefore felt that the

⁴⁰ Legal Education and Training Review. (2013) 'Setting Standards. The Future of Legal Services Education and Training Regulation in England and Wales' accessed at the website <http://letr.org.uk/wp-content/uploads/LETR-Report.pdf> (accessed 26th September 2019).

Reviewed Article

work they were doing was of value to the recipients. One student described it as *'massively important'* as it *'forms the foundation of someone's knowledge behind a topic.'* Therefore, in view of the educational importance one student explained *'you better make sure that you get it right first time.'*

However, one student did not fully appreciate the importance of the newsletter until the end of the module. She would have liked more emphasis at the outset on the implications of the newsletter to the target audience. A further improvement suggested was for future students to dedicate more time to coming up with topics for inclusion in the newsletter and to aid this, a teaching session where the whole group brainstorm the type of issues that the recipients could face in their day to day work. Therefore, a teaching session covering both the implications on the newsletter and brainstorming potential topics would help them appreciate the areas that could be covered. However, such a teaching session would need to be very careful not to intrude upon the student's autonomy in choosing his or her own topic.

Satisfaction

Finally, the positive way in which the students spoke about their experience and the appreciation they felt of being given the opportunity was evident. The students really valued the opportunity to be able to contribute to the Project and this in turn, enhanced their experience. The students felt it was a *'really good way'* of looking into

different areas of employment law and another felt '*fortunate enough to do more than one.*' One student described her experience in the following way:

And also you want to make sure that the opportunity carries on further for the next year and the year after that... and if... there's just silly mistakes and errors, and it doesn't look professional, and there might be errors in the law, then ultimately they're just going to stop coming to us and they'll go elsewhere, or they'll just do it themselves... but the fact that we get the opportunity to do it is brilliant.

Lessons Learnt from the Project

Not giving the students an opportunity to present

This study identified that the students would have welcomed the opportunity to present the contents of their newsletter to either the recipients or their peers. As highlighted above, this would develop their oral communication skills and reinforce their knowledge and learning. Going forward, a presentation to student peers can easily be incorporated into the Project. As the students attend 50-minute weekly firm meetings⁴¹ with the author and the rest of their firm members, the presentations can be scheduled to take place at any point after the research has been undertaken. Following the presentation, the author can then provide one to one formative feedback to each presenter.

⁴¹ These weekly firm meetings are used for a variety of purposes, such as discussing the students cases or as an opportunity to develop a particular skill.

Presentations to the recipients will also be explored in future years, however this will inevitably be more difficult to organise around the availability of all the students and recipients. The benefit of this is that the students would have the opportunity to meet the HR Advisors and establish professional networks, which would be excellent preparation for working life. From a student perspective, this may bring additional significance to the presentation if external individuals are present.

Assistance on the content

In the author's experience, many students did well to identify areas for research and topics for inclusion in the newsletter however there were some students who struggled to identify a topic. As highlighted by the students, a teaching session would assist them in brainstorming ideas going forward. However, the level of assistance should be limited to general areas of law (such as disability discrimination) rather than more specific topics to enable the students to take charge of their Project and promote autonomous learning. A brief document would also be helpful to circulate which introduces the Project and its aims, provides an outline of the type of work the HR Advisors undertake within the external organisation and what format the newsletter should take.

Reviewed Article

More clarity on the importance of the newsletter

A further lesson learnt from the Project was that there should be more emphasis at the outset of the module on the importance of the newsletter. This can be done by asking an HR professional to give a talk to the students and/or incorporating into a firm meeting a discussion on the value of the newsletters. Hearing directly from the HR professionals on the benefits to them personally, and to the organisation as a whole, would be valuable.

Incorporation of a Research Report

From the author's experience in supervising this Project, it would be beneficial for the students to produce a document that sets out their thought process in choosing the topics. In particular:

- Why they felt an area to be relevant to their external recipient and any areas of employment law they considered but discarded for the newsletter and why.
- Any area of law they come across during their research that they feel is an area for future law reform.

These points could all be incorporated into a research report before they embark upon drafting the newsletter. Although this would inevitably increase the time involved (for both the author and students), the benefits of the Project would be enlarged. Firstly, in identifying why they felt an area to be relevant or not, this would demonstrate to the author that they understand the vital context in which they are

providing the newsletter and the importance of their topic to their recipient. This would provide the opportunity for the author to provide feedback on whether the areas are appropriate or not, with a full understanding of the students' reasons. Secondly, in identifying any areas of future law reform, the students are exploring the employment law framework in the context of what changes needs to be made.⁴² The Project therefore would require the students to not just apply the law but also go further and challenge any issues they come across in their research in order highlight areas for change. As Coper highlights '*legal education with an ethos of law reform and social justice would give a more altruistic focus to the pursuit of law as a career...*'⁴³ Finally, the author would be able to see from the report what sources the students have relied upon in their research for the newsletter and be able to provide feedback on the strength of their research skills.

Conclusions

This pilot study demonstrates that the use of employment law newsletters provides pedagogic value to the student and enhances the student experience in CLE. By complimenting their live client work, the Project developed the students' professional skills and they gained a broader knowledge of law and practice. The enthusiasm that

⁴² The assessment in the SLO has also now changed to incorporate a 3,500 report critically analysing an area of legal practice. The incorporation of this research report exploring the wider context of legal reform may also assist them in their ideas for this report.

⁴³ Coper, M. (2007-2008) 'Law Reform and Legal Education: Uniting Separate Worlds' *University of Toledo Law review* Vol 39, p.247.

the students have for the Project is evident and they clearly value the experience. The knowledge gained as to how to research topical legal issues and more generally, keeping up to date with the law is crucial when going into practice. The Project gives the students a different client perspective and purpose, which diversifies the work. It also equips the students with the commercial awareness and awareness of professionalism that comes with a client newsletter in the world of work. The newsletters have received positive feedback by the recipients and given the results of this pilot study, there is clearly potential for the Project to expand further (including the incorporation of other areas of law) for other client recipients to benefit. For example, family law updates to a mediation service or charity, landlord and tenant updates for a Citizens Advice Bureau and criminal procedure for police forces.

Moving forward, this study has provided some learning points to take forward into future academic years. Notably, the suggestion that presentations would be valued by the students. This will be incorporated into next year's Project and the students will deliver a short presentation to their peers and/or recipients on the contents of their newsletter. This will help develop their oral communication skills and would reinforce their knowledge and learning. Finally, the importance of the newsletters to the recipients will be emphasised more from the outset. The value of newsletters in the world of work should also be made more explicit to students and they should not be

underestimated. As Thomas, Darroch and Galvin have noted, *'the newsletter along with other marketing activities is seen as an important factor in legal firms' long term survival.'*⁴⁴

⁴⁴ Thomas, A. Darroch, J and Galvin, W. (1999) 'Client Newsletter Use by New Zealand Law Firms' *Journal of Professional Services Marketing* Vol 19, Issue 2, p.70.

EPHEBAGOGY AND CLINICAL LEGAL EDUCATION.¹

*Lucy Blackburn*²

ABSTRACT

This article will seek to examine whether one of the reasons why Clinical Legal Education (CLE) is so effective as a teaching methodology is the age of the students participating in it. The perceived norm would be those students who are engaged in CLE will be predominantly aged between 18-25 years. The central thread of this article will examine ephebagogy as a teaching philosophy for educating this age group; discuss the main objectives of ephebagogy, and, explain how these align with CLE. This article will then explore whether ephebagogy can further enhance CLE as a teaching methodology and contribute to its ascendance to the forefront of legal education by drawing upon the accepted benefits of CLE and expand on the objectives and principles of ephebagogy as advocated by Sara Flowers.

KEYWORDS

Legal Education, Ephebagogy, Clinical Legal Education, Legal Clinic

¹ Acknowledgement is given for the inspiration of the title to Frank Bloch for his writings on andragogy and clinical legal education, Frank S Bloch, 'The Andragogical Basis for Clinical Legal Education' (1982) 35 Vand L Rev 321.

² Lucy Blackburn is a Senior Lecturer within the School of Law at the University of Central Lancashire

INTRODUCTION

Even in an age of widening participation, it is not unsurprising that of the 1,597,810 students in higher education, studying for a first degree in the UK, in the academic year 2016/17 85.65% were aged 24 and under.³ Evaluation of statistics from Australia and Canada confirm a similar situation. In Australia in 2016 and 2017, 76.3% of students enrolled on a Bachelor's degree were 24 and under⁴ and in Canada 73.2% of students enrolled on a similar degree were also aged 24 and under.⁵ Examination of these statistics on the age range of students is of relevance to this discussion, as these students will be engaging in CLE and participating in law clinics.⁶

With the focus of this article being on the age of the student participants and the impact their age has on the effectiveness of CLE as a teaching methodology, ephebagogy as a teaching theory relevant to this age range of student will be used to argue why CLE should be at the centre of any law school curriculum. The seminal research undertaken by Sara Flowers will ground these arguments in the literature.⁷

Whilst Flower's work concentrated on education, there are high levels of relevance to

³<https://www.hesa.ac.uk/news/11-01-2018/sfr/247-higher-education-student-statistics-/numbers>.

⁴ <https://www.education.gov.au/selected-higher-education-statistics-2016-student-data> and <https://www.education.gov.au/selected-higher-education-statistics-2017-student-data>.

⁵ <https://doi.org/10.25318/3710001501-eng>, Statistics Canada, Table37-10-0015-01 Postsecondary enrolments, by program type, credential type, age groups, registration status and sex.

⁶ The terms 'CLE' and 'clinic' and 'law clinic' will be used interchangeably within this article. Further the type of university law clinic in focus will be an in-house real-client, advice only clinic. For further information see H Brayne, N Duncan & R Grimes *'Clinical Legal Education Active Learning in your Law School'* (Blackstone Press Ltd, 1998), 12-13.

⁷ S M Flowers, 'A Philosophy for Teaching and Learning in Emerging Adulthood (2014) *New Horizons for Learning* Vol 11, No 1 Spring 2014, 1.

legal education and more particularly CLE. First, ephebagogy as a teaching and learning theory will be explained using Flower's definitions, followed by an evaluation of CLE as the most appropriate methodology to achieve the aims.⁸

Ephebagogy as a teaching philosophy

Nearly 40 years ago, Frank Bloch explored the andragogical basis for using the clinical method for teaching US law students.⁹ He discussed the concept of andragogy in modern education that had been summarised by Knowles as '*the art and science of helping adults learn*'.¹⁰ Andragogy as an adult centric education theory suited Bloch's analysis of CLE in American Universities, given that law is offered at post-graduate rather than at undergraduate level.¹¹ This is in contrast with the UK, where law can be studied at either level. However, this article will focus on undergraduate law students, the majority of who would not benefit from Knowles' andragogical basis for teaching given they are not an 'adult law student' but rather an 'emerging adult law student'.

⁸ CLE is 'learning through participation in real or realistic legal interactions coupled with reflection on this experience'. Kevin Kerrigan, 'What is Clinical Legal Education and Pro Bono?' in Kevin Kerrigan and Victoria Murray (eds), *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave MacMillan, 2011) 4.

⁹ Bloch (n1).

¹⁰ M Knowles, *The Modern Practice of Adult Education: from pedagogy to andragogy* (Cambridge, 1970) 38.

¹¹ Bloch (n1) wrote about andragogy and CLE in the context of US professional, legal education '*where law students are already graduates, have some life experience, are at least in their early twenties (often much older) and in many cases are already participating in the practice of law*' 325.

The term 'emerging adult' was used by Arnett when discussing a new conception for development, with a focus on the period between the ages of 18-25.¹² Emerging adults, do not identify as children, adolescents nor adults.¹³ There is evidence to support that emerging adulthood is a distinct period demographically and in terms of identity explorations.¹⁴ Demographic changes experienced in the western world, relating to marriage and parenthood have made a period of emerging adulthood typical for young persons in these societies.¹⁵

Within an educational setting, emerging adults are not served well by either pedagogy or andragogy. The reason being that in between childhood and adulthood lies an immense period of development which neither pedagogy and andragogy are the appropriate teaching and learning theories. There is a gap between full direction (pedagogy) at one end of the teaching and learning spectrum and self-direction (andragogy) at the opposite end.¹⁶ This gap between the two established teaching theories has been referred to as an 'estuary'.¹⁷ The existence of this gap has resulted in the need for ephebagogy as a teaching and learning theory designed to fill it. Ephebagogy recognises the specific needs of emerging adults. As such, ephebagogy and not andragogy would be the most appropriate educational basis for an

¹² J J Arnett, Emerging Adulthood: A Theory of Development from the Late Teens through the Twenties' *American Psychologist* Vol.55 No 5, 469-480,

¹³ Ibid 471.

¹⁴ Ibid.

¹⁵ Ibid 470.

¹⁶ Knowles (n10) considers the change from dependent child to the self-directing adult to be the most important difference between children and adults as learners Bloch (n1) 330.

¹⁷ Flowers (n 7) 4

undergraduate UK law student. The importance of ephebagogy as a teaching theory for undergraduate law students can be evaluated by asking six questions:

- *What is ephebagogy?*
- *Who is affected by ephebagogy?*
- *When is ephebagogy relevant?*
- *Where can ephebagogy be used?*
- *Why is ephebagogy needed?*
- *How can the objectives of ephebagogy be addressed?*¹⁸

For the purpose of this article these questions will be answered within the context of UK higher education.

The first question of “*what is ephebagogy*” is answered by examining the construction of the word ephebagogy. Just as Knowles replaced the Greek stem *paid* with *andr*, here the Greek stem *ephebus* is used to create a word which is crudely interpreted as “*the leader of the adolescents*”.¹⁹ In an educational setting, ephebagogy has been described as a ‘*teaching philosophy for educating students who are between 18-24 years of age and experiencing a developmental shift and are in major transition between childhood and*

¹⁸ S M Flowers, ‘Ephebagogy – A white paper for educators and researchers,’ 27 April 2016, <http://samarandiflowers.weebly.com/guiding-works-ephebagogy.html>.

¹⁹ A youth of ancient Greece just entering manhood or commencing training for full Athenian citizenship.

*adulthood.*²⁰ Logan has referred to ephebogogy as the '*missing link*' between pedagogy and andragogy.²¹

The answer to the second question of "*who*" has already been developed; these are students who are between the ages of 18 and 24 years old and are enrolled in secondary or tertiary education. They may or may not still live with their parents but they are frequently financially supported by them.²² They are experiencing a period of 'semi-autonomy', where they will take on some responsibilities of independent living but leave other responsibilities to their parents, the university or society.²³ They have left the dependency of childhood and adolescence but have not yet entered the enduring responsibilities that are normative with adulthood, such as homeownership, parenthood or permanent employment.²⁴ Even though undergraduate students can now have more complex caring and financial responsibilities arguably than previously experienced, the assumption is made that the majority will still not be experiencing the level of adult responsibility that is to come.

²⁰ Flowers (n 7) 1.

²¹ J P Logan, *Ephebogogy: The missing link between pedagogy and andragogy*. Conference presentation in preparation. School of Information Technology Management, Ryerson University, Toronto, Canada (2004).

²² Official statistics confirm this statement: the percentage of 24 year olds living with parents has increased by 11.9% to 41.7% from 1997 to 2017. Likewise, the percentage of 24 year olds owning their own home has decreased by 21.8% to 18.6% over the same period. Office for National Statistics, 'Milestones: journeying into adulthood' (2017).<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationandmigration/estimates/articles/milestonesjourneyingthroughadulthood/2019-12-17>.

²³ Arnett (n12) 471.

²⁴ Ibid 469.

The third question of “*when*” becomes relevant when transition is experienced by this age group. No exact time frame can be given for when young people will transition from childhood to adulthood; some will transition earlier than others and some later and this article does not dare to offer any perspective from a biological, neurological, developmental or sociological basis.²⁵ For the purposes of education, this transition is the transition from further education to higher education.²⁶

The fourth question of “*where*” looks at where and in what setting ephebagogic theory can be used. The obvious outlets for an ephebagogic approach will be in higher education, where the aim of the university is not only to educate the student but also to develop the student as an individual. However, the application of this theory is not just limited to higher education; it can be used in work place settings where staff of this age range join workforce training programmes.²⁷ The question of “*why*” has already been answered in earlier discussions and will not be overtly scrutinised again. The need for a distinct teaching theory for those students that are between the accepted educational theories of pedagogy and andragogy is evident due to the learning needs of this group.

The final question is the most important aspect of this theory and where the link with CLE begins to emerge. When discussing the “*how*”, Flowers refers to the three aspects of *teaching*, the *environment* and the *objectives* as to how ephebagogy can be developed

²⁵ The specific chronologic age in this period is less important than the actual feature of the transition.

²⁶ Flowers (n18) 1.

²⁷ Flowers (n18) 1.

within teaching and learning strategies.²⁸ The three main aspects of *how* ephebagogy can be developed and delivered will now be explained , followed by an evaluation of how CLE can meet the requirements of an ephebagogically based programme of instruction for educating undergraduate law students.²⁹

2 THE THREE ASPECST OF EPHEBAGOGY

2.1 Teaching

The first aspect of *how* ephebagogy can be developed is *teaching* and focus is on the four principles of *relevance; revelation; responsibility* and *relationships*.³⁰ For ephebagogy to be effective the student must understand and appreciate their learning as *relevant*; they must be brought into the world.³¹ To achieve this objective, taught sessions have to be relevant to the student and bring the outside world into the classroom in which they are studying. This relevance can be achieved by students visiting places that reinforce classroom teaching; taking jobs in the fields that interest them or getting outdoors to see content in action.³² When the student understands the relevance of a learning activity or skill they should then experience the second principle of *revelation*.

²⁸ Flowers (n 18) 2.

²⁹ Bloch (n 1) 338.

³⁰ Flowers (n7) 5.

³¹ Ibid.

³² Flowers (n 7) 5.

This is closely linked to the first principle, as revelation should occur directly after the student understands the relevance of an activity. In the classroom, revelation occurs when the student is exposed to the truth about themselves and the world in which they operate.³³

After the student has undergone a revelation, they must take responsibility for their outcomes. Assuming responsibility is an integral part of the development and transition from childhood into being an adult. The student must be given choices to decide what they learn.³⁴ Ephebogical theory does not support students having a passive role, or simply be provided with the answers to a problem. They are encouraged to ask questions, in order to fully complete their understanding of an activity.³⁵ The student then embarks on a learning journey accompanied by facilitators rather than teachers.³⁶ If followed correctly, this approach will elicit an emotional response from the student, which in turn will lead to greater engagement in the subject.³⁷

The fourth principle focuses on the importance of *relationships* in the learning process and the need for students to fully engage in these *relationships*. The *relationships* in

³³ 'I can see the connections and the relationships make sense' Flowers (n18) 2.

³⁴ Flowers (n 7) 5 goes even further to say that learners should be able to decide what type of assessment they undergo.

³⁵ Ibid.

³⁶ This method encourages students to find their own answers to legal problems, rather than just reading how others found answers. Students are required to use more advanced skills. J Eagar 'The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education' (1996) 32 *Gonz L Rev* 389, 405.

³⁷ Flowers (n 7) 5.

focus are those the student has with the 'work' and with others doing the 'work'.³⁸ These *relationships* help prepare the student for adulthood and can be achieved in the classroom by participating in activities such as discussion, debates and cooperation that allows the student to operate in ways that mirror participation in adult, democratic life.³⁹

When using CLE as the methodology in which to promote ephebagogy, some principles align more neatly than others. When looking at how CLE can facilitate the *relevance* of a learning activity, there are abundant examples over and above work undertaken in advice only law clinics.⁴⁰ It is also evident that the time a student spends in clinic is certainly *relevant* in the truest sense of the word and there is no better way of bringing the real world into an educational settings. If clinic students are allowed to examine issues that are not limited to a specific subject and where the answers are not always easily accessible from a textbook,⁴¹ they will also be able to undergo a *revelatory* experience in clinic by dealing with clients and situations involving risk, discomfort, struggle and conflict.⁴²

³⁸ Flowers (2014) at 2

³⁹ Flowers (2014) at 5

⁴⁰ One example would be participating in community outreach programmes such as that run by the University of Essex by which students offer advice to residents of Jaywick, which is the poorest community in the UK.

⁴¹ A M Lerner (1999), Law and Lawyering in the work place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solvers, 32 AKRON L Rev. 107, 116.

⁴² K Seear, L Bliss, P Galowitz & C F Klein 'Exploring the role of emotions in clinical legal education: inquiry and results from an international workshop for legal educators', The Law Teacher, 53:4 (2019), 487-499, 489

A high level of personal responsibility is required from students in order for CLE to function effectively. In clinic, the student advisor is given *responsibility* to decide on the most appropriate questions to ask in the client interview; followed by deciding upon the most effective research strategy to provide the correct advice to the client. Here, the student advisor is *responsible* (perhaps along with another student advisor) for considering all potential legal aspects that could apply to the client and their situation. A student engaged in CLE, should be confident to take *responsibility* for the research they have undertaken and the advice they give to the client.⁴³ Seear et al argue that '*CLE provides a unique opportunity for students to deeply engage with emotions, in part because emotions are experienced as a regular feature of clinics.*'⁴⁴ By engaging with a real-life client or scenario an emotional response should have been elicited from the student.⁴⁵

Student advisors are forced to notice how their actions (or inactions) impact on their *relationship* with the relevant clinic stakeholders and the student is required to deal with the consequences and ramifications.⁴⁶ The consequences felt by the client, advice partner and clinic in general are not easy to ignore given the human interest involved

⁴³ Student supervisors should be asking '*am I ok signing my name*' in the context of a client advice letter. Flowers (n 18) 2.

⁴⁴ Seear et al (n 42) 489

⁴⁵ 'The students' experience with human problems in the law clinic always has the potential of being emotionally real. The student is directly involved in a case and can explore its social and psychological implications in as great a depth as his motivation allows.' Bloch (n1) 342.

⁴⁶ An example would be when a student does not fully engage with the client and the process and the resulting advice is late, incomplete or worse inaccurate.

in the process. Clinic is very much a 'two-way street'⁴⁷ and the *relationships* that students have with supervisors and clients is one of the most central and important aspects of effective clinical teaching.⁴⁸

2.2 *Environment*

The second principle of "how" is the *environment* that students learn in. For ephebagogy to be effective, the *environment* of the target learning activity or skill must include the *unfamiliar, opportunity, teamwork* and *protection*⁴⁹ The learning environment must be designed to allow the student to explore activities, settings, interactions and cultures that are *unfamiliar* to them.⁵⁰ Students must be given the *opportunity* within the classroom environment to test their current interests; explore new interests, discover unknown interests and also feel supported to abandon interests if they choose. This also reinforces the theory that experiencing the *unfamiliar* is again part of the transition to full adulthood. A goal of the target learning activity should be to organise learning around relationship building and encourage and develop *teamwork* and camaraderie between students and lecturers.⁵¹

⁴⁷Bloch (n1) 338.

⁴⁸ Seears et al (n 42) 491.

⁴⁹ Flowers (n 18) 2.

⁵⁰ Ibid

⁵¹ Ibid.

One of the differences between childhood and adulthood is the acceptance of responsibility.⁵² At some point during this transition period, the student must start to accept full responsibility for their actions.⁵³ Indeed, it is accepting responsibility for one's self and the making of independent decisions that Arnett considers to be the top two criteria for the transition from childhood to adulthood.⁵⁴ Responsibility in ephebagogy is supported by developing a teaching environment that protects the student from calamitous consequences, yet still maintaining their autonomy.⁵⁵ Thus, allowing the student to try new skills and test these skills in an adult environment, without fear of recrimination. Incorporating failure into the classrooms, ensure that students are more invested in understanding the problems that they are trying to solve.⁵⁶

For a student engaging with CLE, principles of *environment* map neatly against the expected outcomes of clinic. For instance, CLE can certainly introduce students to the *unfamiliar* as they experience the activities, settings, interactions and cultures that present themselves in clinic. The issues that clinic clients present with often do not

⁵² This is not a discussion on the legal right afforded to individuals over the age of majority. Rather it is emotional maturity and acceptance of responsibility from this perception that is being examined.

⁵³ This would echo the gradual release of responsibility instructional framework, which purposefully shifts the cognitive load from teacher to student. Through the process of gradually assuming more and more responsibility for their learning the student becomes a competent and independent learner. D Fisher & N Frey, '*Better learning through structured teaching, a framework for the gradual release of responsibility*, (2nd ed) 2014 ASCD, 2.

⁵⁴ Arnett (n12) 473.

⁵⁵ Flowers (n18) 2.

⁵⁶ M Fuglei, 'Why students who embrace short-term failure have a better shot a long-term success', education.cu-portland.edu/blog/classroom-resources/student/failure

follow the law curricula; students are often asked to advise on topics which do not form the content of credit bearing modules. In this situation, the student cannot say to the client “*I’m sorry but I haven’t studied this subject yet, can you come back next year?*” The student must immerse themselves in this *unfamiliar* subject in order to advise the client. The immersion in the *unfamiliar* also allows for the student to test their interest in an area of the law not covered by their law degree.⁵⁷

There are strong parallels between *teamwork* undertaken within clinical teaching and the *relationships* developed. For a student to be successful on a CLE module or to excel in clinic, they cannot work in isolation; *teamwork* is one of the core principles of CLE.⁵⁸ In an advice only clinic, students can only achieve the outcome of timely and accurate advice by working closely and effectively as a team with the other students in clinic, with their supervisor, with the client and perhaps with external bodies.

For the student engaging in CLE, there is always the “safety net” of their supervisor to allow for responsibility to flourish and to offer a form of *protection*. If all the correct clinic procedures are followed, a client will never be given incorrect advice or prejudiced in any way due to the failings of a student advisor. The supervisor is there

⁵⁷ For example, a student may feel they are destined for a career in commercial legal practice, yet participating in a family law clinic may completely change their mindset. There is also the opportunity for the student to experience whether they have a liking for the law at all.

⁵⁸ Weinstein & Morton refer to ‘collaborative intelligence’ in the context of practising lawyers but the same can be applied to students involved in law clinics. J Weinstein & L Morton, ‘Knowledge of and comfort with collaborative work, results in more effective client outcomes’. In L Wortham, A Scheer, N Maurer, S L Brooks ‘*Learning from Practice, A text for experiential legal education*’ (West Academic Publishing, 2016) 3rd Ed, 428.

to also *protect* the interests of the client, even if this means the supervisor must re-write advice before it is sent out. This allows the student to focus on understanding the problem posed by the client.

2.3 *Objectives*

The objectives of the epebagogical method are: *resilience*, becoming a more *self-directed* learner, *relationship skills*, *independence* and *defining passion*.⁵⁹ Looking at the first objective, the student is to be encouraged to build *resilience*.⁶⁰ Whilst failure in summative assessments is not the desired outcome, students must be given the opportunity to fail and then retry at numerous points. For students to develop their *resilience*, they must be given this opportunity to fail in a safe and supported environment.

As already discussed at length, one of the main differences between pedagogy and andragogy is the extent of self-directed learning the student undertakes. With epebagogy, students are being encouraged to develop self-directed learning at every opportunity.⁶¹ Flowers describes the need for students who *'are not simply sojourning*

⁵⁹ Flowers (n 18) 2.

⁶⁰ Flowers (n 7) 5 gives the example of WD-40 lubricant (WD-40 2012). That #40 was the formula that was successful 5.

⁶¹ For the purposes of this article, self-directed learning is distinguishable from independent learning; with the latter being learning occurring outside of a taught session but that still encompasses an element of direction. For example, further but not essential reading. Self-directed learning is where a learner has no guidance or instruction and has to be completely self-reliant in their learning journey.

in our society' rather students must be allowed to take an active role in making a difference in society.⁶²

One of the *objectives* of ephebagogic curriculum design should be that students are afforded multiple opportunities to develop their *interpersonal skills*. Whilst there are obvious similarities with teamwork and encouraging activities that include teamwork, the focus here is on the ability students have to relate with others rather than actually working with them.⁶³ Due to the 'sweeping demographic shifts' that have taken place over the last century, this generation's emerging adults have not had to contend with the same pressures and occurrences that previous generations had to.⁶⁴ Students also need opportunities to develop their empathy skills, which they may not have previously used.⁶⁵

Finally, emerging adults should be given the opportunity to '*define their passion*'.⁶⁶ Not much further detail is added for this *objective*, however this could be interpreted as allowing students to experience their intended career. In Melissa Hardee's 2014 study, her findings revealed that over 70% of law students surveyed were studying law with

⁶² 'These students will eventually be citizens that raise children, labor (sic) with their hands and vote for leaders, inform their neighbours, care for their environments and leave the world greayer when their lives are over'. Flowers (n7) 4.

⁶³ Admittedly, a learner with excellent inter-personal skills would be expected to be an excellent team player.

⁶⁴ Arnett (n12) 469.

⁶⁵ Seear et al (n 42) 498.

⁶⁶ Flowers (n 7) 2.

the intention of entering a career in the legal profession.⁶⁷ This percentage is contrasted with the generally accepted figure of 40-50% of law graduates who actually enter the legal profession..⁶⁸ Something is clearly happening over the three or four years of an undergraduate law degree that causes the percentage to drop. The answer could be that these students are not given the opportunity to *define their passion*, within their undergraduate studies and experience life as a lawyer.

Resilience is a skill that requires development and the learning experience created by CLE is perfectly suited to subtly building and developing resilience in students. This development is achieved by students experiencing an emotional reaction in clinic, as they are developing their own capacity to protect themselves and therefore develop their resilience.⁶⁹ Resilience is also developed in CLE with students being directly responsible for acting upon the feedback they have been given in an advice letter by their supervisor. Their resilience is subtly developed through engaging with the critique of the letter given by the supervisor and the subsequent amendments required before it is sent to the client.

⁶⁷ Career expectation of Students on Qualifying Law Degrees in England and Wales: Interim report: Comparing the first year of the cohort study in 2012-2013 with the UKCLE study March 2012', Melissa Hardee, Hardee Consulting (2014)

https://www.heacademy.ac.uk/system/files/resources/hardee_interimreport_2014final.pdf 13.

⁶⁸ Ibid 35.

⁶⁹ Seear et al (n 42) 498.

The development of *self-directed* learning is encouraged in CLE, as the classroom becomes a '*mutual search for solutions and knowledge*'.⁷⁰ Again this reinforces the clear distinction between andragogy and ephebagogy, with the former firmly establishing self-learning and the latter working towards it. In CLE this is evidenced by clients presenting themselves with issues that may not map neatly to module learning outcomes. In order to advise the client, the student needs to go beneath the surface of their current knowledge and embrace new areas or law and procedure.

CLE allows and encourages *independence* of thought to develop because it is delivered in a manner that does not necessarily prescribe definitive answers to the problems posed. The student has to think outside the ideals of "model answers" and consider all potential solutions or advice available the client.⁷¹ It is acknowledged that some students have led sheltered lives and CLE has the ability to draw these students out of their perceived comfort zone and allow them to interact and empathise with all sections of society.

CLE not only allows for students to experience the practise of lawyering but also to experience various matters of law and policy. Students are permitted to experience the roles and responsibilities of a solicitor within the safe confines of the clinic. Students can experience this quasi-employment aspect of budding citizenship, which

⁷⁰ G Bellows & E Johnson, 'Reflections on the University of Southern California Clinical Semester', 44 S. Cal. L. Rev. 664, 694.

⁷¹ The author is reminded of an anecdote (credit unknown) that neatly sums up the idea of independence of thought. '*twelve lawyers given identical documents will amend them in twelve different ways*'

affords them the opportunity of being able to *define what their passion* is (or not). The most in demand subjects for clinics are those which are often absent from the choice of modules in law schools.⁷² The ability for students to experience these subjects is now of greater importance, with the introduction of the Solicitors Qualifying Exam that does not have a private client focus. The role of the clinic can also be extended to allow these emerging adults to *define their passion* in these subjects.

Conclusion

In order to fulfil the potential of students classed as emerging adults, ephebagogy is the only teaching methodology which adequately supports and develops this group and should be engaged and utilised within higher education. Otherwise, arguably, educators could be accused of setting these students up to under achieve or even fail. This article has shown how ephebagogy can serve as a 'coherent theoretical background for a methodology based justification both for the clinical method of legal instruction and the addition of a clinical component to the law school curriculum.'⁷³ Given the constant battles that clinicians fight to get CLE at the fore front of the law curricula, the core principles of ephebagogy must strengthen the argument for further integration. Ephebagogy as a teaching philosophy, together with CLE as a teaching methodology, show that the core student audience will experience greater learning through CLE not just because of the experiential style of teaching but also because of

⁷² For example welfare law, housing law.

⁷³ Bloch (n1) 325. Even though Bloch was writing in the context of andragogy and CLE, the sentiment applies equally to ephebagogy and CLE.

teaching is appropriate to their stage of transition at the time of the learning experience.

Flowers asked the question in her work, *'What are the best teaching methods and the best practices for drawing out the qualities in young people that will make them fully fledged, contributing members of society?'*⁷⁴ This article has confirmed the answer to that question in the context of undergraduate law students, is Clinical Legal Education; the pedagogies, practice and performance.⁷⁵

Acknowledgements

I would like to thank the participants of the ENLCE conference held in Turin in September 2018 for their constructive feedback.

⁷⁴ Flowers (n 7) 4.

⁷⁵ L S Shulman, 'Signature pedagogies in the professions', *Daedalus*, Summer 2005, 134,3 55.

BLOGGING, JOURNALING AND REFLECTIVE WRITING: A SNAPSHOT OF STUDENTS' PREFERENCES & PERCEPTIONS FROM TWO AUSTRALIAN UNIVERSITIES

Matthew Atkinson & Margaret Castle¹

Abstract

This paper investigates the pedagogical benefits and challenges of using blogs as well as journals in assessing reflective writing in Clinical Legal Education learning.

Recognising that millennial students have diverse learning preferences, the authors administered a survey to explore student preferences for different styles of reflective activity, contrasting peer to peer blogging with student to teacher journaling. Our findings suggest that some of the traditional ideas about privacy and self-disclosure in reflective writing are not of significant concern to students, who see benefit in sharing experiences with each other as part of a learning community. However, our

¹ Matthew works at the UniSA Australia ("UniSA"). He is the managing solicitor of his law school's in-house legal clinic and also coordinator and teacher in two CLE courses: Legal Advice Clinic and Law Professional Placement. Margaret works at Adelaide ("Adelaide"). Director of the Clinical Legal Education program, she manages four law clinics operated by the Law School, a small externship program, and teaches the elective subjects Clinical Legal Education, Alternative Dispute Resolution, and Dispute Resolution and Ethics. Matthew and Margaret acknowledge the kind support of the Australian Collaborative Education Network Limited (ACEN) grant which has supported our research. We also thank our colleagues for their support in this project. Of course, all mistakes are our own.

findings also indicate that the opportunity of private reflection with a teacher is valued by students as part of the reflective learning experience.

This paper outlines the approach to blogging adopted in our teaching practices and concludes that there are many benefits to thoughtfully designed blogging in Clinical Legal Education reflective exercises.

Designers of reflective writing assessment will find this paper a useful source of related literature and ideas for developing journaling and blogging for reflective learning.

I Introduction

Reflective journaling has been a consistent component of learning in Clinical Legal Education (CLE) for decades. Technological change does not just offer different media for reflection but enables different learning dynamics that reflect the technology driven lives of our CLE students.

In 2018, Matthew Atkinson at the University of South Australia ("UniSA") and Margaret Castles at the University of Adelaide ("Adelaide") started using blogging in addition to journaling as a medium for students to engage in reflective writing as part of their CLE course assessment. In both Matthew and Margaret's CLE courses, student learning occurs on placement at their respective university's law clinic or at an external organisation such as a law firm or government agency, with students doing legal work for clients under the supervision of a solicitor. Matthew and Margaret's

course assessments are underpinned by the understanding that reflection and reflective writing are key components which enable students to find meaning and context in the law and the legal work that they are doing,² and that reflective practice is a core function of CLE.³

Margaret's approach to reflective writing has evolved over 20 years teaching CLE. Originally, students submitted a collection of journal entries to be marked at the end of the teaching semester. Over the years this process has been adapted - first, to require sequential submission and grading of journals so that students receive feedback on their work before submitting the next entry; now based on two sequential dialogic journal discussions⁴ between student and teacher, with both original journal entry and students' responses to questions graded. These adaptations were prompted by concerns around the authenticity and equity of journaling, particularly that many

² Hyams, R. (2010) 'Assessing Insight: Grading Reflective Journals in Clinical Legal Education' 17 James Cook University Law Review 25, p.27; Stuckey, R. (2006) 'Can We Assess What We Purport to Teach in Clinical Law Courses' 9 International Journal Clinical Legal Education 9, pp.14-15; Grimes, R. (1995) 'Reflections on Clinical Legal Education' 29 The Law Teacher 169, p.171; Medina Fuentes, J. N. (1991) 'Reflections on Lawyering and Clinical Methodology' Revista Juridica Universidad de Puerto Rico 41, pp.57-58.

³ Evans, A. et al, (2017) *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School*, ANU Press, p.300; Stuckey, R. et al, (2007) *Best Practices for Legal Education: A Vision and A Road Map*, CLEA, pp.48-49; Evans, A. et al, (2013) *Best Practices: Australian Clinical Legal Education* (Government of Australia, Office of Learning and Teaching, 2013) p.13 <<http://www.law.monash.edu.au/about-us/legal/altc-project>>

⁴ Dialogic journaling takes the form of students writing a journal entry, with the marker providing feedback, asking for further explanation or discussion, and directing the student to either resources or other issues that students could discuss to deepen the reflective process. Both Schon and Moon amongst others support dialogue (whether written or in person) as a foundational aspect of reflective learning. See Schon, D. (1987) *Educating the Reflective Practitioner*, Jossey Bass, p.304; Moon, J. (2006) *Learning Journals*, Routledge, 2nd ed, pp.53-55.

students had not encountered deliberate reflection or journaling in prior study.⁵ Several years ago, Margaret introduced an ungraded online blogging exercise on interviewing challenges to complement the face to face seminar program. She noted differences in tone and approach in the reflective writing - students' language was more casual with easier reference to personal feelings and reactions in this informal medium. Further, students reflected on the blog discussions in seminars and in their journals and seemed to value common experiences and reactions. Blogging seemed to help build a sense of community within the CLE class and develop valuable group communication opportunities.

Matthew's experience with teaching reflective writing spans several years teaching CLE, and his use of blogging in CLE is somewhat fortuitous. For over 9 years, Matthew's experience in CLE has primarily been as a clinical supervisor of students at UniSA's Legal Advice Clinic. In 2018, this role changed when Matthew was given the responsibility for creating two newly established final year capstone CLE courses, Legal Advice Clinic and Law Professional Placement. The former caters for students placed in the in-house clinic and the latter caters for student externships. These two newly established courses were based on an existing CLE program at his university, which used reflective writing in the form of a critical incident report and a reflective

⁵ Some students assume that they are naturally not very good at reflection thus have difficulty or resist engaging in the process. See Moon, J.A. (2013) *A Handbook of Reflective and Experiential Learning Theory and Practice*, Taylor and Francis, p.89. Added to this is reflective learning is the exception rather than the rule in legal education and few students will have had any engagement in the process or have even heard of it. Many students need prompting to move from narrative to reflection. See Woodward, H. (1998) 'Reflective Journals and Portfolios: Learning Through Assessment' 23(4) *Assessment and Evaluation in Higher Education*, p.417.

portfolio as a means to assess students' learning from a clinical placement.⁶ However, the new capstone CLE courses included an online assessment component that provided for early feedback and opportunity for students to share their placement experience with peers. Matthew knew that Margaret was using blogging in her CLE course, and thus thought he should speak with her.

Matthew and Margaret's discussion and collaboration about the use of blogs and journaling gave rise to the idea of conducting research into student preferences and perceptions of blogging and journaling in reflective writing. They were particularly interested in probing the perceptions and preferences of IT sophisticated post millennials,⁷ who have grown up using online communication modalities that could not have been imagined in the days when journaling as a model for reflective writing in CLE was first adopted.⁸ It is worth noting that as the paper goes to press we are emerging from an unprecedented period of isolation, as a result of the Coronavirus pandemic, with enhanced dependence upon technological communication, making this discussion very timely.

⁶ See Spencer, R. (2012) 'Holding up the Mirror: A Theoretical and Practical Analysis of the Role of Reflection in Clinical Legal Education' 17(2) *International Journal of Clinical Legal Education* 181, pp.198-200.

⁷ While there is debate about the time range of millennial students' birth years, it is generally accepted that millennial students are those who are born between the early 1980s and the late 1990s. See Palmer, J.S. (2015) 'The Millennials Are Coming: Improving Self-Efficacy in Law Students through Universal Design in Learning' 63 *Cleveland State Law Review* 675, p.676; Benfer, E.A. and Shanahan, C.F. (2013) 'Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School' 20 *Clinical Law Review* 1, 7. Our student cohort could as well be described as post millennials or Generation Z.

⁸ See Ogilvy, J.P. (1996) 'The Use of Journals in Legal Education: A Tool for Reflection' 3(1) *Clinical Law Review* 55.

This article reports on the results of our research and is divided into five parts. Part II provides background into our CLE courses and contextualises the use of blogging and journaling as pedagogical tools to promote reflective practice both in and out of the classroom. Part III outlines the research design and methodology employed in examining student preferences and perceptions of reflective writing in blogging and journaling. Part IV sets out discussion and analysis of student response to the research questionnaire and also data from follow-up focus group sessions. Part V offers some preliminary conclusions and recommendations to contribute to best teaching practice when integrating blogs and journals in teaching and assessment.

II Our CLE Courses and Contextualising Blogging, Journaling and Reflective Practice

(a) How Matthew and Margaret Teach Blogging, Journaling and Reflective Practice

Our CLE courses follow a typical pattern for CLE in Australian law schools. CLE is generally a final year subject, coming towards the end of the substantive law curriculum (after the students have completed foundational subjects including contract, tort, criminal, administrative law, etc.) at which time students have a reasonable grounding in these basic legal principles.

At the University of South Australia, the CLE courses are categorised as 9-point (which is a double-weight credit course for the law program) final year capstone

subject.⁹ All students enrolled in the law program are required to obtain 18 points of capstone courses and most law students enrol in at least one of the CLE courses, Legal Advice Clinic or Law Professional Placement.¹⁰ Together the CLE capstone courses have approximately 120 students enrolled over a year across 3 teaching terms of 10-week duration.¹¹ Assessment of both courses comprise of placement evaluation (attendance together with a work portfolio worth 40%), online forums (3 x 300/400 word blogs, each worth 5%), and a reflective report (3,000 word journal for Legal Advice Clinic/4,000 word journal for Law Professional Placement respectively worth 45%). The online forums, which are due in weeks 2, 5, and 8 during the teaching term for both CLE courses, require students to write a blog entry about a topic relating to their placement experience and learning. These include reflection on placement goals, and depending on the CLE course, also involve students reflecting on client interviewing, supervisor feedback, access to justice and challenges faced on placement. For both courses, the blogs help students prepare for their reflective report: teacher feedback is designed to help students engage in deeper reflection of their topic and also understand how to write in the reflective genre; likewise, students have an opportunity to learn about their peers' experience and approach to reflective writing.

⁹ UniSA CLE course information webpages: <<https://study.unisa.edu.au/courses/165121/2018>> and <<https://study.unisa.edu.au/courses/165302/2018>>.

¹⁰ UniSA Law Program webpage: <<https://study.unisa.edu.au/degrees/bachelor-of-laws-honours>>.

¹¹ In 2019, one of the teaching terms converted into a 5-week intensive. The assessment and placement requirements remain the same; students are simply complete placement in assessment in half the time.

Teacher feedback and participation in student blogs therefore has both formative and summative aspects. The reflective report, which is due a fortnight after the conclusion of the teaching term, is a journal of placement learning - students are required to reflect on their placement performance, and topics relevant to their placement including client-centred practice, access to justice, and wellbeing in the law. In this reflective report, students are expected to highlight their learning by synthesising their placement experience with relevant academic literature from a teacher curated reading list. Further, students can expand on their published blog topics and are also required to use their peers' blogs as a perspective to analyse their placement experience and learning. Appendix A sets out full details of UniSA's instructions for students with respect to the online forums and reflective report together with the assessment rubrics.

At the University of Adelaide, the CLE course is a three-point elective (which is the common credit weight for most subjects across the law program) titled Clinical Legal Education. It takes about 110 students (who are typically in their final year of their degree) per annum over 3 semesters; students are placed in one of five Law School Clinics, one of which post-dated the commencement of this research.¹² Assessment of the subject comprises assessment of placement engagement (worth 35%); 4 reflective writing pieces (blogs and journals in total worth 35%) and a single major project which may be completed individually or in small groups (worth 30%). All assessment is

¹² See Adelaide CLE course information webpage: <<https://law.adelaide.edu.au/free-legal-clinics/>>

summative. For blogging, students must complete 2 x 6-800 word blog entries (each worth 7.5%) in the first part of the semester, specifically to capture student thoughts in the first 5 weeks of placement when the learning curve is very steep, and to help establish a sense of community between students at the start of the subject. Each student posts a blog and also responds to another student's blog with their own ideas, observations and suggestions. Students can read all of the blog entries and replies but are only required to answer one. Students have so far agreed to a protocol to answer a blog that does not yet have a response so that everyone gets comments.¹³ Both contributions (original blog and answer) are graded and students are given specific feedback on examples of good reflective writing and on how the students could engage in deeper reflection. Suggested blog topics that coincide with seminar topics and the anticipated learning arc students will follow are provided for each entry, but students may also choose their own topics.

In addition to blogging, students must also complete 2 x 800 word journal entries and are then required to respond to specific teacher feedback and questions about their entry via a private discussion board (each sequence being worth 10%.)¹⁴ Journals occur in the last 4 weeks of the course when students have greater experience on placement,

¹³ While this restricts students from answering a particular blog that they are really interested in if someone has already done so, it does require intellectual engagement and perspective development by turning students' minds to diverse issues. Students are also permitted to add a second answer to an existing blog, provided students have already answered one without an answer.

¹⁴ In first semester 2018 assessment comprised 3 x journal entries. However, after this semester Margaret felt that the depth expansiveness and quality of journal entries was such that reducing this to 2 entries each worth 7.5% was appropriate. In 2019 the structure has been varied: 3x blog entries/responses worth 5% each, followed by 2x journal dialogues each worth 10%.

and have completed most of the seminar program, to ensure sufficient material and experience to draw on in reflective journals. Teacher comment and feedback on this assessment is designed to prompt deeper, focused reflection and to ask students to consider different perspectives. For example, the teacher may direct students to additional literature or pose a question to prompt further thought about the reflected topic. Appendix B sets out full details of Adelaide's instructions for students with respect to the blogs and journals together with the assessment rubrics.

Both Matthew and Margaret use blogging and journaling as a tool to promote reflection in their CLE courses. With blogging, students are able to practice reflective writing, see their peers' work, and obtain guidance from the teacher that assists with journaling. However, Matthew and Margaret's approach differs in that Margaret's assessment provides for a more structured conversation between students and the teacher. Margaret's students are assessed on their feedback and peer learning through their responses to other blogs to demonstrate the following: first, students have "heard" the comments of the blogger; second, to contribute something of their own experience or thoughts to the conversation; and, third to leave the blogger with something new to think about or consider. Matthew's blogging and journaling activities are not designed in this manner, mainly due to the due dates of assessment. However, he encourages this process through discussion of blog entries in the classroom and during placement at the Legal Advice Clinic. Furthermore, although it is not required, some students also provide supportive written responses to their

peers' blogs. As discussed above, our courses only require two or three blogs from students. This is contrary to some views that multiple entries are ideal if reflective practice is to become embedded.¹⁵ Our experience has been that students rapidly develop blog/journal fatigue, which can affect the value of reflection.

Matthew and Margaret's CLE courses provide students with guidance on reflective processes to support students with their journaling and blogging. This takes the form of Kolb's learning cycle, modelling the four phases of preparation for the task by reference to existing resources, engagement in the task, reflection on the process, and preparation for the next engagement incorporating further preparation based on reflection.¹⁶ At Adelaide, students are asked to do short activities in class and then write a reflection on it demonstrating these four steps, and the students are evaluated in class on a document viewer so that all students can see the process in action. At UniSA, students are introduced to reflective practice by considering Georgina Ledvinka's student A and student B interviewing vignette.¹⁷ Through this introduction students use mentimeter to highlight their understanding of reflective practice by creating a word-cloud which contains the reasons why they think student B (who is far more reflective about their experience) will learn more than student A

¹⁵ Freeman, W. and Brett, C. (2012) 'Prompting an Authentic Blogging Practice in an Online Graduate Course' 59 *Computers and Education* 10, p.14.

¹⁶ Ledvinka, G. (2006) 'Reflection and Assessment in Clinical Legal Education: Do You See What I See?' 9 *International Journal of Clinical Legal Education* 29, p.32.

¹⁷ *Ibid*, p.30.

about legal interviewing.¹⁸ Both Matthew and Margaret's student cohorts also receive examples of reflective writing in course materials.

(b) Contextualising Reflective Practice and Reflective Writing

The benefit of reflective practice and the concomitant pedagogical role of reflective writing is well accepted in CLE.¹⁹ Law student engagement in reflective practice 'promotes innovative and critical thinking, strengthens legal professionalism, and builds a stronger aptitude for problem-solving'²⁰. Schon coined the term reflective practice and it is used to describe the process of developing professional knowledge and skills. He posited that mastery of professional knowledge and skill is best achieved when a professional can reflect *in* and not just *on* their action.²¹ Schon's work has had a profound influence on course design in CLE; and, since his exposition of multiple models of reflective practice have been developed to highlight different levels and stages. For example, Hatton and Smith propose four levels of reflection: descriptive (recall); descriptive reflection (individual perspective); dialogic reflection (stepping back from individual perspective and recognising alternate views and explanations); and, critical reflection (analysing and synthesising multiple perspectives together with historical and socio-political critique).²² Most recently,

¹⁸ For further detail about mentimeter, see webpage: <www.mentimeter.com>.

¹⁹ Burton, K. and McNamara, J. (2009) 'Assessing Reflection Skills in Law Using Criterion-Referenced Assessment' 19 *Legal Education Review* 171.

²⁰ Leering, M. (2017) 'Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism' 95 *Canadian Bar Review* 47.

²¹ Schon (n 4), pp.62-67.

²² Moon (n 5), p.97.

Leering conceives of reflective practice as having three overlapping aspects: reflection on practice; self-reflection; and critical reflection. She notes that these overlapping aspects exist in a community, and the rigour of reflective practice is maximised when it is shared with others to enable feedback and further investigation.²³ Both the Leering and Hatton and Smith models logically break down the micro-reflection that students will ideally follow to become reflective practitioners. All models of reflective practice are conceptually consistent;²⁴ the aim is for students to develop the skill of being able to contemporaneously act as a legal professional and also engage in innovative and critical thinking to solve problems.²⁵

CLE courses are designed to give law students an opportunity to reflect and think critically about the law from a range of perspectives and to help provide a legal service.²⁶ Matthew and Margaret's CLE courses focus on promoting access to justice, target disadvantaged and vulnerable clients, and also utilise a multidisciplinary framework to help students to reflect and recognise new perspectives in law.²⁷ Students are encouraged to reflect on their performance with functionally evaluative questions including: what did or did not work? If I had this experience again, what

²³ Leering, M. (2014) 'Conceptualizing Reflective Practice for Legal Professionals' 23 *Journal of Law and Social Policy* 83, pp.95-98.

²⁴ Casey, T. (2014) 'Reflective Practice in Legal Education: The Stages of Reflection' 20 *Clinical Law Review* 317, p.331.

²⁵ *Ibid*, pp.350-1.

²⁶ Evans, 'Best Practices in Clinical Legal Education' (n 3), pp.4 -7.

²⁷ In Matthew's CLE course some of his students attend at a Health Justice Clinic. See Ferrar, K. et al, (2019) 'Interdisciplinary Learning Opportunities for Clinical Students and Teachers – A Case Study Shared' *Australian Journal of Clinical Education* 1.

would I do differently? What have I learned from this experience? How will I incorporate what I have learned into future practice?

Of course, answering the above questions and building professional identity and expertise does not occur in a vacuum. Meaningful analysis and evaluation of performance also requires students to reflect on themselves as individuals and their place in a community. Such introspection is necessary because performance is inextricably linked to the individual and the community within which an individual's performance takes place. For law students, introspection about performance and their relationship to the legal professional community generates questions like, what are my strengths and weaknesses?²⁸ How do I learn best?²⁹ What assumptions, values, and personality traits do I hold?³⁰ To provide students with different perspectives in answering these questions, both Matthew and Margaret use reading lists and students are expected to incorporate literature into blogs and journals. This literature includes discussion on practical legal skills, legal ethics, professionalism and the role of lawyering, social and legal justice, and wellbeing in the law.³¹ Reflection on providing a legal service in the community - especially to those who cannot otherwise access it - together with exposure to relevant literature has the power to generate 'disorienting

²⁸ James, C. (2011) 'Law Student Wellbeing: Benefits of Promoting Psychological Literacy and Self-Awareness Using Mindfulness, Strengths Theory and Emotional Intelligence' 21 *Legal Education Review* 217.

²⁹ Hyams, R. (2011) 'Nurturing Multiple Intelligences through Clinical Legal Education' 15 *University of Western Sydney Law Review* 80.

³⁰ Leering (n 23), p.98

³¹ The reading list includes the articles cited above including Hyams (n 29); James (n 28); and Leering (n 23). Further detail about the instructions provided to students for reflective writing prompts can be found at Appendix A and B.

moments' for students that may expand their perspective, professional aspirations and understanding of law.³² Capturing this moment in reflective writing helps ensure it is memorable.

(c) The Challenge of Teaching Reflective Practice and Writing

However, teaching and facilitating reflective practice and writing is challenging. Both practices are deeply personal activities, involving intimate self-disclosure. They can provide both unflattering self-discovery³³ and an opportunity to explore personal thought and its relationship to the outward professional world.³⁴ In addition to self-discovery, meaningful reflection and reflective writing also requires students to critique and contextualise their performance and its relationship to the community using different perspectives including historical, social, and political.³⁵ These perspectives are often introduced through literature and students are often assessed (including ours) on their ability to analyse and synthesise their placement experience against such material.³⁶ Our experience with law students has been that even before they encounter these challenges, they may be unfamiliar with reflective practice (in

³² Donnelly, L. (2017) 'Putting Disorienting Moments at the Centre of Legal Education' 24 *International Journal of Clinical Legal Education* 80; Fran Quigley, 'Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics' (1995) 2 *Clinical Law Review* 37.

³³ Hess, G. (2002) 'Learning to Think Like a Teacher: Reflective Journals for Legal Educators' 38 *Gonzaga Law Review* 129, p.146; Ogilvy (n 8) p.91.

³⁴ Elkins, J. (1993) 'Writing Our Lives: Making Introspective Writing a Part of Legal Education' (1993) 29 *Williamette Law Review* 45, 68-69.

³⁵ Burton and McNamara (n 19), pp.186-7; Ledvinka (n 16) p.43; Balsam, J., Brooks, S.L. and Margaret Reuter, (2017) 'Assessing Law Students as Reflective Practitioners' 62 *New York Law School Law Review* 49, p.70.

³⁶ *Ibid.*

fact, CLE may be the first time students have encountered this concept) and are often quite uncomfortable with the idea of using first person language and expressing their own views.³⁷ Student discomfort with reflection and reflective writing is largely the product of years of learning about the law in an environment that privileges a belief that black letter law and “legal” reasoning is paramount.³⁸ Often students say they “don’t know what to talk about”, or need to be assured that their own ideas are “ok”.³⁹ We and other CLE teachers and supervisors often recommend to students that a particular issue or an event that students are discussing is worthy material for reflection. We also encourage (and as discussed above require through assessment) students to synthesise and analyse their experience using different perspectives through literature and conducting independent research. Students seem, at least in the early part of clinical practice, to have difficulty identifying issues from their placement experience as important enough to discuss. Likewise, students often have difficulty with connecting their reflected placement experience to different perspectives highlighted in literature. Prompting reflection and reflective writing in a manner that maximises its benefit to a cohort of law students requires diverse teaching strategies

³⁷ Spencer, R. (2014) ‘First They Tell Us To Ignore Our Emotions, Then They Tell Us to Reflect’ 21 *International Journal of Clinical Legal Education* 33.

³⁸ Castles, M. and Boothby, C. (2020) ‘Which Hat Shall I Wear Today? Exploring the Professional and Ethical Implications of Law Clinic Supervision’ in Strevens, C. and Field, R (Eds) (2020) *Educating or Well Being in Law: Positive Professional Identities and Practice*, Routledge Oxford, p.117.

³⁹ This experience is shared by other CLE teachers. See, for example, Miller, S. R (2013) ‘Field Notes From Starting a Law School Clinic’ *Clinical Law Review* 137, pp.156-7.

and tools. This conforms with Moon's recommendation that support be provided to enable students to engage effectively with reflective writing.⁴⁰

(d) Bringing Blogging into the Equation

One of these ideas is blogging, an activity that is popular among students, reinforces learning, and fosters a shared, collegial learning environment. In 2011, Kift et al identified a range of features in legal education that contributed to heightened law student distress, nationally and globally.⁴¹ Since that time there has been a surge in commentary on the importance of "community" in learning in other disciplines, both to complement learning, and manage wellbeing. The value of networked community engagement,⁴² the impact of peer support in creating productive learning communities,⁴³ with communities expanding things in common, sharing private and collective work achievements, and equipping students to become leaders in their future professional communities.⁴⁴ Unlike journaling, which is traditionally characterised by solitude, and an emphasis on individualised introspection, blogging permits peer-to-peer reflection and immediate peer-to-peer (and teacher) feedback. These claims align with research into effective teaching strategies for the millennial

⁴⁰ Moon (n 4) 115-117.

⁴¹ Kift, S. et al, (2011) *Excellence and Innovation in Legal Education*, LexisNexis Butterworths, 1st ed.

⁴² Prenger, R., Poortman, C. and Handelzalts, A. (2019) 'The Effect of Networked Professional Learning Communities' 70 *Journal of Teacher Education* 441; Stejin, W., Schouten, L. and Vedder, A. (2016) 'Why Concern Regarding Privacy Differs: The Influence of Age and (Non-)Participation on Facebook' 10(1) *Cyberpsychology: Journal of Psychosocial Research on Cyberspace* 3.

⁴³ Zacharopoulou, A. and Turner, (2013) 'Peer Assisted Learning and the Creation of a "Learning Community" for First Year Law Students' 47 *The Law Teacher* 192.

⁴⁴ Kim, B. (2018) 'Things in Common in Learning Communities' 46 *Instructional Science* 627.

generation. Millennials have embraced technology and value “real time” feedback, prefer channel broadcasting (blogging and social media) over one-to-one electronic communication (email and short text message), and value peer teamwork, learning and collaboration.⁴⁵ For the millennial generation blogging may therefore have tremendous pedagogical benefit.

Of course, blogging is not without potential downsides.⁴⁶ Students need training in how to write for an (academic) blog to understand the difference between narrative storytelling and critical evaluation of experience. This is particularly so of law students for whom blogging and journaling is novel, against the context of legal education in which personal opinions (as opposed to precedent and predictable scholarly conclusions) are not valued.⁴⁷ Voluntary engagement with blogs can be sporadic and decline over time.⁴⁸ Intentional blogging can be done “in the moment”, but in reality is likely to be done some distance from the events. This might require a two-step process – the student first captures what happened and some of their initial

⁴⁵ Desy, J.R., et al, (2017) ‘Milestones and Millennials: A Perfect Pairing – Competency-Based Medical Education and the Learning Preferences of Generation Y’ 92(2) *Mayo Clinic Proceedings* 243; Price, C. (2009) ‘Why Don’t My Students Think I’m Groovy? The New R’s for Engaging Millennial Learners’ 19(2) *Psychology Teacher Network* 1; Carver, T. (2011) ‘Peer Assisted Learning, Skills Development and Generation Y: A Case Study of a First Year Undergraduate Law Unit’ 37(3) *Monash University Law Review* 203.

⁴⁶ For a good summation of the concerns blogs in legal education, see Black, P. (2006) ‘Uses of Blogs in Legal Education’ (2006) 13 *James Cook University Law Review* 8, pp.20-23.

⁴⁷ Berger, L.L. (1999) ‘Applying New Rhetoric to Legal Discourse: The Ebb and Flow of Reader and Writer, Text and Context’ 49 *Journal of Legal Education* 155, p.156.

⁴⁸ Black (n 46) p.21. Also see Roper, V. (2018) ‘Blogs as a Teaching Tool and Method of Public Legal Education: A Case Study’ 2(1) *International Journal of Public Education* 46, p.64.

thoughts, and then later engages in deeper reflective writing to allow thoughts to be explored and analysed.⁴⁹

The few published refereed articles in legal education that refer to using a blog for reflective writing have assumed that student authorship is kept anonymous.⁵⁰ Anonymity in journaling is also considered critical.⁵¹ Maintaining this anonymity is based on the expectation that it will improve authentic reflective practice amongst students. We have taken perhaps a unique approach that diverges from traditional orthodoxy in that we have used blogging in such a way that the students know the identity of their peers' blog entries. This is partly for the practical reason that neither University's online learning platform enabled anonymous contributions to blog or discussion functions.⁵² Specific protocols for public blogging were therefore required. We both developed protocols that are explicitly communicated and agreed with students. Ensuring that students do not feel threatened or belittled by any commentary; courtesy; always being constructive; acknowledging different perspectives; taking time to consider the content and phrasing of comments; and, being respectful of both views and people is discussed in the classroom at the

⁴⁹ Beveridge, I. (2006) 'Teaching Your Students to Think Reflectively: The Case for Reflective Journals' 2 *Teaching in Higher Education* 33, p.34.

⁵⁰ Ashford, C. (2007) 'From Baghdad to Sunderland: Weblogs and Reflective Learning, or How I Learned to Stop Worrying and Love the Blog' 41 *Law Teacher* 206, p.209; Allen, R. and Jackson, A. (2017) 'Contemporary Teaching Strategies: Effectively Engaging Millennials Across the Curriculum' 95 *University of Detroit Mercy Law Review* 1, 18.

⁵¹ Ogilvy (n 8) p.91.

⁵² Blogs are not public; they are available only to the enrolled class. When faced with this reality, we concluded that the potential benefits of identifying peers by name and creating a respectful community of practice was sufficiently good reason to continue without anonymity. Blogging is managed through university learning platforms, MYUNI and at Adelaide and Moodle at UniSA.

commencement of each semester. Course material and class content consider the role and values of feedback, and how to give and receive constructive feedback.⁵³ It is also consistent with our expectation that students reflect the standard of inter-collegiate behaviour expected among lawyers. We both oversee and curate the blogs throughout the course, which enables issues arising to be canvassed when needed, both individually with students, and in the classroom. This monitoring also enables us to refer students to their peers' blogs and encourage further discussion where students might find this useful.

Our experience has been positive, with students predominantly reporting satisfaction and confidence in the public nature of blogging. Towards the end of the period of this study, Adelaide accessed and used software that concealed student names in blogging. That experience is subject to a current survey seeking to establish the value that students place on anonymity in this context. Responses so far suggest marginal but not overwhelming preference for anonymity.

(d) Goal of our research

In light of the foregoing, research into our students' preferences and perceptions about reflective writing and the use of blogs and journals in CLE is timely, especially in the millennials era. In contrast to the journal between teacher and student the risk of judgment (real and perceived) is much higher in a broader communication loop such

⁵³ The value of this learning extends beyond immediate reflective writing skills – giving receiving and evaluating feedback is a critical aspect of day to day professional life.

as blogging. Such risk may impinge on enhancing reflective practice. That said, introducing class interaction built on student engagement with online blogging enables shared reflection, peer-to-peer knowledge sharing and feedback, and can make good use of group dynamics as a learning strategy. The online format allows instant posts about issues of interest, and for most of our students this medium is part of the pervasive social networking communication that students engage with on a daily basis.⁵⁴ Socially connected communication is a key feature in the lives of our students, and blogging enables an element of that social connectedness into the classroom. Having a greater insight into our students' perceptions and preferences with blogs and journals will give us a better understanding of these dynamics and also with their experience of reflective practice. We hope this research will also assist in developing best practice for teaching reflection and reflective writing when blogs and journals are used in clinical classes.

Research Design and Methodology

The research design comprised of a survey-monkey questionnaire (see APPENDIX C) and focus group sessions to follow up any questions that arose from the survey results. All students enrolled in CLE courses at Adelaide and UniSA during teaching terms 1 and 2 in 2018 were invited to participate in the research. The student cohort during this timeframe totalled 70 at Adelaide and 102 at UniSA. The relevant ethics

⁵⁴ Freeman and Brett (n 15) p.10.

committees from both universities approved the research⁵⁵ and students were invited to participate by way of group emails that attached a participant information sheet and consent forms.

As Matthew and Margaret are involved in teaching and assessing the CLE courses while conducting research on their students, research design explicitly facilitated students being able to participate anonymously. The survey did not ask students to provide any identifying details and it is impossible to individualise any of the data received from survey-monkey software. Likewise, the focus group sessions were facilitated and conducted by third party staff members at our respective universities.⁵⁶ Transcripts of these focus group sessions were created by using a zoom recorder that enables uploading and conversion of recorded conversations to text. Matthew and Margaret each received de-identified text transcriptions of the focus group sessions. Protecting students' confidentiality helped to ensure candid student response and voluntary participation.

IV Discussion and analysis of student response

Matthew's student cohort yielded 19 responses to the survey-monkey questionnaire and 3 students participated in the follow up focus session.⁵⁷ The anonymity of the data

⁵⁵ Human Research Ethics Committee at the UniSA and Human Research Ethics Committee at the Adelaide.

⁵⁶ Jane Knowler conducted the focus group session for Matthew at UniSA and Lecturer Kellie Toole conducted Margaret's focus group at Adelaide.

⁵⁷ The first email to students was sent by Kelly Ladyman an employee of the UniSA, and it yielded a low number of student responses. Matthew sought and obtained an amendment to his ethics application that permitted him to personally email students inviting them to participate in the research, which improved the response to 18.5%.

precludes comparison of student perception between Matthew's two courses. For Margaret, 48 students completed the survey-monkey questionnaire and 7 students participated in one follow up focus session. Response rates to the survey were variable, with about 2/3 of Adelaide students participating, a smaller proportion of UniSA students. Although participation in focus groups was low it provided value in terms of more detailed insights from students.

This part sets out an analysis of the student response to the survey-monkey questionnaire together with their discussions in the focus group sessions. These follow-up sessions provided students with an opportunity to have a more expansive discussion about their experiences with blogging and journaling in our courses. Student response to the questionnaire – which is divided into parts A, B, C and D – generate a mix of quantitative and qualitative data. Our analysis first summarises the quantitative data to provide a general understanding of student perceptions and preferences with respect to reflective writing in blogging and journaling. This is followed by discussion of the qualitative data where we highlight the key themes in students' comments. The focus group session data underpins and adds depth to this thematic discussion.

(a) Questionnaire: Quantitative Data

In Parts A and B of the questionnaire, which focused on blogging and journaling respectively, student response to both styles of reflective writing were positive. About 90% of UniSA and 80% of Adelaide students strongly agreed or agreed that blogging

helped them see issues from different perspectives and to focus deeply on topics, challenges and ideas.⁵⁸ Likewise, almost 70% of UniSA and 85% of Adelaide students strongly agreed or agreed that making and receiving comments in their blogs helped them to appreciate the value of feedback.⁵⁹ About 90% of both UniSA and Adelaide students strongly agreed or agreed that reading and receiving comments from peers and receiving feedback from the marker helped them to prepare better blog entries in the following weeks.⁶⁰ All students considered that their blogs were treated respectfully.⁶¹

UniSA and Adelaide students also viewed journaling as a valuable tool for learning. Over 75% of students indicated that journaling helped them to organise their thoughts, apply theory to practice, and improve their problem-solving skills.⁶² Almost 95% of students agreed that journaling assisted with performance improvement, developing self-awareness and seeing other perspectives.⁶³ With respect to the statement that blogging helped with their reflective journal, almost 80% of UniSA students and 90% of Adelaide students agreed with this proposition.⁶⁴ Only 50% of UniSA students strongly agreed that the feedback on journal entries helped them to focus deeply on issues.⁶⁵ This is in contrast to Adelaide student response where almost

⁵⁸ See Appendix C, Questions 3 and 4.

⁵⁹ Ibid, Question 6.

⁶⁰ Ibid, Question 1 and 2.

⁶¹ Ibid, Question 5.

⁶² Ibid, Question 13.

⁶³ Ibid.

⁶⁴ Ibid, Question 7.

⁶⁵ Ibid, Question 8.

all of the students thought the feedback helped with deep focus on issues. The explanation for this difference is probably due to the difference in assessment discussed above for our CLE courses. In Margaret's course, students are required to respond to feedback and questions for two pieces of journaling assessment, while in Matthew's course, students submit a reflective report as the final assessment piece at the end of the course and do not have to respond (or otherwise consider) the feedback provided.

Part C of the questionnaire asked students the following: first, whether and why students preferred blogging or journaling;⁶⁶ second, whether confidentiality changes their approach to reflective writing;⁶⁷ and, third whether students prefer a single submission of assessment worth more or multiple smaller submissions of equal value.⁶⁸ From the UniSA cohort, 50% preferred journaling, 25% preferred blogging, and 25% said both activities were equally preferable. Almost 70% of students said confidentiality changed their approach to reflective writing. For the Adelaide students, there was not a clear majority preference for blogging or journaling, with almost equal preference. Just over 50% of Adelaide students said that confidentiality changed their approach to reflective writing. Matthew and Margaret do not have an explanation for the differences in these specific results. However, as discussed in further detail below, the public nature of blogging appeared to have an impact on

⁶⁶ Ibid, Question 15.

⁶⁷ Ibid, Question 16.

⁶⁸ Ibid, Questions 17 and 18.

Adelaide and UniSA students' willingness to share reflected topics with peers. Students appear to frankly acknowledge this as a factor in blogging, with some apparently not concerned, and others more so. Without further investigation, we conclude that there is a lost benefit in blogging arising from the reluctance of some students to fully embrace self-revelation. This may relate to anonymity but may also have deeper causes. Margaret has noted that student blogs are typically self-reflective and commenting on personal experience with clients, but journals often go into revelatory and detailed discussions of relationships with supervisors and other students that students clearly do not want to disclose outside of the student/marker relationship.⁶⁹

The assessment question about preferencing a single submission worth more or multiple smaller submissions of equal value indicate preference for multiple smaller submissions for both UniSA and Adelaide students. While this question did not explicitly ask students to compare their experiences with blogging and journaling, it probably further highlights student desire for feedback on their reflective writing. As discussed above, our experience is that students seek assurance with their reflective writing, and multiple smaller submissions enables recurring feedback. Blogging, which permits comparison and instant feedback from peers together with feedback

⁶⁹ At Adelaide the journals are not marked by the students' direct supervisors. On occasion feedback to students includes suggestions and ideas for evaluating and managing relations with other students and/or supervisor.

and assessment by the teacher, may better cater for students' learning needs.⁷⁰ This is consistent with student comments that they found benefit in hearing what other students were doing, in appreciating commonality of experiences, and in receiving feedback along the way. This suggests that the value of blogging accumulates as students become more confident both in their experience in placement and their trust in the blogging process.

Part D asked students to compare their learning experiences and participating in journaling and blogging. It required students to nominate either journaling, blogging or neither in response to 14 statements about which activity students felt helped with a particular aspect of their learning experience in the CLE course.⁷¹ In summary, the student responses between Adelaide and UniSA students were varied. Over 80% of UniSA and Adelaide students thought that blogging was more helpful in their assisting others with feedback and support. Likewise, almost 75% of Adelaide and UniSA students thought that blogging was more helpful in developing new perspectives. These results appear to be consistent with the interactive, shared nature of blogging. Conversely, Adelaide and UniSA students differed in their views about whether journaling or blogging was more helpful in: questioning or challenging their beliefs, values or knowledge; planning their professional life and developing career goals and plans; learning from experience; receiving critical feedback and, developing

⁷⁰ Garcia, E. et al, (2019) 'Student Learning in Higher Education Through Blogging in The Classroom' 136 *Computers and Education* 61, pp.63-4.

⁷¹ Appendix C, Question 19.

self-awareness, problem-solving together with interpersonal skills. With respect to these learning experiences, approximately 60% of UniSA students thought that journaling was more helpful while approximately 60% of Adelaide students thought it was blogging. The variation in these results may be the product of differences in the assessment regime. For example, Margaret provides feedback responses on journaling to which her students are expected to respond. This may account for why a majority of her students nominate journaling as being more helpful in reflecting deeply on experience. While Matthew's students submit one longer journal (reflective report) at the end of the teaching term where his students are asked to analyse their goals and reflect on their placement experience and what this means looking forward into their professional lives.⁷² This may be why his students say that journaling better helps with their planning their professional life and developing career goals and plans. For both universities, the data shows that students perceive benefits for their learning about reflection and reflective writing in both blogging and journaling.

Close analysis of the responses suggests that student responses are quite tightly linked to elements of content, for example, valuing feedback that enables them to think more deeply and enhance their grades, noting the impact of reflection on future career options when that is specifically requested, and responding positively to the "sharing" of experiences and uncertainties in the early stages of a challenging course.

⁷² See Appendix B, Reflective Report for Law Professional Placement.

(b) Questionnaire: Qualitative Data

Matthew and Margaret together reviewed the survey-monkey questionnaire comments and focus group discussion transcripts and segmented this data into overarching themes.⁷³ This was achieved by identifying and grouping specific words and phrases used by the student cohort who participated in the research. We have developed four main themes from the data in our investigation of students' preferences and perception of blogging and journaling: (1) marker feedback and students' preference in the quality and style of that feedback; (2) peer feedback, which raised consideration of the impact and relationship between summative and formative assessment of reflective writing; (3) sharing reflection with peers and being part of a community where personal feelings and experience can be validated; and (4) sharing personal thoughts with peers and the impact on reflection and reflective writing.

(i) Marker Feedback

Almost all of the Adelaide and UniSA students who completed the questionnaire, and also those who participated in the focus group sessions, provided comments about marker feedback.

On the pragmatic level of being assessed, students commented that feedback helped them understand "what the marker wanted to see", "what areas I needed to improve

⁷³ We followed a similar process to that described in Hess, G.F. (2014) 'Qualitative Research on Legal Education: Studying Outstanding Law Teachers' 51(4) *Alberta Law Review* 925, pp.934-7. We did not code our data using computer software because our data was not so voluminous as to require this technology.

on”, “where to expand”, “how to approach writing” and to confirm “whether I was on the right track or not.”⁷⁴ Important characteristics of marker feedback for students included it being “constructive”, “immediate”, “detailed and personal ... rather than generic.”⁷⁵ There is nothing particularly novel or ground-breaking with this data. Thoughtful feedback in CLE is viewed as an integral pedagogical tool that enhances student learning and promotes reflective practice.⁷⁶ Summative assessment increases student attention and motivation for graded work.⁷⁷ Additionally, formal criterion-based student evaluation provides structure for feedback; such structure is beneficial for students because it gives clarity on the requisite skills to master and the parameters of evaluation.⁷⁸

However, from our analysis of the qualitative data about marker feedback, we note two important issues with promoting reflective practice and writing. First, students at both universities commented on the perceived value of personalised questions the marker posed on their blogs (and the journals too for Adelaide). Asking questions in feedback clearly promoted self-assessment and reflection leading to improved learning outcomes and engagement with new material.⁷⁹ Students comments included:

⁷⁴ UniSA and Adelaide student focus group comment extracts about marker feedback.

⁷⁵ Ibid.

⁷⁶ Mack, K. (1993) ‘Bringing Clinical Learning into a Conventional Classroom’ 4 *Legal Education Review* 89

⁷⁷ Hyams (n 2) p.34.

⁷⁸ Ibid p.35; Also see Barry, M.M (1995-1996) ‘Clinical Supervision: Walking That Fine Line’ 2 *Clinical Law Review* 137, pp.163-4.

⁷⁹ See Withey, C. (2013) ‘Feedback Engagement: Forcing Feed-Forward Amongst Law Students’ 47 *Law Teacher* 319, pp.328-342.

'I like the additional questions that Margaret would put in our blogs, it gives you a different perspective you might not have thought of yourself'

'... [T]he marker would ask me questions that would make me really think about how I react and behave the way I do. I began asking myself similar questions when completing future blog posts, and constantly asked myself why I think the way I do. I think it allowed me to be more introspective.'

Second, students at both universities also highlighted caring, authentic feedback from the marker as being critical for them to engage and “feel okay” about reflective practice when blogging:

'My initial blog was terrible because I was afraid to open up and did not believe the supervisors would care, however based on how much feedback I received, I realised they do genuinely care and took the time to read my blog and critically evaluate it.'

'I noticed that when marking, language such as 'a minor criticism' was used. I am assuming the lecturers are very careful about this, for example to not make students feel bad.'

'I never felt that I was being judged for how I was feeling.'

Extant literature highlights that quality reflective writing hinges on safety, respect and non-judgment from academics involved in responses or grading.⁸⁰ With respect to the preceding students' comments, we suspect that sharing reflection with peers in

⁸⁰ Ogilvy (n 8) p.60.

blogging makes caring, authentic feedback from the marker an even greater imperative. In contrast to the proponents who see benefit in using feedback as a tool for graded student evaluation,⁸¹ critics point to this process as being 'more judgmental, and suggest[ive] [of] a power dynamic that is inconsistent with self-reflection clinics encourage'.⁸² It is argued that a teacher's grading is unnecessary for expressing 'encouragement or concern' and it is a 'simplistic mechanism ... attractive to teachers precisely because it is unspecific and impersonal.'⁸³ While these concerns about grading were not borne out in students perceptions of marker's feedback to students posts (which were detailed personal and specific), the authenticity of the feedback from other students who were subject to grading in their response was questioned by students at Adelaide.

(ii) Blending Summative and Formative Assessment with Peer Feedback

At Adelaide, there were mixed responses concerning the authenticity of the graded blogs. One student in the focus group thought having peer blog responses marked meant that, 'naturally they had thought about it and it contained value'. However, others disagreed and suggested that peer responses were not genuine because they were designed to maximise grades. These concerns were expressed by a number of students and encapsulated in the following comments:

⁸¹ Hyams (n 2); Barry (n 78); Withey (n 79).

⁸² Barry (n 78) p.158.

⁸³ Rice, S. (2007) 'Assessing - But Not Grading - Clinical Legal Education' (Working Paper No 2007-16, Macquarie University) 1 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1061622>.

'The difference I felt between other students [comments] and Margaret's feedback was that we all know her well enough and [she] had lots of encounters with us and [we] knew we genuinely asking us those questions and be genuinely interested as opposed to [a] student we met once.'

'Feedback given in the course of the exercise was clearly done so to achieve grades. The feedback I received felt as though it was written as much for the markers eyes as it was for mine. This kind of exercise cannot be properly done when it is compulsory and graded.'

When grading is taken out of the equation, peer feedback about the blogging was viewed favourably. At both universities, students highlighted how blogging provided a forum for them to develop self-confidence in their abilities and also build their critical thinking skills through acknowledging different perspectives. These sentiments are captured in this UniSA student comment:

'It helped reduce the stigma associated with reflection. It allowed me to realise that other people experience similar emotions during the clinic. I could use this discussion with other students' as well to strengthen my reflective writing too, and demonstrate that I acknowledge other perspectives.'

While Margaret and Matthew do not intend to weigh into the debate about graded vs non-graded evaluation in this paper,⁸⁴ feedback undoubtedly plays a vital role in

⁸⁴ See Moon (n 5) pp.149-58; Hyams (n 2) 25; Boothby, C. (2016) 'Pigs are not Fattened by Being Weighed – So Why Assess Clinic – and Can we Defend Our Methods?' 23 *International Journal of Clinical Legal Education* 137.

students' perception of the value of reflection and their development of a reflective mindset. In terms of striving for grades and understanding what is required in reflective writing, the marker's feedback was highly valued. Likewise, students recognised the benefit of peer feedback in enabling them to see other perspectives and thus produce better quality reflective writing that met marking criteria. Moreover, it appears that students on our courses were able to utilise both styles of feedback to enhance reflective practice: evaluation (being able to compare and comment on their peers' blogs) and also valuation (considering the markers' grade, comments and assessment criteria).

One final issue that we consider beneficial using blogs and journals and blending formative and summative assessment for these tasks is that it makes them more accessible and achievable. Many of our law students have not engaged with personal or reflective writing in their prior study. Our subjects place high assessment values to reflective writing (45% at UniSA and 35% at Adelaide). It is important that students are equipped to make as good an effort at reflective writing as they can at more typical academic assessment tasks. Both of our courses focus closely on how to "be reflective" providing guided readings, exercises in class, and in class discussions and practice exercises in reflection. This range of inputs in blogging and journaling support students to be able to perform well in reflective writing as well as gaining the learning and insight that we want them to develop as part of their ongoing reflective practice.

(iii) Sharing Reflective Writing with Peers and Being Part of a Community

Another impact blogging has on students' reflective writing, which is also noted in the feedback discussion above, was the sense of having personal feelings validated and being part of a community. At UniSA, students in the focus group were in agreement that:

'reading other students blogs made me feel like I could be more open with my blogs because I could see that they were having similar experiences and feeling similar things to me.'

This relational aspect of blogging and helping students to feel that they are not alone may make it a valuable tool in contributing to students' wellbeing. Two Adelaide students made insightful comments on the benefit of blogging in creating a sense of professional community:

'I also agree that the blog system is certainly forcing us to work together, which creates a sense of community between all of the CLE students. I'm certainly enjoying this feeling as it is rare amongst the law fraternity.'

'What I have come to realise, is that that being a collegiate lawyer extends beyond a paternalistic relationship. Over the last couple of weeks, I have really felt a sense of collegiality with other law students. This is largely attributable to being able to read and respond to other people's CLE experiences, and also receive feedback myself through the blogs.'

Emerging scholarship emphasises the importance of community and connection in effective learning in legal education.⁸⁵ Legal education in many respects is typified by a linear, competitive, black and white reasoning process.⁸⁶ It encourages a thought process that is rooted in an objective, adversarial and catastrophising paradigm.⁸⁷ Thinking like a lawyer turns clients into solvable legal problems where calculations of risks and prediction of outcome can be performed for any particular action throughout the legal battle. This thought process makes it difficult for law students to conceptualise human behaviour as being intimately linked to emotion, bias, frailty, and error in perception and judgment.⁸⁸ The blogging activity stands outside of this paradigm and in fact highlights to students that their peers are undergoing a similar experience. Field et al discuss the multiple stresses that face students in legal education and that students will need to build resilience to in practice⁸⁹. Our view is that blogging supports recognition of emotional intelligence, and humanises legal education, with overall benefit to their wellbeing.⁹⁰

⁸⁵ Field, R., Duffy, J. and Huggins, A. (2014) *Lawyering and Positive Professional Identities*, p.21.

⁸⁶ Huggins, A. (2012) 'Autonomy Supportive Curriculum Design: A Salient Factor in Promoting Student Wellbeing' 35(3) *University of New South Wales Law Journal* 683.

⁸⁷ Field, R. and Duffy, J. (2012) 'Better to Light a Single Candle than to Cures the Darkness: Promoting Law Student Well-being through a First Year Law Subject' 12(1) *Queensland University Technology Law & Justice* 133, pp.153 -54.

⁸⁸ *Ibid* p.154.

⁸⁹ Field, Duffy and Huggins (n 85) p.241.

⁹⁰ *Ibid*.

(v) Sharing Personal Thought with Peers and the Impact on Reflective Writing

Reflective practice and writing can be seen as deeply personal activities, which involve intimate interrogation of personal thought and reaction to experience.⁹¹ We therefore were keen to find out what students thought about sharing their reflective writing with peers through blogging. With respect to whether confidentiality changes our students' approach to reflective writing,⁹² our data indicates that Adelaide students appear to be generally less concerned than UniSA students about sharing their reflective writing with their peers. As mentioned above, approximately 70% of UniSA and 50% of Adelaide students indicated that confidentiality does change their approach to reflective writing. As to why confidentiality changes their approach,⁹³ UniSA and Adelaide students can be categorised into three groupings: first, students who were not prepared to share deep, personal reflection with peers; second, students who shared the sentiment of the first group, but changed when students felt safe to share with peers; and, third students who felt comfortable and liked sharing reflective thought with peers.

The first group, who were simply not prepared to explore or discuss some matters that would be read by their peers, expressed aversion towards being reflective in their blogging. At UniSA, these students said with blogging they felt "inhibited", "could

⁹¹ Hess (n 33) p.146; Ogilvy (n 8) p.91; Elkins (n 34) pp.68-69.

⁹² Appendix C, Question 16.

⁹³ Ibid.

not be personal” and “would not be speaking about deep issues”. Likewise, in the Adelaide focus group session students stated:

‘With blogging there was a sense of restriction in that what you’re writing because you know that the rest of the CLE cohort can read it. The journal allowed me to speak frankly.’

‘I felt that I could discuss issues in more detail when I was writing them for Margaret. Margaret was great at making students feel comfortable and open.’

It would be useful to glean a deeper understanding of this category of student and the reasons why students do not feel comfortable with engaging in reflection with their peers. Only one student at UniSA elaborated on why he or she did not feel comfortable blogging - this student states:

‘As a student who does struggle with ... writing and has an access plan to reflect I found it extremely daunting knowing that my writing would be published for the entire cohort to see. Whilst I do believe that there are many benefits to reflective writing I think the potential for the blogging to be edited slightly even if it is just the students names removed from the blog entries would have a big impact on the students willingness to participate...’

The second group of students said that they were fearful and not prepared to “open-up” until they knew that it was safe to do so. At both universities there were variations of this type of comment:

'I was terrified that other students would be able to read about my feelings, and innermost thoughts - because they were not anonymous. This is why I think I refrained from truly getting to the heart of reflection in my first blog post... I was grateful that every student I spoke to was respectful about the posts.'

The third group of students thought that sharing reflective writing with peers was a positive experience from the outset. In this group, students commented that peer sharing encouraged them to "put extra into it" and that it appealed to their "competitive nature". In the UniSA focus group session, one student stated that,

'...the public nature of it forced me to properly think about reflective writing from the beginning of the semester. Whereas if it was just left at the very end, and I didn't have to write something so that I wouldn't be embarrassed in a sense, my last piece [the reflective report] would have been terrible.'

This preliminary data shows that blogging shared with peers has the potential to promote effective engagement with reflective practice and writing. Matthew and Margaret do not have a firm view about whether reflective writing and blogging should be confidential or otherwise anonymised. Moreover, we are of the view that anonymous blogging is likely to generate a different set of concerns and hesitation amongst a student cohort.⁹⁴ On our data and teaching experience, the key is to ensure that students feel safe to share their feelings and to harness law student predilection

⁹⁴ Adelaide recently accessed and used software that concealed student names in blogging in subsequent semesters. That experience is subject to a current survey seeking to establish the value that students place on anonymity in this context.

for competitiveness in a positive manner.⁹⁵ Of course, this will not always be straightforward in a law classroom where there are a range of learning styles.

V Preliminary Conclusions And Recommendations to Contribute to Best Teaching Practice When Integrating Blogs and Journals

One of Matthew and Margaret's aims in introducing blogging in addition to journaling in their clinical courses is to better inculcate reflective practice both in and outside the classroom. A reflective law student enters the legal profession as a self-directed learner with increased self-awareness,⁹⁶ emotional intelligence,⁹⁷ and a sense of professional identity.⁹⁸ Likewise, reflective law students are better able to transition into the legal profession because they have already started to develop their professional resilience, knowledge and expertise.⁹⁹

At its essence, the ultimate goal of reflective practice in clinical legal education is deep metacognitive development of students and their integrating the professional and personal self.¹⁰⁰ This process can be a deeply private activity that involves inward

⁹⁵ Field, Duffy and Huggins (n 85) p.243; Sturm, S. and Guiner, L. (2007) 'The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity' 60(2) *Vanderbilt Law Review* 515.

⁹⁶ Hess (n 33) p.136.

⁹⁷ James (n 28) p.226.

⁹⁸ Darrow-Kleinhaus, S. (2012) 'Developing Professional Identity Through Reflective Practice' 28 *Touro Law Review* 1443.

⁹⁹ Leering (n 23) pp.102-104.

¹⁰⁰ *Ibid* p.99.

looking personal analysis, which may generate feelings of discomfort and vulnerability.¹⁰¹ When students are required to engage in this process in writing as part of assessable work it is traditionally achieved through explicit guarantees of privacy in submission. Blogging does not on its face fit within that deeply personally reflective framework for a number of reasons, most stemming from the lack of privacy. Our research suggests that the anxieties of some of the student cohort may have diverse impacts on the authenticity, honesty, accuracy, and openness of blogging.

There is a perception that people around the millennial generation are more “carefree” and less concerned with privacy. This arises from the often self-revealing behaviour of this generation online.¹⁰² Our study suggests that levels of comfort with personal self-revelation in a social media environment does not extend into the educational or professional arena, and that students are very mindful of the manner in which they reveal personal observations and thoughts, and relate experiences in this more formal context.

Conversely, the values of community and peer connection that flow from blogging may contribute to the development of perspective, flexibility and collaboration skills. Blogging appears to introduce a collective experience to reflection and reflective practice for students, which cannot be replicated in journaling. With blogging, students valued sharing experiences as a means of normalising both feelings and

¹⁰¹ Hess (n 33) p.146; Ogilvy (n 8) p.91.

¹⁰² Stejin, Schouten and Vedder (n 42) p.3.

challenges; students recognised that different perspectives were prompted by the blogging exchange; they found that peer feedback helped them to learn and reflect more deeply, and they felt that blogging helped create a sense of community and connection within the cohort.

Matthew and Margaret are of the view the blogging and journaling are in a sense complimentary. Irrespective of student preference for blogging or journaling, our data indicates blogging helps students recognise other perspectives and also fosters a greater understanding of their individual experience. These are vital aspects of the reflective process and are important ingredients for a rich introspection or self-reflection - which does not necessarily need to be made public. Further to this, it may be the aspects of reflection that blogging promote positively feed into journaling where privacy is protected. To this end, we suggest that using blogging as an introductory assessment tool for reflection may lead to deeper overall learning outcomes for students. However, neither process occurs naturally or intuitively.¹⁰³ If anything our experience has shown that what we ask students to do, how we equip them to engage in the process, and the stage at which processes are used, is integrally linked to their successful engagement with the process. This conforms with Beveridge's view that effective reflection requires a combination of factors – the

¹⁰³ Spencer (n 6) p.181.

trustworthiness of the reader (be that teacher or students); clear expectations, and effective feedback.¹⁰⁴

To conclude, blogging and journaling can be seen to have slightly different roles. As our experiment has unfolded, we have discovered that blogging has a tripart purpose within the overall reflective process in CLE. First, it helps to create a learning community in which students can connect to each other both personally and by comparing experiences. This supports wellbeing as well as the development of perspective.¹⁰⁵ Second, it creates a pool of material that can be woven into the teaching strategy - bringing to light experiences, observations, common and diverse, that connect theory to practice in the classroom. Finally, it introduces students to the idea of critical reflective learning, which then takes on greater depth in subsequent journaling/ dialogue with their teacher.

¹⁰⁴ Beveridge (n 49) p.64.

¹⁰⁵ Field, Duffy and Huggins (n 85) p.252. Identify maintaining perspective as one of the key elements of wellbeing in law school.

APPENDIX A

UniSA Guidelines for Blogging and Journaling:

Bloggng Prompts for Legal Advice Clinic	Bloggng Prompts for Law Professional Placement
<p>Online Post # 1</p> <p>In 300 words please do the following:-</p> <ul style="list-style-type: none">• State a S.M.A.R.T goal you want to achieve at the Legal Advice Clinic (25 words)• Discuss the results of your VIA strength test: Do you think these results have any relationship to your above stated goal - why or why not? (275 words) <p>Online Post # 2</p> <p>In 400 words, reflect on your performance for your mock interview. In this post, please:</p> <ul style="list-style-type: none">• analyse and evaluate one aspect of your performance in the 'mock' interview with other interviewing experiences at the Legal Advice Clinic (250 words);• consider what part(s) of the interviewing process outlined in the text 'Practical Legal Skills: Developing Your Clinical Technique' are relevant to your experience (50 words);• outline what you need to work on to improve your interviewing skills, and how will you do it (100 words).	<p>Online forum post # 1</p> <p>In 350 words, answer the following questions, which you should be able to respond to even if you've not yet started your placement:</p> <ul style="list-style-type: none">• Describe the work of your host organisation. (50 words)• What types of legal matters does your organisation handle (or come in contact with)? (50 words)• State a current placement goal. How will you achieve this goal and why exactly do you want to reach it? (250 words) <p>Online forum post # 2</p> <p>In 350 words, address the following:</p> <ul style="list-style-type: none">• Describe a task you have undertaken, undertaking or will undertake and the associated challenges you are experiencing. (100 words)• Reflect on possible solutions and next steps with reference to relevant literature. (250 words)
<p>Online Post # 3</p> <p>In 300 words, discuss an experience in the Legal Advice Clinic and its relationship to access to justice. Describe the experience (50 words) and using literature in the e-reading list reflect on its relationship to access to justice (250 words).</p>	<p>Online forum post # 3</p> <p>In 350 words, address the following:</p> <ul style="list-style-type: none">• Describe feedback you have received on a task. (50 words)• Discuss in detail what you learned from this feedback, and any changes that you plan to make for future work based on it together with relevant literature. (300 words) <p>Alternatively, if you have not received any feedback discuss what the barriers are in your receiving feedback and what you can do to overcome them using relevant literature. (350 words)</p>

Reflective Report Prompts for Legal Advice Clinic	Reflective Report Prompts for Law Professional Placement
<p>Part 1: Self-Awareness and Performance Analysis (1200 words)</p>	<p>Part 1: Goals, Performance Analysis (1. 1,500 words; 2. 1,000 words)</p>
<p>Using material from the seminars, authentic happiness/VARK tests, <u>and e-reading</u> list to assist your analysis of your Legal Advice Clinic placement performance and learning:</p>	<p>Using material from the seminars, authentic happiness/VARK tests, <u>and e-reading</u> list to assist your analysis of your placement experience and practical learning:</p>
<ul style="list-style-type: none"> • Briefly describe your Clinic goals and then critically discuss them in light of your placement performance. Do this by reflecting on your placement performance: evaluate what you did well or poorly; consider what strengths and weakness you noticed - discuss how you can develop the former and counteract the later; and, analyse what you have learnt from fellow students at the clinic and the role they have had in your performance. (800 words) • Respond to two forum student posts (identify the posts to which you are responding). Outline what you learnt about yourself and your experience at the Clinic from reading these posts. (400 words) 	<ol style="list-style-type: none"> 1. Briefly describe your placement goals and then critically discuss them in light of your placement performance. Do this by reflecting on your placement performance: evaluate what you did well or poorly; consider what strengths and weakness you noticed - discuss how you can develop the former and counteract the later; and, analyse what you have learnt from your supervisor and the role they have had in your performance. 2. Respond to four forum student posts (identify the posts to which you are responding). Outline what you learnt about yourself and your placement experience from reading these posts.
<p>Part 2: Client-Centred Practice (900 words)</p>	<p>Part 2: Your Future in the Profession and Wellbeing, Values and Ethics (1,500 words)</p>
<p>Using the text and relevant e-readings together with your experiences at the Legal Advice Clinic, engage in reflective analysis of client-centred practice by addressing the questions listed below:</p>	<p>Critically analyse at least three of the articles on the e-reading list which focus on values, ethics or wellbeing by examining their relationship to your placement experience and your plans for personal, educational and career development. How do you plan to stay well in the law (or professional life)? Did your placement engage you in work consistent with your own values? How does this realization help you understand your identity as a lawyer and the path that you may take going forward?</p>
<ul style="list-style-type: none"> • What skills did you develop and use to assist clients to tell their narrative and make an informed decision to resolve their legal and (non)-legal problems? • What barriers inhibited you from being client-centred, and if you could "redo" an interaction with a client, fellow student, or supervisor in order to help you be a 'client centred' professional, what would you do differently if you had your time again? • Do you think there are situations when client-centred practice conflicts with the professional obligations of a legal practitioner - why or why not? Do your conclusions about this have anything to do with your experiences at the Legal Advice Clinic? Why/why not? 	
<p>Part 3: Access to Justice and Lawyers' Ethics (900 words)</p>	
<p>Critically analyse an experience you had at the Legal Advice Clinic using all four approaches to lawyers' ethics that are described in Christine Parker's, 'A Critical Morality for Lawyers: Four Approaches to Lawyer's Ethics' (2004) 30 Monash University Law Review 49. In your critical analysis, you should:</p>	
<ul style="list-style-type: none"> • Highlight the connection between each of the four approaches and its respective impact on access to justice • Outline why a particular approach is (or approaches are) preferable using access to justice literature (in the e-reading list or from your own independent research) to support your conclusion. 	

Rubrics for Blogging and Reflective Report [adapted from Susan L Brooks, and Margaret Reuter, ‘Assessing Law Students as Reflective Practitioners’ (2017) 62 *New York Law School Law Review* 49]

	Fail	Pass	Credit	Distinction	High Distinction
<p>Marking Criterion 1</p> <p><u>Object of the reflection</u></p>	<p>The focus of the online post does not address the question(s).</p> <p>Online post topic(s) are confused, and very little of the writing clearly supports or flows from the topic(s) of reflection.</p> <p>Overall, the answer to the online post question is not coherent.</p>	<p>The focus of the online post partly addresses the question(s).</p> <p>Online post topic(s) are mostly defined, and some of the writing supports or flows from the topic(s) of reflection.</p> <p>Overall, the answer to the online post question is somewhat clear.</p>	<p>The focus of the online post mostly addresses the question(s).</p> <p>Online post topic(s) are defined, and most of the writing supports the topic(s) of reflection.</p> <p>Overall, the answer to the online post question is mostly clear.</p>	<p>The focus of the online post clearly addresses the question(s).</p> <p>Online post topic(s) are well-defined, and all of the writing supports the topic(s) of reflection.</p> <p>Overall, the answer to the online post question is clear.</p>	<p>The focus of the online post addresses all of the question(s) in an articulate and sophisticated manner.</p> <p>Online post topic(s) are well-defined, and all of the writing clearly supports all of the topic(s) of reflection.</p> <p>Overall, the answer to the online post question is clear and concise.</p>
<p>Marking Criterion 2</p> <p><u>Critical perspective-taking in the reflection</u></p>	<p>The online post is too descriptive and the topic(s) of reflection only consider the writer’s perspective in an uncritical manner.</p>	<p>The online post is too descriptive, and the topic(s) of reflection partly consider the writer’s perspective in a critical manner.</p> <p>When needed some perspectives are supported by evidence, but it is done in a superficial manner.</p>	<p>The online post has a partial balance of description, interpretation and evaluation, and the topic(s) of reflection mostly consider the writer’s perspective in a critical manner.</p> <p>When needed some perspectives are supported by appropriate evidence (for example, from e-readings, seminar discussions, and additional research).</p>	<p>The online post has a good balance of description, interpretation and evaluation, and the topic(s) of reflection consider the writer’s perspective in a critical manner.</p> <p>When needed most perspectives are supported by appropriate evidence (for example, from e-readings, seminar discussions, and additional research).</p>	<p>The online post has a complete balance of description, interpretation and evaluation, and the topic(s) of reflection consider the writer’s perspective in a critical manner.</p> <p>When needed all perspectives are supported by appropriate evidence (for example, from e-readings, seminar discussions, and additional research).</p>
<p>Marking Criterion 3</p> <p><u>Personal engagement in the reflection</u></p>	<p>The online post shows no introspection about the student’s experience and reaction.</p>	<p>The online post shows some introspection about the student’s experience and reaction.</p>	<p>The online post shows introspection about the student’s experience and reaction.</p>	<p>The online post shows introspection and demonstrates self-awareness about the student’s experience and reaction.</p>	<p>The online post shows deep introspection and keen self-awareness about the student’s experience and reaction.</p>
<p>Marking Criterion 4</p> <p><u>Writing mechanics</u></p>	<p>The online post is poorly organised, has multiple errors in grammar, and requires extensive editing to produce clarity and concision.</p>	<p>The online post is somewhat organised, has some errors in grammar, and requires some editing to improve clarity and concision.</p>	<p>The online post is organised, has negligible errors in grammar, and requires minor editing to improve clarity and concision.</p>	<p>The online post is organised and paints a vivid picture. It may have a negligible error in grammar, but editing to improve clarity and concision is not required.</p>	<p>The online post is organised, flows well and paints a vivid picture. It has no errors in grammar. Editing to improve clarity and concision is not required.</p>

Reviewed Article

	Fail	Pass	Credit	Distinction	High Distinction
<p>Marking Criterion 1:</p> <p><u>Object of the reflection</u></p>	<p>The focus in the reflective report does not properly address the question(s) in Parts I and II.</p> <p>The topics in the reflective report are confused, and there is inadequate detail to explain the relevance of the reflection to the reader.</p> <p>Overall, the reflective report topic setup is cursory and lacks specific contextual detail in response to the Part I and II questions.</p>	<p>The focus in the reflective report partly addresses the questions in Parts I and II.</p> <p>The topics in the reflective report are mostly defined, and there is adequate background information to explain the relevance of the reflection to the reader.</p> <p>Overall, the reflective report topic setup is sufficient but it lacks specific contextual detail in some of the response to the Part I and II questions.</p>	<p>The focus in the reflective report mostly addresses the questions in Parts I and II.</p> <p>The topics in the reflective report are defined and there is detailed background information to explain the relevance of most of the reflection to the reader.</p> <p>Overall, the reflective report topic setup is clear and there is specific contextual detail in response to most of the questions to the Part I and II questions.</p>	<p>The focus in the reflective report addresses all of the questions in Parts I and II.</p> <p>The topics in the reflective report are well-defined and there is detailed background information to explain the relevance of all of the reflection to the reader.</p> <p>Overall, the reflective report topic setup is very clear and there is specific contextual detail in response to all of the Part I and II questions.</p>	<p>The focus in the reflective report addresses all of the questions in Parts I and II in an articulate and sophisticated manner.</p> <p>The topics in the reflective report are well-defined and there is detailed background information to explain the relevance of all of the reflection to the reader.</p> <p>Overall, the reflective report topic setup is faultless and there is specific contextual detail in response to all of the Part I and II questions.</p>
<p>Marking Criterion 2:</p> <p><u>Perspective-taking in the reflection</u></p>	<p>The reflective report is too descriptive and the topics of reflection only consider the writer's perspective in an uncritical manner.</p>	<p>The reflective report is too descriptive, and the topics of reflection partly consider the writer's perspective in a critical manner.</p> <p>Some of the reflective report addresses multiple perspectives, but it fails to identify and examine the perspective of one or more important actors in the topics of reflection.</p> <p>Perspectives are supported by evidence, but it is done in a superficial manner.</p>	<p>The reflective report has a balance of description, interpretation and evaluation, and the topics of reflection mostly consider the writer's perspective in a critical manner.</p> <p>The reflective report addresses multiple perspectives and all of the important actors in the topics of reflection are identified and examined.</p> <p>Most perspectives are supported by appropriate evidence (for example, from e-readings, seminar discussions, online posts, and additional research).</p>	<p>The reflective report has a balance of description, interpretation and evaluation, and the topics of reflection consider the writer's perspective in a critical manner.</p> <p>The reflective report addresses multiple perspectives and all of the important actors in the topics of reflection are identified and examined in a sophisticated manner.</p> <p>All perspectives are supported by appropriate evidence (for example, from e-readings, seminar discussions, online posts and additional research).</p>	<p>The reflective report has a balance of description, interpretation and evaluation, and the topics of reflection consider the writer's perspective in a critical manner.</p> <p>The reflective report addresses multiple perspectives and all of the important actors in the topics of reflection are identified and examined in a sophisticated manner.</p> <p>All perspectives are supported by appropriate evidence in a sophisticated manner (for example, from e-readings, seminar discussions, online posts and additional research).</p>

Reviewed Article

<p>Marking Criterion 3:</p> <p><u>Personal engagement in the reflection</u></p>	<p>The reflective report shows minimal introspection.</p> <p>The evaluation of the writer's reaction to his or her experience is missing or incoherent.</p>	<p>The reflective report shows some introspection about the student's experience and reaction.</p> <p>There is minimal evaluation of the writer's strengths and weaknesses in relation to the topics of reflection.</p>	<p>The reflective report shows introspection about the student's experience and reaction.</p> <p>There is some evaluation of the writer's strengths and weaknesses in relation to the topics of reflection.</p>	<p>The reflective report shows deep, genuine introspection about the student's experience and reaction.</p> <p>There is evaluation of the writer's strengths and weaknesses in relation to the topics of reflection.</p> <p>The writer's evaluation of strengths and weakness highlights what he/she needs to learn going forward is articulated.</p>	<p>The reflective report shows deep, genuine introspection about the student's experience and reaction.</p> <p>There is keen self-awareness and a sophisticated evaluation of the writer's strengths and weaknesses in relation to the topics of reflection.</p> <p>The writer's evaluation of strengths and weakness highlights what he/she needs to learn is clearly articulated.</p>
<p>Marking Criterion 4:</p> <p><u>Lessons learned from reflection</u></p>	<p>The reflective report is descriptive and there are not any identifying takeaways or learning that is personal to the writer.</p>	<p>The reflective report considers lessons learned from reflection, and partly addresses how this learning will be used in the future.</p> <p>The lessons learned are supported by evidence, but it is done in a superficial manner.</p>	<p>The reflective report considers lessons learned from reflection and mostly addresses how this learning will be used in the future.</p> <p>The lessons learned are supported by appropriate evidence (for example, from e-readings, seminar discussions, online posts and additional research).</p>	<p>The reflective report considers lessons learned from reflection and clearly addresses how this learning will be used in the future.</p> <p>The lessons learned are supported by appropriate evidence (for example, from e-readings, seminar discussions, online posts and additional research).</p>	<p>The reflective report considers lessons learned from reflection and clearly addresses how this learning will be used in the future in a sophisticated manner.</p> <p>The lessons learned are supported by appropriate evidence in sophisticated manner (for example, from e-readings, seminar discussions, online posts and additional research).</p>
<p>Marking Criterion 5:</p> <p><u>Writing mechanics</u></p>	<p>The reflective report is poorly organised, has multiple errors in grammar, and requires extensive editing to produce clarity and concision.</p> <p>AGLC compliance is non-existent.</p>	<p>The reflective report is somewhat organised, has some errors in grammar, and requires some editing to improve clarity and concision.</p> <p>AGLC compliant in some areas, but there are errors.</p>	<p>The reflective report is organised, has negligible errors in grammar, and requires minor editing to improve clarity and concision.</p> <p>AGLC compliant save and except for multiple minor errors.</p>	<p>The reflective report is organised and paints a vivid picture. It may have a negligible error in grammar, but editing to improve clarity and concision is not required.</p> <p>AGLC compliant save and except for a minor error.</p>	<p>The reflective report is organised, flows well and paints a vivid picture. It has no errors in grammar. Editing to improve clarity and concision is not required.</p> <p>AGLC compliant.</p>

APPENDIX B

Adelaide University Guidelines for Blogging and Journaling:

BLOGS	BLOG RESPONSES
<p>A good blog outlines the experience event or issue with just enough detail to give it context, frames the issue you want to discuss, and then discusses with reference to theory and your own experience.</p> <ul style="list-style-type: none"> • Blog # 1 – Share your experience/thoughts of your first day on placement. How did you feel on the first day? Relate your feelings to how a client might feel? What specific strategies will you use to help the client through the process. • Blog # 2 – What do you need advice on? There are 20 smart students in this course. Identify one or more things that you would like some advice/support. Frame your questions with reference to theory and to your preliminary thoughts on the issue. • Blog # 3 – Challenges and successes. You should by now have been involved in one or more interviews or other interactions with clients or other advisors. Select an interesting experience. Explain what you learned from the experience, with reference to your starting point and where you are now. Focus on things you have learned or questions you have arising from the experience. <p>NOT INSPIRED BY ANY OF THESE? You can blog about anything you like. Just remember to frame your discussion in a way that another student can learn from and respond to.</p>	<p>A good blog response generally covers the following:</p> <ul style="list-style-type: none"> • Show that you have heard what the blogger says – not be repeating it but by summarising what was said in context (much as you would provide reframed feedback to a client in an interview) • Engage with the blog by adding your own thoughts experiences or suggestions to the discussion • Build on the conversation by adding your own understanding from further research, or by asking carefully thought out questions <p>RESEARCH does not just mean law journals! It means looking for resources that help explain interpret or build understanding and experience – it is completely acceptable to search online for whatever information you find that is helpful it does not have to be a scholarly resource.</p> <p>STYLE – use your own authentic voice, speak in the first person, tell a story rather than a de personalised academic discussion. Try to engage in a conversation with each other.</p>

REFLECTIVE JOURNAL	
--------------------	--

Journal # 1	I will read and comment on your journal entry within the nominated time, and ask you further questions, which you should answer by the nominated date.
Journal # 2	I will read and respond to your journal entry within the nominated time, and you may respond within the further time nominated.

Blogs and journal posts – Marking Rubric

	Pass (2) Fail (1)	C (3) D (4)	HD (5)
Discusses and evaluates client interviews/client management	<p>Primarily narrative</p> <p>Summative conclusions without reasoned and referenced discussion</p> <p>Reference to readings showing relation of theory to practice.</p>	<p>C – reference to readings or additional materials without critical evaluation and application and discussion.</p>	<p>Minimal narrative. Descriptive analysis (what was said, observed, responses)</p> <p>Critical discussion of readings showing application and understanding of range of sources and ideas.</p>

<p>Discuss/evaluate interprofessional relationships</p> <p>Evaluates others' performance and role</p>	<p>Primarily observational discussion of others role in interviews or other activities.</p>	<p>D – Critical discussion of readings AND integrated discussion of found sources demonstrating capacity to relate additional sources to experiences</p>	<p>Evaluates working style, relational style, group dynamics, demonstrating learning from engagement with and critical observation of others. Additional self-directed research and investigation.</p>
<p>Self evaluation</p> <p>Learning style</p>	<p>Mainly narrative/descriptive discussion of own learning process including reactions to situations, identification of challenges, and strategies to overcome.</p>	<p>D – identifies and discusses personal reactions responses and perspectives honestly and with insight. Explores personal reactions with references to sources or different perspectives.</p>	<p>Insightful evaluation of own engagement with legal process identifying processes behaviours and work management issues. Informed strategies to develop further with reference to readings and other sources as relevant.</p>
<p>Justice access/system issues</p>	<p>Identifies justice access/system issues but does not discuss with reference to readings and extra research</p>		<p>Identifies and discusses system and access issues with reference to experiences on placement, with reference to broader interrelationship of justice access from whole system/social legal perspective. Reasoned personal</p>

			opinion; reference to up to date relevant resources.
Ethics and professionalism	Reference to relevant readings and professional standards in reference to work experiences	C- Relates ethical issues arising on placement or elsewhere in own experiences and relates to ethical rules D- considers found sources and applies with reasons to issues raised.	Evaluative discussion of readings relating to professionalism and ethics with apparent connections between day to day experiences and broader concept of ethical and professional practice. Reasoned/ well-argued opinions.
Journal/blog topics	Brief and narrative response to issues showing personal thought but not going beyond readings; matters discussed in seminars; personal views.		Deep analytical discussion of journal questions showing personal insight and application of observations and experiences to underlying themes supported by reference to prescribed and additional materials

APPENDIX C

5. My blogs were treated respectfully.

Strongly agree

Disagree

Agree

Strongly disagree

Neither agree nor disagree

Comment:

6. Making comments and receiving comments helped me to appreciate the value of feedback.

Strongly agree

Disagree

Agree

Strongly disagree

Neither agree nor disagree

Part B

Reflective Journal

7. Blogging helped me with my reflective journal.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

How?

8. Receiving feedback from the marker about my reflective journal entry helped me to focus deeply on issues.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

9. What additional resources would support you in keeping a reflective journal?

10. The thing(s) I found challenging about journaling were:

- a.
- b.
- c.
- d.

11. The thing(s) I liked about journaling were:

- a.
- b.
- c.
- d.

12. Can you identify three or more instances where journaling helped you to develop your skills or understanding ?

Yes

No

13. Journaling helped me to:

	Yes	No
a. Organise my thoughts.	<input type="radio"/>	<input type="radio"/>
b. Apply theory into my practice.	<input type="radio"/>	<input type="radio"/>
c. Reflect on my performance.	<input type="radio"/>	<input type="radio"/>
d. Improve my performance.	<input type="radio"/>	<input type="radio"/>
e. See other perspectives.	<input type="radio"/>	<input type="radio"/>
f. Develop my self-awareness.	<input type="radio"/>	<input type="radio"/>
g. Improve my problem solving skills.	<input type="radio"/>	<input type="radio"/>

14. Keeping a journal has influenced my approach to learning in the future.

Strongly agree Disagree

Agree Strongly disagree

Neither agree nor disagree

Part C

Assessment

15. Did you prefer blogging or journaling? Why?

16. Confidentiality changes my approach to reflective writing.

Yes

No

Why?

17. When assessed on reflective writing I would prefer a single submission worth more.

Strongly agree

Disagree

Agree

Strongly disagree

Neither agree nor disagree

18. When assessed on reflective writing i would prefer small submissions with equal value.

Strongly agree

Disagree

Agree

Strongly disagree

Neither agree nor disagree

Part D			
Comparing blogging and journaling			
19. When you compare your experiences of participating in the blogs and the journals, which activity do you feel helped you to better:			
	Journaling	Blogging	Neither
a. Questions or challenge your beliefs, values or knowledge?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Develop your self-awareness?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Develop your problem-solving skills?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d. Help you plan for your professional life?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e. Develop your interpersonal skills?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f. Help you learn from experience?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g. Help you better develop your practical legal skills?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
h. Develop new perspectives?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
i. Better understand the complexities of legal practice?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
j. Enhance your practical learning from the placement (and into the future)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
k. Assess your own skills and abilities?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
l. Develop career goals and plans and implement strategies to achieve them?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
m. Accept critical feedback?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
n. Assist others with feedback and support?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

IMPROVING LAW STUDENT RESILIENCE: AN AUSTRALIAN PERSPECTIVE

Doris Bozin, Allison Ballard, Vicki de Prazer¹

Introduction

Do university legal clinics, clinical legal educators and health practitioners have a role to play in building the resilience of law students to better equip them to manage their academic studies and their professional lives as they move into legal practice? Given that mental health issues such as depression and anxiety are rife across Australia's law student and legal professional populations, we wondered if developing a legal clinic model in collaboration with a university-based health service would offer one way to address these concerns. To this end, in June 2017, we piloted a university-based health-justice legal advice clinic at the University of Canberra. The clinic's tripartite goals were to offer practical legal experience to law students, to assess and develop law student resilience through a strong orientation and pastoral care program, and to deliver a pro-bono community legal service to clients (primarily) sourced and referred from the university's medical and counselling service. With the guidance of a

¹ Doris Bozin is a Clinical Assistant Professor in Law at the University of Canberra, Dr Allison Ballard is a lecturer at the School of Policing Studies at Charles Sturt University and Vicki de Prazer is a Senior Psychologist at the University of Canberra.

psychologist, the program focused on developing individualised resilience-building strategies incorporated into the academic course of study. Student-focused strategies directed towards preparing them for personal, academic and professional life challenges encompassed a strong pastoral care component developed in collaboration with a psychologist from the health service. We thought this novel approach might better equip law students to deal effectively with their academic studies and future professional lives.

In this article we first consider the relatively poor mental health of Australian law students, lawyers, other legal professionals, the possible reasons for such outcomes and their potentially tragic consequences, before examining some of initiatives taken by the legal profession and the academy to address student and practitioner mental health concerns. Finally, we discuss the case study of the pilot health-justice legal advice clinic in the context of these concerns.

Australian lawyers are more likely than the general population to experience depression, anxiety,² and other forms of mental illness, with almost a third of solicitors and a fifth of barristers suffering from clinical depression.³ Lawyers are also more likely than other professionals to self-medicate for stress and sadness using drugs,

² Laura Helm, *Mental Health and the Legal Profession: A Preventative Strategy Final Report* (Australia, Law Institute of Victoria, 2014) 6.

³ *Ibid.* See also Norman Kelk, Georgina Luscombe, Sharon Medlow, and Ian Hickie, *Courting the blues: Attitudes towards depression in Australian law students and legal practitioners* (Australia, Brain & Mind Research Institute, University of Sydney, 2009).

including illicit drugs and alcohol.⁴ They are also at higher risk of heart disease.⁵ In addition, the personality profiles of lawyers are often said to ‘cluster around perfectionism and pessimism’ characteristics, known risk factors for severe depression.⁶ Suicide on account of severe depression and a reluctance to seek help are also common throughout the legal fraternity,⁷ including across Australia’s magistrate and judge cohort.⁸ This dire situation is comparable to that in other common law countries: a study by the Canadian Bar Association for example, suggests the suicide rate of lawyers is five to six times higher than Canada’s national average,⁹ while the New York and Chicago Bar Associations report rampant ‘unhappiness’ and ‘discontent’ among young lawyers.¹⁰ In addition, researchers at Johns Hopkins

⁴ Toni Vozzo, ‘New committee focuses on wellbeing of legal profession’ (2012) *Law Society of South Australia Bulletin* 10,10; Janet Chan ‘Work-Life Balance’ (2015) *Law Society of NSW Journal* 58,58; Cindy Penrose, ‘Another Inconvenient Truth: Mental Health and the legal profession’ (2012) 223 *Ethos* 9; Beyond Blue: The National Depression Initiative, Annual Professions Survey: Research Summary (April 2007) 3 <http://www.judicialcollege.vic.edu.au/sites/default/files/2007%20-%20Beyond%20Blue%20-%20Annual%20Professions%20Survey.pdf>.

⁵ Martin E. P. Seligman, Paul R. Verkuil, and Terry H. Kang ‘Why lawyers are unhappy’ (2005) 10(1) *Deakin Law Review* 49, 53.

⁶ Cindy Penrose, ‘Another Inconvenient Truth: Mental Health and the legal profession’ (2012) 223 *Ethos*, 8.

⁷ *Ibid.*

⁸ Noel Towell and Adam Cooper, ‘Struggling Magistrates Cry for Help’ *The [Melbourne]Age* (2 April 2018) online: *The Age* <<https://www.theage.com.au/national/victoria/struggling-magistrates-cry-for-help-20180401-p4z7bh.html>>; Peter Wilmoth, ‘Loneliness, panic attacks, insomnia: Life for some on the judicial bench’ *The Sydney Morning Herald* (2 August 2018) online: *SMH* <<https://www.smh.com.au/national/loneliness-panic-attacks-insomnia-life-for-some-on-the-judicial-bench-20180731-p4zukq.html>>.

⁹ Skip Simpson and Paul Quinnett, ‘Preventing Suicide: A Challenge to the Legal Profession’ (2008) *GP Solo* 60, 60.

¹⁰ Seligman et al, above n5, 49-50.

University found that even adjusting for socio-demographic factors, the legal profession suffered from major depressive disorders at 3.6 times the rate of other workers.¹¹

In 2009, Australia's Brain and Mind Research Institute (BMRI) conducted research into depression, distress and other mental illnesses in lawyers and law students.¹² Its report confirmed what had already been found in the United States (US) and Canada; that law students are at high risk of depression and psychological distress. Indeed, the BMRI found that 35 per cent of law students reported high levels of distress as compared to 13 per cent of the general community.

It seems then that both attending law school and practising law are health hazards.¹³ And since law is such a public profession, dysfunction within it can entail

*'.... societal, as well as personal, costs. Indeed, the creation of law itself is in one sense bound up with the health of judges, lawyers, legislators, and academics.'*¹⁴

As Thornton observes though, it is difficult to temper the psychological distress of law students (or lawyers) where it emanates from unknown causes.¹⁵ Therefore, gaining a

¹¹ Ibid, 53.

¹² Kelk et al, above n3, 46; Margaret Thornton, 'Law student wellbeing: A neoliberal conundrum' (2016) 58(2) Australian Universities Review 42, 42.

¹³ Penrose, above n4, 8.

¹⁴ Martin E. P. Seligman, Paul R. Verkuil, and Terry H. Kang 'Why lawyers are unhappy' (2005) 10(1) Deakin Law Review 49, 50-51.

¹⁵ Thornton, above n12, 42.

better understanding of the factors that contribute to this dysfunction in both populations with a view to identifying possible remedies (or better still, prevention) is a worthwhile exercise.

I. Why Such High Rates of Mental Illness?

A number of possible explanations have been proposed to account for the high levels of mental illness and distress within both the legal profession and in law students. These explanations canvas and cross the boundaries of individual, psychological, organizational, cultural and societal perspectives. Factors contributing to high levels of psychological distress may, for example, include the individual personality profiles of law students and legal practitioners,¹⁶ the work culture of the legal profession,¹⁷ workplace bullying and harassment,¹⁸ high work caseloads (especially for judges and

¹⁶ Penrose, above n4, 58.

¹⁷ Chan, above n4, 58.

¹⁸ Sophie Schroder, 'Lawyers some of Australia's worst bullies?' *Australasian Lawyer* (8 October 2014) online: *Australasian Lawyer* <<https://www.australasianlawyer.com.au/news/lawyers-some-of-australias-worst-bullies-192671.aspx>>. See also, the International Bar Association report, *Us Too? Bullying and sexual harassment in the Legal Profession* (IBA, 2019).

magistrates), under-resourcing,¹⁹ low levels of autonomy and decision latitude,²⁰ the adversarial nature of the legal practice (particularly in common law countries and jurisdictions),²¹ social trends such as neoliberalism,²² increased levels of (often critical, uninformed, and biased) public scrutiny from the media and politicians, and in the case of judicial officers especially, the solitary and independent nature of their work.²³ Additionally, relentless public criticism for being “soft on crime”, “tough” or accusatory language around so-called “errors” in judicial decision-making levelled by superior courts in appeal decisions, and the need for judicial officers to advocate on behalf of unrepresented litigants in the context of reduced legal aid funding can all take their toll and have potentially devastating impacts on the psychological well-

¹⁹ Recent figures suggest that in the Australian State of Victoria, 120 magistrates and court registrars heard more than 680,000 criminal matters in the 2015-16 financial year and could face a daily load of 50 cases on matters ranging from family violence and assault to driving offences: Peter Wilmoth, ‘Loneliness, panic attacks, insomnia: Life for some on the judicial bench’ *The Sydney Morning Herald* (2 August 2018) online: SMH <<https://www.smh.com.au/national/loneliness-panic-attacks-insomnia-life-for-some-on-the-judicial-bench-20180731-p4zukk.html>>; Each magistrate in Victoria oversees an average 8000 hearings [2500 cases] annually, while half the cases in the County Court are sexual offences, often involving children: Adam Cooper, ‘What you don’t understand about our job: judges, magistrates speak out’ *The ([Melbourne]Age)* (3 August 2018) online: *The Age* <<https://www.theage.com.au/national/victoria/what-you-don-t-understand-about-our-job-judges-magistrates-speak-out-20180803-p4zvey.html>>.

²⁰ Seligman et al, above n5, 50.

²¹ Judy Gutman ‘Litigation as a Measure of Last Resort: Opportunities and Challenges for Legal Practitioners with the Rise of ADR’ (2015) 14(1) *Legal Ethics* 1-21.

²² Thornton, above n12, 42-49.

²³ Adam Cooper, ‘What you don’t understand about our job: judges, magistrates speak out’ *The Age* on-line 3 August 2018 <<https://www.theage.com.au/national/victoria/what-you-don-t-understand-about-our-job-judges-magistrates-speak-out-20180803-p4zvey.html>>; Peter Wilmoth, ‘Loneliness, panic attacks, insomnia: Life for some on the judicial bench’ *The Sydney Morning Herald* on-line 2 August 2018 <<https://www.smh.com.au/national/loneliness-panic-attacks-insomnia-life-for-some-on-the-judicial-bench-20180731-p4zukk.html>>.

being of practitioners.²⁴ These possible explanations for high levels of mental illness in the legal profession are further explored below. As Jenaway points out though, compounding all of the above is of course ‘the unfavourable public perception of lawyers - supported by a plethora of movies and jokes - as immoral, ruthless mercenaries.’²⁵

A. Mental Health Within the Legal Profession

The nature of the work undertaken by lawyers, including being exposed to vicarious trauma, constant work pressures including hefty caseloads and substantial (and potentially unachievable) ‘billable hours’ targets,²⁶ a lack of workplace flexibility and poor workplace cultures can all add to or cause psychological distress among legal practitioners.²⁷ Where there is a working environment which may necessarily

‘[C]ombine [the loneliness of solitary, independent decision-making and] dealing with a really vile and traumatic case involving shocking child pornography and then going

²⁴ Peter Wilmoth, ‘Loneliness, panic attacks, insomnia: Life for some on the judicial bench’ The Sydney Morning Herald on-line 2 August 2018 <<https://www.smh.com.au/national/loneliness-panic-attacks-insomnia-life-for-some-on-the-judicial-bench-20180731-p4zukq.html>>.

²⁵ Gutman above n21, 8.

²⁶ See for example Yale Law School, The Truth about the Billable Hour (updated July 2017) online: Yale Law School <<https://law.yale.edu/truth-about-billable-hour-0ome-private-law-firms>> where billing 37.5 hours per week (the average Australian working-week) requires lawyers to spend long hours at work to achieve revenue targets.

²⁷ Kelk et al, above n3; and Chan above n4, 58.

*home to your kids or grandkids and trying to put that out of your mind and you've been alone all day making decisions. That's a challenge.'*²⁸

In addition, Australia's legal professional culture generally tends to be 'male-dominated, money-centred, overly competitive (thus encouraging aggression rather than collaboration)' with unreasonable expectations around working hours.²⁹ These characteristics are not inherently conducive to achieving good mental health and well-being or work-life balance. There is also evidence that the levels of adversarialism inherent in the nature of legal practice in common law jurisdictions:

*'... negatively impacts on the social well-being and mental health of legal practitioners.... [and that] ... [d]ecreased adversarialism may lead to a happier and healthier legal profession, which [would necessarily benefit] the administration of justice.'*³⁰

Further complicating a complex and difficult picture – an environment in which over-work and under-resourcing is rife, in which a commitment to social justice is not always translatable into day-to-day basis work practices, and in which practitioners are apparently reluctant to admit to, report, or seek help with their psychological struggles – is the fact that almost a third of legal professional disciplinary matters

²⁸ Victorian County Court Chief Judge Peter Kidd: Adam Cooper, 'What you don't understand about our job: judges, magistrates speak out' The Age on-line 3 August 2018 <<https://www.theage.com.au/national/victoria/what-you-don-t-understand-about-our-job-judges-magistrates-speak-out-20180803-p4zvvey.html>>.

²⁹ Chan, above n4, 58.

³⁰ Gutman, above n 21, 2.

involve issues of lawyer mental ill-health.³¹ In other words, severely impaired professional practice can be a consequence of poor mental health, and may in fact be the issue that first brings the practitioner's mental disorder to light.³² This is a vicious circle in which compromised mental health leads to poor professional performance, judgement and misconduct, the consequences of which in turn, exacerbate poor mental health and distress.

B. The Mental Health of Australian Law Students

While some students may self-select to study law because of the status associated with having a law degree,³³ research also suggests that certain personality traits such as competitive behaviour,³⁴ high achievement-orientation,³⁵ and pessimistic tendencies also predispose law students to a risk of depression when they become lawyers.³⁶ Additionally, law schools may act as potential breeding grounds for future lawyer demoralization.³⁷ Legal education is said to promote certain types of behaviours such

³¹ Penrose, above n6, 10.

³² This figure is based on an estimate by John Briton, the Queensland Legal Services Commissioner, but it is likely that this would be reflected in other Australian States and Territories: Penrose, above n6, 10.

³³ Wendy Larcombe, Ian Malkin and Pip Nicholson, 'Law Students' Motivations, Expectations and levels of Psychological Distress: Evidence and Connections' (2012) 22 *Legal Education Review* 71, 89.

³⁴ Ivar Nordmo and Akylina Samara, 'The Study Experience of the High Achievers in a Competitive Academic Environment: A Cost of Success?' (2009) *Issues in Educational Research* 255.

³⁵ Gerald Hess, 'Heads and Hearts: The Teaching and Learning Environment in Law School' (2002) 52 *Journal of Legal Education* 75.

³⁶ Seligman et al, above n5, 52-54.

³⁷ *Ibid.*

as being defensive, pessimistic and perfectionist - in law students these behaviours may, in turn, lead to unhappiness.³⁸

Australian and other research has found that law students do not demonstrate elevated psychological distress *before* law school – distress only manifests during the first year of university study.³⁹ Still, ‘pessimism’ is not inherently pejorative – it may be reframed as ‘prudence’ – a healthy caution, scepticism and ‘reality-appreciation’ which may be a professional (if not personal) asset for law students and lawyers.⁴⁰ It is a quality embraced both in legal education⁴¹ and by the legal profession because it enables ‘good lawyers’ to see the ‘snares and catastrophes that might conceivably occur in any given transaction’.⁴² While this ability may well benefit the client, it is not always beneficial for lawyers within their private spheres.⁴³ Educating law students to display the qualities of ‘detachment, adversarialism and neutrality’ or to ‘think like a lawyer’ may negatively impact on student well-being.⁴⁴ This points to the need to

³⁸ Susan Daicoff, ‘Lawyer, Know Thyself’ (1997) 46(5) *American University Law Review* 1337.

³⁹ Thornton, above n12, 43; Kennon M Sheldon and Lawrence S Krieger, ‘Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well Being’ (2004) 22 *Behavioural Sciences and the Law* 262, 275; Molly Townes O’Brien, Stephen Tang and Kath Hall, ‘Changing Our Thinking Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum’ (2011) 21 *Legal Education Review* 149.

⁴⁰ Seligman et al above n5, 56.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*, 49.

⁴⁴ Thornton, above n12, 52.

develop skills to recognise the difference between the psychological attitudes and approaches needed at work versus those required at play.⁴⁵

A number of studies have confirmed that Australian law students experience high to very high levels of psychological distress in comparison to other people in the community.⁴⁶ For instance study by Leahy et al found that law student psychological distress levels (58 per cent) were higher than those of mechanical engineering students (50 per cent), medical students (44 per cent) and psychology students (40 per cent).⁴⁷ While (South) Australia's tertiary students generally are four times more likely to be psychologically distressed than their age-matched peers from the general population.⁴⁸ A further study that compared law and psychology students again found that law students had higher mean anxiety and depressive scores.⁴⁹

That said, other research indicates that law students as a group do not necessarily experience more psychological distress than non-law students and that distress is a

⁴⁵ Seligman et al above n5.

⁴⁶ Kelk et al, above n 3.

⁴⁷ Catherine M. Leahy, Ray F. Peterson, Ian G. Wilson, Jonathan W. Newbury, Anne L. Tonkin, Deborah Turnbull, 'Distress levels and self-reported treatment rates for medicine, law, psychology and mechanical engineering tertiary students: cross-sectional study' (2010) *Australian and New Zealand Journal of Psychiatry* 608 at 609.

⁴⁸ *Ibid*, 609, 613.

⁴⁹ Natalie Skead and Shane Rogers, 'Do Law Students Stand Apart From Other University Students in their Quest for Mental Health: A Comparative Study on Wellbeing and Associated Behaviours in Law and Psychology Students', (2015) *International Journal of Law and Psychiatry* 42-43, 81-90.

university student-wide problem.⁵⁰ For instance, Larcombe et al found that veterinary science students at the University of Melbourne experienced higher levels of psychological distress than law students,⁵¹ although law students recorded higher levels of stress than disciplines such as engineering and science.⁵²

The culture of legal education itself has attracted research attention with much of the early work on the mental health of students undertaken in the US. A longitudinal study led by Benjamin found that symptoms of psychological distress in law students increased significantly in the first year of law and persisted throughout their degree studies, to post-graduation,⁵³ having a negative effect on their overall mental health.⁵⁴

Recent Australian research mirrors these findings. For example, O'Brien et al found that prior to entering law school, law students have similar levels of wellbeing to, and in some cases higher levels, than those reported in the general population.⁵⁵ However, from the first semester in law school, law students begin to experience stress, anxiety and depression at rates higher than students in other disciplines such as medicine,

⁵⁰ Wendy Larcombe, Sue Fince and Rachel Sore, 'Who's Distressed? Not Only Law Students: Psychological Distress Levels in University Students Across Diverse Fields of Study' (2015) 37 *Sydney Law Review* 243.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Andrew Benjamin, Alfred Kaszniak, Bruce Sales and Stephen Shanfield, 'The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers' (1986) 11 *American Bar Foundation Research Journal* 2.

⁵⁴ *Ibid.*

⁵⁵ O'Brien et al, above n39, 149.

psychology and engineering.⁵⁶ Further, a study conducted by Lester et al reported a significant increase in symptoms of depression in law students from the beginning to the end of first year.⁵⁷ Lester's study showed that by the end of first year of law school, 15 per cent of students reported symptoms indicating moderate to very high levels of depression requiring possible clinical investigation as compared to 8.5 per cent at the beginning of first year.⁵⁸

This then leads to further questions about curriculum design and its potential contribution to the psychological distress of law students.⁵⁹ For example, does an emphasis on rational legal reasoning and linear thinking (which may be disconnected from social justice issues and de-emphasise creativity, personal values and reflection),⁶⁰ together with teaching practices such as the Socratic method,⁶¹ have a negative impact on law student health and well-being? And does the learning environment within law schools – with its typically highly competitive nature and

⁵⁶ *Ibid.*

⁵⁷ Anthony Lester, Lloyd England and Natalia Antolak-Saper 'Health and Wellbeing in the First Year: The Law School Experience' (2011) 36 (1) *Alternative Law Journal* 47.

⁵⁸ *Ibid.*

⁵⁹ O'Brien et al, above n39, 149.

⁵⁹ *Ibid.*

⁶⁰ James Duffy, Rachael Field and Melinda Shirley, 'Engaging Law Students to Promote Psychological Health' (2011) *Alternative Law Journal* 250; Anne Colby, Judith Welch Wegner, Lee Shulman, Lloyd Bond, and William M. Sullivan, *Educating Lawyers: Preparation for the Profession of Law*, Jossey Bass, 2007; Jean Stefancic and Ricard Delgado, *How Lawyers Lose their Way: A Profession Fails its Creative Minds*, Duke University Press, 2005.

⁶¹ Anna Huggins, 'Autonomy Supportive Curriculum Design: A Salient Factor is Promoting Law Students Wellbeing (2012), *University of New South Wales Law Journal* 683.

heavy workloads also contribute to reduced levels of law student well-being?⁶² Do they, in turn, reduce student peer support,⁶³ as well as opportunities for it to occur? Other contributing factors may include inadequate feedback, a lack of competence and autonomy,⁶⁴ a lack of social connectedness,⁶⁵ and inadequate support of services for students.⁶⁶ Extrinsic factors such as why students wanted to study law in the first place,⁶⁷ and the rewards for doing so, as well as a preoccupation with academic results and ranking,⁶⁸ may also have a part to play.

Researchers have also considered the socio-economic context of law students to assess whether these factors are also contribute to psychological distress. Those studies highlight that factors such as age,⁶⁹ gender,⁷⁰ employment (including the number of

⁶² *Ibid.*

⁶³ Vozzo, above n4, 10 and Kelk et al, above n3, 46.

⁶⁴ Huggins, above n61, 683.

⁶⁵ Natalie Skead and Shane L Rogers, 'Stress, Anxiety and Depression in Law Students: How Student Behaviours Affect Student Wellbeing', (2014) *Monash Law Review* 40, 2. The authors conclude that social connectedness is central to wellbeing of law students.

⁶⁶ Huggins, above n61, 683.

⁶⁷ Dominic Fitzsimmons, Simon Kozlina and Prue Vines, 'Optimising the First Year Experience in Law: The Law Peer Tutor Program at the University.

⁶⁸ Wendy Larcombe, Ian Malkin and Pip Nicholson, 'Law Students' Motivations Expectations and Levels of Psychological Distress: Evidence and Connections (2012), 22 *Legal Education Review*, 71, 85, 86.

⁶⁹ Wendy Larcombe, Sue Finch, Rachel Sore, Christina M. Murray, Sandra Kentish, Raoul A. Mulder, Parshia Lee-Stecum, Chi Baik, Orania Tokatlidis & David A. Williams 'Prevalence and Socio-Demographic Correlates of Psychological Distress Among Students at an Australian University (2016) *Studies in Higher Education*, 41:6, 1074-1091.

⁷⁰ Wendy Larcombe, Letty Tumbaga, Ian Malkin, Pip Nicolson, Orania Tokatlidis, 'Does and Improved Experience of Law School Protect Students from Depression, Anxiety and Stress? An Empirical Study of the Law School Experience of LLB and JD Students' (2012) *University of*

hours worked),⁷¹ and caring responsibilities⁷² may all influence the psychological distress of law students.

Soh et al found that law students had not acquired a foundational level of mental literacy to ensure their own wellbeing. Further, this study found that while many law students suffered from high to very high levels of stress, they also lacked a proactive approach to seek out medical and health services,⁷³ raising questions about why this would be so in an otherwise intelligent and (at least initially, pre-law school) well-adjusted cohort of students.

It seems then that the high levels of psychological distress among law students is a multi-factorial problem - and actually going to law school is (or becomes) part of that problem. But it is also important to consider the broader socio-economic context⁷⁴ as

Melbourne Law Research Services,¹; Nerissa Soh, Fiona Burns, Rita Shackel, Bruce Robinson and Michael Robertson, 'Law Student Mental Health Literacy and Distress: Finances, Accommodation and Travel Time, (2015) Legal Education Review 25 1.

⁷¹ Helen Stallman 'Psychological Distress in University Students: A Comparison with General Population Data' (2011) *Australian Psychologist* 45, 4.

⁷² Wendy Larcombe and Katherine Fethers, 'Schooling the Blues? An Investigation of Factors Associated with Psychological Distress Among Law Students, (2013) *University of New South Wales Law Journal* 390.

⁷³ *Ibid.*

⁷⁴ Larcombe et al, above n72. More importantly the study shows that you need to take care before making broad assumptions in relation to the reasons behind law students' high psychological distress levels.

well as students' own personality traits, characteristics, expectations and motivations.⁷⁵

Some researchers have criticised the conclusions drawn from empirical research and argued that looking at the law school experience (including the "legal thinking" taught there) misses the "wider picture". Parker, for example, claims that mental distress is a society-wide problem which cannot be treated at an individual level.⁷⁶

However, as Thornton points out, the growing body of Australian literature around law student well-being which emerged in the 21st century offers no explanation for the sudden 'eruption of psychological distresses among law students'.⁷⁷ Leahy et al did not attempt to explain why tertiary student distress rates are significantly higher than age-matched peers who were not tertiary students but did suggest that changing university cultures may well be a factor.⁷⁸ Additionally, the many competing demands faced by students including part-time work, intensive discipline-based academic commitments (common to disciplines such as medicine, law and mechanical engineering) and family obligations are likely to play a role.⁷⁹ They postulated that

⁷⁵ Larcombe et al, above n72, 85-86.

⁷⁶ Christine Parker, 'The "Moral Panic" Over Psychological Wellbeing in the Legal Profession: A Personal or Political Ethical Response?' (2014) 37 UNSW Law Journal 1103, 1121.

⁷⁷ Thornton, above n12, 42.

⁷⁸ Leahy et al, above n47, 608-609.

⁷⁹ *Ibid.*

since these multi-factorial demands minimize time for social activities and relaxation, they could contribute to the high rates of reported psychological distress.⁸⁰

In Thornton's view though, the focus on law student well-being individualises and depoliticises the problem, shifting focus from the significant role played by the neoliberalism of Australia's higher education and transforming it from a public to a private good. In her view, the ways in which law students are taught – the "how" and the "what" of legal education – could be altered to ensure they are better equipped to deal with the pressures of the "age".⁸¹ Specifically she argues that law schools should be more transparent about labour market problems and the curriculum 'diversified to prepare students for a range of employment destinations other than traditional legal practice'.⁸² This does not deflect from the fact that law students are suffering distress, that many of them will enter legal practice after their studies, and that their future selves are likely to experience the same levels of psychological distress as contemporary lawyers do. Unless of course, some action is taken to change either their capacity to cope or the legal culture in which they find themselves.

Australia's tertiary sector has long been concerned with the high prevalence of mental health problems in all university students, not just law students, as this cohort has

⁸⁰ Ibid.

⁸¹ Thornton, above n12, 42.

⁸² Ibid.

been identified as being an at-risk population.⁸³ Stallman argues that this highlights the need for universal “early interventions” to prevent the development of severe mental illness in university students and that it is an issue that should be of concern for all educators.⁸⁴

II. Law: Australian mental health Initiatives

Over the last decade, in line with an increased community awareness of the high levels of mental health issues and distress experienced by the legal profession and law students,⁸⁵ a number of mental health and wellbeing initiatives have been implemented by the legal profession and the academy.⁸⁶

There has also been broader support for initiatives that look at cultural, organisational and societal issues to support the legal profession and law students. In 2012, Fisher identified a number of initiatives to make life in legal organizations, universities, law firms and the courts ‘less stressful and more supportive for legal practitioners and students’. These included providing education about mental illness (including triggers, preventative measures and effective remedies), addressing toxic workplace cultures, emphasising the role of ‘enlightened leadership’ (including by putting

⁸³ Stallman, above n71, 4.

⁸⁴ *Ibid.*

⁸⁵ Briana Everett, Perils the profession can’t ignore (12 December 2011) Lawyers Weekly <http://www.lawyersweekly.com.au/news/repairing-the-paradox> and BMRI Report. Janet Chan ‘Depression, Anxiety & Stress in the Legal Profession’, Law Institute of Victoria Journal December 2014

⁸⁶ Helm, above n2, 6.

meaningful, confidential and accessible pastoral care systems in place), and examining ways to increase individual and team resilience in the face of work stress.⁸⁷

A. Initiatives within the legal/judicial profession

By 2014 Australia's legal professional associations had generally accepted that lawyer mental wellbeing was an industry and profession-wide issue requiring action.⁸⁸ Prior to this though the profession had already been quietly taking steps to address these concerns.⁸⁹

The peak representative body of the Australian legal profession, the Law Council of Australia, provides a national support mechanism through its mental health and wellbeing portal.⁹⁰ Further, the law societies/institutes of each Australian State and Territory seek to raise awareness of and to remove the stigma of mental illness in the

⁸⁷ Penrose, above n6, 9.

⁸⁸ Helm, above n2, 6.

⁸⁹ Beyond Blue and Beaton Consulting, the National Depression Initiative Report 2007; online: <https://www.beyondblue.org.au/media/media-releases/media-releases/professionals-unsure-of-how-to-manage-depression-and-anxiety-disorders-in-the-workplace>. Overall the survey found that professionals and students experience more symptoms of depression than the rest of the population, and that the symptoms of depression amongst lawyers and law students, when compared to other professions were high.

⁹⁰ Law Council of Australia, online: <https://www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/mental-health-and-wellbeing-in-the-legal-profession>.

legal profession and in law students. They also provide a range of services to support mental health and wellbeing of their member lawyers.⁹¹

Along with raising awareness of the mental health issues impacting on members of the legal profession, it has become easier for members of the profession to access mental health services.⁹² Together, these factors have all contributed to a growing national conversation about the mental health and wellbeing of the legal profession,⁹³ much of which has focused on the structural factors leading to poor mental health within the profession.⁹⁴ A recent inquiry by Victoria's workplace health and safety regulator, Worksafe, into employee fatigue at one of Australia's "top-tier" law firm, for example, highlighted mental health issues and safety risks in legal workplaces.⁹⁵ Worksafe's inquiry arose in the context of a complaint to the Royal Commission into

⁹¹ Each Law Society has a range of services that includes access to counselling services for their members and families and continuing legal education to improve mental health and wellbeing of the legal profession.

⁹² For example, the Victorian Bar has a 24-hour counselling service; many large firms and government agencies have employee assistance programs (EAP) _ which provide confidential counselling services.

⁹³ Those forums include, but aren't limited to: the National Wellness for Law which explores issues of mental health and wellbeing in the legal profession and law students through the exchange from the profession, academia and its supporters and the Australian Wellness Network for Law that provides hub for sharing of information and resources – a community of legal academics, practitioners and students who are committed to: first, addressing the high levels of psychological distress experienced in law; and second, promoting wellness at law school, in the legal academy, and in the profession.

⁹⁴ Jennifer Windsor, Maria Nawaz Submission to the Productivity Commission Inquiry into Mental Health (Law Society of New South Wales Young Lawyers, 19 April 2019) 9, available on-line at https://www.pc.gov.au/_data/assets/pdf_file/0012/241203/sub456-mental-health.pdf.

⁹⁵ *Ibid*, at 3.

Misconduct in the Banking and Finance Services Industry about overwork in the profession.⁹⁶

In relation to this complaint, Thompson et al reported on 12 October 2018:

'graduates were subject to gruelling conditions, with some employees choosing to sleep at the firm's Melbourne office rather than return home. Day and night shifts were allocated, so work could continue around the clock'.⁹⁷

In a follow-up article in the Australian Financial Review on 26 October 2018, Whyte et al suggested that the problems of overwork and fatigue in the legal profession extended to the particular law firm mentioned in the WorkSafe complaint.⁹⁸

Yet, at the same time, a number of law firms have taken initiatives to assist their staff with mental health and wellbeing issues, including by employing an on-site psychologist to provide early intervention to assist staff with any mental health and well-being issues.⁹⁹

⁹⁶ Ibid, at 9.

⁹⁷ Ibid. see also Sarah Thompson, Jemima Whyte and David Marin-Guzman, 'King & Wood Mallesons Investigated for Overworking Employees' (The Australian Financial Review, 12 October 2019) online: <https://www.afr.com/companies/king--wood-mallesons-investigated-for-overworking-employees-20181011-h16hei>; Kate Allman 'The Burnout Profession' (Law Society Journal 27 March 2019) online: <https://lsj.com.au/articles/the-burnout-profession/>.

⁹⁸ Jemima Whyte 'Worksafe Investigation Lifts Lid On Can of Worms' (Australian Financial Review (26 October 2018)

⁹⁹ Hannah Wooton 'Law firm brings psychologist on site as mental health wanes' (Australian Financial Review 31 October 2019) 6 online: <https://www.afr.com/companies/professional-services/law-firm-brings-psychologist-on-site-as-mental-health-wanes-20191023-p533g6>.

Perhaps more importantly, there has been a generational change occurring in how millennials approach the nature of work. For example, Furlong argues that we are at an important transition in the evolution of legal services with a new generation of lawyers demanding a better work-life balance.¹⁰⁰ Furlong argues that the next generation of lawyers will ‘rewrite the DNA of law firms’¹⁰¹ and reshape the legal industry,¹⁰² as millennials take-over the legal industry.¹⁰³

B. Initiatives within the Australian Academy

Since the BMRI report, law schools across Australia have implemented a range of strategies to address law student mental health well-being with strategies varying depending upon the particular social and cultural setting of the university. Law school budgets, funding for mental health initiatives, leadership commitment, student

¹⁰⁰ Jordan Furlong, ‘The rise of the millennial lawyer’ Lawyers on Demand Report (24 May 2017) online: <<https://www.lodlaw.com/reports/rise-millennial-lawyer>>. This new generation of lawyer also wants collaboration, connection and diversity of work.

¹⁰¹ Ibid. See also Doris Bozin, Allison Ballard and Vicki de Prazer, ‘Interdisciplinary Collaboration to Benefit ‘New’ and Emerging Lawyers’ in Judith Marychurch and Adiva Sifris, *Wellness for Law: Making Wellness Core Business*’ (LexisNexis Butterworths, Australia, 2019) 229-238.

¹⁰² Margot Freedman Alicks ‘How millennials are reshaping the practice of law’ (Colorado Biz 19 November 2018) online: <https://www.cobizmag.com/Trends/How-Millennials-are-Reshaping-the-Practice-of-Law/>..

¹⁰³ Amanda Robert, ‘Millennials are poised to take over; how will the legal industry need to change?’ (American Bar Association Journal 1 March 2019) online: <<http://www.abajournal.com/news/article/millennials-are-a-dominant-force..>

communities, and law course mode of delivery are all important factors in determining the types of strategies that a given law school adopts.¹⁰⁴

Australian legal academics acknowledge the importance of addressing the issue of high levels of law student psychological distress in a range of different ways.¹⁰⁵ Many working within this community feel they have a responsibility to ameliorate the high levels of distress experienced by students, believing it to be an ethical responsibility of academics.¹⁰⁶ In 2009 though Hall noted that some academics (and students) were blinded by certain cognitive barriers that obstructed their understanding of research on psychological wellbeing in law school.¹⁰⁷ and that Australian law schools needed to take steps to 'avoid the unintentional denial and rationalisation that can occur around issues of student wellbeing'¹⁰⁸ and to 'consider how to create environments where both academic staff and students are encouraged to reflect on the impact of legal education on their own thinking and emotional wellbeing.'¹⁰⁹ As Hall observed 'a spectrum of respected sources tell us that high levels of emotional health, maturity

¹⁰⁴ BMRI Report, 48

¹⁰⁵ Rachel Field and James Duffy, 'Better to Light a Single Candle than Curse the Darkness: Promoting Law Student Well-Being through a First Year Law Subject', (2012) 12 QUL Law and Justice Journal 1.

¹⁰⁶ Rachel Field, ALTC Fellowship Flinders Presentation, 17 September 2013, online: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjg8LLa783eAhXWbn0KHbPiCaYQFjAAegQIBRAC&url=http%3A%2F%2Fwww.flinders.edu.au%2FTeaching_and_Learning_Files%2FDocuments%2FALTC_Fellowship%2520Flinders%2520Presentation_17%2520September%25202013.ppt&usq=AOvVaw2_RIZYBLb7-P8a6oummy6e.

¹⁰⁷ Kath Hall, 'Do We Really Want to Know? Recognising the Importance of Student Psychological Wellbeing in Australian Law Schools, (2009) 9(1) QUT Law Journal 4.

¹⁰⁸ *Ibid*, 11.

¹⁰⁹ *Ibid*, 12.

and life satisfaction come from understanding and expressing our values, commitments and character.’¹¹⁰

Initiatives such as the Council and Law Deans of Australia’s support and funding of good practice well-being guidelines provide valuable resources for law schools.¹¹¹ So too does the development of a set of graduate attributes (the competencies, skills and knowledge of law that relate personal behaviour to professional practice),¹¹² and initiatives to assist the transition to university and to help reduce law student psychological distress while at university. Most of the work involves rethinking how the law curriculum is delivered, teaching strategies and the culture of law schools,¹¹³ and part of that process has been to develop support mechanisms that are especially related to resilience and changing the legal learning culture.¹¹⁴

¹¹⁰ Ibid.

¹¹¹ The Australian Council of Law Deans ‘Promoting Law Student Well-Being Good Practice Guidelines for Law Schools, Revised (2014), online: <https://cald.asn.au/resources>.

¹¹² The Council of Law Deans reference national and international statements on competencies, skills and knowledge of law graduates and the descriptors located in the Australian Qualification Framework for Bachelor Degree. An example includes the Threshold Learning Outcome 6: Self-Management.

¹¹³ Field et al, above n105, 133; Penelope Watson and Rachel Field ‘Promoting Well-Being and Resilience at Law School’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011).

¹¹⁴ Rachel Field and Sally Kift, ‘Addressing the High Levels of Psychological Distress in Law Students Through Intentional Assessment and Feedback Design in First Year Law Curriculum’ (2010 1 *The International Journal of First Year in Higher Education* 65, 67.

Law schools have also focused on a range of initiatives to deal with mental health and well-being of students.¹¹⁵ Those initiatives essentially fall into three categories: a whole of law school approach; a focus on law school culture; and a focus on these issues within a specific course/unit of law degree studies. Some approaches combine all three initiatives.

As will be seen below, within this framework the *pilot* health-justice project at the University of Canberra sought to utilise the latter: raising awareness about the importance of self-awareness and resilience as a skill, providing resilience-building strategies and providing support mechanisms through pastoral care, in the context of an academic unit which involved working in a health-justice legal clinic within the university environment.

Field argues that a whole of law school approach that looks structural systemic issues such as curriculum design, assessment and school culture is necessary.¹¹⁶ Both Field and Kift consider the strategic change needed in Australian legal education to properly address high level of 'psychological distress' of law students is particularly significant.¹¹⁷ They argue that intentionally designing the first-year curriculum design

¹¹⁵ For a comprehensive list of the initiatives see Rachel Field and James Duffy above n 101.

¹¹⁶ *Ibid.*

¹¹⁷ Rachel Field, 'Promoting Law Student Well Being Through the Curriculum' Final Report of: Stimulating Strategic Change in Legal Education to Address High Levels of Psychological Distress in Law Students', ALTC Teaching Fellowship, 2014; Sally Kift, 'A Decade of Transition Pedagogy: A Quantum Leap in Conceptualizing the First Year Experience' 2 HERDSA Review of Higher Education (2015) 2 51.

to address and prevent psychological distress in law students is critical. Firstly, they consider the problem of psychological distress in law students. Secondly, they explore a range of theoretical and practical strategies to assist the implementation of good assessment and feedback practice in the first year of legal education.¹¹⁸ They also consider that academic assessment and feedback practice during first year can be harnessed to assist students to successfully transition to studying law at university.¹¹⁹

Most law schools though tend to focus only on the first-year law student experience. They typically also develop transitional pedagogies with an integrated approach to student pastoral care to assist students to navigate their degrees, including through promoting student social connectedness.¹²⁰ James Cook University (JCU) in Queensland adopted an approach directed towards alleviating psychological distress in first year law student program. JCU's approach incorporated a variety of student support strategies to scaffold student capacity for dealing with their academic and personal development. Strategies such as interactive teaching and learning settings, peer-assisted learning, regular email contact from first-year coordinators, an integrated approach to ancillary support services, and an effective mentor program

¹¹⁸ Field et al, above n105, 65, 67.

¹¹⁹ Ibid.

¹²⁰ Sally Kift, 'Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education: Final Report for ALTC Senior Fellowship Program' (August 2009) online: Australian Learning and Teaching Council, 16
<http://www.altcexchange.edu.au/system/files/Kift%2C_Sally_ALTC_Senior_Fellowship_Report_Sep_09.pdf>

are all considered as integral to the success of JCU's first-year law program. Academics' own commitment to caring for students as individuals is also an essential ingredient in effective pastoral care.¹²¹ The approach effectively embeds pastoral care into the law curriculum.¹²²

Developing (student) support programs that work alongside the law degree are also seen as a way to (positively) influence school culture. For instance, at the University of New South Wales (UNSW), the *Law Peer Tutor Program* was designed to assist first year law students successfully transition into law school. The program is funded by the law school and the learning centre and focuses on offering academic support and a social dimension.¹²³ Monash University's Faculty of Law have designated 'University Student Experience Manager' roles and also provides a part-time psychologist to deal with students' specific concerns. Since 2009, mental health awareness, practical strategies designed to nurture resilience and coping behaviours incorporating neuroplasticity and mindfulness have also been included in the law school curriculum.¹²⁴

¹²¹ Kate Galloway, Rachel Bradshaw, Neil Dunbar and Jamie Fellows, 'Approaches to Student Support in the First Year of Law School' (2011) *Legal Education Review* 21 2.

¹²² *Ibid.*

¹²³ Dominic Fitzsimmons, Simon Kozlina and Prue Vines, 'Optimising the first year experience in law: The law peer tutor program at the university' (2006) *Legal Education Review* 6.

¹²⁴ Lester et al, above n 68, 3. The program includes a lecture delivered to first year law students at the beginning of the year. Part 1 of the Wellbeing and Law series, which discuss mental health and wellbeing and specific implications for students. At the end of the first year is Part 11 of the series: Performance@Law discussing students' performance in light of recent developments in

Other examples of significant initiatives include offering specific units or a course of study within the law degree to assist law students. For example, within the administrative law unit at the Queensland University of Technology (QUT) law school, the content and assessment of the unit were modified to include an interdisciplinary approach. This approach included a psychologist providing psychological support to law students through raising awareness of mental well-being; coping mechanisms for studying law; improving student connections with peers, academics and psychological support services. As part of the psychological support provided, students were required to complete a resilience plan which emphasised stress and time management techniques.¹²⁵

Yet despite these many initiatives there are still high levels of mental health issues amongst legal practitioners and law students.¹²⁶ Larcombe et al found that even a “good” law school experience – small classes, strong class connectedness with first year lectures - may not correlate with lower stress.¹²⁷ Larcombe’s study indicated that overall *satisfaction* with a course designed to improve the students’ experience of law

neuroplasticity – positive implications for learning, attention focus, attention density, resilience and graduate attributes are highlighted.

¹²⁵ Linda Crowley-Cyr, ‘Promoting Mental Wellbeing of Law Students: Breaking Down Stigma & Building Bridges with Support Services in the Online Learning Environment’, (2014) QUT Law Review, 14, 1

¹²⁶ Sarah Whyte ‘Tired, hungry and stressed out: What life is like for many Australian lawyers’ ABC News 1 February 2018 <https://www.abc.net.au/news/2018-02-01/stressed-lawyers-are-suffering-from-eating-disorders:-study/9375696>.

¹²⁷ Larcombe et al, above n72.

school and enhance their academic engagement, may in fact have limited impact on their level of wellbeing.¹²⁸

C. The Role of Students, “Stigma”, and Adaptation

While many Australia law schools have invested significant resources in designing curricula and teaching programs that promote mental health in their law students,¹²⁹ it is likely that the solution is not to be found entirely with law schools and academics. Arguably students must also take a degree of personal responsibility and consider what they can do for themselves to alleviate the stress, anxiety and depression that can result from attending law school.¹³⁰

One underlying issue here may be that law students are reluctant to seek and obtain professional assistance when they experience negative stressors that impact on their mental health.¹³¹ This could result from the *stigma*¹³² attached to sharing the experiences or symptoms of “not coping”, thereby increasing feelings of isolation and loneliness.¹³³ Further, there may be a fear that in disclosing information the students may be singled-out – that is, that any (potentially adverse) information they disclose

¹²⁸ Ibid.

¹²⁹ Field et al above n105, 1.

¹³⁰ Skead et al, above 65, 42-43, 81-90.

¹³¹ Crowley-Cyr see above n125.

¹³² Ibid. A comprehensive definition of stigma at 134.

¹³³ Although these studies relate to law students, it is not to say that it wouldn't apply to legal professionals; See also Seligman above n5.

may be received and/or (mis)used by the university.¹³⁴ For instance, they may (reasonably) be concerned about any impact of any such disclosure on their academic legal education, and their future admission to, and acceptance within the legal profession.¹³⁵

This *stigma* surrounding law students (and legal professionals) disclosing mental health issues, along with a lack of clarity surrounding the professional consequences also raises difficult questions for universities, regulatory bodies, future employees and employers. for law students, but also for legal professionals.¹³⁶

The recent paradigm shift in understanding mental health in the general population is important here.¹³⁷ Scientific work on understanding mental health has moved away from the factors and mechanisms that determine vulnerability to mental health, to factors and mechanisms that stimulate individuals to remain healthy or recover quickly when facing adversities over the course of their lives.¹³⁸ Within this framework, resilience is considered an important component in individuals

¹³⁴ Crowley-Cyr see above n125.

¹³⁵ Ibid.

¹³⁶ Mary-Jane Ierodionou, Roberta Foster, 'Telling admissions: disclosing mental illness among lawyers' (Law Institute of Victoria Jan/Feb 2013 87 32) online: <https://www.liv.asn.au/Practice-Resources/Law-Institute-Journal/Archived-Issues/LIJ-Jan-Feb-2013/Telling-admissions--Disclosing-mental-illness-amon>>.

¹³⁷ Bart F Rutten, Caroline Hammels, Nicole Geschwind, Claudia Menne-Lothmann, Eshan Pishva, Koen Schruers, Daniel Louis van den Hove, Gunter Kenis, Marike Wichers, 'Resilience in mental health: linking psychological and neurobiological perspectives' (2013) *Acta Psychiatrica Scandinavica* 128, 1.

¹³⁸ Ibid.

successfully adapting to adversity throughout their lives.¹³⁹ Defining resilience is difficult, as there are different definitions and variable measurements which can preclude a proper analysis.¹⁴⁰ The concept commonly incorporates the ability of an individual to recover from difficult experiences with minimal long-term adverse effects - in other words, the 'ability to bounce back or cope successfully despite substantial adversity.'¹⁴¹

In this context, the importance of law students and legal professionals being resilient is important and has been identified as an important legal skill. For example, a recent inquiry into the future of legal work recognised the importance of resilience, not just for the legal profession, but also for law graduates.¹⁴² The inquiry identified seven skills or areas of practice which were essential both for the future practice of law practice-ready graduate. Significantly, those skills included being resilient.¹⁴³ It emphasised that resilience is a skill that can be learned, practiced and improved.¹⁴⁴

¹³⁹ Ronald C Kessler, Katie A McLaughlin, Jennifer G Green, Michael Gruber, 'Childhood adversities and adult psychopathology in the WHO World Mental Health Surveys' (2010) *The British Journal of Psychiatry* 197, 5.

¹⁴⁰ Bart Rutten see above n137.

¹⁴¹ Heidi Holtz, Katherine Heinze and Cynda Rushton 'Interprofessional' definition of moral resilience' (2017) *Journal of Clinical Nursing* 488 at 489.

¹⁴² The Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (2017).

¹⁴³ The Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (2017). The other skills included: practice skills (interpersonal and professional); business skills; project management skills; internationalisation and cross border practice of law and inter-disciplinary skills.

¹⁴⁴ Paula Davis-Laack, Larry Richard and David Shearon, 'Four Things Resilient Lawyers Do Differently' *Law Practice Today*, 14 June 2016.

While the practice of law has always been inherently stressful, changes to the profession and legal service delivery will expose the legal profession to extra layers of change and stress.¹⁴⁵ Additionally, the advances in technology, economic pressures to revisit existing legal business models, and the globalisation of legal services, mean that the practice of law will be significantly different in the future to what it is now.¹⁴⁶ This means that 'resilience' is not only important for the mental health and wellbeing of law students and lawyers,¹⁴⁷ but also that it will also be necessary to cope with ongoing changes to the nature of legal work.¹⁴⁸

In academia, one response to these challenges has been to 'build resilience, namely resources to sustain well-being in the face of adversity.'¹⁴⁹ Many law schools acknowledging the link between mental health, wellness and resilience have students

¹⁴⁵ Ibid.

¹⁴⁶ Michael Legg, 'New skills for new lawyers: responding to technology and practice developments (1 January 2018). *The Future of Australian Legal Education* (Thomson Reuters 2018) UNSW Law Research No. 18-51.

¹⁴⁷ Speech delivered by Law Council President of Fiona McLeod 'Resilience and Resourcefulness Embracing Change, 10 August 2017, online <https://www.lawcouncil.asn.au/media/speeches/resilience-and-resourcefulness-embracing-change-and-opportunity?platform=hootsuite>.

¹⁴⁸ Commission of Inquiry, 'Future of Law and Innovation in the Profession, (FLIP) Report (2017) The Law Society of NSW, online: <https://www.lawsociety.com.au/sites/default/files/2018-03/1272952.pdf>. European Commission, European Political Strategy, 'The Future of Work: Skills and Resilience for a World of Change' (2016) European Commission. The report doesn't specifically refer to legal work but focuses on the future of work and importance of resilience to the significant pace of change in the workplace.

¹⁴⁹ American Bar Association National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being*.

develop “resilience plans” and strategies to assist them in their academic studies and professional lives.¹⁵⁰

Below we explore a health-justice clinic pilot program developed at the University of Canberra. The clinic was designed to improve student well-being and resilience through engaging students in an academic unit of study concurrent with the delivery of a legal service to clients while offering individual awareness-raising and pastoral care strategies. The clinic adopted an integrated approach as previously used by other law schools,¹⁵¹ but uniquely focused on developing student resilience and well-being by assessing individual characteristics and providing strategies in the context of a strong pastoral care program. It was significant too that the clinic was campus-based and located proximal to its health service partner. This on-site interdisciplinary program was offered within a unit available to LLB and JD students and was designed in collaboration with a general practitioner, psychologist, lawyers and legal academics.

III. A Health-Justice Clinic Pilot Case Study

Before exploring the UC pilot case study, a brief overview of the origins and history of health-justice partnerships, both internationally and in Australia.

¹⁵⁰ Crowley-Cyr see above n125.

¹⁵¹ The Legal Advice Clinic unit has two clinical programs – Small Business Legal Advice Clinic and the Health Justice Legal Advice Clinic. The pilot program focussed on the latter clinic, because of the geographic proximity between the University of Canberra law school and the University of Canberra Medical and Counselling Service involved in the program.

A. Health-Justice Partnerships: A Brief Overview

The first formal health-justice partnership (HJP)¹⁵² was established in the US in 1993 when Dr Barry Zuckerman, head of paediatrics at the Boston University School of Medicine, employed a lawyer to work with him to treat his patients. Zuckerman observed that he was repeatedly treating patients who lived in substandard housing and environments that caused significant and repeated health problems and sought legal assistance to address those poor living conditions and so prevent the ongoing health issues.¹⁵³ The HJPs that followed similarly provided a mechanism for health and legal professionals to work together to address the legal and health-related needs of their mutual patients/clients.¹⁵⁴ Such partnerships clearly offer significant benefits for the community, particularly where there is an intersection between the legal and 'social determinants of health' - which often relate to systemic factors outside a patient's control, including poverty, educational levels, unemployment and discrimination.¹⁵⁵ In the context of a HJP, lawyers can often help remedy some of the problems causing health and others problems which may exacerbate health problems. Importantly, HJPs can also help foster a paradigm shift in which lawyers, academics,

¹⁵² They are also referred to as medico-legal partnerships or multi-disciplinary partnerships.

¹⁵³ Barry Zuckerman, 'Why paediatricians need lawyers to keep children healthy' (2004) 114 *Paediatrics*, 224.

¹⁵⁴ Marnie von Wilpert, 'Medico-legal partnerships in Mississippi: A model to improve access to justice' (2013) 82 *Supra*, 199.

¹⁵⁵ *Ibid.*

doctors, and 'other healthcare professionals work together for a common good.'¹⁵⁶

HJPs offer innovative, effective, and holistic approach to delivering health and legal services.¹⁵⁷

The number of HJPs in Australia has increased significantly over time. For example, while in 2012 there were only a handful of services self-identifying as HJPs, in 2018, there were 48 services located in almost all states and territories in a range of settings, including hospitals, community health settings and Aboriginal community health organisations;¹⁵⁸ with UC's health-justice clinic, being one of the first university-based HJPs. Curran's work highlights how HJPs improve overall outcomes for patients/clients.¹⁵⁹ The value and importance of health-justice partnerships help explain why, as Curran has observed 'there are a number of HJPs in Australia now and they're starting to pop up like mushrooms.'¹⁶⁰

¹⁵⁶ Robert Pettignano, Lisa Bliss and Sylvia Caley 'The Health Law Partnership: A Medical-Legal Partnership Strategically Designed to Provide a Coordinated Approach to Public Health Legal Services, Education, Advocacy, Evaluation, Research, and Scholarship' (2014) 35 (1) *Journal of Legal Medicine* 57-79, 78.

¹⁵⁷ Alexis Anderson, Lynn Barenberg and Paul R. Tremblay, 'Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting' (2007) 13 *Clinical Law Review* 659-718, 660; Liz Curran 'A Research and Evaluation Report for the Bendigo Health-Justice Partnership – A partnerships between Loddon Campaspe Community Legal Centre and Bendigo Community Health Service' (Abridged Final Report October 2016)

¹⁵⁸ Tessa Boyd-Caine, 'Health justice partnerships addressing determinants of health' (12 September 2018) online: < <https://www.healthjustice.org.au/2018/09/12/health-justice-partnerships-addressing-determinants-of-health/>>.

¹⁵⁹ Curran n 157.

¹⁶⁰ Kim Lester 'How Lawyers Improve Health Care' (ANU Reporter Volume 48 N 2)

Utilising law, medical and the students of other professions in HJPs, and, other interdisciplinary approaches to education are becoming an increasingly common approach.¹⁶¹ Collaboration between and cross-fertilising the disciplines of future professionals using such approaches can foster positive 'professional attitudes toward collaborating across disciplines [and create] better future attorneys, physicians, nurses, social workers, public health practitioners, health care executives, and other professionals.'¹⁶²

B. UC's 'Health-Justice Clinic' Pilot: An Overview

The University of Canberra (UC) has a small law school which focuses on developing law students' practical skills and offers two law degree programs: a Bachelor of Laws (LLB) and a postgraduate juris doctor (JD) program. Approximately 83% of law students are enrolled in the LLB and 17% in the JD program. The law student demographics are diverse at UC, but not unlike many other law schools. There are approximately 53% of students that are female; 47% that are male; 8% of students identify as indigenous; and 42% of students are 'first generation' university students (that is, the law student is the first member of their family to attend university).¹⁶³

¹⁶¹ Suzanne Weise, 'Defining the role of clinical law students, medical-legal partnerships and pro-bono lawyers' (2018) 13 *Tennessee Journal of Law and Policy* 18.

¹⁶² Pettignano n 156.

¹⁶³ University of Canberra, 'Background on University of Canberra law students' policy paper for Course Advisory Committee' (2012); Judy Allen and Paula Baron, 'Buttercup goes to law school: student wellbeing in stressed law schools' (2004) 86 *Alternative Law Journal* 29(6); Council Australian Law Deans 'Data Regarding Law School Graduate Numbers and Outcomes' Fact Sheet. November

In June 2017 (Winter semester) the authors established a *pilot* Health-Justice Legal Advice Clinic (UCH-JLAC) at the University of Canberra, Australia. The UCH-JLAC operated as a collaboration between the School of Law & Justice, the University's Medical and Counselling Service, and a private law firm. It brought together health professionals (including doctors, psychologists and social workers), legal professionals (including academics, practising lawyers and volunteers) and later year high-achieving law students.¹⁶⁴

The pilot operated within a clinical legal education context – that is, students were enrolled in a 'legal advice clinic' unit of study and worked under the supervision of practising lawyers to provide legal assistance and support services to clients who, in the main, were referred from the medical and counselling service. During orientation and for the duration of the program, students were, as a group, provided with resilience-building strategies and pastoral care with the support and guidance of psychologist. Students were also particularly encouraged to privately consult with the psychologist if any issues raised during client consultations were in any way *triggering*

2017 201 online: <https://cald.asn.au/wp-content/uploads/2017/11/Factsheet-Law Students in Australia.pdf>.

¹⁶⁴ The selection process for the pilot clinic involved interested students providing an expression of interest which included a brief summary of their reasons for wanting to participate in the program, together with a copy of their resume and academic transcript. Students were then interviewed by the unit convenors who made a decision based on this information as well as their own subjective assessments as to which students would be a 'good fit' for the program. Since the pilot clinic could only accommodate a very small number of students and because the convenors wanted to give the pilot clinic the best possible chance of success as well as providing an opportunity for those students most likely to benefit from participation, the student cohort selected for participation was inevitably biased towards high-achieving law students who were nearing the end of their studies.

for them. Students who successfully completed the components of the academic unit (which included completing a reflective journal and making a presentation in addition to attending the clinic and providing client legal services) were awarded 3 credit points towards their degree. After the completion of the unit, feedback was sought from students about their experience of the clinic, and in particular, their exposure to the resilience-building and emotional support provided within the context of the clinic.¹⁶⁵ Their responses were overwhelmingly positive.

In the context of the pilot, law students were offered an opportunity to appreciate the perspectives of other disciplines and therefore better understand how different disciplinary skills and knowledge might assist in creative problem-solving for the benefit of the client.¹⁶⁶ At the same time, we considered that by having students focus on solving the problems of others, this work might ameliorate their own stress,¹⁶⁷ including by offering them the satisfaction of helping others achieve good

¹⁶⁵ Ethics approval to survey and interview the students was obtained after students had completed the Legal Advice Clinic unit. Those students who agreed to provide feedback by online survey or through individual interviews with psychologist and unit convenor were required to complete a consent form.

¹⁶⁶ Doris Bozin, Allison Ballard and Vicki de Prazer, 'Interdisciplinary Collaboration to Benefit 'New' and Emerging Lawyers' in Judith Marychurch and Advia Sifris (eds) *Wellness for Law Making* Wellness Core Business (LexisNexis Butterworths, 2020); Charity Scott, 'Transforming the Future of Public Health Law Education through a Faculty Fellowship Program' (2016) 44, Suppl, 1 *The Journal of Law, Medicine & Ethics* 6-17, 14; Margaret Martin Barry, Jon C. Dubin and Peter A. Joy, 'Clinical Education for This Millennium: The Third Wave' (2000) 7 (1) *Clinical Law Review* 65-71.

¹⁶⁷ Alexis Anderson, Lynn Barenberg and Paul R. Tremblay, 'Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting' (2007) 13 *Clinical Law Review* 659-718, 661.

outcomes.¹⁶⁸ Yet the authors also recognised that the students might experience distress when dealing with clients, particularly clients who were likely to have multiple physical and mental health problems on account of being referred from the medical and counselling service. Consequently, we considered that in the context of a clinical legal education setting, incorporating self-awareness raising and resilience-building into the unit design would also be important. The authors also hoped that completing the unit would assist them at university and as future professionals.

Initially, the development of the *pilot* involved three main steps:

- Identifying, developing and designing a clinical legal education university program, with the assistance of a psychologist, to build resilience individual students during the semester by focusing on developing self-awareness and through their work helping clients in the legal clinic;
- Developing a collaborative approach and working as a team – law academics, legal practitioners and health practitioner staff working together for the benefit of the patient/client, while not breaching any ethical and professional obligations;
- Training the professionals – lawyers providing training and education to doctors, psychologists and social workers about identifying legal issues and

¹⁶⁸ Joshua D. Rosenberg, 'Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law' (2004) 58 *University of Miami Law Review*, 1225, 1228.

health professionals providing information to lawyers and students about recognising mental illness in a patient/client.

The aims of the UCH-JLAC were three-fold and included:

- providing legal practice experience to law students in a *safe* environment; and
- assessing student resilience at the outset and to provide students with education, tools and ongoing pastoral care to develop their resilience throughout the course of the semester; and
- improving access to justice for vulnerable people through the provision of an independent pro bono community legal service at the university. Client/patients were “warm-referred” from the Medical & Counselling Service (and also to drop-in clients and clients referred from other sources).

C. How Did the Programme Work?

Law students enrolled in a subject¹⁶⁹ in their law degree, which allowed them to participate in the UCH-JLAC which operated on one day each week with patients/clients referred by health professionals.¹⁷⁰ The students’ clinical education induction and support program involved a series of seminars with a lawyer and a

¹⁶⁹ Either the Legal Advice Clinic Unit or a Law Internship Unit.

¹⁷⁰ The relevant health professionals were provided with an education session on ‘How to Spot a Legal Issue’ prior to the commencement of the UCH-JLAC so that they were able to ‘warm refer’ appropriate patients/clients.

psychologist, which were held prior to, and after the operation of the UCH-JLAC, on each clinic day.

The induction and support program consisted of three components: induction, debriefing, and evaluation. The *induction component* involved meeting with a psychologist as a group and participating in a series of Psychological Resilience related exercises.¹⁷¹ The development of resilience was aligned to psych-education and reflection on character strengths, emotional challenges and strategies promoting the discovery of professional identity. The psychologist then facilitated a discussion and provided insight into the importance of resilience on a personal and professional level, before giving students an opportunity to discuss their individual Psychological Resilience test results and their reflections. During this initial program, the psychologist focused on resilience as a competency that students should build on at a personal and professional level and provided guidance about what resilience practices and strategies looked like, and how individual resilience could be developed.¹⁷²

The second *de-briefing session* component had two aspects: student-lawyer interaction and student-psychologist interaction. During the student-lawyer interaction, students and lawyers met to discuss the days' cases with an emphasis on the importance of

¹⁷¹ These exercises were made available to students were made available to students on the day of the induction.

¹⁷² The psychologist also completed the questionnaires and opened the session by discussing the results of her profile with the group. This was done to make the students feel comfortable about sharing their results with the group.

providing pro bono services to disadvantaged members of the community. The idea that they were doing important, “good” and “real” work was also reinforced.¹⁷³ This provided a context for students to think about their role as future lawyers and legal practitioners, as in some instances there was no legal assistance that the UCH-LJA was able to provide to clients.¹⁷⁴ The other part of the session involved students discussing with the psychologist their feelings, values and responses in relation to the client interview work.

The students acknowledged that many of the patients/clients had challenging life circumstances and complex mental and/or physical health issues; this often meant containing the interview very difficult. Students indicated that observing the strategies used by the different UCH-JLAC lawyers, including to build rapport and clarify the client’s legal issues, was invaluable.

The psychologist sessions encouraged the law students to be more self-aware and reflect on their experience of the case as a resilience-building habit, supported by debriefing as necessary. These sessions also emphasised the evidence around life-style

¹⁷³ Maren Robinson, ‘The Benefits of Volunteerism in the Law’ (1998) 42(3) Boston Bar Journal 8.

¹⁷⁴ Mark Heekin, ‘Implementing Psychological Resilience Training in Law Incubators, (2015) *Experiential Learning* 286; Deborah L Rhode, ‘Rethinking the Public in Lawyers’ Public Service: Pro Bono, Strategic Philanthropy and the Bottom Line, *Fordham L Review* 1435-1437. A wide range of evidence suggest that selfless action is good for the self; it enhances satisfaction, health and self-esteem. It was important to emphasis in these de-brief sessions to students how important the work they were doing was to the community.

choices as very significant in the building and maintenance of resilience, e.g. good sleep, exercise, healthy diet, low alcohol consumption and close relationships.¹⁷⁵

The third *evaluation*¹⁷⁶ and *reflection* component of the program was a discussion between the students, lawyers and psychologist of the legal clinical experience. Students, with guidance from the psychologist, discussed strategies and practices they might utilize to build competency in resilience on both a personal and professional level.

By evaluating individual competencies in this way, it was considered that personal and professional confidence, good communication skills and reflective practice would be promoted, in turn leading to the further development and maintenance of resilience. While encouraging students and early career lawyers to speak-up about what they don't understand or can't do may be an anathema to the culture of the profession, this and other strategies may be essential in reducing mental health issues and promoting resilience.

¹⁷⁵ Mary C Davis, 'Building Emotional Resilience to Promote Health' (2009) 3 (1_suppl) *American Journal of Lifestyle Medicine* 60S-63S.

¹⁷⁶ The evaluation of the program was done as a group-discussion with the students, lawyers and psychologist, in terms of what students resilience-building strategies that they would use in the future.

Feedback provided by students at the conclusion of the program through face-to-face interviews was positive.¹⁷⁷ Many students reported that they enjoyed having a psychologist included in the program; that it provided pastoral care, along with resilience-building strategies. They also reported that their overall confidence improved. The authors can only make general comments as to why this approach increased their confidence. It is difficult to surmise why students' confidence improved, and whether it was from the assistance from a psychologist who provided a strong pastoral care program along with resilience-building strategies, the development of their practical legal skills in a legal clinic setting; assisting in delivering a pro-bono community legal service to clients; or a combination of all these factors.

The authors plan to conduct further research as to why this approach increased students' confidence by developing a base-line at the beginning, during and after the program. Additionally, providing students with specific questions about each of the components within the program, should provide more valuable information about the program.

Furthermore, this *pilot* was extremely resource intensive. The authors will expand the program to make it available to more students by only including the psychologist in

¹⁷⁷ Ideally students should have been interviewed at the beginning and during the program. This information would have provided a base-line as to their expectations, skill and knowledge development.

group-discussions on resilience building; (however, if they request it, students would be able to have individual sessions); students completing instruments at beginning and end of program to develop a base-line in relation to their wellness; and a focus on building confidence through understanding the role of a lawyer.

Conclusion

Improving resilience is an important component of ensuring the mental health and wellbeing of law students, both in the context of their academic studies and as future legal professionals. Building greater resilience is also one way of assisting legal professionals to cope with the significant challenges they face on account of the transformation of legal work. The pilot Health-Justice Clinic at the University of Canberra focused on providing practical legal experience for a small select cohort of law students, while simultaneously offering tools to develop their resilience and understanding of “self”, including through a comprehensive orientation program and a strong pastoral care component. The clinic also provided the students with an opportunity to work with, and gain insight into the work of different professions and to develop inter-disciplinary networks. The collaboration between the clinic’s psychologist, who focused on providing resilience-building strategies tailored to individual personalities together with a strong pastoral care component, and the clinic’s academics/lawyers who provided supervised practical legal experience to allow the students to help deliver a pro-bono community legal service, did assist the students. Offering law students a legal clinical experience with a strong pastoral care

component and a focus on resilience-building strategies is one possible piece of the mental health and wellbeing in the law jigsaw puzzle. Allowing more students, and a greater range of students, the chance to participate in similar interdisciplinary clinical programs offers a novel approach to improving law student resilience during their academic studies as well as preparing them to stay healthy as they move into legal practice.