Editorial

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In this issue we have contributors from across the world who have considered the role of clinical legal education in respect of a number of crucial areas, including climate change and access to justice. We delve into how clinics are responding with innovative ways of ensuring that students not only understand and are able to deal with these areas, but are also equipped with the necessary skills and knowledge for the world of work.

Firstly, Mary Anne Noone's Oration considers how Australian clinical legal education responds to the various innovations and disruptions occurring in the legal area. She explores the innovations which are occurring in the legal sector and the impact of these on access to justice and the use by government of automated tools to make decisions. She goes onto examine what these innovations mean for clinical legal education and legal education in general. In particular, how can clinicians and legal education equip students to take on legal roles in the 21st century? She argues that Australian clinical legal education can, and does, provide the skills and knowledge that are required of a legal worker in the 21st century and graduates are prepared for the unpredictable nature of the work.

The exploration of the skills and knowledge needed to be a lawyer was the basis of Rachel Dunn's doctoral research. In this article she shares the 'how' and provides an insight into the Diamond, an innovative data collection tool that can be used to foster a discussion on what legal practice entails and the skills and knowledge that can be developed in clinic. She illustrates how it can be used as a research method and as a teaching aid, providing us with a practical guide on how Diamond ranking can be used and how to approach the analysis of the results. Illustrating its diverse uses, she explores a research project located in secure accommodation for young people, measuring the changes in attitudes following a creative intervention.

Creative interventions are desperately needed at a planetary level and Richard Owen's article looks at how rebellious lawyering methods can provide a template for clinics to further sustainability objectives. He reflects on what lessons can be learnt from the different international approaches and the extent to which sustainability is embedded in clinics. He considers how clinics can respond to sustainably development legislation; highlighting lessons from Wales and that it takes time for sustainability legislation to be embedded across different policy areas.

Last year over 50 university clinics took part in the Global Day of Action for Climate Justice in order to consider the role that clinics can play. This year, on 17th November 2020, the theme is the Rights of Nature and offers the opportunity for clinics across the world to come together to consider this concept. For further information please see the facebook page:

https://www.facebook.com/secondstudentlawclinicdayofaction2020

Ngozi Chinwa Ole and Onyekachi Eni's article examines the opportunities and challenges that the Paris Agreement 2015 provides the Network of University Legal Aid Institutions (NULAI) Nigeria. It is argued that by establishing climate change-focused law clinics and an adoption of a top-down strategy this would help overcome the problem of low awareness of climate change policies amongst law faculties, including clinicians.

Those wanting to respond to the challenge to create a new clinic would benefit from the insights in Louise Crowley's article. Although focusing on a different practice area, in exploring the design and assessment approaches adopted in the delivery of a Family Law Clinic module in the University College Cork Louise brings many critical considerations in to focus. By requiring students to contribute to public knowledge and engagement, the module was designed in order to broaden student learning and empower them to develop a sense of community experience of justice. Through an investigation of student reflections and student interviews, the article shows the impact of the Clinic in providing an innovative space for students to explore the law in practice and to understand access to justice challenges.

Also exploring the challenges of change, Renáta Kálmán guides us through the transformation of the Hungarian Higher Education system and the current situation of their clinical legal education. The types of clinics within Hungary are considered and the obstacles that the law faculties and teachers face are highlighted. It is argued

that clinical legal education can greatly contribute to the accomplishment of the educational requirements defined by the New Decree of the Minister for Higher Education and universities must introduce new, teaching methods which are more practice orientated.

Finally, as we continue to face the unprecedented challenge of teaching during the COVID-19 outbreak, next month's very timely special issue with guest editors Hugh Mcfaul and Francine Ryan will focus upon clinical responses and debate the opportunities, challenges and solutions.

INNOVATION AND DISRUPTION: EXPLORING THE POTENTIAL OF CLINICAL LEGAL EDUCATION

Mary Anne Noone*

Introduction[1]

It's a great privilege to deliver this year's Susan Campbell Oration. I, like many others, had the pleasure of working with Sue on a range of activities. In 2007, Sue conducted a review of the La Trobe Law School Clinical program which was instrumental in helping ensure the program remained an integral aspect of the La Trobe University law course. I hope what I have to say honours Sue's memory and her contributions to legal education and clinical legal education in particular[2].

My focus in this presentation is on how Australian clinical legal education responds to the various innovations and disruptions occurring in the legal arena. The scope and breadth of innovations is mindboggling. There are many predictions about what the future holds for the legal profession, from gloom and doom to utopia, and there

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[1] This paper was delivered in September 2019 for the Monash Law School, Susan Campbell Oration, https://www.monash.edu/law/monash-law-alumni/donations-and-bequests/the-susan-campbell-memorial-fund

[2] For example: Susan Campbell 'Blueprint for a Clinical Program' (1991) 9(2)*The Journal of Professional Legal Education* 121 ; Susan Campbell and Alan Ray, Specialist Clinical Legal Education: An Australian Model'' (2003) 3 *International Journal of Clinical Legal Education* 67; Judith Dickson and Susan Campbell, Professional Responsibility in Practice: Advocacy in the Law School Curriculum (2004) 14(2) *Legal Education Review*, 5; Ross Hyams, Susan Campbell, Adrian Evans *Practical Legal Skills* (4th Edition 2014) Oxford Uni Press; Susan Campbell, *Review of legal education report : pre-admission and continuing legal education* 2006 Victoria. Dept. of Justice.

is a growing body of literature discussing the implications for the legal profession and legal education. In reality, it is impossible to envisage what the legal world will look like in ten years let alone thirty and that poses a real challenge for those involved in legal education, including clinical legal education. How best to prepare today's students for the unknown future?

Given that I have no expertise in digital technology and am certainly not a futurologist my comments relate to those areas about which I have some background: access to justice, social security and clinical legal education. I briefly outline the variety and scope of innovations occurring in the legal world, discuss two related aspects namely access to justice and government decision making, using the example of Robodebt, and then examine the potential for clinical legal education in these disruptive times.

I argue that clinical legal education is well placed to take a more central role in Australian law schools and the training of 21st century legal workers.

Context

Clearly the theme of innovation and disruption extends beyond the legal sector – the current era is sometimes referred to as the fourth industrial revolution[3], or the digital revolution. Innovation and disruption are the buzz words of the decade if not the first part of the 21st century.

[3] Klaus Schwab *The Fourth Industrial Revolution* 2017 Penguin Books Ltd

If I ask you to think about what disruption means in our times, many would talk about climate change and global warming[4], others might refer to the threats to our democratic traditions including attacks on the media and journalists, or the erosion of rights under various forms of legislation and shifts in global power. However, that is not the form of disruption I am talking about. My focus is specifically on disruption and innovations in the legal arena.[5] In preparing this talk, I was conscious that in the audience there would a diverse range of awareness of these developments. Accordingly, I have provided a general outline of the scope of changes. I then identify two specific areas of concerns that warrant caution.

To begin, it is relevant to clarify the terms I am using. Disruptors are innovators, but not all innovators are disruptors. Innovation refers to when a new idea is translated into a new device or way of doing something: new products, processes, services, technologies, or business models.[6] There is an assumption that innovation is good and represents progress. Most would understand to disrupt is to throw into turmoil or disorder; to interrupt the progress of an event.[7] However in contemporary usage, disruption most often is about displacing an existing market, industry, or technology which supposedly produces something new and more efficient and worthwhile. Disruption can result from the adoption of innovations but not necessarily – to

[4] I will not directly address this but encourage you to have a look at Professor Adrian Evan's recent work in this area: Adrian Evans, 'The climate for whistle-blowing: Climate deterioration will challenge the courage of corporate lawyers' (2017) 27(2) *The Australian Corporate Lawyer* 34-37; https://www.envirojustice.org.au/projects/growing-the-next-wave-of-climate-justice-lawyers/

[5] I am aware of the irony in giving an oration on innovation – an oration is a formal old fashioned concept – should really be something like a 'ted talk': www.ted.com

[6] https://dictionary.cambridge.org/dictionary/english/innovation

[7] https://dictionary.cambridge.org/dictionary/english/disruption

disrupt is to prevent something, especially a system, process, or event, from continuing as usual or as expected. Disruption is at once destructive and creative. The concept of disruptive innovation came from an article in the Harvard Business Review in 1995 relating to markets.[8] Once upon a time to be called a disrupter was an insult but now for some people and businesses it is a compliment.

In relation to the legal arena, commentators suggest that we are in the throes of seismic change that will disrupt the legal marketplace; both legal practice and legal institutions as we know them.[9] In an oft quoted prediction, Susskind in 2013, forecast that legal institutions and lawyers "*are poised to change more radically over the next two decades than they have over the last two centuries"*[10]. In the second edition of his book, in 2017, he documents pages of evidence to support his prediction.[11]

To set the scene for the scope of change occurring, I want to take you back in time - ask you to imagine working in a clinical legal education program or some other form of legal practice in the early 1980s. Students are writing letters in long hand to be typed by the secretary; if they need to do legal research they read a limited number of hardcopy reports/book that might be on hand otherwise they have to travel to the university library, every day a full mail bag of letters and documents is delivered,

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[8] Clayton M. Christensen, Michael E. Raynor and Rory McDonald, What Is Disruptive Innovation? (2015) *Harvard Business Review* https://hbr.org/2015/12/what-is-disruptive-innovation : Christensen, C.M. Disruptive technologies: Catching the wave. *Harvard Business Review* 1995, 73

[9] Richard Susskind, *The End of Lawyers? Rethinking the nature of legal* services (Oxford University Press 2010); Julian Webb, 'Legal Technology: The Great Disruption?' in Richard L. Abel et al (eds), *Lawyers in 21st Century Societies*, Vol II, (2020) Oxford: Hart Publishing,

[10] Richard Susskind; *Tomorrow's Lawyers* (2013) Oxford University Press, p xiii

[11] Richard Susskind; *Tomorrow's Lawyers* 2nd Ed (2017) Oxford University Press p vii-vii

sorted and another bag collected to be posted, getting a response to a letter of demand could take weeks. The only technology available is a landline telephone, an IBM electric typewriter and a photocopier. There was no internet, no computers, no fax machine, no mobile phones. For some in the room, imagining this scene might be easier than others – that was what Springvale Community Legal Centre (site of the Monash University clinical legal education program) was like when I began working there in the early 1980s.[12]

[12] Kerry Greenwood, *It seemed like a good idea at the time : a history of Springvale Legal Service 1973-1993* 1994 Springvale Legal Service

It is trite to say that in the intervening three decades, the development of the internet and technology has dramatically changed the way lawyers perform their work, has improved efficiency and speeded up processes. Nevertheless, during that time, the nature of the lawyer/client relationship has essentially not changed and our legal institutions have remained largely unaltered. This is despite, the application of competition policy and the shift to independent regulation of the legal profession, growth in large corporate law firms and the globalisation of legal services.[13] Lawyers maintain their monopoly on the provision of legal services and the nature of the lawyer client relationship remains intact. Lawyers continue to have the same duties to the court, administration of justice and clients as they always have.[14]

But as I have already indicated, change is happening and gathering apace if the number of recent keynote addresses by senior members of the legal profession, the conferences, articles in legal profession journals, professional and academic endeavours are anything to go by.[15] All seem to concede that the legal world is in a process of transformation.

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[13] Paula Baron and Lillian Corbin, *Ethics and Legal Professionalism in Australia* (2017) Oxford University Press pp 18 - 26; Vicki Waye, Martie-Louise Verreynne & Jane Knowler (2018) Innovation in the Australian legal profession, International Journal of the Legal Profession, 25:2, 213-242.

[14] Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* 3rd Ed (2018) Cambridge University Press; Paula Baron and Lillian Corbin, *Ethics and Legal Professionalism in Australia* 2nd Ed (2017) Oxford University Press.

[15] Thornton, M. (2019) "Towards the Uberisation of Legal Practice", *Law, Technology and Humans*, 1, pp. 46-63; Morry Bailes 'An End to Lawyers? Implications of AI for the Legal Profession', Speech delivered by, President of the Law Council of Australia at the Australian Defence Seminar, Australian Defence College, Canberra, 24 October 2018; Morry Bailes 'The Law and Legal Technology – Our Changing Work Practices', Speech delivered by, President-elect of the Law Council of Australia at the 2017 Australian Young Lawyers' Conference, Sydney; Australian Legal Technology Association https://alta.law/ ; Centre for Legal Innovation https://www.cli.collaw.com/ ; Australian Centre for

Innovation and disruption in legal arena

A measure of the extent of changes used by some commentators is the number of legal tech start-up companies developing. It is suggested there are currently between 93 and 111 legal technology firms in Australia alone and more than 1000 world-wide.[16] I am sure many in the room have read about or attended presentations on one or more aspects of these technological innovations in the legal world. Developments relate both to how legal work is done, the location and form of legal practices and how individuals can access legal information and advice.

Some examples include:

- technology which automates what's called 'back of house' work practices; for instance the production of legal documents; assistance in discovery and legal research, workflow management systems; and document analysis; [17]
- front of house examples include legal expert systems and artificial intelligence that provides online targeted and relevant legal information to individuals as an alternative to seeking advice from a lawyer; these may or may not be

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Justice Innovation (ACJI) - Faculty of Law https://www.monash.edu/law/research/excellence/acji ; Zach Warren, 'The Rising Tech Tide: Australia's Legal Tech Scene is Making Waves' https://www.law.com/legaltechnews/2019/04/01/the-rising-tech-tide-australias-legal-tech-scene-is-making-waves/?slreturn=20200628005219;

[16] Jodie Baker 'Australia is leading the legal tech revolution, but what does this mean for lawyers, firms and clients?' January 17, 2019 https://www.smartcompany.com.au/technology/australia-legaltech-revolution/ ; Susskind above n 11

[17] Julian Webb, 'Legal Technology: The Great Disruption?' in Richard L. Abel et al (eds), Lawyers in 21st Century Societies, Vol II, (2020) Oxford: Hart Publishing; R Size, 'Taking Advantage of Advances in technology to enhance the rule of law' (2017) 91(7) *Australian Law Journal* 575

subscription based. This might also involve data analysis (using big data) that can predict litigation outcomes as well as be used in risk assessment; [18] and

- processes like e-Conveyancing minimise the manual processes and paperwork associated with property settlements by enabling the lodgement of documents and completion of financial settlements electronically.[19]

A related form of innovation, often enabled by technology, is the rise of new forms of legal practice. This phenomenon called *NewLaw* covers aspects of how legal practices are structured, how and where legal services are delivered, how clients are charged and how lawyers are employed.[20] These changes manifest in virtual and online legal practices where all services are provided over the internet; outsourcing or contracting of aspects of legal processes to individuals often in a different country[21]; there is also the application of 'gig economy' principles to legal work where an individual lawyer is contracted to do work for a discreet transaction or section of the work; single principals with panels of freelance lawyers ; "alternative

[18] Lyria Bennett Moses, 'Artificial Intelligence in the courts, legal academia and legal practice', (2017) *Australian Law Journal*, vol. 97, pp. 561 - 574, http://sites.thomsonreuters.com.au/journals/2017/08/02/australian-law-journal-update-vol-91-pt-7/ ; R Size, 'Taking Advantage of Advances in technology to enhance the rule of law' (2017) 91(7) *Australian Law Journal* 575

[19] Rod Thomas, Rouhshi Low and Lynden Griggs "Electronic Conveyancing in Australia – is anyone concerned about security?" [2014] *Australian Property Law Journal* 1

[20] Thornton, M. (2019) "Towards the Uberisation of Legal Practice", *Law, Technology and Humans*, 1, pp. 46-63.; Rebecca Lim ' What is a True NewLaw Firm?;'2016 https://insight.thomsonreuters.com.au/legal/posts/true-newlaw-firm

[21] For example https://www.strategiclposolutions.com.au/ ; Stacey Leeke, 'Legal Process Outsourcing: What You Need to Know' ThomsonReuters – *Legal Insight 2015* https://insight.thomsonreuters.com.au/legal/posts/legal-process-outsourcing-need-know

fee arrangement"/time-based billers fixed fee services; and also multidisciplinary practices.[22]

In addition to changes in legal practice and legal work, there are also changes occurring in relation to our legal institutions.[23] Courts are becoming paperless – for example the Australian Federal Court now has an E Court where all documentation is lodged and accessed electronically. As courts gain momentum in their use of technology, there will be a continued expansion of 'e-procedures' such as e-discovery and e-trials in a wider variety of matters[24]. A related aspect is the development of virtual courtrooms where parties do not need to be all physically present in the court room. [25]

There is also the development of Online dispute resolution which exists in Australia now outside the court system but developments in Canada and United Kingdom are adopting it as part of formal court systems. [26]

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[22] Thornton, above n 15

[23] James Allsop (CJ) , 'Technology and the Future of the Courts' TC Beirne School of Law, Uni of Qld, Special Lecture Series, March 2019 https://www.fedcourt.gov.au/digital-law-library/judges-speeches/chief-justice-allsop/allsop-cj-20190326

[24] Bennett Moses, above n 18; Size above n 18, p4-6

[25] Virtual courtrooms have become more common place in the current Covid 19 pandemic. See https://www.supremecourt.vic.gov.au/law-and-practice/virtual-hearings; Anne Wallace and Sharyn Roach Anleu and Kathy Mack, 'Judicial engagement and AV links: judicial perceptions from Australian Courts'2018 *International Journal of Legal Profession*

[26] Allsop above n. 23, 7; British Columbia Civil Resolution Tribunal https://civilresolutionbc.ca ; Courts and Tribunal Judiciary, ODR Review 2015 https://www.judiciary.uk/reviews/online-dispute-resolution/ ; Carneiro, Davide ; Novais, Paulo ; Andrade, Francisco ; Zeleznikow, John ; José Neves, Online dispute resolution: an artificial intelligence perspective'' 2014, Vol.41(2), *Artificial Intelligence Review*, pp.211-240; Tania Sourdin and Bin Li and Tony Burke, 'Just, Quick and Cheap? Civil Dispute Resolution and Technology'2019 19 *Macquarie Law Journal* 17 ; Roger Smith. *The Digital Delivery of Legal Services to People on Low Incomes*. London: The Legal Education Foundation, Annual Report

Perhaps one of the most challenging innovations is the use of Artificial Intelligence (AI)[27]. As an example in US, AI is used in risk assessment and making predictive decisions in relation to bail, parole and some sentencing decisions[28]. It is worth noting that at the end of 2018, the European Commission for the Efficiency of Justice published a charter into the use of AI in judicial systems. The charter calls for the adoption of core principles of non-discrimination, transparency, and respect for fundamental rights when AI is used in judicial systems. This charter was formulated in recognition of the changes already occurring. [29]

Although many sections of the legal profession and legal educators are embracing the technological innovations not all are so convinced that the resultant disruption will bring benefits.[30] Any one of the innovations I have listed gives rise to critique, challenges and concerns. In particular much discussion is generated about what is the future of the legal profession, will these technologies lead to a decline in legal work, will there still be a need for lawyers if more non-lawyers are doing legal work and if so, what will be the role of a lawyer.[31]

Summer 2019. https://www.thelegaleducationfoundation.org/wp-content/uploads/2019/09/Digital-Technology-Summer-2019-v2.pdf

[27] Brian Simpson Algorithms or advocacy: does the legal profession have a future in a digital world?, (2016) 25 (1) *Information & Communications Technology Law*, 50-61,

[28] Bennett Moses above n. 18; Allsop above n 23, 8-9;

[29] European Commission For The Efficiency Of Justice (Cepej)*European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment* 2013 https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c

[30] Thornton above n. 15; Morry Bailes An End to Lawyers? Implications of AI for the Legal Profession, Speech delivered by, President of the Law Council of Australia at the Australian Defence Seminar, Australian Defence College, Canberra, 24 October 2018.

[31] Susskind above n. 11.

The changes bring with them a range of new ethical and regulatory issues[32]. I focus on two aspects that warrant vigilance and are not receiving as much critical attention - the impact of innovations on access to justice and the use by government of automated tools to make decisions.

Access to Justice and technology

When I refer to access to justice, I am not just meaning access to courts and tribunals. I take access to justice to encompass how people navigate and are treated in the many transactions (with legal consequences) that comprise everyday life particularly those that are administered or involve government agencies. It is in these encounters that 'equality and inequality before the law' is experienced by most people.[33]

Certainly, in Australia we know that access to justice remains problematic for most in the community. Numerous government reports have documented the extent of unmet legal need and most recently the Law Councils Justice Project highlighted significant areas of injustice and limited access to justice. Discrimination is endemic in parts of our justice system: those who are indigenous, poor, disabled, live in rural and regional areas fare worse in accessing justice than others. [34]

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[32] Paresh Kathrani (2017) An 'existential' shift? Technology and some questions for the legal profession, 20 (1) *Legal Ethics*, 144, ; Catherine Nunez (2017) Artificial Intelligence and Legal Ethics: Whether AI Lawyers Can Make Ethical Decisions 20 *Tulane. J. Tech. & intell. Prop* 189

[33] Mary Anne Noone & Lola Akin Ojelabi, L. (2020). Alternative dispute resolution and access to justice in Australia 16(2) *International Journal of Law in Context*, 108-127 ; Federal Attorney General's Department *A Strategic Framework for Access to Justice in the Federal Civil Justice System; Report by the Access to Justice Taskforce* 2009 p 4

[34] Law Council of Australia, (2018) *The Justice Project Final Report* https://www.lawcouncil.asn.au/justice-project/final-report; National Press Club Address 'Justice State

It is relevant to note just over 3 million (13.2%) Australians are living below the poverty line; that's one in eight adults living in poverty. Unsurprisingly, the group of people experiencing poverty the most are those relying on Government allowance payments such as Youth Allowance and Newstart which are notoriously low.[35]

Innovations in technology, changes to the way legal services are delivered, the growth of virtual legal practice and a wide range of internet-based information and services present many exciting opportunities to enhance access to justice for those currently denied it.[36] Australian legal aid commissions and community legal centres are eager to explore these options and have been doing so since 1990s[37].

Some recent examples include Justice Connect's commitment to employing digital technology to increase the reach and scale of their legal services (including to regional areas); in a front of house example, they are exploring the role that online self-help resources can play in complementing and enhancing the value of direct legal advice; and back of house, the role that technology can play in reducing the

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of the Nation' Speech delivered by Fiona McLeod SC,14 March 2018 https://www.lawcouncil.asn.au/media/speeches/national-press-club-address-justice-state-of-the-nation .

[35] Australian Council of Social Service and University of New South Wales *Poverty in Australia 2018* https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS_Poverty-in-Australia-Report_Web-Final.pdf; please note this research is prior to current global pandemic – recent research suggests the gap between rich and poor is worsening see Australian Council of Social Service and University of New South Wales, *Inequality in Australia 2020* http://povertyandinequality.acoss.org.au/inequality/inequality-in-australia-2020-part-1-overview/

[36] Roger Smith. *The Digital Delivery of Legal Services to People on Low Incomes*. London: The Legal Education Foundation, Annual Report Summer 2019. https://www.thelegaleducationfoundation.org/wp-content/uploads/2019/09/Digital-Technology-Summer-2019-v2.pdf

[37] Mary Anne Noone (2001), `State of Legal Aid' 29 *Federal Law Review* 37

burden of repetitive administrative tasks for staff so that they can more efficiently focus their time on the highest impact work.[38]

National Legal Aid and the Legal Services Commission of South Australia has launched a new online service called 'amica' to help separating couples reach agreements about dividing their property and arrangements for their children. The secure digital service guides couples through a step-by-step process and offers information and support along the way. The technology provides users with templates highlighting parenting agreements that have worked for other couples and artificial Intelligence software can also assess previous family law court decisions to show couples how judges generally treat disputes that are similar to theirs.[39]

Another example is the development of an online Legal Health Check devised by QPILCH but now readily available on National Association of CLCs website. The aim of this innovation is to assist legal and non-legal workers assess the extent of an individual's legal problems. [40]

There is no end of potential for improving access to justice through digital technology and this is exciting however it is important to remember that those most in need of legal assistance are often also the most disadvantaged. One of the most

[38] https://justiceconnect.org.au/about/digital-innovation/
[39] https://www.amica.gov.au/
[40] http://legalhealthcheck.org.au/

significant challenges is how to ensure that the most disadvantaged continue to receive appropriate and targeted legal services.

Research has shown that people with a disability and single parents are twice as likely to experience legal problems; unemployed and people living in disadvantaged housing also vulnerable; and Indigenous people are most likely to experience multiple legal problems.[41]

And if we are to rely on the internet for improving access to justice, worth noting UK research that shows those at the younger and older ends of the age spectrum, as well as those with lower education attainment are less likely to use the internet in relation to resolving a legal problem. Surprisingly young people, who we general assume to be the most digitally engaged struggle to interact with the internet as a legal information resource and use the internet without regard to the reliability or quality of the source material or the relevance of jurisdiction.[42]

According to ABS figures almost 2.6 million Australians 10%, do not use the internet. Nearly 1.3 million households are not connected.[43] Age is a critical factor but factors

[41] Christine Coumarelos, Deborah Macourt, Julie People, Hugh M. McDonald, Zhigang Wei, Reiny Iriana and Stephanie Ramsey, *Legal Australia-Wide Survey (LAW Survey) Legal Need in Australia 2012* Law and Justice Foundation of NSW

[42] Catrina Denvir, (2016). Online and in the know? Public legal education, young people and the Internet. *Computers and Education*, *92-93*, 204-220; Catrina Denvir, Nigel J Balmer, and Pascoe Pleasence, 'Portal or pot hole? Exploring how older people use the 'information superhighway' for advice relating to problems with a legal dimension (2014) 34(4) *Ageing and Society* 670-699.

[43] Australian Bureau of Statistics, 8146.0 – Household Use of Information Technology, Australia 2016-17; Allsop above n 23, 17

like where you live, whether you have a permanent home and whether you are literate are all relevant.[44]

In a further note of caution about the impact of innovation on access to justice, Australian research looking at legal assistance innovations in 1990's, which included provision of information and advice on internet and advice by video links, revealed that many innovations had failed because they were designed more to satisfy the needs of the legal aid service providers than those of their consumers. That research recommended that new services should be designed in consultation with prospective users in order to ensure that their legal needs are most appropriately addressed. [45]

More recently Denvir now at Monash University and former director of the Legal Innovation Centre at Ulster University, argued that in relation to technological innovations – often the developers are more focussed on the solution rather than clarifying the problem being addressed She argues "there's plenty of "bandwagon-jumping" going on when it comes to lawtech; "All too often, technology is seen as the answer when we don't know what the question is"[46].

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[44] Around 3.7% (620,000) of Australians aged 15 to 74 years had literacy skills at Below Level 1, a further 10% (1.7 million) at Level 1, 30% (5.0 million) at Level 2 (there are five levels). Australian Bureau of Statistics, *Programme for the International Assessment of Adult Competencies, Australia, 2011-12* (2013) https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4228.0Main+Features202011-12

[45] Rosemary Hunter, Cate Banks, C. & Jeffrey Giddings, ' Technology is the answer...but what was the question? Experiments in the delivery of legal services to regional, rural and remote clients'., in Pleasence, P., Buck, A. & Balmer, N. J. (eds.). (2007) *Transforming Lives: Law and Social Process*: The Stationary Office, UK p. 133-160

[46] Quoted in 'More universities are teaching lawtech – but is it just a gimmick?' *The Guardian* 12 Apr 2019 https://www.theguardian.com/law/2019/apr/12/more-universities-are-teaching-lawtech-but-is-it-just-a-gimmick

Given that we know that certain groups in our community suffer more from lack of access to justice than others, it is also critical to ensure that the digital revolution does not impact them more than others. For example, where they rely for income and services on government departments and agencies like Centrelink[47]. That brings me to Robodebt .

Automated decision making – Robodebt [48]

Automated tools are now used to make or facilitate decisions in a range of government agencies, including decisions about welfare, tax, health, visas and veterans' affairs. Bennett Moses notes there are at least 29 Commonwealth Acts and instruments that specifically authorise automated decision-making[49] however it is not always appropriate for decisions to be made by a computer.[50] Centrelink's

[47] https://www.servicesaustralia.gov.au/individuals/centrelink

[48] Since I gave this oration, there have been a number of successful legal appeals against robodebt decisions https://www.legalaid.vic.gov.au/about-us/news/i-hope-everyone-gets-opportunity-for-justice-win-for-deanna-amato-in-her-robo-debt-test-case . The Federal Government has apologised to those affected for the 'harm or hurt' caused by the scheme and promised to pay back those who paid unlawful debts: Katherine Murphy 'Scott Morrison apologises for 'hurt or harm' caused by robodebt rollout' *The Guardian* https://www.theguardian.com/australia-news/2020/jun/11/scott-morrison-apologises-for-hurt-or-harm-caused-by-robodebt-rollout June 2020. Additionally a class action has been filed against the government https://gordonlegal.com.au/robodebt-class-action/ .

[49] Lyria Bennett Moses (2018), 'The Need for Lawyers', in Lindgren K; Kunc F; Coper M (ed.), *The Future of Australian Legal Education,* Lawbook Company, pp. 355 at358

[50] Commonwealth Ombudsman, *Lessons learnt about digital transformation and public administration: Centrelink's Online Compliance Intervention* 2017 https://www.ombudsman.gov.au/__data/assets/pdf_file/0024/48813/AIAL-OCI-Speech-and-Paper.pdf; Nicholas Diakopoulos"We need to know the algorithms the government uses to make important decisions about us" — https://theconversation.com/we-need-to-know-the-algorithms-the-government-uses-to-make-important-decisions-about-us-57869

"Robo-debt" system is a high profile example of what can go wrong with automated decision making. [51]

The official name for this system is the Online Compliance Intervention. A computer program at the Department of Human Services, which oversees Centrelink[52], gathers data from other government agencies like the Australian Tax Office and then compares it with data that people have reported to Centrelink. The system is designed to quickly check whether the income that is reported to Centrelink — used to calculate what benefits an individual is entitled to — is the same as that reported by their employer has to the tax office.

This process is not new and data matching has been in use for some time but what is different now is that after the computer detects a discrepancy, without any human intervention – a letter is sent to the Centrelink recipient asking for an explanation. If the individual does not respond – an automated decision is made to raise a debt. There is no human intervention in this process. I am sure you will be aware, through media coverage of the consequences of this scheme.[53]

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[51] http://www.legalaid.vic.gov.au/find-legal-answers/centrelink/robo-debts; https://www.abc.net.au/news/2019-06-27/centrelink-robo-debt-system-extortion-former-tribunal-member/11252306; https://www.notmydebt.com.au/; https://gordonlegal.com.au/robodebt-class-action/robodebt-faqs/

[52] Centrelink is the government agency that delivers social security payments and services to Australians https://www.servicesaustralia.gov.au/individuals/centrelink

[53] For example: Luke Henriques-Gomes, 'Robodebt official challenged by mothers of two young men who took their own lives' *The Guardian* 17 August 2020 https://www.theguardian.com/australia-news/2020/aug/17/robodebt-official-challenged-by-mothers-of-two-young-men-who-took-their-own-lives ; https://www.abc.net.au/triplej/programs/hack/2030-people-have-died-after-receiving-centrelink-robodebt-notice/10821272 .

Before the system was automated, only 20,000 interventions were made a year but with automation, the system was running at 20,000 a week.[54] The Government said it was wrong to characterise these as "debt letters" — Centrelink is just trying to get more information about what's behind the discrepancy. However the new system effectively shifted the onus onto the Centrelink recipient to prove they owed no debt to the government.

There are a range of concerns with the scheme. O'Donovan argued that the Robo-debt system does not comply with administrative law principles such as reasonableness and procedural fairness.[55] And Carney, in a scathing assessment, argued that Centrelink's "Robo-debt" system is a form of illegal extortion allowed by failings across a "plethora" of democratic and legal institutions. He states that our rule of law institutions have failed to address the illegality of Centrelink's Robo-debt programme and its unethical character. He identifies serious structural deficiencies in the design of accountability and remedial avenues.

It is clear the 'Robo-debt innovation', which likely impacted more on poor and disadvantaged individuals, caused significant disruption, not only to the individuals

[54] Luke Henriques-Gomes, Robodebt: total value of unlawful debts issued under Centrelink scheme to exceed $1bn *The Guardian* Wed 10 Jun 2020 https://www.theguardian.com/australia-news/2020/jun/10/robodebt-total-value-of-debts-issued-under-unlawful-centrelink-scheme-to-exceed-1bn-refund

[55] Darren O'Donovan, 'Lawfulness of debts raised through data matching alone' *Submission to the Senate Inquiry into the Department of Human Services' Online Compliance Initiative* April 2017 file:///C:/Users/manoo/AppData/Local/Temp/sub121_O'Donovan.pdf

receiving the letters but also to the broader administrative law system and rule of law principles.[56]

Given that around 50% of Australian households receive some type of a government payment then automated decisions will likely affect many people.[57] Government views systems like Robo-debt through a budgetary and efficiency lens, however given the significant consequences for individuals and our administrative justice system, a more pertinent perspective should be whether such an innovation enhances or diminishes principles of equality before the law and access to justice. Technological innovations like Robo-debt need to be rigorously scrutinised to ensure that all people but particularly, the disadvantaged and marginalised are not further prejudiced.[58]

Clinical Legal Education and Innovation and disruption

I have given a brief overview of innovations occurring within the legal sector and have identified two aspects that indicate the need to critical analyse these innovations. I now turn to examine what this means for clinical legal education and

[56] O'Donovan, Darren. Social security appeals and access to justice: Learning from the robodebt controversy [online]. Precedent (Sydney, N.S.W.), No. 158, Jun 2020: 34-39.
[57] Peter Whiteford 'FactCheck: Is half to two-thirds of the Australian population receiving a government benefit?' *The Conversation* May 11, 2015 https://theconversation.com/factcheck-is-half-to-two-thirds-of-the-australian-population-receiving-a-government-benefit-41027 ; note this figure has likely increased in 2020.
[58] Monika Zalnieriute, Lyria Bennett Moses & George Williams, 'The rule of law and automation of government decision-making', (2019) 82 *Modern Law Review*, pp. 425 - 455, http://dx.doi.org/10.1111/1468-2230.12412; Monika Sarder 'From robodebt to racism: what can go wrong when governments let algorithms make the decisions' June 2020 https://theconversation.com/from-robodebt-to-racism-what-can-go-wrong-when-governments-let-algorithms-make-the-decisions-132594

legal education more generally. What should be the form and content of legal education to adequately equip students to take on legal roles in this 21st century?

Australian legal education has altered little for decades: to be admitted to legal practice an individual needs to complete a law qualification, a period of practical legal training and be a 'fit and proper' person[59]. The period of practical legal training was an area where Sue championed the change from articles to traineeships.[60]

One aspect of the academic qualification that has altered is the proliferation of clinical legal education programs within the degrees. In the latest *Guide to Clinical Legal Education* in Australia, 26 out of 38 law schools offer some form of clinical legal education or experiential learning.[61] Compare this to only three programs in existence in 1991 when Sue wrote her influential article *Blueprint for a clinical program*.[62]

When undertaking clinical legal education programs, students experience disruption; not in relation to technological innovations but rather through dealing with real clients and real issues and interacting with their clinical supervisors who are their role models of lawyers.[63] Their views about law and justice are often 'disrupted. Students learn about law and its impact on disadvantaged communities;

[59] S.17 *Legal Profession Uniform Law* 2014
[60] Susan Campbell *Review of legal education report : pre-admission and continuing legal education* 2006| Victoria. Dept. of Justice.
[61] Kingsford Legal Centre, *Clinical Legal Education Guide 2019-20* Uni of NSW https://www.klc.unsw.edu.au/sites/default/files/documents/2924%20CLE%20guide-WEB.pdf
[62] Susan Campbell 'Blueprint for a Clinical Program' (1991) 9(2) *The Journal of Professional Legal Education* 121
[63] Mary Anne Noone & Judith Dickson (2002) `Teaching towards a new professionalism: Challenging law students to become ethical lawyers' 4 (2) *Legal Ethics* 127

they critique the law and legal system, reflect on their role as future lawyers while developing legal skills[64].

Clinical legal education programs range from the significant program at Monash Law School where every student who wants to, can undertake a clinical subject and be engaged in providing legal services under supervision to clients[65], to law schools that have a single elective externship subjects or perhaps a clinical component of a subject in which students undertake a simulated piece of legal work.[66]

The benefits of clinical legal education, a form of experiential education, which is the process of learning through experience and reflection on that experience, are now widely recognised but still clinical legal education remains optional in Australia's law degrees.[67] Clinical legal education sits on the margins of Australian legal education. I argue it is time to challenge that state of affairs.

There is an opportunity for those involved in clinical legal education to build on the renewed energy and impetus amongst the legal profession, academics and regulators about the future of Australian legal education. [68]As I am about to outline, Australian clinical legal education is well placed to take a more central role in the

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[64] Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone & Simon Rice, (2017), *Australian Clinical Legal Education*, ANU Press

[65] Monash Clinical Guarantee https://www.monash.edu/law/home/cle ; Jeff Giddings & Jacqueline Weinberg, Experiential legal education: stepping back to see the future 2020, in Denvir, C. (ed.). *Modernising Legal Education*. Cambridge UK: Cambridge University Press, p. 38-56

[66] Evans et all above n 64, p39-66

[67] Council of Australian Law Deans adopted *Best Practices Australian Clinical Legal Education* in Sept 2012.

[68] For example Kevin Lindgren, Francois Kunc & Michael Coper (ed.), *The Future of Australian Legal Education*, Lawbook Company 2018

legal education of 21st century legal workers as it already addresses the required attributes of the future legal worker. If law schools are serious about preparing graduates for the unknown future, they need to embed clinical legal education into law schools' curricula.

There are many people questioning whether the current content and form of legal education is sufficient to provide law graduates with the skills and knowledge they will need to work in this rapidly changing legal practice environment.[69] For example, in 2017, the New South Wales Law Society's report on "The Future of Law and Innovation in the Profession notes:

> *In a changing environment, the skills and area of knowledge likely to be of increasing importance for the graduate of the future include:*
>
> - *technology;*
> - *practice related skills;*
> - *business skills and basic accounting;*
> - *project management;*
> - *international and cross border law;*
> - *interdisciplinary experience;*
> - *resilience;*
> - *flexibility and ability to adapt to change.* [70]

[69] Pauline Collins 'Australian legal education at a crossroads' (2016) 58 (1) *Australian Universities Review* 30

[70] New South Wales Law Society, *The Future of Law and Innovation in the Profession* (2017)

Other commentators argue that the "growing impact of IT and the proliferation of legal tech jobs will, counterintuitively, place a heightened premium on "people skills."[71] The lawyer's human characteristics will differentiate them from technology. It is posited that there are three kinds of intelligence at work in the legal industry today: intellectual (IQ), emotional (EQ) and artificial (AI).[72] Each kind of intelligence can be aspects of a student's learning in a clinical legal education environment.

We know that increasingly law schools are offering a variety of subject offerings focussed on technology.[73] For example, at Monash there is a subject called Legal Tech Studio where students work collaboratively to develop a web based application that solves a contemporary legal issue[74]; similar courses are run at Melbourne University 'Law Apps' program[75], UTS's New Legal Futures and Technology major in its law degree[76] and La Trobe has a Masters of Law and Entrepreneurship[77]. Although not labelled as clinical legal education, these courses are often based on experiential learning, where students collaborate and work with end user groups otherwise known as clients.

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[71] Mark A. Cohen 'Getting Beyond The Tech in Legal Tech' https://www.forbes.com/sites/markcohen1/2019/05/03/getting-beyond-the-tech-in-legal-tech/#29db384216fc

[72] Cohen 'above n. 71

[73] Rachel Kessel, 'Pracademic collaboration: Hacking into the future of legal education' 2019 44(1) *Alternative Law Journal* 73

[74] https://www.monash.edu/study/courses/find-a-course/2021/legal-tech-studio-pdl1031

[75] https://law.unimelb.edu.au/students/jd/enrichment/pili/subjects/law-apps

[76] https://www.uts.edu.au/future-students/law/courses/undergraduate-law/why-study-uts-law/legal-futures-and-technology-major

[77] https://www.latrobe.edu.au/courses/master-of-law-and-entrepreneurship

However it is argued by several contributors in a recent book on the future of Australian legal education, that it is not enough for students to learn about the scope of technological innovation and that artificial intelligence is changing how decisions are made, it remains critical that human legal analysis is applied to these systems.

Bennett Moses states "all law students need a basic understanding of the technologies that are becoming part of the practice of law and the administration of justice. …. [but] students need to know how to use them appropriately and in ways consistent with the rule of law and associated values including fairness, natural justice and legal equality."[78] She also makes the critical point that legal educators need to make sure that future judges and practitioners remain appropriately sceptical about what precisely new technologies offer them and where their limitations lie, that they do not embrace tools such as risk assessment, predictive analytics and blockchain without understanding the limitations as well as the benefits.[79] For instance, legal expertise needs to be applied to examine when and how transactions, sentencing decisions, administrative decisions and the provision of target information should be automated, what is the logic and inherent biases in the systems, what regulation is required and particularly, to advocate for remedies when the technology fails. Lawyers need to be able to appeal against inappropriate

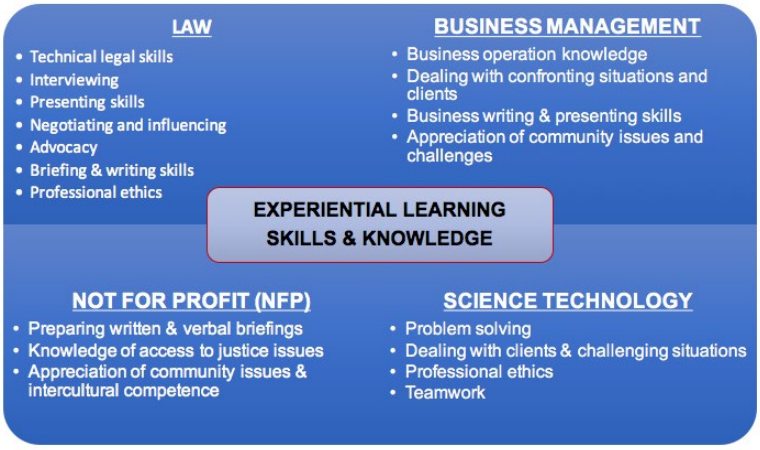
[78] Lyria Bennett Moses 'The Need for Lawyers' in Kevin Lindgren, Francois Kunc and Michael Coper (eds) *The Future of Legal Education: a Collection* (Lawbook Co. 2018) 370

[79] Above n 78 p 370; See also Allsop above n 23, 18-19 and Nicholas Diakopoulos "We need to know the algorithms the government uses to make important decisions about us" — https://theconversation.com/we-need-to-know-the-algorithms-the-government-uses-to-make-important-decisions-about-us-57869

uses of data analytics and expert systems in government decision making. Most importantly lawyers need to be prepared to defend core rule of law values in the face of pressures to embrace innovations and disruption.

So how does clinical legal education fit in? Australian clinical legal education can, and already does, provides many of the skills and knowledge required of 21st century legal workers.[80] Those involved in clinical legal education will recognise that the desired attributes like emotional intelligence, project management, capacity to collaborate across disciplines and people skills are learning outcomes for many clinical legal education programs.

As an example, the Monash clinical website[81], indicates that this range of skills and knowledge are already to be obtained through undertaking a clinical subject.



Additionally in Australia there is a strong legacy in clinical legal education of critical analysis and formulation of appropriate legislative change and test cases. The location of most clinical legal education programs within community legal centres

[80] Evans et al above n 64

[81] https://www.monash.edu/law/home/cle

has meant that students are exposed to discussions about injustice, analysis of both processes and legislation and potential law reform.[82] The critical thinking skills that students utilise currently in clinical practices can be equally applied to assessing the advantages, limitations, assumptions and impacts associated with technology in general and artificial intelligences in particular.

Engaged in clinical legal education, students can work with others to identify problems in access to justice and injustice in the legal system and to develop appropriate responses to clients' problems and forms of injustice. Since the 1980s, clinical legal educators like Sue Campbell, have been concerned about ensuring students were aware of the wider obligations of lawyers – emphasising legal ethics and the impact of the legal system on disadvantaged clients and communities.

Australian clinical legal education has a strong history of innovation, often leading the way with new approaches and models of legal practice. As documented by Naylor and Hyams, "clinical legal educators have not been content to rely on tried and tested programs alone. New ideas about different ways to get the most out of clinical legal experience abound" and the examples detailed in that publication include integration of clinic and academic legal teaching; co-location with a welfare agency eg Homeless Persons Legal Advice Service; examining domestic, commonplace legal issues within a human rights framework; development of

[82] Evans et al above n 64, ch 5 pp 97-122

specialist clinics eg Centre for Sexual Assault, Tax Help Offices; prisoners, law students and theatrical method being used in clinical community development. [83]

More recent examples include:

- clinics at Monash, Uni NSW and La Trobe have run multi-disciplinary clinics where law students collaborate with students and professionals from other disciplines eg business, social work, financial counsellors, health sciences to provide a holistic service to clients.[84]
- clinical programs at ANU and here at Monash run virtual clinics where technology enables students to provide legal assistance to clients and groups both national and internationally[85].

As has been the case historically, Australian clinical legal education currently remains interwoven with a concern to improve access to justice and is well placed to encourage students to engage with the types of issues I have outlined above. Over the last three decades, people like Sue Campbell and others, adapted to new forms of technology but they also continued to be innovative in their approaches to learning and modes of service delivery whilst focusing on seeking justice for the disadvantaged; they engaged in critical analysis and modelled what a good and ethical lawyer should be.

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[83] Bronwyn Naylor & Ross Hyams., (ed) *Innovation in Clinical Legal Education: educating lawyers for the future* (2007) Alterative Law Journal Monograph No 1

[84] Ross Hyams & Faye Gertner,.,'Multidisciplinary clinics - broadening the outlook of clinical learning' (2012) *International Journal of Clinical Legal Education*. 17, p. 23

[85] Les McCrimmon, Ros Vickers & Ken Parish 'Online Clinical Legal Education: Challenging the Traditional Model' (2016) 23(5) *International Journal of Clinical Legal Education* 565.

Conclusion

There can be no doubt that legal practice and how lawyers work will continue to change dramatically over in the coming years. Similarly, how courts and dispute resolution processes function and are accessed will change. Equally we can predict that limited access to justice, attacks on the rule of law like Robo-debt, growing inequality and social injustice will persist. There is enormous potential for those involved in clinical legal education to challenge this state of affairs whilst, concurrently, providing a legal education that prepares agile and resilient graduates for the unpredictable nature of legal work in the future.[86]

Australian clinical legal education is well positioned to take a more central role in the legal education of 21st century legal workers. Those concerned about the future of legal education, should seriously consider how law schools can embed clinical legal education into the legal curriculum.

Irrespective of the changes to the work that lawyers do, how they do it or where they do it, clinical legal educators can continue to cause disruption, not in the contemporary market sense, but rather in the Susan Campbell style, agitating for change within the law school and legal profession, whilst modelling for students how to be access to justice champions, protectors of the rule of law and good and ethical lawyers.

[86] Jeff Giddings & Jacqueline Weinberg, 'Experiential legal education: stepping back to see the future' in Denvir, C. (ed.) (2020), *Modernising Legal Education*. Cambridge UK: Cambridge University Press, p. 38-56

DIAMOND'S ARE A GIRL'S BEST FRIEND... AND A GREAT DATA COLLECTION TOOL!

Rachel Dunn[1]

Abstract

This article explores an innovative and visual data collection tool: The Diamond. The Diamond allows for participants to rank specified items or statements and place them onto a Diamond shape. It can measure various descriptors, such as importance, with the most important item at the top and the least at the bottom. This allows for the researcher to see the overarching relationships between the different items of statements. Participants are asked to discuss the reasoning behind the placements, which provides a qualitative element to a quantitative data set. This article is intended to be a practical guide as how to use the Diamond and analyse the results, discussing the practicalities of it and other potential uses. The examples used throughout are from researched which used the Diamond, namely in clinical legal education and youth justice studies.

Key Words

Research Methods, Visual Methods, Diamond Ranking, Clinical Legal Education, Youth Justice

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Introduction

It has been established in the literature regarding clinical legal education that there is a lack of empirical research and evidence into our pedagogy.[2] Further, it has been noted that the 'quality of reliable statistical data was low to non-existent,' along with 'large gaps in the literature.'[3] One possible explanation of this is legal educators are not often trained in empirical research methods, since legal education, and traditionally law generally, emphasise doctrinal research. Further, those who teach in law clinics may not be given appropriate time, resources and training in how to collect, analyse and report on findings.[4]

This article will outline a very useful data collection tool, called Diamond Ranking. This tool was originally designed and used in primary education research[5], though one of the earliest reports of it being used was with children in the care of Local Authorities.[6] I have developed it for use in higher education, specifically legal education, and have used it with Young People on other projects. It was the main data collection method for my PhD research, which focused on the knowledge, skills

[2] M Tomoszek, 'The Growth of Legal Clinics in Europe – Faith and Hope, or Evidence and Hard Work?' 2014 21(1) International Journal of Clinical Legal Education 93

[3] J Ching *et al*, 'An overture for well-tempered regulators: four variations on a LETR theme,' (2015) 49(2) The Law Teacher 143, 146

[4] McKeown, P. and Dunn, R., 'The European Network of Clinical Legal Education: The Spring Workshop 2015,' (2015) 22(3) The International Journal of Clinical Legal Education 312

[5] Clark, J. 'Exploring the use of Diamond Ranking activities as a visual methods research tool' (2009) Paper presented at the 1st International Visual Methods Conference. Accessed via <https://www.academia.edu/1197680/Exploring_the_use_of_diamond_ranking_activities_as_a_visual_methods_research_tool> Last cited 3.10.20

[6] Thomas, N.P. and O'Kane, C. 'Children's Participation in Reviews and Planning Meetings When They are "Looked After" in Middle Childhood' (1998) 4 Child and Family Social Work 221

and attributes considered necessary to start day one training competently and whether live client clinics can develop them. The method was chosen because it was quick, simple and generated several forms of relatively easy analysis. It also encourages group discussion, which will be explored in this article, allowing for both quantitative and qualitative data to be collected. The first part of this article will outline visual methods and the literature surrounding the Diamond. An in-depth explanation will be given as to how to use the Diamond, how to analyse it and what uses it has in both research and teaching, with reference to my own work as practical examples. This article will not discuss the findings of my PhD research[7] any further than to explain how the analysis works, but rather the methodology and usefulness of the Diamond as a practical guide. More recently, I have used it as a tool for collecting data in a Children's Secure Unit, which will be discussed in the final section.

The Diamond

The Diamond, originally called the Diamond9, is used in primary education. It has been described as a, '*thinking skills tool*,' [8] which encourages and facilitates discussion. A typical Diamond9 looks like the following:

[7] For more information, please see Dunn, R., *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University

[8] Clark, J., Laing, K., Tiplady, L. and Woolner, P., 'Making Connections: Theory and Practice of Using Visual Methods to Aid Participation in Research,' (2013) Research Centre for Learning and Teaching, Newcastle University, p.6. Accessed via

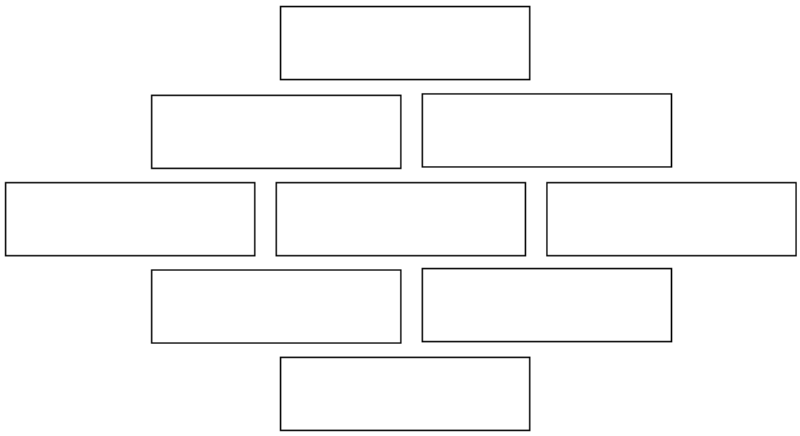


Figure 1 – The Diamond9

The way in which it works is simple. Participants are given nine cards, which can contain statements, words or pictures. They are asked to place them on the Diamond board in a hierarchy, depending on what the researcher is measuring. For example, in my research I was measuring which knowledge, skills and attributes were considered important to practice. The card considered most important was placed at the top of the Diamond, and the card considered least important at the bottom. The Diamond is a diverse tool, which can be used to measure essentially anything. For example, instead of importance you can use it to measure feelings, preferences or interests. It can even be used to measure preferred crisp flavours or cutest animals. When one normally asks someone to rank in a list form, we have a definite place for each category, but it may tell is little about the relationship between the ranking. The researcher will find what the 'most' and 'least' category being measured, which are

<https://eprint.ncl.ac.uk/file_store/production/190964/23811F02-9772-42F3-B124-AD0830449ED7.pdf> Last cited 11.06.18

easy to identify, but the middle becomes undifferentiated and tells us little about the placements. The purpose of the Diamond is to, 'encourage discussion about the relative importance of certain factors.'[9] Cards which are placed on the same row are thought of as carrying the same weight of whatever is being measured and presents the researcher with the opportunity to explore the relationship between those elements. Cards may be moved into a different rank once placed on the board and all cards must be placed, for a complete Diamond. The important aspect of the Diamond, however, is not necessarily the final position of what is being measured, as there is no right or wrong answer. The importance is the 'process of discussion, negotiation, accommodation to other perspectives, and consensus-seeking that takes place in agreeing the ranking.'[10]

When participants organise their opinions in this way, they make their 'understandings available for analysis and comparison.'[11] Comparisons and differences can be made between different categories, which gives a richer analysis and discussion than merely listing categories. Furthermore, 'when ranking items – for example, statements, objects or images – the participants are required to make

[9] M Rockett and S Percival, *thinking for learning*, (Network Education Press, 2002) 99

[10] Clark, J. 'Exploring the use of Diamond Ranking activities as a visual methods research tool' (2009) 3. Paper presented at the 1st International Visual Methods Conference. Accessed via <https://www.academia.edu/1197680/Exploring_the_use_of_diamond_ranking_activities_as_a_visual_methods_research_tool> Last cited 3.10.20

[11] Clark, J., Laing, K., Tiplady, L. and Woolner, P., 'Making Connections: Theory and Practice of Using Visual Methods to Aid Participation in Research,' 2013, Research Centre for Learning and Teaching, Newcastle University, 6 <https://eprint.ncl.ac.uk/file_store/production/190964/23811F02-9772-42F3-B124-AD0830449ED7.pdf> Last cited 11.06.18

obvious the overarching relationships by which they organise knowledge.'[12] Thus, there is not only discussion between categories placed on the same row, but across the whole of the Diamond, making the participants' views and constructions more transparent to the researcher.

As mentioned above, the Diamond can collect both qualitative and quantitative data, whether it is done as part of a group, or individually. The quantitative data is the placement of the cards on the board. When I used it to collect my PhD data, I encouraged groups to discuss the placement of the cards. This prompted some very interesting discussion, with group members often disagreeing with each other, and produced qualitative data. There was never, however, a Diamond which was incomplete, with members always coming to some agreement[13].

There are also ways to adapt the Diamond to collect further data, adding an inductive element to an apparently deductive tool. For example, adding blank cards so that participants can create their own category is a great way to collect some other

[12] Niemi, R., Kumpulainen, K. and Lipponen, L., 'Pupils as active participants: Diamond ranking as a tool to investigate pupils' experiences of classroom practices,' 2015, 14(2) European Educational Research Journal 138, 140

[13] This is in part a result of the semiotics of the task, which encourages completion. However, interesting qualitative data can come from discussions about the nature of the task when participants are reluctant to use hierarchies of any kind. This was reported by Clark, who had a participant refuse to adhere to the Diamond shape, arguing there was no one image which should be ranked lowest. Clark highlights that, whilst frustrating for the researcher, 'a truly participatory approach also must allow for dissention and allowances to opt out of any aspect of research'. Found in: Clark, J. 'Exploring the use of Diamond Ranking activities as a visual methods research tool' (2009), 9. Paper presented at the 1st International Visual Methods Conference. Accessed via <https://www.academia.edu/1197680/Exploring_the_use_of_diamond_ranking_activities_as_a_visual_methods_research_tool> Last cited 3.10.20

categories of data. If we take our example of preferred crisp flavours, the researcher may provide participants with cards which have flavours currently sold on the market. Allowing participants to create their own category may result in them suggesting new flavours of crisps, or flavours which are no longer sold, but feel should be brought back. Some have also reported using the Diamond9 by providing 10 cards and asking participants to discard one as 'not important or relevant.'[14] This adds a deeper element to the data collection and reflexivity on the part of the researcher and the terms of their hypothesis. What can seem like quite a rigid tool can become flexible and fluid, creating further ways to collect data and opinions from participants and be adapted for whatever the research purpose is.

Visual Methods

A visual method is, 'the use of visual materials as one among several research methods that may be employed by a social researcher during the course of an investigation.'[15] There is not necessarily a fixed definition of what a visual method is, but it is generally agreed that visual images are created by participants, 'in the context of, or in response to, human social action.'[16] Thus, in order for a method to be considered visual, there must be a visual element to it, and can include photographs,

[14] Clark, J. 'Exploring the use of Diamond Ranking activities as a visual methods research tool' (2009) 3. Paper presented at the 1st International Visual Methods Conference. Accessed via <https://www.academia.edu/1197680/Exploring_the_use_of_diamond_ranking_activities_as_a_visual_methods_research_tool> Last cited 3.10.20

[15] Banks, M. and Zeitlyn, D., *Visual Methods in Social Research*, (SAGE, 2015), ix

[16] Flick, U., *The SAGE Handbook of Qualitative Data Analysis* (SAGE, 2013), 394

drawings and diagrams.[17] This could be in addition to, or independent from, other non-visual methods, such as interviews or surveys.[18] It is important to distinguish between visual and non-visual methods, in order to explore whether the contribution visual methods make is 'distinctive', and to ensure rigour of the data collection and analysis.[19] Visual methods are by no means a new concept and have mostly been used in fields such as sociology and anthropology. Other fields, such as education and health care, now incorporate visual methods into some research.[20] A systematic review conducted by Balomenou and Garrod found studies using participant-generated images dating back to the 1970s, with 286 studies identified in total.[21] This, however, is only techniques using photography, and there are many other visual methods which are used, such as the Diamond explained above.

[17] Wall, K., Higgins, S., Hall, E. and Woolner, P. ''That's not quite the way we see it': the epistemological challenge of visual data' (2012) International Journal of Research & Method in Education 1, 1

[18] In fact, those who use the Diamond discuss its usefulness in supporting and/or being supported by other non-visual research methods, or often report using them alongside more traditional methods. For example: see Dunn, R., *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University Bucknall, S.M. *Children As Researchers: Exploring Issues and Barriers in English Primary Schools* (2009) PhD thesis, The Open University; Prosser, J. 'Visual methods and the visual culture of schools' (2007) 22(1) Visual Studies 13

[19] Wall, K., Higgins, S., Hall, E. and Woolner, P. ''That's not quite the way we see it': the epistemological challenge of visual data' (2012) International Journal of Research & Method in Education 1, 2

[20] Glaw, X, et al, 'Visual Methods in Qualitative Research: Autophotography and Photo Elicitation Applied to Mental Health Research,' 2017, 16 International Journal of Qualitative Methods 1, 1

[21] Balomenou, N, and Garrod, B., 'A Review of Participant-Generated Image Methods in the Social Sciences,' (2016) 10(4) Journal of Mixed Methods Research 335

Visual methods can be created by their participants, '*in the context of, or in response to, human social action.'*[22] Prosser identifies three categories of visual methods: researcher found, researcher generated, and participant generated.[23] The Diamond sits between the latter two. The researcher generates the Diamond board and some, or all, of the categories for measurement, but it is the participants who generate the final Diamond board. Others argue that there are two kinds of visual methods: one is created by participants to analyse as data and the other is created by the researcher to collect data.[24] Wall *et* al categorise the Diamond in participant generated data,[25] but it doesn't seem that it is only generating that kind of data, and it may depend on how the Diamond is being used. For example, if we are providing participants with pre-determined cards only, the Diamond is a method created by the researcher to collect data, but also by the participants to analyse as data. If, however, participants are asked to take their own photographs and then place them on a Diamond, this would fall more into the participant generated data category. Seemingly, irrespective of how many categories of visual methods are identified by different authors, the Diamond does not fit conclusively into only one of them. This diversity, however, is what 'makes visual methodology complex and attractive'.[26] It is not an issue to 'blur the boundaries' between the different kinds of visual methods, but it must be

[22] Flick, U., *The SAGE Handbook of Qualitative Data Analysis* (Sage, 2013), 394
[23] Jon Prosser, 'Visual methods and the visual culture of schools,' (2007) 22(1) Visual Studies 13, 19
[24] Flick, U., *The SAGE Handbook of Qualitative Data Analysis* (Sage, 2013), 396
[25] Wall, K., Higgins, S., Hall, E. and Woolner, P. ''That's not quite the way we see it': the epistemological challenge of visual data' (2012) International Journal of Research & Method in Education 1, 3
[26] Ibid 2

acknowledged in order to fully comprehend the impact it can have on the data may be classified.[27]

There are many advantages to using visual methods, such as enhancing 'the richness of data by discovering additional layers of meaning, adding validity and depth, and creating knowledge.'[28] Further, they can be used for member checking to add to reliability of findings and can be replicated with almost any population.[29] Visual methods can be used alongside other, more traditional, research methods, such as interviews. The visual method can become the focus of the interview, to better understand the meaning of the visual to the participant, further validate the data and to encourage participants to express themselves in a way which may not be possible using verbal techniques alone.[30] The use of the visual can prompt participants to, 'reveal more than they were expecting to share with the researcher.'[31]

Visual images, such as the Diamond, 'could help to alleviate anxiety about the research process and to clarify the role of the researcher.'[32] This role clarification is useful for aiding the researcher, as well as participants. Visual methods tend to have

[27] Ibid
[28] Glaw, X, et al, 'Visual Methods in Qualitative Research: Autophotography and Photo Elicitation Applied to Mental Health Research,' (2017) 16 International Journal of Qualitative Methods 1, 1
[29] Ibid
[30] Stedman, R. et al, 'A Picture *and* 1000 Words: Using Resident-Employed Photography to Understand Attachment to High Amenity Places,' (2017) 36(4) Journal of Leisure Research 580
[31] Pain, H., 'A Literature Review to Evaluate the Choice and Use of Visual Methods,' (2012) 11(4) International Journal of Qualitative Methods 303, 313
[32] Bailey, N.M, and Van Harken, E.M., 'Visual Images as Tools for Teacher Inquiry,' (2014) 64(3) Journal of Teacher Education 241, 245

a recognisable semiotic form, and by their nature they imply interaction, which may ease participation and be a pathway into conversations between the research and the participants.[33] Further, the timing or pace of these interactions is much less controlled then is more dialogic forms of data collection, such as interviews or a survey. In this way, the researcher can retreat into the background and allow the participants to have more autonomy and control over the data collection process and interact with each other, rather than the person exploring their opinions. During my data collection for me PhD, I very much knew my position in the research process and what my role was during the data collection. Once I told my students what they had to do, I stepped back and let them do it, allowing them to 'set the agenda'[34] of the Diamond. This will be explained further below.

How I used it

For my own research, I made the Diamond bigger, with 16 spaces. I felt as though this were necessary, as there are so many knowledge, skills and attributes involved in legal practice, and only nine spaces would not have reflected this. It was the same concept, but a bigger board. The Diamond16 looked like the following:

[33] For example, Hopkins discusses the use if the Diamond as a 'useful starting point for conversations between teachers and pupils and between student teachers and their tutors about ways in which teaching and learning might be enhanced and personalized.' Hopkins, E. 'Classroom Conditions for effective learning: hearing the voice of Key Stage 3 pupils' (2010) 13(1) Improving Schools 39, 53.
[34] Prosser, J., 'Visual methods and the visual culture of schools,' (2007) 22(1) Visual Studies 13, 22

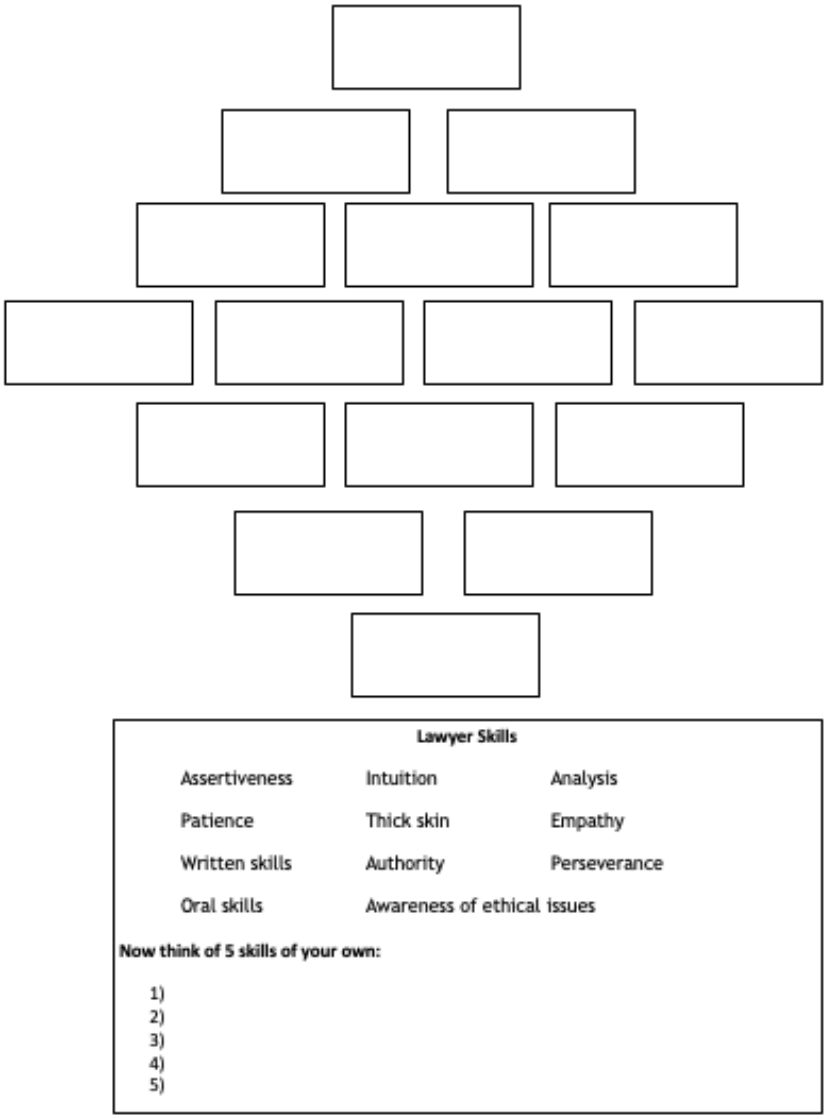


Figure 2 – The Diamond16

It maintained the Diamond shape, but had more rows and cards. I gave my participants 11 pre-determined cards, as seen on *Figure 2*, and five blank cards, to create their own knowledge, skills and attributes. This enabled me to collect a whole other data set to analyse, as I was curious to see what they thought important enough to create on a card. It also made for interesting cross-analysis across all of the groups. There are other areas of analysis which can provide some useful results and discussion, from a methodological perspective. For example, it is possible to track

the movement of a card throughout a Diamond. It was interesting see something which may have started off as important but, as discussions develop and other cards are placed, move down the board or are swapped with others. This analysis is greatly aided by the qualitative data, explaining why a card has been moved. Further, the qualitative data can be turned into quantitative data, recording how often a card is discussed, or not discussed, and whether this has had an effect on its placement. For example, one may find that a card not discussed is not placed highly on the board, and the perceived most important cards are discussed more. This kind of analysis may not completely answer the research questions which are being asked, but may help to explain what is going on behind the scenes and open up further areas of discussion and methodological questions.

My primary data was collected with four firms of students in Northumbria's Student Law Office over an academic year. As the students were starting their clinical experience, I collected a Diamond16 during their first firm meetings. I then went back at the middle and end of the year. The final Diamond16 was collected during their last firm meeting, which was followed by a semi-structured group interview, in which I presented them with all of their Diamond16s from across the year. This interview served two purposes: to validate the Diamond16s and to explore with them further what they thought was important to practice and whether they thought their experience in the Student Law Office had helped to develop these skills. Thus, for these students, I could track their development and potentially changing

perspectives over the year, as they gained more practical experiences. The Student Law Office also offers electives in the second semester to BPTC and LPC students. One Diamond16 was collected with the BPTC students, but I was able to collect two with the LPC students, at the start and end of the module.

For comparison, I collected data with the tutors whose firms I had been allowed access to, who had, or still, practised. They either did it as a group or individually. Those who did it individually were asked questions about the placement of the cards once they had completed the Diamond16, to collect the necessary qualitative data. I was also permitted to enter two law firms in Newcastle in collect data. A commercial firm participated as a group, including partners, solicitors who oversee trainees and a representative from HR and recruitment. One lawyer participated from a legal aid firm. Finally, I gained access to three other clinics: another in the North East of England, one in Poland and one in Czech Republic. This enabled me to conduct a cross comparison between different groups, to explore whether location, experience and proximity to practice can change perceptions of what is important to practice.

Altogether I had 110 participants, with 32 completed Diamond16s. This gave me a wealth of data to analyse and discuss, with many different perspectives and experiences present. It is important to note, however, that not every Diamond16 produced qualitative data. Some of the Diamond16s conducted in Poland and Czech

Republic were done by non-English speakers and, whilst parts of it were translated/interpreted for me, it was not enough for me to be confident to use is as a reliable data set during the analysis. Thus, eight of the Diamond16s had excluded qualitative data, which was recorded and explained during the analysis stage of the PhD. It may be important here to emphasise that not all research goes exactly as planned and, as long as the researcher is transparent in their findings appropriate conclusions can be drawn from the results. After all, we can't plan for and anticipate everything during the research process.

Practicalities

There are some practicalities to consider when using the Diamond. Firstly, I never spoke to my participants when they were doing the Diamond, except to further clarify how it worked. I would tell them at the start what they needed to do, but I never discussed what the different cards meant. I wanted to know what each knowledge, skill and attribute meant to them, rather than them adopting my definition. This worked effectively, as their meaning of certain cards was developed and drawn off their experience of working with it. This means that the skills can mean something different to each participant, making for some very interesting discussions.

It also needs to be considered how to record the data. I filmed each Diamond16, with the consent of my participants, on my iPad. This meant I could accurately record

their discussions and the movement of the cards. Once the Diamond16 was complete, I took a picture of the final placement. These pictures were used in my thesis and made it easier to check my data once it was converted to the spreadsheets. I wrote up each Diamond16 after it happened, using the videos as an aid, recording which group of participants it was, how many participated, the date and any other details which needed to be noted. I made a written transcription of all of the qualitative data, provided the picture of the final placement and stated which cards were created and which were moved throughout the Diamond16 and to where. This served me well when it came to analysis, as I had 32 Diamond16 altogether to organise.

Recording using technology, however, may not always be appropriate or possible. Other ways in which to record the data is to print off multiple Diamond boards and stick cards to the board once complete. This also means that an accurate note must be made of any comments and discussions. I have also produced worksheets of the Diamond16, used mainly in teaching, which allows participants to write the skills in the boxes. This potentially stifles the movement of the cards, as participants will have to cross out and rewrite a category, but it provides the researcher with final placements.

The Diamond is a quick method to use. Each exercise took anywhere from a few minutes to half an hour. I found that I collected very rich data quite quickly, with a

variety of analysis possibilities. It also meant that transcribing did not take as long as it may with an interview.

Analysing the Diamond

As stated, the Diamond provides the researcher with both quantitative and qualitative data. This is a mixed method, meaning that it can be used to answer questions that ask *what*, *why* and *how*. Quantitative data can only show so much. For example, in my own research it could tell me what knowledge, skills and attributes were thought of as important, but not why or how they were important. The why or how is developed using the qualitative data. This is highlighted by Cresswell and Clark, when advocating for the use of mixed methods.[35] They argue that each kind of data has its merits but are limited in what they can show, so the weakness of one is redeemed by the strength of the other.[36] Thus, 'the use of quantitative and qualitative approaches in combination provides a better understanding of research problems than either approach alone.'[37]

What this means for the Diamond is that there are two kinds of analysis to consider. For ease of explanation, and to show a practical example, I will use some of my own Diamond16 analysis. The quantitative analysis will be explained in this article only. I used thematic analysis to analyse the Diamonds and my interviews, following

[35] Creswell, J.W. and Clark, V.L.P., *Designing and Conducting Mixed Methods Research* (SAGE, 2007)
[36] Ibid 9-10
[37] Ibid 18

Clarke and Braun's six steps.[38] There is already extensive articles and guides on thematic analysis and I do not feel it necessary to repeat it here.

When analysing the Diamond, the board should be split in different sections. Woolner *et al*, when analysing a Diamond9, split the board in 5 sections, each row becoming a section.[39] I did the same for the Diamond16, but with multiple rows contained in certain sections, as follows:

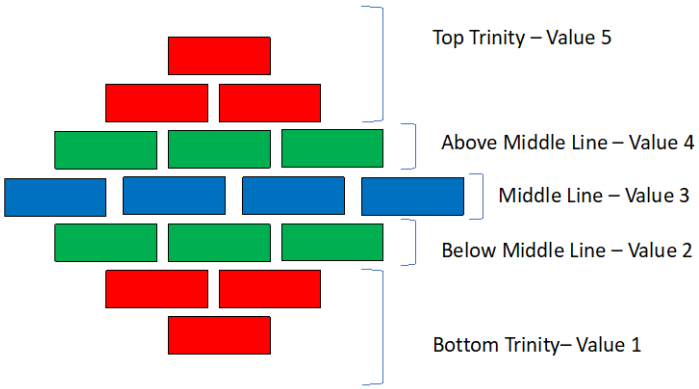


Figure 2 – Analysis of the Diamond16[40]

The calling of top and bottom sections the 'trinity' came from a group of participants, who refused to move any of the skills in this section and named it, 'The

[38] Clarke, V. and Braun, V., 'Using Thematic Analysis in Psychology,' (2008) 3(2) Qualitative Research in Psychology 77

[39] Woolner, P.*et al*, 'What Is Learning? Views of Ideal and Institutional Learning Held by HE, FE and School Teachers Engaged in Practitioner Enquiry' (The European Association for Practitioner Research on Improving Learning (EAPRIL) Conference Paper) 24th-26th November 2010

[40] Dunn, R. *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University, 158

Holy Trinity'. I liked this and adopted it during the analysis stage. As the board was bigger, I thought it easier to group the skills in this way, without masses of sections. It also allowed for me to see which skills were collectively placed at the top and the bottom, but if I wanted to discuss a skill in more detail because it was placed in the top box or the bottom box, I could still do this in the discussion. Further, it also meant that there were equal numbers of cards in each row, apart from the middle row which had four, making a more equal representation of where the cards were placed. Any cards which were placed on a certain row were given a numerical value. The more important the card was perceived, the higher the value it was given, because of how it would be represented on the graphs, which will be explained further. I entered all of the values into an Excel Spreadsheet. For example, when inputting the pre-determined cards and values for a Student Law Office firm over the course of the year, it looked like:

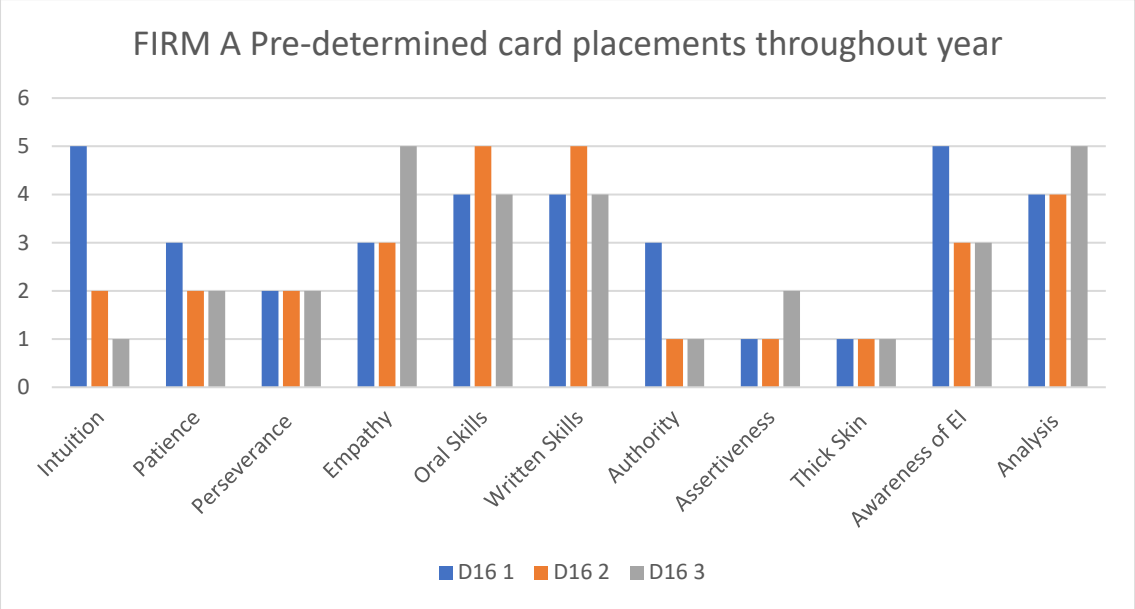
	Intuition	Patience	Perseverance	Empathy	Oral Skills	Written Skills	Authority	Assertiveness	Thick Skin	Awareness of EI	Analysis
D16 1	5	3	2	3	4	4	3	1	1	5	4
D16 2	2	2	2	3	5	5	1	1	1	3	4
D16 3	1	2	2	5	4	4	1	2	1	3	5

Figure 3 – Example of multiple Diamond16 pre-determined cards data input[41]

I analysed the pre-determined cards, which I gave participants, separately to the cards which they created. This made the analysis easier, but also so that there could be deeper discussion of each separate data set. When looking at this table, we can see that for this firm thick skin was always placed in the Bottom Trinity. Intuition

[41] Dunn, R. *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University, Appendix 9

started in the Top Trinity at the start of the year, but progressively moved down as the year went on. Some cards fluctuated greatly, others stayed in a very similar place on the board. Looking at it this way, however, is only simple when you have worked with the data and can pick out the numbers easily. Excel is a great tool for making graphs and most of the data was presented in this way. This is why the numerical values were highest for the most important cards, so that they appeared higher on the graphs. It would have looked strange, for example, if analysis, which scored quite highly across all Diamond16s for this firm, appeared low on the graph making it seem less important at a first glance. Thus, the data in this table was displayed in the following graph:

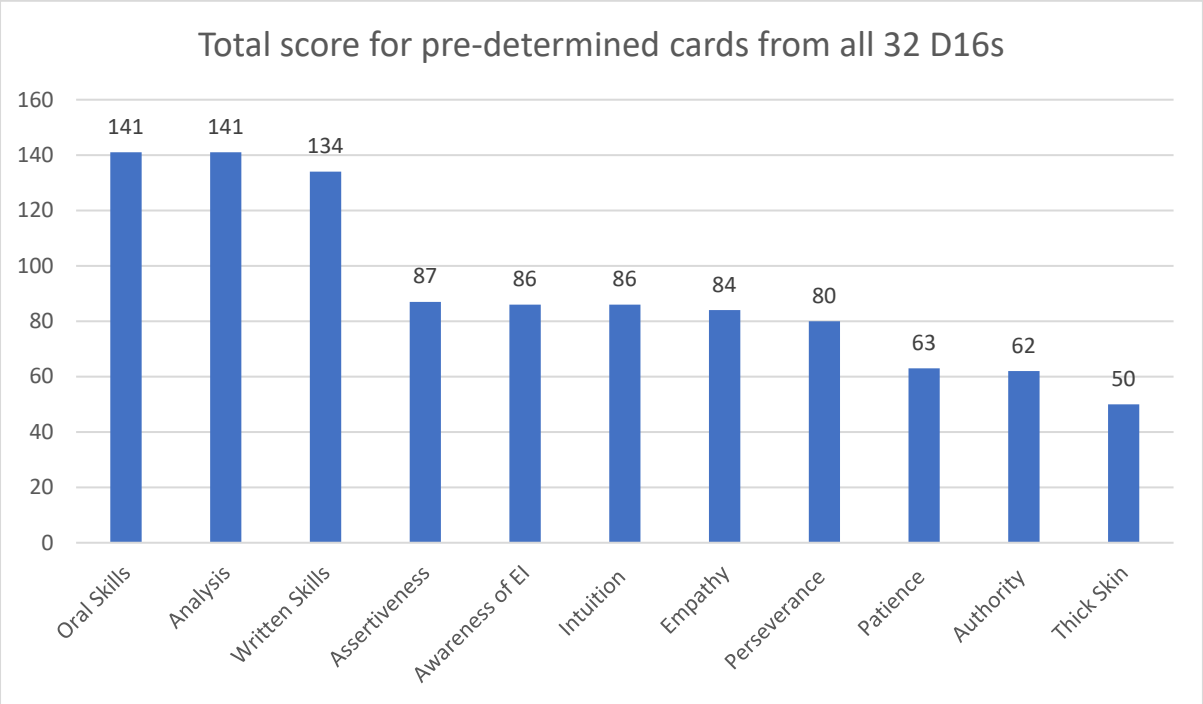


Graph 1 – Final Placement of the pre-determined cards for Firm A[42]

[42] Dunn, R. *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University, 220

Instantly when looking at this graph, we are able to see which cards were deemed the most important and which the least and how it changed and developed over the year. This was very quick and easy to make on Excel, using the above data.

Another way in which I could present the data, was to use all 32 Diamond16s and create an 'importance score'. This was done by adding together all of the numerical values of each card, to create an overall score. Again, Excel makes this very simple to do. It allowed me to see the overall perceived importance, and non-importance, of each card. This was done separately for the pre-determined cards and the created cards. The final graph for the pre-determined cards was:



Graph 2 – Importance Scores of Pre-Determined Cards[43]

[43] Dunn, R. *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University, 170

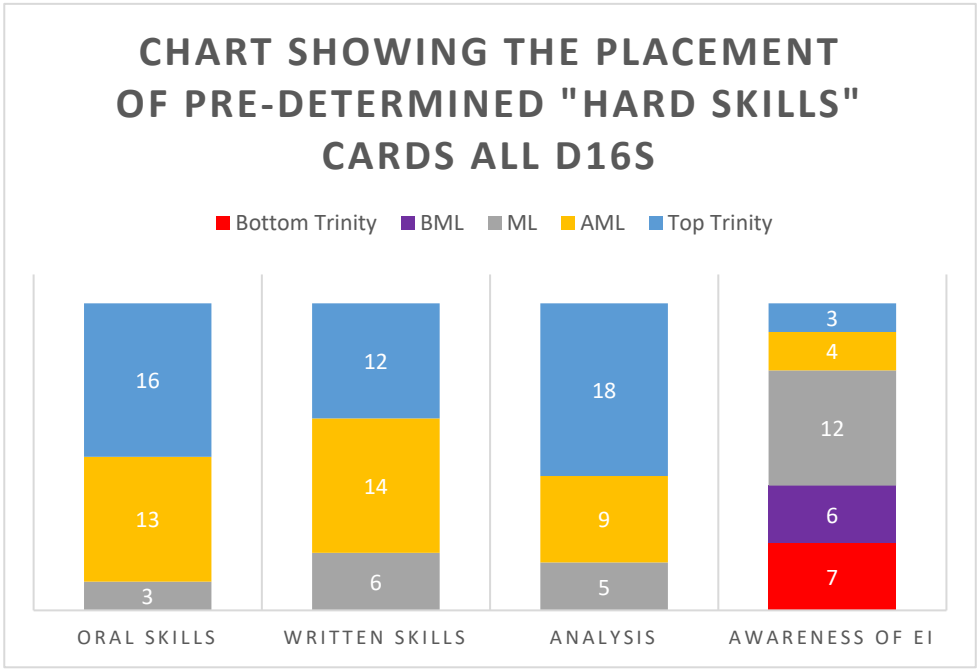
By giving a higher value to the cards in the top part of the board, it was easy to add up all of the values to provide an overall score. Here, we can see that oral skills and analysis were the most highly placed cards across all of the Diamond16s and thick skin was placed the lowest most often throughout all of the Diamond16s. What this does not tell us, however, is the range of where the cards were placed, even if we can see perceived importance. This will be addressed below.

I was also interested to see how the "hard" skills were perceived as important, compared to the "soft" skills. I split each of the cards into these two distinct categories and showed the amount of times they were placed in each section of the board. It is important to note here that the categorising of these cards was at times subjective, as are most decisions in research and analysis. This cannot be avoided as the decisions we make are based on our opinions and our own experiences. As long as there is 'honest acknowledgement of the researcher's position, goals, experience, and subjective point of view,' [44] and this subjectivity is not ignored it does not detract the rigour from the research. For example, there is dispute over whether awareness of ethical issues is a "hard" or a "soft" skill, and I decided to place it in the "hard" skills category. This is because students in the UK are tested on the Codes of Conduct during the course by way of an examination. I appreciate that there are elements of ethics which are in the "soft" skills category, but I strive to be

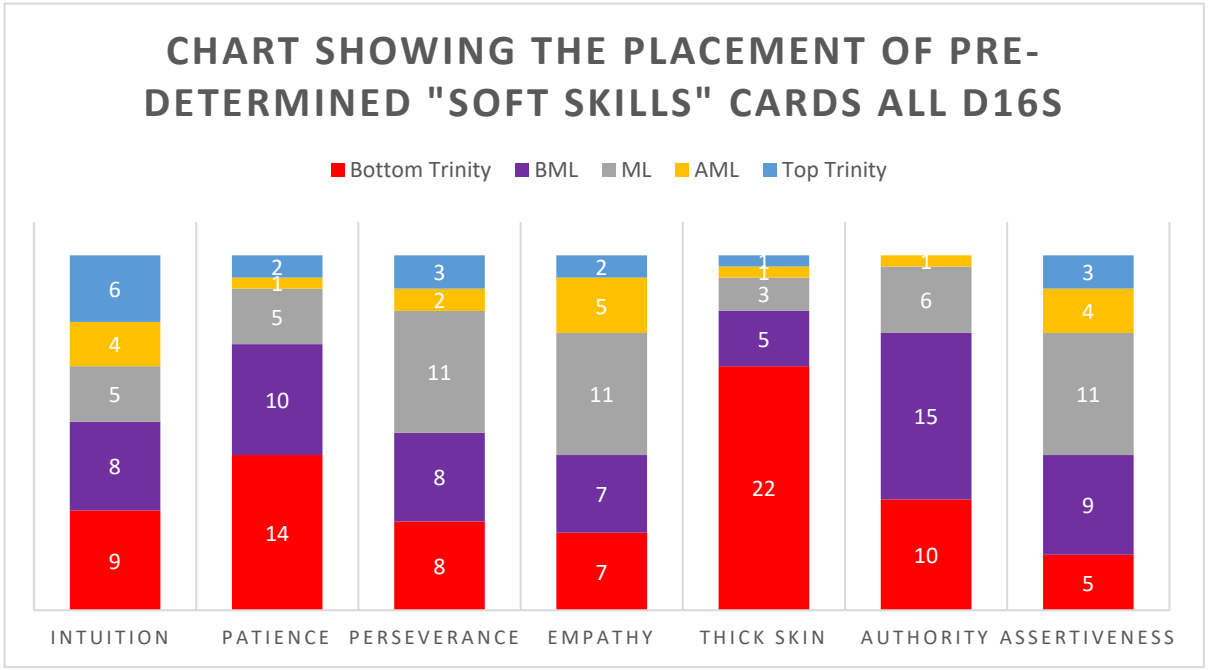
[44] Gelman, A. and Hennig, C., 'Beyond subjective and objective in statistics,' (2015), 12 Accessed via http://stat.columbia.edu/~gelman/research/unpublished/objectivity10.pdf Last cited 19.06.18

transparent on my categorisation and analysis and why certain choices were made. This analysis added some more insight into the perceived importance, which could not have been discussed using Graph 2 and the overall importance score. Again, I will only display the graphs for the pre-determined cards:[45]

[45] Dunn, R. *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University, 178



Graph 3 – Placement of "Hard" Skills for all Groups



Graph 4 Placement of "Soft" Skills for all Groups

When considering these graphs, we can see much more activity. Taking the hard skills first, apart from awareness of ethical issues there was never an instance of a "hard" skill being placed below the middle line. This explains how analysis, written and oral skills scored so highly overall. Awareness of ethical issues was placed more varied across the board, appearing more in the bottom half of the board, than the top. Looking at the "soft" skills, again they were much more varied in their placement. Thick skin, which scored the lowest overall, appeared in the bottom trinity more than any other card and only appeared in the top trinity once. These graphs can tell us more about the perceived importance than an overall importance score. For example, whilst analysis had the overall joint highest importance score, it was not perceived to be the most important for every group of participants, as there were 16 occurrences of it being placed outside of the top trinity. This is where the qualitative data collected during the Diamond16 is vital, as it helps to explain what is happening with the quantitative data, and why certain cards scored more highly. For example, thick skin and patience were placed in the bottom trinity more than other cards. A group of lawyers in a commercial firm stated:

> *'Because you can manage that [pointing to thick skin and patience]. If you know the NQ in your team doesn't have a thick skin, doesn't have patience, you can manage it.'*[46]

[46] Dunn, R. *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University, 180

Thus, skills which were seen as '*easy to manage*' were less likely to be seen as important. The more difficult skills to develop, such as the "harder" skills, were more important for starting day one training competently. This example emphasises that quantitative can only take us so far when discussing what the data shows and often it is imperative to have qualitative data to explain what is happening behind the numbers. The Diamond16, being a mixed methods tool, fosters this well.

In some instances, presenting data was easier done with a table, rather than a graph. It is necessary to explore different ways to present data, as they can each tell us of different activity with the data. I wanted to know how many times a "hard" skill was placed in each section of the board, compared to a "soft" skill:

Placement of card	Amount of times a "hard" skill was placed here	Amount of times a "soft" skill was placed here
Top Trinity	65	31
Above Middle Line	57	39
Middle Line	42	86
Below Middle Line	11	85
Bottom Trinity	11	85
Total	**186**	**326**

Table 1 - The amount of times a "hard" or "soft" skill (pre-determined and created cards) was placed in each section of the Diamond16[47]

[47] Dunn, R. *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University, 184

Importantly, I should highlight that there were more "soft" skills than "hard" skills, across both pre-determined and created cards. If we detract the number of predetermined skills from the overall numbers of each category, there were 58 cards created in the "hard" category and 102 cards in the "soft" category. This is an interesting observation to make, and there was no definite answer as to why this happened. It could be that there were just more "soft" skills which exist and were able to be created or it could be that the amount of "soft" skills created indicates that the skills are important, as they were created, even if not placed highly on the board. From this table it can be seen that the "hard skills" were more likely to be placed in the top half of the board than the bottom, and there were more "hard" skills placed here than there were "soft" skills overall. There were more instances of the "soft" skills being placed in the top half of the board, than there were of the "hard" skills being placed in the bottom half of the board. This can indicate that, even though there were less "hard" skills, their perceived importance is so great that they were not placed below the middle line as often as above. It can be argued that the "harder" skills are more inherently important to practice. If we look to some qualitative data, this can be explained further. Taking the commercial lawyers again, they stated:

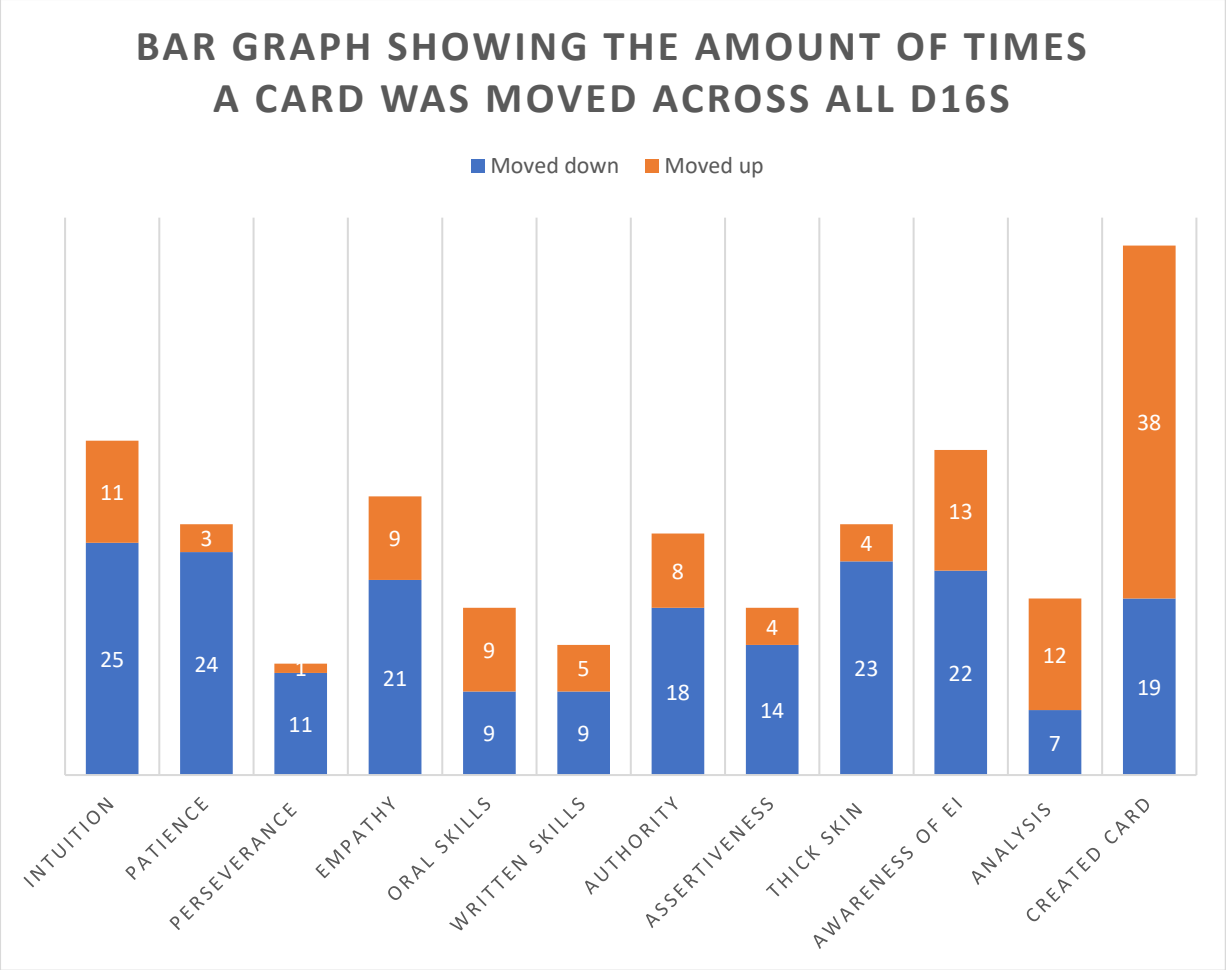
> *'….to a certain degree, as you go through your career and develop as a lawyer, there's almost a merging of this. You know, the bottom skills having to move up a little bit to deal with that fact you have developed and…. You*

> *know, you've developed the skills in the top half that allow you to then, as you've move up the chain perhaps in a firm, to develop more of a thick skin to deal with issues and become more assertive, etc.'*[48]

Thus, we can see an explanation of this as a '*merging*' of the different knowledge, skills and attributes over time. The skills you need when you start day one training are mostly the "harder" skills, then, as you progress through your career, the softer skills are developed and become more necessary. There were similar statements made by other participants, showing some generality of this conclusion. Again, this is an example of the qualitative data explaining what is going on behind the numbers.

Finally, we can use the Diamond16 to measure other methodological trends in the data. For example, I was curious to see if the amount of times a card was moved up or down on a board made a difference to its final placement and importance score. The movement is displayed on the following graph:

[48] Dunn, R. *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University, 185



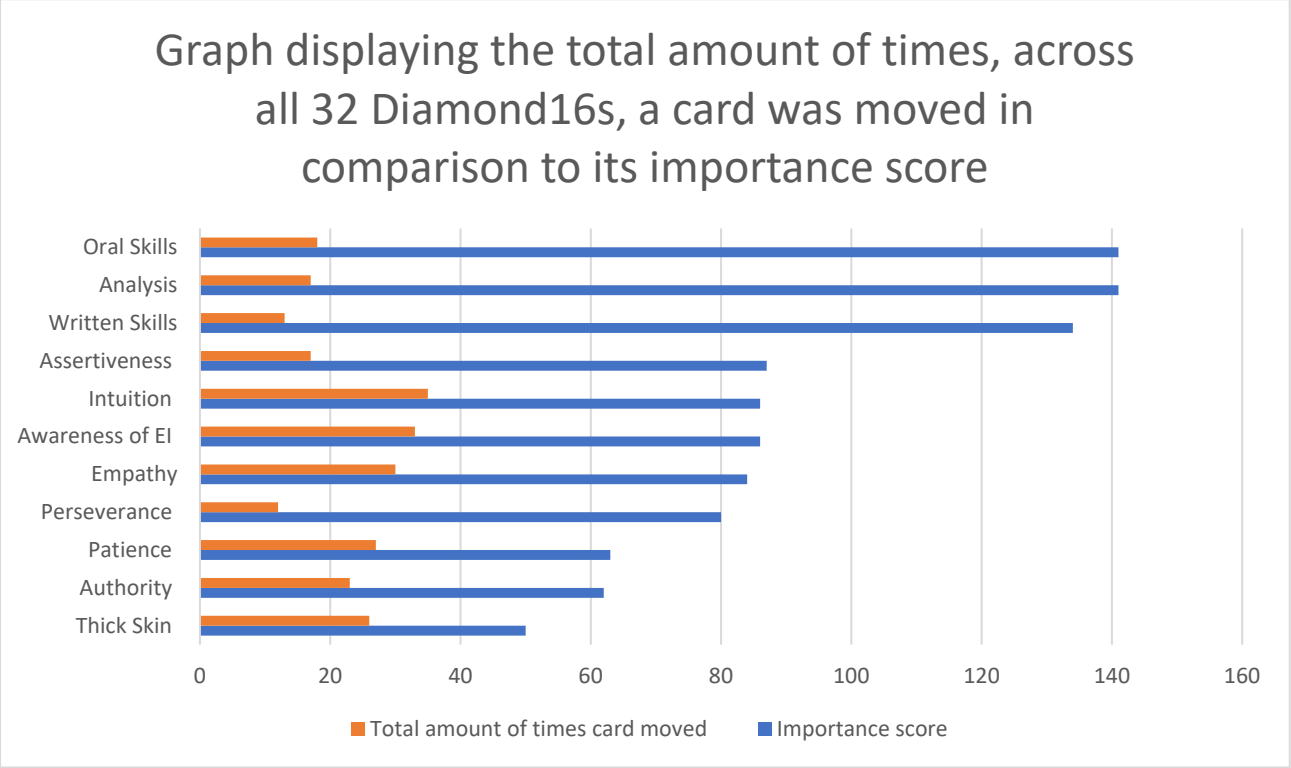
Graph 5 – Amount of Times a Card Was Moved up or down across all Diamond16s[49]

This graph shows that most cards were moved down the board during the Diamond16 exercises more than they were moved up the board. Analysis was the only pre-determined card which was moved up more than it was moved down, and oral skills was equal in the amount of times it was moved. Apart from with awareness of ethical issues, a "soft" skill was more likely to be moved than a "hard" skill. It can be argued that the participants were more certain of their placement of

[49] Dunn, R. *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University, 186

the "hard" skills and the "softer" skills needed more deliberation. Lastly, the created cards were moved up the board more than they were moved down the board. An explanation for this is that the cards were usually created throughout the Diamond16 exercise, so participants would often move other cards down, usually the "softer" skills, to make space for their created cards to have a higher placement. If a participant thought a card was important enough to create it is acceptable to assume that they would like it to be placed higher in importance also.

What this graph doesn't tell us, however, is how the movement of the cards relates to the importance. Thus, I compared this with the pre-determined cards this using the following graph:



Graph 6 – Comparison Between Movement and Importance Score of Pre-Determined Cards[50]

This graph shows that the more important a skill is perceived the less likely it is to be moved, with perseverance as an outlier. This isn't consistent, with the lower the score showing more movement progressively, but does indicate that the more important a skill is perceived, the more fixed it is in its place. *Graph 5* above showed that perseverance was moved down 11 times and only up once and from *Graph 4* that it was most likely to be placed on the middle line and below. Thus, this skill started quite low and was not moved up the board more than once, explaining why it is an outlier. It's perceived importance was so low that it remained quite immobile and often fixed in its placement.

The above explanation of the analysis and presentation of some of the data demonstrates how the Diamond16 has enabled me to delve quite deep into the data. The data available for analysis helped me show what was perceived to be important, but also the thinking behind this, both quantitatively and qualitatively. This is not all of the analysis which I engaged in during my thesis, but a illustration of what I found I could do with the Diamond16 board. I quickly discovered that I could collect many different kinds of data with each short Diamond16 activity. I also engaged with group comparisons, methodological analysis of movement and discussions of

[50] Dunn, R. *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University, 188

the cards and presented the data using a Venn diagram and other visual tools. I hope that the above explanations will help others who wish to use this tool in research and teaching.

Validity

As with any data collection, it is important to engage with some form of data validity. There are different ways in which to validate data and, whilst there is no right way in which to validate data, it comes down to, I argue, the kind of data which has been collected. I will not engage with a discussion of all of the different ways in which to validate, but rather how I validated my own data from the Diamond16.

Data validation is, 'epitomized by the question: are we measuring what we think we are measuring? In a broader concept validity pertains to the extent that a method investigates what it is intended to investigate.'[51] So, validity is making sure your method has measured what you are wanting and thought it would, becoming a kind of investigation which questions the theoretical findings and interpretations.[52] There are various ways in which to validate data and one method in triangulation is 'member checks.'[53] There are two ways to member check, and both or either may be

[51] Kvale, S., *Issues of Validity in qualitative research,* (Studentlitteratur, 1989), 74
[52] Ibid
[53] Creswell, J.W., *Research Design: Qualitative, Quantitative and Mixed Methods Approaches*, (SAGE, 4th edn, 2014), 251

used during the same data validation. The first is allowing participants to read over the raw data and check that it is accurate and add anything they think is missing on reflection or would like to clarify. The second is to read the discussion of the data, written by the researcher, and ask them if this reflects what they meant/said during the data collection. There are arguments for and against each method. For example, Creswell states that raw data should not be used, but that the researcher should use, *'polished or semi-polished product, such as the major findings, themes.'*[54] This way, the participant can check that the researcher's interpretation and presentation of their lived experience is accurate, rather than using the raw data with no interpretation.

I validated the Diamond16 with the students who did the exercise throughout the year. At the end of their last Diamond I presented them with printed photographs of their first two Diamonds. This meant that they could look at them all alongside each other and see how they had changed over the year. This led straight into a group interview, where we talked about the changing Diamonds and their perceptions of the knowledge, skill and attributes on the board. I also reminded them of discussions and comments made during the other Diamonds, read from the raw data. This gave them an opportunity to say why they had said certain comments and whether that opinion had changed. Once the Diamonds were validated, the rest of the interview focused on their experience in the clinic and how they felt about going on to practise. This worked very well for two reasons: I was able to validate the data with the

[54] Ibid

group, at the end of the process before they left the university and they also provided a nice tool and focus for moving into the group interviews.

Difficulties with the Diamond's collection and analysis

I did not come across many difficulties when collecting the data, but more when considering the dynamics of it. As with any data collection method, there are disadvantages or potential effects on the data which must be addressed and discussed. Further, when data collection involves using groups there are nearly always more dominant members of the group. When participants were arguing over where to place a particular card, there was always someone who had to recede their argument. This interaction between participants has been noted in research previously,[55] and some researchers will encourage this disagreement between participants.[56] It is highly unlikely that all participants will agree with each other in every different group, which may be frustrating for some researchers, but it can result in deep and rich discussion of the lived experience.[57] Whilst groups of participants can cause issues, however, using various groups does have its advantages. For example, it can create more reliability in the data, as 'if a series of groups are analysed concurrently, the researcher can determine the point at which there seems to be consensus on the range of issues deemed to be relevant of the

[55] Wong, L.P., 'Focus group discussion: a tool for health and medical research,' (2008) 49(3) Singapore Medical Journal 256, 260

[56] Kitzinger, J., 'The methodology of Focus Groups: the importance of interaction between research participants,' (1994) 61(1) Sociology of Health and Illness 103, 106-107

[57] Sim, J., 'Collection and analysing qualitative data: issues raised by the focus group,' (1998) 28(2) Journal of Advanced Nursing 345, 348

participants, even if determining agreement on each of these individual issues is not feasible.'[58] When I was presenting and discussing my data, I made sure to highlight where there was disagreement, and why, in order to give a voice to the individuals involved in the process, as well as a collective voice.

Though the data analysis of the Diamond16 board was relatively simple, there were some issues I faced. For example, when I was analysing the changes in opinions of the skills, I wanted to use an average score for each knowledge, skill and attribute, to discuss one average per group. This, however, proved difficult. I tried to work out the mean, median and mode for each group and mostly it came out mathematically pleasing, but there were instances where it did not. For example, when attempting to calculate the mean it could give a result of 2.5. Whilst I understood what this meant, it isn't actually a possible placement on the Diamond16 board and thus not representative of what was happening with the data.

When analysing the created cards, I was presented with some different issues. There were cards which were created as many as 13 times and some cards only created once, meaning that if I calculated the range of the placement of these cards, there was a distorted representation of what the scores and was actually happening in the data. Lastly, when the mode was attempted, there were occasionally multiple modes, which did not provide the clarity and statistical representation I wished to

[58] Ibid 348-349

portray. Thus, any attempts to analyse the data in this way had to be abandoned and the Diamond16 did not support it.

The Diamond in a Children's Secure Unit

Since completing my PhD, I have begun to use the Diamond9 in other areas of research. Most recently, I have had the privilege of researching in a Secure Children's Home (SCH), where Young People, aged between 10 and 17, are accommodated due to offending or those in the care of a Local Authority and placed there for their own welfare. The purpose of the study was to measure the changes in a Young Person's emotions before, during and after participating in a dance course. The aim was to explore whether dance enables young people to 'develop a pro-social identity, as well as contribute to building positive social networks.'[59]

The researchers worked with a dance company who were experienced with teaching dance in prisons and SCHs. The Young People were invited to participate in a weeklong course with the dance company and perform at the end of the week. The researchers carried out a Diamond9 exercise before the course started, in the middle of the week, and at the end when the final performance had concluded. The Young People were asked to rank 9 emotional statements, one of which was a blank card on which they could create their own emotional statement. The statements were a mix

[59] Arthur, R., Dunn, R. and Wake, N. 'Empowering Young People: Multi-Disciplinary Expressive Interventions Utilising Diamond9 Evaluative Methods to Encourage Agency in Youth Justice' (2019) 25 International Journal of Mental Health and Capacity Law 124, 125

of both positive and negative statements, such as 'I feel excited about my future' to 'I feel like no one understands me'. The most strongly felt emotion was placed at the top, decreasing until the weakest felt emotion was placed at the bottom. Whilst the purpose of this section is not to go into detail of the results, we found that the dance course did have a positive impact in the experience of the Young Person who participated, and this was easily tracked using the Diamond9. As the researchers did not have long to collect the data with the Young Person, the Diamond9 allowed us to explore their views and emotions quickly and in a way which encouraged participation. The Diamond9 results were then followed up and discussed a short time after during a semi-structured interview.

As discussed above, there are many instances of the Diamond9 being used with children in schools, but little for those who are kept in SCHs.[60] The use of the Diamond9 in this setting allowed for the researchers to collect data expeditiously, in a setting where we had little time to do so, and in a way which allowed to the Young People to engage with us. Whilst some have reported that photographs are better than written statements for Young People, and can help with literary anxiety, this was not suitable for those in the SCH.[61] We had to be careful with what we showed them, as certain Young People had emotional triggers, and we did not want to

[60] To note, a study by Thomas and O'Kane use Diamond Ranking with children who were 'looked after' by Local Authorities: Thomas, N. and O'Kane, C. 'Children's participation in reviews and planning meetings when they are 'looked after' in middle childhood' (2001) 4 Child & Family Social Work 221

[61] Clark, J. 'Using diamond ranking visual cue to engage young people in the research process' (2012) 12 Qualitative Research Journal 222

distress them in any way. We also had to do it individually with each Young Person, rather than in a group, for ethical purposes. The researcher doing the Diamond9 worked with the Young Person to complete it, reading out the statements. They also discussed the placement of the emotional statements with them, to gain qualitative data during the exercise.

The use of the Diamond in this study has been so successful, that we are working with researchers in New Zealand to replicate the study and compare findings. The most important aspect of using the Diamond 9 with these Young People was to give them a voice. The UN Convention on the Rights of the Child (1998), under Article 12, provides for children's participation in decision-making on matters which impact on their own lives. The Diamond9 allowed for this but, perhaps more importantly, it was a tool which 'promote[d] critical voices.'[62] Further, by giving the Young People a voice, it 'can also empower them to assume greater levels of participation and involve them as young citizens.'[63] The was one of the main aims of the study, and we found the Diamond9 provided an opportunity for Young People to have their voices heard and whilst we could measure whether they developed a 'pro-social' identity and built positive social networks. This would not necessarily have been done, or demonstrated as strongly, with the use of interviews alone. As a result of this study,

[62] Niemi, R. 'Diamond ranking as a tool to investigate pupils' experiences of classroom practices' (2015) 14(2) European Educational Research Journal 138, 147

[63] Clark, J. 'Using diamond ranking as visual cues to engage young people in the research process' (2012) 12(2) Qualitative Research Journal 222, 223

and the conclusions that dance and other art-based courses can provide Young People with an outlet for their emotions and a way to connect and work with others, the SCH has incorporated more elements of this into their teaching. They also noted a positive change in some of the Young People involved.

The practicalities of using the Diamond in this setting, however, were much more complex. We were not allowed to take electronic devises into the SCH, so all notes of discussions and placements of the cards had to be written. Further, as the week went on, we went from several participants to one. This was either because the Young Person no longer wanted to participate in the course, or were not able to due to their behaviour. Further, it took much longer to gain ethical approval, and the Diamond9 had to be approved by the SCH staff, who had to be present during the data collection sessions. Whilst we don't think this impacted greatly on the data collected, it is something we can to consider during the analysis. Using the Diamond in a different setting, and with Young People rather than university students, has helped to develop my understanding and complexity of this tool to a greater extent.

Uses going forward

As stated above, the Diamond can be used as a research tool and a teaching aid, and is often in the Student Law Office. I am aware that it is also used as a teaching tool at York Law School. Students are asked to complete the Diamond16 during their induction sessions, as an ice-breaker for the group members, which are kept by the

clinician during the academic year. Students are then asked to complete it again at the end of the year, before their first Diamond16 is revealed. This fosters discussion as to whether and, if so, how their perceptions of skills needed during the clinic have changed over the course of the module, basing it on the students' experience.[64] It seems as though the Diamond16 can help to foster discussions of what legal practice entails and how knowledge, skills and attributes can be developed. It can also be used for students to individually track their development and confidence. For example, it can be used for students to rank which skills they feel most confident with going into a clinic and which skills they feel as though they need to work out. Seeing it visually may provide a basis for the students working in the clinic and where to focus their development. I have also had some of my participants use the Diamond16 photos in their personal reflections at the end of the clinic, so that they can show their skills development and aid their reflective commentaries. Other research using visual methods has highlighted that for 'people unused to reflecting on their experience, visual methods may provide a stepping stone.'[65] They found it useful to discuss how their knowledge, skills and attributes have developed over the year using the Diamond16 as a visual aid, making them useful to those involved in my research as well as for my own purposes. If you are running a clinic and find students face difficulties with reflection, this could be a helpful and educational tool to use.

[64] The information was sent to me via email and is not published at the time of writing.

[65] Pain, H., 'A Literature Review to Evaluate the Choice and Use of Visual Methods,' (2012) 11(4) International Journal of Qualitative Methods 303, 308

I have also been informed that the Diamond16 is being used in recruitment for legal apprenticeships in law firms.[66] This will be as a result of giving the design to a law firm whom I collected data with, to use with their current and potential trainees. I am pleased that this method is proving useful to those outside of academia and demonstrates how diverse and beneficial it is. I hope to continue this work with law firms in the future, helping them to develop recruitment techniques.

I have my own personal uses for the Diamond16 going forward and I highlighted in my thesis other possible studies which could be conducted using the Diamond16.[67] I plan to use it for a larger, global study in the knowledge, skills and attributes needed for competent legal practice and an analysis of what is required in certain legal specialities. For example, in the literature surrounding knowledge, skills and attributes in legal education, there is debate as to whether we should be teaching generic legal skills, or skills more specific to an area of practice.[68] This is an interesting debate but with little empirical data to know if there is such a difference. The Diamond16 will be made as an online tool, which can be sent to lawyers across the globe in many different specialist areas. This will hopefully allow me to analyse

[66] This information has been passed to me informally, but I will be contacting the law firms to explore how they are using the Diamond16 and how effective they think it is.

[67] Dunn, R. *The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them* (2017) PhD thesis, Northumbria University, 289-291

[68] For example, please see Rankin, S.K., 'The Fully Formed Lawyer: Why Law Schools Should Require Public Service to Better Prepare Students for Private Practice,' (2013) Chapman Law Review, 2-3. Accessed via https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2259866; Grimes, R., 'Reflections on Clinical Legal Education,' (1995) 29 The Law Teacher 169, 171-172

whether there are some specific skills we should be teaching, or whether generic skills are what law schools should be aiming for. This will also enable me to do a geographical comparison, seeing which countries require which knowledge, skills and attributes and if there is a difference depending on where a lawyer is based. Further, in my thesis I discuss whether there is a difference between foundational legal skills and practical legal skills. There were suggestions that there are, but more in-depth research is needed to answer this question. These are two areas of further research which I wish to conduct, but there are others highlighted which I will not pursue empirically. For example, a study on which skills are perceived to be "hard" and "soft" and why those in the legal sphere think of them that way. There are many different ways to use the Diamond16 and I am excited to explore further opportunities with it.

In terms of furthering its use with Young People, a team within Northumbria Law School have been given funding to use the Diamond9 as a way to collect data with Young People who are detained in hospitals under the Mental Health Act 1983. The main aim of this project is to determine whether the information given to the Young People is suitable to their age and maturity, whether they felt they had received the appropriate information and their awareness of their rights in relation to their detention. It is hoped that the results of this project will also give a voice to Young People and involve them in the decisions which impact in their life.

Conclusion

Diamond ranking is not a new concept in research but has traditionally been contained within primary education research. This article shows how a method can be taken from one discipline and adapted for another, such as socio-legal studies. It can be used to track development, for comparison across groups and as a methodological analysis tool. As it is mixed methods, it collects both quantitative and qualitative data, adding some dialogue and explanation to numbers. It is quick and easy to use with relatively simple analysis. All graphs were made using Microsoft Excel, so no complicated or expensive data analysis software is needed, just some patience and time. Further, it can used to measure a variety of different uses, such as importance and feelings. This makes it a great teaching and development tool, as well as a research tool. Whilst the Diamond 'fulfils similar purposes to traditional techniques' of data collection, getting participants to engage with the visual can be 'more motivating for the respondents and [can] add a dimension of fun to the data collection exercise'.[69]

It is important to divulge in the research methods of other disciplines, to help advance our own and develop as researchers. The Diamond, for me, has been a great

[69] Wall, K., Higgins, S., Hall, E. and Woolner, P. ''That's not quite the way we see it': the epistemological challenge of visual data' (2012) International Journal of Research & Method in Education 1, 5-6

tool to work with and has inspired me to look for other innovative and creative ways to collect data.

Reviewed Article

SUSTAINABILITY AND THE UNIVERSITY LAW CLINIC

Richard Owen*

Abstract

Following increased activism, the climate crisis has moved up the political agenda, and with it an increased interest in sustainability issues. This article will look at how rebellious lawyering theory can provide a template for university law clinics when seeking to further sustainability objectives. It argues that as rebellious lawyering methods require a collective dimension to lawyering, egalitarian collaboration, deep knowledge of the communities that lawyers serve, simulations of a better future, self-examination and the building of broad coalitions it can in certain circumstances be a more effective way of furthering sustainability objectives than traditional legal process. Furthermore, building broad coalitions is vital to maintain the impetus behind sustainability initiatives.

It will reflect on the cultural change that is needed to respond to the sustainability agenda, what lessons can be learnt from the different approaches which have been taken internationally to the issue, as well as the pedagogical issues that need to be addressed to ensure that students have the appropriate sustainability literacy. It will also reflect on the extent to which sustainability is already embedded in the work of university law clinics.

It will examine how university law clinics can respond to sustainable development legislation by using Swansea Law Clinic's experiences of working with sustainability goals and approaches, in the form of the Well-being of Future Generations (Wales) Act 2015, as a case study.

Keywords: Clinical legal education, future generations, rebellious lawyering, sustainable development, sustainability, Wales, wellbeing.

Introduction[1]

> "The ultimate test of a moral society is the kind of world that it leaves to its children."- Dietrich Bonhoeffer

The Well-being of Future Generations (Wales) Act 2015 (the Act), most of whose provisions came into force on 1st April 2016, makes "sustainable development" the central organising principle of government in Wales. This article will look at how rebellious lawyering theory can be applied in order to inform a law clinic's activities when furthering a sustainability agenda. It will consider the operation of the Act to date and will argue that in certain circumstances rebellious lawyering methods are a more effective and accessible way of furthering sustainability objectives than traditional legal proceedings.

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1 I would like to thank the anonymous reviewer for comments on earlier drafts of this article.

Using Swansea Law Clinic as a case study, it will look at the extent to which sustainability is already inherent within the Clinic's activities and what still needs to be done in order to further sustainability objectives. It will also look at the pedagogical issues that need to be addressed to ensure that students have the appropriate sustainability literacy.

There has been interest in the Welsh sustainability model in other parts of the United Kingdom and internationally. There have also been important sustainability initiatives in other parts of the world. The article will evaluate the complex architecture of the Act and assess the extent to which Wales's sustainable development law is determined by its local context and the extent to which its principles transcend national boundaries.

Rebellious lawyering

Rebellious lawyering is a theory which has been developing since 1992 and is based on a rejection of "regnant lawyering" where there is a hierarchical relationship between lawyer and client with the lawyer seen as the pre-eminent problem solver.[2] Regnant lawyers are seen as having only loose connections with other community groups. Their legal practice will only have a modest grasp on how so-called large

[2] Gerald P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (Westview Press, 1992)

structure - regional, national, international, political, economic and cultural forces - shape and respond to the status quo.[3]

In contrast to regnant lawyers, rebellious lawyers seek to effect social change by empowering clients through egalitarian collaboration, as they believe grassroots activism can be more effective in bringing about social change. They stress that they are not pre-eminent in the lawyer-client relationship.[4] This equality has radical implications for lawyering. It means that lawyers will not tell the client what the legal issues are but the clients themselves will be involved in framing the issue; the client will generate interventions in the community; it is the client who will monitor the success or otherwise of these interventions; and all this will require innovative organisational design.[5]

Although there have been a number of definitions of rebellious lawyering, what they have in common is their belief in an approach to legal practice which is socially transformative. They have a raised awareness of the tendency of legal process to individualise problems and see a community-wide dimension to many of the problems faced by socio-economically challenged communities which calls for community and social movement building. As they are wary of the tendency of

3 ibid 24

4 'What is rebellious lawyering?' (Rebellious Lawyering Institute, undated) <https://rebelliouslawyeringinstitute.org/what-is-rebellious-lawyering/ > accessed 2 July 2019

5 Anthony Alfieri, Rebellious Pedagogy and Practice, (2016) 23 Clinical L. Rev. 5, 15

legal process to individualise problems, they need a vision of a good life in order to bring about programmatic change. This is a technique shared with those working within the sustainability space who also emphasise the need to envision a good life in the form of what a sustainable society will look like.[6] There are also those within the clinical legal education movement who stress the importance of envisioning or, in other words, for seeing clinic as "…a site for imagining justice and new modes of legal practice that promote and even prefigure justice."[7]

Rebellious lawyers will often see the community as their client working with lay lawyers and community groups in a similar way in which public health medics see the community as their patient. There are a number of international examples of this approach of viewing the community as a client including those reaching back in time before theories of rebellious lawyering were formulated. Fifty years ago in the United States, Wexler said: "The whole notion of adversary proceeding is unsuited to dealing with social problems."[8] He advocated a form of legal practice for oppressed communities orientated towards facilitating the organisation and empowerment of people rather than solving their legal problems because many problems were shared amongst members of oppressed groups.[9] Bellow also talks of legal work "being done in service to individuals and larger more collectively

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6 Jane Davidson, *#futuregen* (Chelsea Green Publishing, 2020) Kindle Edition. 440

7 Sarah Buhler, 'Clinical Legal Education in a Dangerous Time' (2016) 23(5) *International Journal of Clinical Legal Education,* 23

8 Stephen Wexler, 'Practicing Law for Poor People' (1970) 79(2) *The Yale Law Journal*, 1049, 1059

9 ibid 1053

orientated goals."[10] Whilst in Canada the mission of Parkdale Community Services, which was founded in 1971, includes providing services based on "community needs".[11] Nicholson, who has practised in South Africa, Scotland and England, says that the most beneficial form of clinical delivery for clients is that which seeks to improve the lives of members of a community by taking a multi-disciplinary, "wraparound" approach recognising the importance of legal and non-legal remedies.[12]

Rebellious lawyers are grounded in their local communities and consider how large structure such as political, economic and political forces affect the ability to bring about change in these communities. As it is a form of community-based lawyering, assets such as community activism and clients' stories are of central importance. Rebellious lawyers demystify the law for their clients in order to empower them so when clients are aware of what the lawyer is trying to achieve, they can bring more information to them, which, in turn, may be of help to the lawyer. It envisions the lawyer as someone who brings their expertise to work in collaboration with, rather than on behalf of, a number of different groups such as community leaders, community groups, agencies and allies with an openness to alternative methods of

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10 Gary Bellow, 'Steady Work: A Practitioner's Reflections on Political Lawyering' (1996) 31 (2) Harvard Civil Rights – Civil Liberties law Review 297, 300

11 Parkdale Community Legal Services, 'Our Vision' < https://www.parkdalelegal.org/about/vision/> accessed 26 June 2020

12 David Nicolson, '"Our Roots Began in South Africa": Modelling Law Clinics to Maximise Social Justice Ends' (2016) 23(3) *International Journal of Clinical Legal Education*, 119

resolving disputes other than the use of litigation although litigation is seen as a component of the lawyer's toolkit.

Communitarian social activists operating in different contexts have used approaches that have affinities with rebellious lawyering, as well as similar ways of working. What they have in common is they stress the importance of being embedded in community, working in non-hierarchical ways, and engaging in self-examination in order to be effective in bringing about social transformation.

For example, before rebellious lawyering theory had been developed, Mahatma Gandhi's theory of social change was born out of a struggle with colonialism. Although there are few explicit acknowledgements of Gandhi's theories in the literature on rebellious lawyering there are parallels and similarities between them. Like rebellious lawyers, Gandhi was sceptical about litigation, but not opposed to it, as a means of advancing the cause of marginalised communities; however, he was wary of its delays and cost.[13] He saw arbitration and mediation as more effective methods of resolving disputes for the marginalised.[14] Gandhi's concept of *swadeshi* which prescribed the path of commitment and service to "our immediate surroundings" resonates with the idea of the lawyer becoming embedded in the

13 Mahatma Gandhi Views on the Basic Issues of Social Change <https://www.yourarticlelibrary.com/sociology/mahatma-gandhi-views-on-the-basic-issues-of-social-change/38489 > accessed 27 June 2020

14 ibid

community, as well as ideas of localism and self-sufficiency within the environmental movement.[15] His commitment to equality, including between intellectual and manual labour, anticipates the rejection of regnant lawyering in rebellious lawyering theory. He felt that there had to be a social purpose to education, so his ideas can take root in a clinical legal education setting. Above all, Gandhi was a transformational leader as he brought about a change in values and beliefs amongst his followers as to the best way to achieve change from initially wanting armed conflict with their colonial oppressors to the successful adoption of nonviolent resistance known as *satyagraha.*

Paolo Freire was one of the founders of critical pedagogy and felt that education could be the basis of social transformation for communities marginalised by capitalism. In Freiran theory teacher and leaner must enter into a dialogue and therefore must be in an equal relationship in order to learn from each other. This reflects in an educational setting the equality of relationship between lawyer and clients in rebellious lawyering. Teacher and learner must act together upon their environment in order to reflect critically upon their reality. However, not only must they reflect, they must also take action to change this reality, which is a concept called conscientization. A commitment to this approach requires constant self-examination on the part of the teacher who must be prepared to be personally

[15] ibid

transformed by the experience.[16] Freire's theories can act as a guide for applying rebellious lawyering theory in an educational setting as the objectives and ways of working are so similar. As in Frieran theory, in rebellious lawyering theory the lawyer and the community are in a reciprocal educative relationship: the lawyer must be open to learn from the communities they serve, and the community must be open to learning about legal process from the lawyer. As a concomitant to the lawyer's openness to learn from the community, they must also be open to self-refection and adapt their lawyering model as their understanding of the communities they serve deepens.[17]

Naomi Klein's theories of social change have been developed in response to the climate crisis. She aims to organise a non-violent mass movement for climate action as she believes individual action by itself, whilst useful, is not sufficient to avert climate catastrophe. There has to be an organised fight for a major restructuring of our economic system, which usurps the reigning neoliberal ideology. She defines this as market fundamentalism involving deregulated capitalism, which needs to be replaced with an alternative worldview. The alternative will be "embedded in interdependence rather than hyper-individualism, reciprocity rather than dominance, and cooperation rather than hierarchy."[18] She recommends a strategic alliance between climate activists and activists in the various movements for social

16 Peter Mayo, *Echoes from Freire for a Critically Engaged Pedagogy*, (2013) Bloomsbury
17 López (n 2) 355
18 Naomi Klein, *This Changes Everything: Capitalism vs. the Climate* (2015) Penguin, 462

justice, based on their common interests and the galvanising effect of climate emergencies. This coalition building is necessary to defeat the forces of populism and is comparable to the need for coalition building that rebellious lawyers recognise they must do in order to be effective. As the present economic model based on endless growth is unsustainable, we have to examine ourselves and our consumerist values in order to reduce our over-consumption to sustainable levels.[19] Economies need to be localised and we need to be more deeply connected with and knowledgeable about our communities, as the effects of climate change has subtly different impacts in different places.[20]

This thread of needing to constantly re-examine yourself in different theories of social change also finds expression amongst rebellious lawyers. They experiment with their collaborative work, "constantly re-evaluating their own institutional and personal efforts."[21] They have to be self-critical in reflecting on their own performance so they do not get hemmed in by their own "tiny habits".[22] As rebellious lawyering requires continuous experimentation it has been said that it is not a methodology but "prescriptively normative" with principles guiding them as they evolve their legal pedagogy and practice.[23] Rebellious lawyers regard themselves as only possessed of a partial truth. Whilst they hope their ideas will last

19 Naomi Klein, 'The Change Within: The Obstacles We Face Are Not Just External' 21 April 2014 *The Nation*

20 ibid

21 López, (n 2) 48

22 ibid 7

23 Alfieri (n 5) 5

for a reasonable time, they are primarily striving to develop ideas about ways of seeing and talking about specific situations. They have to respond to the increase in knowledge they acquire about their communities over time and the changes in the institutions with which they have to deal.[24]

Rebellious lawyers must continuously reflect on their ability to work with, as opposed to on behalf of, certain groups. Do they have sufficient cultural knowledge and awareness to communicate effectively with that group? Are they sufficiently aware of how the law and changes to it permeate the lives of the groups they work with? Are they sufficiently aware of how local, regional, national, political, economic and cultural forces impact on their communities? They will be interdisciplinary in their methods drawing on ethnography, anthropology and sociology, in addition to law in order to understand their communities better. So, a rebellious lawyer is engaged in a constant process of self-examination.[25] They need to reflect on their values, developmental needs, and reaction to situations before they can be agents of social change in similar ways to those advocated by Gandhi, Freire and Klein.

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[24] López (n 2) 65 - 66

[25] López (n 2) 168

Sustainability and Sustainability Education

It is submitted that the rebellious lawyering model is suited to inform the work of a university law clinic engaging in sustainability issues and provides useful guidance. Although rebellious lawyering theorists do not make much mention of sustainability it is inherent in their activities, as, indeed, it is already inherent in many university law clinic activities. It is striking that traditions of lawyering that are specifically rooted in sustainability come to similar conclusions as to the lawyer's role as facilitator and collaborator.[26] Through its desire to link the local to the regional to the national to the global rebellious lawyering has a similar approach to those involved explicitly in sustainability, who also live by the motto, "act local, think global".

Educators have difficulty with sustainability due to the uncertainty of the concept, as there is no universally agreed definition. For the purposes of a university law clinic, the following definition of sustainability is useful:

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[26] Janelle Orsi, 'Birth of Sharing Law' (Shareable, 29 March 2010) <https://www.shareable.net/birth-of-sharing-law/> accessed on 13 September 2019.
'Community transactional law' or 'sharing law' has implications for the content and approach to legal practice. It sees collaboration between lawyer, client, and community as key. A more sustainable economic model will see a shift to more innovative sharing transactions such as bartering, cooperatives, community currencies, time banks. community supported agriculture, cohousing, and community gardens. This will mean that lawyers will more frequently represent groups of people, as opposed to individuals or businesses. This creates new challenges for the lawyer. For example, if a group of unrelated people wish to purchase a house together traditional legal ethics require that they each have their own lawyer to advance their interests "with zeal". However, zealous advocacy of a single party's interests may not be the best approach to achieve the shared objective. It may be more easily realised by facilitating an open and trusting relationship between the parties and mediate between them when disputes arise.

> "A sustainable future is one in which a healthy environment, economic prosperity and social justice are pursued simultaneously to ensure the well-being and quality of life of present and future generations. Education is crucial to attaining that future." [27]

Sustainability education needs to be "approached through a 'whole systems thinking model'", which offers us a profound way to re-orientate our worldview, and also our educational thinking and practice." [28] Whole systems thinking has three interrelated dimensions – perceptual, conceptual and practical – which describe human experience and knowledge at any level whether it be at the level of the individual, the community or whole societies.[29]

The perceptual way of thinking is intuitive ways of knowing. When a culture is individualistic there is little encouragement to think of "the other" whether that be communities, distant communities or future generations. Developing perceptual thinking requires an inner "deepening" process, which values all aspects of personhood, particularly intuition, and becomes aware of our individual and shared

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27 Sustainable Ideas, 'sustainable Ideas!' <https://www.sustainable.id/> accessed on 29 June 2020. Other possible definitions are: "A process of change in which the exploitation of resources, the direction of investments, the orientation of technological development and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations." Another possible definition is: "In essence sustainable development is about five key principles: quality of life; fairness and equity; participation and partnership; care for our environment and respect for ecological constraints - recognising there are 'environmental limits'; and thought for the future and the precautionary principle."

28 Stephen Sterling, *Sustainable Education: Re-visioning Learning and Change* (Green Books for the Schumacher Society) Kindle Edition, 874

29 ibid 890

needs and worldviews. It requires the development of soft skills such as empathy.[30] The conceptual way of knowing is the dominant way of knowing in the Western intellectual tradition. It seeks to develop critical and systemic understanding and pattern recognition.[31] The practical way of knowing or praxis is often given a lesser status in the same tradition.[32] This is the process of using knowledge in a practical way. Privileging the conceptual over the perceptual and practical ways of thinking, as happens in the Western educational tradition, breaks the connection between them. For example, in order to engage in legal practice striving to achieve sustainability goals for marginalised communities, clinical law students will need sound conceptual thinking. They will need to understand the scientific method behind issues such as air pollution. However, that by itself will not be enough to bring about transformational change. They will need to work effectively with people within that community and be able to empathise with them, that is, through the perceptual way of thinking, and work with them on the problems they are facing in order to bring about more sustainable solutions, that is, through the practical way of thinking.

There are clear synergies between whole systems thinking and rebellious lawyering theory. The latter stands in opposition to regnant lawyering with the lawyer who exists exclusively in the conceptual dimension cast in the pre-eminent role whereas

30 Sterling (n 28) 895
31 ibid 916
32 ibid 890

the rebellious lawyer will draw on the practical and perceptual ways of knowing which exist in the communities they serve. This leads to a deeper and more integrated understanding of what is happening in these communities and therefore put them onto a more sustainable footing.

Considering how the past affects the present and the future offers possibilities both for rebellious lawyering and sustainability practice. The sociologist, Avery Gordon, seeks a new way of knowing called "social haunting" or a knowledge of "the things behind the things."[33] She says that "ghostly matters" – "echoes and murmurs of that which has been lost" - haunt us at every turn.[34] Like rebellious lawyers, Gordon says we need new ways of knowing and radical political change cannot come without it. However, to Gordon the new way of knowing is achieved by recognising how the past affects the present.

"Social haunting", which can be defined as "a sense, a feeling, a way of thinking, an atmosphere that pervades within a community, influencing its future in myriad, perhaps unnoticed, ways," can enrich and inform rebellious lawyering practice.[35] It enables new ways of seeing and listening to the communities rebellious lawyers serve; and it also offers the potential to enrich and inform the sustainability agenda.

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33 Avery Gordon and Janice Radway, *Ghostly Matters: Hauntings and the Sociological Imagination* (University of Minnesota Press, 2018) vii

34 ibid x

35 UK Research and Innovation, "Working with social haunting: past- and present-making in two 'communities of value'" ≤ https://gtr.ukri.org/project/0B37892C-E08C-4AD8-BF1E-9BA30FCDF8EB≥ accessed 29 June 2019

Klein used a similar idea specifically in the context of sustainability when she said we need to overcome the "culture of the perpetual present, one that deliberately severs itself from the past that created us as well as the future we are shaping with our actions."[36] If we deepen our understanding of what shapes group behaviour, we increase the chance of bringing about behavioural change.

There have been studies in different branches of science which support Gordon's idea that a community's present and future is determined by the past. There is a relatively new area of study in psychology called intergenerational or transgenerational trauma, which posits that trauma can be transmitted through generations, so can affect later generations who did not live through the historical traumatic event via complex post-traumatic stress disorder mechanisms. This area of study commenced with research into the behaviour patterns of children of Holocaust survivors. Studies have also found that there has also been an impact on the behaviour of subsequent generations of indigenous Canadian and Native American populations caused by past oppression, as well as African-Americans caused by a history of slavery and racial discrimination.[37] Intergenerational trauma has also been found to have been caused by sexual abuse and extreme poverty. It

[36] Klein (n 19)

[37] Tori DeAngelis, 'The legacy of trauma' (2019) 50(2), *Monitor on Psychology* 36

can affect communities, as well as families, by creating distrust of those outside the group, particularly those from historically oppressive groups.[38]

In addition to these behavioural studies, there has been neurological research which posits that the link between memory, imagination and simulating the future is physical. There is a common neural system, which supports our recollection of times past, imagination, and our attempts to predict the future.[39] In other words, there is a physical link between our memory and our ability to imagine the future, as both use the same part of the brain: the hippocampus.

Gordon's identification of the limits of current disciplines and fields can be applied to other areas as well, and those areas are potential partners in the coalition building and network development that rebellious lawyers wish to see. Social work is seen as too often having an individual focus in a way which depoliticises "its response to problems exacerbated by poverty, social exclusion and limited life chance."[40] Similarly, nursing is often seen as focussed on "an individualistic biomedical model that sees the biological individual as a system in itself disconnected from the

38 ibid

39 Sinéad Mullally and Eleanor Maguire, 'Memory, Imagination and Predicting the Future: A Common Brain Mechanism?' (2013) 20(3) *The Neuroscientist* 220

40 Andrew Whiteford, Viv Horton, Diane Garrad, Deidre Ford, and Avril Butler, 'Sustaining Communities: Sustainability in the Social Work Curriculum' in Paula Jones, David Selby and Stephen Sterling (eds) *Sustainability Education* (Earthscan 2010) 241

environment."[41] Rebellious lawyers therefore when engaging in their self-examination need to be aware not only that they have been educated in a discipline whose traditions and processes are highly individualistic but also, in many cases, their coalition and network partners have also been educated and practised in processes which are also highly individualistic and not accustomed to linking the specific to any wider structures.

Putting 'social haunting' in context

In an area like south Wales, where Swansea Law Clinic (the subject of the case study discussed below) is located, effects of de-industrialisation are still being felt. Many will have regarded their communities as having fought and lost an existential battle during the Miners' Strike of 1984. There is an ongoing collective trauma caused by the conflict, so behavioural change will not come about unless there is a good understanding of how the past haunts the present and affects the future. For example, there are continuing feelings of demoralisation and loss of confidence created as a result of losing such a high stakes collective battle.

Many also remember when the economy transitioned away from heavy industry to service industries in the 1980s bringing with it high unemployment.[42] This could

41 Benny Goodman and Janet Richardson, 'Climate Change, Sustainability and health in UK Higher Education: the Challenges for Nursing' in Paula Jones, David Selby and Stephen Sterling (n 35) 118

42 When there were large scale steel redundancies in South Wales in 1980 the unemployment rate rose from 7.7% to 15.7%. S. Young, 'The implementation of Britain's national steel

affect attitudes to change as the economy undergoes its next transition, which is away from a more carbon intensive economy to a low carbon or zero carbon economy.

Rebellious lawyers who are embedded in communities and knowledgeable about their clients lived experience will have greater appreciation of how the past affects the present and future, which will help them identify obstacles to change. However, being aware of the past, and how it affects the present, must not create a sense of inevitability about the future. Although currently economically challenged that does not mean the South Wales region is inevitably going to be so in the future. The way we envision the future draws on our pasts, but there are any number of combinations that can be used which draw on the present and the past when constructing a future. There can be different outcomes if there is a conscious decision to take decisions in different ways from in the past.

Sustainable development legislation and the Well-being of Future Generations (Wales) Act 2015 (the Act)

This section will assess the content of the Act and its implications for lawyering, as well as evaluating how rebellious lawyering methods might respond to it. In addition, it will further assess how it might influence a university law clinic's

strategy at a local level' in Yves Meny, Vincent Wright, Martin Rhodes (eds) *The Politics of Steel: Western Europe and the Steel Industry in the Crisis Years (1974 – 1984)* (De Gruyter, 1986) 371

practice, which is using rebellious lawyering methods, when seeking to achieve sustainability goals.

The Act is the only legislation in the world, to date, to impose duties to protect the needs of future generations and to embed the United Nations Sustainable Development Goals into law.[43] The legislation had first been suggested in 2002 by Victoria Jenkins, then a lecturer in law at Swansea University.[44] There were later widespread calls for such an Act from civil society. For example, WWF had convened and supported thirty civil society organisations into the Sustainable Development Alliance, which called for such legislation.[45]

For the purposes of the Act, "sustainable development" means the process of improving the economic, social, environmental and cultural well-being of Wales.[46] It requires the public bodies named in the Act to carry out sustainable development by acting in accordance with "the sustainable development principle". The definition of sustainable development used in the Well-being of Future Generations (Wales) Act 2015 is:

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43 *The Future Generations Report 2020* (Future Generations Commissioner for Wales, 2020) 14

44 Davidson (n 6) 1360

45 Davidson (n 6) 1461; Sustainable Development Alliance, 'Shaping Our Future' < http://www.shapingfuturewales.org/en/> accessed 7 September 2020

46 Well-being of Future Generations (Wales) Act 2015 s 2

> "…[acting] act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs."[47]

This is a definition of sustainable development, as opposed to sustainability. The difference between the two is often seen as sustainability being a long-term goal (that is, a more sustainable world) and sustainable development as the pathways and processes to achieve it, for example, sustainable production.[48] The definition used in the Act follows the Brundtland definition.[49] The definition in the Act is attempting to combine environmental protection with human, social and economic development concerns. The advantage of this is that it is easy to get broad acceptance of the principle of sustainable development, which will assist those practising rebellious lawyering to achieve the broad consensus, which will be helpful to their work.

The disadvantage of such a broad-ranging definition of sustainable development is that tensions can arise particularly between environmental concerns, on the one hand, and human, social and economic developments concerns, on the other. There is no inherent mechanism for resolving trade-offs between competing concerns

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47 ibid s 5(1)

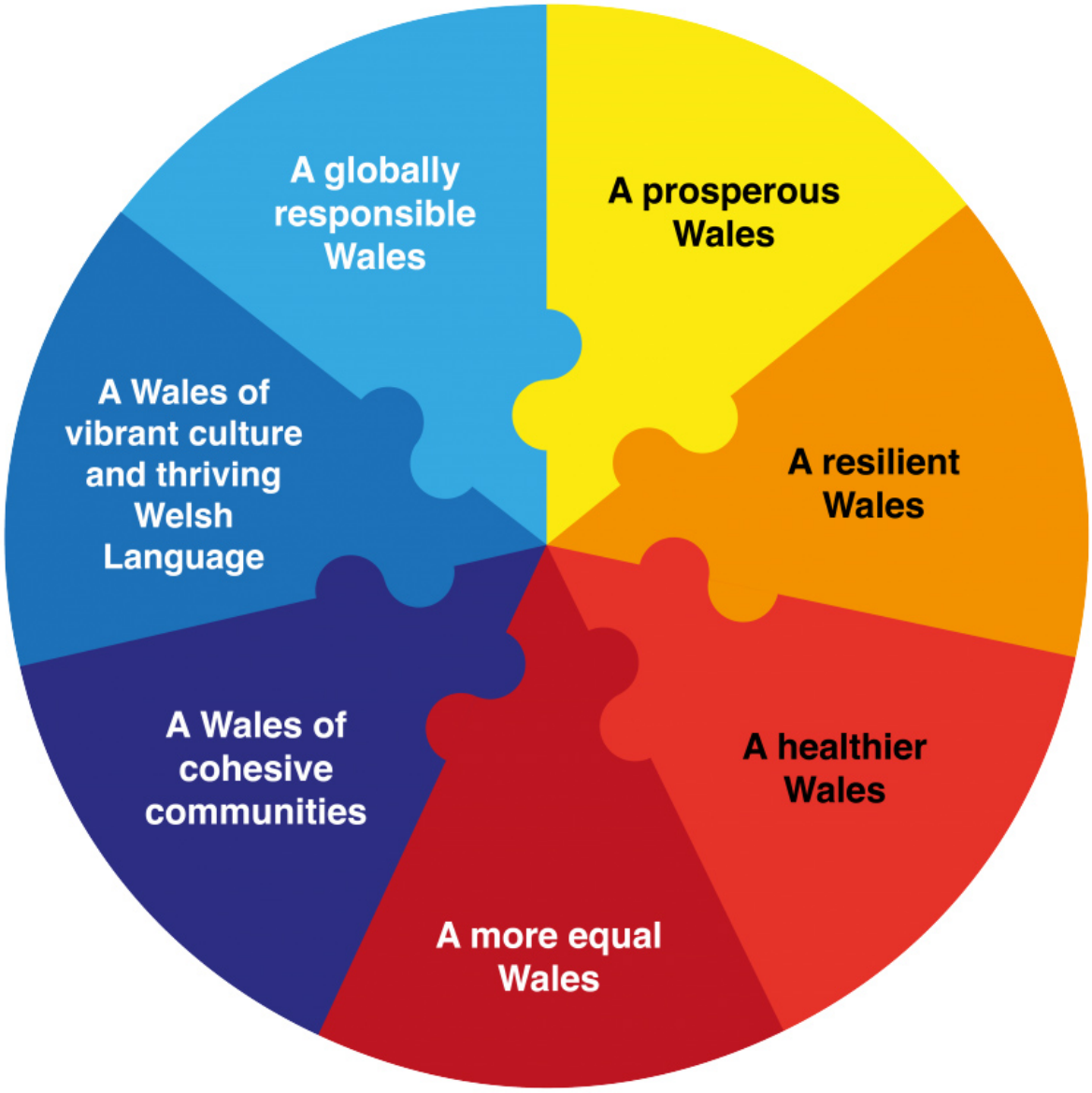
48 'Sustainable Development' (UNESCO undated) < https://en.unesco.org/themes/education-sustainable-development/what-is-esd/sd> accessed 8 August 2019

49 World Commission on Environment and Development, *Our Common Future "the Brundtland Report"* (1987) Chapter 1, para. 49

within the Act. This reality, combined with a lack of a common understanding as to what sustainable development means in practice, impedes its effectiveness. For example, the definition could justify a fiscally conservative approach as the burden of debt will be carried by generations as yet unborn, as well as justifying a deep ecological approach, which would be totally different.

The Act requires forty-four public bodies in Wales to work towards seven well-being goals[50]:

[50] n 46 s 4



These goals have been described as "substantive commitment devices", which are mechanisms that commit policy makers to do certain sorts of things to protect long-term interests and enables the executive to be scrutinised for the effect its decision making is having on long-term interests.[51]

[51] Jonathan Boston, '#futuregen: Lessons from a Small Country' (Hay Digital Festival, 31 May 2020)

The Act also requires the Welsh government to publish "national indicators" that are to be applied to measure progress towards well-being goals;[52] they must produce an annual well-being report "on the progress made towards the achievement of the well-being goals by reference to the national indicators and milestones";[53] and within twelve months of a general election to the Welsh Parliament they must produce a Future Trends report.[54] These have been called "procedural commitment devices", which do not require the government to do the right thing but publicly declare beforehand what they will do so they can be scrutinised and held to account.[55]

There is no prioritisation of the goals, which are intended to be interlocking. However, if ecological sustainability were to have primacy within the principle then this priority would create an effective framework for decision-making and governance, as that would make clear that human, social and economic development must occur in an ecologically sustainable manner.[56]

Although a globally responsible Wales is one of the well-being goals, this goal is seen as a dilution of the Welsh Government's previous sustainable development

52 n 46 s 10 (1)
53 n 46 s 10 (10)
54 n 46 s 11
55 n 51
56 Andrea Ross, *Sustainable Development Law in the UK From Rhetoric to Reality* (Earthscan for Routledge, 2012) 4

scheme which had the vision for Wales living within its environmental limits.[57] At present, Wales consumes at a rate that would require 2.5 planets.[58] Also, there is nothing in the Act which prevents Wales from exporting a lack of sustainability whilst remaining sustainable within its own borders by, for example, exporting plastic refuse to another State. There are those who would analyse the Act from a deep ecological perspective and would argue that sustainable development is a contradiction in terms. Their assertion is that as the Earth only has finite resources, there are limits to economic growth; so unlimited economic growth stands in opposition to environmental protection.[59] From this perspective, "a prosperous Wales" which "recognises the limits of the global environment,"[60] but is not absolutely required to live within them, would not go far enough.

The interlocking of goals and their lack of prioritisation will, however, be able to promote complexity thinking, which has been defined as follows:

> "Systems are defined as complex because they are diverse and composed of multiple, interconnected, interdependent elements interacting in non-linear

57 Welsh Assembly Government (WAG), *One Wales: One Planet The Sustainable Development Scheme of the Welsh Assembly Government* (WAG 2009) 17

58 Stockholm Environment Institute and GHD, *Ecological and Carbon Footprints of Wales Update to 2011* (Stockholm Environment Institute and GHD, 2015)

59 John Alder and David Wilkinson, *Environmental Law and Ethics* (Palgrave, 1999) 141 as cited in Ross (n 56) 3

60 n 46 s 4

> ways. They are adaptive because they have the capacity to change and learn from experience, which gives rise to self-organisation or self-regulation."[61]

Complexity thinking differs from linear thinking which can be defined as:

> "…a process of thought following known cycles or step-by-step progression where a response to a step must be elicited before another step is taken."[62]

Rebellious lawyers, by their nature, will engage in complexity thinking as they will wish to place their clients' experience within a wider context and examine how the interdependence of relationships will affect them, so the interlocking of the seven well-being goals will assist them in their practice, as well as being a template for the good life rebellious lawyers are envisioning.

When applying the sustainable development principle there are "five ways of working" which public bodies must follow.[63] They are as follows:

i. Long-term[64]

Short-term needs must be balanced by the need to meet long-term needs.

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61 Christine Gilligan Kubo, 'Understanding sustainable development in the voluntary sector: a complex problem' (Doctoral thesis) (2013) 61 <http://shura.shu.ac.uk/9712/> accessed 15 August 2019

62 Frank van Empel, 'Why Economists Are Always Wrong' (Ecolutie, undated) <https://www.ecolutie.nl/why-economists-are-always-wrong/ > accessed 15 August 2019

63 n 46 s 5(2)

64 n 46 s 5 (2) (a)

ii. Integration[65]

Public bodies must consider how their well-being objectives may impact upon each of the well-being goals, on their other objectives, or on the objectives of other public bodies.

iii. Collaboration[66]

Public bodies must act in collaboration with any other person (or different parts of the body itself) that could help the body to meet its well-being objectives.

iv. Involvement[67]

Public bodies must involve people with an interest in achieving the well-being goals and ensure that those people reflect the diversity of the area which the body serves.

v. Prevention[68]

Public bodies must take account of preventing problems occurring or getting worse in order to achieve their well-being objectives.

It is submitted that rebellious lawyering theory is well suited to "the five ways of working." The requirement for public bodies to provide an integrative service means that they must relate differently not only to other public bodies but also to individuals, community groups, the third sector and businesses. This creates the

65 n 46 s 5 (2) (b)
66 n 46 s 5 (2) (c)
67 n 46 s 5 (2) (d)
68 n 46 s 5 (2) (e)

opportunity for university law clinics to work with public bodies in innovative ways and provide more innovative service to the economically challenged communities they often serve.

Future Generations Commissioner

The Act has also set up the post of a Future Generations Commissioner for Wales who is effectively the representative of future generations in policy making in Wales.[69] She has the following statutory powers:

- Advise, encourage and promote[70]
- Research[71]
- Carry out reviews[72]
- Make recommendations[73]
- Produce a Future Generations report[74]
- Receive advice from an Advisory Panel[75]

The Future Generations Commissioner is a potential ally to a rebellious lawyer. Her "name and shame" powers have the potential to further a rebellious lawyering agenda and she is in a position to promote socially transformative resolutions to

69 n 46 s 17
70 n 46 s 19 (1)
71 n 46 s1 9 (2)
72 n 46 s 20
73 n 46 s 21
74 n 46 s 23
75 n 46 s 26

disputes other than through the use of litigation. University law clinics can inform her work not only through their data but also by highlighting the Academy's work in creating new solutions to sustainability issues.

Although in certain respects, the Future Generations Commissioner for Wales is a unique role, there have been several attempts at enhancing foresight and the scrutiny of long-term governance in policy making around the globe. The attempts that have been made have been diverse and include specialist legislative committees, future-focused forums, parliamentary commissions and independent commissioners with mandates to address long-term issues, government ministries and various advisory arrangements.[76]

One of the most established initiatives is Finland's Committee for the Future, which is a parliamentary committee established in the 1990s. One of its main functions is to prepare a parliamentary response to the Finnish government's *Reports on the Future* and to date has responded to seven such reports.[77]

Although Scotland's Futures Forum was established over thirteen years ago under the auspices of the Scottish Parliament, it is not a parliamentary committee or any

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76 Jonathan Boston, David Bagnall and Anna Barry, *Foresight, insight and oversight: Enhancing long-term governance through better parliamentary scrutiny* (Institute of Governance and Policy Studies, Victoria University of Wellington, 2019) 114

77 ibid 119

formal part of the parliamentary structure. It is not intended as a scrutiny mechanism but is a channel for public engagement with the Scottish Parliament by encouraging dialogue with long-term issues, as well as promoting research on such issues.

Singapore's approach has been to develop a think tank, the Centre for Strategic Issues, which is part of the executive and since 2015 has been part of the Strategy Group in the Prime Minister's Office.

A number of countries have devised new institutions to address long-term issues. These countries include Hungary, which has a Commissioner for Future Generations; Tunisia, which has a Sustainable Development and the Rights of Future Generations Commission; Gibraltar, which has a Commissioner for Sustainable Development; New Zealand which has a Parliamentary Commissioner for the Environment (whose remit is focussed on the environment, but not wider sustainability issues) and Israel, which had a Commission for Future Generations, now abolished.[78]

[78] House of Lords, 'Protecting and Representing Future Generations in Policymaking Debate on 20 June 2019 Library Briefing' 7 – 10 <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2019-0076#fullreport> accessed 13th August 2019

The United Arab Emirates have tried a different type of institutional innovation through the establishment of a "Ministry of Possibilities", the world's first virtual ministry to apply design-thinking and experimentation to develop proactive and disruptive solutions to tackle critical issues. The Ministry brings together national and local government, the private and voluntary sectors in order to consider radical changes in government systems, to adopt new innovative models and to work in ways that take calculated risks.[79]

At the time of writing, there are also legislation and policy changes in train in Portugal and Canada, as well as a Future Generations Bill before the UK parliament, which have looked to the Welsh model for inspiration.[80] If Canada and the UK were to provide some kind of sustainability lead - whether through institutional change or scrutiny devices of the type mentioned above - they would be countries with significantly larger populations than any of Wales, Finland, Scotland, Singapore, Hungary, Tunisia, Gibraltar, New Zealand or the United Arab Emirates; all of these have populations of fewer than twelve million people.[81] Canada's population is thirty-two million and the United Kingdom's is sixty-seven million.[82]

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79 n 43 12

80 Wellbeing of Future Generations Bill [HL] 2019-21. The UK Bill has a similar structure to the Welsh Act including creating a Future Generations Commissioner for the UK. However, in certain important respects it goes further. If public bodies do not follow the proposed UK Commissioner's recommendations the Commissioner, following an investigation, may apply to court for an order that the public body comply with the recommendations or take such action as the court specifies.

81 The population of Finland is 5.5 million; Scotland 5.4 million; Singapore 5.6 million; Hungary 9.6 million; Tunisia 11.8 million; Gibraltar 33,700; New Zealand 5 million; Israel 8.6 million;

The Welsh Government Minister who sponsored the Act, Jane Davidson, has said:

> "I am strongly of the belief that there are particular opportunities for a small country to be a test bed; to be smarter and more flexible than its larger neighbours. Here cultural behaviour-change experiments can be piloted and new approaches forged."[83]

It can indeed be easier for a small country to bring relevant stakeholders together and to make the links between production, consumption and well-being. Leadership on sustainability issues enables a small country to extend its soft power. They can be influential through leading on sustainability ideas, which can then be rolled out to larger countries who can benefit from the prior experience of small countries.

Institutional change and scrutiny devices are one approach. By contrast, another approach to sustainability has seen attempts to pivot the management of the economy away from a focus on Gross Domestic Product to instead consider a wider range of well-being objectives. New Zealand has adopted a Well-being Budget with five priority areas to focus on areas where there are the greatest opportunities to

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Wales 3.1 million and United Arab Emirates 9.8 million. ≤worldmeters.info≥ accessed 3 July 2020

82 Source: <worldmeters.info> accessed 3 July 2020

83 Davidson (n 6) 159. Jane Davidson was Minister for Environment and Sustainability in Wales from 2007 to 2011 where she was responsible for the Welsh Government agreeing to make sustainable development its central organising principle.

make an impact.[84] It also plans a work programme across government to embed well-being.[85]

There is evidence that having these institutional structures to promote sustainability in place seems to stimulate international cooperation on sustainability issues. The UN Sustainable Development Goal 17 provides:

> A successful development agenda requires inclusive partnerships — at the global, regional, national and local levels — built upon principles and values, and upon a shared vision and shared goals placing people and the planet at the centre.[86]

As a result, some of the governments with a progressive sustainability agenda - Scotland, New Zealand, Iceland, and Wales - have started collaborating in the Wellbeing Economy Governments Partnership.[87] The main objective of the partnership is to promote collaboration and learning on sustainability issues and share experiences. Since 2017, the Future Generations Commissioner for Wales has Chaired the Network of Institutions for Future Generations of similar commissioners

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84 New Zealand Government, 'How does Budget 2019 deliver a wellbeing approach?' < https://www.budget.govt.nz/budget/2019/wellbeing/approach/how-does-b19-deliver.htm> accessed 7 May 2020

85 ibid

86 United Nations, 'Goal 17: Revitalize the global partnership for sustainable development' < https://www.un.org/sustainabledevelopment/globalpartnerships> accessed 30 June 2020

87 Wellbeing Economy Alliance, 'Wellbeing Economy Governments' < https://wellbeingeconomy.org/wego> accessed 30 June 2020

or bodies with responsibilities for representing the needs of future generations across the globe. Its general goals include collaborating and sharing best practice; encouraging the establishment of similar institutions worldwide; raising awareness of the need for well-being of future generations; and working with international organisations, such as the United Nations, to protect "the interests, rights and well-being of future generations".[88] It would seem, therefore, that if a university law clinic is located in a nation which has some sort of institutional structure to safeguard the interests of future generations then there will also be international networks that will collaborate on learning about sustainability issues, which the clinics may benefit from indirectly.

The experience of countries that have taken a lead on sustainability issues shows that this leadership can create an impetus to deepen their engagement; however, continued progress is by no means assured. The experiences of Hungary and Israel, in particular, show the need to develop a broad consensus that supports long-term preventative planning. In Hungary, the Commissioner for Future Generations operated from 2008 but the Commissioner's powers "were significantly reduced" in 2012 under a new constitution. It has been suggested that the reduction of the Commissioner's powers may have been due to a "deficit of political understanding of, or sympathy for, its goals and methods", and may have resulted from its "notable

[88] Network of Institutions for Future Generations, '2018 Mission Statement' ≤ https://www.ajbh.hu/documents/2238847/2939231/Mission+Statment_final/1f2ba67d-5498-c24e-9f4c-1bbec523e203≥ accessed 30 June 2020

interventions in private and governmental interests".[89] Viktor Orbán's assumption of the premiership of the Hungarian government in 2010 with his use of nationalist populism has resulted in a reduction on the checks and balances on the executive, including those designed to protect the interests of future generations.[90]

In Israel the Commission for Future Generation's role was to give opinions on any legislation which affected future generations. This included holding an "effective veto" on legislation which did not comply with the interests of future generations. The Commissioner could also initiate bills and "play a general advocacy role to parliament".[91] The Commission was disestablished in 2016 apparently "for budgetary reasons". However, it is thought that its wide-ranging powers may have been a factor in its demise.[92]

Research into sustainable development agrees that there should be a broad cultural acceptance and understanding across national communities that prioritises operating and thinking about the long-term effects of policies and decisions.[93] The experience of Hungary and Israel show that without a strong base of support for sustainability initiatives amongst communities and civil society then even if they

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89 Mark O'Brien and Thomas Ryan, *Rights and Representation of Future Generations in United Kingdom Policymaking* (University of Cambridge Centre for the Study of Existential Risk, May 2017) 23–4

90 BBC News, 'Leaders profile – Hungary' ≤ https://www.bbc.co.uk/news/world-europe-17382823≥ accessed 30 June 2020

91 O'Brien and Ryan (n 89) 9

92 ibid 23–4

93 Ross (n 56) Chapter 3

have impact there will be a reversion back to governmental short-termism later. For example, the Israeli Commission was not the product of calls from civil society or popular demand. It was largely the idea of one politician, Joseph (Tommy) Lapid, who served as the Deputy Prime Minister and Minister of Justice. When he retired from politics, the Commission lost its champion and ceased to exist shortly after his retirement.[94] Whilst in Hungary, the President was anxious that the post of Commissioner for Future Generations be as independent as possible, so he dispensed with the usual informal process of discussing with political parties as to who was the most suitable candidate. Consequently, there was a lack of cross-party support for the eventual appointee.[95]

The more successful and long-lasting attempts at future generational representation, such as in Finland and Wales, have been established against a backdrop of significant support from civil society.[96] This support is a further challenge to, or opportunity, for rebellious lawyering practice to build a consensus for a sustainability agenda amongst coalitions and networks.

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94 Jonathan Boston, David Bagnall and Anna Barry, *Foresight, insight and oversight: Enhancing long-term governance through better parliamentary scrutiny* (Institute of Governance and Policy Studies, Victoria University of Wellington, 2019) 127

95 Sándor Fülöp, 'The Hungarian Experience' in Anna Nicholl and John Osmond (eds) W*ales' Central Organising Principle: Legislating for Sustainable Development* (IWA in association with WWF Cymru and Cynnal Cymru/Sustain Wales, 2012) 74

96 Natalie Jones, Mark O'Brien and Thomas Ryan, 'Representation of future generations in United Kingdom policy making' *Futures,* 102 (2018) 153, 161

Although the Future Generations Commissioner for Wales has relatively weak powers and does not have a power to initiate or veto legislation in the same way as the Israeli Commissioner had, this might make the office itself more sustainable. The Future Generations Commissioner for Wales could be in a transitional position with greater powers accruing over time as the benefits of a more preventative, long-term approach become apparent, and support for increased powers builds across the political spectrum, as well as amongst communities and civil society. The chances of success will also be enhanced where civil society creates greater public awareness of sustainability issues.[97]

Litigation involving the Act

The Act through its use of "substantive and procedural commitment devices" has provided new tools for the legislature to engage in "forward-looking scrutiny" of the executive, as opposed to the more traditional approach of scrutinising something the executive has already done. [98] These attempts to get public bodies to think about the long-term enhance good governance. Although there are a number of international examples of advisory bodies, scrutiny devices and institutional arrangements to get the public sphere to think long-term, there is "nothing as yet internationally, which is identical and as comprehensive and integrated as the Welsh model."[99] However,

97 ibid 153, 161
98 Boston, Bagnall and Barry (n 94) 11
99 n 51

the Act has been less successful as a way of providing individuals with legally enforceable rights.

This seems to be demonstrated by one of the first challenges which used the Act as a ground for judicial review.[100] A local authority wanted to close a school. The school had falling numbers and the local authority wished to move pupils to another school, which would involve some students in up to a sixty-minute drive from home. Opponents of the closure argued that closing the school would "rip the heart out of the community" so the attractiveness, viability, safety and connectedness of the community would be undermined contrary to the Act.[101]

Despite these arguments the application was denied. Mrs Justice Lambert said:

> "I do not find it arguable that the 2015 Act does more than prescribe a high-level target duty which is deliberately vague, general and aspirational and which applies to a class rather than individuals. As such, judicial review is not the appropriate means of enforcing such duties."[102]

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100 *R (B) v Neath Port Talbot County Borough Council* CO/4740/2018

101 n 46 s 4 Table 1

102 Paul Martin, 'Law to protect future generations 'useless'' (BBC, 15 May 2019) <https://www.bbc.co.uk/news/uk-wales-48272470 > accessed on 13 August 2019

She went on to say that the closure of the school was "not inconsistent" with the local authority's published "well-being objectives", so was compliant with the Act anyway.[103]

Setting aside concerns about the strength of the campaigners' case, as there was specific legislation on school closures, some have argued that there was no need to have recourse to the Act which is a framework piece of legislation. Perhaps the case shows traditional lawyering was not the best approach and a rebellious lawyering approach with its scepticism of litigation and preference for coalition building may have been more effective. There is evidence that the public in Wales have difficulty accessing judicial review, in any event, as judicial review claims are comparatively low in Wales compared to most regions of England.[104]

Mrs Justice Lambert is doubtless right as far as the law is concerned: the Act can only be used to challenge decisions on procedural grounds, such as a clear conflict with a local well-being plan, but the behavioural change through complexity thinking, which the Act promotes, is difficult to challenge though legal process. The well-being duty placed on public bodies by the Act was also held to be too general and

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103 n 100

104 Sarah Nason, *Understanding Administrative Justice in Wales: Full Report Including Executive Summary* (University of Bangor, 2015) 19

aspirational in nature to be directly enforceable through judicial review in a further case.[105]

The former Chief Justice of England and Wales, Lord Thomas of Cwmgiedd, writing extra-judicially, has also labelled the Act "aspirational legislation" and has said that the Act should not have been enacted, as the duties are not drafted in a form which is enforceable and there is no mechanism for enforcement. This lack of enforcement mechanism is "detrimental to the Rule of Law."[106]

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105 *R (the British Association for Shooting and Conservation and Others) v Natural Resources Wales*: CO/4881/2018

106 Lord Thomas of Cwmgiedd, 'Thinking policy through before legislating – aspirational legislation' (The Lord Renton Lecture Institute of Advanced Legal Studies) 21 November 2019 < http://www.statutelawsociety.co.uk/home/lord-thomas-text-aspirational-legislation-21-11-19/ > accessed 30 June 2020. In his lecture Lord Thomas sets out five possible enforcement mechanisms: i. A Court/tribunal where the Commissioner (or an individual) can challenge a decision of a public body and the court/ tribunal adjudicates on the merits of whether the decision complies with the duty; ii. The court/ tribunal instead of deciding on the merits of compliance applies a judicial review test to the decision of the public body; iii. An ombudsman or similar person with an adjudicative role who decides the same questions; iv. A Commissioner/auditor who considers whether the decision complies with the duty and is given the power to go to court to enforce compliance or has the power to enforce itself; v. A Commissioner/auditor who simply reports on non-compliance or reports to an ombudsman. The UK Future Generations Bill is similar to the Welsh Act in many ways. However, it proposes stronger enforcement measures. If a public body does not follow the proposed UK Future Generations Commissioner's recommendations, then following an investigation, the Commissioner can apply for a court order to require the public body to comply with the recommendation or make such other order as the court specifies (s 26). An individual can apply to court when a public body breaches its obligations or refer the matter to the Commissioner for an investigation (s 27). The court is also able to impose a fine on the public body (s 28).

Although there will be few cases where the Act, as currently drafted, will be the basis of a successful challenge using an application for judicial review, it has been successfully used by individuals to challenge planning decisions.[107]

Lawyers using a rebellious lawyering approach want duties that are capable of individual enforcement and are consistent with the Rule of Law. They want detail provided to accompany high level aspirational well-being duties, which, for example, fully spell out what is meant by a right to adequate housing. However, the *impact* on them of a lack of an enforcement mechanism through judicial review is small. They have a scepticism about the ability of legal process to positively affect their clients' lives, as, amongst other things, this assumes their clients can access the legal process in the first place. The Act is meant to promote a dialogic approach using integrated, participative and collaborative methods where interdependence of human and non-human stakeholders is recognised. A hierarchical approach such as judicial review where decisions are imposed through an adjudicative process will inevitably be rarely used by them.

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107 This refers to a planning decision relating to Cae Calon, Martletwy, nr Narberth, Pembrokeshire Planning Application Ref:16/0549/PA. There was a prospective One Planet Development Policy planning application, which was initially refused by the local planning authority. However, it was subsequently approved on appeal by the Planning Inspectorate in December 2017. Of particular note is planning inspector Nicola Gulley's comment: "In reaching this decision, I have taken into account the ways of working set out at section 5 of the Well-Being of Future Generations (Wales) Act 2015 and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by Section 8 of the Well-Being of Future Generations Act." One Planet Council, 'Approved Applications" < http://www.oneplanetcouncil.org.uk/approved-applications/> accessed 6 September 2020

A success for rebellious lawyering methods? The M4 relief road

Where the Act clearly has had impact is in relation to the Welsh government's decision over the M4 relief road. This was a proposed motorway, south of the city of Newport in South Wales and was intended to tackle congestion around the city on the existing motorway. The proposed alternative route would have passed through an environmentally sensitive area known as the Gwent Levels. Eventually, the First Minister of the Welsh Government decided to reject the planned road on grounds of both cost and the environment.[108]

The decision could be seen as a vindication of a rebellious lawyering approach. A coalition had been built between a number of environmental groups and local residents who were also able to enlist the support of the Future Generations Commissioner for Wales.

The decision gives some guidance as to how the Welsh Government will handle the trade-offs which are an inherent part of sustainable development. One of the Act's well-being goals is a "resilient Wales" which is defined as:

108 Decision letter of First Minister of Welsh Government re: various schemes and orders in relation to the M4 corridor around Newport 04/06/2019 <https://gov.wales/sites/default/files/publications/2019-06/m4-corridor-around-newport-decision-letter.pdf > accessed 13 August 2019

> "A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change)."[109]

However, another goal is to create 'A prosperous Wales', which is defined as:

> "An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work."[110]

A coalition of NGO environmental groups, local campaigners and the Commissioner for Future Generations was opposed to the relief road mainly for environmental reasons. All of this is consistent with a rebellious lawyering approach. However, there were other coalitions in favour of the relief road which argued that there were environmental arguments in favour of the new road. These included increasing congestion on the existing road leading to increased CO_2 emissions, as well as the

109 n 46 s 4 Table 1

110 n 46 s 4 Table 1

need for the new road for the economic development of the area. Although there were local residents in favour of the relief road, the most high profile campaigners were business groups led by the Confederation of British Industry (CBI) Wales who felt that it was needed in order to increase the prosperity of South Wales as well as to improve the public transport infrastructure and that steps could be taken to significantly mitigate the environmental damage so that only 2% of the Gwent Levels would be affected.[111] They also felt that increasing active travel would not be enough to solve the problem.

It is submitted that the "prescriptively normative" principles which guide rebellious lawyering would mean that rebellious lawyers would presumptively side with those opposing the relief road. In 2016 Newport had 7.08 tons of CO_2 emissions, which was in the third highest category of emissions in the UK.[112] 28% of households in Newport are without a car or a van, which made the whole debate of limited relevance to them.[113] It would also mean that expenditure on a major road project would not be addressing their transport needs, further exacerbating inequalities. Rebellious lawyering is primarily a form of lawyering which seeks to address

111 Leighton Jenkins, 'Discover more about the M4 relief road and the benefits it presents to the Welsh economy' (CBI 23 April 2019) <https://www.cbi.org.uk/policy-focus/infrastructure-and-energy/articles/cbi-calls-on-welsh-government-to-build-m4-relief-road/> accessed 14 August 2019

112 Centre for Cities, Cities Data Tool <https://www.centreforcities.org/data-tool/#graph=map&city=show-all&sortOrder=high&indicator=co2-emissions-per-capita\\single\\2016> accessed 14 August 2019

113 Hugh Mackay, Campaign Against the Levels Motorway 'The M4 Relief Road: a failed idea out of step with 21st Century Wales' (Nation Cymru, 3rd December 2018) <https://nation.cymru/opinion/the-m4-relief-road-a-failed-idea-out-of-step-with-21st-century-wales/ > accessed 14 August 2019

inequalities caused by the subordinated not being able to access legal proceedings, and not faring well when they do.

In making these trade-offs between resilience and prosperity decision makers are also hampered by the fact that the future is, of course, uncertain. It is possible for example that at some future date electric cars will be so common that they will have lower carbon emissions than public transport alternatives such as trains. But it is only possible to rely on current data to decide where trends such as these are leading. If the decision had been taken to build the relief road campaigners said they would have brought an application for judicial review.[114] However, as can be seen from *R (B) v Neath Port Talbot County Borough Council*[115] judicial review applications are determined on procedural grounds, and campaigners would have found that very difficult. In this context, there was an argument for saying that the relief road met the prosperity goal, and was in keeping with well-being plans, and the science over CO_2 emissions was contested between the campaign groups.

A rebellious lawyering approach, particularly one adopted by a university law clinic, seems to have a lot to offer in this type of situation. As rebellious lawyers, clinic practitioners will be cautious about the use of litigation and will begin with the approach that other methods will be preferable. A university law clinic has the

114 ibid
115 n 100

opportunity to build an interdisciplinary coalition within the university, particularly in the scientific community, to input further evidence into what is often already a high-profile debate.

Developments in policy

If the Act as presently drafted is not capable of individual enforcement, it nevertheless has had significant impact in changing behaviour in some areas of policy.

Planning law has been re-designed to align with the sustainable development principle.[116] As a result, "the planning system is to adopt a placemaking approach to plan making, planning policy and decision making."[117] This is a clear sign of commitment from the Welsh government; however, aligning the planning rules to

116 *Planning Policy Wales Edition 10*, (Welsh Government, 2018)

117 ibid para. 2.9. "Placemaking" is a holistic approach to the planning and design of development and spaces, focused on positive outcomes. It draws upon an area's potential to create high quality development and public spaces that promote people's prosperity, health, happiness, and well-being in the widest sense. Placemaking considers the context, function and relationships between a development site and its wider surroundings. This will be true for major developments creating new places as well as small developments created within a wider place. Placemaking should not add additional cost to a development, but will require smart, multi-dimensional and innovative thinking to implement and should be considered at the earliest possible stage. Placemaking adds social, economic, environmental and cultural value to development proposals resulting in benefits which go beyond a physical development boundary and embed wider resilience into planning decisions.

the policy will take time.[118] This has the potential to create more cohesive communities which can be supported by the work of rebellious lawyers in clinics.[119]

Education policy has also responded to the Act. The education curriculum for 3 – 16-year olds will be significantly overhauled starting from 2022, which is designed to help practitioners to develop a more integrated approach to learning and which aligns to the sustainable development principle by promoting systemic thinking.[120] Analysis of the change from a sustainability perspective has called for:

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118 n 43 Chapter 5

119 Since 2011 the Welsh Government has also adopted the One Planet Development Policy. In order to meet the criteria of one Planet Development Policy "…residents of One Planet Developments have to live quite differently (much more sustainably) than is the norm in the 21st century" Welsh Government, *Practice Note One Planet Development Technical Advice Note 6* (Welsh Government, October 2012) 2. The essential characteristics of One Planet developments in the open countryside are that "they must have a light touch on the environment; be land based – the development must provide for the minimum needs of residents in terms of food, income, energy and waste assimilation in no more than five years; have a low ecological footprint – the development must have an initial ecological footprint of 2.4 global hectares per person or less with a clear potential to move to 1.88 global hectares per person over time…; have very low carbon buildings – these are stringent requirements, requiring that buildings are low in carbon in both construction and use; be defined and controlled by a binding management plan which is reviewed and updated every five years; and be bound by a clear statement that the development will be the sole residence for the proposed occupants" ibid. This is seen by the Welsh Government as a niche initiative and not something to scale up, Max Baring, 'Want to save the planet? Move to Wales' (Thompson Reuters Foundation, 2 August 2018) < https://news.trust.org/item/20180802100003-2bwnt#:~:text=The%20'One%20Planet%20Development%20Policy,the%20resources%20they%20are%20due.> accessed 6 September 2020. In 2018, 32 households had applied for planning permission under the One Planet Development Policy.

120 Hwb, 'Developing a vision for curriculum design' ≤ https://hwb.gov.wales/curriculum-for-wales/designing-your-curriculum/developing-a-vision-for-curriculum-design/#curriculum-design-and-the-four-purposes≥ accessed 2 July 2020. It creates four purposes for learners to become: ambitious, capable learners, ready to learn throughout their lives; enterprising, creative contributors, ready to play a full part in life and work; ethical, informed citizens of Wales and the world; and healthy, confident individuals, ready to lead fulfilling lives as valued members of society. It creates six areas of learning and experience: Languages, Literacy and Communication; Mathematics and Numeracy; Science and Technology; Humanities; Health and Well-being; and Expressive Arts. Individual disciplines still have an important role; however, the six Areas are seen as bringing them together to encourage strong

> "…more formal links between Welsh schools and the businesses, representative bodies, public sector employers, charities and others, links with whom would improve authentic learning for children..."[121]

It is submitted that this connected approach to primary and secondary education will provide a better grounding for students before embarking on clinical legal education, as students will have had a greater amount of experiential learning before starting at university.[122]

Communities of practice

As the Act cannot be used as the basis for challenging decisions under judicial review efforts need to be directed towards coalition building. Gilligan Kubo argues for non-hierarchical Communities of Practice - groups of people who share a concern or a passion for something they do and learn how to do it better as they interact

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and meaningful links between disciplines. There is a cross-cutting focus in literacy, numeracy and digital competence.

121 Calvin Jones, *Fit for the Future Education in Wales: White Paper for Discussion* (Cardiff Business School and the Future Generations Commissioner for Wales, 2019) 22

122 Although not arising directly as a result of Welsh Government policy, although drawing inspiration from it, there is an interesting higher education and sustainability initiative taking place in Wales. The Black Mountains College (BMC), which is based in the Brecon Beacons National Park, will launch the BMC degree – a Bachelor of Arts and Science degree - in September 2022, which will address the challenge of living sustainably. It will use short immersive teaching blocks with modules taught sequentially; spending time in nature; class sizes of twenty students; an interdisciplinary approach integrating information using all senses; a final year project working on a real-world problem; collaboration between students, tutors, industry partners and the local community Black Mountains College, 'The BMC Degree' < https://blackmountainscollege.uk/study/higher-education/> accessed 6 September 2020.

regularly - as a way of encouraging civil society to promote sustainable development.[123]

Gilligan Kubo says that Communities of Practice using complexity thinking will support social learning – the theory that new behaviours can be acquired by observing and imitating others – "and encourage cognitive restructuring which can lead to behaviour change".[124] Among the barriers to civil society promoting sustainable development are a lack of understanding of the need for behavioural change to support sustainable development, which is in turn linked to a lack of understanding of the systemic nature of such development, as well as the lack of staff capacity.[125] This lack of staff capacity is an issue not just for civil society but for all sectors: how to create the headspace to understand sustainable development and develop behavioural change? Most services catering for the needs of the subordinated are very busy with their clients and struggle to find the time for this type of developmental work.

To work optimally, Gilligan Kubo sees Communities of Practice encouraging the engagement of diverse stakeholders, so that their different voices and perspectives are heard. For example, this would include voluntary sector staff, managers,

123 Gilligan Kubo (n 61) 200. An example of a Community of Practice, in the form of the Townhill Children's Zone, is discussed in the case study on the Swansea Law Clinic where a law clinic, schoolteachers, medics, youth workers and a community centre are working together to achieve sustainability objectives.

124 Gilligan Kubo (n 61) 200

125 ibid 207

volunteers, service users, local government and local community representatives.[126] However, given their lack of staff resource and how busy they are servicing the everyday needs of their clients, they will only want to engage in Communities of Practice when there is something of practical benefit to them.[127]

It is difficult to demonstrate quantifiable benefits to those in the voluntary sector interested in being involved in Communities of Practice using a complexity theory approach where outcomes cannot be closely predicted or guaranteed.[128] This is where having legislation which seeks to protect the interests of future generations can be advantageous. The Well-being of Future Generations (Wales) Act 2015 binds forty-four public bodies in Wales, including the Welsh government and local authorities. These public bodies will only wish to fund and work with the voluntary sector if they are striving to achieve the seven well-being goals and using the "five ways of working" under the Act. The Welsh government has established and provides administrative support to Regional Advice Networks where advice agencies can discuss areas of mutual interest and set the agenda themselves. This provides a suitable forum for the advice sector to develop their Communities of Practice. It can provide support in creating the "headspace" for civil society to think about sustainability issues and promote the need for behavioural change. It could also be a way of engaging in coalition building which is not only central to rebellious

126 ibid 211
127 ibid 203
128 ibid 19

lawyering practice, but also a way to build support for sustainability approaches amongst civil society. This creates demonstrable benefits for the voluntary sector when deciding whether to engage in Communities of Practice.

Public Service Boards

Another reason - and opportunity - for civil society to be well organised within the context of the Well-being of Future Generations (Wales) Act 2015 is the Act's provision for Public Service Boards.[129] These boards consist of representatives of the local authority, health board, the local fire and rescue service and the Natural Resources Body for Wales.[130] They must also invite, among others, at least one body representing relevant voluntary organisations.[131] Public service boards are required to prepare and publish a local well-being plan setting out their local well-being objectives and the steps it proposes to take to meet them.[132] This offers an opportunity for Communities of Practice to impact on local policy. If they can achieve consensus through their dialogue the Community of Practice can speak with one voice through its representative on public service boards.

129 n 46 s 29
130 ibid s 29
131 ibid s 30 (1) (e)
132 ibid s 39

Sustainability and clinical legal education

This section will look at how university law clinics can apply rebellious lawyering principles to achieve sustainability objectives. It will consider some of the urgent issues around developing attributes amongst students in order to make them effective sustainability practitioners.

According to UN Educational Scientific and Cultural Organisation (UNESCO), higher education is seen as having a particular role to play in promoting sustainability:

> "Higher education should emphasise experiential, inquiry-based problem-solving learning, interdisciplinary systems approaches and critical thinking."[133]

There is a clear synergy here between clinical legal education, which is a form of experiential, inquiry-based, problem-solving approach using critical thinking, and interdisciplinary learning. This is so despite the fact that many law schools find the interdisciplinary approach challenging. The way many universities are governed with different subjects managed in different faculties and different cost centres often

[133] UNESCO, 'UNESCO Decade of Education for Sustainable Development (2005 – 2014) Draft International Implementation Scheme (UNESCO 2004)' cited in Paula Jones, David Selby and Stephen Sterling 'Introduction' in Paula Jones, David Selby and Stephen Sterling (n 35) 2. UNESCO have also produced learning objectives for the sustainable goals ≤ https://unesdoc.unesco.org/ark:/48223/pf0000247444≥ accessed 2 July 2020

acts as one of the main inhibitors to interdisciplinary learning. These challenges can be overcome, amongst other things, by an institution-wide sustainability strategy and external stimuli such as external grants.[134]

Sustainability can be a value-laden ontology and there have been fears within the Academy that an uncritical embrace of the sustainability agenda is a threat to academic freedom. When the Higher Education Funding Council for England (HEFCE) circulated their consultation document *Sustainable Development in Higher Education* they received the following response from Dr Peter Knight, Vice Chancellor of the University of Central England:

> "It is one of the most pernicious and dangerous circulars ever to be issued. It represents the final assault on the last remaining freedom of universities…It is not the job of universities to promote a particular orthodoxy; it is their role to educate students to examine critically policies, ideas, concepts and systems, then make up their own minds."[135]

There are a number of responses which could be made to this. First, sustainability itself does not promote any orthodoxy among economic models. For example, there are those who think that neo-liberal marketisation is unsustainable and that there

134 Paula Jones, David Selby and Stephen Sterling 'Introduction' in Paula Jones, David Selby and Stephen Sterling (n 35) 10 - 11

135 Peter Knight, 'Unsustainable Developments' (*The Guardian*, 8 February 2005)

has to be a fundamentally new approach taken to the economy. However, there are those who think that if capitalism is restructured and appropriately regulated it can operate on a sustainable basis. If neo-liberal marketisation is not examined and critiqued, then there is a risk of inadvertently promoting it as the orthodoxy, i.e. the only way to organise an economy, so it is necessary to look at alternative economic models.

Secondly, tutors should demonstrate "epistemic humility": being humble with their assumptions about understanding. If a student does not think climate change is anthropogenic in nature then tutors need to engage with this challenge meaningfully, and not be dismissive. It should be viewed as an opportunity for critical discussion, which is beneficial for everyone. It will also mean that counterarguments can be foregrounded and discussed.

Even issues such as climate change, whose existence cannot be seriously contested as 97% of climate scientists believe that there is global warming, can still be discussed with students because responses to it can vary from a fundamental reorganisation of the economy to less challenging adaptations or improvements in technology.[136]

[136] John Cook and others, 'Consensus on consensus: a synthesis of consensus estimates on human-caused global warming' *Environmental Research Letters* Vol. 11 No. 4, (13 April 2016)

There are a number of general principles frequently used in sustainability pedagogies including participatory and inclusive education processes, transdisciplinary cooperation, experiential learning and the use of environment and community as learning resources; all of which involve an interactive enquiry-based approach to teaching and learning.[137] All these requirements have a natural affinity not only with clinical legal education but also with rebellious lawyering practice.

Whatever students' stance on sustainability, and climate change in particular, they should be encouraged to develop a "personal environmental ethic".[138] In developing this "personal environmental ethic" legal clinicians should see this as integral to developing students' well-being. Consider that there has been an "extinction of experience" in childhood.[139] In the 1950s 40 per cent of British children regularly played in natural areas. This has dropped to 10 per cent today, with 40 per cent of children never playing outdoors at all.[140] On the basis of this observation, it is reasonable to assume that many, if not the majority, of legal clinical students have had little experience of the outdoors. This is significant for two reasons.

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137 Debby Cotton and Jennie Winter, 'It's Not Just Bits of Paper and Light Bulbs': A Review of Sustainability Pedagogies and the Potential for Use in Higher Education in Paula Jones, David Selby and Stephen Sterling (n 35) 41 - 42

138 Joy Palmer and Philip Neal, *The Handbook of Environmental Education* (Routledge 1994) 19

139 Masashi Soga and Kevin Galston, 'Extinction of experience: the loss of human–nature interactions' (2016) 14(2) *Frontiers in Ecology and the Environment* 94 - 101

140 Isabela Tree, *Rewilding* (Picador 2018) 294

First, one in six of the UK population suffers from depression, anxiety, stress, phobias, suicidal impulses, obsessive compulsive disorder or panic attacks – sometimes in combination. Anxiety with depression is the most common disorder.[141] E.O. Wilson called the human connection with nature "biophilia", which he defined as the "rich, natural pleasure that comes from being surrounded by living organisms".[142] Studies have shown that symptoms of common mental disorders are alleviated with time spent in nature, as well as an increase in positive mood.[143]

Secondly, studies show that children who spent time in green spaces between the ages of seven and twelve tend to think of nature as magical.[144] As adults they are more concerned about lack of nature protection, while those who have no such experience tend to be more indifferent to its loss.[145] They will therefore have a less developed "personal environmental ethic".[146]

Case study: Sustainability and the Swansea Law Clinic

In order to participate in a clinic of this transformative nature, students need to be supported to put the issues in context whether through pre-reading and/or a suitable

141 William Bird, *Natural Thinking* (Natural England and RSPB 2007) 7

142 Edward Osborne Wilson, *Biophilia: The Human Bond with other Species'* (Harvard University Press, 1984) 157*:*

143 Tree (n 140) 295

144 ibid 294

145 ibid 294

146 John Baines, 'Learning to Live on Planet Earth. The Environmental Approach to Education' (1986) 5(1) *Environmental Education and Information*

induction programme, in order to develop their capacity to reflect on such issues.[147] They need to be aware of major challenges such as the climate crisis, loss of biodiversity, use of plastics, inequalities, pandemics and the effect of automation, and how political, economic, social and cultural forces contribute to these issues. They also need to be encouraged to think about their own personal vision as to what a sustainable world would be like, which puts into a profound sustainability context the rebellious lawyer's idea of a good life.

As sustainability clinics are aiming to promote systemic change, it is necessary to examine with students how all these issues intertwine. The Clinic's induction training has to begin by making the links. For example, examining the relationship between environmental degradation, inequality and gender. Thus, student advisers may not necessarily realise that research studies have shown the single most important thing can be done is to increase communities' resilience to natural disaster is reducing educational inequality between the sexes.[148]

The ideal induction programme, as at Swansea, seeks to develop students' perceptual way of thinking through thinking about client care. It explores various emotional states, how they may be identified and how a distressed client may affect

147 Adrian Evans, 'Greenprint for a Climate Justice Clinic: Law Schools' Most Significant Access to Justice Challenge' (2018) 25(3) *International Journal of Clinical Legal Education* 7, 13

148 Paul Hawken (ed), *Drawdown: The Most Comprehensive Plan Ever to Reduce Global Warming* (Penguin, 2018) 82

the students' own well-being, and what they should do to promote their well-being. The conceptual way of thinking is developed through building on the students' existing knowledge of legal doctrine. The practical way of knowing is developed through the acquisition of professional skills.

As Swansea Law Clinic has small businesses as well as individuals as clients, students' commercial awareness around sustainability issues can be developed. The United Kingdom has passed legislation setting a goal of net zero carbon emissions target by 2050.[149] In order to meet this target companies will need to develop plans, so students need to be aware that climate change is, in certain circumstances, a material financial risk. For example, it is estimated that net zero emissions will lead to 80% of coal assets and half of developed oil reserves being stranded.[150] If they are to have the commercial acumen to meet the needs of clients in the future they need to know the risks and opportunities inherent in transitioning.

They also need to be aware of how central a lawyer's role can be in formulating business practice and company policy. When surveyed, 93% of in-house lawyers globally said when their company had a sustainability plan, they led, contributed or influenced the company's efforts.[151] Therefore, there is a need for university law

149 Climate Change Act 2008, s 1, as amended by The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI 1056, s 2

150 Mark Carney, 'Today' (BBC Radio Four, 30 December 2019)

151 Association of Corporate Counsel, '2019 ACC Chief Legal Officers Survey Corporate Social Responsibility' (30 January 2019) < https://www2.acc.com/governance/upload/New-ACC-

clinics to promote the development of lawyers who have a good grasp of sustainability principles and some experience of applying them.

Given the scale and complexity of issues such as climate change and growing inequalities, students' creativity needs to be nurtured and developed in order to develop the innovative solutions required. Some of Swansea Law Clinic's students are working towards module credits as part of their undergraduate law degree. They can opt out of the normal assessment, and, with agreement, work on a project of their own choosing on some aspect of how the Clinic can contribute to well-being goals as set out in the Well-being of Future Generations (Wales) Act 2015 and/or local well-being plans.

Creativity is something very difficult to teach, but innovative approaches to litigation are increasingly a form of sustainability activism, particularly when it comes to climate change. Raising awareness of these developments could spark students' creativity. Innovative litigation strategies, such as ClientEarth's challenge to the UK government to bring forward new clean air quality plans, are considered.[152]

ESGinfosheet.pdf?_ga=2.233523102.1403026587.1588687862-40775737.1588687862> accessed 5 May 2020

152 *R (on the application of ClientEarth) v Secretary of State for the Environment Food and Rural Affairs* [2015] UKSC 28

The growing body of future generations' strategic litigation around the world is often youth-led so it is not only a subject worthy of study in its own right but also can be an effective way of engaging students. The issues facing future generations such as climate change, rising inequalities, increasing automation, etc. are so complex and, in many cases, novel that the fresh perspectives that students can provide are valuable. Models of youth-led leadership are empowering and can help students develop their confidence in putting their ideas forward.

Climate action lawsuits have spread to twenty-eight countries around the world with more than 1,300 actions brought since 1990.[153] These lawsuits have been placed into two categories: strategic and routine cases.[154] Strategic cases often see the "parties seek to leverage the litigation to instigate broader policy debates and change".[155] Routine cases are less visible cases, dealing with, for example, planning applications. They use original climate change arguments. These might influence governments and private bodies, but that is an incidental purpose.[156] Such cases are creative in the way they use human rights arguments and draw on scientific

153 Joana Setzer and Rebecca Byrnes, *Global trends in climate change litigation: 2019 snapshot* (Centre for Climate Change Economics and Policy, Grantham Research Institute on Climate Change and the Environment and Sabin Center for Climate Change Law at Columbia Law School, July 2019)

154 ibid 2

155 Setzer and Byrnes (n 153) 2

156 ibid

advancements to provide causal links between particular sources of emissions and climate-related harm.[157]

Although the youth-led action against the United States federal government for violation of constitutional rights to a safe climate was eventually thrown out on admissibility grounds in *Juliana v. United States*[158] it could be seen to have value for its impact on policy debates. Although rebellious lawyering practice views litigation as just one tool in a toolkit to support oppressed communities, and is sceptical about its accessibility in many cases, this nuanced use of litigation as a way of advancing policy discussion or introducing new arguments into legal process can be seen as a part of rebellious lawyers' armament.

At Swansea Law Clinic, student advisers are required to safeguard their own mental and physical well-being, as well as develop their own well-being plans. During induction, they are advised as to stress reduction techniques which includes spending time in nature. This has the advantage of not only offering support if they are experiencing difficulties managing their stress levels but also, as research shows that time spent in nature positively affects attitudes towards it, they will have an enhanced awareness of the importance of biodiversity.[159] However, it has to be recognised more needs to be done in this regard. In order to profoundly affect

157 ibid

158 *Juliana v United States* US Court of Appeals Ninth Circuit, No. 18-36082 [2020]

159 Bird (n 141) 7

attitudes towards nature, experiences of nature need to be integrated into education from childhood and at present, this is just one issue covered in the induction programme.

Involvement in environmental issues exacts a price in emotional labour. What is more, this collective emotional toll appears to be growing.[160] Terms have been coined to describe the emotional experience of environmental collapse such as "solastalgia", which is when your "endemic sense of place is being violated";[161] "eco anxiety" which has been defined by the American Psychological Association as chronic fear of environmental doom;[162] and "ecological grief" which has been defined as "the grief reaction stemming from the environmental loss of ecosystems by natural and man-made events."[163]

Students are required to reflect on how their experiences in the Clinic have affected their values in a personal reflection, which is part of the self-examination needed in rebellious lawyering practice. Here students have an opportunity to reflect on the development of their "personal environment ethic" as part of this assessment, so

160 Britt Wray, 'Prequel: At The Beginning There Was Change' (Climate of Emotions: Supporting Youth Wellbeing online conference < https://www.youtube.com/watch?v=FpkEW1CE7nI> streamed live 21 April 2020, accessed on 29 April 2020)

161 Glenn Albrecht cited in Nicola Ross, from 'Language, Nature and the Great Remembering' *The Journal of Wild Culture* (16 September 2017)

162 Ashlee Cunsolo and others (eds) *Mental Health and our Changing Climate: Impacts, Implications, and Guidance* (American Psychological Association, Climate for Health and ecoAmerica 2017) 29

163 Kriss Kevorkian cited in Jordan Rosenfeld, 'Facing Down "Environmental Grief": Is a Traumatic Sense of Loss Freezing Action Against Climate Change?' *Scientific American* (Philadelphia, 21 July 2016)

they also can self-scrutinise their behavioural change. In encouraging students to do this, law clinics must recognise that they will need to support them through their emotional reactions.

Whilst most within the sustainability community talk of the need for adaptation or mitigation when it comes to climate change there is a yet more radical strand that talks of the need for "deep adaptation".[164] This approach does not seek to engage with methods of climate adaptation as it is premised on the view that social collapse, as a result of climate change, is now almost inevitable and human extinction possible.[165] This approach requires moving on from the concept of sustainability, and instead examining what near-term societal collapse will look like.[166]

The risk is that the complex nature of global sustainability issues could lead students to develop feelings of fear, hopelessness and despair, which in turn causes paralysis. This state needs to be acknowledged and contained if it is to lead on to effective action. Many law clinics already practise containment methods such as mindfulness techniques. What is also needed is the space to process these feelings leading to action, which Swansea Law Clinic aims to do through personal reflection. Clinics in

164 Jem Bendall, 'Deep Adaptation: A Map for Navigating a Climate Tragedy' (IFLAS Occasional Paper 2, 27 July 2018) < http://lifeworth.com/deepadaptation.pdf> accessed 1 May 2020

165 ibid 20

166 Melinda Harm Benson and Robin Kundis Craig. 'The End of Sustainability' 27 *Society and Natural Resources* (2014) 777

their nature are action-led, and the *feeling* of taking action is one of the most effective ways of countering the various forms of eco-anxiety.

Swansea Law Clinic students are also given a grounding in the principles of the Act as part of their initial induction and training, which makes it clear that university law clinics have a role in developing the Act's principles. Public Service Boards have found the production of local well-being plans difficult to manage and as a result are playing it "safe" and using arguably weak forms of sustainable development using a narrow form of data.[167] There has also been found to be a compliance culture around the production of local well-being plans.[168]

University law clinics have rich sources of data on the reality of living in their local communities, which can inform local well-being plans. They are also often in a position to use anonymised client stories or narratives. Use of stories is a technique often used in rebellious lawyering practice and can be used by law clinics as a technique to enable people to empathise with subordinated communities.[169] Use of locally connected "icons" has also been shown to be the most effective way of

167 Alan Netherwood, Andrew Flynn and Mark Lang *Well-being Assessments in Wales: An Overview Report* (Netherwood Sustainable Futures, Cardiff University and Mark Lang Consulting 2017) 3

168 ibid 4

169 Richard Owen, 'Gathering the Excluded Voice: The TXT Inside/TXT Outside Project' (2014) 21 (1) *International Journal of Clinical Legal Education* 5 - 41

engaging people in sustainability issues.[170] Use of stories and "icons" is a product of the close relationship university law clinics have with their local communities, and their insights into how "social haunting" might act as a brake on behavioural change, also have the potential to enhance local well-being plans.

Local Area Coordination

The Clinic is located within the local authority area of Swansea Council. The Council is already innovating in the delivery of its service in a way which aligns with the Act. Local Area Coordination was a programme initially developed in Western Australia in 1988 in response to the urgent need to find new and innovative approaches for supporting people with learning disabilities and their families.[171] It has been taken up in New Zealand, Ireland and other parts of the United Kingdom, and the idea has expanded to include supporting people facing all types of challenge.

Swansea Council has set up a network of Local Area Coordinators and the Clinic has been working with the Coordinator for the town of Gorseinon. The coordination approach is designed to take a preventative and collaborative approach in tackling some of the more deep-seated health and social care challenges the community faces,

170 Saffron J. O'Neill and Mike Hulme, 'An iconic approach to representing climate change' (2009) 19 *Global Environmental Change* 402–410

171 Ralph Broad, *Local Area Coordination: From Service Users to Citizens* (The Centre for Welfare Reform, 2012) 12

such as an ageing population which is economically pressed during a time of austerity. Local Area Coordinators are embedded into the community, and work with all demographics to reduce dependence and build long-term resilience. An evaluation of the Local Area Coordination in Swansea and the neighbouring local authority area found:

> "There is an emphasis on nurturing trusting and supportive relationships with individuals and families which can take time to develop, building reliance and supportive connections to reduce the risk of future crisis and service dependency."[172]

Service users are not viewed as passive recipients but as assets who have natural authority and are partners in the project of building community resilience. Swansea Law Clinic has been involved on a monthly basis in a Community Pop-up Café and One Stop Advice Shop which was initially established by the Local Area Coordinator. The café is run by local people and involves local elected officials, faith leaders, local based police officers, local authority officials and up to twenty different advice agencies. This enables the Clinic to give a more holistic service to clients and embodies principles of collaboration between and integration of services, all of which are part of sustainability agendas and rebellious lawyering. For example,

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172 Caring Together and Swansea University, *Local Community Initiatives in Western Bay: Formative Evaluation Summary Report* (April 2016) 3

when advising a client on a potential unfair dismissal claim the advice session with the Clinic will end by advising the client to mitigate their loss. Then the client will be referred on immediately to a back-to-work adviser who will assist the client on the spot to find work. The Clinic will further assist the client by showing them how they need to evidence their work searches for the Employment Tribunal.

The Local Area Coordination programme is not a requirement under the Act but is further evidence of how the Act has brought about behavioural change.

Finally, the Clinic is also part of the Townhill Children's Zone. This again is a multi-agency initiative which serves an economically challenged part of the city. It consists of the head teachers of the local schools, medical practitioners who serve the locality, community youth workers, a local youth centre, as well as the Clinic. It draws inspiration from the Harlem Children's Zone and has as its aim to increase the number of children from the locality who attend university. Its focus is very much on long-term planning, which aligns with the Act's well-being goals, as well as collaboration and the integration of services. Again, the construction of local networks is also consistent with rebellious lawyering practice.

Conclusion

Rebellious lawyering deepens understanding of communities, builds broad-based coalitions, envisions a better life and strengthens awareness of how legal practice

relates to big structures. As such, it is a form of sustainability legal practice, which can be practised in any jurisdiction. Its "normative principles" provide guidance to a university law clinic seeking to achieve sustainability objectives regardless of location, and in efforts to address the climate emergency at a local level. The Welsh experience also shows that where sustainability legislation does not exist academia and civil society – and university law clinics exist at the intersection of both – can have an important leadership role in bringing it about.

The value added to rebellious lawyering practice by sustainability legislation is that it creates a structure to improve long-term public decision making that extends beyond the electoral cycle. The Well-being of Future Generations (Wales) Act 2015 only seems to provide a mechanism for individual enforcement in exceptional cases, which deprives traditional public lawyers of a fundamental tool of their trade, judicial review. This is as much concern to rebellious lawyers, as it is to lawyers using a traditional approach. If challenges based on the Act face continuous defeat in the courts the public may become cynical about its effectiveness. The experience of Israel and Hungary shows that sustainability initiatives cannot be maintained if they lack broad public support. However, the impact of a lack of an individual enforcement mechanism on rebellious lawyering practice will be small, even if such lawyers and law clinics do need to work with others to get the Act amended so that an individual enforcement mechanism is inserted into it. The present situation can

be viewed as a valuable transitional period, which can be used to build up support for the Act across civil society.

Whilst it is hard to quantify change, and the application of the Act by public bodies is at an early stage, there is much evidence it has already improved policies and behaviour, as shown by changes to planning and education policy in Wales. It has also brought about behavioural change in local authority operational practice as shown by the Local Area Coordination programme.

The lesson from Wales is that it takes time for sustainability legislation to be embedded across different policy areas, as a result of the complexity of systemic thinking. Time may not be on the side of any current species, as in 2018 the UN Intergovernmental Panel on Climate Change – which only deals with one aspect of sustainability - said urgent and unprecedented action would need to be taken in the twelve years if climate catastrophe is to be averted.[173] So the challenge for the clinical legal education movement is to absorb and apply these lessons rapidly.

[173] V. Masson-Delmotte and others (eds), *Global Warming of 1.5°C.An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty (*UN Intergovernmental Panel on Climate Change, 2019)

TOWARDS THE IMPLEMENTATION OF THE PARIS CLIMATE CHANGE AGREEMENT 2015: OPPORTUNITIES AND CHALLENGES FOR THE NETWORK OF UNIVERSITIES LEGAL AID INSTITUTIONS (NULAI) NIGERIA

Ngozi Chinwa Ole and Onyekachi Eni*

1. Introduction

Clearly, climate change is the most debilitating global environmental problem of all times.[1] 'From shifting weather patterns that threaten food production, to rising sea levels that increase the risk of catastrophic flooding, the impacts of climate change are global in scope and unprecedented in scale…'[2] For Nigeria, the negative impacts of climate change are felt in the major sectors of the economy. Persistent flooding, droughts, and severe prolonged dry weather conditions have stifled agricultural friendly seasons into non-existence.[3] The implication of the latter is low agricultural productivity and, the attendant risk of hunger in Nigeria.[4] What is more, severe

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[1] Jon Naustdalslid, 'Climate Change-The Challenge of Translating Scientific Knowledge into Action' (2011) 18(3) International Journal of Sustainable Development and World Ecology 243.

[2] United Nations, 'Climate Change' (2020) <https://www.un.org/en/sections/issues-depth/climate-change/> accessed 7th January, 2020.

[3] Ann Ogbo and others, 'Risk Management and, the Challenges of Climate Change' (2013) 41(3) J Hum Ecol 221, 223. See Pao Odjugo, 'General Overview of Climate Change Impacts in Nigeria' (2010) 29(1) J Hum Ecol 47,55.

[4] Osuafor A M and others, 'The Impact of Climate Change on Food Security in Nigeria' (2014) 3(1) International Journal of Science and Technology 209, 212-216. See also Emeka E Obioha, 'Climate

weather conditions occasioned by climate change is exacerbating increased infectious diseases, injury and psychological disorder.[5] The negative impact of climate change also undermines the supply and availability of electricity in Nigeria.[6]

Scientific data posits that the emission of carbon dioxide is the primary contributor to the global problem of climate change.[7] The bulk of the emissions arise from the global electricity sector.[8] In Nigeria, the emission of greenhouse gases (GHGs) from unsustainable practises in land use and through the generation of electricity from fossil fuel sources contributes the most to the global problem of climate change.[9] Thus, mitigating climate change entails a paradigm shift from fossil fuel-based electricity to cleaner electricity such as renewable energy-based electricity.[10] Also, mitigating climate change will not be complete without emission reduction strategies in the agriculture and land sector.[11]

Variability, Environment Change and Food Security Nexus in Nigeria'(2009) 26 (2) Journal of Human Ecology 107.

[5] Rasak Bamidele, 'Conceptualizing the Relationship between Climate Change and Human Health in Nigeria' in *Panoply of Readings in Social Sciences; Lesson for and from Nigeria* (Covenant University Press 2013) 5.

[6] Akinyemi Opeyemi and others, 'Energy Supply and Climate Change in Nigeria' (2012) 7 <https://mpra.ub.uni-muenchen.de/55820/1/MPRA_paper_55820.pdf> accessed 7th January 2020.

[7] Lamiaa Abdallah and Tarek El-Shennawy, 'Reducing Carbon Dioxide from the Electricity Sector using Smart Electricity Grid' (2013) Journal of Engineering 1, 4.

[8] Ibid.

[9] Stephen Oyedele Adewale and others, ' Electricity Sector's Contribution to Greenhouse Gas Emissions' (2017) 28(6) Management of Environmental Quality An International Journal 917, 926. See A I Achike And A O Onoja, 'Greenhouse Gas Emission Determinants in Nigeria: Implications for Trade, Climate Change Mitigation and Adaptation Policies' (2014) 4(1) British Journal of Environment and Climate Change 83, 87.

[10] Steven Ferrey, 'The Failure of International Global Warming Regulation to Promote Needed Renewable Energy' (2010) 37(1) Boston College Environmental Affairs Law Review 68

[11] Sarah J Scherr and Sajal Sthapit, *Mitigating Climate Change through Food and Land Use* (World Watch Institute 2009) 5-38.

The Paris Climate Change Agreement (Paris Agreement) 2015[12] is the current international instrument that coordinates global responses to the problem of climate change.[13] It stipulates 'long-term global climate goals and short-term procedural steps that outline how these goals should be achieved'.[14] The long term mitigation goal is to 'strengthen the global response to the threat of climate change . . . holding the increase in the global average temperature to well below 2◦ C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5◦ C above pre-industrial levels ... ' [15] Consequently, member states are under obligation to prepare, communicate and implement successive Nationally Determined Contributions (NDCs) to achieve the mentioned objective.[16] It is expected that such communicated NDCs should contain *low greenhouse gas emission strategies* for mitigating climate change.[17]

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[12] The Paris Climate Change International Agreement 2015 (adopted 12 December 2015, entry into force date is 4 November 2016). It is a treaty within the Context of the Vienna Law of Treaties 1969, Article 2(1). See also Antto Vihma, 'Climate of Consensus: Managing Decision Making in the UN Climate Change Negotiations' (2015) 24 (1) *RECIEL* 57, 60; Daniel Bodansky, 'The Legal Character of the Paris Agreement' (2016) 2 *RECIEL* 142, 143.

[13] The United Nations Framework Convention on Climate Change (UNFCCC) 1992 was the first international treaty for addressing the problem of climate change. It is the umbrella agreement that gave birth to the Kyoto Protocol 1997 and, subsequently the Paris Climate Change Agreement 2015. See the United Nations Framework Convention on Climate Change 1992 (adopted 9 May 1992, entered into force 21 March 1994), FCCC/INFORMAL/84(UNFCCC); David Freestone, 'The United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Kyoto Mechanisms', in David Freestone and Charlotte Streck (eds), *Legal Aspects of Implementing the Kyoto Protocol Mechanisms: Making Kyoto Work* (Oxford University Press, 2008) 4.

[14] Sylvia I. Karlsson-Vinkhuyzen and others, Entry into Force and Then? The Paris Agreement and State Accountability' (2018) 18 (5) Climate Policy 593.

[15] The Paris Climate Change Agreement 2015 (n 12) Art 2 (1).

[16] Ibid, Art 4 (2).

[17] Ibid, Art 4 (19). The use of the word 'should' implies that member states are expected rather than mandated to include the low greenhouse gas emission strategies as part of their n their NDCs. See Rajamani writes that the use of the word 'should' in the above provision denotes the expectation of performance rather than the creation of a legal obligation. See Lavanya Rajamani, 'The 2015 Paris

The Nigerian government is a signatory to the Paris Agreement 2015.[18] As such, it has communicated core actions that will precipitate the reduction of GHGs emission in the electricity, agriculture and land-use sector by 2030.[19] While the measures provided for in the Nigerian NDCs are commendable, its efficacy in mitigating climate change is contingent on its actual implementation. The Nigerian government submitted its biennial update in 2018, which shows that little has been done in implementing the proposed measures in Nigerian NDCs.[20] On the face of the biennial update, some commentators are pessimistic that the Nigerian NDCs may not be achieved by 2030.[21]

It is fitting to mention that the Paris Agreement does not expressly provide for a punitive enforcement mechanism.[22] However, its provisions give rise to some political and legal tools which some authors posit will secure the successful

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Agreement: Interplay Between Hard, Soft and Non- Obligations' (2016) 28 Journal of Environmental Law 331, 343.

[18] UNFCCC, 'Paris Agreement: Status of Ratification' (2020) <https://treaties.un.org/pages/ViewDetails. aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27> accessed 3rd July 2020. See also 'Nigeria is set to implement the Paris Agreement with the Launch of Green Bonds' (January 17th 2017) **Ventures Africa; Abuja** .

[19]UNFCCC, 'Nigeria NDC' (2015) <www.unfccc.int/submissions/NDC/Published%20Documents/Nigeria/1/ Approved%20Nigeria's%20INDC_271115.pdf > accessed 23 February 2020.

[20] UNFCCC, 'Nigeria: First Biennial Update Report' (2018) <www4.unfccc.int/sites/Submissions Staging/Nati onalReports/Documents/218354_Nigeria-BUR1-1-Nigeria%20BUR1_Final%20(2).pdf> accessed 11th March 2020.

[21] Priscilla Offiong, 'Nigeria's Biannual Update Report and Greenhouse Gas Inventory Report Provide Useful Information on the Country's Emission Levels' (2020) < www.climatescorecard.org/2019/06/nigerias-biannual-update-report-and-greenhouse-gas-inventory-report-provide-useful-information-on-the-countrys-emission-level s/> accessed 22nd March 2020.

[22] Richard Falk, 'Voluntary International Law and, the Paris Agreement' (2016) < https://richardfalk.word press. com/2016/01/16/voluntary-international-law-and-the-paris-agreement/> accessed 12th February 2020.

implementation of the NDCs of member states including Nigeria's.[23] The tools are; a global stocktake by the conference of the parties[24], a compliance mechanism and, a transparency framework which will generate peer pressure from appropriate quarters including civil societies.[25] While the global stocktake and compliance mechanism are powerful in their strength, the transparency framework is reputed to be 'the backbone of the Paris Agreement'.[26]

The Paris Agreement provides for the establishment of a transparency framework to promote the effective implementation of its provisions.[27] A purpose of the framework is to provide an avenue for member states to share such information, necessary to track progress made in the implementation of the NDCs.[28] It is anticipated that the information provided in the transparency framework will provide the required arsenal for non-party stakeholders to propel more ambitious

[23] Daniel Gross, 'The Paris Agreement is the Shove the World Needs' (14 December, 2015) <http://www.slate.com/articles/business/moneybox/2015/12/the_paris_agreement_won_t_punish_countries_that_fall_short_but_it_s_still.html> accessed 12th February 2020.

[24] The Paris Agreement 2015 (n 12) Art. 7 (14). See also Daniel l Klein and others (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press 2017) 79.

[25] Romain Weikmans and others, 'Transparency Requirements under the Paris Agreement and their (un)likely impact on Strengthening the Ambition of Nationally Determined Contributions (NDCs)' (2019) Climate Policy 2-3.

[26]Yamide Dagnet and others, 'Staying on Track from Paris: Advancing the Key Elements of the Paris Agreement' (2016) World Resources Institute Working Paper 25 <www.wri.org/ontrackfromparis> (accessed 26 February 2020).

[27] The Paris Agreement (n 12) Art 13 (1). See also Harald Winkler and others, 'Transparency of Action and Support in the Paris Agreement' (2017) 7 (17) Climate Policy 853.

[28] The information is typically shared in the NDC Registry in the UNFCCC website. See UNFCCC, 'Nationally Determined Contribution' <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs#eq-5> accessed 14th February 2020.

actions from member states for the implementation of NDCs.[29] Notably, the Paris Decision 2015[30] was the very apparatus used to birth the Paris Agreement and, it contains a detailing of some of its provisions.[31] It spells out additional roles for non-party stakeholders, including collaborative actions with member states in the mitigation of climate change.[32] They are also expected to scale up their actions in addressing the problem of climate change.[33]

The term 'non-party stakeholders' was not defined in the Paris Agreement or the Paris Decision.[34] However, the Paris Decision gave examples of 'non-party stakeholders' to include 'civil society (non-governmental organisation (NGO)[35])'.[36] The Network of University Legal Aid Institutions (NULAI) Nigeria is a 'non-governmental, non-profit and non-political organisation committed to promoting clinical legal education, legal education reform, legal aid and access to justice'.[37]

[29] Sylvia Karlsson-Vinkhuyzen and others, 'Entry into Force and then? The Paris Agreement and State Accountability' (n 14) 595.

[30] The Paris Climate Change Decision, UNFCCC/CP/2015/10/Ad.1. See also Ngozi Chinwa Ole and Ruth Akinbola, 'Addressing the Capacity Deficiency in the Nigerian Off-grid Renewable Electricity: The Place of the International Climate Change Regime' (2019) 2 Redeemer's University Law Journal 35, 51.

[31] Daniel Bodansky, 'The Paris Climate Change Agreement: A New Hope' (2016) 110 (2) The American Journal of International Law 288

[32] The Paris Climate Change Decision (n 30) para 117-118.

[33] Ibid.

[34] The Paris Agreement (n 12); The Paris Climate Change Decision (n 30) para 117-118.

[35] C K Vandyck, *Concept and Definition of Civil Society Sustainability* (Washington DC CFSIS 2017) 1. See also David Lewis, 'Civil Society and the Authoritarian State: Cooperation, Contestation and Discourse' (2013) 9(3) Journal of Civil Society 327.

[36] Ibid, Preamble.

[37] NULAI, 'About us' (2020) < https://nulai.org/who-we-are/> accessed 16th February 2020.

Going by this definition, NULAI readily fits into the meaning of non-party stakeholder under the Paris Decision.

In the light of the above, this paper examines the role that NULAI can play in the successful implementation of the Paris Agreement 2015 in Nigeria, having regard to the recognised role of civil societies in this context. It will be argued that NULAI can use the instruments of litigation, engagement with relevant stakeholders and adoption of mitigation measures to catalyse the successful implementation of the Agreement in Nigeria. On the one hand, there are possible limitations to the role of NULAI in this context. One of such limitations is the absence of any justiciable right emanating solely from the Paris Agreement 2015 and, Nigerian NDCs. Another limitation is the low level of awareness of the needed climate change law among student law clinicians and staff of Nigerian universities. Thus, the paper will conclude by making recommendations on how to surmount the identified problems. One such recommendation will be the use of human right-based approached litigation to secure the enforcement of the provisions of the Paris Agreement and, the Nigerian NDCs.

In the light of the above, the paper is sub-divided into four sections. Section one is the introduction. Section two contains a summarised analysis of the provisions of the Paris Agreement 2015 and its implementation tools. Section three contains an analysis of the role of civil societies in the implementation of the Agreement. Section

four contains an analysis of the possible roles and challenges that NULAI can play in the light of the analysed role of civil societies in the Agreement.

2. The Paris Agreement 2015: Measures and Implementation Tools

The Paris Agreement 2015 was made under the umbrella of the United Nations Framework Convention on Climate Change (UNFCCC) 1992.[38] The later was the first international instrument that coordinates the global responses to the problem of climate change.[39] Regrettably, the UNFCCC 1992 did not garner the needed responses for the mitigation of climate change.[40] Under the UNFCCC 1992, the Nigerian government did not commit to any meaningful action for the mitigation of climate change.[41] It was on the later basis among others, that the Paris Agreement was adopted as a part of the Paris Legal Outcome.[42] The Paris Legal Outcome is a conglomerate of the Paris Agreement and, the Paris Decision.[43] The Paris Decision was the resolution of member states of the UNFCCC 1992, which birthed the Paris Agreement.[44] While the Paris Agreement is a treaty within the context of the Vienna Law of Treaties 1969 with its provisions being fully binding, the Paris Decision is

[38] Michele Stua, *From the Paris Agreement to a Low-Carbon Bretton Woods: Rationale for the Establishment of a Mitigation Alliance* (Springer 2017) 10,11.
[39] Eike Albrecht and others, *Implementing Adaptation Strategies by Legal, Economic and Planning Instruments on Climate Change* (Springer 2014) 56.
[40] The failure of the UNFCCC 1992 has been a subject to various commentaries. See Doaa Abdel Motaal, 'Durban: A Success and a Failure' (2012) 42(2) Environmental Policy 85.
[41] Ngozi Chinwa Ole, 'The Paris Agreement as Primer for Developing the Nigerian Off-grid Solar Electricity' (2018) 26(3) African Journal of International and Comparative Law 426, 430.
[42] Susana B. Adamo, 'About Mitigation, Adaptation and the UNFCCC's 21st Conference of the Parties' (2015) 32 (3) *R. bras. Est. Pop.* (Rio de Janeiro) 609.
[43] Ibid.
[44] Daniel Bodansky, 'The Legal Character of the Paris Agreement' (n 12) 143.

not.[45] Regardless, recourse can be validly made to its provisions for a detailing of the Paris Agreement.[46]

The Paris Agreement mandates member states to prepare, communicate and maintain successive nationally determined contributions which will contain mitigation measures in the context of the objective of the Treaty.[47] It is expected that all member parties should have communicated their NDCs by 2020.[48] Subsequent NDCs which must represent a progression of previous efforts to mitigate climate change should be communicated at least every five years.[49] Consequent upon this, the Nigerian government communicated its NDCs in 2015.[50] The NDCs stipulate several actions for the mitigation of climate change in the relevant sector, particularly in land use (agriculture) and electricity.[51] First, it provides for the replacement of orthodox gas electricity technologies with modern gas electricity

[45] The Vienna Convention on Law of Treaty 1969 (adopted 23 May 1969, entered into force 27 January 1980), Article 2(1). See also Antto Vihma, 'Climate of Consensus: Managing Decision Making in the UN Climate Change Negotiations' (2015) 24 (1) RECIEL 57, 60.

[46] Ibid, Art 31.The mentioned Article, provides that a treaty can be interpreted in the context of any instrument made by two or more of the parties in connection to the treaty. See also Yves le Bouthhiller, 'Vienna Convention of 1969' in Olivier Corten and others (eds), *The Vienna Convention on Law of Treaties: A Commentary 1* (Oxford University Press 2011) 846.

[47] The Paris Agreement (n 12) Art 4(1) and (2).

[48] The Paris Decision (n 30).

[49] The Paris Agreement (n 12) Art 4(3) and (9).

[50] The NDC was previously communicated as Intended-NDC in 2015 but it became NDC in 2017 following the ratification of the Paris Agreement by the Nigerian Government. See Olumide Idowu, 'Nigeria Develops Third Paris Agreement National Communication' (2018) <www.climatescorecard.org/2018/09/nigeria-develops-third-paris-agreement-national-communication/> accessed 19th February 2020.

[51] J Akinbunmi and C Akinbunmi, 'Climate Change Mitigation and Adaptation Studies in Nigerian Universities: Achievements, Challenges and Prospects' in Walter Lee Filho (eds) *Climate Change Research at Universities: Addressing the Mitigation and Adaptation Gaps* (Springer 2017) 139.

technologies.[52] Secondly, it proposes that cost-efficient renewable energy solutions will drive rural electrification.[53] In furtherance to the latter, the government aims to develop Off-grid solar photovoltaic electricity options to drive rural electrification.[54] Thirdly, energy efficiency measures should be adopted widely, including in the electricity sector, to mitigate 179 million tonnes of GHGs.

Additionally, the government proposes to end the flaring of GHGs through the generation of electricity from gas sources.[55] It is proposed that the government will promote smart and sustainable agricultural practises to the extent that will mitigate the emission of 74 million tonnes of GHGs.[56] The actions are summarised in the table below:

[52] Ibid, 3. This is to the extent that will reduce greenhouse gas emission by 102 million tonnes.
[53] Ibid, 2. The proposed solar photovoltaic will be to the extent that will reduce the emission of GHGs in the electricity sector by 31 million tonnes.
[54] Ibid. For more commentaries on Nigeria's NDC, see Emem C Onyejelam, 'Building an Effective Implementation Process to Nigeria's Climate Change Policies and Intended Nationally Determined Contributions (INDC)' (2016) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2843279> assessed 11th February 2020.
[55] Ibid. See Philip Antwi-Agyei, 'Alignment between National Determined Contributions and the Sustainable Development Goals for West Africa' (2018) 18 Climate Policy 1296.
[56] Ibid.

Table 1: Mitigation Measures in Nigerian NDC[57]

Mitigation Measures	**Potential GHGs Emission Reduction (Million Tonnes Per Year up till 2030)**
1. Develop Efficient Gas Electricity Strategies	102
2. Energy Efficiency Strategies	179
3. End Gas Flaring	64
4. Climate Smart Agriculture	74
5. Reduce Transmission Losses	26
6. Develop Renewable Energy	31

As earlier stated, the provisions of the Paris Agreement yield some political and social tools which commentators are optimistic would facilitate the enforcement of the NDCs, including Nigeria's.[58] These tools are; global stocktake, compliance mechanism and transparency framework.[59] While the global stocktake and

[57] The Nigerian NDC (n 19) 3.

[58] Ngozi Chinwa Ole, 'The Paris Agreement 2015 as a Primer for Developing Nigerian Off-grid Solar Electricity' (n 41) 432. See also Daniel Gross, 'The Paris Agreement Is the Shove the World Needs' (14 December 2015), <www.slate.com/articles/business/moneybox/2015/12/the_paris_agreement_won_t_punish _countries_that_fall_short_but_it_s_still.html> accessed 12 February 2020.

[59] Lavanya Rajamani, 'The 2015 Paris Agreement: Interplay Between Hard, Soft and Non- Obligations' (n 17) 331

compliance mechanism is not within the purview of this article, it will be summarily discussed in the light of its role in securing the enforcement of the Nigerian NDCs.

The Paris Agreement provides for the global stocktake by vesting on the conference of member states (COP), the mandate to periodically review the collective progress made in the implementation of their individual NDCs.[60] The first stocktake is scheduled to be held by 2023 and subsequently every five years.[61] There is a 'good faith expectation that Nigeria should be influenced by the outcome of such stocktake to voluntarily scale up efforts to develop the targeted off-grid solar electricity' and other mitigation measures.[62] The latter is especially in the context where the stocktake shows that collective efforts of member states are inadequate in the expectation of mitigating the temperature to well below 2 ^{0} C.[63] However, the effect of the global stocktake in facilitating the enforcement of Nigeria's NDCs is whittled down by some other factors which have been discussed by the author in another publication.[64] One of such is that it is 'authorised to consider "collective" progress, thus insulating individual nations from any assessments of adequacy in relation to their actions'.[65]

[60] The Paris Agreement (n 12) Art. 14 (2).
[61] Ibid.
[62] Ngozi Chinwa Ole, 'The Paris Agreement as Primer for Developing the Nigerian Off-grid Solar Electricity' (n 41) 441.
[63] Ibid.
[64] Ibid.
[65] Rajamani Lavanya, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics' (2016) 65 ICLQ 493, 504.

A compliance mechanism comprising of 12 members is also established by the Agreement.[66] It provides that the mechanism shall be 'expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive.'[67] Where a member state like Nigeria is not implementing all or some part of its NDCs as proposed, the mechanism may indicate it in its overall report to the COP.[68] It is argued that in the event of such report, the other member states in the COP might exert peer pressure on the defaulting state to the extent that will nudge them to do the needful to implement their NDCs.[69] However, the strength of the compliance mechanism is whittled down by the general absence of an express provision in the Paris Agreement mandating member states to implement their NDCs.[70] Consequently, there is no legal footing for such peer pressure from other member states to generate a strong force that will compel a recalcitrant Nigerian government, for example, to implement its NDCs.[71]

The final tool of implementation created by the provisions of the Paris Agreement is transparency. The Paris Agreement establishes the transparency framework to

[66] The Paris Agreement (n 12) Art 15(1).
[67] The Paris Decision (n 30) Article 15(2). See Christina Voigt, 'The Compliance and Implementation Mechanism of the Paris Agreement' (2016) 25 (2) *RECIEL* 161.
[68] Achala Abeysinghe and Subhi Barakati, *The Paris Agreement: Options for an Effective Compliance and Implementation Mechanism* (IIED Press 2016) 92.
[69] Sebastian Oberthur, 'Options for a Compliance Mechanism in a 2015 Climate Agreement' (2014) 1–2 Climate Law 34 and 42.
[70] Lavanya Rajamani, 'The 2015 Paris Agreement: Interplay Between Hard, Soft and Non- Obligations' (n 17) 337, 354.
[71] Alexander Zahar, 'Why the Paris Agreement Does Not Need a Compliance Mechanism' (September 2016) <https://poseidon01.ssrn. com/delivery.php?ID=876127020083071028117022119087028098.pdf> accessed 20 Feb. 2020.

enhance the effective implementation of its provisions.[72] The detailed guidelines for transparency will be adopted in 2020.[73] Under the transparency framework, Nigeria is expected to provide all the necessary information to enable the tracking of progress for the implementation of the NDCs on a biennial basis.[74] Such information include the GHGs emission by sources and removals, all such progress recorded in implementing the measures outlined in the NDCs, and the flow of support from external sources.[75] Nigeria submitted its first biennial update on the implementation of the NDCs in 2018.[76] The biennial updates, including the one submitted by Nigeria is displayed in the UNFCCC public registry.[77] The updates will also inform the collective assessment of progress made in the implementation of the global stocktake.[78] More importantly, the information on progress will galvanise the activities of non- party stakeholders' particularly civil societies for the implementation of its provisions.[79] The global stocktake has already been discussed in this section. Given the focus of this paper, some of the provisions on transparency will be discussed in detail alongside the role of civil societies in the implementation of the Paris Agreement.

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[72] The Paris Agreement (n 12) Art 13 (1).
[73] The Paris Agreement (n 12) Art 13 (13). See UNFCCC, 'Transparency of Support under the Paris Agreement' (2020) < https://unfccc.int/topics/climate-finance/workstreams/transparency-of-support-ex-post/transparency-of-support-under-the-paris-agreement> accessed 3rd March 2020.
[74] Ibid, Art 13 (5).
[75] Ibid, Art 13 (7).
[76] UNFCCC, 'Nigeria: First Biennial Update Report' (n 20).
[77] Ibid, Art 4 (9), and Art 4 (12).
[78] Ibid, Art 13 (6).
[79] Arunabha Ghosh and Sumit S Prasad, 'Shining the Light on Climate Action: The Role of Non-party Institutions' (2017) Fixing Climate Governance Series Paper No. 6 <www.cigionline.org /publications/shining-light-climate-action-role-non-party-institutions> accessed 22nd February 2020.

3. The Role of Civil Societies in the Implementation of the Paris Agreement

The point that non-party stakeholders have a role to play in the implementation of the Paris Agreement in Nigeria has previously been made. The term 'non-party stakeholders' was defined in the Paris Decision to include civil societies.[80] The role of civil societies in the implementation of the Paris Agreement is tripartite. In the first instance, civil societies can use various political and legal tools to nudge a member state like Nigeria to vigorously deploy measures for the implementation of their NDCs[81]. Additionally, civil societies can also push for the adoption of more ambitious measures for the mitigation of climate change in a member state like Nigeria in subsequent NDCs.[82] Importantly, they are encouraged to adopt measures, independently, for the mitigation of climate change.[83] These will be discussed accordingly.

The bedrock of transparency is that member states including Nigeria, will make available sufficient information on progress made concerning the implementation of their NDCs in the UNFCCC public register.[84] On the strength of such publication, commentators posit that civil societies and other non-party actors can propel member states like Nigeria to adopt more ambitious actions for the implementation

[80] The Paris Decision (n 30) preamble, para 15.
[81] Harro van Asselt, 'The Role of Non-State Actors in Reviewing Ambition, Implementation, and Compliance under the Paris Agreement' (2016) 6 Climate Law 91, 107.
[82] Thomas Hale, *The Role of Sub-State and Non-State Actors in International Climate Processes* (Chatham House 2018) 3-5.
[83] The Paris Decision (n 30) para 117.
[84] The Paris Agreement (n 12) Art 13 (7).

of their NDCs.[85] While the latter position was not expressly provided for in the Paris Agreement, it can be gleaned from its provisions which is that the transparency framework shall be built on the past experiences from the implementation of the UNFCCC.[86] A core attribute of the transparency framework under the UNFCCC regime was the active role of civil societies in stimulating member states to do more in the area of the implementation of their NDCs.[87] The tool at the disposal of civil societies includes litigation, lobbying, and engagement with relevant stakeholders *etc*.[88]

Another role of civil societies is to nudge member states to scale up mitigation measures in subsequent NDCs. The Paris Agreement provides that member states shall submit subsequent NDCs which will be a progression of the first NDC and shall represent their highest possible ambition.[89] It is argued that civil societies can use tools such as lobbying and litigation to harness the highest possible measures for climate change mitigation from member states in subsequent NDCs.[90] The latter is already the case in some advanced climes. In the case of *Urgenda Foundation and 886*

[85] Thomas Bernauer and others, 'Could more Civil Society involvement increase Public Support for Climate Policy-Making? Evidence from a Survey Experiment in China' (2016) 40 Global Environmental Change 10.
[86] The Paris Agreement (n 12) Art 13 (3) and (4).
[87] Steinar Andresen and Lars H. Gulbrandsen, 'The Role of Green NGOs in Promoting Climate Compliance' in *Implementing the Climate Regime: International Compliance* (Earthscan, 2005) 178– 181; Eric Dannenmaier, 'The Role of Non-state Actors in Climate Compliance', in Olav Schram Stokke et al., *Promoting Compliance in an Evolving Climate Regime* (Cambridge University Press, 2012).
[88] Ngozi Chinwa Ole, 'The Paris Agreement 2015 as a Primer for Developing Nigerian Off-grid Solar Electricity' (n 41) 445-447.
[89] The Paris Agreement (n 12) Art 4(2) and (3).
[90] Harro van Asselt, 'The Role of Non-State Actors in Reviewing Ambition, Implementation, and Compliance under the Paris Agreement' (n 81) 107.

Citizens v. *The State of The Netherlands*[91] (Urgenda Foundation), a civil society succeeded in getting a court declaration to the effect that the Dutch government was liable to keep their emissions to below 25% by 2020, a level that will reflect what is expected of developed countries in international climate science.[92] In Nigeria, some civil societies are already involved in engaging with relevant government stakeholders to push for more ambitious mitigation measures. For example the Civil Society Legislative Advocacy Centre (CISLAC) is currently engaging relevant stakeholders to facilitate the adoption of laws on climate change mitigation.[93]

Finally, the Paris Decision encourages civil societies to adopt measures for the mitigation of climate change. It provides that the member party 'welcomes the efforts of non-party stakeholders to scale up their climate actions…'[94] and encourages member states to 'work closely with non-party stakeholders to catalyse efforts to strengthen mitigation…actions'.[95] The last arm of this provision is to ensure that the activities of non-party stakeholders including civil societies are coordinated

[91] [2015] C/09/456689/ha za 13-1396. See the judgment available at <http://uitspraken.rechtspraak.nl/inzien document? id=ecli:nl:rbdha:2015:7196a> accessed 4th March 2020. The possibility of this strategy has been considered in light of the Paris Agreement; see Sara Stefanini, 'Next Stop for Paris Climate Deal: The Courts' (2016) *Politico*, 11 <http://www.politico.eu/article/parisclimate-urgenda-courts-lawsuits-cop21/> (accessed 4 February 2020).

[92] Ibid. See also K. J. Graaf and J. H. Jans, 'The Urgenda Decision: Netherlands Liable for Role in Causing Dangerous Global Climate Change' (2015) 25 Journal of African Law 517.

[93] Like the Civil Society Legislative Advocacy Centre (CISLAC) is currently involved in engaging relevant stakeholders to facilitate laws on environmental protection and conservation which includes climate change. See CISLAC, 'About Us' (2020) < https://cislacnigeria.net/page/2/> accessed 4th March 2020.

[94] The Paris Decision (n 30) para 117.

[95] Ibid, para 118.

and counts in the overall implementation of the NDCs.[96] Thus, civil societies can initiate and implement measures for the mitigation of climate change. Interestingly, the Paris Decision established some form of transparency mechanism called 'Non-State Actor Zone for Climate Action (NSAZCA)'[97]. In the latter platform, civil societies are expected to register major climate change mitigation projects initiated and implemented at the national level.[98] Thus, the activities of civil societies and other non-party stakeholders can be aggregated and monitored in the light of the overall mitigation target of holding the global temperature to well below 2 ^{0} C.[99] The NSAZCA indicates that three civil societies are already implementing climate change mitigation measures in Nigeria.[100] The three civil societies are Center for Initiative and Development (CID), Nma Eunice Owenson Foundation and, Sanitation and Hygiene Education.[101]

In the light of the analysed roles of non-party stakeholders, the next section contains an analysis of challenges and opportunities that the discussed roles present for NULAI.

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[96] Harro Van Asselt and Thomas Hale, 'Maximizing the Potential of the Paris Agreement: Effective Review in a Hybrid Regime' (2016) <https://www.jstor.org/stable/resrep02776> accessed 4th March 2020.

[97] The Paris Decision (n 30) para 117. See UNFCCC, 'Global Climate Action' (2020) <https://climateaction. unfccc.int/#NG> accessed 4th March 2020.

[98] Ibid. See Sander Chan and Wanja Amling, 'Does Orchestration in the Global Climate Action Agenda Effectively Prioritize and Mobilize Transnational Climate Adaptation Action?' (2019) 19 Int Environ Agreements 429, 435.

[99] Ibid. See the Paris Agreement (n 12) Art 2.

[100] UNFCCC, 'Global Climate Action' <https://climateaction.unfccc. int/#NG> accessed 4th of March 2020.

[101] Ibid.

4. NULAI: Opportunities and Challenges

The Network of University Legal Aid Institution (NULAI) is a civil society and, a conglomerate of law clinics of Nigerian Universities committed to the promotion of clinical legal education, legal aid and access to justice.[102] The term clinical legal education has been by Ojukwu as 'an experiential method of learning that enables law students to learn practice skills while in the same learning process providing legal assistance in circumstances where justice so demands'.[103] On the other hand, law clinics refer to the service hub or physical facilities that affords law students the opportunities to demonstrate and imbibe core law attributes while aiding access to justice.[104]

There are currently about 43 law clinics domiciled in forty-three universities[105] and registered with NULAI.[106] The law clinics usually are managed internally by a set of student clinicians under the supervision of law teachers within the university where it is domiciled.[107] The recurrent focal points of most law clinics are prisoners/pre-trial detainee rights; child rights; human rights; freedom of information community

[102] NULAI, 'About us' (n 42).
[103] Ernest Ojukwu and others, *Clinical Legal Education: Curriculum, Lessons and Materials* (NULAI 2013) 7-8.
[104] Sam Erugo, 'Legal Assistance by Clinical Law Students: A Nigerian Experience in Increasing Access to Justice for the Unrepresented' (2016) 3(2) Asian Journal of Legal Education 165.
[105] The institutions of Higher Learning include thirty seven universities and, six campuses of the Nigerian Law School. See NULAI, 'Reform of Legal Education in Nigeria' (2020) <http://nulai.org> accessed 6th March 2020.
[106] Ibid.
[107] Olanike S. Adelakun-Odewale, 'Role of Clinical Legal Education in Social Justice in Nigeria' (2017) 5(1) Asian Journal of Legal Education 88-98.

education and support.[108] The law clinic is compartmentalised into several units according to the focal points of the law clinic in question.[109] Each of the units is headed by a student clinician.[110] The heads of departments are responsive to the central executives, namely an appointed president, a vice president and a secretary.[111] In turn, the activities of the central executives and, the law clinic are overseen by qualified legal practitioners who are law teachers.[112]

As earlier mentioned, NULAI is a civil society that focuses on different spectrum of access to justice, including environmental and climatic justice. The role of NULAI in promoting access to justice is one with statutory flavour as provided for in the Legal Aid Act.[113] Access to justice is said to cover a series of activities for the promotion, enforcement and, protection of the right to a healthy environment including from anthropogenic activities that exacerbate global warming. [114] It is therefore not surprising that NULAI also covers the promotion of climatic justice as part of access

[108] Ernest Ojukwu, *Compenduim of Campus Based Law Clinics* (NULAI 2014).
[109] Ibid.
[110] Ibid.
[111] Peters Ifeoma, 'Role of Law Clinics in Bridging the Gap between the Less Privileged and Access to Justice in Nigeria – Uwais Abdulrahman' (2017) < https://dnllegalandstyle.com/2017/role-law-clinics-bridging-gap-less-privileged-access-justice-nigeria-uwais-abdulrahman/> accessed 3rd July 2020.
[112] Ibid.
[113] Section 17 of the Legal Aid Act 2011 provides that the Legal Aid Council shall maintain a register of law clinics and may partner with them in the performance of any of their functions under the Act. See the Legal Aid Act 2011.
[114] Niguel Crawhall and Allison Crawhall, 'Access to Justice and the Right to Sustain' (2016) IUCN Working Paper <https://www.iucn.org/sites/dev/files/content/documents/atj_.pdf> accessed 6th March 2020.

to justice.[115] Given its focus and mandate, NULAI can play crucial roles in the implementation of the Paris Agreement, including the Nigerian NDCs.

In the first instance, NULAI can get the Nigerian government to adopt more measures than they ordinarily would for the implementation of the NDCs. As indicated, the Nigerian government has submitted and published their biennial updates on progress made in the implementation of the UNFCCC in 2018.[116] The update shows that while the GHGs emission level is still increasing, little has been done in the area of the implementation of the mitigation proposed in the Nigerian NDCs.[117] An instrument used by individual law clinics to achieve access to justice in some contexts is engaging with relevant stakeholders.[118] For instance, law clinics undertaking prison projects pay advocacy visits to the Chief Judge and Director of Public Prosecution of the state where they are domiciled to secure the release of prison detainees.[119] Thus, NULAI can visit and engage with relevant stakeholders like members of the State and National Assembly[120] both at the national and state level to extrapolate more measures for the implementation of Nigerian NDCs.

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[115] NULAI, 'NULAI Law Clinic Global Day of Action for Climate Justice' (2020) <https://www.change.org/p/students-climate-justice-is-social-justice-join-the-nulai-fresh-aircampaign?use_rea ct=false> accessed 6th March 2020.

[116] UNFCCC, 'Nigeria: First Biennial Update Report' (n 20).

[117] Ibid, 146- 148.

[118] NULAI, 'Law Clinics and Pretrial Detainees' <http://www.nulai.org/index.php/blog/82-improving-access-to-justice-for-pre-trial-detainees-in-nigeria-project> accessed 9th March 2020.

[119] Taiye Joshua Omidoyin and Omolade Oniyinde, 'Law Clinics and Access to Justice for Pretrial Detainees in Nigeria' (2019) 10 (9) NAUJILJ 103.

[120] The relevant stakeholders include members of the State and National Assembly, Staff of the Ministry of Environment and the National Environmental Standards and Regulations Enforcement Agency (NESREA). See Mandyen Brenda Anzaki, 'Climate Change: the Legal Framework' <www.thelawyerschronicle.com/climate-change-the-legal-framework/> accessed 9th March 2020.

However, the limit to which they can engage with relevant stakeholders is constrained by the low level of awareness of climate change issues among university students. The point that NULAI is a conglomerate of university law clinics in Nigeria which embeds facilitating of access to justice with the training of law students has already been made.[121] Law students operate a law clinic under the guidance of qualified law teachers and, in partnership with licensed law firms.[122] A study conducted in 2019 confirms that there is low awareness of climate change issues among university students in Nigeria.[123] As such, it is not surprising that there is little awareness of climate change policies and law among law faculties.[124] Thus, some law clinics will not be sufficiently informed about climatic justice and policies in Nigeria to the extent that will birth a meaningful interaction with stakeholders in the light of securing more proactive measures for the implementation of the NDCs.

However, the latter problem of a low level of awareness may be addressed by the creation of climate-focused law clinics. The general focus of most law clinics in Nigeria is on issues that have a direct bearing on the realisation of human rights.[125] Thus, it might be difficult to get existing law clinics to familiarise themselves with

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[121] Rafatu Ohiare, 'The Role of Law Clinics in Advancing Pretrial Justice Reform in Nigeria' (2019) 4 African
Journal of Clinical Legal Education and Access to Justice 33.

[122] Ibid.

[123] Mark M Akrofi and others, 'Students in Climate Action: A Study of Some Influential Factors and Implications of Knowledge Gaps in Africa' (2019) 6 Environments 12.

[124] Ibid. See Emeka Daniel Otuonye, 'An Assessment of the Level of Awareness of the Effects of Climate Change among Students of Tertiary Institutions in Jalingo Metropolis, Taraba State Nigeria' (2011) 4 (9) J. Geogr. Reg. Plann. 514.

[125] One of such popular area of focus is the realisation of the right to personnel liberty and dignity through prison decongestion projects. See Odinakaonye Lagi and others, *Campus-Based Law Clinics in Criminal Justice Administration in Nigeria* (NULAI 2019).

climate change policies to the degree that will inform a meaningful interaction with law clinics. As such, a panacea to the low level of awareness is the creation of climate justice focused law clinics, stimulated by NULAI. For instance, in 2013, NULAI initiated a project where they mainstreamed Freedom of Information Community Education as a focal point for law clinics across Nigeria.[126] In practise, NULAI can stimulate law clinics registering with them to adopt climate justice as a sole or one of their focal points. Such a unique creation will enable the galvanisation of needed knowledge that will foster meaningful interaction with stakeholders.

What is more, the low level of awareness can also be addressed by the adoption of a top-down approach. Some members of the Board of Trustees of NULAI have already carved a niche for themselves as climate change law experts.[127] There are also some members of NULAI, who are well-grounded in the area of climate change law.[128] Thus, NULAI can leverage the expertise of its members to design a uniform guidance for meaningful engagement with the relevant stakeholders. The uniform program will be distributed across specific law clinics in Nigeria to facilitate such engagement with stakeholders.

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[126] Sam Erugo and Charles O Adekoya, *Lawyering with Integrity: Essays in Honour of Ernest Ojukwu SAN* (Lulu Press 2017) 19-20. See also Ernest Ojukwu and others, *Street Law: Freedom of Information Manual* (NULAI 2016).

[127] Two of the Seven Board Members of NULAI are experts in climate change law. See NULAI, *NULAI Nigeria Profile* (NULAI 2018) 4.

[128] The first author of this article was among the pioneer clinicians and, a product of the first phase of law clinics in Nigeria. Dr. Ngozi Chinwa Ole is a member of NULAI and, an expert in climate change law. See <https://www.linkedin.com/in/dr-ngozi-chinwa-ole-9885858b/?originalSubdomain=uk.> accessed 27th March 2020.

On another note, NULAI could also use the instrument of litigation to extract more ambitious actions from the Nigerian government for the implementation of the NDCs. The point that very little has been done in the implementation of the Nigerian NDCs in view of 2030 has been made.[129] It has been established that one of the tools used by civil societies for extracting proactive actions for the mitigation of climate change is litigation.[130] Some campus-based law clinics in advanced climes like Canada have employed such tools. In *Nadege Dorzema et al. v. the Dominican Republic (Guayabin Massacre Case)*[131], a campus-based law clinic at the University of Quebec in Montreal, Canada successfully used the instrument of litigation to enforce the right to life and human dignity of 30 Haitian migrants against the Dominican government as contained in the American Convention on Human Rights.[132] Thus, NULAI can institute and pursue public interest litigation to extrapolate more actions for the mitigation of climate change in Nigeria.

Such litigation by NULAI just like the *Urgenda foundation's case* can arguably come under the law of tortuous liability, particularly negligence. Given that NULAI is rudimentarily powered by student law clinicians, they can partner with other NGOs

[129] Priscilla Offiong, 'Nigeria's Biannual Update Report and Greenhouse Gas Inventory Report Provide Useful Information on the Country's Emission Levels' (2019) < https://www.climatescorecard.org/2019/06/nigerias-biannual-update-report-and-greenhouse-gas-inventory-report-provide-useful-information-on-the-countrys-emission-levels/> accessed 11th March 2020

[130] The case of *Urgenda Foundation and 886 Citizens* v. *The State of The Netherlands* (n 91) is an example in this context.

[131] (2012) Ser.C No 251 (Dom).

[132] The case of *William Andrews v United States* (1997) IACHR, Case 11.139, Report N 0 57/96 is also another example where the law clinic of American University Washington College of Law instituted a public interest litigation for inmates on death row for the enforcement of their right to dignity.

or affiliated law firms to institute such an action.[133] There are three elements that must establish concurrently for one to succeed in an action for Negligence in Nigeria.[134] The elements are: that there was a duty of care owed, that there was a breach of duty of care and, that the plaintiff suffered damages as a result.[135] The duty of care must be founded in common law or statute.[136] It is such duty of care that will give a litigant the legal right to be heard in a court of law.[137] Thus, NULAI must at least cross the first hurdle of getting the right of audience in a court of law by showing that there is a duty of care on the state to protect the environment.

Regrettably, the non-justiciability of the state's duty to guarantee a safe environment will puncture the chances of NULAI getting a right of audience in a court of law under the tort of negligence. The 1999 Constitution of Nigeria provides for the duty of a state to protect and improve the environment.[138] Thus, this section would ordinarily give rise to a duty of care on the state for the purpose of giving a litigant, the right of audience in a court of law in Nigeria.[139] Regrettably, the duty of care imposed on the state to protect and improve the environment is non-justiciable.[140]

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[133] Law clinics generally have the antecedent of partnering with law firms and NGOs particularly to enable them use the instrument of litigation in attaining access to justice. See Bernand Duhaime & Ismene Nicole Zarifis, 'Using Public Interest Litigation and Advocacy as a Tool for Social Change: Clinical Experiences in the Americas and Africa' (2013) African Journal of Clinical Legal Education and Access to Justice 118, 128-129.

[134] Ese Malemi, *Law of Tort* (Princeton 2017) 287.

[135] MTN (Nig Coms Ltd) v Sadiku (2014) 17 NWLR 386.

[136] A O N Ezeani and R U Ezeani, *Law of Torts (With Cases and Materials)* (Odade Publishers 2014) *295.*

[137] This is encapsulated in the legal maxim, *Ubi jus ibi remedium* which means *where there is a legal right, there is a remedy.* See *Thomas* v. *Olufosoye* (1986) 1 NWLR (Pt 18) 669, at 686.

[138] The 1999 Constitution of Nigeria (NG) s. 20 (1).

[139] Ibid. See MTN (Nig Coms Ltd) v Sadiku (2014) 17 NWLR 386.

[140] Ibid, s. 20. See Epiphany Azinge and Bolaji Owasanoye (eds), *Justiciability and Constitutionality: An Epiphany of the Law* (Nigerian Institute of Advanced Legal Studies Press, 2010) 151.

The latter provision automatically takes away the right of a litigant to be heard in a court of law in this context.[141] Thus, NULAI will not have the legal right to sue under the tort of negligence to extract more ambitious actions from the Nigerian government for the implementation of its NDCs.

However, a panacea to the lack of a legal right to sue under the law of negligence might be the use of a rights-based approach. The 1999 Constitution provides for the fundamental right to life in Nigeria, which shall be enforceable against any party including the state.[142] The Fundamental Human Rights Enforcement Procedure Order 2009 provides that:

> The court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates, or groups as well as any non-governmental organisations, may institute human rights application on behalf of any potential applicant.[143]

The implication of the latter provision is that civil societies like NULAI have a right of audience in court for the enforcement of any of the fundamental human rights

[141] *Archbishop Anthony Okogie* v. *AG Lagos State* [1981] 2 NCLR 337, 350.
[142] The 1999 Constitution (NG) s. 33.
[143] The Fundamental Human Rights Enforcement Procedure Order 2009 (NG), Preamble, s. 3 (e).

provided for in the constitution.[144] In *Gbemre v Shell Petroleum Development Companies and Another*[145] , the court held that the right to life includes the right to a healthy environment including one devoid of the adverse effects of climate change. Thus, one can anticipate a higher possibility of success of a suit by NULAI for the implementation of the NDCs if it is pursued from a right-based approach. A right-based approach will accommodate the position that the refusal to fully implement the measures proposed in the NDCs is likely undermine an individual's right to life.[146] The latter is permissible in the light of the provisions of the Fundamental Human Rights Enforcement Procedure Order 2009 to the effect that a person can sue to enforce his fundamental human rights where an action or omission may likely infringe it.[147]

Another role that NULAI can play in this context is the adoption of measures for the mitigation of climate change. As noted, the Paris Decision encourages civil societies to adopt measures for the mitigation of climate change.[148] Thus, NULAI can adopt measures either individually or collectively for the mitigation of climate change. Some law clinics have already started initiating climate change mitigation projects

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[144] Abiola Sanni, 'Fundamental Rights Enforcement Procedure Rules, 2009 as a Tool for the Enforcement of the African Charter on Human and Peoples' Rights in Nigeria: The Need for Far-reaching Reform' (2011) 11 African Human Rights Law Journal 512.

[145] Suit No. FHC/B/CS/53/05; (2005) AHRLR 151 (NgHC 2005).

[146]Franziska Knur, ' The United Nations Human Rights Approach to Climate Change- Introducing a Human Dimension to International Climate Law' in Sabine von Schorlemer and Sylvia Maus (eds), *Climate Change as a Threat to Peace: Impacts on Cultural Heritage and Cultural Diversity* (Peter LangAG 2014) 37-60.

[147] The Fundamental Human Rights Enforcement Procedure Order 2009 (NG) Order II (1).

[148] The Paris Decision (n 30) para 117.

like tree planting in Nigeria.[149] However, there is still room for more ambitious measures by NULAI.

Notably, such mitigation measures should be made known to relevant stakeholders at the national and international level. Mitigation measures adopted by NULAI should be communicated to the Department of Climate Change, Federal Ministry of Environment.[150] The latter would enable them to factor it in the preparation of Nigeria's Biennial Updates. In the same vein, such mitigation action needs to be registered in NSAZCA so that it can be counted at the global stocktake as part of collective measures for climate change mitigation.[151] Registering with the NSAZCA means that NULAI can also have a stronger footing to partner with other civil societies globally for the adoption of climate change mitigation initiatives.

5. Conclusion

This paper contains an analysis of the opportunities and challenges that the Paris Agreement 2015 provide for NULAI in the context of mitigating climate change in Nigeria. It was argued that the definition of non-party stakeholders to include civil societies provides a platform for NULAI to play dual role in the implementation of

[149] For instance the Ebonyi State University Law Clinic, Nigeria has an annual ritual of tree planting to mitigate climate change in Nigeria. Amari Omaka Chukwu, 'Going Green and Clean: The Ebsu Law Clinic Role in Combating Climate Change for Health' (2019) A Paper presented at the ENCLE-IJCLE Conference 2019 Comenuis University, Bratislava, Slovakia 3-5th July 2019.

[150] Department of Climate Change, 'What we do' (2020) <https://climatechange.gov.ng/what-we-do/> accessed 26th March 2020.

[151] UNFCCC, 'Global Climate Action NSAZCA: About' < https://climateaction.unfccc.int/views/about.html > accessed 26th March 2020.

the Agreement. In the first instance, NULAI can help in facilitating the implementation of Nigerian NDCs. The latter would be through interaction with stakeholders and, the instrument of litigation. Additionally, they can adopt and implement mitigation measures in Nigeria.

It was argued that the provisions of the Paris Agreement and, the Decision allows for NULAI to interact with relevant stakeholders to galvanise more ambitious actions to achieve the implementation of the NNDCs by 2030. However, the low level of awareness of climate change policies among law faculties, including law clinicians reduces the chances of a meaningful engagement with stakeholders in this context. The establishment of climate change-focused law clinics and, the adoption of a top-down strategy were recommended as ways to surmount the problem of low awareness.

The Paris Agreement provides the foundation for NULAI to use litigation as a tool to secure the enforcement of the NDCs by 2030, possibly under the tort of negligence. Regrettably, the possibility of such litigation is eroded by the absence of an enforceable right to a healthy environment in Nigeria. Thus, NULAI will not have a right of audience in a court of law for this purpose. On the other hand, it was argued that the use of a right-based approach might provide an appropriate avenue for NULAI to secure the implementation of Nigeria's NDCs.

Finally, it was identified that the provisions of the Paris Agreement as detailed in the Decision allows for the adoption of mitigation measures by civil societies such as

NULAI. Some law clinics are already involved in projects that are mitigating climate change in Nigeria. However, the latter efforts are few in comparison to what is needed and more measures are needed. It was recommended that NULAI should communicate such measures to the Department of Climate Change, Ministry of Environment, Nigeria and NASZCA to enable it count in the overall national and global efforts for the mitigation of climate change.

Climate change is a recurrent topic in various discourses at governmental and non-governmental fora because of its direct and indirect ramifications, all of which stall the realisation of the sustainable development goals in Nigeria.[152] Given the unprecedented scale of its negative ramifications, the Government of Nigeria has indicated that it is welcoming the actions of civil societies towards the mitigation and adaptation of climate change in Nigeria.[153] This paper has outlined the various ways NULAI can help in the implementation of the Paris Agreement in Nigeria. The paper was presented in the 2nd African Colloquim on Clinical Education 2020 organised by NULAI[154] and, it is anticipated that the analysis and recommendations in this paper will be fully implemented.

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[152] Mohamed Yahya, 'Nigeria must lead on Climate Change' (2019) <www.undp.org/content/undp/en /home/blog/2019/nigeria-must-lead-on-climate-change.html > accessed 30th March 2020.

[153] María Yetano Roche and others, 'Achieving Sustainable Development Goals in Nigeria's Power Sector: Assessment of Transition Pathways' (2019) Climate Policy 15.

[154] NULAI, 'NULAI 2nd African Clinical Legal Education Colloquim' (2019) <https://nulai.org/nulai-africa-clinical-legal-education-colloquium/> accessed 30th March 2020.

THE FAMILY LAW CLINIC AT UCC - UNDERSTANDING THE LAW, IN THE CLASSROOM AND BEYOND

Louise Crowley*

Introduction

Shulman extols the benefits of 'empirical propositions'[1] emphasising the value of interrogating teaching approaches with a view to establishing evidence as to how students learn, and in turn crafting effective ways to teach. This article critically explores the design and assessment approaches adopted in the delivery of the Family Law Clinic Module at the Law School, University College Cork and interrogates the impact of these approaches on student learning. In carrying out this action research, the decision to utilise Universal Design for Learning as the underlying Scholarship of Teaching and Learning framework allows the pedagogical approach adopted to be deconstructed and critically examined. The capacity for student involvement in the teaching journey which is premised upon the ideology of learning and teaching as community property will be explored, both from a theoretical perspective and also from a socio-legal viewpoint. It will be shown that empowering the students to direct the module and assessment content serves to awaken their social awareness and their understanding of their role as pro-social contributors. Following an exploration of these aspects of SOTL thinking, the

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[1] Shulman LS *The Wisdom of Practice: Essays on Teaching, Learning and Learning to Teach* (ed. Wilson S) (2004) (San Francisco) Jossey-Bass at 148, 149.

student learning experience will be explored through a number of qualitative research methods, namely individual student interviews post completion of the module, individual student reflective journals and the testimonial experience of external parties who utilise the Family Law Clinic research services. These approaches to understanding the student experience will serve to demonstrate the unique approach adopted in the Family Law Clinic that gives rise to a unique student learning environment and holistic student development.

Methodology

Researching the Clinical Legal Education experience is very necessary "to ascertain whether it does offer the skills and insight into a practical vision of legal practice which classroom education fails."[2] In measuring the 'success' of the Family Law Clinic as an innovative and progressive pedagogical approach to the teaching and learning of family law, the experience of both its students and external partners have been explored through a number of qualitative methods. Reflective journals are maintained by the students during the delivery and completion of the module, and these personal student reflections are investigated to determine the impact of the Clinic. As research methods, these reflections have been supplemented by individual interviews with students upon completion of the module,[3] to further interrogate

[2] Marson J, Wilson A, Van Hoorebeek M; "The Necessity of Clinical Legal Education in University law Schools: A UK Perspective" [2005] Journal of Clinical Legal Education 29-43 at 30. http://shura.shu.ac.uk/2902/1/Marson%2C_wilson_-_Necessity_of_clinical_legal_education.pdf

[3] Ethical approval was secured from the UCC Social Research Ethics Committee to invite students who had completed the module to participate in this research on the impact of the Family Law Clinic

their learning experience.[4] The external assessment of the student efforts and the impact of their work will be commented upon by the Clinic's clients; legal practitioners and those engaged with law reform activities, together with the informed academic expertise of the module external examiner. These qualitative research methods will facilitate a critical analysis of the impact of this pedagogical approach which aligns with the view that learning lies not only in understanding the law and legal principles in their own right, but by elevating that knowledge to an awareness of its application in practice, which Schon suggests exposes students to "a kind of rigor that falls outside the boundaries of technical rationality".[5]

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as a pedagogical approach to teaching and learning. The participation was voluntary, and all data was anonymised for the purposes of analysis. The following approved indicative question were provided in advance to the students, and these were the question posed to the participating students at interview:

1. Have you previously taken a module which required you to develop legal resources for the community?
2. Do you think students have a contribution to make in the law-making process?
3. What insights have you gained into the role and responsibilities of a family law solicitor?
4. From your experience of law in action during the Family Law Clinic, how accessible do you regard the legal system for Irish people?
5. How crucial is access to information in securing access to justice?
6. What are the pros and cons of providing an online information hub on all aspects of family law?
7. Can you reflect on your learning experience through completing the Family Law Clinic?

[4] The interviews are voluntary in nature, and do not form any part of the module assessment requirements. The reflections and feedback inform the annual review of the Family Law Clinic which is critical to ensure that quality enhancement is always to the forefront of the module review. It is well recognised that as an approach to analysis and research that "interviews give rich, insightful, albeit anecdotal evidence about how people feel and act. Interviews provide persuasive insights and direct quotes from people who "were there." "How to Conduct Interviews for Research" - Designing Information to Engage, Educate and Inspire people https://thevisualcommunicationguy.com/2018/01/30/how-to-conduct-interviews-for-research/

[5] Donald A Schon "Knowing in action – The New Scholarship Requires a new Epistemology" Change Nov/Dec 1995 at 29.

Clinical Legal Education

The Family Law Clinic at University College Cork was developed to provide students in the LLM (Children's Rights and Family Law) with the opportunity to contribute to the "intricate ecosystem of legal advice"[6] within the Irish legal system. In Ireland, the professional legal services regulations restrict the capacity for a university-based law clinic to provide legal advice directly to the public and consequently such clinics more typically provide research services to legal professionals who utilise that research as part of their representation of their clients.[7] The provision of information to the general public, as distinct from advice, is entirely permissible and the students fulfil this role through taking responsibility for the content of the dedicated Clinic online information hub and related resources, outlined below.

Whilst students attend university primarily to gain a knowledge and insight into their chosen discipline, to graduate and progress their career, the understanding of what that career choice entails can often be lacking given the limited scope of classroom-based learning. The exposure of students to the functioning of the legal

[6] Drummond O and McKeever G "Access to Justice through University law Clinics" Ulster University Law School (2015) at 14. https://www.ulster.ac.uk/__data/assets/pdf_file/0003/132654/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf

[7] Section 46(1) of the Legal Services Regulation Act 2015 mandates that legal practitioners (defined as a practising solicitor or practising barrister) must hold professional indemnity insurance to lawfully provide legal services, including legal advice. Legal advice is defined as Any oral or written advice …but does not include an opinion on the application of the law provided by a person to another person in the course of – (i) lecturing in our teaching an area of the law, as part of a course of education or training.

system through the clinic work permits students to better understand and make more informed choices about their next steps post-graduation. More altruistically, the Clinic also provides students with the opportunity to act as information providers and conduits to accessing justice, providing knowledge and supports to individuals who might otherwise struggle to penetrate the complex justice system. Wilson has described clinical legal education as the "greatest single innovation in law school pedagogy – and certainly in student learning – since the 'science' of the Socratic case method was brought to Harvard by Christopher Columbus Langdell."[8] Donnelly in a 2015 report "Clinical Legal Education in Ireland: Progress and Potential",[9] presents a cross-section of clinical legal education programmes in Ireland. He identifies three models of clinic-based learning in Irish universities; the placement/internship model which is the most common and least demanding in terms of university resources; the street law clinic which emphasises the provision of information to the public in an attempt to enhance access to justice and the more novel live client model which is slowly developing in Ireland.[10] Donnelly's report interrogates the work of 10 Irish law schools, as well as the approaches adopted by the Law Society of Ireland, the School of Law at Ulster University and Northumbria Law School. Evidently, as an approach to teaching, law school clinics are growing in popularity in Irish universities. Clinical education at UCC is expanding with the

[8] Wilson R "Western Europe: Last Holdout in the Global Acceptance of Clinical Legal Education" (2009) 10 German Law Journal 823 at 823.
[9] Donnelly L "Clinical Legal Education in Ireland: Progress and Potential" [2015] NUIG. http://www.nuigalway.ie/media/nuigalwayie/content/files/collegesschools/businesspublicpolicylaw/documentsforms/Clinical-Legal-Education-Report.pdf
[10] *Ibid* at 6.

School of Law now operating 5 clinics, one at undergraduate level and four at masters level[11] as well as a dedicated undergraduate BCL (Clinical) degree programme.[12]

The range of issues covered by law clinics varies enormously and is very often dictated by the research and teaching interests of the clinic directors. Additionally, the services provided by clinics will vary, ranging from research services, information provision, advice, and advice and representation. Irish clinics also contribute submissions that inform policy and law development at national level as well as contributing to the work of NGOs and other such organisations. The 2015 Report on the nature and breadth of UK based university law clinics suggests a much greater engagement with individual clients, both in the provision of advice only and in a smaller number of clinics, the provision of advice and representation. Clinical education is thus rightly recognised as a vital component of the development of skills and knowledge in an impactful and "authentic" learning environment.[13] Indeed Donnelly

[11] The Child Law Clinic, Environmental Law Clinic, Family Law Clinic and IT Law Clinic at postgraduate level and the Sports Law Clinic at undergraduate level.
[12] In their 2015 survey Drummond and McKeever document the 62 university law schools in the United Kingdom which operate law clinics, *supra* n.2 at 5.
[13] Vaughan B "Developing a clinical teaching quality questionnaire for use in a university osteopathic pre-registration teaching program" [2015} BMC Medical Education 1-13 at 1. https://bmcmededuc.biomedcentral.com/articles/10.1186/s12909-015-0358-6

> "…unapologetically endorses the popular perspective that clinical legal education is at its best when it is simultaneously purposed to combine 1) the "hands on" teaching and augmenting of practical skills with 2) the advancement of the public interest by endeavouring to improve access to justice for all."[14]

Scope and Activities of LW6614 - Family Law Clinic

The 5-credit module Family law Clinic was first delivered to the LLM (Child and Family Law) students in semester 1 2015/16[15] and involves 12 teaching hours over the semester. Generally this consists of six 2 hour seminars, beginning with the annual development and enhancement of the website and related discussions in respect of access to information and justice. The scheduling of the remaining seminars is, for the most part, determined in response to external requests for research support. The tasks undertaken by the Clinic are four-fold;[16] student contribution to the development and publication of the web-based family law information hub; individual student blogs on contemporary family law issues, contribution to research projects including live family law cases; and the writing of

[14] *Supra* n. 4 at 6. Clinic-based education is not unique to law, much research has been conducted in relation to clinical education in the healthcare professions. In a study of the theories that underpin clinical education in physiotherapy, Patton et al describe workplace learning as "practice, social learning, situated learning and reflective/critical thinking", which interestingly reflect the components of workplace learning in the Family Law Clinic. Patton N, Higgs J, Smith M "Using theories of learning in workplaces to enhance physiotherapy clinical education" [2013] 88 (6) Physiotherapy Theory Practitioner 861-865.

[15] The LLM (Child and Family law) was renamed the LLM (Children's Rights and Family Law) in the 2018/19 academic year.

[16] 50% of the module marks are awarded in respect of student participation and class contribution, 25% for the individual learning journal and 25% for their blog post.

individual reflective learning journals on the student clinic experience. This novel combination of engagement and assessment requires the students to develop skills outside the norm of the lecture room, mandating them to take ownership of their areas of responsibility and to challenge themselves to share their critical understanding of their chosen aspects of family law with the broader public. The flagship piece of work of the Family Law Clinic has been the family law information website - www.familylawinformation.ie . This is a new and unique online resource which acts as a central hub for interested parties, by providing a comprehensive information resource on all aspects of family law, including the regulation of marriage, civil partnership and cohabitation, guardianship, custody and access, domestic violence, adoption, relationship breakdown, and all aspects of state provision for families. Students of the Clinic are tasked with updating the information pages annually, empowering them to address the misinformation and myths surrounding family law, thereby bridging the family law information vacuum that exists in Irish society. The website as an information platform was funded by the Irish Research Council under the 2013 New Foundations scheme.[17] Separately, in March 2020, at the beginning of the COVID-19 pandemic, the 2019/2020 Clinic

[17] The choice to develop the web-based resource was informed following significant consultation with interested parties. Funding was originally sought under an Irish Research Council funding call for the creation of information pamphlets for distribution to the general public both directly and through state support agencies. However following a round-table workshop at the Law School in September 2014 which was attended by public interest bodies, NGOs, the Court Services, Legal practitioners and members of the Irish judiciary, it became very apparent that many state services including FLAC, Citizen Advice Bureau and One Family already publish a range of relevant information documents. It emerged that the challenge to be addressed was ensuring that a member of the public was aware that these documents exist and could easily access them. It was agreed that by far the most effective development would be to create an online hub that would provide a brief insight into each area of family law, and a roadmap to all relevant State support services and information sources.

students supported the creation of a dedicated family law COVID-19 information hub website, to provide a resource for the public in respect of the revised access and support arrangements in the course of the pandemic.[18]

The information website is further supplemented with a topical blog post written by each student, addressing a current issue arising in the area of family law, providing an up to date insight into a socially relevant issue of the day.[19] These blogs are posted on the website and publicised through the Family Law Clinic twitter account.[20] They are also assessed, and contribute to the students' final grade for the module, representing 25% of the overall mark.[21] In contributing to the development and maintenance of the website the students of the Family Law Clinic have been stretched beyond the normative experience of a law student, developing an ability to write not just as a lawyer, but as an information provider to those with little or no understanding of the law. This need to make the law accessible challenges their own

[18] https://www.ucc.ie/en/covid19familylaw/

[19] The blog posts submitted by the 2018/19 Family Law Clinic were entitled as follows:

- Supporting the Deaf Community - Cultural Change is Needed.
- How long is too long in Emergency Accommodation?
- Guardianship
- Divorce – the living apart requirement
- Legal Rights for grandparents
- Pre-Implantation Genetic Diagnosis and Reproduction
- Coercive Control – the overdue recognition of psychological abuse
- The benefits of mediation
- Do children have a right to inherit?
- Adoption Information and Tracing Bill: Right to Identity v Right to Privacy
- The proposed reform of the Family law Courts System in Ireland
- Adoption

[20] @uccfamlawclinic

[21] 25% of the overall marks are awarded for the student blog and 50% for the student contribution and effort over the course of the module.

perceptions and understanding of the law and activates a very real sense of social responsibility. Separately they are also tasked with conducting research for legal practitioners to inform and enhance court applications, and/or policy-based research dossiers as requested by a range of service providers and NGOs. The research projects are crafted in response to external requests received from legal practitioners, non-governmental organisations, support services and lobby groups and form a key element of the student learning. Student efforts in respect of these research projects are assessed alongside class participation, such participation being encouraged through individual presentations on allocated advance reading, as well as spontaneous contributions to class discussion and guest speakers.

Finally, students are required to maintain a learning journal which provides them with the opportunity to document their activities and reflect on their learning journey throughout the duration of the Family Law Clinic. By requiring students to engage with both the explanatory and reflective elements of their learning experience, they are encouraged to explore not just the learning in itself, but also to consider the impact of that learning on themselves and on those targeted by the various exercises, developing their awareness of the law in practice, the challenges faced by those who have restricted or indeed no access to information and/or justice and the very real, positive impact of their efforts on individuals, law and policy reform, and on the standards of advocacy in family law cases. The student experiences of completing a reflective learning journal are considered below.

Interrogating the Family Law Clinic as a form of scholarship

The activities, student learning and research in action arising from the Family Law Clinic are in themselves a valuable form of scholarship. Schon builds upon Boyer's four platforms of scholarship which collectively form his view of the "new forms of scholarship", promoted by Boyer as necessary to challenge the historical epistemology of the modern research university. Boyer's view of the new forms of scholarship comprises four distinct elements. Building upon his original premise of scholarship of discovery representing "the first and most essential form of scholarship", he subsequently identified three additional forms of scholarship:

- Scholarship of integration - what Boyer regards as "serious, disciplined work that seeks to interpret, draw together, and bring new insight to bear on original research."[22]
- Scholarship of application – regarded by Boyer as representing the move towards engagement, as the scholar considers how knowledge gained can be applied to problems, and even further querying whether "social problems *themselves* define an agenda for scholarly investigation?"[23] Boyer posits the principles of the early 20th century that higher education must serve the interests of the larger community. However, he laments that "all too

[22] Boyer EL *Scholarship Reconsidered- Priorities of the Professoriate* (San Francisco Jossey-Bass Publishers 1990) at 19. Boyer cites favourably the views of Van Doren who 30 years earlier had written that "The connectedness of things is what the educator contemplates to the limit of his capacity. No human capacity is great enough to permit a vision of the world as simple, but if the educator does not aim at the vision no one else will, and the consequences are dire when no one does." It is, Boyer notes, "through connectedness that "research" is ultimately made authentic." Van Doren M *Liberal Education* (Boston Beacon Press 1959) at 115.

[23] *Ibid* at 21.

frequently, service does not mean doing scholarship but doing good", implying that the two distinct worlds are unlikely to collide. The very raison d'etre of the Family Law Clinic is to dispel this notion through a deliberate learning in action for impact approach.

- Scholarship of teaching – Rather than being regarded as "a routine function" Boyer quotes Aristotle's assertion that "Teaching is the highest form of understanding".[24] He also references Palmer, who regards knowing and learning as "communal acts".[25] Commending the scholarship of great teachers he applauds them as they "stimulate active, not passive learning and encourage students to be critical, creative thinkers, with the capacity to go on learning after their college days are over."[26]

Schon suggests that this approach places an onus on scholars producing the knowledge to do so in a robust rigorous way that validates the scholarship. This in Schon's view demands "a kind of action research" which challenges the existing norms of technical rationality and extends the knowledge transfer and exploration to a new epistemology, a new theory of knowledge premised upon novel methods of learning with broader, indeed braver scope. The Family Law Clinic provides a unique forum for this new epistemology, compelling students to consider both their acquired classroom knowledge in the context of the law in practice. It operates to

[24] *Ibid* at 23.
[25] *Ibid* at 24, quoting Palmer P *To Know As We Are Known* (New York: Harper & Row, 1983)
[26] *Ibid*.

shift the student learning from the "high, hard ground [where] manageable problems lend themselves to solution through the use of research-based theory and technique" to the "swampy lowlands [where] problems are messy and confusing and incapable of technical solution."[27]

This capacity to encourage intelligence in action, to provide students with the forum to discover the epistemology of practice, that "takes full account of the competence of practitioners…in situations of uncertainty, complexity uniqueness and conflict"[28] directs the students towards the "swampy lowlands" challenging them in new and innovative ways.

> "I found the Clinic to be a very enjoyable experience. Traditionally, modules I have taken over the course of my undergraduate degree and postgraduate degree help me to understand the law, however, none of them have allowed me to contribute to the law in the way the Clinic has done. The engagement with practicing solicitors and the public was something that I have not had the chance to do before."[29]

[27] Donald A Schon "Knowing in action – The New Scholarship Requires a new Epistemology" Change Nov/Dec 1995 at 28.
[28] *Ibid* at 29.
[29] Student A – Learning Journal.

Schon regards these new forms of knowledge and action research as crucial to defending the view that teaching is in itself a new form of scholarship. This emphasis on action research is evidently suited to the work of the Clinic given the reliance upon multiple forms of engagement with end users; the provision of information to the general public, the research activities on behalf of charitable and non-governmental organisations; the engagement with topical legal issues and publication for public consumption; the policy submissions on emerging areas of family law and law reform; and the pro bono case-specific legal research to enhance advocacy standards in the pursuit of individual and family rights. Certainly, in light of Schon's views of action research being the new scholarship, the development and maintenance of the family law information website by the Director and students of the Clinic can be identified as a form of scholarship in itself. This new scholarship implies action research, and in this context the Clinic has a dual mandate – learning in action is evident amongst the students, but equally the research into the Family Law Clinic module and its approach to the delivery of the learning serves as research in action, placing the impact of these innovative practices under constant review both as to how they are delivered as well as how they impact on the student learning experience.

> "If teaching is to be seen as a form of scholarship, then the practice of teaching must be seen as giving rise to new forms of knowledge. If community outreach is to be seen as a form of scholarship, then it is

> the practice of reaching out and providing service to a community that must be seen as raising important issues whose investigations may lead to generalisations prospective relevance and actionability. If we speak of scholarship of integration – the synthesis of findings into larger, more comprehensive understandings – then we are inevitably concerned with designing."[30]

In promoting a more inclusive and imaginative approach to the concept of teaching, Bass has called for a fundamental shift in "how one defines teaching as an activity and thus as an object of investigation."[31] He regards the scholarship of teaching as including a "broad vision of disciplinary questions and methods…[including] the capacity to plan and design activities that implement the vision…the interactions that require particular skills and result in both expected and unexpected results." Citing Shulman, he agrees that "Too often teaching is identified only as the active interactions between teacher and students in a classroom setting….I would argue that teaching like other forms of scholarship, is an extended process that unfolds overtime" and Bass endorses his view that this process embodies at least five elements: vision, design, interactions, outcomes and analysis.[32] Ultimately, in crafting the Family Law Clinic and incorporating multiple modes of delivery,

[30] *Supra* n.19 at 31.
[31] Bass R The Scholarship of Teaching: What's the Problem? [1999] 1 Creative Thinking About Learning and Teaching
[32] *Ibid*, citing Shulman L "Course Anatomy: The Dissection and Analysis of Knowledge through Teaching" The Course Portfolio: How Faculty Can Examine Their Teaching to Advance Practice and Improve Student Learning. 5-12 at 5.

student expression and assessment methods, the Clinic experience can evolve annually as it responds to legal developments, student contributions and external engagement. As distinct from the restrictions and confines of a set examination, utilising the website as a key learning tool provides the scope to observe how we "do" our thinking, moving students away from "just thinking". Citing Kegan and Lahey,[33] Blackshields notes that in this environment, the students and the lecturer can collectively explore their pre-existing assumptions and ultimately integrate practice and theory to allow the students to develop from one way of knowing to another.[34] In recognising the social inequalities which can prevent real access to information and thus blockading true access to justice, this journey pushes them towards a greater understanding of their role as law students and as future lawyers, and their capacity to bridge that gap. Thus, they are tasked with developing an understanding as to the nature and extent of the issue of information availability, and assessing the impact of the lack of access, and in turn determining how this might best be remedied through their efforts. This approach means that no two clinic years are ever the same – the end goal is agreed, namely access to information in order to facilitate access to justice, together with contribution to law and policy reform. Together the problem and the parameters of the task in hand are shared, the

[33] Kegan R., Lahey L.L. "From Subject to Object: A Constructive-Developmental Approach to Reflective Practice" In: Lyons N. (eds.) *Handbook of Reflection and Reflective Inquiry*. Springer, Boston, MA 2010 at 434.

[34] Blackshields D CIRTL presentation at Creative Zone, University College Cork 21 November 2017.

seminar room for the Family Law Clinic module becomes that shared community, to investigate the issues and to craft the student responses.

Bass[35] and Shulman[36] are both vocally critical of the traditional view of teaching as a private endeavour, considered in more detail in the discussion on learning and teaching as community property below. Bass regards an interactive approach to teaching as enabling teachers to not only "know these things" but to have them presented in serious and impactful ways. This in his view encapsulates the essence of the scholarship of teaching.

> "Changing the status of the problem in teaching from terminal remediation to ongoing investigation is precisely what the movement for the scholarship of teaching is all about."[37]

In the process of completing the Family Law Clinic module, students move beyond a basic need to understand and apply the law for knowledge sake. and recognise their capacity to utilise their learning for more than just that.

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[35] *Supra* n. 23.
[36] Shulman L "Teaching as Community Property – Putting an End to Pedagogical Solitude" [1993] 25 Change 6-7. http://depts.washington.edu/comgrnd/ccli/papers/shulman1993TeachingAsCommunityProperty.pdf
[37] *Supra* n.23.

> "The Clinic completely bridged the gap between the theory and what is happening in practice. It demonstrated to me that our work in UCC carries over to practice…. It allowed me to grasp the theory more effectively, helping me to better understand rather than 'slug' through books and articles alone."[38]

By asking the students to accept their responsibility to provide access to legal information, to gauge the public need and respond through updating the website and writing a blog, the students can 'check in on themselves' and better understand their capacity to provide access to legal information and in turn to contribute to the public capacity to engage with the law and ultimately to access justice. In so doing the students are ultimately challenged to both understand and contest the assumptions that they and society typically make, and to recognise the elements that facilitate true access to justice and the underlying importance of knowledge, made possible through accessible and available information.

> "The experience of this module helped my confidence in myself in that the module was "alive" –in that the class linked in with ongoing practice issues, "real" in that it reflected the reality of a poorly

[38] Student C. Similarly, Student D reported: "While carrying out the work for the Clinic I found new ways of utilising my legal knowledge and skills for the benefit of others who seek legal advice and direction. I learned the importance of using this knowledge to provide quick information to people who require it because of a particular situation that has occurred in their lives."

> resourced legal system but also highlighted the tenacity of clients in accessing services and the commitment of the people providing the legal services. Finally, it facilitated incremental learning and reflective practice, an experience I had gained in my family therapy training."[39]

This approach requires group work and collaboration between the students, who have the autonomy to decide the role of each student within each group-based task. This deliberate move away from the traditional independent endeavours of law students caused some trepidation for students "…Initially I was a little hesitant about the prospect of group work…", but serves to both activate and cultivate the important skills required for effective group-based collaboration and has proven a challenge that is successfully embraced by the students, both in terms of experiences and outcomes.

> "The format in which this module was delivered was particularly enjoyable and I feel beneficial to my learning. Within the module we sat around a circular table and the class was for the most part discussion based. The open and informal way in which the class was delivered gave a relaxed feel in which I felt more confident to express my point, ask questions and interact with my classmates – this I feel was very beneficial and a fantastic element of the module. Furthermore, the conversational nature of the Clinic allowed for a

[39] Student K.

> great scope of material to be covered in an interesting and insightful way, I really enjoyed hearing my classmate's experiences and views and I feel it greatly added to my learning.[40]

Utilising Universal Design for Learning to maximise student learning

Universal Design for Learning (UDL) highlights the importance of the well designed, multi-faceted learning environment, which, where properly planned will in the course of the initial module design identify and incorporate the needs of the diverse student population likely to register for the module, and in so doing avoiding any need for post-commencement adaptation. The student 'audience' in the Family Law Clinic is comprised of students from a diverse range of academic and practice backgrounds. Annually we have an intake of 10-15 students, with typically half of the cohort being recent law graduates and the remainder coming from professions and practices relating to children rights and family law. In addition to the naturally occurring multiple intelligences amongst all students, this variety of student knowledge and experience further adds to the variance in learning approaches and capacities in the room. The fact that this class is comprised of such diverse learners demonstrates the importance of recognising and accommodating multiple intelligences when developing the module content, delivery and assessment elements. Some of the students who work in the professions study on a full-time basis and others take the LLM on a 2 year part-time basis with reduced

[40] Student D – Learning Journal.

hours of practice. Thus, the module as structured operates to welcome, support and nurture every student and their individual capacities. The importance of accessible learning cannot be over emphasised, incorporating accessibility not only in terms of information but also pedagogy – the design *and* delivery of the module needing to support learning by all. Rose et al emphasise that utilising UDL is an important acknowledgment of the importance of the individual learner, who works and learns both individually and within the class based group environment, and where properly utilised, results in a student-centric diverse approach to learning and teaching.[41]

Meyer and Rose of the Centre for Applied Special Technology (CAST) assessed the original seven tenets of universal design thinking and its application within the education context. In so doing, whilst recognising the suitability of UDL to programme design, they extrapolated three principles as necessary for the creation of an accessible and wide-ranging module.

> "The framework for UDL…embeds accessible pedagogy into three specific and central considerations in teaching: the means of

[41] Rose D, Harbour W, Johnston C, Daley S and Abarbanell L. "Universal Design for Learning in Postsecondary Education: Reflections on Principles and their Application" [2006] 2 Journal of Post-Secondary and Disability, 19, 135-151 at 136. https://files.eric.ed.gov/fulltext/EJ844630.pdf

> representing information, the means for students' expression of knowledge, and the means of engagement in learning."[42]

The first principle advocated by Meyer and Rose is the multiple means of representation. This is an acknowledgement of the responsibility of the lecturer, to present the module learning in multiple ways, to ensure that every student has at least one means of successfully receiving the information, given that students differ in the ways that they receive and understand the information that is presented to them. Rose et al reference the many ways and reason for such disparity;

> "At the extreme are students with disabilities (e.g., those who are blind or deaf), for whom some forms of presentation are completely inaccessible. More prevalent are students who, because of their particular profile of perceptual or cognitive strengths and deficits, find information in some formats much more accessible than others (e.g., students with dyslexia, aphasia, mental retardation). Even more common are students with atypical backgrounds in the dominant language, cognitive strategies, culture or history of the average classroom who, therefore, face barriers in accessing information when

[42] *Ibid.*

> presented in a manner that assumes a common background among all students."[43]

The disparity in starting points of the Clinic students, both in terms of knowledge and experience, as well as the learning capacities of each student mandates that multiple approaches to presentation are utilised, including prior reading, lecturer delivery of overview, student presentation to facilitate peer-to-peer learning, visual presentation through PowerPoint presentation, use of digital technology and group-based class discussions. Seminars are structured to allow each student, the opportunity to present on, and lead the discussion on a pre-identified topic. This serves a number of learning objectives, firstly; the student leading the discussion, with plenty of notice can prepare with advance reading and is given the opportunity to practice their advocacy and presentation skills, albeit in the relatively safe and familiar environment of this small group of students. Secondly fellow students can equally prepare by reading the material in advance, can ask questions of the student presenter and/or engage with the learning from listening to the oral presentation on the day. Additionally, guest speakers are invited to present on topics under discussion in class, to present the practitioner viewpoint and their experience of the legal issue under discussion. This marrying of the worlds of academia and practice serves a number of purposes; it emphasises the social significance of the law in practice, triggers an awareness amongst students of their own capacities to effect

[43] *Ibid*.

change including providing access to justice after they graduate, and to recognise their current capacities as law students to contribute to social change through their clinic and other commitments. Ultimately this first principle of multiple means of representation aligns with the accepted view that there is no one optimal way of presenting information or transferring knowledge. An awareness of the need for students to receive information in disparate ways is crucial to the creation of a module that can inform all attending students and the incorporation of multiple means of representation serves to provide the students with a positive first engagement with the material being delivered, which in turn better allows Meyer and Rose's two remaining principles of UDL to be achieved.

The second principle is multiple means of expression including expression in action. A key aspect of education across most disciplines is the development of transferrable skills that can be utilised to navigate the learning, and the expression of that learning. The focus of this second principle is a recognition of the multiple means of expression in the development of legal knowledge and the importance of providing appropriate supports and structures to allow for those multiple forms of student expression. Limitations in capacity to express knowledge can arise for physical and cognitive reasons, can be personality driven or can be inhibited through fear and/or lack of knowledge and/or capacity. However, the essence of education is the capacity to develop learning and abilities from wherever a student's starting point is, and thus utilising UDL ought to result in an approach which facilitates all forms of

expression whilst nurturing the development and enhancement of every student. Evidently, ensuring capacity and support for multiple means of expression requires a module that provides alternate options for students in developing and sharing their knowledge and views. The Family Law Clinic absolutely strives to provide such a range of opportunities for the students.

> "The Family Law Clinic provided a different type of learning from the lecture based academic type learning usually associated with an academic course. The family law Clinic bridged the academic aspect of law with the practical application of law. The work I undertook at the Clinic involved me having to improve greatly on my research skills, IT skills, presentation skills and co-working skills. I also learned significantly more about law in practice on a day to day basis. I gained considerable knowledge on a number of areas of law as a result of both the work I undertook on various topics and as a result of the work undertaken by other students. I learned also about group dynamics and the importance of learning to respect other peoples' positions and points of view."[44]

A second, complimentary aspect of this principle is the importance of providing support scaffolding for the students. The capacity for students to develop when

[44] Student I.

mentored and guided is well documented[45] and the unique opportunities and supports provided in the course of the Family Law Clinic have been expressly recognised by participating students as key to their learning journey and overall abilities within the LLM (Children's Rights and Family Law).

> "My involvement with the Clinic has improved my understanding of certain areas of family law as a result of the research I have done for the blog and the website content. It has also improved how I communicate more complex ideas to a varied audience.… I have wholeheartedly enjoyed the experience and have relished the challenge of communicating and discussing the law with the widest possible audience."[46]

Students are invited to submit all written work and research assignments in draft form for feedback no later than one week in advance of the submission date, in order to highlight any shortcomings, allowing them to avail of an opportunity to learn in action and submit an enhanced piece of work for grading. Methodology sessions are also run in conjunction with the module learning, to allow for a broader understanding of the importance of critical thinking when conducting research at

[45] "Campbell T.A and Campbell D.E "Faculty/Student Mentor Program: Effects on Academic Performance and Retention" [1997] 38 Research in Higher Education 727-742. https://link.springer.com/content/pdf/10.1023%2FA%3A1024911904627.pdf

[46] Student F in interview.

masters level, and in parallel the students are provided with library and related skills workshops to assist them in conducting relevant and meaningful research and critical capacities.

> "Participating in the Family Law Clinic has enhanced any performance in all my other modules. It has helped me to clarify for myself the law and the issues in that learning environment, enhancing my learning in the more didactic seminars."

The third principle is multiple means of engagement. Rose et al note that the differences in student capacities and interests will result in markedly different modes of student engagement and motivation. Tasks which require student spontaneity provides the perfect forum for expression for some students but for others they present a frightening and intimidating demand. Individual research and presentation tasks allow some students to excel in their own right and present an opportunity for showcasing such strengths. However equally other students thrive in a supportive peer-shared endeavour, buoyed by the different skills presented by each student, resulting in the collective tackling of the assignment with each student adopting the role most suited to their individual skills.

> "I feel that my public speaking abilities and confidence grew significantly over the course of this module. The small number of

> students in the Family Law Clinic made it easier for me to speak my opinions and give contribution and input when it was required. This is a skill that I feel will continue to benefit me when I am finished my Masters."[47]

Online blogs provide an alternative non-class based, almost private assignment for students to engage with their work, away from the more exposed classroom environment, challenging the students to write in an accessible, non-academic style, without reliance upon legislation, case law or academic analysis. Interestingly students report annually that this is their hardest writing task throughout their LLM year in that it flips their 'trained' academic writing style and demands simplicity of message and style….a mammoth challenge for some but a welcome and refreshing approach for others!

> "Writing a blog was a first for me. I liked the freedom of the genre compared to a typical legal assignment. However, one had to deal with the law accurately. It is still a work in progress as I must incorporate suggestions from Dr. Crowley into my blog and re-submit it. I never took part in debates, either at second or third level. Long ago, before I ever went to university, I was a trade union activist, so I'm used to rough house debates or loud, verbal disagreements. Perhaps if

[47] Student D.

> blogging had been on the scene back then I would have been more successful. As I said I like the freedom of blog writing, but I also like the conventions that stop a blog from being a rant. I do believe that is a new skill I am learning."[48]

The quality of the work presented is tremendous, with one student, who had no background in law prior to commencing the LLM having her blog published in a national newspaper in 2017.[49]

Evidently the common denominator in the UDL approach is the acknowledgment of the importance of a diverse and varied approach to all aspects of teaching and learning in order the recognise and respect the multiplicity of student capacities and the importance of providing a range of opportunities to engage with and express the learning. Whilst students are expected to participate and contribute to each aspect of the workload, the format allows them to excel in those areas that suit their capacities whilst working to improve less proficient areas, typically with the support of both peers and the Clinic director. Accessibility is a multi-layered and complex issue and real effective access occurs on multiple levels and is essential to a complete and comprehensive student learning experience.

[48] Student E – Learning Journal.
[49] https://www.irishexaminer.com/viewpoints/analysis/grace-case-must-prompt-reform-after-foster-care-scandal-shocked-the-nation-393063.html

> "It is not just enough to make classrooms and text books accessible, effective learning environments need to address three main issues. They need to provide information and informational supports that are accessible to all students, provide ways of acting on information that are accessible to all students and provide ways of engaging and motivating learning that are accessible to all students. The UDL principles reflect those 3 aspects in the design of learning environments."[50]

The Clinic is deliberately modelled on the principles of UDL and seeks to facilitate and stimulate all participants to maximise engagement and learning.

> "In reflecting on the learning and self-development that the module has offered, I realise that at a very practical level, this module was very useful as it facilitated both individual and group research in practice. Coming to the course without a primary law degree has been at times a bit daunting. This module enabled me to undertake legal research in a manageable realistic manner. As the tasks assigned were not overwhelming, I was able to take each task individually on board, and incrementally build on my research skills and knowledge. Having a

[50] Butler B, McCarthy M What Does Multiple Intelligence's theory and practice have to offer universal design for learning?" Background Paper to plenary session on Multiple Intelligences and Universal Design for Learning 12 March 2019; referencing the work of Rose et al.

> social work knowledge also helped as the tasks of the module were real, live and relevant to many parts of my previous work experience. I enjoyed the reading and the group work exposed me to the thinking of a much younger generation, who were generous in sharing their ideas and knowledge."[51]

Learning and Teaching as Community Property

In the first instance, those responsible for the delivery of modules must value their teaching and see it as a community property much like research that is ubiquitously shared and celebrated on the conference circuit. Schulman criticises the pedagogical solitude of the classroom, the distinction that is drawn between teaching and research, noting how we share our research amongst a community of scholars yet tend to regard teaching as a more private endeavour. Rather he regards learning and teaching as best approached as a community endeavour with students, where possible, recognising the role that they can play in determining the module direction, the scope of the course materials and the achievement of shared objectives. The Family Law Clinic has been designed to provide scope for experimentation of content and allows students to have a say in the direction of the seminar content. In seeking ultimately to enhance access to information and thus justice, the participating students have a valuable role to play in identifying both new projects and the enhancement of existing ones, to fulfil this overarching mandate. This allows

[51] Student K – Learning Journal.

the responsibility for both the content and delivery of the learning and teaching process to be shared between the lecturer and the students. It also allows students to feed into the teacher's process of problem discovery, as espoused by Bass. Bass is critical of the notion of teaching as a private endeavour that focuses on the mere identification of solutions to teaching challenges.[52] Rather he regards the true teaching riches to exist in "discovering *problems* worth pursuing".[53] Bass supports the views of Laurillard[54] that teaching should not be regarded as a "normative science"; it ought not to be presumed that it can be done 'right'….rather he states it can be done effectively or ineffectively but always better. Such capacity for constant interrogation and improvement underlies the need for the scholarship of teaching movement. Similarly, Shulman advocates for the creation of artefacts to capture the "richness and complexity" of teaching in order to make it visible in the same way that we celebrate what he refers to as "more traditional forms of scholarship."[55]

The Family law information website is a vital tool in providing the students with an insight into the challenges faced by ordinary citizens to access and understand the law in order to understand and vindicate their own rights. From a pedagogical perspective it introduced to the design of the Family Law Clinic, a novel, innovative assessment tool to engage with the students and allow them to explore and express

[52] *Supra* n.23.
[53] *Ibid.*
[54] Laurillard D *Rethinking University Teaching: A Framework for the Effective Use of Educational Technology* (London) Routledge 1993
[55] *Supra* n. 27 at 7.

issues of family law in an entirely different format, and to do so with a significant level of autonomy. By providing the students with the capacity to express their learning in a forum such as the family law information website, they are empowered to bridge the chasm which can restrict public engagement with the law by maintaining and enhancing the tools to assist the broader community. Peruginelli acknowledges that the "[L]aw is the operating system of our society" noting how it regulates all human activity and the associated enforcement of all governing provisions. In regarding access to law as "a fundamental issue of social policy" Peruginelli concludes that "full availability of legal information represents the strategy to even out access to law for everybody." [56]

The student experience has proven to expose the students to the fundamental importance of access to information as a gateway to access to justice, and an associated realisation that such access can be challenging for many.

> "The way the law is written makes it inaccessible for many. We need another way; we need to do more. Like our work on the blogs for the website, makes it accessible."[57]

[56] Peruginelli G Law Belongs to the People: Access to law and Justice Legal Information Management 16 (2016)107-110.
[57] Student D in interview.

In maintaining the online family law information hub[58] and publishing their individual blogs on topical issues of family law, the students develop an awareness of the importance of law as a tool for civil society but also citizen empowerment, and the threat to individual and societal wellbeing where such access is frustrated or prevented. This civic and community contribution speaks to the express aim of UCC to function as a place of learning in the community and for the community. The UCC Civic and Community Engagement Plan *"Together With and For Community"* identifies the university's overarching goal in the period 2017-2022, to become "more Connected, Visible and Engaged with and for Community". Ultimately the vision enunciated by UCC is to be a leading civically engaged University, through capitalising on our teaching and learning strengths, and translating our dynamic academic and research leadership into far-reaching community engagement for the good of all.[59]

Student Reflections through Reflective Journals and Student Interviews

The reflective learning journal represents the student account and associated reflections on their Family Law Clinic learning journey. Morrison lauds the growing

[58] The Family law information website www.familylawinformation.ie is essentially an information hub for all aspects of family law. Whilst providing a short narrative on the basic rights and/or issues arising under each heading and sub heading, it also acts as a central hub for existing resources within the State, which can be of assistance to those in need. Thus, rather than reinventing the already existing information resources, the Website acts as a signpost of sorts, directing the users to those existing services. Additionally, given the very high rates of lay litigants before the Irish family law courts, assistance and information is also provided in respect of court applications, including resources for court forms, details of procedures and possibilities of legal representation. Access to information is a very real obstacle for many and where access to information is impeded, access to justice is effectively thwarted.

[59] https://www.ucc.ie/en/media/centralmedia/UCC_Civic_Engage_2017a.pdf

popularity of reflective practice at third level, allowing for student reflection on, and lecturer monitoring of, "personal, academic, professional and evaluative development", contributing to "notions of student 'empowerment".[60] As a research method to investigate the learning arising from student engagement with Family Law Clinic activities, it provides a forum for the student voice to be heard through the individual reflections upon the learning journey and the interrogation of these student learning journals is an important aspect of the research undertaken here. The learning journal represents a shift from the social, shared learning space of the classroom space to the personal, more private reflections of each student. In this context students are asked to consider their own role, not only in the classroom dynamic, but also more broadly, allowing them to begin querying their responsibilities as law graduates. This student reflection, both in action and on action, allows for the development of a self-awareness surrounding the student learning trajectory, inculcating a greater awareness of their personal and academic development.[61]

Describing their Clinic contributions provides each student with the opportunity to recount the nature and extent of their work, awakening in them if necessary, a

[60] Morrison K (1996) "Developing reflective practice in higher degree students through a learning journal"(1996) 21:3 Studies in Higher Education, 317-332 DOI: 10.1080/03075079612331381241

[61] In maintaining their reflective journals students are required to present their deliberations in a semi-structured format; providing a description of their contributions to the Clinic activities and to reflect on their own associated learning as well as presenting their views on the Clinic experience more broadly.

realisation of the intense but valuable workload involved in the 12-week experience of the Family Law Clinic. In setting out their contributions, the enunciation of their learning journey begins. Whilst the iteration of the various assignments, individual and group efforts is a useful exercise in itself, perhaps more significantly the student reflections on the semester of work commences properly at this point of the journal. Their website responsibilities are taken very seriously, highlighting the importance they attach to information hub contributions, in such a challenging and personal area of the law. It is imperative that the information is accurate but also presented in a manner that takes account of how the public will experience the information on the website. The unique approach adopted by each individual student, facilitated by the autonomy that the Clinic affords them, starts to become more apparent as the students outline their contributions. Student B outlines how in assessing her allocated sections of the website she chose to consult with friends and family members to gain an insight into how the existing content and layout is perceived and understood by the very audience to whom it is directed.

> "This involved consulting with family members and friends as to the accessibility of the website since the provision of easily accessible information to the public is a key aim of the website. This exercise was hugely beneficial in gaining an insight into the thoughts of those who lacked any prior knowledge of family law and thus enabled me to adapt the website accordingly where required."

This innovative and proactive approach illustrates the community property underpinning of the module activities and demonstrates how the module framework encourages independent student research activity. This scope for student novelty is also celebrated by Student E when outlining his contributions to the website.

> "I gave a small questionnaire to 4 people, two of whom were graduates, two not. Two were men and two were women. The response was mostly favourable, and the non-graduates said the language was easy to understand."

Student D provides a useful overview of the range of tasks and associated skills required in outlining her contributions to the Clinic. In particular she references her research work for the National Women's Council of Ireland and the "valuable learning experience" of working with a classmate on the proposed changes to the Family Law civil legal aid system. In particular she notes that they

> "…. came from two different undergraduate backgrounds so I found it very interesting to combine knowledge and experience. Furthermore, I found that the knowledge I gained on this area became applicable in other modules and really highlighted the need for the reform of the Irish Family Court system."

In outlining her research work for Anne Marie Sheridan, solicitor, in respect of the District Court appeal relating to the use of the father's surname on the birth certificate of the client's child, Student D recounts the experience in positive terms.

> "What I found most enjoyable about this task was a number of weeks after the activity was completed that Solicitor whom we worked for joined us in the Clinic. She spoke with us about her work and the outcome of cases that we had worked on. I really enjoyed this aspect of the Clinic and found that meeting her in person really made the research process real and for me personally was fantastic motivation at a stage in the year when the work load was high and we were feeling a little overwhelmed."

Similarly, referencing her research on the effects of mediation in the context of domestic abuse for the work of the National Women's Council of Ireland on the proposed new Family Law courts, student A stated that…"This was one of the most enjoyable assignments that I completed as part of the Clinic as I got to research an area that I had not studied before and gained valuable research skills which will be useful in future assignments and my thesis." The student experience documented in the reflective journals is very impressive, referencing a breadth of learning, including personal development, greater social awareness, and improved communication skills. In terms of social awareness, evidently the various assignments that sought to

enhance access to information and/or the law taught the students that "[T]he law affects every person and so there must be more investment in ensuring that it is accessible to as many people as possible."[62]

The overriding message from the student reflections are the multiple benefits arising from the scope of the learning offered by the combined elements of the delivery and assessment in the Family Law Clinic. The reliance upon group work for the completion of module tasks, introduced a novel approach to study and research for some students, more typically used to independent academic endeavour.

> "An important skill the Clinic has taught me is the ability to work as part of a group. Compared to the other modules I have taken in my undergraduate and postgraduate degree, which were usually individually marked assignments, the Clinic encouraged engaging with our fellow classmates. The first assignment I worked on involving the barring order question spilt the class in half. This was a great opportunity to get to know some of the other postgraduates. It also gave us the opportunity to utilise our skills and strengths. In this particular group project, I was in charge of editing the question and referencing it. I also found it useful how other people in my group approached the question and we encouraged each other when we

[62] Student A.

> found new material to contribute to the assignment. The second assignment involved myself and one other student. This was a particularly stimulating assignment as we both approached the assignment from completely different angles. It was also very interesting to be paired with someone who had a completely different educational background to mine."[63]

In parallel, the varied means of expression incorporated through both engagement and assessment challenged the students to develop or improve a range of communication skills.

> "My ability to communicate law in a straightforward and easily understandable manner has benefited from the completion of this module. The process of reviewing the accessibility of the website has enabled me to become more aware of the difficulties some people may have with understanding legal concepts at a time of crisis in which most family law cases will arise. This skill is, of course, essential to the administration of justice and to legal practice."[64]

[63] Student A.

[64] Student B. Student C reported similar benefits: "The Clinic also enabled me to identify what my unique strengths are. Having studied psychology for my undergraduate degree, it allowed me to develop my skills in communication and critical thinking. Throughout the course of the clinic I applied these strengths to the work I was doing in the Clinic which in turn allowed further development."

A further, very encouraging aspect of the student journals is the evidence that the module as a whole has allowed them to develop not only as law students but has supported their holistic development including aspects of personal confidence and capacity for public speaking.

> "When reflecting on the Clinic I became aware that not only did it improve my understanding of the law but in fact it developed certain aspects of my character, such as my confidence.[65]

Similarly, Student D noted the positive impact of the clinic experience on her capacity to express her opinions in a more comfortable and confident way.

The student reflections demonstrate a learning experience that is varied, challenging and engaging. It serves as a platform for the personal and academic development of all students, irrespective of their strengths or abilities. It also exposes the students to new ways of learning which has a significant impact on other elements of the LLM programme. The inclusion of voices beyond the lecturer and student adds a further dimension to the student education. Overall, the unique academic and personal learning opportunities arising from participation in the Family Law Clinic are regarded by the students as positive and worthwhile experiences. Their exposure to

[65] Student C. She also added that "…Having confidence in oneself is very important if that person aims to pursue a career in law, so this aspect of the Clinic will benefit me throughout my professional career.

the law in practice and their engagement with practitioners provides an insight not available elsewhere in their university studies.

> "The Family Law Clinic I believe was the most enjoyable and beneficial module I undertook in semester one of this masters programme. It took a step away from the vastly theory-based modules that have been most predominant in my education thus far and enabled me to connect with the law in a way that was more engaging. This has benefited me to no end and allowed me to see the necessity of knowing the theoretical aspects and their fundamental foundation for the practice."[66]

The breadth of the modes of delivery and the varied assessment obligations provide a meaningful opportunity for personal and academic development. Ultimately it is evident that the students' overall learning across the breadth of the modules studied, were particularly impacted by their Family Law Clinic experience.

> "My experience of this module has been undoubtedly positive. The approach taken by this module is very progressive and unlike any other modules I have completed. The method of assessment and workload mirrors that of a practitioner. Often, we are faced with

[66] Student C

> issues where the answer was not readily available and legal research was essential to finding the answer. This highlighted to me that no matter how knowledgeable or experienced you may be, new challenges will always arise since no two cases will ever be the same! The skills that I have developed through the Family Law Clinic will no doubt assist me in facing such challenges throughout my career."[67]

Schon contends that one of the reasons for the growing focus on reflective practice in law is that "practice in these professions is often based on rapid action and the proof of expertise in the subjects emerges from the actions taken, not the quality of thought that might have gone into the actions".[68] In delivering content to law students, it is too often readily accepted that transfer of knowledge is the limit of the lecturer's obligation. Conversely, in developing the Family Law Clinic and incorporating the reflective journal element, students are encouraged to not only gain a knowledge of the law, but also an understanding of the social context within which it is both understood and applied. The wisdom developed by these broader insights and the maturity and understanding that it is hoped will evolve from the students' reflection process, will result in a greater ability to reflect appropriately on the strengths and

[67] Student B.

[68] Moon J *Reflection in Learning and Professional Development: Theory and Practice* (Routledge Falmer 1999) at 55, citing Argyis C and Schon D *Theory in Practice: Increasing professional effectiveness* (Jossey-Bass publishers 1974).

weaknesses of both the legal system and the students' own capacity to contribute to its effective and accessible operation.

> "The Clinic has been a fantastic experience and has exceeded my expectations. In choosing this module and in general the Children's Rights and Family Law Masters, I wanted to get a hands-on experience of the material we would be covering. While each module we have is targeted towards learning and applying the law, the Clinic took a different approach by giving a sense of responsibility to the students as the work we were conducting was being presented to people outside of the UCC Law School. Furthermore … the Family Law website offers an all-in-one stop of information that is understandable for the public. … Being a part of the Clinic also provided a sense of pride within myself due to the practical nature of the course, making me aware that I was playing an active part, albeit a small part, in the changes that are needed in the area of family law, which made the work all the more satisfying."[69]

By engaging in reflective practice, students develop and foster critical thinking and decision-making skills, not only in respect of their Clinic and broader LLM learning, but ideally these skills are transferable and applicable throughout their careers. In

[69] Student F.

developing a capacity for reflection and associated informed, progressive learning in action, students cultivate skills for continuous improvement and learning. Rolheiser et al assert that meaningful learning evolves from student reflection, resulting in

> "…the capacity for students to improve their ability to think about their thinking; the ability to self-evaluate - the capacity for students to judge the quality of their work based on evidence and explicit criteria for the purpose of doing better work; the development of critical thinking, problem-solving, and decision-making; and the enhancement of teacher understanding of the learner."[70]

The External Practitioner – as Clients of the Clinic

Testimonies from external legal practitioners who have relied upon the research services of the Clinic provide an external stakeholder critical commentary on the workings and impact of the student endeavours. External engagement is a key component of a successful law school, given the importance of maintaining positive connections with the professions and related service providers, for the benefit of student placements, for the development of positive and mutually beneficial working relationships and to ensure that the broader society also benefits from such collaborations. In analysing the work of the Clinic, this objective professional

[70] Rolheiser, C, Bower B and Stevahn L *The Portfolio Organizer: Succeeding with Portfolios in your Classroom. Alexandria, VA: Association for Supervision and Curriculum Development* (2000) at 31-32.

feedback provides an important critical perspective of the effect and impact of the work being conducted and can lead to enhanced opportunities to develop future relationships and student prospects. In the 2018-19 academic year the research services of the Clinic were utilised by three distinct external legal practitioners and interest groups, namely the National Women's Council of Ireland, the Family Lawyers Association of Ireland and Anne Marie Sheridan solicitor.

The Clinic dealt directly with Ms Denise Roche, the legal officer in the National Women's Council of Ireland who reached out to the Clinic for research support in respect of two key issues on the Council's 2019 agenda. Denise was leading the Council's research in response to the Irish Government's stated intention to reform the Irish family law courts system. Denise identified three distinct approaches worth considering within the Irish context. Denise's written testimonial demonstrates the importance of the efforts of the Clinic in supporting the work of the National Women's Council of Ireland, a leading and influential Irish public interest group.

> "The ability to work with a clinic such as this, is essential for me to be able to carry out my role. NWCI understands the lived experience of women but in order to accurately represent them, I must be able to underpin their testimony with statistics and factually drawn analysis. Facts take time to develop, and given the numerous demands on my role, I have limited capacity to dedicate the required time to develop

> detailed, accurate and comparative research papers. Moreover, the ability to produce up to date research requires access to the most recent academic research which means it's imperative to have access to legal research databases. The cost of these databases is not within the limited financial means of my organisation. Therefore, the Family Law Clinic enables me to acquire highly relevant research without having to dedicate the time or resources to develop it."[71]

She also acknowledged the multiple benefits of this approach, not only in terms of teaching and learning, but also the benefits that accrue to students at this pivotal time of their career, often on the brink of making career path decisions; as well as the positive impact on the work of the NWCI and on society more broadly.

> "I think this clinic is also of benefit to the students. They can see the practical application of their work and how essential it is to be able to produce accurate, detailed and rapid information. It also offers them an insight into the workings of small organisations, and the importance of well-developed research and writing skills. I hope as

[71] Additionally, Roche referenced the reputation of the Clinic Director in the field of family law research and teaching and noted the weight and credibility that this attaches to the work of the Clinic as a whole. "I felt confident in relying on the information provided because it was delivered under the supervision of Louise Crowley. A highly qualified academic who understands the feminist perspective that NWCI wishes to communicate through all our work. I can confirm that the research I received was produced within a short timeframe and cut straight to the core of the issues."

> they move through their careers that this helps foster in them the importance of engaging in pro bono work. Much of what I am able to achieve in my role is as a direct result of lawyers, academics and students offering their expertise for free. I hope to be able to work with the clinic into the future particularly as the reform of the family court system continues."

In October 2018 the Irish Family Lawyers Association approached the Clinic to seek research support in advance of their annual national conference which the UCC School of Law had agreed to host on campus in February 2019. The theme of the conference was the enforcement of family law orders and the Clinic was tasked with providing an international comparative perspective for the workshop discussions. Diverse and effective approaches to enforcement were identified in four distinct jurisdictions; Canada, Denmark, Sweden and New Zealand and the students worked in groups to conduct in-depth research and produce a dossier which, once approved by the Director of the Clinic, was made available to all attendees at the conference. The research dossier formed the basis of a broad and well-informed debate on the future direction for the enforcement of family law orders in Irish courts and the quality of the research was highly commended by those in attendance.[72]

[72] "The students' preparation of the dossier of research was excellent and a very helpful tool in structuring the discussion." (Sarah Fennell BL – conference organiser)

Finally, the students had a valuable multi-layered learning experience in collaboration with Anne Marie Sheridan solicitor, in relation to two District Court appeal cases which required research support and an ongoing inter parent dispute concerning the home schooling of their child. The first District Court appeal related to the legal capacity for an individual to make joint applications for remedies in the context of domestic violence allegations, to ensure that one remedy would ultimately be secured. The second case, related to the right of a mother, not married to the father of her child, to use the father's name on the birth certificate of the child, without the father's consent. Additionally, in the latter case, it was queried whether the court could over-rule any objections of the father and compel the Registrar of Births Deaths and Marriages to register the birth in the father's name. As distinct from the research conducted for the National Women's Council of Ireland and the Family Lawyers Association, and indeed most research in the course of their LLM generally, this engagement with Anne Marie Sheridan exposed the students in a most unique way to the operation of the law in practice. Their understanding of the usefulness and impact of their work was vividly illustrated by Anne Marie when she subsequently attended a clinic seminar to provide the students with this insight. Anne Marie reported her capacity to utilise the research to both negotiate effectively and present enhanced legal arguments to achieve successful outcomes for her clients. The students in turn, whilst benefitting from completing the research assignment, also gained a valuable understanding of the process involved, including fact-focussed research, the reality of contemporaneous twin approaches of negotiation

and proceeding to trial, and an insight into the broader challenges of family law litigation. Equally satisfying was the mutuality of this benefit as espoused by Anne Marie in her reflections of the experience. As a busy family law practitioner, she captures the importance of the Clinic research and the manner in which it enhances the level of advocacy in the lower courts, where because of the workload pressures, the time to engage in vital research in respect of family law issues is typically impossible without support.

> "The key to the District Court is to have each case prepared fully in advance of the court. I have been able to seek the assistance of the FLC to research the law and the case precedents to assist me in running the cases. It also gives me the option of a complete fresh look at a set of facts and sometimes a completely different outlook on the case."

With reference to presenting an issue for determination not previously addressed by Anne Marie, she notes the significance of the Clinic contribution to enhance her capacity to present the best case for her client.

> "This year, I was retained by the Legal Aid Board to act on behalf of a client seeking to home school her son. Her ex-husband did not consent. The FLC and members of the UCC staff were of huge assistance in my preparation. I was fortunate enough to have the opportunity of

> meeting with the students and giving them the feedback of the cases which we had worked on together. Having the personal connection with the students and Dr. Crowley opens the way to maintaining a mutually beneficial relationship."[73]

External Academic Examiner

Finally, the views of the academic external examiner of the module and the broader LLM programme ensures that the context of the Family Law Clinic is always to the forefront, that whilst it operates as a service for the public and the professions, it remains embedded in the academic LLM programme on Children's Rights and Family Law and thus must always serve the interests of the students as an academic module which enhances their learning and their postgraduate experience more broadly. All aspects of the student learning experience are considered by the External examiner who must be satisfied as to the depth of the student learning and their ongoing engagement with academic learning, albeit in the context of that learning impacting on law in practice.

[73] The commendations of Anne Marie Sheridan provide an endorsement not only of the work of the Clinic but also the way the Clinic is conducted. This speaks volumes about the students' commitment and dedication to pursuing the fundamental goals of the Clinic and serves as a welcome validation of the merit in adopting this approach to developing the skills of our LLM students. "I have recommended the FLC to my colleagues who were equally delighted to have such an opportunity open to them. I expect the students are delighted to hear their law in action and make it a living subject for them."

Professor Maebh Harding Warwick University has commented as follows:

> "I have always been impressed by this initiative and it is clearly going from strength to strength. It is great to see such engagement and impact. You have clearly got a very engaged bunch of students. I thought that the work I read was of a very high standard."[74]

Conclusion

"The Clinic opened up my mind, and it never switched off"[75]

The Family Law Clinic at University College Cork represents a deliberate effort to engage with postgraduate students in a manner which empowers them to better understand the challenges of pursing legal remedies and to explore their capacities to support access to the intricate Irish legal system. By creating a module design which requires students to contribute to public knowledge and engagement, the Clinic seeks to achieve the complementary goals of scholarship and community of learning through multiple means of representation, expressions and engagement.The experience to date in delivering the module is that it has developed into a key aspect of the student learning, providing LLM students with a novel and innovative space to explore the law in practice and to better understand the significance of access to the law and the dangers that exist for those who are

[74] Feedback received on student assignments submitted in the 2018/19 academic year.
[75] Student B.

prevented from accessing information, and thus justice. Through qualitative research methods the process of designing and delivering the Clinic, which goes beyond the transfer of legal knowledge and seeks to deliver that learning in a practical context has been explored and has sought to provide considered insight into the student learning experience. It has been demonstrated that the student learning in the course of completing the Family Law Clinic has impacted positively on all other aspects of the LLM experience and activates a process of learning in action and longer-term reflective practices in the participating students.

In creating multiple avenues for the students to amass and present their learning to a multiplicity of audiences, they are provided with an opportunity to recognise their capacity to use their law school education, and in particular the Clinic setting to enhance the community experience of justice. Citing Cooper J and Trubek L, Webb stresses that legal education needs to be seen as a process of "educating for justice … citizens' access to justice must in part be predicated on the ability of lawyers and judges themselves to show an understanding of and commitment to "justice".[76] Interestingly Webb regards the development of that commitment to justice as a function of the universities that must be incorporated in the legal education provided. In better understanding the importance of real access to information and thus justice, the students in the Clinic develop this better understanding of what real

[76] Webb J "Developing Ethical Lawyers: Can Legal Education Enhance Access to Justice?" (1999) The Law Teacher 3:3, 284-297. https://www.tandfonline.com/doi/pdf/10.1080/03069400.1999.9993035?needAccess=true

justice means. They begin to understand the law in context, the role of the law in the community, as both as a social tool and as a means to vindicate and protect individuals. The over-arching message is that law in itself does not operate to secure rights, securing rights necessitates real access and an understanding of the context and application of the law, and the Clinic provides the insight into this reality. Remembering always that "if all we teach students is law, we cannot expect them to practice justice…"[77], the Family Law Clinic has been designed to broaden student learning and empower them to develop a sense of community awareness and responsibility that transcends their student lives and remains with them long after graduation to direct the use of their enhanced awareness, knowledge and skills.[78]

[77] *Ibid* at 286, referencing the works of Elytis and the need to make explicit, the link between ethics, education and access to justice; Elytis Odysseus *The Axion Esti* (translated by Keeley E and Savidis G) (1980) London, Anvil Press.

[78] Webb echoes this hope, suggesting that we ought to always remember to teach students that lawyering involves responsibility to and for others.

LEGAL CLINIC AS AN EXOTIC PHENOMENON IN HUNGARY

Renáta Kálmán[1]

Introduction

In Hungary today, we are experiencing a new phenomenon in the field of higher education. Universities and colleges have begun to emphasize the importance of the introduction and application of new teaching methods. The recent techniques are totally different from the previous, traditional ones. Due to some hindering factors, the transformation from the old to the new methods is difficult. Only a few teachers are willing to adopt new techniques to improve the effectiveness of education. The practical or experiential learning methods were and still are an essential part of some university training, such as medical, pharmaceutical, engineering, etc. In the above-mentioned training, the theoretical and practical parts of the curriculum have equal importance, this sets a good example for other training. Learning by doing is an ancient concept. As the Chinese proverb states, "I hear and I forget, I see and I remember, I do and I understand."[2] Nevertheless, some training focuses on the

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2 Richard J. Wilson: The Global Evaluation of Clinical Legal Education, More than a Method, Cambridge University Press, 2018, p. 7.

fulfillment of this ancient saying, still, there are many areas of higher education, which are far from reaching this goal, for example, legal education.

In Hungary, in the field of legal education, the traditional teaching methods of knowledge transmission are still dominant. The students are passive elements of learning. For example, during lectures they just sit in the classroom and take notes about what they hear from the teacher, without questioning or discussing the material. However, the transformation is underway and new, practice-oriented teaching techniques, such as mediation, classes about legal argumentation techniques, legal clinic, alternative dispute resolution, etc are being introduced.

My article aims to delineate the current situation of clinical legal education in Hungary. Since, clinical legal education is part of the legal education, the article focuses on the challenges that the law faculties and teachers face presently.

Although, legal clinic methodology is not a new phenomenon, for example in the USA, it has been growing since the 1960s, in Hungary, only a few law faculties implement it in their curricula. Unfortunately, only one legal clinic has operated continuously since 2005. There have been a few attempts in other faculties to introduce legal clinic seminars, but almost all of them failed after a couple of years for different reasons; such as lack of financial support from the faculty or lack of qualified teachers. These issues raise the question, whether there are any factors, which make widespread adoption of clinical legal education in Hungary possible? If yes, what are these? There

are some hindering factors, which make this educational method less favorable, but the present article tries to provide answers to the above-mentioned questions.

The paper at hand is divided into three main parts. The first part deals with a new situation in the field of higher education, focusing on the law major in Hungary, because a comprehensive transformation was concluded in 2019. The Minister responsible for higher education issued a Decree at the beginning of 2019, in order to uniformly define the general educational output requirements for students. The latter part of the article will present a deeper insight into this transformation. The second part briefly introduces the types and the operation of those legal clinics, which are currently functional in Hungary. Thirdly, the domestic fulfillment of two main goals of the clinical legal education (social and educational) will be discussed. The author highlights, why the educational goal of the legal clinic is emphasized more in Hungary, than the social one.

The current transformation of the Hungarian higher education system

To begin, it is important to define alternative education, since the clinical legal education belongs within this category. Alternative education is an umbrella term, which includes such non-formal educational forms and methods that are different from the usual, traditional ones. The students are at the centre of this method, where

attention is given to the needs and the different stages of development of the students, making it an excessively flexible, permissive system, which serves equality.[3]

Alternative educational methods are not really welcomed in Hungary, especially in the field of law. There are many reasons, which contribute to this non-favourable position. First of all, alternative educational methods are more expensive than the traditional ones (more and special equipment is needed, the professor has to participate in special training, which means additional financial burden to the university, etc.). Second of all, the practice-oriented seminars operate with only a few (maximum 15) students - unlike the traditional knowledge transmission focused lectures, where more than 100 students can participate - thus teachers have to deliver more seminars under an alternative education model. Thirdly, the role of the professor becomes more of a consultant, facilitator, than a teacher. They have to adjust to their new role, which could cause a problem, especially for the senior staff, who are used to teaching in the same ways.

Following this brief introduction, this article will focus on the current transformation of Hungarian higher education. As it was mentioned above, at the beginning of 2019, the Minister responsible for higher education issued a Decree,[4] which amended the legislation made in 18/2016. The EMMI decree uniformly defines the output requirements for students. The general output requirements were divided into four

3 László Kadocsa: Az atipikus oktatási módszerek [Atypical teaching methods] in: Felnőttképzési Kutatási Füzetek, Budapest 2006, p. 49.

4 Art. 8. Ministerial Decree No. 3 of 2019, February 11 (EMMI)

major components: professional (cognitive) knowledge, skill/proficiency, professional attitude and autonomy and competence relevant to responsibility. Any student, who achieves a master's degree, must acquire different knowledge and skills in the given components.

Concerning *professional (cognitive) knowledge*, for instance, a student shall know his field and the relation to other similar fields of work; the given major's general concepts, problem-solving techniques, terminology, and ethical norms. In terms of professional knowledge, a law student should learn the theoretical and practical knowledge regarding legal professions, mechanisms of the state and legal system. Moreover, a law student must know the problem-solving methods of scientific work, the terminology of law, the historical development of legal systems, human rights and the essence of many relevant national and international rules and doctrines. Knowledge of legal ethics and new moral dilemmas are also part of the training, because lawyers will face how thin is the line between ethical and non-ethical conduct, e.g. rules of conflict of interest. The experiential or practical learning, such as clinical legal education, provides an opportunity for the students to experience these ethical principles in practice.[5]

5 2. Jurist undivided training educational output requirements, Ministerial Decree No. 18 of 2016, August 5 (EMMI) and No. 8 of 2013, January 30 (EMMI) on training and output requirements for vocational training in higher education, basic and master training, and common requirements for teacher training and training and output requirements for individual teaching periods

Under *skill/proficiency*, the student will synthesize comprehensive and special problems through an interdisciplinary approach by applying the given field's terminology in an innovative manner. Also, effective research skills both at national and international level must be acquired, and the student shall be taught how to present those results to the scientific community. Law students must be able to analyse different views and theories concerning the law by applying professional legal terminology. In addition to being able to build up logical reasoning, conducting vivid debates about social and legal issues both in academic and non-academic environments, the student will be able to demonstrate this learning in a foreign language. Moreover, the law student is trained to interpret legal norms and think critically concerning those rules. For example, during a live-client clinic seminar, the students have a hearing with the client, in order to find the legal problem that they will work on. After they search for the relevant laws and regulations, which can help them to find a solution(s) for the case, they provide legal advice to the client. This simple example proves that clinical legal education makes possible the acquisition of those skills, which are missing from the traditional knowledge transmission education.[6]

Third of all, *professional attitude* includes a developed professional attitude and work ethics, which transfers knowledge in an authentic way. This also requires endeavours to follow and contribute to the novelties in this field, and, take a leading role in the

6 Ibid.

workplace. In the field of legal training, attitude includes openness to continuing education and intellectual self-development. Furthermore, a law student should have a critical and sensitive approach regarding social problems, and be open to involving non-legal or alternative methods to find the best possible solution to an issue. Moreover, they should be dedicated to equality, rule of law, pro bono work, high-quality work.[7] Most of the live-client clinics provide free legal services to marginalized groups and those who cannot afford the cost of a lawyer.[8] The pro bono work done by the students has two main winners: the client and the student. From the client's point of view, it is important that the who person deals with his case has specialist legal knowledge, and that they are given access to justice. From the student's perspective, firstly, they gain and improve their above-mentioned knowledge and skills, secondly, they get an insight into how state institutions function. Therefore, the clinical programs, indirectly, shape the social awareness of lawyers, thus humanizing the legal profession.[9]

Last, but not least, *autonomy and competence relevant to responsibility* means that a student learns how to work independently in professional tasks and represent their professional point of view in decision-making processes. Furthermore, the student

7 Ibid.

8 Judit Tóth: Legal Clinic as a Promising Alternative Instrument in Hungary, Jogelméleti Szemle, 2017/4. szám p. 151.

9 Dr. hab. Fryderyk Zoll, Dr. Barbara Namysłowska-Gabrysiak: Chapter Five – The Methodology of Clinical Teaching of Law, in: The Legal Clinic. The Idea, Organization, Methodology, (Ed: Dariusz Lomowski), Fundacja Uniwersyteckich Poradni Prawnych, Varsó, 2005, p. 186.

might be more eager to contribute to research projects at their workplace and become familiar with the mechanisms of teamwork. The law student should endeavour to develop their own professional identity, performs their job in a quality and precise way and take responsibility for the public.[10]

In addition to these, legal education has specialized output criteria too.[11] These are the following: a) 300 credits must be obtained, and ca. 70-80% of the credits come from theoretical lectures and only 15 credits from optional/elected courses, like legal clinic, b) 6 weeks professional practice in a law-related position. Consequently, the theoretical element is still highly important in legal education, although, in the lastfew years, a discussion has begun about increasing the percentage of practical training. Even though, the majority of law students will work in practice, they still gain only a relatively small amount of practical knowledge during their studies. The students can complete their mandatory 6 weeks of professional practice at a court, at a public prosecutor office, at a police department, or an attorney's office, etc.

Although, only a few elements of the output requirements were mentioned, these make it clear that clinical legal education can be an outstanding part of the legal curriculum, which can help to achieve the realization of the educational output

10 2. Jurist undivided training educational output requirements, Ministerial Decree No. 18 of 2016, August 5 (EMMI) and No. 8 of 2013, January 30 (EMMI) on training and output requirements for vocational training in higher education, basic and master training, and common requirements for teacher training and training and output requirements for individual teaching periods

11 Ibid.

requirements. During the legal clinic course, students are able to acquire most of the required knowledge, skills, autonomy, and responsibility.

Despite this new regulation, the theoretical part of legal education remained dominant. Nevertheless, according to a survey of law students,[12] the most important qualities of a law practitioner are the following: sense of justice, good oral communication, logical thinking, and empathy. Therefore, it is clear that the traditional way of teaching cannot fulfil either the students' or the legislation's expectations.

After the transformation of the higher education system in Hungary, it is important to discuss those hindering factors, which impede the spread of alternative educational methods especially the legal clinic. The three factors discussed here are: a) curriculum, b) teaching methods, c) attitude of teachers. One of the biggest questions is what should be taught. In legal education, the effective law always stood in the focal point of teaching. Such approach leads us to the next question, how detailed knowledge should be acquired concerning effective law, since it changes very often?[13] Is it enough to study the frameworks and the basic legal principles, or should the tiniest details be known as well?

12 Helga FEITH and Attila BADÓ: Magyar joghallgatók motivációs vizsgálata [Survey on motivations of law students in Hungary]. Jogelméleti Szemle, 2000/4 pp. 2-18. http://jesz.ajk.elte.hu/bado4.html

13 Zsolt Nagy: A jogi oktatás fejlődés és aktuális kérdései, [The improvement and the actual questions of the legal education] PhD értekezés, Szeged, 2006 p. 150. http://doktori.bibl.u-szeged.hu/263/7/Nagy_Zsolt_ertekezes.pdf

There is no unified standpoint, since the legal society is divided regarding this question. Some experts emphasize the priority of the practical part of legal education, while others stand for the importance of the theoretical methods.[14] The best way is if the theoretical and practical methods are equally present in legal education. The Tuning report pointed out that the biggest gap between the employers and the freshly graduated lawyers is that employers have the ability to apply their knowledge in practice.[15] Such gap can be reduced by the implementation of different alternative educational methods, like clinical legal education in the curriculum.

The second problematic factor is the manner of teaching. The author's opinion is that the most urgent change is needed in this area. As it was mentioned above, the students are passive elements of education, they are afraid to answer the lecturer's questions and the teacher is still an authority figure and not a facilitator. The dominance of traditional teaching is challenged by only a few non-traditional teaching methods that are implemented by professors. However, it is proven that those universities and colleges can be successful and fulfil the output requirements, which provide useful, transferable knowledge and skills, and use diverse teaching methods.[16]

The third hindering factor is the attitude and the position of the teachers. A related issue is that it seems hard to decide, who should teach at the university. If only

14 Ibid p. 151.

15 Julian Lonbay et al.: Tuning Legal Studies in Europe: Initial findings, 2008, pp. 24-25. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677820

16 Zoltán Fleck: A jogászképzés szintleíró jellemzői [The level describing characteristics of legal education] ELTE ÁJTK, 2017 p. 11.

practitioners were to teach, they would focus solely on those skills and knowledge, that they found useful in their work. Basically, they would train "practice-ready" students.[17] This attitude could lead to the omission of thinking on abstract level and basic theoretical knowledge from legal education. If only professors were to teach law, they would focus on doctrines, so there would be few courses where students could gain applicable knowledge and skills. In other words, "the law professors largely focus on what they teach, not how or even why." [18] Furthermore, "in the European system of legal education, contrary to the U.S., clinical faculties are burdened by the pressure to achieve academic advancement in short period of time." [19] Consequently, teachers have to sacrifice those activities which require longer preparation. Moreover, "the teaching itself has been relatively unimportant aspect of the law teacher's academic life. Instead, scholarship – the production of articles and books […] has always been the gold standard of the professoriate." [20] In summary, the position of the law teachers and their attitude towards the alternative educational methods present a hurdle to the improvement of legal education. Another important aspect is the background of the current legal educators in Hungary, because they have no pedagogical education. Therefore, whether it is a law practitioner or a professor, who

17 Renáta Kálmán: A jogklinika, mint alternatív oktatási módszertan?! [Legal Clinic as an alternativ educational method?!], Miskolci Jogi Szemle 2019/1., p. 74.

18 Richard J. Wilson: The Global Evalution of Clinical Legal Education, More than a Method, Cambridge University Press, 2018, p. 7.

19 Dubrava Aksamovic, Philip Genty: An Examination of the Challenges, Successes and Setbacks for Clinical Legal Education in Eastern Europe, International Journal of Clinical Legal Education, Vol. 20, 2014, p. 437.

20 Richard J. Wilson: The Global Evaluation of Clinical Legal Education, More than a Method p. 7.

teaches the students, neither groups will have any prior knowledge about teaching methods, pedagogy or group dynamics. Currently, anyone with a law degree can teach law at the university, even without practical or teaching experience. As a result, there are, with exceptions, basically two different groups of legal educators in Hungary. The first group involves career Professors, who enter into the academic sphere (usually right after graduation) as a PhD student or Assistant Professor and then climb up the ladder until full professorship. On the other hand, there are the law practitioners, who simultaneously working in practice and academia, thereby providing an insight into their field of expertise. Therefore, as I mentioned above, both group members are experts in their field of law, but none of them has pedagogical or teaching background. However, there is a growing interest in pedagogical education with some legal educators participating voluntarily in continuing education courses (1-2 days). Consequently, they are able to transfer their knowledge, but a facilitator role is a new and strange position for them.

More hindering factors could be mentioned, but these factors are the most relevant ones explaining why the spread of alternative educational methods is happening slowly. Nonetheless, this author believes that "[a] traditional education, based solely on information transfer is the least effective, as passive inclusion often cannot even reach understanding." [21] The teachers play a decisive role in preparing students for

21 Zoltán Fleck: A jogászképzés szintleíró jellemzői [The level describing characteristics of legal education] ELTE ÁJTK, 2017 p. 27.

the legal profession, so it is important to train the student to be a critical thinker, not a memorizer. If students understand the connections of the legal system, they can realize the social conflicts, and can take responsibility for the public interest as the new education output requirements desire. The education of other professions (medical, engineer, pharmacist, etc.) serves as a stimulus to rethink the structure of legal education. With the greatest challenge for legal education being "linking the interests of legal educators with the needs of legal practitioners and with the public the profession is pledged to serve."[22] As long as the supply and demand are imbalanced, higher education cannot fulfil the employers' expectations. Therefore, it is really important to cooperate with the employers, when the state decides the output requirements of the higher education, since they will work with the new graduates. Also, the students' ability to adapt to the changing inner and external expectations shall be also taken into account.

Legal Clinics in Hungary

Even though, legal clinics have two main types, NGO-based and university-based, only the second one functions in Hungary. The Hungarian law faculties can be divided into 3 types under this approach: a) legal clinic has never been in place, b) legal clinic exists intermittently, including street law - occasional legal assistance for

22 William M. Sullivan et al.: Summery, Educating Lawyers Preparation for the Profession of Law, The Carnagie Foundation, 2007, p. 4.
http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf

local people, c) legal clinic is, as an elective course, an integral part of curricula.[23] Unfortunately, legal clinic research does not stand in the focal point of research in Hungary, thus we have no further information as to why certain law faculties did not even try to establish a legal clinic program. Those law faculties that temporarily operated legal clinics faced several difficulties, but the reasons for their cessation can be known only from informal discussion with those involved. For instance, lack of financial support. Some of the clinics-maintained funding for a limited period of time and this when this funding ended the clinic was disbanded. Another reason is the lack of human resources, i.e. the skilled leader of a legal clinic leaves the academic sphere and the faculty cannot find a successor. At the time of writing, only three law faculties out of nine, run a clinic as part of their curricula.

The legal clinic at the University of Pécs Faculty of Law has operated since 2013 as an elective course. The legal clinic course takes two semesters. The first semester is an introductory course which includes the methods of legal clinic, the practice of legal writing and working in groups, introduction to presentation techniques and teaching of ethical rules. The second semester is practice oriented. The students have two options, either work at the Campus Legal Aid Clinic or choose one of the faculty's external partners (e.g. Pécs Regional Court, Regional Court of Appeal of Pécs, Public Prosecutor Office of Baranya county, etc.) and work there with a judge or prosecutor,

23 Judit Tóth: Legal Clinic as a Promising Alternative Instrument in Hungary, Jogelméleti Szemle, 2017/4. szám p. 153.

etc. Therefore, they get an inside look into how these institutions function. In Campus Legal Aid Clinic, law students provide written legal advice to students of other faculties. Before they send their advice to their clients, a tutor - who can be a judge, an attorney, or a professor - will review whether their legal advice is correct or not.[24]

Since 2016, Eötvös Loránd University Faculty of Law have run a Street Law clinic. The clinic works together with an NGO, Streetlawyer Association[25] to provide free legal advice to homeless people and those who live in housing poverty in the capital, Budapest. The course takes one semester and only 10 students can participate. The course is divided into two main parts: theoretical preparation and practice.[26] The theoretical preparation takes one day and includes the sociological characteristics of homelessness, sensitivity towards homeless people, and the most relevant laws, such as rules of infringements or eviction, etc. In the second part, students meet with the clients together with their tutor. Every student has to solve at least one complex legal issue. After the hearing, the students start to find the relevant laws and regulations to provide proper legal advice to the client. During that period, the student maintains contact with the client to collect more information as needed. Finally, after the student has consulted with their tutor, they provide their legal advice to the clients in writing and explain the essence of their advice using everyday language.

24 Legal Clinic at University of Pécs https://ajk.pte.hu/hallgatoknak/jogklinika

25 Streetlawyer Association: http://utcajogasz.hu/en/

26 Street law https://www.ajk.elte.hu/file/TSZ_JOT_utcajogasz_1617_2.pdf

The third legal clinic, which has operated continuously since 2005, belongs to the University of Szeged Faculty of Law and Political Sciences. This legal clinic has the longest uninterrupted history in Hungary. As an optional course, it is divided into three parts (Legal Clinic I, II and III.).[27] The Legal Clinic I has two main parts: preparatory and practical. The preparatory part takes 3 days and includes legal, psychological and communication training. The practical part means (same in all Legal Clinic courses) that students have legal counselling with their clients at least 30 hours per semester.[28] Those students, who enjoyed the legal clinic work during Legal Clinic I, can choose the Legal Clinic II and later III. Since the legal clinic of Szeged has bilateral partnership agreements with local NGOs representing handicapped, unemployed, sick, Roma, homeless people and families students provide legal advice to those who cannot afford the cost of a lawyer. As in the above-mentioned legal clinics, students have to consult with their tutor in each case, and after every "closed" case they have to write a report.

In summary, all of the legal clinics, which are an integral part of the curricula in Hungary are live-client clinics, so the students are not dealing with simulated cases, but with real ones. The legal clinic at the University of Pécs is, on the one hand, an in-house (Campus Legal Aid Clinic), and on the other hand, an externship type of legal

27 Legal Clinic at University of Szeged: http://www.juris.u-szeged.hu/english/legal-clinic/legal-clinic

28 Judit Tóth: Legal Clinic as a Promising Alternative Instrument in Hungary, Jogelméleti Szemle, 2017/4. szám p. 153.

clinic (work with a judge at e.g. Pécs Regional Court).[29] The other two legal clinics (at Eötvös Loránd University and University of Szeged) are also in-house clinics. The common characteristic of these two clinics is that the students provide free legal counselling to marginalized groups and those who cannot afford the cost of a lawyer.

In the last couple of years, legal clinicians have cooperated to strengthen the position of clinical legal education and to exchange information. They organized meetings, workshops and conferences, and published newsletters. In 2015, the ENCLE and in 2017, the PILnet organized a conference in Budapest. Yet, the number of the clinicians is quite small, and the legal education sector is still sceptical concerning alternative educational methods like the legal clinic, but we still can see some improvements.

Social vs. educational goal

As was mentioned above, the legal clinic (movement) has two main purposes: social and educational. The question is, can we place one purpose before the other or do they have the same value and importance? In the author's opinion, they are equally important and must be balanced, but in Hungary generally the educational goal seems to be prioritized. However, since each functioning legal clinic in Hungary deals with live clients' real cases, we cannot say that the social goal is not present in their operation.

29 For further detalis regarding in-house and externship legal clinics, see Roy Stuckey and others: Best Practices for Legal Education – A Vision and a Road Map, 2007, pp. 139-152., https://www.cleaweb.org/Resources/Documents/best_practices-full.pdf

The educational goal includes specialist legal (cognitive) knowledge, lawyering skills and professional responsibility. All of these are crucial elements of the output requirements for graduated students, which were defined in the Decree of the Minister responsible for higher education. We should therefore turn our attention to the social goal of the legal clinic. How could we define the social aim of legal clinics? It appears, when students solve social problems and provide free legal advice to marginalized groups and those who cannot afford the cost of a lawyer, they are providing access to justice for these people. Each legal clinic in Hungary requires its students to give legal advice in writing. None of them allows the students to represent a client in court or in front of any other authority. This means that the majority of legal service is related to the explanation of legal conditions, to public administration, municipal procedures, mediation in conflict and drafting of legal proposals. So, the question is, if students cannot represent their clients and they can give legal advice only in writing, is the social goal of the legal clinic fulfilled? In the author's opinion, yes it does, because these legal services are really important, since these clients do not have access to a lawyer and they do not have the legal knowledge to solve their legal issues by themselves.[30]

> *"The statement of the 2007 London conference of Union Ministers for Education puts it this way: Higher education should play a decisive role in cultivating social cohesion,*

30 Renáta KÁLMÁN: Lengyel-magyar két jó barát, avagy a jogklinika programok összehasonlító elemzése [Pole and Hungarian, Two Good Friends or a Comparative Analysis of the Legal Clinic Programs] In: FEJES Zsuzsanna (szerk.): Jog és Kultúra, Szegedi Tudományegyetem Állam- és Jogtudományi Doktori Iskola, Szeged, 2018, pp. 43-44.

> *reducing inequalities and raising the level of knowledge, skills and competences in society. The legal clinical education is a perfect example of this social accountability of universities."31*

Consequently, the legal service delivered by students, help clients to access justice and provides an opportunity to the students to get an insight into how chaotic the public administration can be and how the institutions interpret the same rules differently. Such legal service improves their emotional skills, critical thinking and also their social responsibility, which are also elements of the output requirements.

The legal clinics have micro and macro goals as well. The micro goal is the development of the student's professional identity, while the macro refers to institutional critique[32] which "may lead to an appreciation for social justice […] and develop the habit of questioning and critiquing the status quo that they encounter."[33] Even though, the two main actors are the client and student, the university is a beneficiary of the legal clinic as well. Through the legal clinic, the university builds networks with NGOs, institutes, other universities at national and international levels, and promotes the social responsibility of the university. [34] Through the introduction

31 Clelia Bartoli: Legal Clinics in Europe: for a commitment of higher education in social justice, Diritto&Questioni Pubbliche, 2016, p. 16.

32 Linda F. Smith et al.: Risks and Rewards of Externships: Exploring Goals and Methods, International Journal of Clinical Legal Education Vol. 24. 2017, pp. 60-61.

33 Ibid. p. 61.

34 Clelia Bartoli: Legal Clinics in Europe: for a commitment of higher education in social justice, Diritto&Questioni Pubbliche, 2016, p. 25. o.

of a legal clinic course, universities could satisfy their social responsibility to the public.

Why should all faculties, who have legal clinic course, focus on the educational goal in Hungary? The Act on the professional activities of attorneys-at-law enumerates those activities,[35] which could be done exclusively by attorneys. This list includes legal representation, legal counselling, document drafting, etc. As a result, the Act creates a monopoly where attorneys are the only professional group who can complete these activities. As mentioned above, the majority of legal services completed by students relate to the explanation of legal conditions, legal counselling and drafting legal documents. Some of these services are also in the list of activities, which can only be done by attorneys. Therefore, legal clinic activities should be part of the curricula of the legal education (legal clinic is an optional course; the students get credits for their work), otherwise, universities and their students would breach the above-mentioned Act, since they act as attorneys. If such clinical activity is part of the students' education, the universities did not violate the law, because its purpose is educational. Although, such Hungarian regulation impedes the work of legal clinics (because it monopolizes legal drafting and legal counselling to attorneys and pro bono work is not widely spread in Hungary, and the underrepresented, marginalized groups cannot afford to hire a lawyer) they still achieve not only their educational, but social purposes as well. However, in Poland, an Act on free legal assistance, which came into

35 Section 2 Act LXXVIII of 2017 on the professional activities of attorneys-at-law

force in 2016, includes students with three years of experience as professionals, who can provide free legal assistance.[36] Such action of the Polish legislator recognized the role and importance of students and legal clinics.

Conclusions

In Hungary, the new Decree of the Minister responsible for higher education defined uniformly the educational output requirements for students. These requirements can be divided into four components: professional (cognitive) knowledge, skill/proficiency, professional attitude, autonomy and competence relevant to responsibility. Clinical legal education can greatly contribute to the accomplishment of these requirements. The students acquire many lawyering skills through their clinical work. It is evident that the traditional way of teaching alone is inadequate to transfer professional skills to students. The universities have to introduce new, practice-oriented teaching methods e.g. mediation, legal clinic, legal argumentation techniques, in order to accomplish those requirements, which were defined in the Decree.

A wide variety of legal clinics exists, so law faculties can choose one which fits into their institution and curricula best. However, there are many hindering factors, which are impeding the growth of clinical legal education in Hungary. Approximately, 210-

36 In January 2016, free legal assistance will be launched throughout Poland https://www.premier.gov.pl/en/news/news/in-january-2016-free-legal-assistance-will-be-launched-throughout-poland.html

240 credits out of 300 come from theoretical lectures, so legal education still belongs to that sector of higher education, where the need for theoretical knowledge is high. Most newly graduated students do not have the skills and knowledge required by the labour market. As the Tuning report already pointed out, the biggest gap between the employers and newly graduated lawyers is that the employers have the ability to apply their knowledge in practice. Cooperation between law faculties and practitioners could solve this problem. If demand meets supply, newly graduated students could find a job more easily. In addition to the curricula, the second factor is the teaching methods. Traditional knowledge transmission teaching is still typical in Hungarian legal education. The strong tradition of textualization makes the spread of alternative educational methods difficult. Furthermore, students get used to being passive characters in public/legal education, since they do not question the curriculum and are afraid to form their own opinion about the legal system. The third hindering factor is the attitude and position of the teachers. In the eyes of students, teachers are an authority figure, rather than a mentor or facilitator.

Despite these hindering factors, three law faculties integrated clinical legal education into their curricula. Other law faculties also had legal clinic courses, but after a few years, each of them ceased to exist for different reasons (e.g. for lack of financial support/qualified teachers). Alternative educational methods are more expensive than the traditional ones, since they need more and special equipment and the professor of the clinic has to participate in special training which means additional financial

burden to the university. The European Union and the Visegrad Fund recognises this problem and provide scholarships in order to help maintain the existing legal clinics and establishing new ones.

Unfortunately, the Hungarian regulation impedes the work of legal clinics, since the Act on the professional activities of attorneys-at-law provides monopoly for a couple of legal activities to attorneys. The Act enumerates these activities, and some of them, e.g. legal counseling, legal document drafting, are also part of the legal clinic's work. Therefore, faculties have to focus on the educational goal of the legal clinic respecting this mandatory monopoly. Every Hungarian legal clinic is a live-client type, so the social purposes of legal clinics' are still present, since students are providing legal assistance to those, who cannot afford the cost of a lawyer.

Summing up, the legal clinic in Hungary is still a new phenomenon, only a small percentage of students participate in it. For example, at the University of Szeged every semester an average of 10 students choose the legal clinic course. In comparison with the U.S., where three-quarters of students participated in at least one legal clinic course, there is room to grow. In the 2017-2018 academic year, 83% of the students participated in legal clinic activity at Harvard Law School.[37] There is a long way to go for Hungarian legal clinics, but the endeavour of the law faculties and the commitment of certain teachers give us a reason for confidence.

37 In-house Clinics: https://hls.harvard.edu/dept/clinical/clinics/in-house-clinics/