

PAUL MCKEOWN*

WHAT IS THE IDENTITY OF EUROPEAN CLINICAL LEGAL EDUCATION?

ABSTRACT. This article will explore whether there is, or can be, a common identity for the clinical legal education movement in Europe, despite differing traditions across the continent. The definition of clinical legal education will be critically analysed exploring the teaching methods and the purported aims of clinical legal education encompassing both the educational and social justice mission.

Different models of clinical legal education will be analysed, such as live-client, placements, policy clinic, public legal education and, perhaps most controversially, simulated legal clinic. Each model of will be evaluated to establish whether it satisfies the perceived identity of clinical legal education. In conclusion, the article will advance the case for a broad notion of clinical legal education within Europe placing the student at the heart of its mission. Clinical legal education should be an inclusive movement, encouraging innovation to address the needs of students and society as a whole.

CONTENT. 1. 1. Introduction – 2. The Identity of Clinical Legal Education in Europe – 3. Do all live-client models conform to our understanding of clinical legal education? – 4. Alternative models of ‘clinical legal education’ (or are they ‘clinical legal education?’) – 4.1. Placement (or externship) model – 4.2. Policy Clinics – 4.3. Public Legal Education – 4.4. Simulated Legal Clinic – 5. Concluding Remarks

* Associate Professor, Northumbria University; President of the European Network for Clinical Legal Education.

1. *Introduction*

Clinical legal education has seen a sporadic development across Europe. The first clinical legal education programme incorporated into the curriculum in the UK was at the University of Kent in 1973.¹ It was not until the millennium that clinical legal education exponentially grew within the UK, with a 1995 survey showing only 8 law schools offering live-client clinics in the UK.² Central and Eastern Europe saw the development of clinical legal education during the 1990s following the collapse of communism which resulted in major reforms to the legal profession.³ Practice-orientated legal education saw law students trained in legal skills and values, and included them in the provision of free legal services.⁴ These initiatives received sponsorship from organisations such as the American Bar Association, the Ford Foundation, the Open Society Institute and the Soros Foundations Network.⁵ Despite the flourishing clinical legal education movement within the UK and Central and Eastern Europe, Western Europe was regarded as the ‘last hold-out’ in the worldwide acceptance of clinical legal education.⁶ However, there has been a growth in clinical legal education throughout the last decade in Western Europe. The Bologna Process which sought to make education systems more compatible, enhance the quality of education and promote the attractiveness of European Higher Education is cited as a catalyst for this growth as integration of clinical legal education within the law school curriculum shared the goals.⁷

¹ J Giddings and others, ‘The First Wave of Modern Clinical Legal Education: The United States, Britain, Canada, and Australia’ in FS Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (OUP 2010).

² R Grimes, J Klaff and C Smith, ‘Legal Skills and Clinical Legal Education – A Survey of Undergraduate Law School Practice’ (1996) 30 *Law Teacher* 44, 63-64.

³ M Berbec-Rostas, A Gutnikov and B Namyslowska-Gabrysiak, ‘Clinical Legal Education in Central and Eastern Europe: Selected Case Studies’ in Bloch (n 1).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ RJ Wilson, ‘Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education’ (2009) 10 *German Law Journal* 823.

⁷ L Hovhannisian, ‘Clinical Legal Education and the Bologna Process’ (2006) 2 *PILI Papers* <<https://www.pilnet.org/wp-content/uploads/2020/04/Clinical-Legal-Education-and-the-Bologna-Process.pdf>> accessed 7 May 2023.

The clinical legal education movement gathered momentum that resulted in the establishment of the European Network for Clinical Legal Education (ENCLE) in 2013. ENCLE aims to support the growth and quality of clinical legal education in Europe through the facilitation of transnational information sharing, fostering scholarship and research, convening conferences, workshops and training sessions and promoting collaboration between individuals engaged in clinical legal education.⁸ By 2016, there were over 100 clinical legal education programmes identified within Europe.⁹ However, this is likely to have been only a fraction of the clinical legal education programmes in existence as there were approximately 76 clinical legal education programmes in the UK alone in 2014.¹⁰ ENCLE reports a network consisting of 120 law clinics throughout Europe and 250 individual members, thus highlighting the strength of the movement.

Whilst clinical legal education programmes are developing, there is not a consensus as to what constitutes clinical legal education. Many define clinical legal education within the context of its development within their jurisdiction. For example, the UK historically had a state funded legal aid system which was ‘at least as comprehensive as any in the developed world’.¹¹ As such, access to legal advice was not a significant issue for most people in society during the formative years of the UK clinical legal education movement. Conversely, clinical legal education was established in Central and Eastern Europe during a significant period of political and social upheaval. Influenced by the US, clinical legal education programmes within Central and Eastern Europe focused on vulnerable and indignant groups.¹² As such, these

⁸ ENCLE, ‘What is ENCLE’ (2020) <<https://encle.org/about-us/what-is-encle>> accessed 7 May 2023.

⁹ C Bartoli, ‘Legal Clinics in Europe: For a Commitment to Higher Education in Social Justice’ [2016] *Diritto & Questioni Pubbliche*.

¹⁰ D Carney and others, ‘The LawWorks Law School Pro Bono and Clinic Report 2014’ (2014) <<https://www.law-works.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf>> accessed 7 May 2023; cf Bartoli (n 2) who identified 11 clinical legal education programmes within the UK.

¹¹ P McKeown, ‘Can Social Justice Values be Taught through Clinical Legal Education’ in C Ashford and P McKeown (eds), *Social Justice and Legal Education* (Cambridge Scholars 2018) 101.

¹² P McKeown and E Hall, ‘If We Could Instil Social Justice Values Through Clinical Legal Education, Should We?’ (2018) 5 *Journal of International and Comparative Law* 1.

countries continued the US tradition of public service through clinical legal education. In Western Europe recent years have seen significant social and political issues. In particular, Western Europe has seen an increase in the migrant population with 23.8 million non-EU citizens living in the European Union on 1 January 2022.¹³ Since Russia's invasion of Ukraine in February 2022, the European Union has received the largest number of people fleeing war since the Second World War.¹⁴ The migrant crisis has resulted in a number of social challenges including housing, employment and welfare which have seen a number of initiatives, including law school programmes, engage in seeking to address the issues.

The European clinical legal education movement is now established and transitioning into its adolescent years. Like any adolescent, it is wrestling with its own identity and what clinical legal education is in Europe, and whether there is a single European identity for clinical legal education. In light of the diverse development of clinical legal education within Europe, this article seeks to address whether a common identity can be articulated for the clinical legal education movement within Europe. This is an important discussion to strengthen the European clinical movement to ensure there is a common understanding when addressing stakeholders such as clients, universities, the legal profession, the judiciary as well as national and European bodies.

2. *The Identity of Clinical Legal Education in Europe*

Justice Potter Stewart stated:

“I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so.

¹³ Eurostat, ‘Migration and Migrant Population Statistics’ (2023) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migration_and_migrant_population_statistics#Migration_flows:_Immigration_to_the_EU_was_2.3_million_in_2021> accessed 7 May 2023.

¹⁴ European Commission, ‘Statistics on migration to Europe’ (2022) <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en> accessed 7 May 2023.

But I know it when I see it...'¹⁵

In many ways, similar statements could be made regarding the definition of clinical legal education. There is no consensus as to the definition of clinical legal education amongst the global movement although many scholars know it when they see it. In its broadest sense, clinical legal education 'is any kind of education that uses interactive teaching methods to teach practical skills...to law students.'¹⁶ Such a definition is likely to encompass any form of skills teaching as it is difficult to envisage skills teaching that is not interactive. However, clinical legal education is more than skills teaching. Clinical legal education develops a student's knowledge and understanding of the law, the legal system, and the society in which it operates. Brayne et al highlight that through 'clinical techniques', students 'develop critical and contextual understanding of the law as it affects people in society. Thus, clinical education is defined as that which aims to achieve these intellectual and educational goals.'¹⁷ Whilst this definition provides an overarching view on what is, or is not, clinical legal education, further clarification could be provided on what constitutes 'clinical techniques'. The definition also omits the development of skills. Brayne et al suggest using clinical techniques with nothing other than the goal of skills development would be merely practical training, not clinical legal education.¹⁸ It would also be remiss to ignore the origins of the modern clinical legal education movement where clinical programmes were housed in 'legal aid clinics' serving low-income neighbourhoods.¹⁹ The early clinical legal education programmes in Australia were also housed in community legal centres.²⁰ The clinical legal education programmes within the US and Australia were formed by individuals with strong notions of public service. As such, notions of clinical

¹⁵ Justice Potter Stewart, *Jacobellis v Ohio* (1964) 378 US 187.

¹⁶ Hovhannisian (n 7).

¹⁷ H Brayne, N Duncan and R Grimes, 'Clinical Legal Education: Active Learning in Your Law School' (Blackstone Press 1998), xiii-xiv.

¹⁸ *Ibid.*

¹⁹ FS Bloch and MA Noone, 'Legal Aid Origins of Clinical Legal Education' in Bloch (n 1).

²⁰ *Ibid.*

legal education and public service became intertwined. Clinical legal education developed different missions; one mission regarding the education of students; the second mission was the provision of a public service and enhancing social justice. The early literature from the US suggested that the educational benefits of clinical programmes were secondary to the community service mission.²¹ The US, through its sponsorship of clinical legal education in Central and Eastern Europe, have therefore influenced the notions of clinical legal education in Europe. Therefore, the elements of clinical legal education include the development of skills and an understanding of the law and its role in society, particularly in relation to indignant and vulnerable groups.

This understanding of clinical legal education can be seen in the definition adopted by ENCLE:

Clinical legal education is a *legal teaching method based on experiential learning*, which fosters the *growth of knowledge, personal skills, competences and values*, as well as *promoting social justice*, by providing pro bono services. Clinical legal education *uses practice-oriented, student-centred, problem-based, interactive teaching methods* including, but not limited to, the practical work of students on real cases and social issues supervised by academics and professionals. These educational activities aim to develop professional attitudes and foster the growth of the practical skills of students with regard to the modern understanding of the role of the socially oriented professional in promoting the rule of law, providing access to justice and peaceful conflict resolutions, and solving social problems.²²

Whilst the definition adopted by ENCLE could be regarded as ‘cumbersome’,²³ it succeeds in articulating the elements of a clinical legal education programme thus

²¹ McKeown (n 11); G Grossman, ‘Clinical Legal Education: History and Diagnosis’ (1973) 26 *Journal of Legal Education* 162, 174.

²² ENCLE, ‘Standards for European Clinical Legal Education’ Article 2(1) (emphasis added) <<https://encle.org/upload/lg/news/ENCLE-Standards-Final-Version-July-2022.pdf>> accessed 7 May 2023; see also STARS, ‘STARS Project Guidelines for Clinical Legal Education’ (2021) <<http://www.lawstars.eu/articolo.aspx?id=273>> accessed 7 May 2023.

²³ Bartoli (n 9) 22.

providing a common identity. However, despite, this definition, there is still scope for discussion on what is, and is not, a clinical legal education programme.

3. *Do all live-client models conform to our understanding of clinical legal education?*

Within his definition of clinical legal education, Wilson identifies five components: academic credit for participation; the provision of legal services by students to actual clients with real problems; those clients are indigent, that they cannot afford the cost of legal representation and/or they come from a disadvantaged, marginalised or underserved community; the students are supervised by a qualified lawyer, preferably an academic who shares the pedagogical objectives of clinical legal education; and the casework is preceded or accompanied by a course including skills, ethics and values of practice, as well as the relevant substantive legal knowledge.²⁴

When many people think about clinical legal education they think about a live-client model; where students advise, and potentially represent, members of the public on legal matters. Whilst the exact manner in which the clinical programme operates is likely to vary between programmes, in essence, the legal clinic operates as a legal practice within the university, either as a component of the law programme or as an extra curricula activity. Some scholars, such as Wilson, above, suggest that clinical legal education must be embedded within the curriculum. Where a project is extra curricula, thus deriving no credit for participating students, then this is 'pro bono' rather than clinical. Students are placed in the role of lawyers typically supervised by a member of academic staff or an external practising lawyer. Students will often acquire substantive legal knowledge from their legal studies, although many live-client clinics specialise in areas not covered by the law school curriculum. As such, students will often be required to utilise and develop their research skills to address the issues raised by their client.

Within a live-client model, students will usually interview clients, research the legal issues relevant to their matter and advise the client on the options available to them.

²⁴ Wilson (n 6) 829–830.

As stated above, some clinical programmes will represent their clients by preparing documents, corresponding with an opponent, and advocating on behalf of the client at any court hearing. It is clear how such a model of clinical legal education is ‘practice-orientated’ given that students assume the role of the lawyer within such a model.

Live-client clinics embrace constructivist principles of learning. The client presents the students with a problem, thus demonstrating a ‘problem-based’ approach, requiring the students to find a solution. Unlike traditional approaches to legal education, where an academic will stand at the front of a lecture theatre and dispense knowledge that students passively acquire, the live-client model is ‘student-centred’. Within this model of clinical legal education, the academic (or supervising lawyer) is not the “sage on the stage” but the “guide on the side.”²⁵ Giddings identifies the various roles assumed by the clinical supervisor as translator; role model; collaborator; mentor; constructive critic; supporter; and builder of reflective practice.²⁶ By adopting the appropriate role at the appropriate moment in the student’s clinical learning journey, the supervisor facilitates the learning by helping the student understand and contextualise the experience. Feedback will foster growth in the students’ legal knowledge, skills development, and level of competence. The supervisor should also help students make sense of the law and how it operates in society. Quigley posits that supervisors should utilise the ‘disorientating moment’ to prompt reflection through critical thinking enabling the student to re-orientate how they perceive and understand the world.²⁷ Whilst many of the experiences within a live-client clinic may fall short of being disorientating, supervisors can still facilitate critical thinking through questioning the student experience. This critical thinking fosters a deeper level of learning about themselves and the world in which they are working.

The question arises as to whether all live-client models are a form of clinical legal education, or whether it is restricted to those programmes advising and

²⁵ Wilson (n 6) 829.

²⁶ J Giddings, ‘It’s More Than the Site: Supporting Social Justice Through Student Supervision Practices’ in Ashford and McKeown (n 11) 46–47.

²⁷ F Quigley, ‘Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics’ (1995) 2 *Clinical Law Review* 37.

representing indignant, marginalised, or vulnerable groups.

As identified above, clinical legal education and notions of social justice are intrinsically linked. The literature on clinical legal education, predominantly emanating from the United States, suggests clinical legal education must include the provision of legal services to indignant, marginalised, and vulnerable individuals or groups.²⁸

The term 'social justice' is often mentioned within the context of clinical legal education yet little attempt is made to define what is meant by the term. Clinical educators refer to social justice with an implicit understanding that everyone is referring to the same meaning. Perhaps, as illustrated, that implicit meaning is the provision of legal services to indignant, marginalised, and vulnerable groups. However, the meaning of social justice has occupied the thoughts of philosophers since ancient Greece.²⁹ In modern theory, normative ethics provides a framework to assist in determining what is 'just and unjust' or what is 'good and bad'.³⁰ Split into three branches, namely: virtue ethics, deontology, and consequentialism, the 'just' or 'good' outcome will depend upon which branch is applied. For example, applying the perspective of virtue ethics, altruism is virtuous trait and therefore altruistic actions are likely to be considered 'just' even if the outcome is 'bad'.³¹ Deontologist focus on the action and consider whether that action is intrinsically 'good' or 'bad'.³² Consequentialists will look for the best possible outcome that makes the world a better place.³³ In essence, different actions and outcomes may be justified depending upon the philosophical perspective; a notion often absent in the literature on clinical legal education.

²⁸ See S Wizner and J Aiken, 'Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice' (2004) 73 *Fordham L Rev* 997; S Wizner, 'Beyond Skills Training' (2001) 7 *Clinical L Rev* 327; JA Cohen and others, 'Legal Education and the Role of Law Schools in Defining and Training Lawyers for Public Interest Practice in the Twenty-First Century' (2000) 3 *NY City L Rev* 139; M Martin Barry, JC Dubin and PA Joy, 'Clinical Education for This Millennium: The Third Wave' (2000) 7 *Clinical L Rev* 1; JC Dubin, 'Clinical Design for Social Justice Imperatives' (1998) 51 *SMU L Rev* 1461.

²⁹ See A Hamedi, 'The Concept of Justice in Greek Philosophy (Plato and Aristotle)' (2014) 5 *Mediterranean Journal of Social Sciences* 1163.

³⁰ McKeown and Hall (n 12), 34–36.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

One area of practice often maligned as lacking in social justice is the business clinic.³⁴ Whilst a form of live-client model, business clinics by their very nature do not directly assist, or perhaps target, indignant, marginalised, and vulnerable groups. As such, business clinics may be ‘deemed at best unconventional, at worst a threat’ to the traditional clinical movement.³⁵ However, the work of business clinics can be justified as a ‘good’ from a philosophical perspective. For example, the majority of business owners are not ‘Bill Gates types’, affluent with power, connections and money.³⁶ The provision of legal advice and assistance to a small business owner is altruistic and an intrinsically good act. Further, local communities are likely to benefit through the services offered by a small business and the employment opportunities it may create, enhancing the local economy and benefiting society as a whole.

Business clinics may have an indirect benefit in assisting indignant, marginalised, and vulnerable communities. Such communities often receive charitable assistance. NGOs, charities and community groups must typically comply with legal obligations relating to structure and governance. Business clinics are able to provide legal advice and assistance thus ensuring that they are sustainable and can continue to benefit the communities they serve.

The social justice imperative of live-client clinics may also be re-conceptualised with a focus on the student rather than the clients. Whilst recognising that ‘talent’ rather than socio-economic background should determine entry into tertiary education, under-representation of those from lower socio-economic backgrounds continues to be a problem within Europe.³⁷ It should be noted that the position varies across different countries within Europe although broadly, trends in North-Western Europe have shown decreasing inequalities since 2000, they have continued to increase in South-Western European countries.³⁸ Eastern European countries have seen a rise in inequalities in

³⁴ E Campbell, ‘Taking Care of Business: Challenging the Traditional Conceptualization of Social Justice in Clinical Legal Education’ in Ashford and McKeown (n 11).

³⁵ Ibid 175.

³⁶ Ibid 179.

³⁷ F van Vught, ‘The EU Innovation Agenda: Challenges for European Higher Education and Research’ (2009) 21 Higher Education Management and Policy 1.

³⁸ J Koucký, A Bartušek and J Kovařovic, ‘Who gets a degree?: Access to Tertiary Education in Europe 1950-2009’

tertiary education reaching their average peak level after the year 2000.³⁹ However, whilst there has been an increase in the number of students from lower socio-economic backgrounds entering tertiary education, inequalities have become more subtle and less discernible as they changed from quantitative to qualitative characteristics.⁴⁰ This means that the inequalities are not necessarily in access to tertiary education, but in the subjects being studied, the prestige of institutions at which students can study and opportunities for graduates in the labour market.

Students from lower socio-economic backgrounds are less likely to attend the prestigious universities and are less likely to have the social capital to aid them in acquiring work placements and employment. This is illustrated in England where the less selective universities take the majority of students from poorer backgrounds.⁴¹ On average, graduates from these universities have lower earnings than graduates of more selective universities.⁴² Graduates of more selective universities have the best chance of becoming a higher earner, regardless of their background.⁴³ One explanation for this disparity is the lack of social capital amongst lower socio-economic groups. Social capital 'is the sum of the resources, actual or virtual, that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalized relationships of mutual acquaintance and recognition.'⁴⁴ Having a share of people from a higher socio-economic group among people from lower socio-economic groups is associated with upward income mobility.⁴⁵ This supports the notion that socio-economic background becomes less of an issue once an individual is at a university with those from higher socio-economic groups. This is likely due to their ability to enhance their social capital whilst at university.

(Education Policy Centre, Charles University 2010) <<http://www.strediskovzdelavacipolitiky.info/download/Whogetsadegree.pdf>> accessed 7 May 2023.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ The Sutton Trust, 'Universities and Social Mobility: Summary Report' (2021) <<https://www.suttontrust.com/wp-content/uploads/2021/11/Universities-and-social-mobility-final-summary.pdf>> accessed 8 May 2023.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ P Bourdieu and LJD Wacquant, *An Invitation to Reflexive Sociology* (University of Chicago Press 1992).

⁴⁵ R Chetty and others, 'Social Capital I: Measurement and Associations with Economic Mobility' (2022) 606 *Nature*

However, students who attend less prestigious universities may need to build their social capital in alternative ways. Live-client clinics may assist individuals in building social capital through exposure to the legal system, and the actors within that system, thus facilitating the establishment of networks that students can exploit to secure future employment opportunities. In summary, the live-client clinic can promote social mobility and therefore in and of itself satisfy the social justice mission.

The case for a live-client model as a form of clinical legal education is well-established. For the reasons set out above, live-client clinics are encompassed within clinical legal education regardless of the nature of work adopted. However, the question arises as to whether the live-client model of clinical legal education is the only model of clinic within the ambit of clinical legal education. For various reasons, such as physical, financial, and human resources or limitations imposed by professional bodies on who can engage in legal practice, many individuals or universities who would like to participate in clinical legal education are unable to establish a live-client model of clinic. Can these individuals and universities offer alternative clinical opportunities without exclusion from the clinical legal education community.

4. *Alternative models of ‘clinical legal education’ (or are they ‘clinical legal education’?)*

Law schools have adopted various models of experiential learning. However, there has been debate about whether these models fall within the ambit of clinical legal education. Such models include placements (or externships), policy clinics, public legal education, and simulated clinics. This is not intended as an exhaustive list but merely examples of projects which may be adopted in addition to, or instead of, a live-client model.

4.1. *Placement (or externship) model*

Clinical legal education should be distinguished from work experience. Whilst work experience is invaluable, due to higher graduate employability rates and possibly

higher incomes,⁴⁶ experience alone is insufficient. As highlighted above, a defining aspect of clinical legal education is the incorporation of reflection to enable students to learn from their experiences and build upon their learning, thus contextualising that experience.⁴⁷

Many universities incorporate some form of work experience within their programmes. Such experience may take many different forms, some of which fall within the definition of clinical legal education. For example, many programmes may incorporate a placement, internships, and externships.⁴⁸ Such opportunities may allow students to work in legal practice at a law firm or legal advice centre. Students may also be offered the opportunity to attend court with a member of the judiciary. Within the UK, a student may enrol on an apprenticeship which by definition incorporates both 'on-the-job' and 'off-the-job' training. As such, there are likely to be significant opportunities for placement whilst at law schools. An advantage for the law school is that placements are less resource intensive than the in-house live-client clinic as the university is not required to provide the physical space and equipment necessary for the project, nor is it required to workload staff to supervise casework.

Many law schools offer students the opportunity to undertake a placement at a law firm or a NGO. Whether such placements constitute a form of clinical legal education is likely to depend upon what the student actually does whilst participating in the placement. For example, if the student is a passive observer shadowing a lawyer, it is unlikely that such a placement would constitute a form of clinical legal education. Whilst the student may acquire some learning, through modelling, it is not student-centred. However, where a student partakes in a more active role, this may constitute a model of clinical legal education, transposing the principles of an in-house live-client model of clinic to an external environment. Where the placement is designed to engage

⁴⁶ A Blackwell and others, 'Transforming Work Experience in Higher Education' (2001) 27 *British Educational Research Journal* 243.

⁴⁷ R Heyler and D Lee, 'The Role of Work Experience in the Future Employability of Higher Education Graduates' (2014) 68 *Higher Education Quarterly* 348.

⁴⁸ For examples of placements, see L Bengtsson, C Thomson and BA Court, 'The Law in the Community Module at Northumbria University – Working in Partnership with Citizens Advice as an Effective Teaching Tool' (2021) 28 *International Journal of Clinical Legal Education* 111; L Donnelly, 'Clinical Legal Education in Ireland: Are Placement Programmes Good Enough?' (2018) 41 *Dublin ULJ* 189; P McKeown and S Morse, 'Litigants in Person: Is There a Role for Higher Education?' (2015) 49 *The Law Teacher* 122.

students with reflective practice, this would constitute a form of clinical legal education. Reflective practice can be undertaken with the placement provider although it is preferable that a member of academic staff, familiar with the educational goals, helps the student reflect upon their experiences.

Critics may suggest that many placements do not promote social justice. Such arguments are premised on the basis that a law firm may not be assisting indignant and/or vulnerable clients. However, this interpretation is a somewhat narrow conception of social justice as outlined above. In particular, students from lower socio-economic backgrounds have the opportunity to build their social capital, enhancing their employment prospects and thus enhancing social mobility.

In many respects, a placement is akin to live-client models of clinical legal education. The university has merely outsourced the practical element allowing students the opportunity to engage in professional legal practice. In some respects, the placement is more authentic as students are in the 'real world' rather than a more protected in-house live-clinic environment. However, there is a risk that students will not be able to take advantage of the learning opportunities as those directly supervising may not, and often will not, be familiar with clinical pedagogy. As such, a placement must be well designed to ensure it is educational.

4.2. Policy Clinics

Students in policy clinics engage in research projects with a view to influencing law reform or policy change. In contrast to a live-client model, where students focus on the law as it is, policy clinics allow students to consider how the law 'can be'.⁴⁹ From a social justice perspective, policy clinics may arguably have a greater impact than live-client clinics, thus aligning with notions of utilitarianism. Live-client clinics must focus on the interests of the individual, which may not align with the interests of wider society. Indeed, it is a professional obligation that a lawyer should 'act freely, diligently, and

⁴⁹ R Dunn, L Bengtsson and S McConnell, 'Building a Policy Clinic Network – CLEO Workshop 13th May 2021' (2021) 28 *International Journal of Clinical Legal Education* 244.

fearlessly in accordance with the legitimate interests of the client'.⁵⁰ This means that lawyers should act in the best interests of their client, regardless of broader issues. For example, if a client wishes to settle their matter rather than challenge a potentially unlawful policy, the lawyer must abide by the client's instructions even where the unlawful policy may continue. Alternatively, the client's case may be morally repugnant, but this should not deprive them of representation.

By contrast, policy clinics focus on the law as a whole and therefore the wider impact their work may have so students 'can see that their work may have a positive impact in generating change'.⁵¹ Dunn et al highlighted that students appreciated the potential wider impact of their research albeit recognising that change can take time.⁵²

Policy clinics are practice-orientated, merely exemplifying a different type of practice. Policy clinics may incorporate both empirical and doctrinal research and therefore draw upon an academic skill set. From an institutional perspective, policy clinics create opportunities for non-practitioner academics⁵³ to engage in clinical legal education. As with live-client clinics, there is a constructivist approach with students responsible for constructing their own knowledge of the law and the context in which it operates. Policy clinic also promotes the development of personal growth, skills competences, and values amongst students. Students develop a broad range of skills including research, oral and written communication, teamwork, and time management.⁵⁴ Students may also be exposed to issues that they have not experienced before thus challenging their knowledge and understanding of the world, particularly interaction between law and society. Such experiences may cause students to question their values and can be 'extremely personally challenging' for many of them.⁵⁵

⁵⁰ International Bar Association, 'IBA Standards for the Independence of the Legal Profession' (1990) <<https://www.ibanet.org/MediaHandler?id=F68BBBA5-FD1F-426F-9AA5-48D26B5E72E7>> accessed 7 May 2023.

⁵¹ L Curran, 'University Law Clinics and Their Value in Undertaking Client-Centred Law Reform to Provide a Voice for Clients' Experiences' (2007) 12 *International Journal of Clinical Legal Education* 105, 108.

⁵² R Dunn, L Bengtsson and S McConnell, 'The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students' (2020) 27 *International Journal of Clinical Legal Education* 68.

⁵³ Academics who do not and have not practised as lawyers.

⁵⁴ Dunn, Bengtsson and McConnell (n 52) 90.

⁵⁵ Curran (n 51) 118.

The opportunity for the student to reflect is the core of what makes policy clinic a form of clinical legal education. Within the policy clinic design, opportunities should be embedded for the student to reflect with guidance from a member of academic staff to prompt critical thinking about their learning and understanding of the legal system.

4.3. Public Legal Education

Public legal education programmes typically involve students educating the public on their legal rights and responsibilities. The most notable example of public legal education is Street Law which was founded in 1972 at Georgetown University by a group of law students wanting ‘to teach ordinary people about law and government using student-centred, interactive teaching methods.’⁵⁶ Street Law projects utilise a range of interactive teaching methods, including negotiations, case studies, civil discussions, and simulations such as mock trials.⁵⁷

Public legal education projects such as Street Law provide students with the opportunity to develop their skills. Students must plan and deliver a public legal education session. This is likely to include research, written and oral communication skills. Students will often work as a team in delivering the session to the audience. As such, there are a range of skills and competencies developed during the course of the project.

Whilst initially a public legal education project may not appear to be practice-orientated, as it lacks individual advice and representation, it is arguable that the role of a lawyer goes beyond representation of the individual client. This is recognised by the International Bar Association who state it is the ‘responsibility of the legal profession... to educate the members of the public about the principles of the rule of law, the importance of the independence of the judiciary and of the legal profession and to inform them about their rights and duties and the relevant and available remedies.’⁵⁸ Public legal education embodies this professional responsibility highlighting the importance of legal literacy in society. Students therefore have the opportunity to exhi-

⁵⁶ Steet Law Inc, ‘Street Law’s History’ (2023) <<https://streetlaw.org/who-we-are/about/history/>> accessed 7 May 2023.

⁵⁷ Steet Law Inc, ‘Approach’ (2023) <<https://streetlaw.org/our-work/approach/>> accessed 7 May 2023.

⁵⁸ International Bar Association, ‘IBA Standards for the Independence of the Legal Profession’ (n 50).

bit the attributes of a lawyer in a similar manner to those undertaking live-client clinic.

Further support for the alignment of public legal education with professional legal practice is found in the activities and websites of law firms. Many law firms will deliver training sessions, inviting clients and prospective clients to attend. Law firms will also prepare and publish briefing notes on new and developing areas of law. These activities, whilst principally a marketing tool, highlight the role of lawyers in educating the public on the law. Students seeking employment may utilise their experience of public legal education to enhance their employability, evidencing their transferrable legal skills and an ability to align with the ethos of a prospective employer in delivering training and publishing updates.

Social justice is also embedded within public legal education projects, both in terms of the community and the students participating in the project. Grimes et al (2011) highlighted how Street Law helped to break down the racial barriers caused by apartheid by providing an opportunity for school children from black and white communities to share their experiences and debate important societal issues.⁵⁹ From a student perspective, Street Law exposes students to social issues and may engage them with members of society they have not previously encountered. This is espoused by MacDowell who stated that Street Law provided a 'powerful reality check'.⁶⁰

Once again, this highlights the important role of the academic with a public legal education project that goes beyond checking the student's work. An academic should facilitate a critical reflection on the subject matter of the students' project. Whilst most projects may not have the significance of breaking down the barriers of apartheid, the projects will evoke an appreciation for the impact of the law and how it regulates and governs members of society. Students may experience a 'reality check' gaining an appreciation for the issues experienced by groups they address within their project. As such, the students can contextualise and understand the legal system in which they operate.

⁵⁹ R Grimes and others, 'Street Law and Social Justice Education' in Bloch (n 1).

⁶⁰ EL MacDowell, 'Law on the Street: Legal Narrative and the Street Law Classroom' (2008) 9 Rutgers Race and Law Review 285, 287.

4.4. Simulated Legal Clinic

Perhaps one of the most controversial models is simulated legal clinics whereby students engage with simulated scenarios and exercises. Simulated clinic may form part of an introductory or preparation programme for a live-client model. This has been identified by scholars as a matter of good practice in providing students with foundational knowledge before commencing a live-client experience.⁶¹ However, can a stand-alone simulated legal clinic be considered a form of clinical legal education?

Simulated clinics may not accurately address the realities of professional legal practice. This argument appears to garner support from the Solicitors Regulation Authority, the regulator of the solicitors' profession in England and Wales, who recognise working in a law clinic as a form of qualifying work experience.⁶² However, the Solicitors Regulation Authority do not recognise simulated legal services as a form of qualifying work experience highlighting that qualifying work experience must involve 'real life work' to enable prospective solicitors to experience 'work in practice, the challenges they face and to real clients.'⁶³ Whilst recognising the value of clinical legal education, it is misconceived of the Solicitors Regulation Authority to recognise clinical legal education as a form of qualifying work experience if the criteria is based upon the realities of professional practice. Even within a live-client clinic the environment is likely to be much more controlled than that of professional practice. Students are likely to experience a lower caseload and significantly higher levels of supervision within a clinical setting than that of professional practice. If the rationale relates to the development of competencies, this can be done within a simulated legal clinic. This can be contrasted with the American Bar Association who recognised the importance of simulated legal training stating:

⁶¹ Wilson (n 6) 829.

⁶² Solicitors Regulation Authority, 'Qualifying Work Experience for Candidates' (2023) <<https://www.sra.org.uk/become-solicitor/sqe/qualifying-work-experience-candidates/>> accessed 7 May 2023: Prospective solicitors must complete a period of two years qualifying work experience to qualify for admission to the roll of solicitors in England and Wales. Qualifying work experience provides experience of 'real life legal work' as well as the 'opportunity to develop some or all of the competences needed to be a solicitor'.

⁶³ Ibid.

While even well-structured law school clinical programs would rarely be able to duplicate the pressures and intensity of a practice setting, law schools provide a unique opportunity for exposing students to the full range of these practice skills, an opportunity that might not be readily available in actual practice. Moreover, the organized instruction in these skills, in a *simulated* or live-client context in law schools, enables students to relate their later practice experience to concepts that they have learned in law school, just as students are able to place the substantive knowledge that they acquire after law school in the framework of the concepts they have learned in their substantive courses.⁶⁴

Ultimately, a simulated exercise will only be as realistic as those involved in the exercise can make it.⁶⁵ Whilst it is recognised that a real-life experience cannot truly be replicated due to the vagrancies of real-life clients, students are still able to develop the skills and competencies necessary for a career in professional legal practice including oral and written communication, research, case and time management, and teamwork. The Solicitors Regulation Authority merely require the opportunity to develop two competencies for an experience to count as qualifying work experience.⁶⁶ As a well-planned simulated experience would provide such an opportunity, it is unclear why a simulated experience would not count as qualifying work experience.⁶⁷

If simulated legal clinics are incorporated within clinical legal education, should mootings and other skills-based teaching sessions also be part of the clinical movement? Clinical legal education is more than practical skills teaching and therefore what broader

⁶⁴ American Bar Association, 'Legal Education and Professional Development- An Educational Continuum: Report of The Task Force on Law Schools and the Profession: Narrowing the Gap' (American Bar Association, July 1992), 234-235 (emphasis added) <<https://www.corteidh.or.cr/tablas/28961.pdf>> accessed 7 May 2023.

⁶⁵ J Boersig, J Marshall and G Seaton, 'Teaching Law and Legal Practice in a Live Client Clinic' (2002) 6 Newcastle L Rev 51, 58.

⁶⁶ Solicitors Regulation Authority (n 23).

⁶⁷ It should be noted that qualifying work experience must include the provision of legal services. Section 12(3) of the Legal Services Act 2007 defines legal activity as 'an activity which is a reserved legal activity...and (b) any other activity which consists of one or both of the following – (i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes; (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes.' As such, only live-client models of clinic are likely to count as qualifying work experience.

issues form part of a simulated legal clinic, after all, where is the social justice?

Those who oppose the inclusion of simulated legal clinic within the umbrella of clinical legal education may highlight an inability to promote social justice. Boersig et al suggest that live-client clinics provide ‘an understanding of broader social justice issues’ as clients ‘are drawn from vulnerable groups’ thus providing ‘powerful social insights into the broader social issues that face the law’.⁶⁸

It is however possible that a well-designed simulated legal clinic can provide for powerful social insights, akin to or perhaps greater than a live-client clinic. A live-client clinic is limited, or at least should be, in the type of cases it can accept. Some matters are likely to be too urgent or too complex for students. The educational benefit of live-client clinics should always be balanced against the interests of client. The supervising lawyer will owe the client a duty to act in their best interests, which may create a tension with the educational mission of clinical legal education. For example, if a client is homeless, it may not be in their best interest to allow students the time to undertake the necessary research and strategise an appropriate route to securing suitable accommodation. If the supervising lawyer were to accept such a case, it is likely that they would need to be directional in their approach to the case, thus under-mining notions of student-centredness. However, it is plausible that a well-crafted simulated case could provide a powerful insight into issues such as homelessness and the allocation of social housing. Students would have the opportunity to engage in the law around homelessness and social housing, exploring who is and is not entitled to assistance and the equity of distribution of social housing. If such simulated cases were supplemented with opportunities to discuss their findings and debate the issues, students would be exposed to social issues that face the law.

As with other models of clinical legal education, the educational opportunities are a matter of design. Academics can build opportunities into a simulated legal clinic prompting reflection. This may be easier for academics who have practised the law as they can draw upon their experiences, whilst maintaining confidentiality, to prepare realistic scenarios to facilitate deep levels of reflection. Even academics who have not practised the law could prepare a scenario based upon legal issues within the news. This

⁶⁸ Boersig, Marshall and Seaton (n 65) 66.

may also have the benefit of bringing the scenario to life for the law student.

Finally, there should also be an appreciation that not all students have the ability to commit to a live-client clinic. Such clinics raise issues around professional responsibility to the client. Any student who acknowledges that they cannot commit to this responsibility should be applauded, as this is a sign of professionalism in itself. For example, students may need to work or have family commitments making it impossible for them to devote the requisite time to a real client. It is therefore imperative that opportunities are offered within the curriculum for these students to develop their professional knowledge, skills, competences, and values.

5. *Concluding Remarks*

I know it when I see it; what is *it*?

There are common threads running through the models of clinical legal education set out above enabling an observer to distinguish clinical legal education from other forms of teaching and practical experience. Perhaps the starting point is to dissect the terminology, clinical legal education.

‘Clinical’ can be defined as ‘of, relating to, or conducted in or as if in a clinic’.⁶⁹ A ‘clinic’ is defined as ‘a class of medical instruction in which patients are examined and discussed’ or is ‘a group meeting devoted to the analysis and solution of concrete problems or to the acquiring of specific skills or knowledge’.⁷⁰ This definition highlights the first hallmark of clinical legal education in that it must involve people, problems, skills and knowledge.

‘Legal’ is uncontroversial, and merely distinguishes legal education from other forms of clinical teaching.

The final aspect is ‘education’, and it is this aspect which distinguishes clinical

⁶⁹ Merriam-Webster, ‘Clinical’ (2023) <<https://www.merriam-webster.com/dictionary/clinical#:~:text=Medical%20Definition-,clinical,and%20treatment%20of%20living%20patients>> accessed 8 May 2023.

⁷⁰ Merriam-Webster, ‘Clinic’ (2023) <<https://www.merriam-webster.com/dictionary/clinic>> accessed 8 May 2023.

legal education from other activities such as skills training and mooting. The methodology of clinical legal education embodies notions of deep levels of reflection. Clinical educators utilise real world issues, whether actual or simulated, to prompt students to reflect on the law, the legal system and wider society. Whilst such reflection may not be transformative, it should provide students with an opportunity to contextualise their understanding and appreciate how the law interacts with society. Student may also reflect upon their own performance to enhance their knowledge and skills development.

At the heart of clinical legal education is the student, after all, it is a 'student-centred' methodology. Within the design of any clinical legal education project, consideration must be given to student outcomes such as their learning and employability. The various models of clinical legal education, if designed correctly should enhance a student's knowledge and understanding of the law and society, including the impact of the law on society. The knowledge, skills and attributes acquired through clinical legal education should enhance employability. Clinical legal education should also offer students from lower social economic backgrounds the opportunities to enhance their social capital, growing networks which should enhance their employability and earning potential. As such, clinical education promotes social mobility.

Whilst it is acknowledged that clinical legal education and social justice are historically intertwined, a broader pluralistic approach should be adopted. In reality, most clinical opportunities will involve engagement with indignant, marginalised and vulnerable groups. Clinical legal education projects are likely to be developed in areas of unmet need and therefore there is a symbiotic relationship between clinical legal education and underrepresented groups. Clinical legal education may, or may not, provide a transformative experience for the student. However, it should educate them on the law in action.

However clinical legal education is defined in Europe, it should be broad and inclusive. Adopting a narrow and exclusionary interpretation risks stifling innovation. The ability to innovate in clinical legal education creates the opportunity adapt changing societal pressures and implement high quality learning opportunities.