

5.1 Introduction

This chapter comprises of a literature review that identifies themes arising from research on clinical legal education. Existing evidence relating to clinical pedagogy is synthesised to create a web of knowledge. I also draw on insights gained from my doctoral research and my experience as a clinic supervisor within Northumbria Law School's Student Law Office. An initial systematic literature search identified relevant factors that clinicians should take into consideration when planning to establish, develop and sustain clinical programmes. The results of that initial review led to the development of a map of the identified factors. The continued expansion of the global clinical movement and the need for clinic resources such as a handbook on clinical legal education necessitated a further review. The purpose here is to determine the extent to which research has been undertaken in the field; provide a rationale and justification for continued engagement, expansion and sustenance of all dimensions of research in the field; and assess what is known and outline what is not yet known.¹ I have structured this chapter in terms of specific thematic examples gleaned from a review of clinical scholarship. Whilst the establishment and sustainability of clinical programmes falls outside the purview of this chapter, readers will find the consideration of certain influential factors in the establishment and sustainability of a clinic, a common thread running through the chapter.

With that said, I briefly consider the importance of a clinical component within the legal education curriculum for the purposes of context. Reviewed clinical scholarship suggests that clinical programmes can help law students gain practical lawyering skills essential for legal practice and at the same time providing a platform upon which members of the community can access free legal advice.² The clinical scholarship I reviewed describes a global clinical movement in motion; sweeping across five continents and elucidating the increasingly important role experiential learning plays in the education of students. In providing the reader with relevant information on the development of the Global Clinical Movement, Bloch states the following:

¹ Tribe Mkwebu, 'A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship' (2015). *International Journal of Clinical Legal Education*. 22(3). 238-274.

² Tribe Mkwebu, 'Unpacking Clinical Scholarship: Why Clinics Start and How They Last' (2017). *Asian Journal of Legal Education*. 4(1). 33-46.

“...a momentum has begun to develop that [which] has helped sustain existing clinical programs and ease the path toward institutionalizing clinical education. In other words, the global reach of clinical legal education has aided and facilitated its growth and acceptance.”³

Encapsulated in this quotation is the fact that many, myself included, accept and firmly believe that the benefits of clinical legal education transcend borders. Many clinicians all over the world try to make legal academics and the legal profession more permeable to the advancement of social justice and the preparation of students for law practice. A great deal of clinical scholarship has focused on the importance of clinical legal education in educating future lawyers. Clinicians, in the main, acknowledge the wisdom if not the necessity of integrating a clinical component within the mainstream legal education curriculum. Sometimes, it is easy to believe that we understand why clinics are formed and how they are developed, justifying our understandings by calling it common sense. Consequently, we end up not engaging in a systematic⁴ way to understand our field and how the establishment and sustainability of clinical programmes can be influenced by a consideration of certain topical issues that I raise below.

The thematic literature review presented here is organised around five themes. First, universities have a responsibility to model curriculum requirements that should support a teaching and learning environment where ours and our students' mental health and emotional wellbeing should be supported. With the wellbeing of students and staff located within the broader contemporary debates currently taking place within the sector, issues associated with wellbeing are addressed. Second, consideration of reflection and reflective practice within a clinical pedagogy is given to determine the extent to which this important element of clinical pedagogy can and should be situated within the cycle of experiential education. Considering the fact that reflection, by definition, is an intimately personal experience, the challenging nature of assessing reflection is highlighted and the question on whether or not reflection should be assessed within a clinic setting is addressed. Third, the scale at which the clinic nurtures a contemporary environment that is highly conducive to developing skills for clinic students is examined. The extent to which the clinic helps students to enhance their employability opportunities, while also providing them with practical, hands-on experience of the kind of activities they will be undertaking once they graduate and enter the professional world is reviewed. Fourth, the importance of clinic students being exposed to social justice is discerned and the inherent tension between the service and education missions of clinical

³ Frank S. Bloch (Ed.). *The Global Clinical Movement: Educating Lawyers for Social Justice*. Oxford University Press. (2011). xxiii.

⁴ Angela Boland, Gemma Gerry and Rumona Dickson (Eds.). *Doing a Systematic Review: A Student's Guide*. London: SAGE Publications. (2014).

legal education is discussed. Fifth, the extraordinary pervasiveness of regulation and the number of questions rising from the regulatory framework within a clinic setting is explored.

5.2 The emotional wellbeing of students and academic staff

Understanding and reacting to the emotional wellbeing of students and staff is a growing challenge, and one which needs greater consideration and exploration as evidence below shows. As seen below, students may not find the transition to university life a straightforward one. For context, I make references to the contents of a House of Commons briefing paper,⁵ the conclusions of a study undertaken in 2015 by a United Kingdom based think tank,⁶ the Institute for Public Policy Research and the findings from a study by the Brain and Mind Research Institute (BRMI), University of Sydney.⁷ I argue that the evidence gleaned from these studies should prompt universities, researchers and clinicians to dedicate a significant portion of their time, amidst teaching commitments, research responsibilities and administration roles, to find out more about strategies to deal with emotional distress amongst students and staff. As highlighted below, such research insights would undoubtedly support a detailed operational data from which the university and the law academy can continually review and improve the emotional wellbeing and mental health needs operational processes and support services. As a backdrop to the research to date on wellbeing, I explore certain factors in teaching and learning that I think might lead to decreased emotional wellbeing resulting in mental health concerns such as stress, depression and anxiety. Next I identify, review and appraise current research/evidence on this important topic before proffering suggestions for further research on combating the scourge that mental health illness within higher education has become.

In this section, I examine multileveled-intertwined interactions between a tutor and a student that can encourage imbalanced tutor-student power relations leading to decreased emotional wellbeing of students, be it in other teaching and learning contexts or indeed within the clinic itself. I acknowledge that the relationship between a tutor and a student in a clinic is very different from other teaching and learning contexts. However, the case I make here is that the stricter the relations of social control or audit are in the law school, the more difficult it would be developing a pedagogy that incorporates a clinic element to it. This is more apparent in situations where a clinic supervisor's dominant function coincides with a clinic supervisee's

⁵ Carl Baker, Mental Health Statistics for England: Prevalence, Services and Funding, House of Commons Library (Briefing Number 6988, 25 April 2018).

⁶ Craig Thorley, (2017). Not by Degrees: Improving Student Mental Health in the UK's Universities, IPPR. www.ippr.org/publications/not-by-degrees. (Accessed 4 January 2019).

⁷ Norm Kelk, Georgina Luscombe, Sharon Medlow and Ian Hickie, (2009). *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers*, BMRI Monograph 2009-1, Sydney: Brain & Mind Research Institute.

most vulnerable and painful function.⁸ Based on my experience, my observations, interviews and document analysis from an empirical study I undertook as part of my PhD, arguably, clinicians tend to bring out the best in students. However, where lines of deference are clearly marked students would certainly suffer more from obstinacy and uncompromising attitude of the domineering supervisor, who may be convinced in his or her rightness. A relationship with clinic students can be stimulating and fruitful if students are allowed room for compromise and control of their casework, albeit under supervision. Clearly, the need for any clinic to deliver a service which meets the needs of clients will on occasions require a supervisor to intervene and take control. However, constantly picking through the shortcomings of clinic students is a recipe for distress. Imbalanced tutor-student power relations without justification in terms of service delivery are a potential impediment to clinic creation and sustainability. It would be a fertile ground for emotional distress on the part of my students for me not to hold in the same regard their favourable opinions on how they think they should conduct their welfare benefits caseload. Being quite hierarchical in nature would create tension between students and staff and any attempts at trying to free up the processes required of universities to establish and sustain clinical programmes. Deference attracts a strong resistance and feelings of abhorrence on the part of students, potentially leading to emotional distress and mental health problems.⁹

In my welfare benefits law firms within the clinic, I make my students aware, from the beginning of their Student Law Office experience, that our clinic relationship will be based on an 'unwritten learning contract' over questions of content, pacing and their learning experiences. In addition, I make them appreciate the fact that their performance contributes to the overall ability to solve what would be a difficult problem for a client. Little input from students regarding the nature of clinical legal education and the benefits such programmes bring to their legal training may cause feelings of isolation amongst students and may lead to emotional distress. Lynn, a former clinic student at Northumbria has pointed out that "clinical legal education is a partnership and allows us to learn from each other rather than the hierarchical approach that is typical of most learning."¹⁰ Lynn's quotation encapsulates one of the attributes a clinic student working in a clinic must have, i.e. the ability and willingness to forge a student-supervisor partnership. My observations from my own supervision is that students who work in a clinic are generally enthusiastic about the experience. They are self-motivated and often highly committed to the work. Thus, such views by students engaged in clinical programmes

⁸ Haider Ala Hamoudi, 'Toward a Rule of Law Society in Iraq: Introducing Clinical Legal Education into Iraqi Law Schools' (2005). *Berkeley Journal of International Law*. 23. 112-136.

⁹ Serge A. Martinez, 'Law Clinics in Taiwan: Can Clinical Legal Education Succeed in this Civil Law Jurisdiction with an Undergraduate Legal System?' (2012). *National Taiwan University Law Review*. 7. 343-384.

¹⁰ Mark Lynn, 'Student Law Office Conference: A Platform for Student Engagement with Clinical Legal Education' (2005). *International Journal of Clinical Legal Education*. 19. 69-73. 73.

would help in reducing feelings of disenchantment. Every student in the role of a legal representative must bear the practical responsibility for the resolution of their clients' cases, albeit under supervision and such a responsibility can be overwhelming.¹¹ Thus, a clinic student who is invited into the relatively uncharted waters of instructions-taking and advice-giving must do so with a safety net of support structures involving preliminary preparation and close supervision.¹² Students must be provided with the opportunity to take greater control of their future learning as they test for themselves the best ways to approach issues and problems in the cases they handle but at the same be equipped to be resilient. In so doing, students will be able to develop a framework for how they would approach the need for ongoing learning and development whilst at the same time serving the best interests of the client.

Students' enthusiasm or lack of in clinic casework would normally have an impact on the development of clinical legal education.¹³ Thus, input into clinic work,¹⁴ the notion of practical experience,¹⁵ disenchantment with the traditional method of teaching law,¹⁶ (sometimes) lack of module credit, student autonomy¹⁷ and inadequate time for client contact and work¹⁸ have all been found to be influential in either promoting or impeding the creation and sustainability of clinical programmes but may also add to emotional distress. The enthusiasm of law students for taking clinical programmes may be negatively impacted upon if it is not offered as a credit-bearing module, the student teacher ratio is too high and students not involved in the selection of cases.¹⁹ Students working at Rijeka Law Clinic lacked enthusiasm for the live client work carried out at the clinic because the clinical component was never incorporated into the grading scheme.²⁰ Students had less incentive to participate in a programme that would not contribute to the final grading of their law studies. However, feelings of revulsion caused by undertaking clinic work that has no credit bearing is not universal. Some students from non-credit-bearing clinic modules may find having undertaken such a module useful in gaining

¹¹ Jeff Giddings, 'Contemplating the Future of Clinical Legal Education' (2008). *Griffith Law Review*. 17. 1-26.

¹² *ibid.*

¹³ Shelley A. M. Gavigan, 'Twenty-Five Years of Dynamic Tension: The Parkdale Community Legal Services Experience' (1997). *Osgoode Hall Law Journal*. 35. 443-474.

¹⁴ Lynn, (n 10).

¹⁵ Lawrence Donnelly, 'Clinical Legal Education in Ireland: Some Transatlantic Musings' (2010). *Phoenix Law Review*. 4. 7-20.

¹⁶ Jason M. Dolin, 'Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession' (2007). *California Western Law Review*. 44(1). 219-255.

¹⁷ Cath Sylvester, Elaine Hall and Jonny Hall, 'Problem Based Learning and Clinical Legal Education: What can Clinical Legal Educators Learn from PBL?' (2004). *International Journal of Clinical Legal Education*. 6. 39-63.

¹⁸ Bruce Lasky and M. R. K. Prasad, 'The Clinical Movement in South East Asia and India: A Comparative Perspective and Lessons to be Learned' In: Frank S. Bloch. (Ed.). *The Global Clinical Movement: Educating Lawyers for Social Justice*. Oxford University Press: USA. (2011). 38-44.

¹⁹ Romulus Gidro and Veronica Rebreanu, 'Four Years of a Romanian Juridical Clinic 1998-2002' (2005). *International Journal of Clinical Legal Education*. 7. 49-47.

²⁰ Steven Austermler, 'ABA/CEELI's Clinic Programs in Croatia' (2003). *International Journal of Clinical Legal Education*. 3. 58-66.

experience that they may find difficult to obtain outside of the clinic. Nicolson suggests that it is about providing opportunities for connecting the “aspirations of law students with professional ideals (justice, service, fairness)...” when students engage in clinic casework.²¹

Having considered the emotional wellbeing of students the mental health of clinic supervisors is equally important to explore too. From my own experience as a lecturer and a supervisor positive affective states such as joy, happiness, vigour and positive mood would contribute to improving my own emotional wellbeing. Staff members who have good levels of wellbeing would, generally, feel that life is in balance and that they can generally cope well with challenges. They feel motivated and engaged. They feel resilient and are able to deal effectively with daily troubles that come with academic life, as well as have the ability to bounce back from life’s many challenges. When supervising students dealing with complex areas of law and juggling a multitude of different tasks and demands, it is important that we are given the right emotional and practical support so that we can in turn support and promote the emotional wellbeing of our students.

The view that clinical innovations within the broader traditional legal education curriculum are mere proxy for a money generating scheme²² is a typical constraint in the establishment and sustainability of a clinical pedagogy and can be frustrating for clinical staff. Schneider²³ posits that the introduction of a new component into an existing curriculum normally creates tension within an educational establishment. Krasnicka²⁴ has noted that it is not always easy to establish a new clinical programme at a law school where it is difficult convincing authorities that clinical legal education is an excellent opportunity for the students to get a sense of law in practice. Likewise, one of the impediments to the creation of the clinical programmes and the viability of existing ones is faculty inertia in which some colleagues in the law academy may simply not have much interest and enthusiasm in a clinical pedagogy.²⁵ Resistance to clinical legal education by the traditional law faculty and the total control of the practice of law by the Bar Association Act 1972 in Jordan severely restricted the scope of clinical legal education in that jurisdiction.²⁶ Thus, scepticism by university authorities and the traditional

²¹ Donald Nicolson, ‘Problematizing Competence in Clinical Legal Education: What Do We Mean by Competence and How Do We Assess Non-Skill Competences? Special Issue: Problematizing Assessment in Clinical Legal Education’ (2016). *International Journal of Clinical Legal Education*. 23(1). 2.

²² Martha Skrodzka, Joy Chia and Eddie Bruce-Jones, ‘The Next Step Forward: The Development of Clinical Legal Education in Poland through a Clinical Pilot Program in Bialystok’ (2008). *Columbia Journal of East European Law*. 2(1). 56-93.

²³ Elizabeth Schneider, ‘Political Interference in Law School Clinical Programs: Reflections on Outside Interference and Academic Freedom’ (1985). *Journal of College and University Law*. 11(2). 179-214.

²⁴ Isabela Krasnicka, ‘Legal Education and Clinical Legal Education in Poland’ (2008). *International Journal of Clinical Legal Education*. 13. 47-55.

²⁵ Peter Hoffman, ‘Law Schools and the Changing Face of Practice’ (2012). *New York Law School Law Review*. 56(2). 203-232.

²⁶ Nisreen Mahasneh and Kimberly A. Thomas, ‘Learning from the Unique and Common Challenges: Clinical Legal Education in Jordan’ (2012). *Berkeley Journal of Middle Eastern and Islamic Law*. 5(1). 1-38.

members of the academic staff exacerbated by strong beliefs in the traditional lecture/seminar method as the single educational tool in the overall education of law students can be an inhibiting and distressing factor when planning to set up a clinic. It has been suggested that the older the university is and the length of time one has taught at such an institution, the bigger the chance of having a faculty that sees clinical legal education as untested and unorthodox²⁷ and therefore justifying part of a faculty's resistance to change. The view that clinical programmes are new, untested, expensive²⁸ and merely money generating projects would impede efforts to sustain clinical programmes that are already in existence and efforts to foster new ones and be fertile grounds for emotional distress amongst the clinical staff. Writing about the law clinic at Seattle University, Mitchell states that:

*"In the past years, this clinic was perceived as an appendage to the budget, and a very expensive appendage at that. Many saw the clinic as lacking intellectual rigour, smacking of the notion of a trade school, and serving as a refuge for the less academically capable who took the clinic in an effort to avoid the difficult courses."*²⁹

To some extent, the perception here is one which applies in particular to the United States of America where clinic often forms a key part of pre-qualification skills-based training. However, two complementary aims in clinical legal education are the promotion of professional skills training through the improvement of the quality of law practice and the support of the law school involvement in the public service delivery in which the standards of professionalism and public responsibility are raised. According to Bloch, "clinical programmes engage law students in experiential learning of various lawyering skills and values through active participation in some type of public service activity, such as a legal aid clinic."³⁰ It is therefore essential that the interpretation of the lawyering profession within a legal education curriculum pays critical attention to the interplay between theory and practice in educating future lawyers.³¹ Literature has revealed that sometimes the favourable opinions of the junior members of staff are not normally held in the same regard as those of their senior colleagues, particularly where legal academies are quite hierarchical in nature.³² Efforts at preserving the

²⁷ Hamoudi, (n 8). Referring to Iraq, Hamoudi noted that the dean of one of the targeted law school and several faculty members expressed their belief that clinical legal education methodologies were untested and unorthodox and therefore not worthy of the university's high standards and expense.

²⁸ Mutaz Qafisheh, 'The Role of Legal Clinics in Leading Legal Education: A Model from the Middle East' (2012). *Legal Education Review*. 22(1). 177-198.

²⁹ John B. Mitchell, 'And then Suddenly Seattle University was on its way to a Parallel, Interactive Curriculum' (1995). *Clinical Law Review*. 2(1). 1-36. 5.

³⁰ Frank S. Bloch, 'The Case for Clinical Scholarship' (2004). *International Journal of Clinical Legal Education*. 4. 7-21. 8.

³¹ Alexander Scherr, 'Lawyers and Decisions: A Model of Practical Judgement' (2002). *Villanova Law Review*. 42(1). 161-279.

³² Hamoudi, (n 8). Any attempts at trying to free up the processes required of universities to establish and/or sustain clinical programmes in a law school where deference to tradition is the norm would be met with a strong resistance and feelings of abhorrence, which might lead to emotional distress on the part of the clinician.

status quo will stifle any efforts at establishing and expanding clinical programmes and may be a cause of distress amongst the reformists. The review demonstrates that where there is a strong belief amongst the more traditional academics in the traditional model of legal education, in which students learn in passive and non-interactive manner, the creation and sustainability of a clinical programme would be difficult and may lead to emotional distress on the part of clinicians.

Enthusiasm among the retained clinical staff is as important for the success and expansion of a clinical programme as is getting sufficient resources and giving staff appropriate terms and conditions. Hiring conditions within an institution can easily extinguish the opportunity for enthusiasm particularly when an inferior status is accorded to clinical staff.³³ The emotional wellbeing of clinic staff will be affected if they do not to enjoy the same compensation, status, or job security as their *normal* law school or faculty academic colleagues.³⁴ Law faculties may not have the necessary teaching staff to commit to the clinic on a fulltime basis. Clinicians may still conduct their clinical programmes in addition to their regular teaching workload. This may lead to feelings of emotional distress and problems of mental health. Wilson has noted that clinical legal education requires smaller numbers of students per faculty member to provide quality supervision of student work and competent representation of client.³⁵ Wilson's view suggests that due diligence in case handling requires close supervision of each student from the initial attendance by a client, through to the identification of the legal issues presented in the client's case, up to carrying out research to inform practical legal advice and representation. Therefore, a low student-to-faculty ratio provides a good platform for these processes to be achieved successfully. It generates interest within the clinical faculty, allows a student to receive more individualised attention from their supervisor and inadvertently promotes performance and staff wellbeing. Conversely, a high student-to-faculty ratio caused by the large size of students entering law school classes may inhibit the successful establishment of clinical programmes within law schools.³⁶ Any efforts in creating a law clinic where there is already a high student-to-faculty ratio and an additional burden on the already substantially overtaxed members of the clinical faculty may be met with lack of enthusiasm and a decrease in the emotional wellbeing of staff.

³³ Dave Holness, 'Improving Access to Justice through Compulsory Student Work at University Law Clinics' (2013). *Potchefstroom Electronic Law Journal*. 16(4). 327-349.

³⁴ *ibid.* 335-336.

³⁵ Richard J. Wilson, 'Western Europe: Last Holdout in the World Acceptance of Clinical Legal Education' (2009). *German Law Journal*. 10(6 and 7). 823-846.

³⁶ Hamoudi, (n 8).

Lack of incentives for the appointed clinical staff such as reduced teaching loads has an impact on the enthusiasm of the clinical staff³⁷ and may be a source of mental health problems for the clinician. The call for frequent publication and the requirement to have attained a PhD by a certain period should normally be viewed as one of the few methods available for every academic member of staff to demonstrate academic talent and boost opportunities for career progression. However, this can be problematic for certain members of the clinic team who may have just entered academia and have little or no training in undertaking research and may not have had the opportunity to publish work in academic journals whilst they were in legal practice. This may impact on the emotional wellbeing of clinicians and can cause substantial distress. Where an employer insists on having members of the academic staff getting publications into academic journals and attaining PhDs by a certain period, this may lead to anxiety and distress if the call is taken by clinicians as a *publish or perish* type of death knell. Of course such requirements to *publish* and the resultant effect of *perishing* if the former has not been accomplished are context-specific. However, even where such a requirement is rigidly enforced, there is absolutely no need for any clinician to feel isolated and to doubt their ability to write and publish. Clinicians can still argue for a wider definition of scholarship than their traditional academic colleagues by pointing out in written articles not only the broad social and professional goals of their clinic but the richness and complexities of their clinical methodologies in addressing issues presented by their clinic clientele, legal education scholarship, legal practice, regulations, ethics, standards, law in context and indeed empirical legal research. If clinicians preoccupy themselves with trying to distinguish between writing about their clinical pedagogy and the traditional law teaching and not publish, there is a likelihood that they would be overlooked at the time of promotion followed by an almost unavoidable second-class status not only for them but their clinic too. Thus, clinic supervisors are not and should not be solely limited to publish in traditional academic journals

Researching the broad topic of wellbeing in clinical legal education without considering research in health and emotional wellbeing from the perspective of the wider general population, legal education and the legal profession risks running thin on evidence. This is due to the connectedness of the population, university students, education and the legal profession. I do not assume in this section that just because we have high levels of mental health problems generally in the United Kingdom and beyond, it therefore means that the high levels must be reflected in any clinic intake.³⁸ However, we must be mindful that the students we supervise in the clinic are drawn from the general population and so are the clinic

³⁷ Margaret M. Barry, 'Clinical Legal Education in the Law University: Goals and Challenges' (2007). *International Journal of Clinical Legal Education*. 7. 27-50.

³⁸ Ann Macaskill, 'The Mental Health of University Students in the United Kingdom' (2013). *British Journal of Guidance and Counselling*. 41(4). 426-441.

supervisors. Clinic students are part of the wider university communities and so are the clinic tutors. Clinic students are law students, first and foremost, whether or not they are or would be involved with the clinic. They may end up being in legal practice just like some of their tutors who have been drawn into academia from the legal profession.

In their project, funded by the Legal Education Research Network (LERN), Wilson and Strevens assessed perceptions of wellbeing among law lecturers.³⁹ Their study provides evidence that changes in academia and the never-ending increasing expectations of universities, of students and of academics have an impact upon the perceptions of wellbeing in the study's respondents. In their study, a total of 185 United Kingdom academics completed a large survey which included demographic questions such as their age, academic qualifications, and experience. Respondents also completed four questionnaires and a series of open-ended questions.⁴⁰ Wilson and Strevens noted that "[a]lthough most reported depression, anxiety and stress levels within the normal range, those who reported high stress levels were significantly more likely to report lower hope scores and higher obstruction of values scores as well as significantly less environmental mastery and self-acceptance."⁴¹ They found that the issue of autonomy was profoundly important to law teachers. Further, they warned of the potential increase in levels of psychological distress and concluded by calling for further investigation into this very important aspect of academic practice. Wilson and Strevens noted that "little research to date has explored the expectations of academic staff in dealing with stressed students or the implications for their own well-being" and argue that it is crucial for institutions to know exactly how staff understand and manage their own psychological wellbeing in order to support students and academics.⁴²

Students would undoubtedly worry about the future and such worry may extend to concerns about job prospects and the emotional requirements of the legal profession. It is therefore important to begin to think of the role of clinical legal education as a vehicle in the advancement of clinic students' understanding of the processes involved in managing feelings to fulfil the emotional requirements of the legal profession. A LERN funded study at Sheffield Hallam University examined how clinical legal education influenced the clinic students' understanding of the legal profession in relation to emotional labour expectations.⁴³ Westaby's findings were

³⁹ Clare Wilson and Caroline Strevens, 'Perceptions of Psychological Wellbeing in UK Law Academics' (2018). *The Law Teacher*. 52(3). 335-349.

⁴⁰ *ibid.*

⁴¹ *ibid.* 335.

⁴² *ibid.* 335.

⁴³ Chalen Westaby, 'A Qualitative Study of the Impact of Law Clinics on Students' Perceptions of Emotional Labour Expectations' (2014). *The Law Teacher*. 48(3). 248-280.

that “law clinics have had a profound effect on some of the participants’ understandings of emotional labour expectations.”⁴⁴

Currently, there is little empirical research on the emotional wellbeing of law students undertaking clinical legal education in the United Kingdom and yet mental illness is a serious problem in the general population of the United Kingdom. According to a House of Commons briefing paper,⁴⁵ an estimated 1 in 6 people experienced a common mental disorder in England a week before the survey. Anxiety and depression were the most common disorders revealed by the study.⁴⁶ This is worrisome and should indeed be a concern for any law academy and/or clinician running a law clinic or considering establishing a new one. Younger people, people living in deprived areas and people with disabilities are less likely than average to recover from their condition after psychological therapy according to the report. A million people were in contact with adult health services as of December 2017.⁴⁷ According to a study undertaken in 2015 by a United Kingdom based think tank, the Institute for Public Policy Research, more than 15,395 United Kingdom domiciled first-year students disclosed a mental health condition.⁴⁸ The study also reported that this figure was nearly five times the number that was recorded in 2006. University student suicide deaths rose by 79 percent during the same period, to a record 134 in 2015 and owing to mental health issues, university drop outs have also arisen to record levels.⁴⁹

As can be seen, psychological distress and mental health illness are, statistically, the greatest burden of disease in both adults and young people in England. The recent data from studies undertaken in the United Kingdom to look at the mental health of university students is broadly consistent with studies undertaken elsewhere. The report of the Brain and Mind Research Institute (BRMI), University of Sydney,⁵⁰ makes significant contributions to the research, which I believe would lead to the development of ways that universities, law schools and clinicians can help to protect students from the development or exacerbation of depression and other mental illnesses. The BMRI study disclosed that 35.4 percent of the law students that the

⁴⁴ *ibid.* 276

⁴⁵ Baker, (n 5). According to the report, the number entering treatment in 2016/2017 stood at 281000 women and 140000 men in the 18-35 age groups. That level was almost matched by the next age group 36-64 which had 283000 women and 168000. The total figure which included figures for the under 18s and over 65s indicates that around 1 million people received physiological therapy for a common mental disorder in just a single year.

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ Thorley, (n 6).

⁴⁹ *ibid.* Whilst it is less clear cut as to whether university students are under greater stress than their predecessors, the pressures bearing down on the student community include the burden of debt to pay annual tuition fees that surpass £9,000 a year. University students might be spending a great deal of time worrying about the uncertainty in employment prospects upon graduation. Undoubtedly, social media now seems a natural part of our lives if not the most important aspect of it and sometimes such platforms may give the impression that everyone everywhere is excelling in everything. This may have an effect on the emotional wellbeing of a clinic student who thinks they are not good enough compared to others within and outside the clinic.

⁵⁰ Kelk, et al., (n 7).

Institute surveyed were found to have high or very high distress levels and almost 70 percent had moderate to very high distress levels of 68.5 percent. The report also disclosed that the law student distress proportions were higher than that of the other Australian law schools' students and higher than a sample of the general Australian population. In 2005, a survey of 5000 students in all faculties at the University of New South Wales (UNSW) to which 2528 students responded was carried out to investigate students' attitudes to their experience and expectations of their university education so that teachers could respond effectively to those expectations.⁵¹ When the data was examined, the authors made startling observations:

"...some unexpected differences between law students and other students appeared. Law students reported different reasons for their choice of course, seemed disproportionately concerned about their grades, less interested in team work, and had different ideas about employers' preferences for graduates when compared to students from other disciplines."⁵²

What this quotation encapsulates is that law students may have certain personal characteristics including lack of autonomy and lack of social connectedness that might be indicators of depression or depressed thinking.⁵³ From my own experience and observations within a welfare benefits law firm within a clinic, some clinic students are perfectionists or tend towards perfectionism which, in my view, may be too high and sometimes unrealistic coupled sometimes with relentless self-criticism. This characteristic may contribute to the psychological distress of law students and lawyers leading to cases of mental illness.⁵⁴

These figures and facts should therefore strongly inform any university, legal academy and/or clinician planning to establish a clinical programme and/or sustain an already existing one in developing policies pertaining to the emotional wellbeing and mental health needs of clinic students and supervisors. Recently, calls have been made to revise the design of the legal education curriculum in England and Wales "to include programme learning outcomes that address the development of competencies of resilience and management of subjective wellbeing."⁵⁵ Reform is long overdue. The time is nigh for legal education curriculum intervention. Likewise, as clinicians burdened with the tripartite role of being a teacher, a consultant and a counsellor within a clinic setting, clinic directors and supervisors need to reflect on their practice and be able to formulate and vigorously incorporate within the clinical

⁵¹ Massimiliano Tani (Ed.), Report: On the Motivations, Expectations and Experiences of Students in Tertiary Education: Findings from a large survey carried out at the University of New South Wales (2006).

⁵² Massimiliano Tani and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?' (2009). *Legal Education Review*. 19(1). Article 2.

⁵³ Michael Appleby and Judy Bourke, 'Promoting Law Student Mental Health Literacy and Wellbeing: A Case Study from The College of Law, Australia' (2014). *International Journal of Clinical Legal Education*. 20. 461-498.

⁵⁴ Paul Verkul, Terry Martin and Martin Seligman, 'Why Lawyers are Unhappy' (2005). *Deakin Law Review* 4. 10(1). 49. 54.

⁵⁵ Caroline Strevens and Clare Wilson, 'Law Student Wellbeing in the UK: A Call for Curriculum Intervention' (2016). *Journal of Commonwealth Law and Legal Education*. 11(1). 44-56. 44.

pedagogy, effective policies to deal with the mental health needs of students. Clinicians and clinic directors must not be naive to the fact that poor mental health and wellbeing can affect students' academic performance and their desire to remain in higher education. It is therefore important that clinicians develop an understanding of the emotional wellbeing of students and its relevance to a clinical pedagogy. The field will benefit from empirical studies that shape opportunities for students and enable them to develop resilience to stress, anxiety and similar barriers to achievement and success in higher education. Undertaking empirical research on emotional wellbeing should assist clinic students to develop their emotional competencies, which I hope would help students to survive in legal practice, enjoy legal practice and have success.⁵⁶

As can be seen, a sizeable literature has implicated several factors that might lead to decreased emotional wellbeing amongst students and staff in institutions of higher learning. Academic members of staff and university students are drawn from the general population. Clinicians are part of the academic staff within a university. Clinic students are part of the university community of students. My observations are that clinicians and non-clinicians are surprisingly an under-researched group. There is still need for further research that explores the expectations of academic staff in dealing with emotional distressed students and indeed one that examines the implication of dealing with stressed students for the wellbeing of the academic staff. Currently, limited empirical data exist. More rigorous and theoretically informed research is needed before firm conclusions can be drawn on how best we can combat the scourge of decreased emotional wellbeing of students and staff be it outside of the clinic or within it.

5.3 Reflection and assessment

The benefits to clinic students of being given some opportunity to reflect on the work they do in the clinic is well documented in the field. The clinical scholarship I reviewed consider reflection an important ingredient of competence and good practice. The role of reflection is frequently noted in the general education scholarship and in the empirical research that have been undertaken in areas that cover a wide range of professions including in medicine, nursing and psychology.⁵⁷ Reflection is viewed as an essential characteristic for professional

⁵⁶ Colin James, 'Seeing Things As We Are: Emotional Intelligence and Clinical Legal Education' (2005). *International Journal of Clinical Legal Education*. 8. 123-149.

⁵⁷ Notable writers whose work assert that the emergence of reflective practice is part of a change that acknowledges the need for students to act and to think professionally as an integral part of learning throughout their courses of study, integrating theory and practice from the outset include, [Chris Argyris and Donald Schon, *Theory into Practice: Increasing Professional Effectiveness*. San Francisco: Jossey Bass. (1974); David Boud, Rosemary Keogh and David Walker. *Reflection: Turning Experience into Learning*. London: Kogan Page. (1985); Ronald M Epstein and Edward M. Hundert, 'Defining and Assessing Professional Competence' (2002). *Journal of American Medical Association*. 287. 226–235; Jennifer A. Moon, *A Handbook of Reflective and Experiential Learning: Theory*

competence such that students should be encouraged to improve their ability to be reflective in all aspects of their personal and professional lives.⁵⁸ Ogilvy and Karen Czapanskiy have provided us with a rich bibliography of materials relating to reflection and a critique of clinical scholarship.⁵⁹ In my view, Ogilvy's other edited book on reflection, amongst other topics, is an indispensable guide for clinicians.⁶⁰ The text focuses on reflection with reflective lawyering taking centre stage within the text. Encountering clients who really need help because of their less privileged positions in society can elicit different responses from clinic students.⁶¹ Garcia Anon, has used his experience in clinical legal education in Spain as a backdrop to problematize assessment in clinical legal education.⁶² Evans and others' book gives an insightful narration of how an important element of clinical legal education reflection is.⁶³ Stuckey opines that reflection helps students learn how to learn from experience.⁶⁴ Milstein puts it more formally with his suggestion that the ultimate aim of clinical teaching is to develop reflective practitioners and lifelong learners.⁶⁵ Citing Stuckey,⁶⁶ Spencer posits that it is an accepted argument that reflection is an optimal experiential learning involving a circular sequence of experience, reflection, theory and practice.⁶⁷ As can be seen from the reviewed clinical scholarship, the emergence of reflection within the clinic is a part of a change that acknowledges the need for students and supervisors to think professionally at all the times when dealing with clients. However, how the term reflection ought to be defined still poses some challenges in the field. Should there be a single, universally accepted definition? Whilst considering what reflection is might seem too fundamental a question for a handbook such as this one, I believe that examining what other scholars define as reflection is an important start to appreciating the fact reflection is complicated and challenging. Since the definition of

and Practice. London: Routledge Farmer. (2004); Donald Schon, *The Reflective Practitioner*. San Francisco: Jossey-Bass. (1983); Donald Schon, *Educating the Reflective Practitioner*. San Francisco: Jossey-Bass. (1987).

⁵⁸ J.P. Sandy Ogilvy, 'The Use of Journals in Legal Education: A Tool for Reflection' (1996-1997). *Clinical Law Review*. 3. 55.

⁵⁹ J.P. Sandy Ogilvy and Karen Czapanskiy, 'Clinical Legal Education: An Annotated Bibliography' Part IV. (Revised 2005).

⁶⁰ J.P. Sandy Ogilvy, Leah Wortham and Lisa G. Lerman. (Eds.). *Learning from Practice: A Professional Development Text for Legal Externs*. (2nd Edition.). St. Paul, Minnesota: Thomson/West, (2007).

⁶¹ Robert Rader, 'Confessions of Guilt: A Clinic Student's Reflections on Representing Indigent Criminal Defendants' (1994). *Clinical Law Review*. 1. 299.

⁶² Jose Garcia-Anon, 'How Do We Assess in Clinical Legal Education? A "Reflection" About Reflective Learning' (2016). *International Journal of Clinical Legal Education*. 23(1). 48-65.

⁶³ Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone and Simon Rice, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School*. ANU Press. The Australian National University, Canberra, Australia. (2017). (downloaded from 212.219.156.254 on Wednesday, 2 January 2019 15:47:57 UTC <http://jstor.org>).

⁶⁴ Roy T. Stuckey, et al., *Best Practices for Legal Education: A Vision and a Roadmap*. Clinical Legal Education Association. (2007).

⁶⁵ Elliot Milstein, 'Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations' (2001). *Journal of Legal Education*. 51(3). 375-380.

⁶⁶ Roy T. Stuckey, 'Teaching with a Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses' (2007-08). *Clinical Law Review*. 13. 807.

⁶⁷ Rachel Spencer, 'Holding up the Mirror: A Theoretical and Practical Analysis of the Role of Reflection in Clinical Legal Education' (2012). *International Journal of Clinical Legal Education*. 18. 181-216.

reflection is dependent upon the context in which the clinic is situated, there is a lack of consensus regarding the term's definition. As shall be seen below, others have even questioned whether reflection must be assessed at all.

Dewey defined reflection as an “active, persistent and careful consideration of any belief or supposed form of knowledge in the light of the grounds that support it and the further conclusion to which it tends.”⁶⁸ Boud defined reflection as “a generic term for those intellectual and affective activities in which individuals engage to explore their experiences in order to lead to a new understanding and appreciation.”⁶⁹ Moon describes reflection as “a form of mental processing with a purpose and/or anticipated outcome that is applied to relatively complex or unstructured ideas for which there is not an obvious solution.”⁷⁰ Although there is no single, universal definition of reflection, the term is generally accepted to mean an active, disciplined and deliberate strategy that is incorporated into the processes and activities of teaching and learning to help improve understanding. It is, therefore, much more than a review and justification of what has happened at the end of a period or activity. In dealing with live-client welfare benefits casework within the Student Law Office at Northumbria University, I encourage my students to understand themselves as learners who must be concerned with the processes as well as the products of their learning and to develop the awareness and strategies to be lifelong learners. In an endeavour to support independence and develop reflective practice skills amongst students, clinicians should seek to build on and develop students' knowledge and skills through a virtuous circle of reflection on practice involving research, evaluation and adaptation.

Even though the concepts underlying reflective practice are much older,⁷¹ the phrase ‘reflective practice’ was originally minted by Schon to describe the ability to reflect on one's actions so as to engage in a process of continuous learning.⁷² Schon's concepts such as *reflection-on-action*, *reflection-for-action* and *reflection-in-action* explain how professionals meet the challenges of their work with a kind of improvisation through practice.⁷³ Each of these

⁶⁸ John Dewey, *How We Think: A Restatement of the Relation of Reflective Thinking to the Educative Process*. Boston, MA: D.C. Heath & Co Publishers. (1933). 9.

⁶⁹ David Boud, Rosemary Keogh and David Walker. *Reflection: Turning Experience into Learning*. London: Kogan Page. (1985). 19.

⁷⁰ Jennifer A. Moon. *A Handbook of Reflective and Experiential Learning: Theory and Practice*. London: Routledge Farmer. (2004).

⁷¹ Earlier in the 20th Century, John Dewey was among the first to write about reflective practice with his exploration of experience, interaction and reflection (John Dewey, *How We Think: A Restatement of the Relation of Reflective Thinking to the Educative Process*. Boston: Houghton Mifflin. (1998) [1933].). Other researchers such as Kurt Lewin and Jean Piaget followed and developed relevant theories of human learning and development. See Alice Y. Kolb and David A. Kolb, ‘Learning Styles and Learning Spaces: Enhancing Experiential Learning in Higher Education’ (2005). *Academy of Management Learning and Education*. 4(2). 193–212.

⁷² Donald Schön, *The Reflective Practitioner: How Professionals Think in Action*. New York: Basic Books. (1983).

⁷³ In order to effectively achieve the objectives of reflective practice in any area of practice and/or pedagogy, several models and theories on reflective practice have been formulated to facilitate the process of reflection. Reflection has, over time, been divided into three main categories namely reflection-on-action, reflection-for-action and

reflective processes represents an important skill. Clinic students and their supervisors should develop the ability to engage in critical awareness of their experiences both during client casework and supervision. Reflective practice involves paying critical attention to the practical values and theories which everyday actions are informed by a reflectively examined practice that would ultimately lead to developmental insight,⁷⁴ itself an important aspect of clinical legal pedagogy. As such, a key rationale for reflective practice in a clinical setting is that experience alone involving the initial extraction of instructions from a client, undertaking practical legal research on the case and giving practical legal advice alone does not necessarily lead to students learning and getting prepared for legal practice upon graduation.⁷⁵ Instead, a deliberate reflection on experience of undertaking clinic casework, for example, would be essential.⁷⁶

Reflecting on cases within a clinic setting advances the learning process of students. In the firms I supervise, I encourage my students undertaking casework in welfare benefits law to periodically step back to ponder the meaning of what has recently transpired to them and to their clients in their immediate Student Law Office environment. By so doing, the students get involved in a process that illuminates what the self and others have experienced, providing a basis for future action in the provision of services to indigent members of the community. In particular, reflection privileges the process of inquiry in understanding the welfare benefits system in the United Kingdom, leading to an understanding of experience that the students might have overlooked in taking instructions from the client, in undertaking practical legal research and in providing practical legal advice. Viewed in this way, reflection is typically concerned with forms of experiential learning that “seek(s) to inquire about the most

reflection-in-action. Reflection-on-action refers to the retrospective contemplation of practice undertaken in order to uncover the knowledge used in practical situations, by analysing and interpreting the information recalled. Therefore, reflection-on-action would normally involve clinic students looking back after the event (such as for example an interview with a client) has occurred. It involves the turning of information into knowledge by use of a post mortem done cognitively. It is also believed that this kind of reflection does not only increase one's knowledge but also challenges the theories and concepts held by a person. See Gillie Bolton, *Reflective Practice: Writing and Professional Development*. Paul Chapman Publishing: London. (2001). Reflection-for-action involves the proactive use of these past reflections to inform future action (for instance, considering how new learnings from reflection upon an interaction with one's live-client might guide a clinic student or clinic supervisor's response to future encounters of a similar nature within a clinic setting). Reflection-in-action refers to thinking about what one is doing whilst one is doing it. It is typically stimulated by surprise, by something which puzzles the student or the clinician concerned. (Jennifer Greenwood, 'Reflective Practice a Critique of the Work of Argyris & Schon' (1993). *Journal of Advanced Nursing*. 27. 13-17. Accordingly, this gives the clinic student or clinic supervisor a chance to redesign what is being done while it is being done and is therefore associated with making decisions and adjustments to our actions in a moment-to-moment fashion. See Donald Schon, *The Reflective Practitioner*, Basic Books, New York (1983) and John Smyth, 'Developing and Sustaining Critical Reflection in Teacher Education' (1989). *Journal of Teacher Education*. 40(2). 2-9.

⁷⁴ Gillie Bolton, *Reflective Practice: Writing and Professional Development*. (3rd Edition). Los Angeles: SAGE Publications. (2010) [2001].

⁷⁵ John J. Loughran, 'Effective Reflective Practice: In Search of Meaning in Learning about Teaching' (2002). *Journal of Teacher Education*. 53(1). 33-43.

⁷⁶ Marilyn Cochran-Smith and Susan L. Lytle, 'Relationships of Knowledge and Practice: Teacher Learning in Communities' (1999). *Review of Research in Education*. 24(1). 249-305.

fundamental assumptions and premises behind our practices.”⁷⁷ As such, clinicians must therefore create activities within their firms to promote reflection and evidence to support and inform this curricular intervention. Innovation must not just remain largely theoretical. Clinicians must be clear on which reflection approaches have impact in the supervision of clinic students.

Frameworks for reflection, commonly known as models or theories, encourage a structured process to guide the art of reflecting on an event, past or current. However, I do not intend to go into much detail here regarding reflective models but suffice it to say that there is no single or right model. It is important to choose the one or a combination that is most comfortable for your local context and one or a combination which is felt will best assist clinic students to learn from their clinic experience. Often, it is appropriate to use one model of reflection as a basis, but use prompt questions from other models if they best fit a particular situation. Common reflection models I use in my clinic practice include amongst others those developed by Kolb,⁷⁸ by Gibbs,⁷⁹ by Driscoll⁸⁰ and by Moon.⁸¹

To evaluate the proposition by clinicians that reflection is an essential component of competence in clinical legal education and to appraise the extent of research to date on this topic, I propose a review of certain reflective lawyering questions I believe to be pertinent in situating reflection in the cycle of experiential learning:

1. *Do clinicians and clinic students engage in reflection when dealing with clinic casework?*
2. *What is the nature of the reflective thinking of the participating clinic students when engaged in clinic casework?*
3. *To what extent, if any, can reflection be developed within a clinic setting?*
4. *Would the development of reflection be impacted by the local context within which a clinical programme is situated?*

⁷⁷ Joseph A. Raelin as cited in Steen Hoyrup & Bente Elkjaer, 'Reflection: Taking it Beyond the Individual' In: David Boud, Peter Cressey and Peter Docherty, (Eds.). *Productive Reflection at Work: Learning for Changing Organizations*. New York: Routledge. (2006). 36.

⁷⁸ David A. Kolb, *Experiential Learning: Experience as the Source of Learning and Development*. Prentice Hall, Englewood Cliffs NJ (1984). Kolb's Learning Cycle has four elements of a loop which you can start at any point, though normally you start with an experience

⁷⁹ Graham Gibbs, *Learning by Doing: A Guide to Teaching and Learning Methods*. Further Education Unit. Oxford Polytechnic: Oxford. (1988). In 1998, Graham Gibbs developed his reflective cycle based upon each stage of David A. Kolb's 1984 experiential cycle. He suggested how a full structured analysis of a situation could take place using prompt questions at each stage. It is probably the most cited model by health care professionals but does not contain the number or depth of prompt questions contained in some other models.

⁸⁰ John Driscoll, 'Reflective Practice for Practise' (1994). *Senior Nurse*. 13. 47-50. Terry Borton's (1970) three stem questions: 'What?', 'So What?' and 'Now What?' were developed by John Driscoll in 1994, 2000 and 2007. Driscoll matched the three questions to the stages of an experiential learning cycle, and added trigger questions that can be used to complete the cycle.

⁸¹ Jennifer A. Moon, *A Handbook of Reflective and Experiential Learning*. London: Routledge. (1999).

5. *What are the potential efficacious and inefficacious effects of promoting reflection within a clinical pedagogy?*
6. *To what extent, if any, can reflection be assessed?*

For want of space, I do not intend to go into much detail regarding questions 1-5 before considering next the topical issue of assessing reflection. However, a forum for addressing such questions is, at the time writing this due to be published and the reader is referred to that.⁸²

Arguably, many examinations in traditional subjects in different faculties within a university will usually include the covert assessment of reflection upon other material because they assess critical thinking skills. For example, students undertaking History and English Literature examinations may be required to reflect upon sources of information and literary excerpts that sometimes would involve the need to evaluate them in multiple respects to gauge the level of the students' reflective thinking.⁸³ Reflective journals record self-reflection during the course of the semester. Recording reflective thinking in such a manner has a positive impact on students' overall metacognitive and other critical thinking skills.⁸⁴ When writing in their reflective journals, clinic students should record their reflections as they occur, or as soon as possible afterwards, when they have had them. This would make students avoid the pitfalls of relying on memory to retrieve information after the internal authentic reflective process has already happened, for example an interview they have had. This approach reduces a student's temptation to falsify information as a way of making up for the information that the mind no longer remembers and in the process threatening the purpose and cogency for having this type of assessment in the first place. Journals "help the law student to maintain a sense of self throughout the process of professional socialization that takes place in law school."⁸⁵

Ledvinka⁸⁶ offers an insightful consideration of the educational theory underlying reflection in clinic, raises issues concerning assessment of reflection and considers whether it is appropriate to assess reflection at all, and if so, how fair and how consistent that assessment might be achieved given its inherently subjective nature. The author makes an argument that the reason clinicians assess reflection is to check the learning journey by students as they work with cases. Anon⁸⁷ has postulated that reflective learning is a part of assessment in

⁸² See Special Issue of the Law Teacher, September 2019.

⁸³ The classic opener '*Compare and contrast...*' in some assessments at university usually require students to reflect in this sense. Similarly, Science assessments at higher institutions of learning may require students to reflect upon the outcomes of experiments when interpreting their scientific findings.

⁸⁴ Jessica L. Naber and Tami H. Wyatt, 'The Effect of Reflective Writing Interventions on the Critical Thinking Skills and Dispositions of Baccalaureate Nursing Students' (2014). *Nurse Education Today*, 34(1). 67-72.

⁸⁵ Ogilvy, (n 58). 81.

⁸⁶ Georgina Ledvinka, 'Reflection and Assessment in Clinical Legal Education: Do You See What I See?' (2006). *International Journal of Clinical Legal Education*, 9. 29-56.

⁸⁷ Garcia Anon, (n 62).

clinical pedagogy, albeit given formatively. Sylvester⁸⁸ argues that a one off/end of year nature of assessing reflection is not entirely a good way of evidencing reflective practice. Using Kolb's model of reflection as a backdrop and drawing from Moon's focus on the role of reflection in learning that embeds reflection into the learning process, Sylvester posits that:

"Whilst we might be able to assess the degree to which the student sees the links to the bigger picture it is considerably harder to draw from these isolated examples of reflection an approach to mental processing in line with the learning cycle."⁸⁹

Further, Sylvester has drawn from Van der Vleuten's longitudinal utility model for assessment of medical training⁹⁰ in medicine and has suggested that "competencies can be tracked at different levels."⁹¹ In focussing on the assessment of experiential learning in the context of students learning and supervisors teaching students through the use of a hands on, interactive and reflective methods, Grimes and Gibbons⁹² posit that the importance and value of assessment from both formative and summative perspective is desirable and requires a balance. They suggest the use of group oral examinations to unpick reflection in the context of a clinic and to mitigate against the shortcomings of individual assessments. The global clinical movement is still a developing phenomenon whose theoretical frameworks are yet to be entrenched alongside theoretical frameworks in other established fields. In my view, I do not think that there is any harm in borrowing from existing frameworks despite differences in disciplines.

McNamara and Ruinard have advised that in designing new assessments frameworks in clinical legal education, clinicians must not shy away from drawing concepts on assessment of professional competence in in fields such as medicine and other health professional fields.⁹³ As can be seen, these papers on assessment of reflection suggest that reflection can be assessed in a clinical pedagogy using different assessments methods. Different levels of reflection can be discerned. Further, there is a clear demonstration in the reviewed papers on reflection correlating with reflection in other fields in ways that are undoubtedly theoretically consistent. Students do not only have to be assessed once at the end of their clinical module for reflective practice in authentic settings and therefore some questions remain regarding

⁸⁸ Cath Sylvester, 'Through a Glass Darkly: Assessment of a Real Client, Compulsory Clinic in an Undergraduate Law Programme: Problematising Assessment in Clinical Legal Education' (2016). *International Journal of Clinical Legal Education*. 23. 32-47.

⁸⁹ Ibid. 45.

⁹⁰ Cess van der Vleuten and LWT Schuwirth, 'Assessing Professional Competence: From Methods to Programmes' (2005). *Medical Education*. 39(3). 309-317.

⁹¹ Sylvester, (n 88).

⁹² Richard Grimes and Jenny Gibbons, 'Assessing Experiential Learning - Us, Them, and the Others' (2016). *International Journal of Clinical Legal Education*. 23(1). 107-136.

⁹³ Judith McNamara and Elizabeth Ruinard, 'Evaluation of Collaborative Assessment of Work Integrated Learning' (2016). *International Journal of Clinical Legal Education*. 23. 5-31.

whether what is being measured in the end of year reflective report is a valid indicator of reflective activity, when one considers that students benefit from formative assessment throughout their learning. Despite these concerns, failure to assess reflection and reflective thinking within a clinical pedagogy may imply to learners lack of real value for this activity in the provision of legal services. Whilst there is no doubt of the explosion of clinical scholarship dispersed across several concepts and aspects of a clinical pedagogy, the literature on reflection and reflective practice is still in development and largely theoretical. Nonetheless, the literature offers a useful insight on reflection and reflective practice and their usefulness in clinical legal education. There is therefore an obvious discernible implication for clinical practice that the global clinical movement members may consider when planning to establish and sustain clinical programmes within their legal academies. Clinicians must be mindful of the fact that “the purpose of assessing reflection is to communicate the value of the ongoing process of assimilating new learning and to instil it as a lifelong approach to learning.”⁹⁴ However, there is dearth of scholarship that specifically addresses the particularly challenging nature of assessing reflection in clinic. Studies that clearly articulate how reflection should be assessed are needed in the field since reflection is meant to be an intimately personal experience. If this is so, does it mean that we have to alter the personal experience aspect of reflection by simply defining standards for assessment? Surely, doing so would make reflection a less personal and externally imposed process. Assessment of reflection is either oral or in written form. This may well disadvantage clinic students who are less familiar with the conventional or context-specific linguistic expectations in a manner that has nothing to do with their being able to engross in reflection. This may well become a barrier. Native speakers who have autism, for example, may find it difficult to write a reflective piece of work where such is the way in which reflection is assessed. Where reflection is assessed orally, the same may be true of an international student who is a non-English language speaker or comes from a background with less exposure to common academic linguist forms.

A closer look at the clinical scholarship reviewed in relation to the questions posed above suggests to that we must not be ignorant to the assertion that reflection, with all its firm utility and role in clinical pedagogy, may not be obvious to clinic students, particularly where there are challenges in the caseload they are running and managing. It is therefore incumbent upon clinic supervisors to model reflection in their own practice as lawyers. Modelled in this way, the reflective tasks or activities clinic supervisors set for their clinic students should become more explicit and easy to complete. Reflection must at all times be viewed not only as an individual experience but also as a collaborative exercise between a clinic student and a clinic supervisor. For clinic supervisors, it is not enough to be able to read, learn and write, and

⁹⁴ Sylvester, (n 88). 45.

incorporate the theoretical frameworks on reflection on their practice without reflecting on how well they are developing their students' skills to reflect. As with any other skills that law graduates must acquire during their legal training, clinic students may need a structure to guide the reflective activities they undertake during their time in the clinic, right at the beginning of their clinical practicum.

At the time when clinic students are guided in developing their critical thinking and relational competencies, students would certainly require feedback on both the content and the process of reflecting on the work they have done as proffered by Schon in his three forms of reflective practice.⁹⁵ Where feedback is given on these forms of reflection, the process becomes a good platform upon which clinic students take stock of their strengths and weaknesses to determine how best they need to proceed in their learning. By so doing, clinicians and their clinic students find themselves engaging with a process that opens up opportunities for self-appraisal and encouragement. Whilst clinical scholarship has suggested clinic supervisors must provide structure, guidance and supervision to promote the role of reflective thinking in clinic, it is important too to consider the environment for teaching and learning about reflection. In some respect reflection and its utility can only be well understood if relative to a certain environment and context. If the culture and environment within which a clinical programme is located does not value and legitimise this important aspect of education, reflection and reflective practice will not feature in clinical pedagogy, clinic students will not experience the benefits of this innovative tool of learning. Subsequently, negative experiences of uncertainties within a clinical setting will rage on unabated.

As shown in the clinical scholarship I reviewed, there has been a recent increase in interest in describing the competencies for effective lawyering within a clinical programme. One of the most important mechanisms for enabling the acquisitions of competencies in the provision of legal services is reflection and reflective practice in tandem of course with clinic supervision. This section of the chapter has taken the position, based on the review of the relevant scholarship on reflection and my own experiences, that the role of reflection in clinical programmes has indeed stimulated considerable articulation of reflective stories across the global clinical movement. To a certain extent, clinical scholarship on reflection provides the clinical movement with a direction for future work in research and legal practice. A key

⁹⁵ In 1983, Schon distinguished among three forms of reflective practice. First, reflection-on-action involves making sense of an event that has already taken place for example, reflecting upon an event with a client after an interview has finished. Secondly, reflection-for-action involves the proactive use of these past reflections to inform future action (for instance, considering how new learnings from the reflection upon which a clinic student interacted with a clinic client might guide their response to future encounters of a similar nature either within a clinic setting or indeed in practice. Finally, reflection-in-action encompasses engagement in reflection as a relational event is unfolding, making decisions and adjustments to our actions in a moment-to-moment fashion.

assumption underlying the literature on reflection is that it enhances competence and enhances the learning of clinic students.

5.4 Skills development and student employability

Helping students develop their essential professional skills whilst they are still at university is essential and clinics should find ways of incorporating skills within their clinical programmes that enhances employability opportunities for students. Kerrigan and Murray's book on clinical legal education aims at enhancing skills of interviewing, research, writing, drafting and advocacy.⁹⁶ The chapter on interviewing skills is very insightful as it gives generic advice on how to conduct an interview before focusing on the specific types of interview that a clinic student should be familiar with and use. Examples include the use of open ended and closed questions. The authors go further into exploring the nature of empathy and how this should be developed. According to Kerrigan and Murray,⁹⁷ related to the notion of skills development in clinical pedagogy is the equally important acquisition of practical knowledge by the clinic student that is attractive to employers and helpful for any workplace. The necessity for and the benefits of a pedagogy that bridges the gap between legal education and professional skills are well documented (Grimes,⁹⁸ Dickson,⁹⁹ Iya,¹⁰⁰ Binder and Bergman,¹⁰¹ MacCrate Report,¹⁰² Mason, et al,¹⁰³ Evans, et al,¹⁰⁴). Critical to graduate employability for students is the development of the mind, behaviours, work ethic and professional identity through experiential learning.¹⁰⁵ A widely accepted definition of graduate employability, and the one I think we should promote in clinical pedagogy, is the achievement of "the skills, understandings and personal attributes that make an individual more likely to secure employment and be successful in their chosen occupations to the benefit of themselves, the workforce, the community and the economy."¹⁰⁶ Using the Graduate Employability Indicators prepared by Oliver, et al,¹⁰⁷ as a theoretical grounding to gather and triangulate the perceptions of clinic

⁹⁶ Kevin Kerrigan and Victoria Murray (Eds.). *A Student Guide to Clinical Legal Education and Pro Bono*. (1st Edition). Basingstoke, Palgrave Macmillan. (2011).

⁹⁷ *ibid*.

⁹⁸ Richard Grimes, 'Legal Skills and Clinical Legal Education' (1995). *Web Journal of Current Legal Issues*. 3.

⁹⁹ Judith Dickson, 'Clinical Legal Education in the 21st Century: Still Educating for Service?' (2000). *International Journal of Clinical Legal Education*. 1. 33-46.

¹⁰⁰ Philip F. Iya, 'Fighting Africa's Poverty and Ignorance through Clinical Legal Education: Shared Experiences with New Initiatives for the 21st Century' (2000). *International Journal of Clinical Legal Education*. 1. 13-32.

¹⁰¹ David A. Binder and Paul B. Bergman, 'Taking Lawyering Skills Training Seriously' (2003) *Clinical Law Review*. 10. Fall 301.

¹⁰² Robert MacCrate, 'Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development' (2004). *Clinical Law Review*. 10(2).

¹⁰³ James Marson, Adam Wilson and Mark Van Hoorebeek, 'The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective' (2005). *International Journal of Clinical Legal Education*. 7. 29-43.

¹⁰⁴ Evans, et al., (n 63).

¹⁰⁵ Mantz Yorke and Peter T. Knight, *Embedding Employability into the Curriculum: Learning & Employability Series 1*. The Higher Education Academy. York. (2006).

¹⁰⁶ *ibid*. 8.

¹⁰⁷ Beverley Oliver, Barbara Whelan, Lynne Hunt, Sara Hammer, Sandra Jones, Amanda Pearce and Fiona Henderson, *Introducing the Graduate Employability Indicators*. Australian Learning and Teaching Council. (2011).

graduates, Cantatore undertook a study with a group of law students before and after their clinical programme experience.¹⁰⁸ The findings were that the skills acquired from a legal education that has a clinical component within it presents considerable learning opportunities for students. Alexander and Boothby recently undertook a qualitative study that sought to find “insights into the role clinical legal education can play in preparing students for their transition from university into graduate careers.”¹⁰⁹ Their findings were that at the point of recruitment, having undertaken clinic modules at the university does not appear to have an automatic advantage in securing employment for clinic student.

Such research findings demonstrate that even though the automatic ticket to employment may not be readily available to a clinic student entering the market for employment, clinical programmes do still play an important role in the provision of legal services to indigent members of the community. Many clinicians believe that the clinic experience is a source of confidence for clinic students who have at least spent a semester or a year bridging the academic skill of thinking like a lawyer to the professional skill of lawyering. However, there are evidential gaps in underpinning the exact impact of a clinical pedagogy on the skills development and employability of clinic students. There is particular need for more robust evidence involving not only students but also other different stakeholders such as employers and clinicians using the guidelines for conducting graduate employability research that have been set by Oliver and others in 2011.¹¹⁰ Currently, there is very little rigorous research on the impact clinic experience has on students when they settle into their newly found real life jobs after graduation. This is particularly the case in post clinic experience where more knowledge is needed about whether employability skills gained through a clinical programme assist the graduates to keep and hold their jobs. If we are truly committed to supporting our institutions in reevaluating and reforming teaching and learning outcomes and in implementing clinical programmes that promote skills development and graduate employability opportunities for our students, we need to continue enhancing our research to ensure that these evidence gaps are filled.

5.5 The social justice mission

There has been an increasing interest and attention paid to two specific missions of clinical legal education - social justice and education for the simple reason that there is an important connection between legal education, public service and social justice. Much of the clinical

¹⁰⁸ Francina Cantatore, 'The Impact of Pro Bono Law Clinics on Employability and Work Readiness in Law Students' (2018). *International Journal of Clinical Legal Education*. 25(1). 147-172.

¹⁰⁹ Jill Alexander and Carol Boothby, 'Stakeholder Perceptions of Clinical Legal Education within an Employability Context' (2018). *International Journal of Clinical Legal Education*. 25(3). 53-84.

¹¹⁰ Oliver, et al., (n 107).

scholarship I reviewed propagates that in addition to bridging the gap between legal education and lawyering skills, the exposure to a social justice mission limb of a clinical pedagogy dispenses to students an intellectual footing for a long lasting engagement with social justice.¹¹¹ It is therefore no surprise to see clinical scholarship propounding that clinical programmes “meld legal theory with lawyering skills, and students learn lawyering values by providing legal assistance to clients who would otherwise lack access to justice.”¹¹² In addition to the increased awareness of these two objectives, the tension between them has become increasingly visible. It has become the subject of intense scrutiny and debate amongst clinicians and scholars. The ongoing discussions on the education and social mission goals of clinical pedagogy may be of interest to those planning to set up clinical programmes or those involved in the sustenance of programmes that are already in existence. The reviewed literature provides evidence of the importance of striking a balance between these two objectives.

There is an argument that the “service expectations that will inevitably be linked to external funding need to be balanced with maintaining the focus on student learning.”¹¹³ This means that when providing an intense and productive clinical experience for students to serve there is also a need to focus on the education of students. However, sentiments to the effect that through a clinical pedagogy law students learn on the backs of the poor, sum up perpetual tensions between conflicting clinical legal education objectives related to student learning, community service and the legal professional responsibilities of supervisors.¹¹⁴ Experiential learning provides students with an opportunity to learn how to question and practice law within a broader social justice framework. However, it is also apparent from literature reviewed that if the opportunity to place law in its social milieu were not balanced with the educational needs of students, setting up or sustaining clinics would undoubtedly be faced with some challenges. Some clinicians have warned of students’ interests in clinical pedagogy fading if the mission and ideology of the law school’s clinical programmes remain entrenched in the concept of social justice lawyering “that is heavily dependent on rights-based strategies and traditional, hierarchical conceptions of the lawyer-client relationship.”¹¹⁵ The implication of this approach on law clinics, as noted by Macfarlane, is that the greater our emphasis is on the social justice mission of clinical programmes, the less emphasis on the education objective and hence the

¹¹¹ Rose Voyvodic and Mary Medcalf, ‘Advancing Social Justice through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor’ (2004). *Washington University Journal of Law and Policy*. 14. 101-132.

¹¹² Margaret M. Barry, Jon C. Dubin and Peter A. Joy, ‘Clinical Education for this Millennium: The Third Wave’ (2000). *Clinical Law Review*. 7(1). 1-75. 14.

¹¹³ Giddings, (n 11). 8.

¹¹⁴ Gavigan, (n 13).

¹¹⁵ Julie MacFarlane, ‘Bringing the Clinic into the 21st Century’ (2009). *Windsor Yearbook of Access to Justice*. 27(1). 35.

greater the impediment such an approach would impose on efforts to convince institution leaders to create clinical programmes.

A recent study by Nicolson shows that one of the longest and persistent tradition in clinical legal education is seeing the creation of an array of social justice clinicians as a principal pedagogical goal.¹¹⁶ This is not surprising. Bloch and other contributing authors have made a rallying call for the global clinical movement to educate lawyers for social justice through the inculcation of social skills and ethos amongst the students.¹¹⁷ The question which has been asked is whether social justice values can be taught through clinical legal education.¹¹⁸ McKeown has sought to take exception to some of the beliefs that are made in the field about ethical discussions and challenged the suppositions about social justice that are made. McKeown makes an argument that “social justice has a plurality of meaning and that rather than teaching a set of values, law schools can provide the framework in which students can themselves (de)construct values.”¹¹⁹

McKeown and Hall acknowledge that “[t]here is a natural symbiotic relationship between clinical legal education, social justice and public service”¹²⁰ although it should be added perhaps that a social justice or public service objective is not a necessary requirement for a clinical programme. They also accept that there is an indigent community and groups of marginalised and unrepresented individuals who may be desperately in need of legal assistance but may not afford to pay for such services and would of course turn to the clinic for free advice and representation. However, they caution against taking an idealistic perspective as to the relationship between clinical legal education, social justice and public service. They warn against clinicians imposing their own set beliefs on clinic students and argue that imposing beliefs “may be particularly dangerous in assessed legal clinics where students believe that they must tell their clinical supervisor what they believe they want to hear.”¹²¹ For those planning to set up law clinics it is important to acknowledge the inherent conflict between clinical legal education’s main objectives of providing quality education to students and the provision of a legal service. Given the inherent tension between the two missions of a clinical programme, failing to balance the two concerns may be an obstacle to the establishment and sustainability of a clinical programme, particularly where there “is the

¹¹⁶ Donald Nicolson, ‘Our Roots Began in (South) Africa: Modelling Law Clinics to Maximize Social Justice Ends’ (2016). *International Journal of Clinical Legal Education*. 23(3). 87-136.

¹¹⁷ Bloch, et al., (n 3).

¹¹⁸ Paul McKeown, ‘Can Social Justice Values be Taught Through Clinical Legal Education?’ In: *Social Justice and Legal Education*. Cambridge Scholars Publishing. (2018). 84-110.

¹¹⁹ *ibid.* 3.

¹²⁰ Paul McKeown and Elaine Hall, ‘If We Could Instill Social Justice Values through Clinical Legal Education, Should We?’ (2018). *Journal of International and Comparative Law*. 5(1). 143-180. 180.

¹²¹ *ibid.* 180.

pressure on law school clinics to maximise the numbers of indigent persons they represent.”¹²² The problem seems to be more prevalent in certain parts of the world. Maisel has noted that all legal clinics that provide free representation to indigent persons face serious caseload pressures, but those are magnified in developing countries, such as South Africa, where most of the population live in abject poverty.

Although the reviewed clinical scholarship has identified an inherent tension between the two missions of clinical legal education, there have been very few empirical studies to date on this important topic. There is a need for a realist synthesis of our clinical programmes to answer two questions research questions I think are pertinent in aiding a deeper understanding of the inherent tension between the two objectives of clinical legal education. First, what are the key factors that clinicians need to consider to achieve a balance between the education and service objectives of their clinical programmes? Second, in what ways does a consideration of such factors enable or inhibit this balance within a law clinic setting, for whom and in what circumstances? It is submitted that if these two questions were explored further in research, the results would reveal the most common factors for balancing the educational and the service goals of clinical legal education and indeed the most common contexts in which certain factors are effective in balancing the two missions. Findings from such research would extend existing clinical scholarship in this topic, provide recommendations for the development of the law clinic practice and call for even further research using much more informed and nuanced methodologies that seem to be currently lacking. I hope that it would be at this stage, that the question of necessity in striking a balance between the two missions would be answered, if all it can be.

5.6 The regulatory framework

Within the field of legal practice, adhering to the codes of conduct required in the provision of legal services cannot be wished away. Part Two of the handbook describes the need to increase an awareness of regulation and compliance by the university that employs solicitors and barristers in relation to the work that they do in law schools as law school solicitors and barristers. I do not intend to repeat the contents of Chapter 2 that touches on the regulatory status of university law school solicitors and the regulatory status of law students working in clinic. Suffice it to say that the regulatory bodies such as the Solicitors Regulation Authority and the Bar Standards Association for England and Wales require that those that provide legal advice and representation be qualified to do so in certain activities before validating them as qualified lawyers. Although the literature is sparse, it is important that we familiarise ourselves

¹²² Peggy Maisel, 'Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa' (2007). *Fordham International Law Journal*. 30(2). 374-420. 414.

with the provisions of the Legal Services Act (2007) from which the regulatory framework is derived from. This is important because it ensures that the work carried out in the clinic is to a certain standard and that only qualified people can do it. Clear guidance, however, still lags far behind available knowledge and research, resulting in wide interpretations of the regulatory framework. Moreover, even with an extensive reading of the rules, an understanding of the intricacies of the regulatory framework may be challenging and sometimes feel like a daunting enterprise.

One way to mitigate the impact of the varying understanding of the regulatory framework is through consultation and seeking the knowledge of those who have been in the field for a while. It is important to emphasise the importance of networking and consultation amongst clinicians so as to consolidate knowledge and understanding of how to meet legal requirements¹²³ pertaining to university law clinics including the restrictions and limitations the framework poses.¹²⁴ Without exception, a basic component of learning how to operate within the rules involves being exposed to the fundamentals of reading the rules correctly and with a deeper understanding. Thus, unpacking the rules through the research can help universities and clinicians know what to do or what to promote in ideal or less than ideal situations. Further research in regulatory framework is required to empower universities and clinicians, by providing information and practical strategies for embracing the possibilities and avoiding the pitfalls of providing a service outside the confines of the regulatory framework.

5.7 Conclusion

Clinical scholarship reviewed for this part of the handbook has shown that empirical research on the wellbeing and mental health needs of clinic students and members of staff engaged in clinical pedagogy; reflection and assessment; skills development and student employability; social justice and regulation is still underdeveloped. Notwithstanding this, certain findings in the studies reviewed were quite consistent across clinical programmes even though they are largely theoretical. However, I believe that as the movement continues to grow and develop its scholarship on these important themes in clinical legal education, there would be more studies in the future. In my hope to stimulate further discussion on the issues raised in this chapter, I end by restating some of the topical issues I believe still need further exploration in our field:

¹²³ Linden Thomas, 'Law Clinics in England and Wales: A Regulatory Black Hole' (2017). *The Law Teacher*. 51(4).

¹²⁴ LawWorks' Response to Legal Services Board Consultation: 'Are Regulatory Restrictions in Practising Rules for In-house Lawyers Justified?' (LawWorks, 5 June 2015) <https://www.LawWorks.org.uk/solicitors-and-volunteers/resources/LawWorks-response-legal-services-board-consultation-are> (accessed 18 April 2019).

- First, regarding the wellbeing of students and staff where should the lines be drawn between clinic supervision and pastoral support for clinic students with wellbeing issues considering that members of staff in some institutions are not clinically trained to deal with mental health concerns? Where a situation arises, in which a member of staff has to offer immediate support to a distressed clinic student, what are the implications of dealing with such for the wellbeing of the clinic staff?
- Second, regarding reflection in the clinic, should we concern ourselves with the process of reflection, the products of reflection or indeed both? Does reflection on how and what clinics students experience and learn within the clinic lead to improvements in their final assessments? If reflection is meant to be an intimately personal experience for clinic students, how do we define the standards for assessment without making reflection a less personal and externally imposed process? Reflection is assessed orally or in a written form. How might this affect those students who are less familiar with the context-specific linguistic expectations in a way that has absolutely nothing to do with their ability to participate in reflective practice? Pause and think of students with high functioning autism spectrum disorder finding it difficult to perform writing tasks and/or to engage with the expected thinking process where the tool of assessing reflection is a written piece.
- Third, the review revealed that clinic is widely considered instrumental in equipping new law graduates with the required employability skills to function effectively in the work environment. It appears there seem to be a changing paradigm in the job sector as employers, now more than ever, seek to employ graduates whose education has had a focus on the interventions of technology. This calls for us to collectively reflect, debate and discuss some of the questions that face the sector and indeed our field as we try to keep up with the influence of technology in legal practice. For example, how does our current curriculum affords us the opportunity to innovate and prepare our students to become technologically savvy and future-ready for the professional world? It is incumbent upon us to engage in the digital age discourse to discuss and understand some of the complex and disruptive changes brought about by technologically mediated practices. However, how do we set to examine the discourse of technology to reorient clinic and make it fit for a technologically driven delivery of services?¹²⁵

¹²⁵ See in particular Part 2 of this publication which provides an analysis of the issues associated with “Virtual Lawyering” and technology.

- Fourth, literature reviewed on the two missions of clinical legal education indicates that there is tension between the need to focus on students' development as lawyers and the expectation that students help to meet an unmet legal need. How do we address the conflict and work towards striking a balance between the two mission objectives, if ever there is a need for it? To what extent is there a danger of clinicians imposing their own social justice values by focusing on this aspect of clinics or can the focus on such issues enable students to develop their own understanding and awareness of social justice?
- Fifth, although literature is sparse on the issue of operation of the clinic within the prevailing regulatory environment in the United Kingdom, there has been an emphasis on the importance of dialogue between university law schools and the regulator. Without exception, there is an argument that the regulatory restrictions the clinic currently operates in requires the need for positive action by clinicians to engage proactively with the regulator. To this end, what sort of information and practical strategies for embracing the possibilities and avoiding the pitfalls of operating outside the ambit of regulation do clinicians need to have?

It is my hope that future empirical research would use meticulous methodological models to address these questions. Perhaps for those of us who have for years intuitively felt that clinical legal education has both huge pedagogic benefits and promotes social justice, such research may persuade a wider audience of the need for the further development of what we have come to know as the Global Clinical Movement.

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