



Clinical Legal Education

A Review of the Literature

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Introduction

There is a considerable amount of scholarship on clinical legal education in general, and startup law clinics in particular. One of the most authoritative commentaries on clinical legal education in the United States is the *Clinical Law Review*, a peer-review journal published by the New York University School of Law, and first published in 1995. Commentary on clinical legal education also has a similar pedigree in Europe, with the University of Northumbria first publishing its *International Journal of Clinical Legal Education* in 2000, having run a clinical legal education programme since 1980.

History of Clinical Legal Education

Jerome Frank's 1933 article, 'Why Not a Clinical Lawyer-School?'¹ is one of the first works of clinical scholarship. While Jerome's article

was published in 1933, clinics only became widely established in the 1960s and 1970s in the US through funding from the Council on Legal Education for Professional Responsibility and the Ford Foundation.²

Clinical legal education developed as a means to teach law students about the practice of law. Where once there existed an apprentice system that gave way to the Langdellian method of Socratic dialogue, law schools have returned to the desire to meld theory with practice. Clinics can be viewed as forums for applied law. They disrupt the purely academic exercise of case reading by introducing real clients operating in the real world with real consequences and the opportunity to have real impact.³

Moreover, Roy Stuckey, a clinical legal education professor at the University of South Carolina, noted that there are three types of clinical

course: (a) simulation-based courses, (b) in-house clinics, and (c) externships.⁴ Stuckey also notes that there are four stages to ‘learning from experience,’ namely (a) experience, (b) reflection, (c) theory and (d) application.⁵

How to Establish a Law Clinic

Stephen Miller, director of the economic development clinic at the University of Idaho, has described starting a new law school clinic as “the most complex pedagogical challenges in legal academic.”⁶ He wrote an article published in the 2014 *Clinical Law Review*, “Field Notes from Starting a Law School Clinic,” as an attempt to “draft the article I wish I had been able to read that first summer”. Similarly, Frank Dignan wrote an article detailing his experience in setting up a clinic at the University of Hull, entitled ‘Bridging the Academic/Vocational

Divide: the Creation of a Law Clinic in an Academic Law School.’⁷

European Clinical Legal Education

Lawrence Donnelly has an article on ‘Clinical Legal Education in Ireland: Some Transatlantic Musings,’ where he contrasts the difference between undergraduate and postgraduate students.⁸ Importantly in 2009, the *German Law Journal* published an important article by professor Richard Wilson, who had over 20 years’ experience in clinical legal education, entitled ‘Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education.’⁹ It discusses how to overcome difficulties in Germany.

The Needs of Law Firms

The UK Higher Education Academy published an important study on ‘Employer preferences in UK Legal Education: A Synthesis of re-

search’,¹⁰ which suggested that there was evidence ‘practitioners want more emphasis ‘hard skills’ such as document drafting and problem-solving’ in law schools. Moreover, it seems law firms are concerned over trainees’ lack of understanding of substantive legal ethics.

Scholarship on Startup Law Clinics

Praveen Kosuri, the director of the Entrepreneurship Law Clinic at the University of Pennsylvania Law School,¹¹ wrote an excellent article on the operation of transactional law clinics, and notes that ‘scholars often characterized clinic design as balancing service to clients against pedagogical goals of student learning.’ It is these three distinct dimensions—service, skills training, and pedagogy—that comprise the essence of clinic design. Moreover, Susan Jones wrote about startup law clinics in 1997.¹²

Benefits for students

Clinical legal education provides a learning experience that is difficult to replicate in any classroom setting.¹³ This includes (a) students can see how their work directly benefits a real person, and thus obtain personal satisfaction from impacting positively on someone’s life, (b) students can see the vocational significance of the skills they are developing, (c) students are given ‘responsibility and empowerment’, and feel a duty towards their clients, (d) the ‘energy of firm meetings frequently compares favourably to the apathy-induced somnambulism pervasive to more traditional seminars’, (e) students grow in confidence because of the ‘close-knit’ community of clinics, (f) students develop assertiveness skills, (g) students frequently do not achieve their potential in seminars by not participating in discussion, whereas clinics require full participation, and

(g) by applying the law to an actual case students understand concepts previously less clear to them.¹⁴ Moreover, experience gained from work in 'real life' situations has been demonstrated to motivate students and to invigorate their appetite for legal practice.¹⁵

Moreover, (a) students must engage in fact analysis: in academic modules, students are given a set of facts which requires the law to be applied, but in clinics students are deprived of a set of coherently presented facts, and they must understand the law in sufficient depth to determine which elements of a client's story are important, (b) practical problems as found in clinics rarely adhere to neat distinct compartments, and may involve company, information and tort law, and the ability to forge coherent links between these diverse elements requires 'clarity of mind'. (c) Students acquire an understanding of law in

context: legal rights are juxtaposed with practical considerations, such as cost and commercial relationships.¹⁶ 'Almost any client seeking legal advice will have a problem which encompasses different areas of law, and the facts are never presented neatly on a plate. This means that students dealing with such situations cannot simply fall back on conventional class room teaching. They need to develop new strategies and approaches to problem solving, through the process of reflection.'¹⁷

Recruitment and Selection

Philip Schrag, a clinical professor with twenty-five years' experience, wrote an article on 'Constructing a Clinic.'¹⁸ Clinics can simply have a lottery in the clinic is oversubscribed, but he recommends having an 'elaborate plan to advertise the clinic widely and (a) disclose to prospective students what they can ex-

pect, (b) to select applicants according to criteria that the clinic establishes, and (c) to respond efficiently to any changes in students' plans after they agree to take the clinic.'¹⁹ Notably, Marson et al argue that there is evidence that students 'less able academically than their peers thrive in the clinic setting and their confidence blossoms'.²⁰

Schrag also identifies recruitment timing as something clinics 'must pay attention'. Clinics 'often select students before registration opens for other courses, so that students can take clinic acceptance into account in making other choices about courses and part time jobs, and so that the clinic can accept clients knowing that students will be on board to represent them.'²¹

Schrag also highlights 'early commitment' from students, as clinics need to know in advance how many

students there are in order to meet commitments to clients. Schrag recommends 'elaborate advertising' is warranted for clinics, to ensure 'a large pool of potential applicants'. In particular, Schrag recommends holding a 'pre-registration meeting' where the clinic and some current and former students describe the clinic in depth.

Methods of selection vary, and include (a) lotteries, (b) select students based on short papers the applicants write about themselves and the reasons they want to take part in the clinic, and (c) personal interviews to see whether a student has the 'maturity, commitment and creativity necessary for good clinic work'. However, Schrag notes that interviewing is a 'time-consuming process for instructors if the student pool is large'; and (d) grade-point averages above a minimum level. This may be to protect students from receiving

poor grades in other course under the increased work load that the clinic will impose. But Schrag notes that ‘few if any clinics use prior grades as a criterion’.

Notably, Schrag argues that ‘law schools also need a policy to deal with students who change their minds about enrolling after being accepted for a clinic. Revocations of acceptance are unfair to students who make other commitments after being rejected. Also, if the clinic does not have a waiting list, or if all those on the waiting list make alternative commitments before being accepted, the consequences can be devastating to the clients that the clinic has accepted for representation in reliance on a particular number of students having registered. Therefore, a law school might want a published policy prohibiting students from revoking acceptance to a clinic, except for health emergencies, and impos-

ing severe consequences on students who nevertheless do not enrol in a clinic which they had previously accepted.’²²

Lydia Bleasdale-Hill and Paul Wragg raise a number of questions about the selection of students.²³ They note that in a recent survey commissioned by UK Centre for Legal Education 47 per cent of respondents on a law degree course expressed a desire to enter the legal profession. The dilemma, therefore, for the director establishing a new clinic (or revising an existing one) is the extent to which this should be accounted for in the clinic design and recruiting method. Should clinic participation be available only to those interested in becoming a lawyer? Even then, there is a question about whether participation is confined to those who will practice in the areas of law that the clinic caters for, or whether it is reasonable to expect

that there will be a natural process of self-selection whereby only those students interested in such a career path will apply.’²⁴

Assessment

Georgina Ledvinka, a solicitor and supervisor at Northumbria University’s clinical legal education programme, wrote an excellent article ‘Reflection and assessment in clinical legal education’.²⁵ Ledvinka argues that “In addition to the hands-on legal experience there is a second main element of clinical legal education, and that is reflection. Reflection is a vital part of the process; it is the magic ingredient.”²⁶

First, ‘not only are we assessing the student’s substantive knowledge and skills, but also the learning journey he or she has taken from the beginning to the end of the course. In order to assess the learning journey we must have some evi-

dence that it took place and what it encompassed. Reflection, especially written reflection, provides this evidence.’²⁷ Ledvinka identifies some challenges, including that ‘some students find it extremely difficult and feel very self-conscious engaging in this kind of writing, and it can be a challenge for clinical law teachers to coax good quality reflection out of such students.’ Finally, there is the ‘old chestnut’ of how to assess the student who performs brilliantly with her live client work but turns in a relatively shallow piece of reflection, and conversely, the student who is clueless when it comes to dealing with cases but submits an excellent piece of reflection analysing why it all went wrong.

Grading

Research indicates that grading can have positive effects on student motivation and performance in clin-

ical courses. Stacy Brustin and David Chavkin, both law professors published a ground-breaking study on this correlation.²⁸ The study has been cited as recently as 2014 by Kelly Terry.²⁹

¹ J. Frank, "Why Not a Clinical Lawyer-School?" (1933) 81 *University of Pennsylvania Law Review* 907.

² S. Ellmann, I. Gunning, and R. Hertz, "Why Not a Clinical Lawyer-Journal?" (1995) 1 *Clinical Law Review* 1.

³ P. Kosuri, "'Impact' in 3D - Maximizing Impact through Transactional Clinics," (2012) 18 *Clinical Law Review* 1 at 22.

⁴ R. Stuckey, "Can We Assess What We Purport to Teach In Clinical Law Courses?" (2006) 9 *International Journal of Clinical Legal Education* 9 at 14.

⁵ R. Stuckey, "Can We Assess What We Purport to Teach In Clinical Law Courses?" (2006) 9 *International Journal of Clinical Legal Education* 9 at 15.

⁶ S. Miller, "Field Notes From Starting a Law School Clinic," (2014) 20 *Clinical Law Review* 137.

⁷ F. Dignan, "Bridging the Academic/Vocational Divide: the Creation of a Law Clinic in an Academic Law School," 16 *International Journal of Clinical Legal Education* 75 (2011).

⁸ L. Donnelly, "Clinical Legal Education in Ireland: Some Transatlantic Musings," 4 *Phoenix Law Review* 7 (2011).

⁹ R. Wilson, "Western Education: Last Holdout in the Worldwide Acceptance of Clinical Legal Education," 10 *German Law Journal* 823 (2009).

¹⁰ Available at <https://www.heacademy.ac.uk/node/328> 1.

¹¹ P. Kosuri, "'Impact' in 3D - Maximizing Impact through Transactional Clinics," (2012) 18 *Clinical Law Review* 1.

¹² S. Jones, "Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice," (1998) 4 *Clinical Law Review* 195.

¹³ J. Marson, A. Wilson and M. Van Hoorebeek, 'The Necessity of Clinical Legal Education in University Law Schools: A UK perspective,' (2005) 7 *International Journal of Legal Education* 29, 31.

¹⁴ J. Marson, A. Wilson and M. Van Hoorebeek, 'The Necessity of Clinical Legal Education in University Law Schools: A UK perspective,' (2005) 7 *International Journal of Legal Education* 29, 39.

¹⁵ J. Marson, A. Wilson and M. Van Hoorebeek, 'The Necessity of Clinical Legal Education in University Law Schools: A UK perspective,' (2005) 7 *International Journal of Legal Education* 29, 31.

¹⁶ J. Marson, A. Wilson and M. Van Hoorebeek, 'The Necessity of Clinical Legal Education in University Law Schools: A UK

perspective,' (2005) 7 *International Journal of Legal Education* 29, 39.

¹⁷ G. Ledvinka, "Reflection and assessment in clinical legal education: Do you see what I see?" (2006) 9 *International Journal of Legal Education* 29 at 34.

¹⁸ P. Schrag, "Constructing a Clinic," (1997) 3 *Clinical Law Review* 175.

¹⁹ P. Schrag, "Constructing a Clinic," (1997) 3 *Clinical Law Review* 175 at 210.

²⁰ J. Marson, A. Wilson and M. Van Hoorebeek, 'The Necessity of Clinical Legal Education in University Law Schools: A UK perspective,' (2005) 7 *International Journal of Legal Education* 29, 39.

²¹ P. Schrag, "Constructing a Clinic," (1997) 3 *Clinical Law Review* 175 at 210.

²² P. Schrag, "Constructing a Clinic," (1997) 3 *Clinical Law Review* 175 at 211.

²³ L. Bleasdale-Hill and P. Wragg, "Models of Clinic and Their Value to Students, Universities and the Community in the post-2012 Fee Era," (2013) 19 *International Journal of Legal Education* 257.

²⁴ L. Bleasdale-Hill and P. Wragg, "Models of Clinic and Their Value to Students, Universities and the Community in the post-2012 Fee Era," (2013) 19 *International Journal of Legal Education* 257 at 265.

²⁵ G. Ledvinka, "Reflection and assessment in clinical legal education: Do you see what I see?" (2006) 9 *International Journal of Legal Education* 29.

²⁶ G. Ledvinka, "Reflection and assessment in clinical legal education: Do you see what I see?" (2006) 9

International Journal of Legal Education 29 at 29.

²⁷ G. Ledvinka, "Reflection and assessment in clinical legal education: Do you see what I see?" (2006) 9

International Journal of Legal Education 29 at 39.

²⁸ S. Brustin and D. Chavkin, "Testing the Grades: Evaluating Grading Models in Clinical Legal Education," (1997) 3 *Clinical Law Review* 299.

²⁹ K. Terry, "Embedding Assessment Principles in Externships," (2014) 20 *Clinical Law Review* 467.

