

Legal Education or Community Service? The Extra-Curricular Student Law Clinic

Introduction

Over the past few decades, in-house student law clinics have, along with other forms of clinical legal education such as student placements and legal practice simulations, become an increasingly common feature of legal education in the United Kingdom¹ However, insufficient attention has been paid to the various, and potentially conflicting functions and purposes of student participation in ‘live-client’² clinics, which constitute the exclusive focus of this article, and whether a university clinical course is the best method of achieving the best balance between these functions and purposes.

According to the literature, the most important functions and purposes of live-client law clinics can be grouped appear to fall under three headings:

- knowledge and skills – providing students with a better knowledge of how the law actually operates in practice, and with the legal and other skills used by practitioners;
- ethics – introducing students to and giving them practice in dealing with the ethical issues that arise in practice;
- social and political justice – meeting the unmet legal needs of the community and using law to improve their daily lives.

To this list, many would add the purpose of motivating students to use their skills and knowledge for the community rather than just for themselves, and hence helping to create a new cadre of lawyers committed to the highest ideals of professional service. In addition to these more explicit purposes, students (and indeed some staff) would no doubt also include the function of augmenting their CVs, whereas clinical teachers also sometimes emphasise the enjoyment to be had from clinical teaching. Finally, at an institutional level, law schools and universities are likely to emphasise the enhancement of their image as an active part of the community.

Over the course of the history of student law clinics, different aims have been emphasised at different stages. For example, the early call by Jerome Frank³ and other American Realists for students to experience law in action was the dominant motivating force behind the first few law clinics being established in the US in the 1930s.⁴ Then, in the 1960s and early 1970s, student political activism, calls for their legal education to be made relevant and the perceived need to teach ethics led to the

¹ R Grimes, J Klaff and C Smith, ‘Legal Skills and Clinical Legal Education – A Survey of Undergraduate Law School Practice’ (1996) 30 *Law Teach* 44; Browne, S ‘A survey of pro bono activity by students in law schools in England and Wales’ (2001) 35 *Law Teach* 33.

² In the ‘live-client’ clinic, advice and sometimes representation is provided for clients with real legal problems Julian Webb & Caroline Maughan *Teaching Lawyers’ Skills* (Butterworths, London, 1996)

³ ‘Why not a Clinical Lawyer-School?’ (1933) *University of Pennsylvania Law Review*, 907.

⁴ For accounts of the history of US and UK law clinics, see eg Hugh Brayne, Nigel Duncan and Richard Grimes *Clinical Legal Education Active Learning in Your Law School* (Blackstone Press Ltd, London 1998), 5, 10, 236, 267-8; R Condlin ‘The Moral Failure of Clinical Legal Education’ in D Luban (ed.) *The Good Lawyer: Lawyer’s Roles and Lawyer’s Ethics* (Totowa, NJ, Rowman & Allanheld, 1983b), 332ff; M J, Kotkin, ‘The Law School Clinic: A Training Ground for Public Interest Lawyers’ in J Cooper & LG Trubek (eds) *Educating for Justice: Social Values and Legal Education* (Aldershot, Ashgate, 1997), 136ff; M Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education* (1987) 34 *UCLA Law Review* 577, 589ff; R J Spjut, ‘Praxis and Prudence: Reforming Clinical Legal Education at the University of Kent’, (1977) 11 *Law Teach* 89.

acceleration of the law clinic movement . Later, however, the United States clinical movement became dominated by the drive to use clinics to develop skills and knowledge, though there has evidently been a return to the earlier aims of the clinic movement. In the UK, the emphasis has been far more focussed on teaching law in context than on ethics, politicising students or seeking to ensure social and political justice.⁵ The trajectory has been similar to that in the US, with the earlier contextual educational and social justice aims of the Kent and Warwick clinics being overtaken by the explicit orientation of most clinics under the auspices of the Clinical Legal Education Organisation (CLEO) to place the student's educational needs (largely understood in terms of learning legal skills and how law operates in reality, but also extending to the ethical dimension of legal practice) at the forefront of a clinic's function.

The aim of this article is to argue that the move away from the earlier social and political justice aims of the law clinic movement represents a wrong turning and that clinics should place the needs of the community at the heart of their operations, which in most cases means those of their clients. In order to do so, I will distinguish between two clinic ideal-types in terms of their main orientation: educationally-oriented (EO) and social justice-oriented (SJO) clinics. These categories represent ideal-types in that they are not meant to map directly onto particular law clinics in the UK or elsewhere. Moreover, all clinics are likely to pursue multiple goals, rather than have an exclusive focus, and thus it is never a question of choosing one or even two goals for a law clinic but ensuring that various goals are prioritised in one or other way. For example, in order to use cases to educate students, EO clinics must provide a service to the community. Similarly, SJO clinics have to provide their students with legal skills in order to ensure the necessary levels of service, while their students will continue to be exposed to new areas of law and learn about law's context nature in the course of serving clients.

Nevertheless, I will argue that clinics which prioritise client and community needs represent the best ideals of the law clinic movement, not least because EO clinics convey an unfortunate ethical message to students about professional legal ethics and thus, while meeting the second main aim of law clinics - to introduce students to the ethical issues of practice – run the risk of conveying a message which is at variance high professional and ethical ideals. However, instead of simply calling for re-aligning the priorities of law clinics operating along traditional lines as part of the formal curriculum, I will argue that the safest and most cost effective way to ensure that clinics deliver social justice and model a healthy vision of legal ethics is to develop what I will call the extra-curricular in-house clinic (EIC) model whereby students provide advice and assistance under the supervision of faculty staff and/or volunteer lawyers, but without being rewarded with academic credits. At the same time, I will acknowledge that such a clinic does have one disadvantage in relying on the goodwill of its volunteers, and will argue that one way of meeting this problem might be to graft a curricular course onto the EIC in order to reward student volunteers for their commitment. As long as such courses are built on the firm foundations of a volunteer SJO clinic, it will avoid what I perceive to be the problems with the EO model.

⁵ This was so even in the more critical atmosphere of the Kent and Warwick law schools , though the early Kent law clinic did refer to the need to 'alleviate distress in the community': W M Rees, 'Clinical Legal Education: An Analysis of the University of Kent Model' (1975) 12 *Law Teacher* 125, 135. See also Spjut above and A. Sherr 'Clinical legal education at Warwick and the skills movement: was clinic a creature of its time?' in G Wilson (ed) *Frontiers of Legal Scholarship* (Wiley 1995).

The disadvantages of EO clinics

The type of clinic I have in mind here are those in the UK which adhere to the CLEO guidelines and are most clearly espoused by Richard Grimes and Hugh Brayne, who were instrumental in setting up the Sheffield Hallam and Northumbria clinics.⁶ Thus in their guide to clinical legal education, written with Nigel Duncan and others⁷, they expressly assert that the focus of student live-client clinics must be firmly on education rather than community needs. As Grimes puts it, 'If the clinic is about anything, in our experience, it is about the process of learning...'⁸ Even stronger is his unsupported assertion that the 'temptation, for financial, political or altruistic reasons, to service the client's needs without reference to the learning experience of the student, is at best foolhardy and at worst in danger of satisfying neither the student nor client.'⁹ In fact, for Brayne and Grimes the fun to be had from experiential teaching and learning seems to be more important than helping those in need,¹⁰ though Grimes does acknowledge that it is 'both understandable and commendable to have as an aim the service to the community',¹¹ and that '[p]rovided that legal services which address client's problem do serve the educational objective at the time, there is no difficulty in equally meeting both sets of needs.'¹²

In the Sheffield Hallam and Northumbria clinics, these priorities are communicated, not just to students, but even to prospective clients. Thus the former's handbook informs students: 'The Law Clinic is a vehicle for the study of law. Although it may fulfil other functions (eg providing a useful service to others or giving you a grounding in skills that are useful in the outside world), it is primarily about helping you understand the law.'¹³ Similarly Northumbria's Law Office's retainer informs clients: 'We are committed to making sure that all the work we do meets the highest standards. If at any time it is decided that your case is not of sufficient educational value, or it is otherwise unsuitable, we will no longer act on the matter. If we have to withdraw from your case, we will try to refer you to another source of legal advice and assistance.'

In my view, there are three main problems with this type of approach. Most obviously, it may lead to decreased services to potential clients who do not fit students' educational needs. This may obviously occur because those in need may be turned away, but it may also be that the representation of clients who could afford a lawyer but who have pedagogically useful cases reduces the clinic's capacity to assist those who cannot afford legal services.

⁶ See also the New South Wales clinic mentioned by A Evans in H Brayne, N Duncan and R Grimes *Clinical Legal Education Active Learning in Your Law School* (Blackstone Press Ltd, London 1998), 270.

⁷ *ibid.*

⁸ *ibid.*, p 256

⁹ R Grimes 'The Theory and Practice of Clinical legal Education' in Julian Webb & Caroline Maughan (eds) *Teaching Lawyers' Skills* (Butterworths, London, Dublin, Edinburgh 1996), 155

¹⁰ *Op cit* n 6, chs 1-3 *passim* Evans also refers to this aspect of clinical legal education, but is commendably critical of putting university needs over those of clients: *ibid.*, 267ff.

¹¹ *ibid.*, p 11

¹² *ibid.*, p 18 and cf R Grimes, 'The (Book) Case of Learning by Doing' *New Law Journal Supplement*, Oct 2002, 1516.

¹³ <http://www.shu.ac.uk/schools/ssl/handbook2004.doc> (last visited 29 September 2005).

The commitment by these law clinics, as recommended by the CLEO guidelines,¹⁴ to endeavour to refer cases to other sources of assistance only partly addresses the fact that highly vulnerable and needy clients may end up unassisted if they are turned away by an EO clinic. The existence of legal aid lawyers and numerous other agencies capable of performing many of the services provided by law clinics means that people often end up at clinics as a last resort. A refusal of assistance may thus represent the end of the road for them. Conversely, even if a law clinic is someone's first port of call, it should hesitate before turning away a prospective client given that research shows many of those who need help give up if rebuffed by their first source of help they approach.¹⁵ For those motivated by a desire to address social injustice, the failure to exploit the clinic's potential to assist those in need is disappointing enough, but the willingness of EO clinics to put pedagogy over politics becomes particularly problematic when it leads to clinics actively harming weak and vulnerable community members because a case has educational benefits.¹⁶ Equally troubling is the willingness of EO clinics to cease representation after it has commenced, despite claiming that once the retainer commences client interests are paramount.¹⁷ 'Ironically', as even two members of the Northumbria Law School admit, 'this is the point where the client is most in need of quality legal advice and representation.'¹⁸

The second problem with this approach is the ethical one of using the weak, vulnerable and disadvantaged primarily as vehicles for educating those who come from or who will soon achieve a privileged social background. This prioritising of student needs is perhaps most unacceptable in clinics where students are able to refuse cases on grounds of insufficient interest after prospective clients' hope have been raised by an initial interview¹⁹ - even if clients have been warned of this possibility. However, in all EO clinics, supervisors are likely to be tempted to follow pedagogical wisdom and leave students to learn by their mistakes may prolong cases, exacerbate client anxiety and vexation, and even risk unsatisfactory outcomes.²⁰ Such behaviour might be acceptable in Kantian terms since the fact that clients do receive legal services means that they are not being unethically treated solely as a means to an ends but at least partly as ends in themselves.²¹ On the other hand, alternative ethical theories are unlikely to accept exploitation of another's position of vulnerability. For example, a feminist ethic of care holds that if harm has to be suffered it should be borne by those who can best cope with it. Similarly, postmodernist ethics demands that one care for the other, and particularly those who are weak, vulnerable and underprivileged.

¹⁴ <http://www.ukcle.ac.uk/ukcleadm/resources/clinic/standards.html> (last visited 29 September 2005).

¹⁵ H Genn and A Paterson, *Paths to Justice Scotland: What People in Scotland Do and Think About Going to Law* (Oxford-Portland Oregon 2001). Cf the approach taken by the Strathclyde Law Clinic, discussed below at page 7 and footnote 31.

¹⁶ cf the case discussed by Brayne, et al, op cit n 6, 74

¹⁷ See the CLEO guidelines and Brayne, et al, op cit n 6, 18 and 123. 'In CLEO's view the principle aim of the clinic is educational' Brayne, Duncan and Grimes at p123.

¹⁸ K Kerrigan & P Plowden, 'Who Benefits? - Case Management and Clinical Education' (1996) 30 *Law Teach* 315

¹⁹ *ibid*, p 74

²⁰ See ??: 'It is disturbing to read almost gleeful descriptions of a "disastrous [client] interview [that] provided that [clinic] student with valuable insight into the 'whys' of his behaviour and the avenues for change.'" Although this was written in the US context, there is some evidence for this approach in the UK clinics: Brayne, et al, op cit, 83.

²¹ For a discussion of this and the other ethical theories referred to below, see D Nicolson and J Webb, *Professional Legal Ethics: Critical Interrogations* (Oxford, OUP, 1999), ch 2.

If the prioritising of education over community service by EO clinics is to be justified utilitarianism represents the best route.²² Thus it could be argued that the long-term community benefits to be gained from providing students with a realistic idea of law and experience in dealing with ethical issues justify the short-term sacrifice of the needs of some of those seeking legal assistance. One problem with this argument is that only a relatively small number of students benefit from the intense educational experience EO clinics provide²³ and, as I shall argue, their experience is not so superior to that of EIC clinics to compensate for such limited numbers. But the main problem is that there is no guarantee that the EO clinic graduates will end up putting enough back into the community and particularly those parts from which their clients are drawn to justify their use as teaching tools. Unless students are politically motivated before they enter university, they will tend to go on to practise law for their material and other personal benefits. If they attend the more elite universities or gain sufficiently impressive academic results, they will usually seek employment in the large commercial firms and thus frequently represent the rich and powerful against the poor and weak. Otherwise they are likely to end up in high street firms doing private client work for those who can afford a lawyer. While the community can be said to be served by such private client work, it can be argued that it would be better off if large law firms were less willing to help companies avoid taxes, exploit their workers and destroy environment. In any event, there clearly is a need for lawyers to use their skills to help those who are most vulnerable either on a pro bono basis or even better by pursuing careers in law centres or legal aid or politically motivated practices. Unless EO clinics can be said to encourage lawyers done those paths, it can be argued that the potential exploitation of clients and disappointment of prospective clients are not outweighed by having better educated and more ethically aware students. In theory, resolving the problems of the vulnerable and those in need might inspire clinic students to seek careers which allow the continuation of such activities, but by prioritising education over community service the EO clinics are likely to have the opposite effect and encourage students to put their interests before those of those who are less privileged than themselves.

This leads to the third problem with EO clinics. As we have seen, one aim of law clinics was to introduce students to identifying and resolving issues of professional legal ethics. There is no reason to think that EO clinics are any worse than SJO clinics in delivering what might be called the explicit ethics curriculum. Indeed they might well be prepared to take on cases that a SJO clinic might not because they raise noteworthy ethical issues. On the other hand, this willingness to put student's ethical needs before those of clients contributes to the 'latent' or 'hidden' ethics curriculum²⁴ involved in all law and other teaching but particularly in clinics where professional legal ethics issues are clearly raised. As many have pointed

²² Though the repeated references to the fun to be gained from clinical legal education suggests that the egoistic form of consequentialism is being invoked.

²³ Eg a recent survey of US law clinics (see M A McDiarmid, 'What's Going on Down there in the Basement: In-House Clinics Expand their Beachhead', (1990) 35 N. Y. Law Sch.L. Rev. 239) revealed that they only had an average of 24.2 students, with more than half providing only a semester's involvement and the rest for only a year, unlike at Strathclyde and Bristol where students can join for the duration of their studies.

²⁴ J Chaifetz, 'The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School', (1993) 45 Stan. Law Rev. 1695; A Higgins, 'Educating for Justice and Community: Lawrence Kohlberg's Vision of Moral Education', p 60 in WM Kurtines and JL Gewirtz (eds), *Moral Development: An Introduction* (Boston, Allyn and Bacon, 1995).

out²⁵ it is not a question of whether professional legal ethics should be taught in law schools. Whether we like it or not we are always teaching ethics, even if the lesson is that lawyers' ethics are not worth discussing. The problem with EO clinics is, not that issue of professional legal ethics is ignored, but that the message conveyed is debased.

Occupations like lawyers partly justify their professional status on the grounds that legal practice is more than just a business but serves the community through both lawyers' altruistic concern for those who need access to justice and through their willingness to place service to their clients above their own personal needs. This, however, is not the lesson students in EO clinics learn. Instead, they learn that their interests are predominant, and that clients are means to their ends (now educational but later commercial) rather than possibly vulnerable human beings with pressing material and emotional needs.²⁶

The long-term effects of this message are not difficult to imagine, though of course impossible to quantify. There is also, however, a more direct effect on clinics themselves. If their ethos encourages students to put their own interests first or at least does not discourage them from doing so, students might well abandon clients once their own educational needs are met, such as when courses ends or vacations begin. This was evidently one reason why the University of Warwick's live law clinic was replaced with a simulation clinic. Similarly, when Diploma of Legal Practice students were allowed to join the University of Strathclyde Law Clinic in order to fulfil a course requirement, there was a noticeable difference in commitment between these students and those who had previously joined on a purely voluntary basis.

This difference in motivation was one of the reasons why I adopt an extra-curricular model when I established the University of Bristol University Law Clinic in 1995.²⁷ Another reason was that I had been involved in a totally student run clinic at the University of Cape Town, and had enjoyed and benefited from the autonomy in managing cases and helping run the clinic. However, the final reason for the extra-curricular model was perhaps the most important – there was no possible chance of the Law Faculty funding a law clinic course.

However, while the genesis of the extra-curricular model I am going to sketch was born of a mixture of political, personal and pragmatic reasons, having seen it in operation in the UK over the last ten years in Bristol and at Strathclyde, and prior to that in Cape Town, I have become convinced that it offers a highly cost effective alternative to the curricular in-house model and has many of their advantages when compared with placement schemes.²⁸ **At the same time, while it does have certain drawbacks, I will argue that these are offset by its overall advantages and can be partly addressed by a merging of the curricular and extra-curricular models.**

The EIC Model Described

My initial experience in Cape Town involved a clinic without any staff involvement but which relied on solicitor volunteers to check advice to clients. However, because the poor response from the Bristol legal community and because of a desire to participate in Clinic activities, I decided to retain a supervisory role over the Bristol

²⁵ Chaifetz, *ibid*, M Jewell, 'Teaching Law Ethically: Is It Possible?'(1984) 8 The Dalhousie Law J. 474 at 481; C J, Menkel-Meadow, 'Can a Law Teacher Avoid Teaching Legal Ethics?'(1991) 4 J.Legal Educ.; J Webb 'Developing Ethical Lawyers: Can Legal Education Enhance Access to Justice' p286.

²⁶ cf Evans, in Brayne, Duncan and Grimes, p 269

²⁷ cf J Griffiths-Baker, 'Ethical Education through the Student Law Clinic', (2002) 5 Legal Ethics 24.

²⁸ Cf Brayne et al, op cit n 6.

clinic and continue to have this role at the Strathclyde clinic. Here, I train students, check all advice given to clients and all outgoing correspondence, and occasionally speak to clients and negotiate on their behalf. However, because I do not have a UK law degree, students are often assisted in their research by academic staff or a few volunteer solicitors. The latter sometimes take referrals of case beyond the clinic's capabilities and conversely provide a steady stream of cases to the clinic.

However, as at Bristol, the Strathclyde Law clinic (on which I will henceforth concentrate) is largely administered by the students themselves. A partly appointed and partly elected Executive Committee, assisted by deputy members, has responsibility for training, membership, publicity, funding, maintaining relations with external bodies and the allocation of cases. This committee meets weekly during term and intermittently over the summer, and is responsible for both the Clinic's day to day running and policy making over its future direction. It also decides on whether to take on cases which raise ethical problems or otherwise conflict with the Clinic's ethos, and decides on how to deal with students who fail to fulfil their clinic obligations. In all of this, it is advised by a Management Committee comprising of University members, lawyers and representatives of the local community. The Management Committee also hears appeals from any student adviser aggrieved by decisions of the Executive Committee and any complaints by clients not resolved by myself.

In order to handle its caseload, the Clinic is divided into four firms, each of which is headed by a student case manager, who is in charge of allocating cases in its week of responsibility, and who also monitors the progress of cases. All clients are interviewed at the Law Clinic office by two students who may not give advice at the first interview. The students work in pairs so that more experienced members can supervise and train the less experienced, thus ensuring that much supervision and on-going training is delegated. After seeing a client, the students consult me on how to proceed and are often then sent on to a relevant staff member or solicitor for more specific advice. After research is completed, I and, where relevant, the staff member or solicitor checks the proposed advice, any letters, pleadings and other relevant documents.

Before commencing clinic duties, student advisers receive two day's intensive training, primarily in client interviewing, but also in law clinic procedures, legal research and letter writing. The training is provided by myself along with two Diploma of Legal Practice colleagues and experienced students who critique mock interviews. In addition to this initial training, sessions are held on negotiation, advocacy, and small claims court procedure. More specialist training sessions in areas like industrial tribunal hearings might also be required if a planned retainer with other other advice agencies which cannot cover advocacy in an industrial tribunal is finalised.²⁹ Such retainers will supplement the Clinic's income. Currently this derives partly from the Law School which meets a number of hidden costs for matters such as accommodation, heating, lighting, postage, telephone calls and initially also computer and other office equipment, and partly from an annual donation from the University's Graduate Association which covers remaining expenses like insurance, publicity, web development, and training. The costs of running the clinic are therefore relatively low at just over £5000 a year. The only other hidden cost is the time of staff who help students with cases and my own time, which I estimate to amount about two hours a day during term but considerably less during holidays.

²⁹ If so, we will have to ensure that the need to provide value for money does not swamp the current benefits students gain from autonomy in handling cases and lead to other cases being turned away or given less attention: cf Tarr in Brayne, et al , op cit n 6, 239-40.

For this expenditure and staff time, the University of Strathclyde gains the benefit of a Law Clinic with around 100 student advisers ranging from first year undergraduates to Diploma students. This depth of involvement is far in excess of traditional in-house law clinics and at a far less an expenditure of resources.³⁰ Although membership is possibly largely than that ideal to ensure a coherent esprit d corps, it has been necessary in order to cope with increasing demand for Clinic services. Thus, with only the publicity associated with the Clinic's launch in October 2003 and leaflets left in the Small Claims Court, the Clinic's weekly workload has more than tripled from the initial two cases per week. This may not seem much compared to some other student-assisted law centres, but it should be born in mind that the Clinic is not limited to a particular type of case nor to merely giving advice. Most clients receive some form of assistance, such as a letter written on their behalf or a claim negotiated, and an increasingly number are being represented in court or a tribunal.

The Strathclyde (and Bristol) clinics are not unique in the UK in providing this sort of service.³¹ But as far as I can tell they are unique in being extra-curricular and in relying on students so extensively in their day to day running.³² Also unique is their primary focus on providing a service to the community. Admittedly, many students may want to join for the purposes of bolstering their CV's or slightly less cynically for learning useful skills. However, at Strathclyde there is a fairly rigorous application procedure requiring students to justify why they want to join the Clinic and in many cases they are interviewed by Committee members to assess their commitment to helping others rather than just themselves. While it is impossible to ensure total accuracy in weeding out the 'careerists', it usually soon becomes clear when students are not in fact committed to helping those in need, or at least committed to carrying out their obligations to clients and the clinic, and there are elaborate disciplinary proceedings for excluding such students from the Clinic. In addition, my experience in running clinics, confirmed anecdotally by others, suggests that many of those who join for reasons of self-interest become committed to serving those in need once they start to appreciate the sort of problems they face and gain the satisfaction of making a difference to the lives of those less privileged than themselves.

The main way in which the Strathclyde clinic's social justice ethos is institutionalised is through its criteria for taking on cases. Here, pedagogical factors play absolutely no role. Instead, client need is paramount and the Clinic's stated primary aim is to act as a safety net for all those who fall through existing service provision.³³ As stated on its website³⁴ and advertising leaflets:

³⁰ Eg in the US survey, referred to in n 18, above, law clinics employed an average of 4.36 teachers, notwithstanding the small number of students.

³¹ Cf Grimes et al (and Browne, both *op cit* n 1).

³² Some clinics do have voluntary elements and some students, such as those doing the BVC volunteer to work for FRU. Neither Grimes et al and Browne, *ibid*, explore the voluntary versus credit-bearing distinction in their surveys of UK law clinics. At least in earlier years (cf Q. Johnstone, 'Law School Legal Aid Clinics', (1951) 3 J. Legal Educ. 535); some US law clinics were voluntary, though this does not appear from more recent surveys (M A McDiarmid, *op cit* n 25).

³³ This does not mean that we automatically take on everyone who comes through the door who meets our criteria. Clinics will not serve the community by wasting time and resources on hopeless cases nor the by giving those with such cases false hope. However, while the need to ensure the most effective use of scarce resources remains paramount, the Clinic does recognise the value in providing support to those with legally weak but ethically strong cases so that they can experience their 'day in court' and know that there are others who care about them and recognise the justice of their case. But this does not necessarily mean that a SJ clinic like that of Strathclyde will necessarily 'waste' more valuable

The Clinic is intended to be complementary to existing legal services provided by lawyers and other agencies such as Citizens' Advice Bureaux. It therefore, does not act for anyone who can afford professional legal services, or who qualifies for legal aid. Nor will it act in areas like debt or immigration advice where there are already adequate services provided.

The centrality of the social justice motivation is also inculcated through induction training. Here the idea that students must prioritise the needs of clients and the community is constantly reiterated. It is also stressed that clients should be treated holistically as flesh and blood individuals with unique legal and non-legal problems of an emotional as well as material nature, rather than just a legal problem requiring the use of technical skills ('the eviction, the breach of contract', etc). Thus, the Clinic endeavours as far as possible to ensure them assistance with many of their problems which emerge in relation to the original legal problem. In some cases, such as where clients struggle with filling in forms, it will provide practical help, though in most cases this means finding some other agency like debt advice organisation, women's shelter or medical assistance. The reason for this holistic approach is twofold. One is that many non-legal problems are directly linked to a legal problem such that a solution to the latter is impossible or very difficult without a solution to the former. The other is that being involved with all of a client's problems makes students understand the depth of social deprivation and how this is linked to legal problems. In this way they may learn important lessons about the society in which the law they study and will practice operates.

The final and least direct means of inculcating the service ethos is through occasional discussions between advisors, case managers and the Executive Committee over whether we should take on cases which do not clearly fit within our criteria or which raise difficult ethical issues. Thus, while recognising that particular clients may have unsavoury views,³⁵ the students have come to realise that citizens have a moral claim to have their rights resolved irrespective of their own morality, though the Clinic has declined to be involved in unjustifiably causing harm to others or to assist in the propagation of racism, sexism, etc. Admittedly this process of inculcation remains largely confined to the committee³⁶ and those advisors who attend to discuss their cases, but word does filter down to others, all decisions are minuted and we decisions are publicised through a monthly newsletter and the use of the intranet.

The Advantages of the EIC model

For those seeking to establish in-house law clinics, the relatively low costs of clinics like those of Bristol and Strathclyde should make the extra-curricular model very attractive, particularly as almost all funding can be obtained from sources like a sponsoring law firm, as at Bristol, or a university funding body, as at Strathclyde.

resources on hopeless cases, given that pedagogical benefits may also argue for such cases to be taken on. Moreover, where the only perceived benefit of representation in such cases is educational, their inevitable outcome may demoralise student advisors who do not appreciate the more humane aspects of providing legal support of Brayne, Duncan and Grimes, op cit, p 119.

³⁴ <http://www.lawclinic.org.uk/>

³⁵ A recent client expressed anti-Irish views to an advisor called Colleen!

³⁶ The success of this inculcation process (at least within the Executive Committee) can be seen when in a recent debate, a new member expressed the view that we should not help someone because we are not here to act as social workers, the more experienced members immediately and unanimously retorted that that is precisely what we are here for.

Other than that all is needed is a committed staff member, some supportive colleagues and a core of enthusiastic students. My experience at Bristol shows that setting up such a law clinic is possible even at an institution which was to say the least ambivalent about the benefits of a law clinic. Indeed, contrary to received wisdom³⁷ as long as one has the necessary back-up, one does not even need a clinic director who can or has acted as a practising lawyer, nor indeed one with a law degree from the relevant jurisdiction.

Because of the high degree of student autonomy and that the fact that the pairing of students means that experienced students supervise and teach the less experienced, the need for the low staff-student ration recommended by others³⁸ is also obviated. By focusing supervision on the beginning and end of the process, many cases can be supervised by a few. Of course this raises the possibility of delays and mistakes, but in my seven years of experience as a supervisor at Bristol and Strathclyde and four years as an advisor at Cape Town I am unaware of any irreparable mistakes. However, for those that are, there is a liability disclaimer and professional indemnity insurance. Moreover, one has to weigh this slight possibility of letting down some clients against the EIC clinic's ability to provide a vastly expanded service to the community. And if the current Strathclyde can cope with seeing six or even more clients a week with its current funding and lack of full-time supervisor, the advent of more substantial funding and supervision suggests that both quantity and quality of service can be enhanced.³⁹

But the benefits of the EIC model are not limited to cost and expanded services. Nor should consideration of this model be confined to those thinking of establishing a clinic. There are a number of other advantages which suggest that existing clinics should think of moving to the EIC model or, as I will outline later, combining it with their current clinical courses.

One is that there is no tension between the needs of client and students. Thus, whereas EO clinic supervisors are often faced with the dilemma that intervening in student-client relationships to protect help the client will detract from the learning process,⁴⁰ there is no dilemma in SJO clinics. The clients' interests come first and thus if problems are identified they must be immediately rectified, and the time saved used for helping more potential clients. But this does not mean that students do not benefit educationally from clinic work. Much of what they do, such as ascertaining legal procedures, investigating and handling facts, dealing with legal issues that are either not taught at law school or which cross traditional subject boundaries, writing letter, negotiating and even arguing in court, goes well beyond their traditional legal education. Consequently, the learning experience remains considerable even at fairly

³⁷ M Zander, 'Clinical Legal Education', (1973) Feb 22, New Law J., 181, CLEO guidelines ch 3 Appendix in Brayne, Duncan and Grimes, , M Weaver, 'Clinical Legal Education – Competing Perspectives' (1983) 17 Law Teach 1 at 7 deriding 'academics at play or refugees from practice', but cf Brayne and Grimes in Brayne, Duncan and Grimes *op cit* at pp 66-7.

³⁸ 1: 12 according to the CLEO guidelines and 1:8 according to Evans: Brayne, Duncan and Grimes, *op cit* ch 3 and at 271, respectively. In the US, 54% of law clinics surveyed had a staff-student ratio of between 1:8 and 1: 10, with 16% even having a ratio of less than 1: 6: M A McDiarmid, *op cit* n24, at 254-5.

³⁹ Thus, in the forthcoming year, Strathclyde Law Clinic intends not only to take on specialist industrial tribunal advocacy, but also to establish outreach clinics in outlying areas of Western Scotland. More long-term plans include placing trained students in immigration services and women's refuges, and expanding into street law schemes.

⁴⁰ and where it would seem that students are sometimes left to blunder along because of perceived educational benefits of finding things for themselves and making their own mistakes: see Brayne Duncan and Grimes, *op cit*, p 83

progressive institutions like Strathclyde which include some of these issues in the curriculum. Indeed, the fact that supervision is at arms length and intervention only likely in the form of directing what and where to research the law, correcting letters and helping deciding on strategy, student responsibility for cases and hence the opportunity to learn by experience is as great if not greater than in the EO model.

Moreover, the less intrusive supervision in EIC clinics, and the fact that it does not require practising or even qualified solicitors, means that there is far less possibility of supervisors inculcating in students the sort of harmful models of adversarial lawyering, competitiveness, insensitivity and the professional manipulation of clients which motivated Condlin's attacks on US clinical legal education in the 1980s.⁴¹ As Condlin notes, the fact clinic teachers are the closest students come to their prospective new role as practitioners means that they are likely to have a particular strong influence over students.⁴² Moreover, the absence of assessment avoids the risk of students attempting to conceal weaknesses in case preparation or gaps in their knowledge so as not to prejudice their assessment.⁴³

Consequently, whilst EIC clinics offer less opportunity for intensive hands-on teaching than EO clinics, they do have alternative educational benefits. Most notably the considerable autonomy students have in handling cases confers all the benefits of active, problem-based learning currently espoused by supporters of EO clinics.⁴⁴ This is further enhanced by the fact that a substantial number of students (around twenty in any one year in Strathclyde) gain experience in clinic management and policy making, thus providing them with important life skills. While certain basic principles (such as the need for insurance and supervision) must remain non-negotiable, the committee is given considerable responsibility for day-to-day management, clinic policy and decisions about representing particular clients. Such issues are often vociferously debated and put to the vote. At least for the students involved in this process, the clinic thus acts as the sort of 'just community' espoused by Kohlberg and his disciples. According to Higgins⁴⁵, such communities have three aims: '(1) enhancing students' moral reasoning through participation in moral decisions; (2) creating a moral culture of norms and values through democratic rule-making and building group solidarity or community; and (3) providing a context in which students, and teachers as well, can act on their moral intuitions and decisions.'⁴⁶ The last of these applies to all law students in clinics, but the Strathclyde clinic achieves all three for more than 10% of its membership in any one year and, given that the committee membership changes every year, for up to about 20% for all clinic members.

Another advantage of the SJO model, at least for those who share my view of legal practice, is that it may play an important role in inculcating what I would regard as the appropriate ethical orientations to legal practice. As I see it, this orientation

⁴¹ R Condlin, 'Clinical Education in the 70s: An Appraisal of the Decade', (1983) 33 J.Legal Educ. 604
R Condlin 'The Moral Failure of Clinical Legal Education' in D Luban ed.) *The Good Lawyer: Lawyer's Roles and Lawyer's Ethics* (Totowa, NJ, Rowman & Allanheld); R Condlin, "'Tastes Great, Less Filling": the Law School Clinic and Political Critique', (1986) 35, J. Legal Educ. 45; but cf N Redlich, 'The Moral Value of Clinical Legal Education', (1983) 33, J.Legal Educ. 613 and the more sensitive style of teaching advocated in Brayne, Duncan and Grimes op cit, passim

⁴² 'Moral Failure' *ibid*, pt 331 See also A Evans, 'Lawyers' Perceptions of their Values: an Empirical Assessment of Monash University Graduates in Law, 1980-1998' (2001) 12 Legal Educ Rev 209 .

⁴³ cf Tarr in Brayne, et al, op cit n 6, 246

⁴⁴ See eg Brayne et al, *ibid*.

⁴⁵ Higgins, op cit n 26.

⁴⁶ cf also Webb 1998; 'Developing Ethical Lawyers', 296 for a similar proposal for law schools

takes at least three forms. One, already noted, is that lawyers put client needs above their own. As we have seen, this is an important part of the Strathclyde clinic's ethos and is never compromised by the educational or other needs of students. The second, which we have also seen is inculcated in Strathclyde clinic members, is that law students learn to see clients as real people with emotional and material needs not simply as legal problems requiring the use of intellectual and practical skills.⁴⁷ The third is a commitment by lawyers to repay the privileges that come with having a university education by helping those less fortunate than themselves and in particular those in society who are vulnerable, marginalized and under-privileged. Preferably this should take the form of choosing to practice in areas involving such clients, but at the very least it should involve a commitment to taking on pro bono work as a formal part of one's job or in one's spare time.

According to Evans, law clinics cannot have this latter politicisation effect – they can only confirm students' pre-existing orientation as left or right-leaning.⁴⁸ However, whereas this assertion awaits empirical support, it is possible that it may not apply to extra-curricular clinics. My experience with such clinics suggests that some students who join merely to gain skills or pad their CVs become more committed to using such skills to help others. This might, of course be exceptional and such students may quickly revert to a more selfish orientation once they graduate.

But leaving aside the idea that clinics can completely change political orientation, I think that the scope for confirming pre-existing orientations should not be underestimated. As existing research shows,⁴⁹ law schools do have an effect on students' attitudes, but this is in the direction of discouraging them away from pre-existing social justice orientations towards greater cynicism and self-interest. This is not helped by the fact that, particularly in the more elite law schools, career advice and recruitment exposure is dominated by the large commercial firms.⁵⁰ Without sufficient examples of how legal careers can be devoted to those in need and the less privileged in society, students tend to "fall" into commercial firms or failing that those devoted to the moderately well off private client. By exposing students to alternative legal careers and providing them with the experience of achieving something for those in need, students with the relevant pre-existing orientation may be given the courage to carry through this orientation, whereas those who arrive without any strong pre-formed ideas about what they want to do with their education might be inspired by their work in a SJO clinic to seek justice oriented legal careers or at least to undertake pro bono work. This is far less likely to occur in an EO clinic, especially where its case load replicates those of high street law firms.

Finally, and perhaps most importantly, the SJO clinic has advantages in terms of the quality of service offered to the community; though here the advantages are less straightforward because close supervision of students – particularly if by a practising solicitor who keeps abreast of legal developments – should result in a better service to the clients that EO clinics represent. In addition, clinics run by or who employ a qualified solicitor with a practising certificate can argue cases in court that students cannot. On the other hand, only very rarely will cases need to be argued in courts

⁴⁷ Nicolson and Webb, *op cit* n 23, ch 5 and 6

⁴⁸ in Brayne, et al, *op cit*, p 268; but cf contra Johnstone, *op cit*, p 537; Kotkin *op cit*; Rees *op cit* n 5, 136 and Evan's own earlier view in (Values).

⁴⁹ See eg Chaifetz, *op cit*; J Chapman, 'Why Teach Legal Ethics to Undergraduates'? (2002) 5 Legal Ethics 68.

⁵⁰ Rolfe, H. and Anderson, T. (2003) 'A Firm Choice: Law Firms' Preferences in the Recruitment of Trainee Solicitors' 10 *International Journal of the Legal Profession* 315.

where students cannot represent clients. Thus, the lower courts in Glasgow are happy to allow students to represent clients - indeed many seem to prefer them to litigants in person. In addition, because of selection criteria, clinic clients tend not to be able to risk losing in the higher courts and, if there as defendants, the clinic can endeavour to ensure them pro bono representation or assist them to represent themselves.

But even if it is accepted that the EO clinic may deliver a better service to the clients it does take on, this must be balanced against the fact that with the same level of resources EIC clinics can help vastly more clients without compromising standards to the point likely to lead to more than occasional and rarely irreparable mistakes. But this is not just a question of ensuring the greatest good to the greatest number. The EIC clinic does in fact have certain advantages in terms of the quality of service to existing clients. Thus, if motivated by a desire to help those in need rather than merely to gain university credits or improve recruitment chances, students are far less likely to tailor their services to their own needs, nor let down clients when educational benefits have ended, as we saw occurred in relation to Warwick and Strathclyde Diploma students. But even when students do not deliberately abandon clients where their own needs have been met, but merely hand over their cases at the end of their clinic course (which usually lasts only one semester), the service to clients is likely to suffer. A new relationship has to be established, which may not be appreciated by the client, whose time and energy levels might be low. Even if students keep an exemplary record of what has been said and done by both client and advisors, there will always be important information or insights known to the previous advisor that cannot be articulated in the file and there is also much greater scope for misinterpreting the bare words on a file than those provided by the client. This is a problem with all clinics, but less so when the student's involvement is not limited to a semester but may take place over a number of years and even continue over the summer.

A Hybrid Clinical Model

I have argued that there are a number of advantages to the EIC clinical model primarily in terms of their superior ethical and political message and their much greater distribution of legal services to disadvantaged social groups. I have also argued that any reduction in the quality of service to clients is unlikely to be as great as might be imagined, and that EICs are not totally without the educational benefits and in fact may offer certain learning opportunities not found in traditional student law clinics. Moreover, even if the absence of hands-on supervision and opportunities for guided reflection of clinic performance in EICs, this is not overly worrying. Practical knowledge of how law actually operates and the development of legal skills. can be learnt after graduation at the profession's own rather than taxpayers' expense. By contrast, while I fully accept that prospective students must be introduced to issues of professional legal ethics before they commence practice,⁵¹ EO clinics can only partly meet the current absence of any ethics teaching in most UK universities. In any event, students in EIC clinics will also be introduced to issues of ethics, while they cannot but help learn of how law actually operates and gain legal skills before they can represent clients.

⁵¹ see Nicolson and Webb, *op cit*, ch 10

There is, however, one flaw with the EIC model which argues for SJO clinics having some curricular element.⁵² I have argued that students with an inherent desire to help clients rather than simply pursue their own educational needs will tend to provide a more committed service. However, there are certainly occasions when even the most committed EIC students have academic and outside work pressures which tempt them to cut corners. And for those slip through procedures designed to weed out the self-interested, such temptations may too easily mean that they let down, if not abandon clients; though this has been extremely rare at Strathclyde despite the extent of part-time work most students seem to undertake.

Maintaining commitment is a perennial problem with volunteer organisations. Apart from threatening to end a volunteer's membership, which is hardly effective if their commitment is already wavering, there seems to be little one can do to ensure that they fulfil their obligations. Nevertheless, for all the reasons already alluded to, and primarily because of the limited time-span of clinical courses, I do not think the answer lies in moving to the EO clinic model. Instead, I think that one way to create an incentive for all students to show the same commitment as the majority is to provide a reward or a prize for those who have had an exemplary record in taking on clinic case and perhaps also in clinic management. Given the added educational benefits students clearly obtain from the low staff-student ratio in EO clinics, from learning by listening and observing more experienced practitioners and from having opportunities to reflect on their performance, I think that this reward could be in the form of a credit bearing clinic course. Moreover, if students can use past as well as current cases for the purposes of assessment they would be further rewarded by having a reduced academic load for the relevant semester. Consequently, the few students who are sidetracked into putting their own interests above clients might be less inclined to do so if this would mean losing the opportunity to maximise their learning experience and minimise their workload.

A hybrid clinic does not in my view detract from the social justice orientation of the EIC clinic, while it does have the considerable advantage of allowing a fuller exploration of the ethics and justice of legal practice, and the politics of law and its social context than can currently be achieved in a SJO clinic. As long as one regards the provision of legal services to the disadvantaged as a legitimate, if not *the* legitimate goal of a student law clinic, a clinic with both an extra-curricular and credit-bearing dimension might offer the best of both educational and social justice worlds.

Conclusion

⁵² Another alleged flaw is that the clinics which are not credit bearing are marginalized (Tarr in Brayne, Duncan and Grimes, at 245), but such marginalisation seems to occur in any event in the US despite most clinics being credit bearing and my experience elsewhere is that clinic work is either respected or not irrespective of whether it is credit-bearing. Certainly at Strathclyde, the Law School and University have been willing to provide all requested resources and are keen to highlight the Clinic in their publicity and in quality assurance visits, whereas students repeatedly extol their clinical experiences (see eg Brayne, Duncan and Grimes, p206; G.P. Lopez, 'Training Future Lawyers to Work With the Politically and Socially Subordinated: Anti-Generic Legal Education', (1989) 91 W. Va. L. Rev. 305 at 323; N Tarr, 'Current Issues in Clinical Legal Education', (1993) 37 How. L. J., 31 at 31. Indeed Weaver has the opposite worry: that the inevitable 'glamour' may lead to all other law school activities being seen as less worth-while: M Weaver, 'Clinical Legal Education – Competing Perspectives' (1983) 17 Law Teach 1, 7

There are, however, likely to be those on both the left and right who would argue that universities should have no truck with seeking social justice through law clinics.⁵³ From the left might come the argument that using law to assist the weak and vulnerable projects an image of law as a panacea for social problems, thus helping to legitimise an unjust status quo which is partly built on law itself and distracting attention away from focusing on social change.⁵⁴

This argument might have had some bite in the first half of last century when radical social change was a distinct possibility, but today turning one's back on the oppressed because of the need to keep the way open to fundamental change appears to suffer from the same ethical flaw as putting student needs over those of the community. Thus postmodernists would claim that the time of justice is now and not some uncertain future, while turning away clients contravenes its call to respond to the other's face.⁵⁵ Moreover, following EP Thompson,⁵⁶ many on the left have come to recognise that, while law is ultimately an instrument of power and injustice, to be effective it must sometimes meet its rhetoric of justice, equality and respect for the rights of the weak, and that this rhetoric provides a space for those such as law clinic students to try to push law more towards its claimed justice and away from its actual injustice.

In any event, given the desperate situation of many of law clinic clients and the often blatant attempt by their more powerful opponents to exploit laws which are already weighted in their favour, few clients or the students who represent them are likely to regard any victory achieved as illustrating law's inherent justice. Indeed students are more likely to become cynical about law and its values.⁵⁷ I do not see this as such a bad thing, as long the cynicism can be channelled into a desire to fight legal and social injustice. Given the satisfaction students obtain from achieving positive results for clients and clients' appreciation of the students' efforts, I think there is a strong possibility that students might learn to mix cynicism about legal justice with a commitment to substantive justice. But in any event, even if this possibility is limited or non-existent, I strongly believe that the social justice clinical project is justified in its own terms, as is all the effort involved in running an EIC clinic, even if it does no more than improve the lives of one or two of those who seek assistance.

A diametrically opposed criticism of SJO clinics is likely to come from the right, and those who regard a legal academic's sole duty as teaching law. Such critics are likely to argue that university resources or student time should not be wasted in playing politics or providing services to the community. This argument is based on a number of unwarranted assumptions. Most obviously, it fails to recognise that clinics do add to a student's legal knowledge. Otherwise, they would not be in a position to assist clients. That the added value involves a practical knowledge of law, legal skills

⁵³ Another argument (J E Moliterno, 'An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere', (1991) 60 U. Cin. L. Rev. 83 at p 132) is to the effect that clinics are an inefficient use of public money, which should be diverted directly to other agencies involved in legal representation for the disadvantaged. But one wonders how much representation such agencies would provide for the money that EC clinics require and whether, as Moliterno himself admits, their donors would be happy to divert the funds in this way.

⁵⁴ cf Tarr in Brayne, Duncan and Grimes at 237

⁵⁵ See Nicolson and Webb, loc cit n 23.

⁵⁶ E P Thompson, *Whigs and Hunters: The Origins of the Black Act* (London, Allen Lane, 1975)

⁵⁷ J MacFarlane, 'Look Before You Leap: Knowledge and Learning in Legal Skills Education' (1992) 19 JLS 293, 306

and ethical understanding might be not be regarded by many traditional law teachers as worthwhile, but such traditionalists are being increasingly marginalized.

A second erroneous assumption is that teaching students ‘the law’ (or more accurately the law that can be found in the books) is value free and apolitical, whereas running a SJO clinic is not. This ignores the obvious fact that the law itself is value-laden and far from neutral in both its values and social impact. Failing to acknowledge this to students is as much a political act as seeking to redress the impact of injustice. Moreover, there is nothing neutral about many law schools which offer far more courses addressing the issues of the wealthy than those of the poor and otherwise disadvantaged, notwithstanding their converse social distribution.⁵⁸

Finally, the idea that universities are merely places of education is highly tendentious, not least because most academic research is directed at more than educating students but at the public interest in general. This is obviously not the view of Strathclyde University which publicly supports the clinic as helping to fulfil the university’s mission to be an active part of the community. Moreover, all UK universities and hence their largely middle-class students are heavily subsidised by taxpayers, the majority of whom have not benefited from a university education. It seems unlikely that they or governments bent on reducing legal aid bills would complain if a small proportion of the money going to universities would be used to assist those who tend not to gain the benefit from the large sums currently being spent on producing lawyers for the powerful and better off members of society. On the contrary both government and the lay community are very likely to welcome the fact that extra-curricular law clinics can provide effective legal services at a fraction of the cost lawyers charge.

Indeed, a real concern might be that if extra-curricular law clinics become more widespread, they might provide government with an excuse to further reduce state spending on legal aid and other ways of supporting access to justice, which arguably provide better services.⁵⁹ Here, however, it can be noted that SJO law clinics do not compete with legal aid and other state schemes – they provide a safety net for those who slip through the net and can also engage in activities like public interest litigation and street law that lawyers and others might not be able to undertake. Moreover, professionals providing access to justice and student law clinics are not currently chasing the same source of financial support, and it seems unlikely that those who currently fund law clinics would be prepared to redirect their financial support.⁶⁰ Most importantly, given the vastly more cost-effective nature of voluntary law clinics, it is arguable that redirecting a relatively small amount of state funding to supporting such clinics might be worth the considerable increase in services which can be provided.

⁵⁸ cf Chaifetz, op cit n 26; Lopez, op cit n 56.

⁵⁹ See Moliterno, op cit n 57, 132.

⁶⁰ As Moliterno, *ibid*, himself admits.