

Re-Imagining Clinical Legal Education

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Re-Imagining Clinical Legal Education: A CEPLER Workshop

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Rarely in our professional lives are we offered the time to reflect on what we are doing and why, and seldom are we afforded the luxury to stop and consider what our objectives are and whether there is an alternative, or more effective way to achieve them. So when CEPLER's Director of Education, Dr Steven Vaughan, offered colleagues the opportunity to 're-imagine' their subjects I jumped at the opportunity to put Clinical Legal Education (CLE) in the spotlight.

In broad terms, CLE can be defined as the study of law through real, or simulated, casework. It enables students to experience the law in action, and offers students an alternative learning experience to the traditional lecture/seminar method. By reflecting on their experiences, students are able to take the study of law beyond the lecture theatre and library.

Although a relative newcomer to the discipline of legal education, CLE has been around for several decades and is becoming an increasingly popular component in the offerings of University law schools across the United Kingdom. In some law schools, CLE is credit bearing; in other law schools, it is an extracurricular activity. Some CLE schemes focus on social welfare law, whilst others are commercially orientated. Some are run in conjunction with third sector organisations and many are supported by private practice law firms.

CLE is commonly seen as one of the most innovative branches of legal education. It might therefore seem a strange decision to re-imagine an area which is already perceived to be broaching new frontiers. My rationale for doing so is set out below.

Against the diversity of CLE offerings that I have outlined above, the legal market in England and Wales continues to undergo radical changes: in an age of austerity, the number of training contracts on offer has fallen and we have seen many law firms merge, be taken over and, in some cases, go into administration. The Solicitors Regulation Authority's ongoing consultation on the future of legal education may result in profound changes to the way future lawyers qualify and the competencies expected of them, and cuts to legal aid have left thousands of British citizens without recourse to funded legal advice and representation, causing a significant increase in the number of litigants in person navigating their way through our court system.

It is also a time of change for universities: students are paying more for their education and demand more in return for their investment; collaborations with the third sector and with industry are seen as highly desirable; and academics are required to show the impact of their research.

I therefore wondered whether, in the light of these developments, now is in fact an ideal time to re-imagine clinical legal education. My feeling prior to the workshop was that CLE could be one response to the many challenges and opportunities I have outlined above. I was delighted with the response to my call for papers which suggested that many other CLE practitioners felt the same way.

I have set out below my own interpretation of, and responses to, the presentations given by the many speakers who contributed to this event. In this short summary I can by no means do them justice, for which I hope they will accept my apologies. However, I hope that this brief record of the

many themes and topics discussed will ensure that the ideas put forward are not forgotten, as can happen all too easily as we move on with our busy lives. The conversation about the future of CLE will continue (I hope) long after this workshop and I am grateful to all those who took this opportunity to make such valuable contributions to the debate.

CLE: A view from practice

I was keen to begin the workshop with a consideration of CLE from ‘the other side’. Employability is a hot topic and increasingly law students (and their future employers) expect to graduate from law school with the skills and experience needed to enter the world of work. As clinicians it is easy for us to vaunt CLE as the best, and most obvious, way to achieve this, particularly where our graduates intend to go on and practice law. However, I was interested to hear from a representative of the legal profession as to what recruiters and supervising partners make of students with experience in CLE.

I was therefore delighted when Tony King agreed to give us his ‘view from practice’. Until his recent retirement, Tony held a series of learning and development roles at Clifford Chance including Director of Education, Head of HR Development and Director of the Clifford Chance Academy. In addition, Tony has held a number of roles with the Law Society, including Chair of the Education and Training Committee, and is a founder member of the Legal Education and Training Group, the UK association of law firm training partners and directors, and a former member of the Joint Legal Education and Training Review Consultation Panel, all of which make him very well placed to speak about the benefits (or otherwise) of CLE once graduates enter the workplace.

Tony detailed many advantages which, in his view, CLE gives to graduates. He spoke of the inevitable benefits of learning by doing and the unique opportunity that CLE offers students to understand how the law works. He argued that CLE helps students to learn the business of ‘lawyering’, including problem solving, client handling and the ability to think independently. CLE, he argued, also gets future lawyers to think about ethical issues at an early stage in their career, which can only be advantageous to the profession. In Tony’s experience, those students who have already had some experience of legal practice through their law school’s clinical programmes are better able to ‘hit the ground running’ when they start their training contracts, albeit the playing field levels after around six months. CLE can also give students a competitive advantage in job applications: where academics are comparable, participation in CLE can help employers to differentiate between candidates.

Tony drew upon his own experience of selecting a firm in which to undertake his articles, which in hindsight he felt was not best suited to his personality or his work preferences. He highlighted the opportunity that participation in CLE offers students to try different areas of practice before committing to any particular type of work at the vocational stage of their training. Indeed, for some students, it may even help them to determine at an early stage that a career practising law is not for them. In which case, the many transferable skills developed through CLE (including improved communication and drafting skills, greater commercial awareness and, in many cases, a much needed confidence boost) will stand the student in good stead for an alternative career path.

Interestingly, whilst acknowledging that there are some fans of CLE within the profession, Tony expressed doubt as to how well known and understood CLE is amongst practitioners in general. In

my view, this point requires careful consideration by those of us who are already persuaded of the benefits of CLE that Tony articulated. Are we really doing our best by our students if we are not adequately promoting the competitive edge that participation in CLE can give them to their prospective employers? Tony kindly offered to help promote CLE amongst the profession. If clinicians are agreed that we ought to do this, the next question then becomes: how?

Tony's insightful introduction allowed us to begin our day of re-imagining CLE by looking at it from the perspective of the recruiting employer. Whilst much of what he said was reassuring and supportive of the assertion that CLE is a beneficial component in any law school's employability strategy, he certainly gave me food for thought as to whether more could and should be done to promote the advantages of CLE externally.

After the Legal Services Act, LETR and a new QAA benchmark standard, where does clinic fit in?

Our next speaker, Richard Grimes, of the University of York, used a series of images to prompt discussion amongst the delegates on the ever-changing regulatory environment in which we currently find ourselves. The effect of this (as was the speaker's intent, I am sure) was to raise more questions about the future of clinic than it gave answers.

Attendees were of course generally well aware of the background against which we are operating and were able to offer up interpretations of the images before us, which in turn denoted: the finding of the Legal Education and Training Review that the legal profession needs greater diversity both in terms of lawyers and of their routes into practice; its recommendation to reduce the related red tape; the disparity between the current requirement that in order to achieve a qualifying law degree graduates must have completed prescribed core modules and the SRA's competence statement for solicitors; the Quality Assurance Agency's minimum standards for a law degree which are the subject of ongoing consultation; the current gap between the educational and vocational stages of training; and the recent announcement that two law schools (Nottingham Law School and University of Law) are soon to become alternative business structures (ABS).

The images prompted several strands of discussion. For example, there have been numerous reviews of legal education to date; do any of them go far enough in their conclusions and recommendations or is a more fundamental change required? Who are the various standards and competencies for? Will clinics wishing to conduct litigation be left with no choice but to become ABSs if the transitional provisions of the Legal Services Act 2007 are brought to an end? What might be the practical and ethical implications of clinics that become ABSs charging fees for the provision of legal advice? Will this result in students acting in an employed capacity? Will law school clinics start to compete with local practitioners for fee paying clients? How will universities ensure educational rigour and sufficient control over clinics that are separate legal entities?

With so many questions and at a time of such transformation in the sector, the only firm conclusion that I was able to draw from this part of the day was a point which Richard made at the beginning of his presentation: that now is the perfect time to be re-imagining clinical legal education. We might not yet know how CLE will fit into this changing landscape, but the aforementioned questions and how we might be able to answer them ought to be at the forefront of our minds as we continue to reassess and develop our own clinical offerings.

Clinical legal education: purposes and possibilities

Our next speaker, Professor John Fitzpatrick, of the University of Kent, encouraged his audience to think about what we want from our clinics. He argued that universities are entitled to bring their expectations to the table, yet all too often, they are left out of the conversation. Urging us to go back to the vision of universities propounded by John Henry Newman, John put forward the compelling argument that the ability to think independently is a skill, and that skill is the most valuable thing that a university can give to its students.

John argued for a clinical legal education which enables students to think independently and critically about the law and which has a focus on public service and the client. He asserted that we ought to be more ambitious in our offerings and should encourage innovation. He recommended that clinics should think carefully about what they are aiming to achieve and that these priorities should then be reflected in their assessments. In reference to his own university's clinical programmes, John explained that 80% of the assessment focused on vocational skills and the remaining 20% on legal knowledge. He explained how his students are first required to practice the law, getting to the root of an issue in order to help a client; and are then encouraged to consider and critically assess whether the law they have dealt with is good enough.

John's impassioned and informed presentation put forward a powerful argument as to the value of having a credit bearing clinical component in any law degree. It also served as a timely prompt for delegates to (re)consider what the purpose of our clinics is and the importance of structuring our offerings with a view to realising those goals.

Beyond theory/practice turf wars: where theory is considered a practice and practice is theorised

I was delighted when I received the proposal for the paper presented by our next speakers, Dr Elaine Hall and Cath Sylvester of Northumbria University. As a newcomer to CLE, having coming straight from private practice into an academic institution where little or no clinical teaching has been done to date, I was blithely unaware that anyone might consider the 'academic' study of law to be wholly distinct from its clinical counterpart, or that one might be deemed more intellectually rigorous, and therefore valuable, than the other. To me, it seemed self-evident that these two distinct ways of learning the law could be complimentary and, indeed, mutually beneficial. It was the realisation that not everyone agreed with my assumption that prompted me to include the intentionally provocative question 'to what extent can CLE incorporate legal theory as well as legal practice?' in the call for papers for this workshop and it was music to my ears when Elaine began her presentation by saying that the phrasing of that question had 'got her hackles up'.

Elaine and Cath argued that this 'polarisation' of theory and practice is unhelpful. Drawing on a range of theorists and academics they persuasively argued that clinic can provide a middle ground, allowing students to move seamlessly between theory and practice. Through participation in clinic, students can be made to think critically about when law in books lets them down and they need to think independently. In a traditional academic law degree, students learn how to deal with complex problems in realistic (but not real) situations. They answer problem questions which have been reverse engineered by the writer and although answering such questions is beneficial to the students themselves as a tool for learning, there is no value to others. In other words, there is no social justice value in answering the questions.

Through clinic the students get the distinctive experience of interpreting the law first-hand, as oppose to vicariously, thereby giving them both immediacy and responsibility. The position of the clinical supervisor will often differ from that of the traditional classroom teacher, as unlike the teacher, the supervisor will often not know the answer to the problem being presented and can model how to deal with such a situation. Students can also get a sense of efficacy from using their newly acquired skills and knowledge to advise real people or organisations in need of their assistance.

Unsurprisingly, I whole-heartedly agreed with Elaine and Cath's argument that there is middle-ground between theory and practice in which clinic can operate and I found their portrayal of the academic benefits that participation in clinic can bestow to be compelling. It will perhaps take just a little 're-imagining' of the way practitioners represent themselves to academics and vice-versa in order to achieve harmony between what I perceive to be two parts of the same whole.

Striking a balance: the role of the teaching practitioner in clinical legal education

In the last session of the morning, we heard from Rachel Knowles of UCL, who spoke about the benefits and difficulties of UCL's model of CLE through the lens of her own experience as a legal aid practitioner.

UCL's Centre for Access to Justice runs a final year module entitled 'Access to Justice and Community Engagement', part of which sees students do a placement at one of two charities that work in partnership with UCL: the Free Representation Unit (FRU); and Just for Kids Law. Rachel divides her time between working at UCL as a teaching fellow, supervising students undertaking education related casework and working as a solicitor for Just for Kids Law. This puts her in a unique position to be able to comment on the partnership from both sides.

In addition to detailing the numerous advantages that a collaborative arrangement of this kind can offer, such as access to quality cases and supervision for students, Rachel highlighted a number of challenges that she has faced since taking on her combined role. Rachel prompted the delegates to consider whether it is possible to reconcile the obligation to act in a client's best interest, particularly when the client, who may be vulnerable, is being used as 'practice' for law students. The response from others was that the 'best interest' test is not an absolute. So, for example, whilst it might be in a client's best interest to persuade a Queen's Counsel to take on his or her case on a pro bono basis, it does not mean that anything less than that fails to satisfy the requirement. A discussion around managing clients' expectations, teaching ethics and values to the students assigned to the case, ensuring appropriate safeguarding measures are in place and the importance of appropriate supervision ensued.

Rachel concluded her presentation with a discussion of a legal aid lawyer's view on pro bono. She expressed the concerns shared by many legal aid practitioners that the corporate pro bono lawyers who are stepping into the breach left by the far-reaching cuts to legal aid do not have the same degree of experience and expertise in the necessary areas of specialism as their legal aid counterparts and are therefore not adequately equipped fill the void. As Rachel pointed out, pro bono can be incredibly useful and can make a positive difference to those who receive it. However, it is not and cannot be a replacement for legal aid and as the number of legal aid practices diminishes we risk losing some areas of expertise altogether.

I found myself wondering whether collaborations between legal aid practices and university law schools, similar to the arrangements at UCL, might be one solution (albeit not a panacea), both to filling some of the gap left by the cuts and to preserving sector expertise. This was a theme that would emerge again later in the day.

Modes of delivery of CLE

During the afternoon the workshop divided into two streams, with sessions delivered by a diverse range of speakers about different and innovative modes of delivering CLE. Each session highlighted different opportunities for discussion.

Meredith Daniel and Georgina Staples, students currently studying for an LLM in the Theory and Practice of Clinical Legal Education at the University of York, discussed the challenges and benefits of postgraduate education in clinic. Their presentations gave delegates the rare opportunity to hear reflections from students of CLE, rather than the teachers.

Meredith and Georgina put forward a persuasive case in favour of the advantages that studying CLE at post-graduate level can offer to both students and institutions. They explained how their experiences on the LLM to date had developed their transferable skills in a range of areas sought after by both legal and non-legal employers, including: improved written and verbal communication skills; and project management. They also explained how their experience on the LLM had developed their skills both as academics and as practitioners. As practitioners, they have managed a caseload, undertaken representation and acted as mentors and supervisors for undergraduate students. In an academic capacity, the LLM students have explored the pedagogical benefits of clinic and different methods of teaching and assessing. They have also been able to conduct independent research on clinic, thereby contributing to relatively small, but increasing, body of academic literature on the subject. In bringing these various constituent parts together into one course, Meredith and Georgina emphasised the exciting potential that postgraduate education has for bridging the perceived gap between clinic and academia.

Dr Jane Krishnadas of the University of Keele spoke about the Community Legal Outreach Collaboration Keele (CLOCK) scheme, a partnership project between the University, law firms, barristers chambers, mediation services, the Citizens Advice Bureau, domestic violence and sexual violence support services, housing associations and the local Court. The scheme, which has also been adopted elsewhere in the country, sees students assist court users by assessing possibility for legal aid funding, assisting with court application forms, arranging paper work, accompanying litigants in person in court hearings and note-taking. The students can signpost and refer the service users to other organisations within the CLOCK network and the University will also accept referrals in from the same organisations. A feature which differentiates the project from traditional clinical programmes is that the students involved in the project do not provide any advice. Their role is to provide information, to assist and to signpost and, for this reason, although they are given substantial training, they are not directly supervised.

Undoubtedly, the CLOCK project is an innovative means of responding to the increasing number of individuals who have been left to navigate their own way through a complex Court system since cuts to legal aid have left them without recourse to legal advice and representation. It is also a means of

making those who are still eligible aware that some public funding remains available and of raising awareness of potentially affordable fixed fee options.

The University of Keele is opposed to the cuts to legal aid and is collecting data via its Court desks to inform the ongoing debate. Indeed, one of the scheme's goals is 'to collate information, transfer knowledge and share resources to promote social and legal policy research on legislative reforms, issues of access to justice and disseminate to wider community, academic and professional bodies'.

There are interesting discussions still to be had, I believe, about the civic responsibility of universities to respond to public need; the functions of law schools in responding to the cuts to legal aid; the role that students can, and should, bear in this; the (complementary or contradictory?) balance between educational objectives and social justice imperatives; the means by which educators can work collaboratively and effectively with legal practitioners; and the power and purpose of research aimed at addressing these issues. In my view, this is a topic which could easily fill up a conference agenda on its own and I am grateful to Jane and her students for sharing their experiences of addressing some of these issues.

During the afternoon, Jason Tucker from the University of Cardiff Law School spoke to delegates about his school's partnership with Cerebra, a charity set up to help improve the lives of children with neurological conditions. Under the scheme parents and carers of children aged 16 or under who have a neurodisability are eligible for advice on accessing health, social care or education support services from public bodies such as the NHS, children's social services or local education authorities. Cases that have been considered to date include: education issues such as access, transport, discrimination or bullying; carers' assessments; child and adolescent mental health services; continence services; disabled facilities grants; and respite care. The opinions are collated into a 'Digest', which is distributed free of charge within the advice sector and to policy makers, and is also available as a web resource.

Unusually, the project also has a research arm. As Jason explained, information gathered from the pro bono project allows researchers to understand the main reasons why public bodies sometimes fail to discharge their legal duties and to identify effective ways of overcoming these problems. The aim of the research project is to better equip families to resolve problems with statutory agencies, and enable statutory agencies to improve their decision-making processes and reduce the likelihood of such problems arising in future. It is intended that the research team will also develop a UK-wide database of support resources to assist families to secure the support services they need.

At the start of a new REF cycle, Law Schools will inevitably be thinking about how they will be able to evidence the impact of their research in the future. It is evident to me that a project such as this not only showcases how clinical legal educators and legal researchers can collaborate for their mutual benefit, but also for the benefit of the wider population: which is exactly, as I understand it, what impact is all about.

The final presentation of the day was delivered by Chris King of Birmingham City University (BCU) and David Jones of Sandwell Citizens Advice Bureau (SCAB). Chris and David spoke about the ten year placement collaboration between their organisations. SCAB takes students on placement as part of BCU's Legal Advice and Representation Unit optional clinical module. SCAB is one of a number of third sector partners collaborating on the module and takes 15 BCU students each year.

The students spend at least one day a week on the placement and are assessed in relation to the practice skills they demonstrate during the placement and their own reflections on their experiences.

It was fascinating to hear from both sides of such a longstanding partnership as to the challenges and benefits that the collaboration has offered them. It was also interesting to note the speakers' views that collaborations of this nature have a significant role to play in the future. I was of course already persuaded of the benefits that an arrangement of this nature might offer the students involved. However, I was particularly struck by the revelation that nationally Citizens Advice Bureaux saw a £33 million reduction in income between 2010-11 and 2013-14 as a combined result of cuts to legal aid and local authority grants. Against that backdrop, it is easy to see why a reliable volunteer workforce made up of enthusiastic, well trained and committed students would have the power to make a significant difference to the host organisation.

Chris's closing remarks summed up many of the themes which had arisen elsewhere throughout the day. He suggested that third sector collaborations such as this serve as a blueprint for a wider network of collaborations between law schools and the third sector which can be beneficial to all involved. He also expounded such arrangements as a means of ensuring that clinicians, practitioners, academics and students do their bit to ensure that access to justice is preserved. The onus on these parties to take on such a responsibility is, I believe, a topic for another day.

Concluding thoughts

This workshop did not give the attendees definitive answers to many of the issues that I highlighted in my introduction to this paper. Perhaps this is not possible whilst the landscape we are working in continues to change so rapidly. However, it gave me plenty to think about as I re-evaluate my own clinical programmes and consider new projects going forwards. Above all else, I was left feeling rather reassured. Perhaps, what can often feel like the conflicting challenges of meeting our students' educational and professional needs, acting in the best interests of our clients, upholding the objectives of our institution and pursuing social justice do not in fact conflict at all. There are many ways to achieve all these aims. It just needs a little bit of (re)imagination.