

*Reviewed Article: Clinic, the University and Society*

## “OUR ROOTS BEGAN IN (SOUTH) AFRICA<sup>1</sup>”: MODELLING LAW CLINICS TO MAXIMISE SOCIAL JUSTICE ENDS

Donald Nicolson<sup>\*2</sup>

University of Strathclyde, UK

### Abstract

This article explores the ways in which law clinics can be organised to maximise their impact on social justice in South Africa. Such impact can be both direct, in the form of the actual legal services offered to those in need, or indirect, in the form of encouraging law clinic students to commit to assisting those most in need of legal service after they graduate either through career choice or other forms of assistance. The article develops a decision-making matrix for clinic design around two dimensions, each with a number of variables. The first, “organisational” dimension relates to the way clinics are organised and run, and involves choices about whether: (1) clinics emphasise social justice or student learning; (2) student participation attracts academic credit or is extra-curricular; (3) participation is compulsory or

---

\*I am grateful to Jobst Bodenstein, James Campbell, Rosaan Kruger and Helen Kruuse for their comments, advice and assistance with this article.

<sup>1</sup> With apologies to Pharoah Sanders (song title taken from *Message from Home* (Verve, 1996)).

<sup>2</sup> Donald Nicholson is Professor of Law and Director of Law Clinic School of Law, University of Strathclyde, Glasgow.

*Reviewed Article: Clinic, the University and Society*

optional; (4) clinics are managed and run by staff or students; and (5) there is one “omnibus” clinic structure covering all clinic activities or a “cluster” of discrete clinics conducting different activities. The second, “activities” dimension involves choices about whether services are: (1) specialist or generalist; (2) exclusively legal or “holistic”; (3) provided only by students or qualified legal professionals; (4) located in community neighbourhoods or on campus; (5) provided by students working “in-house” in a university clinic or in external placements; (6) designed to benefit the wider community rather than just the individuals directly served; and (7) designed to remedy existing problems or educate the public on their legal rights and duties.

While not intending to set out a blueprint for existing law clinics, the article argues that, if South Africans are motivated to enhance their impact on social justice and level of community engagement, they can learn much from the first law clinic to be established in South Africa, at the University of Cape Town, which was entirely student-run, optional and solely focused on ensuring access to justice rather than educating students. Drawing on his experience in adapting this model for use in Scotland, the author looks at the advantages of combining the volunteerist and student-owned nature of this clinic with some formal teaching and staff involvement to maximize both the direct and indirect impact of clinics on social justice.

*Reviewed Article: Clinic, the University and Society***1. INTRODUCTION**

Twenty years after the advent of democracy in South Africa, it is clear that many of the benefits which might have been expected to flow from the defeat of apartheid have yet to materialise. While the state, NGOs and various elements of civil society will obviously play the biggest role in seeking to ensure social justice, university law clinics can play their part in increasing the number in society who are aware of and capable of enforcing their legal rights, thereby helping to equalise access to law and the benefits it may bring.<sup>3</sup>

In the light of this role, this paper seeks to explore how best to design clinics to promote social justice and respond to what are regarded as the two<sup>4</sup> biggest challenges facing university law clinics in South Africa (and indeed more widely), namely the precarious nature of funding, and the low academic status and employment conditions of clinical staff.<sup>5</sup> I will do so in terms of a decision-making matrix setting out the various choices about clinic organisation and activities which

---

<sup>3</sup> For an overview of problems of access to justice in South Africa, see David Holness, 'Improving Access to Justice Through Compulsory Student Work at University Law Clinics', 16 *Potchefstroom Elec. L.J.* 327, 332-33 (2013).

<sup>4</sup> Cf also Neels Swanepoel & Inez Bezuidenhout, 'The Institutionalisation of Community Service and Community Service Learning at South African Tertiary Institutions: With Specific Reference to the Role of the University Law Clinics', 45 *De Jure* 1 46, 55 (2012) (noting the limited time students have for clinical legal education).

<sup>5</sup> Peggy Maisel, 'Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa', 30 *Fordham Int'l L.J.* 374, 377, 388ff (2006-7), and on the second challenge: see also Willem De Klerk, 'Unity in Diversity: Reflections on Clinical Legal Education in South Africa', 12 *Int'l J. Clinical Legal Educ.* 95, 99-101 (2007); Philip F. Iya, 'Addressing the Challenges of Research into Clinical Legal Education Within the Context of the New South Africa', 112 *S. African L.J.* 265, 272-74 (1995).

*Reviewed Article: Clinic, the University and Society*

clinics need to consider when deciding how to operate. While I will orient the discussion towards exploring how law clinics can be designed to maximise the goal of social justice, there is, however, no reason why the matrix cannot be used in relation to other goals which clinics choose to pursue.

In exploring how clinics can best be designed to serve social justice goals, I will draw upon my own clinic experiences. Indeed, it was my involvement with UCT [University of Cape Town] Legal Aid, which was entirely student-run and solely focused on ensuring access to justice, that inspired me to set up clinics along similar lines at the Universities of Bristol and Strathclyde. Admittedly, this model has been modified at the University of Strathclyde Law Clinic (henceforth, USLC) in that I, as a full-time academic, direct the clinic, four part-time solicitors supervise cases, and an optional Clinical LLB<sup>6</sup> allows students to integrate their training and experiences, and reflection on both throughout the standard LLB. Nevertheless, the USLC still prioritises social justice and is run jointly by staff and students. It is this model which has been replicated by most law clinics in Scotland – hence the title of this article – and on which I will draw as a possible example for South African law clinics motivated to expand their social justice mission.

---

<sup>6</sup> See at n 47 below.

*Reviewed Article: Clinic, the University and Society*

In doing so, I am very mindful of the dangers of suggesting solutions for a country in which I no longer live.<sup>7</sup> While I have some contact with South African law clinics (including as a Visiting Professor at Rhodes University), I do not purport to be aware of all clinic activities pursued, nor their means of organisation, let alone the history and contextual factors affecting the choice of particular clinic models.<sup>8</sup> Nor am I suggesting that South African law clinics have not made the best choices for promoting social justice. In many ways, they compare very favourably with other jurisdictions, and are certainly more developed and better funded than those in the United Kingdom generally,<sup>9</sup> and particularly in Scotland. Instead, in order that the full implications of choices about clinic design for pursuing social justice may be appreciated, my aim is both to foreground such choices, some of which are often made unwittingly and many of which may have unforeseen knock-on effects for other aspects of clinic design and ultimately for their possible impact on social justice. In addition, I will suggest that clinics in South Africa (and indeed more widely) might benefit from exploring some aspects of the first law clinic to be established in that country.

---

<sup>7</sup> cf Richard J. Wilson, 'Beyond Legal Imperialism: US Clinical Legal Education and the New Law and Development', in *The Global Clinical Movement: Educating Lawyers for Social Justice* (Frank Bloch ed., 2011) esp. 144.

<sup>8</sup> For recent comprehensive accounts, see Maisel, note 4; Willem De Klerk, 'University Law Clinics in South Africa', 122 *S. African L.J.* 929, (2005).

<sup>9</sup> De Klerk, *ibid*, 932-35.

*Reviewed Article: Clinic, the University and Society***2. LAW CLINICS AND SOCIAL JUSTICE**

Before doing so, it is useful to start with an idea of the potential impact law clinics might have on social justice. If we adopt the oft-quoted definition of social justice by David McQuoid-Mason, father of the South African clinical movement,<sup>10</sup> as involving “the fair distribution of health, housing, welfare, education and legal resources in society”,<sup>11</sup> it is clear that access to legal assistance is important both as an aspect of social justice itself, but also in helping members of the community to benefit from whatever means law provides to achieve other public goods. Law clinics can most obviously play an important role in ensuring such access to justice, but, as we shall see, they can also engage in law reform activities, community legal projects and public legal education in order to help people gain the benefits provided by law and avoid the detriments or burdens that it may impose on them.

In addition to enhancing social justice in this direct manner, law clinics may also have an indirect effect by inspiring law students to go on to play some role in redressing social injustice after they graduate, whether through career choice, engaging in pro bono work or making donations, providing training or other forms of assistance to organisations which promote access to justice or social justice more

---

<sup>10</sup> See his pioneering *An Outline of Legal Aid in South Africa* (Butterworth, 1982).

<sup>11</sup> ‘Teaching Social Justice to Law Students through Community Service’, in *Transforming South African Universities – Capacity Building for Historically Black Universities* (Philip F. Iya, Nasila S. Rembe, & J. Baloro eds., 1999) 89.

*Reviewed Article: Clinic, the University and Society*

widely.<sup>12</sup> Thus, drawing on educational theory, many clinicians claim that student exposure to clients may cause “disorienting moments”<sup>13</sup> whereby their pre-existing assumptions about the world clash with their observation of social deprivation, unequal access to justice and substantive legal injustice, especially when repeated exposure reveals that these problems are endemic rather than exceptional.<sup>14</sup> According to adult learning theory,<sup>15</sup> learning from experience rather than abstract teaching is likely to make these lessons particularly profound. And, when the experience is that of someone in dire need and it is realised that they may have no other source of assistance, knowledge may be transformed into empathetic care. Furthermore, Aristotelian theories of moral development<sup>16</sup> teach that satisfaction at helping others (or regret at not being able to do so), particularly if accompanied by guided reflection on experience and the example of positive role models, may convert knowledge about social injustice and empathetic concern for its victims into

---

<sup>12</sup> For similar analyses of this dual function, see Jon C. Dubin, ‘Clinical Design for Social Justice Imperatives’, 51 *S.M.U.L. Rev.* 1461 (1997-8); Lauren Carasik, ‘Justice in the Balance: An Evaluation of One Clinic’s Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission’, 16 *S. Cal. Rev. L. & Soc. Just.* 23 (2006-7).

<sup>13</sup> Fran Quigley, ‘Seizing the Disorientating Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics’, 2 *Clinical L. Rev.* 37 (1995).

<sup>14</sup> e.g. Jane Harris Aiken, ‘Striving To Teach “Justice, Fairness, And Morality”’ 4 *Clinical L. Rev.* 1 (1997); Stephen Wizner, ‘Beyond Skills Training’, 7 *Clinical L. Rev.* 327, 327-8 (2000-1); Donald Nicolson, ‘Education, Education, Education: Legal, Moral and Clinical’, 42 *Law Tchr.* 145 (2008); Juliet M. Brodie, ‘Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics’, 15 *Clinical L. Rev.* 333, 379-83 (2008-9).

<sup>15</sup> Quigley, note 12; Frank Bloch, ‘The Andragogical Basis of Clinical Legal Education’, 35 *Vanderbilt L. Rev.* 321 (1982).

<sup>16</sup> See e.g. R.S. Peters, *Moral Development and Moral Education* (1981), ch. 2; Joel Kupperman, *Character* (1991); Hubert. L. Dreyfus & Stuart. E. Dreyfus, ‘What is Morality? A Phenomenological Account of the Development of Ethical Expertise’ in David. Rasmussen (ed), *Universalism versus Communitarianism: Contemporary Debates in Ethics* (1990).

*Reviewed Article: Clinic, the University and Society*

an ongoing commitment to contribute to social justice. If so, given that this may translate into years of pro bono or financial assistance or even a career devoted to helping those most in need, the indirect role of law clinics in promoting social justice may in the long run be even more important than their direct role.<sup>17</sup>

On the other hand, one can at least be certain when a clinic has enhanced social justice through providing legal services. By contrast, despite qualitative research supporting predictions about the impact of clinic on students' knowledge of social injustice, the development of empathy and a commitment to remedy social injustice,<sup>18</sup> and despite numerous anecdotal accounts from clinicians<sup>19</sup> and students,<sup>20</sup> only a few more quantitative empirical studies show clinics inspiring students to provide pro bono legal assistance or embark on a career which serves social justice.<sup>21</sup> Moreover, these studies were rather small-scale, and only suggestive

---

<sup>17</sup> Steven Wizner & Jane Aiken, 'Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice', 73 *Fordham L. Rev.* 997, 1005 (2004).

<sup>18</sup> Donald Nicolson, 'Learning in Justice: Ethical Education in an Extra-Curricular Law Clinic', in *The Ethics Project in Legal Education* (Michael Robertson, et al, eds., 2010), 171.

<sup>19</sup> See e.g. Quigley, note 12; Jobst Bodenstein, 'Access To Legal Aid In Rural South Africa: In Seeking A Coordinated Approach', *Obiter* 304, 310 (2005) Katherine R. Kruse, 'Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation', 8 *Clinical L. Rev.* 405, 443 (2001-2).

<sup>20</sup> See e.g. Frank Trinity, 'Homelessness and the Use of Reality to Enrich the Experience of Law School', 40 *Clev. St. L. Rev.* 513, 514 (1992); Donald Nicolson, 'Legal Education, Ethics And Access To Justice: Forging Warriors for Justice in a Neo-Liberal World', 22 *Int'l J. Legal Prof.* 1 (2015).

<sup>21</sup> Sally Maresh, 'The Impact of Clinical Legal Education on Decisions of Law Students to Practice Public Interest Law', in *Educating for Justice: Social Values and Legal Education* (Jeremy Cooper & Louise G. Trubek eds., 1997); Josephine Palermo & Adrian Evans, 'Almost There: Empirical Insights into Clinical Method and Ethics Courses in Climbing the Hill Towards Lawyers' Professionalism', 17 *Griffith L. Rev.* 252 (2008); Deborah A. Schmedemann, 'Priming for Pro Bono Publico: The Impact of the Law School on Pro Bono Participation in Practice', in *Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession* (Robert Granfield & Lynn Mather eds., 2009).



*Reviewed Article: Clinic, the University and Society*

in not controlling for students' predispositions before entry to the clinic and/or tracking students into practice. Indeed, other more extensive studies show little or no impact by clinics or other law school programmes involving voluntary legal services<sup>22</sup> or at best that they sustain rather than develop a commitment to altruistic service.<sup>23</sup>

At the same time, however, even if clinics only sustain pre-existing commitments to serve social justice, such a role is in itself incredibly valuable given that studies show that legal education tends to have negative impact on student altruism and commitment to careers promoting social justice. While this research largely emanates from the US,<sup>24</sup> the apparently similar nature of legal education in South Africa<sup>25</sup> with its emphasis on 'thinking like a lawyer', the marginalisation of issues of ethics and justice, the dominance of law subjects devoted to the law of the rich and the dominant image of lawyers as advocates or corporate lawyers is likely to lead to

---

<sup>22</sup> Robert Granfield, 'Institutionalizing Public Service in Law School: Results on the Impact of Mandatory Pro Bono Programs', 54 *Buff. L. Rev.* 1355 (2007) (though see at 1379 and 1399-1341 noting that university pro bono experience influenced 34% of those surveyed in their career choice and had at least a marginal impact on the motivation to continue once in practice); Deborah L. Rhode, *Pro Bono in Principle and in Practice: Public Service and the Professions* (2005), ch. 7 (though see at 156 noting that 22% were encouraged by their law school experience to engage in pro bono after graduation, but 19% were discouraged from doing so).

<sup>23</sup> Rebecca Sandefur & Jeffrey Selbin, 'The Clinic Effect', 16 *Clinical L. Rev.* 57 (2009).

<sup>24</sup> Summarised in Robert Granfield & Philip Veliz, 'Good Lawyering and Lawyering for the Good: Lawyers' Reflections on Mandatory Pro Bono in Law School', in Granfield & Mather (eds.), note 20, 53-4, but see also Avrom Sherr & Julian Webb, 'Law Students, the Market and Socialisation: Do We Make Them Turn to the City', 16 *J. L. & Soc'y* 225 (1989).

<sup>25</sup> See eg Bodenstern, note 18; Lesley Greenbaum, 'Experiencing the South African Undergraduate Law Curriculum', 7 *De Jure* 104 (2012); Joel M. Modiri, 'Transformation, Tension and Transgression: Reflections on the Culture and Ideology of South African Legal Education', 24 *Stellenbosch L. Rev.* 455 (2013).

*Reviewed Article: Clinic, the University and Society*

a similar dampening of students' enthusiasm for using their legal skills for the least privileged in society.<sup>26</sup> Certainly, such an education is not best calculated to inspire in students a desire to do so.

**3. A MATRIX FOR MODELLING CLINICS**

If law clinic students can play both a direct (and tangible) and indirect (but less tangible) role in contributing to social justice, the question then becomes how to maximise these two - as we shall see, often competing - means of doing so. The matrix which I will use to answer this question involves two broad dimensions, each with a number of different variables. The first dimension relates to the way clinics are organised and run, and the second to the activities it conducts.<sup>27</sup> And, while I will discuss the different variables as involving binary oppositions, it must be emphasised that in reality the design and activities of the vast majority of clinics fall somewhere on a spectrum between the various opposing poles. Moreover, at least in relation to clinics which pursue multiple activities, it is possible to have different

---

<sup>26</sup> See generally, on this "hidden" "latent" or "implicit" curriculum", Nicolson, note 13.

<sup>27</sup> For a similar discussion of some of the variables under the second dimension, see Frank Bloch & Mary Anne Noone, 'Legal Aid Origins of Clinical Legal Education', in Bloch (ed.), note 6.

*Reviewed Article: Clinic, the University and Society*

emphases on one or other side of the binary opposition in relation to different activities.<sup>28</sup>

### 3.1 Clinic Organisation

The organisational dimension of the decision-making matrix involves choices about five variables, namely whether: (1) clinics emphasise social justice or student learning; (2) student participation attracts academic credit or is extra-curricular; (3) participation is compulsory or optional; (4) clinics are managed and run by staff or students; and (5) there is one “omnibus” clinic structure covering all clinic activities or a “cluster” of discrete clinics conducting different activities. While the organisational dimension is largely about how clinics are organised and run, much of this will be affected by their goals and hence I will start by exploring those aspects of clinic organisation which flow from choice of goals.

#### 3.1.1 *Social Justice Versus Educational Orientation*

In addition to the main goals of social justice and student education, many South African law clinics seek to assist in the transformation of the legal profession by

---

<sup>28</sup> e.g. public legal education might be conducted on a voluntary basis but case work attract academic credit.

*Reviewed Article: Clinic, the University and Society*

employing candidate attorneys from previous disadvantaged groups.<sup>29</sup> Given that these posts are largely funded by the state and the profession itself,<sup>30</sup> and can be aligned with both social justice and educational goals, I shall concentrate on the question of which of the latter two goals should be prioritised.

Social justice and student education are not, of course, mutually exclusive alternatives. Students serving the community cannot help but learn about law, the way it operates and its justice, and about legal practice and legal ethics. Moreover, in order to be able to effectively serve the community, clinic students need to be taught legal skills and, in my view, also legal ethics;<sup>31</sup> neither of which currently form part of the typical South African law school curriculum. Conversely, when students learn about law, justice, legal practice, etc. in the context of a live-client law clinic, they are likely to be serving members of the community most in need of legal services, not least because those who can afford a lawyer are unlikely to seek help from students.<sup>32</sup>

But, whereas all clinics inevitably serve both social justice and educational goals, choices must unavoidably be made as to which to prioritise. By contrast to many, if

---

<sup>29</sup> See e.g. De Klerk, note 7, 944-45; Maisel, note 4, 414; M.A. du Plessis, 'University Law Clinics Meeting Particular Student and Community Needs: A South African Perspective', 17 *Griffith L. Rev.* 121, 126 (2008).

<sup>30</sup> Maisel, *ibid*, 397.

<sup>31</sup> See Donald Nicolson, 'Problematizing Competence in Clinical Legal Education: What do we Mean by Competence and How do we Assess Non-skill Competencies?' 23 *Int'l J. Clinical Legal Educ.* 66

<sup>32</sup> Whereas EO clinics can choose to serve anyone who wants to use their services, SJO clinics are likely to want to confine services to those most in need and hence may means-test potential clients and/or refer them to other available services in order to optimise their social justice impact.

*Reviewed Article: Clinic, the University and Society*

not most, South African law clinicians,<sup>33</sup> I have long believed<sup>34</sup> that the former should take precedence over the latter. Otherwise, they risk being seen as practising law on the poor rather than for the poor,<sup>35</sup> and implicitly conveying to students that their interests - now educational, later commercial - trump those of clients and the community.<sup>36</sup> It is true that universities are most obviously associated with educating students. However, they have also long sought to serve the general public through research and more recently by “knowledge exchange or transfer” whereby they share learning, ideas and experience with the community, and by other forms of community engagement.<sup>37</sup> This vision has particular resonance in South Africa given the community’s desperate need for the knowledge and skills of its universities and indeed has now been explicitly adopted by South African universities.<sup>38</sup> Moreover, it can be argued that those who benefit from the public investment in educating lawyers and maintaining a legal system which guarantees

---

<sup>33</sup> e.g. De Klerk, note 4, esp 98; Willem de Klerk & Shaheda Mahomed, ‘Specialisation at a University Law Clinic: The Wits Experience’, 39 *De Jure* 2 306 (2006); M.A. Du Plessis, ‘Closing the Gap between the Needs of the Students and the Community they Serve’ 33 *J. for Jurid. Sci.* 1, 14 (2008); M.A. du Plessis & D. Dass, ‘Defining the Role of The University Law Clinician’, 130 *S. African L.J.* 2 390 (2013), esp. at 397 (claiming that this is the general view), but see *contra* Philip F. Iya, ‘Fighting Africa’s Poverty and Ignorance through Clinical Legal Education: Shared Experiences with New Initiatives for the 21<sup>st</sup> Century’, 1 *Int’l J. Clinical Legal Educ.* 13 (2000).

<sup>34</sup> See above n 13; Donald Nicolson, ‘Legal Education or Community Service? The Extra-Curricular Student Law Clinic’ (2006) *Web Journal of Current Legal Issues* <http://www.bailii.org/uk/other/journals/WebJCLI/2006/issue3/nicolson3.html> (last visited June. 22, 2016)

<sup>35</sup> Margaret Thornton, *Privatising the Public University: The Case of Law* (2010) 83.

<sup>36</sup> See also Wizner & Aiken, note 16, 1007; Kruse, note 18, 423-44; Sameer M. Ashar, ‘Law Clinics and Collective Mobilization’, 14 *Clinical L. Rev.* 355, 387 (2007-8).

<sup>37</sup> See Thornton, note 34, ch. 5.

<sup>38</sup> See e.g. Louise Africa, ‘IPF and Social Justice Initiatives in South Africa’, in *Leadership for Social Justice in Higher Education* (Terance W. Bigalke & Mary S. Zurbuchen eds., 2014).

*Reviewed Article: Clinic, the University and Society*

their often affluent livelihood have a duty to ensure that legal services are available to all in society rather than those fortunate enough to pay high lawyer fees or who qualify for legal aid. For law graduates, this involves contributing in some way to enhancing access to justice and for law schools it involves ensuring that law clinics maximise both the direct and indirect role they can play in enhancing access to justice and social justice more generally. Producing highly skilled and knowledgeable lawyers who go on to prioritise their own needs as lawyers over those who need them most is not just a wasted opportunity for law clinics, but is also likely to cause further social injustice when they defend the interests of the most powerful in society to the detriment of the most vulnerable in society.

If this preference for a social justice-oriented (henceforth SJO) over an educationally-oriented (EO) clinic is accepted, then it would seem obvious that such clinics will better serve social justice. Certainly, this is true of the extent of services offered.<sup>39</sup> Thus, in EO clinics the need for opportunities for regular reflection, the educational benefits of allowing students to make their own mistakes in their own time and the use of supervisor time to bring out the educational lessons of experience in real time mean that fewer cases are taken on and staff-student ratios are far lower than in SJO clinics. For instance, compared to staff-student ratios of between 1:6 to 1:10 in the

---

<sup>39</sup> A fact realised by some students despite benefitting from an EO clinic (Kruse, n. 18, 443-44); cf. also Jeff Giddings, 'Contemplating the Future of Clinical Legal Education', 17 *Griffith L. Rev.* 1, 17-19 (2008).

*Reviewed Article: Clinic, the University and Society*

US,<sup>40</sup> the suggested 1:12 in the UK,<sup>41</sup> and an average of between 1:20-1:30 in South Africa,<sup>42</sup> the SULC has a ratio of around 1:150! Where supervision does take place, it is on a “final product” basis in terms of which students exercise considerable autonomy in their research but need to gain approval for letters, pleadings, etc, and experienced students play an important role in mentoring less experienced students and monitoring their work.<sup>43</sup> In this way, relatively meagre resources (around £100,000 a year) stretch far and there is the potential for more generous resources to stretch even further to maximise community service.

There are downsides to such a high volume clinic, most obviously in terms of the possibility that, even if students are given extensive training, the quantity of legal services is bought at the expense of quality. But if this is a concern – and here it can be noted that client goals are at least partially met in over 90% of USLC cases which go beyond advice – the balance between quantity and quality can be adjusted by providing for more hands-on supervision without making the students’ educational interests predominant. However, less obviously, the indirect means of serving social justice may be undermined by the absence of opportunities for students to reflect, and read related literature, on how law operates in practice, problems of access to

---

<sup>40</sup> Marjorie Anne McDiarmid, ‘What’s Going on Down there in the Basement: In-House Clinics Expand their Beachhead’, 35 *N. Y. L. Sch. L. Rev.* 239, 254-55 (1990).

<sup>41</sup> The Clinical Legal Education Organisation, *Model Standards in Clinical Legal Education - Live-Client Clinics* (1995), reproduced in Hugh Brayne, Nigel Duncan, & Richard Grimes, *Clinical Legal Education: Active Learning in Your Law School* (1998).

<sup>42</sup> De Klerk, note 7, 949 n.141.

<sup>43</sup> A practice also adopted in Yale: Wizner, note 13, 335-38 (describing its “tiered system”).

*Reviewed Article: Clinic, the University and Society*

justice and social injustice, and the lawyer's responsibility for these problems.<sup>44</sup>

Thus, it is noticeable that, where in-house clinics and wider pro bono programmes involving externships have been shown to have a positive effect on students' commitment to enhancing access to justice, they have been combined with courses which provide for such educational opportunities.<sup>45</sup>

In other words, combining a SJO clinic with an educational programme may ensure the best of both worlds,<sup>46</sup> as long as the programme focuses primarily on making students "justice ready"<sup>47</sup> through exposing them to issues of social justice and the moral obligations of lawyers to remedy injustice rather than just practice ready through skills training and substantive law teaching. Thus, USLC students can take an optional Ethics and Justice class in their final year in which they reflect on their prior and current clinic activities in the light of reading and discussion on legal ethics and access to justice, or they can opt to take a Clinical LLB which integrates their clinic training and activities into the standard LLB and requires them to reflect inter alia on ethics and justice in journals and clinical essays throughout the

---

<sup>44</sup> Cynthia F. Adcock, 'Beyond Externships and Clinics: Integrating Access to Justice Education into the Curriculum', 62 *J. Legal Educ.* 566, 573-74 (2013).

<sup>45</sup> See Nicolson, note 17; Palermo & Evans, note 20, Schmedemann, note 20.

<sup>46</sup> see Nicolson, note 5.

<sup>47</sup> Jane H. Aiken, 'The Clinical Mission of Justice Readiness', 32 *B.C. J. L. & Soc. Just.* 231 (2012). See further Wizner & Aiken, note 16, 1008-10 on the importance of guided reflection to bring out the lessons of experience in delivering social justice, and Brodie, note 13, 365-67; Jane H. Aiken, 'Provocateurs for Justice' (2000-1) 7 *Clinical L. Rev.* 287 on how to exploit clinical experiences for social justice learning.



*Reviewed Article: Clinic, the University and Society*

studies.<sup>48</sup> Indeed, even if students are directly taught skills and legal knowledge, they will not necessarily see clinic work as merely a means to their educational and vocational needs if they are also taught, their tutors model, and the prevailing clinic ethos emphasises that student needs can never take precedence over those who are served by the clinic. Thus, cases and other clinical work should be chosen not for their value in teaching skills and substantive law, but in terms of client and community needs or at least for the lessons they might bring about the dire state of access to justice and social injustice as well as the role of the legal profession and law in relation to both problems.

*3.1.2. Curricular Versus Extra-Curricular Activity*

The second organisational variable involves whether clinic students undertake work for academic credit<sup>49</sup> or on an extra-curricular basis. Prima facie there seems to be a natural fit, between curricular and EO clinics, on the one hand, and between extra-curricular and SJO clinics, on the other hand. However, while extra-curricular EO clinics seems unlikely,<sup>50</sup> as the ULSC and other clinics show,<sup>51</sup> it is possible to

---

<sup>48</sup> For details, see Nicolson, note 30, 81ff note 5, and Donald Nicolson, 'Calling, Character and Clinical Legal Education: A Cradle to Grave Approach to Inculcating a Love for Justice', 16 *Legal Ethics* 36, 51-55 (2013).

<sup>49</sup> As argued for by Holness, note 2, 342.

<sup>50</sup> Thus, if clinical experience is being used for learning experience, it seems logical for this to attract credit. On other hand, some activities within an EO clinic can be done without credit, such as getting students to act as receptionists before they can take a clinical class (as in some UK clinics).

<sup>51</sup> See JoNel Newman, 'Re-Conceptualizing Poverty Law Clinical Curriculum And Legal Services Practice: The Need For Generalists', 34 *Fordham Urb. L.J.* 1303 (2007); Malcolm M. Combe, 'Selling Intra-Curricular Clinical Legal Education', 48 *Law Tchr.* 281 (2014).

*Reviewed Article: Clinic, the University and Society*

provide academic credit for work in a SJO clinic without undermining its social justice mission. What is more important than the formal question of whether students obtain credit or not, is whether the prevailing ethos and operational decision-making on matters like the number and types of cases undertaken prioritise serving the community rather than providing students with skills and knowledge. Moreover, given that the award of marks for a particular activity implicitly valorises that activity, it is important that academic credit is provided as much for commitment to community service and/or reflection on aspects of justice than for technical performance.

In other words, while a social justice orientation usually coincides with extra-curricular clinics, there is no necessary connection between volunteerism and prioritising community service over educational goals. Indeed, given that students are less likely to engage in the reading and reflection that is necessary to maximise their learning about social injustice and the lawyer's role in redressing injustice if they do not gain academic credit for doing so, there is a positive argument for at least some level of curricular activity in SJO clinics.

On the other hand, if all activity is curricular the number of students involved and resulting level of community service will be reduced. Like the close supervision of cases designed to enhance the development of skills and legal knowledge, running courses and evaluating student performance are time-consuming activities.

*Reviewed Article: Clinic, the University and Society*

Moreover, not being tied to a particular class and being involved for longer than the usual curricular experience of one semester or at most a year, students in extra-curricular clinics may assist the community over a much longer period (up to four years in South Africa and five years in Scotland). Depending on how much time students are prepared to devote to their clinic work in addition to their formal classes<sup>52</sup> and the need to engage in part-time work to fund their studies,<sup>53</sup> this *may* allow for overall greater community service than the more intensive experience of students involved in clinical classes.<sup>54</sup> But even if overall levels of activity are roughly equivalent, I am inclined to think that the impact on student attitudes is likely to be more profound if students have as much time as is necessary to reflect on their experiences rather than being overwhelmed with case work and clinic teaching.

Another possible drawback to giving students credit for their clinic work is that this runs the risk that they might abandon clients or de-prioritise their needs once they have received the required credit for their work. On the other hand, worries about

---

<sup>52</sup> Here, it has to be admitted that Scottish law students attend fewer classes. However, short of rethinking the drive for coverage in the South African law curriculum, there are ways of building in academic credit for voluntary work without necessarily involving the problems of directly linking all clinic work to academic credit, such as providing students with academic credit in their final year for their voluntary work in early years (and preferably also reflection on such work).

<sup>53</sup> Another difference with Scotland is that a significant proportion of South African students might not be able to afford the time to engage in voluntary work, though it can be noted that virtually every student (at least at Strathclyde) engages in some level of part-time work and that, if South African universities are committed to both social justice and equity, they will need to think of ways of ensuring that opportunities for voluntary work are not confined to economically comfortable students. The difficulties in doing so and the associated danger that South African clinics become the preserve of privileged students is perhaps the most compelling argument for curricular clinics.

<sup>54</sup> e.g. more committed USLC students often undertake five or so cases a year, often alongside non-case work legal services. One student conducted 46 cases in just over three years.

*Reviewed Article: Clinic, the University and Society*

loss of marks for letting down clients might be said to lead to students providing better client services than their volunteer counterparts. In response, however, psychologists suggest that attempting to ensure compliance through rewards and punishments is less effective than a personally felt intrinsic motivation to act virtuously, and may in fact undermine the development of such motivation.<sup>55</sup> If so, selecting students on their commitment to social justice and relying on a strong and internally socialised social justice may, as at the USLC, be as (if not more) effective in ensuring quality service to the community than the extrinsic motivation of academic credit. Indeed, it was this confidence in the strength of the ethos that led to the development of the Clinical LLB, which despite my concerns about associating clinical activity with academic credit, allows students admitted into USLC to opt for using their clinical experiences as an alternative form of assessment throughout the standard LLB. Revealingly, less than a third of every new USLC cohort opt to do so.

*3.1.3. Compulsory Versus Voluntary Involvement*

There is no logical connection between whether clinic involvement is curricular or extra-curricular and the independent variable of whether it is compulsory or voluntary. Although the idea of compulsory pro bono legal services may strike

---

<sup>55</sup> See eg David Carr, *Educating the Virtues: An Essay on the Philosophical Psychology of Moral Development and Education* (1991), 150-155; Alfie Kohn, 'How Not to Teach Values – A Critical Look at Character Education', 78 *Phi Delta Kappan* 6 428 (1997).

*Reviewed Article: Clinic, the University and Society*

many as oxymoronic<sup>56</sup> many law schools make a certain number of pro bono hours compulsory and more than half of South African law schools require students to take a clinical class.<sup>57</sup> In other law schools, clinic involvement may be optional, whether it be for credit or on an extra-curricular basis.

From the perspective of promoting social justice, it is arguable that there is no clear benefit to making clinical involvement compulsory and possibly some disadvantages. It will not necessarily increase the number of students involved in a clinic at any one time and hence the level of community service. Clinics who take students for the duration of their studies may have as many as, if not more, participants than if final year students spend a year in the clinic.<sup>58</sup> And, as noted in the previous section, each student volunteer may undertake as much clinical work over the course of a degree than one taking a clinical class or undertaking pro bono legal services for a limited period. Moreover, without the discipline of working for academic credit, those forced to provide legal services may not display the same level of commitment to clients and the community as those who volunteer.

But even if compulsory clinical involvement enhances clinics' direct role in serving social justice, it might well weaken their indirect role. Inculcating in all students a long-standing commitment to serving justice is a very tall order. The legacy of

---

<sup>56</sup> cf. Rhode, note 21, 37.

<sup>57</sup> De Klerk, note 7, 932, and cf. Holness, note 2, 342-3 arguing for this to be extended.

<sup>58</sup> The USLC currently has approximately 50 more members than the average size of the final year of the University of Strathclyde LLB.

*Reviewed Article: Clinic, the University and Society*

apartheid and the exclusion of many from the legal profession make it perfectly understandable for most of the population to want to use a law degree solely for personal and family advancement. Moreover, as we have seen,<sup>59</sup> research in the US shows that even those who enter law school with the desire to serve others tend to be funnelled into commercial and other non-justice oriented jobs by student debt, the dominance of commercial law firm recruiters, and the commercial and private law-bias of law school curricula. Although no equivalent research has been undertaken, it seems that this is unlikely to be very different in South Africa.<sup>60</sup> Consequently, law clinics will do well just to sustain the commitment to social justice of incoming law students. Falling between these two groups of students are those who study law simply because they want to keep their options open or, as many claim in UK surveys, because they think it will be interesting.<sup>61</sup> How likely are they to be transformed into justice activists by clinic involvement? The answer seems to depend on a combination of their underlying personality as either tending more toward altruism than egotism, various factors relating to the length, intensity and type of their clinic involvement (does it expose them directly to problems of those most in need and provide them with opportunities to gain satisfaction at what they achieve or regret at any failures),<sup>62</sup> and the extent to which their clinic experiences

---

<sup>59</sup> At note 23.

<sup>60</sup> See references in note 24.

<sup>61</sup> See Nicolson (2013) above note 47, 41-42, and the other surveys cited.

<sup>62</sup> See sections 2.2.6. and 2.2.7. below in relation to retail and wholesale, and remedial and educative activities, respectively.

*Reviewed Article: Clinic, the University and Society*

are accompanied by opportunities to learn about social injustice and the lawyers' responsibilities to redress it.

However, even with the best conditions possible, US research does not suggest that compulsory pro bono programmes have much success in creating a pro bono legacy.<sup>63</sup> A number of factors<sup>64</sup> combine to suggest mandatory clinical programmes are unlikely to transform many students into future justice warriors: the fact that the personality of incoming students is unlikely to be radically altered from one of egoism to altruism; the length of time which moral psychologists suggest is required for the development of deep-seated moral commitments; and the usual location of compulsory clinical programmes in the later years of study after students have been exposed to an education and law school experience which implicitly teaches them that they owe no particular responsibility to remedy social injustice. Providing a smaller group of students with a long-lasting clinical experience seems likely to have more of an impact, especially if generous clinic resources or a cost-effective clinical model allows a substantial portion of all law school students to have this experience<sup>65</sup> and especially if it is combined with classes highlighting issues of ethics and justice.

---

<sup>63</sup> Granfield, note 21; Rhode, *loc cit* note 21.

<sup>64</sup> See Nicolson, note 13, 156-62 *passim*.

<sup>65</sup> Around a third of all Strathclyde law students join the USLC.

*Reviewed Article: Clinic, the University and Society*

If participation in a SJO clinic is to be optional, then it becomes necessary to decide whether all volunteers are to be admitted and, if demand outstrips the places available, what criteria should be used to select students. The goals of maximising social justice suggest that only those primarily motivated to serve the community (and who have certain minimum levels of competence) should be admitted. Otherwise, clinics risk exposing clients and other service users to inadequate services. On the other hand, if through training, supervision and informal means of socialisation, incoming students are confronted with a strong and hegemonic ethos of community service, SJO clinics may be able to cope with, and even transform, some students who are equally motivated by their own interests. The likelihood of this happening depends, *inter alia*, on the approach to the final two organisational variables, to which we now turn.

*3.1.4. Staff- Versus Student-Managed Clinics*

The first of these relates to whether clinics are run by staff or students. As with many variables, the distinction between staff- and student-managed clinics is one of degree. Clinics can be totally staff- or totally student-managed, but various management tasks can also be divided or shared between staff and students. For example, clinic direction can rest with a committee or management team involving both students and staff, who can have equal or weighted decision-making power. This mix can in turn vary from one area of responsibility to another. For example,



*Reviewed Article: Clinic, the University and Society*

staff could (and should) have sole responsibility for finances and academic programmes, but students could control selection to extra-curricular aspects of the clinic and what type of community services to provide. Similarly, as in the USLC, day to day clinic management can be shared between: academic and clinical staff, who supervise case and run the educational programmes; paid administrative staff, who make client appointments and service committees; and students, who are responsible for fundraising, IT and publicity, and running (but not necessarily delivering) training. As the early years of UCT Legal Aid show, it is possible for students to be supervised by volunteer attorneys or even experienced students, at least where services provided are not particularly complicated. Indeed, using attorneys may become increasingly attractive if other South African law societies follow the example of the Cape Law Society which has made pro bono work compulsory.<sup>66</sup> Admittedly, most clinics will tend to prefer supervision by employed staff. It is also much more conceivable that clinics will involve staff leadership and students undertaking more mundane administrative tasks than follow the early UCT Legal Aid model and reverse this division of labour.

Probably because of the dominant desire to use clinics to educate students, the idea of students playing a central role in clinic direction and administration has fallen out of favour in South Africa. Certainly, there are a number of obvious disadvantages to

---

<sup>66</sup> De Klerk note 7, 945.

*Reviewed Article: Clinic, the University and Society*

this option. First, students will usually lack experience and knowledge of the policy and legal justice landscape, and of university procedures and politics, as well as institutional memory of clinic policies and the reasons for them. Consequently, they might unwittingly cause problems with their universities, funders and other stakeholders. Secondly, it is inefficient to have a regular turn-over of students, each of whom will encounter a steep learning curve as regards their new area of responsibility. Thirdly, clinic management can suffer when academic work, casework and part-time jobs overburden students who, because they are volunteers, cannot be line-managed like paid employees. Finally, collaborative leadership and management between staff and students can lead to a problematic blurring of the status distinction between academic staff and students, especially when they are involved in a teaching relationship.

On the other hand, there are many, arguably overriding, advantages to student-led or mixed management clinics.<sup>67</sup> First and most obviously, using students to run clinics allows finances to stretch further.<sup>68</sup> This allows SJO clinics to expand the services provided and the number of students exposed to the potentially transformative experience of serving the community. Secondly, students learn valuable skills from the tasks they perform and their management roles, with a

---

<sup>67</sup> For a rare acknowledgment, see Robert A Solomon, 'Teaching Morality', 40 *Cleveland State Law Review* 507, 509 (1992).

<sup>68</sup> Relying on student volunteers to help run the USLC covers the cost of approximately one supervisor, who as we have seen (text following note 41) can supervise 150 students.

*Reviewed Article: Clinic, the University and Society*

concomitant impact on social justice if they later use these skills to assist those most in need, rather than just those who are prepared to pay high fees. Thirdly, clinic management is less dependent on key staff members who, if they leave (as regularly occurs in South African law clinics),<sup>69</sup> cannot be easily replaced without disruption. By comparison, the impact of one or even a few students not fulfilling their obligations is far less damaging and more easily rectified.

Other advantages to student responsibility are more difficult to measure, but no less important. Thus, drawing on the ideas and experiences of a wide range of people – many of whom might be closer to the communities they serve than law clinic staff – may generate more innovative and effective ideas for enhancing social justice. Moreover, students responsible for running clinics are likely to feel a sense of “psychological ownership” in “their” clinic. According to empirical research,<sup>70</sup> this encourages them to go the extra mile in fulfilling their responsibilities, and as my experience confirms,<sup>71</sup> to use their initiative to enhance the means and effectiveness of serving the community, thus demonstrating that they can remedy social injustice without waiting for others to show them the way.

---

<sup>69</sup> Maisel, note 4, 402-05.

<sup>70</sup> Jon L. Pierce, Tatiana Kostova, & Kurt T. Dirks, ‘Toward a Theory of Psychological Ownership in Organizations’, 26 *Academy of Management Review* 298 (2001); Michael P. O’ Driscoll, Jon L. Pierce, & Ann-Marie Coghlan, ‘The Psychology of Ownership: Work Environment Structure, Organizational Commitment, and Citizenship Behaviours’, 31 *Group and Organization Management* 388 (2006).

<sup>71</sup> USLC students initiated and developed its public legal education work, its online advice system and a partnership with an HIV/AIDS organisation.

*Reviewed Article: Clinic, the University and Society*

A final group of advantages relates to the transmission of values. Committee meetings and extended mentoring relationships between students (which can replace the more hands-on supervision of EO clinics), arguably provide a more effective process of values socialisation than that provided by a few staff members. While respected staff members may model a commitment to access to justice, the impact might be lessened if they are paid employees and their focus is on teaching. By contrast, students (and volunteer lawyers and academics) who give up their free time to run clinics act as powerful altruistic role models. Finally, long-standing involvement in a distinct organisation, with formalities like a constitution and elections or an appointment process for committee positions, creates conditions conducive to the development of a strong and cohesive ethos which can be transmitted through AGMs, committee meetings, supervision and mentoring, as well as social events and other opportunities for informal socialisation which arise when people are involved in working closely and forming friendships with like-minded colleagues.<sup>72</sup>

3.1.5. *“Cluster” Versus “Omnibus” Clinics*

The advantages of a cohesive student body creating an enduring ethos which is transmitted to each new cohort has implications for a final organisational variable.

---

<sup>72</sup> cf. e.g. Elton F. Jackson et al., ‘Volunteering and Charitable Giving: Do Religious and Associational Ties Promote Helping Behaviour’, 24 *Nonprofit and Voluntary Sector Quarterly* 59 (1995); E. Gil Clary et al., ‘Understanding and Assessing the Motivations of Volunteers: A Functional Approach’, 74 *Journal of Personality and Social Psychology* 6 1516, 1518 (1998).

*Reviewed Article: Clinic, the University and Society*

Thus, a choice faces law schools whose clinics conduct multiple activities (case work, law reform, public legal education, etc.) or multiple specialisms (consumer cases, family law, etc.) or who act for more than one class of clients (refugees or domestic violence survivors, etc.). They can either set up separate clinics for each activity, specialism and/or client type, which are only loosely connected with each other – what can be called a cluster clinic – or they can conduct all activities within a single clinic with a uniform selection process, training, practice rules, etc. – what can be called an omnibus clinic.

While cluster clinics are often chosen in order to link clinical activity to substantive areas of law or legal practice for teaching purposes, it also enables a more intensive socialisation process through more personal relationships with staff. On the other hand, if – as is common in cluster clinics – students remain in a particular clinic for short periods their exposure to this process is limited. Furthermore, they cannot realistically engage in clinic management with all its benefits in terms of psychological ownership and role modelling. Omnibus clinics also have greater potential for inculcating a common social justice ethos over a longer period of time. Finally, they are efficient in not requiring separate student and induction training for each clinic, as well as allowing for other efficiencies of scale as regards publicity, fund-raising, etc.

**3.2 Clinic Activities**

*Reviewed Article: Clinic, the University and Society*

Having looked at five organisational variables, we turn to seven variables relating to the activities dimension of the decision-making matrix, namely whether services are: (1) specialist or generalist; (2) exclusively legal or “holistic”; (3) provided only by students or qualified legal professionals; (4) located in community neighbourhoods or on campus; (5) provided by students working “in-house” in a university clinic or in external placements; (6) designed to benefit the wider community rather than just the individuals directly served; and (7) designed to remedy existing problems or educate the public on their legal rights and duties.

*3.2.1. Specialist Versus Generalist Services*

The first activity variable is closely linked to the last organisational variable. This is because opting to provide at least more than one specialist service often leads to law clinics adopting a cluster clinic. By contrast, omnibus clinics tend, at least when first established to provide generalist services to the community whereby clients or community groups are provided with whatever legal help they need. Such generalist service can be available to all (at least in a SJO if they fit means testing criteria) or only those from certain geographical areas or who fall within client or community groups (such as students or those with HIV/AIDS). However, there is no necessary connection between generalism and omnibus clinics on the one hand, or between specialism and cluster clinics on the other. Discrete generalist clinics can co-exist in

*Reviewed Article: Clinic, the University and Society*

the same law school with specialist clinics under the cluster model,<sup>73</sup> and omnibus clinics can set up units focussing on specialist areas of practice or types of clients, and/or allow students to specialise within the clinic either for the duration of their involvement or at particular stages.

In terms of the benefit to clients and the community, specialist and generalist services have competing advantages. Specialist services allow clinics to target those seen as most in need (such as asylum seekers or domestic violence survivors). They also allow staff and students to develop greater expertise and experience in the areas of law practised, and clinics to foster cooperative relationships with institutional players and parallel organisations.<sup>74</sup> To the extent that client and community needs are confined to that area, specialist clinics or specialist units within omnibus clinics are likely to provide better services than generalist clinics. But where client needs cross areas of law - as they frequently do<sup>75</sup> - clients will have to be referred to other clinics or to external agencies, causing them inconvenience and possibly “referral fatigue” and the abandonment of their claims.<sup>76</sup> Specialist clinics have other drawbacks.<sup>77</sup> Students and staff who grow accustomed to working in a particular

---

<sup>73</sup> As at the University of Witwatersand: De Klerk & Mahomed, note 32.

<sup>74</sup> De Klerk & Mahomed, *ibid.* Other South African supporters include Du Plessis, note 32, 14-5; Holness, note 2, 340.

<sup>75</sup> See e.g. Hazel Genn & Alan Paterson, *Paths to Justice Scotland: What People in Scotland Think and Do about Going to Law* (2001) 44-48 on “problem clusters”.

<sup>76</sup> See e.g. Hazel Genn, et al. *Understanding Advice Seeking Behaviour: Further Findings from the LSRC Survey of Justiciable Problems* (2004), 30-32.

<sup>77</sup> Newman, note 50; Antoinette Sedillo Lopez, ‘Learning Through Service In A Clinical Setting: The Effect Of Specialization on Social Justice and Skills Training’, 7 *Clinical L. Rev.* 307 (2000-2001).

*Reviewed Article: Clinic, the University and Society*

legal area might not see the relevance of other areas and may also be less likely than those in generalist clinics to appreciate the frequently significant connection between legal and non-legal solutions to clients' needs,<sup>78</sup> especially where specialist clinics are designed to teach substantive law subjects.

As regards clinics' possible indirect impact on social justice, students who concentrate on one clinic activity, legal area or type of client are less likely to appreciate the full range of problems and injustices facing disadvantaged members of the community, and may not find that the particular clinic activity undertaken inspires them to a career serving social justice. On the other hand, where they are attracted to the work undertaken, their much greater immersion in it is likely to have a much deeper and longer-lasting impression than a fleeting exposure to a variety of activities. Given these competing advantages and disadvantages of both specialist and generalist services, clinics might be best advised to encourage, if not require, students to undertake a variety of specialisms during the course of their clinical involvement. Once again, this requires the longer student involvement associated with extra-curricular, as opposed to curricular, clinics.

*3.2.2. Holistic Versus Exclusively Legal Services*

Closely related to the question of whether services are specialist and generalist is the question of whether they draw only on the expertise of law staff and students to

---

<sup>78</sup> See section 3.2.2., below.



*Reviewed Article: Clinic, the University and Society*

provide exclusively legal services, on the one hand, or whether law clinics enter into partnerships with professionals and/or students from other disciplines, or at least ensure that students are trained in such disciplines to provide “holistic” (or “wraparound”) services to clients and the community, on the other hand. There is little question that the latter is far more beneficial to those receiving clinic services.<sup>79</sup> Thus, legal problems are often inextricably mixed with social, medical and economic problems,<sup>80</sup> making their resolution difficult without resolving one or more related non-legal issues, such as where clients have mental health problems or are heavily in debt. But even where issues can be compartmentalised, clients benefit from having all relevant types of help on hand, rather than having to do the rounds of different agencies in different locations, especially where they have transport and time restrictions. Similarly, multi-disciplinary approaches are often essential where clinics seek to improve the lives of community members through transactional work or litigation strategies, not least because law may not be the only, or indeed the most effective, way to empower communities or remedy problems.<sup>81</sup>

### 3.2.3. “Professional” Versus “Amateur” Responsibility

---

<sup>79</sup> See e.g. Dubin, note 11, 1491-93; Stephanie K. Boys, Carrie A. Hagan, & Valerie Volland, ‘Lawyers are Counselors, Too: Social Workers can Train Lawyers to More Effectively Counsel Clients’, 12 *Advances in Social Work* 241 (2011); Susan Mcgraugh, Carrie Hagan, & Lauren Choate, ‘Shifting the Lens: A Primer for Incorporating Social Work Theory and Practice to Improve Outcomes for Clients with Mental Health Issues and the Law Students who Represent Them’, 3 *Mental Health L. & Pol’y J.* 471 (2013-14).

<sup>80</sup> See again, Genn and Paterson, *loc cit* note 74.

<sup>81</sup> See the references in note 92 below; esp Ashar.

*Reviewed Article: Clinic, the University and Society*

A second question involving who does what in clinics relates to the balance of responsibility between the students and relevant qualified professionals (whether they be paid or voluntary, legal or non-legal).<sup>82</sup> Are services provided by qualified professionals, with students learning from observation and engaging in discrete tasks like researching particular legal points or drafting routine letters, or alternatively by students acting entirely on their own? Between these two extremes lie what many<sup>83</sup> regard as the optimum “student ownership” educational model, whereby students act under supervision of clinic staff, or (less preferably) voluntary lawyers or those in placement agencies.

Where particular clinics fit on this spectrum depends in part on how many paid staff can be afforded, the existence of agencies to host placements, the extent to which local lawyers will lend their assistance, and crucially in South Africa the extent to which law clinics wish to employ candidate attorneys. In addition, a major obstacle to South African law clinics fulfilling their social justice potential is the continuing prohibition on students appearing in court.<sup>84</sup> This means either that representation stops short of advocacy, thus giving opponents an advantage, or that, absent pro bono advocates, clinic staff have to take time out from supervision to appear in court. It also deprives students of the thrill of court advocacy and the potential sense

---

<sup>82</sup> cf. Giddings, note 38, 20-21.

<sup>83</sup> See e.g. April Land, ‘Lawyering Beyond’ Without Leaving Individual Clients Behind’ (2011-2) 18 *Clinical L. Rev.* 47, esp. at 56.

<sup>84</sup> cf. David McQuoid-Mason, ‘Whatever Happened to the Proposed South African Student Practice Rules?’ (3) *De Jure* 591 (2008).

*Reviewed Article: Clinic, the University and Society*

of achievement at satisfying legal victories which may help foster a life-long commitment to helping those in need.

To the extent that students can represent clients, the choice of how much autonomy they should have in SJO clinics will depend on whether one would prefer to ensure high quality services to a few by increasing professional involvement or to maximise the number of community members served (at least subject to guaranteeing minimum quality standards through training and “final product” supervision). It will also depend on what sort of work is involved. Some activities such as public legal education or help with legal form filling, require minimal or no supervision. Others, such as preparing test cases in the Constitutional Court, might be close to impossible without experienced lawyers.<sup>85</sup>

*3.2.4. Neighbourhood Versus Campus Law Clinics*

Turning from questions of who provides clinic services to those of their locality, it needs to be decided first whether clinics should be located in the community itself or on campus. Where clinics work with particular communities to ensure social change or law reform, locating themselves in the neighbourhood of the community is seen as essential.<sup>86</sup> Matters are less simple in relation to providing legal services to

---

<sup>85</sup> See e.g. Anna E. Carpenter, ‘The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact’, 20 *Clinical L. Rev.* 39 (2013-4).

<sup>86</sup> On the value of a neighbourhood location, see Brodie, *supra* note 13; Nancy Cook, ‘Looking for Justice on a Two-Way Street’, 20 *Wash. U. J.L. & Pol’y* 169 (2006).

*Reviewed Article: Clinic, the University and Society*

individual clients.<sup>87</sup> Neighbourhood law clinics<sup>88</sup> seem to be preferable in terms of ensuring ease of access and consequent expansion of the number of clients served, and in the signal they give clients about their importance. But this requires accommodation in all relevant neighbourhood localities. Where this is not possible and the university is situated near a transport hub, a central campus clinic might make more sense in that it is likely to be cheaper and easier for those living in satellite areas to travel to the clinic, rather than making more than one journey from their own locality to another satellite area.<sup>89</sup>

Neighbourhood clinics also have advantages in terms of a desire to educate students about social justice in that they force students out of the comfort of the campus' "protective bubble"<sup>90</sup> and confront them first-hand with the social deprivation their clients encounter on a daily basis. However, in order to maximise learning experiences, it is desirable to have supervisors on hand either on site or shortly after the students' return to campus.

---

<sup>87</sup> A further complication derives from the possibility of providing (as is done at USLC) online legal services (see e.g. Robert M. Bastress and Joseph D. Harbaugh, 'The 25th Anniversary of Gary Bellow's & Bea Moulton's The Lawyering Process: Taking The Lawyer's Craft Into Virtual Space: Computer-Mediated Interviewing, Counseling, And Negotiating', 10 *Clinical L. Rev.* 115 (2003)). However, while this has obvious advantages in resolving geographical problems of access to justice, insufficient numbers of South Africans most in need of legal services are likely to have easy access to online services or the necessary computer literacy to make this currently a viable alternative to face to face services.

<sup>88</sup> According to Iya, note 32, 27, these have mushroomed in South Africa.

<sup>89</sup> Travel to neighbourhood clinics might also pose problems for some students: Jobst Bodenstein, personal communication, 14 April 2015.

<sup>90</sup> Margaret Martin Barry et al., 'Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics', 18 *Clinical L. Rev.* 401, 444 (2011-2) (albeit making this point in relation to placements).

## *Reviewed Article: Clinic, the University and Society*

### *3.2.5. In-House Versus External Placements*

Particularly if similar teaching arrangements are put in place,<sup>91</sup> a similar conscientising and educative effect may be achieved by placing students with external organisations providing advice and representation, running law reform campaigns or otherwise serving the community. This placement or externship model has the merit of enabling students to gain clinical experience usually under professional supervision at little or no cost, and thus might provide a useful means of extending student involvement beyond that which can be catered for in an in-house clinic.<sup>92</sup> On the other hand, to the extent that in-house clinics can be afforded, they have the benefit of enabling staff to have greater control over student activities.<sup>93</sup>

### *3.2.6. "Retail" Versus "Wholesale" Legal Services*

Having in a sense cleared the ground by looking at the preceding activity variables, we turn to the final two, and perhaps most defining variables, of clinic activity, namely the scale and type of legal services provided. As regards scale, here one can distinguish between what can be called "retail" and "wholesale" services.<sup>94</sup> The

---

<sup>91</sup> Resulting in what Margaret Martin Barry, Jon C Dubin, & Peter A Joy, 'Clinical Education for this Millennium, The Third Wave', 7 *Clinical L. Rev.* 1, 7 (2000) call a hybrid in-house/externship program.

<sup>92</sup> e.g., those not selected for admission to the USLC are offered placements at advice agencies and an optional class on legal practice, ethics and access to justice.

<sup>93</sup> Henry Rose, 'Law Schools Should Be About Justice Too', 40 *Clev. St. L. Rev.* 443, 452 (1992).

<sup>94</sup> Like many other distinctions, there is a spectrum rather than a bright line between these poles. At one extreme are individual services, with unbundled services being the most individualised; at the

*Reviewed Article: Clinic, the University and Society*

former category involves services provided to individuals with legal problems or other legal needs. Most obviously, retail services may involve the “bespoke” services of advice and representation, as well as transactional work such as that provided to non-profit organisations. It may also involve “unbundled” services, ranging in complexity from form-filling to writing letters and even drafting pleadings.<sup>95</sup>

Wholesale services involve assistance to larger groups of people using efficiencies of scale. Thus clinics can provide workshops guiding groups of prospective claimants on how to mount particular types of legal claims or training those who provide services to others.<sup>96</sup> More commonly and more ambitiously, clinics can seek to improve the situation of large groups of people through various more direct means.<sup>97</sup> This may involve impact litigation, law reform campaigns, and educating the public about their legal rights, remedies and duties so that they can avoid legal problems before they arise or know how to resolve them when they do. Increasingly, clinics also engage in community empowerment projects where they work in

---

other is impact work where the benefit of assisting an individual or group of individuals extends beyond the particular client or group; and somewhere between can be placed non-impact work for groups.

<sup>95</sup> For a critical analysis, see Mary Helen McNeal, ‘Unbundling and Law School Clinics: Where’s The Pedagogy?’, 7 *Clinical L. Rev.* 341 (2000-1).

<sup>96</sup> See e.g. Peggy Maisel, ‘The Consumer Indebtedness Crisis: Clinics as Laboratories for Generating Effective Legal Responses’, 18 *Clinical L. Rev.* 133, 171-73 (2011-12) (describing activities of the University of Pretoria Law Clinic).

<sup>97</sup> See e.g. Maisel, *ibid*; Carasik, note 11, esp. 46ff; Kruse, note 18; Ashar, note 35; Peter Pitegoff, ‘Law School Initiatives in Housing and Community Development’, 4 *B. U. Pub. Int. L. J.* 275 (1994-5); Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic*, New York Law School Clinical Research Institute, Research Paper Series (No.10/11 #1), (2010); Praveen Kosuri, ‘“Impact” in 3D - Maximizing Impact Through Transactional Clinics’, 18 *Clinical L. Rev.* 1 (2011-2012).

*Reviewed Article: Clinic, the University and Society*

partnership with communities to bring about lasting changes to people's lives through, for example, economic empowerment, transactional support for community and political groups, and campaigns for living wages and basic community services.<sup>98</sup>

The choice between retail and wholesale service is one of the most difficult facing SJO clinics. On utilitarian grounds, the latter seem preferable in potentially having a far wider and longer-lasting impact. Wholesale services also seem likely to provide students with a better idea of the structural nature of social injustice, and effort and type of activity needed to redress it. Furthermore, the sense of personal achievement in making noticeable improvement to the lives of many may inspire some to engage in similar work once they qualify.<sup>99</sup> The fact that impact work takes time to achieve may also lead to continuing contact between different generations of students, replicating some of the benefits of omnibus clinics in terms of their socialising ethos. Finally, students who undertake long-term projects may continue their involvement after graduation and hopefully develop the habit of pro bono work.<sup>100</sup>

On the other hand, there is also no doubt that clinic clients "demand and appreciate the individual services they receive."<sup>101</sup> Aside from the material benefits provided,

---

<sup>98</sup> See e.g. Caraisik, *ibid*, passim; cf. also Paul R. Tremblay, 'Toward a Community-Based Ethic for Legal Services Practice' 37 *UCLA L. Rev.* 1101 (1989-1990).

<sup>99</sup> See Caraisik, *ibid*, 69ff; Kruse, note 18, 411- 443 passim, 443; Ashar, note 35, passim; Pitegoff, note 94, 285, 288.

<sup>100</sup> Kosuri, note 96, 42.

<sup>101</sup> Brodie, note 13, 369.

*Reviewed Article: Clinic, the University and Society*

there is something very valuable in students showing marginalised and underprivileged community members that they matter by taking time to listen to them and doing their best to resolve their problems. The impact on those who are usually subjected to, rather than protected by, law and lawyers may start a process of healing that is carried through to other aspects of their lives.<sup>102</sup> Moreover, compared to long-term involvement in impact litigation or law reform campaigns where students might not see the results of their hard work, meeting and assisting a wide variety of individual clients is likely to provide students with much greater exposure to the personal impact of social injustice and engender a sense of achievement in making a difference to their lives. As we have seen,<sup>103</sup> it is such exposure which is so important to the development of student empathy and to inspiring a life-long commitment to helping others.

One also needs to consider that obtaining positive outcomes is far less certain with long-term projects than with individual case work. This is largely because legal strategies designed to have wide-ranging consequence are more likely to be resisted by powerful opponents potentially adversely affected by such consequences. While they might succumb to small or self-contained claims because of their nuisance value, such opponents are likely to throw all available resources at preventing more permanent and wide-reaching consequences materialising.

---

<sup>102</sup> But see the scepticism of Ashar, note 35, 407 and 411.

<sup>103</sup> Notes 17-19 above and accompanying text; see also Land, note 82; Srikantiah & Koh, note 96, esp. 462-65 *passim*.



*Reviewed Article: Clinic, the University and Society**3.2.7. Remedial Versus Educative Legal Services*

In discussing the previous variables, for reasons of clarity I have largely focussed on legal services aimed at making material changes to people's lives. These can be called remedial services in contrast with educative services which involve providing people with relevant legal knowledge to enable them to take advantage of their legal rights, avoid legally sanctioned harms or persuade them to respect those of others. Admittedly, there is a considerable overlap between these two categories. Thus, clinics can seek to remedy legal problems through educating people to help (and hence empower) themselves, for instance by running workshops on how to pursue existing legal claims or providing people with the necessary legal knowledge for when problems arise. Alternatively, other agencies can be educated to help others, such as the valuable training South African law clinics provide to para-legals working in rural areas.<sup>104</sup> However, public legal education is usually associated in South Africa and elsewhere with "street law" programmes in institutions like schools or prisons involving various relevant areas of law and human rights.

Deciding whether social justice is better enhanced through prioritising remedial or educative services takes us into the realm of speculation, not least because there seems to be little hard evidence on the effect of street law. Research suggests that it

---

<sup>104</sup> De Klerk, note 7, 941 n. 92.

*Reviewed Article: Clinic, the University and Society*

can reduce prisoner recidivism,<sup>105</sup> but as far as I can gather there is no evidence of street law helping its beneficiaries from avoiding future legal problems, acting more in accord with others' rights or generally furthering the goal - so important in South Africa - of developing a society which values and respects human rights, the rule of law and democracy. Street law has been shown to foster student skills and confidence, and to increase public awareness of the law, empower communities and create a sense of shared community.<sup>106</sup> But, while many of those who provide street law sessions on human rights and democracy may well themselves develop an enhanced commitment to these values, I am not aware of studies investigating whether street law programmes develop or reinforce a commitment in students to serve the community once they have graduated. Here, however, one might imagine that, by contrast to the satisfaction of personally helping others through remedial work even of a wholesale nature, the sense of satisfaction engendered by street law and workshop teaching is likely to be lessened by the prospective and uncertain nature of its impact.

Finally, comparing all forms of remedial and educative work with each other in terms of their ability to open students' eyes to the extent and structural nature of

---

<sup>105</sup> See David McQuoid-Mason, 'Street Law as a Clinical Program-The South African Experience with Particular Reference to the University of KwaZulu-Natal', 17 *Griffith Law Review* 27, 33, (2008), citing L. Arbetman et al., *Street Law: A Course in Practical Law* (4th ed, 1990).

<sup>106</sup> McQuoid-Mason, *ibid*, 46; Kamina A. Pinder, 'Street Law: Twenty-Five Years and Counting', 27 *J.L. & Educ.* 211, 225-31 (1998); Richard Grimes et al., 'Street Law and Social Justice Education', in Bloch (ed.), note 6; Ajay Pandey & Sheena Shukkur, 'Legal Literacy Projects: Clinical Experience of Empowering the Poor in India', in Bloch *ibid*.

*Reviewed Article: Clinic, the University and Society*

social injustice and to provoke disorienting moments and empathy for the victims of social injustice is made fiendishly complicated by the fact that some forms of remedial and educative work do not involve contact with such victims or allow for an overview of the extent of social injustice. Consequently, one can only compare certain types of remedial with similar types of educative work, without being able to gain an overall picture of what to prioritise.

**4. CONCLUSION**

In fact, these problems are multiplied exponentially when considering whether remedial and educative work is conducted on a retail or wholesale basis, and whether it involves specialist or generalist services.<sup>107</sup> And then decision-making becomes vastly more difficult when one also factors in the dilemma over whether it is better to prioritise certain but less extensive positive impacts on social justice over more extensive impacts which are less likely to materialise. This dilemma came up frequently in the preceding discussion, but most notably in relation to comparing retail with wholesale services and, even more fundamentally, in exploring whether to prioritise direct or indirect means of enhancing social justice.

---

<sup>107</sup> Leading to eight possible configurations of services: specialist retail remedial; specialist retail educative; specialist wholesale remedial; specialist wholesale educative; generalist retail remedial; generalist retail educative; generalist wholesale remedial; generalist wholesale educative.

*Reviewed Article: Clinic, the University and Society*

These complications and uncertainties do, however, suggest one conclusion that flows from the analysis of the activities domain of the decision-making matrix. This is that law clinics that seek to maximise their social justice impact might be advised to aim at providing as many different forms of legal service as is possible (specialist as well as generalist, wholesale as well as retail, and educative as well as remedial). Moreover, where choices have to be made within each type of service, they should choose those which will have the widest known impact and/or serve clients or community groups whose needs are most pressing. It would also seem sensible for clinics to work with other disciplines to provide holistic services in a locality most convenient to the communities they serve. Furthermore, in order to extend the level of services and student exposure to the potentially transformative impact of clinical experience, clinics should utilise external placements as well as in-house services and provide students with as much autonomy in the conduct of cases as is compatible with reasonable levels of quality services.

If these suggestions as regards the activities domain of the decision-making matrix are persuasive, this has implications for clinic organisation. Thus, instead of students becoming overwhelmed by competing deadlines and the disparate skills involved in all forms of services (retail and wholesale, remedial and educative, specialist and generalist),<sup>108</sup> their activities could be structured to involve a skills progression. For

---

<sup>108</sup> cf. Srikantiah & Koh, above note 96, 466.

*Reviewed Article: Clinic, the University and Society*

example, incoming students could initially provide wholesale educational services and low-key or unbundled retail work (such as form-filling and possibly also litigation workshops). Later they could graduate to more intensive client-focussed work and more specialist educational work (such as the training of other agencies). Finally, they could engage in the high profile and high skill work involved in impact and community empowerment work, while also mentoring and, if properly trained, even supervising less experienced students in order to save valuable staff time.

While this progressive approach to clinic activity can be achieved in cluster clinics, it is easier to manage in omnibus clinics. Moreover, where clinical involvement is limited in duration, it is more difficult to expose all students to a variety of activities, and to maximise the potential to develop or at least sustain their commitment to redress social injustice, while simultaneously allowing them to gain the training and experience necessary to provide quality legal services. Thus, in addition to the reasons already given for not making clinic involvement compulsory and entirely curricular,<sup>109</sup> the value of a progressive approach to clinical activities (or indeed any other model which exposes students to a wide variety of activities) suggests that – absent substantial increases in clinic resources – clinical participation should be optional so that it can be spread over the course of the degree. Such long-term clinic involvement is particularly useful in meeting the problems of institutional memory

---

<sup>109</sup> See, respectively, sections 3.1.3. and 3.1.4, but note the discussion of the Clinical LLB at note 47, which does not however by any means give students credit for all their clinic activities.

*Reviewed Article: Clinic, the University and Society*

as regards both impact work and maintaining ongoing relations with community leaders. But it is also essential if students are to have the necessary institutional knowledge and experience to help run clinics and ensure all the associated benefits.

However, while tentatively offering a number of suggestions as to how clinics might be designed to maximise their impact on social justice, this article is not intended to provide a blueprint for the redesign of existing South African clinics, even if clinicians were inclined to prioritise social justice to the extent argued for here and even if they were free of constraints imposed by local conditions, such as the absence of partners to host placements or the resources to afford neighbourhood clinics. Instead, my primary aim was to offer a decision-making matrix which makes clear the wide range of choices and their implications so that law schools and law clinics fully appreciate how decisions about clinic design and choice of activities impact on social justice. This, in turn, will allow them – to the extent desired and possible – to modify clinic organisation and activities to better serve social justice (and indeed other goals as well).

Thus, while some of these choices and their implications are well known, this article will have hopefully heightened awareness of less prominent variables (such as whether or not clinics are solely staff-run or only provide legal services). It should also now be clear that some choices involve exclusive binary oppositions, for instance as to whether clinical participation is voluntary or compulsory, and services

*Reviewed Article: Clinic, the University and Society*

are exclusively legal or holistic. However, with many variables, both alternatives can be combined in various proportions in the same clinic. Thus we have seen that clinic can combine specialist with generalist services, retail with wholesale services, and remedial with educative services. Similarly, these services can be provided both in-house and through placements, and on campus and in neighbourhood premises. The possibility of combining alternatives also applies to organisational variables such as whether or not clinical involvement attracts academic credit. And, then again, other variables do not involve distinct binary oppositions but merely a spectrum between two poles. Most notably, all clinics are more or less rather than exclusively oriented towards social justice or education, but they can also involve greater or lesser degrees of student ownership of both the services provided and clinic management (and indeed different degrees in relation to different activities and management responsibilities).

This article should also make clear that, whereas some variables like the choice of locality for service provision, are *relatively* self-contained in their impact, many have significant consequences for other variables, making one or other option impossible or more difficult. For instance, curricular clinics preclude giving students sole or major responsibility for clinic direction and make an education orientation highly likely, whereas compulsory clinical involvement will prevent students participating in a wide range of remedial and educative activities unless there are very generous resources or minimal student involvement and/or supervision. Conversely, focusing

*Reviewed Article: Clinic, the University and Society*

on impact work, whether involving litigation or transactional services, will necessitate much higher supervision levels and work better with extra-curricular student involvement which can be spread over a number of years.

However, this article was not simply intended to analyse how decisions about the different variables relevant to a law clinic's design and activities might in the abstract maximise its social justice impact. It was also intended to analyse their implications for responding to the two main obstacles facing South African law clinics. The first is the currently limited and always precarious nature of clinic resources. Here, we have seen that the much lower staff-student ratios of SJO clinics make them far more cost-effective, even when combined with teaching designed to ensure justice, rather than practice-readiness. For instance, the USLC currently has approximately 280 students who provide advice and representation in the lower courts and tribunals, run street law programmes in prisons and schools, engage in law reform activities, investigate alleged miscarriages of justice, assist destitute asylum seekers and survivors of gender violence, and run workshops to assist those with housing disputes and evening advice sessions staffed by pro bono lawyers. Yet the clinic only employs four part-time supervisors and one full-time administrator, whereas I devote less than half my time to clinic management and the Clinical LLB.

The other reason for the USLC's low costs is the role played by the students in its running. Even leaving aside the advantages of drawing on the energy, enthusiasm,



*Reviewed Article: Clinic, the University and Society*

initiative and life experiences of a wide group of student volunteers to run a clinic, it is undeniable that involving students in running clinics enables more students providing more extensive activities. In South Africa, it would create a bulwark against the precarious nature of the current reliance on non-university funding.<sup>110</sup> Resources can also be made to go further if clinics prioritise social justice rather than teaching law and developing skills because of the lower staff-student ratios. This is so even if curricular opportunities for exploring issues of social justice are combined with largely voluntary student activity in either dedicated classes or something like the Clinical LLB. Such a model may offer a more effective alternative to responding to law clinics' ongoing funding problems by highlighting their educational benefits in order to persuade universities and others to increase clinic resources.<sup>111</sup>

A focus on social justice delivery and teaching may also be more effective in persuading law schools to accord clinicians the same status as other academics in terms of remuneration, promotion and working conditions. Teaching and writing on issues of social injustice and the means for their redress is more likely to be seen as aligning with prevailing conceptions of legal education and scholarship than the *perceived*<sup>112</sup> dumbed-down nature of teaching skills<sup>113</sup> and writing about clinical legal

---

<sup>110</sup> cf. De Klerk, note 7, 949.

<sup>111</sup> cf. *ibid*, 948.

<sup>112</sup> In fact, teaching and writing about issues relating to legal practice can be as intellectually demanding as other forms of legal education and scholarship, certainly that involved in expository teaching and black-letter scholarship.

*Reviewed Article: Clinic, the University and Society*

education. Furthermore, universities in the new South Africa espouse a social justice mission which runs alongside that of teaching and scholarship,<sup>114</sup> and law clinics can justifiably claim to be the primary means of law schools fulfilling that mission. In leading the charge on behalf of their universities and law schools, law clinicians ought to be rewarded and law clinics expanded, not marginalised. Hopefully, my suggestion for a return to the roots of the South African law clinic movement with its emphasis on student activism and social justice can help ensure that law clinics achieve the funding and status they deserve.

---

<sup>113</sup> See Iya, note 4, 272-73, and for an example, see Stuart Woolman, Pam Watson & Nicholas Smith, 'Toto, I've a Feeling We're Not in Kansas Any More: A Reply to Professor Motala and Others on the Transformation of Legal Education in South Africa', 114 *S. African L.J.* 30 (1997).

<sup>114</sup> Africa, above n. 38.