

Final Draft of ‘Calling, Character and Clinical Legal Education: A Cradle to Grave Approach to Inculcating a Love for Justice’ (2013) 16 Legal Ethics (forthcoming)

## **Calling, Character and Clinical Legal Education: A Cradle to Grave Approach to Inculcating a Love for Justice**

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### INTRODUCTION

To be a true professional, one needs to be an amateur! This statement becomes less paradoxical, though not necessarily less controversial, if one ignores the more modern association of ‘professional’ with those who are paid to provide skilled work and recalls the Latin roots of ‘amateur’ and its association with conduct performed for the love of it, rather than the pejorative notion of unpaid and unskilled, if not incompetent, services. This paper states the case for a return to an older ideal of professionalism, in which professionals were regarded as experiencing a calling to exercise their skills and some at least were willing to do so irrespective of whether they were paid. However, instead of reviving a patrician *noblesse oblige* ideal<sup>1</sup> or relying, as others do, on arguments addressed to the profession as a whole, I will ground this sense of professionalism in the personal ethical duties of practitioners and argue that individual lawyers have moral duties to ensure that legal services extend beyond those who can pay or qualify for legal aid. In other words, law involves a calling to devote one’s training, skills and privileges to assist those who require law’s benefits or protections, and hence a true legal professional is a lover of justice.

Previously, I have argued that a core element of professionalism is the maintenance of ethical standards—what I called ‘ethical professionalism’.<sup>2</sup> Here I will use the neologism ‘altru-ethical professionalism’ to argue that, just as ethics are a core aspect of professionalism, so is altruism<sup>3</sup> a core aspect of ethics. After seeking to justify this admittedly idealistic view of professionalism, I will explore how legal education might seek to inculcate this ideal. Again drawing on previous work,<sup>4</sup> I will argue that, firstly, to be effective legal education needs to start a process whereby altru-ethical professionalism becomes part of what I have called professional moral character,

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<sup>1</sup> David Luban, ‘The *Noblesse Oblige* Tradition in the Practice of Law’ (1988) 41 *Vanderbilt Law Review* 717.

<sup>2</sup> Donald Nicolson, ‘Education, Education, Education: Legal, Moral and Clinical’ (2008) 42 *Law Teacher* 145.

<sup>3</sup> By ‘altruism’ is meant ‘actions that not only benefit others, but are also primarily motivated by the desire to benefit others’ (Gustavo Carlo, Lisa M PytlíkZillig, Scott C Roesch and Richard A Dienstbier, ‘The Elusive Altruist: The Psychological Study of the Altruistic Personality’ in Darcia Narvaez and Daniel K Lapsley (eds), *Personality, Identity and Character: Explorations in Moral Psychology* (Cambridge University Press, 2009) 271, 272.

<sup>4</sup> Nicolson (n 2) and D Nicolson, ‘Learning in Justice: Ethical Education in an Extra-Curricular Law Clinic’ in Michael Robertson, Lillian Corbin, Kieran Tranter and Francesca Bartlett, *The Ethics Project in Legal Education* (Routledge, 2010) 171.

namely those permanent character traits which are exercised in the context of professional life,<sup>5</sup> and, secondly, that the most effective means of doing this is through lengthy involvement in a voluntary law clinic. Finally, I will outline a new clinical law degree which seeks to integrate a focus on ethics and justice throughout legal education via law clinic experience in order to start the process of inculcating altruism as part of professional moral character.

## LAW AS A CALLING TO JUSTICE

Before justifying the altru-ethical conception of professionalism, it is worth clarifying that I do not see altruism solely in terms of performing *pro bono* legal services, but more broadly as an obligation to contribute in some way to access to justice. This, in turn, I understand as helping to redress unmet legal need, rather than simply providing legal services without payment. For instance, those who forgo the higher salaries of corporate or other lucrative legal work to work in law centres or as legal aid lawyers (whether out of a sense of calling or otherwise), who waive or reduce fees when needy clients run out of money to pay, or who support others who serve those in need, such as through providing training or financial resources, all contribute to access to justice. But why can it be said that lawyers owe a duty of altruism? One argument rests on an alleged implied social contract between the profession and society, in terms of which society accords lawyers high status, financial rewards, protection from competition and independence from state control in return for expert knowledge, quality legal services, ethical behaviour, and, crucially, altruism and access to justice.<sup>6</sup> This argument provides useful leverage in the hands of the state and other groups campaigning to ensure that professionalism involves less of ‘a conspiracy against the laity’ as George Bernard Shaw’s famous line from *The Doctor’s Dilemma* puts it, and more of a benefit to society as whole. But it is far less likely to be effective as an aspirational ideal that inspires incoming and existing lawyers to devote at least some of their time or income to assist those needing legal services. For one thing, lawyers have long managed to retain the benefits of professional status without being overly concerned about access to justice. Perhaps more importantly, obligations which derive from the enlightened self-interest of a contract (albeit a fictional one), like other forms of extrinsic motivation, are less likely to have a lasting and robust effect than those which develop out of more intrinsic and personally felt motivations.<sup>7</sup>

*Prima facie*, a more promising route to developing altruism appeals to the notions of professionalism as a calling. Here one can argue that the essential difference between professions and even the most skilled of occupations is the idea that professional skills are exercised and services provided, not merely for financial reward, but out of a sense of calling and a love for the job. Otherwise, there is little to distinguish those who regard themselves as professionals from those who work in occupations because they provide a means to make a living which reflects their aptitude, training and contextual

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<sup>5</sup> Donald Nicolson, ‘Making Lawyers Moral: Ethical Codes and Moral Character’ (2005) 25 *Legal Studies* 601.

<sup>6</sup> eg Alan Paterson, *Lawyers and the Public Good: Democracy in Action* (Cambridge University Press, 2011) ch 2.

<sup>7</sup> David Carr, *Educating the Virtues: An Essay on the Philosophical Psychology of Moral Development and Education* (Routledge, 1991) 150; Alfie Kohn, ‘How Not to Teach Values: A Critical Look at Character Education’ (1997) 78 *Phi Delta Kappa* 428; Daniel K Lapsley and F Clark Power (eds), *Character Psychology and Character Education* (University of Notre Dame Press, 2005), *passim*, but esp ch 10.

circumstances. It may obviously occur, but it seems unlikely, that many become plumbers out of the love of unclogging drains or sell insurance because of a desire to protect others against risk. There are obviously other attributes to being a professional—autonomy, the maintenance of high ethical standards, knowledge and skills developed through education and training and accredited by some external body, and the guarantee of indemnity for any harm caused to clients. But many of these are also found or could easily be developed in other occupations.

However, the idea of a calling only takes us so far towards altru-ethical professionalism. Some might argue that, as long as law is practised, not just for extrinsic reasons like money and prestige, but for the intrinsic reward of a career which is stimulating and challenging, lawyers qualify as professionals. One problem with this ‘intrinsic reward’ notion of a calling is that over time it may degenerate into a focus on extrinsic reward because of the sort of things lawyers are required to do on behalf of clients.<sup>8</sup> It seems difficult to maintain satisfaction in a job well done when the consequences involve harm to others, the public interest, or the law itself. Treating legal practice merely as a well-paid job avoids such cognitive dissonance, but possibly at the expense of amoral cynicism leaking into one’s personal life.

In any event, even those like Kronman<sup>9</sup> who have eloquently argued for the importance of this sense of calling have gone further to combine it with a concern for ensuring that legal arguments best serve the public good. Others with a similar liberal persuasion see the guaranteeing of access to justice as promoting the public interest. This is because the law itself is a public good and this in turn is because it ensures that society operates in an ordered and fair fashion by protecting the autonomy and dignity of citizens through the provision of rights to liberty and protection from others.<sup>10</sup> However, as many citizens do not have the knowledge and skills to vindicate their legal rights, lawyers who provide legal services contribute not only to protecting their clients’ autonomy and dignity but also to peaceful social flourishing. Moreover, limiting services to those who can afford them can be said to contravene the idea of equality before the law which is a core aspect of both the rule of law and liberal society. Accordingly, it can be argued that lawyers who ensure access to justice promote both liberty and equality and thereby fraternity.

By contrast, some are sceptical about the sort of equality, dignity, autonomy and fraternity espoused in liberal societies, though not necessarily of these values in themselves.<sup>11</sup> For them, an alternative source for an obligation to contribute to access to justice can be sought in ethical theory alone.<sup>12</sup> Utilitarianism, for instance, might support a duty on lawyers to promote the greatest good for all by giving up some of their privileges to help others. The postmodernist ethic of alterity would require the lawyer to reach out to give succour to the ‘other’ in need of legal services, as, possibly, would also the feminist ethic of care. But a more specific, and probably more

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<sup>8</sup> cf Donald Nicolson and Julian Webb, *Professional Legal Ethics: Critical Interrogations* (Oxford University Press, 1999) 175–8.

<sup>9</sup> Anthony T Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harvard University Press, 1993).

<sup>10</sup> eg Paterson (n 6) 68–70; Stephen L Pepper, ‘The Lawyer’s Amoral Ethical Role: A Defense, a Problem, and Some Possibilities’ [1986] *American Bar Foundation Research Journal* 613.

<sup>11</sup> eg Nicolson and Webb (n 8) 197–205.

<sup>12</sup> *Ibid*, ch 2.

persuasive, argument relies on a moral duty of reciprocity, or even that of gratitude, towards the citizen as taxpayer.

The argument starts from the recognition that through their taxes citizens pay for school education and, still in countries like Scotland, for much of the cost of legal education. This investment enables law students to go on to enjoy substantial financial rewards and thus, presumably because it is thought that their education benefits society, taxpayers are paying for lawyers to make money. However, only those who can afford a lawyer or who are fortunate enough to qualify for legal aid benefit from this public investment in the education of lawyers. Put bluntly: the reason why so many people lack access to legal services is because they are priced out of the market by the fees lawyers charge. Consequently, it can be argued that lawyers have a moral duty to take some remedial action to repay those who helped put them in their privileged position, but who do not benefit from this investment.

As regards the many lawyers who work for large law firms, there is an additional moral reason supporting a duty to extend legal services beyond their clients. Many of these clients are large commercial institutions providing goods or services to the public, who pass on the high cost of legal services to their consumers. Consumers thus subsidise high legal fees, yet many cannot themselves afford legal services. Indeed, the link between the behaviour of law firms and the justice of the legal system is even more direct, given that those without legal representation often face law firms using all the skills and resources at their disposal to protect clients from, for example, paying compensation for unfair dismissal, unlawful discrimination, and unlawful evictions. One response to such power imbalances is for firms to adopt a less adversarial stance towards unrepresented clients. However, given that lawyers owe clients a duty of zeal, a far more plausible response is for them to take steps to ensure that no one goes unrepresented. Admittedly, this might lead some to engage in what has been called ‘schizoid lawyering’,<sup>13</sup> whereby they seek to resolve the sort of problems after work to which they have contributed to during office hours, but this seems a necessary price to pay if such lawyers are to enhance access to justice.

If accepted, the argument about the link between professional status and repaying a debt of gratitude to society can go a long way to founding a duty of altruism. This is because, not only does the ethical duty or virtue of gratitude avoid some of the problems of alternative foundations for such a duty, but research suggests that gratitude is in fact linked to altruism: those who have knowingly received benefits from others are often spurred to acts of altruism generally rather than merely to help those who have helped them.<sup>14</sup>

## ALTRU-ETHICAL PROFESSIONALISM AND LEGAL EDUCATION

### **Clinics, Character and Calling: The Argument**

We thus see that lawyers have good reason to stress a conception of professionalism which emphasises law as a calling in order to distinguish themselves from the many occupations currently competing for equivalent status. Indeed, this argument has added resonance in the current climate in which legal practice is increasingly being

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<sup>13</sup> Robert W Gordon, ‘The Independence of Lawyers’ (1988) 68 *Boston University Law Review* 1, 22–23.

<sup>14</sup> Robert A Emmons, ‘Greatest of the Virtues? Gratitude and the Grateful Personality’ in Narvaez and Lapsley (n 3).

commercialised.<sup>15</sup> Moreover, if professionalism is currently not seen as extending to a duty to ensure access to justice, there are powerful arguments supporting such a conception. If accepted, one question which arises is as to the role law schools can play in instilling in law graduates a commitment to altru-ethical professionalism.

An obvious first, and relatively easy, step is to introduce students to problems of access to justice. However, it is doubtful whether a few lectures and possibly a tutorial on the issue will engage student interest—especially when swamped by endless hours devoted to learning substantive law. By contrast, bringing in practitioners to discuss their successes and satisfaction gained from helping those in need, and using literature and films with similar messages may act to spark student interest and concern.<sup>16</sup> Such narratives can then be linked to discussions of professional ethics.

However, legal ethics currently plays a marginal role in undergraduate legal education in the United Kingdom.<sup>17</sup> Here, roughly only a quarter of law schools teach ethics on a compulsory basis.<sup>18</sup> Consequently, most students are introduced to ethics for the first time in the professional stage of legal education, where teaching can be said<sup>19</sup> to be both too little—being confined largely to the professional rules—and too late—given the in-depth exposure of students over the academic stage of training to what is variously called the law school’s hidden,<sup>20</sup> latent,<sup>21</sup> implicit<sup>22</sup> or informal<sup>23</sup> curriculum. This is said to be likely to undermine any focus on access to justice as part of legal ethics and indeed any underlying commitment incoming law students might have to seeing legal practice as a calling. This hidden curriculum is contained in the unarticulated value assumptions, which supplement and may be as powerful as those contained in the formal curriculum. It is communicated to students by example, teaching methods, curriculum design, student culture and contacts with the legal profession. According to the commentators, it conveys the message that issues of ethics and justice are of little relevance to the real business of law, and that a legal career is largely a means to

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<sup>15</sup> Paterson (n 6) ch 2; Andrew Francis, ‘The Business Context: Legal Ethics, the Marketplace and the Fragmentation of Legal Professionalism’ (2005) 12 *International Journal of the Legal Profession* 173.

<sup>16</sup> eg Ian Johnstone and Mary Treuthart, ‘Doing the Right Thing: An Overview of Teaching Professional Responsibility’ (1991) 41 *Journal of Legal Education* 75, 100–1; Carrie Menkel-Meadow, ‘The Sense and Sensibilities of Lawyers: Lawyering in Literature, Narratives, Film and Television, and Ethical Choices Regarding Career And Craft’ (1999) 31 *McGeorge Law Review* 1, 64–6; Carrie Menkel-Meadow, ‘Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics’ (2000) 69 *Fordham Law Review* 787.

<sup>17</sup> By contrast, ethics teaching has long been compulsory in the United States and more recently in Australia and New Zealand: for various international perspectives on the role of ethics teaching in legal education, see Robertson *et al* (n 4).

<sup>18</sup> Phil Harris and Sarah Beinart, ‘A Survey of Law Schools in the United Kingdom, 2004’ (2005) 39 *Law Teacher* 299, though this may be about to change in England and Wales if the Legal Education and Training Review recommends a greater role for legal ethics in the academic stage of training: see <http://letr.org.uk>.

<sup>19</sup> See Nicolson (n 2) 147–50.

<sup>20</sup> Roger C Cramton, ‘The Ordinary Religion of the Law School Classroom’ (1977–8) 29 *Journal of Legal Education* 247.

<sup>21</sup> Ronald M Pipkin, ‘Law School Instruction in Professional Responsibility: A Curricular Paradox’ [1979] *American Bar Foundation Research Journal* 247.

<sup>22</sup> Howard Lesnick, ‘The Integration of Responsibility and Values: Legal Education in an Alternative Consciousness of Lawyering and Law’ (1986) 10 *Nova Law Journal* 633, 634.

<sup>23</sup> Kim Economides, ‘Legal Ethics: Three Challenges for the Next Millennium’ in Kim Economides (ed), *Ethical Challenges to Legal Education and Conduct* (Hart Publishing, 1998) xvii.

success and financial rewards rather than one in which legal heroes seek justice and help those in need.<sup>24</sup>

Numerous studies in the United States<sup>25</sup> show that the hidden curriculum engenders moral and political cynicism, and undermines any idealism students might have about using law to promote justice. This finding has yet to be replicated in the UK, though Sherr and Webb<sup>26</sup> found that Warwick Law School left untouched the overwhelming conservative political orientation of incoming law students. A recent unpublished study that Zoumidou and I conducted<sup>27</sup> offers a less pessimistic picture of University of Strathclyde law students, while also failing to detect any obvious negative effect of legal education on attitudes after three terms of study. Given the scarcity of information on this issue in the UK, it is worth setting out the results in some detail.

In September 2009, incoming law students were asked various questions designed to gauge their motivation in pursuing a legal career and then re-surveyed 16 months later. When asked before they began studying, 70% declared an intention to practise law, with 26% still undecided and 4% set against a legal career, but 16 months later the figures had altered to 61%, 34% and 5%, respectively<sup>28</sup>—findings which are broadly consistent with similar studies in England and Wales.<sup>29</sup>

As a way of indirectly exploring their sense of calling, the students surveyed were asked to rate a number of specific reasons for studying (and later for continuing to study) law on a Likert scale of 1 to 5, with 1 representing ‘not important’ and 5 ‘very important’. The number and mean score of the responses for incoming students was as follows:

**Table 1**

<b>Reasons for choosing to study law</b>	<b>Number of answers</b>	<b>Mean score</b>
1. Interesting subject to study	132	4.50
2. Leads to a good career in terms of being interesting/stimulating	132	4.38
3. To work with and help people	131	3.97
4. Leads to a good career in terms of salary	131	3.96
5. Desire to ensure social justice	132	3.65

<sup>24</sup> Cf Avrom Sherr, ‘Of Super Heroes and Slaves: Images and Work of the Legal Profession’ (1995) 48 *Current Legal Problems* 327; Andrew Goldsmith, ‘Heroes or Technicians? The Moral Capacities of Tomorrow’s Lawyers’ (1996) 14 *Journal of Professional Legal Education* 1.

<sup>25</sup> Summarised in Jenny Chapman, ‘Why Teach Legal Ethics to Undergraduates?’ (2002) 5 *Legal Ethics* 68, 73–79.

<sup>26</sup> Avrom Sherr and Julian Webb, ‘Law Students, the Market and Socialisation: Do We Make Them Turn to the City?’ (1989) 16 *Journal of Law and Society* 225.

<sup>27</sup> Donald Nicolson, ‘Producing Professionals: The Impact of Law Schools and Law Clinics on the Ethical Attitudes of Prospective Lawyers’, Society of Legal Scholars Conference, Cambridge, UK, September 2011.

<sup>28</sup> Though here attempts at a statistically reliable longitudinal study were scuppered by the fact that only 38 students provided their student number for both surveys and hence at best only allowed comparison of two different cohorts. With regard to these 38 students, those still intending to study law dropped from 75% to 58%.

<sup>29</sup> Those intending to enter practice constituted 58% of incoming students in P McDonald, ‘“The Class of ’81”: A Glance at the Social Class Composition of Recruits to the Legal Profession’ (1982) 9 *Journal of Law & Society* 267; 62% across all three undergraduate years in Sherr and Webb (n 26); and 60% of second year students in A Rees, P Thomas and P Todd, *Law Students: Investing in the Future* (Cardiff University, 2000).

6. Status given by having a law degree	128	3.63
7. To serve the underprivileged	128	3.56
8. Leads to a good career in terms of prestige/status	130	3.36
9. Uncertain what else to study so chose law	129	1.63
10. Family tradition/pressure/expectation	130	1.38

Ignoring the last two more neutral answers, if we group these reasons into those that are largely altruistic (3, 5 and 7), those which reflect material self-interest (4 and 8) and those which reflect a more enlightened self-interest (1 and 2), altruism rates marginally higher than material self-interest (combined mean score of 3.72 as compared to 3.65)—a picture which differed only marginally between students intending to practise law and those unsure or already set against doing so. In other words, the students surveyed seem most motivated to gain an interesting and stimulating career. They might see law as a calling, but not necessarily as a calling to do justice.

Obviously these results are indicative only. Not only do the questions combine reasons for studying law with practising law, but as with earlier studies which produced similar results,<sup>30</sup> it is possible that some respondents were reflecting the answers they thought they should give rather than their real reasons. Perhaps more reliable is the reasons students gave for wanting to join the University of Strathclyde Law Clinic (USLC), which provides free legal representation but largely on an extra-curricular basis:-

**Table 2**

<b>Reasons for wanting to join the Law Clinic</b>	<b>Number of answers</b>	<b>Mean score for students intending to join in Sept 2009</b>	<b>Number of answers</b>	<b>Mean score for students admitted to Clinic by Feb 2011</b>
1. To gain useful skills	111	4.71	36	4.31
2. To put into practice theoretical knowledge	111	4.59	36	4.35
3. To help others	111	4.25	36	4.50
4. To improve my CV	110	4.15	36	3.73
5. To increase access to justice	109	3.95	36	4.26

What these figures reveal is that, while students understandably have mixed motives for studying and wanting to practise law, even those who wanted to become involved in providing voluntary legal help were as much, if not more, motivated by the benefits to themselves rather than those in need. Thus, for students wanting to join USLC in their first year, the combined mean score for more self-centred reasons (1, 2 and 4) was 4.48, but only 4.10 for the altruistic reasons (3 and 5). On the other hand, as the last column in Table 2 shows, those who successfully completed the rigorous selection process seemed far more motivated by altruism in their decision to apply for membership compared to general Clinic applicants. Thus, for students who had been successful in gaining USLC

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<sup>30</sup> Sherr and Webb (n 26), though Strathclyde students did seem to be more altruistic and more intrinsically motivated to study law and less motivated by material self-interest.

entry in their first or second year, their combined mean score for reasons 1, 2 and 4 was 4.13, but 4.38 for reasons 3 and 5.

Moreover, as the comparison in Table 3 of the student responses on entry with those 16 months later suggests,<sup>31</sup> their legal education did not have a noticeable negative (nor indeed positive) impact on attitudes, except in possibly dissuading some students from practising law:

**Table 3**

Reasons for choosing to study law	Sept 2009	Jan 2011	t	
1. Interesting subject to study	4.50	4.10	2.63	<0.05 sig
2. Leads to a good career in terms of being interesting/stimulating	4.38	4.04	2.21	<0.05 sig
3. To work with and help people	3.97	3.94	0.62	>0.05
4. Leads to a good career in terms of salary	3.96	3.75	1.26	>0.05
5. Desire to ensure social justice	3.65	3.61	0.40	>0.05
6. Status given by having a law degree	3.63	3.41	1.41	>0.05
7. To serve the underprivileged	3.56	3.40	0.94	>0.05
8. Leads to a good career in terms of prestige/status	3.36	3.11	1.84	>0.05
9. Uncertain what else to study so chose law	1.63	2.13	-4.07	<0.001
10. Family tradition/pressure/expectation	1.38	1.61	-1.17	>0.05

Of course, these results only reflect the *stated* views of a small group of students at one university—students elsewhere or even other Strathclyde cohorts might be more or less altruistic, whereas the hidden curriculum referred to above<sup>32</sup> might be stronger or weaker at other law schools. Nevertheless, these results do suggest that at least at Strathclyde there is an admittedly smallish group of altruistically inclined students and hence some potential to build upon in seeking to develop altruism in law graduates and no evidence that such efforts have to work against the strong impact of a hidden curriculum. In fact, attention to moral psychology suggests that law schools might be better focusing their efforts on fostering altruism in a limited number of students rather than spreading its efforts amongst all.

This realisation starts with an understanding of the psychology of moral behaviour. Following Rest, it has become accepted that moral behaviour (whatever its content) requires the engagement, though not necessarily consciously or chronologically, of four psychological components.<sup>33</sup> *Moral sensitivity* is required to enable students and lawyers to recognise particular ethical problems, such as that of unmet legal need. *Moral judgment* is then required to enable individuals to recognise a duty to respond to the problem, and to select and justify their response to it. However, empirical research

<sup>31</sup> Here again the caveat raised in n 28 applies.

<sup>32</sup> Text following n 20.

<sup>33</sup> eg James Rest, 'The Major Components of Morality' in William M Kurtines and Jacob L Gewirtz (eds), *Morality, Moral Behaviour and Moral Development* (Wiley, 1984); James Rest and Daniel Narvaez (eds), *Moral Development in the Professions: Psychology and Applied Ethics* (Lawrence Erlbaum Associates, 1994) esp ch 1; James Rest *et al*, *Post Conventional Moral Thinking: A Neo-Kohlbergian Approach* (Lawrence Erlbaum Associates, 1999).



repeatedly confirms that knowing what is morally right by no means guarantees moral behaviour.<sup>34</sup> Thus, *moral motivation* is required to ensure that individuals want to put into effect the solution selected and elevate it over competing considerations like self-interest or organisational and institutional values. Finally, even if individuals care about ensuring access to justice, they need *moral courage* to be able to resist temptations to compromise moral standards. Crucial here are moral fibre, steadfastness, perseverance, ‘backbone’ and what psychologists call ego-strength.<sup>35</sup>

This suggests that traditional forms of law teaching are unlikely to have much impact on encouraging altruism even if issues of access to justice and legal ethics are made more central. By contrast, a growing consensus amongst moral psychologists, educationalists and legal scholars<sup>36</sup> draws on a venerable tradition of moral philosophy to argue that the most effective means of ensuring the development of all four psychological components is through a process of character development. According to Aristotle<sup>37</sup> and other virtue ethicists,<sup>38</sup> education should be aimed at gradually developing relatively stable character dispositions, or habits of perception, thinking, feeling and behaviour, through actual engagement with moral issues in a way similar to the way that expertise is developed in other walks of life. By emulating others, by trial and error, by instruction and feedback from authoritative others, by experiencing and reflecting on the appropriate pride or regret at the outcome of one’s actions, moral habits or dispositions are said to gradually develop to the point that appropriate moral behaviour and feelings become embedded in the individual’s character. In other words, character formation results not so much from direct teaching but from the experience of frequent immersion in real-life problems, exercise of one’s moral muscles, and learning from mistakes and successes.

Applied to the context of inculcating altru-ethical professionalism, actual involvement with those most in need of legal services would hopefully not only provide students with a better appreciation of the depth of the problem of access to justice and the need for lawyers to respond to it, but also help develop their motivation to do so once in practice despite competing demands on their time, and the courage to resist workplace and other pressures to concentrate on making money and other material rewards. Where all four moral components are developed to the extent that virtue becomes a way of life, altruism is far more likely to ensue. Thus, empirical studies suggest that moral behaviour is more likely

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<sup>34</sup> eg Rest, *ibid*, 21–22; James Rest, ‘Can Ethics be Taught in Professional Schools? The Psychological Research’ (1988) 1 *Ethics Easier Said Than Done* 22.

<sup>35</sup> See Augusto Blasi, ‘Moral Character: A Psychological Approach’ in Lapsley and Power (n 7) 67, 74.

<sup>36</sup> See eg RS Peters, *Moral Development and Moral Education* (George & Unwin, 1981); Robert Condlin, ‘The Moral Failure of Clinical Legal Education’ in David Luban (ed), *The Good Lawyer: Lawyers’ Roles and Lawyers’ Ethics* (Rowman & Allanheld, 1983); Thomas D Eisele, ‘Must Virtue be Taught?’ (1987) 37 *Journal of Legal Education* 495; Larry P Nucci (ed), *Moral Development and Character Development: A Dialogue* (McCutchan, 1989); David Carr, *Educating the Virtues: An Essay on the Philosophical Psychology of Moral Development and Education* (Routledge, 1991); David Luban and Micheal Millemann, ‘Good Judgment: Teaching Ethics in Dark Times’ (1995) 9 *Georgetown Journal of Legal Ethics* 31; Julian Webb, ‘Ethics of Lawyers or Ethics for Citizens? New Directions for Legal Education’ (1998) 25 *Journal of Law and Society* 134; Julian Webb, ‘Conduct, Ethics and Experience in Vocational Legal Education: Opportunities Missed’ in Economides (n 23).

<sup>37</sup> *The Nicomachean Ethics* (Prometheus, 1987) esp bk X, ch 10.

<sup>38</sup> See eg Hubert I Dreyfus and Stuart E Dreyfus, ‘What is Morality? A Phenomenological Account of the Development of Ethical Expertise’ in David M Rasmussen (ed), *Universalism and Communitarianism* (MIT Press, 1990), 237; Joel J Kupperman, ‘How Not to Educate Character’ in Lapsley and Power (n 7) 201; Darcia Narvaez and Daniel K Lapsley, ‘The Psychological Foundations of Everyday Morality and Moral Expertise’ in Lapsley and Power (n 7) 140.

when moral considerations are central to one's personal identity and sense of self.<sup>39</sup> **Indeed**, where moral motivations are central to the individual's self-identity, relevant moral behaviour is thought to flow from a kind of 'spontaneous necessity' without the need for willpower or moral courage to overcome temptations or pressures to eschew altruism, and there is empirical evidence to suggest that this applies to altruism.<sup>40</sup> While research has yet to be done on whether and to what extent universities can positively influence character development of young adults, there are reasons for optimism.<sup>41</sup> Certainly, as we have seen,<sup>42</sup> law schools can have a negative impact, whereas research shows that, particularly if accompanied by ethical instruction and involvement in community projects, universities can have a lasting effect on moral judgment,<sup>43</sup> and on moral sensitivity and the related capacity for moral imagination.<sup>44</sup> Admittedly, as already noted, moral reasoning does not necessarily translate into behaviour. However, there is some, albeit weak, connection between the two<sup>45</sup> and if universities can affect moral reasoning and sensitivity, why not other psychological components? Admittedly, also, students come to university with fairly well formed moral characters. However, given that such character has been developed in response to ethical issues raised by everyday life rather than legal practice, and as law students might be prepared to learn from their teachers, there is an opportunity to help adapt what can be called personal moral character to the moral demands of practice by creating *professional* moral character and moral self-identity in which altruism has a central place. Nevertheless, it has to be recognised that radical changes to moral character are likely to be rare, and hence that there is probably little universities can do to inculcate the habits of altru-ethical professionalism in those who enter university with, or who quickly develop, cynical attitudes to legal practice. Such inculcation requires a lengthy immersion in real-life experiences and a supportive context in which students are given guidance and examples to follow. Thus, rather than spreading effort and resources across all students, it seems more sensible to reinforce the orientation of those who enter university with an existing calling to do justice and, more ambitiously, to influence those without predispositions towards either cynicism or **altru-ethical professionalism** to choose the latter

<sup>39</sup> Narvaez and Lapsley (n 3); Lapsley and Power (n 7); Augusto Blasi, 'Moral Understanding and the Moral Personality: The Process of Moral Integration' in William M Kurtines and Jacob L Gewirtz (eds), *Moral Development: An Introduction* (Allyn and Bacon, 1995) 238.

<sup>40</sup> Carlo *et al* (n 3); K Aquino and Americus Reed, 'The Self-Importance of Moral Identity' (2002) 83 *Journal of Personality and Social Psychology* 1423.

<sup>41</sup> See eg Mathew L Davidson, 'Harness the Sun, Channel the Wind: The Art and Science of Effective Character Education' in Lapsley and Power (n 7) 214, 223; Rosamund Rhodes and Lawrence G Smith, 'Molding Professional Character' in Nula Kenny and Wayne Shelton (eds), *Lost Virtue: Professional Character Development in Medical Education* (Elsevier, 2006) 99.

<sup>42</sup> See text at n 25.

<sup>43</sup> See eg Rest and Narvaez (n 33) *passim*; Elliot M Abramson, 'Legal Education, Punching the Myth of the Moral Intractability of Law Students: The Suggestiveness of the Work of Psychologist Lawrence Kohlberg for Ethical Training' (1993) 7 *Notre Dame Journal of Law, Ethics & Public Policy* 223; Judith A Boss, 'The Effect of Community Service Work on the Moral Development of College Ethics Students' (1994) 23 *Journal of Moral Education* 183; Muriel J Bebeau, 'Evidence-Based Character Development' in Kenny and Shelton (n 41) 55–56.

<sup>44</sup> Bebeau, *ibid*, 51–53; Muriel J Bebeau, 'Influencing the Moral Dimensions of Dental Practice' in Rest and Narvaez (n 33) 121; Jay W Brandenberger, 'College, Character and Social Responsibility: Moral Learning Through Experience' in Lapsley and Power (n 7) 305.

<sup>45</sup> Rest *et al* (n 33) 80 ff; Augusto Blasi, 'Bridging Moral Cognition and Moral Action: A Critical Review of the Literature' (1980) 88 *Psychological Bulletin* 1; Stephen Thoma, 'Moral Judgments and Moral Action: Establishing the Link between Judgment and Action' in Rest and Narvaez (n 33) 210.

path. And while it might be possible for other aspects of ethical professionalism to be developed by role plays and simulations, and while placements with outside bodies might go some way to strengthening and/or inculcating altru-ethical professionalism, by far the most likely means of doing so is involvement in live-client law clinics,<sup>46</sup> especially if combined with opportunities to reflect on these experiences and learn from relevant academic literature.

Like all forms of active learning, involvement in law clinics has many advantages over traditional forms of learning.<sup>47</sup> By engaging the interest and emotions of students, it has more potential to develop moral commitment.<sup>48</sup> Learning is more profound where student experiences are more personal, immediate and realistic, and relate to the fulfilment of their future social roles.<sup>49</sup> Learning experiences are also likely to be lasting when prior assumptions and settled values jar with experienced reality, causing ‘disorienting moments’, moral crises and cognitive dissonance, and when personal views are challenged by others to create social disequilibrium.<sup>50</sup> Moreover, by encouraging students to see issues from the client’s perspective, clinics may encourage students to develop empathy and other emotional sentiments,<sup>51</sup> which virtue ethicists and others see as so important to morality.<sup>52</sup>

However, it is generally accepted that clinics have important advantages over other forms of active learning.<sup>53</sup> By engaging with clients with actual problems, students are far more likely to develop empathy for their plight. Lessons learnt are likely to go deeper when students bear responsibility for decisions which have consequences in the ‘real’ world.<sup>54</sup> Clinics also provide opportunities for two important sources of character

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<sup>46</sup> On the other hand, given that 50% of USLC applicants are unsuccessful and that these are likely to include some who could be encouraged to develop a calling for justice, a Community Engagement Class is being designed to use experience on placements with community legal service organisations to ground reflection on legal ethics and access to justice.

<sup>47</sup> See eg Hugh Brayne, Nigel Duncan and Richard H Grimes (eds), *Clinical Legal Education: Active Learning in Your Law School* (Blackstone, 1998).

<sup>48</sup> Norman A Sprinthall, ‘Counselling and Role Taking: Promoting Moral and Ego Development’ in Rest and Narvaez (n 33) 85; David AJ Richards, ‘Moral Theory, The Developmental Psychology of Ethical Autonomy and Professionalism’ (1981) 31 *Journal of Legal Education* 359.

<sup>49</sup> Frank Bloch, ‘The Andragogical Basis of Clinical Legal Education’ (1982) 35 *Vanderbilt Law Review* 321.

<sup>50</sup> Norma Haan, ‘Processes of Moral Development: Cognitive or Social Disequilibrium?’ (1985) 21 *Developmental Psychology* 996; Fran Quigley, ‘Seizing the Disorienting Moment: Adult Learning and the Teaching of Social Justice in Law School Clinics’ (1995) 2 *Clinical Law Review* 37; Julian Webb, ‘Inventing the Good: A Prospectus for Clinical Education and the Teaching of Legal Ethics in England’ (1996) 30 *Law Teacher* 270, 282.

<sup>51</sup> Goldsmith (n 24) 13.

<sup>52</sup> Rest (n 33) 389.

<sup>53</sup> Condlin (n 36) 320–4; Luban and Millemann (n 36); Webb, ‘Conduct, Ethics and Experience’ (n 36) 296; Mary Jewell, ‘Teaching Law Ethically: Is It Possible?’ (1984) 8 *Dalhousie Law Journal* 474, 507–10; Theresa Glennon, ‘Lawyers and Caring: Building an Ethic of Care into Professional Responsibility’ (1991–2) 43 *Hastings Law Journal* 1175; Deborah L Rhode, ‘Into the Valley of Ethics: Professional Responsibility and Educational Reform’ (1995) 58 *Law and Contemporary Problems* 139, 141; Jane H Aiken, ‘Striving to Teach “Justice, Fairness, and Morality”’ (1997) 4 *Clinical Law Review* 1, 47; Nigel Duncan, ‘Responsibility and Ethics in Professional Legal Education’ in Roger Burridge and Karen Hinett (eds), *Effective Learning and Teaching in Law* (Kogan Page, 2002) 102; Andy Boon, ‘Ethics in Legal Education and Training: Four Reports, Three Jurisdictions and a Prospectus’ (2002) 5 *Legal Ethics* 34, 60.

<sup>54</sup> James E Moliterno, ‘An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere’ (1991–2) 60 *University of Cincinnati Law Review* 83,

development. One is the influence of role models, who have been shown to make people want to better themselves morally and to help others.<sup>55</sup> Because of their perceived practical knowledge and skills, clinic supervisors may function as influential moral exemplars, modelling concern for others and an altruistic commitment to the community. Secondly, feelings of satisfaction or regret at their actions in representing actual clients and resolving real dilemmas may crucially affect the character development of law clinic students.

In addition, clinics reveal the extent of unmet legal need, and social and legal injustice, that legal practice can involve helping others, and that this can be rewarding as well as intellectually challenging. Finally, community work in general has been shown to encourage participants to identify as moral agents, which as we have seen is central to personal identity and character development, and to build the sort of self-confidence that contributes to the moral courage required of individuals to act on their convictions in challenging circumstances.<sup>56</sup>

### **Clinics, Character and Calling: The Evidence**

The potential for clinic work to inspire, or at least reinforce, altruistic aspirations in students has been asserted by many clinicians.<sup>57</sup> Some support for a ‘clinic effect’ was found by Evans<sup>58</sup> and Palermo and Evans,<sup>59</sup> but given that student views were not canvassed prior to clinic experience, their conclusions were very tentative. However, further evidence emerges from the unpublished results of the survey of University of Strathclyde students and from a previously published analysis<sup>60</sup> of the 23 reflective dairies of USLC students taking the optional Clinical Legal Practice (CLP) class. **Until recently, this class was the formal form of clinical legal education at Strathclyde. It involves USLC students with case experience taking classes on a variety of issues of legal ethics and access to justice, attending surgeries to discuss the ethical, justice and practical implications of their current clinic cases and being assessed on a reflective essay involving one of their cases and a weekly reflective diary in which they write about their cases and clinical experience, and respond to comments by the tutors.**

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117–18; Mary Anne Noone and Judith Dickson, ‘Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers’ (2001) 4 *Legal Ethics* 131.

<sup>55</sup> Sara B Algoe and Jonathan Haidt, ‘Witnessing Excellence in Action: The “Other-Praising” Emotions of Elevation’ (2009) 4 *Journal of Positive Psychology* 105.

<sup>56</sup> Boss (n 39) 192.

<sup>57</sup> Quentin Johnstone, ‘Law School Legal Aid Clinics’ (1951) 3 *Journal of Legal Education* 535, 537; William M Rees, ‘Clinical Legal Education: An Analysis of the University of Kent Model’ (1975) 12 *Law Teacher* 125, 136; Martin Guggenheim, ‘Fee-Generating Clinics: Can We Bear the Costs?’ (1995) 1 *Clinical Law Review* 677, 683; MJ Kotkin, ‘The Law School Clinic: A Training Ground for Public Interest Lawyers’ and S Maresh, ‘The Impact of Clinical Legal Education on Decisions of Law Students to Practice Public Interest Law’, both in Jeremy Cooper and Louise G Trubek (eds), *Educating for Justice: Social Values and Legal Education* (Ashgate, 1997); Irene Styles and Archie Zariski, ‘Law Clinics and the Promotion of Public Interest Lawyering’ (2001) 19 *Law in Context* 65; Kieran Tranter, ‘Pro-Bono Ethos: Teaching Legal Ethics’ (2002) 29 *Brief* 12, 13.

<sup>58</sup> Adrian Evans, ‘Lawyers’ Perceptions of their Values: An Empirical Assessment of Monash University Graduates in Law, 1980–1998’ (2001) 12 *Legal Education Review* 209.

<sup>59</sup> Josephine Palermo and Adrian Evans, ‘Almost There: Empirical Insights into Clinical Method and Ethical Courses in Climbing the Hill towards Lawyers’ Professionalism’ (2008) 17 *Griffith Law Review* 252.

<sup>60</sup> Nicolson (n 4).

This class was an exception to the otherwise extra-curricular nature of the USLC. Unlike many other clinics, especially outside the UK, which focus more on student education than addressing unmet legal need and in which clinic involvement is credit-bearing and usually limited to a semester or possibly a year, USLC students can be involved for up to five years in providing free legal services to those who cannot obtain them. The lengthy involvement of the approximately 180 students who are USLC members at any one time means that some conduct more than 40 cases before graduating. The mean number of cases for the 23 students whose diaries were analysed<sup>61</sup> was 4.75 cases and 2.88 for the 36 Clinic members who participated in the unpublished survey, even though some of the latter had only recently become USLC members and none for more than 15 months. In fact, all students whose views were reported had between one and three years left in the Clinic and hence were due to gain even more clinical experience.

To the extent that their responses are reliable,<sup>62</sup> both the students surveyed and those who wrote diaries indicated that their clinic experience, and, where relevant, teaching and reflection, influenced their attitudes in numerous ways. One involved stimulating an awareness of the problems of justice and the need for lawyers to play a role in their redress. Thus, when asked if and how their clinic experience had altered their opinion on access to justice, one of the students surveyed stated that it ‘illustrated [that] many people still struggle to get access to justice’, and another that ‘I have seen through clients that would otherwise have not had representation that access to justice is poorer than thought’. A similar question in relation to the ‘importance of lawyers providing free legal representation to those in need’ prompted the following:

- ‘I understand the severity of the need more and the injustices of the system.’
- ‘I have seen that lawyers must provide more free representation as the numbers without access to justice are greater than I knew.’
- ‘[T]he law clinic has made me realise how many people cannot afford a lawyer.’

As one CLP student responded when questioned in an oral examination about what she **had most learnt** from her clinic experience: ‘Theoretically in Legal Process [a first year class devoted *inter alia* to issues of access to justice] they tell you that there is an unmet legal need but that is one of those things that are intangible unless you really experience it.’ Many also seemed to appreciate that they could use their knowledge and skills to make a difference to other people’s lives. Thus the following responses were given by three surveyed students when asked whether clinic experience had altered their opinions on the value of law:

- ‘[It is] extremely valuable in making sure the underprivileged are served.’
- ‘I have gained a greater appreciation for the value of law through helping others.’
- ‘[T]he legal system is invaluable to help peoples [*sic*] lives and feelings.’

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<sup>61</sup> All except one, who could not be traced. The method used involved ‘grounded theory’: see Alan Bryman, *Social Research Methods* (Oxford University Press, 2008) 56 ff.

<sup>62</sup> Here it can be noted that the former had nothing to gain from their answers, whereas the fact that many of the latter were prepared to challenge my views suggests that not all were playing to the gallery.

The recognition of a possible ‘clinic effect’ was more explicit in the reflective diaries of CLP students. One opined that law clinics may enthuse ‘the many students [who] enter the profession with a genuine desire to tackle society’s access to justice problems’. Another stated that the ‘possibility of making a positive difference to someone ... reminds you of why you wanted to become a lawyer in the first place ...’. A third revealed that her satisfaction in successfully representing a client turned down by eight firms reinforced her desire to pursue a career which makes a difference to the community. Her admission that exposure ‘to the wide variety of options other than commercial law’ helped her to discover a ‘social conscience’ shows that law clinics can actually change, rather than merely reinforce, existing values. This emerges clearly from another student’s diary: ‘Before my experience in the Clinic, I had imagined a career in a large law firm and hadn’t really considered the larger ideal of social justice ... . Now I find it impossible not to.’ And lest it be thought that the diaries only reveal thoughts and not actions, this student went on to donate to other law clinics a sophisticated case management system he had developed with his own money and now works for a law centre. The Clinic’s ongoing effect is also revealed by the fact that those who retained their original plans to pursue careers in commercial firms while asserting an intention to engage in *pro bono* work once qualified are now volunteering for USLC evening advice sessions. In fact, such volunteers also come from ex-USLC members whose ‘day job’ involves serving those most in need such as through legal aid services. The CLP diaries also confirm that clinics assist in character development by inducing feelings of satisfaction or regret at the conduct of cases. As one student stated:

I didn’t start my law degree to ‘make a difference’. My goal was simply to earn enough money so I can afford some of life’s luxuries and have no financial troubles. However, [seeing] the positive effect my time and effort has had on clients of the clinic has changed my perspective and now, my ultimate goal is to find a job that provides both financial security and a chance to help communities or less fortunate individuals.

We have also seen that guidance from others plays an important role in character development. Relevant here is the fact that all experienced USLC students mentor inexperienced members, with very experienced members acting as ‘case managers’ for a ‘firm’ of around 30 others, thus increasing the number of cases to which they are exposed. Indeed, a few CLP students referred to learning from mentoring others, and using their experience and learning to engage less experienced students in what some themselves described (no doubt influenced by their seminar reading) as moral apprenticeships. As regards role models, a number of CLP students cited the examples of their teachers who combine voluntary legal work with work as lawyers or academics as inspiring them in their career choices and to go the extra mile for their clients. The other role that the teaching staff play is to guide student reflection—in ‘surgeries’ discussing cases and in responding to diary entries—and placing students’ experiences in context by introducing them to academic literature on issues of ethics and access to justice. Here, the diaries revealed that the students were frequently stimulated by their classes to reflect on their personal values and ethical orientation, and how they might play out in practice, with many admitting to not having previously considered their motivating moral values, various issues of ethics and professionalism, or even the justice of the legal system. Thus, a seminar made one student realise that: ‘my ideals to

altruism will be tested when I start practising as a lawyer ... I suppose I have been naïve to think that I could uphold my ideals and still become a successful lawyer. The seminar set me thinking seriously about the kind of lawyer I wanted to be and what my values really are.’

#### THE CLINICAL LLB: A CRADLE TO GRAVE APPROACH TO ETHICAL DEVELOPMENT

It was not only the students who were set thinking by their experiences. The diaries brought home to me the validity of much of the theoretical underpinning of clinical legal education. Thus the view that ‘[l]earning occurs not in the doing but in the reflection and conceptualisation that takes place during and after the event’<sup>63</sup> echoed my impression that students were learning far more and far more deeply from the symbiotic relationship between experience, reflection and theory (for instance on professionalism, ethics and access to justice) than they would from experience or theory alone.<sup>64</sup> Indeed, Kolb’s well-known learning circle<sup>65</sup> suggests that one learns best by a process of reflection on experiences, leading to the adoption of new, or the adaptation of existing, theories about how to handle issues, which can then be put into practice when similar situations arise, providing the opportunity for further reflection, theory adaption and theory testing, and so on.

At the same time, however, I realised that there were limitations to confining the process of reflective learning to a one-semester class late in the degree programme. Opportunities for fine-tuning approaches to issues of professionalism and ethics were relatively limited and, once the class ended, occurred without guidance from tutors, reading or class discussion. Certainly, if repetition of the learning cycle was going to help transform conscious theory into subconscious habit, it would have to be repeated more frequently than merely over the course of one semester. Moreover, as some of the diaries revealed, introducing students to ethics so late in their clinical career often meant that they had engaged unwittingly in unethical behaviour, especially involving paternalistic invasions of client autonomy, which might otherwise have been avoided. Consequently, in order to integrate experience, theory and reflection throughout the academic stage of legal training, I developed a Clinical LLB which was launched in October 2012. This involves all the classes available on the standard LLB, but in addition:

- provides students with credit for the training and case-work they would otherwise undertake on a voluntary basis;
- allows them to gain credit for reflection on the legal, practical and ethical aspects of their cases;
- requires them to keep a regular diary to reflect on their clinical experiences; and
- most importantly, tops and tails the degree with an introductory session and a final year class on ethics and justice.

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<sup>63</sup> Quoted by Brayne, Duncan and Grimes (n 43) 47.

<sup>64</sup> See also the empirical findings of Boss (n 39) 191.

<sup>65</sup> See eg David A Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Prentice Hall, 1984).

While a few other universities go beyond one-semester or year-long clinical courses,<sup>66</sup> the Clinical LLB seems to be unique in its ‘cradle to grave’ approach to clinical legal education<sup>67</sup> and in the prominence given to exploring the ethical and altruistic aspects of legal professionalism.

More specifically, it is hoped that, by comparison with the standard law degree, the Clinical LLB will:

- enable better comprehension of how law operates in practice through opportunities to discuss clinic experiences and engage with relevant reading;
- encourage students to develop life-long habits of reflection on their exercise of legal skills, but also on how these skills are employed, for whom and against whom;
- start students on a journey towards altru-ethical professionalism in which they acquire and value not just competence, but also an awareness of the wider ethical and justice dimensions to law and legal practice;
- help students grapple with what it means to be a professional and what sort of professional they want to be—what area to practise, what sort of approach to adopt to clients (empathetic or more technocratic, etc), and how they might seek to meet their moral obligations to help ensure access to justice.

These goals are achieved through a mixture of traditional teaching methods and providing students with opportunities for reflection on their learning and case experience. Students are exposed to issues of access to justice in the Legal Process class taken by all LLB students, while all USLC students attend a three-hour induction training session providing an overview of the main issues of legal ethics and involving discussion of dilemmas which have arisen in actual USLC cases. Subsequently, students are required to attend three ‘case surgeries’ every semester in which they discuss any aspect of their cases and four hours of compulsory ‘Continuing Professional Development’ training in their second year on specific areas of practice or advanced legal skills. They also write a fortnightly reflective diary throughout the degree, and respond to comments made by tutors which are designed, where relevant, to prompt reflection on ethics and access to justice if they are not already doing so. Unlike other law students, Clinical LLB students must take Legal Theory in order to learn about the relationship between law and justice and general ethical theory. Finally, in their final year students take the Ethics and Justice class, which links ethics and altruism more deeply and explicitly by exploring in much more detail central issues of professional legal ethics and specific topics in access to justice such as legal aid, public interest litigation and class actions.

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<sup>66</sup> For example, Northumbria Law School students take a year-long clinical legal education course in their third year involving some live-client work, and a double module in the fourth year involving more live-client work. Similarly, in Newcastle, Australia, third year students can opt to take a more practical route which integrates professional training with the rest of their courses via clinical experience rather than continuing with the standard academic route.

<sup>67</sup> Up to four years in total for Honours students, though only two for those taking the postgraduate accelerated LLB. The Scottish undergraduate ‘ordinary’ degree takes three years but most students proceed to a fourth honours year; graduate students can do an accelerated two-year ‘ordinary’ LLB, though some occasionally do an honours year.



However, the aim of inculcating altru-ethical professionalism and a love for justice does not swamp the need of students to obtain the basic building blocks of legal knowledge, learn how to think like a lawyer and critically evaluate law's values and social role. Thus, **only a minimum of a third of** Clinical LLB classes must have a substantial or exclusive clinical content. Four of these are compulsory:

- Legal Methods (Clinical), taken in semester one of the first year, adds training in basic legal skills (client interviewing, letter writing, case and data management) and **an introduction to legal ethics to the standard legal methods class**;
- Voluntary Obligations (Clinical), taken in semester two of the first year, augments the standard contract class with training in advanced legal research, negotiation, advocacy and the writing of pleadings;
- Ethics and Justice (the renamed CLP class), taken in semester one of the final year;
- The new CLP class, which does not involve any teaching or additional learning experiences, but simply gives students a mark for their reflective diaries and performance in their cases (a minimum of five for those on the three-year, and four for those on the two-year, Clinical LLB).

The remaining required clinical credits are obtained by taking additional 'clinically available classes' (at least one for accelerated Clinical LLB students and two for three-year Clinical LLB students). These classes are clinical versions of standard compulsory or optional LLB classes whose subject-matter is relevant to typical USLC cases, most notably Employment Law, Housing Law and (in relation to consumer disputes) Commercial Law. Here students take the standard curriculum in each class, but replace one aspect of the assessment (usually an essay) with a reflective essay on the legal, practical, evidential, ethical and/or justice issues raised by one of their cases. In this way, Clinical LLB students receive almost all the compulsory classes of the standard LLB.<sup>68</sup> In addition, they gain the ethics and skills teaching provided to all USLC volunteers, and an optional class on Ethics and Justice which can be taken by all USLC students. This means that the staffing and other resource implications of the Clinical LLB are minimal. All but a few hours of teaching and associated marking is either already provided to all USLC volunteers or delivered *pro bono* by practitioners (including ex-USLC members). The only noticeable additional associated costs are those needed to ensure that all classes are adapted for their role in the complicated degree structure and that students keep abreast of the ongoing requirements of the Clinical LLB. Teething problems in the LLB's first year led to four of the initial intake of 15 students reverting to the standard LLB; however, the second year has seen all of the new intake of 20 students stay the course and student feedback has generally been positive in relation to both the focus on ethics and the general education value of the degree.

Evidently, there is a danger that the Clinical LLB could transform a largely extra-curricular clinic devoted primarily to serving the community into a vehicle for student learning. This would confound a preference for social justice-oriented clinics (which are usually extra-curricular) over educationally-oriented clinics (almost invariably credit

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<sup>68</sup> Although they do Legal Theory in the second year rather than the more basic and less theoretical first-year Law and Society class.

bearing) which may even assist those who can afford legal services.<sup>69</sup> The Clinical LLB thus has safeguards to ensure that it does not undermine the three most important advantages of social justice-oriented clinics.

One disadvantage of educationally-oriented clinics is that the focus on legal education rather than on providing quality legal services means that fewer cases can be taken on. Less community service is achieved. Compared with most clinics which have a staff-student ratio as low as 1:6, but usually around 1:12,<sup>70</sup> two part-time supervisors are responsible for around 180 USLC students. Existing **resources** are stretched even further because the USLC is largely run by a student committee made up of 17 appointed and 7 elected students who meet once a month to discuss Clinic direction and ethical problems raised by cases, and are responsible for organising training, communications, IT, fundraising, mentoring and monitoring inexperienced USLC members, and running various public legal education and Innocence projects. This degree of volunteer input into clinic management means that the USLC operates far more cost-effectively than equivalent law clinics. Secondly, students who see clinic participation largely in terms of learning and academic credit may tailor services according to their educational needs—with subsequent harm to clients. Finally, and most importantly in terms of promoting altru-ethical professionalism, clinics which prioritise student education over community service convey an important but negative ethical lesson to students, namely that it is their interests—now educational but later financial—that take precedence over those of clients and community. The impact of the USLC’s contrasting ethos was clearly illustrated by the decision of a CLP student to sue a law firm, thereby prioritising his client’s needs despite the potential jeopardy to his own career. He said:

The [USLC’s] altruistic ethos helped to reinforce my beliefs and allowed me to feel comfortable making a selfless decision in a profession surrounded by greed and self-importance. Without the Clinic to strengthen and normalise my beliefs I do not know if I would have had the courage and conviction to act outside the norm. In the future, I will try to use the Clinic as an example to justify acting altruistically rather than succumbing to peer pressure.

Indeed, as I have recently argued,<sup>71</sup> student responsibility for clinic management and direction leads to a sense of ‘psychological ownership’ of its ethos, which translates into an even greater commitment to its altruistic values and the socialisation of non-committee members through mentoring and role-modelling by committee members. Two safeguards secure these advantages. The first is that students must first gain entry to the USLC before being admitted to the Clinical LLB. This involves a rigorous application and interview process aimed at ascertaining whether their motivations are more about helping others than themselves. Secondly, in order to ensure that the number of those gaining credit for clinic work never exceeds the number of volunteers, only 25 students can be admitted to the Clinical LLB every year. In this way, it is hoped that the

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<sup>69</sup> Donald Nicolson, ‘Legal Education or Community Service? The Extra-Curricular Student Law Clinic’ (2006) *Web Journal of Current Legal Issues*, <http://webjcli.ncl.ac.uk/2006/issue3/nicolson3.html>.

<sup>70</sup> *Ibid.*

<sup>71</sup> Donald Nicolson, ‘From South Africa to Scotland: The University of Cape Town Legal Aid Legacy’, paper delivered at the Access to Justice conference, University of Kwazulu-Natal, Durban, South Africa, 10–12 December 2012.

predominant ethos will remain volunteerist and oriented towards social justice, that students will continue to provide the bulk of clinic management, and that student 'ownership' of the USLC will continue to ensure that its existing client-centred ethos is passed down from one generation to another through committee decision-making and the mentoring system already mentioned.

## CONCLUSION

It remains to be seen whether the strong altruistic ethos promoted in the USLC will start a process in which the students develop a professional moral character which sees law as a calling **to promote** justice. The next step in researching the 'clinic effect' is to conduct follow-up interviews with students who have taken the CLP class and the Clinical LLB to ascertain whether any commitment to altru-ethical professionalism they have developed is maintained in the face of the pressures of work and family life, although, as we have already seen, many ex-USLC members participate in evening advice sessions, and provide case surgeries and training free of charge.

And even if those who obtain the intensive moral apprenticeship through USLC membership and cradle to grave ethics teaching through the Clinical LLB are relatively limited in number, it is possible that starting even a small group on the road to altru-ethical professionalism will have a knock-on effect. Students who have already begun the journey might encourage newer colleagues to join them, whereas those in practice may provide both encouragement and role models for similarly disposed neophytes. This, in turn, may dilute the generally amoral environment of legal practice and perhaps also lead to areas of practice or isolated environments within practice which provide sustenance and support for altru-ethical professionalism. As research shows, those who display moral character tend to be involved in ongoing relationships with others who challenge, and thus sustain and expand, their sense of morality.<sup>72</sup> In this way, a love of justice may flourish long after graduation from law school and some legal professions at least may recognise the value of being an amateur.

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<sup>72</sup> Brandenberger (n 40) 316.