

LOCATING THE CLINIC WITHIN THE CURRICULUM

Thoughts from Home and Abroad

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Introduction

This article was inspired by two factors; first, the author's appointment by the University of the South Pacific (USP), and secondly, by his experiences travelling to and talking with people from a variety of common law jurisdictions who incorporate a clinical element into their law programmes.

Both require explanation. The secondment to the USP initially carried a job description of Co-ordinator of Vocational Legal Education. This encompassed, as will be shown, the introduction of clinical legal education. An LLB programme was launched at USP in 1994 and the first graduates from the programme emerged in December 1997. The syllabus concentrates on identified core subjects (contract, torts, criminal law, public law, property law, and equity and trusts) coupled with legal systems and method, customary law, South Pacific-focused humanities courses and a range of law and non-law electives. The whole is intended to give a wide ranging experience that meets internationally accepted academic standards and is tailored to the understanding of law in the South Pacific region.¹ It also aims to equip those wishing to follow a career in legal practice with the necessary skills and knowledge to move on to a jurisdictionally specific vocational programme.

At present, the rules governing the admission of a person into professional practice vary as between the individual countries concerned. In most, the admitting authority is the Chief Justice of that jurisdiction.² Prerequisites for admission also differ with a common denominator being prior admission as a practising lawyer in Australia, New Zealand or the United Kingdom, in some cases coupled with a period of pre-qualification legal experience. Completion of a practical training course to the satisfaction of the admitting authority is required in two jurisdictions. In two other cases, qualification for admission also includes graduation from an accredited US law school and admission to practise in any US State.

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1 USP serves 12 nations: the Cook Islands, Fiji, Kiribati, the Marshall Islands, Nauru, Niue, the Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu and Samoa.

2 In six of the 12 mentioned above. In three, admission is the prerogative of the High Court or Supreme Court, and in one the Law Council (comprised of the Chief Justice, Attorney-General and person nominated by the government) is the admitting body. Two rely on admission in New Zealand.

The post of Co-ordinator of Vocational Legal Education³ was created to aid the transition of students from the academic stage of their legal education towards the practice of law. Not only was the post concerned with degree level studies, but it also included the design of a discreet vocational element in the form of an intensive postgraduate course. This ran for the first time in February 1998 and concentrates upon practical skills, ethical values and substantive rules relevant to the practice of law. In addition the Co-ordinator, together with other agencies in the region, sought to introduce training programmes for the judiciary, the profession and the community at large to ensure a continuum of legal education, from undergraduate studies through to the practice of law and the administration of justice. This development was also intended to complement existing schemes for legal literacy and 'rights' awareness.⁴

Two caveats should be raised at this point. First, it was and is not the intention of the USP law programme to effect a monopoly over the legal education needs of the region. If this results, it will be by virtue of the choice of the countries and students concerned. Secondly, there is no attempt to ensure that each country adopts an identical scheme for the education and professional qualification of its lawyers. Far from it. The USP is acutely aware in this and other aspects of its work of the sovereignty and cultural differences of each nation member. The function of legal education in this context is to assist the various jurisdictions to meet their respective needs in an effective and efficient manner.

Having raised these issues it is also important to realise that the USP is an important resource base for the region. As such, it exerts a considerable influence in the region in terms of the extent of its materials and facilities and as a result of its longstanding presence (USP was formed in 1968).

While the thrust of this article centres on clinical legal education in the context of recent and on-going developments in the South Pacific, the author is also conscious of the importance of contemporary debates through the developed and developing world on the purpose, form and content of legal education. In the autumn of 1993, the author undertook a study tour of US law schools⁵ in the wake of the MacCrate Commission's report.⁶ Although

3 The post was funded by the British Overseas Development Administration for a term of two years from July 1995.

4 For example, the programmes funded by the Regional Rights Resource Team of the Overseas Development Administration, British Aid Programme in Fiji and other South Pacific jurisdictions.

5 Richard Grimes and Jo Larbie toured eight US law schools in September 1993: Brooklyn, CUNY, Yale, South Carolina, University of Chicago, Georgetown, Washington, Washburn, Topeka and University of Southern California. Our thanks to everyone who took the time to be with us and provide us with such a valuable insight in their clinical practices.

6 American Bar Association Task Force (1992) *Legal Education and Professional Development: An Education Continuum, Report of the Task Force on Law Schools and the Profession - Narrowing the Gap* (The MacCrate Report), American Bar Association.

written from the perspective of the American Bar Association (with a clear agenda for the needs of practice) the concerns raised by MacCrate are central to any discussion on the rationale behind a system for educating lawyers. What is it that we wish to produce? What knowledge, values and skills should law graduates have? What role do and should lawyers play in society?

The US clinical movement is now firmly (if not unproblematically) established.⁷ It addresses head-on the fundamental questions set out above and maintains that it provides high quality and relevant education through a hands-on experiential approach.⁸

It is interesting to note that other recent reviews of legal education have raised much the same points as are contained in the MacCrate report. In a firm and critical examination of Australian law schools, the Pearce report suggests:

That all law schools examine the adequacy of their attention to theoretical and critical perspective, including the study of law in operation and the study of the relations between law and other forces.⁹

and further, '[a] modern and properly funded law school should be able to develop clinical legal education as a significant dimension of its undergraduate legal education'.¹⁰

An on-going review of legal education is also taking place in the United Kingdom under the auspices of the Lord Chancellor's Advisory Committee on Legal Education and Conduct. Here the importance of intellectual and practical skills are highlighted. Teaching methods and quality of provision are also examined. In particular, the consultative paper suggests:

Contemporary legal education is ... in a state of flux. Teaching institutions are experimenting with new methods of teaching and assessing legal knowledge and skills ... (moving) away from detailed prescription of the content of the curriculum towards specifying the outcomes which legal education should achieve.¹¹

7 As at December 1995 over 400 teaching staff were affiliated to the Clinical Legal Education Association (CLEA), representing in excess of 125 of the 170 US law schools: *CLEA Newsletter* (1995) 4(3) p 3.

8 See generally N Tarr, *Current Issues in Clinical Legal Education* (1993) 1 *How LJ* 31.

9 D Pearce et al (1987) *Australia Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission*, Australian Government Publishing Service, para 1.149.

10 *Ibid*, para 2.184.

11 Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) (1995) *Consultation paper: The vocational stage and continuing professional development*, Advisory Committee on Legal Education and Conduct, p 4.

And in stressing MacCrate's concept of the education continuum, '[t]he foundations set in place at the initial (academic) stage must therefore be developed in subsequent stages'.¹²

Against the back drop of developments in the South Pacific and the debates on the future of legal education, this article attempts to take the clinical element and locate it within the education continuum. It will be argued that a clinic is as relevant a learning method to first year law students as it is to those involved in overtly vocational courses or continuing legal education. It is valuable to students whether or not their academic legal education is followed by a legal practice career. The experience of developing such a programme in the South Pacific will, it is hoped, illustrate the potential, the role and the place of the clinic across the curriculum.

Why the Clinic?

Much has been written elsewhere on the theories of learning in general¹³ and on the advantages of clinical legal education in particular.¹⁴ In the context of this discussion, it might be useful to note the principal attractions of a clinical approach coupled with some of the implications of adopting this distinctive style of learning.

A system of learning

The primary aim of a clinical methodology is to expose students to a very particular, and strategic, learning model. This model requires them to identify issues, research facts and law, apply the results of their research, and produce solutions or responses to problems. In simulated cases, the experience can be created and regulated by staff for the benefit of students. In live-client work, an element of this initial control is lost but it can bring instead the focus of doing it for real. This is learning at the sharp end. Either way it is learning in what has been referred to as a laboratory of lawyering.¹⁵ It is the case (real or fictional) that provides the vehicle for study. The unstructured nature of the problem, particularly in live-client work, requires students to address the process by which lawyering takes place. The experience of clinical work coupled with structured reflection on that experience are essential components of the methodology. The concept of reflection is examined later.

Skilling the lawyer

In the clinic, students directly confront the need for, and application of, specific skills. These skills can be described as: intellectual (for example,

12 Ibid, p 7.

13 See J Webb and C Maughan (eds) (1996) *Learning Lawyers' Skills*, Butterworths; and G Gibbs (1992) *Improving the Quality of Student Learning*, Technical and Educational Services, Sheffield Hallam University.

14 R Grimes, 'Reflections on Clinical Education' (1995b) 29(2) *The Law Teacher* 169, pp 171-6.

15 See Tarr (1993) p 48.

research, analysis and problem solving); transferable (communication, co-operative and team working, study skills, and office and file management); and subject specific or legal (drafting, research, advocacy, interviewing or counselling and negotiation). The overlap between each description is considerable.

Although many clinical programmes refer to the learning of such skills as a course objective, for the author these skills are only relevant at undergraduate degree level in so far as they are tools for learning about law and the legal system. In other words, they are means to an end. For example, the ability of a student to interview a client effectively involves that student in identifying what it is he or she needs to know to resolve a problem. It is the process that is important throughout rather than the ability, say, to interview accurately or with empathy. In courses designed to prepare students for practice, clearly a case may be made for the inclusion of such skills as more ends in themselves.¹⁶

Either way, skills empower students. Through the doing of law and the use of skills in this process, students are encouraged and facilitated to take an active part in their learning and in the learning of others. The emphasis is very much on taking control. The practice of skills builds self-confidence and fosters team work. The medium of the clinic is a breeding ground for the development of the legal and related skills.

Learning law

The student on the clinical programme is required to research the law both in terms of substance and procedure. On one level this is no different from seminar or tutorial work in so far as a problem may be set that requires to be answered. The advantage of working in a clinic is that the research takes place in the context of a real or realistic case setting. Also the problem can be unstructured in the sense that it may be in a subject area that the student has not yet encountered and/or the problem may not neatly fall into a pre-determined category. Unless the clinic programme is designed to do so, the student is not given a case or a topic that is anticipated by them in advance. Today may not be exemption clauses nor tomorrow, misrepresentation.

The rationale behind such an approach is that the key to solving legal problems is the ability to recognise issues, ask the right questions and discover from primary and secondary sources the possible answers. It is this process of formulating and re-formulating research questions that makes a

16 It should be remembered that in the United States, law is studied as a postgraduate, pre-practice programme. In other jurisdictions, notably Australia and the United Kingdom, it is an undergraduate study which is normally followed by a dedicated vocational course and/or a period of apprenticeship. If a US law student graduated from law school and passed the state bar exam without taking a clinical course he or she would be able to practise (on his or her own or with others) without having taken any specific course in legal practice. Many law schools in the United States do now make either a clinic or a civil or criminal procedure course compulsory. Compulsory courses on professional responsibility and ethics are increasingly common.

clinical input so valuable. Questions are, at this stage, more important than answers. If the case involves a real client, of course the answers and advice based on them are all important and the clinical supervisor must ensure an effective quality control mechanism.

So important is this research exercise that some clinical programmes make the documentation of research (both questions and answers) an express requirement.¹⁷ If students can research effectively, they can address any legal issue, even if it is an area in which they have little or no experience. The system and discipline must be in place to ensure that students are equipped to make necessary progress. Under supervision students can be guided with feedback, and other forms of intervention, in the appropriate research. It is the ability to think like a lawyer that is being developed and not expertise in any one subject area. That can come later.

So where does the learning take place? The clinical experience enables the student to learn techniques and to acquire effective research strategies. The results of this research can be knowledge of both the substance of the law and procedural rules. A well-worked clinical programme bolsters this knowledge by relating it directly to other component parts of the curriculum. For example, a clinic handling landlord and tenant disputes should help a student to relate to principles of land law, contract law and, if applicable, any housing law unit on the programme. The clinical experience has the potential therefore to contribute to the student's understanding of the rest of their legal studies.

Reflecting on the experience

An often cited objective of clinical practice is to produce the reflective student based on Schön's concept of reflective practitioner.¹⁸ Reflection here is taken to mean the process by which the student steps back from the clinical experience and tries to analyse what has taken place in terms of their own learning experience and, consequently, what can be learnt from this.

This can be problem specific. Why did the court decide the case in this way? What options did the client realistically have? What further research is required?

Importantly reflection can be seen as a much wider concept that brings into question the administration of justice, the role of law and lawyers in society and the economic, social and political implications of law and its practice. The ethics of law and practice are also central to this debate.

This process is not an inevitable consequence of the clinical methodology. Rather, it must be facilitated by the design and implementation of the clinical course; that is, it must be included as an overt goal of the clinic. Students have to be encouraged at every opportunity to engage in the process of reflection. Regular team or 'firm' meetings, detailed feedback and the requirement to record the results of their analyses are all devices

17 See Sheffield University (1995) *Sheffield Hallam University Law Clinic Handbook 1995/96*, Sheffield Hallam University, p 37.

18 D Schön (1987) *Educating the Reflective Practitioner*, Jossey-Bass.

whereby constructive and critical reflections can be aided. Reflection does not necessarily happen without being facilitated. It is, however, a valuable and essential component of the teaching and learning methodology and as such must be deliberately incorporated in the clinical programme.

Efforts and rewards

The clinic appears to sow and propagate the seeds of its own success in that students are regularly reported to have been highly motivated and enthused by their exposure to clinical case work. This is particularly true of the live-client clinic.¹⁹ High levels of motivation bring substantial student input. When students work hard they tend to do well, in terms of academic success. This is not peculiar to clinical work. Students consistently do well in their clinical studies. The quality of work produced and their graded results evidence this. However, it is accepted that where clinical programmes are optional, the hard-working, more able students are often self-selecting and predictable results may follow. Although research is at an early stage initial findings of a pilot study indicate that virtually all students who have the benefit of the clinical experience respond well in terms of academic results and their own levels of application.²⁰

Serving legal needs

Much is often made of the importance of live-client clinics through the provision of a service to the impecunious of the local population. This welfare function was at the very heart of the formation of clinical education in the United States and in its subsequent development.

Nothing in this article is intended to belittle the service element of live-client clinic work. Indeed, in the context of the South Pacific, the clinical approach has much to offer in the provision of legal services for large sections of the community, especially in such areas as domestic violence and housing, and particularly given the total or partial absence of legal aid in the region.

However, it is important to stress, particularly in first degree programmes, that the clinic is there primarily for the educational benefit of the students rather than to provide a service, however much needed that service might be.

This is not to say that the clients' needs are unimportant. Where real clients are concerned their interests must come first, whenever the case is taken up. Hard decisions sometimes have to be faced if a case has little to offer students in terms of their own learning experience. In such cases, in the author's view, instructions should not be accepted but the case should be

19 For a student's view of this, see the quotations appearing in the Preface of H Brayne et al (1998) *Clinical Legal Education: Active Learning in Your Law School*, Blackstone Press.

20 An evaluation study is presently being conducted at Sheffield Hallam University on performances by clinical and non-clinical students. The results should be available by July 1998.

referred elsewhere. Once a real client is to be represented the obligations on the clinic are then the same as for any other legal practice. You must act in the best interest of your client. In simulation clinics, meeting such a 'need' does not arise.

The danger in a clinic that is ostensibly run for educational purpose but that becomes service-driven is that students are pressured into taking on too many cases and/or cases of little educational value. In the event, quality, motivation and expectations can suffer. The essence of the clinical experience is to provide an opportunity for learning and reflection. Servicing large numbers of clients in personally important, but often routine matters can be counter-productive. Because of good intentions, funding opportunities and the real difficulty in turning away deserving cases, avoiding the problems of service provision is often a real challenge. However, to balance this view and on a personal note, there is nothing more satisfying than providing a needed and professional service, something that clients, supervisors and students relate to very readily.

Implications of Using a Clinical Model

It is not the purpose of this discussion to deal in detail with the consequences implicit in operating a clinic. The implications of a clinical model, however, must not be underestimated. These can be summarised as:

Resource intensity

The clinic is resource intensive, especially in terms of academic support and staff input. The live-client clinic extends to include clerical assistants, a practitioner's library and indemnity insurance. It also covers the need for law office facilities and machinery. Model standards for live-client clinical work have been adopted elsewhere and cover both minimum and recommended provisions.²¹ Although the clinic may appear to demand extensive resourcing, the true measure of its cost must be judged by its cost effectiveness, that is, what is delivered for the level of resourcing. If the clinic is the profound learning experience that is suggested by this paper the resource input may be well spent. To maximise the beneficial impact of the clinic, effective integration within the curriculum is required.

Assessment

Clinical methods present particular challenges and opportunities. The use of formative rather than summative assessment techniques fits well into both the ethos and structure of the clinic. Several difficulties can arise in this respect. Giving students the same experience on which they are assessed can be a problem, particularly with live-client work. Assessment based on close observation and feedback takes time. Students who work on clinical programmes often achieve high grades, something that appears to disconcert many colleagues at examination boards! Students who enthuse over the often

21 See Clinical Legal Education Organisation (1995) *Model Standards in Clinical Legal Education: Live-client clinics*, Clinical Legal Education Organisation.

innovative methods of assessment and general lack of emphasis on unseen examinations, often raise questions as to the assessment methods used in other parts of the law programme. If the clinic is to carry its own self-claimed academic worth, assessment criteria need to be clearly stated, reasoned and understood.

Quality of teaching, learning and supervision

Again this is at its most acute in the live-client context. Generally the standard of supervision must be adequate to ensure not only that an acceptable academic standard of work is maintained but also, if the reality of the case is to work, the supervision must be professionally competent in terms of legal practice. Securing staff who possess both academic and practice qualities and skills is imperative. The use of practitioners who can join clinical programmes on an occasional or part-time basis, but under the regulation of academic staff, is seen as extremely important. The involvement of practitioners who 'teach' from largely anecdotal materials is not.

A call for greater scholarly input in the clinic has been made elsewhere²² and the rise in recent years of academic journals that either deal principally with, or give space to, serious debates on the clinical input into the law curriculum is encouraging.²³

Equality of opportunity

The clinic provides students with a unique opportunity to undergo an intensive programme in which the learning curve is often steep. Because of the need to effect quality supervision and maintain professional standards, students are given inevitably high levels of support. Often clinical programmes are selective as to the type or number of students they can accommodate. Students excluded from this opportunity can, and do, feel aggrieved and such a model must ensure that there is equality of opportunity for those wishing to take such a course. In addition an awareness of issues of gender, race, disability and culture are as relevant to the clinic as elsewhere.

The Role of the Clinic at the Academic Stage

This section looks at clinical education in the context of law school studies, with particular reference to the South Pacific. In countries where law is studied at undergraduate level the term 'academic' is often used to differentiate this stage of the educational process from any overt vocational element.²⁴ As indicated in the introduction, a clinic input has relevance at all

22 P Hoffman, 'Clinical Scholarship and Skills Training' (1994) 1 *Clinical LR* 93.

23 Regular articles on clinical legal education now appear in the *Clinical Law Review* (USA), *Journal of Professional Legal Education* (Australia) and *The Law Teacher* (UK). Both the CLEA in the United States and the Clinical Legal Education Organisation in the United Kingdom are stimulating scholarly debate on the clinical approach to the study of law.

24 See Lord Chancellor's Advisory Committee on Legal Education and Conduct Consultative papers: (1994) *The Initial Stage*, Advisory Committee on Legal

stages of legal education. Furthermore the division between the so-called academic and vocational elements of legal education is, it is submitted, an artificial one. The concept of the educational continuum raised earlier necessarily implies not just a link between the two but a relationship that is one of interdependence as well. Law cannot be meaningfully taught and, more importantly, understood without being seen in the context of practice.

As has been seen already, other than for an optional and intensive short course preparing students for the Bar exams, US law students do not take an overt vocational programme. They enter practice without necessarily undergoing practical training as a pre-requisite. It is perhaps not surprising, therefore, that students find clinical programmes both relevant and attractive and a means for acquiring the skills necessary for legal practice.

Of other common law jurisdictions, Australia, Canada, Hong Kong, New Zealand, South Africa and the United Kingdom do differentiate between what has historically been seen as the largely autonomous academic and vocational stages of legal education.

Regardless of whether these two stages are artificially separated or not, the clinic can provide a vehicle for studying law in practice, thus complementing the overall aims of the particular programme.

Undergraduate clinical legal education in the South Pacific

The general advantages of the clinic have already been noted. What does this have to offer in the context of legal education at the academic stage in the South Pacific?

The various jurisdictions within the USP region have distinct needs and demands. The dominance of Fiji in terms of student numbers, employment potential, resourcing input and general economic considerations have a particular call on the university. The USP is, however, strongly committed to its regional identity and other countries also have requirements that are recognised and served.

Many, if not all, have a strong need for the education and training of indigenous or locally based people to staff law offices in both private and government service.

Some countries (for example Fiji, Solomon Islands and Kiribati) have a need for lawyers with an understanding of the British legal system supplemented by the domestic law in place since independence. Others (Cook Islands, Niue and Tokelau) rely heavily on New Zealand for their lawyers and legal system.²⁵ All are to a greater or lesser extent developing a jurisprudence peculiar to the territory, country or region.

When translated into academic study this means that the region as a whole has general educational needs whilst each member country has particular requirements in terms of its own substantive law and

Education Conduct, and (1995).

25 For general information on the Pacific Island legal systems, see M Ntuny (1993) *South Pacific Islands Legal Systems*, University of Hawaii Press. The chapters on individual countries include sections entitled 'Constitutional System' and 'Legal Education and Profession'.

administration of justice. The brief of Co-ordinator of Vocational Legal Education required recognition of these important and sometimes competing demands. Most significantly the opportunity existed to respond to what was, in most cases, a partial vacuum in terms of legal education provision, certainly so far as vocational education is concerned. Up until 1992 little discussion had taken place, on a formal basis, on the overall framework within the region for a in-region system of legal education.²⁶

With the USP's law degree up and running the first task in designing a vocational programme was to carry out a fact-finding exercise to establish the needs of each jurisdiction and how far, realistically, those needs could and ought to be addressed by the USP. Contact had to be made with all the interested parties across the region, including colleagues and students in the then Law Department²⁷ and further afield (notably Papua New Guinea, Australia and New Zealand). Representatives of private practice (principally through the local law societies), government law officers (attorneys-general, solicitors-general, directors of public prosecution, public solicitors) and members of the judiciary, (magistrates and judges) were all contacted, as were representatives of government, the Law Reform Commission (Fiji), diplomatic personnel and representatives from the various aid agencies in the region. Finally, but most importantly, non-governmental organisations (NGOs) were contacted, notably community groups and welfare rights teams. All were in principle supportive of the concept of learning by doing and the inclusion at an early stage of a clinical approach within the law degree. This also attracted the academic and student body who saw enormous potential in terms of learning methodology, public service and general interest.

The response of private practice had initially been more circumspect. Some reservations were expressed about the absence of a track record of the then Law Department and the implications on a relatively small legal community of an influx of new qualified lawyers from 1998.²⁸ However, when the programme in general, and the role of the clinic in particular, was explained this response changed noticeably. The clinic was seen as an ideal vehicle to introduce students, at an early stage, to the substance of the law, to

26 In March 1992, a workshop on the curriculum for a law degree at the USP was held in Port Vila, Vanuatu; the recommendations of this meeting are available in a 1992 unpublished report, University of the South Pacific.

27 The Law Department was then part of the School of Social and Economic Development. It became a School in its own right in 199.

28 It is anticipated that between 40 and 50 students will graduate in law from USP annually. From a survey of existing law students at USP it appears that most graduates will undertake the six-month professional legal practice course (Diploma in Legal Practice (DLP)), followed by assessment of competence for the jurisdiction concerned. The first of the DLP holders should qualify for admission into practice in late 1998. It seems likely, judging by enquiries received, that a significant number of non-USP graduates also intend to apply for a place on the DLP. These students will have studied law in countries outside of the region and will wish to qualify for practice in one or more of the region's countries.

legal skills and to working practices. The inclusion of an ethical dimension within the context of clinic was seen as particularly important.

Government law officers were quick to recognise that a law clinic might work in conjunction with their offices, aiding the lawyers concerned in research and file preparation. The potential for externships in this setting was also raised. This has recently been developed, as noted below.

The judiciary, led by the Chief Justices of the region, were without exception welcoming in their response to the development of a law degree programme that specialised in legal issues relevant to the South Pacific. They too saw the clinical approach as a valuable introduction for undergraduates to the operation of law, and recognised its service potential. In some jurisdictions law students taking the clinic were positively encouraged to appear in court as *amicus curiae*.

A very positive reaction came from the NGOs and aid agencies. Although the extent of any service offered was seen as necessarily limited, community groups and aid donors thought that the clinical programme offered much in supplementing existing services and providing some additional cover for legal services in the region. In particular concentration on rights and justice initiatives was seen to be highly relevant. NGOs also saw paralegal training as a priority.

With need initially identified, proposals for a clinical input into the degree could now be designed and implemented. Following this consultative process the USP has now structured the degree-level clinical programme with three distinct components:

A programme of placements (externships)

This is offered to any law student on a voluntary basis to introduce them to some of the demands of live-client work and to build on their previous study experience. Placements may be in private practice, the courts, government law offices or with NGOs doing law-based work. Some placements may also be on the live-client clinic elective. The programme is currently not assessed but may be in the near future.

The law clinic elective

A fully validated and assessed elective has been available to the LLB years 3/4 students since July 1997.²⁹ It runs for one semester and, subject to available resources, can be offered twice (to different students) in the academic year. A designated post of law clinic supervisor was created to implement the clinical programme and the law clinic elective forms a substantial part of this. For the first run (July–November 1997) the elective took the form of an out-house clinic. Participating students were placed in one of three law offices (public solicitor, public prosecutor and ombudsman). Structured discussion sessions were held on a weekly basis, with all students and team meetings also held weekly for students in the same placement. Assessment

29 For the second semester 1997, the elective was limited to year 4 only but from 1998 will be offered to years 3 and 4.

was based on a portfolio of work and reports from the student and supervisor. From July 1998, it is expected that the elective will consist of two clinics: the out-house placement and a legal office based in the law school (that is an in-house, live-client clinic).

A clinical support programme

The law clinic supervisor has been designated a peripatetic role within the law school offering support to colleagues, through the use of simulation, in the introduction of clinical and skills based studies. Although in its early stages of development a clinical component has already featured in some core courses (in criminal law through a trial exercise, in contract law with a case study based on a client interview followed by an advice letter). A mootng programme is also being designed.

The whole is intended to produce a challenging but supportive learning environment in which students learn through case work and personal involvement. Progress is intended to be made from the broad introduction to clinical methods and to the actual representation of clients for those who choose such an option.

The Clinic and Vocational Education in the South Pacific

The point has already been made that the clinic is as relevant to academic study as it is to a vocational course and that in any event the difference between the academic and vocational is more apparent than real. Rather, one is rather an extension of the other.

Notwithstanding the introduction of a four-year law degree programme at the USP, in 1994 no explicit vocational education then existed in any of the 12 constituent countries of the USP. The various jurisdictions required those seeking admission to establish certain prerequisites that either depended on admission under the rules of another country³⁰ or on completion of a programme of education and training, coupled with, in most cases, admission in another country.³¹ Ad hoc vocational training did exist for paralegals, members of private practice and some members of the judiciary.³²

From the discussions held with interested parties across the region, general support was voiced for a regional vocational course that would satisfy the needs for practical legal training and that would also meet the jurisdictional differences, in terms of both substantive law and procedure. The student's understanding of not only the law, but also the cultures, of the region was seen as being of central importance. A student, on completion of such a programme, should be able to address issues of both a general nature within the region, and in terms of the requirements of the individual country, in which he or she intended to practise. Assessment methods were called for that would establish competence in both of these respect.

30 As in Kiribati, Solomon Islands, Tuvalu and Samoa.

31 As in the Cook Islands, Fiji, Nauru, Tonga and Vanuatu.

32 For example, in Fiji and Vanuatu.

Reservations were initially raised by some of those interviewed in the light of established courses in Australia, New Zealand and the United Kingdom. These were seen as having provided historically for existing needs. With no established vocational provision at the USP, the university has had to make its case to become a regional provider. Three considerations were central to this task, all of which are concerned with basic principles of educational provision in law.

First, the highest possible academic standards had to be maintained. These had to be internationally acceptable. Secondly, a programme had to be tailored to the practice of law in the region. Thirdly, access should be widely available to students qualified to take the programme. The design of a professional practice course has now been costed and structured in such a way to present a relevant and viable alternative to existing (but non-regional) specialist courses.

In preparing the syllabus of this course it was decided, following consultation, that a relatively short, intensive programme was required to deliver what was seen as the necessary curriculum. A schedule covering 26 weeks was devised.

The scheme met with the broad approval of the region's profession, judiciary, public law officers and the USP and has been externally validated. At its inaugural meeting in January 1998 the Legal Education Board in Fiji approved the programme, known as the Postgraduate Diploma in Legal Practice (DLP), for the purposes of satisfying the admission requirements of that country. As a result admission is now secured or scheduled to be approved for those who successfully complete the DLP.

The DLP covers three main elements:

- ◇ Professional legal skills (communication, interviewing, research, drafting, dispute resolution, advocacy and office and file management).
- ◇ The ethics of legal practice and professional responsibility
- ◇ Substantive law and procedure — contentious and non-contentious cases (concentrating on civil, criminal, conveyancing, probate, law and the business client and family)

The three components are seen as mutually related and pervasive. To this end they are not delivered as separate parts of the course but rather interdependently through the use of clinical methods. Students are required to become involved in simulated problems through civil and criminal case studies and transactions in the non-contentious subject areas. The exposure of students to exclusively live-client work, although valuable, would be too problematic given the intensive nature of the programme and the limited time available to conduct a real case. Simulation allows cases and facts to be manipulated to suit the course demand. A live-client element on the other hand is seen as an essential supplement and is scheduled to run on the same lines as are proposed for the fourth year degree students. This will be compulsory throughout the students time on the vocational programme. Students will, in addition to participating in the in-house clinic, spend one month in a law office on placement.

Assessment is to be on the basis of individual performances but in the context of team work. All students on the programme will be allocated to a team or firm. The design accommodates those jurisdictions who (rightly in view of the USP) require assessment of knowledge of the laws and procedures of that jurisdiction as a condition for admission into practice. For example, examination in the land tenure system in Vanuatu, customary rights in Samoa or the Penal Code in Fiji, would be an requirement for students wishing to establish their competency in respect of practice in the relevant country.

The clinic therefore serves the vocational stage of legal education in providing a hands-on learning experience through case simulation supplemented by live client work and law office placement.³³

Continuing Legal Education: The Real Clinical Setting?

The MacCrate Commission report raises the importance of the educational continuum in law. In particular, there has been a call for on-going education beyond or apart from the pre-admission to practice requirements.³⁴ In the South Pacific the need for continuing education includes practitioners, the magistracy and judiciary, both lay and professional, and paralegals who work in courts, government offices or advice agencies. Continuing legal education is also taken in this context to include projects aimed at making the general population better informed of their legal position: in particular rights of women, rights of the child, and anti-discrimination provisions. This is continuing legal education in a wider community sense.

Although such coverage is both ambitious and far reaching and, as yet, very much in its formative stage, it is based on a planned system of legal education for the region. Much depends on staffing and resources and on people who will be able to implement the programme.

The clinic's role in the context of continuing legal education is here very much in the work place: judges on the bench, police in their stations, or social workers in a counselling room. The principle remains as powerful as ever; the learning is by the doing, supported by those who can help the participant learn from their experience.

Conclusion

Several important points can be made in conclusion. First, if the clinic is to play a full and formative role in the education of students and others, it must be built into the curriculum as a properly integrated and resourced unit. If not, it is in danger of being marginalised (as has often happened in the United States), and seen as little more than a training workshop and a stepping stone into practice. Properly structured it is a vehicle for the learning of academic law, legal procedure, practice skills and ethical issues.

33 For a more detailed discussion of vocational legal education in the South Pacific, see R Grimes (1995a) *Producing Tomorrow's Lawyers*, University of the South Pacific.

34 ACLEC (1995) p 16.

The whole is an experience on which students can reflect, to build and reinforce their understanding.

Secondly, in the case of the South Pacific, the clinic offers a very particular learning opportunity. It is a means by which a limited but valuable service can be offered to the community. It can also develop a fuller understanding of the laws and issues affecting the constituent countries. To ensure that the development of a vocational educational programme is both sensitive and responsive to the needs of the region, it has been proposed that a Board of Legal Education be established in each country. Fiji currently leads the way in this respect. A Council of Legal Education could operate on a regionwide basis to monitor progress and evaluate quality. In this way the wide variety of interest groups mentioned in this article could be represented and a channel would be created through which recommendations for future progress could be made.

Finally, it is not often, especially in the legal world, that it is possible to be involved in the development of a programme which is largely unaffected by entrenched conventions, practices or personal empires. There is now the chance to consolidate progress on a programme in the South Pacific that provides for its particular needs, as diverse as they might be. The experiences of other jurisdictions indicate that there is much to learn from what has been established elsewhere and the recent reviews of those systems. In the South Pacific region we have the chance to get it right from the start. The clinic has much to offer in this respect.³⁵

References

Books and Articles

- American Bar Association Task Force (1992) *Legal Education and Professional Development: An Education Continuum, Report of the Task Force on Law Schools and the Profession — Narrowing the Gap* (the MacCrate Report), American Bar Association.
- Brayne, H et al (1998) *Clinical Legal Education: Active Learning in Your Law School*, Blackstone Press.
- Clinical Legal Education Association (US) *Newsletter* (1995) 4(3).
- Clinical Legal Education Organisation (1995) *Model Standards in Clinical Legal Education: Live-client clinics*, Clinical Legal Education Organisation.

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- Gibbs, G (1992) *Improving the Quality of Student Learning*, Technical and Educational Services, Sheffield Hallam University.
- Grimes, R (1995a) *Producing Tomorrow's Lawyers*, University of the South Pacific
- Grimes, R, 'Reflections on Clinical Education' (1995b) 29(2) *The Law Teacher* 169.
- Hoffman, P, 'Clinical Scholarship and Skills Training' (1994) 1 *Clinical Law Review* 93.
- Lord Chancellor's Advisory Committee on Legal Education and Conduct (1994) *The Initial Stage* (consultation paper), Advisory Committee on Legal Education and Conduct.
- Lord Chancellor's Advisory Committee on Legal Education and Conduct (1995) *The vocational stage and continuing professional development* (consultation paper), Advisory Committee on Legal Education and Conduct.
- Ntummy, M (1993) *South Pacific Islands Legal Systems*, University of Hawaii Press.
- Pearce, D et al (1987) *Australia Law Schools: Discipline Assessment for the Commonwealth Tertiary Education Commission*, Australian Government Publishing Service.
- Schön, D (1987) *Educating the Reflective Practitioner*, Jossey-Bass.
- Sheffield Hallam University (1995) *Sheffield Hallam University Law Clinic Handbook 1995/96*, Sheffield Hallam University.
- Tarr, N, 'Current Issues in Clinical Legal Education' (1993) 1 *How LJ* 31.
- Webb, J and C Maughan (eds) (1996) *Learning Lawyers' Skills*, Butterworths.