

tions, and extra-legal means, such as organising petitions to State governors, in order to delay the legal process, exceeds the boundaries of legitimate partisanship. It could be argued that thereby they undermine the principle that lawyers have a responsibility to society to uphold the rule of law and that they fail in both their social and professional obligations. This is a substantial claim and one which can only be rebutted by an argument that lawyers' wider duties might transcend their own code of ethics.

The moral relativism which pervades professional codes is the weakness in calls for higher ethical standards. While professional bodies may seek to represent professions as homogeneous and their ethics universal, the workplace is the most powerful determinant of ethical norms. Capital punishment lawyers, particularly in the current climate, lack political leverage within their profession. The norms of their workplace are, at the extremes, contrary to those chosen as a model of professional conduct. The commitment of cause lawyers and the denial of their neutral roles has, at least, a justification on moral rather than economic grounds. Therefore, while, on the one hand, cause lawyers represent a 'deviant strain' in the legal profession they have the capacity to 'reconnect law and morality, and make tangible the idea that law is a public profession.'

It may be suggested that the interns' experience offers them a distorted view of legal practice or the career or conduct of lawyers but it is an experience of practice which moves most interns to evaluate critically the 'value neutral' approach to legal study with which they are most familiar. It is clear from the extracts from interns' work that students ap-

preciate possible disjunctions between ethics and rules of conduct.

### **Inventing the good: a prospectus for clinical education and the teaching of legal ethics in England**

J Webb

30 *Law Teacher* 3, 1996, pp 270–294

Over the years a variety of claims have been made about the value of clinical legal education (CLE). The potential of the law clinic as a mechanism for teaching legal ethics has ranked high on that list. The proponents of CLE argue that effective learning in legal ethics is enhanced where students are confronted by the reality of acting in the role of the lawyer, yet many of those same commentators also admit that this potential largely remains unfulfilled. Some of the educational reasons for this 'failure' need to be considered and some preliminary indications offered for a framework and process that might lead to effective ethics clinics.

Clinicians can rightly point out that the law clinic is one of the few contexts in which legal ethics is presently addressed in English undergraduate education, though the manner and extent of this is highly varied. But is it right to assume that clinical education is able to contribute not just to an appreciation but also to the internalising of ethical principles and values? Can ethics be taught through CLE? What problems does this generate for the clinic? How should CLE be incorporated into an 'ethical curriculum'?

The author deals with the question of whether we can in fact teach ethics and distinguishes two approaches: teaching ethics implicitly and explicitly. He also looks at ethics as moral development and asks whether moral development can be taught.

Clinical courses and ethical courses each have their own aims and objectives, which may be incompatible. What particular problems might be faced in engendering a more ethical focus in CLE programs?

We cannot disregard the fact that all clinical programs place substantial loadings on their students — perhaps significantly greater than many conventional doctrinal courses. It is certainly doubtful whether ethics can simply be added on to such a program without some radical redesign.

The substantive knowledge underpinning clinical programs tends to be quite diffuse and either left largely to discovery methods of learning or built on knowledge acquired in earlier non-clinical courses. Professional conduct usually constitutes a totally novel and substantial body of rules and principles. Either this can become a key knowledge component of the clinic or an essential prerequisite. If it is neither, then the ethical dimension is likely to remain an adjunct of rather than integral to the program.

The development of skills and ethics are not *per se* antithetical objectives. Indeed, there are clear links in so far as ethical decision-making is itself a skilled activity, dependent on the deployment of a range of problem solving and communication skills.

A focus on professional conduct is clearly of significance in setting parameters for standards of clinical work and for instilling some sense of the norms for professional work. But CLE may be susceptible thereby to an ethical pragmatism that is at odds with the wider notions of ethical education. CLE can theoretically be used to question prevailing professional standards, but this is not a straightforward task. Clinical supervisors and students are subjected to the compet-

ing demands of reflective learning and delivering a service which meets clients' needs and does not unduly upset relations with the local profession. It is not easy to refine ethical standards in a setting that often demands that we play the game according to the traditional professional morality.

The chief strength of CLE as a tool for ethics education is that it is grounded in practice and uses the students' experience as a direct mechanism for raising questions about their professional value systems within a realistic setting. Nevertheless, a number of potential difficulties remain. Most UK law schools that have a clinical input offer, at best, one or two optional clinical modules to students. Therefore, the clinical element in most law schools is not well placed to provide substantial broad coverage of professional conduct and ethics issues. The function of the clinic should be to provide opportunities for reflection on the lived experience of ethical problem-solving. If CLE is to concentrate on exploring depth, we require considerable immersion in ethical problems to stimulate moral growth. This is likely to be one of the hardest tasks for the clinic.

Traditionally, much CLE has relied heavily on discovery models of learning and has frequently failed to allow for the need to train students to become self-critical and reflective learners. To this extent it has often privileged action over thought and reflection. If we are to achieve a balance, clinical experience needs to be supported by a non-clinical program which generates a range of ethical knowledge and understanding in students and enables them to engage in the kind of dialogue likely to encourage development. It is through this

process that we might encourage students to begin to 'invent' their own ethics by exploring the connections and interpretations generated by their learning. The addition of a clinical dimension would provide the opportunity to reflect on that understanding in the light of lived experience. Without this, it seems unlikely that students can develop an ethical identity capable of surviving the transition into the world of work. In sum, the clinic must not be treated in isolation but needs to be taken as apart of a strong *pervasive* model of ethics education.

#### **Who benefits? — case management and clinical education**

K Kerrigan & P Plowden  
30 *Law Teacher* 3, 1996, pp 315–329

In clinical casework, tensions might exist between the parallel requirements of the management of the case and the management of the student experience. Long-running and complex cases are an area where management issues can become especially problematic. However, the potential educational benefits of such cases outweigh the difficulties which might be encountered.

Clinical education aims to bridge the gap between the academic understanding of law, and the practical application of legal principles. Clinicians argue not only that a greater depth of knowledge is achieved by allowing students practical experience but also that many of the wider ethical issues that are implicit in the practice of law are brought home to students. In order to achieve these aims, the student experience needs to be managed so as to ensure that the students have the opportunity to learn and to reflect. For example, if a case becomes so complex that the students are no longer able, at this stage in their

development, to continue to work effectively on the case, then clearly from an educational perspective the case has outlived its usefulness. Ironically, this is the point when the client is most in need of quality legal advice and representation. The educational objectives and the case management objectives, which hitherto have been moving in tandem, may now be seen to diverge.

One area where concerns are brought into sharp focus is the large complex non-standard case. The balance between the student's opportunity to learn by doing and the supervisor's need to keep close control over an unusually complex matter may become increasingly difficult to achieve. Ultimately, such cases raise questions about the nature and scope of clinical legal education. There are undoubted benefits of smaller-scale legal work but handling larger more exceptional cases can provide the student with an additional and valuable range of practical experience. Benefits can arise from cases of legal importance, factual and legal complexity or which are high profile. However, the perceived tension between the management of the case (with its focus on the client's paramount interests) and the management of the educational aim (with its focus on the student's learning) can lead to a fairly narrow approach as to the type of case which the clinic will be happy to take on.

There are some concerns that may be implicit in all clinical work but which become more acute in the context of larger-scale cases. Continuity issues in long-running cases may arise and, if not addressed, students may lose interest or a sense of identification with the case. Supervisors have for some reason intervened to take on certain tasks, supervisors will need to