# Culture, Custom and the Clinic — a Model for Legal Education in the South Pacific

RICHARD GRIMES*

*Lo bilong yumi — save bilong yumi*[1]

This article takes, as its starting point, the utility of the clinic as an effective and empowering means of studying law and legal practice. It is not intended to examine the general benefits, implications and challenges of a clinical methodology. This has been done at length, and through a range of sources, before.[2] Rather, the values of the clinic are explored here in the specific context of the South Pacific and the diversity of cultures, customs and traditions found there. The questions raised are: what specifically does the clinic have to offer law students from the region; and how does the clinic address the cultural and social context in which it operates?

Before examining these issues another question must be posed; why the South Pacific? The writer joined the law school at the University of the South Pacific (USP) in July 1995 on secondment from a British university, where he had established and run a live-client, in-house, clinical programme.[3] The job

* Formerly Director, Institute of Justice and Applied Legal Studies, University of the South Pacific, Suva, Fiji, on secondment from Sheffield Hallam University, England, UK; Now Head of Law and Professor of Legal Education at University of Derby, England.

[1] Roughly translated from Bislama, the national (but introduced and adopted) language of Vanuatu: *Our law — our learning.*

[2] See in particular: A Amsterdam, 'Clinical Legal Education — A 21st Century Perspective' (1984) 34 J Legal Educ, 612; F Bloch, 'The Andragogical Basis of Clinical Legal Education' (1982) 35 *Vand L Rev*, 321; J Frank, 'Why not a Clinical Lawyer School' (1933) 81 *U Pa L Rev*, 907; R Grimes, 'Reflections on Clinical Legal Education' (1995) *The Law Teacher*, 29 (2),169; J Macfarlane, *An Evaluation of the Role and Practice of Clinical Legal Education in the United Kingdom*, (1988) PhD thesis CNAA BX 85358. M Spiegel, 'Theory and Practice in Legal Education: An Essay on Clinical Legal Education' (1987) 34, *UCLA L Rev*, 577; N Tarr, 'Current Issues in Clinical Legal Education' (1993) 37 (1) *Howard Law Journal*, 31.

[3] Sheffield Hallam University offers a live-client non-subject specific clinic as elective in years 2 and 3 of its undergraduate law programme. The course has been available since 1992. It operates as a solicitors' practice and, as such, is subject to the same restrictions and expectations in terms of professional standards as any other legal practice in England and Wales. The case load covers a wide range of legal issues including crime, landlord and tenant, consumer, personal injury, employment and immigration. The clientele is drawn from staff and students at the university and cases (principally employment) referred to the clinic by outside agencies. The elective takes up to 24 students and has three dedicated staff, two lecturers and an administrative assistant. The teaching staff have other responsibilities within the law school in terms of teaching and administration. The elective is fully validated and is an integral part of the law curriculum. It is assessed (by continual assessment and a submission consisting of a portfolio of work and a reflective report-based analysis, and it is graded like any other course in the programme. At the time of its formation, the clinic was one of only two solicitor practice clinics located in a law school in a UK university. Other clinics do exist in UK law schools but these are predominantly advice only or are out-house or simulation clinics. For more information on the clinical position in the UK see R Grimes,

brief at USP centred on the vocational element of legal education encompassing both the (newly established) law degree and a planned course at postgraduate level for intending practitioners. Before taking up the position the writer expected, for previously practised and articulated pedagogic reasons, that a strong clinical dimension would feature in the implementation of the relevant programmes. He did not appreciate at that time, the extent to which the clinic would complement the cultural and customary dimensions of law teaching in the South Pacific.

This article will examine what culture and custom mean in the context of clinical education and how the clinic can be used to address and resolve specific learning and teaching challenges and complement other educational strategies.

## I: HISTORY OF LEGAL EDUCATION IN THE REGION

For the present purpose, the South Pacific is defined as the area, and member countries, served by USP. This includes nine independent states, two self-governing jurisdictions (in free association with New Zealand) and one territory of New Zealand.[4] The region stretches from the Cook Islands in the east to the Solomon Islands in the west and from the Marshall Islands in the north to Tonga in the south. It includes a population of around 1.7 million people and has three principal indigenous groupings (Melanesian, Polynesian and Micronesian). It covers an area of over 20 million square miles.[5]

When considering the form and content of legal education in the region account must be taken of the history of colonialism. For better or worse the region has experienced (and continues to experience) a myriad of influences from non-regional sources, many of which impact on legal education. These influences have survived the process of decolonisation and continue to have

J Klaff, and C Smith, 'Legal Skills and Clinical Legal Education — A Survey of Undergraduate Law School Practice' (1996) *The Law Teacher* 30 (1) 44.

[4] It is anticipated that Tokelau, presently a territory of New Zealand, will become self-governing in the near future. The New Zealand Parliament has recently passed the *Tokelau Amendment Act* 1996 (NZ) giving law making powers to the territory with provision for a referendum to decide on its political future. It has been suggested (*Pacific Island Monthly*, August 1996, 11) that the likely outcome will be self-governing status in free association with New Zealand, as is the case in the Cook Islands and Niue.

[5] The USP member countries are: Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Solomon Islands, Tokelau, Tuvalu, Vanuatu and Samoa. Although very much part of the South Pacific, Papua New Guinea is not part of the USP region. It is a very much larger country than its USP neighbours, both in size and population (over three million people). It has its own university and law school. The Federated States of Micronesia also fall outside of USP's membership, but the USP law school does have students from these countries. Of the countries, jurisdictions and territories listed above, the people of Marshall Islands, Kiribati and Nauru are predominantly Micronesian, those of Vanuatu and the Solomon Islands are Melanesian and in Cook Islands, Niue, Tonga, Tokelau, Tuvalu and Samoa, the population is largely Polynesian. The indigenous Fijians are both physically and culturally distinct, with characteristics of both of Melanesia and Polynesia evident. Fiji also has a large Indo-Fijian population (currently over 40%), both Hindu and Muslim. This has a significant impact on the law programme and its clinical component.

effect.[6] In terms of constitutionally recognised law and legal systems, all of the countries of the region have a similar, imported base, but there is a diversity of cultural and customary considerations within which the largely introduced concepts operate. Court structures tend to mirror their adversarial counterparts in Britain and other common law countries, save for occasional differences of name, or the inclusion of tribunals that are dedicated to particular disputes, notably custom and land.[7]

It is also important to appreciate, culture and custom within the South Pacific are neither uniform across the region (or even within a particular country) nor static.[8] Custom may be deeply rooted within the tradition of a country, province or district or may, in fact, be of much more recent origin, often dating from the mid nineteenth century and owing more to a close adaptation of Judeo-Christian belief than what might be considered as indigenous to that jurisdiction.[9]

Formal legal education for students from the South Pacific island states has taken two routes[10]; one, through institutions in common law and Commonwealth countries beyond the USP region (notably some African States, Australia, New Zealand, Papua New Guinea and the UK) and the other, more recently, at USP itself.

Until 1979, all legal education was provided outside the then USP region. The University of Papua New Guinea and the Legal Training Institute of that country, universities and colleges in Australia and New Zealand (and to a lesser extent Ghana, Nigeria and the UK), and law practices in general (through apprenticeships), together provided both the so-called 'academic' and 'vocational' stages of legal education. Admission into legal practice within Pacific island countries was dependent on admission into the jurisdiction where a student was educated.[11] Legal education was (and to a large

[6] For a general discussion on the cultural dimension of colonialism and decolonisation see U Neema, 'Decolonization and Democracy in the South Pacific' in *Culture and Democracy in the South Pacific* (R Crocombe et al, eds, 1992), 1.

[7] For a description of the courts and legal systems of Pacific island states see M Ntumy *South Pacific Islands Legal Systems* (1993). For a more dated but valuable and wide ranging account of courts, both introduced and customary, see G Powles and M Pulea, *Pacific Courts and Legal Systems* (1988).

[8] A valuable examination of custom from a Melanesian viewpoint is contained in B Narokobi, *Lo Bilong Yumi Yet — Law and Custom in Melanesia* (1989) 31–3. The impact of colonial and other influences on this are highlighted.

[9] R Crocombe, *The South Pacific — An Introduction* (1989), 72–83.

[10] If the training and education of paramount chiefs, talking chiefs and orators is included in the term 'legal education' then a third route exists. The chiefly system prevalent in the South Pacific relied, and in some cases continues to rely, on this system of advocacy. See Crocombe, op cit (fn 6) 154–7. For the present purpose 'legal education' is taken to mean education that is provided at tertiary level, through universities and colleges.

[11] For example, see the admission rules in Fiji contained in *Legal Practitioners Act* Cap 254, ss 3–12. There is presently (July 1997) a bill before parliament which contains wholesale changes to these provisions which will have as its cornerstone, proof of competence in the laws and procedures of Fiji — see the report of the Fiji Law Reform Commission in relation to the Legal Practitioners Act, May 1996, 60–3. As the rules currently stand admission in another jurisdiction, coupled with a short period of residency, is sufficient for admission into practice in Fiji. Note: The Legal Practitioners Act has, since the writing of this article now been passed (Effective 1st Jan 1998) and now makes it possible for regional educated lawyers to be admitted.

extent, as will be seen, still is) therefore based on the British model of the undergraduate law student who reads law at university and goes on to enter practice through articles of clerkship or pupillage.[12]

Until the USP member countries complete changes in their own admission rules, the process described above remains the route to legal practice in the region. As will be examined shortly, significant changes are taking place as a result of the impact of the regional law school at USP. Even after amendment to the applicable admission has taken place, it is still likely that a person will be able to become a practitioner in a Pacific island country based on his or her overseas qualifications and experience. However, it is also probable that they will, in future, have to establish their knowledge and understanding of the laws and procedures of the country in question.[13]

In 1979, law began to feature in the curriculum at USP as part of other courses requiring a legal input.[14] In 1985, the Pacific Law Unit was formed and for the first time, in the region served by USP, law was made available as a course of study in its own right, albeit at this stage at pre-degree level.[15] A wide range of courses dealing with laws of the South Pacific was designed and delivered. This programme continues to expand and is available as a distance learning package, through University Extension.[16] In 1994, the Department of Law was formed, as part of the university's School of Social and Economic Development, to offer a full law degree programme. At the time of writing, the LL.B degree has just completed its final year (of four) thus producing the region's first home-produced law graduates. The Department was accorded full School (Faculty) status in October 1996.

It is now therefore possible for students to study law either through USP or at institutions outside of the region. The advantages of studying law in the context of the South Pacific and its customs and cultures, the relative cost advantage of running such a course in-region and the associated convenience factor, have all meant that the USP programme is heavily utilised.[17] The move towards regional provision in terms of legal education should also ensure that those qualified to enter legal practice in Pacific island countries will be more likely to remain in that country at least for the foreseeable future. A significant

[12] This contrasts with the educational system in the USA where law schools take graduate entrants and there is no discernible 'vocational' stage or apprenticeship. One of the reasons for the success of the American clinical movement may be attributed to this difference and the immediacy of the need to address the practice of law within the law school curriculum. For a history of the British model see P Smith and S Bailey, *The Modern English Legal System* (1984) 97.

[13] For a detailed discussion of the proposals for change see R Grimes, *Producing Tomorrow's Lawyers* (1995).

[14] For example, accounting and land management.

[15] For an account of this development see D Paterson, 'The Pacific Law Unit', in *Pacific Courts and Legal Systems*, op cit (fn 7) 286.

[16] For details see *University Extension Handbook* (1996) 54–7.

[17] At the time of writing, there were 53 full-time students on year 4 of the LL.B. degree, 80 on year 3, and 70 on year 2, and approximately 860 on year 1. Seventy-nine students are presently studying by extension and may join the residential students from 1997. So popular has the programme proved that measures are presently being discussed to impose a ceiling on admissions. The university as a whole has over 9000 students enrolled and the equivalent of over 3000 full-time students.

percentage of Pacific island students educated in Australia and New Zealand have failed to return to their home countries following admission, which has proven to be wasteful from both a financial and human resources perspective.[18]

With this background information in place, attention can now be turned to the content of the law programme at USP, the role of the clinic within the curriculum and the cultural considerations of 'doing' clinic in the South Pacific.

## II: STRUCTURE OF LAW STUDIES AT USP

Where does the clinic fit into the curriculum? To answer this question a little must be said about the overall structure and content of the USP law degree and other law courses at the university.

The LL.B degree at USP is a four year programme.[19] Year one features a mixture of law and humanities subjects with emphasis on study in a South Pacific context. This is not to say that all courses which form part of the university's portfolio in general and law's brief in particular do not have a South Pacific focus. Rather, year one addresses specific issues including English, history, land tenure and sociology as well as a course introducing students to the legal systems of the region. Year two consists of a range of compulsory courses covering legal research, contract, torts, criminal law and public law. In years three and four students must study property, equity, current developments in pacific law and legal drafting. Students choose from a list of electives to complete the programme requirements. Proposals have been approved by the university's senate to increase the law input in year one by introducing torts and legal method (including research skills) and by removing land tenure (which is covered in property in year three) and reducing some humanities electives.[20]

The law courses are taught on a law-in-context basis[21] and with specific reference to the laws, procedures, customs and traditions of the region's jurisdictions.

As a newly established programme, the law degree at USP has been developing its own sense of identity and this is reflected by recent changes in its structure and content. It is not only this aspect that has been under review. The teaching and learning methodologies employed in the programme have too fallen under scrutiny of the law school and related staff. The writer

[18] This was identified (along with other reasons) in a submission to the Regional Law Curriculum Workshop held in Vanuatu in March 1992 (Background paper A, agenda item 5). The purpose of the workshop was to make recommendations as to the curriculum of the then to be established law degree.

[19] Full programme details are contained in *Law at USP Handbook* (1998) 14–26 and *The University of the South Pacific Calendar* (1998) 308.

[20] Decision of the Senate of USP, 20 November 1996.

[21] For a useful example of the law in context approach see P Harris, *An Introduction to Law* (1993) and for a development of some of the theoretical principles underlying this see J Leonard, *Legal Studies as Cultural Studies* (1995).

suggests that it is a sign of strength rather than weakness to open oneself up to critical examination of form, content and methods of delivery — however time consuming and painful that might be.[22] Not only can the students' learning experience be redefined and fine-tuned in this way, but the opportunity arises to establish effective curricula and andragogic practices that are not shackled by established practices as may be the case in a programme that has been operating for a longer period. There are seemingly fewer empires to dismantle and toes to tread on.

Students enrolling in the degree come from both the Pacific island states and territories served by USP and beyond (including Australia and Federated States of Micronesia). They can enter the programme as undergraduates (as in the other common law jurisdictions including Australia, New Zealand and the UK, but unlike the USA where law is normally a post-graduate course of study).[23] Many however are mature students with previous working connections with law, and some already hold a first degree, even though this is not an admission requirement.

As indicated above, law is also studied at USP at pre-degree level through a variety of modules that lead to a certificate (and pre-1994 a diploma) in law. Study is by distance learning supplemented by tutorials conducted by satellite contact through USP centres based in the member countries. The range of subject areas available through this means is described elsewhere.[24] Many students enter the law degree programme through study by what is termed 'extension' and are entitled to do so if they secure the requisite grade.

At the other end of the law education spectrum are the professional courses. From 1998 the Postgraduate Diploma in Legal Practice has been offered to prepare students for admission into practice in the region's countries.[25] A programme of continuing legal education is also offered to the practising legal profession, to judicial and court administrative staff and to the general public.[26]

Structurally the responsibility for planning, designing and delivering the law programme is carried by the School of Law (law degree and extension studies) and the Institute of Justice and Applied Legal Studies — IJALS — (clinical input on the degree, the Postgraduate Diploma in Legal Practice and continuing legal education). IJALS also has a research and technical assistance brief in applied legal matters, for example environmental law and law reform.[27]

[22] As someone who initiated the move in law at USP for the introduction and integration of clinic and skills, I speak from personal experience!

[23] For an overview of the routes into legal practice in a range of countries, both common law and civil see 'The Lord Chancellor's Advisory Committee on Legal Education and Conduct' *First Report on Legal Education and Training*, ACLEC (1996) Appendix H.

[24] See *The University of the South Pacific Calendar* (1996) 385–9, 421.

[25] The details of this programme are set out in *Postgraduate Diploma in Legal Practice — Course Summary* (1996).

[26] These courses are described in the Institute of Justice and Applied Legal Studies' *Report October 1995 — September 1996*, 5–6.

[27] Id 6–7.

## III: CLINICAL LEGAL EDUCATION AT USP

For present purposes the clinic is taken to be the organised means through which student performances provide the primary material for analysis and reflection.[28] In other words it is the vehicle through which the student does law, and then thinks about the doing.

In the consultative process that lay behind the design of the wider law programme at USP (that is the beyond the law degree) it was proposed that effective legal education was:

> An on-going process, from undergraduate study, through vocational courses, to continuing legal education [and] . . . that all stages of legal education [should] reflect the need for an awareness of the practice of law and the skills and competencies implicit in this.[29]

This has been reiterated elsewhere with the MacCrate 'continuum' and its emphasis on skills and values.[30] It is suggested here that the clinic directly and powerfully complements this holistic and structured approach.

From 1985–94 (the time the degree began) law by extension was delivered through the distribution of extensive course materials (notes, exercises and case and legislation/constitution readers), the delivery where possible of tutorials (depending on a student's access to the satellite tutorial facility) and feedback on written assignments submitted by the students. It appears that there was no attempt to include more interactive and reflective strategies and in fairness these may have proven difficult to implement given the geographical spread of students and the then severely limited staffing resources.[31]

As will be indicated later, the recent advances in new technology, as well as an established law school, make a clinical component more of a feasible as well as desirable option. Also, it is right to say that the law school staff have now had more opportunity to reflect on their own practice in the context of a relatively new programme and to address teaching methods. Steps have been taken to enhance the extent of student participation in the learning process, including the distribution of study guides and problem solving exercises in settings that students can relate to in a vocational sense (many extension students study part time and have employment in law practice, law enforcement or public administration fields). Nonetheless, the logistical challenges posed by learning through a distance study mode are substantial, for

[28] This definition draws on a slightly lengthier one formulated by J Spiegelman, 'Integrating Doctrine, Theory and Practice in the Law School Curriculum: The Logic of Jake's Ladder in the Context of Amy's Web' (1988) 38 *J Legal Educ* 243.

[29] R Grimes, *Producing Tomorrow's Lawyers*, op cit (fn 13) 1.

[30] *Legal Education and Professional Development — An Educational Continuum, Report of the Task Force on Law Schools and the Profession — Narrowing the Gap*, (The MacCrate Report), ABA, 1992.

[31] Law by extension was largely the product of one person, Professor Don Paterson. He was later joined by Alan Marsh. In 1994 staff numbers increased to five and now (1997) Law and IJALS have between them 20 full and part-time positions either in post or in the course of appointment. These are supplemented by a visiting scholar scheme which is currently attracting a regular flow of short and long term visitors.

substantive learning in general and the clinic in particular. Academic results clearly indicate the difficulty of studying by extension.[32]

For the first year of the law degree programme (1994), teaching was exclusively in the form of the lecture/tutorial approach. While some have described any interactive session (for example seminar discussion) as clinical[33] (and many, if not most, law tutorials are based on fictitious problems posed for discussion), this is not taken as being clinical in the sense that is suggested in this paper. At the start of the second semester in 1995 changes began to occur. The Coordinator for Vocational Legal Education prompted staff discussions on experiential learning and a discrete clinical component on the degree. As a peripatetic facilitator, he introduced short but integrated components in several classes including contract, torts and criminal law in which the students were required to become involved in simulated clinics. In some instances they represented parties involved in litigation, maintaining case files in the process. A trial exercise was also conducted in criminal law and procedure where students advised and appeared for either prosecution or defence in a range of simulated exercises. By the end of 1996 these exercises were well established in the programme. A voluntary *Street Law* course was also offered to second year students which involved delivering a series of 'what are your rights?' classes to prisoners in a local young offenders prison.[34] Other law staff have indicated a desire to include a clinical element, by simulation, in their own courses including family, land and environmental law. An externship clinic is being discussed in commercial law.

The programme of professional and continuing legal education at USP is at an early stage of its development, but the interactive nature and the skills and values now incorporated in an expanding number of the law degree courses and in the school's general philosophy can be built upon.

The Postgraduate Diploma in Legal Practice has been designed to have a strong clinical focus. This programme equips students for practice in the region's jurisdictions. The participating students directly address the lawyering skills, the substantive laws and procedures and the ethical considerations relevant to legal practice in the South Pacific. Both simulation and live-client clinics have been planned with a closely integrated placement or externship element contained in the programme. The details can be found elsewhere.[35]

[32] W Narsey, *Academic Performance and Assessment at USP* (1996) 3–4 and Table 1b (Law).

[33] N Schultz, 'How Do Lawyers Really Think?' (1992) 42 *J Legal Educ* 67.

[34] My thanks to the staff at Georgetown University, Washington DC for their inspiration in the context of a *Street Law* education clinic. Several of the prisoners in the programme offered in Fiji have since enrolled on the Certificate in Law studied by extension — a working example of a legal education continuum! The live-client elective (LA331) has been available since July 1997 on the law degree, based in Port Vila, Vanuatu. This programme currently uses placements (externships) as the basis for the live-client experience. The in-house clinic (that is delivered within the law school and not through placements) is planned for 1998/9.

[35] See fn 25, supra.

The continuing legal education programme at USP is, by its nature, clinical, addressing the doing of practical law in a vocational context.[36]

Against this backdrop, what does the clinic have to offer in the context of the customs and cultures in the South Pacific?

### Custom as law and custom as practice

As with other parts of the world that were colonised by the European powers, the South Pacific has inherited a dual set of rules and structures that impact on the protection of rights, the administration of justice and the operation of the legal profession. At first sight one might be forgiven for concluding that the legal system is broadly the same in the countries of the region as it is in England or in Commonwealth countries on the Pacific rim.[37] The hierarchy of the courts, the reliance on, or cross-referencing to, non-indigenous rules (particularly court procedures [38]) and the general terminology used, can lead the uninitiated to this conclusion. Both law, procedure and customary rules and practices can, however, be starkly different, albeit under a veneer of familiar style and legalese.[39] This has brought controversy, for example in respect of proposals to reactivate the Fijian courts with their selected clientele and their specific jurisdiction.[40]

The clinic is in a unique position to address this duality. Law studies at USP are comparative in nature. This is meant in an international sense and in terms of the comparison between introduced law and custom law. The clinic

[36] See R Grimes, 'Identifying and Satisfying Needs for Continuing Legal Education in the South Pacific' *The Journal of Professional Legal Education* (1995) 13(2) 199.

[37] For an overview of the laws and legal systems of the South Pacific countries see Ntumy op cit (fn 7).

[38] For example, Order 1, Rule 7 *The High Court Rules* 1988 (Fiji) provides that where the court practice and procedure rules make no express provision, the practice and procedure of the High Court in England shall be followed

[39] For example, the work of the (presently dormant) Fijian courts — the Provincial and Tikina courts — see *Commission of Enquiry on the Courts* (The Beattie Report), Government Printers (Fiji), 1994, 160–78.

[40] Id 172–3. The Fiji Women's Rights Movement and the Crisis Centre, in their submissions to the Beattie Enquiry expressed grave reservations over the proposed reactivation of the Fijian courts (dormant since 1967). According to these organisations such a move would fail to support women's interests as customs (such as family 'rights') are largely defined (and ruled on) by men; custom and culture is not homogenous but often inconsistent in its application and definition; and, the court system applies only to indigenous Fijians, who are only one half of the population (as seen before fn 5, supra Fiji has a very substantial Indo-Fijian population). The Women's groups were also concerned that such custom courts were open to corruption due to their geographical and cultural isolation from the formal legal system and the regulatory effect of this line of accountability.

setting can exploit this by examining the interface between law and custom in a practical and applied sense.[41] Take the example of family law.[42]

The juxtaposition of introduced law (particularly precedent), domestic legislation and custom produces a complex and fascinating picture. Couple this with the significant levels of unmet legal need in the region and the viability of 'doing' family law cases in a clinical setting, and the relevance of the clinic as a method of study (as well as an important service provision — a point that will be examined shortly) becomes clear.[43]

Not only is the clinic well placed to examine the substance of customary law and its relationship to constitutional, legislative and extra-jurisdictional legal provisions, but it is also a laboratory for the study of dispute resolution.[44]

Much has been written elsewhere on the role of custom in the problem resolution process,[45] particularly in relation to land.[46] The increasing attention being paid to alternative dispute resolution (ADR) both within and beyond the South Pacific is also interesting for it emphasises the importance of a range of dispute solving techniques and processes, many of which have been willingly adopted by cultures that are some distance removed from a forum such as the Samoan Village Fono.[47]

[41] In the jurisdictions of the region custom can be a source of law itself. The position does vary as between countries but the general position (Niue and Tonga excepted) is that, providing the custom can be established to the court's satisfaction, and providing it is not inconsistent with the written constitution or legislation, then it is binding. For an interesting discussion on the relationship between custom and constitutional rights see *R* v *Loumia* [1984] SILR 51 and M Findlay, 'Criminal Laws of the South Pacific' in *Text and Materials on Criminal Law and Procedure in the South Pacific*, IJALS, 22.

[42] A very useful account of family law in the context of custom can be found in O Jessep and J Luluaki, *Principles of Family Law in Papua New Guinea* (2nd ed, 1994). PNG is not within the USP region but as a complex and culturally sophisticated (and extraordinarily diverse) country (over 800 languages are spoken in a country of an estimated three million people), it provides a wealth of legal and customary material that translates readily into the wider Melanesian, if not general South Pacific context. For those interested in pursuing the issue of the interrelationship and overlap between law and custom in the sense of the development of a distinct jurisprudence read J Nonggorr, 'The Development of an 'Indigenous Jurisprudence' in PNG: The Past record and Future Prospects' in *Custom at the Crossroads* (J Aleck and J Rannells eds, 1995) 68.

[43] Although the live-client clinic was not operative at the time, the development of the family law elective at USP (first offered in 1996) is well relayed in a paper presented to the Australasian Law Teachers' Association (Adelaide, July, 1996) — see N Hicks, *Working notes on Teaching Family Law at USP*. The cultural dimension in terms of both law and student background is addressed.

[44] I am grateful to Nina Tarr for her description of the clinic as 'the laboratory for studying the practice of law' in Tarr op cit (fn 2) 48.

[45] See J Zorn, 'Customary Courts and Customary Law: A Comparison of Papua New Guinean and American Indian Approaches' in *Custom at the Crossroads* op cit (fn 42), 171; and A Manarangi, The Customary Settlement of Disputes in the Cook Islands, in *Pacific Courts and Legal Systems* op cit (fn 7) 214.

[46] See the various papers contained in *Pacific Courts and Legal Systems* op cit (fn 7), under the section headed *Local Courts and Land Courts*, 73–150.

[47] The recent (1996) creation of the New Zealand Institute for Dispute Research and Resolution at the Victoria University of Wellington and the pioneering work of the Conflict Resolution Programme at the University of Hawai'i are two 'local' examples of the growing significance of dispute resolution studies. Of course ADR is an established feature of many law school programmes in the USA, notably at University College Los Angeles. The Village Fono is the custom based 'court' or elders' meeting forum in Samoa.

The clinic again provides an opportunity to incorporate many aspects of what in the 'developed' world would be termed 'ADR' in particular negotiation, mediation and arbitration. The emphasis at USP on the lawyering process as well as on substantive rules of law and procedure gives the students the opportunity to practise the process of solving problems. In the simulated clinic sessions, this can be stage-managed to the extent that a technique can be rehearsed and played out with outcomes manipulated to serve the learning objectives. In the live-client clinic the dispute resolution challenge takes on a new dimension in that this is for real, with all of the professional and personal ramifications that that carries with it.

But the clinic also has the potential to play a culturally significant and appropriate role. In some jurisdictions of the region, the law provides expressly for the consideration of mediation as a means by which the formal resolution of a dispute by the introduced courts can be sidetracked.[48] The potential for mediation in family law cases has also been noted.[49] Students undertaking clinic can not only take on board the regional provisions and variations as part of their South Pacific oriented studies, but they can directly address the skills of advocacy and negotiation that are such key features in the dispute resolution process. The development of ADR generally, with specific reference to local custom, has been the subject of recent developments in Vanuatu.[50]

There is a further aspect of custom that has substantial relevance from a clinical educator's viewpoint, that is the exercise of power. Authority in South Pacific countries is, in a *de jure* sense, rooted in written constitutions. These were largely the product of further colonial input during the lead-in period to Pacific island states acquiring their independence.[51] These documents lay down the structure of, and in most cases the relationship between, the legislative body, the judiciary and government. Some make provision for a set of rules or leadership code to regulate the exercise of power by elected and appointed leaders.[52]

[48] For example in Kiribati the magistrates' court, when hearing civil and land cases, is obliged to 'promote reconciliation . . . and encourage and facilitate settlement . . .without recourse to litigation'. Section 5, *Magistrates' Courts Ordinance* Cap. 52, 1977.

[49] The Beattie Report, op cit (fn 39) 125–6, 138–9.

[50] In recommendations made by the law school to the Government of Vanuatu in mid 1996 the role of ADR was highlighted in the field of juvenile justice. With demographic changes taking place, including population drift from rural areas into the capital, Port Vila, the incidence of criminal activity (although admittedly relatively low) has increased, and is a cause of considerable concern to government and society. It has been suggested that at a local level, responsibility and powers might be given to a village tribunal (consisting of elders) to intervene in cases of deemed anti-social behaviour with a range of (limited) sanctions and remedies available in the context of offender, victim and wider family. It remains to be seen if these suggestions will be acted upon and if so whether the situation improves. What is perhaps significant is the approach of using custom and concepts of 'introduced' or imported law demonstrating the potential for a fresh examination of dispute resolution in an ever changing cultural and legal scene.

[51] For source material see *Pacific Constitutions* Volume 1 Polynesia, and Volume 2 Melanesia and Micronesia, (1983). The constitution making process is described in D Paterson, *Introduction to the Constitution* (1992)19–25. Interesting background reading can be found in Crocombe op cit (fn 6) 141–70.

[52] For example, Ch 10 (Art 66–8) of the *Constitution of the Republic of Vanuatu* 1988.

However from a customary point of view, the position can be very different. In very general terms, but significantly for the purposes of this examination as will be shown, the Polynesian countries of the South Pacific within the region served by USP (the Cook Islands, in part Fiji, Tonga, Tuvalu and Samoa) are historically bedded in a chiefly system and a largely inherited and immovable status. It is a similar story in Micronesia. By contrast, Melanesian society appears to see status as something largely achieved by the acquisition of wisdom, personal wealth and an intricate system of grading.[53]

It is not difficult to picture possible conflicts between the exercise of constitutional power and the use of authority founded in the chiefly or big fela[54] system. To what extent is the chief's word law in the face of ever increasing changes to the political and economic life of the region's countries? What happens if those of chiefly rank or position become vested with constitutional power? Under what circumstances can they be held accountable legally, culturally and socially? Combine this with the historical respect for power (be it wielded by chiefs, colonisers, donor aid agencies or in-country working expatriates) and the situation becomes immensely complex.

This has import for the clinic, for students are exposed through simulation or live-client work to some of the ethical considerations of the substance and practice of law. Challenging authority where it is alleged that power has not been lawfully executed is problematic. It is perhaps unsurprising to see that corruption within government service and in the public sector is widespread. This is not to suggest that abuse of power is peculiar to the South Pacific. Far from it! Rather, the process of accountability in this part of the 'developing' world is less visibly structured and the use and abuse of power that does go on is often seemingly overt. Several startling examples can be cited.[55]

The exercise of power has several important facets. Lawyers hold positions of considerable influence in Pacific island societies. Those prejudiced by the abuse of power are often in poor positions, socially and economically, to

[53] A detailed examination of social rank and its acquisition can be found in several papers in Crocombe.op cit (fn 6), including Bole F. *Fiji's Chiefly System and its Pattern of Political Self-reliance*, 67; A Sokomanu, *Government in Vanuatu: The Place of Culture and Tradition*, 49; and, R Moses and G Ashby, *Tradition and Democracy on Pohnpei Island*, 205

[54] Melanesian pidgin term for chief .

[55] For an up-to-date and fascinating account of corruption in the South Pacific see the main feature in *Pacific Island Monthly*, December 1997. This, amongst other things, looks at recent events in Vanuatu. According to the Public Report of the Ombudsman of Vanuatu, *The Provision of Bank Guarantees*, of 3 July 1996, the then Minister of Finance, the Governor of the Reserve Bank and the Prime Minister were all implicated in varying degrees in the attempt to defraud the country of US$100 000 000. It was not the first time that the Minister of Finance and the Prime Minister have been cited for breaches of the country's Leadership Code. In Fiji there is, at the time of writing, an investigation and prosecutions on-going into alleged corruption and misappropriation of in excess of F$220 000 000 in the form of unrecovered loans from the National Bank of Fiji. Lawyers, government ministers and senior civil servants are suspected. High value scams have also been perpetrated or attempted in the Cook Islands, the Marshall Islands and Nauru. It must be stressed that the wrong-doing, alleged or implicit, in these investigations is not peculiar to the South Pacific. The so-called 'developed' world is no stranger to corruption. The point being made is that there are strengths and weaknesses in both Pacific island and 'Western' cultures that show themselves most clearly in the operation of the legal systems.

challenge the situation. The law may be very clear in terms of the illegality of certain actions but the processes by which those in question are called to account are at best ponderous and ineffective and, at worst, screens behind which the culprits can hide.

The clinic, using case studies based on some of these instances, or through advice and representation to clients who suffer as a result of corruption, can not only usefully highlight the legal and ethical issues at stake but can also provide a means (albeit modest) by which that abuse may be curbed. As will be seen below the service provision of a live-client clinic in South Pacific states has the potential to be of considerable importance in the provision of even the most basic legal services. Some of the cases will almost inevitably, in such relatively small communities, involve the checking of the exercise of power.

**The clinic and the students**

Much has been written elsewhere on the role of clinic in the pedagogic process and of the opportunities the clinic provides for students in terms of a very different and often profound learning experience.[56] How does this translate into a South Pacific context? Do the students' own cultural and ethnic backgrounds impact on the ethos and practice of the clinic and, perhaps more importantly, are the demands of clinical education sensitive to issues of ethnicity and culture? Does the whole work? What are the consequences flowing from the operational context?

There is always danger, and it is ever a challenge, implementing concepts that are introduced from one cultural setting to another. The clinic comes from a largely liberal, western and white heritage, even if the use and development of clinical techniques in law teaching have since dramatically expanded (both in terms of geographical spread and ethnicity of participants — staff and students).[57] Both law and the legal system in the South Pacific share a similar history in the sense that what we have, in the countries of the region and its rim, is a product initially imposed from afar but then adapted and converted for use at a national and local level. Clinical education at USP is also the result of introduction and adaptation and the characteristics and needs of the students are an integral part of this process.

Law students in the South Pacific have come from a rich variety of backgrounds dominated by the three principal cultures identified above — Polynesian, Micronesian and Melanesian. Several significant issues flow from the students' cultural histories that affect their studies and that are addressed in turn by the clinic.

[56] For a contemporary account see H Brayne, 'Student Centred Learning and the Clinic', in *Clinical Legal Education — Active Learning at Your Law School* (H Brayne, N Duncan and R Grimes, eds, forthcoming, 1997).

[57] For reports on the extent of this development see 'Clinical Legal Education Australia' (1996) 10 *Kingston Legal Centre*, 1–2 and 3.

*Language*

Although it is the official medium for instruction at the university, English is the second language of most USP students. In a significant number of cases it may be the third or even fourth language. Although the university sets admission rules that are aimed at ensuring a basic competency in the language, the need to work in English, especially in a discipline such as law where the accurate use of language is so important, is often problematic.[58]

The simulation clinics and the live-client elective both contain the means by which this linguistic challenge can be tackled. Through the use of regular and repeated tasks, and with structured feedback and discussion, the students face this issue. The principle of using reflection and practice as a vehicle for learning is as relevant to the use of English as it is to the study of the substantive rules of law. One particularly useful device that has arisen in the context of USP's clinical work has been letter writing. Students are asked to compose correspondence with clients in which the legal issues must be identified, problems addressed with realistic strategies and advice given. The requirements of research, problem solving and drafting all call upon the students to demonstrate their command of the language as well as the more overt legal skills, ethical considerations, principles of law and procedural issues. Doing law is also about doing language.

There is another aspect to the clinic and the use of language. Although English may be used as the basis for teaching at USP, the clinic provides a very clear opportunity for the use of languages other than English. An example may make the point clear. In the second half of 1996 a *Street Law* (legal literacy) course was offered on a voluntary basis at a young offenders institution in Fiji.[59] The course was prepared and delivered by second year law students under the supervision of law staff. The majority of the prisoners were indigenous Fijians with a small minority being Indo-Fijian (Hindi speakers). Although the materials supporting the course were written in English (which proved to be a significant challenge for the students) because of the linguistic limitations of the staff and the ethnic mix on the programme the main class sessions were delivered in the same language and the small group work was conducted in the languages of the participants. An attempt was made at each session to provide a Fijian and Hindi speaker. Although the project was experimental and many lessons can be learnt from how it operated, the feed-

[58] As a result of a decision of University Senate on 18 September 1996, the normal requirement for admission to the University in terms of competency in English was amended in that any intending law student now has to score a minimum mark of 60% in Foundation English or its equivalent. This raising of standards was in response to reported difficulties on the law programme experienced by some students in the use of English. As it affects admission only, the raising of standards in this way does not address the problems faced by students already enrolled in the law degree, nor does it ensure a working competency after admission. Support can however be obtained through a dedicated unit in year one and through student counselling provided by staff of the University's Centre for the Enhancement of Learning and Teaching.

[59] The *Street Law* programme ran from August to October 1996 at Nasinu Prison, Suva and was supported by University Extension and the Government of New Zealand through their embassy in Fiji. Twenty-four prisoners took part together with 18 law students. It was overseen by two staff members including the writer.

back from participating students (including the prisoners) indicated that the use of the local and/or indigenous language(s) alongside the use of English was useful as a teaching and learning tool. Given that many of the law students who go on to practice will be called upon to work in two or more languages (English normally being one as it is, for the main part, the language of the courts of the region) the clinic provided a useful opportunity to introduce the study of law in the introduced as well as indigenous and local languages.

### *Expectations*

In the South Pacific schooling might be described as 'traditional'.[60] It is conducted in a competitive environment and is dominated by assessment led curricula. This is not peculiar to the region, nor exclusive to secondary education, but it is quite clear when running clinical classes that students are most unused to participating in the learning process. It might also be said that the passive learning experience, in which students are largely the recipients of knowledge, forms a substantial part of tertiary education too. In part this is what the clinical movement is reacting against. The teacher led and dominated approach to any education, including law, fails to utilise one of the valuable and readily available resources — the student.

Couple a tradition of passive learning with specific cultural values and characteristics and the position can become even less participatory for the student. The now Head of the School of Humanities at USP, Professor Konai Thaman, (herself a Pacific islander) has produced a useful set of contrasting emphases that illustrate the complexity of the situation. Her comparisons can be summarised as follows:

CULTURAL ORIENTATIONS

| **Pacific Island Cultures** | **Western/Industrial/Urban** |
|---|---|
| Spiritual | Secular/scientific |
| Respect for rank/authority | Universals |
| Specifics | Equality |
| Conformity | Individuality |
| Interdependence | Independence |
| Other's feelings | Individual rights |
| Blood ties | Nuclear family |
| Restraint | Criticism[61] |

Take just one of these — respect for authority. Many students at USP come from societies where social rank forms an important part of daily life. This is especially true in Polynesia.[62] University teachers are seen as high ranking and must, in consequence, be respected. This encompasses the concept of

[60] See B Davis in *Hints for Teachers* (1996) 15.
[61] Thaman K. id, 22.
[62] Notably students from the Cook Islands, Samoa and Tonga and indigenous Fijians (whose political culture is predominantly Polynesian).

disrespect. For example, if a teacher is challenged, even in academic debate, this can be seen as disrespectful. As in many other countries, particularly in the 'developing' world, if the teacher happens to be male or white the situation can mitigate even further against active and willing student involvement. None of this is to suggest that Pacific island students are alone in finding it difficult to be assertive or to feel at ease in dealings with teaching staff. In the context of the South Pacific, however, it is of particular relevance in the work of the university in general and the clinical programmes in particular.

How then does the clinic contribute towards this potential cultural barrier to effective learning and how can the cultural characteristics be complemented by the ongoing pedagogy? The clinic offers the means by which a student may share in learning. First, clinical approaches demand the direct and regular involvement of the student. This might be seen as culturally threatening and inappropriate, but the use of a clear rationale for the involvement, the setting of realistic and well articulated learning outcomes and the use of support networks to encourage student participation, are all means by which learning by doing can be made to work. Secondly, and related to the first point, the clinic can bring into sharp focus the power relationship between staff and students. Seeing the teacher come off the lectern and mingle with the crowds, having both staff and students talk through course objectives, and (horror on horror!) asking students to participate in the assessment of the course, can all lead to a democratising of the educational process. This is not democracy for its own sake or some esoteric moral and political principle (although that could be argued as a valid end in itself) but it is for the improvement of the experience for the student and an increase in the effectiveness of the learning that goes on.

### *Communications*

Closely linked with education experience and expectations (for staff and students) is the issue of communication. How students interact with each other and how they communicate in both verbal and written form is central to the work of the clinic and is greatly affected by cultural and ethnic characteristics. For example, the issue of respect for the teacher has already been mentioned. This can restrict the nature and extent of communications.

Individually, many students are reluctant to express views. This may not be peculiar to the South Pacific but the personal embarrassment is often extreme and painful to observe.[63] Clinical methods do address this head on as it is part of the rationale of the courses to require the active involvement of the individual. Apart from using encouraging and supportive techniques (for example, giving model presentations, private feedback and making the interaction as good fun as the circumstances permit) the spreading of the participatory principle through the student body helps lessen the difficulty for the student. An example may make the point clear.

On the law degree programme second year students are currently required

[63] This is, to an expatriate's eye, noticeable with students from the Solomon Islands, Vanuatu and, to a lesser extent, Fiji.

to take a summer school course on legal research and writing.[64] This course concentrates on basic research techniques and introduces students to the primary and secondary sources of law.[65] The course is designed on clinical lines, with simulated case studies that bring the research requirement into play. Students are allocated to groups or 'firms' and work on the research exercises together. Each firm must report back verbally to the whole class on the results of their work and this takes the form of individuals sharing the responsibility across the various case studies and research tasks. Each student is therefore called upon to make a verbal and practical contribution. The cultural hesitancy in participation is in part acknowledged and overcome by the supportive environment of the course and the formal requirement of the programme. As these contributions form part of the assessment criteria this too can encourage participation. More is said on assessment shortly.

In group work (a strong feature of clinical programmes at USP and elsewhere) some interesting results flow from cultural attributes and differences. Understandably, students from similar national, ethnic and/or cultural backgrounds often form a close bond both in their work and socially. To recognise the significance of such practices is important in view of the weight that the students attach to this. As noted elsewhere, Pacific island students are not only used to operating in this way in many aspects of their lives, but teaching that builds on this tendency can produce good progress and grades.[66]

The cultural barrier that may otherwise limit interaction between staff and students can be overcome in the group or peer setting and meaningful discussion can take place in a less inhibited way.[67] To add a clinical gloss to this, the writer's personal experience at USP on the *Street Law* programme indicates that the presence of both staff and students in small group discussions facilitates mutual discussion.

### *Behaviour*

Other aspects of student life in the context of the clinic should be mentioned. These fall under the much used expression 'the Pacific way'.[68] Life in the Pacific is often said to be slow paced with a contrasting sense of urgency in many aspects of it as compared with the so-called 'developed' world. Prioritisation, punctuality, conceptions of space (particularly personal property boundaries) and the ordering of work and time differ significantly in many instances. Regular and timely attendance at class can be problematic, as can the submission of assignments and the completion of other tasks, by a

[64] LA200. For the course outline see Law at USP Handbook, 1996, 18.

[65] Year one is, at the time of writing, principally a broad based humanities course with a relatively light legal component on legal systems. From mid 1998 this will change with more emphasis on law subjects in year one with the LA200 unit having become a first year subject.

[66] Aalbersberg, op cit (fn 60) 10.

[67] See Thaman, op cit (fn 60) 24.

[68] A fascinating account of Pacific island culture and the workings of the 'Pacific way' in the face of other (non-Pacific) influences can be found in R Crocombe, *Cultural Policies in the Pacific Islands* and in particular in L Lindstrom and G White, *Culture-Kastom-Tradition — Developing Cultural Policy in Melanesia* (1994) 21–42.

specified deadline. As in many other aspects of life in the South Pacific, the indigenous and the introduced may be at odds. An example from the practice of law may make this clear.

Most countries of the region follow a professional practice code. These codes may have been drafted by the Law Society or Bar Association of the country in question or may be adapted or simply lifted wholesale from another jurisdiction.[69] The content of these codes and the ethical issues arising form part of the curriculum of the law programme, especially on vocationally focused courses and in clinical programmes. Students encounter concepts such as individual (client's) rights, confidentiality and client care (prompt and efficient service, for example). In the simulated classes (and in the live-client work soon to commence) the obligation on the lawyer from a professional perspective is (or will be) examined. It may be culturally acceptable, and, indeed expected, for the lawyer to treat the client with a standard of care and service that may diverge from the expectations set out in that country's code of professional responsibility. To what extent does this create conflict? What if a student ambles into 'court' an hour late, or (as happened in Fiji in 1996) the lawyers are in court but the magistrate is not (he was apparently on holiday, a situation seemingly unknown to anyone else)? How can the cultural and the written rules be weighed and balanced?

The answers so far as they exist are hard to identify other than to say that if there is a common denominator surely it must be that the effect of the lawyer's actions on the client (and possibly the client's extended family or tribal group) must be taken into account and, if say tardiness, damages the client's interests, the lawyer must be held to account. Making the lawyer accountable to the client and in a public way at least puts matters out in the open and cultural expectations can temper the ultimate response. The clinic and the 'Pacific way' therefore work in tandem, throwing up challenges to both staff and student.

There is one more aspect of behaviour that has import in teaching in a South Pacific context — body language. Teachers who are concerned with improving the level of interaction with students will be aware of the significance of non-verbal forms of communication and the messages contained in them. Those engaged in law teaching, especially on counselling and interviewing programmes, will know the importance of body language in the work of the lawyer.[70] Both teaching techniques and lawyering skills fall overtly within the domain of clinical courses.

In Pacific island communities eye contact is often avoided, especially when

[69] For example, in Fiji there is a Code of Ethics that draws heavily on the Law Society of England and Wales in matters of interpretation and coverage. This code (1984) is presently under review. In Fiji and Tonga the rules incorporate the International Code of Ethics of the IBA, London (1956/64). In Samoa the New Zealand Code of Ethics is used (1976 edition — in New Zealand there is now a 1996 version). In the Solomon Islands there is specific national legislation on professional conduct (1995).

[70] A useful if somewhat over simplified account of non-verbal communication (including gestures and interpretations) can be found in H Twist, *Effective Interviewing* (1992) 60–71. North American readers may be more familiar with such texts as P Bergman, D Binder and S Price, *Legal Interviewing and Counselling, a Client Centred Approach* (1991).

the person being addressed is perceived to be of higher social status. The student/teacher relationship is affected by this.[71] A host of other forms of behaviour can also be mentioned including, covering the mouth or face with the hands, giggling, turning away from a person and speaking in a whisper. In class all of these are issues that must be sensitively handled if respect is to be shown and effective learning conducted. The clinic provides an ideal vehicle for managing this interface. Not only is the environment user friendly from a student's perspective but the context within which learning takes place, focuses on matters such as behaviour — something that arises directly in the study of lawyering.

### *Performance and assessment*

Student performance and the assessment of it poses many challenges for all participants in the learning process. Law teaching has long been dominated by methods of assessment that are summative in nature, often emphasising what a student can recall from memory, in the context of an examination hall and in the space of a short, intense period of no more than two or three hours. So much has this model of assessment become the norm that students can be heard to ask: 'is it on the exam paper?' as a precursor as to whether the subject in question is actually worth their time studying. In such a situation it is perhaps not surprising that curricula becomes assessment led.

There is however a slowly but surely developing critique of assessment methodologies that attempts to clarify what is being assessed, how and why. The fundamental principle upon which this analysis is based is to make assessment part of the learning process and more than simply a measuring device. As a Yorkshire farmer once wryly observed at market: 'pigs do not get fat by being weighed'. Ramsden clearly notes the uncertainties of assessment and makes the point that unless we understand that assessment is a relativistic exercise, we have little hope in making it part of ongoing learning.[72]

In the South Pacific the preponderance of summative assessment methods is most apparent.[73] Students are well used to examination dominated courses and perhaps understandably, (especially given the pressure they are under to achieve high grades — an issue explored below) are almost obsessively concerned with performance as reflected in the assessment results.

Before turning to the role that the clinic has to play in the context of assessment and student performance a further piece of the background cultural jigsaw must be put into place. Making the quantum leap between secondary (high) school and university is a significant challenge for any student. For Pacific island students it is all the more so. For many, they are studying in

[71] See V Toganivalu, op cit (fn 60) 21.

[72] See P Ramsden, *Learning to Teach in Higher Education* (1992), 187.

[73] The standard assessment regime at USP is a mixture of written course work or assignments coupled with an end of semester unseen examination. According to university regulations the weighting of each element must be no more than 60% and no less than 40%. The majority of law courses use a 40/60 split in favour of examinations.

another country.[74] It is perhaps not surprising therefore that the learning curve for students tends to be a steep one. The failure rate for external (distance learning) students is significant and the failure rate of internal students in the early stages of their studies is also high. Those that do stay in the course generally perform well and to a standard comparable to other universities.[75]

So what does the clinic have to offer so far as performance and assessment is concerned? As suggested above, the starting point is that the clinic offers the means by which students take a more active part in their learning. Their increased level of involvement focuses not only on the substantive knowledge being assimilated but on the ways in which that assimilation can be measured. Because the process of learning is seen in a more holistic way, with attention being paid to both what students learn and how they learn it, assessment falls under critical scrutiny. In a nutshell, performance and assessment must, if they are to fit the interactive ethos of clinical education, be formative in nature thus adding to the learning rather than simply measuring achievement.[76]

This model of teaching and learning is not without its challenges on the assessment front. There are several issues that arise here. First, experiential learning tends to enthuse students. Their exposure to real or realistic problems gives study a cutting edge. Positive feedback from students about their experience abounds.[77] This, in itself, is of course no problem. Neither are the high levels of motivation that result, nor the good grades that follow, problematic.[78] The difficulty arises when comparisons are made between the results achieved in other subject areas. Innovation often attracts criticism and nowhere more so than from the clinic. Is the assessment regime too soft? Can student participation in assessment maintain objectivity? What implications are at stake for other/our courses as a result? The success of the clinical student can cause disquiet amongst other faculty members. It is as if the more established assessment techniques are themselves beyond critique, being considered by those that use such a methodology as being based in clearly established objectivity. Perhaps the answer is more straightforward — students tend to do better in classes which they enjoy and work hard at! In this respect the clinic at USP appears to differ little from the writer's experience in other institutions.

[74] USP has three campuses — Laucala Bay, Suva, Fiji; Alafua, Apia, Samoa; and, Emalus, Port Vila, Vanuatu. Law is based in Vanuatu and IJALS in Fiji. The bulk of the university's full-time students are at the Fiji campus.

[75] Valuable information on these and other matters can be found in *USP Statistics*, 1996 and Narsey, op cit (fn 31).

[76] For an instructive account of the grading of clinical classes generally see *Clinical Legal Education Australia*, op cit (fn 57) 8–13.

[77] See N Duncan, 'Preface' *Clinical Legal Education — Active Learning in Your Law School*, op cit (fn 56).

[78] In the Sheffield Hallam Law Clinic, with which the writer has been involved, academic grades in clinical work are impressive and generally exceed levels of achievement in other courses: see *Law Clinic Annual Reports* (1994/5) and (1995/6) 7 and 10–11, respectively. Interestingly students who take the clinical option improve their performance in other study areas.

The second difficulty is more Pacific focused. Assessment is a complex issue that can reach far beyond the grading of the individual student (as if that were not complex enough). Group and peer assessment comes into the frame especially when much of USP's clinical work takes place in team or 'firm' settings. To understand the problems that are thrown up by using assessment criteria that take into account team work a little background information is again required. Students at USP have to meet tuition and related charges. The university (rightly or wrongly) does not become involved in how those fees are to be met. That is a matter for each student to settle. Many students obtain grants and scholarships from aid agencies, foundations or from their own governments. Those who are unable to secure funding from external sources must raise the funds from family, friends or part-time work. Given the economic base of the region this is, for many, a daunting task and great privation can result. Those that are financially supported through either source are under considerable pressure to achieve and indeed their future funding may be at risk.

This was brought home very graphically by a recent experience in a clinical class at USP. The students had been allocated into firms and were set a research exercise based on a case study. They had to advise a fictitious client based on the research that they conducted as a team. The assessment regime, which had been clearly explained to the students at the outset (who had not been consulted in its formulation — a lesson to learn indeed), gave an individual grade for the student's oral presentation based on the research, and a group mark for the file that had to be presented at the end of the course. The file contained documented evidence of the research and advice letters that had been drafted. Following the release of the results, several students expressed concern that the final mark did not reflect their own ability and that they had been pulled down by less able or active members of the firm. In the responses to the student course evaluation sheets it became evident that however much the students had enjoyed the programme (and they apparently did) the group mark was highly unpopular. The issue was confronted in a meeting at which the staff member responsible emphasised the importance of what was learnt rather than what grade (above fail) had been achieved. A quiet but poignant comment then came from one of the students who gently pointed out that for those with scrutinising sponsors or demanding parents the actual grades achieved were of considerable relevance and discussions on more general learning strategies did not carry the same weight. It is perhaps sufficient for present purposes to note that a slightly different assessment regime was adopted next year!

A further development that has a very Pacific flavour can also be raised. The clinic actively encourages team work. As mentioned above, the students are generally comfortable with this for it attunes closely with working practices in many Pacific island societies. Students at the university readily form working groups even when the course may not demand it. This appears to be particularly true of students from the Solomon Islands and Samoa. The results of such collaboration are interesting. In courses where individual assignments are required there is often a close similarity in both form and

content where students have worked together. There are, of course, strict rules against plagiarism that are well known to the students and where it is clear that one piece of work is a copy of another the rules are brought into effect. But the results are more subtle than those produced by simple copying. Evidence for this comes from the examination room where again there are striking similarities between performances of students from similar ethnic backgrounds. The operational rules in exams are even stricter in terms of the prohibition of communication. Plagiarism is also outlawed. Why is it then that students who do work closely together produce work that is qualitatively and quantitatively similar? It is beyond the scope of this paper and the author to launch into a precise explanation of how and why this should be. It is sufficient to say for the present that an intuitive process grounded in cultural familiarity would appear to contribute to the learning process and this is reflected in the academic performance of students.

For the clinic this of great importance for not only is group work a central feature of its operation but if learning can be achieved by interaction and mental osmosis, the opportunity to make assessment an even greater learning tool is presented. Whether the potential of the group to facilitate the learning process can be better defined and harnessed remains a challenge for clinicians and students alike.

For law teachers generally the question of what we are assessing and why has been a largely neglected topic. Making assessment part of learning is a challenge that is not simply the prerogative of clinicians.[79]

## The clinic and legal practice

As a model for educating lawyers in the South Pacific the clinic has particular advantages. Some, if not all, of these are shared with any hands-on programme in which students study law in its applied context. However, the particular history and consequential needs of the region makes the clinic an even more pertinent and appropriate vehicle for learning.

The relevance of the clinic to the practice of law can be summarised as follows:

### *Providing lawyers for practice*

As seen above, until 1994 any person intending to practice as a lawyer in a South Pacific jurisdiction had to obtain their education out of the region. It was only on their admission in another (non-regional) country that they could return to the South Pacific to practice. Many did not return or if they did so they were ill equipped in terms of actual practice requirements of the jurisdiction concerned. This situation was aggravated in the case of Fiji, for following the military coups of 1987, a substantial number of experienced

[79] The theoretical and practical issues surrounding assessment and the inevitable link between this and setting learning objectives is carefully and usefully explored in M Le Brun and R Johnstone, *The Quiet (R)Evolution* (1994)149–226.

lawyers (mainly Indo-Fijian) left the country.[80] The result has been to leave the region's countries poorly provided for by way of legal services, both in quantity and quality.

The introduction of the law programme at USP will shortly address this still existing deficiency (the first law graduates emerged in late 1997). The integration of a strong clinical element is not only focusing on the learning strategies for law students but is establishing a strong link with the requirements of practice. Clinicians, particularly in jurisdictions where law is studied at undergraduate law school level, have rightly gone to some lengths to distance themselves from an overtly vocational link between the clinic and practice. The clinic is a means by which law can be studied, not simply a stepping stone to practice.[81] In the South Pacific the clinic is a bridge between the class room and the court room or law office. It is not any the less 'academic' for being so.

The development of law study for the provision of practitioners is entirely consistent with the purpose of the programme and certainly supported by the clinical input.[82] This is examined later (***Providing a service***).

### *Addressing custom as law*

As already noted, in the majority of jurisdictions of the USP region custom is recognised as a source of law.[83] Given its legal and constitutional base, customary law features as an integral part of law studies at the university. Not only is custom a consideration in all subject areas but a dedicated unit is devoted to customary law.[84] Apart from one or two notable and important cases, custom is very much unlitigated.[85] This provides a considerable challenge to law teachers in that unless there is clear material available on custom, either through decided cases or local knowledge (custom not only differs from

[80] This is commented upon in the *Commission of Enquiry on the Courts* (Fiji) op cit (fn 39) i-ii.

[81] The position is somewhat different in the USA where if it were not for the clinic most students would get little, if any, exposure to practice and lawyering skills, there being no apprenticeship or supervised practice stage before admission.

[82] The link between the law degree and practice was clearly identified in the Recommendations of the Law Curriculum Workshop, op cit (fn 18) 1.

[83] Custom is recognised as a source of law in all jurisdictions of the USP region except Niue and Tonga. In some countries (Cook Islands and Tokelau) this is limited to land disputes and in others there are restrictions (for example, in Samoa custom must have the force of law by legislation or court judgment). In Fiji, the Solomon Islands and Vanuatu, custom is to be followed unless it is repugnant to subsequent legislative or constitutional provision, or in the case of Fiji, against general humanitarian principles. For a more expansive account of the position see D Paterson, *Introduction to Law* (SEC01), Course Book 2 (1993) 122–61.

[84] J Zorn, *Custom and Customary Law* (SEC16), Course books 1 and 2 and Reader (1994).

[85] Reference has already been made to *R* v *Loumia* (1984) SILR 51 (fn 41, supra). Note also *In Re B* (1983) SILR 223. The *Loumia* case centred on the validity of payback (retaliation killing) as a defence to murder, where payback was customary practice. Payback was held to be inconsistent with the right to life recognised by the Constitution. *In Re B* custom dictated that a father should have custody of the children of a relationship in the event of the parents separating. This was not applied by the court as it was thought not to be in the best interest of the child — legislation required the court to consider the child's interests as of paramount importance.

one country to another but from one island or even one village to another[86]), much of the discussion on custom will be highly speculative in nature.

In the live-client clinical context this difficulty is addressed, at least to an extent, in that the clients themselves provide the material for study. Bearing in mind the likely focus of the clinic (on areas of law largely unserviced by the legal profession, including customary land disputes and family law) it is highly probable that the students undertaking the live-client studies will come face to face with custom as law.

### *Practising procedure*

The pre-degree certificate programme and degree level studies at USP cater for the rules of procedure in both criminal and civil litigation and in the review of administrative action.[87] The study of procedure — that is, what happens in courts and tribunals from the initiation of litigation to its conclusion — is fertile ground for clinical approaches to teaching, both using simulations and working with real clients. The distance learning units incorporate realistic case studies, but these can hardly be termed clinical due to the lack of face to face teaching opportunities. The introduction of summer schools and country visits and the use of locally based tutors may open up extension courses to a greater clinical component. Improvements in technology may also aid this development (for example, interactive videos and audio-visual conferencing).

On the face to face degree the clinic is becoming increasingly important in its several guises. Through the use of simulation, in the form of trial exercises, students devote most of a semester to the conduct of a criminal trial, including the pre-trial preparation and hearings. At the time of writing, the civil procedure and alternative dispute resolution course and the electives in evidence and the live-client clinic have recently been established, all using clinical methods. These are designed to incorporate a strong clinical component. Indeed, it is difficult to see how such practice oriented courses can succeed without the clinical input. To consolidate this development a member of the law school faculty was appointed in 1997 to take responsibility for the live-client clinic and to inject a simulation input, in co-operation with other staff, on other existing and planned programmes. His (and it is a him) role is therefore, in part, to act as a peripatetic clinician supporting the integrated approach.

[86] For an account of regional, national and local customary variations and differences see *Custom at the Crossroads*, op cit (fn 42). Although focusing on custom in Papua New Guinea this book provides valuable material on the customary law position in other jurisdictions including the USA and parts of Africa.

[87] Dedicated units focus on *Criminal Procedure* (SEC11), *Criminal Practice* (SEC17), *Criminal Law and Procedure* (LA206), *Civil Procedure* (SEC08), *Civil Procedure and Dispute Resolution* (LA311), *Evidence* (SEC09), *Law of Evidence* (LA 310), *Introduction to Law* (SEC01) and *Public Law* (LA208). The SEC classification refers to the certificate programme (pre-degree) studied by distance learning; the LA classification refers to the degree level study courses.

*Learning skills*

This is perhaps one of the more contentious of the issues facing clinical education, especially, but not exclusively, in countries where law is studied at first degree level. Universities have been slow to respond to the introduction of skills based teaching beyond rather broad and unspecific assertions that a law degree is to provide analytical and research skills. The desirability of including skills relevant to intellectual development and lawyering practice have been specifically identified by the professions, and by those engaged in contemporary reviews of legal education provision.[88]

By many of those resistant to change in the context of law teaching, clinic is seen as primarily skills based, and skills are seen as essentially of a vocational nature. It is said by such critics that things vocational do not properly form part of 'academic' education and should be left for the vocational stage itself.[89] There is a growing body of opinion, however, that is advocating change and that is giving the skills debate the theoretical underpinning that has up until recently been missing.[90] In the development of clinic at USP the same resistance has not been encountered. The inclusion of both clinical methods and skills based study has been broadly welcomed by practitioners, the judiciary and law school staff. Some colleagues have expressed concerns, but these have been focused on their own development needs in terms of introducing skills and clinic based approaches into their work rather than on the pedagogic value of clinic and skills centred activity.

It is perhaps worth pondering on why clinical education has received such a positive reception in the South Pacific. It is, perhaps, for three reasons. First and foremost, the law programme is a new and evolving one which is, as yet, unfettered by particular methods of operation and personal empires. Although there is still much that has to be done in terms of developing the curriculum and teaching strategies there is general receptiveness to the use of the clinic and the role of skills in the study of law. Secondly, the skills of the law students themselves are at a relatively undeveloped stage. Organisational and presentational skills require attention if the students are to maximise their time at law school and if they are to function effectively in their chosen careers, particularly, but not exclusively, in law. The clinic provides the ideal vehicle for skills teaching. Thirdly, the use of lawyering skills gives direct

[88] American readers will be familiar with the skills and values requirements contained in the *MacCrate Report*, op cit (fn 30). Although written from the perspective of the American Bar Association (albeit with 'academic' input on the Task Force) and therefore centred on the needs of practice, the conclusions on the need for skills development have none the less been picked up by the *ACLEC Report* (1996), op cit, 72 — a report reviewing all stages of legal education in England and Wales. The report also endorses the need for active learning on the part of students (65).

[89] This argument is put forward by critics of the skills and clinical movement such as Bradney. See A Bradney, 'Ivory towers or satanic mills — choices for university law schools?', 17 *Studies in Higher Education* 1992, 5.

[90] For a US perspective see R Hoffman 'Clinical Scholarship and Skills Training', *Cli Law Rev* 1 (1), 1994, 93–125. The British position is well argued by Boon A. *Skills in the initial stage of legal education: theory and practice for transformation*, in Webb J. and Maughan C. *Teaching Lawyers' Skills*, Butterworths, 1996, 99–136.

meaning to the students in the studies and to those associated with the programme who represent the arms of legal practice.

The use of the clinic and the focus on skills alongside the substantive legal subjects has had wide appeal to both practitioner and student. None of this is to suggest that the law school is simply focused on producing tomorrow's barristers and solicitors. Skills in the transferable and intellectual sense are a pre-requisite to both understanding law and to the pursuit of a wide range of job and career interests.

### *Community involvement*

The clinic at USP is designed to have a community dimension. Not only is this to be manifest in terms of servicing unmet legal need but it is to open the doors to the law school for members of the general public. In the live-client clinic the involvement is perhaps obvious — clients will come into the school and see the students and staff. The dissection of their cases and the rehearsal of the relevant stages (with the clients' consent — the case cannot proceed without this level of preparation though) involves all participants in a way unlikely to be achieved in the busy lawyer's office. It is a learning process for all.

The other clinical activity on the law programme at USP that actively affects the community is the *Street Law* clinic. As indicated above, this is a legal literacy course in which students prepare and present classes on civil and related rights to selected groups (at present prisoners but it is planned to include secondary school age pupils). It is interesting to note that as a result of the class recently concluded in a Fiji prison, 6 of the 24 participating prisoners now intend to register on the university's extension programme.

Future clinical classes are planned to involve the public through seminars and workshops on a range of legal concerns through a legal literacy course.[91] This will be a distance learning package aimed at non-governmental organisations (for example, advice agencies) and local support groups (for example, those concerned with women's rights). In these ways the university better serves the community that supports it.

### *Practice and ethics*

Arthurs, Pearce, MacCrate, and ACLEC have all rightly highlighted the importance in legal education of ensuring that students are aware of the role of lawyers in society and the professional standards to which lawyers can be expected to conform and by which they are accountable.[92]

In the South Pacific, although many countries have codes of professional

[91] For brief details of the programme and other related developments see *South Pacific Law Bulletin* 1 (2) (1996) 7–8.

[92] Ottowa, *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada* (1983) (concentrating on research, this report addressed 'fundamental research' issues including the economic, philosophical, political and social implications of law); Canberra, *Assessment for the Commonwealth Tertiary Education Commission* (1987); MacCrate, op cit (fn 30); ACLEC op cit (fn 23).

conduct and ethical practice, the written rules (largely adopted from other non Pacific island jurisdictions) are often not reflective of Pacific island cultures and even where the rules are appropriate they are seemingly disregarded in many instances.[93]

On the USP's law programme, ethics and professional responsibility form an important and integral part of the curriculum both at degree and professional practice course levels. These issues are pervasive to all subject areas. Identifying actual and potential problems and challenging unethical behaviour is however problematic, both in a course of study and in practice, especially in Pacific island communities. It has already been shown that students find it difficult to raise issues that may lead to discussion and possible conflict. Conflict in itself is avoided by many of the region's cultures for the relationship between people is considered to be precious with conflict breaking the 'space' between individuals. An excess of conflict is thought to lead to social breakdown.[94] Couple this with the apparent rigid social order of much of the region and the respect in which the chiefly and educated are held, and effective accountability becomes a real problem.[95]

The clinical approach can offer some techniques and strategies to meet these difficulties. The close working relationship that develops between the clinic staff and the students has been noted elsewhere.[96] If not exclusive to, this is certainly common in, clinical education. The advantage of this learning environment is that a level of trust and mutual respect can develop that promotes debate even where the subject of the discussion is culturally sensitive. As with the study of practice, the clinic provides the opportunity for an examination of ethics in an applied context, particularly in live-client work. What do you actually do if the real client's mother is on the phone asking for details of her son's or daughter's case? What if you do discover some facts about your client from your enquiries that cast doubt on the instructions you have been given? Are you obliged to alert the court of all authorities (even ones that prejudice your case)? Questions such as these may emerge in the course of clinical work. They allow for discussion, and may require a decision, that has practical meaning for all concerned as well as providing material for consideration and reflection.

### *The clinic and development*

The final perspective in this paper looks at the role of the clinic in the region in developmental terms. The development referred to here relates both to the curriculum and to wider societal concerns.

[93] Conflicts of interest, breaches of confidentiality, mismanagement of clients' funds, extreme delay, incompetence and bribery are frequently complained of. For further details see R Grimes, 'Learning and practising law in the South Pacific — the ethical dimension' in *Ethical Challenges to Legal Education and Conduct* (K Economides, ed, 1998).

[94] Thaman, *Hints for Teachers*, op cit (fn 60) 23–4.

[95] It should be said that this might be equivalent to the status accorded to the wealthy, and the respect shown to business leaders, in western societies.

[96] For example, see L Cole, 'Lessons from a Semester in Practice' (1994) *Cli Law Rev* 1 (1) 173–85.

### *Lessons for the law school*

It should by now have become apparent that law at USP is in the early stages of growth. The law school has been fortunate to draw on the experience, goodwill and good practices of other, more mature, institutions. The expansion of the programme, and of staff and student numbers has been rapid.[97] The introduction of the clinic in both the live-client, placement (externship) and simulation forms has had a profound impact on the overall programme. Not only has it introduced a pro-active dimension to teaching but it has prompted wide ranging discussions on teaching methods, course objectives and assessment regimes. It is perhaps inevitable in a programme which is in its infancy that reviews and appraisals are a recurring theme. As exhausting and time-consuming as this process might be it is in the writer's view a sign that healthy and necessary reflection is taking place. The appointment of the Law Clinic supervisor has seen the cementing into place of the clinical input on the degree and postgraduate professional practice courses and will no doubt lead to further developments.

### *Establishing a continuum*

Not only does the clinic enable students to take a more active part in their learning but it is bridging the gap between what goes on in the law school and the world of legal practice. It would be right to describe the response of private practitioners, government law officers and the judiciary as enthusiastic to a more hands-on approach to study. None of this is intended to suggest that local and regional practitioners in their various guises were not supportive of the law programme generally. It will be recalled that they played a formative part in the creation of the programme through the Curriculum Workshop held in Vanuatu in 1992.[98] What it is has meant however is that outside lawyers can be drawn into the work of the law school, for example, through adjunct positions and work alongside the staff and students in the running of clinics. Why not have a judge on the bench in a trial exercise or a court registrar looking at the pleadings in a drafting class? Students at different levels of study can also be integrated for specific purposes. In a recently launched training course for magistrates in Vanuatu, participants studying on the programme will mix with degree students in a range of exercises including advocacy.[99]

The Diploma in Legal Practice (the intensive six month course following

[97] In the space of three years the School has grown from two full-time faculty members to 14 (excluding adjunct positions) and student numbers now exceed 150. This may seem very small by international standards but is highly significant regionally. IJALS has a further teaching and research staff complement of six (four teaching positions and two research).

[98] See fn 18, supra.

[99] The Vanuatu Judicial Training Project started in July 1996 and the face to face component is due to begin in February 1997. The course delivered by extension mode for the first four months. This programme is funded by the Overseas Development Administration, UK (British aid). It is a pilot scheme for six trainee magistrates (all presently unqualified but several with considerable experience as lay justices). If successful it may be the source for meeting the future training needs of the magistracy in the country. It may also be adaptable to the requirements of other countries of the region.

graduation for those wishing to qualify for entry into practice which commence in February 1998) will similarly encourage the involvement of local and regional practitioners.[100] This, coupled with the continuing legal education brief of IJALS, sees the practitioner focus and input clearly established. And what is law if it is not studied as a continuing process from certificate level, through degree and vocational courses through to post qualification needs? It is in danger of becoming unnecessarily fragmented and unrealistically focused discipline. The practical bias of the clinic is not intended, certainly in law degree classes, to simply prepare lawyers for practice. This may be the objective on more vocationally directed programmes. No, the continuum is sought to make greater sense of study and to maximise the available resources and benefits, whether the participant be an undergraduate student or a High Court judge. The link between levels of study and plurality of needs has not escaped those consulted in the development of law studies.[101]

### *Providing a service*

The development of the live-client clinic will make a substantial contribution to the provision of legal services. The clinic is planned to be an elective on the degree for 300 level students (years three and four) and compulsory for those on the Diploma in Legal Practice course.

The extent to which the clinic ought to and does become client driven is problematic. Clinicians are often pressured into providing a service in recognition of need and indeed funding may require this.[102] Debates then arise on what the role of the clinic is — to serve the client or the learning needs of the student? It is (relatively) easy to say, with some conviction, that it is the educational aim that is of paramount importance and that the client must be made aware of this from the outset. It is also clear from an ethical perspective that whereever a client is advised or otherwise represented, the client's interests come first (even above the students' needs). Where the two are in conflict, the client prevails. This does not mean that the client must always be taken on; and this is the hard bit. How can lawyers turn away clients that are in need of their services and in the context of their inability to pay, or their cultural background, or the lack of provision elsewhere, would find little comfort outside of the clinic?

The numbers of lawyers per head of the population is very low in the South

[100] For details of this course see fn 25, supra.

[101] The law school in general and the writer in particular have, through personal visits, correspondence and the circulation of discussion papers, consulted with private practitioners, the judiciary and magistracy, government law officers and politicians across the region served by USP and within the relevant Pacific rim countries. This consultative process, which has been operative since 1992 is continuing for example through the work of the IJALS Advisory Committee — see *South Pacific Law Bulletin* 1(2), op cit (fn 91) 8.

[102] See Tarr, op cit (fn 2) 32–3 and 38–41.

Pacific region.[103] Legal aid and other publicly funded legal services are thinly spread.[104] The *Street Law* programme referred to above revealed that of 24 young offenders, all of whom were serving substantial prison sentences (including two imprisoned for life) only four were legally represented at their court hearings. Criminal cases, family break-ups (especially where domestic violence is involved), housing and a range of consumer related difficulties largely go unassisted.[105] The pressure, therefore, on any service opening its doors is likely to be enormous. The clinic at USP is and will continue to be proud to be associated with its contribution towards unmet legal need but those responsible for its design and operation are only too mindful of the difficulties for all in raising expectations. A high quality, but relatively low profile and realistically targeted, service is anticipated.

### *Resources and development*

It will come as no surprise to clinicians (or indeed 'regular faculty' members) to hear that finding funds for the clinic causes a constant, or at least recurring, headache. Clinical programmes can be resource intensive, especially in terms of human resources. What must however be taken into account is the value that the investment produces.[106] In a university in the 'developing' world the resource accountability angle is perhaps even more acute. Does the clinic represent value for money and is it a valuable vehicle for study for Pacific island students? Affirmative answers to both questions are suggested here. The development of a pedagogically integrated curriculum that draws on the many advantages of clinical legal education is a sensible use of resources. For the reasons shown above the model that the clinic represents is well suited to South Pacific cultures, particularly with the use of group work. The clinic makes economic sense in terms of the educational objectives of the law programme and the sensible use of resources.

These points have been recognised by those funding the university. USP receives its income from a variety of sources, principally contributions from member countries, student fees and donations from 'developed' countries,

[103] In Tuvalu, for example, there are three lawyers (the Attorney-General, a civil servant and the People's Lawyer) to serve a population of some 9000 people. There is a substantial backlog of cases (mainly land disputes) where the parties require advice.

[104] The position in Fiji, for instance, has recently provoked responses from both a Commission of Inquiry (The Beattie Commission, op cit (fn 39) 368–78) and the Fiji Law Reform Commission (*Report in relation to Legal Aid*, January 1996, report No 3).

[105] In Fiji there is currently one Public Lawyer to deal with a wide range of legal matters. He is mostly taken up with family law cases. The proposals for reform mentioned in the report footnoted immediately above may see the creation of a Legal Aid Commission which, with adequate funding could address some of these problems. Whether this resourcing materialises remains to be seen. The Fiji Young Lawyers' Association (September 1996) launched an advice centre to provide one-off advice on a drop-in basis to callers. The sessions run from 10–12.30 each Saturday.

[106] B Seibel has rightly pointed out (unpublished email response to law clinic list server enquiry about the cost effectiveness of clinical programmes, July 1996) that a cost/benefit exercise with agreed points of measurement must be undertaken to fully appreciate the worth of clinic and this must go beyond merely student/faculty ratios.

notably other Commonwealth nations.[107] The donor agencies have expressed considerable support for the hands-on aspect of law teaching including specific donations to IJALS in general and the *Street Law* and magistrates training project in particular. Of course those donating aid have their own agendas which centre around western notions of democracy and political stability, principles which have meaning and relevance (if conditionally) in the region. The clinic represents a means by which student education can be advanced and through which principles of good governance can be pursued.

## IV CONCLUSION

Two questions were posed at the beginning of this paper: what does the clinic have to offer students in the South Pacific and how does the clinic address the cultural and social context in which it operates?

The clinic is a powerful teaching methodology which empowers students to take some degree of control over their learning. It has largely developed as an educational tool in 'developed' countries, notably the USA. It is now an established (if still sometimes contentious) feature of the majority of US law schools.[108] It is an increasing feature in other common law based jurisdictions including 'developing' nations.[109] It is becoming an established feature of the law programme at USP.

The clinic in the South Pacific appeals to students in part, for the same reasons as it does elsewhere. It is exciting, fun, stimulating, it makes students think about their studies as a whole and it gives students some direct input into their learning. But in the South Pacific it is more than that. The clinical way complements the students' own cultural base, especially the involvement in live-client work, with interaction in the wider community. It addresses the power base from which the teacher is seen and in doing so removes some of the obstacles to active learning. The clinic enables the students to engage in group work which, for many, is a culturally familiar and acceptable method of working. There are of course difficulties. Some students are initially reluctant to open up to a process that is so interactive. Some find the positions of teacher and students so entrenched in their minds that there can be little equalising of the power relationship. For many, the clinic is threatening for the challenges that it brings. As a whole however it appears, at this relatively

[107] Most donor funds come from Australia, New Zealand and the United Kingdom. For further details of income and other financial information see *USP Statistics 1996*, 8–1 — 8–5.

[108] For details of clinical and other programmes offered by law schools in the USA see *Barron's Guide to Law Schools* (annual publication), BESI. This covers all 175 ABA accredited law schools. The umbrella organisation for clinicians in the USA, CLEA, estimates that clinical programmes are offered in over 90% of all law schools.

[109] An extensive clinical programme is now available at the National Law School of India University (NLSIU), including a compulsory clinic. See V Nagaraj, *Clinical Legal Education at NLSIU*, unpublished, but available from the author at NLSIU, Bangalore, India. Clinics are also widely available in law schools in South Africa. See the various works of D McQuoid-Mason of Natal University, Durban.

early stage in the evolution of the law programme, to offer a great deal in terms of educational practice and cultural relevancy.[110]

As a postscript I hope that the observations, sentiments and predictions contained in this paper are read and accepted in the spirit that is intended — the stimulation of a debate on the relevance and desirability of hands-on experience in legal education in the South Pacific. It is, of course, presumptuous for any person who does not share the cultural history of another to comment on developments peculiar to that jurisdiction. If I have, in my analysis, offended anyone, I apologise. I do, however, maintain the right to raise issues, even if others (and there must be many) have cultural and local qualifications to make such contributions that exceed mine. If the product of such interaction is more critical, aware and sensitive lawyers I, for one, consider the effort worthwhile.

[110] I am, as ever in clinical work, grateful to colleagues, students and clients for making the study of law meaningful.